



Gas Supply (Network Safety Management) Regulation 2013

Regulatory Impact Statement

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Executive Summary

This Regulatory Impact Statement (RIS) outlines the need for Government action to:

- Ensure the safety of members of the public and gas workers who come into contact with the gas network; and
- Ensure the technical integrity of the gas network.
- Ensure that customer installations are either not initially connected to supply or disconnected from supply where the installation poses unacceptable risks.

This Regulatory Impact Statement (RIS) is designed to comply with the principles outlined in the Better Regulation Office's *Guide to Better Regulation November 2009*. The RIS also complies with requirements for RISs contained in Schedule 2 of the *Subordinate Legislation Act 1989* 'Provisions applying to regulatory impact statements'.

The options considered in this RIS are:

1. remaking the regulation with no changes;
2. do nothing;
3. industry self-regulation; and
4. amended licence conditions.

Of these, the full impact of options 1 and 2 are considered in detail using a combination of quantitative and qualitative analysis. Where possible the costs and benefits of both the Regulation and the 'do nothing' approach have been quantified.

The RIS outlines consultation undertaken with stakeholders on these options and affirms the role of the RIS in facilitating formal consultation on the proposed approach.

Both the analysis conducted as part of this RIS and consultation undertaken to date support the option of remaking the Regulation with no change (Option 1). The existing Regulation is considered to be a workable and appropriate means of ensuring that safety and reliability of the gas network is maintained.

1. Introduction

1.1. BACKGROUND TO THE NSW GAS NETWORK INDUSTRY

NSW gas network operators consist of:

- authorised reticulators, who are the owners of the natural gas networks; and
- licensed distributors of liquefied petroleum gas networks.

Seven companies are authorised reticulators:

- Jemena Gas Networks (NSW) Ltd
- ActewAGL Distribution
- Albury Gas Company Ltd
- APT Allgas Energy Pty Ltd
- Central Ranges Pipeline Pty Ltd
- Envestra (NSW) Pty Ltd
- Wesfarmers Kleenheat Gas Pty Ltd

Five companies are also licensed distributors of liquefied petroleum gas (LPG):

- Elgas Ltd;
- Elgas Reticulation Ltd;
- Sun Retail Pty Ltd;
- Origin Energy LPG Ltd; and
- Wesfarmers Kleenheat Gas Pty Ltd.

References to gas in this report include both natural gas and LPG unless specified.

1.2. PURPOSE OF THIS REPORT

This Report is a Regulatory Impact Statement (RIS) of the proposed *Gas Supply (Network Safety Management) Regulation 2013* (the Regulation). It is intended to apply to gas network operators only.

The Regulation is to be made by the Minister for Energy through the NSW Department of Trade and Investment Regional Infrastructure and Services (Trade and Investment) under the *Gas Supply Act 1996* (the Gas Supply Act).

The Regulation is to be made in connection with the staged repeal of subordinate legislation

under the *Subordinate Legislation Act 1989* and is an amendment of the *Gas Supply (Network Safety Management) Regulation 2008*.

1.3. NEED FOR GOVERNMENT ACTION

The current *Gas Supply (Network Safety Management) Regulation 2008* is due for automatic repeal on 1 September 2013 under the provisions of the *Subordinate Legislation Act 1989*.

Government action is needed to ensure the safety of members of the public and gas industry employees and the technical integrity of the network. Further detail on these and other reasons supporting the need for Government action is provided below:

1.3.1. Safety of members of the public and workers

The distribution and reticulation of natural gas and LPG is inherently dangerous due its highly volatile and combustible nature. High concentrations of gas in the air we breathe can be a health hazard. Leaking gas from the network, and compromises in network management and operations can lead to explosions and fires which result in property damage, injuries, fatalities and environmental damage.

Even if the network leaking does not ignite, the leak will require special attention usually from emergency response personnel. Network gas leaks can cause major traffic disruptions and affected households and businesses possibly causing the need to be evacuated. Interruptions in gas supply caused by network incidents also impose costs on gas customers and the environment.

1.3.2. Reliability and Quality of Supply

Gas supplies are an increasingly important part of the NSW community's energy usage. Expected changes to energy consumption patterns driven by greenhouse gas emission reduction policies will make gas supply even more critical.

