

Parliamentary Counsel Committee

National Energy Laws Amendment (Gas Pipelines) Bill 2021

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Part 1 Preliminary

1 Short title

This Act may be cited as the *National Energy Laws Amendment (Gas Pipelines) Act 2021*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Amendment provisions

In this Act—

- (a) a provision in Part 2 amends the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996*; and
- (b) a provision in Part 3 amends the *National Energy Retail Law* set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011*; and
- (c) a provision in Part 4 amends the *National Gas (South Australia) Act 2008*; and
- (d) a provision in Part 5 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*; and
- (e) a provision in Part 6 amends the *National Gas (South Australia) Regulations*.

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[s 4]

Part 2 Amendment of National Electricity Law

4 Amendment of section 2 (Definitions)

Section 2, definitions *user or consumer association* and *user or consumer interest group*—
omit.

5 Amendment of section 16 (Manner in which AER performs AER economic regulatory functions or powers)

- (1) Section 16(4), definition *affected Registered participant*, ‘determination.’—

omit, insert—

determination;

- (2) Section 16(4), in alphabetical order—

insert—

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

- (a) the members of which include more than 1 user, prospective user or end user; and
- (b) that represents and promotes the interests of those members in relation to the provision of electricity services;

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

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

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

Part 3 **Amendment of *National Energy Retail Law***

6 **Amendment of section 2 (Interpretation)**

- (1) Section 2(1), definition *distribution system*, paragraph (b), ‘covered pipeline under that law’—

omit, insert—

scheme pipeline within the meaning of section 2 of the NGL

- (2) Section 2(1), definition *distributor*, paragraph (b), ‘covered pipeline’—

omit, insert—

scheme pipeline within the meaning of section 2 of the NGL

7 **Amendment of section 88 (Requirement for authorisation or exemption)**

Section 88(2)(b)(i), ‘or non-scheme pipeline user’—

omit.

8 **Amendment of section 137 (RoLR notice—direction for gas)**

- (1) Section 137(5)(a)(i), ‘, including (if the applicable access arrangement is a limited access arrangement) at the price paid or payable by the failed retailer’—

omit.

- (2) Section 137(14), ‘*limited access arrangement*,’—

omit.

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[s 9]

Part 4 **Amendment of *National Gas (South Australia) Act 2008***

9 **Amendment of section 14 (Conferral of powers on Commonwealth Minister and Commonwealth bodies to act in this State)**

Section 14(2), definition *Commonwealth bodies*—
omit, insert—

Commonwealth bodies means either of the following—

- (a) the AER;
- (b) the Tribunal.

Part 5 **Amendment of *National Gas Law***

10 **Amendment of section 2 (Definitions)**

- (1) Section 2(1), definitions *15-year no-coverage determination, applicable access arrangement decision, classification decision under the Rules, coverage determination, coverage recommendation, coverage revocation determination, coverage revocation recommendation, covered pipeline, covered pipeline service provider, designated pipeline, distribution pipeline, full access arrangement, full access arrangement decision, greenfields pipeline incentive, initial classification decision, international pipeline, jurisdictional determination criteria, light regulation determination, light regulation services, limited access arrangement, limited access arrangement decision, Ministerial coverage decision, NCC, NCC recommendation or decision, no-coverage recommendation, non scheme pipeline user, pipeline coverage criteria, price or revenue regulation, price regulation exemption, price regulation exemption recommendation, reclassification decision, relevant Minister, scheme pipeline,*

tender approval decision, transmission pipeline, user or consumer association and user or consumer interest group—omit.

- (2) Section 2(1), in alphabetical order—
insert—

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

applicable access arrangement decision means a decision of the AER under the Rules that—

- (a) approves or does not approve an access arrangement or revisions to an applicable access arrangement submitted to the AER under section 110 or the Rules; or
- (b) makes an access arrangement—
 - (i) in place of an access arrangement the AER does not approve in that decision; or
 - (ii) because a service provider does not submit an access arrangement in accordance with section 110 or the Rules; or
- (c) makes revisions to an access arrangement—
 - (i) in place of revisions submitted to the AER under section 110 that the AER does not approve in that decision; or
 - (ii) because a service provider does not submit revisions to the AER under section 110;

classification decision means a decision of the AER under Chapter 3 Part 6 Division 1;

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[s 10]

compression service provider means a person who owns, controls or operates a compression service facility;

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

Note—

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

distribution pipeline means a pipeline that—

- (a) is classified as a distribution pipeline under a licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation; or
- (b) if the licence or authorisation mentioned in paragraph (a) does not include a classification of the pipeline—is classified by the AER, on the application of the service provider for the pipeline, as a distribution pipeline,

and includes a pipeline that is reclassified by the AER, on the application of the service provider for the pipeline, as a distribution pipeline;

Note—

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

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

greenfields incentive determination has the

meaning given by section 100;

greenfields pipeline project means a project for the construction of—

- (a) a pipeline that is to be structurally separate from any existing pipeline; or
- (b) a major extension to an existing pipeline;

non-scheme pipeline means a pipeline other than a scheme pipeline;

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

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

pipeline interconnection principles has the meaning given by section 136;

prescribed transparency information has the meaning given by section 136C;

reclassification decision means a decision of the AER under Chapter 3 Part 6 Division 2;

relevant adjudicator means—

- (a) for a scheme pipeline access dispute—the dispute resolution body; or
- (b) for a non-scheme pipeline access dispute—the arbitrator for the dispute;

scheme pipeline means—

- (a) a pipeline to which a scheme pipeline determination applies; or
- (b) a designated pipeline; or

[s 10]

- (c) a pipeline the subject of a scheme pipeline election;

Note—

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

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

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

scheme pipeline election has the meaning given by section 95;

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

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

small shipper means a user or prospective user—

- (a) who is, or seeks to be, a party to a contract with a service provider for the provision of a pipeline service by means of a pipeline; and
- (b) for whom the total daily pipeline capacity right provided, or sought to be provided, under 1 or more contracts with the same service provider and by means of the same pipeline is not more than the following amount—
 - (i) the daily pipeline capacity right prescribed by the Regulations;
 - (ii) if no daily pipeline capacity right is prescribed by the Regulations—5 terajoules;

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

Australia) Act 2008 of South Australia;

transmission pipeline means a pipeline that—

- (a) is classified as a transmission pipeline under a licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation; or
- (b) if the licence or authorisation mentioned in paragraph (a) does not include a classification of the pipeline—is classified by the AER, on the application of the service provider for the pipeline, as a transmission pipeline,

and includes a pipeline that is reclassified by the AER, on the application of the service provider for the pipeline, as a transmission pipeline;

Note—

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

- (3) Section 2(1), definition *access arrangement*, ‘a pipeline’—

omit, insert—

a scheme pipeline

- (4) Section 2(1), definition *access determination*, ‘the dispute resolution body under Chapter 6 Part 3 and includes a determination varied under Part 4 of that Chapter’—

omit, insert—

the relevant adjudicator for an access dispute under Chapter 5 Part 5 and includes a determination varied under Part 6 of that Chapter

- (5) Section 2(1), definition *AER economic regulatory function or power*, ‘scheme’—

omit.

- (6) Section 2(1), definition *applicable access arrangement*, ‘a limited access arrangement or full’—

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[s 10]

omit, insert—

an

- (7) Section 2(1), definition *associate contract decision*, ‘Division 5’—

omit, insert—

Division 4

- (8) Section 2(1), definition *associate pipeline service*, ‘15-year no coverage’—

omit, insert—

greenfields incentive

- (9) Section 2(1), definition *designated regulatory decision*, ‘full access arrangement decision that does not approve a full’—

omit, insert—

decision that does not approve an

- (10) Section 2(1), definition *developable capacity*, ‘covered’, wherever occurring—

omit.

- (11) Section 2(1), definition *distributor*, ‘covered’—

omit, insert—

scheme

- (12) Section 2(1), definition *extension and expansion requirements*, paragraph (a)(i) to (iii)—

omit, insert—

- (i) the circumstances when an extension to a scheme pipeline is to be treated as forming part of the scheme pipeline; and
- (ii) whether the pipeline services provided or to be provided by means of, or in connection with, spare capacity arising out of an extension to a scheme pipeline will be subject to the applicable access arrangement

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

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

- (13) Section 2(1), definition *new facility*, ‘covered’, wherever occurring—

omit.

- (14) Section 2(1), definition *pipeline*, at the end—

insert—

Note—

See also sections 18 and 19.

- (15) Section 2(1), definition *pipeline service*, paragraph (a)(ii), ‘and’—

omit, insert—

or

- (16) Section 2(1), definition *pipeline service standard*, ‘covered’—

omit, insert—

scheme

- (17) Section 2(1), definition *reference tariff*, paragraphs (a) and (b), ‘a full’, wherever occurring—

omit, insert—

an

- (18) Section 2(1), definition *revenue and pricing principles*, after ‘**principles**’—

insert—

, in relation to a pipeline service provided by means of a scheme pipeline,

- (19) Section 2(1), definition *transportation facility user*, ‘and a non scheme pipeline user’—

[s 11]

omit.

- (20) Section 2(1), definition *user*, paragraphs (a) and (b), 'scheme'—

omit.

11 Amendment of section 3 (Meaning of civil penalty provision)

- (1) Section 3, Table, entries for items 5 and 14 to 17—

omit.

- (2) Section 3, Table, after entry for item 13—

insert—

14

Section 148E

15

Section 170(1)(a)

- (3) Section 3, Table, entry for item 2DC, 'Section 91FEA'—

omit, insert—

Section 91FC(3) and (4)

- (4) Section 3, Table, entry for item 2E, 'Section 91FC(3) and (4)'—

omit, insert—

Section 91FEA

- (5) Section 3, Table, items 2A to 19—

renumber as items 3 to 26.

12 Amendment of section 4 (Meaning of conduct provision)

- (1) Section 4, Table, entries for items 2 and 7—

omit.

- (2) Section 4, Table, after entry for item 6—

insert—

- (3) Section 4, Table, items A1 to 7—
renumber as items 1 to 9.

13 Amendment of section 5 (Meaning of prospective user)

Section 5(1) and (2), ‘scheme’—
omit.

