

**GAS STANDARDS (GASFITTING AND CONSUMER GAS INSTALLATIONS) AMENDMENT
REGULATIONS (NO 2) 2000**

Motion for Disallowance

Pursuant to Standing Order No 152(b), the following motion by Hon Jim Scott was moved pro forma on 28 June -

That the Gas Standards (Gasfitting and Consumer Gas Installations) Amendment Regulations (No 2) 2000 published in the *Gazette* on 19 December 2000 and tabled in the Legislative Council on 23 May 2001 under the Gas Standards Act 1972, be and are hereby disallowed.

HON J.A. SCOTT (South Metropolitan) [8.45 pm]: Many members will be familiar with this issue, particularly those who were involved in the inquiry on gas regulations conducted by the Joint Standing Committee on Delegated Legislation. In fact, the amendments that we are looking at deal precisely with some of the regulations that were looked at by that committee.

I have moved this disallowance because of the concerns raised by Mr Peter Stewart, the Director of Combustion Air Pty Ltd, who contacted me after discovering that these regulations had been introduced. Mr Stewart had given evidence to the committee. He had followed the regulations with great interest because he is involved in the industry and was therefore impacted by the changes in both the legislation and the regulations. Mr Stewart expressed the concern that the changes had not dealt with a number of recommendations that had been put forward by the Delegated Legislation Committee. In section 7.3 of its forty-fifth report, the Joint Standing Committee on Delegated Legislation concluded that -

On this basis, the Committee recommends that the Minister For Energy should take steps to:

- (a) amend the definition of “gas appliance” in section 4 of the Act so that it is consistent with the definition of “appliance” in the Regulations, thereby removing any doubt that a Type B appliance is a “gas appliance” for the purpose of section 13D of the Act;

Clearly, that recommendation was made because the term “appliance” was not consistent throughout the different regulations, and therefore it caused considerable confusion for people who had to abide by the Act. Section (b) recommended that the minister should -

amend section 13D of the Act to provide for conditions on the advertising of Type B appliances which have not been approved by the Director;

This was also a concern of the committee. Members may not remember the debate, but the situation is that type B appliances are large commercial or industrial appliances. These appliances could not always be advertised because they were one-off drawings of a particular appliance. It was difficult to advertise in the paper a one-off appliance that would suit a particular job. This impacted on those Western Australians who were producing products that were one-off and specifically for our market, as opposed to an imported version that had duplicates for the larger world market. That situation did in fact militate against the local industry being on an equal footing with the much larger engineering companies around the world.

Section 7.3 (c) recommended that the minister -

amend regulation 35 of the Regulations so as to remove the need for the Director to exercise his discretion in sub-regulation (3) for the provision of “commissioning” gas;

There was quite a lot of concern about the discretionary nature of this regulation. The committee felt that this went against the need to be open and accountable, and in fact that it did not treat equally those people who were required to adhere to the regulations. Section 7.3 (d) recommended that the minister -

amend regulation 28(4) of the Regulation so that it places an obligation on gasfitters which is similar to (but not greater than) the obligation placed on inspectors in regulation 22(2);

This was the recommendation for which I had the greatest concern, because I felt that it had the greatest implications for safety. In that situation, the gas supplier was required to ensure that an inspector had approved the appliance before he could turn on the gas, except in situations in which he was given a commission in gas. The committee felt that there could be significant problems when a gasfitter, who was not highly qualified, was asked to put an appliance together, fit a new appliance to a bank of other equipment, or to solve a problem with a new appliance, when he did not know much more than how to join pipes together.

Hon M.J. Criddle: How would you overcome that?

Hon J.A. SCOTT: Under the previous regulations, a more highly qualified person had to tick off a job at the end of the process. However, under the new process, plans of drawings can be approved without a final inspection

before the gas is turned on. I am extremely worried about that because there is the possibility for accidents to occur. There could be something wrong with an appliance and a less qualified person might not pick this up. The liability for any problem is pushed onto the gasfitter. That was how the situation seemed to the committee and to me. Part (e) of recommendation 7.3 was to -

consider amending section 13 of the Act to provide for the publication of current inspection plans and policies of gas suppliers and pipeline licensees granted exemptions under section 13(2).