At present, over 1.2 million customers in NSW rely on gas. These customers include services essential to the health and wellbeing of the community, including many of the State's key hospitals and emergency services.

Ensuring gas supplies are reliable and of an appropriate quality is important to meet the needs of households, businesses, industry and essential services. Secure gas supplies are also becoming increasingly important for electricity generation, as more gas-fired power stations are being commissioned.

1.4. OBJECTIVE OF GOVERNMENT ACTION

A major objective of government action in this instance is to ensure that the people of NSW are protected from risks to their safety, both as customers, members of the public and as employees of the gas network industry. Another objective relates to ensuring the technical integrity of the networks which is an essential element of providing a reliable supply of gas to the people of NSW.

The objectives of the Regulation are:

- To facilitate improvements in the safety performance of gas networks, thereby reducing the risk of gas escapes and accidents which result in property damage, injuries, fatalities and environmental damage;
- To reduce the risk and incidence of gas network related supply interruptions hence promoting a more reliable supply of gas to NSW consumers;
- To provide a regulatory framework that is consistent with nationally acceptable codes & standards;
- To provide a consistent regulatory framework for the management of all the technical aspects of the gas distribution networks thereby improving uniformity and transparency; and
- To be compatible with the *Gas Supply Act 1996* and other regulatory instruments.

1.5. CONTENT OF THE REGULATION

The Regulation contains provisions that require:

- the design, construction and extension to a gas network to comply with the Director General's nomination of relevant Codes and Australian Standards;
- a leak test to be carried out on a gas installation before gas can be connected or reconnected to that installation;
- notification of non-compliant gas-fitting work and disconnection of unsafe gas installations;
- development of a network Safety and Operating Plan (SOP) to be approved by the Network Operator's authorised representative that provides among other things;
 - a description of the network systems, which is to be by distribution district including areas of different pressure;
 - a summary of emergency procedures to ensure they are reviewed and tested;
 - a summary of operation, maintenance, testing and training procedures; and
 - procedures for identification of ownership of pipes.
- annual independent auditing of the SOP to ensure it is:
 - in compliance with the Regulation; and
 - has appropriate safety measures given the size and complexity of the network.
- natural gas conveyed through a natural gas network to comply with the Australian Standard; and
- gas network performance reporting.

2. Consideration of options

The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non regulatory options.

2.1. IDENTIFICATION OF OPTIONS

The following options are identified and assessed for viability:

- Remake the Regulation with no change;
- Do nothing;
- Industry self-regulation; and
- Amended licence conditions

These options are discussed below.

2.1.1. Option 1 – Remake with no change

Under this option, the existing Regulation would be remade with no changes.

The Regulation requires that network operators must prepare plans covering the issues that stem from the existence of their networks - namely reliability, adequacy of supply and safety.

The Regulation also specifies the broad parameters the plans must cover, such as safe operation, description of the network and the design and planning process. The Regulation does not specify what these parameters must be, and specifically states that where the Director General nominates a specific Code or Australian Standard be incorporated into the plan, that an alternative approach may be taken provided that objective evidence supports an equal or better outcome can be achieved.

The Regulation requires that plans must include reports on a number of matters, including network safety performance, but does not specify particular performance targets. The principal means of assessing performance is by comparison of outcomes with other network operators in NSW and in other jurisdictions, and by reviewing individual performance trends over time.

While the Regulation does contain some prescriptive elements, it is primarily a performance based instrument as it provides industry with considerable scope as to how to achieve safety and network management outcomes.

2.1.2. Option 2 – Do nothing

In this RIS, the major alternative considered under the 'do nothing' option is the 'no regulation' environment. That is, the Regulation would be allowed to lapse on 1 September 2013 and there would be no streamlining of requirements on gas network operators to prepare network management plans covering matters such as network design, operation and maintenance, safety and emergency management.

Due to public safety considerations as the gas assets are located in the public domain, it is highly unlikely that the Government would be able to permit major State infrastructure such as the gas networks to exist without any form of Government oversight. Although no regulation may be in place, the Government would need to consider alternatives in order to ensure safety. The most likely scenario would be the appointment of government inspectors

under the *Gas Supply Act 1996*. This could entail a more prescriptive, ad hoc and resource intensive approach to maintaining public safety.