14 Amendment of section 8 (Meaning of service provider)

- (1) Section 8(1), ‘or scheme pipeline’, wherever occurring—
omit.

- (2) Section 8(1), note—
omit, insert—

Note—

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

- (3) Section 8(2), ‘or scheme pipeline’, wherever occurring—
omit.

15 Amendment of section 8A (Nominated distributors)

Section 8A(1)(a), ‘covered’—
omit, insert—

scheme

16 Amendment of section 9 (Passive owners of scheme pipelines deemed to provide or intend to provide pipeline services)

- (1) Section 9, heading, ‘scheme’—

[s 17]

omit.

- (2) Section 9(1), ‘scheme’—

omit.

17 Amendment of section 13 (Pipeline classification criterion)

- (1) Section 13(2)(h), ‘configuration.’—

omit, insert—

configuration;

- (2) Section 13(2), after paragraph (h)—

insert—

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

18 Omission of sections 14 and 15

Sections 14 and 15—

omit.

19 Amendment of section 16 (Form of regulation factors)

- (1) Section 16(f), ‘be;’—

omit, insert—

be).

- (2) Section 16(g)—

omit.

20 Amendment of section 17 (Effect of separate and consolidated access arrangements in certain cases)

Section 17(2) and (3), ‘covered’, wherever occurring—

omit, insert—

scheme

21 Replacement of sections 18 and 19

Sections 18 and 19—

omit, insert—

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

- (1) Subsection (2) applies in relation to an extension to a scheme pipeline if, by operation of the extension and expansion requirements under an applicable access arrangement, the applicable access arrangement will apply to pipeline services provided by means of the scheme pipeline as extended.
- (2) For the purposes of this Law—
 - (a) the extension to the scheme pipeline must be taken to be part of the scheme pipeline; and
 - (b) the pipeline as extended must be taken to be a scheme pipeline.
- (3) Also, for the purposes of this Law—
 - (a) an expansion of the capacity of a scheme pipeline must be taken to be part of the scheme pipeline; and
 - (b) the pipeline as expanded must be taken to be a scheme pipeline.

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

For the purposes of this Law—

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

22 Amendment of section 22 (Ministers of participating jurisdictions)

Section 22(a)—

omit, insert—

- (a) the South Australian Minister; and

23 Amendment of Chapter 1, Part 3, Division 2, heading (Revenue and pricing principles)

Chapter 1, Part 3, Division 2, heading, after ‘principles’—

insert—

relating to scheme pipelines

24 Amendment of section 24 (Revenue and pricing principles)

- (1) Section 24, heading, after ‘principles’—

insert—

relating to scheme pipelines

- (2) Section 24, before subsection (1)—

insert—

(1AA) This section sets out the revenue and pricing principles that apply in relation to a pipeline service provided by means of a scheme pipeline.

- (3) Section 24(2), ‘service provider’, first mention—

omit, insert—

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-
- scheme pipeline service provider
- (4) Section 24(3), ‘service provider’, first mention—
omit, insert—
- scheme pipeline service provider
- (5) Section 24(4)(a)(i), ‘full’—
omit.
- (6) Section 24(6), ‘service provider’, first mention—
omit, insert—
- scheme pipeline service provider
- (7) Section 24(7), ‘service provider’—
omit, insert—
- scheme pipeline service provider

25 Amendment of section 27 (Functions and powers of the AER)

- (1) Section 27(1), after paragraph (d)—
insert—
- (daa) to make—
- (i) scheme pipeline determinations; and
 - (ii) scheme pipeline revocation determinations; and
 - (iii) greenfield incentive determinations; and
- (dab) to monitor service providers’ behaviour in relation to particular matters, including, for example, the prices charged by service providers for pipeline services; and
- (2) Section 27(1)(f), ‘covered’—
omit, insert—

[s 26]

scheme

26 Amendment of section 28 (Manner in which AER must perform or exercise AER economic regulatory functions or powers)

(1) Section 28(1)(b)(i)(A), ‘covered’—

omit, insert—

scheme

(2) Section 28, after subsection (3)—

insert—

(4) In this section—

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

- (a) the members of which include more than 1 user, prospective user or end user; and
- (b) that represents and promotes the interests of those members in relation to the provision of natural gas services;

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

- (a) that has, as an object or purpose, the object or purpose of representing and promoting the interests of users, prospective users or end users of natural gas services; but
- (b) the members of which need not include a user, prospective user or end user.

27 Amendment of section 30C (Rate of return instrument is binding on AER and covered pipeline service providers)

(1) Section 30C, heading, ‘covered’—

omit, insert—

scheme

- (2) Section 30C(b), ‘covered’—

omit, insert—

scheme

28 Amendment of section 30E (Content of rate of return instrument)

Section 30E(1), (2)(a) and Example for subsection (3), ‘covered’—

omit, insert—

scheme

29 Amendment of section 30Q (Application of instrument)

Section 30Q(2), ‘a full’—

omit, insert—

an

30 Amendment of section 43 (Definitions)

- (1) Section 43, definition *related provider*, ‘scheme pipeline’—

omit.

- (2) Section 43, definition *scheme pipeline service provider*—

omit.

31 Amendment of section 44 (Meaning of contributing service)

Section 44(1) and (2), ‘scheme pipeline’, wherever occurring—

omit.

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[s 32]

32 Amendment of section 45 (Meaning of general regulatory information order)

Section 45, ‘scheme pipeline’—

omit.

33 Amendment of section 46 (Meaning of regulatory information notice)

Section 46, ‘scheme pipeline’—

omit.

34 Amendment of section 48 (Service and making of regulatory information instruments)

Section 48(1)(a) and (2)(b), ‘scheme pipeline’—

omit.

35 Amendment of section 49 (Additional matters to be considered for related provider regulatory information instruments)

Section 49(2)(a), (c)(i), (d) and (3)(b), wherever occurring, ‘scheme pipeline’—

omit.

36 Amendment of section 52 (Opportunity to be heard before regulatory information notice is served)

Section 52(1)(a) and (b), (3)(a) and (4)(a) and (b), ‘scheme pipeline’—

omit.

37 Amendment of section 53 (Form and content of regulatory information instrument)

Section 53(2) and (3), ‘scheme pipeline’—

omit.

38 Amendment of section 54 (Further provision about the information that may be described in a regulatory information instrument)

Section 54(b) and (c), ‘scheme pipeline’—

omit.

39 Amendment of section 55 (Further provision about manner in which information must be provided to AER or kept)

Section 55, Example for paragraph (c), (d) and (e)(ii), ‘scheme pipeline’—

omit.

40 Amendment of section 59 (Assumptions where there is non-compliance with regulatory information instrument)

Section 59(1)(a)(i) and (ii), (b) and (2)(b), wherever occurring, ‘scheme pipeline’—

omit.

41 Insertion of new Chapter 2, Part 1, Division 4A

After section 63—

insert—

Division 4A Monitoring service providers

63A AER must monitor service providers’ behaviour

The AER must regularly and systematically monitor the following matters—

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- (a) the prices charged by service providers for pipeline services;
- (b) the non-price terms and conditions for pipeline services;
- (c) the financial information reported by service providers;
- (d) the outcomes of access negotiations;
- (e) service providers' dealings with associates;
- (f) service providers' compliance with ring fencing requirements;
- (g) the compliance of service providers with other requirements of this Law and the Rules.

63B AER must report to MCE

- (1) At least every 2 years, the AER must report to the MCE on its work under this Division for the previous 2 years (the *relevant period*).
- (2) The report must—
 - (a) state how many service providers the AER monitored during the relevant period for the purposes of this Division; and
 - (b) summarise the information obtained in relation to the matters mentioned in section 63A; and
 - (c) state how the AER obtained information contained in the report; and
 - (d) give an assessment of the behaviour of service providers in relation to the matters mentioned in section 63A.
- (3) As soon as practicable after giving a report to the MCE under this section, the AER must publish, on its website, a version of the report that—

- (a) contains aggregated information about each of the matters mentioned in section 63A; and
- (b) is not likely to result in the identification of a particular service provider.

42 Amendment of Chapter 2, Part 1, Division 5, heading (Service provider performance reports)

Chapter 2, Part 1, Division 5, heading, after ‘reports’—

insert—

relating to scheme pipelines

43 Amendment of section 64 (Preparation of service provider performance reports)

Section 64, heading, after ‘reports’—

insert—

relating to scheme pipelines

44 Replacement of section 83A (Special information and transparency requirements relating to non-scheme pipelines)

Section 83A—

omit, insert—

83A Information and transparency requirements relating to compression service facilities and storage facilities

- (1) Without limiting any other provision, the Rules may provide for such things as—
 - (a) the collection, disclosure, verification, management and publication of information in relation to services that may be provided by means of a compression service facility or a storage facility; and

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- (b) without limiting paragraph (a), requirements about the information that must be provided by a compression service provider or a storage provider (a *relevant provider*) in relation to access (or potential access) to services provided by means of any compression service facility or storage facility, including information about—
 - (i) the terms and conditions on which the relevant provider is prepared to make the facility available for use by others; and
 - (ii) the procedures that the relevant provider will apply in determining a proposal for access to the facility; and
 - (iii) relevant prices, costs and methodologies associated with gaining access to (and using) a facility and relevant or related services; and
 - (iv) access contracts and arrangements used (or required to be used) by the relevant provider; and
- (c) without limiting paragraphs (a) and (b), information to be provided by a relevant provider in response to a request for access to services provided by means of a compression service facility or a storage facility; and
- (d) requirements to ensure that information is accurate and complete; and
- (e) the imposition or recovery of costs associated with any matter referred to in a preceding paragraph or otherwise associated with facilitating access (or potential access) to services provided by means of a compression service facility or a storage facility.

- (2) Nothing in subsection (1) limits any power to grant an exemption from complying with a provision, or part of a provision, of the Rules.

83AA Publication of information relating to compression service facilities and storage facilities

A person required by the Rules made under section 83A to publish information must do so in accordance with the Rules.

45 Omission of section 88 (Functions and powers of Commonwealth Minister under this Law)

Section 88—

omit.

46 Omission of Chapter 2, Part 4 (Functions and powers of the NCC)

Chapter 2, Part 4—

omit.

