

Guidelines to Transfer a Distribution Authority

Gas Supply Act 2003

Under the *Gas Supply Act 2003* ('the Act'), the Regulator (the Director-General, Department of Natural Resources, Mines and Energy) issues licences for the distribution of reticulated natural gas in Queensland. A distribution authority issued by the Regulator authorises its holder to (s21):

- transport processed natural gas through a distribution pipeline or system within a stated area (distribution area); and
- provide customer connection services¹ to the premises in the area.

Under s69, the Regulator may decide to grant an application to transfer only if the Regulator is satisfied the proposed transferee is a suitable person to hold the authority.

The Regulator may consider any suitability criteria to the extent it is relevant to the proposed transferee's competence to hold the distribution authority. Suitability criteria are listed in s32(2) of the Act.

Additionally, in deciding an application, the Regulator must also consider any relevant government policies about energy issues.

If the proposed transferee holds a corresponding authority², the Regulator may decide the applicant is a suitable person to hold the distribution authority without regard to the suitability criteria (s32(3)). A corresponding authority includes a Queensland distribution authority issued under the Act or a distribution authority / licence issued in another state or territory. Under the Act, there is a streamlined process for applicants who hold a corresponding authority.

¹ 'Customer connection services' is defined in section 19 of the Act.

² 'Corresponding authority' is defined in Schedule 2 of the Act.

Except where the proposed transferee holds a corresponding authority, the Regulator must publish a notice in a State wide newspaper about the proposed transfer, and provide at least 20 business days for anyone to make a submission about the transferee's application. As part of this public consultation process, the Regulator must make the application, other than any part of the application that is an RTI exempt matter (s29(2)), open for inspection.

This document provides an overview of the information which must, as a minimum, be included in an application to transfer a distribution authority. The Regulator may require additional information to be provided in order for an application to be considered.

Applications to transfer a distribution authority must be made jointly by the current authority holder and the proposed transferee. The application should take the form of two letters: one from the current authority holder, and one from the proposed transferee. It is preferred that these letters be submitted together.

Applications can be forwarded to the Regulator at the following address:

The Regulator
c/- Energy Regulation
Department of Natural Resources, Mines and Energy
PO Box 15456
CITY EAST QLD 4002

Prior to submitting the application, applicants should check that:

- they have read the relevant provisions of the Act (Chapter 2, Part 1, Division 4) and any relevant regulations under the Act;
- they have read the statement made by the Department of Natural Resources, Mines and Energy on the use and management of collected application and reporting data. This information is included at **Attachment A** at the end of this document;
- all relevant components of the application are completed; and
- the prescribed fee is included with the application (GST does not apply). A list of fees and charges can be found here (PDF, 85.9KB).
- the application is signed by an appropriately senior person, who can ensure the accuracy of the information provided.

Applicants are encouraged to contact the Department of Natural Resources, Mines and Energy on 13 43 87 to discuss their application prior to its formal submission to the Regulator.

General Information Requirements for Applicants seeking to Transfer a Distribution Authority

Applicant Details

The applications of both the current authority holder and the proposed transferee must include the following information:

- the distribution authority number allocated to the authority (identified on the first page of the official authority);
- the name of the company (or person) making the application;
- the company's ABN/ACN;
- the applicant's postal and street address;
- a contact name for the application;
- the phone, fax and email details of the contact person; and
- a general description of the applicant and its business activities (eg company structure, core business).

The current authority holder should now proceed to the following section, "Specific Application Requirements for the Current Authority Holder".

The proposed transferee should now proceed to the section "Specific Application Requirements for the Proposed Transferee".

Specific Application Requirements for the Current Authority Holder

The current distribution authority holder should identify:

- the reason(s) for the proposed transfer;
- the proposed date of effect for the transfer; and
- the arrangements in place (or proposed) to ensure customers are not adversely impacted upon by the transfer.

Specific Application Requirements for the Proposed Transferee

The proposed transferee should include in their application:

- (if a **registered company**), a certified copy of the Certificate of Incorporation;
- details of the arrangements in place (or proposed) to ensure customers are not adversely impacted upon by the proposed transfer.

The remainder of the information to be provided by the proposed transferee is dependent on whether the transferee holds a corresponding authority (ie a Queensland distribution authority issued under the Act or a distribution authority / licence issued in another state or territory).

Proposed transferees who hold a corresponding authority

Applicants who hold a corresponding authority should provide a description of any distribution authorities currently held.

