

Gas Safety Bill

EXPLANATORY MEMORANDUM

The Bill provides for the new **Gas Safety Act 1997** and amends the **Building Act 1993** and the **Gas Industry Act 1994**.

PART 1—PRELIMINARY

- Clause 1 sets out the purpose of the Act, which is to make provision for the safe conveyance, sale, supply, measurement, control and use of gas and to generally regulate gas safety.
- Clause 2 provides for the commencement of the Act. Part 1 comes into operation on the day of which the Act receives Royal Assent. The remaining provisions come into operation on a day or days to be proclaimed, but if a provision is not proclaimed to commence before 31 December 1999, it comes into operation on that day.
- Clause 3 sets out the definitions of words with a special meaning in the Act.
- Clause 4 provides that the Governor in Council, by Order published in the Government Gazette, may declare any gaseous fuel not to be gas for the purposes of the Act.
- Clause 5 provides that the Governor in Council, by Order published in the Government Gazette, may declare certain persons to be gas companies for the purposes of the Act.
- Clause 6 provides that the Governor in Council, by Order published in the Government Gazette, may declare a pipeline or class of pipeline to be a transmission pipeline.
- Clause 7 provides that the Governor in Council, by Order published in the Government Gazette, and on the recommendation of the Office, may declare that provisions of the Act or particular provisions of the Act do not have effect in relation to specified persons or class of persons, a specified facility or class of facilities, specified appliances or a class of appliances, specified gas

installations or a class of gas installations or specified gas work or a class of gas work to such extent as is specified.

Clause 8 states that the Act binds the Crown, not only in right of Victoria but also, as far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—OFFICE OF GAS SAFETY

Clause 9 provides that there shall be established a body corporate by the name of "Office of Gas Safety".

Clause 10 states that the objectives of the Office are to ensure the safety of conveyance, sale, supply, measurement, control and use of gas and to control the safety standards of gas work and to maintain public and industry awareness of gas safety requirements.

Clause 11 states the functions of the Office.

Clause 12 provides that in performing its functions the Office has the powers conferred on it by the Act and any other Act and may do all things necessary or convenient to be done in the achievement of its objectives or the performance of its functions.

Clause 13 provides that the Office may establish committees as it determines which may consist of officers or employees of the Office or other persons as the Office determines.

Clause 14 provides for the Office a limited power of delegation to an officer or employee of the Office, a committee or with the consent of the Minister, another person.

Clause 15 states that the Office consists of the Director of Gas Safety.

Clause 16 provides for the appointment of a person to be the Director of the Office.

Clause 17 states the terms and conditions of appointment of the Director.

Clause 18 provides for the cessation of holding of office by the Director, resignation and removal.

Clause 19 provides for the appointment by the Governor in Council of a person to act as Director.

- Clause 20 provides that decisions of the Office are not invalid merely because of a defect or irregularity in, or in connection with the appointment of the Director.
- Clause 21 states that if the Director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Office, he or she must, as soon as practicable after the relevant facts come to his or her knowledge, disclose the nature of the interest to the Minister.
- Clause 22 provides for the preparation by the Office of a corporate plan each year.
- Clause 23 provides for the matters to be included in a statement of corporate intent.
- Clause 24 states that the Office must act only in accordance with its corporate plan unless it has first obtained the written approval of the Minister and the Treasurer to do otherwise.
- Clause 25 provides that nothing done by the Office is void or unenforceable merely because the Office has failed to comply with Part 2 of the Act.
- Clause 26 provides that the Director is not personally liable for anything done or omitted to be done in good faith in the exercise of a power or the performance of a function of the Office or in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function of the Office. Any liability resulting from an act or omission that, but for this section, would attach to the Director attaches instead to the Office.
- Clause 27 provides for the appointment or engagement of employees or other persons by the Office on terms and conditions determined by the Office.
- Clause 28 states that a person who is, or has been, Director or an employee, agent or contractor of the Office, must not make improper use of any information acquired only in the course of his or her duties to obtain directly or indirectly any pecuniary or other advantage for himself or herself or for any other person.

- Clause 29 provides for the payment by a gas company to the Office at such time or times as the Minister determines such annual amount (if any) as the Minister determines in respect of the remuneration and reasonable costs and expenses of the Office.
- Clause 30 states that the Office has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.
- Clause 31 states that the Office must keep an account called the general account into which must be paid all fees and charges and all other money received by the Office. The Office's expenses are paid out of this account.