47 Amendment of section 91KA (Supply interruption or disconnection in compliance with AEMO's direction)

Section 91KA(5), definition *distribution pipeline*—

omit.

48 Amendment of section 91LA (Retail market participation)

- (1) Section 91LA(2)(c)—

omit.

- (2) Section 91LA(2)(d) to (g)—

renumber as section 91LA(2)(c) to (f).

[s 49]

49 Replacement of Chapter 3 (Coverage and classification of pipelines)

Chapter 3—

omit, insert—

Chapter 3 Regulatory framework for pipelines

Part 1 Scheme pipeline determinations and scheme pipeline elections

Division 1 Scheme pipeline determinations

92 AER may make scheme pipeline determination

- (1) The AER may, on its own initiative or on the application of any person, make a determination that a pipeline is a scheme pipeline (a *scheme pipeline determination*).
- (2) An application for a scheme pipeline determination must—
 - (a) be made to the AER in accordance with the Rules; and
 - (b) contain the information required by the Rules; and
 - (c) be accompanied by the fee prescribed by the Regulations (if any); and
 - (d) be dealt with in accordance with the Rules.

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93 Requirements for making, or not making, a scheme pipeline determination

A scheme pipeline determination or a decision not to make a scheme pipeline determination must—

- (a) be made in accordance with this Law and the Rules; and
- (b) contain the information required by the Rules; and
- (c) be given to the persons specified by the Rules; and
- (d) be made publicly available in accordance with the Rules; and
- (e) if a scheme pipeline determination is made—specify the date the determination takes effect.

94 Operation and effect of scheme pipeline determination

A pipeline the subject of a scheme pipeline determination—

- (a) becomes a scheme pipeline when the scheme pipeline determination takes effect; and
- (b) continues to be a scheme pipeline while the scheme pipeline determination remains in effect.

Division 2 Scheme pipeline elections

95 Scheme pipeline elections

- (1) A service provider for a non-scheme pipeline may elect for the pipeline to be dealt with under this Law as a scheme pipeline (a *scheme pipeline*)

election).

- (2) A scheme pipeline election must be made in accordance with the Rules.

96 Effect of scheme pipeline elections

- (1) A scheme pipeline election takes effect on the day after the day the scheme pipeline election is received by the AER.
- (2) On the day a scheme pipeline election takes effect under subsection (1), the non-scheme pipeline the subject of the scheme pipeline election becomes a scheme pipeline.

Part 2 Scheme pipeline revocation determinations

97 AER may make scheme pipeline revocation determination

- (1) The AER may, on the application of any person, make a scheme pipeline revocation determination in relation to any scheme pipeline other than a designated pipeline.
- (2) An application for a scheme pipeline revocation determination must—
 - (a) be made in accordance with the Rules; and
 - (b) contain the information required by the Rules; and
 - (c) be accompanied by the fee prescribed by the Regulations (if any); and
 - (d) be dealt with in accordance with the Rules.

98 Requirements for making, or not making, a scheme pipeline revocation determination

A scheme pipeline revocation determination or a decision not to make a scheme pipeline revocation determination must—

- (a) be made in accordance with this Law and the Rules; and
- (b) contain the information required by the Rules; and
- (c) be given to the persons specified by the Rules; and
- (d) be made publicly available in accordance with the Rules; and
- (e) if a scheme pipeline revocation determination is made—specify the date the determination takes effect.

99 Effect of scheme pipeline revocation determination

A pipeline the subject of a scheme pipeline revocation determination ceases to be a scheme pipeline when the scheme pipeline revocation determination takes effect.

Part 3 Greenfields incentive determinations

Division 1 Applications for greenfields incentive determination

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100 AER may make greenfields incentive determination

- (1) The AER may, on the application of the service provider for a greenfields pipeline project, make a determination that the pipeline the subject of the greenfields pipeline project is not a scheme pipeline (a *greenfields incentive determination*).
- (2) An application for a greenfields incentive determination—
 - (a) cannot be made after the pipeline is commissioned; and
 - (b) must be made in accordance with the Rules; and
 - (c) must include a description of the pipeline that meets the requirements specified by the Rules; and
 - (d) must contain the information required by the Rules; and
 - (e) need not describe, or include details of, excluded infrastructure; and
 - (f) must be accompanied by the fee prescribed by the Regulations (if any); and
 - (g) must be dealt with in accordance with the Rules.

101 Requirements for making, or not making, a greenfields incentive determination

A greenfields incentive determination or a decision not to make a greenfields incentive determination must—

- (a) be made in accordance with this Law and the Rules; and
- (b) contain the information required by the Rules; and

-
- (c) be given to the persons specified by the Rules; and
 - (d) be made publicly available in accordance with the Rules; and
 - (e) if a greenfields incentive determination is made—
 - (i) specify the date the determination takes effect; and
 - (ii) specify the period of not more than 15 years from the commissioning of the pipeline during which the determination continues in operation.

102 Operation and effect of greenfields incentive determination

- (1) A greenfields incentive determination—
 - (a) takes effect on and from the date specified in the determination; and
 - (b) continues in operation for the period specified in the determination (the *operative period*).
- (2) During the operative period, the pipeline the subject of the greenfields incentive determination is not a scheme pipeline.
- (3) An application for a scheme pipeline determination in relation to a pipeline to which a greenfields incentive determination applies can be made—
 - (a) before the end of the operative period for the greenfields incentive determination; but
 - (b) only if the scheme pipeline determination is to commence from, or after, the end of the operative period.

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103 Requirement for conformity between pipeline description and pipeline as constructed

- (1) Subject to this Part—
 - (a) a greenfields incentive determination applies to the pipeline as described in the relevant pipeline description; and
 - (b) if the pipeline, as constructed, materially differs from the pipeline as described in the relevant pipeline description, the determination does not apply to the pipeline and the service provider is not entitled to its benefit.
- (2) In determining whether a pipeline, as constructed, materially differs from the relevant pipeline description, excluded infrastructure is not to be taken into account.
- (3) In this section—

relevant pipeline description means a description of the pipeline required to be included in the application for the greenfields incentive determination made under section 100.

104 Power of AER to amend pipeline description

- (1) The AER may, on application by the service provider for a pipeline to which a greenfields incentive determination applies, amend the relevant pipeline description.
- (2) An amendment cannot, however, be made under this section after the pipeline has been commissioned.
- (3) In deciding whether to make the amendment sought, the AER must have regard to the criteria that were relevant to the making of the greenfields incentive determination.
- (4) In this section—

relevant pipeline description means a description of the pipeline required to be included in the application for the greenfields incentive determination made under section 100.

Division 2 Early termination of greenfields incentive determination

105 Greenfields incentive determination may lapse

- (1) A greenfields incentive determination lapses if the pipeline to which it applies is not commissioned within 3 years after the determination takes effect.
- (2) However, the Regulations may, in particular circumstances, extend the 3-year period mentioned in subsection (1).

106 Revocation by consent

The AER may, at the request of the service provider for the pipeline to which a greenfields incentive determination applies, revoke the determination.

107 Revocation for misrepresentation

The AER may revoke a greenfields incentive determination on the ground that—

- (a) the applicant misrepresented a material fact on the basis of which the determination was made; or
- (b) the applicant failed to disclose material information that the applicant was required to disclose under this Chapter.

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108 Exhaustive provision for termination of greenfields incentive determination

A greenfields incentive determination does not terminate, and cannot be revoked, before the end of the period specified in the determination under section 101(e)(ii) other than as provided for under this Part.

Part 4 Principles governing the making of particular determinations

109 Principles governing the making of particular determination

- (1) This section sets out principles that apply for the making of the following determinations (each a *relevant determination*) by the AER—
 - (a) a scheme pipeline determination under Part 1, Division 1;
 - (b) a scheme pipeline revocation determination under Part 2;
 - (c) a greenfields incentive determination under Part 3.
- (2) In deciding whether to make a relevant determination, the AER must consider the effect of regulating the pipeline the subject of the application for the determination as a scheme pipeline or non-scheme pipeline on—
 - (a) the promotion of access to pipeline services; and
 - (b) the costs that are likely to be incurred by an efficient service provider; and

-
- (c) the costs that are likely to be incurred by efficient users and efficient prospective users; and
 - (d) the likely costs of end users.
- (3) In doing so, the AER—
- (a) must have regard to the national gas objective; and
 - (b) must have regard to—
 - (i) the form of regulation factors; and
 - (ii) for a greenfields incentive determination—the extent to which the form of regulation factors will, or are likely to, pose an effective constraint on the exercise of market power in respect of services provided by means of the pipeline for the period the determination is in operation; and
 - (c) may have regard to any other matter it considers relevant, including, for example, any information it obtains in the course of performing its functions.

Example of information for paragraph (c)—

information contained in a report made by a mediator in relation to an access dispute

Part 5 Access arrangements for scheme pipelines

Division 1 Submissions generally

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110 Submission of access arrangement or revisions to applicable access arrangements

A scheme pipeline service provider must submit to the AER, for approval by the AER under the Rules, an access arrangement or revisions to an applicable access arrangement, in relation to the pipeline services the service provider provides or intends to provide—

- (a) in the circumstances specified by the Rules; and
- (b) within the period of time specified by the Rules.

Division 2 Provisions relating to applicable access arrangements

111 Protection of certain pre-existing contractual rights

- (1) An applicable access arrangement must not have the effect of depriving a person of a relevant protected contractual right.
- (2) In this section—

relevant exclusivity right means an express contractual right that—

- (a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or
- (b) limits or controls a service provider’s ability to supply pipeline services to persons who are not parties to the contract,

but does not include a user’s contractual right to obtain a certain amount of pipeline services;

relevant protected contractual right means—

- (a) in the case of an applicable access arrangement approved under an applicable arrangement decision—a right under a contract (other than a relevant exclusivity right) in force immediately before that access arrangement was submitted for approval under this Law; or
- (b) in the case of an applicable access arrangement made under an applicable arrangement decision because—
 - (i) an access arrangement was not submitted for approval as required under section 110—a right under a contract (other than a relevant exclusivity right) in force immediately before the date on which an access arrangement was required to be submitted for approval; or
 - (ii) an access arrangement was not approved under an applicable arrangement decision—a right under a contract (other than a relevant exclusivity right) in force immediately before the date on which that access arrangement was submitted for approval.