Additionally, if the corresponding authority was issued by another jurisdiction, applicants should attach:

- a certified copy of the applicant's interstate authority/ies (please attach the copy to the application and mark the certified copy as 'Appendix 1');
- a signed statutory declaration giving particulars of the applicant's interstate authority/ies and of any breaches of it/them and enforcement orders etc made in relation to it/them. A statutory declaration template for this purpose is at **Attachment B** at the end of this document; and
- a written authorisation for the Department of Natural Resources, Mines and Energy to seek information about the applicant and its interstate authority/ies from regulatory bodies in other jurisdictions (in Victoria, NSW, ACT, South Australia, Tasmania and Western Australia) and for those bodies to provide information about the applicant and its interstate authority/ies to the Department of Natural Resources, Mines and Energy. An authorisation form is at **Attachment C** at the end of this document.

Proposed transferees who do not hold a corresponding authority

Applicants who do not hold a corresponding authority must include the following information in their applications:

Business Experience

Applicants should provide details of business experience relevant to holding an authority, including information on any corresponding authorities previously (but not currently) held.

Technical Expertise

Applicants should provide details of relevant technical expertise, including experience in operating processed natural gas distribution networks.

Additionally, applicants should detail their ability to provide an adequate level of customer connection services.

Prudential Information

Applications must include the following:

- details of the applicant's financial capacity;
- the amount of public liability insurance currently held by the applicant **[see Note 1]**; and
- details of any prudential findings against the applicant **[see Note 2]**.

The following prudential matters must be declared if they are relevant to the applicant (either as an individual, or if the applicant is a company, to the company as an entity or to any of its Directors):

- if the applicant has been placed into bankruptcy, receivership, administration or liquidation, or if action has been taken by the applicant or creditors of the applicant to wind up the company;
- if the applicant has had any criminal convictions or civil judgements (where the civil judgement involves compensation in excess of \$1,000) awarded against it during the last 5 years; and
- (If the applicant has previously held any corresponding authorities) if the applicant has had any action for breaches taken against them (eg fines, suspensions or cancellations of authority/ies or licence/s).

Note 1: the applicant acknowledges and agrees that it is their responsibility to assess and consider the risks and scope of the insurance required under this authority.

Note 2: all information provided in the 'prudential information' section will remain confidential.

[July 2019]

ATTACHMENT A

INFORMATION ABOUT THE USE AND MANAGEMENT OF COLLECTED DATA

The Department of Natural Resources, Mines and Energy is committed to the ethical management of information collected from prospective and existing distribution authority holders. Information is collected by the Department of Natural Resources, Mines and Energy in annual reports from distribution authority holders and through application processes to obtain, amend, surrender or transfer an authority.

The information gathered in these processes is in accordance with the provisions of the *Gas Supply Act 2003* ('the Act') and related licences and regulations and may be used by the Regulator in carrying out his/her role. Under the Act, some of the information collected will be included in a register and made available to the public. Sections 308 to 310 of the Act outline the information to be included in the public register.

Any personal information collected in the application and reporting process by the Department of Natural Resources, Mines and Energy may be used for the purposes set out in the Act and related licences and regulations. Information will be disclosed as set out in the Act and related licences and regulations, including making applications available to the public, with the exception of exempt matter under the *Right to Information Act 2009*, in accordance with sections 29(2)(iv), 310(2) and 318(1)(b) of the Act. Subject to the provisions of the Act and other legal requirements, personal information will not be disclosed to third parties outside the Department of Natural Resources, Mines and Energy without your consent.

While the Department of Natural Resources, Mines and Energy encourages suppliers of information to clearly identify any information they consider to be confidential, it is important to note that all information collected through application and reporting processes is subject to the *Right to Information Act 2009* and will be retained as required by the *Public Records Act 2002* and other relevant Acts and regulations.

If you have queries in relation to data collection and management under the Act and its related licences and regulations, contact the Department of Natural Resources, Mines and Energy on 13 43 87.

