

# National Gas Law

## Exposure Draft 3/11/2006

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# **National Gas Law**

## **Exposure Draft 3/11/2006**

### **CHAPTER 1—PRELIMINARY**

#### **PART 1.1—CITATION AND INTERPRETATION**

##### **1. Citation**

This Law may be cited as the National Gas Law.

##### **2. Main purpose of this Law**

The main purpose of this Law is to set out a framework to—

- (a) enable persons to get access to pipeline services provided by means of covered pipelines or international pipelines to which

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- price regulation exemptions apply, and to regulate how that access is given; and
- (b) regulate the provision of pipeline services provided by means of—
    - (i) covered pipelines (including, in some cases, regulation of the revenues earned from the provision of, or prices for, pipeline services); or
    - (ii) international pipelines to which price regulations apply; and
  - (c) resolve disputes about access to pipeline services provided by means of covered pipelines or international pipelines to which price regulation exemptions apply; and
  - (d) impose a number of overriding duties on service providers relating to the provision of pipeline services by means of covered pipelines or international pipelines to which price regulation exemptions apply; and
  - (e) provide for exemptions from the requirements of this Law for certain proposed greenfields pipelines.

**3. General outline of framework of this Law**

The following is a general outline that describes the general operation of the framework of this Law—

**A. Law concerned with pipeline services provided by means of a covered pipeline or international pipeline**

This Law regulates access to pipeline services provided by means of a covered pipeline or an international pipeline to which a price regulation exemptions applies.

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**B. Coverage of pipelines**

- (1) Chapter 3 sets out how pipelines become covered pipelines. Pipelines become covered pipelines (defined in section 5 of this Law) by—
  - (a) the making of a coverage determination by a relevant Minister following a recommendation from the NCC (see Part 3.2); or
  - (b) the making of a tender approval decision by the AER (see Part 3.3); or
  - (c) the approval by the AER of a voluntary access arrangement (see Part 3.4).
- (2) Once a pipeline is a covered pipeline, a service provider that provides or will provide pipeline services by means of the covered pipeline must—
  - (a) comply with—
    - (i) the overriding duties set out in Part 3.5; and
    - (ii) the structural and operational requirements (ring fencing requirements) set out in Part 3.6; and
  - (b) submit to the AER, for approval, an access arrangement that relates to the pipeline services that are or will be provided by the service provider (see Division 2 of Part 4.3 of Chapter 4) unless those services are light regulation services (see Part 4.2 of Chapter 4).

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**C. Access arrangements**

- (1) As to what is an access arrangement, see the definition of "access arrangement" in section 5.
- (2) An approved access arrangement operates as a default framework for access to the pipeline services to which the arrangement applies.
- (3) A service provider and a user of a pipeline service may enter into a contract for the provision of a pipeline service on terms and conditions different to those set out in the approved access arrangement (see section 331).
- (4) The AER may make an access arrangement in place of an access arrangement submitted to it for approval if it does not approve that arrangement (see Division 3 of Part 4.3 of Chapter 4).
- (5) In approving or making an access arrangement under Division 2 or 3 of Part 4.3 of Chapter 4, the AER will ensure that the revenue earned from, or the prices for, the provision of certain pipeline services will be regulated in accordance with the National Gas Rules. These pipeline services are called reference services (see the definition of "reference service" in section 5 and section 7).

**D. Light regulation services**

- (1) A service provider may apply to the AEMC for a light regulation determination in relation to pipeline services the service provider provides, or will provide, by means of the covered pipeline.
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- (2) If the AEMC makes the determination, the service provider—
  - (a) has a choice whether to submit to the AER, for approval, a limited access arrangement that relates to those services (see Part 4.2 and Division 1 of Part 4.3 of Chapter 4); but
  - (b) must, in any event, comply with certain obligations (see Part 4.2 of Chapter 4).
- (3) A limited access arrangement is an access arrangement that does not include provisions relating to the regulation of the revenues earned from, or prices for, the provision of pipeline services (see the definition of "limited access arrangement" in section 5).

**E. Access**

Part 4.4 of Chapter 4 sets out provisions to facilitate access to, and about requests for access to, pipeline services provided by means of a covered pipeline or international pipeline to which a price regulation exemption applies.

**F. Access disputes**

Part 4.5 of Chapter 4 sets out a procedure for the hearing and determination of disputes about access to pipeline services provided by means of a covered pipeline or international pipeline to which a price regulation exemption applies.

**G. Greenfields pipeline incentives**

- (1) Chapter 5 provides for the granting of 15 year exemptions from coverage for—
    - (a) pipelines generally (15 year no-coverage determinations); and
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- (b) international pipelines (price regulation exemptions).
- (2) International pipelines are pipelines that haul gas from a foreign source (see the definition of "international pipeline" in section 5).
- (3) Under this Law, there must be a limited access arrangement in place that applies to pipeline services provided by means of an international pipeline to which a price regulation exemption applies. Like limited access arrangements that apply to light regulation services, these limited access arrangements do not include provisions relating to the regulation of the revenues earned from, or prices for, the provision of pipeline services.

**4. Effect of general outline of framework of this Law**

Section 3 is intended only as a guide to readers as to the general scheme of this Law.

**5. Definitions**

In this Law—

**"access arrangement"** means an arrangement about access to pipeline services (including the terms and conditions relating to, and the prices for, the provision of pipeline services) provided or to be provided by means of—

- (a) a covered pipeline; or
- (b) an international pipeline to which a price regulation exemption applies;

**"access arrangement final decision"** means a decision of the AER under section 178;

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**"access arrangement information"** means information specified by the Rules as access arrangement information, and includes information that would enable users and prospective users to—

- (a) understand the access arrangement or limited access arrangement; and
- (b) form an opinion as to the compliance of the access arrangement or limited access arrangement with this Law and the Rules;

**"access determination"** means a determination of the AER under section 201;

**"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;

**"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 that relates to the economic regulation of pipeline services provided by a service provider—

- (a) by means of; or

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(b) in connection with,  
a covered pipeline or international pipeline  
and includes a function or power performed  
or exercised by the AER under this Law or  
the Rules that relates to—

- (c) a tender approval decision;
- (d) a ring fencing decision;
- (e) an applicable access arrangement  
decision;
- (f) an access determination;

**"AER ring fencing determination"** means a  
determination of the AER under section  
120(1);

**"applicable access arrangement"** means—

- (a) an access arrangement approved under  
Division 2 of Part 4.3 of Chapter 4; or
- (b) an access arrangement made under  
Division 3 of Part 4.3 of Chapter 4; or
- (c) a limited access arrangement approved  
under section 156 or 249,

and includes an applicable access  
arrangement as varied under section 156,  
Division 4 of Part 4.3 of Chapter 4,  
section 249 or an access determination;

Note: In relation to a variation by an access  
determination, see section 210.

**"applicable access arrangement decision"**  
means—

- (a) an access arrangement final decision; or
  - (b) a decision of the AER under section  
156 or section 249 approving a limited  
access arrangement;
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**"approved associate contract"** means an associate contract approved by the AER under section 125;

**"associate"**, in relation to a person—

- (a) has the 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 of that Act did not form part of that Act; or
- (b) means a person or class of person prescribed by the Regulations to be an associate;

**"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 which provides a direct or indirect benefit to an associate;

**"associate pipeline service"** means a pipeline service provided by means of a pipeline other than a pipeline to which a 15 year no-coverage determination applies;

**"Australia's adjacent areas"** means areas that are identified in section 5A of the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth as adjacent to States, Territories and other parts of Australia;

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**"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"** means—

(a) in the case of a breach of a civil penalty provision by a natural person—

(i) an amount not exceeding \$20 000;  
and

(ii) an amount not exceeding \$2000  
for every day during which the  
breach continues;

(b) in the case of a breach of a civil penalty provision by a body corporate—

(i) an amount not exceeding  
\$100 000; and

(ii) an amount not exceeding \$10 000  
for every day during which the  
breach continues;

**"civil penalty provision"** means 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;

**"commission"**, in relation to a pipeline, has the meaning given by section 8;

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

**"conduct provision"** means a provision of this Law (other than an offence provision) or the Rules that is prescribed by the Regulations to be a conduct provision;

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- "coverage determination"** means a determination of a relevant Minister under Division 1 of Part 3.2 of Chapter 3;
- "coverage recommendation"** means a recommendation of the NCC under Division 1 of Part 3.2 of Chapter 3;
- "coverage revocation determination"** means a determination of a relevant Minister under Division 2 of Part 3.2 of Chapter 3;
- "coverage revocation recommendation"** means a recommendation of the NCC under Division 2 of Part 3.2 of Chapter 3;
- "covered pipeline"** means a pipeline—
- (a) the subject of a coverage determination; or
  - (b) deemed to be a covered pipeline by operation of section 100 or 107;
- "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;
- "developable capacity"** means the difference between the current capacity of a covered pipeline and the capacity of a covered pipeline which would be available if a new facility was constructed, but does not include any extension of the geographic range of a covered pipeline;
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**"distribution pipeline"** means a pipeline that is classified in accordance with this Law 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 15 and 16.

**"draft Rule determination"** means a determination of the AEMC under section 320;

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

**"extension and expansion requirements"** means—

- (a) the requirements forming part of an access arrangement that, in accordance with the Rules, specify how an extension to, or expansion of the capacity of, a covered pipeline—
  - (i) will be determined to be part of the covered pipeline; and
  - (ii) will affect a reference tariff; and
- (b) any other requirements specified by the Rules to be extension and expansion requirements;

Note: See also sections 15 and 16.

**"15 year no-coverage determination"** means a determination of a relevant Minister under Part 5.2 of Chapter 5;

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- "final Rule determination"** means a determination of the AEMC under section 323;
- "foreign source"** means a source beyond the outer limits of Australia's adjacent areas;
- "form of regulation factors"** has the meaning given by section 13;
- "Gas Code"** means the *National Third Party Access Code for Natural Gas Pipelines* set out in Schedule 2 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia, as amended and in force immediately before the commencement of section [ ] of the *National Gas (South Australia) Act 2007* of South Australia;
- "general regulatory information order"** has the meaning given by section 43;
- "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;
- "initial classification decision"** means a decision of the NCC under section 88 or 237;
- "initial National Gas Rules"** means the National Gas Rules made under section 310;
- "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 10;
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**"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 gas industry operating in that jurisdiction;

**"light regulation determination"** means a determination of the AEMC under Division 1 of Part 4.2 of Chapter 4;

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

**"limited access arrangement"** means an access arrangement without provision for price or revenue regulation but (subject to any exclusion or modification made by the Regulations) dealing with all other matters for which this Law and the Rules require provision to be made in an access arrangement;

**"MCE"** means the Ministerial Council on Energy established on 8 June 2001, being the Council of Ministers with primary carriage of energy matters at a national level comprising the Ministers representing the Commonwealth, the States, the Australian Capital Territory and the Northern Territory, acting in accordance with its own procedures;

**"MCE statement of policy principles"** means a statement of policy principles issued by the MCE under section 22;

**"Minister of a participating jurisdiction"** means a Minister who is a Minister of a participating jurisdiction within the meaning of section 19;

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**"Ministerial coverage decision"** means—

- (a) a decision of a relevant Minister under section 89, 96 or 238; or
- (b) a decision of the Commonwealth Minister under section 246;

**"national gas legislation"** means—

- (a) the *National Gas (South Australia) Act 2007* 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 2007* of Western Australia; and
  - (d) Regulations made under or for the purposes of the *National Gas Access (Western Australia) Act 2007* of Western Australia; and
  - (e) an Act of a participating jurisdiction (other than South Australia or Western Australia) that applies, as a law of that jurisdiction, to 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 2007* of South Australia; and
  - (f) the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2007* of South Australia as applied as a law of a participating jurisdiction (other than South Australia or Western Australia); and
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- (g) 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 20;

**"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—

- (a) which is in a gaseous state at standard temperature and pressure and which consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane; and
- (b) which is suitable for consumption;

**"natural gas service"** means—

- (a) a pipeline service; or
- (b) the supply of natural gas; or

Note: Natural gas may be supplied by producers, wholesalers or retailers of natural gas.

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

**"NCC"** means the National Competition Council established by section 29A of the *Trade Practices Act 1974* of the Commonwealth;

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**"NCC recommendation"** means—

- (a) a coverage recommendation; or
- (b) a no-coverage recommendation; or
- (c) a coverage revocation recommendation;

**"NCC recommendation or decision"** means—

- (a) an NCC recommendation; or
- (b) a reclassification decision;

**"no-coverage recommendation"** means a recommendation of the NCC under Part 5.2 of Chapter 5;

**"offence provision"** means a provision of this Law the breach or contravention of which exposes a person to a criminal penalty;

**"officer"** has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

**"old access law"** means Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia as in force from time to time before the commencement of section [ ] of that Act;

**"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 that law;

**"old scheme coverage determination"** means a determination under section 1.13 or 1.34 of the Gas Code 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—

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- (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;

**"participating jurisdiction"** means a jurisdiction that is a participating jurisdiction by reason of section 18;

**"pipeline"** means a pipe or system of pipes, or part of a pipe or system of pipes, for the haulage of natural gas, and any tanks, reservoirs, machinery or equipment directly attached to the pipe or system of pipes, and includes a proposed pipe or system of pipes, or proposed part of a pipe or system of pipes, but does not include—

- (a) any part of a pipeline, or anything on a pipeline, with which gas is hauled from—
    - (i) a gas processing plant prescribed by the Regulations; and
    - (ii) an exit flange or other point prescribed by the Regulations; or
  - (b) a gathering system operated as part of an upstream producing operation; or
  - (c) any tanks, reservoirs, machinery or equipment used to remove or add components to or change natural gas
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(other than odourisation facilities) such as a gas processing plant; or

- (d) anything downstream of the connection point to a person who consumes natural gas;

**"pipeline classification criterion"** has the meaning given by section 9;

**"pipeline coverage criteria"** has the meaning given by section 11;

**"pipeline reliability or safety standard"** means a standard imposed by an Act of a participating jurisdiction or any instrument made or issued under or for the purposes of that Act for—

- (a) in the case of a transmission pipeline, the safe or reliable conveyance of natural gas in that jurisdiction;
- (b) in the case of a distribution pipeline, the safe or reliable reticulation of natural gas in that jurisdiction;

**"pipeline service"** means—

- (a) a service provided by means of a pipeline, including—
- (i) haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul); and
- (ii) the right to interconnect with a pipeline; 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;

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**"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 final decision; or
  - (ii) in accordance with the Rules;

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

- (a) the prices for pipeline services to be provided; or
- (b) the revenue to be derived from the provision of pipeline services,

but does not include the provision against price discrimination that is to be included in a limited access arrangement under section 156 or 249;

**"price regulation exemption"** means an exemption under Part 5.3 of Chapter 5;

**"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;

**"prospective user"** has the meaning given by section 6;

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**"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;

**"reclassification decision"** means a decision of the NCC under Part 8.3 of Chapter 8;

**"reference service"**, in relation to a pipeline service, has the meaning given by section 7;

**"reference tariff"** means a tariff for a reference service—

- (a) specified in an applicable access arrangement; or
- (b) determined by applying the formula or methodology contained in an applicable access arrangement;

**"Regulations"** means the regulations made under Part [ ] of the *National Gas (South Australia) Act 2007* of South Australia that apply as a law of this jurisdiction;

**"regulatory economic methodology"** means a mechanism or methodology for the derivation of the maximum allowable—

- (a) revenue to be earned by a service provider from the provision of reference services; or
- (b) prices to be charged by a service provider for the provision of reference services;

**"regulatory information instrument"** means—

- (a) a general regulatory information order; or
  - (b) a regulatory information notice;
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**"regulatory information notice"** has the meaning given by section 44;

**"regulatory obligation or instrument"** means, in relation to the provision by a service provider of pipeline services—

- (a) pipeline reliability or safety standard;
- (b) a pipeline service standard;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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 instrument referred to in paragraphs (c) to (e)) that materially affects the provision, by a service provider, of pipeline services to which an applicable access arrangement applies,

but does not include a fine, penalty or compensation paid or to be paid (in whatever form) under an Act or an instrument referred to in paragraphs (c) to (f);

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**"relevant Minister"** means if, in a coverage recommendation, no-coverage recommendation 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 designated Minister is defined in each of the Acts of the participating jurisdictions that apply this Law as a law of that 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"** means the principles set out in section 21;

**"ring fencing decision"** means—

- (a) an AER ring fencing determination; or
- (b) an exemption under section 121; or
- (c) a decision under section 125 whether to approve an associate contract proposal;

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**"scheme register"** means the register established and maintained under section 346;

**"service provider"**, in relation to a pipeline, covered pipeline or international pipeline, means the person who is, or is to be, the owner or operator of the whole or any part of the pipeline, covered pipeline or international pipeline;

Note: In the case of a pipeline that is a covered pipeline, the service provider must not provide pipeline services by means of that covered pipeline unless the service provider is a legal entity of a specified kind: see section 109.

**"spare capacity"** means—

- (a) in relation to a contract carriage pipeline, the sum of—
  - (i) the difference between the capacity and the contracted capacity of that pipeline; and
  - (ii) the difference between the contracted capacity and the contracted capacity which is being used of that pipeline; and
- (b) in relation to a market carriage pipeline, the capacity of that pipeline to enable a service provider to provide a pipeline service to a user without impeding the provision of the pipeline service to another user;

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

**"tender approval decision"** means a decision of the AER under section 99 approving a tender process as a competitive tender process;

**"Territory"** means the Australian Capital Territory or the Northern Territory;

**"transmission pipeline"** means a pipeline that is classified in accordance with this Law 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 15 and 16.

**"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 will provide a pipeline service to that person by means of—
  - (i) a covered pipeline; or
  - (ii) an international pipeline to which a price regulation exemption applies; or

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- (b) has a right under an access determination to be provided with a pipeline service by means of—
  - (i) a covered pipeline; or
  - (ii) an international pipeline to which a price regulation exemption applies;

**"voluntary access arrangement"** means an applicable access arrangement that was—

- (a) submitted for approval under section 159; and
- (b) approved under Division 2 of Part 4.3 of Chapter 4.

**6. Meaning of "prospective user"**

- (1) For the purposes of this Law, a prospective user is a person who seeks or wishes to be provided with a pipeline service by means of—
  - (a) a covered pipeline; or
  - (b) an international pipeline to which a price regulation exemption applies.
- (2) To avoid doubt, for the purposes of this Law, a user is also a prospective user if the user seeks or wishes to be provided with a pipeline service by means of a covered pipeline or international pipeline to which a price regulation exemption applies other than a pipeline service already provided to them under—
  - (a) a contract; or
  - (b) an access determination.

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**7. Meaning of "reference service"**

For the purposes of this Law, a reference service is a pipeline service—

- (a) the Rules declare or specify as a reference service; or
- (b) if the Rules do not do so, the AER requires to be a reference service in—
  - (i) approving an access arrangement under Division 2 of Part 4.3 of Chapter 4; or
  - (ii) an access arrangement it makes under Division 3 of Part 4.3 of Chapter 4; or
  - (iii) approving a variation to an applicable access arrangement under Division 4 of Part 4.3 of Chapter 4;

**8. Commissioning of a pipeline**

For the purposes of this Law, a pipeline is commissioned when the pipeline is first used for the haulage of natural gas, on a commercial basis.

**9. Pipeline classification criterion**

- (1) For the purposes of this Law, 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—

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- (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 fed 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.

**10. Jurisdictional determination criteria—cross boundary distribution pipelines**

For the purposes of this Law, 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 one 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 one participating jurisdiction than in the jurisdictional area of any other participating jurisdiction;
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- (c) whether more of the network for a cross boundary distribution pipeline is in the jurisdictional area of one participating jurisdiction than in the jurisdictional area of any other participating jurisdiction;
- (d) whether one 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 one participating jurisdiction than for any other participating jurisdiction.

**11. Pipeline coverage criteria**

For the purposes of this Law, 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 one market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline; and
  - (b) that it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline; and
  - (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; and
  - (d) that access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.
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**12. Least costly form of regulation to be considered in giving effect to pipeline coverage criteria**

For the purposes of this Law, if, in giving effect to the pipeline coverage criteria, the NCC or a relevant Minister has regard to the costs that may be incurred by a service provider in providing pipeline services, the NCC or the relevant Minister must give effect to the criteria on the basis that the least costly form of regulation should apply to the services provided by means of the pipeline.

**13. Form of regulation factors**

For the purposes of this Law, 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;

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- (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);
- (g) the extent to which a prospective user or user has adequate information to enable them to negotiate on an informed basis with a service provider for the provision of a pipeline service to them by the service provider.

**14. Certain parts of covered pipelines are to be taken to be separate covered pipelines in certain cases**

Despite anything to the contrary in this Law, if separate access arrangements are submitted for approval in accordance with a direction under section 160(1) for pipeline services provided, or to be provided, by different parts of a covered pipeline, each part of the covered pipeline—

- (a) by which pipeline services are provided; and
- (b) to which each separate applicable access arrangement applies,

is to be taken to be a separate covered pipeline for the purposes of this Law.

**15. 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

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(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 pipeline as extended or expanded.

**16. 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.

**17. 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.

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Part 1.2—Participating Jurisdictions

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**PART 1.2—PARTICIPATING JURISDICTIONS**

**18. Participating jurisdictions**

The State of South Australia, the Commonwealth, each of the States of New South Wales, Victoria, Queensland, Western Australia and Tasmania, and the Australian Capital Territory and the Northern Territory are participating jurisdictions for the purposes of this Law.

**19. Ministers of participating jurisdictions**

The Ministers of the participating jurisdictions are—

- (a) the Minister of the Crown in right of South Australia administering Part [ ] of the *National Gas (South Australia) Act 2007* of South Australia; and
  - (b) the Minister of the Crown in right of Western Australia administering the *National Gas Access (Western Australia) Act 2007* of Western Australia; and
  - (c) the Minister of the Crown in right of the Commonwealth administering the *Australian Energy Market Act 2004* of the Commonwealth; and
  - (d) the Ministers of the Crown in right of the other participating jurisdictions administering the laws of those jurisdictions that substantially correspond to Part [ ] of the *National Gas (South Australia) Act 2007* of South Australia.
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Part 1.3—National Gas Objective and Principles

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**PART 1.3—NATIONAL GAS OBJECTIVE AND PRINCIPLES**

**Division 1—National gas objective**

**20. 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 price, quality, safety, reliability and security of supply of natural gas.

**Division 2—Revenue and pricing principles**

**21. Revenue and pricing principles**

- (1) For the purposes of this Law, the revenue and pricing principles are the principles set out in subsections (2) to (7).
- (2) A 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 instrument.
- (3) A 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 a pipeline with which the service provider provides reference services; and

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Part 1.3—National Gas Objective and Principles

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- (b) the efficient provision of pipeline services;  
and
- (c) the efficient use of the pipeline.
- (4) Allowance should be made for the value of a pipeline by means of which a service provider provides reference services.
- (5) Regard should be had to any valuation of a pipeline set out in any previous—
  - (a) access arrangement final decision; or
  - (b) decision of a relevant Regulator under section 2 of the Gas Code.
- (6) Regard should be had to the economic costs and risks of the potential for under and over investment by a 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 service provider provides pipeline services.