112 Service provider may enter into agreement for access different from applicable access arrangement

Subject to sections 83C and 135, nothing in this Law is to be taken as preventing a service provider from entering into an agreement with a user or a prospective user about access to a pipeline service provided by means of a scheme pipeline that is different from an applicable access

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arrangement that applies to that pipeline service.

113 Applicable access arrangements continue to apply regardless of who provides pipeline service

An applicable access arrangement applies to a pipeline service provided, or to be provided, by means of a pipeline regardless of who provides that pipeline service.

Part 6 Classification and reclassification of pipelines

Division 1 Classification of pipelines

114 Application for classification of pipeline

- (1) This section applies if a pipeline is not classified as a distribution or transmission pipeline under a licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation.
- (2) Within 20 business days after the commissioning of the pipeline, the service provider for the pipeline must apply to the AER for the pipeline to be classified as a distribution pipeline or transmission pipeline.
- (3) An application for a classification decision must—
 - (a) be made in accordance with the Rules; and
 - (b) contain the information required by the Rules; and

-
- (c) be accompanied by the fee prescribed by the Regulations (if any); and
 - (d) be dealt with in accordance with the Rules.

Division 2 Reclassification of pipelines

115 Application for reclassification of pipeline

- (1) A service provider may, in relation to a pipeline by means of which the service provider provides pipeline services, apply to the AER for the pipeline to be reclassified as—
 - (a) if the pipeline is a transmission pipeline—a distribution pipeline; or
 - (b) if the pipeline is a distribution pipeline—a transmission pipeline.
- (2) An application for a reclassification decision must—
 - (a) be made in accordance with the Rules; and
 - (b) contain the information required by the Rules; and
 - (c) be accompanied by the fee prescribed by the Regulations (if any); and
 - (d) be dealt with in accordance with the Rules.

Part 7 AER reviews into designated pipelines

116 AER reviews

- (1) The MCE may request the AER to conduct a review into, and report to it as to, whether a

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pipeline should continue to be a designated pipeline.

- (2) A service provider that provides pipeline services by means of a designated pipeline may request the AER to conduct a review into, and report to the MCE as to, whether that pipeline should continue to be a designated pipeline.
- (3) A request under subsection (1) or (2) must be in writing.
- (4) On receiving a request under this section, the AER must conduct a review as to whether the pipeline the subject of the request should continue to be a designated pipeline.
- (5) In conducting a review under this section, the AER must—
 - (a) have regard to—
 - (i) the national gas objective; and
 - (ii) whether there has been a material change in competition in a market served by the designated pipeline; and
 - (b) consult, in accordance with the Rules, with the public.
- (6) On the completion of a review under this section, the AER must prepare a report and—
 - (a) give the report to the MCE; and
 - (b) publish the report on its website.
- (7) The AER must also give a copy of the report to the service provider that has requested the review.

50 Amendment of Chapter 4, heading (General requirements for provision of covered pipeline services)

Chapter 4, heading, ‘covered’—
omit.

51 Insertion of new Chapter 4, Part 1AA

Before Chapter 4, Part 1—

insert—

Part 1AA Preliminary

130 Application of this Chapter

- (1) This Chapter applies in relation to scheme pipelines and non-scheme pipelines.
- (2) Also, this Chapter, or a provision of this Chapter, applies to a person other than a service provider as if a reference in the Chapter, or provision, to a service provider were a reference to the person—
 - (a) if—
 - (i) this Chapter, or the provision, is prescribed by the Regulations for the purposes of this subsection; and
 - (ii) the person is prescribed by the Regulations for the purposes of this subsection; and
 - (b) subject to any modifications prescribed by the Regulations for the purposes of this subsection.

52 Amendment of Chapter 4, Part 1, heading (General duties for provision of pipeline services by covered pipelines)

Chapter 4, Part 1, heading, ‘by covered pipelines’—

omit.

53 Amendment of section 131 (Service provider must be legal entity of a specified kind to provide pipeline services by covered pipeline)

- (1) Section 131, heading, ‘by covered pipeline’—

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[s 54]

omit.

- (2) Section 131, ‘A covered pipeline service provider must not provide a pipeline service by means of a covered pipeline unless’—

omit, insert—

A service provider must not provide a pipeline service by means of a pipeline unless

- (3) Section 131(e), ‘covered’—

omit.

54 Omission of section 132 (Submission of full access arrangement or revisions to applicable full access arrangements)

Section 132—

omit.

55 Amendment of section 133 (Preventing or hindering access)

- (1) Section 133(1)(a), ‘covered pipeline’—

omit.

- (2) Section 133(1)(b)(i) and (ii), ‘covered’—

omit.

- (3) Section 133(1), ‘the covered pipeline’—

omit, insert—

the pipeline

- (4) Section 133(5) and (6)—

omit, insert—

- (5) In this section—

- (a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including the following—
 - (i) refusing to supply a pipeline service;
 - (ii) without reasonable grounds, limiting or disrupting a pipeline service;
 - (iii) making, or giving effect to, a provision of a contract or arrangement, arriving at, or giving effect to, a provision of an understanding, or requiring the giving of, or giving, a covenant; and
- (b) a reference to refusing to do an act includes a reference to—
 - (i) refraining (otherwise than inadvertently) from doing that act; or
 - (ii) making it known that that act will not be done.

56 Omission of section 134 (Supply and haulage of natural gas)

Section 134—
omit.

57 Replacement of section 135 (Covered pipeline service provider must comply with queuing requirements)

Section 135—
omit, insert—

135 Service provider must comply with queuing requirements

A service provider must comply with the queuing requirements of an applicable access arrangement or the Rules.

[s 58]

58 Replacement of section 136 (Covered pipeline service provider providing light regulation services must not price discriminate)

Section 136—

omit, insert—

136 Compliance with pipeline interconnection principles

Subject to section 91BF, a service provider must comply with the principles relating to the interconnection of pipelines and facilities (the *pipeline interconnection principles*) specified in the Rules.

136A Prohibition against increasing charges to subsidise particular development

- (1) This section applies to a service provider for a transmission pipeline, other than a pipeline within a declared transmission system.
- (2) The service provider must not increase a charge for a pipeline service payable by an existing user to the service provider to subsidise the development of an extension, or expansion of the capacity, of the pipeline.
- (3) However, subsection (2) does not apply to a service provider if the service provider is exempt from complying with subsection (2) under the Rules.

136B Prohibition on bundling of services

A service provider must not make it a condition of the provision of a particular pipeline service to a prospective user that the prospective user accept another non-gratuitous service from the service provider unless the bundling of the services is reasonably necessary.

136C Service providers must publish prescribed transparency information

- (1) A service provider must—
 - (a) publish the information relating to pipelines and pipeline services specified in the Rules made for the purposes of this paragraph (the *prescribed transparency information*); and
 - (b) ensure the prescribed transparency information is published in accordance with the Rules.
- (2) However, subsection (1) does not apply to a service provider if the service provider is exempt from complying with subsection (1) under the Rules.

59 Amendment of section 137 (Definitions)

- (1) Section 137, definition *compliance date*—
omit.
- (2) Section 137, definition *related business*, paragraphs (a) and (b), ‘covered’—
omit.

60 Amendment of section 138 (Meaning of marketing staff)

Section 138(1) and (2) and Example for subsection (2), ‘covered pipeline’, wherever occurring—
omit.

61 Amendment of section 139 (Carrying on of related businesses prohibited)

Section 139, ‘On and after the compliance date, a covered pipeline’—
omit, insert—

[s 62]

A

62 Amendment of section 140 (Marketing staff and the taking part in related businesses)

- (1) Section 140(1) and (2), ‘On and after the compliance date, a covered pipeline’—

omit, insert—

A

- (2) Section 140(1) and (2), ‘the covered pipeline’—

omit, insert—

the

63 Amendment of section 141 (Accounts that must be prepared, maintained and kept)

- (1) Section 141, ‘On and after the compliance date, a covered pipeline’—

omit, insert—

A

- (2) Section 141(a), ‘covered pipeline owned, operated or controlled by the covered pipeline’—

omit, insert—

pipeline owned, operated or controlled by the

- (3) Section 141(b), ‘covered pipeline’—

omit.

64 Amendment of section 143 (AER ring fencing determinations)

- (1) Section 143(1), ‘covered pipeline service provider or associate of a covered pipeline’—

omit, insert—

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service provider or associate of a

(2) Section 143(2)(a) to (c)—

omit, insert—

- (a) in the case where 1 part of the business of a service provider (*business unit A*) is providing pipeline services to another part of the business of the service provider (*business unit B*), the service provider must ensure that business unit A provides the pipeline services to business unit B as if business unit B were a separate unrelated entity;
- (b) in the case where a service provider is providing pipeline services to an associate of the service provider, the service provider must ensure that those services are provided as if the associate of the service provider were a separate unrelated entity;
- (c) users and prospective users should have sufficient information in order to understand whether a service provider is complying with paragraph (a) or (b).

(3) Section 143(3)(a) and (b), ‘covered pipeline’—

omit.

(4) Section 143(4), (5) and (6), ‘covered pipeline service provider or associate of a covered pipeline’—

omit, insert—

service provider or associate of a

65 Amendment of section 144 (AER to have regard to likely compliance costs of additional ring fencing requirements)

Section 144(a) and (b), ‘covered pipeline’—

omit.

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[s 66]

66 Amendment of section 145 (Types of ring fencing requirements that may be specified in an AER ring fencing determination)

- (1) Section 145, ‘require a covered pipeline’—

omit, insert—

require a

- (2) Section 145(a), Example 1, ‘covered pipeline service provider to ensure that persons employed or engaged by the covered pipeline service provider in relation to the provision of pipeline services are not also associates, or employed by associates, of the covered pipeline’—

omit, insert—

service provider to ensure that persons employed or engaged by the service provider in relation to the provision of pipeline services are not also associates, or employed by associates, of the

- (3) Section 145(a), Example 2, ‘covered pipeline service provider to put in place electronic, physical and procedural security measures in respect of the offices and computer systems of the covered pipeline service provider, and of the offices and computer systems of its associates, so that certain specified employees or persons engaged by the covered pipeline’—

omit, insert—

service provider to put in place electronic, physical and procedural security measures in respect of the offices and computer systems of the service provider, and of the offices and computer systems of its associates, so that certain specified employees or persons engaged by the

67 Omission of Chapter 4, Part 2, Division 4 (AER ring fencing exemptions)

Chapter 4, Part 2, Division 4—

omit.

