
Overview of Gas Distribution and Retail Licensing

covering

Gas Supply Act 2003

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Gas Supply Regulation 2003

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Important Notice

This document has been prepared by the Department of Energy in good faith, and is intended as a guide only. The document should not be considered as a substitute for legal or other professional advice. No persons or organisations should act on the basis of any information contained in this document without first considering, and if necessary, seeking appropriate professional advice.

This document is available in hard copy from the Department of Energy or electronically from the Department of Energy website at www.energy.qld.gov.au.

1 Introduction

The *Gas Supply Act 2003* ('the Act'¹) commenced on 1 July 2003. The Act regulates distribution and retail of reticulated natural gas and liquefied petroleum gas (LPG) in Queensland. The Act's purposes are to:

- implement the franchising and licensing principles under clauses 13 and 14 of the Natural Gas Pipelines Access Agreement²;
- promote efficient and economical fuel gas supply; and
- protect customers in reticulated fuel gas markets.

The Act was developed in consultation with stakeholders, and following discussions with industry, a one-year transitional period was provided to assist stakeholders in implementing the new arrangements.

The Regulator under the Act is the Director-General of the Department of Energy. The Department of Energy administers the Act on a day-to-day basis.

The Act replaces the old monopoly gas franchise system with a new licensing regime. Under the new arrangements, entities transporting gas require a **distribution authority**, and entities selling gas require a **retail authority** (ie. distribution and retail functions have been *unbundled* and require separate authorisation).

The Act gives Queensland's small gas customers (ie. those consuming less than 1 terajoule per year) access to free, independent and confidential dispute resolution services through the Energy Consumer Protection Office (ECPO). Customers in dispute with their supplier (ie. retailer or distributor) can take their case to ECPO for complaint resolution services, including mediation and arbitration.

This *Overview* includes information on a variety of topics, including:

- how to apply for a distribution or retail authority;
- how to apply to renew, transfer or surrender an authority;
- reporting requirements under the authority conditions;
- the role of the Regulator; and
- the complaints and appeals process.

In addition to this *Overview*, the Department of Energy has compiled a number of *Application Guidelines* designed to assist entities in submitting various applications to the Regulator. These *Application Guidelines* include a description of the requirements to apply for, amend, renew, transfer and surrender retail and distribution authorities.

Further information about the *Gas Supply Act 2003* and copies of the *Application Guidelines* for submitting applications to the Regulator can be obtained from the Department of Energy website at www.energy.qld.gov.au or by contacting the Principal Policy Officer, Energy Regulation and Legislation, Department of Energy on (07) 3239 0046. A copy of the *Gas Supply Act 2003* and *Gas Supply Regulation 2003* is available from www.legislation.qld.gov.au.

¹ Any reference to 'the Act' in this document refers to the *Gas Supply Act 2003* unless otherwise noted.

² The Natural Gas Pipelines Access Agreement was entered into by the Commonwealth, States and Territories in 1997.

2 What is the Regulator's role?

Broadly, the Regulator's role is to administer a clear regulatory framework which promotes efficient and economical supply of fuel gas and protects the needs of gas customers. Aside from licensing responsibilities, the Regulator also:

- investigates complaints by customers about the performance or operation of distributors or retailers;
- refers customer / distributor or retailer disputes to mediation or arbitration; and
- resolves disputes between a distributor and a public entity about actual or proposed gas infrastructure work.

The Regulator also has the power to require an industry participant to make a contingency supply plan.

3 Who needs to apply for a retail or distribution authority?

An entity transporting fuel gas through a distribution pipeline or system generally requires a **distribution authority**. (Under s286 of the Act, there are a limited number of exceptions to this general requirement, which are discussed later in this section of the Overview).

There are two types of distribution authority³:

- **point-to-point distribution authority:** authorises the holder to transport fuel gas through a distribution pipeline, from one stated point to a stated customer at a specific commercial or industrial facility; and
- **area distribution authority:** authorises the holder to transport fuel gas within a stated area using a distribution system and provide customer connection services to customers in the area.

An entity intending to sell gas via a distribution system generally requires a **retail authority**. (Under s288 of the Act, there are a limited number of exceptions to this general requirement, which are discussed later in this section of the Overview). There are two different types of retail authority available, and these vary according to the geographic area serviced and the type of customer serviced.

