Western Australia

National Gas Access (Western Australia) Law

CONSULTATION DRAFT

This document shows proposed changes to the *National Gas Access (Western Australia) Law* (the ***WA Law***) that would be made by:

1. the *National Gas Access (WA) Adoption of Amendments (Gas Pipelines) Order 2026* (the ***adoption order***); and
2. the *National Gas Access (WA) (Act Amendment) (Gas Pipelines) Regulations 2026* (the ***Act amendment regulations***).

The adoption order would declare that certain amendments made to the *National Gas (South Australia) Act 2008* (SA) Schedule 1 by various South Australian Acts are relevant to the WA Law. Declaring South Australia amendments relevant causes equivalent amendments to be made to the WA Law.

The Act amendment regulations would, in relation to those amendments, modify the WA Law under the *National Gas Access (WA) Act 2009* section 7B.

The South Australian Acts are as follows:

1. the *National Gas (South Australia) (National Gas Law—Australian Energy Market Operator) Amendment Act 2009* (SA) (amendments designated with [*1], related modifications with [*1M*]);
2. the *National Gas (South Australia) (Capacity Trading and Auctions) Amendment Act 2018* (SA) (amendments designated with [*2], there are no related modifications);
3. the *National Gas (South Australia) (Market Transparency) Amendment Act 2022* (SA) (amendments designated with [*3], related modifications with [*3M*]);
4. the *Statutes Amendment (National Energy Laws) (Gas Pipelines) Act 2022* (SA) (amendments designated with [*4] (and, when made on top of earlier amendments in s. 8(2), highlighted in yellow), related modifications with [*4M*]).]

Western Australia

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Western Australia

National Gas Access (Western Australia) Law

Chapter 1 — Preliminary

Part 1 — Citation and interpretation

1. Citation

This law may be cited as the *National Gas Access (Western Australia) Law*.

[Section 1 modified: WA Act s. 7(1)(b) and Sch. 1 cl. 2.]

[Editorial note:

This Law began to apply in WA on 1 Jan 2010 when the *National Gas Access (WA) Act 2009* s. 7 commenced.

A reference to ***WA Act*** in a note beneath a section is a reference to the *National Gas Access (WA) Act 2009*.]

2. Definitions

In this Law—

[*4]~~***15 year no-coverage determination*** means a determination of a relevant Minister under Chapter 5 Part 2;~~

ACCC means the Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974* of the Commonwealth;

access arrangement means an arrangement setting out terms and conditions about access to pipeline services provided or to be provided by means of [*4]a scheme pipeline ~~a pipeline~~;

access determination means a determination of [*4]the relevant adjudicator for an access dispute under Chapter 5 Part 5 and includes a determination varied under Part 6 of that Chapter ~~the dispute resolution body under Chapter 6 Part 3 and includes a determination varied under Part 4 of that Chapter~~;

[*4]***access dispute*** means a dispute between a user or prospective user and a service provider about 1 or more aspects of access to a pipeline service provided by means of a pipeline and includes a matter that is deemed to be an access dispute under the Rules;

AEMC means the Australian Energy Market Commission established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

AER means the Australian Energy Regulator established by section 44AE of the *Trade Practices Act 1974* of the Commonwealth except if section 2A requires the term to be given a different meaning;

[*4]***AER Compliance Procedures and Guidelines*** has the meaning given by section 64F;

AER economic regulatory decision means a decision (however described) of the AER under this Law or the Rules performing or exercising an AER economic regulatory function or power;

AER economic regulatory function or power means a function or power performed or exercised by the AER under this Law or the Rules (other than making a rate of return instrument) that relates to the economic regulation of pipeline services provided by a service provider—

(a) by means of; or

(b) in connection with,

a [*4]~~scheme~~ pipeline and includes a function or power performed or exercised by the AER under this Law or the Rules (other than making a rate of return instrument) that relates to—

(c) the preparation of a service provider performance report;

(d) a ring fencing decision;

(e) an applicable access arrangement decision;

(f) an access determination (if the AER is the dispute resolution body);

Note—

The application of a rate of return instrument under this Law is an AER economic regulatory function or power. See section 30Q(2).

AER ring fencing determination means a determination of the AER under section 143(1);

annual turnover has the same meaning as in section 2(1) of Schedule 2 to the *Competition and Consumer Act 2010* of the Commonwealth;

applicable access arrangement means [*4]an ~~a limited access arrangement or full~~ access arrangement that has taken effect after being approved or made by the AER under the Rules and includes an applicable access arrangement as varied—

(a) under the Rules; or

(b) by an access determination as provided by this Law or the Rules;

[*4]***applicable access arrangement decision*** means a decision of the AER under the Rules that—

(a) approves or does not approve an access arrangement or revisions to an applicable access arrangement submitted to the AER under section 113 or the Rules; or

(b) makes an access arrangement—

(i) in place of an access arrangement the AER does not approve in that decision; or

(ii) because a scheme pipeline service provider does not submit an access arrangement in accordance with section 113 or the Rules; or

(c) makes revisions to an access arrangement—

(i) in place of revisions submitted to the AER under section 113 that the AER does not approve in that decision; or

(ii) because a scheme pipeline service provider does not submit revisions to the AER under section 113;

~~***applicable access arrangement decision*** means~~

~~(a) a full access arrangement decision; or~~

~~(b) a limited access arrangement decision;~~

[*1]***application Act*** means an Act of a participating jurisdiction that applies, as a law of that jurisdiction, this Law or any part of this Law;

approved associate contract means an associate contract approved by the AER under an associate contract decision;

associate in relation to a person has the same meaning it would have under Division 2 of Part 1.2 of the *Corporations Act 2001* of the Commonwealth if sections 13, 16(2) and 17 did not form part of that Act;

associate contract means—

(a) a contract, arrangement or understanding between a service provider and an associate of the service provider in connection with the provision of an associate pipeline service; or

(b) a contract, arrangement or understanding between a service provider and any person in connection with the provision of an associate pipeline service—

(i) that provides a direct or indirect benefit to an associate; and

(ii) that is not at arm's length;

associate contract decision means a decision of the AER under the Rules that approves or does not approve an associate contract for the purposes of Chapter 4 Part 2 [*4]Division 4 ~~Division 5~~;

associate pipeline service means a pipeline service provided by means of a pipeline other than a pipeline to which a [*4]greenfields incentive ~~15-year no-coverage~~ determination applies;

Bulletin Board information means information that—

(a) a person gives to the Bulletin Board operator to comply with section 223(1); or

(b) a person gives to the Bulletin Board operator in circumstances expressly permitted by the Rules;

Bulletin Board operator means the person prescribed by the Regulations for the purposes of section 217;

charge, in relation to a pipeline service, means the amount that is payable by a user to a service provider for the provision of the pipeline service to that user;

civil penalty—see section 3A;

civil penalty provision has the meaning given by section 3;

[*4]***classification decision*** means a decision of the AER under Chapter 3 Part 6 Division 1;

~~***classification decision under the Rules*** means a decision of the NCC under the Rules that classifies either of the following pipelines as a cross boundary transmission pipeline, cross boundary distribution pipeline, transmission pipeline or a distribution pipeline:~~

~~(a) a pipeline in respect of which a tender approval decision becomes irrevocable by operation of the Rules;~~

~~(b) a pipeline —~~

~~(i) by means of which a service provider intends to provide pipeline services to which a full access arrangement voluntarily submitted to the AER for approval by that provider will apply, if approved; and~~

~~(ii) in respect of which the NCC has not previously made an initial classification decision;~~

commission, in relation to a pipeline, has the meaning given by section 12;

Commonwealth Minister means the Minister of the Commonwealth administering the *Australian Energy Market Act 2004* of the Commonwealth;

[*2]***compression service facility*** means—

(a) a designated compression service facility; or

(b) any other facility or part of a facility (whether or not forming part of another facility or located on or connected to another facility) for compressing natural gas other than—

(i) a facility operated as part of a gathering system operated as part of an upstream producing operation; or

(ii) anything downstream of a point on a pipeline from which a person takes natural gas for consumption purposes;

[*3]***compression service provider*** means a person who owns, controls or operates a compression service facility;

conduct provision has the meaning given by section 4;

constituent components, in relation to a designated regulatory decision, means the matters that constitute the elements or components of the designated regulatory decision and on which that designated regulatory decision is based and includes —

(a) matters that go to the making of the designated regulatory decision; and

(b) decisions made by the AER for the purposes of the designated regulatory decision;

[*4]~~***coverage determination*** means a determination of a relevant Minister under Chapter 3 Part 1 Division 1;~~

~~***coverage recommendation*** means a recommendation of the NCC under Chapter 3 Part 1 Division 1;~~

~~***coverage revocation determination*** means a determination of a relevant Minister under Chapter 3 Part 1 Division 2;~~

~~***coverage revocation recommendation*** means a recommendation of the NCC under Chapter 3 Part 1 Division 2;~~

~~***covered pipeline*** means a pipeline —~~

~~(a) to which a coverage determination applies; or~~

~~(b) deemed to be a covered pipeline by operation of section 126 or 127;~~

~~***covered pipeline service provider*** means a service provider that provides or intends to provide pipeline services by means of a covered pipeline;~~

~~***cross boundary distribution pipeline*** means a distribution pipeline that is partly situated in the jurisdictional areas of 2 or more participating jurisdictions;~~

~~***cross boundary transmission pipeline*** means a transmission pipeline that is partly situated in the jurisdictional areas of 2 or more participating jurisdictions;~~

[*2]***designated compression service facility*** means a facility or part of a facility for compressing natural gas prescribed by the Regulations as a designated compression service facility;

[*4]***designated pipeline*** means a pipeline classified by the Regulations, or designated in the application Act of a participating jurisdiction, as a designated pipeline and includes an extension to, or expansion of the capacity of, the pipeline that is taken to be part of the pipeline under section 18;

Note—

A designated pipeline is a scheme pipeline. See the definition of scheme pipeline.

~~***designated pipeline*** means a pipeline classified by the Regulations, or designated in the application Act of a participating jurisdiction, as a designated pipeline;~~

~~**Note—**~~

~~A light regulation determination cannot be made in respect of pipeline services provided by means of a designated pipeline: see sections 109 and 111.~~

designated regulatory decision means an applicable access arrangement decision (other than a [*4]decision that does not approve an ~~full access arrangement decision that does not approve a full~~ access arrangement), or a decision prescribed by the Regulations to be a designated regulatory decision;

developable capacity means the difference between the current capacity of a [*4]~~covered~~ pipeline and the capacity of a [*4]~~covered~~ pipeline which would be available if a new facility was constructed, but does not include any new capacity of a [*4]~~covered~~ pipeline resulting from an extension to the geographic range of a [*4]~~covered~~ pipeline;

dispute resolution body has the meaning given to that term in section 9(1) of the *National Gas Access (WA) Act 2009*;

[*4]**Note—**

In Western Australia, under the *National Gas Access (WA) Act 2009* of Western Australia, section 9, the dispute resolution body generally is the entity known as the Western Australian Energy Disputes Arbitrator.

[*4]***distribution pipeline*** means a pipeline that—

(a) is classified as a distribution pipeline under a licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation; or

(b) if the licence or authorisation mentioned in paragraph (a) does not include a classification of the pipeline—is classified by the AER as a distribution pipeline,

and includes a pipeline that is reclassified by the AER as a distribution pipeline;

Note—

See Chapter 3 Part 6 in relation to the classification and reclassification of pipelines. See also sections 18 and 19.

~~***distribution pipeline*** means a pipeline that is classified in accordance with this Law or the Rules as a distribution pipeline and includes any extension to, or expansion of the capacity of, such a pipeline when it is a covered pipeline that, by operation of an applicable access arrangement or under this Law, is to be treated as part of the pipeline;~~

~~**Note—**~~

~~See also sections 18 and 19.~~

draft Rule determination means a determination of the AEMC under section 308;

end user means a person who acquires natural gas or proposes to acquire natural gas for consumption purposes;

ERA means the Economic Regulation Authority established by section 4 of the *Economic Regulation Authority Act 2003* of Western Australia;

[*4]***excluded infrastructure***, in relation to a pipeline, means tanks, reservoirs, machinery, equipment or other infrastructure that forms part of the pipeline but is classified by the Rules as excluded infrastructure for the purposes of this Law;

extension and expansion requirements means—

(a) the requirements contained in an access arrangement that, in accordance with the Rules, specify—

[*4](i) the circumstances when an extension to a scheme pipeline is to be treated as forming part of the scheme pipeline; and

(ii) whether the pipeline services provided or to be provided by means of, or in connection with, spare capacity arising out of an extension to a scheme pipeline will be subject to the applicable access

arrangement applying to the pipeline services to which that arrangement applies; and

(iii) whether an extension to, or expansion of the capacity of, a scheme pipeline will affect a reference tariff and, if so, the effect on the reference tariff; and

~~(i) the circumstances when an extension to, or expansion of the capacity of, a covered pipeline is to be treated as forming part of the covered pipeline; and~~

~~(ii) whether the pipeline services provided or to be provided by means of, or in connection with, spare capacity arising out of an extension to, or expansion of the capacity of, a covered pipeline will be subject to the applicable access arrangement applying to the pipeline services to which that arrangement applies; and~~

~~(iii) whether an extension to, or expansion of the capacity of, a covered pipeline will affect a reference tariff, and if so, the effect on the reference tariff; and~~

(b) any other requirements specified by the Rules as extension and expansion requirements;

Note—

See also sections 18 and 19.

final Rule determination means a determination of the AEMC under section 311;

foreign company has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

foreign source means—

(a) a source beyond the outer limits of all of the following:

(i) the adjacent area of this jurisdiction;

(ii) the adjacent area of another participating jurisdiction; or

(b) a source within the joint petroleum development area (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003* of the Commonwealth);

form of regulation factors has the meaning given by section 16;

[*4]~~***full access arrangement*** means an access arrangement that—~~

~~(a) provides for price or revenue regulation as required by the Rules; and~~

~~(b) deals with all other matters for which the Rules require provision to be made in an access arrangement;~~

~~***full access arrangement decision*** means a decision of the AER under the Rules that—~~

~~(a) approves or does not approve a full access arrangement or revisions to an applicable access arrangement submitted to the AER under section 132 or the Rules; or~~

~~(b) makes a full access arrangement—~~

~~(i) in place of a full access arrangement the AER does not approve in that decision; or~~

~~(ii) because a service provider does not submit a full access arrangement in accordance with section 132 or the Rules;~~

~~(c) makes revisions to an access arrangement—~~

~~(i) in place of revisions submitted to the AER under section 132 that the AER does not approve in that decision; or~~

~~(ii) because a service provider does not submit revisions to the AER under section 132;~~

Gas Code means the *National Third Party Access Code for Natural Gas Pipeline Systems* set out in Schedule 2 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia as amended and applying from time to time before the commencement of section 30 of the *National Gas Access (WA) Act 2009* as a law of Western Australia;

gas market operator means VENCorp or any other person or body prescribed by the Regulations to be a gas market operator;

general regulatory information order has the meaning given by section 45;

[*4]***greenfields pipeline project*** means a project for the construction of—

(a) a pipeline that is to be structurally separate from any existing pipeline; or

(b) a major extension to an existing pipeline;

greenfields incentive determination has the meaning given by section 100;

greenfields price protection determination has the meaning given by section 109;

~~***greenfields pipeline incentive*** means —~~

~~(a) a 15-year no-coverage determination; or~~

~~(b) a price regulation exemption;~~

haulage, in relation to natural gas, includes conveyance or reticulation of natural gas;

[*4]~~***initial classification decision*** means a decision of the NCC under section 98 or 155;~~

initial National Gas Rules means —

(a) the National Gas Rules that, when the *National Gas Access (WA) Act 2009* section 30 came into operation, applied under section 294; and

(b) the *National Gas Access (Pipelines-Arbitration Amendment) Rules 2017* made by the Minister for Mineral Resources and Energy of South Australia under the National Gas (South Australia) Law section 294F (notice of which was published in the *Government Gazette* of South Australia on 1 August 2017 at p. 2994); and

(c) the *National Gas (Binding Rate of Return Instrument) Amendment Rule 2019* made by the Minister for Energy and Mining of South Australia under the National Gas (South Australia) Law section 294CA (notice of which was published in the *Government Gazette* of South Australia on 7 February 2019 at [*4M*]p. 404; and~~p. 404);~~

(d) the *National Gas Amendment (Gas Pipelines) Rule 2023* made by the Minister for Energy and Mining of South Australia under the National Gas (South Australia) Law section 294FB (notice of which was published in the *Government Gazette* of South Australia on 16 March 2023 at p. 545), other than the following —

(i) rule 6(1) to the extent that it inserts paragraph (b) of the definition of ***decision maker***;

(ii) rule 13 to the extent that it inserts rule 29F(3)(c);

(iii) rule 76;

(iv) rule 77;

[*4]~~***international pipeline*** means a pipeline for the haulage of gas from a foreign source;~~

~~***jurisdictional determination criteria***, in relation to a cross boundary distribution pipeline, has the meaning given by section 14;~~

jurisdictional gas legislation means an Act of a participating jurisdiction (other than national gas legislation), or any instrument made or issued under or for the purposes of that Act, that regulates the haulage of gas in that jurisdiction;

[*4]~~***light regulation determination*** means a determination of the NCC under Chapter 3 Part 2 Division 1;~~

~~***light regulation services*** means pipeline services to which a light regulation determination applies;~~

~~***limited access arrangement*** means an access arrangement that, under this Law and the Rules, is not required to make provision for price or revenue regulation but deals with the matters for which this Law and the Rules require provision to be made in an access arrangement;~~

~~***limited access arrangement decision*** means a decision of the AER under the Rules that approves or does not approve —~~

~~(a) a limited access arrangement submitted to the AER under section 116 or 168; or~~

~~(b) revisions to a limited access arrangement submitted to the AER under section 116(3) or 168(3) or the Rules;~~

listed corporation has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth;

MCE means the group of Ministers (constituting or forming part of a Ministerial Council, Standing Council of Ministers or similar body (however described)) responsible for energy matters at a national level comprising 9 Ministers as follows:

(a) 1 Minister from the Commonwealth;

(b) 1 Minister from each State (totalling 6 Ministers);

(c) 1 Minister from each Territory (totalling 2 Ministers),

acting in accordance with its own procedures;

MCE directed review means a review conducted by the AEMC under Chapter 2 Part 2 Division 4;

MCE statement of policy principles means a statement of policy principles issued by the MCE under section 25;

minimum ring fencing requirement means a requirement under Chapter 4 Part 2 Division 2;

Minister of a participating jurisdiction means a Minister who is a Minister of a participating jurisdiction within the meaning of section 22;

[*4]~~***Ministerial coverage decision*** means~~

~~(a) a decision of a relevant Minister under section 99, 106 or 156; or~~

~~(b) a decision of the Commonwealth Minister under section 164;~~

national gas legislation means—

(a) the *National Gas (South Australia) Act 2008* of South Australia and Regulations in force under that Act; and

(b) the *National Gas (South Australia) Law*; and

(c) the *National Gas Access (Western Australia) Act 2008* of Western Australia; and

(d) the National Gas Access (Western Australia) Law within the meaning given in the *National Gas Access (Western Australia) Act 2008* of Western Australia; and

(e) Regulations made under the *National Gas Access (Western Australia) Act 2008* of Western Australia for the purposes of the National Gas Access (Western Australia) Law; and

(f) an Act of a participating jurisdiction (other than South Australia or Western Australia) that applies, as a law of that jurisdiction, any part of—

(i) the Regulations referred to in paragraph (a); or

(ii) the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia; and

(g) the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia as applied as a law of a participating jurisdiction (other than South Australia or Western Australia); and

(h) the Regulations referred to in paragraph (a) as applied as a law of a participating jurisdiction (other than South Australia or Western Australia);

national gas objective means the objective set out in section 23;

National Gas Rules or ***Rules*** means—

(a) the initial National Gas Rules; and

(b) Rules made by the AEMC under this Law, including Rules that amend or revoke—

(i) the initial National Gas Rules; or

(ii) Rules made by it;

natural gas means a substance that—

(a) is in a gaseous state at standard temperature and pressure; and

(b) consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane; and

(c) is suitable for consumption;

[*3]***natural gas industry*** includes—

(a) activities and transactions relating to—

(i) processable gas; or

(ii) natural gas [*3M*]~~(including liquefied natural gas)~~ and natural gas services; or

(iii) natural gas industry facilities; or

(iv) services provided by means of natural gas industry facilities; and

(b) activities and transactions relating to petroleum tenements; and

(c) any other activities or transactions specified by the Regulations for the purposes of this paragraph;

natural gas industry facility means—

(a) a pipeline; or

(b) a compression service facility; or

(c) a gas processing plant; or

[*3M*]~~(d) an LNG facility; or~~

(e) a storage facility; or

(f) a user facility; or

(g) another facility of a type specified by the Regulations for the purposes of this paragraph;

natural gas service means—

(a) a pipeline service; or

(b) the supply of natural gas; or

(c) a service ancillary to the service described in paragraph (b);

Natural Gas Services Bulletin Board means the website maintained by the Bulletin Board operator that contains information of the kind specified in the Rules in relation to natural gas services;

[*4]~~***NCC*** means the National Competition Council established by section 29A of the *Trade Practices Act 1974* of the Commonwealth;~~

~~***NCC recommendation or decision*** means—~~

~~(a) a coverage recommendation; or~~

~~(b) a coverage revocation recommendation; or~~

~~(c) a no-coverage recommendation; or~~

~~(d) a price regulation exemption recommendation; or~~

~~(e) a reclassification decision; or~~

~~(f) a light regulation determination; or~~

~~(g) a decision of the NCC under Chapter 3 Part 2 Division 2 to revoke a light regulation determination; or~~

~~(h) a decision of the NCC not to make a decision referred to in paragraph (f) or (g); or~~

~~(i) advice under section 172;~~

new facility means an extension to, or expansion of the capacity of, a [*4]~~covered~~ pipeline which is to be treated as part of the [*4]~~covered~~ pipeline—

(a) in accordance with the extension and expansion requirements contained in an applicable access arrangement applying to the pipeline services provided by means of that [*4]~~covered~~ pipeline; or

(b) under this Law;

Note—

See also sections 18 and 19.

[*4]***non-scheme pipeline*** means a pipeline other than a scheme pipeline;

non-scheme pipeline access dispute means an access dispute that involves a non-scheme pipeline;

~~***no-coverage recommendation*** means a recommendation of the NCC under Chapter 5 Part 2;~~

~~***non scheme pipeline user*** means a person who—~~

~~(a) is a party to a contract with a service provider under which the service provider provides or intends to~~

~~provide a pipeline service to that person by means of a pipeline that is not a scheme pipeline; or~~

~~(b) has a right under an access determination to be provided with a pipeline service by means of a pipeline that is not a scheme pipeline;~~

offence provision means a provision of this Law the breach or contravention of which by a person exposes that person to a finding of guilt by a court;

officer has the same meaning as officer has in relation to a corporation under section 9 of the *Corporations Act 2001* of the Commonwealth;

old access law means Schedule 1 to the *Gas Pipelines Access (Western Australia) Act 1998* as in force from time to time before the commencement of section 30 of the *National Gas Access (WA) Act 2009*;

old scheme classification or determination means a classification or determination under section 10 or 11 of the old access law in force at any time before the repeal of the old access law;

old scheme distribution pipeline means a pipeline that was, at any time before the repeal of the old access law—

(a) a distribution pipeline as defined in that law; and

(b) a covered pipeline as defined in the Gas Code;

old scheme transmission pipeline means a pipeline that was, at any time before the repeal of the old access law—

(a) a transmission pipeline as defined in that law; and

(b) a covered pipeline as defined in the Gas Code;

[*4]***operative period***, for a greenfields incentive determination, has the meaning given by section 102(2);

participating jurisdiction means a jurisdiction that is a participating jurisdiction by reason of section 21;

[*3]***petroleum*** includes any naturally occurring hydrocarbon, mixture of hydrocarbons or mixture of hydrocarbons and non-hydrocarbons, whether in gaseous, liquid or solid state;

petroleum tenement means a right granted under law to explore for, extract, recover or process petroleum;

pipeline means—

(a) a pipe or system of pipes for the haulage of natural gas, and any tanks, reservoirs, machinery or equipment directly attached to that pipe or system of pipes; or

(b) a proposed pipe or system of pipes for the haulage of natural gas, and any proposed tanks, reservoirs, machinery or equipment proposed to be directly attached to the proposed pipe or system of pipes; or

(c) a part of a pipe or system of pipes or proposed pipe or system of pipes referred to in paragraph (a) or (b),

but does not include—

(d) unless paragraph (e) applies, anything upstream of a prescribed exit flange on a pipeline conveying natural gas from a prescribed gas processing plant; or

(e) if a connection point upstream of an exit flange on such a pipeline is prescribed, anything upstream of that point; or

(f) a gathering system operated as part of an upstream producing operation; or

(g) any tanks, reservoirs, machinery or equipment used to remove or add components to or change natural gas (other than odourisation facilities) such as a gas processing plant; or

(h) anything downstream of a point on a pipeline from which a person takes natural gas for consumption purposes;

[*4]**Note—**

See also sections 18 and 19.

[*4]***pipeline capacity right*** means a right under a contract with a service provider to be provided with a pipeline service, by means of a pipeline, for a given quantity of natural gas over a given period of time;

pipeline classification criterion has the meaning given by section 13;

[*4]***pipeline interconnection principles*** has the meaning given by section 136;

~~***pipeline coverage criteria*** has the meaning given by section 15;~~

pipeline reliability standard means a standard imposed by or under an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, relating to the reliable haulage of natural gas in that jurisdiction;

pipeline safety duty means a duty or requirement under an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, relating to—

(a) the safe haulage of natural gas in that jurisdiction; or

(b) the safe operation of a pipeline in that jurisdiction;

pipeline service means—

(a) a service provided by means of a pipeline, including—

(i) a haulage service (such as firm haulage, interruptible haulage, spot haulage and backhaul); and

(ii) a service providing for, or facilitating, the interconnection of pipelines; [*4]or~~and~~

(b) a service ancillary to the provision of a service referred to in paragraph (a),

but does not include the production, sale or purchase of natural gas or processable gas;

pipeline service standard means a standard relating to the standard of the pipeline services provided by a service provider by means of a covered pipeline imposed—

(a) by or under jurisdictional gas legislation; or

(b) by the AER—

(i) under an access arrangement decision; or

(ii) in accordance with the Rules;

[*4]***prescribed transparency information*** has the meaning given by section 136C;

~~***price or revenue regulation*** means regulation of—~~

~~(a) the prices, charges or tariffs for pipeline services to be, or that are to be, provided; or~~

~~(b) the revenue to be, or that is to be, derived from the provision of pipeline services;~~

~~***price regulation exemption*** means an exemption under Chapter 5 Part 3;~~

~~***price regulation exemption recommendation*** means a recommendation of the NCC under section 162;~~

processable gas means a substance that—

(a) is in a gaseous state at standard temperature and pressure; and

(b) consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane;

producer means a person who carries on a business of producing natural gas;

prospective user has the meaning given by section 5;

queuing requirements means terms and conditions providing for the priority that a prospective user has, as against any other prospective user, to obtain access to spare capacity and developable capacity;

rate of return instrument—see section 30D(2);

[*4]***reclassification decision*** means a decision of the AER under Chapter 3 Part 6 Division 2;

~~***reclassification decision*** means a decision of the NCC under Chapter 3 Part 5;~~

reference service means a pipeline service specified by, or determined or approved by the AER under, the Rules as a reference service;

reference tariff means a tariff or charge for a reference service—

(a) specified in an applicable access arrangement approved or made under [*4]an ~~a full~~ access arrangement decision; or

(b) determined by applying the formula or methodology contained in an applicable access arrangement approved or made under [*4]an ~~a full~~ access arrangement decision;

Regulations means the regulations made under Part 3 of the *National Gas Access (WA) Act 2009* that apply as a law of this jurisdiction;

regulator has the meaning given to that term in section 9(1) of the *National Gas Access (WA) Act 2009;*

regulatory information instrument means—

(a) a general regulatory information order; or

(b) a regulatory information notice;

regulatory information notice has the meaning given by section 46;

regulatory obligation or requirement has the meaning given by section 6;

regulatory payment has the meaning given by section 7;

[*4]***relevant adjudicator*** means—

(a) for a scheme pipeline access dispute—the dispute resolution body; or

(b) for a non scheme pipeline access dispute—the arbitrator for the dispute;

~~***relevant Minister*** means if, in a coverage recommendation, no-coverage recommendation, classification decision under the Rules or reclassification decision, the NCC determines the pipeline is—~~

~~(a) a cross boundary transmission pipeline—the Commonwealth Minister;~~

~~(b) a transmission pipeline situated wholly within a participating jurisdiction—the designated Minister;~~

~~Note—~~

~~The term designated Minister is defined in the Act of this jurisdiction that applies this Law as a law of this jurisdiction.~~

~~(c) a distribution pipeline situated wholly within a participating jurisdiction—the Minister of the participating jurisdiction;~~

~~(d) a cross boundary distribution pipeline—the Minister of the participating jurisdiction determined by the NCC in the recommendation as being the participating jurisdiction with which the cross boundary distribution pipeline is most closely connected;~~

relevant Regulator has the same meaning as in section 2 of the old access law;

revenue and pricing principles[*4], in relation to a pipeline service provided by means of a scheme pipeline, means the principles set out in section 24;

ring fencing decision means—

(a) an AER ring fencing determination; or

(b) a decision [*4]granting or not granting an exemption under Rules made under section 148A ~~under section 146 granting or not granting an exemption under that section~~; or

(c) an associate contract decision;

[*4]***scheme pipeline*** means—

(a) a pipeline to which a scheme pipeline determination applies; or

(b) a designated pipeline; or

(c) a pipeline in respect of which a scheme pipeline election takes effect;

Note—

However, see section 99 in relation to when a pipeline the subject of a scheme pipeline revocation determination ceases to be a scheme pipeline.

scheme pipeline access dispute means an access dispute that involves a scheme pipeline;

scheme pipeline determination has the meaning given by section 92(1);

scheme pipeline election has the meaning given by section 95;

scheme pipeline revocation determination means a determination made under section 97(1);

scheme pipeline service provider means a service provider who provides or intends to provide pipeline services by means of a scheme pipeline;

~~***scheme pipeline*** means~~

~~(a) a covered pipeline; or~~

~~(b) an international pipeline to which a price regulation exemption applies;~~

service provider has the meaning given by section 8;

service provider performance report means a report prepared by the AER under section 64;

[*4]***small shipper*** has the meaning given by section 8AB;

South Australian Minister means the Minister of the Crown in right of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia;

spare capacity means unutilised capacity of a pipeline;

[*3]***storage facility*** means a facility for storing processable gas or natural gas [*3M*]~~(including liquefied natural gas)~~ before or after processing;

storage provider means any person who owns, controls or operates a storage facility;

~~***storage provider*** means any person who owns, operates or controls a facility for storing natural gas or processable gas for injection into a pipeline;~~

supply includes—

(a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire purchase; and

(b) in relation to services—provide, grant or confer;

tariff means a rate by which a charge for a pipeline service is calculated;

[*4]~~***tender approval decision*** means a decision of the AER under the Rules under which the AER approves a tender process for the construction and operation of a pipeline as a competitive tender process;~~

Territory means the Australian Capital Territory or the Northern Territory;

[*4]***transmission pipeline*** means a pipeline that—

(a) is classified as a transmission pipeline under a licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation; or

(b) if the licence or authorisation mentioned in paragraph (a) does not include a classification of the pipeline—is classified by the AER as a transmission pipeline,

and includes a pipeline that is reclassified by the AER as a transmission pipeline;

Note—

See Chapter 3 Part 6 in relation to the classification and reclassification of pipelines. See also sections 18 and 19.

~~***transmission pipeline*** means a pipeline that is classified in accordance with this Law or the Rules as a transmission pipeline and includes any extension to, or expansion of the capacity of, such a pipeline when it is a covered pipeline that, by operation of an applicable access arrangement or under this Law, is to be treated as part of the pipeline;~~

~~**Note—**~~

~~See also sections 18 and 19.~~

Tribunal means the Australian Competition Tribunal referred to in the *Trade Practices Act 1974* of the Commonwealth and includes a member of the Tribunal or a Division of the Tribunal performing functions of the Tribunal;

user means a person who—

(a) is a party to a contract with a service provider under which the service provider provides or intends to provide a pipeline service to that person by means of a [*4]~~scheme~~ pipeline; or

(b) has a right under an access determination to be provided with a pipeline service by means of a [*4]~~scheme~~ pipeline;

[*3]***user facility*** means a facility by means of which natural gas is consumed (including by transformation of the gas into a new form) and which is not any other form of natural gas industry facility;

[*4]~~***user or consumer association*** has the meaning given by section 244;~~

~~***user or consumer interest group*** has the meaning given by section 244;~~

VENCorp means the Victorian Energy Networks Corporation continued under Part 8 of the *Gas Industry Act 2001* of Victoria;

WA arbitrator has the meaning given to that term in section 9(1) of the *National Gas Access (WA) Act 2009*.

[Section 2 modified: WA Act Sch. 1 cl. 3; amended: see SA Act No. 30 of 2009 s. 6 and WA Gazette 18 Dec 2009 p. 5167; SA Act No. 79 of 2013 s. 19 and WA Gazette 14 Mar 2014 p. 632; SA Act No. 33 of 2018 and WA Gazette 5 Apr 2019 p. 1007-8; SA Act No. 37 of 2020 s. 47 and WA Gazette 4 Sep 2024 p. 2215; SA Act No. 3 of 2021 s. 33 and WA Gazette 22 Jan 2025 p. 63-4.]

2A. Meaning of AER modified

(1) In this Law, other than in the definition of ***AER*** in section 2, a reference to the AER is to be read as a reference to the regulator (whether the ERA or the AER) except to the extent that subsection (2) gives a different meaning.

(2) To the extent to which a reference to the AER is capable of being read as a reference to the Australian Energy Regulator established by section 44AE of the *Trade Practices Act 1974* of the Commonwealth acting as the disputes resolution body, the term is to be read as having or including that meaning.

[Section 2A inserted: WA Act Sch. 1 cl. 4.]

2B. References to WA application Act

In this Law, a reference to the *National Gas Access (Western Australia) Act 2008*, if any, is to be read as a reference to the *National Gas Access (WA) Act 2009*.

[Section 2B inserted: WA Act Sch. 1 cl. 4.]

3. Meaning of civil penalty provision

A civil penalty provision is—

(a) a provision of this Law specified in an item in the Table at the foot of this section; or

(b) a provision of this Law (other than an offence provision) or the Rules that is prescribed by the Regulations to be a civil penalty provision.

Table

Item	Provision
1	Section 56
2	Section 57
3	Section 131
4	Section 133
[*4]~~5~~	~~Section 134~~
6	Section 135
7	Section 136
8	Section 139
9	Section 140
10	Section 141
11	Section 143(6)
12	Section 147
13	Section 148
[*4]~~14~~	~~Section 168~~
~~15~~	~~Section 169(3)~~
~~16~~	~~Section 170~~
~~17~~	~~Section 195~~
18	Section 223
19	Section 225
20	Section 227
21	Section 228

3A. Civil penalty amounts for breaches of civil penalty provisions

(1) Subject to this section, the civil penalty for a breach of a civil penalty provision is—

(a) in the case of a breach of a civil penalty provision, other than a provision prescribed under paragraph (b) or (c)—

(i) if the breach is by a natural person—

(A) an amount not exceeding $33 900; plus

(B) an amount not exceeding $3 390 for every day during which the breach continues;

(ii) if the breach is by a body corporate—

(A) an amount not exceeding $170 000; plus

(B) an amount not exceeding $17 000 for every day during which the breach continues; or

(b) in the case of a breach of a civil penalty provision prescribed by the Regulations for the purposes of this paragraph—

(i) if the breach is by a natural person—

(A) an amount not exceeding $287 000; plus

(B) an amount not exceeding $14 400 for every day during which the breach continues;

(ii) if the breach is by a body corporate—

(A) an amount not exceeding $1 435 000; plus

(B) an amount not exceeding $71 800 for every day during which the breach continues; or

(c) in the case a breach of a civil penalty provision prescribed by the Regulations for the purposes of this paragraph—

(i) if the breach is by a natural person—an amount not exceeding $500 000;

(ii) if the breach is by a body corporate—an amount not exceeding the greater of the following:

(A) $10 000 000;

(B) if the Court can determine the value of any benefit reasonably attributable to the breach of the civil penalty provision that the body corporate, and any body corporate related to the body corporate, has obtained, directly or indirectly—3 times the value of that benefit;

(C) if the Court cannot determine the value of the benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate breached, or began breaching, the civil penalty provision.

Note—

See Schedule 2 clause 47A, which provides for the amounts specified in this subsection to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(2) Subsection (1)(c)(ii)(B) or (C) will only apply in a particular case if the AER, in applying for an order under section 231(2)(a), requests that those provisions be applied in that particular case.

[Section 3A inserted: SA Act No. 37 of 2020 s. 48 and WA Gazette 4 Sep 2024 p. 2215.]

4. Meaning of conduct provision

A conduct provision is—

(a) a provision of this Law specified in an item in the Table at the foot of this section; or

(b) a provision of this Law (other than an offence provision) or the Rules that is prescribed by the Regulations to be a conduct provision.

Table

Item	Provision
1	Section 133
[*4]~~2~~	~~Section 134~~

Item	Provision
3	Section 135
4	Section 136
5	Section 147
6	Section 148
[*4]~~7~~	~~Section 170~~

5. Meaning of prospective user

(1) A prospective user is a person who seeks or wishes to be provided with a pipeline service by means of a [*4]~~scheme~~ pipeline.

(2) To avoid doubt, a user is also a prospective user if the user seeks or wishes to be provided with a pipeline service by means of a [*4]~~scheme~~ pipeline other than a pipeline service already provided to them under—

(a) a contract; or

(b) an access determination.

6. Meaning of regulatory obligation or requirement

(1) A regulatory obligation or requirement is—

(a) in relation to the provision of a pipeline service by a service provider—

(i) a pipeline safety duty; or

(ii) a pipeline reliability standard; or

(iii) a pipeline service standard; or

(b) an obligation or requirement under—

(i) this Law or the Rules; or

(ii) an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, that levies or imposes a tax or other levy that is payable by a service provider; or

(iii) an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act, that regulates the use of land in a participating jurisdiction by a service provider; or

(iv) an Act of a participating jurisdiction or any instrument made or issued under or for the purposes of that Act that relates to the protection of the environment; or

(v) an Act of a participating jurisdiction, or any instrument made or issued under or for the purposes of that Act (other than national gas legislation or an Act of a participating jurisdiction or an Act or instrument referred to in subparagraphs (ii) to (iv)), that materially affects the provision, by a service provider, of pipeline services to which an applicable access arrangement applies.

(2) A regulatory obligation or requirement does not include an obligation or requirement to pay a fine, penalty or compensation—

(a) for a breach of—

(i) a pipeline safety duty; or

(ii) a pipeline reliability standard; or

(iii) a pipeline service standard; or

(b) under this Law or the Rules or an Act or an instrument referred to in subsection (1)(b)(ii) to (v).

Note—

See also section 24(2)(b).

7. Meaning of regulatory payment

A regulatory payment is a sum that a service provider had been required or allowed to pay to a user or an end user for a breach of, as the case requires—

(a) a pipeline reliability standard; or

(b) a pipeline service standard,

because it was efficient for the service provider (in terms of the service provider's overall business) to pay that sum.

Note—

See also section 24(2)(b).

8. Meaning of service provider

(1) A service provider is a person who—

(a) owns, controls or operates; or

(b) intends to own, control or operate,

a pipeline [*4]or any part of a pipeline ~~or scheme pipeline, or any part of a pipeline or scheme pipeline~~.

[*4]**Note—**

A service provider must not provide a pipeline service by means of a pipeline unless the service provider is a legal entity of a specified kind: see section 131.

~~**Note—**~~

~~A service provider must not provide pipeline services by means of a scheme pipeline unless the service provider is a legal entity of a specified kind: See section 131, and section 169 where the scheme pipeline is an international pipeline to which a price regulation exemption applies.~~

[*1](2) If [*1M*]a gas market operator~~AEMO~~ controls or operates (without at the same time owning) a pipeline [*4]or any part of a pipeline ~~or scheme pipeline, or any part of a pipeline or scheme pipeline~~, [*1M*]the gas market operator~~AEMO~~ is not for that reason to be taken to be a service provider for the purposes of this Law.

~~(2) A gas market operator that controls or operates (without at the same time owning)—~~

~~(a) a pipeline or scheme pipeline; or~~

~~(b) a part of a pipeline or scheme pipeline,~~

~~is not to be taken to be a service provider for the purposes of this Law.~~

[*4]8AB—Meaning of small shipper

(1) A small shipper is a user or prospective user—

(a) who is, or seeks to be, a party to a contract with a service provider for the provision of a pipeline service by means of a pipeline; and

(b) for whom the total daily pipeline capacity right provided, or sought to be provided, under 1 or more contracts with the same service provider and by means of the same pipeline is not more than—

(i) the daily pipeline capacity right prescribed for this definition by the Regulations; or

(ii) if no daily pipeline capacity right is prescribed by the Regulations, the lesser of the following amounts:

(A) 5 terajoules per day;

(B) 20% of the pipeline's nameplate rating.

(2) However, a small shipper does not include a corporation with a market capitalisation of more than $500 000 000 or a related body corporate of the corporation.

Note—

See also section 19A in relation to related bodies corporate.

(3) In this section—

nameplate rating, in relation to a pipeline, means the maximum daily capacity of the pipeline under normal operating conditions.

9. [*4]Passive owners of pipelines deemed to provide or intend to provide pipeline services~~Passive owners of scheme pipelines deemed to provide or intend to provide pipeline services~~

(1) This section applies to a person who owns a [*4]~~scheme~~ pipeline but does not provide or intend to provide pipeline services by means of that pipeline.

(2) The person is, for the purposes of this Law, deemed to provide or intend to provide pipeline services by means of that pipeline even if the person does not, in fact, do so.

10. Things done by 1 service provider to be treated as being done by all of service provider group

[*3](1) This section applies if—

(a) more than 1 person (a ***group***) carries out a controlling facility activity in respect of a natural gas industry facility (or part of a natural gas industry facility); and

(b) under this Law or the Rules a person who carries out a controlling facility activity in respect of the facility (or part of the facility) mentioned in paragraph (a) is required or allowed to do a thing.

(2) A member of the group (the ***complying member***) may do that thing on behalf of the other members of the group if the complying member has the written permission of all of the members of that group to do that thing on behalf of the group.

(3) Unless this Law or the Rules otherwise provide, on the doing of a thing referred to in subsection (2) by a complying member, the members of the group on whose behalf the complying member does that thing must, for the purposes of this Law and the Rules,

each be taken to have done the thing done by the complying member.

~~(1) This section applies if—~~

~~(a) more than 1 service provider (a ***service provider group***) carries out a controlling pipeline activity in respect of a pipeline (or a part of a pipeline); and~~

~~(b) under this Law or the Rules a service provider is required or allowed to do a thing.~~

~~(2) A service provider of the service provider group (the ***complying service provider***) may do that thing on behalf of the other service providers of the service provider group if the complying service provider has the written permission of all of the service providers of that group to do that thing on behalf of the service provider group.~~

~~(3) Unless this Law or the Rules otherwise provide, on the doing of a thing referred to in subsection (2) by a complying service provider, the service providers of the service provider group on whose behalf the complying service provider does that thing, must, for the purposes of this Law and the Rules, each be taken to have done the thing done by the complying service provider.~~

(4) This section does not apply to a thing required or allowed to be done under section 131 or Chapter 4 Part 2.

[*3](5) In this section—

controlling facility activity means—

(a) in relation to a pipeline—own, control or operate, or intend to own, control or operate, the pipeline (or part of the pipeline); or

(b) in relation to any other natural gas industry facility—own, control or operate the natural gas industry facility (or part of the facility).

~~(5) In this section—~~

~~***controlling pipeline activity*** means own, control or operate.~~

11. Local agents of foreign service providers

(1) This section applies if—

(a) a service provider is a foreign company; and

(b) the service provider has, under the *Corporations Act 2001* of the Commonwealth, appointed a local agent within the meaning of that Act.

(2) The local agent—

(a) is answerable for the doing of all acts, matters and things the service provider is required by or under this Law to do; and

(b) is personally liable to a penalty imposed on the service provider for a breach of a provision of this Law or the Rules if a court hearing the matter is satisfied that the local agent should be so liable.

12. Commissioning of a pipeline

A pipeline is commissioned when the pipeline is first used for the haulage of natural gas, on a commercial basis.

13. Pipeline classification criterion

(1) The pipeline classification criterion is whether the primary function of the pipeline is to—

(a) reticulate gas within a market (which is the primary function of a distribution pipeline); or

(b) convey gas to a market (which is the primary function of a transmission pipeline).

(2) Without limiting subsection (1), in determining the primary function of the pipeline, regard must also be had to whether the characteristics of the pipeline are those of a transmission pipeline or distribution pipeline having regard to—

(a) the characteristics and classification of, as the case requires, an old scheme transmission pipeline or an old scheme distribution pipeline;

(b) the characteristics of, as the case requires, a transmission pipeline or a distribution pipeline classified under this Law;

(c) the characteristics and classification of pipelines specified in the Rules (if any);

(d) the diameter of the pipeline;

(e) the pressure at which the pipeline is or will be designed to operate;

(f) the number of points at which gas can or will be injected into the pipeline;

(g) the extent of the area served or to be served by the pipeline;

(h) the pipeline's linear or dendritic configuration;~~.~~

[*4](i) the type of pipeline licence or authorisation that has been obtained in respect of the pipeline under jurisdictional gas legislation.

[*4]~~**14. Jurisdictional determination criteria—cross boundary distribution pipelines**~~

~~The pipeline jurisdictional determination criteria are—~~

~~(a) whether more gas is to be delivered by a cross boundary distribution pipeline in the jurisdictional area of 1 participating jurisdiction than in the jurisdictional area of any other participating jurisdiction;~~

~~(b) whether more customers to be served by a cross boundary distribution pipeline are resident in the jurisdictional area of 1 participating jurisdiction than in the jurisdictional area of any other participating jurisdiction;~~

~~(c) whether more of the network for a cross boundary distribution pipeline is in the jurisdictional area of 1 participating jurisdiction than in the jurisdictional area of any other participating jurisdiction;~~

~~(d) whether 1 participating jurisdiction has greater prospects for growth in the gas market served or to be served by a cross boundary distribution pipeline than any other participating jurisdiction;~~

~~(e) whether the regional economic benefits from competition are likely to be greater for 1 participating jurisdiction than for any other participating jurisdiction.~~

~~**15. Pipeline coverage criteria**~~

~~The pipeline coverage criteria are—~~

~~(a) that access (or increased access) to pipeline services provided by means of the pipeline would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline;~~

~~(b) that it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline;~~

~~(c) that access (or increased access) to the pipeline services provided by means of the pipeline can be provided without undue risk to human health or safety;~~

~~(d) that access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.~~

16. Form of regulation factors

The form of regulation factors are—

(a) the presence and extent of any barriers to entry in a market for pipeline services;

(b) the presence and extent of any network externalities (that is, interdependencies) between a natural gas service provided by a service provider and any other natural gas service provided by the service provider;

(c) the presence and extent of any network externalities (that is, interdependencies) between a natural gas service provided by a service provider and any other service provided by the service provider in any other market;

(d) the extent to which any market power possessed by a service provider is, or is likely to be, mitigated by any countervailing market power possessed by a user or prospective user;

(e) the presence and extent of any substitute, and the elasticity of demand, in a market for a pipeline service in which a service provider provides that service;

(f) the presence and extent of any substitute for, and the elasticity of demand in a market for, electricity or gas (as the case may be);

[*4]~~(g) the extent to which there is information available to a prospective user or user, and whether that information is adequate, to enable the prospective user or user to negotiate on an informed basis with a service provider for the provision of a pipeline service to them by the service provider.~~

17. Effect of separate and consolidated access arrangements in certain cases

(1) This section applies despite anything to the contrary in this Law.

(2) If, under this Law and the Rules, separate access arrangements are approved in an applicable access arrangement decision for pipeline services provided, or to be provided, by means of

different parts of a [*4]scheme ~~covered~~ pipeline, each part of the [*4]scheme ~~covered~~ pipeline—

(a) by which pipeline services are provided; and

(b) to which each separate applicable access arrangement applies,

must to be taken to be a separate [*4]scheme ~~covered~~ pipeline for the purposes of this Law.

(3) If under this Law and the Rules, a single access arrangement is approved in an applicable access arrangement decision for pipeline services provided, or to be provided, by means of 2 or more [*4]scheme ~~covered~~ pipelines, those pipelines must be taken to be a single [*4]scheme ~~covered~~ pipeline for the purposes of this Law.

[*4]18—Certain extensions to, or expansion of the capacity of, pipelines to be taken to be part of a scheme pipeline

(1) Subsection (2) applies in relation to an extension to a scheme pipeline if, by operation of the extension and expansion requirements under an applicable access arrangement, the applicable access arrangement will apply to pipeline services provided by means of the scheme pipeline as extended.

(2) For the purposes of this Law—

(a) the extension to the scheme pipeline must be taken to be part of the scheme pipeline; and

(b) the pipeline as extended must be taken to be a scheme pipeline.

(3) Also, for the purposes of this Law—

(a) an expansion of the capacity of a scheme pipeline must be taken to be part of the scheme pipeline; and

(b) the pipeline as expanded must be taken to be a scheme pipeline.

19—Expansions of the capacity of non-scheme pipelines to be taken to be part of non scheme pipeline

For the purposes of this Law—

(a) an expansion of the capacity of a non-scheme pipeline must be taken to be part of the non-scheme pipeline; and

(b) the pipeline as expanded must be taken to be a non-scheme pipeline.

~~**18. Certain extensions to, or expansion of the capacity of, pipelines to be taken to be part of a covered pipeline**~~

~~For the purposes of this Law —~~

~~(a) an extension to, or expansion of the capacity of, a covered pipeline must be taken to be part of the covered pipeline; and~~

~~(b) the pipeline as extended or expanded must be taken to be a covered pipeline,~~

~~if, by operation of the extension and expansion requirements under an applicable access arrangement, the applicable access arrangement will apply to pipeline services provided by means of the covered pipeline as extended or expanded.~~

~~**19. Expansions of and extensions to covered pipeline by which light regulation services are provided**~~

~~For the purposes of this Law, an extension to, or expansion of the capacity of, a covered pipeline by means of which light regulation services (and in respect of which there is no limited access arrangement) are provided, must be taken to be part of the covered pipeline unless the AER determines otherwise in writing.~~

19A. Related bodies corporate

For the purposes of this Law, 2 or more bodies corporate are related to each other if they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

[Section 19A inserted: SA Act No. 37 of 2020 s. 49 and WA Gazette 4 Sep 2024 p. 2215.]

20. Interpretation generally

Schedule 2 to this Law applies to this Law, the Regulations and the Rules and any other statutory instrument made under this Law.

Part 1A — Postponement of Natural Gas Services Bulletin Board provisions

[Heading inserted: WA Act Sch. 1 cl. 5.]

20A. Minister may fix day on which provisions apply

To the extent that a provision of this Law relates to the Natural Gas Services Bulletin Board, the provision does not apply before a day is fixed by the Minister, by an order notice of which is published in the *Government Gazette*, as the day on and after which provisions of this Law relating to the Natural Gas Services Bulletin Board apply.

[Section 20A inserted: WA Act Sch. 1 cl. 5.]

Part 2 — Participating jurisdictions

21. Participating jurisdictions

(1) The following jurisdictions are participating jurisdictions for the purposes of this Law—

(a) the State of South Australia; and

(b) the Commonwealth, a Territory or a State (other than South Australia) if there is in force, as part of the law of that jurisdiction, a law that applies this Law or any part of this Law (whether by a law that corresponds to Part 2 of the *National Gas (South Australia) Act 2008* of South Australia or by some other law).

(2) If a law of a participating jurisdiction referred to in subsection (1)(b) ceases to be in force, the jurisdiction ceases to be a participating jurisdiction.

[Section 21 inserted: see SA Act No. 3 of 2021 s. 34 and WA Gazette 22 Jan 2025 p. 63-4.]

22. Ministers of participating jurisdictions

The Ministers of the participating jurisdictions are—

[*4](a) the South Australian Minister; and

~~(a) the Minister of the Crown in right of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia; and~~

(b) the Ministers of the Crown in right of the other participating jurisdictions administering the laws of those jurisdictions that apply this Law or any part of this Law (whether by a law that corresponds to Part 2 of the *National Gas (South Australia) Act 2008* of South Australia or by some other law).

[(c), (d) deleted]

[Section 22 amended: see SA Act No. 3 of 2021 s. 35 and WA Gazette 22 Jan 2025 p. 63-4.]

Part 3 — National gas objective and principles

Division 1 — National gas objective

23. National gas objective

The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to—

(a) price, quality, safety, reliability and security of supply of natural gas; and

(b) the achievement of targets set by a participating jurisdiction—

(i) for reducing Australia's greenhouse gas emissions; or

(ii) that are likely to contribute to reducing Australia's greenhouse gas emissions.

Note—

The AEMC must publish targets in a targets statement: see section 72A.

[Section 23 amended: see SA Act No. 26 of 2023 s. 14.]

23A. Regulations may prescribe matters for national gas objective

Without limiting the *National Gas Access (WA) Act 2009* Part 3, the Regulations may make provision about a matter relating to the achievement of targets mentioned in section 23(b) of this Law.

[Section 23A inserted: see SA Act No. 26 of 2023 s. 15; WA Act Sch. 1 cl. 5A.]

Division 2 — Revenue and pricing principles [*4]relating to scheme pipelines

24. [*4]Revenue and pricing principles relating to scheme pipelines~~Revenue and pricing principles~~

(1) The revenue and pricing principles [*4]that apply in relation to a pipeline service provided by means of a scheme pipeline are the principles set out in subsections (2) to (7).

(2) A [*4]scheme pipeline service provider ~~service provider~~ should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—

(a) providing reference services; and

(b) complying with a regulatory obligation or requirement or making a regulatory payment.

(3) A [*4]scheme pipeline service provider ~~service provider~~ should be provided with effective incentives in order to promote economic efficiency with respect to reference services the service provider provides. The economic efficiency that should be promoted includes—

(a) efficient investment in, or in connection with, a pipeline with which the service provider provides reference services; and

(b) the efficient provision of pipeline services; and

(c) the efficient use of the pipeline.

(4) Regard should be had to the capital base with respect to a pipeline adopted—

(a) in any previous—

(i) [*4]~~full~~ access arrangement decision; or

(ii) decision of a relevant Regulator under section 2 of the Gas Code;

(b) in the Rules.

(5) A reference tariff should allow for a return commensurate with the regulatory and commercial risks involved in providing the reference service to which that tariff relates.

(6) Regard should be had to the economic costs and risks of the potential for under and over investment by a [*4]scheme pipeline service provider ~~service provider~~ in a pipeline with which the service provider provides pipeline services.

(7) Regard should be had to the economic costs and risks of the potential for under and over utilisation of a pipeline with which a [*4]scheme pipeline service provider ~~service provider~~ provides pipeline services.

Division 3 — MCE policy principles

25. MCE statements of policy principles

(1) Subject to this section, the MCE may issue a statement of policy principles in relation to any matters that are relevant to the exercise and performance by the AEMC of its functions and powers in—

(a) making a Rule; or

(b) conducting a review under section 83.

(2) Before issuing a statement of policy principles, the MCE must be satisfied that the statement is consistent with the national gas objective.

(3) As soon as practicable after issuing a statement of policy principles, the MCE must give a copy of the statement to the AEMC.

(4) The AEMC must publish the statement in the South Australian Government Gazette and on its website as soon as practicable after it is given a copy of the statement.

Part 4 — Operation and effect of National Gas Rules

26. National Gas Rules to have force of law

The National Gas Rules have the force of law in this jurisdiction.

Chapter 2 — Functions and powers of gas market regulatory entities

Part 1 — Functions and powers of the Australian Energy Regulator

Division 1 — General

27. Functions and powers of the AER

(1) The AER has the following functions and powers:

(a) to monitor compliance by persons with this Law, the Regulations and the Rules, including compliance with an applicable access arrangement, an access determination and a ring fencing decision; and

(b) to investigate breaches or possible breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; and

(c) to institute and conduct proceedings in relation to breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; and

(d) to institute and conduct appeals from decisions in proceedings referred to in paragraph (c); and

[*4](daa) to make—

(i) scheme pipeline determinations; and

(ii) scheme pipeline revocation determinations; and

(iii) greenfields incentive determinations; and

(iv) greenfields price protection determinations; and

(dab) to monitor service providers' behaviour in relation to particular matters, including, for example, the prices charged by service providers for pipeline services; and

(da) to make a rate of return instrument; and

(e) AER economic regulatory functions or powers; and

(f) to prepare and publish reports on the financial and operational performance of service providers in providing pipeline services by means of [*4]scheme ~~covered~~ pipelines; and

(g) to approve compliance programs of service providers relating to compliance by service providers with this Law or the Rules; and

(h) any other functions and powers conferred on it under this Law or the Rules.

(2) The AER has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

[Section 27 amended: see SA Act No. 33 of 2018 s. 14 and WA Gazette 5 Apr 2019 p. 1007.]

28. Manner in which AER must perform or exercise AER economic regulatory functions or powers

(1) The AER must, in performing or exercising an AER economic regulatory function or power—

(a) perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national gas objective; and

(b) if the AER is making a designated regulatory decision —

(i) ensure that —

(A) the [*4]scheme ~~covered~~ pipeline service provider that provides the pipeline services to which the applicable access arrangement decision will apply; and

(B) users or prospective users of the pipeline services that the AER considers have an interest in the matter; and

(C) any user or consumer associations or user or consumer interest groups that the AER considers have an interest in the matter,

are, in accordance with the Rules —

(D) informed of the material issues under consideration by the AER; and

(E) given a reasonable opportunity to make submissions in respect of the decision before it is made; and

(ii) specify —

(A) the manner in which the constituent components of the decision relate to each other; and

(B) the manner in which that interrelationship has been taken into account in the making of the decision; and

[(iii) deleted]

(2) In addition, the AER—

(a) must take into account the revenue and pricing principles—

(i) when exercising a discretion in approving or making those parts of an access arrangement relating to a reference tariff; or

(ii) when making an access determination relating to a rate or charge for a pipeline service; and

(b) may take into account the revenue and pricing principles when performing or exercising any other AER economic regulatory function or power, if the AER considers it appropriate to do so.

