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Australian Energy Market Amendment (Minor Amendments) Bill 2008

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Australian Energy Market Amendment (Minor Amendments) Bill 2008

Date introduced: 20 March 2008

House: House of Representatives

Portfolio: Resources, Energy and Tourism

Commencement: Sections 1 to 3 and anything not covered by the Table in clause 2 commence on the day of the Royal Assent; Schedules 1, 2 and 4 commence immediately after the commencement of Schedule 1 to the *Australian Energy Market Amendment (Gas Legislation) Act 2007*; and Schedule 3 commences at the same time as Schedule 1 to the *Australian Energy Market Amendment (Gas Legislation) Act 2007*.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The main purpose is to amend the reference to ‘2007’ to a reference to ‘2008’ in the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act), the *Australian Energy Market Act 2004* (Australian Energy Market Act), the *Australian Energy Market Amendment (Gas Legislation) Act 2007* (Australian Energy Market Amendment (Gas Legislation) Act) and the *Trade Practices Act 1974* (TPA) to take account of the change in the timing of the introduction of legislation which will establish a national gas access regime.

Background

Over the past decade, the energy sector has undergone major [reform](#). Much of the early reform was under the umbrella of the National Competition Policy which arose from the report of the Independent Committee of Inquiry into National Competition, known as the ‘Hilmer Report’. Reform included provision for third parties to gain access to gas infrastructure such as pipelines under Part IIIA of the TPA. More recently, reform entailed establishing the [Australian Energy Market Commission](#) and the [Australian Energy Regulator](#).

Problems with the access regime led the Commonwealth Government to ask the Productivity Commission to report on ways the regime might be improved. In 2004, the

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Government released the Productivity Commission's report, which was titled '[Review of the Gas Access Regime](#)'. The Productivity Commission concluded that access arrangements could potentially discourage or distort investment in gas infrastructure.¹ It proposed, among other things, moving away from cost-based price regulation and relying instead on price monitoring.² The Productivity Commission also advocated arrangements providing scope to exempt new gas pipelines (on a case-by-case basis) from access provisions for a 15 year period.³ When the Government released the report, it indicated that the [Ministerial Council on Energy](#) (MCE) would be charged with developing a response to the Commission's recommendations.⁴

In May 2006, the MCE [released](#) its [response](#) to the Productivity Commission's report. The MCE noted that its response contained:

... key policy decisions which will be incorporated in the new National Gas Law and National Gas Rules. In accordance with the Productivity Commission's key recommendations, the following changes will be made to the Gas Access Regime:

- an overarching objects clause will be introduced to clarify the regime's objectives;
- changes will be made to the regime's scope to align it with the National Access Regime; and
- a light handed regulatory option will be introduced.

The then Treasurer and the Minister for Industry Tourism and Resources [welcomed](#) the MCE's response stating that it would be implemented through legislative amendments to the Gas Access Regime, following consultation on the draft legislative package.⁵

Agreement was reached between the Commonwealth and the States and Territories to establish a harmonised national gas access regime, which would apply in all participating jurisdictions. The proposed mechanisms are a National Gas Law and National Gas Rules.

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1. Productivity Commission, 'Review of the Gas Access Regime', *Inquiry Report No. 31*, Commonwealth of Australia, Canberra, 11 June 2004, p. LIX.
 2. *ibid.*, p. XXII.
 3. *ibid.*
 4. Hon. Peter Costello, Treasurer, 'Productivity Commission Report on the Review of the Gas Access Regime', [Press Release](#), Parliament House, Canberra, 10 August 2004.
 5. Hon. Peter Costello, Treasurer, 'MCE's Response to the Productivity Commission's Review of the Gas Regime', [Press Release](#), Parliament House, Canberra, 25 May 2006.

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The first step in the process of establishing the national regime included releasing drafts of the Law and the Rules and seeking comment on them. On 19 July 2007, [second exposure drafts](#) were released. In October 2007, the Standing Committee of Officials of the MCE released a [response](#) to comments on the second exposure draft of the National Gas Law.

The second step in the process is the enactment of ‘lead legislation’ by South Australia in 2008. South Australia will enact the National Gas Law as the Schedule to the proposed *National Gas (South Australia) Act 2008*. The Rules appear as [National Gas \(South Australia\) Regulations](#) under Part 3 of the *National Gas (South Australia) Act 2008*.

The third step is that other participating jurisdictions—with the exception of Western Australia—will follow South Australia by enacting ‘application legislation’ which will mirror the South Australian legislation. Western Australia, for its part, will pass complementary legislation to give effect to the National Gas Law.

The timing for the introduction of the South Australian legislation has slipped from 2007 to 2008. According to the Minister’s second reading speech, the delay is the result of proposed changes to the National Gas Law and Rules to allow for a gas [bulletin board](#).⁶ The change in timing has resulted in the need to amend the reference to ‘2007’ in a number of Acts to a reference to ‘2008’.

Financial implications

There are no financial implications arising from the Bill.

Main provisions

The provisions are essentially technical in nature and fall into three categories:

- those where a reference to ‘2008’ is substituted for ‘2007’ as follows:
 - **Schedule 1** which amends the ADJR Act at **clauses 1 and 2**
 - **Schedule 2** which amends the Australian Energy Market Act at **clauses 1, 3-6, 9, 12 and 13**, and
 - **Schedule 4** which amends the TPA at **clause 1**.
- those where the words ‘the National Gas Access (Western Australia) Law (within the meaning of the *National Gas Access (Western Australia) Act 2008* of Western

6. Hon. Martin Ferguson, Minister for Resources and Energy, Second Reading Speech: Australian Energy Market Amendment (Minor Amendments) Bill 2008, *House Hansard*, 20 March 2008, p. 15.

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Australia) are substituted for 'the National Gas Access Law set out in Schedule 1 to the *National Gas Access (Western Australia) Act 2007* of Western Australia' as follows:

- **Schedule 1** which amends the ADJR Act at **clause 3**
- **Schedule 2** which amends the Australian Energy Market Act at **clauses 2, 7, 8, 10 and 11**, and
- **Schedule 4** which amends the TPA at **clauses 1 and 4**.
- **Schedule 3** amends the [Australian Energy Market Amendment \(Gas Legislation\) Act](#) by repealing existing Item 4 of Schedule 2 and substituting the **proposed Item 4** which changes the reference to paragraph 11J(a) to a reference to paragraph 11J(1)(a).

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