The granting of exemptions means that an accountable system is required to ensure an open process. That same process occurs when a minister reports important matters to this House. They were the points on which the committee commented, but a number of other points were brought before the committee. A multiplicity of approval forms was being used at the time the committee was examining this issue. There was some concern that this would create confusion. Mistakes could be made if every time somebody put one of these appliances together or a gasfitter fitted an appliance, a different form had to be completed. There were also expressions of concern about the inspectors and the way in which they would be selected and would work. There was a view that if an inspector came from private industry, he might favour the industry from which he came and would not be fully accountable.

A number of concerns discussed during the committee process were not really outlined in the final conclusions of the committee. When I examined the new subsidiary legislation, I found that part 7.3(d) of the recommendations, which concerns gasfitters being the final responsible person, had been amended. Part of it has been amended satisfactorily, as far as I could see, so I am not concerned about that. However, a number of the other issues had not been examined. I have since discussed this with Mr Koenig, who informed me that while these things had not all been fixed in the regulations, a number of them, including the advertising conditions applying to type B appliances, were to be amended in the Act.

Point of Order

Hon M.J. CRIDDLE: Who in the Government is dealing with this regulation?

Hon N.D. Griffiths: It is Hon Tom Stephens. He is present in the House.

Hon M.J. CRIDDLE: Thank you.

The PRESIDENT: The honourable member got in a question, rather than a point of order, but it whizzed through fast.

Debate Resumed

Hon J.A. SCOTT: I have been told that a number of those concerns are being dealt with or must be dealt with under the Act, rather than in the regulations. That includes the advertising of type B appliances, the ability of the director to exercise his discretion, which will be dealt with under the Act, and the final point was to -

consider amending section 13 of the Act to provide for the publication of current inspection plans and policies of gas suppliers and pipeline licensees granted exemptions under section 13(2).

I have been promised that these issues will be considered in future changes to the Act. Before I am satisfied, I want an assurance from the minister on these issues, because the gas industry can have a huge impact on the public. When something goes wrong, such as the Longford plant accident in Victoria, it can have a huge impact both on the safety and whole economic wellbeing of a State. Western Australia has some large gas facilities, not only near Perth but also in other parts of the State. Significant problems could arise if a disaster occurred in those areas. I would like a set of regulations that will properly deal with those issues. On top of all these changes, there is an understanding, as in any regulation, that it is a balancing act between the risk and benefit one gets from safety regulations. I had a good read of a document titled "Health and Safety Executive Discussion Document on Reducing Risk and Protecting People", which came from the United Kingdom. It was one of a series of documents put together following the examination of the nuclear industry in Britain. That examination formed the basis of risk assessment and regulation for a whole lot of industries. I do not want to take up too much time with this issue. The document I referred to indicated that many regulations today have an international basis. Uniform international legislation is aimed at ensuring there are no false impediments against free trade. However, we must balance that type of pressure against the safety of our community and the economics of other people who are impacted upon by such things as gas explosions. Luckily, there is a balance in the strict safety regulations of the European Union, which are probably much better than the regulations pushed by entities such as the World Trade Organisation. We have the ability to put in place good quality regulations and legislation if we follow the lead of the Europeans. I hope we go down that path, rather than the path of WTO-style regulations that are aimed at improving profitability, getting rid of measures to prevent free trade and favouring of one nation over another. When we consider this legislation we must ensure that the benefits flowing from it to the people in the industry are balanced by safety and good levels of scrutiny in the

community. It is important to check these regulations when they come before this place otherwise they will move in the other direction.

At this point I will sit down. However, I seek an assurance from the minister that the issues that have not yet been dealt with, which were foreshadowed by the Joint Standing Committee on Delegated Legislation to be fixed through the Act rather than through delegated legislation, are in the pipeline and will be amended to allay the concerns of the committee. If I have that assurance I have no intention of blocking this delegated legislation. On the other hand, if this is just some time-in-the-future legislation that the Government may get around to dealing with, I would be less likely to accept that as a reasonable proposition. I hope the minister will be able to assure me that these changes to the Act will occur reasonably quickly and not some time in the future when I am long gone from this place.

