

GAS PIPELINES ACCESS (WESTERN AUSTRALIA) (REVIEWS) AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

The purpose of this Bill is to amend the *Gas Pipelines Access (Western Australia) Act 1998* (“the Act”) to clarify certain provisions of the Act and to give effect to matters dealt with by a proposed change to the National Third Party Access Code for Natural Gas Pipeline Systems (“the Code”).

The Bill clarifies the time at which the right of appeal arises, expands appeal rights, streamlines procedures for the classification of pipelines and makes necessary consequential changes.

The Western Australian Act is complementary legislation to the *Gas Pipelines Access (South Australia) Act 1997* (“the South Australian Act”), which was passed pursuant to the Council of Australian Governments’ Natural Gas Pipelines Agreement (“the Agreement”), signed by the Prime Minister, Premiers and Chief Ministers on 7 November 1997.

Under the Agreement, all states, except Western Australia, joined together to apply the uniform provisions of the South Australian Act by means of application legislation. The uniform provisions include Schedule 1 and Schedule 2, which are usually referred to as the Law and the Code.

Western Australia enacted the *Gas Pipelines Access (Western Australia) Act 1998* and Regulations with essentially identical effect to the South Australian Act.

Under clause 6.1 of the Agreement, a Party must not amend its access legislation, of which Schedule 1 is a part, unless the amendments have been approved in writing by all the Ministers of the other parties.

In late 2001, Ministers of all Australian jurisdictions unanimously approved a Bill to amend Schedule 1 of the South Australian Act, as well as amendments to the Code and minor amendments to the uniform Regulations.

Amendments to the Code do not require Parliamentary approval and can be made following agreement by jurisdictional Ministers. However, consequential amendments to Schedule 1 to give effect to matters related to a Code change do require Parliamentary approval.

As lead legislator, South Australia introduced the *Gas Pipelines Access (South Australia) (Reviews) Amendment Bill 2002* into its Parliament in June 2002. This Bill was passed on 17 October 2002 and came into operation on 6 February 2003.

In accordance with clause 6.3 of the Agreement, Western Australia is required to submit a Bill into its Parliament to ensure that its Gas Pipelines Access Law has essentially identical effect to the Gas Pipelines Access Law as enacted in South Australia. The *Gas Pipelines Access (Western Australia) (Reviews) Amendment Bill 2002* fulfils Western Australia’s commitment in this regard.

Clause 1: Short title

Provides that the Act may be cited as the *Gas Pipelines Access (Western Australia) (Reviews) Amendment Act 2002*.

Clause 2: Commencement

Provides for commencement of the Act on a day to be fixed by proclamation.

Clause 3: The Act Amended

Provides that the amendments in this Act are to the *Gas Pipelines Access (Western Australia) Act 1998*.

Clause 4: Schedule 1 section 11 amended

Provides that the Code Registrar must be notified of relevant recommendations or decisions in relation to the classification of pipelines by the National Competition Council or Ministers. Currently, the Code Registrar is required to record information about recommendations or decisions on the classification of pipelines, however there is no corresponding obligation on the National Competition Council and the relevant Ministers to notify the Code Registrar of these recommendations or decisions.

Clause 5: Schedule 1 Section 38 amended

Provides that the time for making an application for a review of a relevant Regulator's decision will be 14 days from the day after the decision is placed on the public register kept by the Code Registrar under the Code.

Clause 6: Schedule 1 section 39 amended

The amendment to section 39 provides that a person who makes a submission on a relevant Regulator's draft access arrangement, or revisions to it, is able to apply to the relevant appeals body for a review of the decision of the Regulator. Currently, only a person who makes a submission on the service provider's proposed access arrangement, or revisions to it, is able to apply for a review of the Regulator's decision. This is relevant where the service provider has failed to submit an access arrangement or revisions as required by the Code.

The proposed new section 39(1a) provides the service provider with a right to apply for a review of a decision of the relevant Regulator to disallow a variation proposed by a service provider of a Reference Tariff within an Access Arrangement Period or to make the Regulator's own variation of a Reference Tariff within an access arrangement period. This amendment relates to a Code change.

Consequential amendments are also made to the matters that may be considered by the relevant appeals body.

Clause 7: Schedule 1 section 41 amended

Enables the relevant Regulator to use the powers to obtain information and documents contained in that section for purposes related to a decision under the Code whether to approve, disallow or make a variation of a Reference Tariff within an Access Arrangement period. This amendment relates to a Code change.