ATTACHMENT B

STATUTORY DECLARATION TEMPLATE

I, **(insert full name)** of **(insert address)** do solemnly and sincerely declare that:

- (1) I am **(insert position/office held)** of **(insert name of entity)** ("entity") and am duly authorised to make this declaration on behalf of the entity.
- (2) The entity seeks to apply, under the provisions of the *Gas Supply Act 2003*, to have a distribution authority transferred to the entity.
- (3) The entity holds a current authority or licence to retail gas to customers in **(insert State or Territory)** and I certify that the document attached to the declaration as marked "Appendix 1" is a true and correct copy of that authority or licence as at the date of this declaration. **(see Note 1)**
- (4) To the best of my knowledge:
 - (a) the entity is not currently in material breach of that authority or licence; and
 - (b) no compliance orders, enforcement orders, other directions or similar documents, relating to any alleged non-compliance by the entity with the authority or licence, have been given to the entity and with which the entity has not complied.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867 (Qld)*. **(see Note 2)**

SIGNED AND DECLARED by the above-named)
)
declarant at)
)
in the State of)
)
this day of20)
)
before me:)
)
.....)
(Signature of authorised witness))
)
.....)
(Name of authorised witness – block letters))
)
.....)
(Signature of declarant))
)
.....)
(Capacity in which authorised witness)
takes the statutory declaration)

Note 1. The attachment must include the following note and be signed by the witness:

“This and the following [] pages is the attachment marked “Appendix 1” referred to in the statutory declaration of [full name of declarant] declared before me this [] day of [] 20 .

[signature of authorised witness]

[name of authorised witness]

[capacity in which authorised witness takes the declaration]”

Note 2. A different form of statutory declaration must be used when made in a State or Territory other than Queensland, in accordance with the relevant legislation of that State or Territory.

ATTACHMENT C

AUTHORISATION TEMPLATE TO SEEK INFORMATION ABOUT THE APPLICANT FROM INTERSTATE AUTHORITIES

To assist the Regulator under the Queensland *Gas Supply Act 2003* to determine whether **[applicant]** is a suitable person to be a distributor in Queensland, **[applicant]** authorises the Department of Natural Resources, Mines and Energy to make enquiries of the Essential Services Commission, Victoria relating to **[applicant]**. **[Applicant]** also authorises the Essential Services Commission, Victoria to disclose information about **[applicant]** to the Department of Natural Resources, Mines and Energy.

and/or

To assist the Regulator under the Queensland *Gas Supply Act 2003* to determine whether **[applicant]** is a suitable person to be a distributor in Queensland, **[applicant]** authorises the Department of Natural Resources, Mines and Energy to make enquiries of the Independent Pricing and Regulatory Tribunal of New South Wales relating to **[applicant]**. **[Applicant]** also authorises the Independent Pricing and Regulatory Tribunal of New South Wales to disclose information about **[applicant]** to the Department of Natural Resources, Mines and Energy.

and/or

To assist the Regulator under the Queensland *Gas Supply Act 2003* to determine whether **[applicant]** is a suitable person to be a distributor in Queensland, **[applicant]** authorises the Department of Natural Resources, Mines and Energy to make enquiries of the Independent Competition and Regulatory Commission, Australian Capital Territory relating to **[applicant]**. **[Applicant]** also authorises the Independent Competition and Regulatory Commission, Australian Capital Territory to disclose information about **[applicant]** to the Department of Natural Resources, Mines and Energy.

and/or

To assist the Regulator under the Queensland *Gas Supply Act 2003* to determine whether **[applicant]** is a suitable person to be a distributor in Queensland, **[applicant]** authorises the Department of Natural Resources, Mines and Energy to make enquiries of the Essential Services Commission of South Australia relating to **[applicant]**. **[Applicant]** also authorises the Essential Services Commission of South Australia to disclose information about **[applicant]** to the Department of Natural Resources, Mines and Energy.

and/or

To assist the Regulator under the Queensland *Gas Supply Act 2003* to determine whether **[applicant]** is a suitable person to be a distributor in Queensland, **[applicant]** authorises the Department of Natural Resources, Mines and Energy to

make enquiries of the Office of the Tasmanian Energy Regulator relating to **[applicant]**. **[Applicant]** also authorises the Office of the Tasmanian Energy Regulator to disclose information about **[applicant]** to the Department of Natural Resources, Mines and Energy.

and/or

To assist the Regulator under the Queensland *Gas Supply Act 2003* to determine whether **[applicant]** is a suitable person to be a distributor in Queensland, **[applicant]** authorises the Department of Natural Resources, Mines and Energy to make enquiries of the Economic Regulation Authority of Western Australia relating to **[applicant]**. **[Applicant]** also authorises the Economic Regulation Authority of Western Australia to disclose information about **[applicant]** to the Department of Natural Resources, Mines and Energy.

[Signature]

[Position and Organisation]