PART 3—GAS SAFETY

- Clause 32 states the general duties of gas companies to manage and operate each of its facilities to minimise as far as practicable the hazards and risks to safety of the public and customers and the hazards and risks of damage to property arising from gas and the hazards and risks arising from an interruption to the conveyance or supply of gas.
- Clause 33 states that a gas company must ensure that, so far as is practicable, the gas which it conveys and the gas which supplies or sells meets prescribed standards of quality.
- Clause 34 provides that it is an offence for a gas company to knowingly supply or sell gas for use in an installation which is unsafe or does not comply with the Act or regulations.
- Clause 35 provides that a gas company must not knowingly supply or sell gas for use in a gas installation to which an emergency plumbing order under the **Building Act 1993** is current.
- Clause 36 provides that a gas company must report to the Office certain gas incidents.
- Clause 37 provides that a gas company must submit a safety case to the Office for each of its facilities.
- Clause 38 establishes that the Office may require a gas company to obtain an independent validation of its safety case.

- Clause 39 provides that the Office may require a gas company to provide any additional information that the Office thinks fit in relation to its safety case.
- Clause 40 provides for the Office to consider a safety case submitted with as much expedition as is possible and that the Office must accept a safety case if it is satisfied that the safety case is appropriate for the facility to which it applies and complies with the Act and the regulations.
- Clause 41 provides for the Office to provisionally accept a safety case.
- Clause 42 provides for the Office not accepting or provisionally accepting a safety case.
- Clause 43 establishes that the Office may determine a safety case which is to apply in respect of an existing facility if a gas company fails to submit a safety case or the Office has decided not to accept a safety case for that facility.
- Clause 44 provides that a gas company must not commission a facility or commence operations unless a safety case for that facility has been accepted or provisionally accepted, must comply with an accepted safety case and must not modify a facility where that modification will significantly increase the overall levels of risk without submitting a revised safety case.
- Clause 45 provides that a gas company must submit a revised safety case to the Office in certain circumstances.
- Clause 46 establishes that a gas company must submit a revised safety case at the end of each five year period.
- Clause 47 provides that the Office may at any time request a gas company to submit a revised safety case.
- Clause 48 provides that if the Office requests a revised safety case and the gas company does not comply with that request, the gas company is guilty of an offence.
- Clause 49 establishes that the procedures which apply to submission of a safety case also apply to submission of a revised safety case.

- Clause 50 establishes that it is a defence to a prosecution of a person relating to a breach of a duty or obligation under this Part if the person has complied with an accepted safety case in relation to that duty or obligation.
- Clause 51 defines the terms "manufacturer" and "operator".
- Clause 52 provides that the Office may permit the operator of a class of gas installations to submit a safety case for those installations.
- Clause 53 provides that the Office may permit a manufacturer of a class of industrial gas appliances to submit a safety case in relation to the supply and installation of those appliances.
- Clause 54 provides that the Office may permit a manufacturer of a class of gas installations to submit a safety case for the manufacture of those installations.
- Clause 55 provides that if the Office accepts a safety case under clause 50, 51 or 52 of the Act, the Office may exempt the operator or manufacturer from complying with prescriptive regulations made under this Act which would otherwise apply to that person.
- Clause 56 provides that non compliance with a safety case submitted under clause 50, 51 or 52 constitutes an offence.
- Clause 57 provides that an accepted safety case submitted under clause 50, 51 or 52 must be revised at the end of each period of five years.
- Clause 58 provides that the Office may request the submission of a revised safety case.
- Clause 59 provides that an operator or manufacturer must comply with a request made by the Office under section 58.
- Clause 60 provides that if the operator or manufacturer fails to comply with clause 57 or 58, the Office may by notice in writing to that person cause their accepted safety case to lapse and also provides for the withdrawal of an accepted safety case.
- Clauses 61, 62 and 63 provide that where an accepted safety case applies the operator or manufacturer must, minimise as far as is practicable, the hazards and risks to the safety of the public and property arising from their operation or gas installation.