2.1.3. Option 3 - Industry self-regulation

Under this option industry would design, install, operate and maintain their gas networks under self-designed and administered arrangements. Industry would be free to determine the manner in which they would operate and what (if any) performance data would be collected and reported.

Nevertheless Government would still need to carry out a substantial monitoring role as the networks are located in public places, and the consequences to the community of network failure are so great. Monitoring without the guidance and support of a regulation would be inherently less effective and more expensive.

There are no questions about the gas distribution industry's commitment to maintaining the safety and technical integrity of the gas network. However, the self-regulation approach is still regarded as posing an unacceptably high risk to the community, given the importance of gas as an essential service and the potential for catastrophic outcomes if safety and network management systems are not properly maintained and adhered to.

For these reasons, this option is not considered in further detail in this RIS.

2.1.4. Option 4 – Amended licence conditions

The Minister for Energy under the *Gas Supply Act* may impose conditions on gas distributor's licences in relation to their operations. Under this option the Minister may impose equivalent conditions to that proposed in the Regulation. Licence conditions are currently administered by IPART.

Licensing has the disadvantage of being less transparent and potentially less equitable than the Regulation, as different licence conditions may be applied to different licensees.

Customer service standards and other issues currently subject to licence condition are directly linked to the revenue arrangements for the networks (currently regulated by IPART). However, the provisions of the Regulation are matters of safety and network integrity, which are entirely separate to revenue considerations. The different nature of these matters (i.e. customer service *versus* network integrity) was considered when the existing Regulation was originally prepared. As a result, a number of conditions relating to emergency service provision by the network operators were moved from licences into the Regulation.

As the economic regulation of gas distribution has moved to a national regulator, IPART's role in relation to gas distributors have greatly reduced. It therefore seems illogical to increase the matters which IPART will be required to monitor as part of its gas distribution licensing role. This would also require IPART to obtain skills in the technical and safety requirements of gas networks, an area not previously oversee by IPART.

For these reasons, this option is not considered in further detail in this RIS.

3. Impact Analysis Requirements

3.1. IDENTIFICATION OF AFFECTED PARTIES

Stakeholders who will be affected by the Regulation and therefore considered in this impact analysis include:

- NSW Department of Trade and Investment.
- NSW gas network operators.
- Customers and related persons exposed to the activities of the gas distribution and reticulation industry in NSW and their families.
- General Public

The RIS has taken the above parties into consideration.

3.2. APPROACH TO IMPACT ANALYSIS IN THIS RIS

The approach to identifying the impacts of the Regulation on the affected parties has been to use quantitative and qualitative analysis. The administrative costs on government and the gas network operators have been quantified as data on these costs can be readily collected. Where social and environmental benefits have been identified, these benefits have not been quantified due to the wide range of values which can be attributed to these benefits.

Given the outcomes of both options are similar, that is to ensure public safety, and as the benefits of each option could not readily be quantified, a cost effectiveness analysis has been used to identify the least cost option. This allows a quantitative comparison of the options based on the administrative costs and a qualitative analysis of the benefits of improved safety and reduced environmental impacts.

4. Impact Analysis of Option 1 (the proposed Regulation)

4.1. COSTS

4.1.1. Compliance costs including resources, time and financial costs

These include the following direct costs imposed on the gas distribution industry as a result of the regulatory requirements and include the following:

- Developing plans;
- Implementing and adhering to plans;

- Measuring against and reporting on plans; and
- Independent auditing of plans.

These are likely to be largely unchanged from the situation under the current regulation as the process for preparing plans, having those plans independently audited, and reporting on network performance is already in place.

For each network operator the annual compliance cost can vary depending on the network size, location and age. An estimated total cost of \$286,000 per annum has been calculated across the entire industry. The costs are based on similar requirements to prepare audit reports for government audit processes and previous data provided by gas network operators.

4.1.2. Administrative costs including potential costs and time constraints on government

Direct administrative costs for the Government associated with the proposed Regulation include:

- Provision of guidance on reporting;
- Assessment of network management plans for adequacy;
- Assessment of audit reports;
- Assessment of performance; and
- Occasional site visits to check particular issues.

Administrative costs to the Government relate to staff and associated costs. They are estimated to total \$310,000 annually.