**Division 3—MCE policy principles**

**22. 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.
  - (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.
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Part 1.3—National Gas Objective and Principles

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- (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.
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Part 1.4—Operation and Effect of National Gas Rules

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**PART 1.4—OPERATION AND EFFECT OF NATIONAL GAS  
RULES**

**23. National Gas Rules to have force of law**

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

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Part 1.5—Miscellaneous Matters

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**PART 1.5—MISCELLANEOUS MATTERS**

**24. "Propose-respond" model not to apply under this Law unless Rules provide otherwise**

- (1) Nothing in this Law is to be taken as requiring the AER to approve, in an access arrangement final decision, any aspect or element of an access arrangement, or the whole of an access arrangement, in the form that aspect, element, or arrangement—
  - (a) is submitted for approval under Subdivision 1 of Division 2 of Part 4.3 of Chapter 4; or
  - (b) as revised under section 173.
- (2) Nothing in this Law is to be taken as requiring the AER, in a decision under section 156 or 249, to approve, in the form submitted for approval under either of those sections—
  - (a) any aspect or element of a limited access arrangement; or
  - (b) the whole of a limited access arrangement.
- (3) Nothing in this Law is to be taken as requiring the AER to approve, in a decision under section 156, 186 or 249, in the form submitted for approval under any of those sections, a variation to an applicable access arrangement.
- (4) Subsections (1), (2) and (3) apply unless the Rules otherwise provide.

**25. Methodology or formulas in applicable access arrangements do not operate to vary arrangement**

- (1) An applicable access arrangement may contain a methodology or formula in a term of the arrangement.
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Part 1.5—Miscellaneous Matters

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- (2) For the purposes of this Law, the outcome or effect of the application or operation of the methodology or formula in a term of an applicable access arrangement is not to be taken to be a variation of the access arrangement.
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**CHAPTER 2—FUNCTIONS AND POWERS OF GAS  
MARKET REGULATORY BODIES**

**PART 2.1—FUNCTIONS AND POWERS OF THE  
AUSTRALIAN ENERGY REGULATOR**

**Division 1—General**

**26. 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—
    - (i) breaches of provisions of this Law, the Regulations or the Rules; and
    - (ii) offences against this Law; and
  - (d) to institute and conduct appeals from decisions in proceedings referred to in paragraph (c); 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; and
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- (g) to approve compliance programs of service providers relating to compliance by service providers with Parts 3.5 and 3.6 of Chapter 3; 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.

**27. 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, 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 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) a reference tariff; or
        - (B) 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 function or power, if the AER considers it appropriate to do so.
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- (3) For the purposes of subsection (2)(a)(ii)(B), a reference to a "reference service" in the revenue and pricing principles must be read as a reference to a "pipeline service".

**28. Delegations**

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

**29. Confidentiality**

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.

Note: See also Division 1 of Part 8.2 of Chapter 8.

**Division 2—Investigation powers**

**30. Definitions**

In this Division—

**"authorised person"** means a person authorised under section 31;

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

**31. 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.

### **32. 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.

### **33. 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.

Penalty: \$500.

### **34. 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

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- (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 a 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.

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- (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.

**35. Announcement before entry**

- (1) On executing a search warrant, the person executing the warrant must announce that he or she is authorised by the warrant to enter the place and, if the person has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.
- (2) A person need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

**36. Details of warrant to be given to occupier**

- (1) If the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed, the person executing the warrant must—
  - (a) identify himself or herself to that person; and
  - (b) give the person a copy of the warrant.
- (2) A person executing the warrant is not entitled to exercise any powers under that warrant in relation to premises if the person does not—
  - (a) identify himself or herself to the occupier, or any other person who apparently represents the occupier and who is present at the premises, before the warrant is executed; and
  - (b) give the occupier, or any other person who apparently represents the occupier and who is present at the premises, a copy of the warrant.

**37. Copies of seized documents**

- (1) If a person executing a warrant retains possession of a document seized from a person in accordance with the warrant, the person must give that other person, within 21 days of the seizure, a copy of the document certified as correct by the person executing the warrant.
- (2) A copy of a document certified under subsection (1) shall be received in all relevant courts and all tribunals as evidence of equal validity to the original.

**38. Retention and return of seized documents or things**

- (1) If a person executing a warrant seizes a document or other thing in accordance with the warrant, the person 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.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the person executing the warrant 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 39 extending the period during which the document or thing may be retained.

**39. Period for retention of documents or things seized may be extended**

- (1) An authorised person 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.
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- (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.

**40. Obstruction of persons authorised to enter**

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

Penalty:

- (a) in the case of a natural person—\$2000;
  - (b) in the case of a body corporate—\$10 000.
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**Division 3—General information gathering powers**

**41. 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 or producing a document 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—
  - (a) give 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).
- (3) A person must not—
  - (a) without reasonable excuse, refuse or fail to comply with a relevant notice; or
  - (b) in purported compliance with a relevant notice, provide information that is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$2000;
- (b) in the case of a body corporate—\$10 000.

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- (4) It is a reasonable excuse for the purposes of subsection (3)(a) if a person is not capable of complying with a relevant notice.
  - (5) It is a reasonable excuse for a natural person to—
    - (a) fail to provide information of the kind referred to in subsection (1) to the AER; 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,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.
  - (6) 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
    - (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.
  - (7) 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.
  - (8) This section does not require a person to—
    - (a) provide information 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
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- 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, 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.
- (9) A person incurs, by complying with a relevant notice, no liability for breach of contract, breach of confidence or any other civil wrong.

**Division 4—Regulatory information notices and general regulatory information orders**

**Subdivision 1—Interpretation**

**42. Division does not limit operation of information gathering powers under section 41**

This Division does not limit the operation of section 41.

**43. What is a general regulatory information order?**

A general regulatory information order is an order made by the AER in accordance with this Division that requires a class of service provider, or class of associate of a service provider, to do either one or both of the following—

- (a) provide to the AER the information described in the order; or
- (b) prepare, maintain or keep information described in the notice in a manner and form specified in the order.

**44. What is a regulatory information notice?**

A regulatory information notice is a notice prepared and served by the AER in accordance with this Division that requires the service provider or associate of a service provider, named in the notice to do either one or both of the following—

- (a) provide to the AER the information described in the notice; or
- (b) prepare, maintain or keep information described in the notice in a manner and form specified in the notice.

**Subdivision 2—Serving and making of regulatory information instrument**

**45. 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 service provider or an associate of a service provider; or
  - (b) make a general regulatory information order.
- (2) A general regulatory information order made under subsection (1)(b) must be published on the AER's website as soon as practicable after it is made.
- (3) Notice of the making of a general regulatory information order must be published in a newspaper circulating generally throughout Australia as soon as practicable after it is made.

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- (4) A regulatory information notice must not be served, or a general regulatory information order must not be made, solely for the purpose of collecting information for the preparation of a report under Division 5.

**46. AER must consult before publishing a general regulatory information order**

The AER, before making a general regulatory information order, must, subject to and in accordance with the Rules—

- (a) publish on its website a draft of the general regulatory information order it proposes to make; and
- (b) publish on its website, and in a newspaper circulating generally throughout Australia, notice of its proposal to make the draft order—
- (i) specifying the class of service provider or associate of a service provider to whom the draft order, if made, will apply; and
- (ii) inviting submissions from the public on that proposal by the date specified in the notice.

Note: See also section 60 about what the AER must and may do after receiving submissions.

**47. Opportunity to be heard before regulatory information notice is served**

- (1) The AER must, at least 7 days before serving a regulatory information notice—
- (a) notify, in writing, the service provider, or the associate of a service provider, named in the notice of the AER's intention to serve the regulatory information notice; and

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- (b) invite the service provider, or the associate, to make written representations, within 7 days after receiving the notice under paragraph (a), as to whether the AER should serve the regulatory information notice on them.
- (2) A service provider, or an associate of a service provider, may make written representations to the AER within 7 days after receiving a notice under subsection (1)(a).
- (3) Representations under subsection (2) may include representations about—
  - (a) the content of the regulatory information notice; or
  - (b) additional costs (whether ongoing or otherwise), that the service provider or associate may incur in complying with the regulatory information notice.
- (4) The AER must consider the written representations made under subsection (2) before making its decision to serve the regulatory information notice.

**Subdivision 3—Form and content of regulatory information instruments**

**48. Form and content of regulatory information instrument**

- (1) A regulatory information instrument—
    - (a) must describe the information required to be—
      - (i) provided to the AER; or
      - (ii) prepared, maintained or kept in the particular manner and form specified in the instrument; and
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- (b) may specify the manner and form in which the information described in the instrument is required to be—
    - (i) provided to the AER; or
    - (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; or
    - (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 service provider or the associate of a service provider to whom it is directed.
  - (3) In the case of a general regulatory information order, the order must specify the class of service provider, or associate of a service provider, to whom the order applies.

**49. Further provision about the information that may be described in a regulatory information instrument**

Without limiting section 48(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);
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- (b) information that is or may be derived from other information in the possession or control of the service provider or the associate to whom the instrument applies;
- (c) information to enable the AER to verify whether the service provider to whom the instrument applies is or has been complying with Parts 3.5 and 3.6 of Chapter 3;
- (d) information to enable the AER to verify any requirements for the allocation of costs between natural gas services in accordance with—
  - (i) the Rules; or
  - (ii) an applicable access arrangement.

**50. Further provision about manner in which information must be provided to AER or kept**

Without limiting section 48(1)(b), a regulatory information instrument may specify the information described 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—

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- (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;

**Example**

The AER may require a 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 the service provider, or of an associate of a service 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 the service provider or associate to whom the instrument applies.

**Subdivision 4—Compliance with Regulatory Information Instruments**

**51. 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.

**52. Compliance with general regulatory information order**

- (1) On publication of a general regulatory information order in accordance with section 45(2), 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 53.

**53. Exemptions from compliance with general regulatory information order**

- (1) The AER may exempt a person, or a class of person, from complying with section 52—
  - (a) unconditionally or on specified conditions; or
  - (b) wholly or to such an extent as is specified.
- (2) An exemption under this section must be in writing.

**54. Assumptions where there is non-compliance with regulatory information instrument**

- (1) This section applies if—
  - (a) under a regulatory information instrument the AER requires—
    - (i) a 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 service provider; or
    - (ii) an associate of a service provider to provide information to the AER that is relevant to the making of an AER economic regulatory decision relating to the service provider; and

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- (b) the service provider or associate—
  - (i) does not provide the information to the AER in accordance with the applicable regulatory information instrument; or
  - (ii) provides information in accordance with the applicable regulatory information instrument but that information is insufficient for the AER to make its decision.
- (2) Without limiting sections 51 and 52 and despite anything to the contrary in this Law or the Rules, the AER—
  - (a) may make the AER economic regulatory decision on the basis of the information the AER has at the time it makes that decision; and
  - (b) in making that decision, may make reasonable assumptions (including assumptions adverse to the interests of the service provider) about any aspect of that decision.

**Subdivision 5—General**

**55. Providing AER false and misleading information**

A person must not, in complying with a regulatory information instrument requiring the person to provide information to the AER, provide information to the AER that is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$2000;
- (b) in the case of a body corporate—\$10 000.

**56. Person cannot rely on duty of confidence to avoid compliance with regulatory information instrument**

- (1) A person may 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.

**57. Legal professional privilege not affected**

Nothing in a regulatory information instrument or section 51 or 52 prevents a person from refusing to provide to the AER information described in a regulatory information instrument because that information is information in respect of which the person claims legal professional privilege.

**58. Protection against self-incrimination**

- (1) A natural person to whom section 51 applies is not required 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) A natural person to whom section 52 applies is not required 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.

**Division 5—Service provider performance reports**

**59. Preparation of service provider performance reports**

- (1) The AER may prepare a report on the financial or operational performance of one or more service providers in providing pipeline services.
- (2) A report prepared under this section may include information provided to the AER by a person in compliance with a regulatory information instrument.
- (3) The AER may publish a report prepared under this section on its website.

**Division 6—Miscellaneous matters**

**60. Consideration by the AER of submissions or comments made to it under this Law**

If, under this Law, 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.

**61. Use of information provided under a notice under section 41 or a regulatory information instrument**

Despite anything to the contrary in Division 3 or 4, the AER may use information provided to it by a person in compliance with a notice under section 41 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, the Regulations or the Rules.

**62. 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 in respect of that breach or possible breach under Chapter 6; or
    - (ii) serve an infringement notice in accordance with Part 6.6 of Chapter 6 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.
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**PART 2.2—FUNCTIONS AND POWERS OF THE  
AUSTRALIAN ENERGY MARKET COMMISSION**

**Division 1—General**

**63. 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; and
  - (b) the market development functions conferred on it under this Law and the Rules; and
  - (c) determining whether pipeline services should or should not be light regulation services; and
  - (d) 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.

**64. 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.

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**65. 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 Division 2 of Part 8.2 of Chapter 8.

**66. 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.

**67. 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 78.

**Division 2—Rule making functions and powers of the  
AEMC**

**68. 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—

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- (a) regulating—
  - (i) access to pipeline services;
  - (ii) disputes about access to pipeline services;
  - (iii) the provision of pipeline services;

Note: The procedure for the making of a Rule by the AEMC is set out in Part 7.3 of Chapter 7.

- (b) any matter or thing contemplated by this Law, or is necessary or expedient for the purposes of this Law.
  - (2) Without limiting subsection (1)(a), 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, or the AEMC; 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);
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- (e) confer a function on the AER or the AEMC to make or issue guidelines, tests, standards, procedures or any other document (however described) in accordance with the Rules;
  - (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 or the AEMC 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;
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- (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) contain provisions of a savings or transitional nature consequent on the amendment or revocation of a Rule.

**69. AEMC must not make Rules so that Rules do not provide for economic regulation of pipeline services**

Subject to section 70, the AEMC must not make a Rule so that the Rules do not provide for all of the matters or things specified in items 7 to 14 of Schedule 1 to this Law.

**70. Rules must not provide for "total factor productivity" as alternative to "building blocks approach" unless Regulations allow it**

- (1) Unless the Regulations otherwise provide, the AEMC must not make a Rule so that the Rules provide for, or require, the application of the methodology known as "total factor productivity" as a regulatory economic methodology for the purpose of—
  - (a) making or approving an access arrangement (other than a limited access arrangement); or
  - (b) approving a variation to an applicable access arrangement (other than a limited access arrangement); or
  - (c) making an access determination.
- (2) However, the AEMC may make a Rule that provides for the application of the methodology known as "total factor productivity" as a regulatory economic methodology to inform and assist the AER in applying or analysing the application of the methodology known as the "building blocks approach" by the AER for the purpose of—
  - (a) making or approving an access arrangement (other than a limited access arrangement); or
  - (b) approving a variation to an applicable access arrangement (other than a limited access arrangement); or
  - (c) making an access determination.

**71. 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) In this section—

**"publicly available"**, in relation to 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, means—

- (a) publishing the standard, rule, specification, method or document on the AEMC's website; or
- (b) specifying a place from which the standard, rule, specification, method or document may be obtained or purchased (as the case requires).

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**Division 3—Committees, panels and working groups of the  
AEMC**

**72. 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**

**73. Definition**

In this Division—

**"MCE directed review"** means a review conducted in accordance with this Division.

**74. 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

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- (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.

**75. 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 one 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;

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- (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.

**76. Notice of MCE directed review**

- (1) The AEMC must publish notice of a MCE directed review on its website and in a newspaper circulating generally throughout Australia.
- (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.

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**77. 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**

**78. 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.

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- (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 340.

**Division 6—Miscellaneous matters**

**79. AEMC must maintain and make available up to date versions of the National Gas 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.

**80. Fees for services provided**

- (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.

**81. 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.

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- (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.
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## **CHAPTER 3—COVERAGE AND CLASSIFICATION OF PIPELINES**

### **PART 3.1—INTERPRETATION**

#### **82. Definitions**

In this Chapter—

**"additional ring fencing requirement"** means a requirement specified in an AER ring fencing determination;

**"associate contract prohibition"** means—

- (a) section 122; or
- (b) section 123; or
- (c) section 124;

**"compliance date"** means the day that is 6 months after the day a pipeline becomes a covered pipeline;

**"gas supply information"** means information held by a service provider (whether as a result of being created by the service provider or otherwise) that relates to—

- (a) the acquisition of natural gas by a person (whether for consumption purposes or otherwise); or
- (b) actual natural gas consumption patterns of a person;

**"marketing staff"** means an employee, consultant, independent contractor or agent of a service provider directly involved in sales, marketing or advertising (whether or not they are also involved in other activities) and includes the officers of the service

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provider to whom those persons report either directly or indirectly;

**"minimum ring fencing requirement"** means a requirement imposed on a service provider under Division 1 of Part 3.6;

**"recognised stock exchange"** means—

- (a) a stock exchange that is a member of the World Federation of Exchanges; or
- (b) a stock exchange that is prescribed by the Regulations to be a recognised stock exchange;

**"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 covered pipeline; or
- (b) to enable a service provider to provide balancing services in connection with a covered pipeline;

**"relevant confidential information"** means—

- (a) information given to the service provider in confidence by a user or prospective user that relates to—
    - (i) the use or possible use of a pipeline service by that user or prospective user; or
    - (ii) a person who acquires or proposes to acquire natural gas from a user or a prospective user for the purpose of on-selling that gas to another person; or
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- (iii) an end user; or
  - (iv) a supplier or producer of natural gas or processable gas;
  - (b) information about the use or possible use of a pipeline service by a user or prospective user in the possession or control of a service provider in respect of which the user or prospective user has informed the service provider to treat the information in confidence.
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**PART 3.2—COVERAGE OF PIPELINES**

**Division 1—Coverage determinations**

**83. 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; and
  - (b) must be accompanied by the fee prescribed by the Regulations (if any).

**84. Content of application**

An application under section 83 must—

- (a) identify the pipeline; and
- (b) specify whether the pipeline is, in the opinion of the applicant—
  - (i) a transmission pipeline; or
  - (ii) a distribution pipeline; and
- (c) include any information, or be accompanied by any document, that is prescribed by the Regulations.

**85. Application to be dealt with in accordance with regulatory scheme decision making procedure**

On receiving an application under section 83, the NCC must deal with it in accordance with Division 1 of Part 8.5 of Chapter 8.

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**86. NCC coverage recommendation**

(1) The NCC, within 4 months after receiving an application under section 83, must make a coverage recommendation recommending 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: The NCC may extend the time within which it must make a coverage recommendation: see Division 3 of Part 8.5 of Chapter 8.

(2) A coverage recommendation must—

- (a) be in writing; and
- (b) identify the pipeline the subject of the recommendation; and
- (c) include a reference to a website at which a full description of the pipeline can be inspected; and
- (d) state the terms of the recommendation, applying section 87, and the reasons for it; and
- (e) include the NCC's pipeline initial classification decision and state the reasons of the NCC for making that decision; and
- (f) include any other information that is prescribed by the Regulations.

(3) A recommendation under this section may recommend an outcome different from the outcome sought in the application under section 83.

(4) A coverage recommendation must be delivered to the relevant Minister without delay.

**87. 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.

**88. 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 83 as a transmission pipeline or a distribution pipeline (an "**initial classification decision**"). In doing so, the NCC must apply the pipeline classification criterion.

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- (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) If, under this section, the NCC determines the pipeline the subject of the application under section 83 is also a cross-boundary distribution pipeline, the NCC must determine, as part of an initial classification decision, 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.

**89. Relevant Minister's determination on application**

- (1) The relevant Minister must, within 30 days after receiving a coverage recommendation, decide whether or not to make a coverage determination in respect of the pipeline to which the recommendation relates.

Note: The relevant Minister may extend the time within which the Minister must make a decision under subsection (1): see Division 3 of Part 8.5 of Chapter 8.

- (2) In deciding whether to make a coverage determination under this section, the relevant Minister—
    - (a) must give effect to the pipeline coverage criteria; and
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- (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 (but is not bound by) the coverage recommendation; and
    - (iii) may take into account any relevant submissions and comments made to the NCC under Division 1 of Part 8.5 of Chapter 8 in relation to the application.
  - (3) 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.
  - (4) A coverage determination or a decision not to make a coverage determination must—
    - (a) be in writing; and
    - (b) identify the pipeline the subject of the determination or decision; and
    - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
    - (d) state the terms of the determination or decision, applying subsections (2) and (3), and the reasons for it.
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- (5) A coverage determination may have an outcome different to the outcome—
  - (a) sought in the application under section 83; or
  - (b) of the coverage recommendation.
- (6) A coverage determination must specify the date the determination takes effect.

**90. 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 operation.

**Division 2—Coverage revocation determinations**

**91. Applications 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; and
  - (b) must be accompanied by the fee prescribed by the Regulations (if any).

**92. Content of application**

An application under section 91 must—

- (a) identify the covered pipeline the subject of the application; and
  - (b) include any information, or be accompanied by any document, that is prescribed by the Regulations.
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**93. Application to be dealt with in accordance with regulatory scheme decision making procedure**

On receiving an application under section 91, the NCC must deal with it in accordance with Division 1 of Part 8.5 of Chapter 8.

**94. NCC coverage revocation recommendation**

- (1) The NCC, within 4 months after receiving an application under section 91, must make a recommendation to the relevant Minister as to whether the covered pipeline the subject of the application—
  - (a) should continue to be a covered pipeline; or
  - (b) should not be a covered pipeline.

Note: The NCC may extend the time within which it must make a coverage revocation recommendation: see Division 3 of Part 8.5 of Chapter 8.

- (2) A recommendation under this section must—
    - (a) be in writing; and
    - (b) identify the covered pipeline the subject of the recommendation; and
    - (c) include a reference to a website at which a full description of the covered pipeline can be inspected; and
    - (d) state the terms of the recommendation, applying section 95, and the reasons for it; and
    - (e) include any other information that is prescribed by the Regulations.
  - (3) A recommendation under this section may recommend an outcome different from the outcome sought in the application under section 91.
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- (4) A recommendation under this section must be delivered to the relevant Minister without delay.

**95. 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.

**96. Relevant Minister's determination on application**

- (1) The relevant Minister must, within 30 days after receiving a coverage revocation recommendation, decide whether or not to make a coverage revocation determination in respect of the pipeline to which the recommendation relates.

Note: The relevant Minister may extend the time within which the Minister must make a decision under subsection (1): see Division 3 of Part 8.5 of Chapter 8.

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- (2) In deciding whether to make a determination under this section, 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 (but is not bound by) the coverage revocation recommendation; and
      - (iii) may take into account any relevant submissions and comments made to the NCC under Division 1 of Part 8.5 of Chapter 8 in relation to the application.
  - (3) 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.
  - (4) A coverage revocation determination or a decision not to make a coverage revocation determination must—
    - (a) be in writing; and
    - (b) identify the covered pipeline the subject of the determination or decision; and
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- (c) include a reference to a website at which a full description of the covered pipeline can be inspected; and
  - (d) if there is a coverage determination in relation to the covered pipeline the subject of the application, refer to the coverage determination; and
  - (e) state the terms of the determination under this section, applying subsections (2) and (3), and the reasons for it.
- (5) A coverage revocation determination may have an outcome different to the outcome—
- (a) sought in the application under section 91; or
  - (b) of the coverage revocation recommendation.
- (6) A coverage revocation determination must specify the date the determination takes effect.

**97. 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.

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**PART 3.3—COVERAGE OF PIPELINES THE SUBJECT OF  
TENDER PROCESS**

**98. Application for approval of tender process as a  
competitive tender process**

- (1) A person who wishes to conduct a tender for the construction of a pipeline by means of which pipeline services will be provided, may apply to the AER for it to approve the tender process as a competitive tender process.
- (2) An application must—
  - (a) specify the pipeline services proposed to be provided by means of the pipeline; and
  - (b) specify the terms and conditions for access to the pipeline services specified; and
  - (c) be in accordance with the Rules.