For the purpose of a retail authority, there are two types of gas customers: 'contestable' and 'non-contestable'.

Under the Act at present, contestable customers⁴ are consumers who use 1 terajoule or more of gas per year and have elected to choose their gas retailer. Non-contestable customers comprise those customers who consume less than 1 terajoule of gas per year, and those who consume more than this threshold amount but have elected not to become contestable.

³ In November 2005, provisions relating to greenfield distribution authorities were removed from the Act.

⁴ 'Contestable customer' is defined in section 17 and Schedule 1 of the Act. On 1 July 2005, the threshold for gas contestability was reduced from 100 terajoules to 1 terajoule per annum. Full retail contestability will commence in Queensland on 1 July 2007, which will allow all gas customers to choose their retailer.

Non-contestable customers are serviced by the retailer who holds the authority for the geographic area the customer is located within (ie. non-contestable customers do not have a choice of retailer).

Full retail contestability is due to commence in Queensland on 1 July 2007. This will mean all customers, regardless of how much gas they consume, will have the option of choosing their gas retailer.

There are two types of retail authority⁵:

- **general retail authority:** authorises the holder to sell gas to contestable customers anywhere in Queensland; and
- **area retail authority:** authorises the holder to sell gas to non-contestable customers in a stated area and to contestable customers anywhere in Queensland.

Additionally, a point-to-point distribution authority enables the holder to provide a stated customer with retail services as well as customer connection services.

Exceptions to holding a distribution authority exist in situations where (s286):

- the pipeline is completely within a lot, or contiguous lots, owned by the same person;
- the pipeline is completely within contiguous lots if the fuel gas is only transported to one other person;
- an on-supply situation is in place; or
- the transport of gas is carried out under an insufficiency of supply direction.

Exceptions to holding a retail authority exist in situations where (s288):

- a point-to-point distribution authority is in place;
- the relevant distribution pipeline is located completely within a lot or contiguous lots owned by the same person;
- the relevant distribution pipeline is completely within contiguous lots if the fuel gas is only transported to one other person;
- an on-supply situation is in place; or
- the sale is made under an insufficiency of supply direction.

4 Ring-fencing

The Act unbundles distribution and retail operations by requiring separate licences for each function. However, in some cases, distribution and retail activities must also be ring-fenced. Under these arrangements, an entity distributing processed natural gas through a covered pipeline⁶ must not also sell processed natural gas transported through any pipeline (s41 of the Act). Similarly, any retailer operating on a covered pipeline must not also transport processed natural gas through any pipeline (s168 of the Act).

For this reason, a retailer who sells processed natural gas transported through a covered pipeline cannot apply for a distribution authority in relation to processed natural gas (s27 (2) of the Act), and a distributor who transports processed natural gas through a covered

⁵ In November 2005, provisions relating to exclusive retail authorities were removed from the Act.

⁶ A pipeline that is *covered* under the Gas Pipelines Access Law.

pipeline cannot apply for a retail authority in relation to processed natural gas (s148(3) of the Act).

If none of the network/s operated by the entity are covered, then the entity may hold both a distribution and retail authority. Within Queensland, currently there are natural gas distribution networks that are not covered, eg. those operated by Roma and Dalby Town Councils. Additionally, as the ring-fencing requirements only apply to distributors and retailers of processed natural gas, the one entity may be both retailer and distributor in relation to reticulated LPG networks.

While a point-to-point distribution authority is not unbundled, ie. it authorises a single entity to both distribute and sell reticulated fuel gas to a stated customer at a specific commercial or industrial facility, the ring-fencing requirements in sections 41 and 168 of the Act still apply. This means that a point-to-point distribution authority for the distribution and sale of processed natural gas cannot be held by an entity who either retails or distributes processed natural gas through any covered pipeline in Queensland.

5 How can I apply for an authority?

Applications for a distribution and/or retail authority must be made in writing to the Regulator (the Director-General of the Department of Energy). Prospective applicants are encouraged to visit the Department of Energy website (www.energy.qld.gov.au) in the first instance.

The Regulator is responsible for assessing an application, and will grant an authority only if satisfied the applicant is a suitable person to hold the authority and having regard to the other requirements of the Act.

Details of specific requirements can be found within each of the *Application Guidelines* available from the Department of Energy website. Further information and advice on the content and format of applications is also available from the Department of Energy if required. Contact details are included in Section 16 of the *Overview*.