(3) For the purposes of subsection (2)(a)(ii), a reference to a "reference service" in the revenue and pricing principles must be read as a reference to a "pipeline service".

[*4](4) In this section—

user or consumer association means an association or body (whether incorporated or unincorporated)—

(a) the members of which include more than 1 user, prospective user or end user; and

(b) that represents and promotes the interests of those members in relation to the provision of natural gas services;

user or consumer interest group means an association or body (whether incorporated or unincorporated)—

(a) that has, as an object or purpose, the object or purpose of representing and promoting the interests of users, prospective users or end users of natural gas services; but

(b) the members of which need not include a user, prospective user or end user.

[Section 28 amended: see SA Act No. 79 of 2013 s. 20 and WA Gazette 14 Mar 2014 p. 632; SA Act No. 3 of 2021 s. 36 and WA Gazette 22 Jan 2025 p. 63-4.]

29. Delegations

Any delegation by the AER under section 44AAH of the *Trade Practices Act 1974* of the Commonwealth or by the ERA under section 29 of the *Economic Regulation Authority Act 2003* extends to, and has effect for the purposes of, this Law, the Regulations and the Rules.

[Section 29 modified: WA Act Sch. 1 cl. 6.]

30. Confidentiality

(1) Section 44AAF of the *Trade Practices Act 1974* of the Commonwealth has effect for the purposes of this Law, the Regulations and the Rules as if it formed part of this Law.

(2) Without limiting section 2A, that section also applies to section 44AAF as adopted by subsection (1) and, when the adopted section is read as if a reference in it to the AER were a reference to the ERA, it is further modified as follows:

(a) delete subsection (3)(c) of the adopted section and insert:

(c) the Australian Energy Regulator established by section 44AE of the *Trade Practices Act 1974* of the Commonwealth;

(b) delete subsection (6)(a)(i) of the adopted section and insert:

(i) an ERA member, a person assisting the ERA in the performance of its functions or a delegate of the ERA;

Note—

See also Chapter 10 Part 2 Division 1.

[Section 30 modified: WA Act Sch. 1 cl. 7.]

Division 1A—Rate of return instrument

[Heading inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

Subdivision 1—Preliminary

[Heading inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30A. Definitions

In this Division—

consumer reference group, for making a rate of return instrument, see section 30H(1)(a);

explanatory information, for a rate of return instrument, means information about the content of the instrument, including (but not limited to) information explaining—

(a) the reasons for the rate of return on capital or the value of imputation credits under the instrument; and

(b) how the stated value, or the way to calculate the rate or value, was decided; and

(c) if the instrument replaces another instrument—

(i) the differences (if any) between the instrument and the replaced instrument; and

(ii) the reasons for any differences; and,

(d) why the AER is satisfied the instrument will, or is most likely to, contribute to the achievement of the national gas objective to the greatest degree; and

(e) how the AER had regard to the following in making the instrument:

(i) the revenue and pricing principles;

(ii) the matters mentioned in section 30G;

(iii) estimation methods, financial models, market data and other evidence relevant to making the instrument;

(iv) prevailing conditions in the market for equity funds;

(v) the interrelationships between financial parameters used, or to be used, in relation to deciding the rate or value.

[Section 30A inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30B. Rate of return instrument has force of law

(1) A rate of return instrument has the force of law in this jurisdiction.

(2) An Act of this jurisdiction regulating the making of subordinate legislation does not apply to a rate of return instrument.

[Section 30B inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30C. [*4]Rate of return instrument is binding on AER and scheme pipeline service providers~~Rate of return instrument is binding on AER and covered pipeline service providers~~

A rate of return instrument is binding on—

(a) the AER in relation to the performance or exercise of an AER economic regulatory function or power; and

(b) each [*4]scheme ~~covered~~ pipeline service provider in relation to a matter relevant to the performance or exercise of an AER economic regulatory function or power.

[Section 30C inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

Subdivision 2—Requirement to make rate of return instrument

[Heading inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30D. AER to make rate of return instrument

(1) This section applies if a rate of return on capital or the value of imputation credits is required for performing or exercising an AER economic regulatory function or power.

(2) The AER must make an instrument (a ***rate of return instrument***) stating—

(a) for a rate of return on capital—the way to calculate the rate; and

(b) for the value of imputation credits—the value or the way to calculate the value.

(3) The AER may make an instrument only if satisfied the instrument will, or is most likely to, contribute to the achievement of the national gas objective to the greatest degree.

(4) Subject to subsection (3), the way to calculate a rate of return on capital must include a weighted average of an allowed return on equity and an allowed return on debt.

(5) In making an instrument, the AER must have regard to—

(a) the revenue and pricing principles; and

(b) other information the AER considers appropriate.

[Section 30D inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30E. Content of rate of return instrument

(1) If a rate of return instrument states the value of imputation credits, the instrument must state a single value to apply in relation to all [*4]scheme ~~covered~~ pipeline service providers.

(2) If a rate of return instrument states a way to calculate the rate of return on capital or the value of imputation credits, the instrument must—

(a) provide for the same methodology to apply in relation to all [*4]scheme ~~covered~~ pipeline service providers in calculating the rate or value; and

(b) provide for the methodology to apply automatically without the exercise of any discretion by the AER.

[*4]**Example—**

Matters to help a scheme pipeline service provider calculate a rate of return or the value of imputation credits.

~~**Example for paragraph (b)—**~~

~~The instrument can not include different methodologies or a band of values from which the AER could choose in applying the instrument.~~

(3) Subject to subsections (1) and (2), the instrument may include other matters the AER considers appropriate.

Example—

Matters to help a covered pipeline service provider calculate a rate of return or the value of imputation credits.

[Section 30E inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

Subdivision 3—Consultation requirements

[Heading inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30F. Process for making rate of return instrument

Subject to this Division, the AER may make a rate of return instrument in the way it considers appropriate.

[Section 30F inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30G. Other matters AER must have regard to in making instrument

In making a rate of return instrument, the AER must also have regard to the following—

(a) advice, recommendations or submissions given by a consumer reference group;

(b) submissions made, and the report published, under section 30H;

(c) submissions made under section 30J;

(d) the report given by the independent panel under section 30K.

[Section 30G inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30H. Requirements before publishing draft instrument

(1) Before publishing a draft rate of return instrument under this Subdivision, the AER must—

(a) establish a reference group to help the AER implement an effective consumer consultation process for making the proposed instrument (a ***consumer reference group***); and

(b) publish a notice on its website—

(i) inviting persons to make a written submission to the AER about the proposed instrument; and

(ii) stating the period, not less than 28 days, within which a submission must be made; and

(c) seek concurrent expert opinions or evidence about the proposed instrument.

(2) A person may make a submission after the stated period only with the written approval of the AER.

(3) Subject to subsections (4) and (5), the AER may seek the expert opinions or evidence in the way it considers appropriate.

Example—

The AER might convene a conference of experts to identify key issues, and areas of dispute and agreement among the experts, about the content of the proposed instrument.

(4) The AER must call for nominations of eligible experts but may seek the expert opinions or evidence from any eligible expert.

(5) If practicable, the AER must seek the expert opinions or evidence from at least 3 eligible experts.

(6) The AER must publish on its website—

(a) submissions made under this section; and

(b) a report on the outcomes of seeking the expert opinions or evidence.

(7) In this section—

eligible expert means a person with qualifications or experience in a field the AER considers relevant to making a rate of return instrument.

Examples of relevant fields—

Finance, economics, law, consumer affairs, institutional investment.

[Section 30H inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30I. Consumer reference group

(1) A consumer reference group for making a rate of return instrument—

(a) is to consist of the members appointed by the AER; and

(b) may carry out its activities, including giving advice or recommendations to the AER about the instrument, in the way it considers appropriate.

(2) Without limiting subsection (1)(b), the consumer reference group may—

(a) consult with consumers of natural gas; and

(b) facilitate consumer engagement in the process for making the instrument; and

(c) make written submissions to the AER about the content of the instrument and the process for making it.

(3) The AER must publish on its website any written advice, recommendations or submissions given to it by the consumer reference group.

[Section 30I inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30J. Publication of draft instrument and other information

(1) The AER must, at least 6 months before making a rate of return instrument, publish on its website—

(a) a draft of the proposed instrument and the explanatory information for the instrument; and

(b) a notice—

(i) inviting persons to make a written submission to the AER about the proposed instrument; and

(ii) stating the period, not less than 28 days, within which a submission must be made.

(2) A person may make a submission after the stated period only with the written approval of the AER.

(3) The AER must publish submissions made under this section on its website.

[Section 30J inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30K. Report about draft instrument by independent panel

(1) The AER must, as soon as practicable after publishing the draft instrument, establish an independent panel to give the AER a written report about the instrument.

(2) The panel—

(a) may carry out its activities, including giving the report, in the way it considers appropriate; but

(b) must seek to give the report by consensus.

(3) The panel must—

(a) consist of at least 3 members, appointed by the AER, who have qualifications or experience in a field the AER considers relevant to making a rate of return instrument; and

Examples of relevant fields—

Finance, economics, law, consumer affairs, institutional investment.

(b) give the report to the AER before the AER makes the instrument.

(4) The AER must take reasonable steps to minimise and manage any conflicts of interest a panel member may have in relation to making the instrument.

(5) The report must—

(a) include the panel's assessment of the evidence and reasons supporting the rate of return on capital or the value of imputation credits under the instrument; and

(b) state whether the report is given by consensus.

(6) The AER must publish the report on its website.

[Section 30K inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30L. Publication of explanatory information

The AER must publish explanatory information for a rate of return instrument on its website when the instrument is published under section 30N.

[Section 30L inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30M. Failure to comply does not affect validity

Failure to comply with this Subdivision does not invalidate or otherwise affect a rate of return instrument.

[Section 30M inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

Subdivision 4—Publication, review and other matters

[Heading inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30N. Publication of rate of return instrument

After making a rate of return instrument, the AER must publish the instrument on its website.

Note—

See section 30L for the requirement to publish explanatory information for the instrument.

[Section 30N inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30O. Commencement and duration of instrument

A rate of return instrument—

(a) commences on the day after it is published on the AER's website; and

(b) remains in force until the end of the day it is replaced under section 30P.

[Section 30O inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30P. Review and replacement of instrument

(1) The AER must—

(a) review each rate of return instrument; and

(b) make a new rate of return instrument under this Division to replace the reviewed instrument.

(2) The AER must replace the reviewed instrument by publishing the new instrument on its website on the day that is—

(a) the fourth anniversary of the day the reviewed instrument was published; or

(b) if the day mentioned in paragraph (a) is not a business day—the first business day after that day.

[Section 30P inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30Q. Application of instrument

(1) A rate of return instrument—

(a) applies for the purposes of an AER economic regulatory decision made after the commencement of the instrument; and

(b) does not affect an AER economic regulatory decision made before the commencement of the instrument.

(2) To remove any doubt, it is declared that the application of the instrument under this Law, including, for example, in making [*4]an ~~a full~~ access arrangement decision, is an AER economic regulatory function or power.

[Section 30Q inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

[30R. *Section 30R inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007; deleted: WA Act Sch. 1 cl. 7A.]*

Subdivision 5—Confidentiality of information

[Heading inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30S. Confidentiality

(1) If a person wishes to give information to the AER for the purposes of this Division in confidence—

(a) the person must give the AER written notice that the person claims the information is confidential; and

(b) give reasons to support the claim, including—

(i) information about the detriment that might be caused to the person if the information were disclosed by the AER; and

(ii) information that—

(A) is reasonably within the person's knowledge and capacity to give; and

(B) may be relevant to the AER's consideration under section 329 about whether the public benefit in disclosing the information outweighs the detriment.

(2) In giving reasons to support a claim under subsection (1) about information received from another person (a ***third party***), a person may include information that—

(a) is reasonably within the person's knowledge and capacity to give; and

(b) is about the detriment that might be caused to the third party if the information were disclosed by the AER; and

(c) may be relevant to the AER's consideration under section 329 about whether the public benefit in disclosing the information outweighs the detriment.

(3) In acting under subsection (1), a person must specifically identify the information in relation to which the claim is made.

(4) Information given to the AER for the purposes of this Division is not to be regarded as being given in confidence, or to be confidential in any way, unless the information is subject to an express claim of confidentiality made under this section.

[Section 30S inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

30T. Disclosure of information given in confidence

(1) Chapter 10 Part 2 Division 1 applies in relation to publishing information given to the AER in confidence under this Division.

(2) In this section—

information includes advice, recommendations, submissions and reports.

[Section 30T inserted: see SA Act No. 33 of 2018 s. 15 and WA Gazette 5 Apr 2019 p. 1007.]

Division 2 — Search warrants

31. Definitions

In this Division—

authorised person means a person authorised under section 32;

relevant provision means a provision of this Law, the Regulations or the Rules.

32. Authorised person

(1) The AER may, in writing, authorise a person that the AER considers is suitably qualified or trained to be an authorised person for the purposes of this Division.

(2) An authorised person must comply with any direction of the AER in exercising powers or functions as an authorised person.

33. Identity cards

(1) The AER must issue an identity card to an authorised person.

(2) The identity card must contain the name, a recent photograph and the signature of the authorised person.

(3) An authorised person must carry the identity card at all times when exercising powers or performing functions as an authorised person.

(4) An authorised person must produce his or her identity card for inspection—

(a) before exercising a power as an authorised person; or

(b) at any time during the exercise of a power as an authorised person, if asked to do so.

34. Return of identity cards

If a person to whom an identity card has been issued ceases to be an authorised person, the person must return the identity card to the AER as soon as practicable.

Maximum penalty: $620.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

[Section 34 amended: see SA Act No. 37 of 2020 s. 50 and WA Gazette 4 Sep 2024 p. 2215.]

35. Search warrant

(1) An authorised person may apply to a magistrate for the issue of a search warrant in relation to a particular place if the person—

(a) believes on reasonable grounds that—

(i) there is or has been or will be a breach of a relevant provision; and

(ii) there is or may be a thing or things of a particular kind connected with that breach on or in that place; or

(b) reasonably suspects that—

(i) there may have been a breach of a relevant provision; and

(ii) there is or may be a thing or things of a particular kind connected with that breach on or in that place.

(2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of an authorised person that there are reasonable grounds for suspecting that there is, or may be within the next 7 days, a thing or things of a particular kind connected with a breach or possible breach of a relevant provision on or in a place, the magistrate may issue a search warrant authorising an authorised person named in the warrant—

(a) to enter the place specified in the warrant, with such assistance and by the use of such force as is necessary and reasonable;

(b) to search the place or any part of the place;

(c) to search for and seize a thing named or described in the warrant and which the person believes on reasonable

grounds to be connected with the breach or possible breach of the relevant provision;

(d) to inspect, examine or record an image of anything in the place;

(e) to take extracts from, and make copies of, any documents in the place;

(f) to take into the place such equipment and materials as the person requires for exercising the powers.

(3) A search warrant issued under this section must state—

(a) the purpose for which the search is required and the nature of the suspected breach of the relevant provision; and

(b) any conditions to which the warrant is subject; and

(c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

(d) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) Except as provided by this Law, the rules to be observed with respect to search warrants mentioned in any relevant laws of this jurisdiction extend and apply to warrants under this section.

36. Announcement of entry and details of warrant to be given to occupier or other person at premises

(1) This section applies if the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed.

(2) The authorised person executing the warrant must—

(a) identify himself or herself to that person; and

(b) announce that he or she is authorised by the warrant to enter the place; and

(c) before using force to enter, give the person an opportunity to allow entry; and

(d) give the person a copy of the warrant.

(3) The authorised person executing the warrant is not entitled to exercise any powers under the warrant in relation to premises if the authorised person does not comply with subsection (2).

37. Immediate entry permitted in certain cases

An authorised person executing a warrant need not comply with section 36 if he or she believes on reasonable grounds that immediate entry to premises is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the search warrant is not frustrated.

38. Copies of seized documents

(1) If an authorised person executing a warrant retains possession of a document seized from a person in accordance with the warrant, the authorised person must give that other person, within 21 days of the seizure, a copy of the document certified as correct by the authorised person executing the warrant.

(2) A copy of a document certified under subsection (1) shall be received in all courts and all tribunals as evidence of equal validity to the original.

39. Retention and return of seized documents or things

(1) If an authorised person executing a warrant seizes a document or other thing in accordance with the warrant, the authorised person must if he or she is not a person employed by the AER, give the document or other thing seized to the AER.

(2) The AER must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.

(3) If the document or thing seized has not been returned within 3 months after it was seized, the AER must take reasonable steps to return it unless—

(a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or

(b) a magistrate makes an order under section 40 extending the period during which the document or thing may be retained.

40. Extension of period of retention of documents or things seized

(1) The AER may apply to a magistrate—

(a) within 3 months after a document or other thing was seized in accordance with a warrant; or

(b) if an extension has been granted under this section, before the end of the period of the extension,

for an extension of the period for which the AER may retain the document or thing but so that the total period of retention does not exceed 12 months.

(2) An application must be made before proceedings for the purpose for which the document or thing was retained have been commenced.

(3) A magistrate may order such an extension if he or she is satisfied that—

(a) it is in the interests of justice; and

(b) the total period of retention does not exceed 12 months; and

(c) retention of the document or other thing is necessary—

(i) for the purposes of an investigation into whether a breach of a relevant provision has occurred; or

(ii) to enable evidence of a breach of a relevant provision to be obtained for the purposes of a proceeding under this Law.

(4) If proceedings are commenced for the purpose for which the document or thing was retained at any time before the expiry of the period specified in an order under this section, the document or thing may be retained until those proceedings (including any appeal) have been completed despite those proceedings being completed after the period specified in the order.

(5) At least 7 days prior to the hearing of an application under this section by a magistrate, notice of the application must be sent to the owner of the document or thing described in the application.

41. Obstruction of persons authorised to enter

A person must not, without reasonable excuse, obstruct or hinder an authorised person in the exercise of a power under a search warrant under this Division.

Maximum penalty:

(a) in the case of a natural person—$3 400;

(b) in the case of a body corporate—$17 000.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

[Section 41 amended: see SA Act No. 37 of 2020 s. 51 and WA Gazette 4 Sep 2024 p. 2215.]

Division 3 — General information gathering powers

42. Power to obtain information and documents in relation to performance and exercise of functions and powers

(1) If the AER has reason to believe that a person is capable of providing information, producing a document or giving evidence that the AER requires for the performance or exercise of a function or power conferred on it under this Law or the Rules, the AER may, by notice in writing, serve on that person a notice (a ***relevant notice***).

(2) A relevant notice may require the person to do 1 or more of the following:

(a) provide to the AER, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any information of the kind referred to in subsection (1); or

(b) produce to the AER, or to a person specified in the notice acting on its behalf, in accordance with the notice, any documents of the kind referred to in subsection (1); or

(c) appear before the AER, or before a member of the staff assisting the AER who is an SES employee or an acting SES employee and who is specified in the notice, at a time and place specified in the notice, to provide any information or to give any evidence of the kind referred to in subsection (1), either orally or in writing, and to produce any documents of the kind referred to in subsection (1).

(2A) When subsection (2)(c) is read as if a reference in it to the AER were a reference to the ERA, the subsection is to be read as if "a

member of the staff assisting the AER who is an SES employee or an acting SES employee and" had been deleted and the following had been inserted instead:

a staff member as defined in the *Economic Regulation Authority Act 2003* section 3

(3) A person on whom a relevant notice is served must comply with the relevant notice unless the person has a reasonable excuse.

Maximum penalty:

(a) in the case of a natural person—$6 300;

(b) in the case of a body corporate—$31 500.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(3a) A person must not, when appearing under subsection (2)(c), refuse or fail to answer a question that the person is required to answer for the purpose of providing information or giving evidence unless the person has a reasonable excuse.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(4) A person must not, in purported compliance with a relevant notice, provide information or give evidence that the person knows is false or misleading in a material particular.

Maximum penalty:

(a) in the case of a natural person—$6 300;

(b) in the case of a body corporate—$31 500.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(5) It is a reasonable excuse for the purposes of subsection (3) if the person served the relevant notice is not capable of complying with that notice.

(5a) It is a reasonable excuse for the purposes of subsection (3a) if the person is not capable of providing the information or giving the evidence (as the case may be) to which the question relates.

(6) It is a reasonable excuse for a natural person to—

(a) fail to provide information or to give evidence of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice;

(b) fail to produce a document of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice acting on behalf of the AER,

if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of this jurisdiction or a law of another participating jurisdiction.

(7) It is not a reasonable excuse for a person to—

(a) fail to provide information of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice; or

(b) fail to produce a document of the kind referred to in subsection (1) to the AER, or to a person specified in a relevant notice acting on behalf of the AER,

on the ground of any duty of confidence.

(8) This section does not require a person to—

(a) provide information that is the subject of legal professional privilege; or

(b) produce a document the production of which would disclose information that is the subject of legal professional privilege.

(9) This section does not require a person to—

(a) provide information or give evidence that would disclose the contents of a document prepared for the purposes of a meeting of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory; or

(b) produce a document prepared for the purposes of a meeting of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory; or

(c) provide information, give evidence or produce a document that would disclose the deliberations of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory.

(9a) The AER, or a person specified in a relevant notice under this section, may require evidence given under subsection (2)(c) to be given on oath or affirmation and for that purpose the AER or specified person (as the case may be) may administer the oath or affirmation.

(9b) A person must not, without reasonable excuse, refuse or fail to be sworn or to make an affirmation under subsection (9a).

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(10) A person incurs, by complying with a relevant notice, no liability for breach of contract, breach of confidence or any other civil wrong.

(11) Subject to the preceding subsections, the Court may, on application by the AER on behalf of the Commonwealth, if satisfied that a person has breached subsection (3) or (3a), make an order that the person take such action as the Court requires for remedying the breach.

(11A) When subsection (11) is read as if a reference in it to the AER were a reference to the ERA, the subsection is to be read as if "on behalf of the Commonwealth" had been deleted.

(12) To avoid doubt, the Court may act under subsection (11) if satisfied on the balance of probabilities that a person is in breach of subsection (3) or (3a) (as the case may be).

(13) The AER must not exercise, or continue to exercise, a power under subsection (1) in relation to a matter (and any notice under that subsection will cease to have effect)—

(a) after the AER has commenced proceedings in relation to the matter, other than proceedings for an injunction (whether interim or final); or

(b) if proceedings for a final injunction have been commenced by the AER—after the close of pleadings in those proceedings.

(14) Subsection (13) does not prevent the AER from—

(a) using any information, evidence or document acquired under this section in any proceedings if the information, evidence or document has been obtained before the commencement of those proceedings; or

(b) exercising a power under this section for a purpose other than for the purposes of proceedings referred to in that subsection.

(15) Any information, evidence or document obtained under subsection (14)(b) may be used in any proceedings if it is found to be relevant to those proceedings.

(16) The Regulations may make any other provision in relation to the form, content or service of a notice under this section.

(17) An annual report for the AER must include the following information relating to the relevant reporting period for that report:

(a) the number of notices (if any) given under subsection (2)(c) during the reporting period to appear to provide information or to give evidence orally;

(b) in relation to a notice under paragraph (a)—a general description of the nature of the matter or matters in respect of which the notice was given;

(c) the number of proceedings (if any) commenced during the reporting period to challenge a notice given under subsection (2)(c) to appear to provide information or to give evidence orally.

(18) A person must not—

(a) threaten, intimidate or coerce another person; or

(b) cause or procure damage, loss or disadvantage to another person,

because that other person—

(c) proposes to provide information, give evidence or produce a document in response to a notice under this section; or

(d) proposes to appear, or has appeared, in response to a notice under this section.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(19) In this section—

acting SES employee has the same meaning as in the *Public Service Act 1999* of the Commonwealth;

SES employee has the same meaning as in the *Public Service Act 1999* of the Commonwealth.

[Section 42 amended: see SA Act No. 37 of 2020 s. 52 and WA Gazette 4 Sep 2024 p. 2215; modified: WA Act Sch. 1 cl. 7B.]

Division 4 — Regulatory information notices and general regulatory information orders

Subdivision 1 — Interpretation

43. Definitions

In this Division—

contributing service has the meaning given by section 44;

[*4]~~***scheme pipeline service provider*** means~~

~~(a) a covered pipeline service provider; or~~

~~(b) a service provider who provides or intends to provide pipeline services by means of an international pipeline to which a price regulation exemption applies;~~

related provider means a person who supplies a contributing service to a[*4]service provider ~~scheme pipeline service provider~~.

44. Meaning of contributing service

(1) A contributing service is a service that the AER, in accordance with this section, decides is a service that contributes in a material way to the provision of a pipeline service by a [*4]~~scheme pipeline~~ service provider.

(2) In deciding whether a service is a service that contributes in a material way to the provision of a pipeline service by a [*4]~~scheme pipeline~~ service provider, the AER must have regard to—

(a) the nature and kind of the service;

(b) when the service was first supplied;

(c) the nature and extent of the contribution of the service relative to—

(i) the pipeline service; and

(ii) all other services supplied by the [*4]~~scheme pipeline~~ service provider;

(d) whether the service was previously supplied—

(i) by the [*4]~~scheme pipeline~~ service provider; or

(ii) directly or indirectly by an associate of the [*4]~~scheme pipeline~~ service provider;

(e) whether the service, together with other services, contributes in a material way to the provision of pipeline services;

(f) any other matter specified under the Rules.

45. Meaning of general regulatory information order

A general regulatory information order is an order made by the AER in accordance with this Division that requires each [*4]~~scheme pipeline~~ service provider of a specified class, or each related provider of a specified class, to do either or both of the following:

(a) provide to the AER the information specified in the order;

(b) prepare, maintain or keep information specified in the notice in a manner and form specified in the order.

46. Meaning of regulatory information notice

A regulatory information notice is a notice prepared and served by the AER in accordance with this Division that requires the [*4]~~scheme pipeline~~ service provider, or a related provider, named in the notice to do either or both of the following:

(a) provide to the AER the information specified in the notice;

(b) prepare, maintain or keep information specified in the notice in a manner and form specified in the notice.

47. Division does not limit operation of information gathering powers under Division 3

This Division does not limit the operation of Division 3.

Subdivision 2 — Serving and making of regulatory information instruments

48. Service and making of regulatory information instrument

(1) Subject to this Division, the AER, if it considers it reasonably necessary for the performance or exercise of its functions or powers under this Law or the Rules, may—

(a) serve a regulatory information notice on a [*4]~~scheme pipeline~~ service provider or a related provider; or

(b) make a general regulatory information order.

(2) In considering whether it is reasonably necessary to serve a regulatory information notice, or make a general regulatory information order, the AER must have regard to—

(a) the matter to be addressed by—

(i) the service of the regulatory information notice; or

(ii) the making of the general regulatory information order; and

(b) the likely costs that may be incurred by an efficient [*4]~~scheme pipeline~~ service provider or efficient related provider in complying with the notice or order.

Note—

The AER must also exercise its powers under this section in a manner that will or is likely to contribute to the achievement of the national gas objective: see section 28.

(3) A regulatory information notice must not be served, or a general regulatory information order must not be made, solely for the purpose of—

(a) investigating breaches or possible breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; or

(b) instituting and conducting proceedings in relation to breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; or

(c) instituting and conducting appeals from decisions in proceedings referred to in paragraph (b); or

(d) collecting information for the preparation of a service provider performance report; or

(e) any application for review of a decision of the AER under Chapter 8 Part 5.

49. Additional matters to be considered for related provider regulatory information instruments

(1) This section applies if the AER is intending to—

(a) serve a regulatory information notice on a related provider; or

(b) make a general regulatory information order that will apply to a class of related providers.

(2) In addition to the matters set out in section 48(2), the AER, in considering whether it is reasonably necessary to serve the regulatory information notice, or make the general regulatory information order, must have regard to—

(a) whether the [*4]~~scheme pipeline~~ service provider being supplied a contributing service by the related provider or related providers to which the intended regulatory information instrument will apply can—

(i) provide the information to be specified in that instrument; or

(ii) prepare, maintain or keep the information to be specified in the particular manner and form to be specified in that instrument; and

(b) the extent to which the related provider or related providers to which the intended regulatory information instrument will apply is, or are, supplying a contributing service on a genuinely competitive basis; and

(c) the nature of any ownership or control between—

(i) the [*4]~~scheme pipeline~~ service provider being supplied a contributing service by a related provider to which the intended regulatory information instrument will apply; and

(ii) that related provider; and

(d) the nature of any ownership or control as between different related providers supplying the contributing service to the [*4]~~scheme pipeline~~ service provider; and

(e) any other matter the AER considers relevant.

(3) For the purposes of subsection (2)(b), in considering whether a contributing service is being supplied on a genuinely competitive basis, the AER may take into account—

(a) whether there is effective competition in the market for the supply of the contributing service; and

(b) whether the related provider supplies the contributing service to a [*4]~~scheme pipeline~~ service provider under a contract, arrangement or understanding entered into with that [*4]~~scheme pipeline~~ service provider following a competitive process for the awarding of the right to enter into that contract, arrangement or understanding involving persons who were not associates of the [*4]~~scheme pipeline~~ service provider.

50. AER must consult before publishing a general regulatory information order

The AER must, in accordance with the Rules, consult with the public on the general regulatory information order it intends to make before it makes that order.

Note—

See also section 65 about what the AER must and may do after receiving submissions.

51. Publication requirements for general regulatory information orders

(1) A general regulatory information order made under section 48(1)(b) must be published on the AER's website as soon as practicable after it is made.

[(2) deleted]

[Section 51 amended: see SA Act No. 3 of 2021 s. 37 and WA Gazette 22 Jan 2025 p. 63-4.]

52. Opportunity to be heard before regulatory information notice is served

(1) The AER, before serving a regulatory information notice, must—

(a) notify, in writing, the [*4]~~scheme pipeline~~ service provider, or the related provider, on whom the AER intends to serve the regulatory information notice of its intention to do so; and

(b) give the [*4]~~scheme pipeline~~ service provider, or the related provider, a draft of the regulatory information notice it intends to serve.

(2) If the regulatory information notice to be served is an urgent notice, the AER must, in a notice under subsection (1)—

(a) identify the regulatory information notice to be served as an urgent notice; and

(b) give its reasons, in writing, why the regulatory information notice to be served is an urgent notice.

(3) A regulatory information notice is an urgent notice if—

(a) under the notice the AER will require the [*4]~~scheme pipeline~~ service provider or related provider to provide information to the AER; and

(b) that requirement has arisen because the AER considers it must deal with or address a particular matter or thing in order for it to make an AER economic regulatory decision or a rate of return instrument; and

(c) the AER considers that, having regard to the time within which it must make that AER economic regulatory decision or a rate of return instrument, the time within which the AER requires the information is of the essence.

(4) A notice under subsection (1) must—

(a) invite the [*4]~~scheme pipeline~~ service provider, or the related provider, to make written representations to the AER as to whether the AER should serve the regulatory information notice on them; and

(b) specify the period within which the [*4]~~scheme pipeline~~ service provider, or the related provider, may make the representations.

(5) The period that must be specified in accordance with subsection (4) must be—

(a) in the case of an urgent notice to be served—a period of not less than 5 business days and not more than 10 business days calculated from the date of the notice under subsection (1);

(b) in all other cases—a period of at least 20 business days calculated from the date of the notice under subsection (1).

(6) The AER must consider the written representations made in accordance with a notice under subsection (1) before making its decision in accordance with this Division to serve the regulatory information notice.

[Section 52 amended: see SA Act No. 33 of 2018 s. 16 and WA Gazette 5 Apr 2019 p. 1007.]

Subdivision 3 — Form and content of regulatory information instruments

53. Form and content of regulatory information instrument

(1) A regulatory information instrument—

(a) must specify the information required to be—

(i) provided to the AER;

(ii) prepared, maintained or kept in the particular manner and form specified in the instrument; and

(b) may specify the manner and form in which the information described in the instrument is required to be—

(i) provided to the AER;

(ii) prepared, maintained or kept; and

(c) must state the reasons of the AER for requiring the information described in the instrument to be—

(i) provided to the AER;

(ii) prepared, maintained or kept in the particular manner and form specified in the instrument; and

(d) in the case of an instrument requiring information to be provided to the AER, must specify when the information must be provided.

(2) In the case of a regulatory information notice, the notice must name the [*4]~~scheme pipeline~~ service provider or the related provider to whom it applies.

[*3](3) In the case of a general regulatory information [*3M*]order, ~~order or a price information order,~~ the order must specify the class of persons to whom the order applies.

~~(3) In the case of a general regulatory information order, the order must specify the class of scheme pipeline service provider, or related provider, to whom the order applies.~~

54. Further provision about the information that may be described in a regulatory information instrument

Without limiting section 53(1)(a), the information that may be required to be provided to the AER, or to be prepared, maintained or kept, may include—

(a) historic, current and forecast information (including financial information);

(b) information that is or may be derived from other information in the possession or control of [*3]the person~~the scheme pipeline service provider or the related provider~~ to whom the instrument applies;

(c) information to enable the AER to verify whether the [*4]~~scheme pipeline~~ service provider to whom the instrument applies is or has been complying with Chapter 4;

(d) information to enable the AER to verify compliance with any requirements for the allocation of costs between natural gas services under—

(i) the Rules; or

(ii) an applicable access arrangement.

55. Further provision about manner in which information must be provided to AER or kept

Without limiting section 53(1)(b), a regulatory information instrument may [*1]require that the information specified in the instrument~~specify the information specified in the instrument~~—

(a) be provided to the AER, or prepared, maintained or kept, on an annual basis or some other basis, including on the occurrence of a specified event or state of affairs;

(b) be provided to the AER, or prepared, maintained or kept, in accordance with specified Rules;

(c) be provided to the AER, or prepared, maintained or kept, in accordance with any document, code, standard, rule, specification or method formulated, issued, prescribed or published by the AER or any person, authority or body whether—

(i) wholly or partially or as amended by the instrument; or

(ii) as formulated, issued, prescribed or published at the time the instrument is served or published or at any time before the instrument is served or published; or

(iii) as amended from time to time;

[*4]**Example—**

The AER may require a service provider to provide information in a form and manner that complies with relevant accounting standards.

~~**Example—**~~

~~The AER may require a scheme pipeline service provider to provide information in a form and manner that complies with relevant accounting standards.~~

(d) be verified by way of statutory declaration by an officer of [*3]the person~~the scheme pipeline service provider, or of a related provider,~~ to whom the instrument applies;

(e) be audited—

(i) by a class of person specified in the instrument before it is provided to the AER; and

(ii) at the expense of [*3]the person~~the scheme pipeline service provider or related provider~~ to whom the instrument applies.

Subdivision 4 — Compliance with regulatory information instruments

56. Compliance with regulatory information notice that is served

On being served a regulatory information notice, a person named in the notice must comply with the notice.

57. Compliance with general regulatory information order

(1) On publication of a general regulatory information order in accordance with section 51(1), a person who is a member of the class of person to which a general regulatory information order applies must comply with the order.

(2) Subsection (1) does not apply to a person who has been given an exemption under section 58.

58. Exemptions from compliance with general regulatory information order

(1) The AER may exempt a person, or a class of person, from complying with section 57—

(a) unconditionally or on specified conditions; or

(b) wholly or to the extent as is specified in the exemption.

(2) An exemption under this section must be in writing.

59. Assumptions where there is non-compliance with regulatory information instrument

(1) This section applies if—

(a) under a regulatory information instrument the AER—

(i) requires a [*4]~~scheme pipeline~~ service provider to provide information to the AER for the purpose of enabling the AER to make an AER economic regulatory decision relating to the [*4]~~scheme pipeline~~ service provider or to make a rate of return instrument; or

(ii) requires a related provider to provide information to the AER that is relevant to the making of an AER economic regulatory decision relating to a [*4]~~scheme pipeline~~ service provider or the making of a rate of return instrument; and

(b) the [*4]~~scheme pipeline~~ service provider or related provider—

(i) does not provide the information to the AER in accordance with the applicable regulatory information instrument; or

(ii) provides information that is insufficient (when compared to what was requested under the applicable regulatory information instrument).

(2) Without limiting sections 56 and 57 and despite anything to the contrary in this Law or the Rules, the AER—

(a) may make the AER economic regulatory decision or the rate of return instrument on the basis of the information the AER has at the time it makes that decision or instrument; and

(b) in making that decision or instrument, may make reasonable assumptions (including assumptions adverse to the interests of the [*4]~~scheme pipeline~~ service provider) in respect of the matters the information required under the regulatory information instrument would have addressed had that information been provided as required.

[Section 59 amended: see SA Act No. 33 of 2018 s. 17 and WA Gazette 5 Apr 2019 p. 1007.]

Subdivision 5 — General

60. Providing to AER false and misleading information

A person must not, in purported compliance with a regulatory information instrument requiring the person to provide information to the AER, provide information to the AER that the person knows is false or misleading in a material particular.

Maximum penalty:

(a) in the case of a natural person—$6 300;

(b) in the case of a body corporate—$31 500.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

[Section 60 amended: see SA Act No. 37 of 2020 s. 53 and WA Gazette 4 Sep 2024 p. 2215.]

61. Person cannot rely on duty of confidence to avoid compliance with regulatory information instrument

(1) A person must not refuse to comply with a regulatory information instrument on the ground of any duty of confidence.

(2) A person incurs, by complying with a regulatory information instrument, no liability for breach of contract, breach of confidence or any other civil wrong.

62. Legal professional privilege not affected

A regulatory information instrument, and sections 56 and 57, are not to be taken as requiring a person to—

(a) provide to the AER information that is the subject of legal professional privilege; or

(b) produce a document to the AER the production of which would disclose information that is the subject of legal professional privilege.

63. Protection against self-incrimination

(1) It is a reasonable excuse for a natural person to whom section 56 applies not to comply with a regulatory information notice served on the person requiring the person to provide information to the AER if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of this jurisdiction or another participating jurisdiction.

(2) It is a reasonable excuse for a natural person to whom section 57 applies not to comply with a general regulatory information order made requiring the person to provide information to the AER if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of this jurisdiction or another participating jurisdiction.

[*4]Division 4A—Monitoring service providers

63A—AER must monitor service providers' behaviour

The AER must regularly and systematically monitor the following matters:

(a) the prices charged by service providers for pipeline services;

(b) the non-price terms and conditions for pipeline services;

(c) the financial information reported by service providers;

(d) the outcomes of access negotiations;

(e) service providers' dealings with associates;

(f) service providers' compliance with ring fencing requirements;

(g) the compliance of service providers with other requirements of this Law and the Rules.

63B—AER must report to MCE

(1) At least every 2 years, the AER must report to the MCE on its work under this Division for the previous 2 years (the ***relevant period***).

(2) The MCE may issue a direction to the AER requiring the AER to include information in the report about a stated matter that relates to the AER's performance or exercise of its functions or powers under Chapters 3 to 5.

(3) The report must—

(a) state how many service providers the AER monitored during the relevant period for the purposes of this Division; and

(b) summarise the information obtained in relation to the matters mentioned in section 63A; and

(c) state how the AER obtained information contained in the report; and

(d) give an assessment of the behaviour of service providers in relation to the matters mentioned in section 63A; and

(e) state the extent to which service providers have complied, or failed to comply, with their obligations under this Law, the Regulations and the Rules; and

(f) include any information requested in a direction issued by the MCE under subsection (2).

(4) As soon as practicable after giving a report to the MCE under this section, the AER must publish, on its website, a version of the report that—

(a) contains aggregated information about each of the matters mentioned in section 63A; and

(b) is not likely to result in the identification of a particular service provider.

Division 5 — Service provider performance reports [*4]relating to scheme pipelines

64. [*4]Preparation of service provider performance reports relating to scheme pipelines~~Preparation of service provider performance reports~~

(1) Subject to this section, the AER may prepare a report on the financial performance or operational performance of 1 or more scheme pipeline service providers in providing pipeline services by means of a scheme pipeline.

Note—

The AER may only prepare a report under subsection (1) if the preparation of the report will or is likely to contribute to the achievement of the national gas objective: see section 28.

(2) A report prepared under this section may—

(a) deal with the financial or operational performance of the scheme pipeline service provider in relation to—

(i) complying with pipeline service standards; and

(ii) standards relating to the provision of pipeline services to users or end users; and

(iii) the profitability of scheme pipeline service providers in providing pipeline services; and

(b) if the AER considers it appropriate, deal with the performance of the scheme pipeline service provider in relation to other matters or things if that performance is

directly related to the performance or exercise by the AER of an AER economic regulatory function or power.

(3) A report prepared under this section may include—

(a) information provided to the AER by a person in compliance with a regulatory information instrument; and

(b) in the case of a report dealing with the financial performance of 1 or more scheme pipeline service providers, a comparison of the profitability of the scheme pipeline service providers to which the report relates from the provision of pipeline services by them.

(4) Before preparing a report under this section, the AER must, in accordance with the Rules, consult with the persons or bodies specified by the Rules.

(5) The AER may publish a report prepared under this section on its website.

[*4]**Division 5A—Compliance and performance**

64A—References in this Division to service providers

In this Division, a reference to a service provider includes a reference to a person, other than a service provider, to whom Chapter 4, or a provision of Chapter 4, applies under section 130.

64B—Compliance audits by AER

For the purpose of assessing a service provider's compliance with the requirements of this Law, the Regulations and the Rules, the AER may—

(a) carry out compliance audits of any or all activities of the service provider; or

(b) arrange for the carrying out by contractors or other persons of compliance audits on behalf of the AER of any or all activities of the service provider.

64C—Compliance audits by service providers

(1) A service provider must, if required by the AER, carry out a compliance audit in connection with specified aspects of the activities of the service provider in relation to the service

provider's compliance with the requirements of this Law, the Regulations and the Rules.

(2) If the AER requires a service provider to carry out a compliance audit under this section, the service provider may arrange for the audit to be carried out on its behalf by contractors or other persons, but the service provider remains responsible for the audit.

(3) A service provider must, within a period specified by the AER, provide the AER with the results of a compliance audit carried out under this section.

Note—

Subsections (1) and (3) are civil penalty provisions.

64D—Carrying out of compliance audits

A compliance audit is to be carried out in accordance with the AER Compliance Procedures and Guidelines.

64E—Cost of compliance audits

(1) The cost of conducting a compliance audit under section 64B is an amount to be determined in accordance with the AER Compliance Procedures and Guidelines and is recoverable by the AER from the service provider to whom the audit relates.

(2) The cost of conducting a compliance audit under section 64C is to be borne by the service provider to whom the audit relates.

64F—AER Compliance Procedures and Guidelines

(1) The AER must make procedures and guidelines (***AER Compliance Procedures and Guidelines***) in accordance with the Rules.

(2) Without limiting subsection (1), the AER Compliance Procedures and Guidelines may provide guidance for service providers about the following matters:

(a) compliance with the requirements of this Law, the Regulations and the Rules;

(b) the carrying out of compliance audits, and the costs payable by service providers, under this Division.

(3) The AER Compliance Procedures and Guidelines may include a statement of the AER's compliance priorities.

(4) The AER may amend the AER Compliance Procedures and Guidelines in accordance with the Rules.

(5) The AER Compliance Procedures and Guidelines may form part of similar guidelines under this [*4M*]Law.~~Law, the National Electricity Law or the National Energy Retail Law.~~

Division 6 — Miscellaneous matters

65. Consideration by the AER of submissions or comments made to it under this Law or the Rules

If, under this Law or the Rules, the AER publishes a notice inviting submissions in relation to the making of an AER economic regulatory decision, the AER, in making the decision—

(a) must consider every submission it receives within the period specified in the notice; and

(b) may, but need not, consider a submission it receives after the period specified in the notice expires.

66. Use of information provided under a notice under Division 3 or a regulatory information instrument

The AER may use information provided to it by a person in compliance with a notice under section 42 or a regulatory information instrument for any purpose connected with the performance or exercise of a function or power of the AER under this Law or the Rules.

67. AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices

(1) If the AER is given information by any person in relation to a breach or a possible breach of this Law, the Regulations or the Rules by a person but—

(a) decides not to investigate that breach or possible breach; or

(b) following an investigation, decides not to—

(i) institute any proceedings under Chapter 8 in respect of that breach or possible breach; or

(ii) serve an infringement notice in accordance with Chapter 8 Part 7 in respect of that breach or possible breach,

the AER must notify that person of that decision in writing.

(2) This section does not apply if the person gave the information to the AER anonymously.

68. AER guidelines

(a1) The AER must prepare guidelines about the exercise of its powers under section 42, including about—

(a) the rights and obligations of persons who are served with a relevant notice under that section; and

(b) the penalties applying under that section for non-compliance with a notice; and

(c) the purposes for which information obtained under that section may be used.

(1) The AER may prepare guidelines about the matters it will have regard to before—

(a) making an application under section 231; or

(b) serving an infringement notice under section 277.

(2) The AER must publish guidelines prepared under subsection (a1) or (1) on its website.

[Section 68 amended: see SA Act No. 37 of 2020 s. 54 and WA Gazette 4 Sep 2024 p. 2215.]

[68C. *Deleted: see SA Act No. 3 of 2021 s. 38 and WA Gazette 22 Jan 2025 p. 63-4.]*

Part 1A — Functions and powers of WA arbitrator

[Heading inserted: WA Act Sch. 1 cl. 8.]

68A. Manner in which WA arbitrator must perform or exercise certain functions or powers

(1) The WA arbitrator must, in performing or exercising a function or power that relates to an access determination, perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national gas objective.

(2) In addition, the WA arbitrator—

(a) must take into account the revenue and pricing principles when making an access determination relating to a rate or charge for a pipeline service; and

(b) may take into account the revenue and pricing principles when performing or exercising any other function or power that relates to an access determination, if the WA arbitrator considers it appropriate to do so.

(3) For the purposes of subsection (2)(a), a reference to a reference service in the revenue and pricing principles must be read as a reference to a pipeline service.

[Section 68A inserted: WA Act Sch. 1 cl. 8.]

Part 2 — Functions and powers of the Australian Energy Market Commission

Division 1 — General

69. Functions and powers of the AEMC

(1) The AEMC has the following functions and powers:

(a) the Rule making functions and powers conferred on it under this Law and the Regulations;

(b) the market development functions conferred on it under this Law and the Rules;

(c) any other functions and powers conferred on it under this Law and the Rules.

(2) The AEMC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

70. Delegations

Any delegation by the AEMC under section 20 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia extends to, and has effect for the purposes of, this Law, the Regulations and the Rules.

71. Confidentiality

Section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia has effect for the

purposes of this Law, the Regulations and the Rules as if it formed part of this Law.

Note—

See also Chapter 10 Part 2 Division 2.

72. AEMC must have regard to national gas objective

In performing or exercising any function or power under this Law, the Regulations or the Rules, the AEMC must have regard to the national gas objective.

72A. Targets statement for greenhouse gas emissions targets

(1) The AEMC must prepare and maintain a document (the ***targets statement***) stating the targets set by a participating jurisdiction mentioned in section 23(b).

(2) If the MCE or a Minister of a participating jurisdiction gives a written direction to the AEMC to include a target in, or remove a target from, the targets statement, the AEMC must comply with the direction.

(3) A Minister may give a written direction under subsection (2) only in relation to a target set by the Minister's participating jurisdiction.

(4) The AEMC must publish on its website—

(a) the targets statement; and

(b) each direction given under subsection (2).

(5) In having regard to the national gas objective under this Law, the Regulations or the Rules with respect to the matters mentioned in section 23(b), a person or body must consider, as a minimum, the targets stated in the targets statement.

[Section 72A inserted: see SA Act No. 26 of 2023 s. 16.]

73. AEMC must have regard to MCE statements of policy principles in relation to Rule making and reviews

The AEMC must have regard to any relevant MCE statement of policy principles—

(a) in making a Rule; or

(b) in conducting a review under section 83.

Division 2 — Rule making functions and powers of the AEMC

74. Subject matter for National Gas Rules

(1) Subject to this Division, the AEMC, in accordance with this Law and the Regulations, may make Rules, to be known, collectively, as the "National Gas Rules", for or with respect to—

(a) regulating—

(i) access to pipeline services;

(ii) the provision of pipeline services;

(iii) the collection, use, disclosure, copying, recording, management and publication of information in relation to [*3]the natural gas industry~~natural gas services~~;

(b) any matter or thing contemplated by this Law, or is necessary or expedient for the purposes of this Law.

Note—

The procedure for the making of a Rule by the AEMC is set out in Chapter 9 Part 3.

(2) Without limiting subsection (1), the AEMC, in accordance with this Law and the Regulations, may make Rules for or with respect to any matter or thing specified in Schedule 1 to this Law.

(3) Rules made by the AEMC in accordance with this Law and the Regulations may—

(a) be of general or limited application;

(b) vary according to the persons, times, places or circumstances to which they are expressed to apply;

(c) confer functions or powers on, or leave any matter or thing to be decided or determined by—

(i) the AER, the AEMC or the Bulletin Board operator; or

(ii) any panel or committee established by the AEMC; or

(iii) any other body established, or person appointed, in accordance with the Rules;

(d) confer rights or impose obligations on any person or a class of person (other than the AER or the AEMC);

(e) confer a function on the AER, the AEMC or the Bulletin Board operator to make or issue guidelines, tests, standards, procedures or any other document (however described) in accordance with the Rules, including guidelines, tests, standards, procedures or any other document (however described) that leave any matter or thing to be determined by the AER, the AEMC or the Bulletin Board operator;

(f) empower or require any person (other than a person referred to in paragraph (e)) or body to make or issue guidelines, tests, standards, procedures or any other document (however described) in accordance with the Rules;

(g) apply, adopt or incorporate wholly or partially, or as amended by the Rules, the provisions of any standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body whether—

(i) as formulated, issued, prescribed or published at the time the Rules are made or at any time before the Rules are made; or

(ii) as amended from time to time;

(h) confer a power of direction on the AER, the AEMC or the Bulletin Board operator to require a person conferred a right, or on whom an obligation is imposed, under the Rules to comply with—

(i) a guideline, test, standard, procedure or other document (however described) referred to in paragraph (e) or (f); or

(ii) a standard, rule, specification, method or document (however described) referred to in paragraph (g);

(i) if this section authorises or requires Rules that regulate any matter or thing, prohibit that matter or thing or any aspect of that matter of thing;

(j) provide for the review of, or a right of appeal against, a decision or determination made under the Rules and for that purpose, confer jurisdiction on the Court;

(k) require a form prescribed by or under the Rules, or information or documents included in, attached to or

given with the form, to be verified by statutory declaration;

(l) in a specified case or class of case, exempt a person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules or a class of any such person or body from complying with a provision, or a part of a provision, of the Rules;

(m) provide for the modification or variation of a provision of the Rules (with or without substitution of a provision of the Rules or a part of a provision of the Rules) as it applies to a person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed, under the Rules or a class of any such person or body;

(n) confer an immunity on, or limit the liability of, any person or body performing or exercising a function or power, or conferred a right, or on whom an obligation is imposed under the Rules;

(o) contain provisions of a savings or transitional nature consequent on the amendment or revocation of a Rule.

75. Rules relating to MCE or Ministers of participating jurisdictions require MCE consent

The AEMC must not, without the consent of the MCE, make a Rule that confers a right or function, or imposes an obligation, on the MCE or a Minister of a participating jurisdiction.

Note—

The term ***function*** is defined in clause 10 of Schedule 2 to this Law to include "duty".

76. AEMC must not make Rules that create criminal offences or impose civil penalties for breaches

The AEMC must not make a Rule that—

(a) creates an offence for a breach of a provision of the Rules; or

(b) provides for a criminal penalty or civil penalty for a breach of a provision of the Rules.

77. Documents etc applied, adopted and incorporated by Rules to be publicly available

(1) The AEMC must make publicly available—

(a) every standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body that is applied, adopted or incorporated by a Rule; and

(b) if a standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body is applied, adopted or incorporated by a Rule as amended from time to time—any amendment to that standard, rule, specification, method or document.

(2) For the purposes of subsection (1), the AEMC makes a standard, rule, specification, method or document (however described) formulated, issued, prescribed or published by any person, authority or body applied, adopted or incorporated by any Rule publicly available if the AEMC—

(a) publishes the standard, rule, specification, method or document on the AEMC's website; or

(b) specifies a place from which the standard, rule, specification, method or document may be obtained or purchased (as the case requires).

Division 3 — Committees, panels and working groups of the AEMC

78. Establishment of committees, panels and working groups

The AEMC may establish committees, panels and working groups to—

(a) provide advice on specified aspects of the AEMC's functions; or

(b) undertake any other activity in relation to the AEMC's functions as is specified by the AEMC.

Division 4 — MCE directed reviews

79. MCE directions

(1) The MCE may give a written direction to the AEMC that the AEMC conduct a review into—

(a) any matter relating to a market for gas (including services provided in a market for gas); or

(b) any matter relating to access to pipelines or to pipeline services provided by means of pipelines; or

(c) the operation and effectiveness of the Rules; or

(d) any matter relating to the Rules; or

(e) the effectiveness of competition in a market for gas for the purpose of giving advice about whether to retain, remove or reintroduce price controls on prices for retail gas services.

(2) A direction given to the AEMC under this section is binding on the AEMC and must be complied with despite anything to the contrary in the Rules.

(3) A direction given under this section must be published in the South Australian Government Gazette.

(4) The AEMC must cause a direction given under this section to be published on its website.

80. Terms of reference

(1) The terms of reference of a MCE directed review will be as specified in the direction given by the MCE.

Example—

The terms of reference may require a MCE directed review to be conducted—

(a) about a specific matter within a specified time; or

(b) whenever a specified event occurs; or

(c) on an annual basis.

(2) Without limiting subsection (1), the MCE may in its direction to the AEMC do 1 or more of the following:

(a) require the AEMC to give a report on a MCE directed review to the MCE within a specified period;

(b) require the AEMC to make the report on a MCE directed review publicly available or available to specified persons or bodies;

(c) require the AEMC to make a draft report publicly available or available to specified persons or bodies during a MCE directed review;

(d) require the AEMC to consider specified matters in the conduct of a MCE directed review;

(e) require the AEMC to have specified objectives in the conduct of a MCE directed review which need not be limited by the national gas objective;

(f) require the AEMC to assess a particular matter in relation to services provided in a market for gas against specified criteria or a specified methodology;

(g) require the AEMC—

(i) to assess a particular matter in relation to services provided in a market for gas; and

(ii) to develop appropriate and relevant criteria, or an appropriate and relevant methodology, for the purpose of the required assessment;

(h) give the AEMC other specific directions in respect of the conduct of a MCE directed review.

81. Notice of MCE directed review

(1) The AEMC must publish notice of a MCE directed review on its website.

(2) The AEMC must publish a further such notice if a term of reference or a requirement or direction relating to the MCE directed review is varied.

[Section 81 amended: see SA Act No. 3 of 2021 s. 39 and WA Gazette 22 Jan 2025 p. 63-4.]

82. Conduct of MCE directed review

Subject to any requirement or direction of the MCE, a MCE directed review—

(a) may be conducted in such manner as the AEMC considers appropriate; and

(b) may (but need not) involve public hearings.

Division 5 — Other reviews

83. Rule reviews by the AEMC

(1) The AEMC may conduct a review into—

(a) the operation and effectiveness of the Rules; or

(b) any matter relating to the Rules.

(2) A review—

(a) may be conducted in such manner as the AEMC considers appropriate; and

(b) may (but need not) involve public hearings.

(3) During the course of a review, the AEMC may—

(a) consult with any person or body that it considers appropriate;

(b) establish working groups to assist it in relation to any aspect, or any matter or thing that is the subject of, the review;

(c) commission reports by other persons on its behalf on any aspect, or matter or thing that is the subject of, the review;

(d) publish discussion papers or draft reports.

(4) At the completion of a review, the AEMC must—

(a) give a copy of the report to the MCE; and

(b) publish a report or a version of a report from which confidential information has been omitted in accordance with section [*4M*]330.~~331.~~

Division 6 — Miscellaneous matters

[*4]83A—Information and transparency requirements relating to compression service facilities and storage facilities

(1) Without limiting any other provision, the Rules may provide for such things as—

(a) the collection, disclosure, verification, management and publication of information in relation to services that may be provided by means of a compression service facility or a storage facility; and

(b) without limiting paragraph (a), requirements about the information that must be provided by a compression service provider or a storage provider (each a ***relevant provider***) in relation to access (or potential access) to services provided by means of any compression service facility or storage facility, including information about—

(i) the terms and conditions on which the relevant provider is prepared to make the facility available for use by others; and

(ii) the procedures that the relevant provider will apply in determining a proposal for access to the facility; and

(iii) relevant prices, costs and methodologies associated with gaining access to (and using) a facility and relevant or related services; and

(iv) access contracts and arrangements used (or required to be used) by the relevant provider; and

(c) without limiting paragraphs (a) and (b), information to be provided by a relevant provider in response to a request for access to services provided by means of a compression service facility or a storage facility; and

(d) requirements to ensure that information is accurate and complete; and

(e) the imposition or recovery of costs associated with any matter referred to in a preceding paragraph or otherwise associated with facilitating access (or potential access) to services provided by means of a compression service facility or a storage facility.

(2) Nothing in subsection (1) limits any power to grant an exemption from complying with a provision, or part of a provision, of the Rules.

83AA—Publication of information relating to compression service facilities and storage facilities

A person required by the Rules made under section 83A to publish information must do so in accordance with the Rules.

