



INDEPENDENT PRICING AND REGULATORY TRIBUNAL OF NEW SOUTH WALES

Guide for Prospective NSW Natural Gas Reticulators

This guide has been developed to assist you in applying for a natural gas reticulator's authorisation (an Authorisation). You should read it in conjunction with the *Natural Gas Reticulators Authorisation Application Form*. The guide provides details about:

- the Tribunal's role in administering authorisations (Section 1)
- the criteria it uses to assess applications for authorisations (Section 2)
- the application process (Section 3)
- the assessment process (Section 4)
- the reasons an application might be refused (Section 5)

It also provides an overview of the regulatory framework that governs energy licensing in NSW (Section 6) and the compliance reporting obligations that will apply if you are granted an authorisation (Section 7).

If you have any questions about this guide, the application form or the application process, please contact the Program Manager, Energy Compliance, by email at compliance@ipart.nsw.gov.au or telephone (02) 9290 8477.

1 TRIBUNAL'S ROLE IN ADMINISTERING AUTHORISATIONS

The Minister for Energy (the Minister) has the power to issue authorisations that allow entities to operate a natural gas distribution pipeline to convey natural gas to other entities in NSW. These authorisations are issued subject to the authorisation holder meeting a range of conditions relating to matters such as the requirement to develop and implement appropriate processes/systems to support retail competition.

The Independent Pricing and Regulatory Tribunal of New South Wales (the Tribunal) is responsible for administering the authorisation process. It assesses applications, monitors compliance with authorisation conditions, and makes recommendations to the Minister about:

- the granting, transfer or cancellation of an authorisation
- the imposition, variation or cancellation of the conditions of an authorisation
- any action to be taken, and sanctions to be applied against an authorisation holder who breaches the conditions of its authorisation

The Tribunal is also responsible for monitoring the extent to which authorisation holders comply with their authorisation conditions, and periodically reports its findings to the

Minister.¹ If it finds that an authorisation holder has breached one or more of these conditions, the Tribunal and/or the Minister may impose monetary and/or non monetary penalties on the authorisation holder, and take other action as they consider appropriate.

The Department of Energy, Utilities and Sustainability (the Department) is responsible for administering the technical and safety requirements imposed on natural gas reticulator authorisation holders by various *Acts* and *regulations*.

2 ASSESSMENT CRITERIA

The Tribunal assesses applications for natural gas reticulator authorisations against a set of criteria approved by the Minister.² These criteria include that the applicant:

- **Is fit and proper to hold an authorisation.** The individuals who manage the entity applying for the authorisation – for example, the Director/s and Chief Executive Officer (CEO) of a corporation, the trustees of a trust, or the partners of a partnership – must be able to demonstrate that they meet the test applied to Directors under the *Corporations Act 2001 (Commonwealth)*. That is, they must not have been, or would not be, disqualified from managing corporations.
- **Has sufficient financial capacity.** The entity applying for the authorisation must be in a position to securely finance the activities to be performed under the authorisation.
- **Has sufficient technical and operational capacity.** The entity applying for the authorisation must have the technical and operational capacity to conduct the activities to be performed under the authorisation, and to comply with the conditions of the authorisation.

3 THE APPLICATION PROCESS

To apply for a natural gas reticulator's authorisation on behalf of an entity, you should complete an application form, providing all the information requested on the form that is relevant to your application and clearly marking any information that is confidential. You then submit this form, together with the application fee, to the Tribunal. It is a good idea to contact the Tribunal before you submit an application, to discuss any specific issues you may have.

3.1 The application form

The *Natural Gas Reticulator's Application Form* is a standard form and should be used for all applications. To obtain a copy of this form, go to the Tribunal's website at www.ipart.nsw.gov.au or contact the Tribunal by phone on (02) 9290 8447.

3.2 Information requirements

The application form requests information that will help the Tribunal assess your application. Please note that the Tribunal will not consider an application lodged until all

¹ Currently, the Tribunal reports to the Minister every six months.