- Clause 64 provides that compliance with an accepted safety case is a defence to prosecution for an offence relating to a breach of the duties set out in clauses 61, 62 and 63.
- Clause 65 provides that the Office may give a person approval on their application to carry out upstream gas work in relation to a particular facility or class of facilities.
- Clause 66 provides that a person must not carry out upstream gas work in relation to any facility unless the person is approved under clause 65 to carry out that work or is authorised under an accepted safety case.
- Clause 67 provides that a person who carries out gas work in relation to a facility must carry out that work competently and with due regard to safety.
- Clause 68 provides that the Office may authorise an acceptance scheme or part of an acceptance scheme for gas appliances.
- Clause 69 provides that the Office may accept an appliance or a class of appliances.
- Clause 70 provides that a person must not knowingly install a Type A appliance unless the appliance has been accepted under an acceptance scheme or by the Office.
- Clause 71 provides that a person must not supply or offer to supply or sell or offer to sell a Type A appliance unless the appliance has been accepted under an acceptance scheme or by the Office.
- Clause 72 provides that a person carrying out gasfitting work must ensure that that work complies with relevant standards and requirements and that a person carrying gasfitting work on an appliance or installation must ensure that the appliance or installation complies with relevant standards and requirements. An exemption by the Office is provided for.
- Clause 73 provides that a person who carries out work on certain installations must apply to the Office for acceptance of the installation before it is commissioned.
- Clause 74 provides that a person must not use a Type B appliance unless the gas installation of which that appliance forms a part has

been accepted by the Office or installed in accordance with an accepted safety case.

- Clause 75 provides that if section 74 applies to an appliance a person must not supply or offer to supply and sell the appliance unless notice is given of the requirements of section 74.
- Clause 76 provides that the Office may prohibit the supply of an appliance or component or classes of appliances or components on the ground that the relevant appliance or component is unsafe to use.
- Clause 77 provides that a person must not, while a prohibition under section 76 remains in force, do anything prohibited by the prohibition.
- Clause 78 provides that the Office may recall unsafe gas appliances or components.
- Clause 79 provides that the person to whom a recall notice is given must comply with the requirements of that recall notice.

PART 4—GAS APPEALS BOARD

- Clause 80 provides for the establishment of the Gas Appeals Board. The members of the Board are appointed by the Governor in Council.
- Clause 81 provides that a person who is aggrieved by certain decisions of the Office may appeal the decision to the Gas Appeals Board.
- Clause 82 provides that an appeal under this Part does not stay the operation of the decision under appeal, unless the Gas Appeals Board otherwise determines.
- Clause 83 provides that an appeal to the Gas Appeals Board is an appeal on the merits.
- Clause 84 provides that the Gas Appeals Board may make a number of orders in relation to the decision under appeal and has the powers of the Office and the Director in relation to that decision.
- Clause 85 provides that the Office must assist the Gas Appeals Board as the Board requires.

PART 5—INSPECTION

- Clause 86 provides that the Director may appoint an officer or employee of the Office to be an inspector for the purpose of this Act. The inspector must carry an identification card signed by the Director which bears a photograph and a signature of the inspector.
- Clause 87 provides that an inspector may for certain purposes enter any residence or the land on which a residence is situated if the inspector gives the occupier not less than 24 hours notice and the occupier consents in writing to that entry. Entry may occur between 8.00 a.m. and 6.00 p.m., unless the occupier consents in writing otherwise. An inspector may enter any other land or premises during normal business hours. An inspector must cause as little harm or inconvenience or damage as is possible.
- Clause 88 provides that an occupier who consents in writing to the entry of his or her residence must be given a copy of the signed consent immediately.
- Clause 89 provides that an inspector may enter land or a residence at any time in an emergency if there is a threat to the safety of persons or property arising from a situation relating to gas.
- Clause 90 provides that on exercising a power of entry an inspector may do certain things.
- Clause 91 provides that an inspector must return within 14 days anything seized under section 90 unless proceedings have commenced or a Court order is granted.
- Clause 92 provides that the Magistrates' Court may extend the period for which seized property may be kept.
- Clause 93 provides that inspectors must report the exercise of a power of entry to the Gas Appeals Board.
- Clause 94 provides that if an inspector has reasonable grounds for suspecting that there is on any land or premises a particular thing that may be evidence of the commission of an offence against this Act or the regulations, the inspector may in certain circumstances enter the land or premises in search of the thing.