HON GEORGE CASH (North Metropolitan) [9.04 pm]: I have listened with interest to the various issues raised by Hon Jim Scott about these regulations. Before I comment on the Opposition's position on disallowing these regulations, there is a need to recognise some of the history that has occurred in the current 2000 regulations being tabled in the House.

Members will be aware that the regulations were made under the Gas Standards Act 1972, and that in 1999 the 1983 regulations were significantly upgraded. Members will also no doubt recall that Hon Tom Stephens - then Leader of the Opposition - gave notice of a motion to disallow the 1999 regulations in the House during 1999. However, later in November 1999, Hon Tom Helm moved that the disallowance motion be discharged on the basis that the Delegated Legislation Committee had made inquiries into the 1999 regulations, made recommendations and received commitments from the then Minister for Energy. The purpose of the 1999 regulations was said to be to regulate the minimum standards of gasfitting work to be carried out in consumers' premises, to provide for the safety of consumers, primarily by establishing and maintaining a system of licensing gasfitters and prescribing the technical standards with which gas and gas installations must comply, in a manner consistent with the regulatory regimes of other jurisdictions in Australia.

The 1999 regulations were considered by the Delegated Legislation Committee. That committee heard evidence from a number of interested parties including a substantial submission by Peter Stewart from Combustion Air Pty Ltd. In particular, the committee considered issues dealing with type B appliances. I shall describe the division between type A and type B appliances so that members understand what type B appliances are.

Type A appliances are of a type or class as specified in schedule 1 and are generally in the nature of mass produced domestic appliances, such as heaters, cookers and small commercial appliances. Type B appliances are defined according to their input rate being greater than 10 megajoules but not being type A appliances or a mobile engine. They are said to be in the nature of industrial or larger commercial appliances.

The submission made at the time by Combustion Air to the Delegated Legislation Committee centred around a number of specific issues. The first issue was the displacement of the State Energy Commission of Western Australia system by regulation 22; secondly, the issue surrounding approval of type B appliances under section 13D of the Act; thirdly, regulation 35 and the supply of "commissioning" gas; and, fourthly, the shift of liability to gasfitters and manufacturers, which was raised along with other issues by Hon Jim Scott tonight. On that issue, Combustion Air argued that regulation 28(4) attempted to inappropriately shift liability to gasfitters and manufacturers. It further submitted that a gasfitter was made responsible for gas safety and that a type B appliance met prescribed requirements which, given existing training levels, was said by Combustion Air to be unworkable.

Given the evidence of Mr Stewart and a number of other interested parties who came before the Delegated Legislation Committee, the committee also took evidence from the Office of Energy. In particular, it was questioned on the issues raised by Combustion Air. I will not go through the evidence; it is in the forty-fifth report of the Delegated Legislation Committee for all to read. However, it is important to understand the conclusions that were arrived at by the committee.

Firstly, the Standing Committee on Delegated Legislation made the point that the regulations were in fact within power and it resolved not to recommend disallowance. As a result of the information obtained from the Office of Energy, the Delegated Legislation Committee said that it was generally satisfied with the approval process for installing and commissioning type B gas appliances. However, the committee identified five concerns, which it is important to recognise. Firstly, it recognised the ambiguity arising from the definitions of "appliance" under the regulations and "gas appliance" under the Act. Secondly, it recognised the potential for section 13D of the Act to cause hardship to manufacturers of type B appliances, some of which may not be capable of approval prior to advertising - another point raised by Hon Jim Scott. Thirdly, it recognised the apparent conflict between the procedure for supplying "commissioning" gas for inspection and testing under regulation 22 and the prohibition on the supply of gas to a consumer's gas installation other than with the exemption of the director,

which is contained in regulation 35. Fourthly, the committee concluded that there was a question about the apparent shift of liability from gas suppliers and inspectors to gasfitters. Fifthly, it acknowledged the failure to publish inspection plans and policies of gas suppliers granted exemptions under section 13(2) of the Act.