~~**83A. Special information and transparency requirements relating to non-scheme pipelines**~~

~~(1) In this section~~

~~***non-scheme pipeline*** means~~

~~(a) a transmission pipeline that is not a scheme pipeline; and~~

~~(b) a distribution pipeline that is not a scheme pipeline.~~

~~(2) Without limiting any other provision, the Rules may provide for such things as~~

~~(a) the collection, disclosure, verification, management and publication of information in relation to services that may be provided by a non-scheme pipeline; and~~

~~(b) without limiting paragraph (a), requirements about the information that must be provided by service providers in relation to access (or potential access) to services provided by means of any non-scheme pipeline, including information about —~~

~~(i) the terms and conditions on which the service provider is prepared to make a non-scheme pipeline available for use by others; and~~

~~(ii) the procedures that the service provider will apply in determining a proposal for access to a non-scheme pipeline; and~~

~~(iii) relevant prices, costs and methodologies associated with gaining access to (and using) a non-scheme pipeline and relevant or related services; and~~

~~(iv) access contracts and arrangements used (or required to be used) by the service provider; and~~

~~(c) without limiting paragraphs (a) and (b), information to be provided by a service provider in response to a request for access to services provided by means of a non-scheme pipeline; and~~

~~(d) requirements to ensure that information is accurate and complete; and~~

~~(e) requirements that relate to any matter that is contemplated by Chapter 4 Part 2 (as if a reference to a covered pipeline service provider in that Part were a reference to a service provider in relation to a non-scheme pipeline and subject to any modifications made by the Rules and subject to such other necessary alterations and modifications so as to apply those requirements in relation to non-scheme pipelines); and~~

~~(f) the imposition or recovery of costs associated with any matter referred to in a preceding paragraph or otherwise associated with facilitating access (or potential access) to services provided by means of a non-scheme pipeline.~~

~~(3) Nothing in subsection (2) limits any power to grant an exemption from complying with a provision, or part of a provision, of the Rules.~~

~~(4) A reference in subsection (2) with respect to gaining access (or potential access) to services provided by means of a non-scheme pipeline includes a reference to services that will require an extension to, or expansion of the capacity of, a non-scheme pipeline.~~

~~*[Section 83A inserted: see SA Act No. 23 of 2017 s. 4 and WA Gazette 22 Dec 2017 p. 5984.]*~~

84. AEMC must publish and make available up to date versions of Rules

The AEMC must, at all times—

(a) maintain, on its website, a copy of the National Gas Rules, as in force from time to time; and

(b) make copies of the National Gas Rules, as in force from time to time, available to the public for inspection at its offices during business hours.

85. Fees

(1) The AEMC may charge a fee specified, or a fee calculated in accordance with a formula or methodology specified, in the Regulations for services provided by it in performing or exercising any of its functions or powers under this Law, the Regulations or the Rules.

(2) The fee must not be such as to amount to taxation.

86. Immunity from personal liability of AEMC officials

(1) No personal liability attaches to an AEMC official for an act or omission in good faith in the performance or exercise, or purported performance or exercise of a function or power under this Law, the Regulations or the Rules.

(2) A liability that would, but for subsection (1), lie against an AEMC official lies instead against the AEMC.

(3) In this section—

AEMC official means—

(a) a member of the AEMC;

(b) the chief executive of the AEMC;

(c) a member of staff appointed by the AEMC.

Part 3 — Functions and powers of Ministers of participating jurisdictions

87. Functions and powers of Minister of this participating jurisdiction under this Law

(1) The Minister of this participating jurisdiction has the functions and powers conferred on him or her under this Law, the Regulations or the Rules.

(2) The Minister of this participating jurisdiction has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

(3) In this section—

Minister of this participating jurisdiction means the Minister that administers the Act of this jurisdiction that applies this Law or a part of this Law as a law of this jurisdiction—see section 22(b).

[Section 87 amended: see SA Act No. 3 of 2021 s. 40 and WA Gazette 22 Jan 2025 p. 63-4.]

[*4]~~**88. Functions and powers of Commonwealth Minister under this Law**~~

~~(1) The Commonwealth Minister has the functions and powers conferred on him or her under this Law, the Regulations or the Rules.~~

~~(2) The Commonwealth Minister has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.~~

[*4]~~Part 4 — Functions and powers of the NCC~~

~~89. Functions and powers of NCC under this Law~~

~~(1) The NCC has the functions and powers conferred on it under this Law, the Regulations or the Rules.~~

~~(2) The NCC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.~~

90. Confidentiality

(1) The NCC must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence in, or in connection with, the performance of its functions or the exercise of its powers under this Law, the Regulations or the Rules.

(2) For the purposes of subsection (1), the disclosure of information as required or permitted by this Law, a law of the Commonwealth, a State or Territory is taken to be authorised use and disclosure of the information.

(3) Disclosing information to 1 of the following is authorised use and disclosure of the information:

(a) the ACCC;

(b) the AER;

(c) the ERA;

(d) the AEMC;

(e) any staff or consultant assisting a body mentioned in paragraph (a) to (d) in performing its functions or exercising its powers;

(f) any other person or body prescribed by the Regulations for the purpose of this paragraph.

(4) A person or body to whom information is disclosed under subsection (3) may use the information for any purpose connected with the performance of the functions, or the exercise of the powers, of the person or body.

(5) The NCC may impose conditions to be complied with in relation to information disclosed under subsection (3).

(6) For the purposes of subsection (1), the use or disclosure of information by a person for the purposes of performing the person's functions, or exercising the person's powers, as —

(a) a Councillor or a person referred to in section 29M of the *Trade Practices Act 1974* of the Commonwealth; or

(b) a person who is authorised to perform or exercise a function or power of, or on behalf of, the NCC,

is taken to be authorised use and disclosure of the information.

~~(7) Regulations made for the purposes of this section may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of this section.~~

~~(8) Nothing in any of the above subsections limits —~~

~~(a) anything else in any of those subsections; or~~

~~(b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.~~

~~(9) In this section —~~

~~***Councillor*** has the same meaning as in the *Trade Practices Act 1974* of the Commonwealth.~~

~~**Note—**~~

~~See also Chapter 10 Part 2 Division 2.~~

Part 5 — Functions and powers of Tribunal

91. Functions and powers of Tribunal under this Law

(1) The Tribunal has the functions and powers conferred on it under Chapter 8 Part 5 and any Regulations made for the purposes of that Division.

(2) The Tribunal has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

[*4]Chapter 3—Regulatory framework for pipelines

Part 1—Scheme pipeline determinations and scheme pipeline elections

Division 1—Scheme pipeline determinations

92—AER may make scheme pipeline determination

(1) The AER may, on its own initiative or on the application of any person, make a determination that a non-scheme pipeline is a scheme pipeline (a ***scheme pipeline determination***).

(2) An application for a scheme pipeline determination must—

(a) be made in accordance with the Rules; and

(b) contain the information required by the Rules; and

(c) be accompanied by the fee prescribed by the Regulations (if any); and

(d) be dealt with in accordance with the Rules.

93—Requirements for making, or not making, a scheme pipeline determination

(1) A scheme pipeline determination or a decision not to make a scheme pipeline determination must—

(a) be made in accordance with this Law and the Rules; and

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules; and

(e) if a scheme pipeline determination is made—specify the date the determination takes effect.

(2) For subsection (1)(e), the date specified must be at least 6 months, but not more than 12 months, after the determination is made.

94—Effect of scheme pipeline determination

A pipeline the subject of a scheme pipeline determination—

(a) becomes a scheme pipeline when the scheme pipeline determination takes effect; and

(b) continues to be a scheme pipeline while the scheme pipeline determination remains in effect.

Division 2—Scheme pipeline elections

95—Scheme pipeline elections

(1) A service provider for a non-scheme pipeline may elect for the pipeline to be dealt with under this Law as a scheme pipeline (a ***scheme pipeline election***).

(2) A scheme pipeline election must be made in accordance with the Rules.

96—Effect of scheme pipeline elections

(1) A scheme pipeline election takes effect on a day, determined by the AER, that is at least 6 months, but not more than 12 months, after the AER receives the election.

(2) However, if the AER does not make a determination under subsection (1), the scheme pipeline election takes effect on the day that is 12 months after the AER receives the election.

(3) On the day a scheme pipeline election takes effect under this section, the non-scheme pipeline the subject of the scheme pipeline election becomes a scheme pipeline.

Part 2—Scheme pipeline revocation determinations

97—AER may make scheme pipeline revocation determination

(1) The AER may, on its own initiative or on the application of any person, make a scheme pipeline revocation determination in relation to any scheme pipeline other than a designated pipeline.

(2) An application for a scheme pipeline revocation determination must—

(a) be made in accordance with the Rules; and

(b) contain the information required by the Rules; and

(c) be accompanied by the fee prescribed by the Regulations (if any); and

(d) be dealt with in accordance with the Rules.

98—Requirements for making, or not making, a scheme pipeline revocation determination

A scheme pipeline revocation determination or a decision not to make a scheme pipeline revocation determination must—

(a) be made in accordance with this Law and the Rules; and

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules; and

(e) if a scheme pipeline revocation determination is made—specify the date the determination takes effect.

99—Effect of scheme pipeline revocation determination

A pipeline the subject of a scheme pipeline revocation determination ceases to be a scheme pipeline when the scheme pipeline revocation determination takes effect.

Part 3—Greenfields incentive determinations and greenfields price protection determinations

Division 1—Greenfields incentive determinations

100—AER may make greenfields incentive determination

(1) The AER may, on the application of the service provider for a greenfields pipeline project, make a determination that the pipeline the subject of the greenfields pipeline project cannot become a scheme pipeline during the operative period for the determination (a ***greenfields incentive determination***).

(2) An application for a greenfields incentive determination—

(a) cannot be made after the pipeline is commissioned; and

(b) must be made in accordance with the Rules; and

(c) must include a description of the pipeline that meets the requirements specified by the Rules; and

(d) must contain the information required by the Rules; and

(e) need not describe, or include details of, excluded infrastructure; and

(f) must be accompanied by the fee prescribed by the Regulations (if any); and

(g) must be dealt with in accordance with the Rules.

101—Requirements for making, or not making, a greenfields incentive determination

(1) A greenfields incentive determination or a decision not to make a greenfields incentive determination must—

(a) be made in accordance with this Law and the Rules; and

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules; and

(e) if a greenfields incentive determination is made—specify the date the determination takes effect.

(2) The AER may, in having regard to the matters mentioned in section 112, decide a period during which a greenfields incentive determination is to continue in operation that is less than 15 years.

(3) If the AER decides a period under subsection (2), the greenfields incentive determination must also specify the period.

102—Effect of greenfields incentive determination

(1) A greenfields incentive determination takes effect on and from the date specified in the determination.

(2) The period during which a greenfields incentive determination continues in force (the ***operative period***) is—

(a) if the AER decides a period under section 101(2) that is less than 15 years—that period; or

(b) otherwise—15 years from the commissioning of the pipeline.

(3) During the operative period, the pipeline the subject of the greenfields incentive determination cannot become a scheme pipeline.

(4) An application for a scheme pipeline determination in relation to a pipeline to which a greenfields incentive determination applies can be made—

(a) before the end of the operative period for the greenfields incentive determination; but

(b) only if the scheme pipeline determination is to commence from, or after, the end of the operative period.

103—Requirement for conformity between pipeline description and pipeline as constructed

(1) Subject to this Part—

(a) a greenfields incentive determination applies to the pipeline as described in the relevant pipeline description; and

(b) if the pipeline, as constructed, materially differs from the pipeline as described in the relevant pipeline description, the determination does not apply to the pipeline and the service provider is not entitled to its benefit.

(2) In determining whether a pipeline, as constructed, materially differs from the relevant pipeline description, excluded infrastructure is not to be taken into account.

(3) In this section—

relevant pipeline description means a description of the pipeline required to be included in the application for the greenfields incentive determination made under section 100.

104—Power of AER to amend pipeline description

(1) The AER may, on application by the service provider for a pipeline to which a greenfields incentive determination applies, amend the relevant pipeline description.

(2) An amendment cannot, however, be made under this section after the pipeline has been commissioned.

(3) In deciding whether to make the amendment sought, the AER must have regard to the criteria that were relevant to the making of the greenfields incentive determination.

(4) In this section—

relevant pipeline description means a description of the pipeline required to be included in the application for the greenfields incentive determination made under section 100.

Division 2—Early termination of greenfields incentive determination

105—Greenfields incentive determination may lapse

(1) A greenfields incentive determination lapses if the pipeline to which it applies is not commissioned within 3 years after the determination takes effect.

(2) The AER may, in a particular case, extend the 3 year period mentioned in subsection (1).

106—Revocation by consent

The AER may, at the request of the service provider for the pipeline to which a greenfields incentive determination applies, revoke the determination.

107—Revocation for misrepresentation

The AER may revoke a greenfields incentive determination on the ground that—

(a) the applicant misrepresented a material fact on the basis of which the determination was made; or

(b) the applicant failed to disclose material information that the applicant was required to disclose under this Chapter.

108—Exhaustive provision for termination of greenfields incentive determination

A greenfields incentive determination does not terminate, and cannot be revoked, before the end of the operative period for the determination other than as provided for under this Part.

Division 3—Greenfields price protection determinations

109—AER may make greenfields price protection determination

(1) The AER may, on the application of the service provider for a greenfields pipeline project, make a determination that prices and non-price terms and conditions for particular pipeline services provided by means of a pipeline that are specified in the determination are protected, in the manner provided for in the Rules, in any arbitration of an access dispute involving the pipeline (a ***greenfields price protection determination***).

(2) An application for a greenfields price protection determination—

(a) cannot be made after the pipeline is commissioned; and

(b) must be made in accordance with the Rules; and

(c) must contain the information required by the Rules; and

(d) must be dealt with in accordance with the Rules.

110—Requirements for making, or not making, a greenfields price protection determination

(1) The AER must not make a greenfields price protection determination unless—

(a) the pipeline the subject of the determination is also the subject of a greenfields incentive determination; and

(b) the AER is satisfied—

(i) that—

(A) the pipeline has been developed following a competitive process; and

(B) the prices and non-price terms and conditions for pipeline services that will be made available to prospective users during the operative period for the greenfields price protection determination have been set as a result of that process; or

(ii) that—

(A) one or more form of regulation factors effectively constrained the exercise of market power by the service provider when the prices and non-price terms and conditions for pipeline services that will be made available to prospective users during the operative period for the greenfields price protection determination were determined; and

(B) the making of the determination will, or is likely to, contribute to the achievement of the national gas objective.

(2) For the purposes of subsection (1)(b)(i)(A), a pipeline is taken to have been developed following a competitive process if the AER is reasonably satisfied from the information provided to it by the applicant for the greenfields price protection determination that there was competition (whether formal or informal) to develop the pipeline between 2 or more prospective service providers that—

(a) were not related bodies corporate of each other; and

(b) did not include a related body corporate of the applicant

Example—

Competition between prospective service providers could involve the service providers competing on the basis of—

(a) different pipeline routes; or

(b) an expansion of an existing pipeline and the development of a new pipeline.

(3) A greenfields price protection determination or a decision not to make a greenfields price protection determination must—

(a) be made in accordance with this Law and the Rules; and

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules; and

(e) if a greenfields price protection determination is made, specify—

(i) the date the determination takes effect; and

(ii) the operative period for the determination.

(4) For subsection (3)(e)(ii), the operative period for a greenfields price protection determination—

(a) is the period during which the prices and non-price terms and conditions specified in the determination will be made available to prospective users; but

(b) cannot be longer than the operative period for the greenfields incentive determination relating to the pipeline.

111—Effect of greenfields price protection determination

(1) A greenfields price protection determination—

(a) takes effect on and from the date specified in the determination; and

(b) continues in operation for the operative period for the determination mentioned in section 110(4).

(2) A greenfields price protection determination ends if the greenfields incentive determination to which the greenfields price protection determination relates ceases to apply to the pipeline.

Part 4—Principles governing the making of particular determinations

112—Principles governing the making of particular determinations

(1) This section sets out principles that apply for the making of the following determinations (each a ***relevant determination***) by the AER—

(a) a scheme pipeline determination under Part 1 Division 1;

(b) a scheme pipeline revocation determination under Part 2;

(c) a greenfields incentive determination under Part 3.

(2) In deciding whether to make a relevant determination, the AER must consider the effect of regulating the pipeline, to which the determination would apply, as a scheme pipeline or non-scheme pipeline on—

(a) the promotion of access to pipeline services; and

(b) the costs that are likely to be incurred by an efficient service provider; and

(c) the costs that are likely to be incurred by efficient users and efficient prospective users; and

(d) the likely costs of end users.

(3) In doing so the AER—

(a) must have regard to the national gas objective; and

(b) must have regard to—

(i) the form of regulation factors; and

(ii) for a greenfields incentive determination—the extent to which the form of regulation factors or competition to develop the pipeline (whether formal or informal) between 2 or more unrelated prospective service providers will, or is likely to, pose an effective constraint on the exercise of market power in respect of services provided by means of the pipeline for the period the determination is in operation; and

Example—

Competition between prospective service providers could involve the service providers competing on the basis of—

(a) different pipeline routes; or

(b) an expansion of an existing pipeline and the development of a new pipeline.

(c) may have regard to any other matter it considers relevant, including, for example, any information it obtains in the course of performing its functions.

Example for paragraph (c)—

The AER may have regard to information contained in a report made by a mediator in relation to an access dispute

(4) For subsection (3)(b)(ii), prospective service providers are unrelated if the service providers—

(a) are not related bodies corporate of each other; and

(b) do not include a related body corporate of the applicant for the greenfields incentive determination.

Part 5—Access arrangements for scheme pipelines

Division 1—Submissions generally

113—Submission of access arrangement or revisions to applicable access arrangement

A scheme pipeline service provider must submit to the AER, for approval by the AER under the Rules, an access arrangement or revisions to an applicable access arrangement, in relation to the pipeline services the service provider provides or intends to provide—

(a) in the circumstances specified by the Rules; and

(b) within the period of time specified by the Rules.

Division 2—Provisions relating to applicable access arrangements

114—Protection of certain pre-existing contractual rights

(1) An applicable access arrangement must not have the effect of depriving a person of a relevant protected contractual right.

(2) In this section—

relevant exclusivity right means an express contractual right that arose on or after 30 March 1995 that—

(a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or

(b) limits or controls a service provider's ability to supply pipeline services to persons who are not parties to the contract,

but does not include a user's contractual right to obtain a certain amount of pipeline services;

relevant protected contractual right means—

(a) in the case of an applicable access arrangement approved under an applicable access arrangement decision—a right under a contract (other than a relevant exclusivity right) in force immediately before that access arrangement was submitted for approval under this Law; or

(b) in the case of an applicable access arrangement made under an applicable access arrangement decision because—

(i) an access arrangement was not submitted for approval as required under section 113—a right under a contract (other than a relevant exclusivity right) in force immediately before the date on which an access arrangement was required to be submitted for approval; or

(ii) an access arrangement was not approved under an applicable access arrangement decision—a right under a contract (other than a relevant exclusivity right) in force immediately before the date on which that access arrangement was submitted for approval.

115—Service provider may enter into agreement for access different from applicable access arrangement

Subject to [*4M*]section 135, ~~sections 83C and 135,~~ nothing in this Law is to be taken as preventing a service provider from entering into an agreement with a user or a prospective user about access to a pipeline service provided by means of a scheme pipeline that is different from an applicable access arrangement that applies to that pipeline service.

116—Applicable access arrangements continue to apply regardless of who provides pipeline service

An applicable access arrangement applies to a pipeline service provided, or to be provided, by means of a scheme pipeline regardless of who provides that pipeline service.

Part 6—Classification and reclassification of pipelines

Division 1—Classification of pipelines

117—Application for classification of pipeline

(1) This section applies if a pipeline is not classified as a distribution or transmission pipeline under a licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation.

(2) Within 20 business days after the commissioning of the pipeline, the service provider for the pipeline must apply to the AER for the pipeline to be classified as a distribution pipeline or transmission pipeline.

(3) An application for a classification decision must—

(a) be made in accordance with the Rules; and

(b) contain the information required by the Rules; and

(c) be accompanied by the fee prescribed by the Regulations (if any); and

(d) be dealt with in accordance with the Rules.

Division 2—Reclassification of pipelines

118—Reclassification of pipelines

(1) The AER may, on its own initiative or on the application of a service provider, make a decision for a pipeline to be reclassified as—

(a) if the pipeline is a transmission pipeline—a distribution pipeline; or

(b) if the pipeline is a distribution pipeline—a transmission pipeline.

(2) An application for a reclassification decision must—

(a) be made in accordance with the Rules; and

(b) contain the information required by the Rules; and

(c) be accompanied by the fee prescribed by the Regulations (if any); and

(d) be dealt with in accordance with the Rules.

Division 3—Provisions relating to classification and reclassification decisions

119—Requirements for making classification or reclassification decisions

(1) In making a classification decision or reclassification decision, the AER must have regard to—

(a) the national gas objective; and

(b) the pipeline classification criterion.

(2) A classification decision or reclassification decision must—

(a) be made in accordance with this Law and the Rules; and

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules.

120—Effect of classification decision or reclassification decision

On the making of a classification decision or reclassification decision, a pipeline is—

(a) if the pipeline is classified or reclassified as a distribution pipeline—a distribution pipeline; or

(b) if the pipeline is classified or reclassified as a transmission pipeline—a transmission pipeline.

Part 7—AER reviews into designated pipelines

121—AER reviews

(1) The MCE may request the AER to conduct a review into, and report to it as to, whether a pipeline should continue to be a designated pipeline.

(2) A service provider that provides pipeline services by means of a designated pipeline may request the AER to conduct a review into, and report to the MCE as to, whether that pipeline should continue to be a designated pipeline.

(3) A request under subsection (1) or (2) must be in writing.

(4) On receiving a request under this section, the AER must conduct a review as to whether the pipeline the subject of the request should continue to be a designated pipeline.

(5) In conducting a review under this section, the AER must—

(a) have regard to—

(i) the national gas objective; and

(ii) whether there has been a material change in competition in a market served by the designated pipeline; and

(b) consult, in accordance with the Rules, with the public.

(6) On the completion of a review under this section, the AER must prepare a report and—

(a) give the report to the MCE; and

(b) publish the report on its website.

(7) The AER must also give a copy of the report to the service provider that has requested the review.

~~Chapter 3 — Coverage and classification of pipelines~~

~~Part 1 — Coverage of pipelines~~

~~Division 1 — Coverage determinations~~

~~92. Application for recommendation that a pipeline be a covered pipeline~~

~~(1) Any person may apply for a determination that a pipeline be a covered pipeline (a ***coverage determination***).~~

~~(2) An application for a coverage determination —~~

~~(a) is to be made to the NCC in accordance with the Rules; and~~

~~(b) must contain the information required by the Rules; and~~

~~(c) must be accompanied by the fee prescribed by the Regulations (if any).~~

~~93. Application to be dealt with in accordance with the Rules~~

~~Subject to section 94, on receiving an application under section 92 the NCC must deal with it in accordance with the Rules.~~

~~94. NCC may defer consideration of application in certain cases~~

~~(1) This section applies if an application under section 92 is made in relation to a proposed pipeline after —~~

~~(a) an application has been made to the AER under the Rules for the approval, by the AER, of the tender process for the construction and operation of the proposed pipeline as a competitive tender process; or~~

~~(b) a tender approval decision has been made in respect of the tender process for the construction and operation of the proposed pipeline.~~

~~(2) The NCC may defer consideration of whether to make a recommendation in respect of the application until —~~

~~(a) the application for the approval, by the AER, of the tender process for the construction and operation of the proposed pipeline as a competitive tender process has been rejected by the AER under the Rules; or~~

~~(b) the tender approval decision —~~

(i) has been revoked under the Rules; or

(ii) has lapsed as provided under the Rules.

95. NCC coverage recommendation

(1) Subject to sections 94 and 96, the NCC must recommend to the relevant Minister that the pipeline the subject of the application —

(a) be a covered pipeline; or

(b) not be a covered pipeline.

Note—

See also Chapter 3 Part 2 Division 1 Subdivision 1.

(2) A recommendation under this section must —

(a) be made in accordance with this Law and the Rules; and

(b) be made within the time specified by the Rules; and

(c) contain the information required by the Rules; and

(d) be given to the persons specified by the Rules; and

(e) be made publicly available in accordance with the Rules.

(3) A recommendation under this section may recommend an outcome different from the outcome sought in the application under section 92.

Example—

An applicant may apply for a determination that the whole of a pipeline be a covered pipeline. The NCC may recommend that only a part of the pipeline the subject of the application be covered or may recommend that the pipeline not be covered.

(4) A recommendation under this section must be delivered to the relevant Minister without delay.

96. NCC must not make coverage recommendation if tender approval decision becomes irrevocable

Despite anything to the contrary in this Division, the NCC —

(a) must not make a recommendation under section 95 if the pipeline is the subject of a tender approval decision that —

(i) has not lapsed as provided under the Rules; or

(ii) is not revoked under the Rules; and

(b) must, for the purposes of paragraph (a), treat the application as having never been made.

97. Principles governing the making of a coverage recommendation

(1) In making a coverage recommendation, the NCC —

(a) must give effect to the pipeline coverage criteria; and

(b) in deciding whether or not the pipeline coverage criteria are satisfied must have regard to the national gas objective.

(2) The NCC gives effect to the pipeline coverage criteria as follows:

(a) if the NCC is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline — the recommendation must be in favour of the pipeline being a covered pipeline;

(b) if the NCC is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline — the recommendation must be against the pipeline being a covered pipeline.

98. Initial classification decision to be made as part of recommendation

(1) The NCC must, as part of a coverage recommendation, classify the pipeline the subject of an application under section 92 as a transmission pipeline or a distribution pipeline (an ***initial classification decision***). In doing so, the NCC must apply the pipeline classification criterion.

(2) The NCC must as part of an initial classification decision —

(a) if it classifies the pipeline the subject of the application as a transmission pipeline — determine whether the transmission pipeline is also a cross boundary transmission pipeline;

(b) if it classifies the pipeline the subject of the application as a distribution pipeline — determine whether the distribution pipeline is also a cross boundary distribution pipeline.

(3) The NCC must also determine, as part of an initial classification decision, the participating jurisdiction with which the pipeline the subject of the application under section 92 is most closely connected if the NCC determines the pipeline is also a cross boundary distribution pipeline. In doing so, the NCC must apply the pipeline classification criterion.

99. Relevant Minister's determination on application

(1) On receiving a coverage recommendation, the relevant Minister must decide whether to make a coverage determination in respect of the pipeline to which the recommendation relates.

(2) The relevant Minister must use his or her best endeavours to make the decision within 20 business days after receiving the coverage recommendation.

(3) If the relevant Minister is unable to make the decision within the period specified under subsection (2), he or she must make the decision as soon as reasonably practicable after the end of the specified period.

(4) The relevant Minister, for the purpose of making the decision, may request submissions or comments in relation to an application under section 92.

(5) A coverage determination or a decision not to make a coverage determination must —

(a) be made in accordance with this Law and the Rules; and

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules.

(6) In the case of a coverage determination, the determination must specify the date the determination takes effect.

(7) A coverage determination may have an outcome different to the outcome —

(a) sought in the application under section 92; or

(b) of the coverage recommendation.

Example —

An applicant may apply for a determination that the whole of a pipeline be a covered pipeline. The NCC may recommend that only a part of the pipeline the subject of the application be covered. The relevant Minister may determine that different parts of the pipeline to those recommended by the NCC be covered.

100. Principles governing the making of a coverage determination or decision not to do so

(1) In deciding whether to make a coverage determination under this Division, the relevant Minister —

(a) must give effect to the pipeline coverage criteria; and

(b) in deciding whether or not the pipeline coverage criteria are satisfied in relation to the pipeline —

(i) must have regard to the national gas objective; and

(ii) must have regard to the coverage recommendation; and

(iii) must take into account any submissions or comments he or she receives on a request under section 99(4); and

(iv) may take into account any relevant submissions and comments made to the NCC by the public under the Rules in relation to the application.

(2) The relevant Minister gives effect to the pipeline coverage criteria as follows:

(a) if the relevant Minister is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline — the Minister must make a coverage determination;

(b) if the relevant Minister is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline — the Minister must not make a coverage determination.

101. Operation and effect of coverage determination

The pipeline the subject of a coverage determination becomes a covered pipeline —

(a) when the coverage determination takes effect; and

(b) continues to be a covered pipeline while the coverage determination remains in effect.

Division 2 — Coverage revocation determinations

102. Application for a determination that a pipeline no longer be a covered pipeline

(1) Any person may apply for a determination that a covered pipeline no longer be a covered pipeline (a ***coverage revocation determination***).

(2) An application for a coverage revocation determination —

(a) is to be made to the NCC in accordance with the Rules; and

(b) must contain the information required by the Rules; and

(c) must be accompanied by the fee prescribed by the Regulations (if any).

103. Application to be dealt with in accordance with the Rules

On receiving an application under section 102, the NCC must deal with it in accordance with the Rules.

104. NCC coverage revocation recommendation

(1) The NCC must make a recommendation to the relevant Minister as to whether the covered pipeline the subject of the application should continue to be a covered pipeline.

Note—

See also section 119.

(2) A recommendation under this section must —

(a) be made in accordance with this Law and the Rules; and

(b) be made within the time specified by the Rules; and

(c) contain the information required by the Rules; and

(d) be given to the persons specified by the Rules; and

(e) be made publicly available in accordance with the Rules.

(3) A recommendation under this section may recommend an outcome different from the outcome sought in the application under section 102.

Example—

A service provider may apply for a determination that revokes the coverage of the covered pipeline by means of which the provider provides pipeline services. The NCC may recommend that the coverage of the covered pipeline be only partly revoked or not be revoked.

(4) A recommendation under this section must be delivered to the relevant Minister without delay.

105. Principles governing the making of a coverage revocation recommendation

(1) In making a coverage revocation recommendation, the NCC —

(a) must give effect to the pipeline coverage criteria; and

(b) in deciding whether or not the pipeline coverage criteria are satisfied must have regard to the national gas objective.

(2) The NCC gives effect to the pipeline coverage criteria as follows:

(a) if the NCC is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline – the recommendation must be in favour of the pipeline continuing to be a covered pipeline;

(b) if the NCC is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline – the recommendation must be in favour of the pipeline no longer being a covered pipeline.

106. Relevant Minister's determination on application

(1) On receiving a coverage revocation recommendation, the relevant Minister must decide whether to make a coverage revocation determination in respect of the pipeline to which the recommendation relates.

(2) The relevant Minister must use his or her best endeavours to make the decision within 20 business days after receiving the coverage revocation recommendation.

(3) If the relevant Minister is unable to make the decision within the period specified under subsection (2), he or she must make the decision as soon as reasonably practicable after the end of the specified period.

(4) The relevant Minister, for the purpose of making the decision, may request submissions or comments in relation to an application under section 102.

(5) A coverage revocation determination or a decision not to make a coverage revocation determination must –

(a) be made in accordance with this Law and the Rules; and

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules.

(6) In the case of a coverage revocation determination, the determination must specify the date the determination takes effect.

(7) A coverage revocation determination may have an outcome different to the outcome –

(a) sought in the application under section 102; or

(b) of the coverage revocation recommendation.

~~**Example—**~~

~~A service provider may apply for a determination that revokes the coverage of the covered pipeline by means of which the provider provides pipeline services. The NCC may recommend that the coverage of the covered pipeline be only partly revoked. The relevant Minister may make a determination that revokes coverage of different parts of the covered pipeline to those parts in relation to which the NCC recommended coverage be revoked.~~

~~107. Principles governing the making of a coverage revocation determination or decision not to do so~~

~~(1) In deciding whether to make a coverage revocation determination under this Division, the relevant Minister—~~

~~(a) must give effect to the pipeline coverage criteria; and~~

~~(b) in deciding whether or not the pipeline coverage criteria are satisfied in relation to the pipeline—~~

~~(i) must have regard to the national gas objective; and~~

~~(ii) must have regard to the coverage revocation recommendation; and~~

~~(iii) must take into account any submissions or comments he or she receives on a request under section 106(4); and~~

~~(iv) may take into account any relevant submissions and comments made to the NCC by the public under the Rules in relation to the application.~~

~~(2) The relevant Minister gives effect to the pipeline coverage criteria as follows:~~

~~(a) if the relevant Minister is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline—the Minister must not make a coverage revocation determination;~~

~~(b) if the relevant Minister is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline—the Minister must make a coverage revocation determination.~~

~~108. Operation and effect of coverage revocation determination~~

~~The pipeline the subject of a coverage revocation determination ceases to be a covered pipeline when the coverage revocation determination takes effect.~~

~~Part 2 — Light regulation of covered pipeline services~~

~~Division 1 — Making of light regulation determinations~~

~~Subdivision 1 — Decisions when pipeline is not a covered pipeline~~

~~109. Application of Subdivision~~

~~This Subdivision applies if —~~

~~(a) an application has been made under section 92 for a coverage determination; and~~

~~(b) the pipeline the subject of the application is not a designated pipeline.~~

~~110. NCC's decision on light regulation of pipeline services~~

~~(1) The NCC must decide whether to make a determination that the pipeline services provided or to be provided by means of the pipeline are light regulation services (a ***light regulation determination***).~~

~~(2) The NCC must make its decision under subsection (1) —~~

~~(a) at the same time as it makes the coverage recommendation; and~~

~~(b) within the time it must make the coverage recommendation.~~

~~(3) A light regulation determination or a decision not to make a light regulation determination must —~~

~~(a) be made in accordance with this Law and the Rules; and~~

~~**Note—**~~

~~For example, see section 122.~~

~~(b) be attached to the coverage recommendation; and~~

~~(c) contain the information required by the Rules.~~

~~**Note—**~~

~~If the NCC makes a light regulation determination, and the relevant Minister makes the coverage determination, the service provider may submit a limited access arrangement in respect of the light regulation services to the AER for approval: see section 116.~~

~~Subdivision 2 — Decisions when pipeline is a covered pipeline~~

~~111. Application of Subdivision~~

~~This Subdivision applies if a service provider provides pipelines services —~~

(a) by means of a covered pipeline that is not a designated pipeline; and

(b) to which an applicable access arrangement approved or made under a full access arrangement decision applies.

112. Application

(1) A service provider may apply to the NCC for a determination that pipeline services provided by the service provider by means of a covered pipeline be light regulation services (a ***light regulation determination***).

(2) An application must —

(a) be in accordance with the Rules; and

(b) contain the information required by the Rules.

(3) An application may only be made in respect of all of the pipeline services provided by means of the covered pipeline.

113. Application to be dealt with in accordance with the Rules

On receiving an application under section 112, the NCC must deal with it in accordance with the Rules.

114. NCC's decision on light regulation of pipeline services

(1) The NCC must decide whether to make a light regulation determination within —

(a) 4 months after receiving an application under section 112; or

(b) if the Rules specify a later period, that period.

(2) A light regulation determination or a decision not to make a light regulation determination must —

(a) be made in accordance with this Law and the Rules; and

Note—

For example, see section 122.

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules.

Note—

If the NCC makes a light regulation determination, the service provider may submit a limited access arrangement in respect of the light regulation services to the AER for approval: see section 116.

~~Subdivision 3 — Operation and effect of light regulation determinations~~

~~115. When light regulation determinations take effect~~

~~(1) A light regulation determination takes effect —~~

~~(a) in the case of a light regulation determination made under Subdivision 1 — on the day the relevant coverage determination takes effect;~~

~~(b) in the case of a light regulation determination made under Subdivision 2 — 60 business days after the light regulation determination is made.~~

~~(2) A light regulation determination continues in operation until —~~

~~(a) it is revoked by operation of section 117(5); or~~

~~(b) a decision under section 119(2) or 120 takes effect; or~~

~~(c) it is revoked by operation of section 123(2); or~~

~~(d) it is revoked by operation of section 124.~~

~~116. Submission of limited access arrangement for light regulation services~~

~~(1) A service provider may, in respect of light regulation services the service provider provides or intends to provide, submit a limited access arrangement to the AER for approval by the AER under the Rules.~~

~~(2) If the service provider chooses to submit a limited access arrangement in accordance with subsection (1), the limited access arrangement must —~~

~~(a) be submitted in accordance with the Rules; and~~

~~(b) contain the information required by the Rules.~~

~~(3) A service provider must submit to the AER, for approval by the AER under the Rules, revisions to an applicable access arrangement that is a limited access arrangement and that applies to the light regulation services the provider provides —~~

~~(a) in accordance with the Rules; and~~

~~(b) within the period specified by the Rules.~~

~~Division 2 — Revocation of light regulation determinations~~

~~Subdivision 1 — On advice from service providers~~

~~117. Advice by service provider that light regulation services should cease to be light regulation services~~

~~(1) A service provider may advise the NCC that it wishes that the pipeline services it provides cease to be light regulation services.~~

~~(2) An advice under subsection (1) must be in writing.~~

~~(3) On receiving an advice under subsection (1), the NCC must, without delay, publish notice of receipt of that advice on its website.~~

~~(4) On publication of a notice under subsection (3) the service provider must comply with section 132.~~

~~(5) The light regulation determination applying to the pipeline services is, by force of this section, revoked on the same day that an access arrangement that applies to the pipeline services provided by that service provider is, as the case requires, approved or made under a full access arrangement decision.~~

~~(6) On the revocation of the light regulation determination the pipeline services to which the light regulation determination applied cease to be light regulation services.~~

~~*[Section 117 amended: see SA Act No. 3 of 2021 s. 43 and WA Gazette 22 Jan 2025 p. 63-4.]*~~

~~Subdivision 2 — On application by persons other than service providers~~

~~118. Application (other than by service provider) for revocation of light regulation determinations~~

~~(1) A person (other than the service provider who provides light regulation services) may apply to the NCC for the revocation of a light regulation determination relating to those services.~~

~~(2) An application under subsection (1) must —~~

~~(a) be in accordance with the Rules; and~~

~~(b) contain the information required by the Rules.~~

119. Decisions on applications made around time of applications for coverage revocation determinations

(1) This section applies if an application is made under section 118 and —

(a) there is an application for a coverage revocation determination under section 102 under consideration —

(i) in respect of the covered pipeline by means of which the light regulation services the subject of the application under section 118 are provided; and

(ii) in respect of which the NCC has not made a coverage revocation recommendation; or

(b) an application for a coverage revocation determination is made under section 102 in respect of the covered pipeline by means of which the light regulation services the subject of the application under section 118 are provided —

(i) after the application under section 118; but

(ii) before the NCC makes its decision in respect of the application under section 118.

(2) Despite anything to the contrary in this Part, the NCC must make its decision in respect of the application under this section.

(3) On receiving the application under section 118, the NCC must decide whether to revoke the light regulation determination.

(4) The NCC must make its decision under subsection (3) —

(a) at the same time as it makes the coverage revocation recommendation; and

(b) within the time it must make the coverage revocation recommendation.

(5) A decision under subsection (3) must —

(a) be made in accordance with this Law and the Rules; and

Note—

For example, see section 122.

(b) be attached to the coverage revocation recommendation; and

(c) contain the information required by the Rules.

120. NCC decision on application where no application for a coverage revocation recommendation

(1) This section applies if —

(a) an application is made under section 118; and

(b) no application for a coverage revocation determination in respect of the covered pipeline (by means of which the light regulation services the subject of the application under section 118) are provided is made before the NCC makes its decision in respect of the application under section 118.

(2) Subject to this section, on receiving an application under section 118 the NCC must deal with it in accordance with the Rules.

(3) The NCC must decide whether to revoke a light regulation determination within —

(a) 4 months after receiving an application under section 118; or

(b) if the Rules specify a later period, that period.

(4) A decision under this section must —

(a) be made in accordance with this Law and the Rules; and

Note—

For example, see section 122.

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules.

121. Operation and effect of decision of NCC under this Division

(1) Subject to section 124, on the making of a decision under section 119(2) or 120 revoking a light regulation determination, the service provider must comply with section 132.

(2) However, the decision under section 119(2) or 120 revoking a light regulation determination does not take effect until an access arrangement that applies to the pipeline services provided by that service provider is approved or made under a full access arrangement decision.

(3) The effect of a decision under section 119(2) or 120 revoking a light regulation determination is that the pipeline services to which the light regulation determination applied cease to be light regulation services.

~~Division 3 — Principles governing light regulation determinations~~

~~122. Principles governing the making or revoking of light regulation determinations~~

~~(1) In deciding whether to make a light regulation determination under Division 1 or to revoke a light regulation determination under Division 2, the NCC must consider —~~

~~(a) the likely effectiveness of the forms of regulation provided for under this Law and the Rules to regulate the provision of the pipeline services (the subject of the application) to promote access to pipeline services; and~~

~~(b) the effect of the forms of regulation provided for under this Law and the Rules on —~~

~~(i) the likely costs that may be incurred by an efficient service provider; and~~

~~(ii) the likely costs that may be incurred by efficient users and efficient prospective users; and~~

~~(iii) the likely costs of end users.~~

~~Note—~~

~~The forms of regulation provided for under this Law and the Rules to regulate the provision of the pipeline services by means of a covered pipeline are —~~

~~(a) making a light regulation determination so that those services become light regulation services;~~

~~(b) not making a light regulation determination so that those services are regulated under a full access arrangement decision that approves or makes the applicable access arrangement that applies to those services.~~

~~(2) In doing so, the NCC —~~

~~(a) must have regard to the national gas objective; and~~

~~(b) must have regard to the form of regulation factors; and~~

~~(c) may have regard to any other matters it considers relevant.~~

~~Division 4 — Revocation if coverage determination not made~~

~~123. Light regulation determination revoked if coverage determination not made~~

~~(1) This section applies if —~~

~~(a) a light regulation determination has been made in respect of pipeline services; but~~

(b) the pipeline by means of which those services will be provided does not become a covered pipeline because the relevant Minister, contrary to a coverage recommendation recommending coverage, makes a decision not to make a coverage determination.

(2) The light regulation determination is, by force of this section, revoked on the same day as the relevant Minister's decision not to make a coverage determination takes effect.

Division 5 — Effect of pipeline ceasing to be covered pipeline

124. Light regulation services cease to be such services on cessation of coverage of pipeline

If a pipeline by means of which light regulation services are provided ceases to be a covered pipeline because of a coverage revocation determination —

(a) the light regulation determination applying to the light regulation services provided by means of that pipeline is, by force of this section, revoked on the same day the coverage revocation determination takes effect; and

(b) to avoid doubt, the light regulation services to which that determination applied cease to be light regulation services on the same day.

Division 6 — AER reviews into designated pipelines

125. AER reviews

(1) The MCE may request the AER to conduct a review into, and report to it as to, whether a pipeline should continue to be a designated pipeline.

(2) A service provider that provides pipeline services by means of a designated pipeline may request the AER to conduct a review into, and report to the MCE as to, whether that pipeline should continue to be a designated pipeline.

(3) A request under subsection (1) or (2) must be in writing.

(4) On receiving a request under this section, the AER must conduct a review as to whether the pipeline the subject of the request should continue to be a designated pipeline.

(5) In conducting a review under this section, the AER must —

(a) have regard to —

(i) the national gas objective; and

(ii) whether there has been a material change in competition in a market served by the designated pipeline; and

(b) consult, in accordance with the Rules, with the public.

(6) On the completion of a review under this section, the AER must prepare a report and —

(a) give the report to the MCE; and

(b) publish the report on its website.

(7) The AER must also give a copy of the report to the service provider that has requested the review.

Part 3 — Coverage of pipelines the subject of tender process

126. Tender approval pipelines deemed to be covered pipelines

(1) A pipeline to which a tender approval decision relates is deemed to be a covered pipeline on and from the date the tender approval decision becomes irrevocable by operation of the Rules.

(2) The pipeline ceases to be a covered pipeline —

(a) if there is an applicable access arrangement that applies to the pipeline services provided, or that are to be provided by means of that pipeline — when that arrangement expires; or

(b) when a coverage revocation determination made in respect of that pipeline takes effect.

Note—

Under the Rules, the NCC will —

(a) classify the pipeline to be constructed and operated in accordance with an approved tender process as a cross boundary transmission pipeline, cross boundary distribution pipeline, transmission pipeline or distribution pipeline; and

(b) determine the relevant Minister for the purposes of that pipeline.

Part 4 — Coverage following approval of voluntary access arrangement

127. Certain pipelines become covered pipelines on approval of voluntary access arrangement

(1) This section applies if —

(a) a service provider voluntarily submits to the AER for approval by the AER, under the Rules, a full access arrangement that will apply to the pipeline services provided, or that are to be provided, by means of a pipeline; and

(b) that pipeline is not a covered pipeline.

(2) The pipeline is deemed to be a covered pipeline on the day the voluntarily submitted full access arrangement takes effect as an applicable access arrangement.

(3) The pipeline ceases to be a covered pipeline —

(a) when the applicable access arrangement that applies to the pipeline services provided, or that are to be provided, expires; or

(b) when a coverage revocation determination is made in respect of that pipeline takes effect.

Note—

Under the Rules, the NCC will —

(a) classify the pipeline (by means of which the pipeline services to which the arrangement relates are provided) as a cross boundary transmission pipeline, cross boundary distribution pipeline, transmission pipeline or distribution pipeline; and

(b) determine the relevant Minister for the purposes of that pipeline.

Part 5 — Reclassification of pipelines

128. Service provider may apply for reclassification of pipeline

(1) A service provider may, in respect of a pipeline by means of which the service provider provides pipeline services, apply to the NCC for the pipeline to be reclassified as —

(a) if the pipeline is a transmission pipeline — a distribution pipeline; or

(b) if the pipeline is a distribution pipeline — a transmission pipeline.

(2) The application must be accompanied by the fee prescribed by the Regulations (if any).

129. Reclassification decision

(1) The NCC must make a decision (a ***reclassification decision***) within —

(a) 4 months after receiving an application under section 128; or

(b) if the Rules specify a later period, that period.

(2) A reclassification decision must —

(a) be made in accordance with this Law and the Rules; and

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules.

(3) In making a reclassification decision, the NCC must have regard to —

(a) the national gas objective; and

(b) the pipeline classification criterion.

(4) The NCC must also as part of the reclassification decision —

(a) if it reclassifies the pipeline the subject of the application as a transmission pipeline — determine whether the transmission pipeline is also a cross boundary transmission pipeline;

(b) if it reclassifies the pipeline the subject of the application as a distribution pipeline — determine whether the distribution pipeline is also a cross boundary distribution pipeline.

(5) If, under subsection (4), the NCC determines that a pipeline reclassified as a distribution pipeline is also a cross boundary distribution pipeline, the NCC must determine the participating jurisdiction with which the cross boundary distribution pipeline is most closely connected. In doing so, the NCC must have regard to the jurisdictional determination criteria.

130. Effect of reclassification decision

On the making of a reclassification decision —

(a) the pipeline is, in accordance with the decision, reclassified as either a transmission pipeline or distribution pipeline; and

(b) the relevant Minister in respect of the pipeline is the relevant Minister as provided under this Law.

Chapter 4 — General requirements for provision of [*4]~~covered~~ pipeline services

[*4]Part A1—Preliminary

130—Application of this Chapter

(1) This Chapter applies in relation to scheme pipelines and non-scheme pipelines.

(2) Also, this Chapter, or a provision of this Chapter, applies to a person other than a service provider as if a reference in the Chapter or provision to a service provider were a reference to the person—

(a) if—

(i) this Chapter, or the provision, is prescribed by the Regulations for the purposes of this subsection; and

(ii) the person—

(A) is prescribed by the Regulations for the purposes of this subsection; or

(B) is a member of a class of persons prescribed by the Regulations for the purposes of this subsection; and

(b) subject to any modifications prescribed by the Regulations for the purposes of this subsection.

Part 1 — General duties for provision of pipeline services by [*4]~~covered~~ pipelines

131. [*4]Service provider must be legal entity of a specified kind to provide pipeline services~~Service provider must be legal entity of a specified kind to provide pipeline services by covered pipeline~~

[*4]A service provider must not provide a pipeline service by means of a pipeline unless ~~A covered pipeline service provider must not provide a pipeline service by means of a covered pipeline unless~~ the service provider is—

(a) a legal entity registered under the *Corporations Act 2001* of the Commonwealth; or

(b) a foreign company; or

(c) a corporation established by or under a law of this jurisdiction or another participating jurisdiction, whether

or not that corporation has been established for a public purpose; or

(d) the Crown in right of this jurisdiction or another participating jurisdiction; or

(e) a person referred to in paragraph (a) to (d) and that person provides a pipeline service by means of a [*4]~~covered~~ pipeline together with another person referred to in paragraph (a) to (d).

[*4]~~132. Submission of full access arrangement or revisions to applicable full access arrangements~~

~~(1) A covered pipeline service provider must submit to the AER, for approval by the AER under the Rules, a full access arrangement or revisions to an applicable access arrangement that is a full access arrangement, in respect of the pipeline services the provider provides or intends to provide —~~

~~(a) in the circumstances specified by the Rules; and~~

~~(b) within the period of time specified by the Rules.~~

~~(2) Subsection (1) does not apply —~~

~~(a) if the pipeline services that are, or are intended to be, provided by the service provider light regulation services; or~~

~~(b) to the extent the Rules provide subsection (1) is not to apply.~~

~~**Note—**~~

~~A service provider who provides or intends to provide pipeline services by means of an international pipeline to which a price regulation applies must submit a limited access arrangement to the AER for approval: see section 168.~~

133. Preventing or hindering access

(1) A person who is—

(a) a [*4]~~covered pipeline~~ service provider; or

(b) a person who—

(i) is a party to an agreement with a service provider relating to a pipeline service provided by means of a [*4]~~covered~~ pipeline; or

(ii) as a result of an access determination is entitled to a pipeline service provided by means of a [*4]~~covered~~ pipeline; or

(c) an associate of a service provider or a person referred to in paragraph (b),

must not engage in conduct for the purpose of preventing or hindering the access of another person to a pipeline service provided by means of [*4]the pipeline ~~the covered pipeline~~.

(2) For the purposes of subsection (1), a person is deemed to engage in conduct for a particular purpose if—

(a) the conduct is or was engaged in for that purpose or for a purpose that includes, or included, that purpose; and

(b) that purpose is or was a substantial purpose.

(3) A person may be taken to have engaged in conduct for the purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

(4) Subsection (3) does not limit the manner in which the purpose of a person may be established for the purpose of subsection (1).

[*4](5) In this section—

(a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including the following—

(i) refusing to supply a pipeline service;

(ii) without reasonable grounds, limiting or disrupting a pipeline service;

(iii) making, or giving effect to a provision of a contract or arrangement, arriving at, or giving effect to, a provision of an understanding, or requiring the giving of, or giving, a covenant; and

(b) a reference to refusing to do an act includes a reference to—

(i) refraining (otherwise than inadvertently) from doing that act; or

(ii) making it known that that act will not be done.

~~(5) In this section—~~

~~(a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including refusing to~~

~~supply a pipeline service or, without reasonable grounds, limiting or disrupting a pipeline service, or making, or giving effect to, a provision of, a contract or arrangement, arriving at, or giving effect to, a provision of, an understanding or requiring the giving of, or giving, a covenant;~~

~~(b) a reference to refusing to do an act includes a reference to —~~

~~(i) refraining (otherwise than inadvertently) from doing that act; or~~

~~(ii) making it known that that act will not be done.~~

(6) Subsection (1) does not apply to conduct engaged in in accordance with an agreement, if the agreement was in force on 30 March 1995.

Example—

An example of conduct which may be prohibited if the requisite purpose is established is refusing to supply, or limiting or disrupting the supply of, a pipeline service to a user or prospective user for technical or safety reasons without reasonable grounds.

[*4]~~**134. Supply and haulage of natural gas**~~

~~(1) If a producer states terms and conditions (whether or not including the price) (***the first terms***) on which the producer offers to supply natural gas through a covered pipeline that is in operation at the time of the offer to a person at a place other than the exit flange of the producer's processing plant, the producer must, on request by the person, state terms and conditions (including the price, if the price was included in the first terms) (***the second terms***) on which the producer will supply natural gas to the person at the exit flange.~~

~~(2) If there is a difference in the price stated in the first terms and the second terms, the producer must include in the second terms a statement of the reasons for the difference.~~

~~(3) If the producer offers to supply natural gas to a person at a place other than the exit flange of the producer's processing plant, the producer must, on request, offer to supply the gas at the exit flange on the terms and conditions (including price) stated in accordance with this section.~~

[*4]135—Service provider must comply with queuing requirements

A service provider must comply with the queuing requirements of an applicable access arrangement or the Rules.

~~**135. Covered pipeline service provider must comply with queuing requirements**~~

~~A covered pipeline service provider must comply with the queuing requirements of an applicable access arrangement.~~

[*4]136—Compliance with pipeline interconnection principles

[*4M*]A ~~Subject to section 91BF, a~~ service provider must comply with the principles relating to the interconnection of pipelines and facilities (the ***pipeline interconnection principles***) specified in the Rules.

136A—Prohibition against increasing charges to subsidise particular development

(1) This section applies to a service provider for a transmission [*4M*]pipeline.~~pipeline, other than a pipeline within a declared transmission system.~~

(2) The service provider must not increase a charge for a pipeline service payable by an existing user to the service provider to subsidise the development of an extension, or expansion of the capacity, of the pipeline.

(3) However, subsection (2) does not apply to a service provider if the service provider is exempt from complying with subsection (2) under the Rules.

(4) Nothing in this section prevents a service provider from charging an existing user of the service provider for pipeline services provided by means of an extension, or expansion of the capacity, of a pipeline.

136B—Prohibition on bundling of services

A service provider must not make it a condition of the provision of a particular pipeline service to a prospective user that the prospective user accept another service from the service provider unless the bundling of the services is reasonably necessary.

136C—Service providers must publish prescribed transparency information

(1) A service provider must—

(a) publish the information relating to pipelines and pipeline services specified in the Rules made for the purposes of this paragraph (the ***prescribed transparency information***); and

(b) ensure the prescribed transparency information is published in accordance with the Rules.

(2) However, subsection (1) does not apply to a service provider if the service provider is exempt from complying with subsection (1) under the Rules.

~~**136. Covered pipeline service provider providing light regulation services must not price discriminate**~~

~~(1) A covered pipeline service provider must not engage in price discrimination when providing light regulation services.~~

~~(2) Subsection (1) does not apply if the covered pipeline service provider engages in price discrimination that is conducive to efficient service provision.~~

Part 2 — Structural and operational separation requirements (ring fencing)

Division 1 — Interpretation

137. Definitions

In this Part—

additional ring fencing requirement has the meaning given by section 143(1);

[*4]~~***compliance date*** means the date that is 6 months after the date a pipeline becomes a covered pipeline;~~

marketing staff has the meaning given by section 138;

related business means the business of producing, purchasing or selling natural gas or processable gas, but does not include

purchasing or selling of natural gas or processable gas to the extent necessary—

(a) for the safe and reliable operation of a [*4]~~covered~~ pipeline; or

(b) to enable a service provider to provide balancing services in connection with a [*4]~~covered~~ pipeline.

138. Meaning of marketing staff

(1) A person is marketing staff of—

(a) a [*4]~~covered pipeline~~ service provider, if the person—

(i) is an officer, employee, consultant or independent contractor or agent of the [*4]~~covered pipeline~~ service provider; and

(ii) is directly involved in the sale, marketing or advertising of pipeline services (whether or not the person is also involved in other activities);

(b) an associate of a [*4]~~covered pipeline~~ service provider, if the person—

(i) is an officer, employee, consultant or independent contractor or agent of the associate; and

(ii) is directly involved in the sale, marketing or advertising of pipeline services (whether or not the person is also involved in other activities).

(2) A person is not marketing staff of a [*4]~~covered pipeline~~ service provider, or an associate of a [*4]~~covered pipeline~~ service provider, if—

(a) the person's function or role (as an officer, employee, consultant or independent contractor or agent of a [*4]~~covered pipeline~~ service provider, or an associate of a [*4]~~covered pipeline~~ service provider) is only to provide technical, administrative, legal and accounting services to that provider or associate; or

(b) the sale, marketing or advertising of pipeline services is only an incidental part of the person's function or role (as an officer, employee, consultant or independent contractor or agent of a [*4]~~covered pipeline~~ service provider, or an associate of a [*4]~~covered pipeline~~ service provider).

[*4]**Example—**

A person in the position of general manager of marketing of a service provider or an associate of a service provider would be marketing staff whereas a person in the position of chief executive officer, or chief financial officer, of a service provider or an associate of a service provider would not be marketing staff.

~~**Example—**~~

~~A person in the position of general manager of marketing of a covered pipeline service provider or an associate of a covered pipeline service provider would be marketing staff whereas a person in the position of chief executive officer, or chief financial officer, of a covered pipeline service provider or an associate of a covered pipeline service provider would not be marketing staff.~~

Division 2 — Minimum ring fencing requirements

139. Carrying on of related businesses prohibited

[*4]A ~~On and after the compliance date, a covered pipeline~~ service provider must not carry on a related business.

140. Marketing staff and the taking part in related businesses

(1) [*4]A ~~On and after the compliance date, a covered pipeline~~ service provider must ensure that none of its marketing staff are officers, employees, consultants, independent contractors or agents of an associate of [*4]the ~~the covered pipeline~~ service provider that takes part in a related business.

(2) [*4]A ~~On and after the compliance date, a covered pipeline~~ service provider must ensure that none of its officers, employees, consultants, independent contractors or agents are marketing staff of an associate of [*4]the ~~the covered pipeline~~ service provider that takes part in a related business.

141. Accounts that must be prepared, maintained and kept

[*4]A ~~On and after the compliance date, a covered pipeline~~ service provider must prepare, maintain and keep—

(a) separate accounts in respect of pipeline services provided by means of every [*4]pipeline owned, operated or controlled by the ~~covered pipeline owned, operated or controlled by the covered pipeline~~ service provider; and

(b) a consolidated set of accounts in respect of the whole of the business of the [*4]~~covered pipeline~~ service provider.

Division 3 — Additional ring fencing requirements

142. Division does not limit operation of Division 2

This Division does not limit Division 2.

143. AER ring fencing determinations

(1) Subject to this Division and subject to and in accordance with the Rules, the AER may make a determination requiring a [*4]service provider or associate of a ~~covered pipeline service provider or associate of a covered pipeline~~ service provider named in the determination to do, or refrain from doing, a thing specified in the determination (an ***additional ring fencing requirement***).

(2) In specifying an additional ring fencing requirement the AER must have regard to the following principles:

[*4](a) in the case where 1 part of the business of a service provider (***business unit A***) is providing pipeline services to another part of the business of the service provider (***business unit B***), the service provider must ensure that business unit A provides the pipeline services to business unit B as if business unit B were a separate unrelated entity;

(b) in the case where a service provider is providing pipeline services to an associate of the service provider, the service provider must ensure that those services are provided as if the associate of the service provider were a separate unrelated entity;

(c) users and prospective users should have sufficient information in order to understand whether a service provider is complying with paragraph (a) or (b).

~~(a) in the case where 1 part of the business of a covered pipeline service provider (***business unit A***) is providing pipeline services to another part of the business of the covered pipeline service provider (***business unit B***), the covered pipeline service provider must ensure that business unit A provides the pipeline services to business unit B as if business unit B were a separate unrelated entity;~~

~~(b) in the case where a covered pipeline service provider is providing pipeline services to an associate of the service provider, the covered pipeline service provider must~~

~~ensure that those services are provided as if the associate of the covered pipeline service provider were a separate unrelated entity;~~

~~(c) users and prospective users should have sufficient information in order to understand whether a covered pipeline service provider is complying with paragraph (a) or (b).~~

(3) The AER must—

(a) notify, in writing, the [*4]~~covered pipeline~~ service provider or associate named in the AER ring fencing determination of the making of that determination; and

(b) give the [*4]~~covered pipeline~~ service provider or associate a copy of the AER ring fencing determination.