4.1.3. Impact on competition

The proposed Regulation has no inherent impact on competition. The gas network operators are regulated monopoly businesses. There is nothing in the proposed Regulation to preclude the establishment of new gas network operating businesses in NSW and the proposed Regulation would apply to any party seeking to establish such a network.

There is potential for the proposed Regulation to impose unequal obligations on different sized networks. This is eliminated by the provision which requires that the Safety and Operating Plan take into account the nature of the network.

Costs arising from this issue are not relevant and have thus not been quantified.

4.1.4. Social costs or impacts on the community

No additional major social costs or community impacts have been identified.

4.1.5. Environmental impacts

No major negative environmental impacts have been identified.

4.1.6. Distribution impacts across regions

There are no distribution impacts across regions as the proposed Regulation does not impose a blanket requirement regardless of location or type and size of network. For example, Safety and Operating Plans must be appropriate for the individual network.

4.1.7. Cumulative impacts of the regulatory options

Given the gas network licence requirements are high level and do not prescribe what is required for network management, the proposed regulation complements existing regulation in regards to safety and technical standards.

Costs arising from these issues have thus not been attempted to be quantified.

4.1.8. Other costs including both direct and indirect costs

No other direct and indirect costs have been identified.

4.1.9. Implementation and compliance

The Department of Trade and Investment already has an implementation and compliance strategy in place for the current Regulation. This includes:

- Departmental evaluation of industry Safety and Operating Plans, audit and performance reports
- Industry reporting of accidents involving the public and workers by pipeline and gas network service providers;
- Industry reporting of loss of containment incidents; and
- Departmental monitoring of industry performance against national and international benchmarks.

Departmental officers also participate in industry and government committees and take an active role in monitoring national and international developments in relation to gas safety. Departmental officers are also available to provide advice to industry on their compliance activities.

As the Regulation will be unchanged under this option, the implementation of the Regulation is expected to be relatively seamless with gas network operators continuing to submit plans and monitor and report on performance in accordance with those plans.

Similarly, the Department's existing compliance strategy of evaluating Safety & Operating Plans, audit and performance reports will continue unchanged.

4.2. BENEFITS ASSOCIATED WITH THE REGULATION

There are two main benefits of the proposed Regulation:

- Reduced social costs and community impacts; and
- Reduced environmental impacts.

While attempts have been made to quantify these benefits (largely reductions in costs), the analysis below is mainly qualitative due to the wide range of uncertainties associated with measuring and quantifying the environmental and social economic impacts.

4.2.1. Reduced Social Costs and Community Impacts

The proposed Regulation has the effect of reducing costs to the community of:

- Serious accidents including fatalities; and
- Property damage.

The two main causes of social and community impacts related to gas distribution are loss of containment and loss of supply. The loss of containment in any circumstance is a potentially dangerous and undesirable event.

Information collected between 2002 and 2012 has shown there have been three fatalities which occurred in 2008. The 2008 to 2012 period has indicated a decrease in the number of people injured on gas networks.

As a comparison, data obtained from the PHMSA Office of Pipeline Safety USA, which has an overlapping regulatory system involving the Federal Agency and State Organisations, notes the following:

- The distribution networks across the USA total some 1,980,000 km in length, which is approximately 70 times greater than that of NSW.
- There were 121 incidents recorded in the USA for 2011, of which 13 were fatalities, and 57 serious injuries.
- Over the ten year average (2002-2011) there has been 12 fatalities and 45 serious injuries per year. A serious injury necessitating hospitalisation.

Over the same ten year period NSW has average 0.3 fatalities and 7.9 serious injuries per year. A serious injury is one that requires treatment at a hospital.

4.2.2. Environmental impacts

Gas leaks pose a threat to the environment due to the leakage of recognised 'greenhouse' gases to the atmosphere, and the potential for fires that consume vegetation and harm native animals. This risk is addressed by the requirements within the Regulation that leak surveys be conducted on a regular basis. Australian Standards such as AS4645 – Gas Distribution,

which are more detailed than the Regulation on this matter, are nominated to the network operators by the Director General.

It should be noted that the environmental impacts of any fires are likely to be low as gas networks are normally confined to urbanised areas with limited native flora and fauna. However, there are other risks posed by fires in these areas (e.g. loss of life and property damage).