68 Renumbering of Chapter 4, Part 2, Division 5 (Associate contracts)

Chapter 4, Part 2, Division 5—
renumber as Chapter 4, Part 2, Division 4.

69 Amendment of section 147 (Service provider must not enter into or give effect to associate contracts that have anti-competitive effect)

Section 147, ‘covered pipeline’—
omit.

70 Amendment of section 148 (Service provider must not enter into or give effect to associate contracts inconsistent with competitive parity rule)

- (1) Section 148(1), ‘covered pipeline’—
omit.
- (2) Section 148(2), ‘covered pipeline service provider must ensure that any pipeline services that the covered pipeline service provider provides to an associate of the covered pipeline’—
omit, insert—
- service provider must ensure that any pipeline services that the service provider provides to an associate of the

71 Insertion of new Chapter 4, Part 2, Division 5 and Chapter 4, Parts 3 and 4

After section 148—
insert—

Division 5 Exemptions from particular requirements

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[s 71]

148A Exemptions from particular requirements

The Rules may make provisions with respect to exemptions from the requirements under section 139, 140, 141, 147 or 148.

Part 3 Negotiation of access

148B Definition

In this Part—

relevant pipeline service means a pipeline service provided, or to be provided, by means of a pipeline and includes a pipeline service provided, or to be provided, by an extension to, or expansion of the capacity of, a pipeline.

148C Access proposals

A service provider must comply with the Rules relating to access to a relevant pipeline service made for the purposes of this section.

148D Duty to negotiate in good faith

A user or prospective user seeking access to a relevant pipeline service and the service provider for the service must negotiate in good faith with each other about—

- (a) whether access can be granted to the user or prospective user; and
- (b) if access is to be granted—the terms and conditions for the provision of access to the user or prospective user.

Part 4 Miscellaneous

148E Supply and haulage of natural gas

- (1) If a producer states terms and conditions (whether or not including the price) (*the first terms*) on which the producer offers to supply natural gas through a pipeline that is in operation at the time of the offer to a person at a place other than the exit flange of the producer's processing plant, the producer must, on request by the person, state terms and conditions (including the price, if the price was included in the first terms) (*the second terms*) on which the producer will supply natural gas to the person at the exit flange.
- (2) If there is a difference in the price stated in the first terms and the second terms, the producer must include in the second terms a statement of the reasons for the difference.
- (3) If the producer offers to supply natural gas to a person at a place other than the exit flange of the producer's processing plant, the producer must, on request, offer to supply the gas at the exit flange on the terms and conditions (including price) stated in accordance with this section.

72 Replacement of Chapters 5–6A

Chapters 5 to 6A—

omit, insert—

Chapter 5 Access disputes

Part 1 Interpretation and application

149 Definitions

In this Chapter—

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access dispute pipeline, in relation to an access dispute, means the pipeline the subject of the dispute;

dispute hearing means a hearing conducted by the relevant adjudicator for an access dispute for the purpose of making an access determination in relation to the dispute;

party, in relation to an access dispute, has the meaning given by section 154.

150 Application of this Chapter to disputes arising under the Rules

- (1) The provisions of this Chapter applicable to the determination of an access dispute apply to the determination of any dispute arising under any provision of the Rules specified in the Rules for the purposes of this section.
- (2) This section applies subject to any modification of the provisions of this Chapter specified in the Rules.

151 Chapter does not limit how disputes about access may be raised or dealt with

This Chapter does not limit how a dispute about access to a pipeline service may be raised or dealt with.

**Part 2 Notice of access
 dispute and other
 provisions**

Division 1 Notice of access dispute

152 Notice of access dispute

- (1) This section applies if there is an access dispute between a user or prospective user and a service provider.
- (2) The user, prospective user or service provider may give a notice in writing to the following entity that the access dispute exists—
 - (a) for a scheme pipeline access dispute—the dispute resolution body;
 - (b) for a non-scheme pipeline access dispute—the AER.
- (3) A notice given under subsection (2) must—
 - (a) include information about—
 - (i) the matters (if any) on which agreement has been reached; and
 - (ii) the matters that are in dispute; and
 - (iii) any other matter specified by the Rules; and
 - (b) be accompanied by—
 - (i) if an access dispute is a scheme pipeline access dispute—the fee prescribed by the Regulations (if any); or
 - (ii) if an access dispute is a non-scheme pipeline access dispute—the fee set by the AER from time to time and specified on the AER’s website; and
 - (c) be given to any other party to any negotiations that gave rise to the dispute as soon as practicable after it is given to the dispute resolution body or AER; and
 - (d) be dealt with in accordance with the Rules.
- (4) The user, prospective user or service provider

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may not give a notice under subsection (2) in relation to a non-scheme pipeline access dispute if the dispute relates to a matter excluded from arbitration by the Rules.

153 Withdrawal of notice

Subject to the Rules, a notice given under section 152 may be withdrawn—

- (a) in accordance with the Rules; and
- (b) at any time before an access determination is made in relation to the dispute.

Division 2 Parties to an access dispute

154 Parties to an access dispute

- (1) The parties to an access dispute are—
 - (a) the parties to any negotiations mentioned in section 152(3)(c) that gave rise to the access dispute; and
 - (b) if the dispute resolution body or AER (as the case requires) is of the opinion that the resolution of the access dispute may involve requiring another person to do something and that it is appropriate that the person be joined as a party—that other person; and
 - (c) if a small shipper is a party and has elected, in accordance with the Rules, for a user association to be joined as a party—the user association; and
 - (d) if the access dispute is a scheme pipeline access dispute—any other person who applies in writing, in accordance with the

Rules, to be made a party and is accepted by the dispute resolution body as having a sufficient interest.

(2) In this section—

user association means an association or body, whether incorporated or not—

- (a) the members of which include more than 1 user or prospective user; and
- (b) that represents and promotes the interests of those members in relation to the provision of pipeline services.

Part 3 Alternative dispute resolution for access disputes

Division 1 Alternative dispute resolution for scheme pipeline access disputes

155 Dispute resolution body may require parties to engage in alternative dispute resolution

- (1) This section applies if the dispute resolution body receives a notice of a scheme pipeline access dispute under section 152.
- (2) The dispute resolution body may require the parties to the dispute, in accordance with the Rules, to mediate, conciliate or engage in another alternative dispute resolution process for the purpose of resolving the dispute.
- (3) A party must comply with a requirement under subsection (2).

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**Division 2 Mediation of access
disputes involving small
shippers**

**156 Small shipper may elect to have access
dispute mediated**

A small shipper who is a party to an access dispute may, in accordance with the Rules, elect for the dispute to be resolved by mediation.

157 Appointment of mediator

- (1) This section applies if a small shipper makes an election under section 156.
- (2) The parties to the access dispute may agree to appoint, in accordance with the Rules, a mediator to resolve the dispute.
- (3) If the parties do not agree to the appointment of a mediator within a period specified by the Rules, the dispute resolution body or AER (as the case requires) must—
 - (a) consult with the parties to the dispute about the appointment of a mediator; and
 - (b) after consultation, appoint a mediator the dispute resolution body or AER considers appropriate for the dispute.
- (4) A mediator must be a person who—
 - (a) is independent of the parties to the dispute; and
 - (b) is properly qualified to act in the resolution of the dispute; and
 - (c) has no direct or indirect interest in the outcome of the dispute.

- (5) If a mediator does not, for any reason, complete a mediation of a dispute, the parties to the dispute may agree to appoint, in accordance with the Rules, an alternative mediator to resolve the dispute.
- (6) However, if the parties do not agree to the appointment of an alternative mediator within a period specified by the Rules, the dispute resolution body or AER must appoint another mediator in the way set out under subsection (3).

Part 4 Arbitration of non-scheme pipeline access disputes

158 Reference of non-scheme pipeline access dispute to arbitration

- (1) This section applies if the AER receives a notice of a non-scheme pipeline access dispute under section 152.
- (2) The AER must refer the dispute to arbitration.
- (3) The AER must give notice of the referral of an access dispute to arbitration to—
 - (a) the parties to the access dispute; and
 - (b) if relevant, any other person who will be a party to the access dispute.
- (4) However, this section applies subject to section 156.

159 Appointment of arbitrator

- (1) This section applies if a non-scheme pipeline access dispute is referred to arbitration under section 158.

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- (2) The parties to the access dispute may agree to appoint, in accordance with the Rules, an arbitrator to resolve the dispute.
- (3) If the parties do not agree to the appointment of an arbitrator within a period specified by the Rules, the AER must—
 - (a) consult with the parties to the dispute about the appointment of an arbitrator; and
 - (b) after consultation, appoint an arbitrator the AER considers appropriate for the dispute.
- (4) An arbitrator must be a person who—
 - (a) is independent of the parties to the dispute; and
 - (b) is properly qualified to act in the resolution of the dispute; and
 - (c) has no direct or indirect interest in the outcome of the dispute.
- (5) If an arbitrator does not, for any reason, complete an arbitration of a dispute, the parties to the dispute may agree to appoint, in accordance with the Rules, an alternative arbitrator to resolve the dispute.
- (6) However, if the parties do not agree to the appointment of an alternative arbitrator within a period specified by the Rules, the AER must appoint another arbitrator in the way set out under subsection (3).