(4) An AER ring fencing determination must specify the date on and after which the [*4]service provider or associate of a ~~covered pipeline service provider or associate of a covered pipeline~~ service provider must do, or refrain from doing, a thing specified in the determination (a ***notified compliance date***).

(5) A notified compliance date must not be a date that is earlier than 10 business days after the date the [*4]service provider or associate of a ~~covered pipeline service provider or associate of a covered pipeline~~ service provider is given a copy of the AER ring fencing determination.

(6) A [*4]service provider or associate of a ~~covered pipeline service provider or associate of a covered pipeline~~ service provider must comply with every additional ring fencing requirement specified in an AER ring fencing determination on and after the notified compliance date.

144. AER to have regard to likely compliance costs of additional ring fencing requirements

In making an AER ring fencing determination the AER must have regard to the likely costs that may be incurred by, as the case requires—

(a) an efficient [*4]~~covered pipeline~~ service provider; or

(b) an efficient associate of a [*4]~~covered pipeline~~ service provider,

in complying with an additional ring fencing requirement specified in the determination.

145. Types of ring fencing requirements that may be specified in an AER ring fencing determination

Without limiting what may be specified as an additional ring fencing requirement, the AER, in an AER ring fencing determination, may [*4]require a ~~require a covered pipeline~~ service provider to—

(a) ensure that its business and business activities are conducted, structured and arranged in the particular manner specified;

[*4]**Example 1—**

An AER ring fencing determination may require the service provider to ensure that persons employed or engaged by the service provider in relation to the provision of pipeline services are not also associates, or employed by associates, of the service provider that take part in a related business and how this must be effected.

Example 2—

An AER ring fencing determination may require the service provider to put in place electronic, physical and procedural security measures in respect of the offices and computer systems of the service provider, and of the offices and computer systems of its associates, so that certain specified employees or persons engaged by the service provider do not have access to certain specified information.

~~**Example 1—**~~

~~An AER ring fencing determination may require the covered pipeline service provider to ensure that persons employed or engaged by the covered pipeline service provider in relation to the provision of pipeline services are not also associates, or employed by associates, of the covered pipeline service provider that take part in a related business and how this must be effected.~~

~~**Example 2—**~~

~~An AER ring fencing determination may require the covered pipeline service provider to put in place electronic, physical and procedural security measures in respect of the offices and computer systems of the covered pipeline service provider, and of the offices and computer systems of its associates, so that certain specified employees or persons engaged by the covered pipeline service provider do not have access to certain specified information.~~

(b) in a specified manner, disclose, to the AER and to the public, specified information in a specified manner about its business operations, structure and arrangements, and its business activities.

~~[*4]Division 4 — AER ring fencing exemptions~~

~~**146. Exemptions from minimum ring fencing requirements**~~

~~(1) A covered pipeline service provider may, in accordance with the Rules, apply to the AER for an exemption from —~~

~~(a) the requirement under section 139; or~~

~~(b) a requirement under section 140; or~~

~~(c) the requirement under section 141.~~

~~(2) On receiving an application under subsection (1), the AER, subject to and in accordance with the Rules, may exempt a covered pipeline service provider from —~~

~~(a) the requirement under section 139; or~~

~~(b) a requirement under section 140; or~~

~~(c) the requirement under section 141.~~

Division [*4]4~~5~~ — Associate contracts

147. Service provider must not enter into or give effect to associate contracts that have anti-competitive effect

A [*4]~~covered pipeline~~ service provider must not—

(a) enter into an associate contract that has; or

(b) vary an associate contract so that contract, as varied, has; or

(c) give effect to a provision of an associate contract that has,

the purpose, or would have or be likely to have the effect, of substantially lessening competition in a market for natural gas services unless—

(d) that associate contract is an approved associate contract; or

(e) that provision is contained in an approved associate contract.

148. Service provider must not enter into or give effect to associate contracts inconsistent with competitive parity rule

(1) A [*4]~~covered pipeline~~ service provider must not—

(a) enter into an associate contract that is; or

(b) vary an associate contract so that contract, as varied, is; or

(c) give effect to a provision of an associate contract that is,

inconsistent with the competitive parity rule unless—

(d) that associate contract is an approved associated contract; or

(e) that provision is contained in an approved associate contract.

(2) For the purposes of subsection (1), and any Rules made for the purposes of that subsection, the competitive parity rule is the rule that a [*4]service provider must ensure that any pipeline services that the service provider provides to an associate of the ~~covered pipeline service provider must ensure that any pipeline services that the covered pipeline service provider provides to an associate of the covered pipeline~~ service provider are provided to that associate as if that associate were a separate unrelated entity.

[*4]Division 5—Exemptions from particular requirements

148A—Exemptions from particular requirements

The Rules may make provisions with respect to exemptions from the requirements under section 139, 140, 141, 147 or 148.

Part 3—Negotiation of access

148B—Definition

In this Part—

relevant pipeline service means a pipeline service provided, or to be provided, by means of a pipeline and includes a pipeline service provided, or to be provided, by an extension to, or expansion of the capacity of, a pipeline.

148C—Access proposals

A service provider must comply with the Rules relating to access to a relevant pipeline service made for the purposes of this section.

148D—Duty to negotiate in good faith

A user or prospective user seeking access to a relevant pipeline service and the service provider for the service must negotiate in good faith with each other about—

(a) whether access can be granted to the user or prospective user; and

(b) if access is to be granted—the terms and conditions for the provision of access to the user or prospective user.

Part 4—AER reviews about application of this Chapter

148E—AER reviews about application of this Chapter

(1) The MCE may request the AER to conduct a review into, and report to it as to, whether this Chapter, or a provision of this Chapter, should apply to any person or class of persons to whom the Chapter or provision does not currently apply.

(2) A request under subsection (1) must be in writing.

(3) On receiving a request under this section, the AER must conduct the review.

(4) In conducting a review under this section, the AER must—

(a) have regard to—

(i) the national gas objective; and

(ii) the effect the application of this Chapter, or a provision of this Chapter, to another person or class of persons would have on—

(A) the promotion of access to pipeline services and any other benefits that may be associated with the application; and

(B) the costs that are likely to be incurred by the person or class of persons if they were operating efficiently; and

(b) consult, in accordance with the Rules, with the public.

(5) On the completion of a review under this section, the AER must prepare a report and—

(a) give the report to the MCE; and

(b) publish the report on its website.

[*4]Chapter 5—Access disputes

Part 1—Interpretation and application

149—Definitions

In this Chapter—

access dispute pipeline, in relation to an access dispute, means the pipeline the subject of the dispute;

dispute hearing means a hearing conducted by the relevant adjudicator for an access dispute for the purpose of making an access determination in relation to the dispute;

party, in relation to an access dispute, has the meaning given by section 154.

150—Application of this Chapter to disputes arising under the Rules

(1) The provisions of this Chapter applicable to the determination of an access dispute apply to the determination of any dispute arising under any provision of the Rules specified in the Rules for the purposes of this section.

(2) This section applies subject to any modification of the provisions of this Chapter specified in the Rules.

151—Chapter does not limit how disputes about access may be raised or dealt with

This Chapter does not limit how a dispute about access to a pipeline service may be raised or dealt with.

Part 2—Notice of access dispute and other provisions

Division 1—Notice of access dispute

152—Notice of access dispute

(1) This section applies if there is an access dispute between a user or prospective user and a service provider.

(2) The user, prospective user or service provider may give a notice in writing to the following entity that the access dispute exists—

(a) for a scheme pipeline access dispute—the dispute resolution body;

(b) for a non-scheme pipeline access dispute—the AER.

(3) A notice given under subsection (2) must—

(a) include information about—

(i) the matters (if any) on which agreement has been reached; and

(ii) the matters that are in dispute; and

(iii) any other matter specified by the Rules; and

(b) be accompanied by—

(i) if an access dispute is a scheme pipeline access dispute—the fee prescribed by the Regulations (if any); or

(ii) if an access dispute is a non-scheme pipeline access dispute—the fee set by the AER from time to time and specified on the AER's website; and

(c) be given to any other party to any negotiations that gave rise to the dispute as soon as practicable after it is given to the dispute resolution body or AER; and

(d) be dealt with in accordance with the Rules.

(4) The user, prospective user, or service provider may not give a notice under subsection (2) if the dispute relates to a matter excluded from the operation of this Chapter by the Rules.

[*4M*]152A. ERA must provide information relevant to scheme pipeline access dispute to WA arbitrator

(1) If the WA arbitrator receives a notice of a scheme pipeline access dispute under section 152(2)(a)—

(a) the WA arbitrator must inform the ERA that a notice of the dispute has been received; and

(b) the WA arbitrator may request the ERA to give the WA arbitrator any information in the ERA's possession that is relevant to the dispute.

(2) If the WA arbitrator requests information, the ERA must give the WA arbitrator the information requested, whether or not it is confidential and whether or not it came into the ERA's possession for the purposes of resolving the dispute.

(3) If the ERA gives the WA arbitrator information that is confidential, the ERA must identify the nature and extent of the confidentiality and the WA arbitrator must treat the information accordingly.

153—Withdrawal of notice

Subject to the Rules, a notice given under section 152 may be withdrawn—

(a) in accordance with the Rules; and

(b) at any time before an access determination is made in relation to the dispute.

Division 2—Parties to an access dispute

154—Parties to an access dispute

(1) The parties to an access dispute are—

(a) the parties to any negotiations that gave rise to the access dispute; and

(b) if the dispute resolution body or AER (as the case requires) is of the opinion that the resolution of the access dispute may involve requiring another person to do something and that it is appropriate that the person be joined as a party—that other person; and

(c) if a small shipper is a party and has elected, in accordance with the Rules, for a user association to be joined as a party—the user association; and

(d) if the access dispute is a scheme pipeline access dispute—any other person who applies in writing, in accordance with the Rules, to be made a party and is accepted by the dispute resolution body as having a sufficient interest.

(2) In this section—

user association means an association or body, whether incorporated or not—

(a) the members of which include more than 1 user or prospective user; and

(b) that represents and promotes the interests of those members in relation to the provision of pipeline services.

Part 3—Alternative dispute resolution for access disputes

Division 1—Alternative dispute resolution for scheme pipeline access disputes

155—Dispute resolution body may require parties to engage in alternative dispute resolution

(1) This section applies if the dispute resolution body receives a notice of a scheme pipeline access dispute under section 152.

(2) The dispute resolution body may require the parties to the dispute, in accordance with the Rules, to mediate, conciliate or engage in another alternative dispute resolution process for the purpose of resolving the dispute.

(3) A party must comply with a requirement under subsection (2).

Division 2—Mediation of access disputes involving small shippers

156—Small shipper may elect to have access dispute mediated

A small shipper who is a party to an access dispute may, in accordance with the Rules, elect for the dispute to be resolved by mediation.

157—Appointment of mediator

(1) This section applies if a small shipper makes an election under section 156.

(2) The parties to the access dispute may agree to appoint, in accordance with the Rules, a mediator to resolve the dispute.

(3) If the parties do not agree to the appointment of a mediator within a period specified by the Rules, the AER must—

(a) consult with the parties to the dispute about the appointment of a mediator; and

(b) after consultation, appoint a mediator the AER considers appropriate for the dispute.

(4) A mediator must be a person who—

(a) is independent of the parties to the dispute; and

(b) is properly qualified to act in the resolution of the dispute; and

(c) has no direct or indirect interest in the outcome of the dispute.

(5) If a mediator does not, for any reason, complete a mediation of a dispute, the parties to the dispute may agree to appoint, in accordance with the Rules, an alternative mediator to resolve the dispute.

(6) However, if the parties do not agree to the appointment of an alternative mediator within a period specified by the Rules, the AER must appoint another mediator in the way set out under subsection (3).

(7) If an alternative mediator does not, for any reason, complete a mediation of the dispute, the dispute must be determined by the relevant adjudicator for the dispute under Part 5.

158—Party's lawyer may be present at mediation

A party to a mediation may have a lawyer present at the mediation.

Part 4—Arbitration of non-scheme pipeline access disputes

159—Reference of non-scheme pipeline access dispute to arbitration

(1) This section applies if the AER receives a notice of a non-scheme pipeline access dispute under section 152.

(2) The AER must refer the dispute to arbitration.

(3) The AER must give notice of the referral of an access dispute to arbitration to—

(a) the parties to the access dispute; and

(b) if relevant, any other person who will be a party to the access dispute.

(4) However, this section applies subject to section 156.

160—Appointment of arbitrator

(1) This section applies if a non-scheme pipeline access dispute is referred to arbitration under section 159.

(2) The parties to the access dispute may agree to appoint, in accordance with the Rules, an arbitrator to resolve the dispute.

(3) If the parties do not agree to the appointment of an arbitrator within a period specified by the Rules, the AER must—

(a) consult with the parties to the dispute about the appointment of an arbitrator; and

(b) after consultation, appoint an arbitrator the AER considers appropriate for the dispute.

(4) An arbitrator must be a person who—

(a) is independent of the parties to the dispute; and

(b) is properly qualified to act in the resolution of the dispute; and

(c) has no direct or indirect interest in the outcome of the dispute.

(5) If an arbitrator does not, for any reason, complete an arbitration of a dispute, the parties to the dispute may agree to appoint, in accordance with the Rules, an alternative arbitrator to resolve the dispute.

(6) However, if the parties do not agree to the appointment of an alternative arbitrator within a period specified by the Rules, the AER must appoint another arbitrator in the way set out under subsection (3).

Part 5—Access determination

Division 1—Determination of access disputes generally

161—Determination of access dispute

(1) Unless the relevant adjudicator for an access dispute terminates the access dispute under Part 7, the relevant adjudicator must make a determination on access by the user or prospective user (as the case requires) (including a determination that does not require a service provider to provide access to any pipeline services).

(2) In making an access determination, the relevant adjudicator must comply with this Chapter and the Rules.

(3) An access determination may deal with any matter relating to access by the user or prospective user to the pipeline services specified by the Rules for the purposes of this subsection.

(4) The Rules may also, in connection with the making of an access determination, contain provisions for or with respect to such things as—

(a) the form of any determination; and

(b) the content of any determination, including as to the giving of reasons; and

(c) the time within which a determination must be made; and

(d) the process for making a determination; and

(e) when a determination takes effect; and

(f) the giving of notice of the making of a determination; and

(g) the publication of an access determination and other information related to the determination, including a statement of reasons for making the access determination, relevant financial calculations and any reports.

162—Matters to be taken into account for access disputes

In making an access determination, the relevant adjudicator for an access dispute the subject of the determination must take into account any matters specified in the Rules for the purposes of this section.

163—Restrictions on access determinations

(1) An access determination must not have any of the following effects:

(a) preventing a user from obtaining a sufficient amount of a pipeline service under a contract or previous access determination to be able to meet the user's reasonably anticipated requirements, measured at the time the access dispute was notified;

(b) preventing a user or prospective user from obtaining, by the exercise of a pre-notification right, a sufficient amount of a pipeline service to be able to meet the user's or prospective user's actual requirements;

(c) depriving a person of a relevant protected contractual right.

(2) In this section—

pre-notification right means a right under a contract, or under an access determination, that was in force at the time when the access dispute was notified under section 152;

relevant exclusivity right means an express contractual right that arose on or after 30 March 1995 that—

(a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or

(b) limits or controls a service provider's ability to supply pipeline services to persons who are not parties to the contract,

but does not include a user's contractual right to obtain a certain amount of pipeline services;

relevant protected contractual right means a right under a contract (other than a relevant exclusivity right) that was in force immediately before the notification of an access dispute under section 152.

164—Access determinations and part contributions of capital to fund installations or the construction of new facilities

(1) In making an access determination, the relevant adjudicator for an access dispute the subject of the determination may take into account past contributions of capital to fund installations or the construction of new facilities for the access dispute pipeline.

(2) Without limiting section 74, the Rules may—

(a) specify the matters that the relevant adjudicator must address in making that access determination; and

(b) specify the content of that access determination.

Division 2—Particular provisions relating to scheme pipeline access disputes

165—Access determination must give effect to applicable access arrangement

(1) This section applies subject to sections 161, 164 and 166 and any Rules made for the purposes of this Part.

(2) In making an access determination for a scheme pipeline access dispute, the dispute resolution body must give effect to the applicable access arrangement (the ***relevant applicable access arrangement***)—

(a) applying to the pipeline services provided, or to be provided, by means of the access dispute pipeline; and

(b) in effect at the time the determination is made.

(3) Subsection (2) applies even though the relevant applicable access arrangement may not have been in force when notice of the access dispute was given.

166—Rules may allow determination that varies applicable access arrangement for installation of a new facility

(1) This section applies in relation to an access determination for a scheme pipeline access dispute that requires—

(a) a service provider to install or construct a new facility to expand the capacity of the access dispute pipeline; and

(b) the user or prospective user who is a party to the access dispute to contribute some or all of the capital to fund the installation or construction of the new facility.

(2) Without limiting section 74, the Rules may—

(a) confer a function or power on the dispute resolution body, when making the access determination, to vary the applicable access arrangement; and

(b) specify the matters that the dispute resolution body must address in making the access determination; and

(c) specify the kinds of variations that may be made to the applicable access arrangement; and

(d) specify the content of the access determination.

Part 6—Variation of access determinations

167—Variation of access determination—scheme pipeline disputes

(1) This section applies in relation to an access determination for a scheme pipeline access dispute.

(2) The dispute resolution body may vary the access determination on the application of any party to the determination, but cannot vary the final determination if any other party objects.

Note—

If the parties cannot agree on a variation, a new access dispute can be notified under section 152.

(3) Section 163 applies to a variation under this section as if—

(a) an access dispute arising out of the access determination had been notified when the application was made to the dispute resolution body for the variation of the determination; and

(b) the variation were the making of an access determination in the terms of the varied determination.

168—Variation of access determination—non-scheme pipeline disputes

(1) This section applies in relation to an access determination for a non-scheme pipeline access dispute.

(2) The access determination may be varied by agreement between all parties to the access determination.

(3) The Rules may also contain provisions with respect to seeking variations to an access determination.

(4) The provisions of this Chapter about the arbitration of an access dispute apply with necessary modifications to a proposal under the Rules to vary an access determination or to a dispute arising out of such a proposal.

Part 7—Termination of access dispute

169—Relevant adjudicator may terminate access dispute in particular circumstances

(1) The relevant adjudicator for an access dispute may at any time terminate the access dispute (without making an access determination) if—

(a) the notice of dispute given under section 152 is withdrawn; or

(b) the relevant adjudicator considers that—

(i) the pipeline service the subject of the access dispute could be provided on a genuinely competitive basis by a person other than the service provider or an associate of the service provider; or

(ii) the notice of the access dispute was vexatious; or

(iii) the subject matter of the dispute is trivial, misconceived or lacking in substance; or

(iv) the party who notified the access dispute did not negotiate in good faith; or

(v) a specified dispute termination circumstance has occurred; or

(vi) there is some other good reason why the dispute should be terminated.

(2) Subject to section 163, the relevant adjudicator for an access dispute may also terminate the access dispute (without making an access determination) if the relevant adjudicator considers

that the aspect of access about which there is a dispute is expressly or impliedly dealt with under a contract between the user or prospective user and the service provider.

(3) Furthermore, a relevant adjudicator who is an arbitrator for a non-scheme pipeline access dispute may terminate an arbitration (without making an access determination) if the arbitrator considers that the user or prospective user seeking access is not engaging in the arbitration in good faith.

(4) In this section—

specified dispute termination circumstance means a circumstance specified by the Rules as being a circumstance, the occurrence of which, entitles the relevant adjudicator for an access dispute to terminate the access dispute (without making an access determination).

Part 8—Compliance with access determinations

170—Compliance with access determination

(1) Subject to the Rules and subsection (2)—

(a) a party to a scheme pipeline access dispute in respect of which an access determination is made must comply with the access determination; and

(b) an access determination in relation to a non-scheme pipeline is enforceable as if it were a contract between the parties to the access determination.

Note—

See also Chapter 8 Part 6 in relation to the enforcement of access determinations.

(2) A user or prospective user of a pipeline service to which an access determination relates is not bound to seek access to the service.

(3) However, if a user or prospective user of a pipeline service seeks or obtains access, the user or prospective user is bound by any relevant provision of the access determination.

171—Subsequent service providers bound by access determinations

(1) An access determination applies to every subsequent service provider as if that subsequent service provider were a party to the access dispute in respect of which the access determination was made.

(2) In this section—

subsequent service provider means a service provider (other than the service provider to whom the access determination applies) who provides pipeline services—

(a) the subject of the access dispute; and

(b) in respect of which the access determination was made.

Part 9—Access dispute hearing procedure

172—Part applies subject to any modifications prescribed by the Regulations

This Part applies subject to any modifications prescribed by the Regulations.

173—Fast track resolution process—scheme pipeline access disputes

A scheme pipeline access dispute may be dealt with in accordance with a fast track resolution process under the Rules in the circumstances provided for in the Rules.

174—Hearing to be in private

(1) A dispute hearing is to be in private.

(2) However, if the parties agree, a dispute hearing or part of a dispute hearing may be conducted in public.

(3) The relevant adjudicator for an access dispute the subject of the dispute hearing may give written directions as to the persons who may be present at a dispute hearing that is conducted in private.

(4) In giving directions under subsection (3), the relevant adjudicator must have regard to the wishes of the parties and the need for commercial confidentiality.

175—Right to representation

In a dispute hearing, a party may appear in person or be represented by another person.

176—Procedure of relevant adjudicator

(1) In a dispute hearing the relevant adjudicator for an access dispute—

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) must act as speedily as a proper consideration of the access dispute allows, having regard to the need to carefully and quickly inquire into and investigate the access dispute and all matters affecting the merits, and fair settlement, of the access dispute; and

(c) may inform itself about any matter relevant to the access dispute in any way it thinks appropriate.

(2) The relevant adjudicator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties in the dispute hearing, and may require that the cases be presented within those periods.

(3) The relevant adjudicator may require evidence or argument to be presented in writing, and may decide the matters on which the relevant adjudicator will hear oral evidence or argument.

(4) The relevant adjudicator may determine that a dispute hearing is to be conducted by—

(a) telephone; or

(b) closed circuit television; or

(c) any other means of communication.

(5) The Rules may make further provision about the procedure for the conduct of dispute hearings.

177—Particular powers of relevant adjudicator in a hearing

(1) The relevant adjudicator for an access dispute may do any of the following things for the purpose of determining the access dispute:

(a) give a direction in the course of, or for the purpose of, a dispute hearing;

(b) hear and determine the access dispute in the absence of a party who has been given notice of the dispute hearing;

(c) sit at any place;

(d) adjourn to any time and place;

(e) refer any matter to an independent expert and accept the expert's report as evidence.

(2) The relevant adjudicator may make an interim determination.

178—Role of a dispute resolution expert

(1) This section applies if, for the purpose of determining an access dispute, a matter is referred to an independent expert under section 177(1)(e).

(2) The expert is to be appointed on terms and conditions determined by the relevant adjudicator for the access dispute.

(3) The expert must report to the relevant adjudicator in accordance with the requirements of the relevant adjudicator.

(4) The independent expert must—

(a) have knowledge and experience that is relevant to the matter; and

(b) not have any material direct or indirect interest or association that compromises, or is likely to compromise, the impartiality of the expert; and

(c) disclose to the relevant adjudicator any material or indirect interest or association that compromises, or would reasonably be seen to compromise, the impartiality of the expert.

179—Disclosure of information

(1) The relevant adjudicator for an access dispute may give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of the access dispute unless the person has the relevant adjudicator's permission.

(2) A person must not, without reasonable excuse, refuse or fail to comply with an order under subsection (1).

Maximum penalty:

(a) in the case of a natural person—$3 400;

(b) in the case of a body corporate—$17 000.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

180—Power to take evidence on oath or affirmation

(1) The relevant adjudicator for an access dispute may take evidence on oath or affirmation and for that purpose the relevant adjudicator may administer an oath or affirmation.

(2) The relevant adjudicator may summon a person to appear before the relevant adjudicator to—

(a) give evidence; or

(b) produce such documents (if any) as are referred to in the summons; or

(c) give evidence and produce such documents (if any) as are referred to in the summons.

(3) The powers in this section may be exercised only for the purposes of hearing and determining the access dispute.

181—Failing to attend as a witness

A person who is served, as prescribed by the Regulations, with a summons to appear as a witness at a dispute hearing before the relevant adjudicator for an access dispute must not, without reasonable excuse—

(a) fail to attend as required by the summons; or

(b) fail to appear and report from day to day unless excused, or released from further attendance, by the relevant adjudicator.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

182—Failing to answer questions etc

(1) A person appearing at a dispute hearing as a witness before the relevant adjudicator for an access dispute the subject of the dispute hearing must not, without reasonable excuse—

(a) refuse or fail to be sworn or to make an affirmation; or

(b) refuse or fail to answer a question that the person is required to answer by the relevant adjudicator; or

(c) refuse or fail to produce a document that the person is required to produce by a summons under this Chapter served on the person as prescribed by the Regulations.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(2) It is a reasonable excuse for the purposes of subsection (1) for a natural person to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might—

(a) tend to incriminate the person; or

(b) expose the person to a criminal penalty.

(3) Subsection (2) does not limit what is a reasonable excuse for the purposes of subsection (1).

183—Intimidation etc

A person must not—

(a) threaten, intimidate or coerce another person; or

(b) cause or procure damage, loss or disadvantage to another person,

because that other person—

(c) proposes to produce, or has produced, documents to the relevant adjudicator for a dispute hearing; or

(d) proposes to appear, or has appeared, as a witness before the relevant adjudicator for a dispute hearing.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

184—Particular powers of a relevant adjudicator in a hearing

(1) A party in a dispute hearing may—

(a) inform the relevant adjudicator for an access dispute the subject of the dispute hearing that, in the party's opinion, a specified part of a document contains confidential information (the ***relevant part of the document***); and

(b) request the relevant adjudicator not to give a copy of the relevant part of the document to another party.

(2) On receiving a request, the relevant adjudicator must—

(a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and

(b) ask the other party or parties whether there is any objection to the relevant adjudicator complying with the request.

(3) If there is an objection to the relevant adjudicator complying with the request, the party objecting may inform the relevant adjudicator of the objection and of the reasons for it.

(4) The relevant adjudicator must consider—

(a) a request; and

(b) any objection; and

(c) any further submissions that any party has made in relation to the request.

(5) After considering the matters mentioned in subsection (4), the relevant adjudicator may decide—

(a) not to give the other party or parties a copy of any part of the relevant part of the document that the relevant adjudicator thinks should not be given; or

(b) to give the other party or another specified party a copy of the whole, or part, of the relevant part of the document subject to —

(i) a condition that the party give an undertaking not to disclose the information contained in the relevant part of the document to another person except to the extent specified by the relevant adjudicator; and

(ii) any other condition the relevant adjudicator considers appropriate.

Part 10—Costs

Division 1—Scheme pipeline access disputes

185—Costs—scheme pipeline access disputes

(1) Each party to a scheme pipeline access dispute is to bear its own costs in a dispute hearing except to the extent that an order under this section specifies otherwise.

(2) At any time, the dispute resolution body may order that a party (other than a small shipper) pay all or a specified part of the costs of another party in a dispute hearing.

(3) The dispute resolution body may make an order under subsection (2) only if satisfied that it is fair to do so, having regard to—

(a) whether a party has conducted the dispute hearing in a way that unnecessarily disadvantaged another party by conduct such as—

(i) failing to comply with an order or direction of the dispute resolution body without reasonable excuse; or

(ii) failing to comply with this Law, the Regulations or the Rules; or

(iii) asking for an adjournment as a result of subparagraph (i) or (ii); or

(iv) causing an adjournment; or

(v) attempting to deceive another party or the dispute resolution body; or

(vi) vexatiously conducting an access dispute; and

(b) whether a party has been responsible for prolonging unreasonably the time taken to complete the dispute hearing; and

(c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law; and

(d) the nature and complexity of the access dispute; and

(e) any other matter the dispute resolution body considers relevant.

(4) A party to whom an order made under subsection (2) is directed must comply with the order.

(5) If the dispute resolution body considers that the representative of a party, rather than the party, is responsible for conduct described in subsection (3)(a) or (b), the dispute resolution body may order that the representative in the representative's own capacity compensate another party for any costs incurred unnecessarily.

(6) Before making an order under subsection (5), the dispute resolution body must give the representative a reasonable opportunity to be heard.

(7) A representative of a party to whom an order made under subsection (5) is directed must comply with the order.

(8) If the dispute resolution body makes an order for costs before the end of an access dispute, the dispute resolution body may require that the order be complied with before it continues with the proceeding.

(9) If the dispute resolution body makes an order for costs, the dispute resolution body may fix the amount of costs itself.

(10) This section applies to costs incurred by the parties in a dispute hearing even if the notice of the access dispute to which the dispute hearing relates is withdrawn.

186—Outstanding costs are a debt due to party awarded the costs—scheme pipelines

Costs that are payable under section 185(4) or (7)—

(a) are a debt due to the party to whom the dispute resolution body has ordered that they be paid; and

(b) may be recovered by that party in a court of competent jurisdiction.

187—Regulations about the costs to be paid by parties to access dispute—scheme pipelines

The Regulations may provide for the dispute resolution body to—

(a) charge the parties to an access dispute for its costs in the access dispute; and

(b) apportion those costs between the parties.

Division 2—Non-scheme pipeline disputes

188—Costs of arbitration of non-scheme pipeline disputes

(1) This section applies in relation to the parties to an arbitration of a non-scheme pipeline dispute conducted under this Chapter.

(2) Despite any other provision of this Chapter, the parties to the arbitration bear their own costs.

(3) The costs of the arbitration (including costs associated with the arbitration process and the cost of the arbitrator) must be shared equally between the parties to the arbitration.

(4) The Rules may make provision in relation to the costs of an arbitration conducted under this Chapter, including rules that provide for a different approach to allocating costs under subsection (3) in specified circumstances.

(5) Costs that are payable to the arbitrator under this section—

(a) are a debt due by the party to the arbitrator; and

(b) may be recovered by the arbitrator in a court of competent jurisdiction.

Division 3—Mediation of access disputes involving small shippers

189—Costs of mediation of access disputes involving small shippers

(1) This section applies in relation to an access dispute involving small shippers that is referred to mediation under this Chapter.

(2) The parties to the mediation bear their own costs.

(3) The costs of the mediation (including costs associated with the mediation process and the cost of the mediator) must be shared equally between the parties to the mediation.

(4) Subsections (2) and (3) apply subject to any agreement between the parties to the access dispute about who will bear any costs (or a particular share of any costs) in the particular case.

(5) Costs that are payable to the mediator under this section—

(a) are a debt due by the party to the mediator; and

(b) may be recovered by the mediator in a court of competent jurisdiction.

Part 11—Joint access dispute hearings—scheme pipeline disputes

190—Definition

In this Part—

nominated disputes has the meaning given by section 191(2).

191—Joint dispute hearing

(1) This section applies if—

(a) the dispute resolution body is conducting 2 or more dispute hearings in relation to scheme pipeline access disputes at a particular time; and

(b) one or more matters are common to the access disputes in relation to which the dispute hearings are being conducted.

(2) The dispute resolution body may, by notice in writing, decide that it will hold a joint dispute hearing in respect of such of

those access disputes (the ***nominated disputes***) as are specified in the notice.

(3) The dispute resolution body may do so only if it considers this would be likely to result in the nominated disputes being resolved in a more efficient and timely manner.

192—Consulting the parties

(1) Before making a decision under section 191(2), the dispute resolution body must give each party to each of the nominated disputes a notice in writing—

(a) specifying what the dispute resolution body is proposing to do; and

(b) inviting the party to make a written submission on the proposal to the dispute resolution body within 10 business days after the notice is given.

(2) The dispute resolution body must have regard to any submission so made in deciding whether to do so.

(3) The dispute resolution body may also have regard to any other matter it considers relevant.

193—Constitution and procedure of dispute resolution body for joint dispute hearings

Part 9 applies to the joint dispute hearing in a corresponding way to the way in which it applies to a particular dispute hearing.

194—Record of proceedings etc

(1) The dispute resolution body as constituted for the purposes of the joint dispute hearing may have regard to any record of the proceedings of the dispute of any of the nominated disputes.

(2) The dispute resolution body as constituted for the purposes of the dispute hearing of each of the nominated disputes may, for the purposes of making an access determination in relation to the access dispute to which that hearing relates—

(a) have regard to any record of the proceedings of the joint dispute hearing; and

(b) adopt any findings of fact made by the dispute resolution body as constituted for the purposes of the joint dispute hearing.

Part 12—Miscellaneous matters

195—Correction of access determinations for clerical mistakes etc

(1) This section applies if an access determination contains—

(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the determination; or

(d) a defect in form.

(2) Subject to the Rules, the relevant adjudicator for the access dispute the subject of the dispute hearing may correct the determination.

196—User's existing capacity rights during an access dispute

A service provider who is in an access dispute with a user must not, without the consent of the user, alter the rights that the user has to use the capacity of the pipeline during the period of the dispute.

Chapter 5 — Greenfields pipeline incentives

Part 1 — Interpretation

149. Definitions

In this Chapter —

excluded infrastructure, in relation to a pipeline, means tanks, reservoirs, machinery, equipment or other infrastructure that forms part of the pipeline but is classified by the Rules as excluded infrastructure for the purposes of this Law;

greenfields pipeline project means a project for the construction of —

(a) a pipeline that is to be structurally separate from any existing pipeline (whether or not it is to traverse a route different from the route of an existing pipeline); or

(b) a major extension to an existing pipeline that is not a covered pipeline; or

(c) a major extension to a covered pipeline by means of which light regulation services are provided if that extension is exempted by the AER under section 19.

150. International pipeline to be a transmission pipeline for purposes of Chapter

An international pipeline is, for the purposes of this Chapter, a transmission pipeline.

Part 2 — 15-year no-coverage determinations

151. Application for 15-year no-coverage determination for proposed pipeline

(1) If a greenfields pipeline project is proposed, or has commenced, the service provider may, before the pipeline is commissioned, apply for a determination (a ***15-year no-coverage determination***) exempting the pipeline from being a covered pipeline.

(2) If a price regulation exemption has been granted for an international pipeline, an application for a 15-year no-coverage determination for the pipeline may be made by the service provider —

(a) before the pipeline is commissioned; or

(b) after the pipeline is commissioned but before the term of the price regulation exemption comes to an end.

(3) An application for a 15-year no-coverage determination —

(a) is to be made to the NCC; and

(b) must include a description of the pipeline that meets the requirements specified by the Rules; and

(c) must contain the information required by the Rules; and

(d) need not describe, or include details of, excluded infrastructure; and

(e) must be accompanied by the fee prescribed by the Regulations (if any).

(4) In this section —

service provider includes a person that intends to be a service provider.

152. Application to be dealt with in accordance with the Rules

On receiving an application under section 151, the NCC must deal with it in accordance with the Rules.

153. No-coverage recommendation

(1) The NCC must make a recommendation recommending to the relevant Minister that the pipeline the subject of the application —

(a) be exempted from being a covered pipeline for a period of 15 years; or

(b) not be exempted from being a covered pipeline for a period of 15 years.

(2) A recommendation under this section must —

(a) be made in accordance with this Law and the Rules; and

(b) be made within the time specified by the Rules; and

(c) contain the information required by the Rules; and

(d) be given to the persons specified by the Rules; and

(e) be made publicly available in accordance with the Rules.

(3) A recommendation under this section may recommend an outcome different to the outcome sought in the application under section 151.

~~**Example—**~~

~~An applicant may apply for a 15-year no-coverage determination in relation to the whole pipeline. The NCC may recommend that only a part of the pipeline the subject of the application be subject to a 15-year no-coverage determination.~~

~~(4) A recommendation under this section must be delivered to the relevant Minister without delay.~~

~~154. Principles governing the making of a no-coverage recommendation~~

~~(1) In making a no-coverage recommendation, the NCC—~~

~~(a) must give effect to the pipeline coverage criteria; and~~

~~(b) in deciding whether or not the pipeline coverage criteria are satisfied must have regard to the national gas objective.~~

~~(2) The NCC gives effect to the pipeline coverage criteria as follows:~~

~~(a) if the NCC is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline the recommendation must be against making a 15-year no-coverage determination;~~

~~(b) if the NCC is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline the recommendation must be in favour of making a 15-year no coverage determination.~~

~~155. Initial classification decision to be made as part of recommendation~~

~~(1) If the pipeline the subject of an application under section 151 is not an international pipeline, the NCC must, as part of a no-coverage recommendation, classify the pipeline as a transmission pipeline or a distribution pipeline (an ***initial classification decision***). In doing so, the NCC must apply the pipeline classification criterion.~~

~~(2) The NCC must as part of an initial classification decision—~~

~~(a) if it classifies the pipeline the subject of the application as a transmission pipeline—determine whether the transmission pipeline is also a cross boundary transmission pipeline; or~~

~~(b) if it classifies the pipeline the subject of the application as a distribution pipeline—determine whether the~~

distribution pipeline is also a cross boundary distribution pipeline.

(3) The NCC must also determine, as part of an initial classification decision, the participating jurisdiction with which the pipeline the subject of the application under section 151 is most closely connected if the NCC determines the pipeline is also a cross boundary distribution pipeline. In doing so, the NCC must have regard to the jurisdictional determination criteria.

156. Relevant Minister's determination on application

(1) On receiving a no-coverage recommendation the relevant Minister must decide whether or not to make a 15-year no-coverage determination in respect of the pipeline to which the recommendation relates.

(2) The relevant Minister must use his or her best endeavours to make the decision within 30 business days after receiving the coverage recommendation.

(3) If the relevant Minister is unable to make the decision within the period specified under subsection (2), he or she must make the decision as soon as reasonably practicable after the end of the specified period.

(4) The relevant Minister, for the purpose of making the decision, may request submissions or comments in relation to an application under section 151.

(5) A 15-year no-coverage determination or a decision not to make a 15-year no-coverage determination must —

(a) be made in accordance with this Law and the Rules; and

(b) contain the information required by the Rules; and

(c) be given to the persons specified by the Rules; and

(d) be made publicly available in accordance with the Rules.

(6) A 15-year no-coverage determination may have an outcome different to the outcome —

(a) sought in the application under section 151; or

(b) of the no-coverage recommendation.

Example —

An applicant may apply for a 15-year no-coverage determination in relation to the whole pipeline. The NCC may recommend that only a part of the pipeline the subject of the application be subject to a 15-year no-coverage determination. The relevant Minister may make a 15-year no-coverage determination that applies to different parts of the

pipeline to those recommended by the NCC be subject to the determination.

157. Principles governing the making of a 15-year no-coverage determination or decision not to do so

(1) In deciding whether to make a 15-year no-coverage determination under this Part, the relevant Minister —

(a) must give effect to the pipeline coverage criteria; and

(b) in deciding whether or not the pipeline coverage criteria are satisfied in relation to the pipeline —

(i) must have regard to the national gas objective; and

(ii) must have regard to the no-coverage recommendation; and

(iii) must take into account any submissions or comments he or she receives on a request under section 156(4); and

(iv) may take into account any relevant submissions and comments made to the NCC by the public under the Rules in relation to the application.

(2) The relevant Minister gives effect to the pipeline coverage criteria as follows:

(a) if the Minister is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline the Minister must not make a 15-year no-coverage determination;

(b) if the Minister is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline the Minister must make a 15-year no-coverage determination.

158. Effect of 15-year no-coverage determination

(1) A 15-year no-coverage determination —

(a) takes effect on and from the date specified in the determination; and

(b) continues in operation for a period of 15 years from the commissioning of the pipeline.

(2) An application for coverage of a pipeline to which a 15-year no-coverage determination applies can be made before the end of the period for which the determination remains in operation

only if the coverage sought in the application is to commence from, or after, the end of that period.

159. Consequences of Minister deciding against making 15-year no-coverage determination for international pipeline

(1) If —

(a) the Commonwealth Minister decides against making a 15-year no-coverage determination for an international pipeline; and

(b) the applicant asks the Commonwealth Minister to treat the application as an application for a price regulation exemption,

the Commonwealth Minister may treat the application as an application for a price regulation exemption under Chapter 5 Part 3.

(2) If the Commonwealth Minister decides to treat an application for a 15-year no-coverage determination as an application for a price regulation exemption, the Commonwealth Minister may —

(a) refer the application to the NCC for a recommendation under Chapter 5 Part 3; or

(b) proceed to determine the application without a recommendation under Chapter 5 Part 3.

Part 3 — Price regulation exemptions

Division 1 — Application for price regulation exemption

160. Application for price regulation exemption

(1) If a greenfields pipeline project for construction of an international pipeline is proposed, or has commenced, the service provider may, before the pipeline is commissioned, apply for a price regulation exemption for the pipeline.

(2) An application for a price regulation exemption —

(a) is to be made to the NCC; and

(b) must include a description of the pipeline that meets the requirements specified by the Rules; and

(c) must contain the information required by the Rules; and

(d) need not describe, or include details of, excluded infrastructure; and

(e) must be accompanied by the fee prescribed by the Regulations (if any).

(3) In this section —

service provider includes a person that intends to be a service provider.

Division 2 — Recommendations by NCC

161. Application to be dealt with in accordance with the Rules

On receiving an application under section 160, the NCC must deal with it in accordance with the Rules.

162. NCC's recommendation

(1) The NCC must make a recommendation to the Commonwealth Minister as to whether the Minister should grant a price regulation exemption for the pipeline the subject of the application.

(2) A recommendation under this section must —

(a) be made in accordance with this Law and the Rules; and

(b) be made within the time specified by the Rules; and

(c) contain the information required by the Rules; and

(d) be given to the persons specified by the Rules; and

(e) be made publicly available in accordance with the Rules.

(3) A recommendation under this section must be delivered to the Commonwealth Minister without delay.

163. General principle governing NCC's recommendation

(1) In making its recommendation on an application for a price regulation exemption, the NCC must weigh the benefits to the public of granting the exemption against the detriments to the public.

(2) In doing so, the NCC —

(a) must have regard to the national gas objective with particular reference to —

(i) the implications of the exemption for relevant markets (including the effect on market power); and

(ii) other possible effects on the public interest; and

(b) may have regard to any other relevant matter.

~~Division 3 — Making and effect of price regulation exemption~~

~~164. Making of price regulation exemption~~

~~(1) On receiving the NCC's recommendation under section 162, the Commonwealth Minister must decide whether to grant a price regulation exemption.~~

~~(2) The Commonwealth Minister must use his or her best endeavours to make the decision within 10 business days after receiving the NCC's recommendation.~~

~~(3) If the Commonwealth Minister is unable to make the decision within the period specified under subsection (2), he or she must make the decision as soon as reasonably practicable after the end of the specified period.~~

~~(4) A decision under this section must —~~

~~(a) be made in accordance with this Law and the Rules; and~~

~~(b) contain the information required by the Rules; and~~

~~(c) be given to the persons specified by the Rules; and~~

~~(d) be made publicly available in accordance with the Rules.~~

~~165. Principles governing the making of a price regulation exemption~~

~~(1) In deciding whether to make a decision to grant a price regulation exemption, the Commonwealth Minister must weigh the benefits to the public of granting the exemption against the detriments to the public.~~

~~(2) In doing so, the Commonwealth Minister —~~

~~(a) must have regard to the national gas objective with particular reference to —~~

~~(i) the implications of the exemption for relevant markets (including the effect on market power); and~~

~~(ii) other possible effects of the exemption on the public interest; and~~

~~(b) must have regard to the NCC's recommendation; and~~

~~(c) may take into account any relevant submissions and comments made to the NCC by the public under the Rules in relation to the application; and~~

~~(d) may have regard to any other relevant matter.~~

166. Conditions applying to a price regulation exemption

A price regulation exemption granted under this Part is subject to the following conditions:

(a) the service provider must publish on its website prices for the provision of pipeline services by means of the international pipeline; and

(b) the service provider's limited access arrangement and the register of spare capacity are to be accessible on the service provider's website; and

(c) the service provider —

(i) must, as and when required by the AER or the Commonwealth Minister, provide information requested by the AER or the Commonwealth Minister (in a manner and form determined or approved by the AER or the Commonwealth Minister) on access negotiations and the result of access negotiations; and

(ii) must report annually to the AER and the Commonwealth Minister (in a manner and form approved by the AER or the Commonwealth Minister) on access negotiations and the result of access negotiations.

Note—

See also sections 168 and 169(3).

167. Effect of price regulation exemption

(1) If a price regulation exemption is granted, then for a period of 15 years from the commissioning of the pipeline, the services provided by means of the pipeline are not subject to price or revenue regulation under this Law or the Rules.

(2) A price regulation exemption is, however, ineffective unless a limited access arrangement, approved by the AER, is in force in relation to the relevant pipeline.

Note—

See also section 168.

(3) If, while a price regulation exemption remains in force, the Commonwealth Minister makes a 15-year no-coverage determination for the pipeline, the 15-year no-coverage determination supersedes the price regulation exemption (which is then terminated) and remains in force for the balance of the period for which the exemption was granted.

~~(4) An application for coverage of a pipeline to which a price regulation exemption applies can only be made before the end of the period of exemption if the coverage sought in the application is to commence from, or after, the end of that period.~~

~~Division 4 — Limited access arrangements~~

~~168. Limited access arrangements for pipeline services provided by international pipeline to which a price regulation exemption applies~~

~~(1) A service provider must, within 60 business days after the grant of a price regulation exemption, submit a limited access arrangement to the AER for approval by the AER under the Rules.~~

~~(2) A limited access arrangement must —~~

~~(a) be submitted in accordance with the Rules; and~~

~~(b) contain the information required by the Rules.~~

~~(3) A service provider must submit to the AER, for approval by the AER under the Rules, revisions to an applicable access arrangement that is a limited access arrangement and that applies to the pipeline service to which that arrangement applies —~~

~~(a) in accordance with the Rules; and~~

~~(b) within the period specified by the Rules.~~

~~Division 5 — Other matters~~

~~169. Other obligations to which service provider is subject~~

~~(1) The service provider for a pipeline to which a price regulation exemption applies is subject to the following provisions as if the pipeline were a covered pipeline:~~

~~(a) Chapter 4 Part 1 (except sections 132 and 136); and~~

~~(b) Chapter 4 Part 2.~~

~~(2) The service provider for a pipeline to which a price regulation exemption applies must comply with any Rules that —~~

~~(a) relate to the facilitation of, and request for access to, pipeline services provided by means of that pipeline; and~~

~~(b) apply to the service provider or a class of person of which the service provider is a member.~~

(3) A service provider must ensure compliance with conditions to which the price regulation exemption is subject.

Note—

See also section 160.

170. Service provider must not price discriminate in providing international pipeline services

(1) A service provider must not, when providing pipeline services —

(a) by means of an international pipeline to which a price regulation exemption applies; and

(b) to which a limited access arrangement applies,

engage in price discrimination.

(2) Subsection (1) does not apply if the service provider engages in price discrimination that is conducive to efficient service provision.

Part 4 — Extended or modified application of greenfields pipeline incentive

171. Requirement for conformity between pipeline description and pipeline as constructed

(1) Subject to this Part —

(a) a greenfields pipeline incentive applies to the pipeline as described in the relevant pipeline description; and

(b) if the pipeline, as constructed, materially differs from the pipeline as described in the relevant pipeline description, the incentive does not attach to the pipeline and the service provider is not entitled to its benefit.

(2) In determining whether a pipeline, as constructed, materially differs from the relevant pipeline description, excluded infrastructure is not to be taken into account.

(3) In this section —

relevant pipeline description means a description of a pipeline required to be included in an application under section 151 or 160.

172. Power of relevant Minister to amend pipeline description

(1) The relevant Minister may, on application by the service provider for a pipeline for which a greenfields pipeline incentive has been granted, amend the relevant pipeline description.

(2) An amendment cannot, however, be made under this section after the pipeline has been commissioned.

(3) The relevant Minister —

(a) may refer an application for amendment to a pipeline description to the NCC for advice; and

(b) if the amendment sought involves a substantial change to the pipeline description as it currently exists must refer the application to the NCC for advice.

(4) In giving its advice to the relevant Minister, the NCC must have regard to the criteria that were relevant to the grant of the greenfields pipeline incentive.

(5) In deciding whether to make the amendment sought, the relevant Minister —

(a) must have regard to the criteria that were relevant to the grant of the greenfields pipeline incentive; and

(b) if the application has been referred to the NCC for advice must consider the NCC's advice.

Part 5 — Early termination of greenfields pipeline incentive

173. Greenfields pipeline incentive may lapse

(1) A greenfields pipeline incentive lapses if the pipeline for which it was granted is not commissioned within 3 years after the incentive was granted.

(2) The Regulations may, in a particular case, extend the period of 3 years referred to in subsection (1).

174. Revocation by consent

The relevant Minister may, at the request of the service provider, revoke a greenfields pipeline incentive.

175. Revocation for misrepresentation

The relevant Minister may, on application by the AER, revoke a greenfields pipeline incentive on the ground that —

(a) the applicant misrepresented a material fact on the basis of which the application was granted; or

(b) the applicant failed to disclose material information that the applicant was required to disclose under this Chapter.

176. Revocation for breach of condition to which a price regulation exemption is subject

The Commonwealth Minister, on application by the AER, may revoke a price regulation exemption on the ground that the service provider has breached a condition to which the price regulation exemption is subject.

177. Exhaustive provision for termination of greenfields pipeline incentive

A greenfields pipeline incentive does not terminate, and cannot be revoked, before the end of its term except as provided in this Part.

Chapter 6 — Access disputes—scheme pipelines

[Heading inserted: see SA Act No. 23 of 2017 s. 5 and WA Gazette 22 Dec 2017 p. 5984.]

Part 1 — Interpretation and application

178. Definitions

In this Chapter —

access dispute means a dispute between a user or prospective user and a service provider about 1 or more aspects of access to a pipeline service provided by means of a scheme pipeline;

access dispute pipeline means a scheme pipeline used or that could be used to provide a pipeline service that is the subject of an access dispute;

dispute hearing means a hearing conducted by the dispute resolution body for the purpose of making an access determination;

party, in relation to an access dispute, has the meaning given by section 183.

179. Chapter does not limit how disputes about access may be raised or dealt with

This Chapter is not to be taken to limit how a dispute about access to a pipeline service may be raised or dealt with.

180. No price or revenue regulation for access disputes relating to international pipeline services

An access dispute notified under this Chapter in relation to a pipeline service provided by means of an international pipeline to which a price regulation exemption applies must not be resolved under this Chapter on terms —

(a) regulating the price at which a service is to be provided by the service provider; or

(b) limiting the revenue to be derived by the service provider from the provision of a service.

Part 2 — Notification of access dispute

181. Notification of access dispute

(1) Subject to this section, if a prospective user or user is unable to agree with a service provider about 1 or more aspects of access

to a pipeline service provided or to be provided by means of a scheme pipeline, the prospective user, user or service provider may notify the dispute resolution body, in writing, that an access dispute exists.

Note—

A dispute about access to a light regulation service may be notified under this section because light regulation services are pipeline services provided by means of a covered pipeline (which is a scheme pipeline).

(2) A notification must be accompanied by the fee prescribed by the Regulations (if any).

(3) On receiving a notification under subsection (1), the dispute resolution body must notify, in writing, of the access dispute—

(a) the service provider, if a prospective user or user (as the case requires) notified the dispute resolution body of the access dispute under subsection (1);

(b) the prospective user or user (as the case requires), if the service provider notified the dispute resolution body of the access dispute under subsection (1).

[*4M*]181A. Providing information for certain disputes

(1) If the dispute resolution body for a dispute notified under section 181(1) is the WA arbitrator—

(a) the WA arbitrator is to inform the ERA that notification of the dispute has been received; and

(b) the WA arbitrator may request the ERA to give the WA arbitrator any information in the ERA's possession that is relevant to the dispute.

(2) The ERA is to give the WA arbitrator the information requested, whether or not it is confidential and whether or not it came into the ERA's possession for the purposes of resolving the dispute.

(3) If the ERA gives the WA arbitrator information that is confidential, the ERA is to identify the nature and extent of the confidentiality and the WA arbitrator is to treat the information accordingly.

[Section 181A inserted: WA Act Sch. 1 cl. 9.]

182. Withdrawal of notification

(1) The person who notified the dispute resolution body of an access dispute under section 181(1) may withdraw that

notification at any time before the dispute resolution body makes an access determination in respect of that access dispute.

(2) The notification must be withdrawn by notice in writing.

(3) If the notification is withdrawn, it must be taken, for the purposes of this Chapter, never to have been given.

183. Parties to an access dispute

The parties to an access dispute are —

(a) the person notifying the dispute resolution body of an access dispute under section 181(1); and

(b) a person notified by the dispute resolution body under section 181(3); and

(c) if the dispute resolution body is of the opinion that the resolution of the access dispute may involve requiring another person to do something — that other person; and

(d) any other person who applies in writing to be made a party and is accepted by the dispute resolution body as having a sufficient interest.

Part 3 — Access determinations

184. Determination of access dispute

(1) Unless the dispute resolution body terminates an access dispute under section 186, the dispute resolution body must make a determination on access by the prospective user or user, as the case requires.

(2) In making an access determination the dispute resolution body must comply with this Chapter and the Rules.

(3) An access determination must —

(a) be in writing; and

(b) include a statement of reasons for making the determination; and

(c) be given to the parties without delay.

(4) An access determination has effect on and after the date specified in the determination.

185. Dispute resolution body may require parties to mediate, conciliate or engage in an alternative dispute resolution process

(1) The dispute resolution body may require the parties, in accordance with the Rules, to mediate, conciliate or engage in another alternative dispute resolution process for the purpose of resolving the dispute.

(2) A party must comply with a requirement under subsection (1).

186. Dispute resolution body may terminate access dispute in certain cases

(1) The dispute resolution body may at any time terminate an access dispute (without making an access determination) if the dispute resolution body considers that —

(a) the notification of the access dispute was vexatious; or

(b) the subject matter of the dispute is trivial, misconceived or lacking in substance; or

(c) the party who notified the access dispute had, but did not avail itself of, an opportunity to engage in negotiations in good faith with the other party before that notification; or

(d) a specified dispute termination circumstance has occurred.

(2) Subject to section 188, the dispute resolution body may also terminate an access dispute (without making an access determination) if the dispute resolution body considers that the aspect of access about which there is a dispute is expressly or impliedly dealt with under a contract between, as the case requires —

(a) the prospective user and service provider;

(b) the user and service provider.

(3) In this section —

specified dispute termination circumstance means a circumstance specified by the Rules as being a circumstance, the occurrence of which, entitles the dispute resolution body to terminate an access dispute (without making an access determination).

187. No access determination if dispute resolution body considers there is genuine competition

Despite anything to the contrary in this Chapter, the dispute resolution body may refuse to make an access determination that requires the service provider to provide a particular pipeline service to a prospective user or user if the dispute resolution body considers that the pipeline service the subject of the access dispute could be provided on a genuinely competitive basis by a person other than the service provider or an associate of the service provider.

188. Restrictions on access determinations

(1) The dispute resolution body must not make an access determination that would have any of the following effects:

(a) preventing a user obtaining a sufficient amount of a pipeline service under a contract or previous access determination to be able to meet the user's reasonably anticipated requirements, measured at the time the access dispute was notified;

(b) preventing a prospective user or user from obtaining, by the exercise of a pre-notification right, a sufficient amount of a pipeline service to be able to meet the prospective user's or user's actual requirements;

(c) depriving a person of a relevant protected contractual right.

(2) In this section —

pre-notification right means a right under a contract, or under an access determination, that was in force at the time when the access dispute was notified under section 181;

relevant exclusivity right means an express contractual right that arose on or after 30 March 1995 that —

(a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or

(b) limits or controls a service provider's ability to supply pipeline services to persons who are not parties to the contract,

but does not include a user's contractual right to obtain a certain amount of pipeline services;

relevant protected contractual right means a right under a contract (other than a relevant exclusivity right) that was in force immediately before the notification of an access dispute under section 181.

189. Access determination must give effect to applicable access arrangement

Subject to sections 190 and 191 and any Rules made for the purposes of this Part, the dispute resolution body must, in making an access determination, give effect to the applicable access arrangement —

(a) applying to the pipeline services provided, or to be provided, by means of the access dispute pipeline; and

(b) in effect at the time the determination is made,

(even though that arrangement may not have been in force when notification of the access dispute was given).

190. Access determinations and past contributions of capital to fund installations or the construction of new facilities

(1) In making an access determination, the dispute resolution body may (where relevant) take into account past contributions of capital to fund installations or the construction of new facilities.

(2) Without limiting section 74, the Rules may —

(a) specify the matters that the dispute resolution body must address in making that access determination;

(b) specify the content of that access determination.

191. Rules may allow determination that varies applicable access arrangement for installation of a new facility

(1) This section applies if the dispute resolution body is proposing to make an access determination that will require —

(a) a service provider to install or construct a new facility to expand the capacity of the access dispute pipeline; and

(b) the prospective user or user who is a party to the access dispute to contribute some or all of the capital to fund the installation or construction of the new facility.

(2) Without limiting section 74, the Rules may —

(a) confer a function or power on the dispute resolution body to, when making the access determination, vary the applicable access arrangement; and

(b) specify the matters that the dispute resolution body must address in making that access determination; and

(c) specify the kinds of variations that may be made to the applicable access arrangement; and

(d) specify the content of that access determination.

192. Access determinations need not require the provision of a pipeline service

An access determination may, but need not, require a service provider to provide a pipeline service to a prospective user.

193. Content of access determinations

Subject to this Chapter, an access determination may deal with any matter relating to the provision of a pipeline service to a prospective user or user.

Example—

An access determination may require the service provider to provide a pipeline service to the prospective user or user at—

(a) a specified tariff, rate or charge; and

(b) on specified terms and conditions.

Part 4 Variation of access determinations

194. Variation of access determination

(1) The dispute resolution body may vary an access determination on the application of any party to the determination. However, it cannot vary the final determination if any other party objects.

Note—

If the parties cannot agree on a variation, a new access dispute can be notified under section 181.

(2) Section 188 applies to a variation under this section as if—

(a) an access dispute arising out of the access determination had been notified when the application was made to the dispute resolution body for the variation of the determination; and

(b) the variation were the making of an access determination in the terms of the varied determination.