**99. AER must approve or refuse to approve tender  
process as a competitive tender process**

- (1) The AER must, within 6 months after it receives an application under section 98, by notice in writing, approve or refuse to approve the tender process as a competitive tender process.
  - (2) The AER must not approve a tender process as a competitive tender process unless—
    - (a) it is satisfied that reasonable terms and conditions of access to any pipeline service specified under section 98(2)(a) will be the result of the process; and
    - (b) it is satisfied that the tender process meets the requirements prescribed by the Rules.
  - (3) If the AER approves the tender process as a competitive tender process, it may specify in the notice the period for which the decision is in force.
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- (4) The AER may, by writing, extend that period by a specified period. The AER may do so more than once.

**100. Pipeline becomes a covered pipeline on approval of tender process as competitive tender process**

- (1) A pipeline in respect of which the AER has approved a tender process as a competitive tender process is deemed to be a covered pipeline on and from the date of that approval.
- (2) The pipeline does not cease to be a covered pipeline until a coverage revocation determination is made in respect of that pipeline.

**101. Report on conduct of tender process**

- (1) An applicant under section 98(1) must give to the AER a written report on the conduct of the tender process within 2 months after the tenderer is chosen.
- (2) A report must—
  - (a) set out the basis on which the tenderer was chosen; and
  - (b) include any other information specified by the Rules.
- (3) After the AER receives the report, it may ask the applicant under section 98(1), by notice in writing, to give the AER further information in relation to the conduct of the tender process.

**102. Revocation of tender approval decision at discretion of the AER**

- (1) The AER may, by writing, revoke a decision to approve a tender process as a competitive tender process if it is satisfied that—
    - (a) the assessment of the tenders was not in accordance with that process; or
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- (b) a term or condition for the provision of a pipeline service by means of a tender approval pipeline is unreasonable having regard to the terms and conditions of the applicable access arrangement.

Note 1: On the date a decision is made to revoke a tender approval decision, a service provider must comply with section 157.

Note 2: See also sections 182 and 184.

- (2) Subject to this section, the AER may only revoke a decision to approve a tender process on the ground set out in subsection (1)(a) within one month after receiving a report under section 101.
  - (3) Before making a decision under subsection (1), the AER must give the applicant under section 98(1), and the service provider providing the pipeline service specified under section 98(2)(a), a written notice—
    - (a) stating that the AER is proposing to make such a decision and the reasons for it; and
    - (b) inviting the person to make a written submission to the AER on the proposal; and
    - (c) stating that any submission must be made within the period of 2 months after the notice is given.
  - (4) The one month time limit in subsection (2) must be calculated on the basis that time does not run during a period—
    - (a) commencing on the asking for further information by AER under section 101(3); and
    - (b) ending on the giving of the information asked for.
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(5) In this section—

**"tender approval pipeline"** means a pipeline constructed or to be constructed following a tender process approved as a competitive tender process in a tender approval decision.

**103. Mandatory revocation of tender approval decision by AER**

(1) If—

- (a) the AER approves a tender process as a competitive tender process; and
- (b) the AER gives the applicant a notice under section 101(3); and
- (c) the applicant does not comply with the notice within the period of 2 months beginning on the day on which the notice is given,

the AER must, by writing, revoke the tender approval decision at the end of that period. The AER must give notice of the revocation to the applicant.

(2) If—

- (a) the AER approves a tender process as a competitive tender process; and
- (b) the applicant does not comply with section 101(1),

the AER must, by writing, revoke the tender approval decision. The AER must give notice of the revocation to the applicant.

Note 1: On the date a decision is made to revoke a tender approval decision, a service provider must comply with section 157.

Note 2: See also sections 182 and 184.

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Part 3.3—Coverage of Pipelines the Subject of Tender Process

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**104. When does revocation take effect?**

A decision under section 102 or 103 only takes effect on the same day that an access arrangement that applies to the pipeline services provided or to be provided by the pipeline to which the revoked tender approval decision relates is—

- (a) approved by the AER under Division 2 of Part 4.3 of Chapter 4; or
- (b) made by the AER under Division 3 of Part 4.3 of Chapter 4.

Note: See also section 157(1)(b).

**105. Notification of AEMC of approval of tender process as competitive tender process or revocation**

The AER must notify, in writing, the AEMC of—

- (a) every tender approval decision; and
- (b) every revocation of a tender approval decision under section 102 or 103.

**106. Withdrawal of applications under this Part**

- (1) A person who has made an application under section 98 may withdraw the application at any time before a decision is made on that application.
  - (2) A withdrawal of an application in accordance with this section must be—
    - (a) in writing; and
    - (b) given to the AER.
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**PART 3.4—COVERAGE FOLLOWING APPROVAL OF  
VOLUNTARY ACCESS ARRANGEMENT**

**107. Certain pipelines become covered pipelines on  
approval of voluntary access arrangement**

A pipeline by means of which pipeline services (to which a voluntary access arrangement applies) are provided, or are to be provided, is deemed to be a covered pipeline—

- (a) on and from the day that arrangement takes effect; and
- (b) until—

- (i) the expiry of that arrangement; or
- (ii) a coverage revocation determination is made in respect of that pipeline,

whichever occurs first.

**108. Applications for coverage may be made before  
expiry of voluntary access arrangement**

An application under Part 3.2 for coverage of a pipeline to which section 107 applies can be made before the expiry of the voluntary access arrangement which applies to pipeline services provided by means of that pipeline only if the coverage sought in the application is to commence from, or after, the expiry of that arrangement.

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**PART 3.5—OVERRIDING DUTIES FOR PROVISION OF  
PIPELINE SERVICES BY COVERED PIPELINES**

**109. Service provider must be legal entity of a specified  
kind to provide pipeline services by covered pipeline**

A 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 within the meaning of the *Corporations Act 2001* of the Commonwealth; 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 covered pipeline together with another person referred to in paragraph (a) to (d).

**110. Preventing or hindering access**

- (1) A person who is—
  - (a) a service provider who provides a pipeline service by means of a covered pipeline; 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 covered pipeline; or

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- (ii) as a result of an access determination is entitled to a pipeline service provided by means of a 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 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).
- (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

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- 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.

**111. 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
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request, offer to supply the gas at the exit flange on the terms and conditions (including price) stated in accordance with this section.

(4) In this section—

**"producer"** means a person who carries on a business of producing natural gas.

**112. Service provider must comply with queuing requirements**

A service provider must, in providing a pipeline service by means of a covered pipeline, comply with the queuing requirements of an applicable access arrangement.

**113. Disclosure of relevant confidential information prohibited**

- (1) A service provider must not disclose relevant confidential information or gas supply information.
- (2) A service provider must take all practicable steps to ensure that relevant confidential information or gas supply information is not disclosed to any other person.

**114. Use of relevant confidential information for purpose other than purpose for which it's given prohibited**

- (1) A service provider must not use relevant confidential information or gas supply information given to the service provider for a purpose other than the purpose for which that information was given.
- (2) A service provider must take all practicable steps to ensure that relevant confidential information or gas supply information given to a service provider is not used for a purpose other than the purpose for which that information was given.

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**115. Exceptions from duties in relation to disclosure and use of information given in confidence**

Section 113 or section 114 does not apply if—

- (a) the user or prospective user who gave the relevant confidential information or gas supply information, or to whom the relevant confidential information or gas supply information relates, consents—
  - (i) to the disclosure of the information; or
  - (ii) to the use for the purpose it is used; or
- (b) the relevant confidential information or gas supply information comes into the public domain otherwise than by disclosure by the service provider; or
- (c) the disclosure of the relevant confidential information or gas supply information is necessary in order for the service provider to comply with—
  - (i) this Law or any other law of this jurisdiction; or
  - (ii) a law of another participating jurisdiction; or
  - (iii) an order of a court or tribunal of this jurisdiction or another participating jurisdiction; or
  - (iv) the listing rules of a recognised stock exchange.

**116. Service provider must disclose gas supply information in certain cases**

- (1) Despite anything to the contrary in this Part or at law, or under any agreement, a service provider must disclose gas supply information to a user or prospective user, or end user, if that user or prospective user or end user—
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- (a) requests that information; and
  - (b) in the case of a request by a user or prospective user, has the written authority of the person to whom it relates for the user or prospective user to have that information.
- (2) A service provider may charge a reasonable fee for the disclosure of the gas supply information requested.
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Part 3.6—Structural and Operational Separation Requirements (Ring Fencing)

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**PART 3.6—STRUCTURAL AND OPERATIONAL SEPARATION REQUIREMENTS (RING FENCING)**

**Division 1—Minimum ring fencing requirements**

**117. Carrying on of related businesses prohibited**

A service provider must not, on and from the compliance date—

- (a) provide a pipeline service by means of a covered pipeline; and
- (b) carry on a related business.

**118. Marketing staff and the taking part in related businesses**

- (1) A service provider must, on and from the compliance date, ensure that its marketing staff are not also employees, consultants, independent contractors or agents of an associate that takes part in a related business.
- (2) A service provider must, on and from the compliance date, ensure that none of its employees, consultants, independent contractors or agents are marketing staff of an associate that takes part in a related business.

**119. Accounts that must be prepared, maintained and kept**

A service provider must, on and from the compliance date, prepare, maintain and keep, in accordance with the Rules—

- (a) separate accounts in respect of pipeline services provided by means of every covered pipeline owned or operated by the service provider; and

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Part 3.6—Structural and Operational Separation Requirements (Ring  
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- (b) a consolidated set of accounts in respect of the whole of the business of the service provider.

**Division 2—Additional ring fencing requirements**

**120. 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 service provider or associate of a service provider named in the determination to do a thing specified in the determination (an "**additional ring fencing requirement**").
- (2) In making an AER ring fencing determination the AER must have regard to the likely costs that may be incurred by the service provider or the associate in complying with an additional ring fencing requirement specified in the determination.
- (3) An additional ring fencing requirement specified in an AER ring fencing determination must be consistent with at least one of the following principles—
  - (a) a service provider must ensure that the service provider provides pipeline services to its associates as if the pipeline services being provided by the service provider are being provided to an entity different from, and unrelated to, the service provider;
  - (b) users and prospective users must have sufficient information in order to determine whether a service provider is complying with paragraph (a).

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(4) Without limiting what may be specified as an additional ring fencing requirement, the AER, in an AER ring fencing determination, may specify—

- (a) a service provider must ensure that its business and business activities are conducted, structured and arranged in the particular manner specified;

**Example 1**

An AER ring fencing determination may specify that persons employed or engaged by the service provider in relation to the provision of pipeline services are not also employed or engaged, or agents of, an associate of the service provider that takes part in a related business and how this must be effected.

**Example 2**

An AER ring fencing determination may specify that the service provider must ensure that it 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 and independent contractors, so that certain specified employees or persons engaged by the service provider do not have access to relevant confidential information or gas supply information.

- (b) a service provider must 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.

(5) The AER must—

- (a) notify, in writing, the service provider or associate named in the AER ring fencing determination of the making of that determination; and
- (b) give the service provider or associate a copy of the AER ring fencing determination.
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- (6) On receipt of a notification under subsection (5), a service provider must comply with every additional ring fencing requirement specified in the AER ring fencing determination.

**Division 3—AER ring fencing exemptions**

**121. Exemptions from minimum ring fencing requirements**

The AER, subject to and in accordance with the Rules, may exempt a service provider from—

- (a) the requirement under section 117; or
- (b) a requirement under section 118; or
- (c) the requirement under section 119.

**Division 4—Associate contracts**

**122. Associate contracts inconsistent with Part 3.5 and minimum and additional ring fencing requirements prohibited**

- (1) A service provider must not—
- (a) enter into an associate contract; or
  - (b) give effect to a provision of an associate contract,  
that is inconsistent with Part 3.5, a minimum ring fencing requirement or an additional ring fencing requirement unless—
    - (c) that associate contract is an approved associate contract; or
    - (d) that provision is contained in an approved associate contract.
- (2) Subsection (1) does not apply to a service provider that enters into an associate contract, or gives effect to a provision of an associate contract, that is inconsistent with a minimum ring fencing
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requirement in respect of which the service provider has been exempted under section 121 from complying.

**123. Service provider must not enter into associate contracts that have anti-competitive effect**

A service provider must not—

- (a) enter into an associate contract; or
- (b) 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—

- (c) that associate contract is an approved associate contract; or
- (d) that provision is contained in an approved associate contract.

**124. Service provider must not enter into associate contracts inconsistent with ring fencing principle in section 120(3)(a)**

(1) A service provider must not—

- (a) enter into an associate contract; or
- (b) give effect to a provision of an associate contract,

that has a prohibited effect unless—

- (c) that associate contract is an approved associated contract; or
- (d) that provision is contained in an approved associate contract.

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(2) In this section—

**"prohibited effect"** means an effect other than the effect that the service provider provides pipeline services to its associates as if the pipeline services being provided are being provided to an entity different from, and unrelated to, the service provider.

**125. Approval of associate contracts etc.**

- (1) A service provider may submit for approval to the AER—
  - (a) a proposed associate contract; or
  - (b) a proposed variation to an associate contract; or
  - (c) a proposed variation to an approved associate contract,(an **"associate contract proposal"**).
- (2) Subject to section 127, the AER may, in writing, approve or refuse to approve an associate contract proposal as an approved associate contract.
- (3) In deciding whether to approve or refuse to approve an associate contract proposal as an approved associate contract, the AER must have regard to whether it is reasonable, in all the circumstances, to approve the associate contract proposal as an approved associate contract.
- (4) A decision made under this section must—
  - (a) set out the reasons for the decision; and
  - (b) be given to the service provider without delay.

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**126. Approved associate contracts not to be taken to be in breach of associate contract prohibitions**

- (1) If the AER approves an associate contract proposal as an approved associate contract, the service provider or associate that enters into an approved associate contract or gives effect to a provision of an approved associate contract is not to be taken to be in breach of an associate contract prohibition.
- (2) Subsection (1) applies despite anything to the contrary in this Law.

**127. Deemed approval of associate contract proposal if AER does not make decision within 30 days**

- (1) Subject to this section, if the AER does not make a decision under section 125 within 30 days after receiving the application, the AER is deemed to have made a decision approving the associate contract proposal as an approved associate contract.
- (2) The 30 day time limit in subsection (1) must be calculated on the basis that time does not run during the period within which a service provider complies or must comply with—
  - (a) a notice under section 41; or
  - (b) a regulatory information notice.

**128. AER must be notified of, and given, all associate contracts entered into**

- (1) A service provider, within 7 days after entering into an associate contract, must—
  - (a) notify, in writing, the AER that the provider has entered into an associate contract (whether or not that contract is an approved associate contract); and

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- (b) give a copy of the associate contract to the AER.
  - (2) Subsection (1)(b) applies despite anything to the contrary at law, or in the associate contract, that is inconsistent with the giving of the associate contract to the AER.
  - (3) A person incurs, by complying with this section, no liability for breach of contract, breach of confidence or any other civil wrong.
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## CHAPTER 4—ACCESS TO PIPELINE SERVICES

### PART 4.1—INTERPRETATION

#### 129. Definitions

In this Chapter—

**"access arrangement draft decision"** means a decision of the AER under section 170;

**"access arrangement expiry date"** means the date specified in an applicable access arrangement as the date on which the applicable access arrangement expires;

**"access dispute"** means a dispute between a user or prospective user and a service provider about one or more aspects of access to a pipeline service;

**"access dispute pipeline"** means a covered pipeline used or that could be used to provide a pipeline service that is the subject of an access dispute;

**"capacity expansion"** means the expansion of the capacity of an access dispute pipeline;

**"capacity trading requirements"** means terms and conditions providing for the subcontracting by a user of all or part of its contracted capacity and the method by which that subcontracting may be effected;

**"contract carriage basis"** means a basis for managing the supply of pipeline services provided by means of a pipeline under which—

- (a) the service provider usually manages its ability to provide pipeline services primarily by requiring users to use no

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more than the quantity of pipeline service specified in a contract; and

- (b) users are usually required to enter into a contract that specifies a quantity of pipeline service; and
- (c) charges for the use of a pipeline service are usually based at least in part upon the quantity of pipeline service specified in a contract; and
- (d) a user usually has the right to trade its right to obtain a pipeline service to another user;

**"contract carriage pipeline"** means a pipeline by means of which a service provider provides pipeline services on a contract carriage basis;

**"contract carriage user"** means a user to whom a pipeline service is provided by means of a contract carriage pipeline;

**"contracted capacity"** means that part of the capacity of a covered pipeline that has been reserved for a user under a contract entered into with the service provider;

**"delivery and receipt point notification requirements"** means the requirements set out in section 130;

**"dispute hearing"** means a hearing conducted by the AER for the purpose of making an access determination;

**"incremental capacity"** means an increase in capacity attributable to a new facility;

**"incremental user"** means a user who can only be provided with a pipeline service by means of incremental capacity;

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**"market carriage basis"** means a basis for managing supply of pipeline services provided by means of a pipeline under which—

- (a) the service provider does not usually manage its ability to provide pipeline services primarily by requiring users to use no more than the quantity of pipeline service specified in a contract; and
- (b) users are usually not required to enter a contract that specifies a quantity of pipeline service; and
- (c) charges for use of pipeline services are usually based on actual usage of pipeline services; and
- (d) a user does not usually have a right to trade its right to obtain a pipeline service to another user;

**"market carriage pipeline"** means a pipeline by means of which a service provider provides pipeline services on a market carriage basis;

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

- (a) in accordance with the extension and expansion requirements contained in an applicable access arrangement in respect of that covered pipeline; or
- (b) under this Law;

Note: See also sections 15 and 16.

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**"party"**, in relation to an access dispute, has the meaning given by section 196;

**"pre-submission conference"** means a conference—

- (a) about an access arrangement required to be submitted for approval; and
- (b) requested by a service provider under section 161;

**"prevailing tariff"** means—

- (a) in the case of a reference service, the applicable reference tariff;
- (b) in the case of a pipeline service other than a reference service, the rate for that service;

**"review submission date"**, in relation to an applicable access arrangement, means—

- (a) the date that is one year before the access arrangement expiry date; or
- (b) if the AER in approving or making the applicable access arrangement specifies another date in accordance with the Rules, that date;

**"safety of operation notification"** means a notification under section 197(2);

**"surcharge"** means a charge that is in addition to the charge that would apply under a reference tariff.

**130. Delivery and receipt point notification requirements**

- (1) For the purposes of Part 4.3, the following are the delivery and receipt point notification requirements—
- (a) a contract carriage user may, with the consent of the service provider, change a delivery point or receipt point at which the contract carriage user is provided a pipeline service; and
  - (b) the service provider must not unreasonably withhold its consent if a provision to the effect of paragraph (a) is included in an access arrangement.

- (2) In subsection (1)(a)—

**"delivery point"** means the point on a pipeline at which natural gas is delivered by a service provider to a user;

**"receipt point"** means the point on a pipeline at which natural gas is delivered by a user to a service provider to be hauled by the service provider through that pipeline.

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**PART 4.2—LIGHT REGULATION OF SERVICES PROVIDED  
BY MEANS OF COVERED PIPELINES**

**Division 1—Light regulation determinations**

**131. Application**

- (1) A service provider may apply to the AEMC for a determination that pipeline services provided or to be provided by means of a pipeline be light regulation services (a "**light regulation determination**").
- (2) An application may only be made in respect of all of the pipeline services provided or to be provided by means of the pipeline.
- (3) An application may be made even if at the time of the application the pipeline services are services to which an access arrangement approved by the AER under Division 2 of Part 4.3, or made by the AER under Division 3 of Part 4.3, applies.

Note: In such cases, a light regulation determination determining the services to be light regulation services will only take effect on the expiry of the relevant applicable access arrangement. See section 138(1)(b).

**132. Time by when application must be made**

An application under section 131 may be made—

- (a) within 30 days after the making of a coverage recommendation in respect of the pipeline by means of which the pipeline services the subject of the application are or are intended to be provided that a pipeline be a covered pipeline; or

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- (b) if paragraph (a) does not apply, within 30 days after the making of a coverage determination applying to the pipeline by means of which the pipeline services the subject of the application are or are intended to be provided; or
- (c) at any time before the expiry of an applicable access arrangement that applies to the pipeline services the subject of the application.

**133. Content of application**

An application under section 131 must—

- (a) be in writing; and
- (b) include a description of the pipeline services the subject of the application; and
- (c) include a full description of the pipeline with which the pipeline services the subject of the application are to be provided; and
- (d) include the reasons of the applicant as to why the pipelines services should be light regulation services; and
- (e) include any information, or be accompanied by any document, prescribed by the Regulations.

**134. Application to be dealt with in accordance with regulatory scheme decision making procedure**

On receiving an application under section 131, the AEMC must deal with it in accordance with Division 1 of Part 8.5 of Chapter 8.

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**135. AEMC's decision on application**

- (1) The AEMC, within 4 months after receiving an application under section 131, must decide whether or not to make a light regulation determination.

Note: The AEMC may extend the time within which it must make a decision under subsection (1): see Division 3 of Part 8.5 of Chapter 8.

- (2) A light regulation determination, or a decision not to make a light regulation determination, under this section, must—
- (a) be in writing; and
  - (b) include a description of the pipeline services the subject of the determination or decision; and
  - (c) identify the pipeline by means of which those pipeline services will be provided; and
  - (d) include a reference to a website at which the description of those pipeline services and a full description of the pipeline can be inspected; and
  - (e) state the terms of the determination or decision and the reasons for it.

**136. Matters AEMC must and may have regard to in making a light regulation determination**

In deciding whether to make a light regulation determination, the AEMC—

- (a) must have regard to—
  - (i) the form of regulation factors; and
  - (ii) any other matters it considers relevant; and

Note: The AEMC must also have regard to the national gas objective: See section 66.

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- (b) may take into account any submissions and comments made to the NCC under Division 1 of Part 8.5 of Chapter 8 for the purpose of making a coverage recommendation in relation to the application for the coverage of the pipeline by means of which the pipeline services the subject of an application under this Division are provided or are intended to be provided.

**137. AEMC must consult with the AER and NCC**

In deciding whether to make a light regulation determination, the AEMC must consult with the AER and the NCC.

**138. Commencement and expiry of light regulation determination**

- (1) A light regulation determination takes effect—
  - (a) in the case of pipeline services provided or to be provided by means of a pipeline to which a coverage determination applies—
    - (i) if the coverage determination is in effect—on the day the light regulation determination is made;
    - (ii) if the coverage determination is not in effect—on the day that coverage determination takes effect; and
  - (b) in the case of pipeline services to which an access arrangement approved by the AER under Division 2 of Part 4.3, or made by the AER under Division 3 of Part 4.3, applies—on the expiry of that arrangement.

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- (2) A light regulation determination continues in operation until—
- (a) it is revoked by operation of section 144(5);  
or
  - (b) a decision under section 148 takes effect.

**Division 2—Effect of light regulation determinations**

Note: A service provider that provides or intends to provide light regulation services must still comply with Parts 3.5 and 3.6 of Chapter 3 because those services are, or are intended to be, provided by means of a covered pipeline.

**139. Service provider not required to lodge access arrangement in relation to light regulation services**

Divisions 2 to 5 of Part 4.3 do not apply to a service provider that provides or intends to provide light regulation services.

Note: A service provider that provides or intends to provide light regulation services may nevertheless lodge a limited access arrangement in respect of those services under Division 1 of Part 4.3.

**140. Service provider must publish terms and conditions for access to light regulation services**

A service provider that provides or will provide light regulation services must publish on its website—

- (a) the prices for the provision of those services, whether or not there is a limited access arrangement applying to those services; and

Note: Copies of a limited access arrangement must be given to any person who requests a copy without charge: see section 189(1) and (2).

- (b) if there is no limited access arrangement applying to those services—the terms and conditions (other than the price) for the provision of those services.

