THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN ENERGY MARKET AMENDMENT (MINOR AMENDMENTS) BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Energy, the Hon Martin Ferguson MP)
GENERAL OUTLINE

The purpose of this Bill is to amend the Australian Energy Market Act 2004, the Australian Energy Market (Gas Legislation) Act 2007, the Administrative Appeals (Judicial Review) Act 1977 (ADJR Act) and the Trade Practices Act 1974 (TPA) to correct the year of enactment of South Australian and Western Australian legislation from 2007 to 2008.

The National Gas Law

The National Gas Law (NGL) will form the basis of a new regime for the regulation of access to natural gas pipelines (the "gas access regime").

The new gas access regime will be implemented through a cooperative legislative regime, underpinned by lead legislation enacted in the South Australian Parliament. This year the South Australian Parliament will enact the National Gas (South Australia) Act 2008, and the National Gas Law will be a Schedule to that Act.

Application Legislation

The Commonwealth, and all the States and Territories (with the exception of Western Australia), have agreed to introduce legislation, known as Application Acts, to apply the National Gas Law as law in their own jurisdictions. WA will pass complementary legislation to give effect to the NGL, rather than applying the NGL established by South Australian law as in force from time to time.

The Commonwealth's Application Act is the Australian Energy Market Act 2004 (the AEM Act). It was amended in 2007\(^1\) to apply, among other things, the National Gas Law in the Commonwealth's offshore jurisdiction through reference to the anticipated South Australian and Western Australian legislation. The South Australian lead legislation implementing the NGL and WA complementary legislation will be passed in 2008 rather than 2007.

Accordingly, references in the AEM Act, the ADJR Act and the TPA to the South Australian and Western Australian legislation need to be amended to reference the anticipated 2008 legislation to be passed in those jurisdictions. A minor amendment is also required to the Australian Energy Market (Gas Legislation) Act 2007.

Amendments to other Commonwealth Acts

The 2007 Commonwealth Act amending the AEM Act also amended the TPA to empower several Commonwealth bodies (the Australian Energy Regulator, National Competition Council and Australian Competition Tribunal) to perform key functions under the National Gas (South Australia) Act 2007. Accordingly, the reference in the

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\(^1\) Australian Energy Market Amendment (Gas Legislation) Act 2007
TPA amendments to the South Australian legislation needs to be updated to correct its year of enactment to 2008 rather than 2007.

The 2007 Commonwealth Act amending the AEM Act, also specified the *National Gas (South Australia) Act 2007* as an Act under which decisions are subject to judicial review under the *Administrative Appeals (Judicial Review) Act 1977* (the ADJR Act). Accordingly, the reference in the ADJR Act amendments needs to be updated to correctly reference the anticipated 2008 legislation to be passed in South Australia and Western Australia.

**Financial Impact Statement**

This Bill will have no financial impact.
NOTES ON CLAUSES

Preliminary

Clause 1: Short title

Clause 1 is a formal provision specifying the short title of the Bill. The Act will be called the *Australian Energy Market Amendment (Minor Amendments) Act 2008*.

Clause 2: Commencement

This clause provides that sections 1 to 3 of this Act will commence on the day the Act receives Royal Assent. It also provides that the amendments to the *Administrative Decisions (Judicial Review) Act 1977*, *Australian Energy Market Act 2004* and *Trade Practices Act 1974* contained in Schedules 1 and 2 will commence immediately after the commencement of the equivalent provisions of the *Australian Energy Market Amendment (Gas Legislation) Act 2007*.

Clause 3: Schedule(s)

This clause provides that, subject to the commencement provisions above, each Act specified in Schedule 1 or Schedule 2 of this Bill, is amended as set out in the Schedules.

Schedule 1 – *Administrative Decisions (Judicial Review) Act 1977*

*Items 1 and 2 – Paragraphs 2(d) and 2(daa) of Schedule 3*

These items correct references in the *Administrative Decisions (Judicial Review) Act 1977* to the South Australian lead legislation to refer to its year of enactment as 2008 rather than 2007: the *National Gas (South Australia) Act 2008*.

*Item 3 – Paragraph 2(dab) of Schedule 3*

This item corrects the reference in the *Administrative Decisions (Judicial Review) Act 1977* to the WA Application Act. The amended clause will refer to the year of enactment of the WA Application Act as 2008 rather than 2007: *National Gas Access (Western Australia) Act 2008*.

The item also picks up the definition of "National Gas Access (Western Australia) Law" used in the Western Australian Act to refer to the NGL as it is implemented in Western Australia.

Schedule 2 – *Australian Energy Market Act 2004*

*Items 1, 3, 4, 5, 6, 9, 12 and 13*
These items correct references in the Australian Energy Market Act 2004 to the South Australian lead legislation to refer to its year of enactment as 2008 rather than 2007: the National Gas (South Australia) Act 2008.

Items 2, 7, 8, 10 and 11


The items also picks up the definition of "National Gas Access (Western Australia) Law)" used in the Western Australian Act to refer to the NGL as it is implemented in Western Australia.

Schedule 3 – Australian Energy Market Amendment (Gas Legislation) Act 2007

This Schedule makes a technical amendment to correct a reference to a subsection in the Australian Energy Market Amendment (Gas Legislation) Act 2007.

Schedule 4 – Trade Practices Act 1974

Items 1 and 3


Items 2 and 4


The items also pick up the definition of "National Gas Access (Western Australia) Law)" used in the Western Australian Act to refer to the NGL as it is implemented in Western Australia.