Having identified those concerns, the committee made a number of recommendations. It is important that we acknowledge the recommendations made by that committee because a chain of events occurred after those recommendations were made and tabled in this House. Firstly, the committee recommended that the definition of “gas appliance” be amended in section 4 of the Act so that it was consistent with the definition of “appliance” in the regulations, thereby removing any doubt that a type B appliance is a gas appliance for the purposes of section 13D of the Act. Secondly, it recommended that section 13D of the Act be amended to provide for conditions on the advertising of type B appliances that have not been approved by the director. Thirdly, it recommended that regulation 35 be amended to remove the need for the director to exercise his discretion in subregulation (3) for the provision of “commissioning” gas. Fourthly, the committee recommended that regulation 28(4) be amended so that it would place an obligation on gasfitters that would be similar to but no greater than the obligation placed on inspectors in regulation 22(2). Fifthly, the committee recommended that section 13 of the Act be amended to provide for publication of current inspection plans and policies of gas suppliers and pipeline licensees that are granted exemptions under section 13(2) of the Act. Those recommendations were brought into this House on 9 November 1999. The committee report was signed by the then Chairman of the Joint Standing Committee on Delegated Legislation, Hon Bob Wiese.

Subsequent to report No 45, which, as I said, came down in November 1999, report No 49 of the Delegated Legislation Committee was tabled in this House. That report updated the House on the issues raised in the earlier report that, in part, had been dealt with. The Minister for Energy at the time, Hon Colin Barnett, had been written to by the Delegated Legislation Committee and the recommendations were pointed out to the minister. Coincidentally, on 9 November 1999 the minister wrote to the Chairman of the Joint Standing Committee on Delegated Legislation and pointed out what he was prepared to do about certain recommendations. Later, in another letter dated 30 December 1999, the Minister for Energy wrote again to the Chairman of the Standing Committee on Delegated Legislation in the following terms. It is important that these terms be incorporated in *Hansard* so that we understand the various steps taken along the way to the tabling in the House of the regulations that are the subject of this disallowance motion. The letter to the then Minister for Energy reads -

Thank you for your letter dated 16 November 1999 and attached Report No. 45, setting out the outcomes of the Committee’s review of these regulations.

I was pleased to note the Committee concluded that the Regulations are within power and resolved to not recommend their disallowance.

The Committee provided me with the following recommendations to improve the regulations, and I discuss each briefly:

- (a) Amend the definition of “gas appliance” in the *Gas Standards Act 1972* to make it clear it includes a Type B (industrial) gas appliance - I accept this recommendation and will include it with other amendments to that Act expected to be introduced during next year.
- (b) Amend s.13D of the *Gas Standards Act 1972* to provide for conditions on the advertising of Type B gas appliances which have not yet been approved by the Director of Energy Safety - I also accept this recommendation and will include it with other amendments to that Act expected to be introduced during next year.
- (c) Amend Regulation 35 so as to remove the need for the Director of Energy Safety to exercise his discretion in sub-regulation (3) for the provision of “commissioning” gas - I have already indicated per my letter of 9 November 1999 that I will authorise a suitable amendment and note that the Committee supported the proposal.
- (d) Amend regulation 28(4) so that it places an obligation on gas fitters which is similar to (but no greater than) the obligation placed on inspectors in regulation 22(2) - as also covered in my letter of 9 November 1999, I am prepared to amend item 501 (2)(c) in Schedule 6 of the Regulations to deal with this issue and I note the Committee supports that approach. The Committee has further requested that I give this issue additional consideration, to the extent of providing an amendment that would expressly limit the liability of gas fitters to ensuring the compliance of work *they* have performed, either on a Type B appliance or on the gas installation.

I acknowledge that, in the particular case of a person who merely connects pipework to a Type B appliance this could be justified. However, simply changing Regulation 28(4) in the way indicated is likely to have repercussions in relation to other areas of gasfitting and I could

therefore not agree to that specific change. I can, however, commit to any changes necessary to achieve the desired outcome, taking the advice of Parliamentary Counsel as to the most appropriate means of achieving it.

- (e) Consider amending s.13 of the *Gas Standards Act 1972* to provide for the publication of current inspection plans and policies of persons (gas undertakers and pipeline licensees) granted exemptions under s.13(2) - I believe this recommendation also has merit and I will seek to include it with other amendments to that Act expected to be introduced during next year.