4.3. SUMMARY OF COSTS AND BENEFITS OF THE REGULATION

The costs of the Regulation are approximately \$596,000 per annum. Although there are clear social and environmental benefits under this option, a cost benefit analysis has not been undertaken as the benefits have not been quantified. As mentioned above, a cost effectiveness analysis has been undertaken instead.

5. Impact Analysis of Option 2 (the major alternative)

5.1. COSTS

5.1.1. Compliance costs including resources, time and financial costs

Under the alternative 'do nothing' approach, it is likely that companies would still develop and implement Safety and Operating Plans as part of their risk management procedures, given they are provided for under the relevant Australian Standards. However, there would be no compliance costs associated with submitting these plans to Government.

Without compliance there would be no requirement to report to the Government on network performance, reliability and quality of the gas supply as well as conducting the independent audit of compliance with their Safety and Operating Plan. Although companies may still conduct some of these activities for internal business performance management requirements.

Thus the impact on industry of the 'do nothing' option could vary greatly between firms depending on the processes in place within each organisation.

5.1.2. Administrative costs including potential costs and time constraints on government

It is expected that the Government would still incur administration costs under this approach, through ensuring safety standards are met through alternative means, such as investigation of network failures, accidents and property damage. A decrease in worker safety performance may also lead to an increase in administration costs for other agencies such as WorkCover NSW which has responsibility for workplace safety.

Should the 'do nothing' approach result in poorer safety outcomes, administrative costs are also likely to be increased as Government plays a role in investigating incidents and possibly participating in legal proceedings should private parties bring civil actions against the transmission or distribution companies. This would be expected to lead to higher staffing

and operating costs for the Government over the life of the Regulation.

Under this option, the administrative costs to Government would be expected to be much higher and are estimated to be \$575,000 per annum. This reflects the increased number of employees (most likely government inspectors) required to investigate incidents. The costs to the Government could be even higher, as this does not include an assessment of the impacts on other agencies, such as WorkCover.

5.1.3. Impact on competition

The 'do nothing' option is expected to have no impact on competition, as is the case for the Regulation, as it will be at the discretion of each individual network operator to determine their own safety, technical and performance requirements.

5.1.4. Social costs or impacts on the community

It is expected that this option would involve significant social costs and community impacts. As discussed in section 4.2.1 the affect of the current regulation has indicated that the number of serious injuries has declined. Most of the serious injuries identified are burn related.

The 'costs' associated with a serious injury or fatality are very difficult to accurately quantify as they can never capture the true social cost of such events which include the pain and suffering of the injured party, as well as the indirect impacts on family members and the community of a fatality or serious injury. This cost item provides the strongest argument against adopting the 'do nothing' approach in this area.

5.1.5. Environmental impacts

The main environmental impact associated with a 'do nothing' approach relates to the increased risk of fires affecting vegetation and native animals. Increased numbers of network initiated fires are likely to occur because the Regulation imposes an obligation on network operators to maintain a tightly focussed approach to the risks associated with their gas networks.

The environmental impacts of any fires are likely to be low as gas network are normally confined to urbanised areas with limited native flora and fauna. However, there are other risks posed by fires in these areas (e.g. loss of life and property damage).

5.1.6. Any distribution impacts across regions

No distributional impacts have been identified.

5.1.7. Any cumulative impacts of the regulatory options

No cumulative impacts have been identified.

5.1.8. Other costs including both direct and indirect costs

No other direct and indirect costs have been identified.

5.1.9. Implementation and compliance

Implementation of a 'do nothing' approach would require a dramatic change to the Department's compliance strategy for gas safety. As stated in 2.1.2 above, it is highly unlikely, due to public safety considerations, that the Government would be able to permit major State infrastructure such as the gas networks to exist without any form of Government oversight. Although no regulation may be in place, the Government would need to consider alternatives in order to ensure safety.

The most likely scenario would be the appointment of Government inspectors under the *Gas Supply Act 1996*. This would entail a more prescriptive, *ad hoc* and resource intensive approach to maintaining public safety. Hence implementation of this approach by the Government may involve the establishment of a larger inspectorate type compliance group.

