

# National Gas (South Australia) Bill 2008

## SECOND READING SPEECH

### Introduction

The Government is again delivering on a key energy commitment through new legislation to improve the governance arrangements for the regulation of natural gas pipeline services, for the benefit of South Australians and all Australians.

The *National Gas (South Australia) Bill 2008* will make important governance reforms to gas regulation, through separating high level policy direction, economic regulation, rule making, and rule enforcement. The Bill brings gas access regulation under the jurisdiction of the Australian Energy Market Commission as rule-maker and the Australian Energy Regulator as the economic regulator and enforcement body. These reforms are modelled on the changes made to electricity regulation in the 2005 and 2007 amendments to the National Electricity Law and are designed to ensure consistency between gas and electricity regulation where appropriate.

The Bill contains new incentives to encourage investment in gas infrastructure, which are particularly important in light of the important role gas is expected to play as we move to a carbon-constrained economy. These incentives include the continuation of the greenfields pipeline incentives, a new light-handed regulatory regime and improvements to the rules around cost recovery for investment in expanding existing gas infrastructure capacity.

A further major reform is the streamlined rule change process, now embodied in the new National Gas Law. As a result of these reforms, the rules that govern the regulation of pipeline services, and which are currently embodied in the National Gas Code, will be replaced with rules made under the National Gas Law.

This Bill also makes significant advances in transparency in the market for gas by establishing a Bulletin Board to provide information about natural gas services and assist in the response to gas emergencies.

In short, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of pipeline services while increasing consistency between electricity and gas regulation and improving transparency.

## **Background**

As Honourable Members will be aware, South Australia is the lead legislator for national gas legislation and retains this important role under the reforms proposed.

The existing co-operative scheme for the regulation of pipeline services came into operation in 1997. The lead legislation is the *Gas Pipelines Access (South Australia) Act 1997*. There are two Schedules to this Act, the first titled *Third party access to natural gas pipelines*, and the second being the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Gas Code). Together these Schedules are referred to as the Gas Pipelines Access Law and, along with the Regulations made under them, are applied by all Australian States and Territories as well as the Commonwealth. The Gas Code is able to be amended by a Ministerial approval process.

Under the proposed reforms, the new National Gas Law, the Regulations made under the *National Gas (South Australia) Act 2008* and, now, the National Gas Rules, will be applied in all Australian jurisdictions by application Acts which apply our Law, Regulations and Rules.

As Honourable Members will be aware, in December 2003, the Ministerial Council on Energy responded to the Council of Australian Governments' report "Towards a Truly National and Efficient Energy Market", also known as the Parer Review by announcing a comprehensive and sweeping set of policy decisions for its major energy market reform program. These policy decisions were publicly released as the Ministerial Council's Report to the Council of Australian Governments on "Reform of Energy Markets". All first Ministers endorsed the Ministerial Council's Report.

The 2004 *Australian Energy Market Agreement*, as amended in 2006 commits the Commonwealth, State and Territory Governments to establish and maintain the new national energy market framework. An important objective of the *Australian Energy Market Agreement* is the promotion of the long term interests of energy consumers, which has been enshrined as the key objective of the Law, in the new National Gas Objective in the National Gas Law.

Also in 2004, the Productivity Commission completed its "Review of the Gas Access Regime". This Bill implements the policy responses of the Ministerial Council on Energy to that Review and incorporates a number of resulting regulatory reforms.

Parallel to the process of replacing the Gas Code with the National Gas Law, the Ministerial Council on Energy has been pursuing other mechanisms to develop the gas market. In

November 2005 the Ministerial Council on Energy announced the establishment of the Gas Market Leaders Group, an industry-run group, to develop proposals to improve transparency and trading in Australia's gas markets. The Gas Market Leaders Group reported to the Ministerial Council in June 2006, and in October 2006 the Ministerial Council endorsed the proposals for development of a gas market Bulletin Board and design work for a Gas Short Term Trading Market. This Bill contains provisions to allow the Bulletin Board to become operational.

### **New regulatory arrangements**

This Bill reforms the governance arrangements for the regulation of pipeline services by conferring functions and powers on two national energy bodies, the Australian Energy Market Commission, which was established under the South Australian *Australian Energy Market Commission Establishment Act 2004*, and the Australian Energy Regulator, established under the Commonwealth *Trade Practices Act 1974*. These bodies were originally given functions and powers as the regulator and rule maker under the National Electricity Law, and will now have similar functions conferred on them under the National Gas Law. Importantly, the Bill also enshrines the policy-making role of the Ministerial Council on Energy in the context of gas regulation.

The Australian Energy Regulator will be responsible for gas transmission and distribution regulation in all jurisdictions other than Western Australia, where the Economic Regulation Authority retains this role. The Australian Energy Market Commission will be responsible for rule-making for gas transmission and distribution in all jurisdictions.

As a result of these new regulatory arrangements, the Code Registrar and the National Gas Pipelines Advisory Committee are to be abolished and their functions assumed by the Australian Energy Market Commission.

### **Consultation**

All of these reforms have been the result of extensive public consultation processes with industry participants and other stakeholders. These have included the development, publication and MCE responses to the 2002 Parer Review and the 2004 Productivity Commission Review of the Gas Access Regime. Further consultation was then undertaken on the implementation of the recommendations contained in the Expert Panel in its "Report on Energy Access Pricing" of 2006.

Consultation on this Bill itself included opportunities to provide written submissions on two exposure drafts of the Bill and the National Gas Rules. In total, 45 written submissions on the drafts of this Bill and the rules were received. I take this opportunity to thank all parties who made submissions for their valuable contribution to these important reforms. As you have heard, however, many of the constituent parts of the overall reform program, including important elements of this Bill, have also been subject to previous consultation processes.

The Bulletin Board provisions of the Law and the Rules have been extensively consulted on by the Gas Market Leaders Group, including an initial consultation paper in June 2007, a final paper outlining business data and requirements for the Bulletin Board in September 2007 and consultation on exposure drafts of the Bulletin Board Law and Rules provisions in February of this year.

### **National gas objective**

This Bill incorporates a new national gas objective which mirrors the National Electricity Objective in the National Electricity Law.

The alignment between the objectives of the gas and electricity regime is an important foundation for the regime. A single consistent objective across gas and electricity will increase the prospect that the regimes remain closely aligned over the long term, even in light of the capacity in both regimes for interested parties to make applications to change rules through the Australian Energy Market Commission.

The national gas objective is to promote efficient investment in, and efficient use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, reliability and security of supply of natural gas.

The national gas objective is an economic concept and should be interpreted as such.

The long term interest of consumers of gas requires the economic welfare of consumers, over the long term, to be maximised. If gas markets and access to pipeline services are efficient in an economic sense, the long term economic interests of consumers in respect of price, quality, reliability, safety and security of natural gas services will be maximised. By the promotion of an economic efficiency objective in access to pipeline services, competition will be promoted in upstream and downstream markets.

Just as the Australian Energy Market Commission must test changes against the objective of the law when making rules, the Australian Energy Regulator must perform its functions in a manner that will or is likely to contribute to achieving the objective of the law.

The purpose of the National Gas Law is to establish a framework to ensure the efficient operation of pipeline services, efficient investment, and the effective regulation of gas networks.

### **Revenue and pricing principles**

A key feature of the amended National Gas Law is the inclusion of six principles that guide the development of the framework for the regulation of pipeline services. These revenue and pricing principles will guide the Australian Energy Market Commission in making the rules governing the regulation of pipeline services and the Australian Energy Regulator when approving access arrangements.

These principles are fundamental to ensuring that the Ministerial Council on Energy's intention of enhancing the efficient delivery of natural gas services is achieved. To provide certainty to the industry and consumers, these principles will be applied through the National Gas Law. The aim of the pricing principles is to provide the necessary balance between allowing the regulatory regime to evolve as the industry evolves through the National Gas Rules and provide the framework for efficient investment in pipelines. These revenue and pricing principles replicate the principles in the National Electricity Law to ensure a consistent framework for energy access pricing.

The first of these principles requires that a regulated service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in providing services, complying with a regulatory obligation or requirement or making a regulatory payment. At least efficient cost recovery is vital if service providers are to maintain their gas networks in order to meet community expectations of the service levels they receive, and to undertake further investment to serve Australia's growing population.

The second principle requires that service providers should be provided with effective incentives in order to promote the economically efficient investment in and provision and use of pipeline services.

The third principle requires that regulators have regard to the capital base adopted in any previous determination conducted by the Australian Competition and Consumer Commission

or jurisdictional regulators, or as specified in the rules. This principle is important to ensure that the regulatory framework recognises the long lived nature of pipelines by recognising how sunk assets have been considered previously in rules or previous access arrangements.

The fourth principle ensures that risks are appropriately compensated by requiring that prices and charges for the provision of reference services allow for a return commensurate with the regulatory and commercial risks involved in providing the services to which that price or charge relates.

The fifth principle explicitly requires the Australian Energy Regulator to have regard to the economic costs and risks of the potential for under and over investment by a regulated service provider in its network. The cost of under investment is lower service standards for consumers and ultimately higher costs to correct these, while the cost of over investment is unnecessarily high prices to consumers. This principle will ensure that Australian consumers receive the level of service that they expect and at the right price.

The final principle requires that regard be had to the economic costs and risks of the potential for under and over utilisation of a service provider's network. This principle guides decision makers to consider the efficiency of the usage of existing assets and balance this against the principle of over and under investment. Utilisation is another important indicator of whether the network is operating efficiently. Under utilisation during a previous access arrangement period might indicate that prices have been set too high. It may also be an indicator of over investment, which can also result in high prices. Either way it can have adverse consequences on consumers. Conversely, over utilisation is an indicator of under investment which can result in poor service standards.

### **Ministerial Council on Energy role and functions**

Consistent with the *Australian Energy Market Agreement* the new National Gas Law and Rules have been drafted to reflect the Ministerial Council on Energy's function to give high level policy direction to the Australian Energy Market Commission in relation to the national energy market, rather than engaged directly in the day-to-day operation of the energy market or the conduct of regulators. The Ministerial Council's powers under the National Gas Law mirror its role under the National Electricity Law.

The means by which the Ministerial Council on Energy will perform this role under the new National Gas Law and Rules is, first, through its ability to direct the Australian Energy Market Commission to carry out a review and report to the Ministerial Council on Energy. Such a

review may result in the Australian Energy Market Commission making recommendations to the Ministerial Council on Energy in relation to any relevant changes to the Rules that it considers are required. Secondly, the Ministerial Council on Energy may initiate a Rule change proposal including in response to a review or advice carried out or provided by the Australian Energy Market Commission as a result of a request by the Ministerial Council on Energy. Thirdly, the Ministerial Council on Energy may publish statements of policy principles in relation to the Australian Energy Market Commission's rule-making and review functions under the new National Gas Law, or the Rules.

Ministerial Council on Energy statements of policy principles must be consistent with the National Gas Objective. The Ministerial Council will be required to give a copy of such statements to the Australian Energy Market Commission which must then publish the statement in the South Australian Government Gazette and on the Australian Energy Market Commission's website.

### **Australian Energy Market Commission role and functions**

The Australian Energy Market Commission has been established as a statutory commission. Under the new National Gas Law and Rules, the Australian Energy Market Commission is responsible for Rule making and market development. Market development will occur as a result of the Rule review function.

In so far as its Rule making function is concerned, the Australian Energy Market Commission itself will generally not be empowered to initiate any change to the Rules other than where the proposed change seeks to correct a minor error or is non-material. Instead, its role is to manage the Rule change process and to consult and decide on Rule changes that are proposed by others, including the Ministerial Council on Energy, gas market operators, industry participants and gas users.

In so far as its market development function is concerned, the Australian Energy Market Commission must conduct such reviews into any matter related to the national gas market or the Rules as directed by the Ministerial Council on Energy. The Australian Energy Market Commission may also, of its own volition, conduct reviews into the operation and effectiveness of the Rules or any matter relating to them. These reviews may result in the Australian Energy Market Commission recommending changes to the Rules, in which case the Ministerial Council on Energy, or any other person, can then decide to initiate a Rule change proposal based on these recommendations through the Rule change process.

In performing its functions under the new National Gas Law and Rules, the Australian Energy Market Commission will be required to have regard to the National Gas Objective. Further, the Australian Energy Market Commission must have regard to any relevant Ministerial Council on Energy statements of policy principles in making a Rule change or conducting a review into any matter relating to the Rules.

### **Australian Energy Regulator role and functions**

The Australian Energy Regulator has been established as a Commonwealth statutory body under the *Trade Practices Act 1974*. The Australian Energy Regulator is the primary regulator under the National Electricity Law and will take on this function under the National Gas Law in all jurisdictions except Western Australia, where the Western Australian Economic Regulation Authority will perform this function. Under the new National Gas Law and Rules, the Australian Energy Regulator has enforcement, compliance monitoring, and economic regulatory functions. To perform these functions under the National Gas Law, the Australian Energy Regulator will be given identical powers to those it has under the National Electricity Law.

### **Information gathering powers**

This Bill adopts the Australian Energy Regulator's information gathering powers under the National Electricity Law. They are designed to address ongoing issues of information asymmetry between regulated businesses and the regulator that were recognised by the Expert Panel.