Part 5 Access determination

**Division 1 Determination of access
disputes generally**

160 Determination of access dispute

- (1) Unless the relevant adjudicator for an access dispute terminates the access dispute under Part 7, the relevant adjudicator must make a determination on access by the user or prospective user (as the case requires) (including a determination that does not require a service provider to provide access to any pipeline services).
- (2) In making an access determination, the relevant adjudicator must comply with this Chapter and the Rules.
- (3) An access determination may deal with any matter relating to access by the user or prospective user to the pipeline services specified by the Rules for the purposes of this subsection.
- (4) The Rules may also, in connection with the making of an access determination, contain provisions for or with respect to such things as—
 - (a) the form of any determination; and
 - (b) the content of any determination, including as to the giving of reasons; and
 - (c) the time within which a determination must be made; and
 - (d) the process for making a determination; and
 - (e) when a determination takes effect; and
 - (f) the giving of notice of the making of a determination; and
 - (g) the publication of an access determination and other information related to the determination, including a statement of reasons for making the access determination, relevant financial calculations and any reports.

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161 Principles to be taken into account for access disputes

In making an access determination, the relevant adjudicator for an access dispute the subject of the determination must take into account any principle specified in the Rules for the purposes of this section.

162 Restrictions on access determinations

- (1) An access determination must not have any of the following effects—
 - (a) preventing a user from obtaining a sufficient amount of a pipeline service under a contract or previous access determination to be able to meet the user’s reasonably anticipated requirements, measured at the time the access dispute was notified;
 - (b) preventing a user or prospective user from obtaining, by the exercise of a pre-notification right, a sufficient amount of a pipeline service to be able to meet the user’s or prospective user’s actual requirements;
 - (c) depriving a person of a relevant protected contractual right.

- (2) In this section—

pre-notification right means a right under a contract, or under an access determination, that was in force at the time when the access dispute was notified under section 152;

relevant exclusivity right means an express contractual right that—

- (a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or

- (b) limits or controls a service provider's ability to supply pipeline services to persons who are not parties to the contract,

but does not include a user's contractual right to obtain a certain amount of pipeline services;

relevant protected contractual right means a right under a contract (other than a relevant exclusivity right) that was in force immediately before the notification of an access dispute under section 152.

163 Access determinations and past contributions of capital to fund installations or the construction of new facilities

- (1) In making an access determination, the relevant adjudicator for an access dispute the subject of the determination may take into account past contributions of capital to fund installations or the construction of new facilities for the access dispute pipeline.
- (2) Without limiting section 74, the Rules may—
- (a) specify the matters that the relevant adjudicator must address in making that access determination; and
- (b) specify the content of that access determination.

Division 2 Particular provisions relating to scheme pipeline access disputes

164 Access determination must give effect to applicable access arrangement

- (1) This section applies subject to sections 160, 163

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and 165 and any Rules made for the purposes of this Part.

- (2) In making an access determination for a scheme pipeline access dispute, the dispute resolution body must give effect to the applicable access arrangement (the *relevant applicable access arrangement*)—
 - (a) applying to the pipeline services provided, or to be provided, by means of the access dispute pipeline; and
 - (b) in effect at the time the determination is made.
- (3) Subsection (2) applies even though the relevant applicable access arrangement may not have been in force when notice of the access dispute was given.

165 Rules may allow determination that varies applicable access arrangement for installation of a new facility

- (1) This section applies in relation to an access determination for a scheme pipeline access dispute that requires—
 - (a) a service provider to expand the capacity of the access dispute pipeline; and
 - (b) the user or prospective user who is a party to the access dispute to contribute some or all of the capital to fund the expansion.
- (2) Without limiting section 74, the Rules may—
 - (a) confer a function or power on the dispute resolution body, when making the access determination, to vary the applicable access arrangement; and

-
- (b) specify the matters that the dispute resolution body must address in making the access determination; and
 - (c) specify the kinds of variations that may be made to the applicable access arrangement; and
 - (d) specify the content of the access determination.

Part 6 Variation of access determinations

166 Variation of access determination—scheme pipeline disputes

- (1) This section applies in relation to an access determination for a scheme pipeline access dispute.
- (2) The dispute resolution body may vary the access determination on the application of any party to the determination, but cannot vary the final determination if any other party objects.

Note—

If the parties cannot agree on a variation, a new access dispute can be notified under section 152.

- (3) Section 162 applies to a variation under this section as if—
 - (a) an access dispute arising out of the access determination had been notified when the application was made to the dispute resolution body for the variation of the determination; and
 - (b) the variation were the making of an access determination in the terms of the varied determination.

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167 Variation of access determination—non-scheme pipeline disputes

- (1) This section applies in relation to an access determination for a non-scheme pipeline access dispute.
- (2) The access determination may be varied by agreement between all parties to the access determination.
- (3) The Rules may also contain provisions with respect to seeking variations to an access determination.
- (4) The provisions of this Chapter about the arbitration of an access dispute apply with necessary modifications to a proposal under the Rules to vary an access determination or to a dispute arising out of such a proposal.

Part 7 Termination of access dispute

168 Relevant adjudicator may terminate access dispute in particular circumstances

- (1) The relevant adjudicator for an access dispute may at any time terminate the access dispute (without making an access determination) if—
 - (a) the notice of dispute given under section 152 is withdrawn; or
 - (b) the relevant adjudicator considers that—
 - (i) the notice of the access dispute was vexatious; or
 - (ii) the subject matter of the dispute is trivial, misconceived or lacking in substance; or

-
- (iii) the party who notified the access dispute did not negotiate in good faith; or
 - (iv) a specified dispute termination circumstance has occurred.
- (2) Subject to section 162, the relevant adjudicator for an access dispute may also terminate the access dispute (without making an access determination) if the relevant adjudicator considers that the aspect of access about which there is a dispute is expressly or impliedly dealt with under a contract between the user or prospective user and the service provider.
- (3) In this section—
- specified dispute termination circumstance* means a circumstance specified by the Rules as being a circumstance, the occurrence of which, entitles the relevant adjudicator for an access dispute to terminate the access dispute (without making an access determination).

169 Termination if there is genuine competition

- (1) This section applies if the relevant adjudicator for an access dispute considers that the pipeline service the subject of the access dispute could be provided on a genuinely competitive basis by a person other than the service provider or an associate of the service provider.
- (2) Despite anything to the contrary in this Chapter, the relevant adjudicator may refuse to make an access determination that requires the service provider to provide a particular pipeline service to a user or prospective user.

Part 8 Compliance with access determinations

170 Compliance with access determination

- (1) Subject to the Rules and subsection (2)—
 - (a) a party to a scheme pipeline access dispute in respect of which an access determination is made must comply with the access determination; and
 - (b) an access determination in relation to a non-scheme pipeline is enforceable as if it were a contract between the parties to the access determination.
- (2) A user or prospective user of a pipeline service to which an access determination relates is not bound to seek access to the service.
- (3) However, if a user or prospective user of a pipeline service seeks or obtains access, the user or prospective user is bound by any relevant provision of the access determination.

171 Subsequent service providers bound by access determinations

- (1) An access determination applies to every subsequent service provider as if that subsequent service provider were a party to the access dispute in respect of which the access determination was made.
- (2) In this section—

subsequent service provider means a service provider (other than the service provider to whom the access determination applies) who provides pipeline services—

 - (a) the subject of the access dispute; and

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

Part 9 Access dispute hearing procedure

172 Part applies subject to any modifications prescribed by the Regulations

This Part applies subject to any modifications prescribed by the Regulations.

173 Fast track resolution process—scheme pipeline access disputes

A scheme pipeline access dispute may be dealt with in accordance with a fast track resolution process under the Rules in the circumstances provided for in the Rules.

174 Hearing to be in private

- (1) A dispute hearing is to be in private.
- (2) However, if the parties agree, a dispute hearing or part of a dispute hearing may be conducted in public.
- (3) The relevant adjudicator for an access dispute the subject of the dispute hearing may give written directions as to the persons who may be present at a dispute hearing that is conducted in private.
- (4) In giving directions under subsection (3), the relevant adjudicator must have regard to the wishes of the parties and the need for commercial confidentiality.

175 Right to representation

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

176 Procedure of relevant adjudicator

- (1) In a dispute hearing the relevant adjudicator for an access dispute—
 - (a) is not bound by technicalities, legal forms or rules of evidence; and
 - (b) must act as speedily as a proper consideration of the access dispute allows, having regard to the need to carefully and quickly inquire into and investigate the access dispute and all matters affecting the merits, and fair settlement, of the access dispute; and
 - (c) may inform itself about any matter relevant to the access dispute in any way it thinks appropriate.
- (2) The relevant adjudicator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties in the dispute hearing, and may require that the cases be presented within those periods.
- (3) The relevant adjudicator may require evidence or argument to be presented in writing, and may decide the matters on which the relevant adjudicator will hear oral evidence or argument.
- (4) The relevant adjudicator may determine that a dispute hearing is to be conducted by—
 - (a) telephone; or
 - (b) closed circuit television; or
 - (c) any other means of communication.

- (5) The Rules may make further provision about the procedure for the conduct of dispute hearings.

177 Particular powers of relevant adjudicator in a hearing

- (1) The relevant adjudicator for an access dispute may do any of the following things for the purpose of determining the access dispute—
 - (a) give a direction in the course of, or for the purpose of, a dispute hearing;
 - (b) hear and determine the access dispute in the absence of a party who has been given notice of the dispute hearing;
 - (c) sit at any place;
 - (d) adjourn to any time and place;
 - (e) refer any matter to an independent expert and accept the expert's report as evidence.
- (2) The relevant adjudicator may make an interim determination.

178 Role of a dispute resolution expert

- (1) This section applies if, for the purpose of determining an access dispute, a matter is referred to an independent expert under section 177(1)(e).
- (2) The expert is to be appointed on terms and conditions determined by the relevant adjudicator for the access dispute.
- (3) The expert must report to the relevant adjudicator in accordance with the requirements of the relevant adjudicator.
- (4) The independent expert must—
 - (a) have knowledge and experience that is relevant to the matter; and

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- (b) not have any material direct or indirect interest or association that compromises, or is likely to compromise, the impartiality of the expert; and
- (c) disclose to the relevant adjudicator any material or indirect interest or association that compromises, or would reasonably be seen to compromise, the impartiality of the expert.

179 Disclosure of information

- (1) The relevant adjudicator for an access dispute may give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of the access dispute unless the person has the relevant adjudicator’s permission.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with an order under subsection (1).

Maximum penalty—

- (a) in the case of a natural person—\$3 400;
- (b) in the case of a body corporate—\$17 000.