² The assessment criteria were approved by the Minister on 14 June 2003.

the information requested is provided, including background information and information that specifically addresses the assessment criteria.

3.2.1 Background information

Applicant details

The Tribunal requires the following information so that it can properly identify the proposed holder of the authorisation, its agents, or any other person specified in the authorisation:

- the applicant's legal identity³
- the applicant's address and contact details
- the applicant's nominated contact person. This will be the person to whom the Tribunal directs enquiries and correspondence about the application. For the application to be processed as quickly as possible, the Tribunal should be able to directly contact this person.

Supply details

The Tribunal also requires the following information:

- the approximate date on which you intend to begin distribution of natural gas. You are reminded that you cannot reticulate natural gas until such time as an authorisation is granted, and that you cannot construct or operate a natural gas pipeline until you have fulfilled the requirements of the *Gas Supply (Network Safety Management) Regulation 2002*.
- the local government area / areas in which it intends to operate. The authorisation if granted will be limited to these areas.⁴

3.2.2 Information addressing the assessment criteria

Fit and proper

The 'fit and proper' criterion is intended to test the applicant's suitability to hold an authorisation. To assess an application against this criterion, the Tribunal requires a statutory declaration to the effect that the individuals responsible for managing the entity applying for the authorisation have not been, or would not be, disqualified under the *Corporations Act 2001 (Commonwealth)* from managing corporations.⁵

The appropriate person(s) to provide this statutory declaration depends on the legal identity of the applicant:

- if the applicant is a corporation, it should be provided by the CEO (or equivalent), and a director representing the board.⁶

³ The legal identity of the applicant refers to whether the applicant is a natural person, private limited company, partnership etc. It is necessary to provide all relevant registration details of the entity eg, the ACN.

⁴ It should be noted that more than one reticulator may be authorised to operate in a particular area.

⁵ The provision of a statutory declaration is subject to the *Statutory Declarations Act 1959 (Commonwealth)*.

⁶ In the case of a corporation that has a sole director the statutory declaration should be provided by the CEO (or equivalent) and the sole director. The CEO and director may be the same person.

- if the applicant is a partnership, it should be provided by all the partners. Where a partner is a corporation or a trust, the requirement will be as if the applicant is a corporation or trust respectively.
- if the applicant is a trust, it should be provided by all the trustees. Where the trust is a corporation or partnership, the requirement will be as if the applicant is a corporation or partnership respectively.
- if the applicant is a 'natural person', it should be provided by that person in their own right.

The Tribunal also requires the name, date of birth and residential address of each director, CEO (or equivalent), partner, trustee or natural person (as applicable). It will check the accuracy of each declaration by conducting searches of the Australian Security & Investments Commission (ASIC) and Insolvency and Trustee Service Australia (ITSA) registers. It will treat this information in accordance with the *Privacy and Personal Information Act 1998*.

Sufficient financial capacity

The 'financial capacity' criterion is intended to test the applicant's ability to securely finance the activities to be preformed under authorisation. To assess an application against this criterion, the Tribunal requires a statutory declaration to the effect that the applicant is:

- in a position to meet the financial/prudential requirements for participation in the natural gas market.
- Not aware of any factor which would affect its ability to securely finance the activities to be preformed under the authorisation over the following 12 months.

The appropriate person(s) to provide this statutory declaration depends on the legal identity of the applicant:

- if the applicant is a corporation, it should be provided by the CEO (or equivalent), and a director representing the board.⁷
- if the applicant is a partnership, it should be provided by all the partners. Where a partner is a corporation or a trust, the requirement will be as if the applicant is a corporation or trust respectively.
- if the applicant is a trust, it should be provided by all the trustees. Where the trust is a corporation or partnership, the requirement will be as if the applicant is a corporation or partnership respectively.
- if the applicant is a 'natural person', it should be provided by that person in their own right.