- Clause 95 provides that an occupier who consents in writing must be given a copy of that consent.
- Clause 96 provides that an inspector may apply to a Magistrate for the issue of a search warrant in relation to particular land or premises if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, on the land or premises a particular thing that may be evidence of the commission of an offence against this Act or the regulations.
- Clause 97 provides that before executing a search warrant, the inspector named in the warrant must announce that he or she is authorised by the warrant to enter the land or premises and give any person at the land or premises an opportunity to allow entry.
- Clause 98 provides that if the occupier or another person is present at the land or premises when a search warrant is being executed the inspector must identify himself or herself to that person by producing his or her identification card and give that person a copy of the warrant.
- Clause 99 provides that an inspector may to the extent that it is reasonably necessary to do so require information or documents to be provided to the inspector.
- Clause 100 provides that a person must not give to an inspector false or misleading information or documents.
- Clause 101 provides that an inspector may make copies of documents provided to the inspector under section 99.
- Clause 102 provides that a natural person may refuse or fail to give information if doing so would tend to incriminate the person.
- Clause 103 provides that it is an offence to obstruct or hinder an inspector exercising functions under this Act.
- Clause 104 provides that a member of the police force may assist an inspector on request.
- Clause 105 provides that a person must not impersonate an inspector.

PART 6—ENFORCEMENT

- Clause 106 provides that the Director may, in writing, direct any person to take certain action when necessary to do so for safety reasons.
- Clause 107 provides that the Director has additional powers to give any direction necessary to make a gas emergency situation safe.
- Clause 108 provides that it is a defence to a prosecution for the breach of a safety case if the person has acted in accordance with a direction.
- Clause 109 provides that a person acting in good faith in the execution of a direction is not liable for damage, loss or injury suffered as a result.
- Clause 110 provides that the Director or an inspector may issue an improvement notice to a person if they are contravening any provision of this Act or the regulations or have contravened such a provision in circumstances that make it likely that the contravention will be continued or repeated. A person who receives an improvement notice may appeal against it. Otherwise, they have at least seven days within which to comply.
- Clause 111 provides that it is an offence not to comply with an improvement notice.
- Clause 112 provides that the Director or an inspector may issue a prohibition notice if they consider that there is an immediate risk to safety arising from gas.
- Clause 113 provides that it is an offence not to comply with a prohibition notice.
- Clause 114 provides that an improvement or a prohibition notice may contain directions as to the measures to be taken to remedy any contravention or risk to which a notice relates.
- Clause 115 provides that if a body corporate commits an offence against this Act or the regulations, an officer knowingly concerned in or party to the commission of the offence is also guilty of that offence.

Clause 116 provides that if the Act or a regulation made under the Act provides that a person is guilty of an offence, that reference includes a reference to a member of a partnership or a member of the committee of management of an unincorporated body or association.

Clause 117 provides that a person must not give information that is false or misleading in a material particular to the Office or to an officer or employee of the Office.

PART 7—GENERAL

Clause 118 provides that the Governor in Council may make regulations.

PART 8—REPEALS, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

Clauses 119, 120, 121 and 122 make a number of amendments to the **Gas Industry Act 1994**, the **Dangerous Goods Act 1985**, the **Building Act 1993** and the **Borrowing and Investment Powers Act 1987**. The amendments to the **Gas Industry Act 1994** are to remove sections of that Act which have been re-enacted in this Act and for other purposes. The amendment to the **Dangerous Goods Act 1985** clarifies that the Dangerous Goods Act does not apply to matters covered by this Act. The amendments to the **Building Act 1993** are consequential amendments flowing from the establishment of the safety case regime with respect to industrial gas installations and the manufacture of gas appliances. The Office of Gas Safety is added to Schedule 1 of the **Borrowing and Investment Powers Act 1987** and the applicable sections of that Act are stated.

Clause 123 provides that the Office of Gas Safety established by this Act continues to be the same body established under the **Gas Industry Act 1994**.

Clause 124 provides that certain sections of the Act do not apply to gas installations existing at the date of the commencement of the section unless certain modifications are made.

Clause 125 provides transitional provision for the approval of installations.

Clause 126 provides for the continuing approval of appliances that had been approved before the commencement of the section.