The amendments enable the Australian Energy Regulator to obtain adequate information from industry to set efficient prices for energy services without placing an unnecessarily heavy administrative burden on industry, while supporting competition in the energy market and protecting commercially sensitive information.

Information on costs incurred in supplying pipeline services is a critical input into the regulatory process and is an essential starting point for determining regulated prices for services supplied in such a market. These provisions implement the concerns of the Expert Panel about the necessity of information provision in gas and electricity regulation.

The Bill includes search warrant provisions consistent with current criminal law policy and with the National Electricity Law. Search warrants are a tool for breaches of the legislative regime rather than economic regulation.

The National Gas Law gives the Australian Energy Regulator the ability to obtain information or documents from any person where such information or documents are required by the Australian Energy Regulator for the purpose of performing or exercising any of its functions and powers. The Australian Energy Regulator's information gathering powers under this provision extend to existing information. However, persons are not required to provide information or documents pursuant to such a notice where they have a reasonable excuse for not doing so, such as that the person is not capable of complying with the notice. Information that is the subject to legal professional privilege is also protected from disclosure under such a notice.

The Bill includes the concepts of a 'general regulatory information order' and a 'regulatory information notice' that were developed in the 2007 amendments to the National Electricity Law. The law outlines the processes by which these instruments may be used by the Australian Energy Regulator.

A general regulatory information order is an order made by the Australian Energy Regulator that requires each regulated service provider of a specified class, or each related provider of a specified class, to provide the information specified in the order and to prepare, maintain or keep information described in the notice in a manner specified in the order. A regulatory information notice is a notice prepared and served by the Australian Energy Regulator that requires the regulated network service provider, or a related provider, named in the notice to provide the information specified in the notice and to prepare, maintain or keep information described in the notice in a manner and form specified in the notice.

The Australian Energy Regulator can only serve a regulatory information notice or make a general regulatory information order if it considers it reasonably necessary for the performance or exercise of its functions. In considering whether it is reasonably necessary, the Australian Energy Regulator must have regard to the matters to be addressed in the service of the regulatory information notice or the making of the general regulatory information order, and the likely costs that may be incurred by an efficient network service provider or efficient related provider in complying with the notice or order. The Australian Energy Regulator must also exercise its powers under this section in a manner that will or is likely to contribute to the achievement of the national gas objective.

A key component of this Bill is to extend the Australian Energy Regulator's information gathering powers to parties related to the service provider. This mechanism is designed to

ensure that the Australian Energy Regulator has sufficient information to perform its functions and to discourage service providers from using corporate structures to avoid disclosure of information to the regulator, without allowing the Australian Energy Regulator to unduly interfere in competitive commercial arrangements.

The National Gas Law requires the Australian Energy Regulator to consider additional matters in considering whether it is reasonably necessary to serve a regulatory information notice or make a general regulatory information order for related providers. One of the matters the Australian Energy Regulator is required to consider is whether the service provider is able to provide sufficient and timely information to address the reasons for issuing the information instrument. The Australian Energy Regulator is also required to consider the extent to which it considers the services provided by the related provider are a contributing service provided on a genuinely competitive basis having regard to the nature of ownership and control between the related provider and the network service provider and the competitiveness of the market in which the person provides services to the service provider.

The National Gas Law identifies the functions to which the general regulatory information order and regulatory information notice powers extend. A regulatory information instrument must not be served solely for the Australian Energy Regulator's enforcement functions, appeals or collecting information for the preparation of a service provider performance report. Outside of these areas, the tests for issuing a regulatory information instrument are sufficient to ensure these powers do not create an unnecessary regulatory burden.

The National Gas Law also recognises that there are certain circumstances where the Australian Energy Regulator needs to issue an urgent regulatory information notice. In such circumstances, the Australian Energy Regulator is required to identify that the notice is an urgent regulatory information notice and give reasons as to why the regulatory information notice is an urgent notice.

The National Gas Law gives the Australian Energy Regulator the ability to make certain assumptions in instances where the regulated network service provider or related provider does not provide the information to the Australian Energy Regulator in accordance with the applicable regulatory information instrument or provides information that is insufficient.

These instruments are intended to clearly set out the information requirements on service providers to report annually and at an access arrangement review. By creating clear obligations, regulators, users, related providers and network service providers will be able to

more clearly ascertain compliance with the law and the efficiency of prices for services. As well, the framework set out in the National Gas Law should help to avoid information being collected in several different ways under different parts of the National Gas Rules.

These amendments will require the Australian Energy Regulator to take into account the comments received, including the likely costs of compliance, before issuing a regulatory information notice. Consultation is intended to ensure the Australian Energy Regulator does not exercise its powers without regard to why it requires the information and taking into account the regulatory burden that may be imposed by the request for information.

### **Protection of confidential information**

This Bill also establishes a comprehensive framework covering the circumstances where the Australian Energy Regulator is authorised to disclose confidential information. The *Trade Practices Act* generally requires the Australian Energy Regulator keep information confidential but allows the National Electricity Law and National Gas Law to specify how and when the Australian Energy Regulator may disclose confidential information. In the regulatory framework for energy, while there is a legitimate need to protect confidential information, particularly that relating to businesses in competitive parts of the market, there is also a need to disclose much of a network service provider's information to the public to allow adequate scrutiny of its costs.

Accordingly, the Australian Energy Regulator is able to disclose confidential information with consent, where aggregated, for proceedings or to accord natural justice. Additionally, where none of the previous options apply or are appropriate, the Australian Energy Regulator is able to disclose information where it would not cause detriment or if the public benefit of disclosing outweighs the detriment. The Australian Energy Regulator must give affected parties 5 business days to comment on such a disclosure and if submissions are received, must issue a further disclosure notice and wait a further 5 business days before disclosure. These decisions are also subject to merits review in the Australian Competition Tribunal.

### **Performance reporting**

This Bill replicates the power given to the Australian Energy Regulator under the National Electricity law to publish performance reports on the financial and operational performance of service providers. This is a key aspect of transparency for service providers and will be of great benefit to gas users and consumers. Performance reporting on regulated services is an important element of the regulatory framework as it allows the Australian Energy Regulator to

consider whether the service providers are complying with the regulatory determinations, and to promote competition by comparison for monopoly service providers.

In preparing a report on the financial and operational performance of a network service provider, the National Gas Law provides that the Australian Energy Regulator can only prepare a report in a manner that will, or is likely to, contribute to the achievement of the National Gas Objective. The National Gas Law also provides that the report prepared by the Australian Energy Regulator can include performance against network service standards, customer service standards, and profitability of the regulated services. The report may also cover other performance of service providers directly related to the economic regulatory functions of the Australian Energy Regulator. The purpose of these requirements is to provide the regulator and users and consumers with information about how the regulated service provider is performing more broadly to ensure it can deliver reliable and efficient pipeline services.

The National Gas Law also requires the Australian Energy Regulator, before preparing a performance report under the law, to consult with persons specified in the Rules and in accordance with the consultation process outlined in the Rules. The initial rules require the Australian Energy Regulator to consult with service providers, associations representing service providers, and the public generally in order to determine the appropriate priorities and objectives to be addressed in the preparation of a performance report. In preparing the performance report, the Australian Energy Regulator is also required to consult with jurisdictional safety and technical regulators to avoid unnecessary duplication.

The Rules also provide the service provider with an opportunity, at least 30 business days before the publication of the report, to submit information and make submissions relevant to the subject matter of the report. The service provider must be given an opportunity to comment on material of a factual nature to be included in the report. This provides an opportunity for affected stakeholders to be consulted while at the same time encouraging transparency and insight into a service provider's performance.

### **Coverage of pipelines**

The National Gas Law retains the structure of the Gas Code where economic regulation is only applied to covered pipelines which exhibit a level of market power where the benefits of regulation outweigh the costs. Coverage of pipelines is a process for determining whether or not economic regulation should or should not be applied to the services provided by a

particular pipeline. This decision is made by the relevant State or Commonwealth Minister, on the recommendation of the National Competition Council. The decision of whether or not to regulate is based upon whether the pipeline coverage criteria are satisfied. Consistent with the current Gas Code, a coverage decision may apply to more or less of the pipeline than is the subject of the application or recommendation.

The Gas Code coverage criteria have been amended in response to the Productivity Commission Review of the Gas Access Regime such that a 'material' increase in competition in at least one market is required before coverage should be applied. This, consistent with similar amendments to Part IIIA of the Trade Practices Act, ensures that the increase in competition needs to be non-trivial before regulation is imposed.

The National Gas Law does not apply economic regulation to pipelines that do not meet the coverage criteria. Any person can apply to bring a pipeline under the regime or for a pipeline to become uncovered at any time, unless the pipeline has been granted a greenfields pipeline incentive.

This Bill streamlines the pipeline classification and coverage process. Under the National Gas Law, classification and coverage will be dealt with simultaneously. In this process the National Competition Council will make draft and final recommendations on coverage at the same time as making draft and final decisions on the classification of the pipeline. That final classification decision will therefore determine who is to be the relevant Minister for making the decision on whether the pipeline should be covered or uncovered under the regime. As in the Gas Pipelines Access Law, the relevant Minister so determined will make the final coverage determination based on the advice of the National Competition Council.

### **Light regulation of services**

Under the National Gas Law not all covered pipelines will necessarily be subject to upfront price regulation in an access arrangement. This Bill implements the recommendation of the Productivity Commission that a light handed form of regulation be introduced into the gas access regime which does not involve upfront setting of reference tariffs through the access arrangement approval process. In its response to the review, the Ministerial Council on Energy largely accepted the thrust of the Productivity Commission's proposals and adapted them to be consistent with the new governance framework. It should be noted that both the Productivity Commission and the Ministerial Council have recognised that binding arbitration, as a core

requirement for certified effective access regimes, needs to be able to be applied to pipelines under this form of regulation.

The National Gas Law allows service providers operating covered pipelines to apply for the services offered by means of that pipeline to be "light regulation services". The National Competition Council is the body charged with the responsibility of deciding whether or not to make a "light regulation determination" in regard to a covered pipeline. A light regulation determination means that services provided by a pipeline are light regulation services and has effect until it is revoked.

Service providers offering light regulation services are not required to, but may, submit a limited access arrangement to the Australian Energy Regulator for approval. A limited access arrangement is an access arrangement without provision for price or revenue regulation. Service providers may wish to submit such an arrangement as it gives certainty over terms and conditions applicable to their pipeline services. Further, a limited access arrangement also means the Australian Energy Regulator, in resolving an access dispute, must apply the limited access arrangement terms and conditions. Even though limited access arrangements do not provide for price or revenue regulation, in an arbitration the Australian Energy Regulator will be able to set a price between the parties for the purpose of resolving the access dispute. However, the price would only be a price set between the parties to the dispute based upon the application of the revenue and pricing principles.

Service providers subject to light regulation will be required to make public the terms and conditions of access, including prices, for provision of those services. A service provider is also required by the National Gas Law not to engage in price discrimination.

The Ministerial Council has also agreed that the market status of the current covered pipeline networks in South Australia, Victoria and Western Australia makes them inappropriate for light regulation. These networks will be listed as designated pipelines in the initial regulations. Should market circumstances change, advice may be provided to the Ministerial Council by the Australian Energy Regulator and the Council may decide to pass a regulation removing one or more of the pipelines from the list as designated pipelines.

### **Test for light regulation and form of regulation factors**

Determining how covered pipeline services are to be regulated requires an assessment of the potential for market power to be exploited by a service provider. The National Gas Law requires the National Competition Council to consider the likely effectiveness of light

regulation as opposed to access arrangement regulation in promoting access to pipeline services in light of the costs of each form of regulation. Accordingly, where light regulation can reduce the costs of regulation while still providing an effective check on a pipeline's market power, the light regulation option should be available. Light regulation may be particularly relevant for point-to-point transmission pipelines with a small number of users who have countervailing market power.

The National Gas Objective and 'form of regulation factors' guide this assessment of the form of regulation to apply to covered pipeline services. This framework effectively implements the Expert Panel recommendations and mirrors considerations in the National Electricity Law.

The first of the form of regulation factors assesses the presence and extent of any barriers to entry in a market for pipeline services. Many of the services provided by pipelines can be characterised as natural monopolies and need to be regulated to ensure that consumers' interests are met.

Another factor that predisposes pipelines towards natural monopoly status is the interdependent nature of network services. This means that it is usually more efficient to have one service provider provide a pipeline service to a given geographical area. Additionally it may be more efficient to have the same company provide other pipeline services to the same geographical area.

The second and third form of regulation factors require that the National Competition Council identify these interdependencies and network externalities as potential sources of market power.

The fourth form of regulation factor looks to consider the extent to which market power possessed by the owner, operator or controller of a pipeline by which services to be subject to regulation are provided is likely to be mitigated by countervailing market power possessed by the users of those services. This factor allows the National Competition Council to apply a lighter form of regulation to a pipeline that is subject to this type of countervailing market power from a major user.

Another factor that may cause the National Competition Council to consider a lighter form of regulation is the degree to which pipeline services can be substituted for other products. For example, electricity may also compete with natural gas for some or all of a customer's needs. The fifth and sixth form of regulation factors allow the National Competition Council to

consider the presence and extent of substitutions for users to be provided with the particular service.