I thank the Committee for its advice in regard to these matters.

The regulations before us go a long way to satisfying the committee's recommendations. For instance, it is intended under clause 8 of the regulations that regulation 28 be amended such that regulation 28(3) and 28(4) are repealed and new subregulations inserted in their stead. It then goes through the new regulations 28(3) and 28(4). I believe that is written in such a way as to give support to the minister's earlier advice to the committee that he would take into account what was said.

I now refer to new regulation 18(2). Clause 5 of the 2000 regulations states regulation 18 is repealed and the following regulation is inserted in its stead. The wording of new regulation 18(2) is important, because it deals with the work that is done by licensed gasfitters. I know Hon Jim Scott believed that gasfitters were being held responsible for the whole of type B appliances. My reading of new regulation 18(2) indicates that is not the case and it relates to the work done by those licensed gasfitters. However, Hon Jim Scott has raised an important issue, because those licensed gasfitters and other operators who install those appliances have raised important matters that they are entitled to believe will be looked at.

The bottom line as far as the Opposition is concerned is that we believe the new 2000 regulations cover important safety issues and are designed to protect the people who design, manufacture and install, and provide gas to these appliances; and the members of the public who use these gas appliances. Our first priority is clearly to ensure that public safety is maintained and there is a proper apportionment of liability for those responsible for or involved in the chain, from the designer of the appliances through to the end user.

However, although the regulations appear to cover the issues raised by the Delegated Legislation Committee, they certainly do not cover those amendments that the former Minister for Energy said would be put in place in respect of section 13D of the Act. That is not unreasonable, because we are currently dealing with regulations rather than an Act. However, in my view Hon Jim Scott is correct in seeking a firm commitment from the Government that amendments will be forthcoming in the near future in respect of section 13D and other areas of the 1972 Act. We support the need for a commitment by the Government on that matter.

Hon Jim Scott has raised some interesting issues, some of which may be taken up again by the Delegated Legislation Committee, because that committee has an obligation to track what is being done. Some of the recommendations that were made by the committee in 1999 appear to have been completed, but other recommendations are clearly outstanding, and the opportunity tonight to discuss this matter will provide some information for the Delegated Legislation Committee should it wish to pursue this matter further.

In the end, in all good conscience, we cannot support a disallowance of these regulations. I say that not because of the safety factor alone. If we were to disallow the 2000 regulations, we would go back to the 1999 regulations, as Hon Jim Scott well knows; and the 1999 regulations are the regulations that were complained of. Therefore, at the very least it can be said that there has been a step forward in the process. It can be said also that we have not completed the steps necessary to satisfy the requirements that were outlined in reports Nos 45 and 49 of the Delegated Legislation Committee. I urge the Government to give this matter the consideration that it deserves, because Hon Jim Scott has raised a number of important issues.

Combustion Air Pty Ltd raised a number of issues not only in its 1999 evidence to the Delegated Legislation Committee but also subsequently. Not all of those issues hold water. Combustion Air might have made its submission and subsequent comments in good faith; however, it should not be overlooked that some years ago, Combustion Air took a Supreme Court action against the Office of Energy. That action was struck out after the statement of claim had been amended on, I think, six different occasions; therefore, to some degree the factor of the wounded litigant might come into play in this matter. It appears from Combustion Air's public comments, and certainly from the evidence that it gave to the Delegated Legislation Committee, that it has some sort of grudge against the Office of Energy or some of its officers. That is a matter for the Office of Energy and Combustion Air to work out. However, we need to recognise that although Combustion Air has put forward various issues, not all can be sustained. Combustion Air is entitled, as is any company or person in Western Australia, to have its case aired, and I believe Hon Jim Scott has done a good job tonight in airing the issues that it has raised. I am sure the Office of Energy will now be able to address the issues that remain outstanding in respect of this matter.