5.2. SUMMARY OF COSTS AND BENEFITS OF THE ALTERNATIVE

The costs of the alternative 'do nothing' approach are at least \$575,000 per annum. This only includes the administrative costs to Government and does not include any additional costs to industry which it has not been possible to quantify.

The benefits under this option largely relate to reduced reporting costs for industry associated with no longer being required to lodge audit and performance reports with the Government.

6. Consultation on options

The Resources and Energy Division maintains close contact with the gas distribution industry through its compliance and performance reporting regimes. As a result issues with the existing Regulation are discussed continuously as they arise.

In general, the structure of the existing Regulation is supported by the gas distribution industry as reasonable and appropriate.

Finally this RIS and the Draft Regulation form the basis for detailed specific consultation on the provisions of the Regulation and the impacts those provisions will have on all stakeholders.

The consultation has been included in Appendix A - Consultation with Stakeholders.

7. Preferred option

It is recommended that Option 1: Remake with no changes, identified under clause 2.1.1, be adopted as the preferred option.

Under this option, the existing Regulation would be remake with no changes.

While it does still contain some prescriptive elements, it is primarily a performance based instrument providing industry with considerable scope as to how to best achieve desired safety and network management outcomes.

It is consistent with current arrangements, and requires that network operators prepare plans covering issues that relate to their networks such as reliability, adequacy of supply and safety, and implement these plans. The Regulation also specifies the broad parameters the plans must cover such as safe operation, description of the network and the design and planning process. The Regulation does not specify what these parameters must be, and specifically states that where the Director General nominates a specific Code or Guide be incorporated into the plan, the operator can submit an alternative approach provided an equal or better outcome can be demonstrated and achieved.

Adoption of the Regulation provides the Government with a satisfactory level of assurance that the interests of the greater community and the environment will be considered, without placing unreasonable obligations on the network operators that might otherwise stifle innovation and interfere with the normal day-to-day operations of the network itself.

Recorded outcomes of the effect of this regulatory approach show that protection of the asset and its operating personnel are foremost in matters of safety.

While the 'do nothing' option may go some way towards meeting these objectives, it is not only considered less effective but more costly in terms of social and environmental impacts.

The impact (cost effectiveness) analysis indicates that while the two options have similar identified cost impacts, the benefits for Option 1 are likely to be much greater than Option 2.

8. Evaluation and review

The performance of the proposed Regulation will be monitored continuously by the Department's Energy Networks Performance Section, which receives and evaluates independent audit and industry performance reports on a continuous basis throughout the period the Regulation will be in effect.

Identified issues will be discussed with stakeholders and any need to review or amend the regulatory framework will be communicated to the Department's Energy Policy section for action.

9. References

The following documents or instruments were referred to in preparing this RIS:

- Better Regulation Office 2009 *Guide to Better Regulation*
- *Gas Supply Act 1996*
- *Gas Supply (Safety and Network Management) Regulation 2008*

Gas Supply (Safety and Network Management) Regulation 2013

- *Home Building Act 1989*
- NSW Department of Trade and Investment Regulatory Impact Statement *Gas Supply (Safety and Network Management) 2013*
- *Subordinate Legislation Act 1989*
- Pipeline and Hazards Material Safety Administration (PHMSA) web site
<http://www.phmsa.dot.gov/pipeline/library/data-stats>

Appendix A

Consultation with Stakeholders

All Network Operators received the draft regulation and RIS and notification of when public comments would close. The Department received two public comments; the table below indicates the issue raised and the outcome.

Organisation	Issue raised	Recommended outcome
Energy Compliance team	To cover procedures for ensuring compliance with regulatory reporting requirements	Include in <i>Clause 13 2 (a)</i> a description of the gas network operation and an outline of operating, maintenance and reporting procedures.
Jemena Gas Networks (NSW) Ltd	Advised acceptance of the recommended changes.	Noted no changes required
	Pleased to see that the Safety and Operating Plan continues to be the instrument for ensuring safe, reliable and efficient operations of the gas network and not used as an administrative piece	Noted no changes required
	Jemena also noted that the costs for compliance as stated within the Regulatory Impact Statement are not fully representative of actual costs and are considered to be too low.	<p>The costs were arrived by information supplied by the network operator's. One operator from each category, and calculated across operations in NSW.</p> <ul style="list-style-type: none"> • One large network operator • Three medium network operators • Five small network operators