Finally, customers can only negotiate with service providers when they have adequate information, to determine whether or not payments required of them accurately reflect the efficient cost of providing the service. In a competitive market the efficient cost is revealed as competing providers seek to out-bid each other down to the point where they are covering their costs plus a normal profit. Where a business is a natural monopoly this does not occur and it can be difficult for consumers and regulators to access information from natural monopoly service providers. The final form of regulation factor allows the National Competition Council to consider the extent to which there is adequate information available to users, to enable them to negotiate with the service provider on an informed basis.

Additionally, even within a pipeline regulated by an access arrangement, some services may still only be subject to arbitration rather than upfront price regulation. The form of regulation factors will guide the Australian Energy Market Commission in making rules which distinguish between these services.

### **General obligations on covered pipelines**

The National Gas Law directly imposes a number of fundamental obligations on pipelines similar to the previous regime. Service providers and related parties are prohibited from preventing and hindering access, must comply with their queuing requirements and are subject to a number of ring-fencing obligations including not carrying on a related business, restrictions on marketing staff and requirements about keeping separate and consolidated accounts for their business. Other details about ring-fencing and exemptions from ring-fencing requirements are in the Rules. Just as in the current regime, producers are required to offer terms and conditions of sale from the exit flange of their facility to ensure there are no gaps in the access regime.

The approval process for contracts between service providers and associates has been altered, so that approval from the regulator is not needed for every such contract. It is now left to the discretion of the service provider as to whether such a contract is likely to breach the associate contract provisions of the National Gas Law, by reducing competition. If other parties or the Australia Energy Regulator believe that a party is in breach of the associate contract provisions, the Australian Energy Regulator or an affected party may enforce those provisions. This approach is similar to arrangements in the Trade Practices Act 1974. It achieves an

appropriate balance between reducing the regulatory burden on the pipeline industry and protecting the interests of downstream users of pipeline services.

### **Access arrangements**

Access arrangements have been the central feature of pipeline regulation under the Gas Code and will continue to have this position under the National Gas Law. The law requires service providers who are subject to price regulation to submit access arrangements and revisions to access arrangements to the Australian Energy Regulator in accordance with the Rules. The Australian Energy Regulator is also required to apply an access arrangement during an access dispute. The processes for submitting, approving and revising access arrangements will be contained in the National Gas Rules to allow flexible development through the rule change process. In the initial Rules the approval processes for access arrangements will now be subject to clear time limits. The benefits of this are that the approval of access arrangements will be expedited and certainty as to what is expected of all parties has been improved.

The intention has been for the Rules concerning access arrangements to replicate the economic regulatory model operating under the Gas Code while implementing the Ministerial Council on Energy's response to both the Productivity Commission Review of the Gas Access Regime and the Expert Panel on Energy Access Pricing. In a small number of areas, such as pricing principles for distribution networks, the gas regime has been aligned to the regime in the National Electricity Rules to promote greater consistency in regulation. Generally, consistency with current practice will ensure business and user certainty in the transition between the current and new regimes.

Consistent with the Gas Code, the National Gas Law ensures that access arrangements do not infringe upon protected existing contractual rights and service providers are free to negotiate terms and conditions of access with users which differ from an applicable access arrangement.

### **Access arrangement decision making framework**

A key aspect of the regulatory framework established by this Bill is the recognition of a "fit for purpose" decision making framework as recommended by the Expert Panel.

The National Gas Law reflects the Ministerial Council on Energy policy intention to establish a "fit for purpose" decision-making model by allowing the rules to set out the decision making framework and determine the level of discretion the Australian Energy Regulator has in dealing with the different aspects of a regulatory determination. The decision making model

adopted in this Bill mirrors the decision making model established under the National Electricity Law and is designed to ensure a consistent approach to regulatory decision making in electricity and gas regulation.

The key aspect of the "fit for purpose" framework is that it best balances the aims of reducing the risk of regulatory error, balancing the interests of consumers and the service provider, and allowing for the regulatory regime to evolve where required.

The "fit for purpose" framework acknowledges that in a service provider's proposal, there is such a range of dimensions and inter-relationships between revenue and price components, that the regulatory framework should retain the capacity to require the regulator to have a presumption of acceptance, have discretion to determine an outcome or apply a more specific test to different elements of the proposal. Under this model, the regulator is not given absolute discretion for different elements of the proposal, but is guided in its decision-making by the National Gas Objective, the revenue and pricing principles, and the fit-for-purpose framework established in the National Gas Rules.

The "fit for purpose" framework provides the appropriate degree of flexibility by allowing the National Gas Rule to evolve and adapt the model of regulatory decision making according to the degree of regulatory risk or certainty desired by the market.

### **Increasing investment in existing pipelines**

The initial Rules will now include a "positive economic value" test for investment in existing pipelines designed to capture net increases in producer and consumer surpluses in upstream and downstream gas markets, whilst also capturing the system security and reliability benefits that were considered by regulators to constitute system-wide benefits.

This test will ensure the assessment of pipeline investments unambiguously includes benefits that accrue to users and end users of gas when they are able to purchase additional quantities of gas, or to gas producers when they are able to sell additional quantities of gas. This should assist in promoting efficient investment in our existing pipeline network to meet our increasing demand for natural gas.

### **Access disputes**

This Bill adopts the procedure for disputes relating to access used in the National Electricity Law. Under the new Part 6, a dispute occurs when a user or prospective user is unable to agree with a service provider about one or more aspects of access to a regulated pipeline service.

These provisions will allow the Australian Energy Regulator to act as arbitrator over parties to an access dispute. They will establish the Australian Energy Regulator's powers and make its access determinations binding on the parties to an access dispute. This access dispute framework is consistent with the 2007 amendments to the National Electricity Law, 1995 Competition Principles Agreement and Parts IIIA and XIC of the Commonwealth *Trade Practices Act*.

Under the new process the Australian Energy Regulator may terminate access disputes where it is clear that the service sought in the dispute is capable of being provided on a genuinely competitive basis. The Bill also ensures that existing contractual rights are protected in access disputes and that, by obliging the Australian Energy Regulator to take into account the revenue and pricing principles, service providers are appropriately compensated for providing access.

### **Greenfields pipeline incentives**

This Bill continues the greenfields incentives established in 2006 under the Gas Pipelines Access Law. The greenfields incentives allow the relevant Minister to make, following a recommendation by the National Competition Council, a no-coverage determination that is binding for a period of 15 years (a 15-year no-coverage determination) if a new pipeline does not meet the pipeline coverage criteria.

However, the 15-year no-coverage assessment process may not be a sufficiently timely process to provide regulatory certainty for complex international greenfields gas pipeline projects. For this reason, the Ministerial Council on Energy also decided to implement the option of a price regulation exemption (also having effect for 15 years) for international transmission pipelines bringing gas from a source outside Australia.

The Ministerial Council on Energy implemented these two measures in the existing gas access regime in June 2006 and the relevant provisions (set out in Part 3A of the Gas Pipelines Access Law) are replicated in the National Gas Law.

### **Competitive tender processes**

This Bill retains and simplifies the Gas Code provisions applying to pipelines built under competitive tendering arrangements. In the initial Rules, the competitive tendering process has been improved to increase the level of certainty for pipeline developers, by allowing pipeline users or other proponents (such as local councils), to seek approval of a tender process as a competitive tender process with a special regulatory status. This will guarantee that the terms

negotiated through the competitive tendering process are reflected in access arrangements. This provision will support the Ministerial Council on Energy policy of increased penetration of natural gas services in Australia. This process will be particularly beneficial for encouraging investment in pipelines in new and unproven markets, offering access to new gas services for consumers at competitive and sustainable tariffs. Similar to the greenfields incentives, pipelines subject to an access arrangement resulting from a competitive tendering process become uncovered upon the expiry of those arrangements.

### **Gas Market Bulletin Board**

This Bill includes provisions establishing a Natural Gas Services Bulletin Board. The provisions in the National Gas Law are designed to support the Bulletin Board rules being developed as part of the Gas Market Leaders Group process. The purpose of the Bulletin Board is to both to facilitate trade in natural gas and markets for natural gas services through the provision of system and market information which is readily available to all interested parties, including the general public, and assist in emergency management through the provision of system and market information. The Bulletin Board will also provide a platform for future gas market transparency measures such as a gas market statement of opportunities.

The law provisions establish the Bulletin Board Operator, define the scope of its functions and allow rules to be made supporting the Bulletin Board. The law provides civil immunity to the Bulletin Board operator for the performance of its functions and immunity to persons who provide information in accordance with the law and rules other than through negligence or bad faith. The law provisions also protect information given to the Bulletin Board Operator by restricting what its employees or contractors can do with the information and allow the Bulletin Board Operator to collect fees to fund its operations. The Bulletin Board Operator will initially be the Victorian Energy Networks Corporation but will be transferred to the Australian Energy Market Operator when that body is established.

The initial National Gas Rules, will also include Rules to support the operation of the Bulletin Board. These rules were developed as part of the Gas Market Leaders Group process. The rules contain a variety of detailed requirements about the operation of the Bulletin Board, registration of participants, the provision of information and the creation of more detailed bulletin board procedures by the Bulletin Board Operator. The key requirements are that Bulletin Board facility operators provide information about the nameplate rating of their plant, three day capacity outlooks and actual flow data which will be reconciled against the three day

outlooks. The Bulletin Board will also contain an emergency page that will be used to help market participants and the National Gas Emergency Response Advisory Committee respond to gas emergencies. The Bulletin Board Rules will be part of the National Gas Rules and will be open for further development by the Australian Energy Market Commission through the rule change process following their commencement.

## **Enforcement**

The new National Gas Law makes a number of important changes in relation to the enforcement of the National Gas Law, the Regulations made under the *National Gas (South Australia) Act 2008* and the National Gas Rules.

Under the new regulatory regime, the Australian Energy Regulator is able to bring proceedings for a breach of the National Gas Law, the Regulations made under the *National Gas (South Australia) Act 2008* or the National Gas Rules.

The Australian Energy Regulator will be able to bring proceedings for a breach of the National Gas Law, the Regulations or the Rules in a State or Territory Supreme Court or the Federal Court, as appropriate. For the purposes of such proceedings, the Court may make an order declaring that the person is in breach of the National Gas Law, the Regulations or the Rules. If the Court makes such a declaration, the Court may also order the person to pay a civil penalty (for prescribed civil penalty provisions), to desist from the breach, to remedy the breach or to implement a compliance program.

As is the case under the current National Electricity Law, provision is made for the Regulations to prescribe provisions of the National Gas Rules, as well as provisions of the new National Gas Law, the breach of which will attract a civil penalty. However, under the new regulatory regime, the current graduated civil penalties scheme will be replaced by a maximum civil penalty of \$100,000 and \$10,000 for every day during which the breach continues (in the case of a body corporate) and of \$20,000 and \$2,000 for every day during which the breach continues (in case of a natural person). The National Gas Law has not adopted a graduated civil penalty scheme rather, the civil penalties regime has been simplified so that the Courts will determine the appropriate amount of the civil penalty having regard to the circumstances of each particular breach.

The Australian Energy Regulator may also apply to the Court for an injunction where a person has engaged in, is engaging in or is proposing to engage in conduct in breach of the National Gas Law, the Regulations or the Rules.

Under the National Gas Law a person who attempts to commit a breach of a civil penalty provision is taken to have committed that breach and persons who are in any way directly or indirectly knowingly concerned in, or party to, a breach of a civil penalty provision by a relevant participant are also liable for a breach of that provision. As is the case under the current National Electricity Law, officers of corporations which breach a civil penalty provision will also be liable for that breach if they knowingly authorised or permitted it.

The last element of the new enforcement regime is the ability of the Australian Energy Regulator to serve an infringement notice for breaches of civil penalty provisions. A person who receives such a notice may either pay the infringement penalty, or defend, in court, any proceedings brought by the Australian Energy Regulator in respect of the breach. The amount of the infringement penalty is \$20,000 (for a body corporate) and \$4,000 (for a natural person), or such lesser amount as is prescribed by the Regulations for the particular civil penalty provision.

While persons other than the Australian Energy Regulator cannot bring general enforcement proceedings for a breach of the National Gas Rules, the National Gas Law allows other parties to enforce provisions to be prescribed as conduct provisions by the Law or Regulations. If a provision is prescribed as a conduct provision, a person may apply to a court for an order that another person is in breach of the provision. The court then has the power to make various orders including injunctions to prevent the person engaging in the conduct or the payment of damages. These provisions recognize that market participants are best placed to enforce some of the obligations under the regime and should be compensated for any damage they suffer for conduct in breach of the Law and Rules.

### **Judicial Review**

As with the National Electricity Law, judicial review in State Supreme Courts is provided for decisions of the Australian Energy Market Commission and also for the Bulletin Board Operator. Commonwealth bodies performing functions under the National Gas Law are subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth.

### **Merits review**

This package will include a mechanism for limited merits review by the Australian Competition Tribunal of specified regulatory decisions under the National Gas Law. This merits review model mirrors the model adopted in the National Electricity Law to ensure

consistent regulation of electricity and gas. The decisions subject to merits review include coverage decisions, decisions on greenfields incentives, light regulation determinations, approvals of associate contracts, ring-fencing decisions and final access arrangement decisions.

