

**MEMORANDUM OF UNDERSTANDING
IN RELATION TO
NATURAL GAS SUPPLY SHORTAGES AFFECTING JURISDICTIONS
WITH INTERCONNECTED GAS SUPPLY NETWORKS
AND THE USE OF EMERGENCY POWERS**

Date: 22 December 2004

Parties: The Commonwealth of Australia (“Commonwealth”)
The State of New South Wales (“NSW”)
The State of Victoria (“Victoria”)
The State of Queensland (“Queensland”)
The State of Western Australia (“Western Australia”)
The State of South Australia (“South Australia”)
The State of Tasmania (“Tasmania”)
The Northern Territory of Australia (“Northern Territory”)
The Australian Capital Territory (“ACT”)

Recitals:

- A. The Council of Australian Governments (“COAG”) has established the Ministerial Council on Energy (“MCE”) to provide national oversight and coordination of energy sector decision-making and the COAG energy market reform program.
- B. The national gas supply is increasingly interconnected across State and Territory borders. Also natural gas is increasingly used as a fuel for power generation in jurisdictions participating in the National Electricity Market (“NEM”) and in other jurisdictions.
- C. The MCE has agreed that formal national response protocols are required in the event of major interruptions to the supply of natural gas in order to minimise the impact on the economy and the community of disruptions to gas and electricity supplies and to provide more coordinated and efficient management of major supply interruptions.
- D. Each jurisdiction has legislation which confers Emergency Powers which may be exercised in natural gas emergency situations.
- E. The MCE has agreed that a National Gas Emergency Response Protocol should be developed to ensure supply interruptions are managed in a nationally consistent manner and that the Protocol should apply to both cross-border and intra-jurisdictional arrangements.
- F. The Parties now intend to abide by the objectives and principles set out in this Memorandum of Understanding.

Operative Provisions:

The Parties agree as follows:

Part 1 Interpretation

Name

1.1 This memorandum may be referred to as the Natural Gas Supply Shortage (Use of Emergency Powers) Memorandum of Understanding.

Definitions

1.2 In this memorandum, unless the contrary intention appears:

“Designated Minister”, in relation to a Party, means the Minister signing this memorandum or the last Minister notified by that Party under paragraph 2.4(a) of this memorandum;

“Emergency Power” means a power conferred by a Law specified in Schedule 1 (including any replacement or additional Law which confers a similar power) within a jurisdiction, exercised or exercisable in response to a Natural Gas Supply Shortage in that jurisdiction;

“jurisdiction” means the Commonwealth of Australia, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Northern Territory or the Australian Capital Territory;

“Law” means an Act passed by the Parliament of a Party or a regulation, by-law, ordinance, code or other instrument made under such an Act;

“Natural Gas Supply Shortage” means a situation where the available supply of gas in two or more jurisdictions with an interconnected gas supply network, is, or is likely to become, materially less than is sufficient for the reasonable requirements of customers using natural gas in the jurisdictions;

Interpretation

1.3 In this memorandum, unless the contrary intention appears:

- (a) a reference to this memorandum or another instrument includes any variation or replacement of either of them;
- (b) a reference to a Law or other law includes relevant consolidations of, amendments to, re-enactments of or replacements of that Law or law;
- (c) the singular includes the plural and vice versa;
- (d) an expression importing a natural person includes a jurisdiction, firm, a body corporate, partnership, joint venture, an unincorporated association or an authority;

- (e) if a word or phrase is specifically defined in this memorandum, then other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taken by novation) and permitted assigns; and
- (g) a reference to a body (including, without limitation, an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) the powers or functions of which are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

Headings

- 1.4 Headings are inserted for convenience and do not affect the interpretation of this memorandum.

Part 2 Nature of Memorandum

Memorandum objective

- 2.1 This memorandum sets out the objectives and principles concerning inter-jurisdictional communications on the use of Emergency Powers for responding to a Natural Gas Supply Shortage affecting jurisdictions with interconnected gas supply networks.

Memorandum not legally binding

- 2.2 This memorandum:
- (a) is not legally binding; and
 - (b) records the Parties' intentions to abide by the objectives and principles set out in this memorandum.

Designated Minister and Departmental contact information

- 2.3 Each Party must keep each other Party informed, by written notice, of:
- (a) the Minister responsible for implementing that Party's obligations under this memorandum; and
 - (b) contact information of its Department or government agency principally responsible for responding to Natural Gas Supply Shortages.

Part 3 Consultation and Exercise of Emergency Powers

Consultation during any Natural Gas Supply Shortage

3.1 During any Natural Gas Supply Shortage, the officials of each interconnected or affected jurisdiction responsible for dealing with the supply shortage will use reasonable endeavours to consult with the relevant officials of the other interconnected or affected jurisdictions and the Commonwealth concerning:

- (a) the Natural Gas Supply Shortage; and
- (b) any exercise (or proposed exercise) of Emergency Powers.