~~Part 5 Compliance with access determinations~~

~~195. Compliance with access determination~~

~~A party to an access dispute in respect of which an access determination is made must comply with the access determination.~~

~~Part 6 Access dispute hearing procedure~~

~~196. Hearing to be in private~~

~~(1) Subject to subsection (2), a dispute hearing is to be in private.~~

~~(2) If the parties agree, a dispute hearing or part of a dispute hearing may be conducted in public.~~

~~(3) The dispute resolution body may give written directions as to the persons who may be present at a dispute hearing that is conducted in private.~~

~~(4) In giving directions under subsection (3), the dispute resolution body must have regard to the wishes of the parties and the need for commercial confidentiality.~~

~~197. Right to representation~~

~~In a dispute hearing a party may appear in person or be represented by another person.~~

~~198. Procedure of dispute resolution body~~

~~(1) In a dispute hearing the dispute resolution body—~~

~~(a) is not bound by technicalities, legal forms or rules of evidence; and~~

~~(b) must act as speedily as a proper consideration of the access dispute allows, having regard to the need to carefully and quickly inquire into and investigate the access dispute and all matters affecting the merits, and fair settlement, of the access dispute; and~~

~~(c) may inform itself about any matter relevant to the access dispute in any way it thinks appropriate.~~

~~(2) The dispute resolution body may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties in the dispute hearing, and may require that the cases be presented within those periods.~~

~~(3) The dispute resolution body may require evidence or argument to be presented in writing, and may decide the matters on which the dispute resolution body will hear oral evidence or argument.~~

~~(4) The dispute resolution body may determine that a dispute hearing is to be conducted by —~~

~~(a) telephone; or~~

~~(b) closed circuit television; or~~

~~(c) any other means of communication.~~

~~(5) The Rules may make further provision about the procedure for the conduct of dispute hearings.~~

~~199. Particular powers of dispute resolution body in a hearing~~

~~(1) The dispute resolution body may do any of the following things for the purpose of determining an access dispute:~~

~~(a) give a direction in the course of, or for the purpose of, a dispute hearing;~~

~~(b) hear and determine the access dispute in the absence of a party who has been given notice of the dispute hearing;~~

~~(c) sit at any place;~~

~~(d) adjourn to any time and place;~~

~~(e) refer any matter to an independent expert and accept the expert's report as evidence.~~

~~(2) The dispute resolution body may make an interim determination.~~

~~200. Disclosure of information~~

~~(1) The dispute resolution body may give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of an access dispute unless the person has the dispute resolution body's permission.~~

~~(2) A person must not, without reasonable excuse, refuse or fail to comply with an order under subsection (1).~~

~~Maximum penalty:~~

~~(a) in the case of a natural person — $3 400;~~

~~(b) in the case of a body corporate — $17 000.~~

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

[Section 200 amended: see SA Act No. 37 of 2020 s. 61 and WA Gazette 4 Sep 2024 p. 2215.]

201. Power to take evidence on oath or affirmation

(1) The dispute resolution body may take evidence on oath or affirmation and for that purpose the dispute resolution body may administer an oath or affirmation.

(2) The dispute resolution body may summon a person to appear before the dispute resolution body to —

(a) give evidence; or

(b) produce such documents (if any) as are referred to in the summons; or

(c) give evidence and produce such documents (if any) as are referred to in the summons.

(3) The powers in this section may be exercised only for the purposes of hearing and determining an access dispute.

202. Failing to attend as a witness

A person who is served, as prescribed by the Regulations, with a summons to appear as a witness before the dispute resolution body must not, without reasonable excuse —

(a) fail to attend as required by the summons; or

(b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by the dispute resolution body.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

[Section 202 amended: see SA Act No. 37 of 2020 s. 62 and WA Gazette 4 Sep 2024 p. 2215.]

203. Failing to answer questions etc

(1) A person appearing as a witness before the dispute resolution body must not, without reasonable excuse —

(a) refuse or fail to be sworn or to make an affirmation; or

(b) refuse or fail to answer a question that the person is required to answer by the dispute resolution body; or

(c) refuse or fail to produce a document that he or she is required to produce by a summons under this Chapter served on him or her as prescribed by the Regulations.

Maximum penalty: $6 300.

Note—

See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

(2) It is a reasonable excuse for the purposes of subsection (1) for a natural person to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might —

(a) tend to incriminate the person; or

(b) expose the person to a criminal penalty.

(3) Subsection (2) does not limit what is a reasonable excuse for the purposes of subsection (1).

[Section 203 amended: see SA Act No. 37 of 2020 s. 63 and WA Gazette 4 Sep 2024 p. 2215.]

204. Intimidation etc

A person must not —

(a) threaten, intimidate or coerce another person; or

(b) cause or procure damage, loss or disadvantage to another person,

because that other person —

(c) proposes to produce, or has produced, documents to the dispute resolution body; or

(d) proposes to appear, or has appeared, as a witness before the dispute resolution body.

Maximum penalty: $6 300.

~~**Note—**~~

~~See Schedule 2 clause 47B, which provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.~~

~~*[Section 204 amended: see SA Act No. 37 of 2020 s. 64 and WA Gazette 4 Sep 2024 p. 2215.]*~~

~~205. Party may request dispute resolution body to treat material as confidential~~

~~(1) A party in a dispute hearing may—~~

~~(a) inform the dispute resolution body that, in the party's opinion, a specified part of a document contains confidential information; and~~

~~(b) request the dispute resolution body not to give a copy of that part to another party.~~

~~(2) On receiving a request, the dispute resolution body must—~~

~~(a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and~~

~~(b) ask the other party or parties whether there is any objection to the dispute resolution body complying with the request.~~

~~(3) If there is an objection to the dispute resolution body complying with the request, the party objecting may inform the dispute resolution body of the objection and of the reasons for it.~~

~~(4) After considering—~~

~~(a) a request; and~~

~~(b) any objection; and~~

~~(c) any further submissions that any party has made in relation to the request,~~

~~the dispute resolution body may decide—~~

~~(d) not to give the other party or parties a copy of so much of the document as contains confidential information that the dispute resolution body thinks should not be given; or~~

~~(e) to give the other party or another specified party a copy of the whole, or part, of the part of the document that contains confidential information subject to a condition that the party give an undertaking not to disclose the~~

information to another person except to the extent specified by the dispute resolution body and subject to such other conditions as the dispute resolution body determines.

206. Costs

(1) Each party is to bear its own costs in a dispute hearing except to the extent that an order under this section specifies otherwise.

(2) At any time, the dispute resolution body may order that a party pay all or a specified part of the costs of another party in a dispute hearing.

(3) The dispute resolution body may make an order under subsection (2) only if satisfied that it is fair to do so, having regard to —

(a) whether a party has conducted the dispute hearing in a way that unnecessarily disadvantaged another party by conduct such as —

(i) failing to comply with an order or direction of the dispute resolution body without reasonable excuse;

(ii) failing to comply with this Law, the Regulations or the Rules;

(iii) asking for an adjournment as a result of subparagraph (i) or (ii);

(iv) causing an adjournment;

(v) attempting to deceive another party or the dispute resolution body;

(vi) vexatiously conducting an access dispute;

(b) whether a party has been responsible for prolonging unreasonably the time taken to complete the dispute hearing;

(c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law;

(d) the nature and complexity of the access dispute;

(e) any other matter the dispute resolution body considers relevant.

(4) A party to whom an order made under subsection (2) is directed must comply with the order.

(5) If the dispute resolution body considers that the representative of a party, rather than the party, is responsible for conduct described in subsection (3)(a) or (b), the dispute resolution body may order that the representative in his or her own capacity compensate another party for any costs incurred unnecessarily.

(6) Before making an order under subsection (5), the dispute resolution body must give the representative a reasonable opportunity to be heard.

(7) A representative of a party to whom an order made under subsection (5) is directed must comply with the order.

(8) If the dispute resolution body makes an order for costs before the end of an access dispute, the dispute resolution body may require that the order be complied with before it continues with the proceeding.

(9) If the dispute resolution body makes an order for costs, the dispute resolution body may fix the amount of costs itself.

(10) This section applies to costs incurred by the parties in a dispute hearing even if the notification of the access dispute to which the dispute hearing relates is withdrawn.

207. Outstanding costs are a debt due to party awarded the costs

Costs that are payable under section 206(4) or (7)

(a) are a debt due to the party to whom the dispute resolution body has ordered that they be paid; and

(b) may be recovered by that party in a court of competent jurisdiction.

Part 7 Joint access dispute hearings

208. Definition

In this Part

nominated disputes has the meaning given by section 209(2).

209. Joint dispute hearing

(1) This section applies if

(a) the dispute resolution body is conducting 2 or more dispute hearings at a particular time; and

(b) 1 or more matters are common to the access disputes in relation to which the dispute hearings are being conducted.

~~(2) The dispute resolution body may, by notice in writing, decide that it will hold a joint dispute hearing in respect of such of those access disputes (the ***nominated disputes***) as are specified in the notice.~~

~~(3) The dispute resolution body may do so only if it considers this would be likely to result in the nominated disputes being resolved in a more efficient and timely manner.~~

~~210. Consulting the parties~~

~~(1) Before making a decision under section 209(2), the dispute resolution body must give each party to each of the nominated disputes a notice in writing —~~

~~(a) specifying what the dispute resolution body is proposing to do; and~~

~~(b) inviting the party to make a written submission on the proposal to the dispute resolution body within 10 business days after the notice is given.~~

~~(2) The dispute resolution body must have regard to any submission so made in deciding whether to do so. The dispute resolution body may have regard to any other matter it considers relevant.~~

~~211. Constitution and procedure of dispute resolution body for joint dispute hearings~~

~~Chapter 6 Part 6 applies to the joint dispute hearing in a corresponding way to the way in which it applies to a particular dispute hearing.~~

~~212. Record of proceedings etc~~

~~(1) The dispute resolution body as constituted for the purposes of the joint dispute hearing may have regard to any record of the proceedings of the dispute of any of the nominated disputes.~~

~~(2) The dispute resolution body as constituted for the purposes of the dispute hearing of each of the nominated disputes may, for the purposes of making an access determination in relation to the access dispute to which that hearing relates —~~

~~(a) have regard to any record of the proceedings of the joint dispute hearing; and~~

~~(b) adopt any findings of fact made by the dispute resolution body as constituted for the purposes of the joint dispute hearing.~~

Part 8 Miscellaneous matters

213. Correction of access determinations for clerical mistakes etc

If an access determination contains —

(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the determination; or

(d) a defect in form,

the dispute resolution body may correct the access determination.

214. Reservation of capacity during an access dispute

A service provider who is in an access dispute with a user must not, without the consent of the user, alter the rights that the user has to use the capacity of the access dispute pipeline during the period of the dispute.

215. Subsequent service providers bound by access determinations

(1) An access determination applies to every subsequent service provider as if that subsequent service provider were a party to the access dispute in respect of which the access determination was made.

(2) In this section —

subsequent service provider means a service provider (other than the service provider to whom the access determination applies) who provides pipeline services —

(a) the subject of the access dispute; and

(b) in respect of which the access determination was made.

216. Regulations about the costs to be paid by parties to access dispute

The Regulations may provide for the dispute resolution body to —

(a) charge the parties to an access dispute for its costs in the access dispute; and

(b) apportion those costs between the parties.

Chapter 6A—Access disputes—non-scheme pipelines

[Heading inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

Part 1—Interpretation and application

[Heading inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216A. Definitions

In this Chapter—

access determination means a determination of an arbitrator under Part 3 and includes a variation under Part 5;

access dispute means a dispute between a user or prospective user and a service provider about 1 or more aspects of access to a pipeline service provided by means of a non-scheme pipeline (subject to the operation of section 216C(2));

dispute hearing means a hearing conducted by an arbitrator under this Chapter for the purpose of making an access determination;

distribution pipeline means a pipeline that is classified in accordance with this Law or the Rules as a distribution pipeline and includes any extension to, or expansion of the capacity of, such a pipeline that, by operation of an access arrangement or access determination, is to be treated as part of the pipeline;

non-scheme pipeline means a pipeline to which this Chapter applies by operation of section 216C;

party, in relation to an access dispute, has the meaning given by section 216I;

prospective user has the meaning given by section 216B;

scheme administrator means the AER;

transmission pipeline means a pipeline that is classified in accordance with this Law or the Rules as a transmission pipeline and includes any extension to, or expansion of the capacity of, such a pipeline that, by operation of an access arrangement or access determination, is to be treated as part of the pipeline;

user means a person who—

(a) is a party to a contract with a service provider under which the service provider provides or intends to provide a pipeline service to that person by means of a non-scheme pipeline; or

(b) has a right under an access determination to be provided with a pipeline service by means of a non-scheme pipeline.

[Section 216A inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216B. Meaning of prospective user

(1) For the purposes of this Chapter, a prospective user is a person who seeks or wishes to be provided with a pipeline service by means of a non-scheme pipeline.

(2) To avoid doubt, a user is also a prospective user for the purposes of this Chapter if the user seeks or wishes to be provided with a pipeline service by means of a non-scheme pipeline other than a pipeline service already provided to them under —

(a) a contract; or

(b) an access determination.

(3) Subsection (2)(b) does not limit the operation of Part 5.

[Section 216B inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216C. Application of Chapter

(1) Subject to subsection (2), this Chapter applies to and in relation to —

(a) a transmission pipeline that is not a scheme pipeline; and

(b) a distribution pipeline that is not a scheme pipeline.

(2) This Chapter does not apply to or in relation to —

(a) a pipeline, or part of a pipeline, excluded from the operation of this Chapter by the Rules; or

(b) a pipeline within a class or group of pipelines excluded from the operation of this Chapter by the Rules; or

(c) a pipeline service (including in relation to a specific pipeline, or part of a specific pipeline) excluded from the operation of this Chapter by the Rules.

[Section 216C inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216D. Application of this Chapter to disputes arising under Rules

The provisions of this Chapter applicable to the determination of an access dispute apply, subject to such modifications as may be prescribed by the Rules, to the determination of any dispute arising under any provision of the Rules specified in the Rules for the purposes of this section.

[Section 216D inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216E. Chapter does not limit how disputes about access may be raised or dealt with

This Chapter is not to be taken to limit how a dispute about access to a pipeline service may be raised or dealt with.

[Section 216E inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

Part 2 Negotiation of access

[Heading inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216F. Access proposals

The Rules may contain provisions for or with respect to seeking access to a pipeline service provided or to be provided by means of a non-scheme pipeline (or by part of a non-scheme pipeline or by an extension to, or expansion of the capacity of, a non-scheme pipeline).

[Section 216F inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216G. Duty to negotiate in good faith

A prospective user or user seeking access to a pipeline service provided or to be provided by means of a non-scheme pipeline (or by part of a non-scheme pipeline or by an extension to, or expansion of the capacity of, a non-scheme pipeline), and the service provider for the relevant non-scheme pipeline, must negotiate in good faith with each other about whether access can be granted and, if so, the terms and conditions for the provision of access to the prospective user or user (as the case requires).

[Section 216G inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216H. Notification of access dispute

(1) Subject to this section, if a prospective user or user (as the case requires) and a service provider cannot agree about 1 or more aspects of access to a pipeline service after a request has been made in accordance with the Rules, the prospective user or user, or the service provider, may notify the scheme administrator, in writing, that an access dispute exists.

(2) A notification must include, in accordance with the Rules, information about —

(a) the matters (if any) on which agreement has been reached; and

(b) the matters that are in dispute; and

(c) any other matter specified by the Rules.

(3) A notification must be accompanied by the fee set by the Rules (if any).

(4) A notification cannot be made under this section if the access dispute relates to a matter excluded from arbitration under this Chapter by the Rules.

[Section 216H inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216I. Parties to an access dispute

The parties to an access dispute are —

(a) the parties to the negotiations that gave rise to the access dispute under section 216H(1); and

(b) if the scheme administrator is of the opinion that the resolution of the access dispute may involve requiring another person to do something and that it is appropriate that the person be joined as a party — that other person.

[Section 216I inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

Part 3 — Reference of dispute to arbitration

[Heading inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216J. Reference of dispute

(1) If the scheme administrator receives notification of an access dispute under Part 2, the dispute must be referred to arbitration.

(2) The scheme administrator must give notice of the referral of an access dispute to arbitration to the parties to the negotiations that gave rise to the access dispute and, if relevant, to any other person who will be a party to the access dispute.

[Section 216J inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216K. Selection of arbitrator

(1) The parties to an access dispute may agree to appoint, in accordance with the Rules, the arbitrator for the purposes of an access dispute that is to be referred to arbitration under this Part.

(2) If the parties do not agree to the appointment of an arbitrator within a period specified by the Rules, the arbitrator will be a person selected by the scheme administrator after consultation with the parties to the access dispute.

(3) The arbitrator must be a person who —

(a) is independent of the parties to the dispute; and

(b) is properly qualified to act in the resolution of the dispute; and

(c) has no direct or indirect interest in the outcome of the dispute.

(4) If for some reason an arbitrator does not complete an arbitration, the parties may agree, in accordance with the Rules, to make a fresh appointment and, in default of agreement within a period specified by the Rules, the scheme administrator may, after consultation with the parties, make the appointment.

[Section 216K inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216L. Determination of access dispute

(1) Unless an arbitration is terminated under another provision of this Chapter, the arbitrator must make a determination on access by the prospective user or user (as the case requires) (including a determination that does not require a service provider to provide access to any pipeline services).

(2) A determination may deal with any matter relating to access by the prospective user or user to the pipeline services specified by the Rules for the purposes of this subsection (and the arbitrator must not make a determination that is inconsistent with the Rules or goes beyond the matters specified by the Rules).

(3) The Rules may also, in connection with the making of an access determination, contain provisions for or with respect to such things as —

(a) the form of any determination; and

(b) the content of any determination, including as to the giving of reasons; and

(c) the time within which a determination must be made; and

(d) the process for making a determination; and

(e) when a determination takes effect; and

(f) the giving of notice of the making of a determination.

[Section 216L inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216M. Principles to be taken into account

The arbitrator must, when making a determination on access, take into account any pricing or other principle specified in the Rules.

[Section 216M inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216N. Restrictions on access determinations

(1) The arbitrator must not make an access determination that would have any of the following effects:

(a) preventing a user obtaining a sufficient amount of a pipeline service under a contract or previous access determination to be able to meet the user's reasonably anticipated requirements, measured at the time that the access dispute was notified;

(b) preventing a prospective user or user from obtaining, by the exercise of a pre-notification right, a sufficient amount of a pipeline service to be able to meet the prospective user's or user's actual requirements;

(c) depriving a person of a relevant protected contractual right.

(2) In this section —

pre-notification right means a right under a contract, or under an access determination, that was in force at the time when the access dispute was notified under section 216H;

~~***relevant exclusivity right*** means an express contractual right that—~~

~~(a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or~~

~~(b) limits or controls a service provider's ability to supply pipeline services to persons who are not parties to the contract,~~

~~but does not include a user's contractual right to obtain a certain amount of pipeline services;~~

~~***relevant protected contractual right*** means a right under a contract (other than a relevant exclusivity right) that was in force immediately before notification of an access dispute under section 216H.~~

~~*[Section 216N inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]*~~

~~216O. Arbitrator's power to terminate arbitration~~

~~(1) An arbitrator may determine not to proceed with an arbitration (and terminate the proceedings under this Chapter) if the arbitrator considers that—~~

~~(a) the notification of the dispute was vexatious; or~~

~~(b) the subject matter of the dispute is trivial, misconceived or lacking in substance; or~~

~~(c) the party who notified the access dispute did not negotiate in good faith; or~~

~~(d) there is some other good reason why the arbitration should not proceed.~~

~~(2) Furthermore, the arbitrator may at any time terminate an arbitration without making an access determination if the arbitrator considers that—~~

~~(a) the prospective user or user seeking access is not engaging in the arbitration in good faith; or~~

~~(b) the terms and conditions on which access is to be granted should be governed by an existing contract or determination.~~

~~(3) The arbitrator may also at any time terminate an arbitration if the arbitrator considers that a specified dispute termination circumstance has occurred.~~

(4) In subsection (3), a ***specified dispute termination circumstance*** is a circumstance specified by the Rules as being a circumstance, the occurrence of which, entitles the arbitrator to terminate an access dispute without any further step being taken.

[Section 216O inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216P. Access seeker's right to terminate arbitration

(1) The prospective user or user seeking access to pipelines services under this Chapter may terminate the arbitration before an access determination is made by the arbitrator.

(2) The arbitration is terminated under this section by giving notice of termination to —

(a) the arbitrator; and

(b) the other parties to the arbitration; and

(c) the scheme administrator.

[Section 216P inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

Part 4 Compliance with access determinations

[Heading inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216Q. Compliance with access determinations

(1) Subject to the Rules and to subsection (2), an access determination is enforceable as if it were a contract between the parties to the access determination.

(2) A prospective user or user of a pipeline service to which an access determination relates is not bound to seek access to the service (but if access is sought or obtained then the prospective user or user (as the case requires) is bound by any relevant provision of the access determination).

[Section 216Q inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

Part 5 Variation of access determinations

[Heading inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216R. Variation of access determinations

(1) An access determination may be varied by agreement between all parties to the access determination.

(2) The Rules may also contain provisions with respect to seeking variations to an access determination.

(3) The provisions of this Chapter about the arbitration of an access dispute apply with necessary modifications to a proposal under the Rules to vary an access determination or to a dispute arising out of such a proposal.

[Section 216R inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

Part 6 Hearing procedures

[Heading inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216S. Hearing procedures

Chapter 6 Part 6 applies to an arbitration under this Chapter —

(a) as if —

(i) a reference in that Part to a dispute hearing were a reference to a hearing conducted by an arbitrator for the purposes of making an access determination under this Chapter; and

(ii) a reference in that Part to a party or parties were a reference to a party or the parties to an arbitration under this Chapter; and

(iii) a reference in that Part to the dispute resolution body were a reference to an arbitrator under this Chapter; and

(iv) a reference in that Part to an access dispute were a reference to an access dispute under this Chapter; and

(b) subject to the exclusion of sections 206 and 207, and subject to any other exclusion prescribed by the Regulations; and

(c) subject to any modifications prescribed by the Regulations; and

(d) with such other necessary alterations and modifications.

[Section 216S inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

Part 7 Miscellaneous matters

[Heading inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216T. Correction of access determinations for clerical mistakes etc

The Rules may make provision with respect to correcting the following in an access determination:

(a) a clerical mistake;

(b) an error arising from an accidental slip or omission;

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in an access determination;

(d) a defect in form.

[Section 216T inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216U. Reservation of capacity during an access dispute

A service provider who is in an access dispute with a user must not, without the consent of the user, alter the rights that the user has to use the capacity of the non-scheme pipeline during the period of the dispute.

[Section 216U inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]

216V. Costs of arbitration

(1) Subject to this section, the costs of an arbitration under this Chapter (including costs associated with the arbitration process and the cost of the arbitrator) will be shared equally between the parties to the arbitration.

(2) The Rules may make provision with respect to the costs of an arbitration under this Chapter, including rules that provide for a different approach to allocating costs under subsection (1) in specified circumstances.

~~(3) Costs payable to an arbitrator are a debt due to the arbitrator and may be recovered by the arbitrator in a court of competent jurisdiction.~~

~~(4) Despite anything in a preceding subsection, the parties to an arbitration will bear their own costs.~~

~~*[Section 216V inserted: see SA Act No. 23 of 2017 s. 6 and WA Gazette 22 Dec 2017 p. 5984.]*~~

Chapter 7 — The Natural Gas Services Bulletin Board

Part 1 — The Bulletin Board Operator

217. The Bulletin Board operator

The Bulletin Board operator is the person prescribed by the Regulations as the Bulletin Board operator.

218. Obligation to establish and maintain the Natural Gas Services Bulletin Board

(1) The Bulletin Board operator first prescribed under section 217 must establish a website, to be known as the Natural Gas Services Bulletin Board, containing information of the kind specified in the Rules in relation to natural gas services.

(2) The Bulletin Board operator must maintain the Natural Gas Services Bulletin Board.

(3) The Bulletin Board operator may replace the website with another website containing information of the kind specified in the Rules in relation to natural gas services.

219. Other functions of the Bulletin Board operator

The Bulletin Board operator also has the following functions:

(a) to collect and collate Bulletin Board information;

(b) to collect and collate other information in relation to natural gas services for inclusion on the Natural Gas Services Bulletin Board;

(c) to derive from information of the type mentioned in paragraphs (a) and (b) information for inclusion on the Natural Gas Services Bulletin Board;

(d) to publish information on the Natural Gas Services Bulletin Board of the kinds that may or must be included on the Natural Gas Services Bulletin Board under the Rules;

(e) to manage information of the type mentioned in paragraphs (a), (b) and (c);

(f) such other functions as are conferred on the Bulletin Board operator by this Law, the Rules or any other law prescribed by the Regulations for the purposes of this paragraph.

220. Powers of the Bulletin Board operator

The Bulletin Board operator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

221. Immunity of the Bulletin Board operator

(1) The Bulletin Board operator or an officer or employee of the Bulletin Board operator does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of the Bulletin Board operator under this Law or the Rules unless the act or omission is done or made in bad faith or through negligence.

(2) The civil monetary liability for an act or omission of a kind referred to in subsection (1) done or made through negligence may not exceed the prescribed maximum amount.

(3) The Regulations may, for the purposes of subsection (2), without limitation do all or any of the following:

(a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;

(b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;

(c) prescribe the manner in which a maximum amount is to be divided amongst claimants.

(4) The Bulletin Board operator may enter into an agreement with a person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.

(5) This section does not apply to any liability of an officer or employee of a body corporate to the body corporate.

(6) In this section—

civil monetary liability means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty

under this Law, an infringement penalty under Chapter 8 Part 7 or the costs of a proceeding.

222. Fees for services provided

(1) The Bulletin Board operator may charge a fee specified, or a fee calculated in accordance with a formula or methodology specified, in the Rules for access by a person to—

(a) the Natural Gas Services Bulletin Board; or

(b) Bulletin Board information.

(2) The fee must not be such as to amount to taxation.

Part 2 — Bulletin Board information

223. Obligation to give information to the Bulletin Board operator

(1) A person of the following kind who has possession or control of information in relation to natural gas services must give the Bulletin Board operator the information if the person is required to do so under the Rules:

(a) a service provider;

(b) a gas market operator;

(c) a user;

(d) a non scheme pipeline user;

(e) a producer;

(f) a storage provider;

(g) another person who is prescribed by the Regulations for the purposes of this paragraph.

(2) The information must be given to the Bulletin Board operator in accordance with the Rules.

(3) Subsection (1) does not apply if the person is exempt under the Rules from giving the information.

224. Person cannot rely on duty of confidence to avoid compliance with obligation

A person must not refuse to comply with the requirement in section 223(1) on the ground of any duty of confidence.

225. Giving to Bulletin Board operator false and misleading information

A person must not give Bulletin Board information to the Bulletin Board operator that the person knows is false or misleading in a material particular.

226. Immunity of persons giving information to the Bulletin Board operator

(1) A person who gives Bulletin Board information to the Bulletin Board operator does not incur any civil monetary liability for an act or omission in giving that information unless the act or omission is done or made in bad faith or through negligence.

(2) The civil monetary liability for an act or omission of a kind referred to in subsection (1) done or made through negligence may not exceed the prescribed maximum amount.

(3) The Regulations may, for the purposes of subsection (2), without limitation do all or any of the following:

(a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;

(b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;

(c) prescribe the manner in which a maximum amount is to be divided amongst claimants.

(4) A person mentioned in subsection (1) may enter into an agreement with another person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.

(5) In this section—

civil monetary liability means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty

under this Law, an infringement penalty under Chapter 8 Part 7 or the costs of a proceeding.

Part 3 — Protection of information

227. Protection of information by the Bulletin Board operator

(1) The Bulletin Board operator must not copy, record, use or disclose information that is Bulletin Board information, except for the purposes of exercising powers or performing functions as the Bulletin Board operator.

(2) If a person ceases to be the Bulletin Board operator, the person must not afterwards copy, record, use or disclose information that is Bulletin Board information and that was disclosed to the person as the Bulletin Board operator.

(3) Subsection (1) does not apply if—

(a) the Bulletin Board operator has the written consent for the copying, recording, use or disclosure from—

(i) the person who gave the information; or

(ii) the person from whom the person referred to in subparagraph (i) received that information; or

(b) the information is publicly available; or

(c) the information is required to be used or disclosed because of the operation of a law of this jurisdiction or another participating jurisdiction; or

(d) the information is also disclosed to the Bulletin Board operator—

(i) for reasons other than compliance with section 223(1); and

(ii) in circumstances other than those expressly permitted by the Rules.

228. Protection of information by employees etc of the Bulletin Board operator

(1) A person who is—

(a) an officer of the Bulletin Board operator; or

(b) an employee of the Bulletin Board operator; or

(c) a person performing work for or rendering services to the Bulletin Board operator otherwise than as an officer or employee,

must not copy, record, use or disclose information that is Bulletin Board information, except in that person's capacity as a person who is exercising powers or performing functions, or assisting in the exercise of powers or performance of functions, for the Bulletin Board operator as the Bulletin Board operator.

(2) If—

(a) information is Bulletin Board information; and

(b) the information is disclosed to a person in the person's capacity as—

(i) an officer of the Bulletin Board operator; or

(ii) an employee of the Bulletin Board operator; or

(iii) a person performing work for or rendering services to the Bulletin Board operator otherwise than as an officer or employee,

exercising powers or performing functions, or assisting in the exercise of powers or performance of functions, for the Bulletin Board operator; and

(c) 1 of the following applies:

(i) in the case of an officer of the Bulletin Board operator—the person ceases to be an officer acting in that capacity;

(ii) in the case of an employee of the Bulletin Board operator—the person ceases to be an employee acting in that capacity;

(iii) in the case of a person performing work for or rendering services to the Bulletin Board operator otherwise than as an officer or employee—the person ceases to be a person of that kind acting in that capacity,

the person must not afterwards copy, record, use or disclose the information.

(3) Subsections (1) and (2) do not apply if—

(a) the person has the written consent for the copying, recording, use or disclosure from—

(i) the person who gave the information; or

(ii) the person from whom the person referred to in subparagraph (i) received that information; or

(b) the information is publicly available; or

(c) the information is required to be used or disclosed because of the operation of a law of this jurisdiction or another participating jurisdiction; or

(d) the information is also disclosed to the person—

(i) for reasons other than compliance with section 223(1); and

(ii) in circumstances other than those expressly permitted by the Rules.

Chapter 8 — Proceedings under the National Gas Law

Part 1 — Proceedings generally

229. Instituting civil proceedings under this Law

(1) Proceedings may not be instituted in a court in respect of a breach of a provision of this Law, the Regulations or Rules that is not an offence provision by any person except as provided for in this Chapter.

(2) The AER may, in accordance with Chapter 8 Part 2, institute civil proceedings in respect of a breach of—

(a) a provision of this Law that is not an offence provision (including a provision that is a civil penalty provision or conduct provision); or

(b) a provision of the Regulations that is not an offence provision (including a provision that is a civil penalty provision or conduct provision); or

(c) a provision of the Rules (including a provision that is a civil penalty provision or a conduct provision).

(3) A person other than the AER may, in accordance with Chapter 8 Part 2, institute civil proceedings in respect of a breach of a conduct provision.

230. Time limit within which proceedings may be instituted

(1) The AER may only institute a proceeding for a breach, by a person, of a provision of this Law, the Regulations or the Rules that is not an offence provision within 6 years after the date on which the breach occurred.

(2) A person, other than the AER, may only institute a proceeding for a breach of a conduct provision by another person within 6 years after the date on which the breach occurred.

Part 2 — Proceedings for breaches of this Law, Regulations or the Rules

231. AER proceedings for breaches of this Law, Regulations or the Rules that are not offences

(1) The Court may make an order, on application by the AER on behalf of the Commonwealth, declaring that a person has breached a provision of this Law, the Regulations or the Rules that is not an offence provision.

Note—

A Supreme Court of a participating jurisdiction that is a State may hear an application by the AER under subsection (1) by operation of section 39(2) of the *Judiciary Act 1903* of the Commonwealth.

(1A) When subsection (1) is read as if a reference in it to the AER were a reference to the ERA, the subsection is to be read as if "on behalf of the Commonwealth" had been deleted.

(2) If the order declares a person has breached a provision of [*4]this Law, the ~~this Law the~~ Regulations or the Rules that is not an offence provision, the order may include 1 or more of the following:

(a) an order that the person pay a civil penalty determined in accordance with this Law, the Regulations and the Rules if the breach is a breach of a civil penalty provision;

(b) an order that the person cease, within a specified period, the act, activity or practice constituting the breach;

(c) an order that the person take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach;

(d) an order that the person implement a specified program for compliance with this Law, the Regulations and the Rules;

(da) an order that the person perform a specified service that relates to the breach and that is for the benefit of the community or a section of the community;

(db) an order that the person, at the person's expense, engage—

(i) another person specified in the order; or

(ii) another person in a class of persons specified in the order,

to perform a service that is specified in the order and that relates to the breach and that is for the benefit of the community or a section of the community;

(dc) an order to ensure that the person does not engage in further conduct of the same nature, or similar or related conduct, during the period of the order (which cannot exceed 3 years), including—

(i) an order that the person establish a compliance program or an education and training program

for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to the conduct constituting the breach, or similar or related conduct; or

(ii) an order that the person revise the internal operations of the person's business that led to the person committing the breach;

(dd) an order that the person—

(i) disclose, in the way and to the persons specified in the order, specified information, being information that the person has possession of or access to; and

(ii) publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order;

(e) an order of a kind prescribed by the Regulations.

(2a) An order under paragraph (db) of subsection (2) is not enforceable against a person mentioned in paragraph (db)(i) or (ii).

(3) If a person has engaged, is engaging or is proposing to engage in any conduct in breach of a provision of this Law, the Regulations or the Rules that is not an offence provision, the Court may, on application by the AER on behalf of the Commonwealth, grant an injunction—

(a) restraining the person from engaging in the conduct; and

(b) if, in the Court's opinion, it is desirable to do so—requiring the person to do something.

(3A) When subsection (3) is read as if a reference in it to the AER were a reference to the ERA, the subsection is to be read as if "on behalf of the Commonwealth" had been deleted.

(4) The power of the Court under subsection (3) to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised—

(a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

[Section 231 modified: WA Act Sch. 1 cl. 10; amended: see SA Act No. 37 of 2020 s. 65 and WA Gazette 4 Sep 2024 p. 2215.]

232. Proceedings for declaration that a person has breached a conduct provision

(1) The Court may make an order, on application by a person other than the AER, declaring that another person has breached a conduct provision.

(2) If the order declares a person has breached a conduct provision, the order may include 1 or more of the following:

(a) an order that the person cease, within a specified period, the act, activity or practice constituting the breach;

(b) an order that the person take such action, or adopt such practice, as the Court requires for remedying the breach or preventing a recurrence of the breach;

(c) an order that the person implement a specified program for compliance with this Law, the Regulations and the Rules;

(d) an order of a kind prescribed by the Regulations.

(3) If a person has engaged, is engaging or is proposing to engage in any conduct in breach of a conduct provision, the Court may, on application by another person (other than the AER), grant an injunction—

(a) restraining the first mentioned person from engaging in the conduct; and

(b) if, in the Court's opinion, it is desirable to do so—requiring the first mentioned person to do something.

(4) The power of the Court under subsection (3) to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised—

(a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the

Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person in conduct of that kind.

[Section 232 amended: see SA Act No. 37 of 2020 s. 66 and WA Gazette 4 Sep 2024 p. 2215.]

233. Actions for damages by persons for breach of conduct provision

A person other than the AER who suffers loss or damage by conduct of another person that was done in breach of a conduct provision may recover the amount of the loss or damage by action against that other person in a court of competent jurisdiction.

Part 3 — Matters relating to breaches of this Law, the Regulations or the Rules

234. Matters for which there must be regard in determining amount of civil penalty

Every civil penalty ordered to be paid by a person declared to have breached a provision of this Law, the Regulations or the Rules must be determined having regard to all relevant matters, including—

(a) the nature and extent of the breach; and

(b) the nature and extent of any loss or damage suffered as a result of the breach; and

(ba) without limiting the operation of section 3A(1)(c)(ii)(B) or (C)—the value of any benefit reasonably attributable to the breach that the person or, in the case of a body corporate, any related body corporate, has obtained, directly or indirectly; and

(c) the circumstances in which the breach took place; and

(d) whether the person has engaged in any similar conduct and been found to have breached a provision of this Law, the Regulations or the Rules in respect of that conduct; and

(e) whether the service provider had in place a compliance program approved by the AER or required under the Rules, and if so, whether the service provider has been complying with that program.

[Section 234 amended: see SA Act No. 37 of 2020 s. 67 and WA Gazette 4 Sep 2024 p. 2215.]

235. Breach of a civil penalty provision is not an offence

A breach of a civil penalty provision is not an offence.

236. Breaches of civil penalty provisions involving continuing failure

For the purpose of determining the civil penalty for a breach of a civil penalty provision, if the breach consists of a failure to do something that is required to be done, the breach is to be regarded as continuing until the act is done despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

237. Conduct in breach of more than 1 civil penalty provision

(1) If the conduct of a person constitutes a breach of 2 or more civil penalty provisions, proceedings may be instituted under this Law against the person in relation to the breach of any 1 or more of those provisions.

(2) However, the person is not liable to more than 1 civil penalty under this Law in respect of the same conduct.

Note—

Clause 49 of Schedule 2 to this Law sets out further provisions in relation to double jeopardy.

238. Persons involved in breach of civil penalty provision or conduct provision

(1) A person must not—

(a) aid, abet, counsel or procure a breach of a civil penalty provision or conduct provision by another person; or

(b) be in any way directly or indirectly knowingly concerned in, or party to, a breach of a civil penalty provision or conduct provision by another person.

(2) This Law applies to a person who breaches subsection (1) in relation to a civil penalty provision or conduct provision as if

the person were a person who has breached the civil penalty provision or conduct provision.

239. Attempt to breach a civil penalty provision

A person who attempts to commit a breach of a civil penalty provision commits a breach of that provision.

240. Civil penalties payable to the Commonwealth

If a person is ordered to pay a civil penalty, the penalty is payable to the State of Western Australia except if the order is made on an application by the AER on behalf of the Commonwealth, in which case it is payable to the Commonwealth.

[Section 240 modified: WA Act Sch. 1 cl. 11.]

Part 4 — Judicial review of decisions under this Law, the Regulations and the Rules

241. Definition

In this Part—

person aggrieved includes a person whose interests are adversely affected.

242. Applications for judicial review of decisions of the AEMC

(1) A person aggrieved by—

(a) a decision or determination of the AEMC under this Law, the Regulations or the Rules; or

(b) a failure by the AEMC to make a decision or determination under this Law, the Regulations or the Rules; or

(c) conduct engaged in, or proposed to be engaged in, by the AEMC for the purpose of making a decision or determination under this Law, the Regulations or the Rules,

may apply to the Court for judicial review of the decision or determination, failure or conduct or proposed conduct.

[*4]**Note—**

The AER is subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth.

~~Note—~~

~~The Commonwealth Minister, NCC and AER are subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth.~~

(2) Unless the Court otherwise orders, the making of an application to the Court under subsection (1) does not affect the operation of the decision or determination referred to in that subsection or prevent the taking of action to implement the decision or determination.

243. Applications for judicial review of decisions of the Bulletin Board operator

(1) A person aggrieved by—

(a) a decision or determination of the Bulletin Board operator under this Law or the Rules; or

(b) a failure by the Bulletin Board operator to make a decision or determination under this Law or the Rules; or

(c) conduct engaged in, or proposed to be engaged in, by the Bulletin Board operator for the purpose of making a decision or determination under this Law or the Rules,

may apply to the Court for judicial review of the decision or determination, failure or conduct or proposed conduct.

(2) Unless the Court otherwise orders, the making of an application to the Court under subsection (1) does not affect the operation of the decision or determination referred to in that subsection or prevent the taking of action to implement the decision or determination.

Part 5 — Merits review and other non-judicial review

Division 1 — Interpretation

244. Definitions

In this Part—

AER information disclosure decision means a decision of the AER under section 329 to disclose information, or the contents of a document;

applicant means—

[(a) deleted]

(b) a person who makes an application under section 263;

review under this Part means a review under Division 3;

[Section 244 amended see SA Act No. 79 of 2013 s. 22 and WA Gazette 14 Mar 2014 p. 632; SA Act No. 3 of 2021 s. 44 and WA Gazette 22 Jan 2025 p. 63-4.]

[Division 2 (s. 245-262) deleted: SA Act No. 3 of 2021 s. 45 and WA Gazette 22 Jan 2025 p. 63-4.]

Division 3 — Tribunal review of AER information disclosure decisions under section 329

263. Application for review

(1) A person whose interests are adversely affected by an AER information disclosure decision may apply to the Tribunal for a review of the decision.

(2) An application must be made in the form and manner determined by the Tribunal.

(3) An application may only be made on the ground that—

(a) the decision was not made in accordance with law; or

(b) the decision is unreasonable having regard to all relevant circumstances.

(4) The person must lodge the application with the Tribunal no later than 5 business days after the date of the notice given under section 329(2), (3) or (6) to which the AER information disclosure decision relates (whichever is the later).

(5) An application under this section stays the operation of the decision until the earlier of—

(a) 20 business days; or

(b) the making of a determination by the Tribunal in respect of the application.

264. Exclusion of public in certain cases

On the application of a party to a review under this Division, the Tribunal may conduct the review in the absence of the public.

265. Determination in the review

(1) Subject to this Part, on receipt of an application under section 263, the Tribunal must make a determination in respect of the application.

(2) A determination under this section must only—

(a) affirm the AER information disclosure decision; or

(b) forbid disclosure by the AER of the information or document to which the AER information disclosure decision the subject of the review relates; or

(c) restrict, as specified in the determination, the intended disclosure by the AER of the information or document to which the AER information disclosure decision the subject of the review relates.

(3) For the purposes of making a determination of the kind in subsection (2)(a), the Tribunal may perform all the functions and exercise all the powers of the AER under this Law or the Rules.

(4) A determination by the Tribunal affirming, forbidding or restricting the AER information disclosure decision is, for the purposes of this Law (other than this Part), to be taken to be a decision of the AER.

266. Tribunal must be taken to have affirmed decision if decision not made within time

(1) This section applies if the Tribunal does not make a determination under section 265 within 20 business days after an application is lodged under section 263.

(2) The Tribunal must be taken to have made a determination under section 265 affirming the AER information disclosure decision to which the application relates.

267. Assistance from the AER in certain cases

The member of the Tribunal presiding in the review may require the AER to give information and other assistance and to make reports, as specified, by the member for the purposes of the review.

Division 4 — General

268. Costs in a review

(1) Subject to this section, the Tribunal may order that a party to a review under this Part pay all or a specified part of the costs of another party to the review.

(2) The Tribunal must not make an order requiring the AER [*4M*]~~or AEMO~~ to pay the costs of another party to the review unless the Tribunal considers that the AER [*4M*]~~or AEMO~~ has conducted their case in the review without due regard to—

(a) the costs that would have to be incurred by another party to the review as a result of that conduct; or

(b) the time required by—

(i) the Tribunal to hear the review as a result of that conduct; or

(ii) another party to prepare their case as a result of that conduct; or

[(c) deleted]

[(3) deleted]

[Section 268 amended see SA Act No. 79 of 2013 s. 32 and WA Gazette 14 Mar 2014 p. 632; SA Act No. 3 of 2021 s. 46 and WA Gazette 22 Jan 2025 p. 63-4.]

269. Amount of costs

(1) If the Tribunal makes an order for costs in a review under this Part, the Tribunal may in that order fix the amount of costs payable by a party to the review on—

(a) a party and party basis; or

(b) a solicitor and client basis; or

(c) an indemnity basis; or

(d) any other basis as the Tribunal may decide.

[(2) deleted]

[Section 269 amended see SA Act No. 79 of 2013 s. 33 and WA Gazette 14 Mar 2014 p. 632; SA Act No. 3 of 2021 s. 47 and WA Gazette 22 Jan 2025 p. 63-4.]

*[**269A, 270.** Deleted: see SA Act No. 3 of 2021 s. 48 and WA Gazette 22 Jan 2025 p. 63-4.]*

Part 6 — Enforcement of access determinations

271. Enforcement of access determinations

(1) If the Court is satisfied, on the application of a party to an access determination, that another party to the determination has engaged, is engaging, or is proposing to engage in conduct that

constitutes a contravention of the determination, the Court may make all or any of the following orders:

(a) an order granting an injunction on such terms as the Court thinks appropriate—

(i) restraining the other party from engaging in the conduct; or

(ii) if the conduct involves refusing or failing to do something—requiring the other party to do that thing;

(b) an order directing the other party to compensate the applicant for loss or damage suffered as a result of the contravention;

(c) any other order that the Court thinks appropriate.

(2) The revocation of an access determination does not affect any remedy under subsection (1) in respect of a contravention of the determination that occurred when the determination was in force.

(3) If the Court has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who was involved in the contravention concerned.

(4) A reference in this section to a person involved in the contravention is a reference to a person who has—

(a) aided, abetted, counselled or procured the contravention; or

(b) induced the contravention, whether through threats or promises or otherwise; or

(c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or

(d) conspired with others to effect the contravention.

[*4]~~(5) A reference in this section to an access determination includes a reference to an access determination under Chapter 6A.~~

[Section 271 amended: see SA Act No. 23 of 2017 s. 7 and WA Gazette 22 Dec 2017 p. 5984.]

272. Consent injunctions

On an application for an injunction under section 271, the Court may grant an injunction by consent of all of the parties to the proceedings, whether or not the Court is satisfied that the section applies.

273. Interim injunctions

The Court may grant an interim injunction pending determination of an application under section 271.

274. Factors relevant to granting a restraining injunction

The power of the Court to grant an injunction under section 271 restraining a person from engaging in conduct may be exercised whether or not—

(a) it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) the person has previously engaged in conduct of that kind; or

(c) there is an imminent danger of substantial damage to any person if the first mentioned person engages in conduct of that kind.

275. Factors relevant to granting a mandatory injunction

The power of the Court to grant an injunction under section 271 requiring a person to do a thing may be exercised whether or not—

(a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; or

(b) the person has previously refused or failed to do that thing; or

(c) there is an imminent danger of substantial damage to any person if the first mentioned person refuses or fails to do that thing.

276. Discharge or variation of injunction or other order

The Court may discharge or vary an injunction or order granted under this Part.

Part 7 — Infringement notices

277. Power to serve notice

(1) The AER may serve an infringement notice on a person if the AER believes on reasonable grounds that the person has breached a civil penalty provision.

(2) The AER must, however, serve an infringement notice not later than 12 months after the date on which the AER forms a belief that there has been a breach of a civil penalty provision.

(3) An infringement notice may be served on a natural person—

(a) by delivering it personally to the person; or

(b) by sending it by post addressed to the person to their usual or last known place of residence or business.

(4) An infringement notice may be served on a person that is a body corporate—

(a) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or

(b) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.

[Section 277 amended: see SA Act No. 37 of 2020 s. 68 and WA Gazette 4 Sep 2024 p. 2215.]

278. Form of notice

An infringement notice must state—

(a) the date of the notice;

(b) that the alleged breach is a breach of the civil penalty provision;

(c) the nature, and a brief description, of the alleged breach;

(d) the date, time and place of the alleged breach;

(e) the infringement penalty for the alleged breach;

(f) the manner in which the infringement penalty may be paid;

(g) the time (being not less than 28 days after the date on which the notice is served) within which the infringement penalty must be paid;

(h) that, if the amount of the infringement penalty is paid before the end of the time specified in the notice, proceedings will not be instituted in respect of the alleged breach by the AER unless the notice is withdrawn before the end of that time in accordance with section 282;

(i) that the person is entitled to disregard the notice and defend any proceedings in respect of the civil penalty provision;

(j) any other particulars prescribed by the Regulations.

279. Infringement penalties

(1) In this section—

tier 1 civil penalty provision means a provision with a civil penalty determined under section 3A(1)(c);

tier 2 civil penalty provision means a provision with a civil penalty determined under section 3A(1)(b);

tier 3 civil penalty provision means a provision with a civil penalty determined under section 3A(1)(a).

(2) The infringement penalty for a breach of a civil penalty provision is—

(a) in the case of a tier 3 civil penalty provision—

(i) if the breach is alleged to have been committed by a natural person—$6 790 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision;

(ii) if the breach is alleged to have been committed by a body corporate—

(A) if the AER makes a determination under subsection (3)—$6 790 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision; or

(B) in any other case—$33 900 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision;

(b) in the case of a tier 2 or tier 1 civil penalty provision—

(i) if the breach is alleged to have been committed by a natural person—$13 600 or any lesser

amount that is prescribed by the Regulations in relation to the civil penalty provision;

(ii) if the breach is alleged to have been committed by a body corporate—$67 800 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision.

(3) In the case of a body corporate that is not a listed corporation or a body corporate that is subject to the infringement penalty by virtue only of being a related body corporate, the AER may, in a particular case, determine that the infringement penalty to be included in an infringement notice to be issued to the body corporate in relation to an alleged breach of a tier 3 civil penalty provision will be the amount applying under subsection (2)(a)(ii)(A) if the AER considers this to be an appropriate course of action after taking into account—

(a) the nature of the alleged breach; and

(b) the degree of financial impact on the body corporate if the higher infringement penalty under subsection (2)(a)(ii)(B) were to be imposed; and

(c) the extent to which the imposition of the higher infringement penalty would appear to be excessive in the circumstances; and

(d) any other matter considered relevant by the AER.

Note—

See Schedule 2 clause 47A, which provides for the amounts specified in this section to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

[Section 279 inserted: see SA Act No. 37 of 2020 s. 69 and WA Gazette 4 Sep 2024 p. 2215.]

280. AER cannot institute proceedings while infringement notice on foot

On serving an infringement notice under this Part, the AER must not institute a proceeding in respect of the breach for which the infringement notice was served if—

(a) the time for payment stated in the infringement notice has not expired; and

(b) the infringement notice has not been withdrawn by the AER in accordance with section 282.

281. Late payment of penalty

The AER may accept payment of the infringement penalty even after the expiration of the time for payment stated in the infringement notice if—

(a) a proceeding has not been instituted in respect of the breach to which the infringement penalty relates; and

(b) the infringement notice has not been withdrawn by the AER in accordance with section 282.

282. Withdrawal of notice

(1) The AER may withdraw an infringement notice at any time before the end of the time for payment specified in the notice by serving a withdrawal notice on the person served with the infringement notice.

(2) A withdrawal notice may be served on a natural person—

(a) by delivering it personally to the person; or

(b) by sending it by post addressed to the person to their usual or last known place of residence or business.

(3) A withdrawal notice may be served on a person that is a body corporate—

(a) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or

(b) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.

(4) An infringement notice may be withdrawn even if the infringement penalty has been paid.

283. Refund of infringement penalty

If an infringement notice is withdrawn in accordance with section 282, the amount of any infringement penalty paid must be refunded by the AER.

284. Payment expiates breach of civil penalty provision

No proceedings may be taken by the AER against a person on whom an infringement notice was served in respect of an alleged breach of a civil penalty provision if—

(a) the infringement penalty is—

(i) paid within the time for payment stated in the notice; and

(ii) not withdrawn by the AER within the time for payment stated in the notice in accordance with section 282; or

(b) the infringement penalty is accepted in accordance with section 281.

285. Payment not to have certain consequences

The payment of an infringement penalty under this Part is not and must not be taken to be an admission of a breach of a civil penalty provision or an admission of liability for the purpose of any proceeding instituted in respect of the breach.

286. Conduct in breach of more than 1 civil penalty provision

(1) If the conduct of a person constitutes a breach of 2 or more civil penalty provisions, an infringement notice may be served on the person under this Part in relation to the breach of any 1 or more of those provisions.

(2) However, the person is not liable to pay more than 1 infringement penalty in respect of the same conduct.

Part 8 — Further provision for corporate liability for breaches of this Law etc

287. Definition

In this Part—

breach provision means an offence provision, a civil penalty provision or a conduct provision.

288. Offences and breaches by corporations

(1) If a corporation contravenes a breach provision, each officer of the corporation is to be taken to have contravened the breach provision if the officer knowingly authorised or permitted the contravention or breach.

(2) An officer of a corporation may be proceeded against under a breach provision pursuant to this section whether or not the corporation has been proceeded against under the provision.

(3) Nothing in this section affects the liability of a corporation for a contravention of a breach provision.

289. Corporations also in breach if officers and employees are in breach

If an officer or employee of a corporation commits an act, which is within the scope of the actual or apparent authority of the officer or employee, that would, if that act were committed by the corporation, constitute a breach of a provision of this Law, the Regulations or the Rules, that corporation is to be taken to have contravened that provision.

[Section 289 amended: see SA Act No. 37 of 2020 s. 70 and WA Gazette 4 Sep 2024 p. 2215.]

Chapter 9 — The making of the National Gas Rules

Part 1 — General

Division 1 — Interpretation

290. Definitions

In this Chapter—

AEMC initiated Rule means a Rule of the kind referred to in section 295(2);

AEMC Rule review means a review conducted by the AEMC under Chapter 2 Part 2 Division 5;

gas market regulatory body means—

(a) the AER;

(b) the ERA;

(c) VENCorp;

(d) GMCo;

(e) REMCo;

(f) a person or body prescribed by Regulation to be a gas market regulatory body;

GMCo means the Gas Market Company Ltd (ACN 095 400 258);

market initiated proposed Rule means a request for a Rule made under section 295(1) in respect of which the AEMC publishes a notice under section 303;

more preferable Rule has the meaning given by section 296;

non-controversial Rule means a Rule that is unlikely to have a significant effect on a market for gas or the regulation of pipeline services;

proposed Rule means—

(a) a market initiated proposed Rule; or

(b) a proposal for an AEMC initiated Rule; or

(c) a proposed more preferable Rule;

publish means—

(a) in relation to a notice required to be published under this Chapter (except section 315)—publish in the South Australian Government Gazette and on the AEMC's website;

(b) in relation to a decision under section 301(2)—publish on the AEMC's website and make available at the offices of the AEMC;

(c) in relation to a proposed Rule referred to in section 303 and any other documents prescribed by the Regulations in relation to a proposed Rule referred to in section 303—publish on the AEMC's website and make available at the offices of the AEMC;

(d) in relation to a draft Rule determination or final Rule determination—publish on the AEMC's website and make available at the offices of the AEMC;

(e) in relation to any submissions or comments received by the AEMC under this Chapter—subject to section 319, publish on the AEMC's website and make available at the offices of the AEMC;

(f) in relation to a report prepared under section 320—publish on the AEMC's website and make available at the offices of the AEMC;

REMCo means the Retail Energy Market Company Ltd (ACN 103 318 556);

urgent Rule means a Rule relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening the supply of gas.

[Section 290 modified: WA Act Sch. 1 cl. 12; amended: see SA Act No. 3 of 2021 s. 52 and WA Gazette 22 Jan 2025 p. 63-4.]

Division 2 — Rule making tests

291. Application of national gas objective

(1) The AEMC may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the national gas objective.

(2) For the purposes of subsection (1), the AEMC may give such weight to any aspect of the national gas objective as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.

292. AEMC must take into account form of regulation factors in certain cases

In addition to complying with sections 291 and 293, the AEMC must take into account the form of regulation factors and any other matter the AEMC considers relevant—

(a) in making a Rule that—

(i) specifies a pipeline service as a reference service; or

(ii) confers a function or power on the AER to specify under [*4]an ~~a full~~ access arrangement decision approving or making an access arrangement a pipeline service (to which the relevant applicable access arrangement applies) as a reference service; or

(b) in revoking a Rule that has been made or is in force that—

(i) specifies a pipeline service as a reference service; or

(ii) confers a function or power on the AER to specify under [*4]an ~~a full~~ access arrangement decision approving or making an access arrangement a pipeline service (to which the relevant applicable access arrangement applies) as a reference service.

293. AEMC must take into account revenue and pricing principles in certain cases

In addition to complying with sections 291 and 292, the AEMC must take into account the revenue and pricing principles in making a Rule for or with respect to any matter or thing specified in items [*4]45 to 53 ~~40 to 48~~ of Schedule 1 to this Law.

Part 2 — Initial National Gas Rules

294. Initial National Gas Rules for WA

(1) The National Gas Rules that apply upon section 30 of the *National Gas Access (WA) Act 2009* coming into operation are as set out in the document called the *National Gas Rules 2008*, signed on 1 July 2008 by the Minister for Energy of South Australia, as affected, if applicable, by any amendments made

by the AEMC under national gas legislation before the coming into operation of that section.

(2) Subsection (1) does not prevent the AEMC from making Rules under this Chapter that amend or revoke the rules referred to in it.

[Section 294 inserted and modified: WA Act Sch. 1 cl. 13.]

294CA. South Australian Minister may make consequential Rules relating to rate of return instrument

(1) The South Australian Minister may make Rules that revoke or amend a Rule if the revocation or amendment is consequential on the enactment of the *Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018*.

(2) Without limiting subsection (1), the South Australian Minister may make a rule providing that the rate of return on capital under a rate of return instrument in force at the start of a regulatory period applies throughout the period.

(3) Section 74(3) applies to Rules made under this section in the same way it applies to Rules made by the AEMC.

(4) As soon as practicable after making Rules under this section, the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette; and

(b) make the Rules publicly available.

(5) The notice referred to in subsection (4)(a) must state—

(a) the date on which the Rules commence operation; and

(b) if different Rules will commence operation on different dates, those dates.

(6) Rules may only be made under this section on the recommendation of the MCE.

(7) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(8) In this section—

regulatory period means the period specified in an applicable access arrangement to be the regulatory period;

South Australian Minister means the Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia.

[Section 294CA inserted: see SA Act No. 33 of 2018 s. 18 and WA Gazette 5 Apr 2019 p. 1007-8.]

294F. South Australian Minister to make initial Rules relating to access to non-scheme pipelines

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia (the ***South Australian Minister***) may make Rules on any 1 or more of the following subjects:

(a) access proposals, access disputes and arbitrations under Chapter 6A;

(b) the subject matter of a new head power added to Schedule 1 by the Pipelines Access/Arbitration amendments;

(c) any other subject contemplated by, or consequential on, the Pipelines Access/Arbitration amendments.

(2) Rules may only be made under subsection (1) on the recommendation of the MCE.

(3) Section 74(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(4) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette stating the date of commencement or, if they commence at different times, various dates of commencement; and

(b) making the Rules publicly available.

(5) The South Australian Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (4)(a) or this subsection.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(7) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.