These amendments will allow a range of affected parties including service providers, users and consumer associations to seek review of decisions made by the various decision makers under the National Gas Law.

Merits review will only be available if the original decision contained errors of fact, if the original decision maker's discretion was incorrectly exercised or their decision was unreasonable, having regard to all the circumstances.

An applicant for merits review will need to seek leave from the Tribunal to bring an action for review and, amongst other things, will need to meet a materiality threshold. The Tribunal must be satisfied that there is a serious issue to be heard. In addition, for revenue-related errors, the amount at issue as a result of all of the alleged grounds of review must exceed \$5 million or 2 per cent of average annual regulated revenue. An application for leave setting out the grounds of review must be made within 15 business days of a reviewable decision being published.

There will be a relatively wide scope for persons and groups to intervene in merits review proceedings, once commenced. Persons with a sufficient interest in the original decision are able to intervene, as well as jurisdictions, and user and consumer associations and interest groups with the leave of the Tribunal. Specific provision is made for the intervention of user and consumer associations and interest groups to overcome legal arguments that regulatory decisions are not sufficiently connected to their concerns or members.

The Tribunal will be able to affirm or vary the original decision, or set the decision aside and either substitute a new decision or remit the matter to the Australian Energy Regulator for reconsideration.

Consistent with the regime under the Gas Code and the desire to make the original decision making process meaningful, arguments to make out a ground of review must be based upon submissions to the original decision maker or the NCC when it is making a recommendation. The original decision maker is also able to raise related and consequential matters in a review to ensure that the Tribunal takes account of broader issues affecting the decision, and is able to defend its decision in full. The Tribunal is also required to have regard to any public policy

documents which have guided the original decision maker in its decision to help avoid unnecessary policy divergence between the Tribunal and the original decision maker.

### **Rule making under the National Gas Law**

The National Gas Law embodies a rule change process identical to that contained within the National Electricity Law. The Australian Energy Market Commission may make a Rule following a Rule change proposal if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the National Gas Objective. As with the National Electricity Law, the Australian Energy Market Commission, although not being able to initiate substantive rule changes itself, is able to solve the issues or problems raised by a rule change proposal by implementing a solution which it considers best contributes to the achievement of the national gas objective.

The Rule change process set out in the new National Gas Law is transparent and involves the opportunity for significant input by stakeholders. Thorough consultation must be carried out on rule changes, with requirements for fully reasoned draft and final determinations. There is also the ability for fast tracked amendments by gas market regulatory bodies where adequate prior consultation has been undertaken. A fast tracked rule change process proceeds straight to a draft determination.

Given the need to have Rules in place at the same time as the National Gas Law comes into operation, the initial National Gas Rules will not be made under this Rule change process. Instead, they will be made, on the recommendation of the Ministerial Council on Energy, by a Ministerial notice. The initial Rules will largely consist of the provisions of the current National Gas Code as amended to accommodate the reforms contained in the new National Gas Law, the new governance and institutional arrangements, the status of the Rules as law, and various other consequential modifications. However, once made, these Rules will be subject to change in accordance with the new Rule change process, including through the application of the Rule making test and the public consultation arrangements. It is important to note that this initial Rule making power can only be exercised once.

While the Bill includes the power to levy fees for rule change applications, it has also been decided not to levy any such fees in the initial Regulations. This recognises the public interest in an open and accessible rule change process but allows further action should the revised process lead to a large number of vexatious applications.

## **Regulations made under the National Gas Law**

As with the *National Electricity (South Australia) Act 1996*, this Bill allows Regulations to be made where they are contemplated by, or necessary or expedient for the purpose of, the National Gas Law. However, the extent of the Regulations that may be made is constrained by the provisions of the National Gas Law, and Regulations cannot be made to implement extensive changes. Regulations will only deal with the prescription of civil penalty and conduct provisions, designated pipelines, some transitional issues and other minor and machinery matters. An important safeguard is that Regulations can only be made with the unanimous agreement of all relevant Ministerial Council on Energy Ministers.

## **Savings and transitionals**

To ensure a smooth transition to the National Gas Law and Rules, savings and transitional provisions are included in the new Law and initial Rules. Additional savings and transitional provisions may also be included in the Regulations, and a specific regulation making power has been included under the *National Gas (South Australia) Act 2008* for this purpose. The savings and transitional provisions contained in the National Gas Law are designed to ensure a smooth transition to the new regime for all regulated pipelines.

## **Interpretation**

Like the existing Gas Pipelines Access Law, the National Gas Law includes a schedule of interpretive provisions. This Schedule 2 to the National Gas Law means the Law is subject to uniform interpretation provisions in all participating jurisdictions.

As I noted at the beginning of this speech, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of the national gas market, for the benefit of South Australians and all Australians.

I commend the Bill to Members.

## **EXPLANATION OF CLAUSES**

### **Part 1—Preliminary**

#### **1—Short title**

This clause is formal. It provides for the name (also called the short title) of the proposed Act.

## 2—Commencement

Clause 2(1) provides for the measure to be brought into operation by proclamation. Clause 2(2) makes it clear that the Governor may, if necessary, bring different provisions of the Schedule into operation on different days. Clause 2(3) excludes the operation of section 7(5) of the *Acts Interpretation Act 1915* due to the fact that this measure forms part of a co-operative legislative scheme involving other Australian jurisdictions.

## 3—Interpretation

A key aspect to the definitions under the Act is that there will be a point of distinction between the *National Gas Law*, being a law to be applied in the jurisdiction of the scheme participants, and the *National Gas (South Australia) Law*, being the National Gas Law as it applies in this State. The clause also provides that definitions included in the law (as applying because of this measure) also apply for the purposes of the Act.

## 4—Crown to be bound

This clause provides that the legislation binds the Crown.

## 5—Application to coastal waters

This clause applies the legislation to the coastal waters of the State.

## 6—Extra-territorial operation

This clause provides for the extra-territorial operation of the legislation.

## Part 2—*National Gas (South Australia) Law and National Gas (South Australia) Regulations*

### 7—Application of National Gas Law

This clause applies the National Gas Law set out in the Schedule as a law of South Australia. The applied law is to be referred to as the *National Gas (South Australia) Law*.

### 8—Application of regulations under National Gas Law

This clause provides that the regulations in force under Part 3 apply as regulations in force for the purposes of the *National Gas (South Australia) Law*. The regulations are to be referred to as the *National Gas (South Australia) Regulations*.

### 9—Interpretation of some expressions in *National Gas (South Australia) Law and National Gas (South Australia) Regulations*

This clause contains a number of definitions used for the purposes of the *National Gas (South Australia) Law* and the *National Gas (South Australia) Regulations*. These definitions relate to expressions whose meaning necessarily varies according to the jurisdiction in which the National Gas Law is being applied.

## **Part 3—Making of regulations and rules under National Gas Law**

### **10—Definitions**

This clause provides that for the purposes of this Part a reference to the *National Gas Law* is a reference to the law as in force for the time being.

### **11—General regulation-making power for National Gas Law**

This clause enables the Governor to make regulations to give effect to the National Gas Law on the unanimous recommendation of the Ministers of the participating jurisdictions. In view of the interstate application of laws scheme that is based on this measure and regulations made under the Act, Parliamentary disallowance of the regulations is excluded.

### **12—Specific regulation-making power**

This clause enables the Governor to make regulations of a transitional nature relating to the transition from the Gas Code under the current Act (the *Gas Pipelines Access (South Australia) Act 1997*) to this new scheme.

### **13—Making of rules**

In view of the interstate application of Rules made under this scheme, it is appropriate that the Rules be excluded from the operation of the South Australian *Subordinate Legislation Act 1978*.

## **Part 4—Cross vesting of powers**

### **14—Conferral of powers on Commonwealth Minister and Commonwealth bodies to act in this State**

This clause provides for the Minister of the Commonwealth administering the *Australian Energy Market Act 2004* of the Commonwealth (*the Commonwealth Minister*), the Australian Energy Regulator, the National Competition Council and the Australian Competition Tribunal to do acts in or in relation to this State in the performance or exercise of a function or power conferred by the national gas legislation of another participating State or Territory.

### **15—Conferral of powers on Ministers of other participating States and Territories to act in this State**

This clause provides for the Minister of another participating State or Territory to do acts in or in relation to this State in the performance or exercise of a function or power conferred by the national gas legislation of another participating State or Territory.

### **16—Conferral of functions or powers on State Minister**

This clause provides that if the national gas legislation of another participating State or Territory confers a function or power on the Minister, the Minister may perform that function or exercise that power.

## **Part 5—General**

### **17—Exemption from taxes**

This clause provides for an exemption from State duties or taxes in relation to certain transfers of assets or liabilities that are made for the purposes of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas or processable gas in breach of any ring fencing requirements of any national gas legislation or for the purpose of the separation of certain businesses or business activities as required by an Australian Energy Regulator ring fencing determination.

### **18—Actions in relation to cross boundary pipelines**

This clause provides that if any action is taken under the national gas legislation of a participating jurisdiction with respect to a cross boundary pipeline by a relevant Minister or a Supreme Court of the jurisdiction each other relevant Minister or Supreme Court in any other participating jurisdiction in which the pipeline is situated is also taken to have taken that action. No appeal is permitted against any such action by a relevant Minister except in the jurisdiction with which the pipeline is most closely connected.

### **19—Conferral of functions and powers on Commonwealth bodies**

This clause provides that a provision of the proposed Act or regulations is to be construed so as not to exceed the legislative power of the Parliament, in particular with respect to a provision that appears to impose a duty on the Commonwealth Minister, the Australian Energy Regulator, the National Competition Council or the Australian Competition Tribunal.

## **Part 6—Repeal of *Gas Pipelines Access (South Australia) Act 1997***

### **20—Repeal of *Gas Pipelines Access (South Australia) Act 1997***

The *Gas Pipelines Access (South Australia) Act 1997* is to be repealed.

## **Part 7—Amendment of this Act when *Offshore Petroleum Act 2006* commences**

### **21—Amendment of this Act when *Offshore Petroleum Act 2006* commences**

This clause provides for the substitution of the definitions of *adjacent area of this jurisdiction* and *adjacent area of another participating jurisdiction* in proposed section 9(1) on the commencement of section 7 of the *Offshore Petroleum Act 2006* of the Commonwealth.

## **Part 8—Amendment of *Australian Energy Market Commission Establishment Act 2004***

### **22—Amendment of *Australian Energy Market Commission Establishment Act 2004***

This clause makes consequential amendments to the *Australian Energy Market Commission Establishment Act 2004*.

## **Schedule 1—National Gas Law**

The National Gas Law constitutes the Schedule.

### **Chapter 1—Preliminary**

#### **Part 1—Citation and interpretation**

##### **1—Citation**

Provides that this Law may be referred to as the National Gas Law (the NGL).

##### **2—Definitions**

Sets out definitions used in the NGL.

##### **3—Meaning of civil penalty provision**

Defines "civil penalty provision."

##### **4—Meaning of conduct provision**

Defines "conduct provision."

##### **5—Meaning of prospective user**

Defines "prospective user."

##### **6—Meaning of regulatory obligation or requirement**

Defines "regulatory obligation or requirement."

##### **7—Meaning of regulatory payment**

Defines "regulatory payment."

##### **8—Meaning of service provider**

Defines "service provider."

##### **9—Passive owners of scheme pipelines deemed to provide or intend to provide pipeline services**

Provides that passive owners of scheme pipelines are deemed to provide pipeline services.

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

Provides that things done by 1 service provider of a pipeline are to be treated as being done by all service providers of the pipeline.

**11—Local agents of foreign service providers**

Places liability for the actions of foreign service providers on their local agents.

**12—Commissioning of a pipeline**

Defines when a pipeline is deemed to be commissioned for the purposes of the NGL.

**13—Pipeline classification criterion**

Sets out the pipeline classification criterion.

**14—Jurisdictional determination criteria—cross boundary distribution pipelines**

Sets out the pipeline jurisdictional determination criteria.

**15—Pipeline coverage criteria**

Sets out the pipeline coverage criteria.

**16—Form of regulation factors**

This provision sets out the form of regulation factors under the NGL. These mirror the factors used in the NEL.

**17—Effect of separate and consolidated access arrangements in certain cases**

Sets out how pipelines with multiple access arrangements and multiple pipelines covered by a single access arrangement are to be treated.

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

Provides that extensions and expansions to covered pipelines are to be treated as part of the covered pipeline if the applicable access arrangement provides that they will be.

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

Provides that extensions and expansions of pipelines that provide light regulation services are to be considered covered pipelines, unless the pipeline is subject to a limited access arrangement or the AER has determined otherwise.

## **20—Interpretation generally**

Provides that Schedule 2 to the NGL, which contains interpretation provisions, applies to the NGL, to Regulations made under the *National Gas (South Australia) Act 2008* and to the National Gas Rules made under the NGL.

## **Part 2—Participating jurisdictions**

### **21—Participating jurisdictions**

Provides for the participating jurisdictions, which will be South Australia together with the Commonwealth, any other State and any Territory that has in place a law that applies the NGL as a law of that jurisdiction.