6 What other applications are required under the Act?

Authority holders must apply to the Regulator to do any of the following:

- renew a fixed-term distribution or retail authority;
- transfer a distribution or retail authority;
- amend a distribution or retail authority; or
- surrender a distribution or retail authority.

Specific information as to the form of the application may be found in each of the relevant *Application Guidelines*, available from the Department of Energy website.

7 Can licensing decisions by the Regulator be reviewed or appealed?

Under the Act (s271), if an application is refused by the Regulator or delegate, the applicant may apply for review within 20 business days of the original decision (or a later date given by the reviewer). A review application may be made only to the following person (the 'reviewer'):

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- if the original decision to which the application relates was made by the Regulator – the Minister;
 - otherwise – the Regulator.

The review application must clearly state on what grounds the applicant seeks review, and it must be supported by enough information to enable the decision to be reviewed. Reviews must be undertaken within 20 business days of the review application being made (s274). The subsequent decision by the reviewer (the 'review decision') can either:

- confirm the original decision; or
- amend the original decision; or
- substitute another decision for the original decision.

Review decisions can be appealed in the District Court (s279). In most cases, appeals should be lodged within 20 business days of receiving notice of the review decision.

8 What are the conditions of an authority?

Chapter 2 Division 2 Part 1 of the Act details the conditions of a distribution authority, and Chapter 3 Division 2 Part 1 of the Act details the conditions of a retail authority. The Regulator may also impose additional conditions when issuing the authority. The conditions that will be stated in the authority will generally include the term of the authority, requirements to supply information (eg. an annual report to the Regulator) and payment of annual licence fees.

9 What are the obligations of an authority holder?

The obligations of an authority holder are set out in the Act, as well as in conditions contained in the authority itself.

Some obligations relate to how an authority holder undertakes works or deals with customers. For example:

- a distributor has specific obligations concerning works on a publicly controlled place (eg. state controlled road) (s79-80 and s83-86);
- a distributor has obligations to customers with respect to connecting gas (s105-109);
- a retailer with a retail area has an obligation to sell to non-contestable customers in its area (s199(2)(a)); and
- a retailer has obligations to customers with respect to providing information on terms of supply (s200).

Other obligations concern authority holders providing information to the Regulator on their operations. For example:

- both area distributors and retailers must give the Regulator notice of their intention to stop or significantly reduce their services (s244 and s247); and
- both distributors and retailers have a number of obligations regarding the sufficiency of supply (chapter 4 of the Act) including preparation of a contingency supply plan (chapter 4, part 2 of the Act).

Authority holders should familiarise themselves with the Act, Regulations and conditions stated in the Authority itself.

10 How long is the term of an authority?

Under section 34(2) of the Act, the Regulator may issue a distribution authority for a stated term. Where no term is stated, the distribution authority continues in force until cancelled or surrendered.

Similarly, section 154(2) of the Act allows the Regulator to issue a retail authority for a stated term. Those without a stated term will continue in force until cancelled or surrendered.

Stated terms will not be usual practice but in certain circumstances, the Regulator may apply a stated term to an authority.

11 Annual reports by distribution and retail authority holders

A condition of holding a distribution or retail authority is that the holder submits an annual report to the Regulator. The annual report provides information on business activities for the year. It enables the Regulator to consider whether the authority holder remains suitable to hold the relevant authority, and also provides other relevant information to assist the Regulator in performing his/her statutory functions.

Unless otherwise stated, each annual report covers the period from 1 July to 30 June. Reports are due by 31 October each year for the preceding reporting period.

The Department of Energy will contact all authority holders in writing each year to remind them of the due date for the submission of annual reports to the Regulator. The Department of Energy will also provide authority holders with a template for the annual report.

12 Quarterly report by area distribution authority holders on the exercise of extraordinary powers of entry

It is a condition of holding an area distribution authority that the holder submits quarterly reports to the Regulator on the exercise of entry powers under sections 139 and 140 of the *Gas Supply Act 2003*. These sections give distributors power to enter customer premises, without notice and/or consent, to make gas infrastructure safe, and in an emergency situation. As entry without notice and/or consent is expected to be the exception rather than the rule, quarterly reports are required as follows:

- the entry report covering the July to September quarter must be submitted by the last day of October following that quarter;
- the entry report covering the October to December quarter must be submitted by the last day of January following that quarter;
- the entry report covering the January to March quarter must be submitted by the last day of April following that quarter; and
- the entry report covering the April to June quarter must be submitted by the last day of July following that quarter.