Note—

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

180 Power to take evidence on oath or affirmation

- (1) The relevant adjudicator for an access dispute may take evidence on oath or affirmation and for that purpose the relevant adjudicator may administer an oath or affirmation.
- (2) The relevant adjudicator may summon a person to

appear before the relevant adjudicator to—

- (a) give evidence; or
 - (b) produce such documents (if any) as are referred to in the summons; or
 - (c) give evidence and produce such documents (if any) as are referred to in the summons.
- (3) The powers in this section may be exercised only for the purposes of hearing and determining the access dispute.

181 Failing to attend as a witness

A person who is served, as prescribed by the Regulations, with a summons to appear as a witness at a dispute hearing before the relevant adjudicator for an access dispute must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused, or released from further attendance, by the relevant adjudicator.

Maximum penalty—\$6 300.

Note—

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

182 Failing to answer questions etc

- (1) A person appearing at a dispute hearing as a witness before the relevant adjudicator for an access dispute the subject of the dispute hearing must not, without reasonable excuse—
- (a) refuse or fail to be sworn or to make an affirmation; or

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- (b) refuse or fail to answer a question that the person is required to answer by the relevant adjudicator; or
- (c) refuse or fail to produce a document that the person is required to produce by a summons under this Chapter served on the person as prescribed by the Regulations.

Maximum penalty—\$6 300.

Note—

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

- (2) It is a reasonable excuse for the purposes of subsection (1) for a natural person to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might—
 - (a) tend to incriminate the person; or
 - (b) expose the person to a criminal penalty.
- (3) Subsection (2) does not limit what is a reasonable excuse for the purposes of subsection (1).

183 Intimidation etc

A person must not—

- (a) threaten, intimidate or coerce another person; or
- (b) cause or procure damage, loss or disadvantage to another person,

because that other person—

- (c) proposes to produce, or has produced, documents to the relevant adjudicator for a dispute hearing; or

-
- (d) proposes to appear, or has appeared, as a witness before the relevant adjudicator for a dispute hearing.

Maximum penalty—\$6 300.

Note—

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

184 Particular powers of relevant adjudicator in a hearing

- (1) A party in a dispute hearing may—
 - (a) inform the relevant adjudicator for an access dispute the subject of the dispute hearing that, in the party's opinion, a specified part of a document contains confidential information (the *relevant part of the document*); and
 - (b) request the relevant adjudicator not to give a copy of the relevant part of the document to another party.
- (2) On receiving a request, the relevant adjudicator must—
 - (a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and
 - (b) ask the other party or parties whether there is any objection to the relevant adjudicator complying with the request.
- (3) If there is an objection to the relevant adjudicator complying with the request, the party objecting may inform the relevant adjudicator of the objection and of the reasons for it.

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- (4) The relevant adjudicator must consider—
 - (a) a request; and
 - (b) any objection; and
 - (c) any further submissions that any party has made in relation to the request.
- (5) After considering the matters mentioned in subsection (4), the relevant adjudicator may decide—
 - (a) not to give the other party or parties a copy of any part of the relevant part of the document that the relevant adjudicator thinks should not be given; or
 - (b) to give the other party or another specified party a copy of the whole, or part, of the relevant part of the document subject to—
 - (i) a condition that the party give an undertaking not to disclose the information contained in the relevant part of the document to another person except to the extent specified by the relevant adjudicator; and
 - (ii) any other condition the relevant adjudicator considers appropriate.

Part 10 Costs

Division 1 Scheme pipeline access disputes

185 Costs—scheme pipeline access disputes

- (1) Each party to a scheme pipeline access dispute is to bear its own costs in a dispute hearing except to

the extent that an order under this section specifies otherwise.

- (2) At any time, the dispute resolution body may order that a party (other than a small shipper) pay all or a specified part of the costs of another party in a dispute hearing.
- (3) The dispute resolution body may make an order under subsection (2) only if satisfied that it is fair to do so, having regard to—
 - (a) whether a party has conducted the dispute hearing in a way that unnecessarily disadvantaged another party by conduct such as—
 - (i) failing to comply with an order or direction of the dispute resolution body without reasonable excuse; or
 - (ii) failing to comply with this Law, the Regulations or the Rules; or
 - (iii) asking for an adjournment as a result of subparagraph (i) or (ii); or
 - (iv) causing an adjournment; or
 - (v) attempting to deceive another party or the dispute resolution body; or
 - (vi) vexatiously conducting an access dispute; and
 - (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the dispute hearing; and
 - (c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law; and
 - (d) the nature and complexity of the access dispute; and

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- (e) any other matter the dispute resolution body considers relevant.
- (4) A party to whom an order made under subsection (2) is directed must comply with the order.
- (5) If the dispute resolution body considers that the representative of a party, rather than the party, is responsible for conduct described in subsection (3)(a) or (b), the dispute resolution body may order that the representative in the representative's own capacity compensate another party for any costs incurred unnecessarily.
- (6) Before making an order under subsection (5), the dispute resolution body must give the representative a reasonable opportunity to be heard.
- (7) A representative of a party to whom an order made under subsection (5) is directed must comply with the order.
- (8) If the dispute resolution body makes an order for costs before the end of an access dispute, the dispute resolution body may require that the order be complied with before it continues with the proceeding.
- (9) If the dispute resolution body makes an order for costs, the dispute resolution body may fix the amount of costs itself.
- (10) This section applies to costs incurred by the parties in a dispute hearing even if the notice of the access dispute to which the dispute hearing relates is withdrawn.

186 Outstanding costs are a debt due to party awarded the costs—scheme pipelines

Costs that are payable under section 185(4) or

-
- (7)—
- (a) are a debt due to the party to whom the dispute resolution body has ordered that they be paid; and
 - (b) may be recovered by that party in a court of competent jurisdiction.

187 Regulations about the costs to be paid by parties to access dispute—scheme pipelines

The Regulations may provide for the dispute resolution body to—

- (a) charge the parties to an access dispute for its costs in the access dispute; and
- (b) apportion those costs between the parties.

Division 2 Non-scheme pipeline disputes

188 Costs of arbitration of non-scheme pipeline disputes

- (1) This section applies in relation to the parties to an arbitration of a non-scheme pipeline dispute conducted under this Chapter.
- (2) The costs of the arbitration (including costs associated with the arbitration process and the cost of the arbitrator) must be shared equally between the parties to the arbitration.
- (3) The Rules may make provision in relation to the costs of an arbitration conducted under this Chapter, including rules that provide for a different approach to allocating costs under subsection (2) in specified circumstances.
- (4) Costs that are payable to an arbitrator under this

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section—

- (a) are a debt due by the party to the arbitrator; and
 - (b) may be recovered by the arbitrator in a court of competent jurisdiction.
- (5) Despite any other provision of this Chapter, the parties to an arbitration bear their own costs.

**Division 3 Mediation of access
 disputes involving small
 shippers**

**189 Costs of mediation of access disputes
 involving small shippers**

- (1) This section applies in relation to an access dispute involving small shippers that is referred to mediation under this Chapter.
- (2) Each party to the access dispute must bear their own costs.
- (3) The parties to the access dispute must each pay an equal share of the following costs of the mediator—
 - (a) the fees and expenses of the mediator;
 - (b) the costs of room hire;
 - (c) the cost of any additional input (including expert reports) agreed by the parties to be necessary to the conduct of the mediation.
- (4) Subsections (2) and (3) apply subject to any agreement between the parties to the access dispute about who will bear any costs (or a particular share of any costs) in the particular case.

-
- (5) Costs that are payable under subsection (3)—
- (a) are a debt due by the party to the mediator; and
 - (b) may be recovered by the mediator in a court of competent jurisdiction.

Part 11 Joint access dispute hearings—scheme pipeline disputes

190 Definition

In this Part—

nominated disputes has the meaning given by section 191(2).

191 Joint dispute hearing

- (1) This section applies if—
- (a) the dispute resolution body is conducting 2 or more dispute hearings in relation to scheme pipeline access disputes at a particular time; and
 - (b) 1 or more matters are common to the access disputes in relation to which the dispute hearings are being conducted.
- (2) The dispute resolution body may, by notice in writing, decide that it will hold a joint dispute hearing in respect of such of those access disputes (the *nominated disputes*) as are specified in the notice.
- (3) The dispute resolution body may do so only if it considers this would be likely to result in the nominated disputes being resolved in a more

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efficient and timely manner.

192 Consulting the parties

- (1) Before making a decision under section 191(2), the dispute resolution body must give each party to each of the nominated disputes a notice in writing—
 - (a) specifying what the dispute resolution body is proposing to do; and
 - (b) inviting the party to make a written submission on the proposal to the dispute resolution body within 10 business days after the notice is given.
- (2) The dispute resolution body must have regard to any submission so made in deciding whether to do so.
- (3) The dispute resolution body may also have regard to any other matter it considers relevant.

193 Constitution and procedure of dispute resolution body for joint dispute hearings

Part 9 applies to the joint dispute hearing in a corresponding way to the way in which it applies to a particular dispute hearing.

194 Record of proceedings etc

- (1) The dispute resolution body as constituted for the purposes of the joint dispute hearing may have regard to any record of the proceedings of the dispute of any of the nominated disputes.
- (2) The dispute resolution body as constituted for the purposes of the dispute hearing of each of the nominated disputes may, for the purposes of making an access determination in relation to the

access dispute to which that hearing relates—

- (a) have regard to any record of the proceedings of the joint dispute hearing; and
- (b) adopt any findings of fact made by the dispute resolution body as constituted for the purposes of the joint dispute hearing.

Part 12 Miscellaneous matters

195 Correction of access determinations for clerical mistakes etc

- (1) This section applies if an access determination contains—
 - (a) a clerical mistake; or
 - (b) an error arising from an accidental slip or omission; or
 - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the determination; or
 - (d) a defect in form.
- (2) Subject to the Rules, the relevant adjudicator for the access dispute the subject of the dispute hearing may correct the determination.

196 User's existing capacity rights during an access dispute

A service provider who is in an access dispute with a user must not, without the consent of the user, alter the rights that the user has to use the capacity of the pipeline during the period of the dispute.