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**141. Service provider must give undertaking not to engage in price discrimination**

A service provider that provides light regulation services (in respect of which there is no limited access arrangement) must give an undertaking to every user to the effect that the service provider will not engage in price discrimination unless that price discrimination—

- (a) is conducive to efficient service provision; or
- (b) can be justified on some other rational economic basis.

**142. Service provider must provide information about access negotiations for light regulation services**

A service provider that provides light regulation services—

- (a) must, as and when required by the AER, provide information requested by the AER (in a manner and form determined or approved by the AER) on access negotiations and the result of access negotiations in respect of the services; and
- (b) must report annually to the AER (in a manner and form approved by the AER) on access negotiations and the result of access negotiations in respect of the services.

**143. Publication of annual reports on access negotiations**

The AER may publish a report referred to in section 142(b) that it receives.

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**Division 3—Revocation of light regulation determinations**

**Subdivision 1—On advice from service providers**

**144. Advice by service provider that light regulation services should cease to be light regulation services**

- (1) A service provider may advise the AEMC that it wishes that the pipeline services provided by it cease to be light regulation services.
- (2) An advice under subsection (1) must be in writing.
- (3) On receipt of an advice under subsection (1), the AEMC must, without delay publish notice of that advice—
  - (a) on its website; and
  - (b) in a newspaper circulating generally throughout Australia.
- (4) On publication of a notice under subsection (3) the service provider must comply with section 157.
- (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—
  - (a) approved by the AER under Division 2 of Part 4.3; or
  - (b) made by the AER under Division 3 of Part 4.3.
- (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.

Note: A light regulation determination cannot be made again in relation to light regulation services the subject of a determination until a relevant access arrangement approved

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by the AER under Division 2 of Part 4.3 or made by the AER under Division 3 of Part 4.3 expires. See section 138(1)(b).

**Subdivision 2—On application by persons other than service providers**

**145. Application (other than by service provider) for revocation of light regulation determinations**

A person (other than the service provider) may apply to the AEMC for revocation of a light regulation determination.

**146. Content of application**

An application under section 145 must—

- (a) be in writing; and
- (b) identify the light regulation determination the subject of the application; and
- (c) identify the service provider providing the light regulation services; and
- (d) identify the covered pipeline by which the light regulation services are provided; and
- (e) include the reasons of the applicant as to why the light regulation determination should be revoked; and
- (f) include any information, or be accompanied by any document, prescribed by the Regulations.

**147. Application to be dealt with in accordance with regulatory scheme decision making procedure**

On receiving an application under section 145 the AEMC must deal with the application in accordance with Division 1 of Part 8.5 of Chapter 8.

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**Subdivision 3—Decisions in relation to applications by other  
persons**

**148. AEMC decision on application**

- (1) The AEMC, within 4 months after receiving an application under section 145, must decide whether to revoke a light regulation determination the subject of the application.

Note: The AEMC may extend the time within which it must make a decision under subsection (1): see Division 3 of Part 8.5 of Chapter 8.

- (2) A decision under this section must—
- (a) be in writing; and
  - (b) identify the light regulation determination the subject of the decision; and
  - (c) include a description of the light regulation services the subject of the decision; and
  - (d) identify the service provider providing the light regulation services; and
  - (e) identify the covered pipeline by which the light regulation services are provided; and
  - (f) state the terms of the decision and the reasons for it.

**149. Matters AEMC must and may have regard to  
whether to revoke a light regulation determination**

In making a decision under section 148, the AEMC—

- (a) must have regard to—
- (i) the form of regulation factors; and
  - (ii) any other matters it considers relevant;  
and

Note: The AEMC must also have regard to the national gas objective: See section 66.

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- (b) may take into account any submissions and comments made to the NCC under Division 1 of Part 8.5 of Chapter 8 for the purpose of making a coverage recommendation in relation to the application for the coverage of the pipeline by means of which the pipeline services the subject of an application under this Subdivision are being provided.

**150. AEMC must consult with the NCC and AER if the AER is not the applicant**

- (1) The AEMC must, in making a decision under section 148, consult with the NCC.
- (2) If the AER is not the applicant, the AEMC must, in making a decision under section 148, consult with the AER.

**151. Operation and effect of decision**

- (1) On the making of a decision under section 148 revoking a light regulation determination, the service provider must comply with section 157.
- (2) However, the decision under section 148 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—
  - (a) approved by the AER under Division 2 of Part 4.3; or
  - (b) made by the AER under Division 3 of Part 4.3.
- (3) The effect of a decision under section 148 revoking a light regulation determination is that the pipeline services to which the light regulation determination applied cease to be light regulation services.

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**Subdivision 4—Revocation if coverage determination not made**

**152. 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 4—Effect of pipeline ceasing to be covered pipeline**

**153. 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—

- (a) the light regulation determination is, by force of this section, revoked on the same day; and
- (b) to avoid doubt, the light regulation services to which that determination applied cease to be light regulation services on the same day.

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**Division 5—AEMC information gathering powers for this  
Part**

**154. Power to obtain information and documents in  
relation to functions and powers under this Part**

- (1) If the AEMC has reason to believe that a person is capable of providing information or producing a document that the AEMC requires for the performance or exercise of a function or power conferred on it under this Part, the AEMC may, by notice in writing, serve on that person a notice (a "**relevant notice**").
- (2) A relevant notice may require the person to—
  - (a) provide to the AEMC, 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 AEMC, 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).
- (3) A person must not—
  - (a) without reasonable excuse, refuse or fail to comply with a relevant notice; or
  - (b) in purported compliance with a relevant notice, provide information that is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$2000;
- (b) in the case of a body corporate—\$10 000.

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- (4) It is a reasonable excuse for the purposes of subsection (3)(a) if a person is not capable of complying with a relevant notice.
- (5) It is a reasonable excuse for a natural person to—
  - (a) fail to provide information of the kind referred to in subsection (1) to the AEMC; or
  - (b) fail to produce a document of the kind referred to in subsection (1) to the AEMC, or to a person specified in a relevant notice acting on behalf of the AEMC,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.
- (6) 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 AEMC; or
  - (b) fail to produce a document of the kind referred to in subsection (1) to the AEMC, or to a person specified in a relevant notice acting on behalf of the AEMC,on the ground of any duty of confidence.
- (7) 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.
- (8) This section does not require a person to—
  - (a) provide information 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

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- 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, 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.
- (9) A person incurs, by complying with a regulatory information instrument, no liability for breach of contract, breach of confidence or any other civil wrong.
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**PART 4.3—ACCESS ARRANGEMENTS**

**Division 1—Limited access arrangements for light  
regulation services**

**155. 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) a limited access arrangement to the AER for approval; and
  - (b) at any time after the approval of a limited access arrangement, submit a variation to the limited access arrangement for approval.
- (2) A service provider that submits a limited access arrangement under this section must, at the same time as submitting the limited access arrangement, submit access arrangement information.
- (3) For the purposes of this Division, access arrangement information that is submitted with a limited access arrangement is to be taken to form part of that limited access arrangement.

**156. Decisions on limited access arrangement proposals**

- (1) On receiving a limited access arrangement or a variation to a limited access arrangement, the AER must make a decision on the proposal in accordance with Division 2 of Part 8.5 of Chapter 8.

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- (2) In the decision, the AER may—
  - (a) in the case of a limited access arrangement, approve the limited access arrangement with or without variation;
  - (b) in the case of a variation to a limited access arrangement, approve the submitted variation to the limited access arrangement or approve another variation that is acceptable to the service provider, or refuse to approve the submitted variation.
- (3) A limited access arrangement approved under this section must not—
  - (a) make any provision for price or revenue regulation; or
  - (b) be inconsistent with section 330.
- (4) A limited access arrangement must, however, contain an undertaking, on the part of the service provider, not to engage in price discrimination unless the price discrimination—
  - (a) is conducive to efficient service provision; or
  - (b) can be justified on some other rational economic basis.
- (5) A dispute about access to light regulation services may be notified and dealt with under Part 4.5.
- (6) Nothing in subsection (5) is to be taken to limit how a dispute about access to light regulation services may be raised and dealt with.

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**Division 2—Access arrangements for non-light regulation services**

**Subdivision 1—Submission of access arrangements for approval**

**157. Submission of access arrangement in respect of pipeline services provided by means of covered pipeline**

- (1) Subject to sections 158 and 160, a service provider must submit to the AER, for approval, an access arrangement in respect of the pipeline services that are, or are to be provided, by the provider by means of a covered pipeline—
    - (a) within 90 days after the date of operation of the relevant coverage determination; or
    - (b) within 120 days after the service provider gives a report to the AER under section 101;
    - (c) within 90 days after the date of a decision, under section 102 or 103, to revoke a tender approval decision; or

Note: See also sections 104, 182 and 184.

    - (d) within 90 days after the date of a decision of the AEMC under section 135 not to make a light regulation determination; or
    - (e) within 90 days after the revocation of a light regulation determination under Division 3 of Part 4.2; or
    - (f) on or before the review submission date contained in an applicable access arrangement.
  - (2) Subsection (1) does not apply if the pipeline services that are, or are to be provided, by means of a covered pipeline are light regulation services.
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**158. AER may extend period of time by when access arrangement must be lodged**

- (1) The AER may extend the period within which a service provider is required to lodge an access arrangement for approval under section 157.
- (2) The AER may only extend the period on the request of a service provider, in writing, before the expiry of the period specified in section 157, or before the expiry of the period as extended under this section.
- (3) The AER may extend the period more than once.
- (4) However, it must not, in extending the period more than once, extend it so that the period, regardless of the number of extensions, exceeds 60 days.

**159. Voluntary submission of access arrangement in certain cases**

- (1) A service provider may voluntarily submit to the AER for approval an access arrangement in respect of the pipeline services that are, or are to be, provided by means of a pipeline that is not a covered pipeline.
- (2) However, a service provider who submits for approval an access arrangement under this section may, by notice in writing to the AER, withdraw that access arrangement at any time before the AER makes an access arrangement final decision in relation to that access arrangement.
- (3) If an access arrangement is withdrawn in accordance with this section, it is taken for the purposes of this Law to have never been submitted.

**160. AER may require submission of separate access arrangements or consolidation of access arrangements**

- (1) On receiving an access arrangement, for approval, the AER may direct, in writing, the service provider that submitted the access arrangement to do any one or more of the following—
  - (a) to submit separate access arrangements in respect of the pipeline services that are, or are to be provided, by that service provider by means of different parts of a covered pipeline;
  - (b) if the pipeline services provided or to be provided by the service provider are or are to be provided by means of one or more covered pipelines, to submit one access arrangement in respect of all the pipeline services.
- (2) In giving a direction under subsection (1), the AER must have regard to—
  - (a) the description of the covered pipeline in—
    - (i) the coverage determination applying to the covered pipeline; or
    - (ii) the tender approval decision applying to the pipeline to be constructed;
  - (b) the pipeline services provided or to be provided by means of the covered pipeline or covered pipelines.
- (3) A service provider must comply with a direction under subsection (1).

**161. Pre-submission conferences may be requested by service provider**

- (1) A service provider who is required to submit an access arrangement for approval under section 157 or under a direction under section 160 may request the AER to meet with the provider about the access arrangement before the provider submits that access arrangement.
- (2) The AER must comply with a request only if the request is reasonable.

**162. Notification by AER of receipt of access arrangement for approval**

- (1) Subject to section 163, the AER must—
    - (a) publish on its website and in a newspaper circulating generally throughout Australia, a notice that—
      - (i) states that an access arrangement has been received by the AER for approval and the name of the service provider who submitted the access arrangement; and
      - (ii) requests written submissions in relation to the access arrangement on or before the date specified in the notice; and
      - (iii) includes any other information prescribed by the Regulations; and
    - (b) publish on its website the access arrangement.
  - (2) The date specified in a notice under subsection (1)(a) must not be a date that is less than 21 days after the date the notice is published.
-

**163. Time within which AER must comply with notification requirements**

- (1) The AER must comply with section 162 as soon as practicable unless it has served a regulatory information notice on the service provider who submitted the access arrangement for approval that relates to that access arrangement.
- (2) If the AER has served a regulatory information notice on the service provider who submitted the access arrangement for approval, the AER must comply with section 162 within 45 days after receiving that access arrangement.
- (3) The AER must comply with subsection (2) regardless of whether the service provider complies with the regulatory information notice.

**Subdivision 2—Content of access arrangement submitted for approval**

**164. Submission of access arrangement information**

- (1) A service provider that submits an access arrangement to the AER under Subdivision 1 must, at the same time as submitting the access arrangement, submit access arrangement information.
- (2) For the purposes of this Division, access arrangement information that is submitted with an access arrangement is to be taken to form part of that access arrangement.

**165. Content of access arrangements submitted for approval**

- (1) A service provider who, under Subdivision 1, submits an access arrangement to the AER for approval must in the access arrangement include, in accordance with the Rules—

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- (a) a full description of the pipeline to which the access arrangement relates; and
  - (b) a statement as to whether the pipeline is a market carriage pipeline or contract carriage pipeline; and
  - (c) a description of all the pipeline services provided or to be provided by means of the pipeline; and
  - (d) queuing requirements; and
  - (e) if the pipeline is a contract carriage pipeline—
    - (i) capacity trading requirements; and
    - (ii) provisions that give effect to the delivery and receipt point notification requirements; and
  - (f) extension and expansion requirements; and
  - (g) information required to be included in that access arrangement by—
    - (i) a general regulatory information order; or
    - (ii) a regulatory information notice; or
    - (iii) the Rules; and
  - (h) except in the case of an access arrangement submitted under section 159, a proposed review submission date; and
  - (i) a proposed access arrangement expiry date.
- (2) A service provider may also include, in the access arrangement, any other terms or conditions about access the service provider considers relevant.

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**166. Designation of pipeline services as reference services in access arrangement submitted for approval**

- (1) A service provider who, under Subdivision 1, submits an access arrangement to the AER for approval must also, in the access arrangement—
    - (a) designate as a reference service each pipeline service provided or to be provided by means of the pipeline—
      - (i) that is of a kind declared or specified as a reference service under the Rules; or
      - (ii) the service provider considers is likely to be a reference service, having regard to—
        - (A) whether the service is likely to be sought by a significant part of the market for that service; or
        - (B) the form of regulation factors; and
    - (b) include, in accordance with the Rules, the terms and conditions on which each of the reference services designated under paragraph (a) will be provided.
  - (2) Without limiting subsection (1)(b), the terms and conditions referred to in that paragraph must include, in accordance with the Rules—
    - (a) the proposed tariff or tariffs for each designated reference service; and
    - (b) how the proposed tariff or tariffs for each designated reference service has been determined; and
    - (c) current and previous tariffs for each designated reference service (if any).
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- (3) An access arrangement submitted to the AER for approval under this Division must be accompanied by the service provider's reasons explaining its designation of pipeline services as reference services.

**167. Contents of capacity trading requirements for contract carriage pipelines**

The capacity trading requirements that must be included in an access arrangement must include, as part of those requirements, provisions that give effect to all of the following—

- (a) a contract carriage user may, without the service provider's consent, subcontract contracted capacity to another person (the "**third party**") on terms under which the contract carriage user's rights and obligations as against the service provider remain unaffected; and
- (b) a contract carriage user that enters into a sub-contract referred to in paragraph (a), must notify the service provider of the subcontract, its likely duration, the identity of the third party, the extent of the contracted capacity subject to the sub-contract, and any other information required under the regulations; and
- (c) a contract carriage user may, with the consent of the service provider, subcontract contracted capacity to another person; and
- (d) the service provider must not unreasonably withhold its consent if a provision to the effect of paragraph (c) applies.

**168. Service provider prohibited from submitting further information or variations to the access arrangement**

- (1) A service provider cannot submit further information relating to, or revise, an access arrangement submitted for approval under Subdivision 1 after the AER publishes notice of receipt of the access arrangement in accordance with section 162.
- (2) This section applies subject to—
  - (a) a regulatory information instrument or notice under section 41 applying to the service provider; and
  - (b) Subdivisions 3 and 4; and
  - (c) section 169.

**169. AER may consent to service provider submitting further information or making revisions in certain cases**

- (1) A service provider may request the consent of the AER to submit further information relating to, or to revise, an access arrangement submitted for approval under Subdivision 1 before the AER makes an access arrangement final decision in relation to that arrangement if there has been a material change in the circumstances of the service provider that is relevant to that arrangement.
  - (2) A request under this section must—
    - (a) set out the material change of circumstances and the cause of that change; and
    - (b) state when the service provider became aware of the change of circumstances; and
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- (c) include a description of—
  - (i) the further information the service provider wishes to submit; or
  - (ii) the revision to the access arrangement the service provider wishes to make.
- (3) On receiving a request under this section, the AER may consent or refuse to consent to, as the case requires—
  - (a) the further information being submitted; or
  - (b) a revision to the access arrangement being made.
- (4) A decision under subsection (3) must—
  - (a) be in writing; and
  - (b) include the reasons for the decision.

**Subdivision 3—Access arrangement draft decisions**

**170. Access arrangement draft decision on whether access arrangement will be approved**

- (1) The AER must, in accordance with the Rules, make an access arrangement draft decision as to whether it proposes to approve the access arrangement submitted to it for approval.
- (2) The AER must, in an access arrangement draft decision, refuse to approve the access arrangement if the access arrangement—
  - (a) does not include the information required under sections 164 to 166; or
  - (b) is inconsistent with section 330.

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- (3) In making an access arrangement draft decision the AER may—
- (a) approve, or refuse to approve, as reference services, the pipeline services designated as reference services; and
  - (b) approve, or refuse to approve, as a reference tariff, a tariff for a pipeline service designated as a reference tariff; and
  - (c) make reasonable assumptions (including assumptions adverse to the interests of the services provider) about any matter in respect of the access arrangement about which the service provider—
    - (i) has made an assumption; or
    - (ii) was required to provide information to the AER under this Law or the Rules if—
      - (A) that information was not provided; or
      - (B) the information that was provided was insufficient for the AER to make its decision.
- (4) In the case where the AER has made a related tender approval decision, the AER must not make an access arrangement draft decision that is inconsistent with the terms and conditions approved in that tender approval decision.
- (5) The access arrangement draft decision must—
- (a) set out the reasons of the AER as to whether or not it proposes to approve the access arrangement; and

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- (b) if the AER proposes not to approve the access arrangement, specify—
    - (i) any revisions (or the nature of revisions) that the AER considers should be made to the access arrangement for the AER to approve it; and
    - (ii) any matters that the AER considers should be addressed for the AER to approve it; and
    - (iii) the date by which any revisions to the access arrangement must be submitted to the AER, being at least 21 days after, but no longer than 42 days after, the date of the access arrangement draft decision.
  - (6) Without limiting subsection (5)(b), the AER may specify revisions that—
    - (a) add further or different pipeline services;
    - (b) applying section 171, require a pipeline service not designated as a reference service to be a reference service;
    - (c) subject to and in accordance with the Rules, specify a reference tariff in respect of a reference service referred to in paragraph (b);
    - (d) specify, subject to and in accordance with the Rules, that the extension and expansion requirements must provide for the access arrangement to apply to pipeline services provided by an extension to or expansion of the pipeline.
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- (7) An access arrangement draft decision must be—
- (a) in writing; and
  - (b) given, without delay, to the service provider who submitted the access arrangement for approval; and
  - (c) published on the AER's website; and
  - (d) made available at the offices of the AER, for inspection during business hours.
- (8) In this section—
- "related tender approval decision"** means a tender approval decision—
- (a) in respect of the pipeline by means of which pipeline services to be provided (to which the access arrangement the subject of the access arrangement draft decision relates); and
  - (b) that is in force at the time the access arrangement draft decision is made.

**171. AER may require pipeline services to be reference services**

The AER may require a pipeline service that is not a reference service, or not designated as a reference service, to be a reference service if it considers—

- (a) the service is a service that is likely to be sought by a significant part of the market for that service; or
- (b) the service should be a reference service after taking into account the form of regulation factors and any other matter that may be relevant.

**172. Requests for submissions on access arrangement draft decision**

- (1) The AER must publish, on its website and in a newspaper circulating generally throughout Australia, a notice that—
  - (a) states that an access arrangement draft decision has been made in respect of an access arrangement submitted for approval and the name of the service provider who submitted the access arrangement; and
  - (b) invites written submissions as specified in the notice and within the time specified in the notice; and
  - (c) includes the information prescribed by the Regulations (if any).
- (2) The time specified in the notice must not be a period of time that is less than 14 days after the period of time specified in an access arrangement draft decision in accordance with section 170(5)(b)(iii).
- (3) A notice under subsection (1) must be published on the same day as the access arrangement draft decision is published under section 170.

**173. Service provider may submit revisions to access arrangement**

- (1) If, in an access arrangement draft decision, the AER proposes not to approve an access arrangement, the service provider who submitted the access arrangement for approval may, within the revision period, submit to the AER revisions to the access arrangement that—
    - (a) incorporate, or substantially incorporate, the revisions specified in the access arrangement draft decision that the AER considers should
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be made for it to approve the access arrangement; and

- (b) otherwise address the matters specified in the access arrangement draft decision that the AER considers should be addressed for it to approve the access arrangement.

- (2) In this section—

**"revision period"** means the period of time specified by the AER in an access arrangement draft decision in accordance with section 170(5)(b)(iii).

**174. Revisions to access arrangement must be published as soon as practicable**

The AER must, as soon as practicable after receiving revisions to an access arrangement under section 173, publish, on its website, the access arrangement as revised.

**175. Extension of consultation period if revisions to access arrangement are material**

- (1) If the AER is of the opinion that the revisions to an access arrangement under section 173 are material, the AER must extend the period within which a person may make a written submission about the access arrangement draft decision by a period of at least 14 days but not more than 21 days.
- (2) Notice of the extension of the period must be published on the AER's website.
- (3) A notice under subsection (2) must specify the date by when a person may make a written submission.

**176. Pre-final decision hearing may be held**

- (1) A person may request, in writing, within 7 days after the publication of a notice under section 172 or 175, the AER to hold a hearing in relation to an access arrangement draft decision.
- (2) Despite subsection (1), the AER may decide not to hold a hearing in relation to an access arrangement draft decision.
- (3) Without limiting the reasons why the AER may decide not to hold a hearing in relation to an access arrangement draft decision, the AER may decide not to hold a hearing if—
  - (a) a person requests the AER to hold a hearing; and
  - (b) the person does not make written submission in accordance with a notice under section 172 or 175; and
  - (c) no other person requests the AER to hold a hearing.
- (4) If the AER decides not to hold a hearing under this section, it must give the person that requested the hearing its reasons, in writing, for declining that person's request.
- (5) If the AER agrees to the request to hold a hearing under this section, the AER must—
  - (a) appoint a date (being not later than 21 days after the date of publication of the notice under, as the case requires, section 172 or 175), time and place for the holding of the hearing; and
  - (b) publish a notice of that date, time and place on its website.

**Subdivision 4—Access arrangement final decisions**

**177. Consideration of service provider revisions to an access arrangement**

Before making an access arrangement final decision, the AER must consider any revisions to an arrangement made by a service provider in accordance with section 173.

**178. Final decision on whether access arrangement is approved**

- (1) The AER must make, in accordance with the Rules, an access arrangement final decision whether to approve an access arrangement within 6 months after receipt of the access arrangement for approval.

Note: The AER may extend the time within which it must make an access arrangement final decision: see Division 3 of Part 8.5 of Chapter 8.