(8) In this section—

Pipelines Access/Arbitration amendments means the amendments made to this Law by the *National Gas (South Australia) (Pipelines Access—Arbitration) Amendment Act 2017*.

[Section 294F inserted: see SA Act No. 23 of 2017 s. 8 and WA Gazette 22 Dec 2017 p. 5984.]

[*4]294FB—South Australian Minister to make initial Rules relating to pipeline regulation

(1) The South Australian Minister may make Rules on any 1 or more of the following subjects:

(a) scheme pipeline determinations, scheme pipeline revocation determinations, scheme pipeline elections, greenfields incentive determinations, greenfields price protection determinations, monitoring of service providers, general requirements for the provision of pipeline services, information disclosure requirements, access negotiations and access disputes;

(b) the subject matter of a new head of power added to Schedule 1, or an existing head of power amended, by the Gas Pipelines amendments;

(c) any other subject contemplated by, or consequential on, the Gas Pipelines amendments.

(2) Rules may only be made under subsection (1) on the recommendation of the MCE.

(3) Section 74(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

(4) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette stating the date of commencement or, if they commence at different times, various dates of commencement; and

(b) make the Rules publicly available.

(5) The South Australian Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (4)(a) or this subsection.

(6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(7) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.

(8) In this section—

Gas Pipelines amendments means the amendments made by the *Statutes Amendment (National Energy Laws)(Gas Pipelines) Act 2022* and the amendments to the *National Gas (South Australia) Regulations* by regulations that are expressed to be made in connection with the *Statutes Amendment (National Energy Laws)(Gas Pipelines) Act 2022*.

294FC. South Australian Minister to make initial Rules relating to national gas objective

(1) The South Australian Minister may, within 9 months after the commencement of the *National Gas (South Australia) Law* (South Australia) section 294FC —

(a) make Rules for or with respect to any matter or thing necessary or expedient to implement the amended objective; and

(b) make Rules for or with respect to any other subject contemplated by, or necessary or expedient for implementing, the amended objective; and

(c) make Rules that revoke or amend a Rule as a consequence of —

(i) the enactment of the *Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023* (South Australia); or

(ii) the amendment of this Law by virtue of the *National Gas Access (WA) Adoption of Amendments Order (No. 2) 2024* clause 3 (the ***adopting clause***).

(2) Rules in the nature of a derogation may be made under subsection (1) even though there may not have been a request for a derogation.

(3) Section 74(3) applies to the making of Rules under subsection (1) as if the Rules being made under subsection (1) were Rules being made by the AEMC.

(4) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—

(a) publish notice of the making of the Rules in the South Australian Government Gazette; and

(b) make the Rules publicly available.

(5) The notice referred to in subsection (4)(a) must state—

(a) the date on which the Rules commence operation; or

(b) if different Rules will commence operation on different dates, those dates.

(6) The Rules made under subsection (1) may only be made on the recommendation of the MCE.

(7) If the South Australian Minister makes Rules under subsection (1), the Minister cannot make another Rule under that subsection.

(8) In this section—

amended objective means the national gas objective as in force on the coming into operation of the adopting [*4M*]clause.~~clause;~~

[*4M*]***~~South Australian Minister~~*** ~~means the Minister in right of the Crown of South Australia administering the *National Gas (South Australia) Act 2008* (South Australia) Part 2.~~

[Section 294FC inserted: see SA Act 26 of 2023 s. 17 and WA Gazette 24 Jan 2024 p. 91-2; WA Act Sch. 1 cl. 13A.]

Part 3 — Procedure for the making of a Rule by the AEMC

295. Initiation of making of a Rule

(1) The AEMC may make a Rule at the request of any person or the MCE.

Note—

Section 74 and Schedule 1 to this Law specify the subject matter for Rules.

(2) The AEMC must not make a Rule without a request under subsection (1) unless—

(a) it considers the Rule corrects a minor error in the Rules; or

(b) it considers the Rule involves a non-material change to the Rules; or

(c) the Rule is in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative.

296. AEMC may make more preferable Rule in certain cases

The AEMC may make a Rule that is different (including materially different) from a market initiated proposed Rule (a ***more preferable Rule***) if the AEMC is satisfied that, having regard to the issue or issues that were raised by the market initiated proposed Rule (to which the more preferable Rule relates), the more preferable Rule will or is likely to better contribute to the achievement of the national gas objective.

297. AEMC may make Rules that are consequential to a Rule request

(1) Despite section 295(2), the AEMC may, having regard to a request to make a Rule under section 295(1), make a Rule that is necessary or consequential to the Rule that is to be made on that request.

(2) For the purposes of this Chapter, the AEMC must treat a Rule it may make under subsection (1) as if it were part of the Rule to be made on that request.

298. Content of requests for a Rule

A request for the making of a Rule—

(a) must contain the information prescribed by the Regulations; and

(b) must, subject to section 299, be accompanied by the fee prescribed by the Regulations (if any); and

(c) may be accompanied by a draft of the Rule to be made.

299. Waiver of fee for Rule requests

The AEMC may waive the payment of any fee prescribed by the Regulations for the purposes of section 298.

300. Consolidation of 2 or more Rule requests

(1) If the AEMC considers it necessary or desirable that 2 or more requests for the making of a Rule should be dealt with together, the AEMC may—

(a) treat those requests as 1 request for the purposes of this Chapter (a ***consolidated Rule request***); or

(b) treat any later request as a submission in relation to the earliest Rule request.

(2) For the purposes of this Chapter, the AEMC may treat a consolidated Rule request as being received by it on the day it receives either the first or last of the Rule requests forming part of the consolidated Rule request.

301. Initial consideration of request for Rule

(1) Subject to this Chapter, as soon as practicable after receiving a request for the making of a Rule (an ***active request***), the AEMC must consider whether—

(a) the active request appears to—

(i) contain the information prescribed by the Regulations; and

(ii) not be misconceived or lacking in substance; and

(b) the subject matter of the active request appears to be for or with respect to a matter in respect of which the AEMC may make a Rule under this Law; and

Note—

Section 74 and Schedule 1 to this Law specify the subject matter for Rules.

(c) the subject matter of the active request appears to relate to the subject matter of—

(i) a Rule made, or a request for the making of a Rule under section 295(1) not proceeded with, in the 12 months immediately before the date of receipt of the active request; or

(ii) another request for the making of a Rule under section 295(1) in respect of which the AEMC is taking action under this Part.

(2) If the AEMC considers that, having regard to the matters set out in subsection (1), it should not take any action under this Part in respect of the active request, the AEMC must make a decision to that effect and inform the person or body, in writing, that requested the Rule of that decision.

(3) Despite subsection (1) or (2), the AEMC may make a decision to the effect that it should not take any action under this Part in respect of the active request if the person or body that made the

active request has not complied with a notice in accordance with section 302.

(4) In making a decision under subsection (3), the AEMC must have regard to any representation it receives under section 302(4).

(5) A decision under subsection (2) or (3) must—

(a) set out the reasons for the decision; and

(b) be given to the person or body that made the active request without delay; and

(c) in the case where the decision was made only because of the matters set out in subsection (1)(c)—be published.

(6) Subject to this Chapter, if the AEMC considers that, having regard to the matters set out in subsection (1), it should take action under this Part in respect of an active request the AEMC must publish notice of that active request in accordance with section 303.

302. AEMC may request further information from Rule proponent in certain cases

(1) This section applies if the AEMC—

(a) receives a request for the making of a Rule under section 295(1); and

(b) considers, having regard to the nature and content of the request, that further information is required from the person or body that has made the request to assist it to understand the request's purpose or content.

(2) The AEMC may, by notice in writing, request the person or body that made the request under section 295(1) to provide the AEMC further information.

(3) A notice under subsection (2) must specify—

(a) the kind of information the AEMC requires from the person or body; and

(b) the time within which that information must be provided to the AEMC.

(4) A person or body given a notice under this section may make a written representation to the AEMC as to why it cannot provide the information specified in the notice within the time specified in the notice.

303. Notice of proposed Rule

(1) This section applies if the AEMC—

(a) considers that it should take action under this Part in respect of a request for the making of a Rule; or

(b) forms an intention to make an AEMC initiated Rule.

(2) The AEMC must publish—

(a) notice of the request or intention (as the case requires); and

(b) a draft of the proposed Rule; and

(c) any other document prescribed by the Regulations.

(3) A notice published under this section must—

(a) invite written submissions and comments from any person or body in relation to the proposed Rule by the date specified in the notice by the AEMC, being a date that is not less than 4 weeks from the date the notice is published; and

(b) contain any other information prescribed by the Regulations.

(4) Nothing in this Part is to be taken as requiring the AEMC to publish notices under this section in the same order as it—

(a) considers that it should take action under this Part in respect of a request for the making of a Rule; or

(b) forms an intention to make an AEMC initiated Rule.

304. Publication of non-controversial or urgent final Rule determination

(1) Subject to this section, if the AEMC considers that—

(a) an AEMC initiated Rule is a non-controversial Rule; or

(b) a request for a Rule is a request for a non-controversial Rule; or

(c) a request for a Rule is a request for an urgent Rule,

the AEMC may make the relevant Rule in accordance with this Part (except sections 307 to 310) and as if the period of time within which the final Rule determination in respect of the relevant Rule must be published were 8 weeks from the date of publication of the notice under section 303.

(2) Before making a Rule as set out in subsection (1), the AEMC must include in a notice under section 303 a statement to the

effect that the AEMC may make the relevant Rule if the AEMC does not receive a written request, and reasons, not to do so from any person or body within 2 weeks of publication of that notice.

(3) The AEMC must not make a Rule in accordance with this section if, following publication of a notice under section 303 containing a statement to the effect set out in subsection (2)—

(a) the AEMC receives a written request not to do so; and

(b) the reasons set out in that request are not, in its opinion, misconceived or lacking in substance.

(4) If the AEMC is of the opinion that the reasons given by a person or body in a written request for it not to make the non-controversial Rule or urgent Rule are misconceived or lacking in substance, the AEMC must—

(a) make a decision to that effect; and

(b) give the person or body its reasons, in writing, for that decision without delay.

(5) If the AEMC is of the opinion that the reasons given by a person or body in a written request for it not to make the non-controversial Rule or urgent Rule, are not misconceived or lacking in substance, the AEMC must publish a notice to the effect that it will make the relevant Rule in accordance with this Part (other than this section).

[Section 304 amended: see SA Act No. 12 of 2018 s. 26 and WA SL 2020/195 cl. 3.]

305. "Fast track" Rules where previous public consultation by gas market regulatory body or an AEMC review

(1) This section applies if—

(a) a gas market regulatory body has—

(i) made a request for the making of a Rule under section 295(1); and

(ii) consulted with the public on the nature and content of the request before making that request; or

(b) a person or the MCE has made a request for the making of a Rule under section 295(1) on the basis of—

(i) a recommendation for the making of a Rule contained in a MCE directed review; or

(ii) a conclusion for the making of a Rule contained in an AEMC Rule review.

(2) The AEMC may take action under this Part in respect of the request without complying with section 303(3)(a) or 307 if it is of the opinion that—

(a) in the case where the request has been made by a gas market regulatory body in the circumstances described in subsection (1)(a)—the consultation conducted by the gas market regulatory body was adequate, having regard to—

(i) the nature and content of that request; and

(ii) the kind of consultation conducted by the gas market regulatory body;

(b) in the case where a request has been made by a person or the MCE in the circumstances described in subsection (1)(b)—

(i) the request reflects, or is consistent with, the relevant recommendation contained in the MCE directed review or relevant conclusion in the AEMC Rule review (as the case requires); and

(ii) there was adequate consultation with the public by it on the content of the relevant recommendation or relevant conclusion during the MCE directed review or AEMC Rule review (as the case requires).

(3) To avoid doubt—

(a) section 301 applies to a request for the making of a Rule to which this section applies; and

(b) section 306 does not apply to a request for the making of a Rule to which this section applies.

306. Right to make written submissions and comments

Any person or body, within the period specified in a notice under section 303, may make a written submission or comment in relation to the proposed Rule to which the notice relates.

307. AEMC may hold public hearings before draft Rule determination

(1) The AEMC may (but need not), at any time after publication of a notice under section 303 and before making a draft Rule determination, hold a hearing in relation to any proposed Rule.

(2) Notice of a hearing held under this section must—

(a) be published; and

(b) contain the information prescribed by the Regulations (if any).

308. Draft Rule determination

(1) The AEMC must make a draft Rule determination before making a final Rule determination in relation to the proposed Rule.

(2) Subject to this Chapter, the AEMC must, within 10 weeks after the date specified in a notice under section 303, publish—

(a) the draft Rule determination; and

(b) notice of the making of the draft Rule determination.

(3) In the case of a proposed Rule to which section 305 applies, the AEMC must publish the draft Rule determination and notice of the making of the draft Rule determination within 5 weeks after the date notice under section 303(2) is published.

(4) A draft Rule determination must contain—

(a) the reasons of the AEMC as to whether or not it should make the proposed Rule, including—

(i) in the case where the proposed Rule is not a proposed more preferable Rule, the reasons of the AEMC as to whether it is satisfied the proposed Rule will or is likely to contribute to the achievement of the national gas objective; and

(ii) in the case of a proposed more preferable Rule, the reasons of the AEMC as to whether it is satisfied the proposed more preferable Rule will or is likely to better contribute to the achievement of the national gas objective than the market initiated Rule request to which the more preferable Rule relates; and

(iii) if the AEMC is required to take into account the form of regulation factors or the revenue and pricing principles, the reasons of the AEMC taking those factors or principles (as the case requires) into account; and

(iv) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and

(v) the reasons of the AEMC having regard to any other matters the AEMC considers relevant; and

(b) if the AEMC determines to make a Rule, a draft of the Rule to be made; and

(c) any other matters that are prescribed by the Regulations.

(5) A notice referred to in subsection (2) must—

(a) invite written submissions and comments from any person or body in relation to the determination within a period specified by the AEMC, being a period not less than 6 weeks from the date of publication of the notice; and

(b) include a statement to the effect that any person or body may request, in writing within 1 week after the publication of the notice, the AEMC to hold a hearing in accordance with section 310; and

(c) contain any other information prescribed by the Regulations.

309. Right to make written submissions and comments in relation to draft Rule determination

Any person or body, within the period specified in a notice under section 308(1), may make a written submission or comment in relation to a draft Rule determination to which the notice relates.

310. Pre-final Rule determination hearing may be held

(1) The AEMC may (but need not), at any time after publication of a notice under section 308(2) and before making a final Rule determination, hold a hearing in relation to a draft Rule determination.

(2) In addition, any person or body may request, in writing, within 1 week after the publication of a notice under section 308(2), the AEMC to hold a hearing in relation to a draft Rule determination.

(3) Despite subsection (2), the AEMC may decide not to a hold a hearing in relation to a draft Rule determination.

(4) Without limiting the reasons why the AEMC may decide not to a hold a hearing following a request under subsection (2) in relation to a draft Rule determination, the AEMC may decide not to hold a hearing if—

(a) the person or body that requests the AEMC to hold a hearing does not make a written submission or comment in accordance with section 309; and

(b) no other person or body requests the AEMC to hold a hearing.

(5) If the AEMC decides not to hold a hearing after a request under subsection (2), it must give the person or body that requested the hearing its reasons, in writing, for declining that person's or body's request.

(6) If the AEMC decides to hold a hearing, or agrees to hold a hearing after a request under subsection (2), the AEMC must—

(a) appoint a date (being not later than 3 weeks after the date of publication of the notice under section 308), time and place for the holding of the hearing; and

(b) publish a notice of that date, time and place.

311. Final Rule determination

(1) Subject to section 312, the AEMC must make a final Rule determination as to whether to make a proposed Rule.

(2) Subject to this Chapter, the AEMC must, within 6 weeks after the period for written submissions or comments in relation to the draft Rule determination ends, publish—

(a) the final Rule determination; and

(b) notice of the making of the final Rule determination.

(3) A final Rule determination must contain—

(a) the reasons of the AEMC as to whether or not it should make a Rule, including—

(i) in the case where the Rule to be made is not a more preferable Rule, the reasons of the AEMC as to whether it is satisfied the Rule will or is likely to contribute to the achievement of the national gas objective; and

(ii) in the case where the Rule to be made is a more preferable Rule, the reasons of the AEMC as to whether it is satisfied the more preferable Rule to be made will or is likely to better contribute to the achievement of the national gas objective than the market initiated Rule request to which the more preferable Rule relates; and

(iii) if the AEMC is required to take into account the form of regulation factors or the revenue and pricing principles, the reasons of the AEMC taking those factors or principles (as the case requires) into account; and

(iv) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and

(v) the reasons of the AEMC having regard to any other matters the AEMC considers relevant; and

(b) any other matters that are prescribed by the Regulations.

(4) A notice referred to in subsection (2) must contain the information prescribed by the Regulations.

312. Further draft Rule determination may be made where proposed Rule is a proposed more preferable Rule

(1) This section applies if the AEMC proposes to make a more preferable Rule.

(2) Without limiting this Chapter, the AEMC may take action again under sections 308 to 310 in respect of the proposed more preferable Rule before making a final Rule determination in respect of that Rule.

(3) Sections 308 to 310 apply as if, in section 308(2), for "the date specified in a notice under section 303" there were substituted "the date of the previous draft Rule determination".

313. Making of Rule

(1) Subject to this section, if the AEMC, in its final Rule determination, determines to make a Rule, the AEMC must make the relevant Rule as soon as practicable after the publication of the final Rule determination.

(2) Notice of the making of the Rule must be published in the South Australian Government Gazette as soon as practicable after the making of the Rule.

314. Operation and commencement of Rule

A Rule made under section 313 commences operation on the day the relevant notice is published in the South Australian Government Gazette or on any day after that day that is provided for in the relevant notice or the Rule.

315. Rule that is made to be published on website and made available to the public

On publication of a notice in accordance with section 313(2), the AEMC must, without delay—

(a) publish the Rule on its website; and

(b) make copies of the Rule available to the public at its offices.

316. Evidence of the National Gas Rules

A document purporting to be a copy of—

(a) the National Gas Rules; or

(b) the initial National Gas Rules; or

(c) an amendment to the initial National Gas Rules or the National Gas Rules,

endorsed with a certificate to which the seal of the AEMC has been duly affixed certifying the document is such a copy, is evidence that the document is such a copy.

Part 4 — Miscellaneous provisions relating to rule making by the AEMC

317. Extension of periods of time in Rule making procedure

(1) Despite anything to the contrary in this Chapter and without limiting section 318, the AEMC may, by notice, extend a period of time specified in Chapter 9 Part 3 if the AEMC considers that a request for a Rule raises issues of sufficient complexity or difficulty or there is a material change in circumstances such that it is necessary that the relevant period of time specified in Chapter 9 Part 3 be extended.

(2) A notice under subsection (1) must—

(a) be published; and

(b) set out the period of time specified in Chapter 9 Part 3 to be extended; and

(c) specify a new period of time to apply in the place of the period of time specified in Chapter 9 Part 3.

(3) A notice under subsection (1) may be published at the same time as a notice under section 303.

(4) The AEMC may only extend a period of time under this section before the expiry of that time.

318. AEMC may extend period of time for making of final Rule determination for further consultation

(1) This section applies if—

(a) a person or body raises an issue in—

(i) a submission or comment in relation to a draft Rule determination; or

(ii) a hearing held under section 307 or 310; and

(b) the AEMC considers the issue raised by the person or body requires further public consultation in relation to the proposed Rule or draft Rule determination.

(2) Despite anything to the contrary in this Chapter and without limiting section 317, the AEMC may, by notice, extend the period of time specified in section 311 within which it must make a final Rule determination.

(3) A notice under subsection (2) must—

(a) be published; and

(b) specify a new period of time to apply in the place of the period of time specified in section 311; and

(c) specify the issue on which the AEMC requires further public submissions and comments; and

(d) invite written submissions and comments from any person or body by the date specified in the notice.

(4) The new period of time must not have the effect of extending the relevant period of the time specified in section 311 by more than 4 weeks.

(5) The AEMC may only extend the period of time under this section before the expiry of time specified in section 311.

(6) Any person or body, within the period specified in a notice under subsection (2), may make a written submission or comment in relation to the issue specified in the notice.

319. AEMC may publish written submissions and comments unless confidential

(1) Subject to this section, the AEMC may publish any information in any written submission or comment given to it under this Chapter unless—

(a) the person or body who gave the information, claims, when giving it to the AEMC, that it contains confidential information; and

(b) the AEMC decides that the written submission or comment contains confidential information.

(2) A written submission or comment given to the AEMC under this Chapter that has been claimed under this section to contain confidential information, and that the AEMC has decided contains confidential information, may be published if that information is omitted.

(3) If information is omitted from a published written submission or comment given to the AEMC under this Chapter as being confidential information, a note to that effect must be included in the submission or comment at the place in the submission or comment from which the information is omitted.

Note—

See also section 71 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

320. AEMC must publicly report on Rules not made within 12 months of public notification of requests

(1) This section applies if the AEMC—

(a) publishes a notice under section 303 in respect of a request for the making of a Rule; but

(b) does not make a final Rule determination in respect of that request within 12 months after the publication of that notice (the ***report trigger date***).

(2) The AEMC must prepare a report on the request as soon as practicable after the report trigger date.

(3) A report prepared under this section—

(a) must contain the reasons why the final Rule determination has not been made within 12 months after the publication of the notice under section 303; and

(b) must specify when the AEMC considers it will make the final Rule determination; and

(c) must be published.

Chapter 10 — General

[*4]Part 1 — Provisions relating to applicable access arrangements

321. Protection of certain pre-existing contractual rights

(1) An applicable access arrangement must not have the effect of depriving a person of a relevant protected contractual right.

(2) In this section —

relevant exclusivity right means an express contractual right that arose on or after 30 March 1995 that —

(a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or

(b) limits or controls a service provider's ability to supply pipeline services to persons who are not parties to the contract,

but does not include a user's contractual right to obtain a certain amount of pipeline services;

relevant protected contractual right means —

(a) in the case of an applicable access arrangement approved under an applicable arrangement decision — a right under a contract (other than a relevant exclusivity right) in force immediately before that access arrangement was submitted for approval under this Law;

(b) in the case of an applicable access arrangement made under an applicable arrangement decision because —

(i) a full access arrangement was not submitted for approval as required under section 132 — a right under a contract (other than a relevant exclusivity right) in force immediately before the date on which an access arrangement was required to be submitted for approval;

(ii) an access arrangement was not approved under an applicable arrangement decision — a right under a contract (other than a relevant exclusivity right) in force immediately before the date on which that access arrangement was submitted for approval.

~~**322. Service provider may enter into agreement for access different from applicable access arrangement**~~

~~Subject to section 135, nothing in this Law is to be taken as preventing a service provider from entering into an agreement with a user or a prospective user about access to a pipeline service provided by means of a scheme pipeline that is different from an applicable access arrangement that applies to that pipeline service.~~

~~**323. Applicable access arrangements continue to apply regardless of who provides pipeline service**~~

~~An applicable access arrangement applies to a pipeline service provided, or to be provided, by means of a pipeline regardless of who provides that pipeline service.~~

Part 2 — Handling of confidential information

Division 1 — Disclosure of confidential information held by AER

324. Authorised disclosure of information given to the AER in confidence

The AER is authorised to disclose information given to it in confidence in, or in connection with, the performance or exercise of its functions or powers under this Law or the Rules subject to and in accordance with—

(a) this Division; or

(b) section [*4]184~~205~~.

Note—

See also section 30 of this Law and section 44AAF of the *Trade Practices Act 1974* of the Commonwealth.

325. Disclosure with prior written consent is authorised

The AER is authorised to disclose information given to it in confidence if the AER has the written consent to do so of—

(a) the person who gave the information; or

(b) the person from whom the person referred to in paragraph (a) received that information.

326. Disclosure for purposes of court and tribunal proceedings and to accord natural justice

The AER is authorised to disclose information given to it in confidence—

(a) for the purposes of civil or criminal proceedings; or

(b) for the purposes of a proceeding before the Tribunal or a tribunal established by or under a law of this jurisdiction or another participating jurisdiction; or

(c) for the purposes of according natural justice to a person affected by a decision (however described) of the AER under this Law or the Rules.

327. Disclosure of information given to the AER with confidential information omitted

(1) This section applies if—

(a) in compliance with this Law or the Rules or voluntarily, a person gives the AER information in confidence; and

(b) that information is contained in a document with other information.

(2) The AER may disclose the document with the information given in confidence omitted.

(3) The AER must include a note at the place in the document from which the information given in confidence is omitted to the effect that that information has been omitted from the document.

328. Disclosure of information given in confidence does not identify anyone

The AER is authorised to disclose information given to it in confidence, in compliance with this Law or the Rules or voluntarily, if—

(a) it does not disclose any elements of the information that could lead to the identification of the person to whom that information relates; or

(b) the manner in which it discloses the information does not identify the person to whom that information relates.

Example—

Information disclosed under this section may be combined or arranged with other information provided that the manner in which that information is combined or arranged will not lead to the identification of the person to whom the information relates.

329. Disclosure of confidential information authorised if detriment does not outweigh public benefit

(1) Despite section 327 or 328 but subject to this section, the AER is authorised to disclose information given to it in confidence after the restricted period if the AER is of the opinion—

(a) that the disclosure of the information would not cause detriment to the person who has given it or to the person from whom that person received it; or

(b) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.

(2) Before disclosing the information, the AER must give the person who gave the information—

(a) a written notice (an ***initial disclosure notice***) stating—

(i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that the AER is of the opinion required by subsection (1); and

(iii) that the person, within the period specified in the notice, may make representations to the AER not to disclose the information; and

(b) the AER's decision, in writing, setting out the reasons why the AER—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1).

(3) If the AER is aware that the person who gave the information in turn received the information from another person and is aware of that other person's identity and address, the AER must, before disclosing the information give that other person—

(a) a written notice (an ***initial disclosure notice***) stating—

(i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that the AER is of the opinion required by subsection (1); and

(iii) that the person, within the period specified in the notice, may make representations to the AER not to disclose the information; and

(b) the AER's decision, in writing, setting out the reasons why the AER—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1).

(4) The AER must consider every representation made to it by a person given an initial disclosure notice under this section within the time specified in the notice.

(5) The period of time specified in an initial disclosure notice must not be less than 5 business days after the date the initial disclosure notice is given to the person.

(6) If after considering the representations, the AER wishes to disclose the information, the AER must give the person given the initial disclosure notice—

(a) a written notice (a ***further disclosure notice***) stating—

(i) that the AER wishes to disclose the information, specifying the nature of the intended disclosure; and

(ii) that the AER is of the opinion required by subsection (1); and

(b) the AER's decision, in writing, setting out the reasons why the AER—

(i) wishes to make the disclosure; and

(ii) is of the opinion required by subsection (1).

(7) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the AER wishes to disclose it cannot cause detriment to any person referred to in subsection (2) or (3).

(8) In this section—

restricted period means a period of 5 business days after—

(a) an initial disclosure notice has been given under this section; or

(b) a further disclosure notice has been given under this section,

whichever is the later.

[*4]Division 2—Disclosure of confidential information held by AEMC

330—Confidentiality of information

(1) Information provided to the AEMC for the purposes of an MCE directed review or a review conducted by the AEMC under section 83 is confidential information for the purposes of that procedure if—

(a) the person who provides it claims, when providing it to the AEMC, that it is confidential information; and

(b) the AEMC decides that the information is confidential information.

(2) Nothing prevents the disclosure of confidential information by the AEMC in a report published under Division 4 or Division 5 of Chapter 2 Part 2, but the AEMC must ensure that the information is identified as such in the report.

(3) If the AEMC decides that information provided to it for the purposes of an MCE directed review or a review conducted by the AEMC under section 83 is confidential information, the AEMC, the MCE or a Minister of a participating jurisdiction may only publish a version of the report from which the information has been omitted.

(4) If information is omitted from a published version of a report as being confidential information, a note to that effect must be included in the decision at the place in the decision from which the information is omitted.

Note—

See also section 71 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia

~~Division 2 — Disclosure of confidential information held by relevant Ministers, NCC and AEMC~~

~~330. Definitions~~

~~In this Division —~~

~~***relevant decision maker*** means —~~

~~(a) a relevant Minister;~~

~~(b) the Commonwealth Minister in the case of decisions relating to applications for price regulation exemptions;~~

~~(c) the NCC;~~

~~(d) the AEMC;~~

~~***scheme decision*** means~~

~~(a) in relation to a relevant Minister or the Commonwealth Minister, a Ministerial coverage decision;~~

~~(b) in relation to the NCC, an NCC recommendation or decision;~~

~~(c) in relation to the AEMC, a report published under Division 4 or Division 5 of Chapter 2 Part 2;~~

~~***scheme procedure*** means~~

~~(a) in the case of a relevant Minister or the Commonwealth Minister, the procedure to be followed by the relevant Minister or Commonwealth Minister under this Law for the purpose of making a Ministerial coverage decision;~~

~~(b) in the case of the NCC, the procedure to be followed by the NCC under this Law and the Rules for the purpose of making an NCC recommendation or decision;~~

~~(c) in the case of the AEMC, an MCE directed review or a review conducted by the AEMC under section 83.~~

~~331. Confidentiality of information received for scheme procedure purpose and for making of scheme decision~~

~~(1) Information provided to a relevant decision maker for the purposes of a scheme procedure is confidential information for the purposes of that procedure if~~

~~(a) the person who provides it claims, when providing it to the relevant decision maker, that it is confidential information; and~~

~~(b) the relevant decision maker decides that the information is confidential information.~~

~~(2) However, subject to this section, nothing prevents the disclosure of confidential information by the relevant decision maker (the ***principal decision maker***) in a scheme decision or to another relevant decision maker or the MCE, but the principal decision maker must ensure that the information is identified as such~~

~~(a) in the scheme decision; or~~

~~(b) when the principal decision maker discloses that information to another relevant decision maker or MCE.~~

~~(3) In the case of where the AEMC publishes a report under Division 4 or Division 5 of Chapter 2 Part 2, nothing prevents the disclosure of confidential information in a report to the MCE or a Minister of a participating jurisdiction, but the AEMC~~

must ensure that the information is identified as such in the report.

(4) If the AEMC decides that information provided to it for the purposes of a MCE directed review or a review conducted by the AEMC under section 83, is confidential information, the AEMC, the MCE or a Minister of a participating jurisdiction may only publish a version of the report from which the information has been omitted.

(5) If the NCC decides that information provided to it for the purposes of an NCC recommendation or decision is confidential information, the NCC and the relevant Minister may only publish a version of (as the case requires) an NCC recommendation or decision or Ministerial coverage decision from which the information has been omitted.

(6) If information is omitted from a published version of a scheme decision as being confidential information, a note to that effect must be included in the decision at the place in the decision from which the information is omitted.

Note—

In relation to the AEMC, see section 71 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

Part 3 — Miscellaneous

332. Failure to make a decision under this Law or the Rules within time does not invalidate the decision

(1) A decision (however described) made under this Law or the Rules by a regulatory scheme decision maker after the expiry of the period of time specified by this Law or Rules for the making of that decision is not to be taken to be an invalid decision only because the decision is not made within the specified period of time.

(2) A decision to which subsection (1) applies takes effect on and from—

(a) the day it is made; or

(b) if it specifies a date for operation or effect that is after the day it is made, that specified date.

(3) In this section—

[*4]***regulatory scheme decision maker*** means any of the following:

(a) the AER;

(b) the AEMC;

[*4M*](c) the Bulletin Board operator.

~~(c) AEMO.~~

~~***regulatory scheme decision maker*** means—~~

~~(a) a relevant Minister;~~

~~(b) the Commonwealth Minister in the case of decisions relating to price regulation exemptions;~~

~~(c) the NCC;~~

~~(d) the AER;~~

~~(e) the AEMC;~~

~~(f) the Bulletin Board operator.~~

[*4]333—Withdrawal of applications relating to particular determinations or classification

(1) A person who has made an application for a relevant decision may withdraw the application at any time before the decision is made.

(2) A withdrawal of an application in accordance with this section must be—

(a) in writing; and

(b) given to the AER.

(3) In this section—

relevant decision means—

(a) a scheme pipeline determination; or

(b) a scheme pipeline revocation determination; or

(c) a greenfields incentive determination; or

(d) a greenfields price protection determination; or

(e) a classification decision; or

(f) a reclassification decision.

333. Withdrawal of applications relating to coverage or reclassification

(1) A person who has made an application for a Ministerial or NCC scheme decision may withdraw the application at any time before the Ministerial or NCC scheme decision is made.

(2) A withdrawal of an application in accordance with this section must be —

(a) in writing; and

(b) given to, as the case requires, the relevant Minister, Commonwealth Minister or the NCC.

(3) In this section —

Ministerial or NCC scheme decision means —

(a) a decision of a relevant Minister under section 99, 106 or 156; or

(b) a decision of the Commonwealth Minister under section 164; or

(c) a reclassification decision; or

(d) a decision of the NCC relating to the making or revoking of a light regulation determination under Chapter 3 Part 2.

[*4]**334. Notification of Ministers of participating jurisdictions of receipt of application**

If the NCC receives an application for a coverage determination, a 15-year no-coverage determination, a coverage revocation determination or a reclassification decision, it must, without delay, notify the Ministers of the participating jurisdictions of receipt of the application.

335. Relevant Minister may request NCC to give information or assistance

(1) A relevant Minister may request the NCC, in writing, to give to him or her information or assistance that the Minister may require for the purpose of making —

(a) a coverage determination; or

(b) a 15-year no-coverage determination; or

(c) a coverage revocation determination.

(2) The NCC must comply with a request.

335A. Penalty privilege

If an individual has a privilege against self-exposure to a penalty, other than for a criminal offence, the individual is not excused from doing any of the following on that ground:

(a) providing information under this Law, the Regulations or the Rules;

(b) producing a document under this Law, the Regulations or the Rules;

(c) providing evidence under this Law, the Regulations or the Rules;

(d) answering a question under this Law, the Regulations or the Rules.

[Section 335A inserted: see SA Act No. 37 of 2020 s. 71 and WA Gazette 4 Sep 2024 p. 2215.]

335B. Court may grant relief from liability

If in any proceedings under this Law in which a person, other than a body corporate, may be liable for an offence or a civil penalty it appears to the Court that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the Court may relieve the person either wholly or partly from liability on such terms as the Court thinks fit.

[Section 335B inserted: see SA Act No. 37 of 2020 s. 71 and WA Gazette 4 Sep 2024 p. 2215.]

336. Savings and transitionals

Schedule 3 to this Law has effect.

[*4]Schedule 1 — Subject matter for the National Gas Rules

Regulatory determinations and classification of pipelines

1 Scheme pipeline determinations, scheme pipeline revocation determinations, greenfields incentive determinations and greenfields price protection determinations (***regulatory determinations***), including—

(a) the content of applications for regulatory determinations; and

(b) procedures for dealing with applications for regulatory determinations; and

(c) information that must be provided by a service provider and the consequences of failing to provide that information; and

(d) procedures for making regulatory determinations; and

(e) the content of regulatory determinations and decisions not to make regulatory determinations; and

(f) publication of regulatory determinations and decisions not to make regulatory determinations.

2 Scheme pipeline elections, including—

(a) the circumstances in which scheme pipeline elections may be made; and

(b) the content of scheme pipeline elections.

3 The classification or reclassification of pipelines, including—

(a) the content of applications for classification and reclassification of pipelines; and

(b) procedures for dealing with applications for classification and reclassification of pipelines; and

(c) procedures for making classification decisions and reclassification decisions; and

(d) the content of classification decisions, reclassification decisions and decisions not to make a reclassification decision; and

(e) publication of classification decisions, reclassification decisions and decisions not to make a reclassification decision.

Access arrangements

4 The submission to the AER, by service providers, of access arrangements or revisions to applicable access arrangements for approval by the AER, including requiring service providers to—

(a) submit access arrangements for pipeline services provided by means of scheme pipelines; and

(b) submit more than 1 access arrangement; and

(c) to consolidate access arrangements.

5 The content of access arrangements and applicable access arrangements, including—

(a) a description of pipeline services provided or that may be provided by means of scheme pipelines, including reference services; and

(b) the content of expansion and extension requirements; and

(c) the content of queuing requirements; and

(d) review submission dates, expiry dates and dates when revisions to access arrangements and applicable access arrangements are to take effect.

6 Variations to applicable access arrangements.

7 Information to accompany access arrangements submitted for approval, or proposals for revisions or variations to access arrangements, including information to enable a person to understand the background or basis or derivation of the access arrangement or proposal.

8 The provision and publication of information referred to in item 7.

9 Decisions of the AER that approve (with or without revisions or modifications) or do not approve access arrangements or proposals for revisions or variations to access arrangements.

10 The making of access arrangements by the AER when it does not approve access arrangements.

11 The contents of decisions of the AER that—

(a) approve or do not approve access arrangements or proposals for revisions or variations to access arrangements; and

(b) make access arrangements.

12 The procedure for the approval or making by the AER of access arrangements, or approval by the AER of proposals for revisions or variations to applicable access arrangements, including the publication and giving of—

(a) access arrangements and proposals; and

(b) decisions of the AER; and

(c) applicable access arrangements; and

(d) drafts of decisions of access arrangements and proposals and decisions of the AER.

13 Matters to be addressed by the AER in approving or not approving an access arrangement, or making an access arrangement, or approving or not approving revisions or variations to an applicable access arrangement.

General duties for provision of pipeline services

14 Queuing requirements for non-scheme pipelines.

15 Pipeline interconnection principles.

16 Exemptions from the prohibition in section 136A.

17 Information that must be published by service providers under section 136C, including—

(a) the collection, disclosure, verification, management and publication of information in relation to pipeline services, including information about—

(i) the terms and conditions on which the service provider is prepared to make a pipeline available for use by others; and

(ii) relevant prices, costs and methodologies associated with gaining access to (and using) a pipeline and relevant or related services; and

(iii) access contracts and arrangements used (or required to be used) by the service provider; and

(b) requirements to ensure that information is accurate and complete; and

(c) the imposition or recovery of costs associated with any matter referred to in a paragraph (a) or (b); and

(d) exemptions from the requirement to publish information.

Ring fencing requirements

18 The content of a minimum ring fencing requirement.

19 AER ring fencing determinations and additional ring fencing requirements.

20 The approval by the AER of associate contracts and variations to associate contracts.

21 The grounds on which the AER may approve associate contracts and variations to associate contracts, including grounds different from those specified in section 147 or section 148.

22 Exemptions from minimum ring fencing requirements and associate contract provisions, including applications for exemptions.

Access to pipeline services

23 Access to pipeline services.

24 The facilitation of requests for access to pipeline services (***access requests***), including—

(a) requirements for the publication by service providers of user access guides that describe the processes for making access requests, access offers and access negotiations; and

(b) exemptions from the requirement to publish a user access guide; and

(c) requirements about access requests and the information to be provided by the service provider in response to access requests; and

(d) requirements about access offers; and

(e) access negotiations between a user or prospective user and a service provider; and

(f) the imposition or recovery of costs associated with facilitating access (or potential access) to pipeline services.

25 Requirements to ensure that information published in a user access guide, in response to access requests or during access negotiations, is accurate and complete.

26 The transfer of capacity of a pipeline to deliver pipeline services, including—

(a) the circumstances when and how it is to happen; and

(b) the legal consequences of a transfer of that capacity.

27 The establishment and maintenance of registers of unutilised capacity of pipelines to deliver pipeline services, including the information to be included in such registers.

28 The public availability of information on registers referred to in item 27.

29 The provision of information to users of information about unutilised capacity of pipelines to deliver pipeline services.

30 The conditions a service provider may impose for the provision of pipeline services.

Access disputes

31 Access dispute notices, including—

(a) the content of access dispute notices; and

(b) procedures for dealing with access dispute notices; and

(c) withdrawal of access dispute notices.

32 Parties to an access dispute, including—

(a) applications to become a party to an access dispute; and

(b) procedures for dealing with applications to become a party to an access dispute.

33 Mediation of access disputes involving small shippers, including—

(a) elections by small shippers to have an access dispute mediated; and

(b) appointments of mediators; and

(c) mediation procedures; and

(d) reports required to be given by mediators to the AER.

34 Procedures and time limits for the making of access determinations, including a fast track procedure for scheme pipeline access disputes.

35 The appointment of persons to inquire into and report on the safe operation of pipelines for the purpose of enabling the relevant adjudicator to make an access determination.

36 Principles to be taken into account by the relevant adjudicator when making an access determination.

37 Matters an access determination may deal with.

38 The kinds of access determinations that may be made, including determinations—

(a) requiring prospective users or users to make capital contributions towards a service provider's capital expenditure for the expansion of the capacity of pipelines; and

(b) that enable service providers to charge prospective users or users surcharges to recover capital expenditure for the expansion of the capacity of pipelines.

39 Circumstances in which an access dispute may be terminated.

40 Procedures for varying an access determination.

41 Allocation of costs of an arbitration between parties to a non-scheme pipeline access dispute.

42 Procedures for correcting errors in an access determination.

~~**[*4M]Sale and supply of gas to customers**~~

~~[*4M]43 Credit support arrangements between service providers and retailers, including the financial obligations of service providers and retailers to support the sale and supply of natural gas to retail customers.~~

~~44 Charges for the connection of premises of retail customers.~~

Regulatory economic methodologies

45 The regulatory economic methodologies (including the use of the methodology known as the "building block approach") to be applied by—

(a) the AER in approving or making an access arrangement; or

(b) the AER in approving revisions or a variation to an applicable access arrangement; or

(c) the relevant adjudicator in making an access determination.

46 If the Rules provide for the regulatory economic methodology known as the "building block approach" to be applied by—

(a) the AER for the purpose of approving or making an access arrangement; or

(b) the AER for the purpose of approving revisions or a variation to an applicable access arrangement; or

(c) the relevant adjudicator for the purpose of making an access determination,

the determination by the AER or the relevant adjudicator (as the case requires) of allowances for—

(d) depreciation; or

(e) the operating costs of a service provider; or

(f) if the service provider is a corporation, the income tax payable by corporations.

47 The methodology known as "total factor productivity"—

(a) as a regulatory economic methodology to be applied by—

(i) the AER for the purpose of approving or making an access arrangement; or

(ii) the AER for the purpose of approving revisions or a variation to an applicable access arrangement; or

(iii) the relevant adjudicator for the purpose of making an access determination; and

(b) as an economic regulatory tool to inform and assist the AER in applying, or analysing the application of, the regulatory economic methodology known as the "building block approach" by the AER for the purpose of—

(i) approving or making an access arrangement; or

(ii) approving revisions or a variation to an applicable access arrangement; and

(c) as an economic regulatory tool to inform and assist the relevant adjudicator in applying, or analysing the application of, the regulatory economic methodology known as the "building block approach" by the relevant adjudicator for the purpose of making an access determination in relation to the dispute.

48 The capital base with respect to a pipeline, and of a new facility for the purposes of—

(a) approving or making an access arrangement; or

(b) approving revisions or a variation to an applicable access arrangement; or

(c) making an access determination.

49 The assessment, or treatment of, investment in pipelines and new facilities by—

(a) the AER for the purposes of approving or making an access arrangement; or

(b) the AER for the purposes of approving revisions or a variation to an applicable access arrangement; or

(c) the relevant adjudicator for the purposes of making an access determination in relation to the dispute.

50 The economic framework and methodologies to be applied by the AER or the relevant adjudicator for the purposes of item 49.

51 Incentives for service providers to make efficient operating and investment decisions including, where applicable, service performance incentive schemes.

52 The treatment of capital contributions referred to in item 38(a) when determining the capital base with respect to a pipeline.

53 The handling of surcharges referred to in item 38(b).

AER economic regulatory function or powers

54 The way in which the AER performs or exercises an AER economic regulatory function or power, including the basis on which the AER makes an AER economic regulatory decision.

55	Principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power.

[*4M]AER gas price reporting functions

[*4M]56	The AER gas price reporting functions.

[*4M] AEMO

[*4M]57	A registration scheme to be administered by AEMO for Registered participants in relation to a regulated gas market; the prudential and other requirements to be met by a Registered participant; exemption from registration; the suspension from registration or deregistration of a Registered participant; the exclusion of a Registered participant from a regulated gas market operated or administered by AEMO.
58	The operation and administration of a regulated gas market.
59	The declared system functions or STTM functions.
60	AEMO's functions, powers and duties, and the duties and obligations of Registered participants, exempted participants and others, in regard to the operation of a declared transmission system or a regulated gas market.
61	The setting of prices (including maximum and minimum prices) for natural gas and services purchased through the declared wholesale gas market or short term trading market operated and administered by AEMO.
62	The regulation of a declared LNG storage provider and liquefied natural gas stored by the provider.
63	The metering of natural gas to record the production or consumption of natural gas.
64	The registration of metering installations used to meter natural gas.
65	The regulation of persons providing metering services relating to the metering of natural gas.
66	The matters to be dealt with in the gas statement of opportunities and the obligations of AEMO and other persons in regard to its preparation, review, revision and publication.
67	Principles to be applied, and procedures to be followed, by AEMO in exercising a power or performing a function in relation to the gas statement of opportunities.
68	In relation to the gas statement of opportunities –

~~(a) the kinds of information that may or must be given to AEMO for the gas statement of opportunities, including~~

~~(i) historic, current and forecast information; and~~

~~(ii) information that may be derived from other information in the possession or control of the person required to provide the information; and~~

~~(b) who must give AEMO the information; and~~

~~(c) the circumstances in which the information may or must be given; and~~

~~(d) the procedure for giving the information.~~

~~69~~ ~~Fees payable to AEMO for services provided, or statutory functions performed, under this Law, the Rules or the Procedures.~~

~~70~~ ~~The payment of money (including the payment of interest and the provision of related security)~~

~~(a) for the settlement of transactions for natural gas or services purchased or supplied through a regulated gas market operated and administered by AEMO; or~~

~~(b) to or from a Rule fund; or~~

~~(c) for any service provided, or statutory function performed, for which the Rules require payment.~~

~~71~~ ~~Rules for determining the ownership of, and the transfer of title to, natural gas supplied at an STTM hub and for resolving disputes about ownership.~~

~~72~~ ~~The terms and conditions on which service providers, or classes of service providers, may recover costs for allocating quantities of natural gas relating to market operator services.~~

~~73~~ ~~The operation and administration of a gas trading exchange.~~

~~74~~ ~~The content, operation and administration of a gas trading exchange agreement.~~

~~75~~ ~~The duties and obligations of members of a gas trading exchange.~~

~~76~~ ~~Other rules relating to the conduct (including suspension) of the members of a gas trading exchange.~~

~~77~~ ~~The determination and settlement of payments in relation to a gas trading exchange.~~

Natural Gas Services Bulletin Board

78 The establishment and maintenance of a website that contains information in relation to the natural gas industry.

79	Principles to be applied, and procedures to be followed, by [*4M*]the Bulletin Board operator ~~AEMO~~ in exercising a power or performing a function in relation to the Natural Gas Services Bulletin Board.
80	The kinds of information that may or must be given to [*4M*]the Bulletin Board operator, ~~AEMO,~~ who must give [*4M*]the Bulletin Board operator ~~AEMO~~ the information, the circumstances in which the information may or must be given, and the procedure for giving the information.
81	The kinds of information that may or must be included on the Natural Gas Services Bulletin Board and the manner in which information is to be dealt with before being put on the Natural Gas Services Bulletin Board, including, but not limited to, the removal of information that would identify the person who gave the information.
82	Persons, or classes of persons, to whom the requirement to give information does not apply and the circumstances in which the requirement does not apply, including, but not limited to, the grant of power to [*4M*]the Bulletin Board operator ~~AEMO~~ to exempt persons, or classes of persons, from that requirement.
83	The circumstances in which the requirement to give information may start to apply again to the persons, or classes of persons, mentioned in item 82.
84	Persons, or classes of persons, who may access the Natural Gas Services Bulletin Board and the class, or classes, of information to which they may have access.
85	The terms and conditions on which the persons, or classes of persons, mentioned in item 84 may access the Natural Gas Services Bulletin Board.
86	The procedure for dealing with information that was, but is no longer, on the Natural Gas Services Bulletin Board.
87	Persons, or classes of persons, who may have access to information that was, but is no longer on the Natural Gas Services Bulletin Board and the class, or classes, of information to which they may have access.
88	The terms and conditions on which the persons, or classes of persons, mentioned in item 87 may have access to information that was, but is no longer on the Natural Gas Services Bulletin Board.
89	The terms and conditions on which service providers, or classes of service providers, may recover amounts from [*4M*]the Bulletin Board operator ~~AEMO~~ for aggregating Bulletin Board information for the Bulletin Board operator.
90	Matters mentioned in items 78 to 89, in so far as they relate to emergency situations.

[*4M]Facilitating capacity trades and the capacity auction

[*4M*] 91 The making of, and amendment to, an Operational Transportation Service Code, including –

(a) the establishment, membership and operation of a representative panel for the Code; and

(b) the functions of AEMO in relation to the panel; and

(c) the functions of the panel in connection with proposals for amendment of the Code.

92 The content of an Operational Transportation Service Code.

93 Requirements for a standard OTSA and the services provided under a standard OTSA.

94 Publication of a standard OTSA, entry into a standard OTSA and amendment of a standard OTSA.

95 Requirements for transportation service providers to give effect to operational transfers.

96 The determination of payments to transportation service providers for use of an operational transportation service after termination or suspension of the contract from which the transportation capacity was first derived.

97 A registration scheme to be administered by AEMO for registration of transportation service providers and transportation facilities.

98 The provision of information to AEMO about the points at or between which transportation services are provided and the publication of that information by AEMO.

99 The allocation of service points to zones and the transfer of transportation capacity between service points.

100 The recording of information about nominations and renominations for the use of transportation services and the scheduling and curtailment of transportation services and the provision of that information to AEMO or the AER.

101 The recovery of the costs of transportation service providers in connection with the provision of a standard OTSA, a capacity auction and the transaction support arrangements and the publication of schedules of charges.

102 The negotiation or determination of provisions in agreements with transportation facility users to facilitate sale by operational transfer and the transfer of capacity between service points.

103 Exemptions in connection with a standard OTSA or capacity auction.

[*4M]Capacity auctions

[*4M*] 104	The capacity auction functions and the operation and administration of a capacity auction.
105	The transportation services to be available through a capacity auction and the determination of the quantities of transportation capacity to be offered in the capacity auction.
106	The form of a capacity auction and the rules relating to the conduct (including suspension) of a capacity auction.
107	The duties and obligations of transportation service providers in relation to a capacity auction, including the provision of information and the maintenance of records in relation to the nomination, scheduling and supply of transportation services.
108	The content, operation and administration of capacity auction agreements.
109	The duties and obligations of capacity auction participants.
110	The activities of transportation service providers and transportation facility users in connection with a capacity auction.
111	The determination and settlement of payments in relation to a capacity auction.
112	The order of priority to be given to transportation services using transportation capacity bought in a capacity auction, including in the scheduling, supply or curtailment of transportation services.
113	The classification of transportation services as priority services in connection with a capacity auction.
114	The functions of the AER in relation to transportation services classified as priority services in connection with a capacity auction and variations to those services.

[*4M]Standard market timetable

[*4M*] 115	Provision for or with respect to a standard market timetable, including requirements concerning use of a standard market timetable and the measurement of gas flows over periods corresponding to the standard gas day.
116	Provision for or with respect to the negotiation or determination of amendments to contracts for transition to the use of a standard market timetable.

Miscellaneous

117	Specification of pipeline services as reference services.
118	The preparation (including public consultation) and publication by the AER of discussion papers relating to the AER's functions and powers under this Law and the Rules.

119 Reviews by or on behalf of—

(a) the AER or the AEMC; or

(b) any other person appointed, in accordance with the Rules.

120 Reporting and disclosing information to the AER.

121 The establishment and maintenance of a register by the AEMC of the following:

(a) all previous and current determinations and decisions made in relation to a pipeline under Chapter 3; and

(b) all previous and current exemptions from publishing prescribed transparency information under section 136C; and

(c) all previous and current determinations and decisions made in relation to a pipeline under Chapters 3 and 5 as in force from time to time before the commencement of Part 19 of Schedule 3.

122 Time periods within which the AER must make a decision (including an AER economic regulatory decision).

123 Extensions to periods of time referred to in item 122.

124 Reports into failures to make decisions within a specified period of time and the publication of such reports.

125 Confidential information held by service providers, users, prospective users, end users, the AER, the AEMC, [*4M*]the Bulletin Board operator ~~AEMO~~ and other persons or bodies conferred a function, or exercising a power or right, or on whom an obligation is imposed, under the Rules, and the manner and circumstances in which that information may be disclosed.

126 Dispute resolution, including—

(a) definition of the class of disputes subject to the dispute resolution provisions of the Rules; and

(b) the appointment of persons to arbitrate, mediate or assist in some other way in the resolution of such disputes; and

(c) the appointment of a person to manage and facilitate the dispute resolution process (without however derogating from that person's power to act personally as an arbitrator or mediator in a particular dispute); and

(d) the dispute resolution process; and

(e) rights of appeal on questions of law against decisions made in the course of the dispute resolution process.

[*4M*] ~~127~~	~~Energy Consumers Australia (including provisions for its funding).~~
128	The modification of section 3, 8 or 10.8 of the Gas Code as those sections apply to a transitioned access arrangement (as defined in clause 1 of Schedule 3 to this Law). **Note—** See also clause 30 of Schedule 3 to this Law.
129	Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the Gas Code as in operation and effect immediately before the commencement of [*4M*]the *National Gas Access (WA) Act 2009* section 30.~~section 20 of the *National Gas (South Australia) Act 2008* of South Australia.~~
[*4M*] 130	~~Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the superseded jurisdictional rules.~~
131	Any matter or thing relating to gas prescribed by the Regulations.

Schedule 1—Subject matter for the National Gas Rules

Section 74

Classification and coverage of pipelines

1 The content of applications for coverage determinations, coverage revocation determinations and 15-year no-coverage determinations.

2 The content of coverage recommendations, coverage revocation recommendations and no-coverage recommendations.

3 The content of decisions about coverage determinations, coverage revocation determinations and 15-year no-coverage determinations.

4 The classification of pipelines by the NCC—

(a) after a tender approval decision becomes irrevocable; or

(b) during the process the approval of a voluntarily submitted access arrangement.

5 The content of applications for the reclassification of pipelines and reclassification decisions.

Price regulation exemptions

6 The content of applications for price regulation exemptions.

7 The content of recommendations by the NCC in relation to price regulation exemptions.

8 The content of decisions about price regulation exemptions.

Light regulation determinations

9 The content of applications for light regulation determinations or the revocation of light regulation determinations.

10 The content of decisions about light regulation determinations or the revocation of light regulation determinations.

11 The matters to be addressed by the NCC in making decisions about light regulation determinations or the revocation of light regulation determinations.

Tender approvals for the construction of pipelines

12 Applications for and the approval by the AER of a tender for the construction of a pipeline (by means of which pipeline services are intended to be provided) as a competitive tender process.

13 The content of tender approval decisions.

14 The procedure for the making and the publication of a tender approval decision.

15 Reports on the conduct of tender processes approved under tender approval decisions.

16 The lapsing or revocation of tender approval decisions.

Access to pipeline services

17 Access to pipeline services provided or that may be provided by means of a scheme pipeline.

18 The facilitation of requests for access to pipeline services provided by means of a scheme pipeline.

19 The transfer of capacity of a pipeline to deliver pipeline services, including—

(a) the circumstances when and how it is to happen; and

(b) the legal consequences of a transfer of that capacity.

20 The establishment and maintenance of registers of unutilised capacity of pipelines to deliver pipeline services, including the information to be included in such registers.

21 The public availability of information on registers referred to in item 20.

22 The provision of information to users of information about unutilised capacity of pipelines to deliver pipeline services.

23 The disclosure to the AER of information relating to access to light regulation services.

24 Reports on negotiations relating to access to light regulation services.

25 The publication of prices and other terms and conditions of access to light regulation services.

26 The conditions a service provider may impose for the provision of pipeline services.

Access arrangements

27 The submission to the AER, by service providers, of access arrangements or revisions to applicable access arrangements for approval by the AER including requiring service providers to—

(a) submit full access arrangements for pipeline services (that are not light regulation services) provided by means of covered pipelines;

(b) submit limited access arrangements for pipeline services provided by means of international pipelines to which price regulation exemptions apply;

(c) submit more than 1 access arrangement;

(d) to consolidate access arrangements.

28 The content of access arrangements and applicable access arrangements including—

(a) a description of pipeline services provided or that may be provided by means of scheme pipelines, including reference services;

(b) the content of expansion and extension requirements;

(c) the content of queuing requirements;

(d) review submission dates, expiry dates and dates when revisions to access arrangements and applicable access arrangements are to take effect.

29 Variations to applicable access arrangements.

30 Information to accompany access arrangements submitted for approval, or proposals for revisions or variations to access arrangements, including information to enable a person to understand the background or basis or derivation of the access arrangement or proposal.

31 The provision and publication of information referred to in item 30.

32 Decisions of the AER that approve (with or without revisions or modifications) or not approve access arrangements or proposals for revisions or variations to access arrangements.

33 The making of access arrangements by the AER when it does not approve access arrangements.

34 The contents of decisions of the AER that —

(a) approve or do not approve access arrangements or proposals for revisions or variations to access arrangements;

(b) make access arrangements.

35 The procedure for the approval or making by the AER of access arrangements, or approval by the AER of proposals for revisions or variations to applicable access arrangements, including the publication and giving of —

(a) access arrangements and proposals;

(b) decisions of the AER;

(c) applicable access arrangements;

(d) drafts of decisions of access arrangements and proposals and decisions of the AER.

36 Matters to be addressed by the AER in approving or not approving an access arrangement, or making an access arrangement, or approving or not approving revisions or variations to an applicable access arrangement.

Access disputes

37 The procedure and time limits for the making of access determinations under Chapter 6 or 6A.

38 The appointment of persons to inquire into and report on the safe operation of pipelines for the purpose of enabling the dispute resolution body to make an access determination under Chapter 6 or an arbitrator to make an access determination under Chapter 6A.

39 The kinds of access determinations that may be made under Chapter 6 or 6A including determinations —

(a) requiring prospective users or users to make capital contributions towards a service provider's capital expenditure for the installation or construction of new facilities for the expansion of the capacity of pipelines;

(b) that enable service providers to charge prospective users or users surcharges to recover capital expenditure for the installation or construction of new facilities for the expansion of the capacity of pipelines.

Regulatory economic methodologies

40 The regulatory economic methodologies (including the use of the methodology known as the "building block approach") to be applied by —

(a) the AER in approving or making a full access arrangement;

(b) the AER in approving revisions or a variation to an applicable access arrangement that is a full access arrangement;

(c) the dispute resolution body in making an access determination.