Sufficient technical and operational capacity

In NSW, the Department of Energy, Utilities and Sustainability is the primary body responsible for technical, operational and safety issues within the natural gas industry. In this role, the Department administers the *Gas Supply (Network Safety Management) Regulation 2002*. Clause 8 of this *Regulation* requires:

⁷ In the case of a corporation that has a sole director the statutory declaration should be provided by the CEO (or equivalent) and the sole director. The CEO and director may be the same person.

- 8 (1) A network operator must:
- (a) lodge with the Director-General a safety and operating plan for its gas network that complies with the requirements of this Regulation, and
 - (b) Implement that plan.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

- (2) The safety and operating plan must be lodged:
 - (a) within 6 months from the date of the grant of the authorisation or licence to operate the gas network to which the plan relates, or
 - (b) within such further period as may be approved by the Director-General in writing.
- (4) A network operator must not construct, alter, extend, maintain, repair or operate a gas network except in accordance with:
 - (a) a safety and operating plan, or
 - (b) a draft safety and operating plan (being a plan that complies with the requirements of this Regulation relating to the form and content, and review and availability, of safety and operating plans but which has not yet been audited in accordance with clause 12) that has been lodged with the Director-General.

As a consequence, the requirements in this Regulation are the primary regulatory obligations to ensure that all the technical/ operational and safety requirements are met by authorised natural gas reticulator's.

To assess an applicant's ability to meet the 'technical and operational capacity' criterion, the Tribunal requires:

- **A statement indicating how you intend to achieve ongoing compliance with the authorisation conditions.** You should carefully examine all authorisation conditions specific to your operation. Information about these conditions can be found in the Natural Gas Reticulator Reporting Manual, Consolidated Reference Document and the standardised Ministerially imposed authorisation conditions.
- **A statement indicating the actions being undertaken by you to prepare a safety and operating plan** prior to the construction of the network.
- **A brief précis of the applicant's current or previous experience in the energy sector.**

The Tribunal will assist the Department in its role as technical regulator by:

- providing the Department with a copy of the application⁸
- advising the Department when the authorisation is granted
- advising the Department of the details of the conditions imposed on the authorisation

You should contact the Gas Networks and Pipelines section at the Department of Energy Utilities and Sustainability to discuss lodging a safety and operating plan and compliance with other technical/ operational and safety obligations.

⁸ The Tribunal treat confidential information as indicated in section 3.3 of this document.

3.3 Confidentiality

If any of the information provided on the application form is confidential, you should clearly identify it as such. The Tribunal will divulge information only:

- with the consent of the nominated contact person
- when it is satisfied that the information is not confidential in nature
- to a member of the Tribunal or an officer of its Secretariat.⁹

3.4 Application fee

The authorisation application fee is currently \$1,500 per authorisation. It should be paid by cheque, made out to the Independent Pricing and Regulatory Tribunal. The Tribunal will not consider an application to have been lodged until the correct fee has been paid.

If you are granted an authorisation, you will be required to pay an annual authorisation fee, determined by the Minister.¹⁰

3.5 Submission details

Applications should be marked to the attention of the Program Manager, Energy Compliance, and submitted to the Tribunal's office at:

Independent Pricing and Regulatory Tribunal
Level 2
44 Market Street
Sydney, NSW 2000

Or posted to:

Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office
Sydney, NSW 2000

4 THE ASSESSMENT PROCESS

When the Tribunal receives an application for a natural gas reticulator's authorisation it will undertake a public consultation process, assess the application and make a recommendation to the Minister to either grant or refuse the licence. The Minister will then make the final decision. Most applications take between three and six months to be processed. An overview of the application and assessment process is shown in Figure 1.