Opportunity for interconnected or affected jurisdictions to comment on the use of Emergency Powers

3.2 Where it is proposed to exercise an Emergency Power during any Natural Gas Supply Shortage, a government agency or official of the jurisdiction proposing to exercise the power must use all reasonable endeavours to:

- (a) notify other interconnected or affected jurisdictions and the Commonwealth of the proposed exercise of Emergency Power;
- (b) allow a reasonable opportunity for other interconnected or affected jurisdictions and the Commonwealth to provide comments or advice to the relevant government agency or official about:
 - (i) the likely impacts of the proposed exercise of the Emergency Power on the supply and demand for natural gas in interconnected or affected jurisdictions, including natural gas used for the supply of electricity;
 - (ii) whether other action could be taken to manage the Natural Gas Supply Shortage by the relevant government agency or official;
 - (iii) whether action could be taken by other jurisdictions to assist in managing the Natural Gas Supply Shortage, including use of Emergency Powers in those jurisdictions;
- (c) consider any comments or advice provided by other interconnected or affected jurisdictions and the Commonwealth before exercising the Emergency Power.

Interpretations for Part 3

3.3 For the purposes of this Part, **“affected”** includes “potentially affected”.

Part 4 General

Commencement

4.1 This memorandum is effective when executed by all Parties.

Execution by counterparts

4.2 This memorandum may be executed in any number of counterparts, all of which taken together will be deemed to constitute one and the same document.

Variation or amendment

4.3 This memorandum may be varied or amended by agreement in writing executed by all Parties.

4.4 Variations or amendments to this memorandum may be executed in any number of counterparts, all of which taken together will be deemed to constitute one and the same document.

Review

4.5 This memorandum may be reviewed at any time by agreement of the Parties.

Withdrawal

4.6 A Party may withdraw from this memorandum by giving at least one month's notice in writing to the other Parties of its intention to do so. Such notice must state the date on which the withdrawal will be effective.

4.7 This memorandum will continue in force between the remaining Parties according to its terms notwithstanding the withdrawal of one or more Parties from it.

Schedule 1

Principal Gas Supply and Emergency Legislation

New South Wales

Gas Supply Act 1997
Pipelines Act 1967
Energy Administration Act 1987
State Emergency and Rescue Management Act 1989

Victoria

Gas Industry Act 2001
Gas Safety Act 1997
Essential Services Act 1958
Emergency Management Act 1986

Queensland

Petroleum and Gas (Production and Safety) Act 2004
Gas Supply Act 2003
State Counter Disaster Organisation Act 1975 (Part 3)

Western Australia

Fuel, Energy and Power Resources Act 1972
Energy Coordination Act 1994

South Australia

Gas Act 1997
Essential Services Act 1981
State Disaster Act 1980

Tasmania

Gas Act 2000

The Northern Territory

Energy Pipelines Act 2003
Energy Pipelines Regulations

Australian Capital Territory

Utilities Act 2000
Emergencies Act 2004
Gas Safety Act 2000
Gas Pipelines Access Act 1988

Schedule 2
Departmental/agency contacts

<p>Commonwealth</p> <p>Head of Division Energy and Environment Division Department of Industry, Tourism and Resources</p>	<p>New South Wales</p> <p>Director-General Department of Energy, Utilities and Sustainability</p>
<p>Victoria</p> <p>Executive Director Energy and Security Division Department of Infrastructure</p>	<p>Queensland</p> <p>Director-General Department of Energy</p>
<p>Western Australia</p> <p>Director of Energy Safety Department of Consumer and Employment Protection</p>	<p>South Australia</p> <p>Executive Director Micro-Economic Reform and Infrastructure Department of Treasury and Finance</p>
<p>Tasmania</p> <p>General Manager Infrastructure Policy Department of Infrastructure, Energy and Resources</p>	<p>The Northern Territory</p> <p>Director, Mining and Energy Services Department of Business, Industry and Resource Development</p>
<p>Australian Capital Territory</p> <p>Director Office of Sustainability Chief Minister's Department</p>	

Execution Page:

SIGNED as a Memorandum of Understanding.

Signed by the Honourable Ian Macfarlane MP)
Minister for Industry, Tourism and Resources for)
the Australian Government)
On the day of December 2004)

Signed by the Honourable Frank Sartor MP)
Minister for Energy and Utilities in the State of New South Wales)
On the day of December 2004)

Signed by the Honourable Theo Theophanous MP)
Minister for Energy Industries in the State of Victoria)
On the day of December 2004)

Signed by the Honourable John Mickel MP)
Minister for Energy in the State of Queensland)
On the day of December 2004)

Signed by the Honourable Eric Ripper MLA)
Deputy Premier; Treasurer, Minister for Energy in the State of)
Western Australia)
On the day of December 2004)

Signed by the Honourable Patrick Conlon MP)
Minister for Energy in the State of South Australia)
On the day of December 2004)

Signed by the Honourable Bryan Green MHA)
Minister for Infrastructure, Energy and Resources in the State)
Tasmania)
On the day of December 2004)

Signed by the Honourable Kon Vatskalis MLA)
Minister for Mines and Energy in the Northern Territory)
On the day of December 2004)

Signed by Mr Jon Stanhope MLA)
Chief Minister of the Australian Capital Territory)
On the day of December 2004)