### **22—Ministers of participating jurisdictions**

Provides for the relevant Ministers of the participating jurisdictions.

## **Part 3—National gas objective and principles**

### **Division 1—National gas objective**

#### **23—National gas objective**

The NGL objective is designed 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**

#### **24—Revenue and pricing principles**

Sets out the revenue and pricing principles.

### **Division 3—MCE policy principles**

#### **25—MCE statements of policy principles**

Provides that the Ministerial Council on Energy (MCE) may issue statements of policy principles in relation to any matters that are relevant to the functions and powers of the Australian energy Market Commission (AEMC). Statements must be published in the South Australian Government Gazette by the AEMC.

## **Part 4—Operation and effect of National Gas Rules**

### **26—National Gas Rules to have force of law**

Provides for the Rules to have the force of law in each of the participating jurisdictions.

## **Chapter 2—Functions and powers of gas market regulatory entities**

### **Part 1—Functions and powers of the Australian Energy Regulator**

**Note—**

This Part provides for the functions and powers of the Australian Energy Regulator established by section 44AE of the *Trade Practices Act 1974* of the Commonwealth (the TPA).

#### **Division 1—General**

##### **27—Functions and powers of the AER**

Sets out the AER's functions and powers.

##### **28—Manner in which AER must perform or exercise AER economic regulatory functions or powers**

Makes provision in relation to the manner in which the AER must perform or exercise the AER's economic regulatory functions or powers.

##### **29—Delegations**

Provides that a delegation by the AER under section 44AAH of the TPA is effective for the purposes of the NGL, Regulations and Rules.

##### **30—Confidentiality**

Provides that the confidentiality provisions of section 44AAF of the TPA are effective for the purposes of the NGL, Regulations and Rules.

#### **Division 2—Search warrants**

##### **31—Definitions**

Sets out definitions for the purposes of this Division.

##### **32—Authorised person**

Provides that the AER may authorise persons to be authorised persons for the purposes of this Division.

##### **33—Identity cards**

Requires the AER to issue identity cards to authorised people.

##### **34—Return of identity cards**

Requires identity cards to be returned to the AER.

##### **35—Search warrant**

Provides for the issue of search warrants by a magistrate.

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

Provides for announcement before entry to a place in execution of a search warrant and requires certain details of a search warrant to be given to the occupier of premises.

**37—Immediate entry permitted in certain cases**

Provides a limited exemption from complying with section 36.

**38—Copies of seized documents**

Requires a certified copy of a seized document to be provided to the person from whom it was seized in execution of a search warrant.

**39—Retention and return of seized documents or things**

Provides for return of documents or other things seized in execution of a search warrant.

**40—Retention of and return of documents or things**

Provides for extension of the period within which a document or other thing must be returned.

**41—Obstruction of persons authorised to enter**

Creates an offence of obstructing or hindering a person in the exercise of power under a warrant, for which the penalty is a fine of up to \$2 000 for a natural person or up to \$10 000 for a body corporate.

**Division 3—General information gathering powers**

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

Provides that the AER may serve notices requiring information to be furnished or documents to be produced and creates an offence of failing to comply with such a notice, for which the penalty is a fine of up to \$2 000 for a natural person or up to \$10 000 for a body corporate.

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

**Subdivision 1—Interpretation**

**43—Definitions**

Defines terms used in this division.

**44—Meaning of contributing service**

Defines "contributing service."

**45—Meaning of general regulatory information order**

Defines "general regulatory information order."

**46—Meaning of regulatory information notice**

Defines "regulatory information notice."

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

Provides that this division does not limit Division 3.

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

**48—Service and making of regulatory information instrument**

Allows the AER to serve regulatory information instruments if it considers it reasonably necessary for the performance of its functions or powers. The AER may not issue an instrument for the purpose of investigating breaches, preparing a performance report or as part of a merits review.

**49—Additional matters to be considered for related provider regulatory information instruments**

Imposes additional considerations on the AER before issuing an information instrument to a related provider.

**50—AER must consult before publishing a general regulatory information order**

Requires the AER to consult before issuing a general regulatory information order.

**51—Publication requirements for general regulatory information orders**

Requires publication of a general regulatory information order.

**52—Opportunity to be heard before regulatory information notice is served**

Gives covered pipeline service providers and related providers an opportunity to be heard before the AER serves a regulatory information notice on them.

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

**53—Form and content of regulatory information instrument**

Sets out the information that is required to be in a regulatory information instrument and allows the AER to specify how the information is to be provided as well as what information must be prepared, maintained or kept to comply with the instrument.

**54—Further provision about the information that may be described in a regulatory information instrument**

Provides a non – exclusive list of the possible content of a regulatory information instrument.

**55—Further provision about manner in which information must be provided to AER or kept**

Provides a non – exclusive list of the information that the AER may require to be kept or provided under a regulatory information instrument.

**Subdivision 4—Compliance with regulatory information instruments**

**56—Compliance with regulatory information notice that is served**

Provides that a person served with a regulatory information notice must comply with the notice.

**57—Compliance with general regulatory information order**

Provides that a member of the class of persons to whom a regulatory information order applies must comply with it once it is published.

**58—Exemptions from compliance with general regulatory information order**

Allows the AER to exempt individuals or classes of people from complying with a general regulatory information order.

**59—Assumptions where there is non-compliance with regulatory information instrument**

Allows the AER to make economic regulatory decisions on the basis of assumptions if a covered service provider or related provider fails to comply with a regulatory information instrument.

**Subdivision 5—General**

**60—Providing to AER false and misleading information**

Imposes penalties of \$2000 for a natural person and \$10 000 for a body corporate for knowingly providing false or misleading information to the AER.

**61—Person cannot rely on duty of confidence to avoid compliance with regulatory information instrument**

Provides that a person may not rely on a duty of confidence to avoid compliance with a regulatory information instrument. This section also provides protection from civil liability for a person who complies provides information in accordance with a regulatory information instrument.

**62—Legal professional privilege not affected**

Provides that regulatory information instruments do not require people to provide information that is subject to legal professional privilege.

**63—Protection against self-incrimination**

Provides that a natural person does not have to provide information in compliance with a regulatory information instrument if it may make them liable to a criminal penalty in a participating jurisdiction.

**Division 5—Service provider performance reports**

**64—Preparation of service provider performance reports**

Allows the AER to prepare performance reports of covered pipelines.

**Division 6—Miscellaneous matters**

**65—Consideration by the AER of submissions or comments made to it under this Law or the Rules**

Requires the AER to consider submissions, made in response to an invitation to provide submissions, when making economic regulatory decisions.

**66—Use of information provided under a notice under Division 3 or a regulatory information instrument**

Allows the AER to use information collected under Division 3 to exercise its functions or powers under this law.

**67—AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices**

Requires the AER to inform a person who provided information about a breach or potential breach of the law or rules, that they do not intend to investigate the breach or commence proceedings.

**68—AER enforcement guidelines**

Allows the AER to issue guidelines about how it will conduct enforcement actions under this law.

**Part 2—Functions and powers of the Australian Energy Market Commission**

**Division 1—General**

**69—Functions and powers of the AEMC**

Sets out the AEMC's functions and powers.

**70—Delegations**

Provides that a delegation by the AEMC under section 20 of the *Australian Energy Market Commission Establishment Act 2004* is effective for the purposes of the NGL, Regulations and Rules.

**71—Confidentiality**

Provides that the confidentiality provisions of section 24 of the *Australian Energy Market Commission Establishment Act 2004* are effective for the purposes of the NGL, Regulations and Rules.

**72—AEMC must have regard to national gas market objective**

Provides that the AEMC must have regard to the national gas market objective.

**73—AEMC must have regard to MCE statements of policy principles in relation to Rule making and reviews**

Provides that the AEMC must have regard to any relevant MCE statements of policy principles in making a Rule or conducting certain reviews.

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

**74—Subject matter for National Gas Rules**

Provides for the subject matter of the Rules. Schedule 1 to the NGL also specifies matters about which the AEMC may make Rules.

**75—Rules in relation to economic regulation of transmission systems**

Provides for the making of Rules in relation to economic regulation of transmission systems.

**76—National Gas Rules to always provide for certain matters relating to transmission systems**

Provides that the Rules are at all times to provide for certain matters relating to transmission systems.

**77—Documents etc. applied, adopted and incorporated by Rules to be publicly available**

Requires documents applied, adopted or incorporated by a Rule to be publicly available.

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

**78—Establishment of committees, panels and working groups**

Provides for establishment of committees, panels and working groups by the AEMC.

## **Division 4—MCE directed reviews**

### **79—MCE directions**

Provides that the MCE may direct the AEMC to conduct reviews. The direction must be published in the South Australian Government Gazette.

### **80—Terms of reference**

Provides for the terms of reference of MCE directed reviews.

### **81—Notice of MCE directed review**

Requires the AEMC to publish notice of an MCE directed review.

### **82—Conduct of MCE directed review**

Provides for the conduct of MCE directed reviews.

## **Division 5—Other reviews**

### **83—Rule reviews by the AEMC**

Provides for reviews by the AEMC other than MCE directed reviews.

## **Division 6—Miscellaneous**

### **84—AEMC must publish and make available up to date versions of the National Gas Rules**

Requires the AEMC to maintain an up to date copy of the Rules on its website and to make copies of the Rules available for inspection at its offices.

### **85—Fees**

Provides for the AEMC to charge fees as specified in the Regulations.

### **86—Immunity from personal liability of AEMC officials**

Protects AEMC officials from any personal liability as a result of performing their functions under this Law and the Rules.

## **Part 3—Functions and powers of Ministers of participating jurisdictions**

### **87—Functions and powers of Minister of this participating jurisdiction under this Law**

Allows the Minister administering the NGL in any particular jurisdiction to perform their functions under this law.

### **88—Functions and powers of Commonwealth Minister under this Law**

Allows the Commonwealth Minister to perform their functions under this law.

## **Part 4—Functions and powers of the NCC**

### **89—Functions and powers of NCC under this Law**

Empowers the NCC to perform its functions under this law.

### **90—Confidentiality**

Requires the NCC to protect confidential information while allowing it to share information with other regulatory bodies.

## **Part 5—Functions and powers of Tribunal**

### **91—Functions and powers of Tribunal under this Law**

Empowers the Australian Competition Tribunal to perform its functions under the NGL.

## **Chapter 3—Coverage and classification of pipelines**

### **Part 1—Coverage of pipelines**

#### **Note—**

This Chapter provides for the coverage and classification of pipelines for the haulage of natural gas.

#### **Division 1—Coverage determinations**

### **92—Application for recommendation that a pipeline be a covered pipeline**

Provides that a person may apply for to the NCC for a determination that a pipeline be a covered pipeline.

### **93—Application to be dealt with in accordance with the Rules**

Provides that an application to the NCC must be dealt with in accordance with the National Gas Rules.

### **94—NCC may defer consideration of application in certain cases**

Provides that the NCC may defer consideration of an application under section 92, if an application has been made to the AER under the National Gas Rules in relation to approval of a competitive tender process or a tender approval decision has been made.

### **95—NCC coverage recommendation**

Provides that the NCC must make a coverage recommendation to the relevant Minister in accordance with this Law and the National Gas Rules.

**96—NCC must not make coverage recommendation if tender approval decision becomes irrevocable**

Provides that the NCC must not recommend coverage if a tender approval decision becomes irrevocable.

**97—Principles governing the making of a coverage recommendation**

Provides that the NCC must give effect to the pipeline coverage criteria and have regard to the national gas objective when making a coverage recommendation.

**98—Initial classification decision to be made as part of recommendation**

Provides that the NCC must make an initial classification decision in relation to a pipeline the subject of a pipeline application as a transmission or distribution pipeline utilising the pipeline classification criterion. The NCC must also determine whether the pipeline is a cross boundary transmission or distribution pipeline and, if so, the participating jurisdiction with which the pipeline is most closely connected.

**99—Relevant Minister's determination on application**

Provides that the relevant Minister must, on receiving a coverage recommendation from the NCC, decide whether to make a coverage determination within a certain period of time and that a coverage determination or decision not to make a coverage determination must be made in accordance with this Law and the National Gas Rules.

**100—Principles governing the making of a coverage determination or decision not to do so**

Provides that the relevant Minister must give effect to the pipeline coverage criteria, have regard to the national gas objective and the coverage recommendation and must take into account certain submissions received when making a coverage determination or decision not to do so.

**101—Operation and effect of coverage determination**

Provides for the time when the coverage determination takes effect and that it continues to be a covered pipeline while the coverage determination is in effect.

**Division 2—Coverage revocation determinations**

**102—Applications for a determination that a pipeline no longer be a covered pipeline**

Provides that any person may apply to the NCC for a coverage revocation determination in accordance with the National Gas Rules.

**103—Application to be dealt with in accordance with the Rules**

Provides that the NCC must deal with an application for a coverage revocation determination in accordance with the National Gas Rules.

**104—NCC coverage revocation recommendation**

Provides that the NCC must make a coverage recommendation in accordance with this Law and the National Gas Rules.

**105—Principles governing the making of a coverage revocation recommendation**

Provides that the NCC must give effect to the pipeline coverage criteria and have regard to the national gas objective when making a coverage revocation recommendation.