4.1 Public consultation

When an application is made, the Tribunal undertakes a public consultation on behalf of the Minister over a statutory period of not less than 40 days. As part of this process, the Minister

⁹ *Independent Pricing and Regulatory Tribunal Act 1992* section 24FF

¹⁰ Refer to the *Gas Supply Act 1996* clause 15.

must place a notice in the NSW Government Gazette and in a daily newspaper circulating throughout the State, inviting submissions from interested parties. The notice must indicate:

- the nature of the authorisation application
- the identity of the applicant
- the district in which the authorisation, if granted or transferred, would operate
- where submissions on the application should be lodged
- the time within which any submissions should be lodged¹¹
- such other matters as may be prescribed by the regulations¹²

The Tribunal also places applications on its website, to provide further opportunities for public comment.

4.2 Tribunal's assessment

The Tribunal assesses your application against the assessment criteria discussed above, based on the information provided in your application. It also carries out any checks and searches necessary to verify the accuracy of this information. In addition, it considers any submissions it received through the public consultation process. Then, taking all these considerations into account, it makes a recommendation to the Minister about whether or not an authorisation should be granted.

4.3 Minister's decision

The Minister is required to assess your application in accordance with Part 2 Division 1 to the Gas Supply Act 1996 (NSW). In deciding whether or not to grant a licence, the Minister considers this assessment, together with the Tribunals' recommendations, and any public submissions.

5 REASONS AN APPLICATION MAY BE REFUSED

The reason why the Minister may refuse an application is outlined in the *Gas Supply Act 1996 (NSW)*. An authorisation application may be refused:

- If the applicant fails to satisfy any technical or prudential criteria that the Minister has adopted to determine its ability to operate a viable business as a reticulator
- on such grounds as may be prescribed by the regulations¹³
- on such grounds as the Minister considers relevant, having regard to the interests of consumers and the need to promote a competitive market for natural gas, to prevent misuse of market power and to ensure the security and reliability of the NSW supply system for natural gas¹⁴

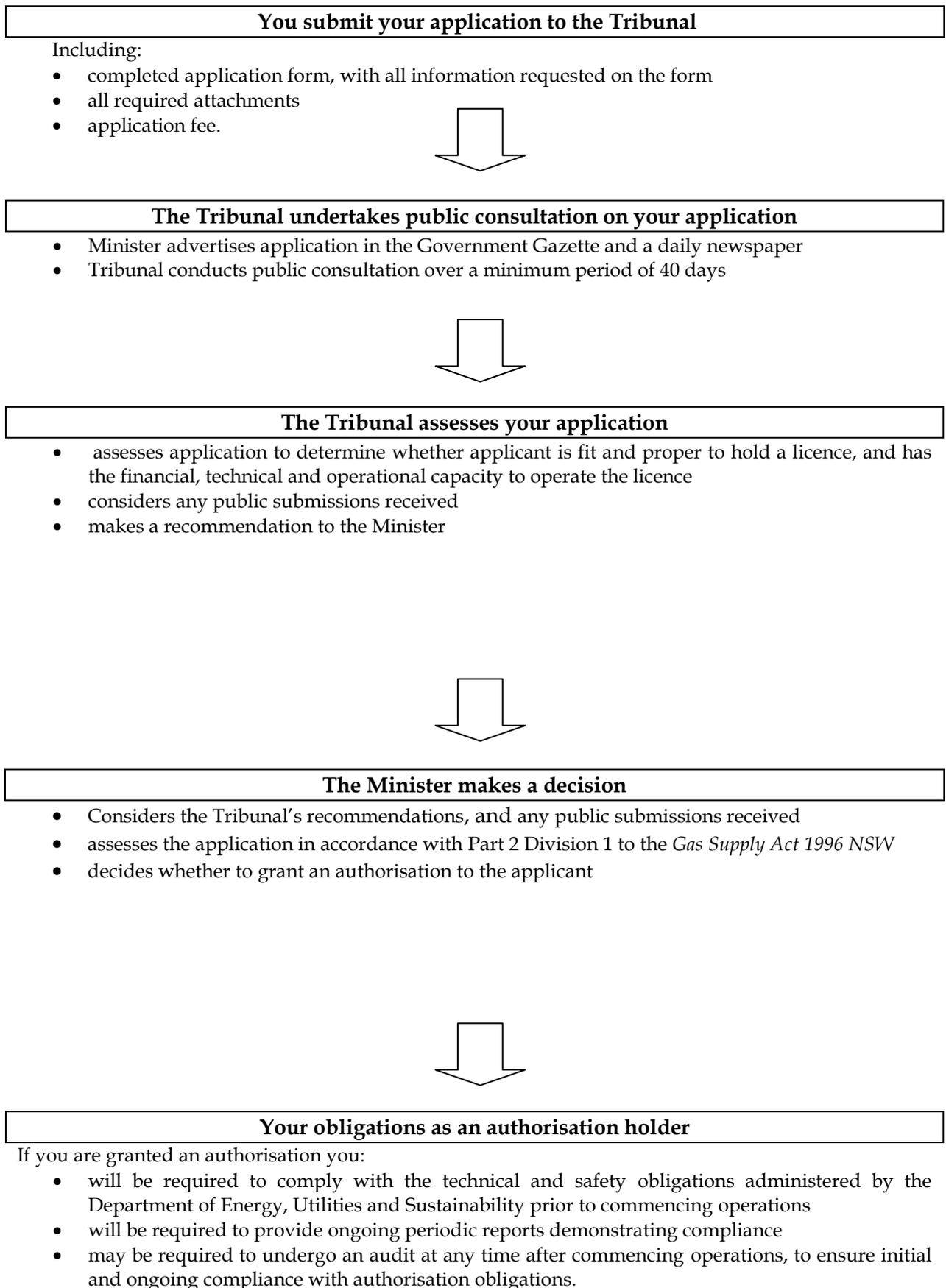
¹¹ Being not less than 40 days from the date on which the notice is published.