The report proforma is available from the Department of Energy website at www.energy.qld.gov.au.

Note that powers of entry for day-to-day operational matters are set out in section 138 of the Act, and there is no requirement to report on these general powers of entry.

13 What are the application and annual authority fees?

The *Gas Supply Regulation 2003* sets the application and annual fees for prospective and current authority holders. These fees are shown in the Table at Attachment A.

As stated in the Table, an application for an authority, or transfer of an authority, is subject to a fee of \$250. Authority holders are also subject to an annual fee, which is calculated on a pro rata basis for each financial year (that is, for the period covering 1 July – 30 June).

Invoices for the appropriate annual fee will be sent to authority holders towards the end of each financial year. Application and annual fees are not subject to GST.

Further information can be obtained by contacting the Principal Policy Officer, Energy Regulation and Legislation, Department of Energy on (07) 3239 0046.

14 Can the public access information about authorities?

Yes. Under Chapter 6 Part 6 of the Act, the Regulator must keep details about distribution and retail authorities (including details of the name and type of each authority, and the details of any cancelled, suspended or surrendered authorities), and other documents relating to this Act the Regulator considers appropriate on a Register.

The Register will be open for inspection by the public during office hours on business days and can also be accessed via www.energy.qld.gov.au. This information will be updated by the Regulator as changes to distribution and retail authorities occur.

Information included in the application and annual reporting process is also subject to the *Freedom of Information Act 1992*. Applications can be made under this legislation to access information about distribution and retail authorities, and requests for information will be considered on a case-by-case basis.

15 What can a gas customer do if they have a complaint?

If a customer has a problem with gas supply or billing, the customer should first contact the retailer to discuss the issue.

Where problems cannot be resolved to the customer's satisfaction, a small-volume gas customer (ie. consuming less than 1 terajoule per year) may take the complaint to the Energy Consumer Protection Office (ECPO).

ECPO provides mediation and arbitration services for gas customers unable to resolve gas supply problems with their retailer. These services are free, independent and confidential. ECPO may be contacted anywhere in Queensland on 1300 300 993 (local call charges apply). The ECPO website at www.ecpo.qld.gov.au also provides an online complaint system.

16 Where can I get more information on gas business licensing and regulation?

For further information on gas licensing and regulation in Queensland, visit the Department of Energy website at www.energy.qld.gov.au.

Specific enquiries regarding the *Gas Supply Act 2003* can also be made to the Principal Policy Officer, Energy Regulation and Legislation, Department of Energy:

Telephone: 07 3239 0046
Fax: 07 3237 1344
Email: gasregulation@energy.qld.gov.au

Attachment A: Fees

No.	Description	Amount	Scope
1	Application for distribution authority (s28)	\$257.25	
2	Application to amend a distribution authority (s55) <ul style="list-style-type: none"> ▫ Clerical or formal amendments ▫ Other amendments 	Nil \$77.20	
3	Application to renew a distribution authority (s64)	Nil	
4	Application to transfer a distribution authority (s68)	\$257.25	
5	Application to surrender a distribution authority (s73)	Nil	
6	Distribution authority annual fee (s40) Natural gas distribution area (km ²) <ul style="list-style-type: none"> ▫ Area less than 100 ▫ Area between 100 and 300 ▫ Area greater than 300 Other fuel gas distribution area	\$514.50 \$5,145 \$20,580 \$514.50	
7	Application for retail authority (s149)	\$257.25	
8	Application to amend a retail authority (s179) <ul style="list-style-type: none"> ▫ Clerical or formal amendments ▫ Other amendments 	Nil \$77.20	
9	Application to renew a retail authority (s188)	Nil	
10	Application to transfer a retail authority (s192)	\$257.25	
11	Application to surrender a retail authority (s197)	Nil	
12	Retail authority annual fee (s166) <ul style="list-style-type: none"> ▫ Incumbent retailer (ie. ENERGEX Retail or Origin Energy) ▫ General retailer (holding a General Retail Authority) ▫ Other retailers 	\$138,915 \$2,572.50 \$1,029	per retailer per retailer per retail area

The fees listed in this Attachment are exempt from GST.