HON M.J. CRIDDLE (Agricultural) [9.27 pm]: Many of the issues have been canvassed, but this matter is important, particularly for type B industrial appliances, because we need to guard against the possibility of severe damage, and some work remains to be done with regard to the Gas Standards Act and the shift of responsibility to the people who carry out the work. Hon Jim Scott has outlined his concerns about the regulations. I have read the regulations and feel quite comfortable with them, because they are an improvement on the 1999 regulations. However, I would like the minister to point out whether it is proposed to change the penalties that will apply, because it is all very well to give these people the responsibility for this work, but we need to know what penalties will apply, given that we now have a clear outline of what the new regulations are intended to achieve.

HON TOM STEPHENS (Mining and Pastoral - Minister for Housing and Works) [9.29 pm]: The Chamber has been fortunate tonight to have had clearly put before it an issue that has been in this House for some time. Hon Jim Scott has pointed out the history of this matter. That history has been elaborated upon by Hon George Cash, who paid a compliment to Hon Jim Scott by saying that the issue is now well and truly before the attention of government. The Office of Energy also has now had the issue brought to its attention well and truly. Hon George Cash has made it clear that the Opposition is not prepared to have the safety of people working in this industry put at risk.

I have been asked to comment upon two residual questions that are before the House. First, Hon Jim Scott has asked the Government what it will do to tackle the concerns expressed in the committee report. The answer to that question was given to him by the Minister for Energy a few moments ago. It is now my task to relay that to the House. The Minister for Energy, on behalf of the Government, has asked me to advise the House that legislation will be brought forward in the autumn session that will tackle the residual concerns of the committee and, in particular, those definitional issues that need to be resolved. There will then be an opportunity to tidy up the statute in the manner described.

Secondly, I refer to the penalties. In response to the question Hon Murray Criddle asked, the quick advice that I received in the corner from the senior officer who has been made available to me by the Minister for Energy is that the drafting of amendments to the penalties is under way, and is also part of the legislative reform that is on offer from government. I presume that it will be tackled in the same time frame. I was not informed of that issue, but I presume it will be the same time frame.

On that basis, I am pleased that this motion to disallow a regulation will be either withdrawn or defeated. Whichever way it goes, I hope those assurances are of some assistance to the members who raised the issues.

HON J.A. SCOTT (South Metropolitan) [9.32 pm]: I am satisfied that the Government has said that it will bring legislation before the House in the autumn session to fix the problems that have arisen. It was my intention that that should happen, and I am very satisfied with that. I thank members for their input to this debate, because gas safety is an important issue for the whole community, not just for those who work in the industry. On that basis, I seek leave to withdraw the disallowance motion.

The PRESIDENT: I believe we need to put this to the House for determination. It must be passed or defeated, not withdrawn.

Question put and negatived.

Points of Order

Hon TOM STEPHENS: As a point of clarification, I wonder if at some point the President could give us formal advice on whether the withdrawal or discharge of a motion is sufficient to ensure that the motion is dealt with by the House and that the regulations survive. I do not want to ask the President for that ruling now; however, for future reference, is the request for leave of the House for a motion to be either withdrawn or discharged sufficient, rather than, once a matter has been clarified, a member having the freedom to not pursue a motion that he was previously of the view he should pursue?

The PRESIDENT: I undertake to respond in due course to the minister's request.

Hon GEORGE CASH: It is important in considering that point of order to have close regard to disallowance motions, because if a disallowance motion is withdrawn after it has been moved, it has not been either agreed to or defeated. The object of my interjection tonight was to ensure that there was finality of the matter at hand. It had to be either agreed to or not agreed to. The House decided that it would not proceed with the disallowance, and has made a decision that will appear in the minutes. That is a very important aspect. For a member to move a disallowance motion, have a number of members speak on it, and then stand up and say that he wants to withdraw it, in my view, would not be satisfactory under the provisions of the Interpretation Act.

Hon TOM STEPHENS: It is my view, for what it is worth, that it would be entirely appropriate for the President to construe that the House had not agreed to a disallowance motion if the House had agreed that it be discharged or withdrawn. However, that is up to you, Mr President, to decide in your ruling.

The PRESIDENT: Yes. I thank the minister for his comments. We will not continue this assay debate. The points that the Chairman of Committees has made are correct in respect of disallowance motions being resolved in the affirmative or the negative. However, I will clarify that point and chapter.