41 If the Rules provide for the regulatory economic methodology known as the "building block approach" to be applied by —

(a) the AER for the purpose of approving or making a full access arrangement; or

(b) the AER for the purpose of approving revisions or a variation to an applicable access arrangement that is a full access arrangement; or

(c) the dispute resolution body for the purpose of making an access determination,

the determination by the AER or the dispute resolution body (as the case requires) of allowances for —

(d) depreciation;

(e) the operating costs of a service provider;

(f) if the service provider is a corporation, the income tax payable by corporations;

[(g) deleted]

~~42 The methodology known as "total factor productivity"~~

~~(a) as a regulatory economic methodology to be applied by~~

~~(i) the AER for the purpose of approving or making a full access arrangement;~~

~~(ii) the AER for the purpose of approving revisions or a variation to an applicable access arrangement that is a full access arrangement;~~

~~(iii) the dispute resolution body for the purpose of making an access determination;~~

~~(b) as an economic regulatory tool to inform and assist the AER in applying, or analysing the application of, the regulatory economic methodology known as the "building block approach" by the AER for the purpose of~~

~~(i) approving or making a full access arrangement; or~~

~~(ii) approving revisions or a variation to an applicable access arrangement that is a full access arrangement;~~

~~(c) as an economic regulatory tool to inform and assist the dispute resolution body in applying, or analysing the application of, the regulatory economic methodology known as the "building block approach" by the dispute resolution body for the purpose of making an access determination.~~

~~43 The capital base with respect to a covered pipeline, and of a new facility for the purposes of~~

~~(a) approving or making a full access arrangement; or~~

~~(b) approving revisions or a variation to an applicable access arrangement that is a full access arrangement; or~~

~~(c) making an access determination.~~

~~44 The assessment, or treatment of, investment in covered pipelines and new facilities by~~

~~(a) the AER for the purposes of approving or making a full access arrangement;~~

~~(b) the AER for the purposes of approving revisions or a variation to an applicable access arrangement that is a full access arrangement;~~

~~(c) the dispute resolution body for the purposes of making an access determination.~~

~~45 The economic framework and methodologies to be applied by the AER or the dispute resolution body for the purposes of item 44.~~

~~46~~ ~~Incentives for service providers to make efficient operating and investment decisions including, where applicable, service performance incentive schemes.~~

~~47~~ ~~The treatment of capital contributions referred to in item 39(a) when determining the capital base with respect to a covered pipeline.~~

~~48~~ ~~The handling of surcharges referred to in item 39(b).~~

~~48A~~ ~~For the purposes of items 40 to 47 (inclusive) —~~

~~(a) a reference to the dispute resolution body will be taken to include a reference to an arbitrator under Chapter 6A; and~~

~~(b) a reference to an access determination will be taken to include a reference to an access determination under Chapter 6A; and~~

~~(c) a reference to a covered pipeline will be taken to include a reference to a non-scheme pipeline under Chapter 6A.~~

~~AER economic regulatory function or powers~~

~~49~~ ~~The way in which the AER performs or exercises an AER economic regulatory function or power, including the basis on which the AER makes an AER economic regulatory decision.~~

~~50~~ ~~Principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power.~~

~~Ring fencing requirements~~

~~51~~ ~~The content of a minimum ring fencing requirement.~~

~~52~~ ~~AER ring fencing determinations and additional ring fencing requirements.~~

~~53~~ ~~Exemptions from a minimum ring fencing requirement.~~

~~Associate contracts~~

~~54~~ ~~The approval by the AER of associate contracts and variations to associate contracts.~~

~~55~~ ~~The grounds on which the AER may approve associate contracts and variations to associate contracts, including grounds different from those specified in section 147 or section 148.~~

~~Natural Gas Services Bulletin Board~~

~~56~~ ~~The establishment and maintenance of a website that contains information in relation to natural gas services.~~

~~57~~ ~~Principles to be applied, and procedures to be followed, by the Bulletin Board operator in exercising a power or performing a function in relation to the Natural Gas Services Bulletin Board.~~

58 The kinds of information that may or must be given to the Bulletin Board operator, the circumstances in which the information may or must be given, and the procedure for giving the information.

59 The kinds of information that may or must be included on the Natural Gas Services Bulletin Board and the manner in which information is to be dealt with before being put on the Natural Gas Services Bulletin Board, including, but not limited to, the removal of information that would identify the person who gave the information.

60 Persons, or classes of persons, to whom the requirement to give information does not apply and the circumstances in which the requirement does not apply, including, but not limited to, the grant of power to the Bulletin Board operator to exempt persons, or classes of persons, from that requirement.

61 The circumstances in which the requirement to give information may start to apply again to the persons, or classes of persons, mentioned in item 60.

62 Persons, or classes of persons, who may access the Natural Gas Services Bulletin Board and the class, or classes, of information to which they may have access.

63 The terms and conditions on which the persons, or classes of persons, mentioned in item 62 may access the Natural Gas Services Bulletin Board.

64 The procedure for dealing with information that was, but is no longer, on the Natural Gas Services Bulletin Board.

65 Persons, or classes of persons, who may have access to information that was, but is no longer on the Natural Gas Services Bulletin Board and the class, or classes, of information to which they may have access.

66 The terms and conditions on which the persons, or classes of persons, mentioned in item 65 may have access to information that was, but is no longer on the Natural Gas Services Bulletin Board.

67 The terms and conditions on which service providers, or classes of service providers, may recover amounts from the Bulletin Board operator for aggregating Bulletin Board information for the Bulletin Board operator.

68 Matters mentioned in items 56 to 67, in so far as they relate to emergency situations.

Miscellaneous

69 Specification of pipeline services as reference services.

70 The preparation (including public consultation) and publication by the AER of discussion papers relating to the AER's functions and powers under this Law and the Rules.

~~71 Reviews by or on behalf of—~~

~~(a) the AER or the AEMC; or~~

~~(b) any other person appointed, in accordance with the Rules.~~

~~72 Reporting and disclosing information to the AER.~~

~~73 Procedure to be followed by the NCC or a relevant Minister in dealing with an application for—~~

~~(a) a coverage determination;~~

~~(b) a coverage revocation determination;~~

~~(c) a 15-year no-coverage determination;~~

~~(d) a price regulation exemption;~~

~~(e) a reclassification decision;~~

~~(f) a light regulation determination;~~

~~(g) a determination to revoke a light regulation determination.~~

~~74 The publication and the giving of NCC recommendations or decisions or Ministerial coverage decisions.~~

~~75 The establishment and maintenance of a register by the AEMC of all previous and current—~~

~~(a) coverage determinations; and~~

~~(b) coverage revocation determinations; and~~

~~(c) greenfields pipeline incentives; and~~

~~(d) decisions under section 99 not to make a coverage determination; and~~

~~(e) decisions under section 106 not to make a coverage revocation determination; and~~

~~(f) decisions under section 156 not to make a 15-year no-coverage determination; and~~

~~(g) decisions under section 1.13 of the Gas Code that a pipeline is not covered under the old access law and Gas Code; and~~

~~(h) decisions under section 1.34 of the Gas Code that coverage of a covered pipeline under the old access law and Gas Code is not revoked; and~~

~~(i) tender approval decisions; and~~

~~(j) light regulation determinations; and~~

~~(k) decisions revoking light regulation determinations; and~~

~~(l) covered pipelines, including their description and classification as transmission pipelines or distribution pipelines; and~~

(m) covered pipelines by means of which light regulation services are or intended to be provided; and

(n) international pipelines; and

(o) applicable access arrangements.

76 The inclusion on the register referred to in item 75 of descriptions of —

(a) all old scheme transmission pipelines and old scheme distribution pipelines; and

(b) all old scheme classifications or determinations.

77 Time periods within which —

(a) the NCC must make an NCC recommendation or decision;

(b) the AER must make a decision (including an AER economic regulatory decision).

78 Extensions to periods of time referred to in item 77.

79 Reports into failures to make decisions within a specified period of time and the publication of such reports.

80 Confidential information held by service providers, users, prospective users, end users, the AER, the AEMC, the NCC, the Bulletin Board operator and other persons or bodies conferred a function, or exercising a power or right, or on whom an obligation is imposed, under the Rules, and the manner and circumstances in which that information may be disclosed.

81 The modification of section 3, 8 or 10.8 of the Gas Code as those sections apply to a transitioned access arrangement (as defined in clause 1 of Schedule 3 to this Law).

Note —

See also clause 30 of Schedule 3 to this Law.

82 Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the Gas Code as in operation and effect immediately before the commencement of [*4M*]section 30 of the *National Gas Access (WA) Act 2009* of Western Australia.

83 Any matter or thing relating to gas prescribed by the Regulations.

[Schedule 1 modified: WA Act Sch. 1 cl. 14; amended: see SA Act No. 23 of 2017 s. 9 and WA Gazette 22 Dec 2017 p. 5984; SA Act No. 33 of 2018 s. 19 and WA Gazette 5 Apr 2019 p. 1007.]

Schedule 2 — Miscellaneous provisions relating to interpretation

Section 20

Part 1 — Preliminary

1. Displacement of Schedule by contrary intention

(1) The application of this Schedule to this Law, the Regulations or other statutory instrument (other than the National Gas Rules) may be displaced, wholly or partly, by a contrary intention appearing in this Law or the Regulations or that statutory instrument.

(2) The application of this Schedule to the National Gas Rules (other than clauses 7, 12, 15, 17, 19 and 20, 23 to 26 and 31 to 44, 49, 52 and 53 of this Schedule) may be displaced, wholly or partly, by a contrary intention appearing in the National Gas Rules.

Part 2 — General

2. Law to be construed not to exceed legislative power of Legislature

(1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) Without limiting subclause (2), this Law is not to be construed as imposing any duty on [*4]~~the Commonwealth Minister, the NCC,~~ the Australian Competition Tribunal or AER to perform a function or exercise a power if the imposition of the duty would be in excess of the legislative power of the Legislature of this jurisdiction.

Note—

The term ***function*** is defined in clause 10 to include "duty".

(4) In particular, if a provision of this Law appears to impose a duty on a Commonwealth officer or body to perform a function or exercise a power, the duty is taken to be imposed by the provision to the extent to which imposing the duty—

(a) is within the legislative powers of this jurisdiction; and

(b) is consistent with the constitutional doctrines under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body.

(4a) To avoid doubt, a provision of this Law does not impose the duty on the Commonwealth officer or body to the extent to which imposing the duty would—

(a) contravene any constitutional doctrine under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of this jurisdiction.

(4b) If imposing on the Commonwealth officer or body the duty to do that thing would—

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of both the State and the Commonwealth,

the provision of this Law is taken instead to confer on the Commonwealth officer or body a power to do that thing at the discretion of the Commonwealth officer or body (as the case may require).

(5) This clause does not limit the effect that a provision of this Law would validly have apart from this clause.

[Clause 2 amended: see SA Act No. 3 of 2021 s. 54(1) and WA Gazette 22 Jan 2025 p. 63-4.]

[*1]**3. Changes of drafting practice not to affect meaning**

Differences of language between provisions of this Law or the Rules may be explicable by reference to changes of legislative drafting practice and do not necessarily imply a difference of meaning.

~~**3. Vacant provision**~~

~~**Note—**~~

~~There is no clause 3.~~

4. Material that is, and is not, part of Law

(1) The heading to a Chapter, Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.

(3) A heading to a section or subsection of this Law does not form part of this Law.

(4) A note at the foot of a provision of this Law does not form part of this Law.

(5) An example (being an example at the foot of a provision of this Law under the heading "Example" or "Examples") does not form part of this Law.

5. References to particular Acts and to enactments

In this Law—

(a) an Act of this jurisdiction may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of this jurisdiction for the citation of such an Act; and

(b) a Commonwealth Act may be cited—

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act,

together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act,

together with a reference to the jurisdiction.

6. References taken to be included in Act or Law citation etc

(1) A reference in this Law to an Act includes a reference to—

(a) the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference, the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to—

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference, the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) Subclauses (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7. Interpretation best achieving Law's purpose

(1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

8. Use of extrinsic material in interpretation

(1) In this clause—

Law extrinsic material means relevant material not forming part of this Law, including, for example—

(a) material that is set out in the document containing the text of this Law as printed by authority of the Government Printer of South Australia; and

(b) a relevant report of a committee of the Legislative Council or House of Assembly of South Australia that was made to the Legislative Council or House of Assembly of South Australia before the provision was enacted; and

(c) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Legislative Council or House of Assembly of South Australia by the member bringing in the Bill before the provision was enacted; and

(d) the speech made to the Legislative Council or House of Assembly of South Australia by the member in moving a motion that the Bill be read a second time; and

(e) material in the Votes and Proceedings of the Legislative Council or House of Assembly of South Australia or in any official record of debates in the Legislative Council or House of Assembly of South Australia; and

(f) a document that is declared by the Regulations to be a relevant document for the purposes of this clause;

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law;

Rule extrinsic material means—

(a) a draft Rule determination; or

(b) a final Rule determination; or

(c) any document (however described)—

(i) relied on by the AEMC in making a draft Rule determination or final Rule determination; or

(ii) adopted by the AEMC in making a draft Rule determination or final Rule determination.

(2) Subject to [*4] subclause (4) ~~subclause (3)~~, in the interpretation of a provision of this Law, consideration may be given to Law extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure, to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or

(c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) Subject to subclause (4), in the interpretation of a provision of the Rules, consideration may be given to Law extrinsic material or Rule extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure, to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or

(c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(4) In determining whether consideration should be given to Law extrinsic material or Rule extrinsic material, and in determining the weight to be given to Law extrinsic material or Rule extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

9. Compliance with forms

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

Part 3 — Terms and references

10. Definitions

In this Law—

Act means an Act of the Legislature of this jurisdiction;

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

amend includes—

(a) omit or omit and substitute; or

(b) alter or vary; or

(c) amend by implication;

appoint includes re-appoint;

breach includes fail to comply with;

business day means a day that is not—

(a) a Saturday or Sunday;

(b) observed as a public holiday on the same day in each of the participating jurisdictions (except the Commonwealth);

calendar month means a period starting at the beginning of any day of 1 of the 12 named months and ending—

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day, at the end of the next named month;

calendar year means a period of 12 months beginning on 1 January;

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation;

confer, in relation to a function, includes impose;

contravene includes fail to comply with;

definition means a provision of this Law (however expressed) that—

(a) gives a meaning to a word or expression; or

(b) limits or extends the meaning of a word or expression;

document includes—

(a) any paper or other material on which there is writing; or

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or

(c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

estate includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

expire includes lapse or otherwise cease to have effect;

fail includes refuse;

financial year means a period of 12 months beginning on 1 July;

function includes duty;

Gazette means the Government Gazette of this jurisdiction;

instrument includes a statutory instrument;

interest, in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property;

make includes issue or grant;

minor means an individual who is under 18 years of age;

modification includes addition, omission or substitution;

month means a calendar month;

named month means 1 of the 12 months of the year;

number means—

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter;

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise;

office includes position;

omit, in relation to a provision of this Law or an Act, includes repeal;

party includes a body politic or body corporate as well as an individual;

penalty includes a civil penalty, forfeiture or punishment;

person includes a body politic or body corporate as well as an individual;

power includes authority;

prescribed means prescribed by the Regulations;

printed includes typewritten, lithographed or reproduced by any mechanical means;

proceeding means a legal or other action or proceeding;

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

(a) a Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Law or the Act; or

(b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act; or

(c) the long title and any preamble to the Act;

record includes information stored or recorded by means of a computer;

repeal includes—

(a) revoke or rescind; or

(b) repeal by implication; or

(c) abrogate or limit the effect of the law or instrument concerned; or

(d) exclude from, or include in, the application of the law or instrument concerned, any person, subject matter or circumstance;

sign includes the affixing of a seal or the making of a mark;

statutory declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

statutory instrument means the Regulations or an instrument made or in force under this Law;

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

word includes any symbol, figure or drawing;

writing includes any mode of representing or reproducing words in a visible form.

11. Provisions relating to defined terms and gender and number

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

12. Meaning of may and must etc

(1) In this Law, the word "may", or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word "must", or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

13. Words and expressions used in statutory instruments

(1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

14. References to Minister

(1) In this Law—

(a) a reference to a Minister is a reference to a Minister of the Crown of this jurisdiction; and

(b) a reference to a particular Minister by title, or to "the Minister" without specifying a particular Minister by title, includes a reference to another Minister, or a member of the Executive Council of this jurisdiction, who is acting for and on behalf of the Minister.

(2) In a provision of this Law, a reference to "the Minister", without specifying a particular Minister by title is a reference to—

(a) the Minister of this jurisdiction administering the provision; or

(b) if, for the time being, different Ministers of this jurisdiction administer the provision in relation to different matters—

(i) if only 1 Minister of this jurisdiction administers the provision in relation to the relevant matter, the Minister; or

(ii) if 2 or more Ministers of this jurisdiction administer the provision in relation to the relevant matter, any 1 of those Ministers; or

(c) if paragraph (b) does not apply and, for the time being, 2 or more Ministers administer the provision, any 1 of the Ministers.

(3) For the removal of doubt, it is declared that if—

(a) a provision of this Law is administered by 2 or more Ministers of this jurisdiction; and

(b) the provision requires or permits anything to be done in relation to any of the Ministers,

the provision does not require or permit it to be done in a particular case by or in relation to more than 1 of the Ministers.

15. Production of records kept in computers etc

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs—

(c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

16. References to this jurisdiction to be implied

In this Law—

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and

(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

17. References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

18. Reference to certain provisions of Law

If a provision of this Law refers—

(a) to a Chapter, Part, section or Schedule by a number and without reference to this Law, the reference is a reference to the Chapter, Part, section or Schedule, designated by the number, of or to this Law; or

(b) to a Schedule without reference to it by a number and without reference to this Law, the reference, if there is only 1 Schedule to this Law, is a reference to the Schedule; or

(c) to a Division, Subdivision, subsection, paragraph, subparagraph, subsubparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law, the reference is a reference to—

(i) the Division, designated by the number, of the Part in which the reference occurs; and

(ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

(iii) the subsection, designated by the number, of the section in which the reference occurs; and

(iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and

(v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and

(vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

(vii) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,

as the case requires.

Part 4 — Functions and powers

19. Performance of statutory functions

(1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

20. Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument, decision or determination—

(a) the power includes power to amend or repeal the instrument, decision or determination; and

(b) the power to amend or repeal the instrument, decision or determination is exercisable in the same way, and subject to the same conditions, as the power to make the instrument, decision or determination.

21. Matters for which statutory instruments may make provision

(1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind),

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

(a) be of general or limited application;

(b) vary according to the persons, times, places or circumstances to which it is expressed to apply.

(4) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(5) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(6) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(7) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(8) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

(9) In this clause—

statutory instrument does not include the National Gas Rules.

22. Presumption of validity and power to make

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

23. Appointments may be made by name or office

(1) If this Law authorises or requires a person or body—

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing,

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

24. Acting appointments

(1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than 1 year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy,

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

(a) the appointee has all the powers and functions of the holder of the office; and

(b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

25. Powers of appointment imply certain incidental powers

(1) If this Law authorises or requires a person or body to appoint a person to an office—

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes—

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

26. Delegation

(1) If this Law authorises a person to delegate a function or power, the person may, in accordance with this Law, delegate the power to—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) The delegation—

(a) may be general or limited; and

(b) may be made from time to time; and

(c) may be revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or if the delegator is a body corporate, by a person authorised by the body corporate for the purpose.

(4) A delegated function or power may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated function or power, do anything that is incidental to the delegated function or power.

(6) A delegated function or power that purports to have been exercised by the delegate is taken to have been duly exercised by the delegate unless the contrary is proved.

(7) A delegated function or power that is duly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function or power is, under this Law, dependent on the delegator's opinion, belief or state of mind in relation to a matter, the function or power, when exercised by the delegate, is dependent on the delegate's opinion, belief or state of mind in relation to the matter.

(9) If a function or power is delegated to a particular officer or the holder of a particular office—

(a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the power was delegated ceases to be the officer or the holder of the office; and

(b) the function or power may be exercised by the person for the time being occupying or acting in the office concerned.

(10) A function or power that has been delegated may, despite the delegation, be exercised by the delegator.

27. Exercise of powers between enactment and commencement

(1) If a provision of this Law (the ***empowering provision***) that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing,

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(2) If a provision of an Act of South Australia (the ***empowering provision***) that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing,

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(3) If—

(a) this Law has commenced and confers a power to make a statutory instrument (the ***basic instrument making power***); and

(b) a provision of an Act of South Australia that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the ***additional instrument making power***),

then—

(c) the basic instrument making power and the additional instrument making power may be exercised by making a single instrument; and

(d) any provision of the instrument that required an exercise of the additional instrument making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of—

(a) enabling the exercise of a power mentioned in the subclause; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect—

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

(a) an appointment is made under subclause (1) or (2); or

(b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),

the appointment, instrument or provision takes effect—

(c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.

(8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

27A. WA modifications of clause 27

Clause 27 applies to a conferral of power by this Law to the extent that the power derives from an amendment to the Schedule to the *National Gas (South Australia) Act 2008* of South Australia —

(a) as if references in clause 27(2), (5) and (6) to the commencement of the empowering provision referred to the time when the Western Australian National Gas Access Law text, as defined in section 7(2) of the *National Gas Access (WA) Act 2009*, is affected by the amendment; and

(b) as if the reference in clause 27(3) to additional power that would be conferred had an Act of South Australia commenced referred to additional power that would be conferred had the Western Australian National Gas Access Law text been already affected by the amendment; and

(c) as if clause 27(7) had been omitted.

[Clause 27A inserted: WA Act Sch. 1 cl. 15.]

Part 5 — Distance and time

28. Matters relating to distance and time

(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days, by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case, by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

Part 6 — Service of documents

29. Service of documents and meaning of service by post etc

(1) If this Law requires or permits a document to be served on a person (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the document may be served—

(a) on a natural person—

(i) by delivering it to the person personally; or

(ii) by leaving it at, or by sending it by post, facsimile or similar facility to the last known address of the place of residence or usual place of business of the person; or

(iii) by sending it electronically to that person; or

(b) on a body corporate—

(i) by leaving it at the registered office or usual place of business of the body corporate with an officer of the body corporate; or

(ii) by sending it by post, facsimile or similar facility to its registered office or its usual place of business; or

(iii) by sending it electronically to that body corporate or an officer of the body corporate.

(2) Nothing in subclause (1)—

(a) affects the operation of another law that authorises the service of a document otherwise than as provided in the subclause; or

(b) affects the power of a court or tribunal to authorise service of a document otherwise than as provided in the subclause.

30. Meaning of service by post etc

(1) If this Law requires or permits a document to be served by post (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), service—

(a) may be effected by properly addressing, prepaying and posting the document as a letter; and

(b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

(2) If this Law requires or permits a document to be served by a particular postal method (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the requirement or permission is taken to be satisfied if the document is posted by that method or, if that method is not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

Part 7 — Evidentiary matters

Division 1 — Publication on websites

31. Definitions

In this Division—

decision maker means [*4]~~a relevant Minister, the NCC,~~ the AER, the AEMC or the Bulletin Board operator;

relevant decision or document means—

(a) a decision (however described) or determination (however described) of a decision maker under this Law or the Rules; or

(b) an access arrangement to which a decision of the AER under the Law or Rules relates;

relevant notice means a notice under the Rules calling for or inviting submissions or comments in relation to a relevant decision or document;

32. Publication of decisions on websites

(1) For the purposes of this Law, a relevant decision or document or relevant notice that is required by this Law or the Rules to be published on a website is to be taken to be published on the website if—

(a) the relevant decision or document or relevant notice is made accessible in full on the website; or

(b) notice of the making or publication of the relevant decision or document or relevant notice is made accessible on that website and the relevant decision or document or relevant notice is made accessible separately in full on that website or in any other identified location.

(2) The date on which the relevant decision or document or relevant notice is published on the website is the date notified by the relevant decision maker on the website as the date of the relevant decision's or document's or relevant notice's publication (being not earlier than the date on which it was first made so accessible).

Division 2 — Evidentiary certificates

33. Definitions

In this Division—

acting SES employee has the same meaning as in section 17AA of the *Acts Interpretation Act 1901* of the Commonwealth;

AEMC chief executive means the chief executive of the AEMC appointed under section 16 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

AEMC Commissioner means a Commissioner within the meaning of the *Australian Energy Market Commission Establishment Act 2004* of South Australia;

AER member has the same meaning as in the *Trade Practices Act 1974* of the Commonwealth;

[*4]~~***NCC member*** means a Councillor within the meaning of the *Trade Practices Act 1974* of the Commonwealth;~~

relevant notice has the same meaning as in clause 31;

SES employee has the same meaning as in section 17AA of the *Acts Interpretation Act 1901* of the Commonwealth.

34. Evidentiary certificates—AER

(1) In any proceedings under this Law, a certificate signed or purported to be signed by an AER member, or an SES employee or acting SES employee assisting the AER as mentioned in section 44AAC of the *Trade Practices Act 1974* of the Commonwealth, stating any of the following matters is evidence of the matter:

(a) a stated document is 1 of the following things, made, given, served or issued under this Law or the Rules:

(i) a decision (however described) or determination (however described);

(ii) an authorisation under section 32;

(iii) a general regulatory information order;

(iv) a notice, notification, direction or requirement;

(b) a stated document is a copy of a thing referred to in paragraph (a);

(ba) a stated document is a copy of a rate of return instrument;

(c) on a stated day, a person was or was not:

(i) given a decision (however described), or determination (however described);

(ii) authorised as an authorised person (within the meaning of section 31);

(iii) served a notice under section 42 or a regulatory information notice;

(iv) notified under section 52;

(v) notified under section 143(3) of the making of an AER ring fencing determination;

(d) on a stated day any of the following were published on the AER's website:

(i) a decision (however described) or determination (however described);

(ii) a general regulatory information order;

[*4](iii) an access arrangement or revisions to an applicable access arrangement submitted for approval under section 113;

~~(iii) a full access arrangement or revisions to an applicable access arrangement submitted for approval under section 132;~~

[*4]~~(iv) a limited access arrangement or revisions to an applicable access arrangement submitted for approval under section 116 or 168;~~

(v) a relevant notice.

(2) When subclause (1) is read as if a reference in it to the AER were a reference to the ERA, the subclause is to be read as if "an AER member, or an SES employee or acting SES employee assisting the AER as mentioned in section 44AAC of the *Trade Practices Act 1974* of the Commonwealth" had been deleted and the following had been inserted instead:

a member of the ERA

[Clause 34 modified: WA Act Sch. 1 cl. 16; amended: see SA Act No. 33 of 2018 s. 20(1) and WA Gazette 5 Apr 2019 p. 1007-8.]

35. Evidentiary certificates—AEMC

In any proceedings under this Law, a certificate signed or purported to be signed by a Commissioner or the AEMC chief executive, stating any of the following matters is evidence of the matter:

(a) a stated document is a decision (however described), made, given, served or issued under this Law;

(b) a stated document is a copy of a thing referred to in paragraph (a);

(c) on a stated day, a person was or was not given a decision (however described);

(d) on a stated day a relevant notice was published on the AEMC's website.

~~[*4]36. Evidentiary certificates—NCC~~

~~In any proceedings under this Law, a certificate signed or purported to be signed by an NCC member, or an SES employee or acting SES employee who is an employee assisting the NCC as mentioned in section 29M of the *Trade Practices Act 1974* of the Commonwealth, stating any of the following matters is evidence of the matter:~~

~~(a) a stated document is—~~

~~(i) an NCC recommendation or decision;~~

~~(ii) a decision of the NCC not to make a coverage determination because of section 96;~~

~~(b) on a stated day, a person was or was not given a reclassification decision;~~

~~(c) on a stated day any 1 of the following was, in accordance with the Rules, published on the NCC's website:~~

~~(i) a Ministerial coverage decision;~~

~~(ii) an NCC recommendation or decision;~~

~~(iii) a decision of the NCC not to make a coverage determination because of section 96;~~

~~(iv) a relevant notice.~~

~~**37. Evidentiary certificates – relevant Minister and Commonwealth Minister**~~

~~In any proceedings under this Law, a certificate signed or purported to be signed by a relevant Minister or the Commonwealth Minister stating any of the following matters is evidence of the matter:~~

~~(a) a stated document is a Ministerial coverage decision; or~~

~~(b) on a stated day a person or the NCC was or was not given a Ministerial coverage decision.~~

38. Evidentiary certificates—Bulletin Board operator

In any proceedings under this Law, a certificate signed or purported to be signed by the chief executive officer of the Bulletin Board operator, stating any of the following matters is evidence of the matter:

(a) a stated document is a decision (however described), made, given, served or issued under this Law;

(b) a stated document is a copy of a thing referred to in paragraph (a);

(c) on a stated day, a person was or was not given a decision (however described);

(d) on a stated day a relevant notice was published on the Bulletin Board operator's website.

Part 8 — Commencement of this Law and statutory instruments

39. Time of commencement of this Law or a provision of this Law

If a provision of an Act of South Australia provides that this Law or a provision of this Law shall commence, or be deemed to have commenced, on a particular day, it shall commence, or be deemed to have commenced, at the beginning of that day.

40. Time of commencement of a Rule

(1) If a Rule provides that the Rule shall commence on a particular day, it shall commence at the beginning of that day.

(2) If a provision of an Act of South Australia provides that a Rule is deemed to have commenced on a particular day, the Rule shall be deemed to have commenced at the beginning of that day.

(3) If a notice published in the South Australian Government Gazette under Chapter 9 Part 2 or section 314 provides that a Rule shall commence on a particular day, the Rule shall commence at the beginning of that day.

Part 9 — Effect of repeal, amendment or expiration

41. Time of Law, the Regulations or Rules ceasing to have effect

If a provision of this Law, the Regulations or the Rules is expressed—

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day,

the provision has effect until the last moment of the specified day.

42. Repealed Law, Regulation or Rule provisions not revived

(1) If a provision of this Law is repealed or amended by an Act of South Australia or a provision of an Act of South Australia, the provision is not revived merely because the Act or the provision of the Act—

(a) is later repealed or amended; or

(b) later expires.

(2) If a provision of the Regulations or the Rules is repealed or amended by a Regulation or a Rule, the provision is not revived merely because the Regulation or Rule—

(a) is later repealed or amended; or

(b) later expires.

43. Saving of operation of repealed Law, Regulation or Rule provisions

(1) The repeal, amendment or expiry of a provision of this Law, the Regulations or the Rules does not—

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or

(d) affect a penalty incurred in relation to an offence arising under the provision; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

44. Continuance of repealed provisions

(1) If an Act of South Australia repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

(2) If a Regulation or Rule repeals some provisions of the Regulations or Rules and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

45. Law and amending Acts to be read as one

This Law and all Acts of this jurisdiction amending this Law are to be read as one.

Part 10 — Offences under this Law

46. Penalty at foot of provision

In this Law, a penalty specified at the foot of—

(a) a section (whether or not the section is divided into subsections); or

(b) a subsection (but not at the end of a section); or

(c) a section or subsection and expressed in such a way as to indicate that it applies only to part of the section or subsection,

indicates that an offence mentioned in the section, subsection or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, subsection or part constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

47. Penalty other than at foot of provision

(1) In this Law, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or the contravention constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

[*4M*](2) ~~This clause does not apply to a penalty to which clause 36 applies.~~

47A. Indexation of civil penalty amounts

(1) Each civil penalty amount is to be adjusted in accordance with the method prescribed by the Regulations for the purposes of this clause.

(2) The first adjustment is to occur on the day on which the *National Gas Access (WA) Adoption of Amendments Order 2024* clause 3 comes into operation.

(3) The next adjustment is to occur on 1 July 2026 and an adjustment is to occur on 1 July every 3 years after that.

(4) The AER must, on or as soon as practicable after the date of the first adjustment and before each subsequent adjustment, publish on its website the civil penalty amounts that apply on and from the date of the adjustment. However, a failure by the AER to do so does not invalidate an adjustment.

(5) A civil penalty amount that is adjusted under this clause applies to a breach of a civil penalty provision that occurs or is alleged to occur on or after the date of the adjustment.

(6) In this clause—

civil penalty amount means—

(a) each amount specified in section 3A(1)(a), (b) or (c)(i) or (ii)(A); and

(b) each amount specified as an infringement penalty in section 279.

[Clause 47A inserted: see SA Act No. 37 of 2020 s. 72(1) and WA Gazette 4 Sep 2024 p. 2215; modified: WA Act Sch. 1 cl. 16A.]

47B. Indexation of criminal penalties

(1) Each criminal penalty amount is to be adjusted in accordance with the method prescribed by the Regulations for the purposes of this clause.

(2) The first adjustment is to occur on the day on which the *National Gas Access (WA) Adoption of Amendments Order 2024* clause 3 comes into operation.

(3) The next adjustment is to occur on 1 July 2026 and an adjustment is to occur on 1 July every 3 years after that.

(4) The AER must, on or as soon as practicable after the date of the first adjustment and before each subsequent adjustment, publish on its website the criminal penalty amounts that apply on and from the date of the adjustment. However, a failure by the AER to do so does not invalidate an adjustment.

(5) A criminal penalty amount that is adjusted under this clause applies to a breach of a provision that occurs or is alleged to occur on or after the date of the adjustment.

(6) In this clause—

criminal penalty amount means any amount, specified in this Law, which is the maximum monetary penalty that may be imposed on conviction for the commission of an offence against this Law.

[Clause 47B inserted: see SA Act No. 37 of 2020 s. 72(1) and WA Gazette 4 Sep 2024 p. 2215; modified: WA Act Sch. 1 cl. 16B.]

48. Indictable offences and summary offences

(1) An offence against this Law that is not punishable by imprisonment is punishable summarily.

(2) An offence against this Law that is punishable by imprisonment is, subject to subclause (3), punishable on indictment.

(3) If—

(a) a proceeding for an offence against this Law that is punishable by imprisonment is instituted in a court of summary jurisdiction; and

(b) the prosecutor requests the court to hear and determine the proceeding,

the offence is punishable summarily and the court must hear and determine the proceeding.

(4) A court of summary jurisdiction must not—

(a) impose, in relation to a single offence against this Law, a period of imprisonment of more than 2 years; or

(b) impose, in relation to offences against the Law, cumulative periods of imprisonment that are, in total, more than 5 years.

(5) Nothing in this clause renders a person liable to be punished more than once in relation to the same offence.

49. Double jeopardy

(1) If an act or omission constitutes an offence—

(a) under this Law as applied as a law of this jurisdiction; and

(b) under this Law as applied as a law of another jurisdiction,

and the offender has been punished in relation to the offence under the law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence mentioned in paragraph (a).

(2) If an act or omission constitutes—

(a) a breach of a civil penalty provision of this Law as applied as a law of this jurisdiction; and

(b) a breach of a civil penalty provision of this Law as applied as a law of another jurisdiction,

and the person in breach of the civil penalty provision mentioned in paragraph (a) has been punished in relation to the civil penalty provision mentioned in paragraph (b), the person is not liable in relation to the breach of the civil penalty provision mentioned in paragraph (a).

(3) The Court must not make a declaration that a person has breached a provision of this Law, the Regulations or the Rules that is not an offence provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the breach.

(4) Proceedings for a declaration referred to in subclause (3) are stayed if—

(a) criminal proceedings are commenced or have already been commenced against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the breach.

(5) The proceedings for the declaration referred to in subclause (3) may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration must be dismissed.

[Clause 49 amended: see SA Act No. 37 of 2020 s. 72(2) and WA Gazette 4 Sep 2024 p. 2215.]

50. Attempts and incitement

Section 555A(1) and (2) of *The Criminal Code* apply in relation to a simple offence under this Law as if it were a simple offence under *The Criminal Code*.

[Clause 50 inserted: WA Act Sch. 1 cl. 17.]

Part 11 — Instruments under this Law

51. Schedule applies to statutory instruments

(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

(3) In this clause—

statutory instrument includes the Regulations, the rate of return instrument or the Rules.

[Clause 51 modified: WA Act Sch. 1 cl. 17A.]

51A. Rate of return instrument construed not to exceed the legislative power of the Legislature of this jurisdiction or the powers conferred by this Law

(1) A rate of return instrument is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which it is made.

(2) If a provision of the rate of return instrument, or the application of a provision of the instrument to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which it is made—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of the instrument, and the application of the provision to other persons, subject matters or circumstances, is not affected.

[Clause 51A inserted: see SA Act No. 33 of 2018 s. 20(3) and WA Gazette 5 Apr 2019 p. 1007.]

52. National Gas Rules to be construed so as not to exceed the legislative power of the Legislature of this jurisdiction or the powers conferred by this Law

(1) The National Gas Rules are to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which they are made.

(2) If a provision of the National Gas Rules, or the application of a provision of the National Gas Rules to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction or the power conferred by this Law under which it is made—

(a) it is a valid provision to the extent to which it is not in excess of that power; and

(b) the remainder of the National Gas Rules, and the application of the provision to other persons, subject matters, or circumstances, is not affected.

(3) Without limiting subclause (2), the National Gas Rules are not to be construed as imposing any duty on the AER to perform a function or exercise a power if the imposition of the duty would be in excess of the legislative power of the Legislature of this jurisdiction.

Note—

The term ***function*** is defined in clause 10 to include “duty”.

(4) In particular, if a provision of the National Gas Rules appears to impose a duty on a Commonwealth officer or body to perform a function or exercise a power, the duty is taken to be imposed by the provision to the extent to which imposing the duty—

(a) is within the legislative powers of this jurisdiction; and

(b) is consistent with the constitutional doctrines under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body.

(4a) To avoid doubt, a provision of the National Gas Rules does not impose the duty on the Commonwealth officer or body to the extent to which imposing the duty would—

(a) contravene any constitutional doctrine under the Constitution of the Commonwealth restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of this jurisdiction.

(4b) If imposing on the Commonwealth officer or body the duty to do that thing would—

(a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth officer or body; or

(b) otherwise exceed the legislative powers of both the State and the Commonwealth,

the provision of the National Gas Rules is taken instead to confer on the Commonwealth officer or body a power to do that thing at the discretion of the Commonwealth officer or body (as the case may require).

(5) This clause does not limit the effect that a provision of the National Gas Rules would validly have apart from this clause.

[Clause 52 amended: see SA Act No. 3 of 2021 s. 54(2) and WA Gazette 22 Jan 2025 p. 63-4.]

53. Invalid Rules

(1) If the Court orders (by declaration or otherwise) that a Rule is invalid, the order of the Court does not—

(a) revive anything not in force or existing at the time of the order of the Court; or

(b) affect the previous operation of the Rule or anything suffered, done or begun under the Rule; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the Rule; or

(d) affect a penalty arising because of a breach of the Rule; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) A penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced as if the Rule had not been ordered by the Court as invalid.

53A. Invalid rate of return instrument

(1) This clause applies if the Court orders (by declaration or otherwise) that a rate of return instrument is invalid.

(2) The AER must make a new rate of return instrument under this Law to replace the invalid instrument.

(3) Until the invalid instrument is replaced, the rate of return on capital and the value of imputation credits under the invalid instrument continue to apply for the purposes of this Law.

(4) However, the AER must deal with any affected access arrangement decision to apply the new rate of return instrument to the decision as if the new instrument had applied from the start of the decision.

(5) Subclause (4) applies despite section 30Q(1).

(6) In this clause—

affected access arrangement decision means [*4]an ~~a full~~ access arrangement decision to which the invalid instrument applied or continued to apply;

deal with, an affected access arrangement decision, means to do either of the following the AER considers appropriate in the circumstances—

(a) revoke the decision and substitute a new decision;

(b) vary the decision.

[Clause 53A inserted: see SA Act No. 33 of 2018 s. 20(4) and WA Gazette 5 Apr 2019 p. 1007.]

Schedule 3 — Savings and transitionals

Section 336

Part 1 — General

1. Definitions

In this Schedule—

binding no-coverage determination has the same meaning as in section 13A of the old access law;

commencement day means the day on which section 30 of the *National Gas Access (WA) Act* 2009 comes into operation;

current access arrangement means an Access Arrangement as defined by section 10.8 of the Gas Code and in effect immediately before the commencement day;

new application Act means the *National Gas (South Australia) Act 2008* of South Australia;

old scheme coverage application means an application under section 1.3 of the Gas Code in respect of which a determination under section 1.13 of the Gas Code has not been made before the commencement day;

old scheme coverage revocation application means an application under section 1.25 of the Gas Code in respect of which an old scheme coverage revocation determination has not been made before the commencement day;

old scheme coverage determination means a determination of an old scheme relevant Minister under section 1.13 of the Gas Code—

(a) that a pipeline is covered; and

(b) that is in effect immediately before the commencement day;

old scheme coverage revocation determination means a determination of an old scheme relevant Minister under section 1.34 of the Gas Code;

old scheme covered pipeline means a covered pipeline within the meaning of section 10.8 of the Gas Code;

old scheme limited access arrangement means a limited access arrangement (within the meaning of section 13A of the old access law)—

(a) approved under section 13U of that law; and

(b) in effect immediately before the commencement day;

old scheme price regulation exemption means a price regulation exemption within the meaning of section 13A of the old access law;

old scheme relevant Minister means a relevant Minister within the meaning of section 2 of the old access law;

pending old scheme coverage determination means a determination of an old scheme relevant Minister under section 1.13 of the Gas Code that a pipeline is covered that—

(a) has not taken effect before the commencement day; but

(b) is intended to take effect on or after that day;

pending old scheme no-coverage determination means a determination of an old scheme relevant Minister under section 1.13 of the Gas Code that a pipeline is not covered that—

(a) has not taken effect before the commencement day; but

(b) is intended to take effect on or after that day;

pending old scheme coverage non-revocation determination means a determination of an old scheme relevant Minister under section 1.34 of the Gas Code that coverage of a covered pipeline not be revoked that—

(a) has not taken effect before the commencement day; but

(b) is intended to take effect on or after that day;

pending old scheme coverage revocation determination means a determination of an old scheme relevant Minister under section 1.34 of the Gas Code that coverage of a covered pipeline be revoked that—

(a) has not taken effect before the commencement day; but

(b) is intended to take effect on or after that day;

relevant appeals body has the same meaning as in section 2 of the old access law;

transitioned access arrangement means—

(a) a current access arrangement; or

(b) an access arrangement approved, or drafted and approved, in accordance with clause 28; or

(c) a current access arrangement incorporating revisions approved, or approved and made, in accordance with clause 29.

Note—

The Regulations or the Rules may also contain provisions of an application, savings or transitional nature.

[Clause 1 modified: WA Act Sch. 1 cl. 18(1).]

[*4]**1A—Words in particular provisions have meanings given by former section 2**

(1) Words defined under former section 2 and used in Parts 2 to 18 of this Schedule have, unless the context otherwise requires, the same meanings as they had under former section 2.

(2) In this section—

former section 2 means section 2 of the Law as in force immediately before the [*4M*]coming into operation of the *National Gas Access (WA) Adoption of Amendments (Gas Pipelines) Order 2026* clause 7.~~commencement of Part 19.~~

2. Schedule subject to jurisdictional transitional arrangements in jurisdictional legislation

(1) This Schedule, and any Regulations or Rules of a savings and transitional nature, apply in this jurisdiction except to the extent provided by or under an Act of this jurisdiction (including an Act that applies this Law and the Regulations as a law of this jurisdiction).

(2) In this clause—

Regulations or Rules of a savings and transitional nature means Regulations or Rules that deal with matters of a savings or transitional nature relating to the transition from the application of provisions of the old access law and Gas Code to the application of provisions of this Law and the Rules.

Part 2 — General savings provision

3. Saving of operation of old access law and Gas Code

(1) Subject to this Schedule, the Regulations and the Rules, the repeal of the old access law or Gas Code does not—

(a) revive anything not in force or existing at the time the repeal takes effect; or

(b) affect the previous operation of the old access law or Gas Code or anything suffered, done or begun under or in accordance with the old access law or Gas Code; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the old access law or Gas Code; or

(d) affect a penalty incurred in relation to—

(i) an offence arising under the old access law; or

(ii) a penalty incurred in relation to a breach of a provision of the old access law or Gas Code; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Subject to this Schedule, the Regulations and the Rules, any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the old access law or Gas Code had not been repealed.

Part 3 — Classification and coverage of pipelines

4. Pending applications for the classification of pipelines lapse

On the commencement day, every application under section 10 of the old access law in respect of which a decision has not been made under section 10 or 11 of that law immediately before that day, lapses.

5. Old scheme coverage determinations

On the commencement day, an old scheme coverage determination is deemed to be a coverage determination.

6. Old scheme covered transmission pipelines

On the commencement day, an old scheme covered pipeline that is a transmission pipeline (within the meaning of section 2 of the old access law) is deemed to be a covered pipeline that is a transmission pipeline.

7. Old scheme covered distribution pipelines

On the commencement day, an old scheme covered pipeline that is a distribution pipeline (within the meaning of section 2 of the old access law) is deemed to be a covered pipeline that is a distribution pipeline.

8. Pending coverage applications under old scheme (before NCC recommendation)

(1) This clause applies if—

(a) there is an old scheme coverage application; and

(b) the NCC has not made a recommendation in respect of that application under section 1.9 of the Gas Code before the commencement day.

(2) On and after the commencement day, the NCC must, despite the repeal of the Gas Code, continue to take action in relation to the application as required under the Gas Code (including making a recommendation under section 1.7 of the Gas Code and submitting it to the relevant old scheme relevant Minister under that section) as if the old access law and Gas Code continued to apply.

9. Pending relevant Minister decisions in relation to coverage under old scheme

(1) This clause applies if—

(a) an old scheme relevant Minister has received a recommendation of the NCC under section 1.7 of the Gas Code before the commencement day but the old scheme relevant Minister has not made a determination under section 1.13 of the Gas Code in relation to that recommendation before that day; or

(b) an old scheme relevant Minister receives a recommendation of the NCC as provided for under clause 8 on or after the commencement day.

(2) On and after the commencement day, the old scheme relevant Minister must, despite the repeal of the old access law and Gas Code, make a determination under section 1.13 of the Gas Code in relation to that recommendation as if the old access law and Gas Code continued to apply.

(3) A determination made in accordance with subclause (2) is deemed to be, on the relevant transition date—

(a) if the determination is that the pipeline is covered—a coverage determination;

(b) if the determination is that the pipeline is not covered—a decision not to make a coverage determination under section 99.

(4) In this clause—

relevant transition date means, if an application is not made under section 38 of the old access law for a review of the determination within the time specified by that section—the day after the last day an application could have been made under that section.

10. Pending relevant Minister decisions in relation to coverage that are reviewed under old scheme

(1) This clause applies if—

(a) an old scheme relevant Minister makes a determination under section 1.13 of the Gas Code in accordance with clause 9; and

(b) an application is made under section 38 of the old access law for a review of the determination of the old scheme relevant Minister.

(2) If on the review the relevant appeals body refuses to review the determination in accordance with section 38(11) of the old access law, the determination of the old scheme relevant Minister is deemed to be, on the day the determination of the relevant appeals body takes effect—

(a) if the determination is that the pipeline is covered—a coverage determination;

(b) if the determination is that the pipeline is not covered—a decision not to make a coverage determination under section 99.

(3) If on the review the relevant appeals body makes a determination under section 38 of the old access law affirming or varying the determination of the old scheme relevant Minister, that determination (as affirmed or varied) is deemed to be, on the day the order of the

relevant appeals body affirming or varying that determination takes effect—

(a) if the effect of that determination is that the pipeline is covered—a coverage determination;

(b) if the effect of that determination is that the pipeline is not covered—a decision not to make a coverage determination under section 99.

(4) If on the review the relevant appeals body makes a determination under section 38 of the old access law that sets aside the determination of the old scheme relevant Minister and remits the matter to the old scheme relevant Minister for the Minister to make a determination again in respect of the matter, the Minister must make a determination under clause 9.

(5) If on the review the relevant appeals body makes a determination under section 38 of the old access law that sets aside the determination of the old scheme relevant Minister and that is to operate in place of the determination of the old scheme relevant Minister, the determination of the relevant appeals body is deemed to be, on the day that determination takes effect—

(a) if that determination is that the pipeline is covered—a coverage determination;

(b) if that determination is that the pipeline is not covered—a decision not to make a coverage determination under section 99.

11. Pending old scheme coverage determinations where no applications for review under old scheme

(1) This clause applies if—

(a) there is a pending old scheme coverage determination; and

(b) an application has not been made under section 38 of the old access law for a review of the determination within the time provided for under that section (whether or not that time expires on or after the commencement day).

(2) The pending old scheme coverage determination is deemed to be a coverage determination on the day after the last day an application could have been made under section 38 of the old access law.

12. Pending old scheme coverage determinations where applications for review under old scheme on foot

(1) This clause applies if—

(a) there is a pending old scheme coverage determination; and

(b) an application has been made under section 38 of the old access law for a review of the determination before the commencement day.

(2) If on the review the relevant appeals body refuses to review the determination in accordance with section 38(11) of the old access law, the pending old scheme coverage determination is deemed to be a coverage determination on the day on which the determination of the relevant appeals body takes effect.

(3) If on the review the relevant appeals body makes a determination affirming or varying the pending old scheme coverage determination, that determination (as affirmed or varied) is deemed to be a coverage determination on the day on which the order of the relevant appeals body affirming or varying that determination takes effect.

(4) If on the review the relevant appeals body makes a determination that sets aside the pending old scheme coverage determination and remits the matter to the old scheme relevant Minister for the Minister to make a determination again in respect of the matter, the old scheme relevant Minister must make a determination under section 1.13 of the Gas Code as if the Gas Code continued to apply.

(5) If on the review the relevant appeals body makes a determination that sets aside the pending old scheme coverage determination and that is to operate in place of the pending old scheme coverage determination, the determination of the relevant appeals body is deemed to be, on the day that determination takes effect—

(a) if that determination is that the pipeline is covered—a coverage determination;

(b) if that determination is that the pipeline is not covered—a decision not to make a coverage determination under section 99.

13. Pending old scheme no-coverage determinations where no applications for review under old scheme

(1) This clause applies if—

(a) there is a pending old scheme no-coverage determination; and

(b) an application has not been made under section 38 of the old access law for a review of the determination within the time provided for under that section (whether or not that time expires on or after the commencement day).

(2) The pending old scheme no-coverage determination is deemed to be a decision not to make a coverage determination under section 93 on the day after the last day an application could have been made under section 38 of the old access law.

14. Pending old scheme no-coverage determinations where applications for review under old scheme on foot

(1) This clause applies if—

(a) there is a pending old scheme no-coverage determination; and

(b) an application has been made under section 38 of the old access law for a review of the determination before the commencement day.

(2) If on the review the relevant appeals body refuses to review the determination in accordance with section 38(11) of the old access law, the pending old scheme no-coverage determination is deemed to be a decision not to make a coverage determination under section 99 on the day on which the determination of the relevant appeals body takes effect.

(3) If on the review the relevant appeals body makes a determination affirming or varying the pending old scheme no-coverage determination, that determination (as affirmed or varied) is deemed to be a decision not to make a coverage determination under section 99 on the day on which the order of the relevant appeals body affirming or varying that determination takes effect.

(4) If on the review the relevant appeals body makes a determination that sets aside the pending old scheme no-coverage determination and remits the matter to the old scheme relevant Minister for the Minister to make a determination again in respect of the matter, the old scheme relevant Minister must make a determination under section 1.13 of the Gas Code as if the Gas Code continued to apply.

(5) If on the review the relevant appeals body makes a determination that sets aside the pending old scheme coverage determination and that is to operate in place of the pending old scheme coverage determination, the determination of the relevant appeals body is deemed to be, on the day that determination takes effect—

(a) if that determination is that the pipeline is covered—a coverage determination;

(b) if that determination is that the pipeline is not covered—a decision not to make a coverage determination under section 99.

15. Pending coverage revocation applications under old scheme (before NCC recommendation)

(1) This clause applies if—

(a) there is an old scheme coverage revocation application; and

(b) the NCC has not made a recommendation in respect of that application under section 1.28 of the Gas Code before the commencement day.

(2) On and after the commencement day, the NCC must, despite the repeal of the Gas Code, continue to take action in relation to the application as required under the Gas Code (including making a recommendation under section 1.29 of the Gas Code and submitting it

to the relevant old scheme relevant Minister under that section) as if the old access law and Gas Code continued to apply.

16. Pending relevant Minister decisions in relation to coverage revocation under old scheme

(1) This clause applies if—

(a) an old scheme relevant Minister has received a recommendation of the NCC under section 1.29 of the Gas Code before the commencement day but the old scheme relevant Minister has not made a determination under section 1.34 of the Gas Code in relation to that recommendation before that day; or

(b) an old scheme relevant Minister receives a recommendation of the NCC as provided for under clause 15 after the commencement day.

(2) On and after the commencement day, the old scheme relevant Minister must, despite the repeal of the old access law or Gas Code, make a determination under section 1.34 of the Gas Code in relation to that recommendation as if the old access law and Gas Code continued to apply.

(3) A determination made in accordance with subclause (2) is deemed to be, on the relevant transition date—

(a) if the determination is that coverage of the covered pipeline is revoked—a coverage revocation determination;

(b) if the determination is that coverage of the covered pipeline is not revoked—a decision not to make a coverage revocation determination under section 106.

(4) In this clause—

relevant transition date means, if an application is not made under section 38 of the old access law for a review of the determination within the time specified by that section—the day after the last day an application could have been made under that section.

17. Pending relevant Minister decisions in relation to coverage revocation that are reviewed under old scheme

(1) This clause applies if—

(a) an old scheme relevant Minister makes a determination under section 1.34 of the Gas Code in accordance with clause 16; and

(b) an application is made under section 38 of the old access law for a review of the determination of the old scheme relevant Minister.

(2) If on the review the relevant appeals body refuses to review the determination in accordance with section 38(11) of the old access law,

the determination of the old scheme relevant Minister is deemed to be, on the day the determination of the relevant appeals body takes effect—

(a) if the determination is that coverage of the covered pipeline is revoked—a coverage revocation determination;

(b) if the determination is that coverage of the covered pipeline is not revoked—a decision not to make a coverage revocation determination under section 106.

(3) If on the review the relevant appeals body makes a determination under section 38 of the old access law affirming or varying the determination of the old scheme relevant Minister, that determination (as affirmed or varied) is deemed to be, on the day the order of the relevant appeals body affirming or varying that determination takes effect—

(a) if the effect of that determination is that coverage of the covered pipeline is revoked—a coverage revocation determination;

(b) if the effect of that determination is that coverage of the covered pipeline is not revoked—a decision not to make a coverage revocation determination under section 106.

(4) If on the review the relevant appeals body makes a determination under section 38 of the old access law that sets aside the determination of the old scheme relevant Minister and remits the matter to the old scheme relevant Minister for the Minister to make a determination again in respect of the matter, the Minister must make a determination under clause 16.

(5) If on the review the relevant appeals body makes a determination under section 38 of the old access law that sets aside the determination of the old scheme relevant Minister and that is to operate in place of the determination of the old scheme relevant Minister, the determination of the relevant appeals body is deemed to be, on the day that determination takes effect—

(a) if that determination is that coverage of the covered pipeline is revoked—a coverage revocation determination;

(b) if that determination is that coverage of the covered pipeline is not revoked—a decision not to make a coverage revocation determination under section 106.

18. Pending old scheme coverage revocation determinations where no applications for review under old scheme

(1) This clause applies if—

(a) there is a pending old scheme coverage revocation determination; and

(b) an application has not been made under section 38 of the old access law for a review of the determination within the time provided for under that section (whether or not that time expires on or after the commencement day).

(2) The pending old scheme coverage revocation determination is deemed to be coverage revocation determination on the day after the last day an application could have been made under section 38 of the old access law.

19. Pending old scheme coverage revocation determinations where applications for review under old scheme on foot

(1) This clause applies if—

(a) there is a pending old scheme coverage revocation determination; and

(b) an application has been made under section 38 of the old access law for a review of the determination before the commencement day.

(2) If on the review the relevant appeals body refuses to review the determination in accordance with section 38(11) of the old access law, the pending old scheme coverage revocation determination is deemed to be a coverage revocation determination on the day on which the determination of the relevant appeals body takes effect.

(3) If on the review the relevant appeals body makes a determination affirming or varying the pending old scheme coverage revocation determination, that determination (as affirmed or varied) is deemed to be a coverage revocation determination on the day on which the order of the relevant appeals body affirming or varying that determination takes effect.

(4) If on the review the relevant appeals body makes a determination that sets aside the pending old scheme coverage revocation determination and remits the matter to the old scheme relevant Minister for the Minister to make a determination again in respect of the matter, the old scheme relevant Minister must make a determination under section 1.34 of the Gas Code as if the Gas Code continued to apply.

(5) If on the review the relevant appeals body makes a determination that sets aside the pending old scheme revocation coverage determination and that is to operate in place of the pending old scheme revocation coverage determination, the determination of the relevant appeals body is deemed to be, on the day that determination takes effect—

(a) if that determination is that coverage of the covered pipeline is revoked—a coverage revocation determination;

(b) if that determination is that coverage of the covered pipeline is not revoked—a decision not to make a coverage revocation determination under section 106.

20. Pending old scheme coverage non-revocation determinations where no applications for review under old scheme

(1) This clause applies if—

(a) there is a pending old scheme coverage non-revocation determination; and

(b) an application has not been made under section 38 of the old access law for a review of the determination within the time provided for under that section (whether or not that time expires on or after the commencement day).

(2) The pending old scheme coverage non-revocation determination is deemed to be a decision not to make a coverage revocation determination under section 106 on the day after the last day an application could have been made under section 38 of the old access law.

21. Pending old scheme coverage non-revocation determinations where applications for review under old scheme on foot

(1) This clause applies if—

(a) there is a pending old scheme coverage non-revocation determination; and

(b) an application has been made under section 38 of the old access law for a review of the determination before the commencement day.

(2) If on the review the relevant appeals body refuses to review the determination in accordance with section 38(11) of the old access law, the pending old scheme coverage non-revocation determination is deemed to be a decision not to make a coverage revocation determination under section 106 on the day on which the determination of the relevant appeals body takes effect.

(3) If on the review the relevant appeals body makes a determination affirming or varying the pending old scheme coverage non-revocation determination, that determination (as affirmed or varied) is deemed to be a decision not to make a coverage revocation determination under section 106 on the day on which the order of the relevant appeals body affirming or varying that determination takes effect.