- (2) The AER must, in an access arrangement final decision, refuse to approve the access arrangement if the access arrangement—
  - (a) does not include the information required under sections 164 to 166; or
  - (b) is inconsistent with section 330.
- (3) In making an access arrangement final decision the AER may make reasonable assumptions (including assumptions adverse to the interests of the services provider) about any matter in respect of the access arrangement about which the service provider—
  - (a) has made an assumption; or

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- (b) was required to provide information to the AER under this Law or the Rules if—
    - (i) that information was not provided; or
    - (ii) the information that was provided was insufficient for the AER to make its decision.
  - (4) The access arrangement final decision must set out the reasons of the AER as to whether or not it proposes to approve the access arrangement.
  - (5) In the case where the AER is making an access arrangement final decision in relation to an access arrangement in respect of which the service provider has submitted revisions to the access arrangement under section 173, the AER must determine whether the revisions—
    - (a) incorporate, or substantially incorporate, the revisions specified in the access arrangement draft decision that the AER considers should be made for it to approve the access arrangement; and
    - (b) otherwise address the matters specified in the access arrangement draft decision that the AER considers should be addressed for it to approve the access arrangement.
  - (6) In the case where the AER has made a related tender approval decision, the AER must not make an access arrangement final decision that is inconsistent with the terms and conditions approved in that tender approval decision.
  - (7) In this section—
    - "related tender approval decision"** means a tender approval decision—
      - (a) in respect of the pipeline by means of which pipeline services to be provided (to which the access arrangement the
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subject of the access arrangement final decision relates); and

- (b) that is in force at the time the access arrangement final decision is made.

**179. Calculating the 6 month time period within which access arrangement final decision must be made**

The 6 month time limit in section 178(1) must be calculated on the basis that time does not run during the following periods—

- (a) the period during which a proceeding for judicial review of a decision under this Part is on foot;
- (b) the period within which a service provider submits further information or makes a revision to an access arrangement after the date on which the AER gives consent under section 169;
- (c) the period within which a service provider complies, or must comply, with—
  - (i) a notice under section 41; or
  - (ii) a regulatory information notice;
- (d) the period of operation of a notice under section 162, 172 or 175.

**180. Giving and publishing an access arrangement final decision**

The AER must without delay—

- (a) give a copy of the access arrangement final decision to the service provider; and
  - (b) publish the access arrangement final decision on its website; and
  - (c) make the access arrangement final decision available for inspection at its offices, during business hours.
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**181. Commencement of approved access arrangement**

An access arrangement that is approved by the AER in an access arrangement final decision takes effect—

- (a) 14 days after the date of the final decision; or
- (b) if the AER in an access arrangement final decision specifies an earlier date, that date.

**182. Period of effect of approved access arrangement**

An access arrangement that is approved by the AER in an access arrangement final decision has effect until—

- (a) subject to section 188, it expires; or
  - (b) another access arrangement submitted in accordance with section 157(1)(c) and approved under this Division takes effect; or
  - (c) an access arrangement made under Division 3 (because of the following circumstances) takes effect—
    - (i) a service provider does not submit an access arrangement for approval under section 157(1)(c); or
    - (ii) the AER in an access arrangement final decision does not approve an access arrangement submitted for approval under section 157(1)(c); or
  - (d) the coverage determination in respect of the covered pipeline by which the pipeline services to which the access arrangement applies is revoked.
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**Division 3—Access arrangements made by AER for non-light regulation services**

**183. AER make make access arrangements in certain cases**

- (1) The AER must make an access arrangement—
    - (a) if a service provider does not submit an access arrangement for approval under section 157—within 6 months after the date by when the service provider was required to submit the access arrangement; or
    - (b) if in an access arrangement final decision of the AER does not approve a relevant access arrangement—within 2 months after the date of the final decision.
  - (2) An access arrangement that is made by the AER must include an access arrangement expiry date.
  - (3) Division 2 of this Part and Division 3 of Part 8.5 of Chapter 8, apply to the making of an access arrangement under subsection (1)(a)—
    - (a) as if—
      - (i) a reference to an access arrangement submitted for approval under Division 2 were a reference to an access arrangement to be made under subsection (1)(a); and
      - (ii) the AER were making the access arrangement under subsection (1)(a) instead of approving an access arrangement submitted for approval under Division 2; and
    - (b) with any other alterations and modifications that are necessary.
  - (4) Section 330 applies to the making of an access arrangement made under subsection (1)(b).
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- (5) On making an access arrangement under this section, the AER must, without delay, give—
  - (a) the access arrangement to the service provider; and
  - (b) the reasons, in writing, in making the access arrangement.
- (6) To avoid doubt, an access arrangement made as provided for by subsection (1)(b) is made in place of the relevant access arrangement.
- (7) In this section—
  - "relevant access arrangement"** means—
    - (a) the access arrangement submitted by the service provider for approval under section 157; or
    - (b) if that access arrangement has been revised in accordance with section 173, that revised access arrangement.

**184. Period of effect of access arrangement made under this Division**

An access arrangement made under section 183 has effect until—

- (a) subject to section 188, it expires; or
- (b) another access arrangement submitted in accordance with section 157(1)(c) and approved under Division 2 takes effect; or
- (c) an access arrangement made under this Division (because of the following circumstances) takes effect—
  - (i) a service provider does not submit an access arrangement for approval under section 157(1)(c); or

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- (ii) the AER in an access arrangement final decision does not approve an access arrangement submitted for approval under section 157(1)(c); or
- (d) the coverage determination in respect of the covered pipeline by which the pipeline services to which the access arrangement applies is revoked by a coverage revocation determination.

**Division 4—Variation of applicable access arrangements for non-light regulation services**

**185. Application for variation of applicable access arrangement**

- (1) Only the service provider that provides pipeline services to which an applicable access arrangement applies may apply to the AER for a variation of that applicable access arrangement.

Note: The AER may also vary an access arrangement by an access determination: See Part 4.5.

- (2) An application for a variation cannot be made after the review submission date of an applicable access arrangement.
- (3) An application for a variation must be in accordance with the Rules.
- (4) An application under this section must—
  - (a) be in writing; and
  - (b) include a description of the proposed variation; and
  - (c) state the reasons for the proposed variation; and

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- (d) if the service provider is of the opinion the proposed variation is a non-material variation, state the opinion, and the reasons for that opinion; and
- (e) include any other information required by the Rules.

**186. Decision to approve or refuse to approve variation**

- (1) Subject to section 187 and this section, on receiving an application under section 185, the AER may approve or refuse to approve a proposed variation to an applicable access arrangement.
  - (2) Subject to subsection (3), Division 2 of this Part, and Division 3 of Part 8.5 of Chapter 8, apply to the proposed variation—
    - (a) as if—
      - (i) a reference to an access arrangement submitted for approval under Division 2 were a reference to the proposed variation; and
      - (ii) the AER were approving the proposed variation instead of approving an access arrangement submitted for approval under Division 2; and
    - (b) with any other alterations and modifications that are necessary.
  - (3) The Rules may provide for or with respect to the procedure with which the AER must comply in approving or refusing to approve a proposed variation to an applicable access arrangement. If the Rules do so, the AER must comply with the procedure under the Rules instead of subsection (2).
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- (4) If the AER decides to vary an applicable access arrangement under this section, the variation takes effect on and from the date of the decision.

**187. Proposed variations stated to be non-material**

- (1) If the AER receives an application under section 185 in which the applicant states that it is of the opinion the proposed variation is a non-material variation, the AER must, within 30 days after receiving the application, advise, in writing, the applicant if it agrees or disagrees with the applicant's opinion.
- (2) If the AER agrees that the proposed variation is a non-material variation, the AER must, without delay, approve the variation.
- (3) If the AER disagrees with the opinion of the applicant, the AER must—
  - (a) in its advice to the applicant state its reasons for disagreeing; and
  - (b) deal with the application under section 185.
- (4) A variation to an applicable access arrangement approved by the AER in accordance with subsection (2) takes effect on and from the date of the approval.

**Division 5—Miscellaneous matters relating to access arrangements for non-light regulation services**

**188. Applicable access arrangements continue in operation until new access arrangement approved or made**

- (1) Despite anything to the contrary in an applicable access arrangement, an applicable access arrangement does not expire if, before its expiry, another access arrangement is submitted for approval under Division 2 in relation to the same
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pipeline services as those to which the applicable access arrangement applies.

- (2) If subsection (1) applies, the applicable access arrangement continues to apply until—
    - (a) the other access arrangement is approved under Division 2; or
    - (b) an access arrangement made under Division 3 by the AER takes effect.
  - (3) This section does not apply to a voluntary access arrangement.
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Part 4.4—Facilitation of and Request for Access

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**PART 4.4—FACILITATION OF AND REQUEST FOR ACCESS**

**189. Availability of applicable access arrangement and other information**

- (1) A service provider who provides pipeline services to which an applicable access arrangement applies must provide, in accordance with the Rules—
  - (a) copies of every applicable access arrangement to any person who requests copies of it; and
  - (b) any other information to any person or class of person that the AER may, by notice under subsection (3), require be provided to that person or class of person.
- (2) Copies of an applicable access arrangement, and the information required to be provided under a notice under subsection (3), must be provided without charge.
- (3) The AER, by notice in writing, may require a service provider specified in the notice to provide information that may assist a user or prospective user, or class of user or prospective user, to—
  - (a) decide whether to seek to be provided with a pipeline service by the service provider; or
  - (b) determine how to seek to be provided with a pipeline service by the service provider.
- (4) A notice under subsection (3) must state the information that must be provided to a user or prospective user.
- (5) Subsection (3) applies despite anything to the contrary in an applicable access arrangement or any agreement or at law.

- (6) A service provider incurs, by complying with a notice under subsection (3), no liability for breach of contract, breach of confidence or any other civil wrong.

**190. Requests for information about unutilised contracted capacity**

- (1) A person may request a user to give them information about the quantity, type and availability of the user's unutilised contracted capacity.
- (2) A user must, in accordance with the Rules comply with a request referred to in subsection (1).
- (3) In complying with a request referred to in subsection (1), a user must—
- (a) inform the person making the request whether there are any technical or safety reasons that limit the utilisation of the user's unutilised contracted capacity; and
  - (b) if there are technical or safety reasons that limit the utilisation of the user's unutilised contracted capacity, give those reasons.
- (4) Subsections (2) and (3) apply despite anything to the contrary in an applicable access arrangement or any agreement or at law.
- (5) A user incurs, by complying with a request referred to in subsection (1), no liability for breach of contract, breach of confidence or any other civil wrong.

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**191. Public registers of spare capacity**

- (1) A service provider who provides pipeline services by means of a covered pipeline that is a transmission pipeline must, in accordance with the Rules, establish and maintain, a register of spare capacity.
- (2) A service provider who provides pipeline services by means of a covered pipeline that is a distribution pipeline must, in accordance with the Rules, establish and maintain, a register of spare capacity if the AER determines, in accordance with the Rules, that the service provider must establish and maintain, the register.
- (3) A service provider that establishes a register under subsection (1) or (2) must make the register available for inspection—
  - (a) on the service provider's website; and
  - (a) at the service provider's registered business office during business hours, free of charge.

**192. Requests for access**

- (1) A prospective user may, in accordance with the Rules, request a service provider to provide to the prospective user a pipeline service by means of a covered pipeline.
  - (2) On receiving a request under subsection (1), the service provider must, in accordance with the Rules—
    - (a) investigate and advise the prospective user whether the pipeline service can be provided; and
    - (b) if the pipeline service can be provided, advise the prospective user of the terms and conditions on which the service provider will provide the pipeline service requested.
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- (3) If a service provider advises under subsection (2) that it cannot provide the pipeline service requested, the service provider must, in accordance with the Rules, give the prospective user who made the request written reasons for that advice and information about when the request may be met.

Note: A prospective user may notify an access dispute under Part 4.5 depending on the service provider's response.

**193. Further obligations relating to requests for pipeline services**

A service provider—

- (a) must not make it a condition for the provision of a pipeline service that the prospective user accept and pay for another pipeline service unless it is reasonably necessary to do so;
  - (b) must provide a separate tariff for an element of a pipeline service if this is requested by a prospective user unless it is reasonably necessary not to do so.
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**PART 4.5—ACCESS DISPUTES**

**Division 1—Notification of access dispute and other matters**

**Subdivision 1—Notifications generally**

**194. Notification of access dispute**

- (1) Subject to this section, if a prospective user or user is unable to agree with a service provider about one or more aspects of access to a pipeline service provided by means of a covered pipeline, the prospective user, user or service provider may notify the AER, in writing, that an access dispute exists.

Note: In relation to access disputes about access to pipeline services provided by means of an international pipeline to which a price regulation exemption applies, see also section 249.

- (2) A notification must be accompanied by the fee (if any) prescribed by the Regulations.
- (3) On receiving a notification under subsection (1), the AER must notify, in writing, of the access dispute—
  - (a) the service provider, if a prospective user or user (as the case requires) notified the AER of the access dispute under subsection (1);
  - (b) the prospective user or user (as the case requires), if the service provider notified the AER of the access dispute under subsection (1).

**195. Withdrawal of notification**

- (1) The person who notified the AER of an access dispute under section 194(1) may withdraw that notification at any time before the AER makes an access determination in respect of that access dispute.
- (2) The notification must be withdrawn by notice in writing.
- (3) Subject to section 224, if the notification is withdrawn, it is taken for the purposes of this Part never to have been given.

**196. Parties to an access dispute**

The parties to an access dispute are—

- (a) the person notifying the AER of an access dispute under section 194(1); and
- (b) a person notified by the AER under section 194(3).

**Subdivision 2—Notifications relating to safe operation of pipeline**

**197. Notification by service provider of request that may adversely affect safe operation of pipeline**

- (1) This section applies if an access dispute has arisen because a service provider has refused to provide a pipeline service.
- (2) The service provider, on or before the submissions lodgement date, may notify the other party to the dispute and the AER, in writing, that it believes that it is not reasonably able to provide the pipeline service requested by the prospective user or user consistently with—

- (a) the safe operation of the access dispute pipeline; or
  - (b) prudent pipeline practices in the gas industry.
- (3) A notification must—
- (a) set out the grounds on which the service provider formed its belief, including any facts and assumptions the service provider relied on to form that belief; and
  - (b) include any other information that may be required by the Rules to be included in the notification.
- (4) In this section—
- "submissions lodgement date"** means the date which the AER specifies, in accordance with the Rules, as the date on or before which initial submissions in the access dispute must be lodged with the AER.

**198. Withdrawal of safety of operation notification**

At any time before an access determination is made, a service provider may withdraw a safety of operation notification by notice, in writing, to—

- (a) the AER; and
- (b) the other party to the dispute.

**199. Service provider to obtain independent expert report**

- (1) This section applies if a safety of operation notification has not been withdrawn under section 198.
  - (2) The service provider must, in accordance with the Rules, obtain a report from an independent expert that contains an assessment as to whether the pipeline service the subject of the access dispute
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can reasonably be provided to the prospective user or user consistently with—

- (a) the safe operation of the access dispute pipeline; or
  - (b) prudent pipeline practices in the gas industry.
- (3) The service provider must obtain a report referred to in subsection (2) as soon as reasonably practicable after giving the AER a safety of operation notification.
- (4) On obtaining a report referred to in subsection (2), the service provider must give it to the AER and the other party to the access dispute.

**200. Restrictions on access determinations where there has been a safety of operation notification**

- (1) On receipt of a safety of operation notification, the AER must not, despite anything to the contrary in this Part, make an access determination in respect of the access dispute unless it has received—
- (a) a notification under section 198; or
  - (b) an independent expert's report from the service provider.
- (2) If the AER receives a report referred to in subsection (1), the AER must have regard to the report in making an access determination in respect of the access dispute.
- (3) In this section—

**"independent expert's report"** means a report referred to in section 199.

**Division 2—Access determinations**

**201. Determination of access dispute**

- (1) Unless the AER terminates an access dispute under section 203, the AER must make a determination on access by (as the case requires) the prospective user or user.

Note: A delegate of the AER may make the access determination. See section 28 of this Law and section 44AAH of the *Trade Practices Act 1974* of the Commonwealth.

- (2) In making an access determination the AER must comply with this Part 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 from the date specified in the determination.

**202. AER may require parties to mediate, conciliate or engage in an alternative dispute resolution process**

- (1) The AER 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).

**203. AER may terminate access dispute in certain cases**

- (1) The AER may at any time terminate an access dispute (without making an access determination) if the AER considers that—
    - (a) the notification of the access dispute was vexatious; or
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- (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.
- (2) The AER may also terminate an access dispute (without making an access determination) if the AER considers that the aspect of access about which there is a dispute is expressly or impliedly dealt with under an agreement between, as the case requires—
- (a) the prospective user and service provider;
  - (b) the user and service provider.

**204. No access determination if AER considers there is substantial competition for pipeline service**

Despite anything to the contrary in this Part, the AER 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 AER considers there is substantial competition in the market for the provision of the pipeline service the subject of the access dispute.

**205. Restrictions on access determinations**

- (1) The AER 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 to be able to meet the user's reasonably anticipated requirements, measured at the time the access dispute was notified;

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- (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—

**"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.

**206. Access determination must give effect to applicable access arrangement**

Subject to section 210, the AER must, in making an access determination, give effect to the applicable access arrangement—

- (a) applying to the pipeline services provided by means of the access dispute pipeline; and
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(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).

**207. 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.

**208. Content of access determinations**

Subject to this Part, 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.

**Division 3—Specific kinds of access determinations**

**209. Access determinations may require the expansion of capacity by service provider**

- (1) An access determination may require the service provider to carry out a capacity expansion.
- (2) However, an access determination must not be made requiring the service provider to carry out a capacity expansion in relation to a pipeline by means of which light regulation services are provided unless the other party to the dispute agrees to fund all of that capacity expansion.

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- (3) In addition, an access determination that requires a capacity expansion to be carried out must not—
  - (a) require the service provider to extend the geographical range of the access dispute pipeline; or
  - (b) have the effect of the prospective user or user becoming the owner of the access dispute pipeline without the agreement of the service provider; or
  - (c) require the service provider to fund part or all of the capacity expansion unless—
    - (i) the extension and expansion requirements contained in the applicable access arrangement for the access dispute pipeline state that the service provider will fund the capacity expansion; and
    - (ii) the extension and expansion requirements have been complied with.

**210. Access determinations requiring the installation of a new facility and funding by prospective user or user**

- (1) This section applies to an access determination that requires—
  - (a) the 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) The AER may, as part of the access determination, vary the applicable access arrangement applying to the access dispute pipeline so that the applicable access arrangement,

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in accordance with the Rules, provides for any one or more of the following—

- (a) a mechanism by which the prospective user or user who is the party to the access dispute, and who contributes some or all of the capital to fund the installation or construction of the new facility, pays charges for pipeline services calculated by reference to reference tariffs that take into account that contribution;
  - (b) a mechanism by which the service provider may include in the capital base of the pipeline some or all of the capital costs incurred by the prospective user or user for the installation or construction of the new facility for the purpose of determining the reference tariffs to be used to calculate the charges for reference services provided to—
    - (i) the prospective user or user who is the party to the access dispute; and
    - (ii) other prospective users or users;
  - (c) that the service provider may levy a surcharge on users for the purpose of recovering some or all capital costs incurred in installing or constructing the new facility;
  - (d) the establishment of a speculative investment account;
  - (e) the requirements as to how money standing to the credit of the speculative investment account may be paid out.
- (3) This section applies despite anything to the contrary in Part 4.3 or section 249.

(4) In this section—

**"speculative investment account"** means an account established by a service provider, in accordance with the Rules, into which some or all capital costs incurred for the installation or construction of the new facility by the prospective user or user who is the party to the access dispute may be paid.

#### **Division 4—Variation of access determinations**

##### **211. Variation of access determinations**

(1) The AER 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 194.

(2) Section 205 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 AER for the variation of the determination; and
- (b) the variation were the making of an access determination in the terms of the varied determination.

#### **Division 5—Compliance with access determinations**

##### **212. 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.

**Division 6—Procedure**

**213. 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 AER 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 AER must have regard to the wishes of the parties and the need for commercial confidentiality.

**214. Right to representation**

In a dispute hearing a party may appear in person or be represented by another person.

**215. Procedure of AER**

- (1) In a dispute hearing the AER—
  - (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 carefully and quickly to 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.

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- (2) The AER 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 AER may require evidence or argument to be presented in writing, and may decide the matters on which the AER will hear oral evidence or argument.
- (4) The AER 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.

**216. Particular powers of AER in a hearing**

- (1) The AER 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 AER may make an interim determination.
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**217. AER may require NCC to give information and assistance and make reports**

The AER may, for the purpose of determining an access dispute, require the NCC to—

- (a) give information and other assistance; and
- (b) make reports,

as specified by the AER.

**218. Disclosure of information**

- (1) The AER 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 AER's permission.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with an order under subsection (1).

Penalty:

- (a) in the case of a natural person—\$2000;
- (b) in the case of a body corporate—\$10 000.

**219. Power to take evidence on oath or affirmation**

- (1) The AER may take evidence on oath or affirmation and for that purpose the AER may administer an oath or affirmation.
- (2) The AER may summon a person to appear before the AER 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.

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- (3) The powers in this section may be exercised only for the purposes of hearing and determining an access dispute.

**220. 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 AER 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 AER.

Penalty: \$2000.

**221. Failing to answer questions etc.**

- (1) A person appearing as a witness before the AER 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 AER; or
- (c) refuse or fail to produce a document that he or she is required to produce by a summons under this Part served on him or her as prescribed by the Regulations.

Penalty: \$2000.

- (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).

**222. 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 AER; or
- (d) proposes to appear, or has appeared, as a witness before the AER.

Penalty: \$2000.

**223. Party may request AER to treat material as confidential**

- (1) A party in a dispute hearing may—
    - (a) inform the AER that, in the party's opinion, a specified part of a document contains confidential information; and
    - (b) request the AER not to give a copy of that part to another party.
  - (2) On receiving a request, the AER 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 AER complying with the request.
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- (3) If there is an objection to the AER complying with the request, the party objecting may inform the AER 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 AER 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 AER 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 AER and subject to such other conditions as the AER determines.

**224. Costs**

- (1) Each party is to bear its own costs in a dispute hearing.
  - (2) At any time, the AER may order that a party pay all or a specified part of the costs of another party in a dispute hearing.
  - (3) The AER may make an order under subsection (2) only if satisfied that it is fair to do so, having regard to—
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- (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 AER 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 AER;
    - (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 AER considers relevant.
- (4) A party to whom an order made under subsection (2) is directed must comply with the order.
  - (5) If the AER considers that the representative of a party, rather than the party, is responsible for conduct described in subsection (3)(a) or (b), the AER may order that the representative in his or her own capacity compensate another party for any costs incurred unnecessarily.
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- (6) Before making an order under subsection (5), the AER 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 AER makes an order for costs before the end of an access dispute, the AER may require that the order be complied with before it continues with the proceeding.
- (9) If the AER makes an order for costs, the AER may fix the amount of costs itself.
- (10) For the purposes of this section, the costs incurred by a service provider in obtaining a report under section 199 are to be taken to be costs in a dispute hearing.

**225. Outstanding costs are a debt due to party awarded the costs**

Costs that are payable under section 224(4) or (7)—

- (a) are a debt due to the party to whom the AER has ordered that they be paid; and
- (b) may be recovered by that party in a court of competent jurisdiction.

**Division 7—Miscellaneous matters**

**226. 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
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(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 AER may correct the access determination.

**227. 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 or prospective user, alter the rights that the user has to the use the capacity of the access dispute pipeline during the period of the dispute.

**228. 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 by means of the pipeline used to provide the pipeline services—

(a) the subject of the access dispute; and

(b) in respect of which the access determination was made.