**106—Relevant Minister's determination on application**

Provides that the relevant Minister must, on receiving a coverage revocation recommendation from the NCC, decide whether to make a coverage revocation determination within a certain period of time and that a coverage revocation determination or decision not to make a coverage revocation determination, must be made in accordance with this Law and the National Gas Rules.

**107—Principles governing the making of a coverage revocation determination or decision not to do so**

Provides that the relevant Minister must give effect to the pipeline coverage criteria, have regard to the national gas objective and the coverage recommendation and must take into account certain submissions received when making a coverage revocation determination or decision not to do so.

**108—Operation and effect of coverage revocation determination**

Provides for the time when the coverage revocation determination takes effect and that it continues to be a covered pipeline while the coverage revocation determination is in effect.

**Part 2—Light regulation of covered pipeline services**

**Division 1—Making of light regulation determinations**

**Subdivision 1—Decisions when pipeline is not a covered pipeline**

**109—Application of Subdivision**

Provides that this Subdivision applies if an application has been made for a coverage determination and the pipeline the subject of the application is not a pipeline prescribed by the National Gas Regulations to be a designated pipeline.

**110—NCC's decision on light regulation of pipeline services**

Provides that the NCC must decide whether to make a light regulation determination at the same time and within the same time as it makes a coverage recommendation and in accordance with this Law and the National Gas Rules.

## **Subdivision 2—Decisions when pipeline is a covered pipeline**

### **111—Application of Subdivision**

Provides that this subdivision applies if a service provider provides pipeline services by means of a covered pipeline that is not a designated pipeline and to which an applicable access arrangement approved or made under a full access arrangement decision applies.

### **112—Application**

Provides that a service provider may apply to the NCC for a light regulation determination in accordance with the National Gas Rules and in respect of all of the pipeline services provided by means of the pipeline.

### **113—Application to be dealt with in accordance with the Rules**

Provides that the NCC must deal with an light regulation determination application in accordance with the National Gas Rules.

### **114—NCC's decision on light regulation of pipeline services**

Provides that the NCC must decide whether to make a light regulation determination within a certain period of time and that a light regulation determination or a decision not to make a light regulation determination must be made in accordance with this Law and the National Gas Rules.

## **Subdivision 3—Operation and effect of light regulation determinations**

### **115—When light regulation determinations take effect**

Provides when a light regulation determination takes effect and the circumstances in which it is revoked.

### **116—Submission of limited access arrangement for light regulation services**

Provides that a service provider may, in respect of light regulation services, submit a limited access arrangement drafted in accordance with the National Gas Rules to the AER for approval under the National Gas Rules.

## **Division 2—Revocation of light regulation determinations**

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

#### **117—Advice by service provider that light regulation services should cease to be light regulation services**

Provides that a service provider may advise the NCC in writing that it wishes the pipeline services to cease to be light regulation services and provides for a process that the NCC must follow upon receiving that advice. Also provides that a light regulation determination is revoked on the same day that an access arrangement that applies to the relevant pipeline is approved or made.

**Subdivision 2—On application by persons other than service providers****118—Application (other than by service provider) for revocation of light regulation determinations**

Provides that a person other than the service provider who provides light regulation services may apply in accordance with the National Gas Rules to the NCC for the revocation of a light regulation determination.

**119—Decisions on applications made around time of applications for coverage revocation determinations**

Provides that the NCC must make a decision in relation to an application to revoke a light regulation determination and a decision in relation to an application for a coverage revocation determination received around the same time as the first application, at the same time and within the same time period and in accordance with this Law and the National Gas Rules.

**120—NCC decision on application where no application for a coverage revocation recommendation**

Provides that the NCC must make a decision in relation to an application to revoke a light regulation determination, where no application has been made to it in relation to a coverage revocation recommendation within a certain period of time and in accordance with this Law and the National Gas Rules.

**121—Operation and effect of decision of NCC under this Division**

Provides that a service provider must submit a full access arrangement on the making of a decision by the NCC to revoke a light regulation determination, and that the light regulation revocation determination does not take effect until the relevant access arrangement is approved or made under a full access arrangement decision.

**Division 3—Principles governing light regulation determinations****122—Principles governing the making or revoking of light regulation determinations**

Provides that in deciding whether to make a light regulation determination or to revoke a light regulation determination, the NCC must consider:

- the likely effectiveness of the forms of regulation provided for under this Law and the National Gas Rules in promoting access to pipeline services; and
- the effect of those forms of regulation on the likely costs that may be incurred by an efficient service provider, efficient users and prospective users and end users.

In considering these matters, the NCC must have regard to the national gas objective, the form of regulation factors and any other matters it considers relevant.

## **Division 4—Revocation if coverage determination not made**

### **123—Light regulation determination revoked if coverage determination not made**

Provides that a light regulation determination is revoked at the same time as the relevant Minister makes a decision not to make a coverage determination in relation to the relevant pipeline.

## **Division 5—Effect of pipeline ceasing to be covered pipeline**

### **124—Light regulation services cease to be such services on cessation of coverage of pipeline**

Provides that a light regulation determination is revoked on the same day as a coverage revocation determination takes effect.

## **Division 6—AER reviews into designated pipelines**

### **125—AER reviews**

Provides that the MCE or the service provider may request the AER to conduct a review into and report to the MCE as to whether a pipeline should continue to be a designated pipeline and, in conducting a review, the AER must have regard to the national gas objective and whether there has been a material change in competition in a market served by the designated pipeline and must undertake public consultation on the matter. Also provides that the AER must, after completion of the review, prepare a report, give it to the AER and the service provider and publish the report on its website.

## **Part 3—Coverage of pipelines the subject of tender process**

### **126—Tender approval pipelines deemed to be covered pipelines**

Provides that a pipeline is deemed to be a covered pipeline on and from the date that the tender approval decision becomes irrevocable and ceases to be a covered pipeline on the expiry of an applicable access arrangement (if one applies to the pipeline) or when a coverage revocation determination takes effect.

## **Part 4—Coverage following approval of voluntary access arrangement**

### **127—Certain pipelines become covered pipelines on approval of voluntary access arrangement**

Provides that a pipeline the subject of a full access arrangement voluntarily submitted by a service provider to the AER for approval is deemed to be a covered pipeline on the day that access arrangement takes effect as an applicable access arrangement and ceases to be a covered pipeline if the

applicable access arrangement expires or when a coverage revocation determination takes effect.

## **Part 5—Reclassification of pipelines**

### **128—Service provider may apply for reclassification of pipeline**

Provides that a service provider may apply to the NCC for reclassification of a pipeline.

### **129—Reclassification decision**

Provides that the NCC must make a reclassification decision within a certain time period and in accordance with this Law and the National Gas Rules. In making a reclassification decision, the NCC must have regard to the national gas objective and the pipeline classification criterion and must as part of the reclassification decision, determine whether the pipeline is a cross boundary transmission or distribution pipeline.

### **130—Effect of reclassification decision**

Provides that the pipeline is reclassified in accordance with the decision of the NCC and that the relevant Minister is the relevant Minister as provided under this Law.

## **Chapter 4—General requirements for provision of covered pipeline services**

### **Part 1—General duties for provision of pipeline services by covered pipelines**

#### **131—Service provider must be legal entity of a specified kind to provide pipeline services by covered pipeline**

Provides that a covered pipeline service provider must be constituted as a legal entity of a kind specified in this section in order to provide pipeline services by means of a covered pipeline.

#### **132—Submission of full access arrangement or revisions to applicable full access arrangements**

Provides that a covered pipeline service provider must submit in accordance with the National Gas Rules a full access arrangement or revisions to that access arrangement to the AER for approval unless the pipeline services are or are intended to be light regulation services.

#### **133—Preventing or hindering access**

Provides that various person or entities must not engage in conduct for the purpose of preventing or hindering the access of another person to a pipeline service. The section details further the meaning of the term “purpose” and “conduct” within the context of the prohibition.

**134—Supply and haulage of natural gas**

Provides that if a producer offers to supply natural gas on certain terms and conditions at a place other than the exit flange (“the first terms”), the producer must also, on request, state terms and conditions (including price if that was included in the first terms) for supply of natural gas at the exit flange (“the second terms”) with reasons if there is a price differential between the first and second terms. Also obliges the producer to supply natural at the exist flange on the terms and conditions stated if an offer has been made by the producer to offer to supply natural gas at a place other than the exit flange.

**135—Covered pipeline service provider must comply with queuing requirements**

Provides that a covered pipeline service provider must comply with the queuing requirements of an applicable access arrangement.

**136—Covered pipeline service provider providing light regulation services must not price discriminate**

Provides that a covered pipeline service provider must not discriminate in relation to price when providing light regulation services unless that price discrimination is conducive to efficient service provision.

**Part 2—Structural and operational separation requirements (ring fencing)**

**Division 1—Interpretation**

**137—Definitions**

Provides for definitions specific to this Part.

**138—Meaning of marketing staff**

Provides for a definition of “marketing staff”.

**Division 2—Minimum ring fencing requirements**

**139—Carrying on of related businesses prohibited**

Provides that on and after the compliance date, as defined, a covered pipeline service provider must not carry on a related business.

**140—Marketing staff and the taking part in related businesses**

Provides that on and after the compliance date, as defined, that marketing staff must not take certain roles in related businesses.

**141—Accounts that must be prepared, maintained and kept**

Provides that on and after the compliance date, as defined, a covered pipeline service provider must prepare, maintain and keep separate accounts for pipeline services provided by each covered pipeline and a consolidated set of

accounts for the whole of the business of the covered pipeline service provider.

### **Division 3—Additional ring fencing requirements**

#### **142—Division does not limit operation of Division 2**

Provides that this Division does not limit Division 2.

#### **143—AER ring fencing determinations**

Provides that the AER, in accordance with this Division and the National Gas Rules, may make a determination requiring a covered pipeline service provider to comply with an additional ring fencing requirement. The provision also specifies that the AER, when making a determination in relation to an additional ring fencing requirement, must have regard to various principles.

#### **144—AER to have regard to likely compliance costs of additional ring fencing requirements**

Provides that the AER, when making an additional ring fencing requirement, must have regard to the likely costs the may be incurred by an efficient covered pipeline service provider or and efficient associate of covered pipeline service provider.

#### **145—Types of ring fencing requirements that may be specified in an AER ring fencing determination**

Provides for, without limitation, particular types of additional ring fencing requirements that the AER may require of a covered pipeline service provider in a determination.

### **Division 4—AER ring fencing exemptions**

#### **146—Exemptions from minimum ring fencing requirements**

Provides that a covered pipeline service provider may apply to the AER, in accordance with the National Gas Rules, for a exemption from the requirements of sections 139, 140 or 141 and empowers the AER to grant that exemption in accordance with the National Gas Rules.

### **Division 5—Associate contracts**

#### **147—Service provider must not enter into or give effect to associate contracts that have anti-competitive effect**

Provides that a covered pipeline service provider must not enter into or vary an associate contract or give effect to a provision of an associate contract that has the purpose of would have or be likely to have the effect of substantially lessening competition in a market for natural gas services, unless that associated contract is approved or the provision is contained in an approved associate contract.

**148—Service provider must not enter into or give effect to associate contracts inconsistent with competitive parity rule**

Provides that a service provider must not enter into or vary an associate contract or give effect to a provision of an associate contract that is inconsistent with the competitive parity rule, unless that associated contract is approved or the provision is contained in an approved associate contract.

**Chapter 5—Greenfields pipeline incentives**

**Part 1—Interpretation**

**149—Definitions**

Defines terms used in this Chapter.

**150—International pipeline to be a transmission pipeline for purposes of Chapter**

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

**Part 2—15-year no-coverage determinations**

**151—Application for 15-year no-coverage determination for proposed pipeline**

Allows a service provider to apply to the National Competition Council for a binding no-coverage determination exempting the pipeline from coverage.

**152—Application to be dealt with in accordance with the Rules**

Provides that an application must be dealt with in accordance with the rules.

**153—No-coverage recommendation**

Provides that the NCC may make no – coverage recommendations.

**154—Principles governing the making of a no-coverage recommendation**

Provides that the NCC is required to give effect to the pipeline coverage criteria. In deciding whether or not those criteria are satisfied, the NCC is required to have regard to relevant submissions and comments made within the time allowed for submissions and comments. If the NCC is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the NCC must recommend against making a binding no-coverage determination. If the NCC is not satisfied that all the criteria are satisfied, the recommendation must be in favour of making a determination.

**155—Initial classification decision to be made as part of recommendation**

Requires the NCC to classify the pipeline as part of its recommendation.

**156—Relevant Minister's determination on application**

Requires the relevant Minister to decide whether or not to make a binding no-coverage determination within 30 days of receiving the NCC's recommendation. In making his or her decision, the relevant Minister must give effect to the pipeline coverage criteria.

**157—Principles governing the making of a 15-year no-coverage determination or decision not to do so**

In deciding whether or not the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must have regard to the national gas objective and the NCC's recommendation. He or she may take into account any relevant submissions and comments made to the NCC. If the Minister is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must not make a binding no-coverage determination. If the Minister is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must make a binding no-coverage determination. A binding no-coverage determination, or a decision not to make a binding no-coverage determination, must be in writing and must contain a short description of the pipeline the subject of the determination, accompanied by a reference to a website at which the relevant pipeline description can be inspected.