¹² Currently there are no other matters that have been prescribed by the regulations.

¹³ Currently, there are no other matters that have been prescribed by the regulations.

¹⁴ *Gas Supply Act 1996 (NSW)* clause 9(2).

Figure 1 Overview of application and assessment process



6 REGULATORY FRAMEWORK

The *Gas Supply Act 1996* establishes the statutory basis for the regulation of gas reticulation in NSW and is supplemented by the following regulatory instruments:

- *Regulations* made under the above Act
- Market Operations Rules
- Ministerially imposed *reticulator authorisation conditions*
- Other relevant Acts including the *Gas Industry Restructuring Act 1986 (NSW)* and *Dangerous Goods Act 1975 (NSW)*

6.1 Consolidated authorisation obligations

To identify what authorisation obligations are likely to apply if your application is successful, you should refer to the Tribunal's 'Consolidated Reference Documents'. These documents list all obligations imposed by the above legislation and regulatory instruments by the subject matter they relate to. They also explain the main obligations authorisation holders must meet that are not formal authorisation obligations. You can also refer to the Tribunal's Licence Reporting Manuals, which provide a comprehensive list of all authorisation obligations that apply in tabular form.

These documents can be found on the Tribunal's website at www.ipart.nsw.gov.au.

7 MONITORING COMPLIANCE OF AUTHORISATION HOLDERS

If your application is successful and you are granted a natural gas reticulator's authorisation, the Tribunal will monitor your compliance with the conditions of your authorisation on an ongoing basis.

7.1 Compliance audits

The Tribunal may audit the operations of new reticulator's at any time. The primary purpose of this audit is to ensure that the licence holder has systems in place to enable ongoing compliance with all the authorisation conditions.

The Tribunal may undertake further periodic audits of compliance by authorisation holders. The frequency of these audits depends on a number of factors, including:

- the results of previous compliance audits
- the authorisation holder's compliance history
- whether significant new authorisation obligations have been introduced

The authorisation holder is required to bear the cost of each compliance audit.

7.2 Compliance reporting

The Tribunal also requires authorisation holders to provide periodic exception based reports to demonstrate their compliance with their authorisation conditions. These reports must comply with the applicable Licence Reporting Manual, which can be found on the Tribunal's website at www.ipart.nsw.gov.au.