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**229. Regulations about the charges to be paid by parties to access dispute for AER's costs in dispute hearing**

The Regulations may provide for the AER to—

- (a) charge the parties to an access dispute for its costs in the access dispute; and
  - (b) apportion those costs between the parties.
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## **CHAPTER 5—GREENFIELDS PIPELINE INCENTIVES**

### **PART 5.1—INTERPRETATION**

#### **230. 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 Regulation 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 in respect of which the access arrangement that applies to the pipeline services provided by means of the covered pipeline will not apply to the services provided by means of that extension; or
  - (d) a major extension to a covered pipeline by which light regulation services are provided if that extension is exempted by the AER under section 16.
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Part 5.1—Interpretation

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**231. International pipeline to be a transmission pipeline  
for purposes of Chapter**

An international pipeline is, for the purposes of  
this Chapter, a transmission pipeline.

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**PART 5.2—15 YEAR NO-COVERAGE DETERMINATIONS**

**232. Application for 15 year no-coverage determinations for proposed pipelines**

- (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 be accompanied by the fee prescribed by the Regulations (if any).

**233. Content of application**

- (1) An application for a 15 year no-coverage determination must—
  - (a) include a full description of the pipeline the subject of the application; and
  - (b) specify whether the pipeline is, in the opinion of the applicant—
    - (i) an international pipeline; or

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Part 5.2—15 Year No-Coverage Determinations

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- (ii) a transmission pipeline (other than an international pipeline); or
  - (iii) a distribution pipeline; and
  - (c) include any information, or be accompanied by any document, that is prescribed by the Regulations.
- (2) The description referred to in subsection (1)(a)—
- (a) must include the details required under the Regulations; but
  - (b) need not describe, or include details of, excluded infrastructure.

**234. Application to be dealt with in accordance with regulatory scheme decision making procedure**

On receiving an application under section 232, the NCC must deal with it in accordance with Division 1 of Part 8.5 of Chapter 8.

**235. No-coverage recommendation**

- (1) The NCC must make a no-coverage recommendation within 4 months after receiving an application under section 232.

Note : The NCC may extend the time within which it must make a no-coverage recommendation: see Division 3 of Part 8.5 of Chapter 8.

- (2) A recommendation under this section must—
- (a) be in writing; and
  - (b) identify the pipeline the subject of the recommendation; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) state the terms of the recommendation, applying section 236, and the reasons for it; and
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- (e) include the NCC's pipeline initial classification decision and state the reasons of the NCC for making that decision; and
  - (f) include any other information that is prescribed by the Regulations.
- (3) A recommendation under this section may recommend an outcome different to the outcome sought in the application under section 232.
  - (4) A recommendation under this section must be delivered to the relevant Minister without delay.

**236. 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.

**237. Initial classification decision to be made as part of recommendation**

- (1) If the pipeline the subject of an application under section 232 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) If, under this section, the NCC determines the pipeline the subject of the application under section 232 is also a cross-boundary distribution pipeline, the NCC must determine, as part of an initial classification decision, 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.

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**238. Relevant Minister's determination on application**

- (1) The relevant Minister must, within 42 days after receiving a no-coverage recommendation, decide whether or not to make a 15 year no-coverage determination in respect of the pipeline to which the recommendation relates.

Note: The relevant Minister may extend the time within which the Minister must make a decision under subsection (1): see Division 3 of Part 8.5 of Chapter 8.

- (2) In deciding whether to make a determination under this section, 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 (but is not bound by) the no-coverage recommendation; and
    - (iii) may take into account any relevant submissions and comments made to the NCC under Division 1 of Part 8.5 of Chapter 8 in relation to the application.
- (3) 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;
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- (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.
- (4) A 15 year no-coverage determination, or a decision not to make a 15 year no-coverage determination, must—
  - (a) be in writing; and
  - (b) identify the pipeline the subject of the determination or decision; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) state the terms of the determination or decision, applying subsections (2) and (3), and the reasons for it.
- (5) A 15 year no-coverage determination may have an outcome different to the outcome—
  - (a) sought in the application under section 232; or
  - (b) of the no-coverage recommendation.

**239. 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.
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- (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.

**240. 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 Part 5.3.
- (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 Part 5.3; or
  - (b) proceed to determine the application without a recommendation under Part 5.3.
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**PART 5.3—PRICE REGULATION EXEMPTIONS**

**Division 1—Application for price regulation exemption**

**241. 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) The application is to be made to the NCC.
- (3) An application for a price regulation exemption must include—
  - (a) a full description of the international pipeline the subject of the application; and
  - (b) a reference to a website at which a full description of the pipeline can be inspected; and
  - (c) any information, or be accompanied by any document, that is prescribed by the Regulations.
- (4) The description referred to in subsection (3)(a)—
  - (a) must include the details required under the Regulations; but
  - (b) need not describe, or include details of, excluded infrastructure.

**242. Notification of Commonwealth Minister**

When the NCC receives an application for a price regulation exemption, it must, without delay, notify the Commonwealth Minister of receipt of the application.

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**Division 2—Investigation and recommendation by NCC**

**243. NCC's duty to make recommendation within 42 days**

- (1) The NCC must within 42 days after receipt of an application for a price regulation exemption make a recommendation to the Commonwealth Minister on the application.
- (2) As soon as practicable after delivering the recommendation to the Commonwealth Minister, the NCC must—
  - (a) give copies of the recommendation to—
    - (i) the applicant; and
    - (ii) the AEMC; and
    - (iii) the AER; and
  - (b) publish the recommendation on the NCC's website; and
  - (c) make the recommendation available for inspection at the offices of the NCC during business hours.

**244. 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

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- (ii) other possible effects on the public interest; and
- (b) may have regard to any other relevant matter.

**245. Invitation of submissions and comments**

- (1) The NCC must publish a notice on its website and in a newspaper circulating generally throughout Australia.
- (2) The notice must—
  - (a) notify receipt of the application; and
  - (b) identify the pipeline the subject of the application; and
  - (c) include a reference to a website at which the full description of the pipeline can be inspected; and
  - (d) any further information required by the Regulations; and
  - (e) invite submissions and comments within a specified period from the date of the notice.
- (3) The NCC is not obliged to give notice of an application under this section if the NCC rejects the application on the ground—
  - (a) that the applicant has failed to provide the information and materials required under this Part; or
  - (b) that the application is not accompanied by the document the Regulations have prescribed to accompany the application; or
  - (c) that the application is frivolous or vexatious.

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- (4) A decision under subsection (3) to reject an application must—
  - (a) be in writing; and
  - (b) set out the reasons for the decision; and
  - (c) be given to the applicant without delay.

**Division 3—Making and effect of price regulation exemption**

**246. Making of price regulation exemption**

- (1) The Commonwealth Minister must, within 14 days after receiving the NCC's recommendation, decide whether or not to make a price regulation exemption.

Note: The Commonwealth Minister may extend the time within which he or she must make a decision under subsection (1): see Division 3 of Part 8.5 of Chapter 8.

- (2) In deciding whether to make a price regulation exemption, the Commonwealth Minister must weigh the benefits to the public of granting the exemption against the detriments to the public.
  - (3) 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 (but is not bound by) the NCC's recommendation; and
    - (c) may take into account any relevant submissions and comments made to the NCC under Division 2; and
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- (d) may have regard to any other relevant matter.
- (4) A price regulation exemption, or a decision not to make a price regulation exemption, must—
  - (a) be in writing; and
  - (b) identify the pipeline the subject of the decision; and
  - (c) include a reference to a website at which a full description of the pipeline may be inspected; and
  - (d) set out the Commonwealth Minister's reasons for the decision to grant, or not to grant, the exemption.

**247. 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.
- (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.
- (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.

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- (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**

**248. Limited access arrangements for pipeline services provided by international pipelines to which price regulations exemptions apply**

- (1) A service provider—
  - (a) must, within 90 days after the grant of a price regulation exemption, submit a proposed limited access arrangement to the AER for approval; and
  - (b) may, at any time after the approval of a limited access arrangement, submit a variation to the limited access arrangement for approval.
- (2) A service provider that submits a limited access arrangement under this section must, at the same time as submitting the limited access arrangement, submit access arrangement information.
- (3) For the purposes of this Division, access arrangement information that is submitted with a limited access arrangement is to be taken to form part of that limited access arrangement.
- (4) Subsections (1) and (2) operate to the exclusion of Parts 4.2 and 4.3 of Chapter 4.

**249. Decisions on limited access arrangement proposals**

- (1) On receiving a limited access arrangement or a variation to a limit access arrangement, the AER must make a decision on the proposal in accordance with Division 2 of Part 8.5 of Chapter 8.
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- (2) In the decision, the AER may—
    - (a) in the case of a limited access arrangement, approve the limited access arrangement with or without variation;
    - (b) in the case of a variation to a limited access arrangement, approve the submitted variation to the limited access arrangement or approve another variation that is acceptable to the service provider, or refuse to approve the submitted variation.
  - (3) A limited access arrangement approved under this section must not—
    - (a) make any provision for price or revenue regulation; or
    - (b) be inconsistent with section 330.
  - (4) A limited access arrangement must, however, contain an undertaking, on the part of the service provider, not to engage in price discrimination unless the price discrimination—
    - (a) is conducive to efficient service provision; or
    - (b) can be justified on some other rational economic basis.
  - (5) Without limiting how a dispute about access to a pipeline to which a price regulation exemption applies may be dealt with, such a dispute may be dealt with under this Law in the same way as a dispute about access to a covered pipeline under Part 4.5 of Chapter 4.
  - (6) However such an access dispute cannot be resolved under Part 4.5 of Chapter 4 on terms—
    - (a) regulating the price at which services are to be provided by the service provider (except to the extent that such regulation is necessary to give effect to the undertaking against price
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discrimination referred to in subsection (4));  
or

- (b) limiting the revenue to be derived by the service provider from the provision of services.

**Division 5—Other matters**

**250. 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) Part 3.5 of Chapter 3; and
    - (b) Part 3.6 of Chapter 3; and
    - (c) Part 4.4 of Chapter 4; and
    - (d) Part 4.5 of Chapter 4.
  - (2) Subsection (1)(d) is not to be taken to limit how a dispute about access to a pipeline service provided by means of a pipeline to which a price regulation exemption applies may be raised and dealt with.
  - (3) However, an access dispute notified under Part 4.5 of Chapter 4 cannot be resolved under that Part on terms—
    - (a) regulating the price at which services are to be provided by the service provider (except to the extent that such regulation is necessary to give effect to the undertaking against price discrimination referred to in section 249(4));  
or
    - (b) limiting the revenue to be derived by the service provider from the provision of services.
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- (4) A price regulation exemption is subject to the following conditions—
- (a) the service provider must not engage in price discrimination contrary to the undertaking contained in the service provider's limited access arrangement; and
  - (b) the service provider must publish on its website prices for the provision of pipeline services by means of the international pipeline; and
  - (c) the service provider's limited access arrangement and the register of spare capacity are to be accessible on the service provider's website; and
  - (d) 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.
- (5) A service provider must ensure compliance with conditions to which the exemption is subject.

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**251. Publication of annual reports on access negotiations**

The AER may publish a report referred to in section 250(4)(d)(ii) that it receives.

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Part 5.4—Extended or Modified Application of Greenfields Pipeline  
Incentive

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**PART 5.4—EXTENDED OR MODIFIED APPLICATION OF  
GREENFIELDS PIPELINE INCENTIVE**

**252. 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, differs from the pipeline as described in the 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, differs from the relevant pipeline description, excluded infrastructure is not to be taken into account.

**253. 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

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Part 5.4—Extended or Modified Application of Greenfields Pipeline  
Incentive

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- (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 (but is not bound by) the NCC's advice.
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**PART 5.5—EARLY TERMINATION OF GREENFIELDS  
PIPELINE INCENTIVE**

**254. 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).

**255. Revocation by consent**

The relevant Minister may, at the request of the service provider, revoke a greenfields pipeline incentive.

**256. 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.

**257. Revocation for breach of condition to which a price regulation 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 is subject.

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Part 5.5—Early Termination of Greenfields Pipeline Incentive

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**258. 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.

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**CHAPTER 6—PROCEEDINGS UNDER THE  
NATIONAL GAS LAW**

**PART 6.1—PROCEEDINGS GENERALLY**

**259. 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 Part 6.2, 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 Part 6.2, institute civil proceedings in respect of a breach of a conduct provision.

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Part 6.1—Proceedings Generally

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**260. 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.
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**PART 6.2—PROCEEDINGS FOR BREACHES OF THIS LAW,  
REGULATIONS OR THE RULES**

**261. 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 is in breach of 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 subsection 39(2) of the *Judiciary Act 1903* of the Commonwealth.

- (2) If the order declares a person to be in breach of a provision of this Law the Regulations or the Rules that is not an offence provision, the order may include one 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;
  - (e) an order of a kind prescribed by the Regulations.
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Part 6.2—Proceedings for Breaches of this Law, Regulations or the Rules

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- (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.
- (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.

**262. Proceedings for declaration that a person is in breach of a conduct provision**

- (1) The Court may make an order, on application by a person other than the AER, declaring that another person is in breach of a conduct provision.
  - (2) If the order declares a person to be in breach of a conduct provision, the order may include one or more of the following—
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Part 6.2—Proceedings for Breaches of this Law, Regulations or the Rules

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- (a) an order that the person in breach cease, within a specified period, the act, activity or practice constituting the breach;
  - (b) an order that the person in breach 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 in breach 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
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Part 6.2—Proceedings for Breaches of this Law, Regulations or the Rules

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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.

**263. 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.

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Part 6.3—Matters Relating to Breaches of this Law, the Regulations or the  
Rules

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**PART 6.3—MATTERS RELATING TO BREACHES OF THIS  
LAW, THE REGULATIONS OR THE RULES**

**264. 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 be in breach of 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
- (c) the circumstances in which the breach took place; and
- (d) whether the person has engaged in any similar conduct and been found to be in breach of a provision of this Law, the Regulations or the Rules in respect of that conduct; and
- (e) in the case of a breach of a provision of Parts 3.5 and 3.6 of Chapter 3, whether the service provider had in place a compliance program approved by the AER.

**265. Breach of a civil penalty provision is not an offence**

A breach of a civil penalty provision is not an offence.

**266. 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

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that any period within which, or time before which, the act is required to be done has expired or passed.

**267. Conduct in breach of more than one 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 one or more of those provisions.
- (2) However, the person is not liable to more than one civil penalty under this Law in respect of the same conduct.

Note: Clause 39 of Schedule 2 to this Law sets out further provisions in relation to double jeopardy.

**268. 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.

**269. 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.

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**270. Civil penalties payable to the Commonwealth**

If a person is ordered to pay a civil penalty, the  
penalty is payable to the Commonwealth.

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Part 6.4—Judicial Review of Decisions of the AEMC under this Law, the  
Regulations and the Rules

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**PART 6.4—JUDICIAL REVIEW OF DECISIONS OF THE  
AEMC UNDER THIS LAW, THE REGULATIONS AND THE  
RULES**

**271. 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.

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.
- (3) In this section—
- "person aggrieved"** includes a person whose interests are adversely affected.

**PART 6.5—MERITS REVIEW**

**272. Definitions**

In this Part—

**"applicant"** means a person or body referred to in section 273(1) who has been granted leave to apply for review by the Tribunal under this Part;

**"average annual regulated revenue"** means the average of regulated revenue calculated annually;

**"intervener"** means a person or body referred to in section 280 or 281 who has intervened in a review under this Part with the leave of the Tribunal or otherwise;

**"original decision maker"** means a relevant Minister, the Commonwealth Minister, the AER or the AEMC;

**"regulated revenue"** means the total revenue earned or to be earned by a service provider—

(a) under; and

(b) during the period of operation of,

an applicable access arrangement through the provision of reference services to which that arrangement applies;

**"reviewable regulatory decision"** means a decision of a relevant Minister, the Commonwealth Minister, the AER or the AEMC under this Law or the Rules that is prescribed by the Regulations to be a reviewable regulatory decision;

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

- (a) the members of which include at least one 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 its object or purpose the object or purpose of representing and promoting the interests of users or 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;

**"user or consumer intervener"** means—

- (a) a user or consumer association; or
- (b) a user or consumer interest group,

that has made a submission or comment in relation to the making of a reviewable regulatory decision following an invitation to do so by the original decision maker under this Law or the Rules.

### **273. Who may apply for review?**

- (1) The following persons or bodies, with the leave of the Tribunal, may apply to the Tribunal for a review of a reviewable regulatory decision—
    - (a) a service provider to whom the reviewable regulatory decision applies;
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- (b) a user, prospective user or end user whose commercial interests are materially affected by the reviewable regulatory decision;
  - (c) a user or consumer association;
  - (d) a person whose interests are affected by—
    - (i) a coverage determination; or
    - (ii) a 15 year no-coverage determination; or
    - (iii) a coverage revocation determination.
- (2) An application must be made in the form and manner determined by the Tribunal.

**274. By when must an application be made?**

An application under section 273(1) must be made no later than 14 days after the reviewable regulatory decision is published in accordance with this Law.

**275. Tribunal must not grant leave in certain cases**

Subject to section 277, the Tribunal must not grant leave to apply under section 273(1) unless it appears to the Tribunal that there is a serious issue to be determined and—

- (a) if the reviewable regulatory decision is about the revenue of a service provider and the issue to be determined relates to an amount specified in or derived from the decision, that amount—
    - (i) exceeds the lesser of \$5 000 000 or 2% of the average annual regulated revenue of the service provider; or
    - (ii) if that amount cannot be derived from the decision, is a material amount of the average annual regulated revenue of the service provider;
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- (b) in all other cases, there is an error that, if established, would be material to the operation and effect of the decision.

**276. Tribunal must refuse to grant leave if submission not made or is made late**

The Tribunal must not grant leave to apply under section 273(1) to a person or body referred to in section 273(1)(b), (c) or (d) if that person or body—

- (a) did not make a submission or comment in relation to the making of the decision following an invitation by the original decision maker to do so under this Law or the Rules; or
- (b) did make a submission or comment in relation to the making of the decision following an invitation by the original decision maker to do so under this Law or the Rules but—
  - (i) that submission was not made within the time required under this Law or the Rules following that invitation; and
  - (ii) the original decision maker chose not to take that submission or comment into account in making the decision.

**277. Tribunal may refuse to grant leave to service provider in certain cases**

- (1) This section applies—
    - (a) in relation to an application under section 273(1) by a service provider for a review of a reviewable regulatory decision that applies to the service provider; and
    - (b) if the Tribunal is satisfied of the matters set out in section 275.
-

- (2) Despite being satisfied of the matters set out section 275, the Tribunal may refuse to grant leave to apply under section 273(1) to the service provider if the Tribunal is satisfied the service provider—
- (a) without reasonable excuse—
    - (i) failed to comply with a request for information made by the original decision maker under this Law or the Rules for the purpose of making the decision; or
    - (ii) failed to comply with a request or direction of the original decision maker made under this Law or the Rules for the purpose of making the decision; or
    - (iii) conducted itself in a manner that resulted in the making of the decision of the original decision maker being delayed; or
  - (b) by its conduct, misled, or attempted to mislead, the original decision maker when the original decision maker was making the decision.

**278. Grounds for review**

- (1) An application under section 273(1) may be made only on one or more of the following grounds—
- (a) the original decision maker made an error of fact in its findings of facts, and that error of fact was material to the making of the decision;
  - (b) the original decision maker made more than one error of fact in its findings of facts, and that those errors of fact, in combination, were material to the making of the decision;
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- (c) the exercise of the original decision maker's discretion was incorrect, having regard to all the circumstances;
  - (d) the original decision maker's decision was unreasonable, having regard to all the circumstances.
- (2) To avoid doubt, it is for the applicant to establish a ground listed in subsection (1).

**279. Effect of application on operation of reviewable regulatory decisions**

An application under section 273(1)—

- (a) does not the stay the operation of the following reviewable regulatory decisions—
  - (i) an applicable access arrangement decision approving or making an applicable access arrangement; or
  - (ii) a decision of the AER under section 125 (approval of associate contracts);
- (b) stays the operation of any other reviewable regulatory decision on the granting of leave to apply by the Tribunal, unless the Tribunal otherwise orders.

**280. Intervention by others in a review without leave**

Only the following persons may intervene in a review under this Part without leave of the Tribunal—

- (a) a service provider to whom the reviewable regulatory decision being reviewed applies;
  - (b) a Minister of a participating jurisdiction;
  - (c) a person (other than a Minister of a participating jurisdiction) with a sufficient interest in the reviewable regulatory decision being reviewed who—
-

- (i) has made a submission or comment in relation to the making of that decision within the time required under this Law or the Rules following an invitation by the original decision maker to do so; or
- (ii) has made a submission or comment in relation to the making of that decision outside the time required under this Law or the Rules following an invitation by the original decision maker to do so but which the original decision maker chose to take into account in making that decision.

**281. Leave for user or consumer intervener**

- (1) A user or consumer intervener may apply to the Tribunal for leave to intervene in a review of a reviewable regulatory decision under this Part.
  - (2) The Tribunal may grant leave to a user or consumer intervener to intervene in a review under this Part if the Tribunal is satisfied—
    - (a) the user or consumer intervener, in its application for leave to intervene, raises a matter that will not be raised by the original decision maker or the applicant; or
    - (b) the information or material the user or consumer intervener wishes to present, or the submissions the user or consumer intervener wishes to make, in the review is likely to be better presented if submitted by the user or consumer intervener rather than another party to the review; or
    - (c) the interests of the user or consumer intervener or its members are affected by the decision being reviewed.
-

- (3) For the purposes of subsection (2)(c)—
- (a) the interests of a user or consumer intervener are to be taken to be affected if the reviewable regulatory decision being reviewed relates to an object or purpose of the user or consumer intervener;
  - (b) the interests of a user or consumer intervener are not to be taken to not be affected only because those interests do not coincide with the interests of the applicant.

**282. Interveners may raise new grounds of review**

- (1) An intervener may raise in a review under this Part any of the grounds specified in section 278 even if the ground that is raised by the intervener is not raised by the applicant.
- (2) To avoid doubt, it is for the intervener to establish the ground referred to in subsection (1).

**283. Parties to a review under this Part**

The parties to a review under this Part are—

- (a) the applicant; and
- (b) the original decision maker whose decision is the reviewable regulatory decision being reviewed under this Part; and
- (c) an intervener.

**284. Original decision maker as a party not limited by grounds raised by applicant or intervener**

An original decision maker whose decision is the reviewable regulatory decision being reviewed under this Part may, in the review, raise—

- (a) a matter not raised by the applicant or an intervener that relates to a ground for review, or a matter raised in support of a ground for
-

review, raised by the applicant or an intervener;

- (b) a possible outcome or effect on the reviewable regulatory decision being reviewed that the original decision maker considers may occur as a consequence of the Tribunal making a determination setting aside or varying the reviewable regulatory decision.

**285. Tribunal must make determination**

- (1) If, following an application, the Tribunal grants leave in accordance with section 273, the Tribunal must make a determination in respect of the application.

Note: See section 287 for the time limit within which the Tribunal must make its determination.

- (2) Subject to section 286, the determination may do any of the following—
    - (a) affirm, set aside or vary the reviewable regulatory decision;
    - (b) remit the matter back to the original decision maker to make the decision again, in accordance with any direction or recommendation of the Tribunal.
  - (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 original decision maker under this Law or the Rules.
  - (4) In deciding whether to remit a matter back to the original decision maker to make the decision again, the Tribunal must have regard to the nature and relative complexities of—
    - (a) the reviewable regulatory decision; and
    - (b) the matter the subject of the review.
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- (5) A determination by the Tribunal affirming, setting aside or varying the reviewable regulatory decision is, for the purposes of this Law (other than this Part), to be taken to be a decision of the original decision maker.