**158—Effect of 15-year no-coverage determination**

Provides that a binding no-coverage determination takes effect when it is made and remains in force for a period of 15 years from the commissioning of the pipeline. An application for coverage of a pipeline to which a binding no-coverage determination applies can only be made before the end of the period for which the determination remains in force if the coverage sought in the application is to commence from, or after, the end of that period.

**159—Consequences of Minister deciding against making 15-year no-coverage determination for international pipeline**

If the Commonwealth Minister decides against making a binding no-coverage determination for an international pipeline, and the applicant asks the Commonwealth Minister to treat the application as an application for a price regulation exemption, the Minister may treat the application as an application for a price regulation exemption. The Commonwealth Minister may then refer the application back to the NCC for a recommendation or proceed to determine the application without a further recommendation.

**Part 3—Price regulation exemptions****Division 1—Application for price regulation exemption****160—Application for price regulation exemption**

Provides that if a greenfields pipeline project for construction of an international pipeline is proposed, or has commenced, the service provider may apply for a price regulation exemption for the pipeline.

## **Division 2—Recommendations by NCC**

### **161—Application to be dealt with in accordance with the Rules**

Requires applications to be dealt with in accordance with the rules.

### **162—NCC's recommendation**

Requires the NCC to make a recommendation to the Commonwealth Minister.

### **163—General principle governing NCC's recommendation**

Requires the NCC to weigh the benefits to the public of granting the exemption against the detriments to the public. The NCC is required to have regard to the national gas objective and other relevant matters.

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

### **164—Making of price regulation exemption**

Requires the Commonwealth Minister to decide whether or not to make a price regulation exemption following receipt of the NCC's recommendation.

### **165—Principles governing the making of a price regulation exemption**

Requires the Commonwealth Minister to weigh the benefits to the public, of granting the exemption against the detriments to the public and to have regard to the national gas objective and other relevant matters.

### **166—Conditions applying to a price regulation exemption**

Requires service providers to publish certain information and provide information to the AER or Commonwealth Minister.

### **167—Effect of price regulation exemption**

Describes the effect of a price regulation exemption.

## **Division 4—Limited access arrangements**

### **168—Limited access arrangements for pipeline services provided by international pipeline to which a price regulation exemption applies**

Requires holders of price regulation exemptions to submit limited access arrangements.

## **Division 5—Other matters**

### **169—Other obligations to which service provider is subject**

Lists some provisions to which the service provider for a pipeline to which a price regulation exemption applies is subject.

**170—Service provider must not price discriminate in providing international pipeline services**

Prohibits a service provider from engaging in price discrimination.

**Part 4—Extended or modified application of greenfields pipeline incentive**

**171—Requirement for conformity between pipeline description and pipeline as constructed**

Provides that a greenfields pipeline incentive applies to the pipeline as described in the relevant pipeline description. 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.

**172—Power of relevant Minister to amend pipeline description**

Allows the relevant Minister, on application by the service provider, to amend the relevant pipeline description.

**Part 5—Early termination of greenfields pipeline incentive**

**173—Greenfields pipeline incentive may lapse**

Provides that a greenfields pipeline incentive lapses if the pipeline for which it was granted is not commissioned within 3 years after the incentive was granted.

**174—Revocation by consent**

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

**175—Revocation for misrepresentation**

Allows the relevant Minister to revoke a greenfields pipeline incentive on application by the AER, on the grounds that the applicant misrepresented a material fact or failed to disclose material information.

**176—Revocation for breach of condition to which a price regulation exemption is subject**

Allows the relevant Minister to revoke a greenfields pipeline incentive on application by the AER, on the grounds that the applicant has breached a condition to which the price regulation is subject.

**177—Exhaustive provision for termination of greenfields pipeline incentive**

Provides that a greenfields pipeline incentive does not terminate, and cannot be revoked, before the end of its term except as provided in this Part.

## **Chapter 6—Access disputes**

### **Part 1—Interpretation and application**

#### **178—Definitions**

Defines terms used in this Chapter.

#### **179—Chapter does not limit how disputes about access may be raised or dealt with**

Provides that this Chapter does not limit how parties may resolve access disputes.

#### **180—No price or revenue regulation for access disputes relating to international pipeline services**

Prohibits the resolution of a dispute about a pipeline service, subject to an international price regulation exemption by imposing price or revenue regulation.

### **Part 2—Notification of access dispute**

#### **181—Notification of access dispute**

Allows users, prospective users or service providers to notify the AER of an access dispute.

#### **182—Withdrawal of notification**

Allows a party to withdraw a notification.

#### **183—Parties to an access dispute**

Lists the parties to an access dispute.

### **Part 3—Access determinations**

#### **184—Determination of access dispute**

Requires the AER to make determinations on access.

#### **185—Dispute resolution body may require parties to mediate, conciliate or engage in an alternative dispute resolution process**

Allows the AER to require parties to engage in alternative dispute resolution.

#### **186—Dispute resolution body may terminate access dispute in certain cases**

Allows the AER to terminate a dispute if it considers that; the notification was vexatious, the subject matter of the dispute is trivial, misconceived or lacking in substance, the party who notified the dispute did not negotiate in good faith or a specific termination circumstances has occurred.

**187—No access determination if dispute resolution body considers there is genuine competition**

The AER may refuse to make a determination if it considers that the pipeline service could be provided on a genuinely competitive basis.

**188—Restrictions on access determinations**

Prevents the AER from making a determination that affects existing contractual rights or rights under earlier access determinations.

**189—Access determination must give effect to applicable access arrangement**

Requires the AER to apply an applicable access arrangement when making an access determination.

**190—Access determinations and past contributions of capital to fund installations or the construction of new facilities**

Allows the AER to consider past contributions of capital by users.

**191—Rules may allow determination that varies applicable access arrangement for installation of a new facility**

Allows the AEMC to make Rules concerning alteration of access arrangements when access determinations require the construction of a new facility.

**192—Access determinations need not require the provision of a pipeline service**

Enables the AER to make an access determination that does not grant access to a pipeline service.

**193—Content of access determinations**

Specifies the content of an access determination.

**Part 4—Variation of access determinations**

**194—Variation of access determination**

Allows the AER to vary an access determination at the request of a party to the determination if no other parties object.

**Part 5—Compliance with access determinations**

**195—Compliance with access determination**

Requires parties to an access determination to comply with the determination.

## **Part 6—Access dispute hearing procedure**

### **196—Hearing to be in private**

Access Dispute hearings are to be conducted in private unless the parties agree.

### **197—Right to representation**

Allows other people to appear as representatives of the parties to the dispute.

### **198—Procedure of dispute resolution body**

Establishes the procedure for the AER in an access dispute.

### **199—Particular powers of dispute resolution body in a hearing**

Gives the AER powers to assist it conduct hearings.

### **200—Disclosure of information**

Allows the AER to authorise disclosure of information as part of a hearing.

### **201—Power to take evidence on oath or affirmation**

Empowers the AER to take evidence under oath.

### **202—Failing to attend as a witness**

Imposes a penalty of \$2 000 for failure of a witness to attend.

### **203—Failing to answer questions etc**

Imposes a penalty of \$2 000 for witnesses who fail to answer questions.

### **204—Intimidation etc**

Creates a penalty of \$2 000 for intimidating witnesses.

### **205—Party may request dispute resolution body to treat material as confidential**

Allows a party to request that information be treated as confidential and allows the AER to decide to treat the information as confidential.

### **206—Costs**

Creates a presumption that parties will pay their own costs but allows the AER to award costs under some circumstances.

### **207—Outstanding costs are a debt due to party awarded the costs**

Allows parties to recover unpaid costs in court.

## **Part 7—Joint access dispute hearings**

### **208—Definition**

Defines terms used in this Part.

**209—Joint dispute hearing**

Allows the AER to conduct joint dispute hearings.

**210—Consulting the parties**

Requires the AER to consult with the parties before deciding to hold a joint dispute hearing.

**211—Constitution and procedure of dispute resolution body for joint dispute hearings**

Applies Chapter 6 Part 6 to joint dispute hearings.

**212—Record of proceedings etc**

Allows the AER to have regard to records of proceedings.

**Part 8—Miscellaneous matters**

**213—Correction of access determinations for clerical mistakes etc**

Allows correction of minor clerical errors in a determination.

**214—Reservation of capacity during an access dispute**

Prohibits a service provider from altering a users access rights during the period of a dispute.

**215—Subsequent service providers bound by access determinations**

Applies the result of an access dispute to subsequent service providers.

**216—Regulations about the costs to be paid by parties to access dispute**

Allows the regulations to specify charges for access disputes.

**Chapter 7—The Natural Gas Services Bulletin Board**

**Part 1—The Bulletin Board Operator**

**217—The Bulletin Board operator**

Allows the Bulletin Board operator to be prescribed by regulation.

**218—Obligation to establish and maintain the Natural Gas Services Bulletin Board**

Requires the Bulletin Board operator to establish and maintain a Bulletin Board.

**219—Other functions of the Bulletin Board operator**

Gives the Bulletin Board operator additional functions to assist them operate the Bulletin Board.

**220—Powers of the Bulletin Board operator**

Allows the Bulletin Board operator to do all things necessary and convenient for the performance of its functions.

**221—Immunity of the Bulletin Board operator**

Protects the Bulletin Board operator and its staff from liability while performing their functions under this Law.

**222—Fees for services provided**

Allows the Rules to specify fees for access to the Bulletin Board.

**Part 2—Bulletin Board information**

**223—Obligation to give information to the Bulletin Board operator**

Lists classes of people who the Rules may require to provide information to the Bulletin Board operator.

**224—Person cannot rely on duty of confidence to avoid compliance with obligation**

Prevents people relying on duties of confidence to avoid providing information to the Bulletin Board operator.

**225—Giving to Bulletin Board operator false and misleading information**

Prohibits providing false or misleading information to the Bulletin Board operator.

**226—Immunity of persons giving information to the Bulletin Board operator**

Protects people providing information to the Bulletin Board operator from civil monetary liability.

**Part 3—Protection of information**

**227—Protection of information by the Bulletin Board operator**

Requires the Bulletin Board operator to only use information given to it in ways permitted by the Law or Rules.

**228—Protection of information by employees etc of the Bulletin Board operator**

Prohibits employees of the Bulletin Board operator and other persons performing work for the Bulletin Board operator, from using information given to them for anything other than uses allowed by the Law or Rules.

## **Chapter 8—Proceedings under the National Gas Law**

### **Part 1—General**

#### **229—Instituting civil proceedings under this Law**

Provides that proceedings for breach of the NGL, Regulations or Rules may not be instituted except as provided in this Part.

#### **230—Time limit within which proceedings may be instituted**

Provides for the time limit within which proceedings may be instituted.

### **Part 2—Proceedings by the AER in respect of this Law, Regulations or the Rules**

#### **231—AER proceedings for breaches of a provision of this Law, Regulations or the Rules that are not offences**

Provides for the orders that may be made in proceedings in respect of breaches of provisions of the NGL, Regulations or Rules that are not offence provisions.

#### **232—Proceedings for declaration that a person is in breach of a conduct provision**

Allows a person other than the AER to apply to a court for a declaration that a person is in breach of a conduct provision.

#### **233—Actions for damages by persons for breach of conduct provision**

Allows recovery of damages by people who suffer loss as a result of a breach of a conduct provision.

### **Part 3—Matters relating to breaches of this Law, the Regulations or the Rules**

#### **234—Matters for which there must be regard in determining amount of civil penalty**

Sets out matters to be taken into account in determining civil penalties.

#### **235—Breach of a civil penalty provision is not an offence**

Provides that a breach of a civil penalty provision (as defined in clause 58) is not an offence.

#### **236—Breaches of civil penalty provisions involving continuing failure**

Provides for breaches of civil penalty provisions involving continuing failure.

#### **237—Conduct in breach of more than 1 civil penalty provision**

Provides for liability for one civil penalty in respect of the same conduct constituting a breach of two or more civil penalty provisions.

**238—Persons involved in breach of civil penalty provision**

Provides for aiding, abetting, counselling, procuring or being knowingly concerned in or party to a breach of a civil penalty provision.

**239—Attempt to breach a civil penalty provision**

Provides that an attempted breach of a civil penalty provision is deemed to be a breach of that provision.

**240—Civil penalties payable to the Commonwealth**

Provides that civil penalties are payable to the Commonwealth.

**Part 4—Judicial review of decisions under this Law, the Regulations and the Rules**

**241—Definition**

Defines terms used in this Part.

**242—Applications for judicial review of decisions of the AEMC**

Provides that aggrieved persons (as defined) may apply for judicial review in respect of AEMC decisions and determinations; the operation of a decision or determination is not affected by an application for judicial review, unless the Court otherwise orders.

**243—Applications for judicial review of decisions of the Bulletin Board operator**

Provides that aggrieved persons (as defined) may apply for judicial review in respect of Bulletin Board Operator decisions and determinations; the operation of a decision or determination is not affected by an application for judicial review, unless the Court otherwise orders.

**Part 5—Merits review and other non-judicial review**

**Division 1—Interpretation**

**244—Definitions**

Defines terms used in this Part.