(4) If on the review the relevant appeals body makes a determination that sets aside the pending old scheme coverage non-revocation determination and remits the matter to the old scheme relevant Minister for the Minister to make a determination again in respect of the matter, the old scheme relevant Minister must make a determination under section 1.34 of the Gas Code as if the Gas Code continued to apply.

(5) If on the review the relevant appeals body makes a determination that sets aside the pending old scheme coverage non-revocation

determination and that is to operate in place of the pending old scheme coverage non-revocation determination, the determination of the relevant appeals body is deemed to be, on the day that determination takes effect—

(a) if that determination is that coverage of the covered pipeline is revoked—a coverage revocation determination;

(b) if that determination is that coverage of the covered pipeline is not revoked—a decision not to make a coverage revocation determination under section 106.

22. Binding no-coverage determinations

On the commencement day, a binding no-coverage determination in effect immediately before that day is deemed to be a 15-year no-coverage determination.

23. Pending applications for binding no-coverage determinations (before NCC recommendation)

(1) This clause applies if—

(a) an application under section 13D of the old access law for a binding no-coverage determination has been made before the commencement day; and

(b) NCC has not made a recommendation under section 13J of the old access law in relation to that application before that day.

(2) On and after the commencement day, the NCC must, despite the repeal of the old access law, continue to take action in relation to the application as required under the old access law (including making a recommendation under section 13J of the old access law and submitting it to the relevant old scheme relevant Minister under that section) as if the old access law continued to apply.

24. Pending relevant Minister decisions for binding no-coverage determinations under old scheme

(1) This clause applies if—

(a) an old scheme relevant Minister has received a recommendation of the NCC under section 13J of the old access law before the commencement day but the old scheme relevant Minister has not made a determination under section 13J of the old access law in relation to that recommendation before that day; or

(b) an old scheme relevant Minister receives a recommendation of the NCC as provided for under clause 23 on or after the commencement day.

(2) On and after the commencement day, the old scheme relevant Minister must, despite the repeal of the old access law, make a

decision under section 13K of the old access law in relation to that recommendation as if the old access law continued to apply.

(3) A decision made in accordance with subclause (2) is deemed to be, on the relevant transition date—

(a) if the decision is a binding no-coverage determination—a 15-year no-coverage determination;

(b) if the decision is not to make binding no-coverage determination—a decision not to make a 15-year no-coverage determination under section 162.

(4) In this clause—

relevant transition date means, if an application is not made under section 38 of the old access law for a review of the decision within the time specified by that section—the day after the last day an application could have been made under that section.

25. Pending relevant Minister decisions in relation to binding no-coverage determinations that are reviewed under old scheme

(1) This clause applies if—

(a) an old scheme relevant Minister makes a decision under section 13J of the old access law in accordance with clause 24; and

(b) an application is made under section 38 of the old access law for a review of the decision of the old scheme relevant Minister.

(2) If on the review the relevant appeals body refuses to review the determination in accordance with section 38(11) of the old access law, the decision of the old scheme relevant Minister is deemed to be, on the day the decision of the relevant appeals body takes effect—

(a) if the decision is a binding no-coverage determination—a 15-year no-coverage determination;

(b) if the decision is not to make a binding no-coverage determination—a decision not to make a 15-year no-coverage determination under section 162.

(3) If on the review the relevant appeals body makes a determination under section 38 of the old access law affirming or varying the decision of the old scheme relevant Minister, that decision (as affirmed or varied) is deemed to be, on the day the order of the relevant appeals body affirming or varying that decision takes effect—

(a) if the decision is a binding no-coverage determination—a 15-year no-coverage determination;

(b) if the decision is not to make a binding no-coverage determination—a decision not to make a 15-year no-coverage determination under section 162.

(4) If on the review the relevant appeals body makes a determination under section 38 of the old access law that sets aside the decision of the old scheme relevant Minister and remits the matter to the old scheme relevant Minister for the Minister to make a decision again in respect of the matter, the Minister must make a decision under clause 24.

(5) If on the review the relevant appeals body makes a determination under section 38 of the old access law that sets aside the decision of the old scheme relevant Minister and that is to operate in place of the decision of the old scheme relevant Minister, the determination of the relevant appeals body is deemed to be, on the day that determination takes effect—

(a) if the determination is a binding no-coverage determination—a 15-year no-coverage determination;

(b) if the determination is not to make binding no-coverage determination—a decision not to make a 15-year no-coverage determination under section 162.

Part 4 — Access arrangements

26. Current access arrangements (other than old scheme limited access arrangements)

Subject to this Part, on the commencement day—

(a) a current access arrangement approved in—

(i) a final decision under section 2.16 or 2.38 of the Gas Code; or

(ii) a further final decision under section 2.19 or 2.41 of the Gas Code,

is deemed to be a full access arrangement approved by the AER under a full access arrangement decision;

(b) a current access arrangement drafted and approved by a relevant Regulator under section 2.20 or 2.42 of the Gas Code is deemed to be a full access arrangement made by the AER under a full access arrangement decision.

27. Old scheme limited access arrangements

On the commencement day, an old scheme limited access arrangement is deemed to be a limited access arrangement approved by the AER under the Rules.

28. Access arrangements submitted but not approved or rejected before repeal of old scheme

(1) This clause applies if—

(a) a proposed access arrangement has been submitted under section 2.2 of the Gas Code to a relevant Regulator before the commencement day for approval; and

(b) the relevant Regulator has not, that day—

(i) approved that access arrangement in a final decision under section 2.16, or a further final decision under section 2.19 of the Gas Code; or

(ii) drafted and approved its own access arrangement under section 2.20 of the Gas Code.

(2) On and after the commencement day, the relevant Regulator must, despite the repeal of the Gas Code, deal with the proposed access arrangement as if the Gas Code continued to apply.

(3) An access arrangement approved, or drafted and approved, in accordance with subclause (2) is deemed to be, on the day the relevant decision takes effect—

(a) in the case of an access arrangement approved in a final decision under section 2.16, or a further final decision under section 2.19, of the Gas Code—a full access arrangement approved by the AER under a full access arrangement decision;

(b) in the case of an access arrangement drafted and approved by the relevant Regulator under section 2.20 of the Gas Code—a full access arrangement made by the AER under a full access arrangement decision.

(4) Despite anything to the contrary in this Law and the repeal of the old access law, section 39 of the old access law continues to apply to a full access arrangement decision referred to in this section as if a reference in that section to a decision of the relevant Regulator under the Gas Code were a reference to a full access arrangement decision of the AER.

29. Access arrangement revisions submitted but not approved or rejected before repeal of old scheme

(1) This clause applies if—

(a) proposed revisions to a current access arrangement have been submitted under section 2.28 of the Gas Code to a relevant Regulator before the commencement day for approval; and

(b) the relevant Regulator has not, before that day—

(i) approved those revisions in a final decision under section 2.38, or a further final decision under section 2.41, of the Gas Code; or

(ii) drafted and approved its own revisions under section 2.42 of the Gas Code.

(2) On and after the commencement day, the relevant Regulator must, despite the repeal of the Gas Code, deal with the proposed revisions as if the Gas Code continued to apply.

(3) An access arrangement in respect of which revisions are approved, or drafted and approved, in accordance with subclause (2) is deemed to be, on the day the relevant decision takes effect—

(a) in the case of an access arrangement in respect of which revisions are approved in a final decision under section 2.38, or a further final decision under section 2.41, of the Gas Code—a full access arrangement as revised by the AER under a full access arrangement decision;

(b) in the case of an access arrangement in respect of which revisions are drafted and approved by the relevant Regulator under section 2.42 of the Gas Code—a full access arrangement (as revised) made by the AER under a full access arrangement decision.

(4) Despite anything to the contrary in this Law and the repeal of the old access law, section 39 of the old access law continues to apply to a full access arrangement decision referred to in this section as if a reference in that section to a decision of the relevant Regulator under the Gas Code were a reference to a full access arrangement decision of the AER.

30. Certain provisions of the Gas Code to continue to apply to current and proposed access arrangements

(1) Despite the repeal of the Gas Code and subject to this clause and any current access arrangement modification Rules, sections 3, 8 and 10.8 of the Gas Code continue to apply to a transitioned access arrangement until revisions to that access arrangement first approved or made in accordance with this Law and the Rules after the commencement day take effect.

(2) To avoid doubt, after the commencement day, a covered pipeline service provider must, despite anything to the contrary in a transitioned access arrangement, submit an access arrangement revision proposal in relation to that access arrangement in accordance with section 132 and the Rules.

(3) Sections 3, 8 and 10.8 of the Gas Code, as applied under this clause, do not have effect to the extent that they provide for or deal with the procedure for the approval of revisions to access arrangements.

(4) For the purposes of this clause—

(a) the AER is deemed to have the functions and powers a relevant Regulator has under sections 3, 8 and 10.8 of the Gas Code as applied under this clause; and

(b) every reference to a relevant Regulator in those sections as applied under this clause is deemed to be a reference to the AER.

(5) In this clause—

access arrangement revision proposal has the same meaning as in the Rules;

current access arrangement modification Rules means Rules made for or with respect to item 81 of Schedule 1 to this Law that are in force.

31. Certain decisions relating to certain access arrangements are reviewable regulatory decisions for purposes of Chapter 8 Part 5 of the Law

(1) Despite anything to the contrary in this Law, the definition of ***reviewable regulatory decision*** in section 244 is deemed, during the relevant transition period, to include decisions of the AER—

(a) that disallow a variation proposed by a service provider of a Reference Tariff contained in a transitioned access arrangement; or

(b) to make the AER's own variation of a Reference Tariff in respect of a transitioned access arrangement—

(i) on disallowing a variation proposed by a service provider; or

(ii) because a service provider fails to submit such a variation as required.

(2) In this clause—

new scheme revisions commencement date means the date revisions approved or made to a transitioned access arrangement under this Law and the Rules take effect following the first review of that access arrangement under this Law and the Rules after the commencement day;

Reference Tariff has the same meaning as in the Gas Code immediately before its repeal;

relevant transition period means the period—

(a) commencing on the commencement day; and

(b) ending on the day after the day that is 15 business days after the first new scheme revisions commencement date.

Note—

See also clause 30.

32. Limited access arrangements submitted but not approved before repeal of old scheme

(1) This clause applies if a proposed limited access arrangement or a proposed amendment to a limited access arrangement—

(a) has been submitted under section 13U(1) of the old access law to the ACCC before the commencement day for approval; and

(b) the ACCC has not approved that limited access arrangement or that amendment before that day.

(2) On and after the commencement day, the ACCC must, despite the repeal of the old access law, deal with the proposed access arrangement under section 13U as if the old access law continued to apply.

(3) A proposed limited access arrangement, or a proposed amendment to a limited access arrangement, approved by the ACCC in accordance with subclause (2) is deemed to be, on the day the decision takes effect—

(a) in the case of a decision approving the proposed limited access arrangement—a limited access arrangement approved by the AER under a limited access arrangement decision;

(b) in the case of a decision approving a proposed amendment to a limited access arrangement—a variation to a limited access arrangement approved by the AER under the Rules.

33. Extensions and expansions policies

On the commencement day, an Extensions/Expansions Policy (as defined in section 3.16 of the Gas Code), and in effect immediately before that day, is deemed to be extension and expansion requirements.

34. Queuing policies

On the commencement day, a Queuing Policy (as defined in section 3.12 of the Gas Code), and in effect immediately before that day, is deemed to be queuing requirements.

Part 5 — Price regulation exemptions

35. Old scheme price regulation exemptions

On the commencement day, an old scheme price regulation exemption in effect immediately before that day is deemed to be a price regulation exemption.

36. Pending applications for price regulation exemptions

(1) This clause applies if—

(a) an application under section 13N of the old access law for an old scheme price regulation exemption has been made before the commencement day; and

(b) NCC has not made a recommendation under section 13R of the old access law in relation to that application before that day.

(2) On and after the commencement day, the NCC must, despite the repeal of the old access law, continue to take action in relation to the application as required under the old access law (including making a recommendation under section 13R of the old access law and submitting it to the Commonwealth Minister under that section) as if the old access law continued to apply.

37. Pending Commonwealth Minister decisions for price regulation exemptions

(1) This clause applies if—

(a) the Commonwealth Minister has received a recommendation of the NCC under section 13R of the old access law before the commencement day but the Commonwealth Minister has not made a decision under section 13S of the old access law in relation to that recommendation before that day; or

(b) the Commonwealth Minister receives a recommendation of the NCC as provided for under clause 36 after the commencement day.

(2) On and after the commencement day, the Commonwealth Minister must, despite the repeal of the old access law, make a decision under section 13S of the old access law in relation to that recommendation as if the old access law continued to apply.

(3) If the Commonwealth Minister makes an old scheme price regulation exemption under section 13S of the old access law in accordance with subclause (2), that exemption is deemed to be a price regulation exemption on the day it is made.

Part 6 — Structural and operational separation (ring fencing)

38. Definitions

In this Part—

old scheme ring fencing requirement, in relation to a service provider, means—

(a) section 4.1(b) to (d), (h) or (i) of the Gas Code as those sections apply to the service provider subject to—

(i) any notice given to the service provider under section 4.15(a) of the Gas Code waiving that service provider's compliance with an obligation under section 4.1(b) of the Gas Code that is in effect immediately before the commencement day; and

(ii) any notice given to the service provider under section 4.15(b) of the Gas Code waiving that service provider's compliance with an obligation under section 4.1(h) and (i) of the Gas Code that is in effect immediately before the commencement day; or

(b) any obligation applying to the service provider under a notice given to that service provider under section 4.3 of the Gas Code that is in effect immediately before the commencement day;

relevant transition period means the period beginning on the commencement day and ending on the day that is 6 months after the commencement day.

39. Compliance with certain old scheme ring fencing requirements sufficient compliance for 6 month period

(1) Despite anything to the contrary in this Law, a service provider who during the relevant transition period complies with an old scheme ring fencing requirement must be taken to comply with Division 2 and Division 3 of Chapter 4 Part 2 of the Law during that period.

(2) In addition to subclause (1) but subject to subclauses (3) and (4), a service provider must continue to comply with an old scheme ring fencing requirement as if the Gas Code continued to apply.

(3) A service provider may depart from complying with an old scheme ring fencing requirement before the end of the relevant transition period solely for the purpose of preparing to comply with Division 2 or Division 3 of Chapter 4 Part 2 of this Law at the end of that period.

(4) If a service provider does depart from complying with an old scheme ring fencing requirement in accordance with subclause (3) the service provider must in respect of that departure comply with Division 2 and Division 3 of Chapter 4 Part 2 of this Law (as the case requires).

40. Existing waivers of ring fencing obligations

(1) After the relevant transition period, a notice given to a service provider under section 4.15(a) of the Gas Code waiving that service provider's compliance with an obligation under section 4.1(b) of the Gas Code, and in effect immediately before the commencement day, is deemed to be an exemption of the AER under section 146 from the requirement to comply with section 139 given to that service provider.

(2) After the relevant transition period, a notice given to a service provider under section 4.15(b) of the Gas Code waiving that service

provider's compliance with an obligation under section 4.1(h) and (i) of the Gas Code, and in effect immediately before the commencement day, is deemed to be an exemption of the AER under section 146 from the requirement to comply with section 140 given to that service provider.

(3) Subclauses (1) and (2) do not apply to the extent to which a notice referred to in those subclauses is inconsistent with this Law or the Rules.

41. Additional ring fencing obligations

(1) After the relevant transition period, a notice given to a service provider under section 4.3 of the Gas Code and in effect immediately before the commencement day is deemed to be an additional ring fencing requirement (as defined in section 137).

(2) Subclause (1) does not apply to the extent to which a notice referred to in that subclause is inconsistent with this Law or the Rules.

Part 7 — Access disputes

42. Non-finalised access disputes

(1) A non-finalised access dispute must continue to be dealt with in accordance with the old access law and Gas Code despite the repeal of the old access law and Gas Code.

(2) However, despite anything to the contrary in the old access law and Gas Code, a non-finalised access dispute is to be dealt with by the dispute resolution body and for that purpose—

(a) every reference to an arbitrator in Part 4 of the old access law and in the Gas Code is to be read as a reference to the dispute resolution body; and

(b) anything done in relation to a non-finalised access dispute by an arbitrator before the commencement day is deemed to have been done by the dispute resolution body; and

(c) the dispute resolution body may, in relation to a particular non-finalised access dispute, have regard to any record of the arbitrator conducting the arbitration of that non-finalised access dispute; and

(d) the arbitrator must stop conducting the arbitration and give the dispute resolution body all documents the arbitrator has created for the purposes of, or received in, the arbitration.

(3) In this clause—

non-finalised access dispute means an access dispute within the meaning of section 14 of the old access law that has arisen and not been finally determined under Part 4 of the old access law and Gas Code before the commencement day.

Part 8 — Investigations and proceedings

43. Investigations into breaches and possible breaches of the old access law or Gas Code

(1) On and after the commencement day, a relevant Regulator investigation may be conducted and completed by the AER in accordance with this Law, the Regulations and the Rules as if that investigation were commenced by the AER under this Law, the Regulations and the Rules.

(2) In this clause—

relevant Regulator investigation means an investigation into a breach or possible breach of the old access law or Gas Code that—

(a) has been commenced by a relevant Regulator before the commencement day; and

(b) has not been completed by the relevant Regulator before the commencement day.

44. AER may conduct investigations into breaches or possible breaches of Gas Pipelines Access Law not investigated by a relevant Regulator

(1) Despite anything to the contrary in this Schedule, the AER may, on and after the commencement day, conduct an investigation into a breach or possible breach of the old access law or the Gas Code.

(2) The AER may conduct an investigation referred to in subclause (1) as if it were an investigation into a breach of this Law, and for that purpose, may exercise all of the powers it has under this Law relating to investigations into breaches or possible breaches under this Law.

45. AER may bring proceedings in relation to breaches of old access law and Gas Code

(1) In this clause—

AER breach investigation means an investigation conducted and completed by the AER in accordance with clause 43 or 44.

(2) On and after the commencement day, the AER may bring proceedings in the Court in respect of an AER breach investigation.

(3) Despite anything to the contrary in clause 2 or the repeal of the old access law and Gas Code, Part 5 of the old access law applies to a proceeding under this clause as if—

(a) a reference in that Part to a relevant Regulator or the ACCC were a reference to the AER; and

(b) regulation 5 of, and Schedule 2 to, the *Gas Pipelines Access (Western Australia) Regulations 2000* were not repealed.

[Clause 45 modified: WA Act Sch. 1 cl. 18(2).]

Part 9 — Associate contracts

46. Pending associate contract approvals that are approved after commencement day

(1) This clause applies if on the commencement day—

(a) there is a proposed associate contract (within the meaning of section 10.8 of the Gas Code) with a relevant Regulator for approval; and

(b) the relevant Regulator has not made a decision approving or not approving the proposed associate contract.

(2) The relevant Regulator must, despite the repeal of the old access law and the Gas Code, take action in relation to that proposed associate contract under section 7.1 to 7.6 of the Gas Code as if the old access law and Gas Code continued to apply.

(3) If the relevant Regulator decides to approve the proposed associate contract under section 7.1 to 7.6 of the Gas Code, that associate contract is deemed to be an approved associate contract on, as the case requires—

(a) the day the relevant Regulator approves the associate contract in accordance with those sections; or

(b) the day the relevant Regulator is deemed to have approved the associate contract by operation of those sections.

47. Pending associate contracts approvals that are not approved

(1) This clause applies if the relevant Regulator decides not to approve a proposed associate contract under clause 46.

(2) If an application is not made under section 38 of the old access law for a review of the decision within the time specified by that section, the proposed associate contract is deemed not to be an approved associate contract on the day after the last day an application could have been made under that section.

(3) If an application is made under section 38 of the old access law for a review of the decision but the relevant appeals body refuses to review the decision in accordance with section 38(11) of the old access law, the proposed associate contract is deemed not to be an approved associate contract on the day on which the determination of the relevant appeals body takes effect.

(4) If—

(a) an application is made under section 38 of the old access law for a review of the decision; and

(b) the relevant appeals body, by determination, affirms the decision,

the proposed associate contract is deemed not to be an approved associate contract on the day on which the determination of the relevant appeals body affirming the decision takes effect.

(5) If—

(a) an application is made under section 38 of the old access law for a review of the decision; and

(b) the relevant appeals body makes a determination that sets aside the decision and remits the matter to the relevant Regulator for the Regulator to make a decision again in respect of the matter,

the relevant Regulator must make a decision under clause 46.

(6) If—

(a) an application is made under section 38 of the old access law for a review of the decision; and

(b) the relevant appeals body makes a determination that sets aside the decision and approves the associate contract,

the proposed associate contract to which the determination relates is deemed to be, on the day the determination takes effect, an approved associate contract.

48. Approved associate contracts

(1) On the commencement day, an associate contract (within the meaning of section 10.8 of the Gas Code)—

(a) in effect immediately before that day; and

(b) that has been approved by a relevant Regulator under section 7 of the Gas Code,

is deemed to be an approved associate contract.

(2) On the commencement day, an associate contract (within the meaning of section 10.8 of the Gas Code)—

(a) in effect immediately before that day; and

(b) that has been deemed to have been approved by operation of section 7 of the Gas Code,

is deemed to be an approved associate contract.

Part 10 — Other

49. Pending and final tender approval requests lapse

(1) On the commencement day, every Tender Approval Request (within meaning of section 10.8 of the Gas Code), in respect of which a decision has not been made under section 3.25 of the Gas Code immediately before that day, lapses.

(2) On the commencement day, every Final Approval Request (within the meaning of section 3.29 of the Gas Code), in respect of which a decision has not been made under that section immediately before that day, lapses.

50. Decisions approving final approval requests

(1) This section applies if before, or on, the commencement day a relevant Regulator has made or makes a decision under section 3.32 of the Gas Code that approves a Final Approval Request (within the meaning of section 10.8 of the Gas Code).

(2) On the commencement day—

(a) the decision of the relevant Regulator is deemed to be a tender approval decision that has become irrevocable by operation of the Rules; and

(b) the pipeline to which the decision relates is deemed to be a covered pipeline.

51. Rights under certain change of law provisions in agreements or deeds not to be triggered

(1) The repeal of the old access law and the Gas Code, and the commencement of this Law and the initial National Gas Rules, is not to be regarded as a change of law (however defined) under any agreement or deed in effect on the commencement day.

(2) Subclause (1) applies despite any provision in any agreement or deed to the contrary.

52. References to relevant Regulator in access arrangements

On the commencement day, unless the context otherwise requires, every reference to a relevant Regulator in a current access arrangement deemed under Part 4 of this Schedule to be a full access arrangement or a limited access arrangement is deemed to be a reference to the AER.

53. Old scheme classifications and scheme participant determinations

(1) On the commencement day, every old scheme classification and scheme participant determination applying to an old scheme covered pipeline is deemed to be an initial classification decision (within the meaning of section 98(1)).

(2) In this clause—

old scheme classification and scheme participant determination means—

(a) a classification and determination under section 10(5)(a) of the old access law; or

(b) a determination under section 10(5)(b) of the old access law; or

(c) a classification and determination under section 11(3) of the old access law.

Part 15 — Transitional provision related to AEMC rule making powers

[Heading inserted: see SA Act No. 12 of 2018 s. 29 and WA SL 2020/195 cl. 3.]

90. AEMC rule making powers

The amendment to section 304 of this Law by virtue of the *National Gas Access (WA) Adoption of Amendments Order 2020* clause 3 (the ***adopting clause***) does not apply to the making of—

(a) a Rule on a request under section 295(1) of this Law received by the AEMC before the coming into operation of the adopting clause; or

(b) an AEMC initiated Rule (within the meaning of section 290 of this Law) in respect of which the AEMC has, before the coming into operation of the adopting clause, published notice of its intention to make.

[Clause 90 inserted: see SA Act No. 12 of 2018 s. 29 and WA SL 2020/195 cl. 3; modified: WA Act Sch. 1 cl. 18(2A).]

Part 17 — Transitional provisions for rate of return instrument

[Heading inserted: see SA Act No. 33 of 2018 s. 21 and WA Gazette 5 Apr 2019 p. 1007.]

95. Definitions

In this Part—

2013 non-binding guideline means the guideline about determining the rate of return on capital issued by the AER in 2013;

commencement means the coming into operation of the *National Gas Access (WA) Adoption of Amendments Order 2019* clause 3;

review, of the 2013 non-binding guideline, means the review of the guideline started by the AER in 2017;

stakeholders means—

(a) service providers and consumer organisations; or

(b) end users and prospective end users; or

(c) any of the following persons the AER considers appropriate to give the AER advice or comment about the review of the 2013 non-binding guideline—

(i) persons engaged by a covered pipeline service provider, a consumer organisation or another entity to give the advice or comment;

(ii) other persons the AER considers have the qualifications or experience appropriate to give the advice or comment; or

(d) other persons the AER considers have an interest in the review of the 2013 non-binding guideline.

[Clause 95 inserted: see SA Act No. 33 of 2018 s. 21 and WA Gazette 5 Apr 2019 p. 1007; modified: WA Act Sch. 1 cl. 18(3).]

96. Making first rate of return instrument if review not completed before commencement

(1) This clause applies if—

(a) the review of the 2013 non-binding guideline was not completed before the commencement; and

(b) the AER has sought advice or comment from stakeholders in relation to the review; and

(c) at least 3 months before making the first rate of return instrument, the AER has published on its website a draft of the proposed first rate of return instrument or proposed new non-binding guideline under the Rules; and

(d) the draft instrument or guideline has been reviewed by an independent panel consisting of at least 3 members with qualifications or experience the AER considers appropriate to conduct the review.

(2) Chapter 2 Part 1 Division 1A Subdivision 3 does not apply in relation to making the first rate of return instrument.

(3) The independent panel mentioned in subclause (1)(d) must seek to give the AER a consensus report on the panel's review.

(4) However, a failure to give the AER a consensus report does not affect the making of the first rate of return instrument.

[Clause 96 inserted: see SA Act No. 33 of 2018 s. 21 and WA Gazette 5 Apr 2019 p. 1007; modified: WA Act Sch. 1 cl. 18(4).]

97. Making first rate of return instrument if review completed before commencement

(1) This clause applies if, before the commencement—

(a) the review of the 2013 non-binding guideline was completed and a new non-binding guideline is in force under the Rules; and

(b) the AER sought advice or comment from stakeholders in relation to the review; and

(c) at least 3 months before making the new non-binding guideline, the AER published on its website a draft of the proposed new non-binding guideline; and

(d) the draft was reviewed by an independent panel consisting of at least 3 members with qualifications or experience the AER considered appropriate to conduct the review; and

(e) the independent panel gave the AER a report on the panel's review.

(2) The new non-binding guideline is taken to be the first rate of return instrument on the commencement.

(3) For section 30P, the instrument is taken to have been published on the AER's website on the commencement.

(4) The report mentioned in subclause (1)(e) need not be a consensus report on the panel's review.

[Clause 97 inserted: see SA Act No. 33 of 2018 s. 21 and WA Gazette 5 Apr 2019 p. 1007; modified: WA Act Sch. 1 cl. 18(5).]

98. Application of this Law to particular decisions

(1) The amended Law applies in relation to an AER economic regulatory decision made after the commencement even if any action or process for making the decision started before the commencement.

(2) However, subclause (1) does not apply in relation to an AER economic regulatory decision made before the commencement that has been remitted back to the AER to make the decision again.

(3) In this clause—

amended Law means this Law as amended and modified by virtue of the *National Gas Access (WA) Adoption of Amendments Order 2019* and the *National Gas Access (WA) (Act Amendment) Regulations 2019*.

[Clause 98 inserted: see SA Act No. 33 of 2018 s. 21 and WA Gazette 5 Apr 2019 p. 1007; modified: WA Act Sch. 1 cl. 18(6).]

Part 18 — Savings and transitional provisions related to Ministerial Council on Energy amendments

[Heading inserted: see SA Act No. 3 of 2021 s. 55 and WA Gazette 22 Jan 2025 p. 63-4.]

99. Definitions

In this Part—

adopting clause means the *National Gas Access (WA) Adoption of Amendments Order 2025* clause 3;

commencement day means the day on which the adopting clause comes into operation.

[Clause 99 inserted: see SA Act No. 3 of 2021 s. 55 and WA Gazette 22 Jan 2025 p. 63-4; modified: WA Act Sch. 1 cl. 18(6A)-(6C).]

100. References to Ministerial Council on Energy

(1) On and from the commencement day, a reference to the Ministerial Council on Energy or MCE in an Act, a legislative instrument, any other kind of instrument, or a contract, agreement or other document will be taken to be a reference to the MCE as defined in section 2 (as amended by virtue of the adopting clause).

(2) In this clause—

agreement includes the Australian Energy Market Agreement or any other intergovernmental agreement to which this jurisdiction is a party.

[Clause 100 inserted: see SA Act No. 3 of 2021 s. 55 and WA Gazette 22 Jan 2025 p. 63-4; modified: WA Act Sch. 1 cl. 18(6D).]

101. Rights under certain change of law provisions in agreements or deeds not to be triggered

(1) The substitution of the definition of the MCE by virtue of the adopting clause is not to be regarded as a change of law (however defined) under any agreement or deed in effect on the commencement day.

(2) Subclause (1) applies despite any provision in any agreement or deed to the contrary.

[Clause 101 inserted: see SA Act No. 3 of 2021 s. 55 and WA Gazette 22 Jan 2025 p. 63-4; modified: WA Act Sch. 1 cl. 18(6E).]

102. Rights under contracts etc

(1) The substitution of the definition of the MCE by virtue of the adopting clause does not affect a right, obligation, liability or immunity of the MCE under an agreement, deed or other instrument entered into by the MCE and in effect on the commencement day.

(2) On and from the commencement day, a reference to the Ministerial Council on Energy or MCE in an agreement, deed or other instrument referred to in subclause (1) will be taken to be a reference to the MCE as defined in section 2 (as amended by virtue of the adopting clause).

(3) Subclause (1) applies despite any provision in any agreement, deed or other instrument to the contrary.

[Clause 102 inserted: see SA Act No. 3 of 2021 s. 55 and WA Gazette 22 Jan 2025 p. 63-4; modified: WA Act Sch. 1 cl. 18(6F).]

103. Saving of decisions etc

The substitution of the definition of the MCE by virtue of the adopting clause does not affect the validity of—

(a) any decision or direction made by the MCE before the commencement day; or

(b) any appointment in accordance with a recommendation or nomination of the MCE made before the commencement day.

[Clause 103 inserted: see SA Act No. 3 of 2021 s. 55 and WA Gazette 22 Jan 2025 p. 63-4; modified: WA Act Sch. 1 cl. 18(6G).]

[*4]Part 19—Transitional provisions related to pipeline regulation amendments

Division 1—Preliminary

104—Definitions

In this Part—

15-year no-coverage determination means a 15-year no-coverage determination within the meaning of section 2 of the pre-amended Law;

commencement day means the day on which [*4M*]the *National Gas Access (WA) Adoption of Amendments (Gas Pipelines) Order 2026* clause 7 comes into operation;~~this Part comes into operation;~~

covered pipeline means a covered pipeline within the meaning of section 2 of the pre-amended Law;

limited access arrangement means a limited access arrangement within the meaning of section 2 of the pre-amended Law;

pre-amended Law means this Law as in force immediately before the commencement day;

price regulation exemption means a price regulation exemption within the meaning of section 2 of the pre-amended Law;

relevant entity means—

(a) a relevant Minister within the meaning of section 2 of the pre-amended Law; or

(b) the NCC within the meaning of section 2 of the pre-amended Law;

tender approval decision means a tender approval decision within the meaning of section 2 of the pre-amended Law;

tender approval pipeline means a pipeline to which a tender approval decision relates under section 126 of the pre-amended Law;

voluntary access arrangement pipeline means a pipeline in relation to which a full access arrangement was voluntarily submitted under section 127 of the pre-amended Law.

Division 2—Regulation and classification of pipelines

Subdivision 1—Covered pipelines generally

105—Particular covered pipelines deemed to be scheme pipelines

(1) This clause applies in relation to a pipeline that, immediately before the commencement day, was a covered pipeline, other than a light regulation pipeline.

Note—

A covered pipeline includes a pipeline deemed to be a covered pipeline by operation of section 126 or 127 of the pre-amended Law.

(2) On the commencement day—

(a) the covered pipeline is deemed to be a scheme pipeline; and

(b) a scheme pipeline determination is deemed to have been made in relation to the pipeline.

(3) In this section—

light regulation pipeline means a covered pipeline by means of which light regulation services, within the meaning of section 2 of the pre-amended Law, are supplied under a light regulation determination, within the meaning of section 2 of the pre-amended Law.

Subdivision 2—Provisions for tender approval pipelines

106—Particular tender approval pipelines become scheme pipelines

(1) This clause applies in relation to a tender approval pipeline if the tender approval decision for the pipeline has not become irrevocable before the commencement day.

(2) On the tender approval decision becoming irrevocable—

(a) the pipeline becomes a scheme pipeline; and

(b) a scheme pipeline determination is deemed to have been made in relation to the pipeline.

107—When particular scheme pipelines become non-scheme pipelines

(1) This clause applies in relation to a pipeline that, before the commencement day, was a tender approval pipeline and—

(a) is deemed to be a scheme pipeline under clause 105; or

(b) becomes a scheme pipeline under clause 106.

(2) On the earlier of the following events happening, the pipeline becomes a non-scheme pipeline—

(a) if there is an applicable access arrangement that applies to the pipeline services provided by means of that pipeline—when that arrangement expires;

(b) when a scheme pipeline revocation determination made in relation to that pipeline takes effect.

Subdivision 3—Provisions for voluntary access arrangement pipelines

108—Particular voluntary access arrangement pipelines become scheme pipelines

(1) This clause applies in relation to a voluntary access arrangement pipeline if the full access arrangement voluntarily submitted to the AER has not been approved before the commencement day.

(2) On the day the full access arrangement takes effect as an applicable access arrangement—

(a) the pipeline becomes a scheme pipeline; and

(b) a scheme pipeline determination is deemed to have been made in relation to the pipeline.

109—When particular scheme pipelines become non-scheme pipelines

(1) This clause applies to a pipeline that, before the commencement day, was a voluntary access arrangement pipeline and—

(a) is deemed to be a scheme pipeline under clause 105; or

(b) becomes a scheme pipeline under clause 108.

(2) On the earlier of the following events happening, the pipeline becomes a non-scheme pipeline—

(a) if there is an applicable access arrangement that applies to the pipeline services provided by means of that pipeline—when that arrangement expires;

(b) when a scheme pipeline revocation determination takes effect in relation to the pipeline.

Subdivision 4—Classification of pipelines

110—Classification under pre-amended Law continues in effect

(1) On the commencement day—

(a) a pipeline that, immediately before the commencement day, is a distribution pipeline within the meaning of section 2 of the pre-amended Law continues to be a distribution pipeline; and

(b) a pipeline that, immediately before the commencement day, is a transmission pipeline within the meaning of section 2 of the pre-amended Law continues to be a transmission pipeline.

(2) Nothing in subclause (1) prevents a pipeline from being reclassified, under this Law, as a distribution pipeline or transmission pipeline.

111—Pipelines not classified under pre-amended Law or jurisdictional gas legislation

(1) This clause applies in relation to an existing pipeline that, immediately before the commencement day, was not classified as a distribution pipeline or transmission pipeline under the pre-amended Law or under a licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation.

(2) On the commencement day, the pipeline is taken to have the classification shown in the register known as the 'Gas pipeline register' that is maintained by the AEMC under Part 15 of the Rules (the ***AEMC register***).

(3) However, if the AEMC register does not contain a classification for the pipeline, the service provider must apply to the AER for a classification decision within 2 months after the commencement day.

(4) Nothing in subclause (2) prevents the pipeline from being reclassified, under this Law, as a distribution pipeline or transmission pipeline.

112—Notice to be given about classification of particular pipelines

(1) This clause applies in relation to a pipeline that—

(a) immediately before the commencement day, was a pipeline to which the pre-amended Law applied; but

(b) does not have a classification that is continued, or taken to be, in effect for the pipeline under clauses 110 to 111.

(2) Within 2 months after the commencement day, the service provider for the pipeline must notify the AEMC whether the pipeline is classified as a distribution pipeline or as a transmission pipeline under the licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation.

Division 3—Pending matters under Chapter 3 of pre-amended Law

113—Pending applications under Chapter 3 of pre-amended Law

(1) This clause applies despite clause 43(1)(b) and (c) of Schedule 2 to this Law.

(2) On the commencement day, any application under Chapter 3 of the pre-amended Law in respect of which a decision has not been made under that Chapter immediately before that day lapses.

114—Recommendation-making process under Chapter 3 of pre-amended Law

(1) This clause applies if, immediately before the commencement day, a relevant entity—

(a) is deciding whether to make a recommendation (however described) under a requirement of Chapter 3 of the pre-amended Law; and

(b) has not made the recommendation.

(2) On the commencement day—

(a) the requirement to make the recommendation stops having effect; and

(b) the relevant entity must stop deciding whether to make the recommendation.

115—Decision-making process under Chapter 3 of pre-amended Law

(1) This clause applies if, immediately before the commencement day, a relevant entity—

(a) is deciding whether to make a decision (however described) or determination (however described) under a requirement of Chapter 3 of the pre-amended Law; and

(b) has not made the decision or determination.

(2) On the commencement day—

(a) the requirement to make the decision or determination stops having effect; and

(b) the relevant entity must stop deciding whether to make the decision or determination.

Division 4—Provisions for limited access arrangements

116—Limited access arrangements

(1) This clause applies in relation to a limited access arrangement that is in force immediately before the commencement day.

(2) On the commencement day, the limited access arrangement lapses.

117—Submission of limited access arrangement

(1) This clause applies if, before the commencement day—

(a) a service provider has submitted a limited access arrangement to the AER for approval; and

(b) the AER has not approved the limited access arrangement.

(2) On the commencement day, the submission lapses.

Division 5—Provisions for 15-year no-coverage determinations

Subdivision 1—General provisions

118—15-year no-coverage determinations deemed to be greenfields incentive determinations

(1) On the commencement day, a 15-year no-coverage determination that was in force immediately before the commencement day is deemed to be a greenfields incentive determination.

(2) The determination continues in operation for a period of 15 years from the commissioning of the pipeline.

119—Exemption for pipelines to which a 15-year no-coverage determination applied

(1) This clause applies to a pipeline if a 15-year no-coverage determination that applied to the pipeline before the commencement day is deemed to be a greenfields incentive determination under clause 118.

(2) During the period mentioned in clause 118(2), Chapters 4 and 5 do not apply to the pipeline unless the pipeline is or becomes a third party access pipeline.

(3) A pipeline is a third party access pipeline for the purposes of this clause if any pipeline services provided by means of the pipeline are provided, directly or indirectly, to any person other than—

(a) the service provider for the pipeline; or

(b) a related body corporate of the service provider for the pipeline; or

(c) a joint venture in which the service provider for the pipeline or a related body corporate of the service provider is a joint venture participant.

120—Pending applications for 15-year no-coverage determinations under pre-amended Law

(1) This clause applies in relation to an application for a 15-year no-coverage determination under Chapter 5 Part 2 of the pre-amended Law in respect of which a decision has not been made under that Part immediately before the commencement day.

(2) Chapter 5 Part 2 as in force immediately before the commencement day continues to apply to the application as if that Part were still in force.

(3) To remove any doubt, a relevant entity may, in relation to the application, make a recommendation or determination under

Chapter 5 Part 2 as in force immediately before the commencement day as if that Part were still in force.

(4) A 15-year no-coverage determination made on or after the commencement day, under the operation of this clause, is deemed to be a greenfields incentive determination.

(5) The greenfields incentive determination continues in operation for a period of 15 years from the commissioning of the pipeline.

Subdivision 2—Price regulation exemptions

121—Pending applications for price regulation exemption

On the commencement day, any application for a price regulation exemption under section 160 of the pre-amended Law in respect of which a decision has not been made under Chapter 5 Part 3 of the pre-amended Law immediately before that day lapses.

122—Making of recommendations for price regulation exemptions

(1) This clause applies if the NCC—

(a) has received under section 160 of the pre-amended Law an application for a price regulation exemption for a pipeline the subject of the application; and

(b) immediately before the commencement day, has not made a recommendation under section 162 of the pre-amended Law.

(2) On the commencement day—

(a) the requirement to make the recommendation stops having effect; and

(b) the NCC must not make the recommendation.

123—Granting of price regulation exemptions

(1) This clause applies if, immediately before the commencement day, the Commonwealth Minister—

(a) is deciding whether to make a decision to grant a price regulation exemption under section 164 of the pre-amended Law; and

(b) has not granted the exemption.

(2) On the commencement day—

(a) the requirement to decide whether to make a decision to grant the exemption stops having effect; and

(b) the Commonwealth Minister must stop deciding whether to make a decision to grant the exemption.

124—Price regulation exemptions deemed to be greenfields incentive determinations

(1) This clause applies in relation to a price regulation exemption if the exemption—

(a) has been granted before the commencement day; and

(b) immediately before the commencement day, is not ineffective only because of section 167(2) of the pre-amended Law.

Note—

Under section 167(2) of the pre-amended Law, a price regulation exemption is ineffective unless a limited access arrangement, approved by the AER, is in force in relation to the relevant pipeline.

(2) On the commencement day, the exemption is deemed to be a greenfields incentive determination.

(3) The greenfields incentive determination continues in operation for a period of 15 years from the commissioning of the pipeline.

Note—

Under section 167(1) of the pre-amended Law, if a price regulation exemption is granted, the exemption remains in force for a period of 15 years from the commissioning of the pipeline.

Division 6—Access disputes

125—Access disputes started under pre-amended Law

(1) This clause applies if—

(a) an access dispute has been started under Chapter 6 or 6A of the pre-amended Law; and

(b) the access dispute has not been finally dealt with or decided immediately before the commencement day.

(2) An access dispute started under Chapter 6 of the pre-amended Law must be dealt with and decided under that Chapter as if it were still in force and despite Chapter 5.

(3) An access dispute started under Chapter 6A of the pre-amended Law must be dealt with and decided under that Chapter as if it were still in force and despite Chapter 5.

Division 7—Miscellaneous provisions

126—Service provider for non-scheme pipeline not required to comply with section 131

(1) This clause applies in relation to a service provider for a pipeline that—

(a) was in operation before the commencement day; and

(b) on the commencement day, is a non-scheme pipeline.

(2) The service provider is not required to comply with section 131.

127—Exemptions from minimum ring fencing requirements

(1) This clause applies in relation to a service provider who held an exemption under section 146 of the pre-amended Law that was in force immediately before the commencement day.

(2) On the commencement day, the exemption continues in force.

128—Delayed commencement of ring fencing requirements for non-scheme pipelines

(1) This clause applies in relation to a pipeline that, immediately before the commencement day, was a non-scheme pipeline.

(2) On the commencement day, Part 2 of Chapter 4 does not apply to the pipeline.

(3) However, Part 2 of Chapter 4 starts applying to the pipeline at the end of 12 months after the commencement day.

[Cl. 129 version as set out in Statutes Amendment (National Energy Laws) (Gas Pipelines) Act 2022 (SA)]

129—Provision for Goldfields Gas Pipeline

(1) On the commencement day, any expansion of the Goldfields Gas Pipeline that did not previously form part of the scheme pipeline becomes part of the scheme pipeline.

(2) In this section—

Goldfields Gas Pipeline means the transmission pipeline between Yarraloola and Kalgoorlie in Western Australia and defined in Pipeline Licence 24 (as amended) issued under the *Petroleum Pipelines Act 1969* of Western Australia, including any extension to, or expansion of the capacity of, that pipeline.

[Cl. 129 potential alternative version]

[*4M*]129. Provision for Goldfields Gas Pipeline

(1) In this clause —

Goldfields Gas Pipeline —

(a) means the transmission pipeline defined in Pipeline Licence 24, issued under the *Petroleum and Greenhouse Gas Pipelines Act 1969*, as in effect immediately before commencement day; and

(b) includes any extension to, or expansion of the capacity of, that pipeline that existed immediately before commencement day;

non-scheme Goldfields Gas Pipeline means the non-scheme pipeline deemed under subclause (2)(b);

scheme Goldfields Gas Pipeline means —

(a) the scheme pipeline deemed under subclause (2)(a); and

(b) any extension to, or expansion of the capacity of, that pipeline that under this Law is taken to be part of that pipeline.

Note for this definition:

In relation to paragraph (b), see subclauses (4), (5) and (6) and section 18.

(2) The Goldfields Gas Pipeline —

(a) to the extent that it was, immediately before commencement day, a covered pipeline, is, on commencement day, deemed to be —

(i) a pipeline; and

(ii) a scheme pipeline;

and

(b) to the extent that it provides pipeline services by means of an expansion of the capacity of the pipeline that, under the pre-amended Law, was not taken to be part of the covered pipeline, is deemed to be —

(i) a pipeline; and

(ii) despite paragraph (b) of the definition of ***scheme pipeline*** in section 2, a non-scheme pipeline.

(3) On commencement day, a scheme pipeline determination is deemed to have been made in relation to the Goldfields Gas Pipeline to the extent that it was, immediately before commencement day, a covered pipeline.

(4) Despite section 19, an expansion of the capacity of the non-scheme Goldfields Gas Pipeline must be taken to be an expansion of the capacity of the scheme Goldfields Gas Pipeline.

Note for this subclause:

See section 18(3) in relation to the effect of an expansion of the capacity of the scheme Goldfields Gas Pipeline.

(5) An extension to the non-scheme Goldfields Gas Pipeline must be taken to be an extension to the scheme Goldfields Gas Pipeline.

Note for this subclause:

See section 18(1) and (2) in relation to the effect of an extension of the scheme Goldfields Gas Pipeline.

(6) Despite section 94 and 96(3), if a scheme pipeline determination or scheme pipeline election is made in relation to the non-scheme Goldfields Gas Pipeline, then, when the determination or election takes effect —

(a) subclause (2)(b) ceases to have effect; and

(b) the non-scheme Goldfields Gas Pipeline must be taken to be part of the scheme Goldfields Gas Pipeline; and

(c) the scheme Goldfields Gas Pipeline as expanded must be taken to be a scheme pipeline.

(7) Clause 105 does not apply in relation to the Goldfields Gas Pipeline to the extent that it was, immediately before commencement day, a covered pipeline.

(8) Nothing in this clause affects whether a pipeline or part of a pipeline is a designated pipeline.

130—Provision for Northern Gas Pipeline

(1) This clause applies in relation to the Northern Gas Pipeline.

(2) On the commencement day, Chapters 4 and 5 do not apply to the pipeline.

(3) However, Chapters 4 and 5 start applying to the pipeline—

(a) if the pipeline becomes a scheme pipeline—when the pipeline becomes a scheme pipeline; or

(b) otherwise—at the end of a period of 15 years from the commissioning of the pipeline.

(4) In this clause—

access principles means the arrangements agreed between the service provider for the Northern Gas Pipeline and the Northern Territory Government under which a prospective user may gain access to pipeline services on the Northern Gas Pipeline;

Northern Gas Pipeline means the pipeline between Tennant Creek in the Northern Territory and Mount Isa in Queensland, the subject of Pipeline Licence 34 granted under the *Energy Pipelines Act 1981* of the Northern Territory and Pipeline Licence 2015 granted under the *Petroleum and Gas (Production and Safety) Act 2004* of Queensland, including any extension to, or expansion of the capacity of, that pipeline that is subject to the access principles.

131—Pending applications under Rules for approval of tender process

(1) This clause applies—

(a) in relation to an application that has been made to the AER under the Rules for the approval, by the AER, of a tender

process for the construction and operation of a proposed pipeline as a competitive tender process; and

(b) in respect of which the AER has not made a tender approval decision before the commencement day.

(2) On the commencement day, the application lapses despite clause 43(1)(b) and (c) of Schedule 2 to this Law.

132—Decision-making process under Rules for approval of tender process

(1) This clause applies if, before the commencement day, the AER—

(a) is deciding whether to make a tender approval decision; and

(b) has not made the decision.

(2) On the commencement day—

(a) the requirement to make the tender approval decision stops having effect; and

(b) the AER must stop deciding whether to make the tender approval decision.

Part 20 — Transitional provisions related to national gas objective amendments

[Heading inserted: see SA Act No. 26 of 2023 s. 18 and WA Gazette 24 Jan 2024 p. 91-2.]

133. Definitions

In this Part—

adopting clause means the *National Gas Access (WA) Adoption of Amendments Order (No. 2) 2024* clause 3;

amended objective means the national gas objective as in force on the coming into operation of the adopting clause;

government or regulatory entity means the AEMC, AEMO, the AER, the Energy Security Board, the MCE or another government entity;

start day—see clause 134(2)(a).

[Section 133 inserted: see SA Act No. 26 of 2023 s. 18 and WA Gazette 24 Jan 2024 p. 91-2; WA Act Sch. 1 cl. 18(7)-(9).]

134. When amended objective takes effect for particular matters

(1) This clause applies in relation to a thing required or permitted to be done under this Law by a person or body, other than the AEMC, if, in doing the thing, the person or body is required to consider or apply the national gas objective including, for example, by—

(a) having regard to the national gas objective; or

(b) doing the thing in a manner that will or is likely to contribute to the achievement of the national gas objective.

(2) Despite the coming into operation of the adopting clause —

(a) the national gas objective as in force before the adopting clause came into operation continues to apply for the doing of the thing until the day (the ***start day***) that is 2 months after the coming into operation of the adopting clause; and

(b) the amended objective applies in relation to the doing of the thing from the start day.

(3) However, if the thing required or permitted to be done relates to a relevant access arrangement—

(a) on the coming into operation of the adopting clause the amended objective applies to the doing of the thing; and

(b) clause 135(3) does not apply in relation to the doing of the thing.

(4) Subclauses (1) and (2) are subject to clause 135.

(5) In this clause—

relevant access arrangement means an access arrangement under the Rules proposed to commence on 1 January 2025 for—

(a) the Mid-West and South-West Gas Distribution System comprised of the scheme distribution pipeline in Western Australia and defined in gas distribution licence 8 (as amended) issued under the *Energy Coordination Act 1994* of Western Australia, including any extension to or expansion of the capacity of that pipeline; or

(b) the Goldfields Gas Pipeline comprised of the transmission pipeline between Yarraloola and Kalgoorlie in Western Australia and defined in Pipeline Licence 24 (as amended) issued under the *Petroleum Pipelines Act 1969* of Western Australia, including an extension to or expansion of the capacity of, that pipeline.

[Section 134 inserted: see SA Act No. 26 of 2023 s. 18 and WA Gazette 24 Jan 2024 p. 91-2; WA Act Sch. 1 cl. 18(10).]

135. Application of national gas objective to particular matters in progress on start day

(1) This clause applies if—

(a) before the start day, a person or body had started, or was required or permitted to start, doing a thing; and

(b) on the start day—

(i) the person or body has not finished doing the thing; or

(ii) the period within which the thing is required or permitted to be done has not ended; and

(c) in doing the thing the person or body is required to consider or apply the national gas objective by, for example—

(i) having regard to the national gas objective; or

(ii) doing the thing in a manner that will or is likely to contribute to the achievement of the national gas objective.

(2) The national gas objective as in force before the coming into operation of the adopting clause, and as continued in effect under clause 134 until the start day, continues to apply in relation to the doing of the thing.

(3) However, a government or regulatory entity may decide to consider or apply the amended objective in relation to the doing of the thing.

(4) For subclause (1), a matter relating to an access arrangement is taken not to have been started, or required or permitted to have been started, before the start day if, on the start day, the access arrangement proposal for the access arrangement has not been submitted for the AER's approval under Rule 46 of the Rules.

[Section 135 inserted: see SA Act No. 26 of 2023 s. 18 and WA Gazette 24 Jan 2024 p. 91-2; WA Act Sch. 1 cl. 18(11).]

136. Administrative guidance for decisions under clause 135(3)

(1) If a government or regulatory entity, other than the AER, proposes to exercise a discretion under clause 135(3), the entity must use its best endeavours to ensure that within 45 days after the coming into operation of the adopting clause, it issues administrative guidance about the matters the entity is likely to have regard to in deciding whether to consider or apply the amended objective in doing a thing.

(2) The AER must, within 45 days after the coming into operation of the adopting clause, issue administrative guidance about the matters the AER is likely to have regard to in deciding whether to consider or apply the amended objective in doing a thing.

(3) A failure to comply with this section does not prevent a government or regulatory entity from exercising a discretion under clause 135(3).

[Section 136 inserted: see SA Act No. 26 of 2023 s. 18 and WA Gazette 24 Jan 2024 p. 91-2; WA Act Sch. 1 cl. 18(12).]

137. Administrative guidance about value of greenhouse gas emissions

(1) This clause applies if—

(a) administrative guidance is issued by a government or regulatory entity about considering or applying the amended objective; and

(b) the guidance includes the value, or a method of working out the value, of greenhouse gas emissions or greenhouse gas emissions reduction; and

(c) the guidance is consistent with any MCE statement.

(2) The value or method stated in the administrative guidance must be complied with by the government or regulatory entity in considering or applying the amended objective.

(3) This clause applies until a Regulation or Rule takes effect for the matter described in subclause (1).

(4) In this clause—

MCE statement means a statement issued by the MCE that states the value, or a method of or guidance for working out the value, of greenhouse gas emissions or greenhouse gas emissions reduction, that is to be used by a government or regulatory entity in considering or applying the amended objective until a Regulation or Rule mentioned in subclause (3) takes effect.

[Section 137 inserted: see SA Act No. 26 of 2023 s. 18 and WA Gazette 24 Jan 2024 p. 91-2.]

138. Validation of things done in relation to Rules before commencement

(1) This clause applies if, before the coming into operation of the adopting clause —

(a) the MCE or a Minister of a participating jurisdiction had requested a Rule under section 295(1) in relation to the national gas objective as if the amended objective were in force; and

(b) the AEMC had done a thing under Chapter 9, other than sections 313 to 315, in relation to the request.

(2) On the coming into operation of the adopting clause —

(a) the thing is taken to have been validly done under Chapter 9; and

(b) the AEMC is taken to have satisfied a requirement under the Law to apply the national gas objective in relation to the thing.

[Section 138 inserted: see SA Act No. 26 of 2023 s. 18 and WA Gazette 24 Jan 2024 p. 91-2; WA Act Sch. 1 cl. 18(13).]

Notes

This is a compilation of the *National Gas Access (Western Australia) Law* [1, 2]. This version is the *National Gas Access (Western Australia) Law* as at the date specified in the footer below.

Compilation table

Short title	Number and year	Assent	Commencement
National Gas Access (Western Australia) Law			1 Jan 2010 (see *National Gas Access (WA) Act 2009* s. 2(b) and *Gazette* 31 Dec 2009 p. 5327)
National Gas (South Australia) Act 2008 Schedule (as modified by the *National Gas Access (WA) Act 2009* Sch. 1)	19 of 2008 (SA Act)		In SA: 1 Jul 2008 (see SA *Gazette* 26 Jun 2008 p. 2553); In WA: 1 Jan 2010 (see WA Act s. 2(b) and *Gazette* 31 Dec 2009 p. 5327)
National Gas (South Australia) (National Gas Law—Australian Energy Market Operator) Amendment Act 2009 s. 6	30 of 2009 (SA Act)		In SA: 1 Jul 2009 (see SA *Gazette* 25 Jun 2008 p. 3000); In WA: 1 Jan 2010 (see WA *Gazette* 18 Dec 2009 p. 5167-8)
Statutes Amendment (National Electricity and Gas Laws—Limited Merits Review) Act 2013 Pt. 3	79 of 2013 (SA Act)		In SA: 19 Dec 2013 (see SA *Gazette* 19 Dec 2013 p. 4927); In WA: 15 Mar 2014 (see WA *Gazette* 14 Mar 2014 p. 632)
National Gas (South Australia) (Pipelines Access—Arbitration) Amendment Act 2017	23 of 2017 (SA Act)		In SA: 1 Aug 2017 (see SA *Gazette* 1 Aug 2017 p. 3037); In WA: 23 Dec 2017 (see WA *Gazette* 22 Dec 2017 p. 5984)
Statutes Amendment (National Energy Laws) (Rules) Act 2018	12 of 2018 (SA Act)		In SA: 20 Sep 2018 (see SA *Gazette* 20 Sep 2018 p. 3500); In WA: 10 Oct 2020 (see SL 2020/195 cl. 2(b))
Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018 Pt. 3	33 of 2018 (SA Act)		In SA: 13 Dec 2018 (see SA *Gazette* 13 Dec 2018 p. 4272); In WA: 6 Apr 2019 (see WA *Gazette* 5 Apr 2019 p. 1007)
Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020 Pt. 4 (other than s. 55-60)	37 of 2020 (SA Act)		In SA: 29 Jan 2021 (see SA *Gazette* 27 Jan 2021 p. 163); In WA: 5 Sep 2024 (see WA *Gazette* 4 Sep 2024 p. 2215)
Statutes Amendment (National Energy Laws) (Omnibus) Act 2021 Pt. 5 (other than s. 41, 42, 49-51 and 53)	3 of 2021 (SA Act)		In SA: 15 Apr 2021 (see SA *Gazette* 15 Apr 2021 p. 1169); In WA: 23 Jan 2025 (see WA *Gazette* 22 Jan 2025 p. 63-4)

Short title	Number and year	Assent	Commencement
Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023	26 of 2023 (SA Act)		In SA: 21 Sep 2023 (see s. 2); In WA: 25 Jan 2024 (see WA *Gazette* 24 Jan 2024 p. 91-2)

Other notes

1 The *National Gas Access (Western Australia) Law* applies as a law of Western Australia under the *National Gas Access (WA) Act 2009* section 7(1).

The *National Gas Access (Western Australia) Law* is the National Gas Law (as set out in the Schedule to the *National Gas (South Australia) Act 2008* (SA) for the time being in force) as modified to give effect to the following provisions of the *National Gas Access (WA) Act 2009*:

(a) section 7A(3), which provides that an amendment by the Parliament of South Australia to the National Gas Law does not change the *National Gas Access (Western Australia) Law* unless the Minister declares the amendment relevant;

(b) section 7A(4), which provides that if the Minister declares an amendment relevant, the *National Gas Access (Western Australia) Law* changes on the day fixed under section 7A(5);

(c) Schedule 1, which makes various other modifications. Section 7B provides that Schedule 1 can be amended by regulations to deal with the consequences of an amendment by the Parliament of South Australia to the National Gas Law or of giving effect to section 7A(3) or (4).

2 The *National Gas Access (Western Australia) Law* has been formatted in accordance with WA drafting style. Editorial notes have been inserted as part of producing this compilation.

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