**286. Further provision for determinations relating to applicable access arrangement decisions**

- (1) In a review under this Part relating to a reviewable regulatory decision that is an applicable access arrangement decision, the Tribunal may only, in a determination, affirm, vary or remit the decision.
- (2) A determination of the Tribunal that varies a reviewable regulatory decision that is an applicable access arrangement decision must not—
- (a) have retrospective operation or effect; or
  - (b) provide for, or allow, an adjustment to the regulated revenue to be earned by a service provider under the relevant access arrangement in the remaining period that takes into account the regulated revenue earned, or not earned, before the making of the determination.
- (3) In this section—

**"relevant access arrangement"** means the applicable access arrangement to which the applicable access arrangement decision being varied relates;

**"remaining period"** means the period beginning on the day the determination of the Tribunal takes effect and ending on the day the relevant access arrangement ceases to have effect.

**287. Target time limit for Tribunal for making a determination under this Part**

- (1) The Tribunal must use its best endeavours to make a determination in respect of the application—
  - (a) within 3 months after the Tribunal grants leave in accordance with section 273 ("**the standard period**"); or
  - (b) if the standard period is extended under this section—that period as extended.
- (2) If the Tribunal is unable to make a determination in respect of the application within the standard period, or that period as extended, the Tribunal must, by notice in writing, extend the standard period by a specified period.
- (3) The Tribunal must give a copy of the notice to—
  - (a) the applicant; and
  - (b) every other party to the application.
- (4) The Tribunal may extend the standard period, or that period as extended, more than once.
- (5) If the Tribunal extends a period, it must publish a notice in a newspaper circulating generally throughout Australia—
  - (a) stating that it has done so; and
  - (b) specifying a date by which it must now use its best endeavours to make the determination.

**288. Material, documents, information etc. to be considered by Tribunal in making determination**

- (1) Subject to this section, the Tribunal, in reviewing a reviewable regulatory decision, must not consider any document, information or material other than the original decision making documents and information.
  - (2) The Tribunal, in reviewing a reviewable regulatory decision, must have regard to, but is not bound by, any document—
    - (a) prepared, and used, by the original decision maker for the purpose of making the reviewable regulatory decision; and
    - (b) that the decision maker has made publicly available.
  - (3) In addition, if in a review, the Tribunal is of the view that a ground of review has been established, the Tribunal may allow new information or material to be submitted to the Tribunal if the Tribunal is of the view that the new information or material—
    - (a) would assist the Tribunal on any aspect of the determination to be made; and
    - (b) was not unreasonably withheld from the original decision maker when it was making the reviewable regulatory decision.
  - (4) For the purpose of subsection (3)(b), information or material not provided to the original decision maker following a request for that information or material by it under this Law or the Rules is to be taken to have been unreasonably withheld.
  - (5) Subsection (4) does not limit what may constitute an unreasonable withholding of information or material.
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(6) In this section—

**"original decision making documents and information"** means the documents, information and material the original decision maker considered, or was required to consider, under this Law, the Regulations or the Rules, in making the reviewable regulatory decision and includes—

- (a) the reviewable regulatory decision; and
  - (b) in the case of a reviewable regulatory decision that is an applicable access arrangement decision—
    - (i) the proposed access arrangement or proposed limited access arrangement submitted for approval to which the decision relates; and
    - (ii) any variations or revisions to that proposed access arrangement or proposed limited access arrangement; and
    - (iii) the applicable access arrangement to which the decision relates (including variations to the arrangement); and
  - (c) any reports relied on by the original decision maker in making the reviewable regulatory decision; and
  - (d) a draft of the reviewable regulatory decision; and
  - (e) any submissions or comments on the draft of the reviewable regulatory decision or the reviewable regulatory decision itself considered by the original decision maker; and
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- (f) the transcript (if any) of any hearing conducted by the original decision maker for the purpose of making the reviewable regulatory decision.

**289. Assistance from NCC in certain cases**

- (1) This section applies if the reviewable regulatory decision being reviewed under this Part is a Ministerial coverage decision.
- (2) The member of the Tribunal presiding at the review may require the NCC to give information and other assistance and to make reports, as specified, by the member for the purposes of the review.

**290. Costs in a review**

- (1) Subject to this section, the Tribunal may order that a party to a review pay all or a specified part of the costs of another party to the review.
- (2) The Tribunal must not make an order requiring a relevant Minister, the AER or the AEMC to pay the costs of another party to the review unless the Tribunal considers that the relevant Minister, the AER or the AEMC has engaged in inappropriate conduct during the review.
- (3) The Tribunal may make an order requiring a user or consumer intervener that has intervened in the review to pay all or part of the costs of another party to the review if the Tribunal considers that it has engaged in inappropriate conduct during the review.

**291. Amount of costs**

- (1) If the Tribunal makes an order for costs in a review, the Tribunal must, unless there are exceptional circumstances, fix the amount of costs payable by a party to the review on an indemnity basis.
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- (2) If the Tribunal considers there are exceptional circumstances, the Tribunal may in an order for costs, 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) any other basis as the Tribunal may decide.

**292. Review of Part**

- (1) The MCE must cause a review of this Part to be undertaken within 7 years after the commencement of this Part by a person nominated by the MCE.
  - (2) The MCE must specify the matters to be addressed in the review.
  - (3) The person undertaking the review must, during the review, invite public comment and submissions about the matters to be addressed in the review.
  - (4) The person undertaking the review must report, in writing, to the MCE on the outcome of the review by the date specified by the MCE.
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**PART 6.6—INFRINGEMENT NOTICES**

**293. Power to serve notice**

- (1) The AER may serve an infringement notice on a person that the AER has reason to believe 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.

**294. 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;
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Part 6.6—Infringement Notices

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- (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 298;
- (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.

**295. Infringement penalty**

The infringement penalty for a breach of a civil penalty provision is—

- (a) if the breach is alleged to have been committed by a natural person—\$4000 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision;
  - (b) if the breach is alleged to have been committed by a body corporate—\$20 000 or any lesser amount that is prescribed by the Regulations in relation to the civil penalty provision.
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**296. 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 298.

**297. 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 298.

**298. 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.
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- (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.

**299. Refund of infringement penalty**

If an infringement notice is withdrawn in accordance with section 298, the amount of any infringement penalty paid must be refunded by the AER.

**300. Payment exiates 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; or
  - (ii) accepted in accordance with section 297; and
- (b) the infringement notice is not withdrawn by the AER within the time for payment stated in the notice in accordance with section 298.

**301. 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.

**302. Conduct in breach of more than one 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 one or more of those provisions.
  - (2) However, the person is not liable to pay more than one infringement penalty in respect of the same conduct.
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Part 6.7—Further Provision for Corporate Liability for Breaches of this Law  
etc.

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**PART 6.7—FURTHER PROVISION FOR CORPORATE  
LIABILITY FOR BREACHES OF THIS LAW ETC.**

**303. Definition**

In this Part—

**"breach provision"** means an offence provision,  
a civil penalty provision or a conduct  
provision.

**304. 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.

**305. Corporations also in breach if officers and employees are in breach**

If an officer or employee of a corporation commits an act in their capacity as officer or employee of the corporation 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.

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## CHAPTER 7—THE MAKING OF THE NATIONAL GAS RULES

### PART 7.1—GENERAL

#### Division 1—Interpretation

#### 306. Definitions

In this Chapter—

**"AEMC initiated Rule"** means a Rule of the kind referred to in section 311(2);

**"interested person or body"** means a person or body that proposes to make a written submission or comment under section 321;

**"non-controversial Rule"** means a Rule that is unlikely to have a significant effect on a market for gas;

**"publish"** means—

- (a) in relation to a notice required to be published under this Chapter (except section 310 or 324)—publish in the *South Australian Government Gazette*, on the AEMC's website and in a newspaper circulating generally throughout Australia;
- (b) in relation to a proposed Rule referred to in section 316 and any other documents prescribed by the Regulations in relation to a proposed Rule referred to in section 316—publish on the AEMC's website and make available at the offices of the AEMC;

- (c) 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;
- (d) in relation to any submissions or comments received by the AEMC under this Chapter—subject to section 329, publish on the AEMC's website and make available at the offices of the AEMC;

**"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.

#### **Division 2—Rule making tests**

##### **307. 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.

##### **308. Application of form of regulation factors in certain cases**

In addition to complying with sections 307 and 309, 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 declares or specifies a pipeline service to be a reference service; or
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Part 7.1—General

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- (b) in revoking a Rule referred to in paragraph (a) that has been made or is in force.

**309. AEMC must take into account revenue and pricing principles in certain cases**

In addition to complying with sections 307 and 308, 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 7 to 14 of Schedule 1 to this Law.

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**PART 7.2—INITIAL NATIONAL GAS RULES**

**310. South Australian Minister to make initial National Gas Rules**

- (1) The Minister in right of the Crown of South Australia administering Part [ ] of the *National Gas (South Australia) Act 2007* of South Australia may make Rules for or with respect to any matter or thing referred to in section 68 and Schedule 1 to this Law.
  - (2) As soon as practicable after making Rules under subsection (1), the Minister referred to in that subsection must—
    - (a) publish notice of the making of the Rules in the *South Australian Government Gazette*; and
    - (b) make the Rules publicly available.
  - (3) The notice referred to in subsection (2)(a) must state the date on which the Rules commence operation.
  - (4) The Rules made under subsection (1) may only be made on the recommendation of the MCE.
  - (5) If the Minister referred to in subsection (1) makes Rules under that section, the Minister cannot make another Rule under that subsection.
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Part 7.3—Procedure for the Making of a Rule by the AEMC

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**PART 7.3—PROCEDURE FOR THE MAKING OF A RULE BY  
THE AEMC**

**311. Initiation of making of a Rule**

- (1) The AEMC may make a Rule at the request of any person or the MCE.

Note: Section 68 and Schedule 1 to this Law specify the subject matter for Rules.

- (2) The AEMC must not make a Rule on its own initiative unless it considers the Rule—
- (a) corrects a minor error in the Rules; or
  - (b) involves a non-material change to the Rules; or
  - (c) 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.

**312. AEMC may make rules that are consequential to a Rule request**

- (1) Despite section 311(2), the AEMC may, having regard to a request to make a Rule under section 311(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.

**313. 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) may be accompanied by a draft of the Rule to be made.
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**314. More than one request in relation to same or related subject matter**

If the AEMC receives more than one request for the making of a Rule in respect of the same subject matter or subject matters that are related subject matters, the AEMC may treat those requests as one request for the purposes of this Part.

**315. Initial consideration of request for Rule**

- (1) As soon as practicable after receiving a request for the making of a Rule, the AEMC must consider whether—
  - (a) the request for the Rule 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 request appears to be for or with respect to a matter in respect of which the AEMC may make a Rule under this Law.

Note: Section 68 and Schedule 1 to this Law specify the subject matter for Rules.

- (2) If the AEMC considers that, having regard to the matters set out in subsection (1)(a) and (b), it should not take any action under this Part in respect of the request for the making of the Rule, 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) A decision under subsection (2) must—
    - (a) set out the reasons for the decision; and
    - (b) be given to the person or body that made the request without delay.
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- (4) If the AEMC considers that, having regard to the matters set out in subsection (1)(a) and (b), it should take action under this Part in respect of the request for the making of the Rule, the AEMC must give notice of the request for the making of a Rule in accordance with section 316.

**316. Notice of proposed Rule**

- (1) As soon as practicable after forming an intention to make an AEMC initiated Rule or considering that it should take action under this Part in respect of a request for the making of a Rule, the AEMC must publish—
- (a) notice of the intention or request (as the case requires); and
  - (b) a draft of the proposed Rule; and
  - (c) any other documents prescribed by the Regulations.
- (2) 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.

**317. Non-controversial and urgent Rules**

- (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
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- (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 319 to 322) and as if the period of time within which the final Rule determination in respect of the relevant Rule must be published were 2 weeks from the date of publication of the notice under section 316.
- (2) Before making a Rule as set out in subsection (1), the AEMC must include in a notice under section 316 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 316 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.
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- (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).

**318. Right to make written submissions and comments**

Any person or body, within the period specified in a notice under section 316, may make a written submission or comment in relation to the proposed Rule to which the notice relates.

**319. 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 316 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).

**320. Draft Rule determination**

- (1) Before making a final Rule determination, but within 8 weeks after the date specified in a notice under section 316, the AEMC must publish—
- (a) a draft Rule determination in relation to the proposed Rule; and
  - (b) notice of the draft Rule determination.
- (2) A draft Rule determination must contain—
- (a) the reasons of the AEMC as to whether or not it should make the proposed Rule or another Rule, including—
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- (i) the reasons of the AEMC as to whether it is satisfied the proposed Rule or the other Rule (if any) will or is likely to contribute to the achievement of the national gas objective; and
  - (ii) if 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
  - (iii) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and
  - (iv) 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.
- (3) The draft of the Rule to be made need not be the same as the draft of the proposed Rule to which the notice under section 316 relates.
- (4) A notice of the draft Rule determination 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 interested person or body may request, in writing within one week after the publication
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of the notice, the AEMC to hold a hearing in accordance with section 322; and

- (c) contain any other information prescribed by the Regulations.

**321. 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 320(1), may make a written submission or comment in relation to a draft Rule determination to which the notice relates.

**322. Pre-final Rule determination hearing may be held**

- (1) An interested person or body may request, in writing, within one week after the publication of a notice under section 320(1), the AEMC to hold a hearing in relation to a draft Rule determination.
  - (2) Despite subsection (1), the AEMC may decide not to hold a hearing in relation to a draft Rule determination.
  - (3) Without limiting the reasons why the AEMC may decide not to hold a hearing in relation to a draft Rule determination, the AEMC may decide not to hold a hearing if—
    - (a) an interested person or body requests the AEMC to hold a hearing; and
    - (b) the interested person or body does not make written submission or comment in accordance with section 321; and
    - (c) no other person or body requests the AEMC to hold a hearing.
  - (4) If the AEMC decides not to hold a hearing under this section, it must give the interested person or body that requested the hearing its reasons, in writing, for declining that person's or body's request.
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- (5) If the AEMC agrees to the request to hold a hearing under this section, the AEMC must—
  - (a) appoint a date (being not later than 3 weeks after the date of publication of the notice under section 320), time and place for the holding of the hearing; and
  - (b) publish a notice of that date, time and place.

**323. Final Rule determination as to whether to make a Rule**

- (1) The AEMC must publish a final Rule determination as to whether to make a proposed Rule and notice of the final Rule determination within 4 weeks after the close of the period for written submissions or comments in relation to the draft Rule determination.
- (2) A final Rule determination must contain—
  - (a) the reasons of the AEMC as to whether or not it should make a Rule, including—
    - (i) 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) if 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
    - (iii) the reasons of the AEMC having regard to any relevant MCE statement of policy principles; and
    - (iv) the reasons of the AEMC having regard to any other matters the AEMC considers relevant; and

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- (b) any other matters that are prescribed by the Regulations.
- (3) A notice of the final Rule determination must contain the information prescribed by the Regulations.

**324. 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.
- (3) The Rule that is made in accordance with subsection (1) need not be the same as the draft of the proposed Rule to which a notice under section 316 relates or the draft of a Rule contained in a draft Rule determination.

**325. Operation and commencement of Rule**

A Rule made under section 324 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.

**326. Rule that is made to be published on website and made available to the public**

On publication of a notice in accordance with section 324(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.
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**327. 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.

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Part 7.4—Miscellaneous provisions relating to Rule making by the AEMC

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**PART 7.4—MISCELLANEOUS PROVISIONS RELATING TO  
RULE MAKING BY THE AEMC**

**328. AEMC may extend certain periods of time specified  
in Part 7.3**

- (1) Despite anything to the contrary in this Chapter, the AEMC may, by notice, extend a period of time specified in Part 7.3 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 Part 7.3 be extended.
- (2) A notice under subsection (1) must—
  - (a) be published; and
  - (b) set out the period of time specified in Part 7.3 to be extended; and
  - (c) specify a new period of time to apply in the place of the period of time specified in Part 7.3.
- (3) The AEMC may only extend a period of time under this section before the expiry of that time.

**329. 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.
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- (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 65 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

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## **CHAPTER 8—GENERAL**

### **PART 8.1—PROVISIONS RELATING TO APPLICABLE ACCESS ARRANGEMENTS**

#### **330. Protection of certain pre-existing contractual rights**

- (1) An applicable access arrangement, or a variation to 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 approval of a limited access arrangement under section 156 or 249, or an access arrangement under Division 2 of Part 4.3 of Chapter 4—a right under a contract (other than a relevant exclusivity right) in force immediately before that access arrangement was submitted for approval;

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Part 8.1—Provisions Relating to Applicable Access Arrangements

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- (b) in the case of an access arrangement made under Division 3 of Part 4.3 of Chapter 4 because—
  - (i) an access arrangement was not submitted for approval as required under Division 2 of Part 4.3 of Chapter 4—a right under a contract (other than a relevant exclusivity right) in force immediately before the date on which an access arrangement should have been submitted for approval;
  - (ii) an access arrangement was not approved in an access arrangement final 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;
- (c) in the case of a variation of an applicable access arrangement under section 156 or 249, or Division 4 of Part 4.3 of Chapter 4—a right under a contract (other than a relevant exclusivity right) in force immediately before the access arrangement was varied.

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**331. Service provider may enter into agreement for access different from applicable access arrangement**

Subject to section 112, nothing in this Law prevents 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 covered pipeline that is different from an applicable access arrangement that applies to that pipeline service.

**332. Applicable access arrangements continue to apply despite change in service provider**

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.

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**PART 8.2—HANDLING OF CONFIDENTIAL INFORMATION**

**Division 1—Disclosure of confidential information held by  
AER**

**333. 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 223.

Note: See also section 29 of this Law and section 44AAF of the *Trade Practices Act 1974* of the Commonwealth

**334. 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.

**335. 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
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- (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.

**336. Disclosure of confidential information authorised if detriment does not outweigh public benefit**

- (1) The AER is authorised to disclose information given to it in confidence if—
  - (a) the AER is of the opinion—
    - (i) 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
    - (ii) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment; and
  - (b) the AER has given the person who gave the information a written notice—
    - (i) stating that the AER wishes to disclose the information, specifying the nature of the intended disclosure and setting out reasons why the AER wishes to make the disclosure; and
    - (ii) stating that the AER is of the opinion required by paragraph (a) and setting out reasons why it is of that opinion; and
  - (c) 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 has given that other person a written notice—

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- (i) containing the details required by paragraph (b); and
  - (ii) stating that the AER is of the opinion required by paragraph (a) in relation to that other person and setting out reasons why it is of that opinion.
- (2) 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 (1)(b) or (c).

**337. Disclosure of information given to the AER with confidential information omitted**

- (1) This section applies if—
- (a) in compliance with this Law a person gives the AER information in confidence; and
  - (b) that information is contained in a document with other information; and
  - (c) the AER is of the opinion that the disclosure of the information would cause detriment to the person who has given it or to the person from whom that person received it that outweighs the public benefit in disclosing the 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.

**338. Disclosure of information given in confidence does not identify anyone**

- (1) This section applies if—
  - (a) in compliance with this Law a person gives the AER information in confidence; and
  - (b) the AER is of the opinion that the disclosure of the information would cause detriment to the person who has given it or to the person from whom that person received it that outweighs the public benefit in disclosing the information.
- (2) The AER is authorised to disclose the information given to it in confidence in any manner (whether combined with other information or otherwise) if that manner does not identify any person to whom that information relates.

**Division 2—Disclosure of confidential information held by relevant Ministers, NCC and AEMC**

**339. Definitions**

In this Division—

**"MCE directed review"** has the same meaning as in section 73;

**"relevant decision maker"** means—

- (a) a relevant Minister;
- (b) the NCC;
- (c) the AEMC;

**"scheme decision"** means—

- (a) in relation to a relevant Minister, a Ministerial coverage decision;
  - (b) in relation to the NCC, an NCC recommendation or decision;
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- (c) in relation to the AEMC—
  - (i) a report published under Division 4 or 5 of Part 2.2 of Chapter 2; or
  - (ii) a decision under section 135 or 148;

**"scheme procedure"** means—

- (a) in the case of a relevant Minister, the procedure to be followed by the relevant 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 for the purpose of making an NCC recommendation or decision;
- (c) in the case of the AEMC—
  - (i) an MCE directed review or a review conducted by the AEMC under section 78; or
  - (ii) the procedure to be followed by the AEMC under this Law as to whether to make a light regulation determination or a decision to revoke a light regulation determination.

**340. 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—

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- (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 5 of Part 2.2 of Chapter 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 78, 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 AEMC decides that information provided to it for the purposes of making a decision under section 135 or 148, is confidential information, the AEMC may only publish a version of the decision from which the information has been omitted.
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- (6) 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.
- (7) 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 65 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

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**PART 8.3—RECLASSIFICATION AND VARIATION OF  
CLASSIFICATION OF PIPELINES**

**341. Service provider may apply for reclassification, or  
variation of, classification pipeline**

- (1) A service provider may, in respect of a pipeline by which the service provider provides pipeline services, apply to the NCC for—
  - (a) the pipeline to be reclassified as—
    - (i) if the pipeline is a transmission pipeline—a distribution pipeline; or
    - (ii) if the pipeline is a distribution pipeline—a transmission pipeline; or
  - (b) the classification of the pipeline to be varied.
- (2) The application must be accompanied by the fee (if any) prescribed by the Regulations.

**342. Content of application**

An application under section 341 must—

- (a) identify the pipeline; and
- (b) specify what is sought by the application; and
- (c) be accompanied by information to support the reclassification of the pipeline or variation to the classification of the pipeline, having regard to the pipeline classification criterion; and
- (d) include any information, or be accompanied by any document, that is prescribed by the Regulations.

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Part 8.3—Reclassification and Variation of Classification of Pipelines

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**343. Application to be dealt with in accordance with regulatory scheme decision making procedure**

On receiving an application under section 341, the NCC must deal with it in accordance with Division 1 of Part 8.5.

**344. Reclassification decision**

- (1) The NCC must make a decision (a "**reclassification decision**") within 4 months after receiving an application under section 341.

Note: The NCC may extend the time within which it must make a reclassification decision: see Division 3 of Part 8.5.

- (2) A reclassification decision must—
- (a) be in writing; and
  - (b) identify the pipeline the subject of the application; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) state the terms of the decision under this section, applying subsections (3) to (5), and the reasons for it; and
  - (e) include any other information that is prescribed by the Regulations.
- (3) In making a reclassification decision, the NCC must have regard to—
- (a) the national gas objective; and
  - (b) the pipeline classification criterion.
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Part 8.3—Reclassification and Variation of Classification of Pipelines

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- (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.

**345. Effect of reclassification decision**

On the making of a reclassification decision—

- (a) in the case of a reclassification decision that reclassifies a pipeline—
  - (i) the pipeline is, in accordance with the decision, reclassified as either a transmission pipeline or distribution pipeline; and
  - (ii) the relevant Minister in respect of the pipeline is the relevant Minister as provided under this Law;
- (b) in the case of a reclassification decision that varies the classification of a pipeline, the classification is varied as stated in the decision.

**PART 8.4—SCHEME REGISTER**

**346. Establishment and maintenance of register**

- (1) The AEMC must establish and maintain a register (a "**scheme register**") of—
    - (a) all previous and current—
      - (i) coverage determinations; and
      - (ii) coverage revocation determinations; and
      - (iii) greenfields pipeline incentives; and
      - (iv) tender approval decisions; and
      - (v) light regulation determinations; and
      - (vi) covered pipelines, including their full description and classification as transmission pipelines or distribution pipelines; and
      - (vii) covered pipelines by which light regulation services are or will be provided; and
      - (viii) international pipelines; and
    - (b) all old scheme transmission pipelines and old scheme distribution pipelines; and
    - (c) all old scheme coverage determinations; and
    - (d) all old scheme classifications or determinations.
  - (2) The scheme register must—
    - (a) include any other information that is prescribed by the Regulations; and
    - (b) be kept in accordance with the Rules.
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**347. Register to be publicly available**

The AEMC must make the scheme register available for inspection by the public—

- (a) on its website; and
- (b) at its offices during business hours.