**Division 2—Merits review for reviewable regulatory decisions**

**245—Applications for review**

Allows affected or interested persons to apply for review of a reviewable regulatory decision.

**246—Grounds for review**

Allows review if the original decision maker made an error in finding of fact that was material to the decision or their decision was incorrect or unreasonable.

**247—By when an application must be made**

Requires applications for review to be made within 15 business days.

**248—Tribunal must not grant leave unless serious issue to be heard and determined**

The Tribunal may only hear matters if it is convinced that there is a serious issue to be heard.

**249—Leave must be refused if application is about an error relating to revenue amounts below specified threshold**

Leave for review of some decisions must be refused if the amount in dispute is smaller than the lesser of five million dollars or two percent of average annual regulated revenue.

**250—Tribunal must refuse to grant leave if submission not made or is made late**

The Tribunal must refuse leave to an applicant other than a service provider if the applicant failed to make submissions to the original decision maker or made a late submission.

**251—Tribunal may refuse to grant leave to service provider in certain cases**

Allows the Tribunal to refuse leave for a review to a service provider if they; failed to comply with a request of the original decision maker, delayed the making of the original decision or misled the original decision maker.

**252—Effect of application on operation of reviewable regulatory decisions**

Provides that an application for review stays the operation of all reviewable regulatory decisions except access arrangement decisions and associate contract decisions.

**253—Intervention by others in a review without leave**

Allows the service provider to whom a reviewable regulatory decision applies and Minister's of participating jurisdictions to intervene in a review without the leave of the Tribunal.

**254—Leave for reviewable regulatory decision process participants**

Allows other parties to intervene in a review with the leave of the Tribunal.

**255—Leave for user or consumer intervener**

Allows user or consumer groups to intervene in a review with the leave of the Tribunal.

**256—Interveners may raise new grounds for review**

Allows interveners to raise new grounds of review.

**257—Parties to a review under this Division**

Lists the parties to a review.

**258—Matters that parties to a review may and may not raise in a review**

Lists matters that may and may not be raised in a review by the parties to a review.

**259—Tribunal must make determination**

Requires the Tribunal to make a decision and allows them to affirm, set aside or vary the original decision or remit the decision to the original decision maker.

**260—Target time limit for Tribunal for making a determination under this Division**

Provides a target time limit of 3 months for the Tribunal to make decisions.

**261—Matters to be considered by Tribunal in making determination**

Lists material that may be considered by the Tribunal.

**262—Assistance from NCC in certain cases**

Allows the Tribunal to seek assistance from the NCC when reviewing ministerial coverage decisions.

**Division 3—Tribunal review of AER information disclosure decisions under section 329**

**263—Application for review**

Allows applications for review of AER information disclosure decisions.

**264—Exclusion of public in certain cases**

Allows the review to be conducted in private.

**265—Determination in the review**

Allows the Tribunal to affirm the AER's decision or forbid or restrict disclosure of the information.

**266—Tribunal must be taken to have affirmed decision if decision not made within time**

Deems the Tribunal to have affirmed the AER's decision if it does not make a decision within 20 business days.

**267—Assistance from the AER in certain cases**

Allows the AER to request assistance from the AER in certain circumstances.

**Division 4—General**

**268—Costs in a review**

Specifies how the AER may award costs.

**269—Amount of costs**

Allows the Tribunal to determine how the amount of costs will be calculated.

**270—Review of Part**

Requires the MCE to review this Part within 7 years after its commencement.

**Part 6—Enforcement of access determinations**

**271—Enforcement of access determinations**

Allows parties to an access determination to apply to a court to enforce the determination.

**272—Consent injunctions**

Allows the court to grant consent injunctions.

**273—Interim injunctions**

Allows the court to grant interim injunctions.

**274—Factors relevant to granting a restraining injunction**

Lists factors to be considered by the court when granting restraining injunctions.

**275—Factors relevant to granting a mandatory injunction**

Lists factors to be considered by the court when granting mandatory injunctions.

**276—Discharge or variation of injunction or other order**

Allows the court to discharge or vary injunctions.

## **Part 7—Infringement notices**

### **277—Power to serve a notice**

Provides that the AER may serve infringement notices for breaches of relevant civil penalty provisions.

### **278—Form of notice**

Provides for the form of the infringement notice.

### **279—Infringement penalty**

Sets out the amount of the infringement penalty: \$4 000, or such lesser amount as is prescribed in the Regulations, for a natural person; or \$20 000, or such lesser amount as is prescribed in the Regulations, for a body corporate.

### **280—AER cannot institute proceedings while infringement notice on foot**

Provides that the AER must not, without first withdrawing the infringement notice, institute proceedings for a breach until the period for payment under the infringement notice expires.

### **281—Late payment of penalty**

Provides for when the AER may accept late payment of an infringement penalty.

### **282—Withdrawal of notice**

Provides that the AER may withdraw an infringement notice.

### **283—Refund of infringement penalty**

Provides for refund of an infringement penalty if the infringement notice is withdrawn.

### **284—Payment expiates breach of civil penalty provision**

Provides for expiation of a breach subject to an infringement notice.

### **285—Payment not to have certain consequences**

Provides that payment of an infringement penalty is not to be taken to be an admission of a breach or of liability.

### **286—Conduct in breach of more than 1 civil penalty provision**

Provides for payment of one infringement penalty in respect of the same conduct constituting a breach of two or more civil penalty provisions for which two or more infringement notices have been served.

## **Part 8—Further provision for corporate liability for breaches of this Law etc**

### **287—Definition**

Defines terms used in this Part.

### **288—Offences and breaches by corporations**

Provides that an officer (as defined) of a corporation is also liable for a breach of an offence provision or civil penalty provision by the corporation if the officer knowingly authorised or permitted the breach.

### **289—Corporations also in breach if officers and employees are in breach**

Provides that an act committed by an officer (as defined) or employee of a relevant participant (as defined) will be a breach where the act, if committed by the relevant participant, would be a breach.

## **Chapter 9—The making of the National Gas Rules**

### **Part 1—General**

#### **Division 1—Interpretation**

##### **290—Definitions**

Sets out definitions for the purposes of this Part.

#### **Division 2—Rule making tests**

##### **291—Application of national gas objective**

Requires the AEMC to make rules that contribute towards achieving the National Gas Objective.

##### **292—AEMC must take into account form of regulation factors in certain cases**

Requires the AEMC to consider the form of regulation factors when making a rule that specifies reference services or allows the AER to determine reference services.

##### **293—AEMC must take into account revenue and pricing principles in certain cases**

The AEMC must take the revenue and pricing principles into account when specifying regulatory economic methodologies.

## **Part 2—Initial National Gas Rules**

### **294—South Australian Minister to make initial National Gas Rules**

Provides for the South Australian Minister to make the initial Rules. A notice of making must be published in the South Australian Government Gazette and the Rules must be made publicly available.

## **Part 3—Procedure for the making of a Rule by the AEMC**

### **295—Initiation of making of a Rule**

Provides for who may request the making of a Rule and also provides that the AEMC must not make a Rule on its own initiative except in certain circumstances.

### **296—AEMC may make more preferable Rule in certain cases**

The AEMC will be able to make a Rule that is different from a market initiated Rule if the AEMC is satisfied that its proposed rule will or is more likely to better contribute to the achievement of the national electricity objective.

### **297—AEMC may make Rules that are consequential to a Rule request**

Allows the AEMC to make Rules that are consequential to a rule change request.

### **298—Content of requests for a Rule**

Sets out what a request for the making of a Rule must contain.

### **299—Waiver of fee for Rule requests**

Allows the AEMC to waive a fee for a rule request.

### **300—Consolidation of 2 or more Rule requests**

The powers of the AEMC to consolidate requests for Rules are to be clarified. The processes surrounding the consideration of a request for a Rule are to be revised to some extent.

### **301—Initial consideration of request for Rule**

Provides for initial consideration by the AEMC of a request for a Rule.

### **302—AEMC may request further information from Rule proponent in certain cases**

The AEMC will be given express power to request additional information from a person who requests the making of a Rule.

### **303—Notice of proposed Rule**

If the AEMC decides to act on a request for a rule to be made, or forms an intention to make an AEMC initiated rule, the AEMC will publish notice of the request or intention and a draft of the proposed Rule.

**304—Publication of non-controversial or urgent final Rule determination**

Provides for the publication of non-controversial and urgent Rules.

**305—"Fast track" Rules where previous public consultation by gas market regulatory body or an AEMC review**

Certain requests for Rules will be able to be dealt with expeditiously.

**306—Right to make written submissions and comments**

Provides for the making of written submissions on a proposed Rule.

**307—AEMC may hold public hearings before draft Rule determination**

Provides for the holding of a hearing in relation to a proposed Rule.

**308—Draft Rule determination**

Requires the AEMC to publish its draft determination, including reasons, in relation to a proposed Rule.

**309—Right to make written submissions and comments in relation to draft Rule determination**

Provides for written submissions on a draft Rule determination.

**310—Pre-final Rule determination hearing may be held**

Provides for holding of a pre-final determination in relation to a draft Rule determination.

**311—Final Rule determination as to whether to make a Rule**

Requires the AEMC to publish its final Rule determination, including reasons.

**312—Further draft Rule determination may be made where proposed Rule is a proposed more preferable Rule**

The AEMC may take action to consult, receive submissions and conduct hearings in relation to a more preferable Rule.

**313—Making of Rule**

Requires the AEMC to make a Rule as soon as practicable after publication of its final Rule determination. Notice of the making of a Rule must be published in the South Australian Government Gazette.

**314—Operation and commencement of Rule**

Provides that a Rule comes into operation on the day the notice of making is published or on such later date as is specified in that notice or the Rule.

**315—Rule that is made to be published on website and made available to the public**

Requires the AEMC, without delay after making a Rule, to publish the Rule on its website and make a copy available for inspection at its offices.

**316—Evidence of the National Gas Rules**

Is an evidentiary provision relating to the Rules.

**Part 4—Miscellaneous provisions relating to rule making by the AEMC**

**317—Extension of periods of time in Rule making procedure**

Provides a general power for the AEMC to extend periods of time in the Rule making procedure.

**318—AEMC may extend period of time for making of final Rule determination for further consultation**

Allows the AEMC to extend periods of time for consultation as a result of comments received during consultation.

**319—AEMC may publish written submissions and comments unless confidential**

Allows the AEMC to publish submissions unless they are confidential.

**320—AEMC must publicly report on Rules not made within 12 months of public notification of requests**

Requires the AEMC to publicly report if it fails to make a Rule within 12 months of receiving a request.

**Chapter 10—General**

**Part 1—Provisions relating to applicable access arrangements**

**321—Protection of certain pre-existing contractual rights**

Prevents access arrangement decisions from depriving parties of protected contractual rights.

**322—Service provider may enter into agreement for access different from applicable access arrangement**

Allows a service provider to enter into agreement for access different from applicable access arrangement.

**323—Applicable access arrangements continue to apply regardless of who provides pipeline service**

Applies an access arrangement to whichever service provider provides the service.

**Part 2—Handling of confidential information**

**Division 1—Disclosure of confidential information held by AER**

**324—Authorised disclosure of information given to the AER in confidence**

Allows the AER to disclose information in some circumstances.

**325—Disclosure with prior written consent is authorised**

Allows the AER to disclose information with the consent of the person who provided it.

**326—Disclosure for purposes of court and tribunal proceedings and to accord natural justice**

Allows the AER to disclose information if it is required to for a court or tribunal proceedings.

**327—Disclosure of information given to the AER with confidential information omitted**

Allows the AER to omit confidential information before disclosing a document.

**328—Disclosure of information given in confidence does not identify anyone**

Allows the AER to disclose de-identified information.

**329—Disclosure of confidential information authorised if detriment does not outweigh public benefit**

Allows the AER to disclose information if the detriment does not outweigh the public benefit.

**Division 2—Disclosure of confidential information held by relevant Ministers, NCC and AEMC**

**330—Definitions**

Defines terms used in this division.

**331—Confidentiality of information received for scheme procedure purpose and for making of scheme decision**

Allows the disclosure of confidential information to other scheme decision makers or the MCE as well as it is identified as confidential.

### **Part 3—Miscellaneous**

#### **332—Failure to make a decision under this Law or the Rules within time does not invalidate the decision**

Provides that a failure to make a decision in time does not invalidate the decision.

#### **333—Withdrawal of applications relating to coverage or reclassification**

Allows applications for decisions to be withdrawn.

#### **334—Notification of Ministers of participating jurisdictions of receipt of application**

Requires the NCC to notify Minister's of participating jurisdictions of applications for ministerial decisions.

#### **335—Relevant Minister may request NCC to give information or assistance**

Allows the relevant Minister to request assistance from the NCC when making a decision.

#### **336—Savings and transitionals**

Schedule 3 has effect under the Law.

### **Schedule 1—Subject matter for the National Gas Rules**

Specifies matters about which the AEMC may make Rules.

### **Schedule 2—Miscellaneous provisions relating to interpretation**

Contains interpretation provisions that will apply to the NGL, Regulations and Rules.

### **Schedule 3—Savings and transitionals**

Sets out savings and transitional provisions.