**348. AEMC to record information about coverage/reclassification decisions on scheme register**

(1) On receiving a copy of a coverage/reclassification decision, the AEMC must record, on the scheme register, the details of the decision that are prescribed by the Regulations.

(2) In this section—

**"coverage/reclassification decision"** has the same meaning as in section 362.

**349. AEMC to record information about tender approval decisions on scheme register**

The AEMC must—

- (a) record on the scheme register every tender approval decision of which it receives notification under section 105(a); and
- (b) note on the scheme register the revocation of a tender approval decision of which it receives notification under section 105(b).

**350. Notification of AEMC when extension to or expansion of capacity changes pipeline description**

(1) A service provider that owns or operates a covered pipeline or international pipeline the description of which changes because of an extension to, or an expansion to the capacity of, the pipeline must give the AEMC a new full description of the pipeline that incorporates that extension or expansion.

- (2) On receiving the new full description under subsection (1), the AEMC must enter the full new description of the relevant covered pipeline or international pipeline in the scheme register.

**351. Notification of AEMC when voluntary access arrangement expires**

- (1) A service provider that provides pipeline services to which a voluntary access arrangement applies must notify the AEMC—
- (a) of the date of expiry of that access arrangement; and
  - (b) before the date of expiry, whether the service provider will submit another access arrangement for approval under section 159.
- (2) On receiving notification of the date of expiry under subsection (1), the AEMC must note that date in the entry, in the scheme register, of the relevant covered pipeline by which the service provider provides the pipeline services to which the voluntary access arrangement applies.
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Part 8.5—Procedural Provisions for making of Regulatory Scheme Decisions  
under this Law

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**PART 8.5—PROCEDURAL PROVISIONS FOR MAKING OF  
REGULATORY SCHEME DECISIONS UNDER THIS LAW**

**Division 1—Consultation procedure to be followed by  
regulatory scheme decision makers**

**352. Definitions**

In this Division—

**"decision maker"** means the NCC or AEMC;

**"regulatory scheme decision"** means—

- (a) in the case of the NCC, an NCC recommendation or decision; or
- (b) in the case of the AEMC, a decision under section 135 or 148;

**"relevant application"** means an application under—

- (a) section 83;
- (b) section 91;
- (c) section 131;
- (d) section 145;
- (e) section 232;
- (f) section 341.

**353. Notice of relevant application**

- (1) A decision maker, within 14 days after receiving a relevant application, must publish a notice—
  - (a) on its website; and
  - (b) in a newspaper circulating generally throughout Australia.

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- (2) A notice under subsection (1) must—
    - (a) notify receipt of the application; and
    - (b) include any further information prescribed by the Regulations to be included; and
    - (c) invite submissions and comments within 21 days after the date of the notice.
  - (3) In the case of a relevant application under section 83, 91 or 232, the application must also—
    - (a) identify the pipeline the subject of the application; and
    - (b) include a reference to a website at which a full description of the pipeline can be inspected.
  - (4) In the case of a relevant application under section 131 or 145, the application must also—
    - (a) include a short description of the pipeline services or light regulation services the subject of the application; and
    - (b) identify the service provider that provides or will provide the pipeline services or light regulation services the subject of the application; and
    - (c) identify the pipeline by means of which those services are provided or are intended to be provided.
  - (5) The decision maker is not obliged to give notice of a relevant application under this section if, within 14 days after receiving the application, the decision maker rejects the application on the ground—
    - (a) that the applicant has failed to provide the information and materials required under this Law; or
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- (b) that the application is not accompanied by the document the Regulations have prescribed to accompany the application; or
  - (c) that the application is frivolous or vexatious.
- (6) A decision under subsection (3) to reject an application must—
- (a) be in writing; and
  - (b) set out the reasons for the decision; and
  - (c) be given to the applicant without delay.

**354. Draft regulatory scheme decisions**

- (1) The decision maker must prepare a draft of a regulatory scheme decision.
  - (2) In preparing a draft of a regulatory scheme decision, the decision maker—
    - (a) must consider any submissions received within 21 days after the date it publishes or gives a notice in accordance with section 353; and
    - (b) may, but need not, consider any submissions received after 21 days after the date it publishes or gives notice in accordance with section 353.
  - (3) The decision maker must, without delay—
    - (a) give copies of the draft of the regulatory scheme decision to, as the case requires—
      - (i) the applicant; and
      - (ii) the service provider; and
      - (iii) the AER; and
      - (iv) the AEMC; and
    - (b) publish the draft of the regulatory scheme decision on the decision maker's website; and
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- (c) make the draft of the regulatory scheme decision available at its offices during business hours.
- (4) In the case of a decision under section 135 or 148, the AEMC must also give a copy of the draft of the decision to the relevant Minister without delay.

**355. Decision maker must invite submissions and comments about draft decision**

The decision maker must publish, on its website, and in a newspaper circulating throughout Australia, notice of the preparation of a draft of a regulatory scheme decision inviting written submissions and comments on the draft within 14 days after publication of the notice.

**356. Submissions and comments to be considered in making relevant decisions**

In making a regulatory scheme decision, the decision maker—

- (a) must consider all submissions received within 14 days after the date it publishes a notice in accordance with section 355; and
- (b) may, but need not, consider any submissions received after 14 days after the date it publishes a notice in accordance with section 355.

**Division 2—Limited access arrangement procedure**

**357. Procedure to be followed by AER in approving or varying a limited access arrangement**

When the AER receives a limited access arrangement, or a variation to a limited access arrangement, for approval, the AER must proceed as follows—

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- (a) the AER must publish the limited access arrangement, or the variation, on its website together with an invitation to the public to make submissions on the proposal within 21 days after the date of the invitation; and
- (b) the AER must, in accordance with this Law, consider the submissions and publish on its website a limited access arrangement draft decision on the proposal together with a further invitation to the public to make submissions on the limited access arrangement draft decision within 14 days after the date of the further invitation; and
- (c) the AER must then make a limited access arrangement final decision on the proposal; and
- (d) the AER must then publish its limited access arrangement final decision, and the reasons for it, on its website.

**Division 3—Provisions relating to operation of time periods  
under this Law**

**358. Definitions**

In this Division—

**"regulatory scheme decision maker"** means a relevant Minister, the NCC, the AER or the AEMC;

**"time extendable decision"** means—

- (a) a Ministerial coverage decision; or
- (b) an NCC recommendation or decision; or
- (c) an AER economic regulatory decision (except a decision of the AER under section 125); or

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- (d) a decision of the AEMC under section 135 or 148.

**359. Extension of time within which time extendable decision must be made**

- (1) Despite anything to the contrary in this Law, a regulatory scheme decision maker may, by notice, extend the period of time within which the decision maker must make a time extendable decision.
- (2) The regulatory scheme decision maker may only extend the period of time within which the decision maker must make a time extendable decision if the decision maker considers that—
  - (a) the time extendable decision to be made is of sufficient complexity or difficulty; or
  - (b) there is a material change in circumstances, that it is necessary that the relevant period of time be extended.
- (3) In the case of the NCC, the AER or the AEMC, the NCC, the AER or AEMC may only extend the period of time once by a period of not more than 2 months.
- (4) A relevant Minister must give a copy of his or her notice under subsection (1) to the NCC.
- (5) Subject to subsection (6), a notice under subsection (1) must—
  - (a) be published—
    - (i) on the regulatory scheme decision maker's website; and
    - (ii) in a newspaper circulating generally throughout Australia; and

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- (b) specify the new date by when the decision maker will make the time extendable decision.
- (6) A notice under subsection (1) of a relevant Minister must be published on the NCC's website.
- (7) A regulatory decision maker may only extend a period of time under this section before the expiry of that time.

**360. Regulatory scheme decision maker must report to MCE if not made within extended time period**

- (1) In this section—
  - "relevant extended period"** means the period of time within which the regulatory scheme decision maker must make a time extendable decision following an extension, in accordance with this Law or the Rules, of the time for the making of that decision under this Law or the Rules.
- (2) If the regulatory scheme decision maker does not make a time extendable decision within the relevant extended period, the decision maker must give a report to the MCE that—
  - (a) describes the decision maker's handling of the matter; and
  - (b) gives the reasons of the decision maker for not making the decision within the relevant extended period; and
  - (c) specifies a date by when the decision maker considers the decision will be made.
- (3) A report under subsection (2)—
  - (a) must be given to the MCE as soon as practicable after the expiry of the relevant extended period; and

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- (b) must be published on the decision maker's website as soon as practicable after it is given to the MCE in accordance with paragraph (a).

**361. 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.

**Division 4—Miscellaneous procedural provisions relating to coverage and classification of pipelines**

**Subdivision 1—Interpretation**

**362. Definitions**

In this Division—

**"coverage/reclassification application"** means an application under section 83, 91, 232 or 342;

**"coverage/reclassification decision"** means—

- (a) a decision of a relevant Minister under section 89, 96 or 238; or
- (b) a reclassification decision.

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**Subdivision 2—Full pipeline description requests**

**363. Requests for full pipeline descriptions by NCC**

- (1) The NCC, after receiving a coverage/reclassification application, may, in writing, request a service provider who provides or intends to provide a pipeline service by means of the pipeline identified in the coverage/reclassification application to—
  - (a) provide to the NCC a full description of the pipeline; or
  - (b) place on the service provider's website a full description of the pipeline for inspection by the public free of charge.
- (2) A service provider must comply with a request under subsection (1).

**Subdivision 3—Publication and giving of coverage/reclassification decisions**

**364. Coverage/reclassification decisions must be given to applicant and others without delay**

- (1) A coverage/reclassification decision must, without delay be given to, as the case requires—
  - (a) the applicant; and
  - (b) the service provider (if the service provider is not also the applicant); and
  - (c) the NCC; and
  - (d) the AER; and
  - (e) the AEMC.

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- (2) In the case of a reclassification decision, the decision must also be given, without delay, to—
- (a) the Minister of the participating jurisdiction who was the relevant Minister in respect of the covered pipeline before the reclassification of the covered pipeline; and
  - (b) the Minister of the participating jurisdiction who is the relevant Minister in respect of the covered pipeline on the reclassification of the covered pipeline.

**365. NCC must publish coverage determinations etc.**

On receiving a coverage determination, a 15 year no-coverage determination or a coverage revocation determination, the NCC must, without delay—

- (a) publish on the NCC's website—
  - (i) the determination; and
  - (ii) the coverage recommendation, no-coverage recommendation or coverage revocation recommendation relating to the determination; and
- (b) make the relevant determination and recommendation available for inspection at the offices of the NCC during business hours.

**366. Publication and availability of reclassification decision**

A reclassification decision must be, without delay—

- (a) published on the NCC's website; and
- (b) made available for inspection at the offices of the NCC during business hours.

**Subdivision 4—Other matters**

**367. Withdrawal of applications relating to coverage or reclassification**

- (1) A person who has made an application for a coverage/reclassification decision may withdraw the application at any time before the coverage/reclassification 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 or the NCC.

**368. Notification of Ministers of participating jurisdictions of receipt of application**

When 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.

**369. Relevant Minister may request NCC to give information or assistance**

- (1) The 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.

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Part 8.6—Miscellaneous

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**PART 8.6—MISCELLANEOUS**

**370. Savings and transitionals**

Schedule 3 to this Law has effect.

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**SCHEDULES**

**SCHEDULE 1**

Section 68

**SUBJECT MATTER FOR THE NATIONAL GAS RULES**

**Classification and coverage of pipelines**

1. Applications for the approval by the AER of a tender for the construction of a pipeline by means of which pipeline services will be provided as a competitive tender process.
2. The procedure for the making and the content of a tender approval decision.
3. Reports on the conduct of tender processes approved under tender approval decisions.

**Access to pipeline services and access arrangements**

4. The disclosure to the AER of information relating to light regulation services.
5. Access to pipeline services provided or that may be provided by means of a covered pipeline or an international pipeline to which a price regulation exemption applies.
6. The content of access arrangements including—
  - (a) the description of pipeline services provided or that may be provided by means of a covered pipeline to which a price regulation exemption applies, including reference services; and
  - (b) the content of expansion and extension requirements; and
  - (c) the content of capacity trading requirements; and
  - (d) the content of queuing requirements.
7. Access arrangement expiry dates and review submission dates of applicable access arrangements.
8. The regulatory economic methodologies (including the use of the methodology known as the "building block approach") to be applied by the AER in—

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- (a) making or approving an access arrangement (other than a limited access arrangement); or
  - (b) approving a variation to an applicable access arrangement (other than a limited access arrangement); or
  - (c) making an access determination.
9. If the Rules provide for the regulatory economic methodology known as the "building block approach" to be applied by the AER for the purpose of—
- (a) making or approving an access arrangement (other than a limited access arrangement); or
  - (b) approving a variation to an applicable access arrangement (other than a limited access arrangement); or
  - (c) making an access determination,
- the determination by the AER 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) a rate of return on assets.
10. The methodology known as "total factor productivity"—
- (a) as a regulatory economic methodology to be applied by the AER for the purpose of—
    - (i) making or approving an access arrangement (other than a limited access arrangement); or
    - (ii) approving a variation to an applicable access arrangement (other than a limited access arrangement); or
    - (iii) making an access determination;
- Note: Under section 70, the AEMC must not make a Rule under item 10(a) unless the Regulations provide otherwise.
- (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—
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- (i) making or approving an access arrangement (other than a limited access arrangement); or
  - (ii) approving a variation to an applicable access arrangement (other than a limited access arrangement); or
  - (iii) making an access determination.
- 11. The valuation of assets forming part of a covered pipeline, and of a new facility for the purposes of—
  - (a) making or approving an access arrangement (other than a limited access arrangement); or
  - (b) approving a variation to an applicable access arrangement (other than a limited access arrangement); or
  - (c) making an access determination.
- 12. The assessment, or treatment, by the AER, of investment in covered pipelines and new facilities for the purposes of—
  - (a) making or approving an access arrangement (other than a limited access arrangement); or
  - (b) approving a variation to an applicable access arrangement (other than a limited access arrangement); or
  - (c) making an access determination.
- 13. The economic framework and methodologies to be applied by the AER for the purposes of item 12.
- 14. Incentives for service providers to make efficient operating and investment decisions, including, where applicable service performance incentive schemes.

**AER economic regulatory function or powers**

- 15. 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 access arrangement final decision.
- 16. Principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power.

**Access disputes**

- 17. The procedure for the making of access determinations.
  - 18. Time limits for the making of access determinations.
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19. Appointment of persons by the AER to inquire into and report on the safe operation of pipelines for the purpose of enabling the AER to make an access determination.

**Ring fencing requirements**

20. The content of a minimum ring fencing requirement.
21. AER ring fencing determinations.
22. Exemptions from a minimum fencing requirement.

**Miscellaneous**

23. Declaration or specification of pipeline services as reference services.
  24. Reviews by or on behalf of—
    - (a) the AER or the AEMC; or
    - (b) any other person appointed, in accordance with the Rules.
  25. Reporting and disclosing information to the AER.
  26. Confidential information held by service providers, users, prospective users, end users, the AER, the AEMC 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.
  27. 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 section [ ] of the *National Gas (South Australia) Act 2007* of South Australia.
  28. Any matter or thing relating to gas prescribed by the Regulations.
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**SCHEDULE 2**

**MISCELLANEOUS PROVISIONS RELATING TO  
INTERPRETATION**

Section 17

**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 32, 33, 34, 39, 42 and 43 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.

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- (3) Without limiting subclause (2), this Law is not to be construed as imposing any duty on 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 the Commonwealth Minister, the NCC, the Australian Competition Tribunal or AER to perform a function or exercise a power in matters or circumstances in which the assumption of the duty cannot be validly authorised under the law of the Commonwealth, or is otherwise ineffective, the provision is to be construed as if its operation were expressly confined to—
- (a) acts or omissions of corporations to which section 51(xx) of the *Constitution of the Commonwealth* applies; or
  - (b) acts or omissions taking place in the course of, or in relation to, trade or commerce between this jurisdiction and places outside this jurisdiction (whether within or outside Australia); or
  - (c) acts or omissions taking place outside Australia, or in relation to things outside Australia.
- (5) This clause does not limit the effect that a provision of this Law would validly have apart from this clause.

**3. Every section to be substantive enactment**

Every section of this Law has effect as a substantive enactment without introductory words.

**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.
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- (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.
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- (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—

**"extrinsic material"** means relevant material not forming part of this Law or the Rules, 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

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- (f) draft Rule determinations and final Rule determinations; and
- (g) 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.

- (2) Subject to subclause (3), in the interpretation of a provision of this Law or the Rules, consideration may be given to 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) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to 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

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- (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 one 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;

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**"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;

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**"modification"** includes addition, omission or substitution;

**"month"** means a calendar month;

**"named month"** means one 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, subparagraph or Schedule of or to this Law or the Act; or

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(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.
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- (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—

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- (i) if only one Minister of this jurisdiction administers the provision in relation to the relevant matter, the Minister; or
  - (ii) if two or more Ministers of this jurisdiction administer the provision in relation to the relevant matter, any one of those Ministers; or
  - (c) if paragraph (b) does not apply and, for the time being, two or more Ministers administer the provision, any one of the Ministers.
- (3) For the removal of doubt, it is declared that if—
- (a) a provision of this Law is administered by two 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 one 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 one 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
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- (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 or a Rule 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 or a Rule 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 or a Rule 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 or a Rule 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.
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**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.

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- (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 or a Rule 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 or a Rule authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with, as the case requires, this Law or the Rule, appoint—
  - (a) a person by name; or

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- (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 one 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) as the case requires, this Law or the Rules 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
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(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law or a Rule 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 or a Rule 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, as the case requires, this Law or the Rule 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 or a Rule authorises a person to delegate a function or power, the person may, in accordance with, as the case requires, this Law or the Rule, 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, as the case requires, this Law or the Rule, 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

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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.

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- (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).
- (3a) If a provision of the Rules (the "empowering provision") that does not commence on its making would, had it commenced, confer a power—
- (a) to make an appointment; or
  - (b) to make a statutory instrument of an 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.
- (4) If an instrument, or a provision of an instrument, is made under subclause (1), (2) or (3a) 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—
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- (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), (2) or (3a); or
  - (b) an instrument, or a provision of an instrument, made under subclause (1), (2) or (3a) 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), (2) or (3a) 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.

**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—
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- (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

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- (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 6A—EVIDENTIARY MATTERS**

**Division 1—Publication on websites**

**31AA. Definitions**

In this Division—

**"decision maker"** means a relevant Minister, the NCC, the AER or the AEMC;

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**"relevant decision or document"** means—

- (a) a decision (however described) or determination (however described) of a decision maker under this Law; or
- (b) an access arrangement submitted for approval under Division 2 of Part 4.3 of Chapter 4; or
- (c) a revised access arrangement required to be published under section 174;

**"relevant notice"** means—

- (a) in the case of the AER—
  - (i) notice under section 162 or 172;
  - (ii) a notice under Division 2 of Part 8.5 of Chapter 8;
- (b) in the case of the AEMC—
  - (i) notice under section 144(3);
  - (ii) a notice under Division 1 of Part 8.5 of Chapter 8;
- (c) in the case of the NCC, a notice under Division 1 of Part 8.5 of Chapter 8.

**31AB. 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 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).
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**Division 2—Evidentiary certificates**

**31AC. 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;

**"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 31AA;

**"SES employee"** has the same meaning as in section 17AA of the *Acts Interpretation Act 1901* of the Commonwealth.

**31AD. Evidentiary certificates—AER**

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 one of the following things, made, given, served or issued under this Law—
  - (i) a decision (however described) or determination (however described);
  - (ii) an authorisation under section 31;
  - (iii) a general regulatory information order;
  - (iv) a notice, notification, direction or requirement;

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- (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—
  - (i) given a decision (however described), or determination (however described);
  - (ii) authorised as an authorised person (within the meaning of section 30);
  - (iii) served a notice under section 41 or a regulatory information notice;
  - (iv) notified under section 47;
  - (v) notified under section 120(5) of the making of an AER ring fencing determination;
  - (vi) given, served or issued a direction under section 160(1);
  - (vii) given, served or issued a direction under section 189(3);
- (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;
  - (iii) an access arrangement submitted for approval under Division 2 of Part 4.3 of Chapter 4;
  - (iv) an access arrangement as revised under section 173;
  - (v) a relevant notice.

**31AE. 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 one of the following things, made, given, served or issued under this Law—
    - (i) a decision (however described); or
    - (ii) a light regulation determination;
    - (iii) a notice under section 154;
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- (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—
  - (i) given a decision (however described); or
  - (ii) given a light regulation determination;
  - (iii) served a notice under section 154;
- (d) on a stated day a relevant notice was published on the AEMC's website.

**31AF. 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 to reject an application for a coverage determination, coverage revocation determination, a 15 year no-coverage determination or a price regulation exemption;
- (b) on a stated day, a person was or was not given a reclassification decision;
- (c) on a stated day a Ministerial coverage decision, reclassification decision or relevant notice was published on the NCC's website.

**31AG. 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.
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**PART 6B—COMMENCEMENT OF THIS LAW AND  
STATUTORY INSTRUMENTS**

**31AH. 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.

**31AI. Time of commencement of a Rule**

- (1) If a Rule provides that the Rule 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.
- (2) If a notice published in the *South Australian Government Gazette* under section 324 provides that a Rule shall commence on a particular day, the Rule shall commence at the beginning of that day.

**PART 7—EFFECT OF REPEAL, AMENDMENT OR  
EXPIRATION**

**31. 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.

**32. 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.

**33. 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.

**34. 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.

**35. 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.

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**PART 8—OFFENCES UNDER THIS LAW**

**36. Penalty at end of provision**

In this Law, a penalty specified at the end 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.

**37. Penalty other than at end 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.
- (2) This clause does not apply to a penalty to which clause 36 applies.

**38. 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.

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- (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 two years; or
  - (b) impose, in relation to offences against the Law, cumulative periods of imprisonment that are, in total, more than five years.
- (5) Nothing in this clause renders a person liable to be punished more than once in relation to the same offence.

**39. 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 is in breach of 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.
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- (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.

**40. Aiding and abetting, attempts etc.**

- (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Law is taken to have committed that offence and is liable to the penalty for the offence.
- (2) A person who attempts to commit an offence against this Law commits an offence and is punishable as if the attempted offence had been committed.

**PART 9—INSTRUMENTS UNDER THIS LAW**

**41. 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.

**42. 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.

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- (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 the AER to perform a function or exercise a power in matters or circumstances in which the assumption of the duty cannot be validly authorised under a law of the Commonwealth, or is otherwise ineffective, the provision is to be construed as if its operation were expressly confined to—
- (a) acts or omissions of corporations to which section 51(xx) of the *Constitution of the Commonwealth* applies; or
  - (b) acts or omissions taking place in the course of, or in relation to, trade or commerce between this jurisdiction and places outside this jurisdiction (whether within or outside Australia); or
  - (c) acts or omissions taking place outside Australia, or in relation to things outside Australia.
- (5) This clause does not limit the effect that a provision of the National Gas Rules would validly have apart from this clause.

**43. 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.
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**SCHEDULE 3**

Section 370

**SAVINGS AND TRANSITIONALS**

*[This Schedule will contain savings and transitional provisions  
providing for the transition from the Gas Pipelines Access Law  
and Gas Code to this Law.]*

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**ENDNOTES**