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73 Amendment of section 271 (Enforcement of access determinations)

Section 271(5)—

omit.

74 Amendment of section 292 (AEMC must take into account form of regulation factors in certain cases)

Section 292(a) and (b), ‘a full’—

omit, insert—

an

75 Insertion of new section 294FA

Chapter 9, Part 2, Division 1, after section 294F—

insert—

294FA South Australian Minister to make initial Rules relating to pipeline regulation

- (1) The South Australian Minister may make Rules on any 1 or more of the following subjects—
 - (a) scheme pipeline determinations, scheme pipeline revocation determinations, scheme pipeline elections, greenfields incentive determinations, monitoring of service providers, general requirements for the provision of pipeline services, information disclosure requirements, access negotiations and access disputes;
 - (b) the subject matter of a new head of power added to Schedule 1, or an existing head of power amended, by the Gas Pipelines amendments;
 - (c) any other subject contemplated by, or consequential on, the Gas Pipelines amendments.

- (2) Rules may only be made under subsection (1) on the recommendation of the MCE.
- (3) Section 74(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.
- (4) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—
 - (a) publish notice of the making of the Rules in the South Australian Government Gazette stating the date of commencement or, if they commence at different times, various dates of commencement; and
 - (b) making the Rules publicly available.
- (5) The South Australian Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (4)(a) or this subsection.
- (6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.
- (7) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.
- (8) In this section—

Gas Pipelines amendments means the amendments made by the *National Energy Laws Amendment (Gas Pipelines) Act 2021*.

76 Amendment of section 294G (South Australian Minister may make Rules on recommendation of MCE and Energy Security Board)

Section 294G(1), ‘The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South*

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*Australia) Act 2008 of South Australia (the **South Australian Minister**)’—*

omit, insert—

The South Australian Minister

77 Omission of Chapter 10, Part 1

Chapter 10, Part 1—

omit.

78 Replacement of Chapter 10, Part 2, Division 2 (Disclosure of confidential information held by relevant Ministers, NCC and AEMC)

Chapter 10, Part 2, Division 2—

omit, insert—

Division 2 Disclosure of confidential information held by AEMC

330 Confidentiality of information

- (1) Information provided to the AEMC for the purposes of a MCE directed review or a review conducted by the AEMC under section 83 is confidential information for the purposes of that procedure if—
 - (a) the person who provides it claims, when providing it to the AEMC, that it is confidential information; and
 - (b) the AEMC decides that the information is confidential information.
- (2) Nothing prevents the disclosure of confidential information by the AEMC in a report published under Division 4 or Division 5 of Chapter 2 Part 2, but the AEMC must ensure that the information

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is identified as such in the report.

- (3) If the AEMC decides that information provided to it for the purposes of a MCE directed review or a review conducted by the AEMC under section 83 is confidential information, the AEMC, the MCE or a Minister of a participating jurisdiction may only publish a version of the report from which the information has been omitted.
- (4) If information is omitted from a published version of a report as being confidential information, a note to that effect must be included in the decision at the place in the decision from which the information is omitted.

Note—

See also section 71 of this Law and section 24 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia.

79 Amendment of section 332 (Failure to make a decision under this Law or the Rules within time does not invalidate the decision)

Section 332(3), definition *regulatory scheme decision maker—*

omit, insert—

regulatory scheme decision maker means any of the following—

- (a) the AER;
- (b) the AEMC;
- (c) AEMO.

80 Replacement of section 333 (Withdrawal of applications relating to coverage or reclassification)

Section 333—

omit, insert—

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333 Withdrawal of applications relating to particular determinations or classification

- (1) A person who has made an application for a relevant decision may withdraw the application at any time before the decision is made.
- (2) A withdrawal of an application in accordance with this section must be—
 - (a) in writing; and
 - (b) given to the AER.
- (3) In this section—

relevant decision means—

 - (a) a scheme pipeline determination; or
 - (b) a scheme pipeline revocation determination; or
 - (c) a greenfields incentive determination; or
 - (d) a classification decision; or
 - (e) a reclassification decision.

81 Omission of sections 334 and 335

Sections 334 and 335—
omit.

82 Replacement of Schedule 1 (Subject matter for the National Gas Rules)

Schedule 1—
omit, insert—

Schedule 1 Subject matter for the National Gas Rules

(section 74)

Regulatory determinations and classification of pipelines

- 1 Scheme pipeline determinations, scheme pipeline revocation determinations and greenfields incentive determinations (*regulatory determinations*), including—
- (a) the content of applications for regulatory determinations; and
 - (b) procedures for dealing with applications for regulatory determinations; and
 - (c) information that must be provided by a service provider and the consequences of failing to provide that information; and
 - (d) procedures for making regulatory determinations; and
 - (e) the content of regulatory determinations and decisions not to make regulatory determinations; and
 - (f) publication of regulatory determinations and decisions not to make regulatory determinations.
- 2 Scheme pipeline elections, including—
- (a) the circumstances in which scheme pipeline elections may be made; and
 - (b) the content of scheme pipeline elections.
- 3 The classification or reclassification of pipelines, including—
- (a) the content of applications for classification and reclassification of pipelines; and

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- (b) procedures for dealing with applications for classification and reclassification of pipelines; and
- (c) procedures for making classification decisions and reclassification decisions; and
- (d) the content of classification decisions, reclassification decisions and decisions not to make a reclassification decision; and
- (e) publication of classification decisions, reclassification decisions and decisions not to make a reclassification decision.

Access arrangements

- 4 The submission to the AER, by service providers, of access arrangements or revisions to applicable access arrangements for approval by the AER, including requiring service providers to—
 - (a) submit access arrangements for pipeline services provided by means of scheme pipelines; and
 - (b) submit more than 1 access arrangement; and
 - (c) consolidate access arrangements.
- 5 The content of access arrangements and applicable access arrangements, including—
 - (a) a description of pipeline services provided or that may be provided by means of scheme pipelines, including reference services; and
 - (b) the content of extension and expansion requirements; and

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- (c) the content of queuing requirements;
and
 - (d) review submission dates, expiry dates
and dates when revisions to access
arrangements and applicable access
arrangements are to take effect.
- 6 Variations to applicable access
arrangements.
- 7 Information to accompany access
arrangements submitted for approval, or
proposals for revisions or variations to
access arrangements, including information
to enable a person to understand the
background or basis or derivation of the
access arrangement or proposal.
- 8 The provision and publication of
information referred to in item 7.
- 9 Decisions of the AER that approve (with or
without revisions or modifications) or do
not approve access arrangements or
proposals for revisions or variations to
access arrangements.
- 10 The making of access arrangements by the
AER when it does not approve access
arrangements.
- 11 The contents of decisions of the AER that—
- (a) approve or do not approve access
arrangements or proposals for revisions
or variations to access arrangements;
and
 - (b) make access arrangements.
- 12 The procedure for the approval or making
by the AER of access arrangements, or
approval by the AER of proposals for
revisions or variations to applicable access

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arrangements, including the publication and giving of—

- (a) access arrangements and proposals; and
- (b) decisions of the AER; and
- (c) applicable access arrangements; and
- (d) drafts of decisions of access arrangements and proposals and decisions of the AER.

13 Matters to be addressed by the AER in approving or not approving an access arrangement, or making an access arrangement, or approving or not approving revisions or variations to an applicable access arrangement.

General duties for provision of pipeline services

14 Queuing requirements for non-scheme pipelines.

15 Pipeline interconnection principles.

16 Exemptions from the prohibition in section 136A.

17 Information that must be published by service providers under section 136C, including—

- (a) the collection, disclosure, verification, management and publication of information in relation to pipeline services, including information about—
 - (i) the terms and conditions on which the service provider is prepared to make a pipeline available for use by others; and

-
- (ii) relevant prices, costs and methodologies associated with gaining access to (and using) a pipeline and relevant or related services; and
 - (iii) access contracts and arrangements used (or required to be used) by the service provider; and
 - (b) requirements to ensure that information is accurate and complete; and
 - (c) the imposition or recovery of costs associated with any matter referred to in a paragraph (a) or (b); and
 - (d) exemptions from the requirement to publish information.

Ring fencing requirements

- 18 The content of a minimum ring fencing requirement.
- 19 AER ring fencing determinations and additional ring fencing requirements.
- 20 The approval by the AER of associate contracts and variations to associate contracts.
- 21 The grounds on which the AER may approve associate contracts and variations to associate contracts, including grounds different from those specified in section 147 or section 148.
- 22 Exemptions from minimum ring fencing requirements and associate contract provisions, including applications for exemptions.

Access to pipeline services

- 23 Access to pipeline services.

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- 24 The facilitation of requests for access to pipeline services (*access requests*), including—
- (a) requirements for the publication by service providers of user access guides that describe the processes for making access requests, access offers and access negotiations; and
 - (b) exemptions from the requirement to publish a user access guide; and
 - (c) requirements about access requests and the information to be provided by the service provider in response to access requests; and
 - (d) requirements about access offers; and
 - (e) access negotiations between a user or prospective user and a service provider; and
 - (f) the imposition or recovery of costs associated with facilitating access (or potential access) to pipeline services.
- 25 Requirements to ensure that information published in a user access guide, in response to access requests or during access negotiations, is accurate and complete.
- 26 The transfer of capacity of a pipeline to deliver pipeline services, including—
- (a) the circumstances when and how it is to happen; and
 - (b) the legal consequences of a transfer of that capacity.
- 27 The establishment and maintenance of registers of unutilised capacity of pipelines to deliver pipeline services, including the information to be included in such registers.

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- 28 The public availability of information on registers referred to in item 27.
- 29 The provision of information to users of information about unutilised capacity of pipelines to deliver pipeline services.
- 30 The conditions a service provider may impose for the provision of pipeline services.

Access disputes

- 31 Access dispute notices, including—
- (a) the content of access dispute notices; and
 - (b) procedures for dealing with access dispute notices; and
 - (c) withdrawal of access dispute notices.
- 32 Parties to an access dispute, including—
- (a) applications to become a party to an access dispute; and
 - (b) procedures for dealing with applications to become a party to an access dispute.
- 33 Mediation of access disputes involving small shippers, including—
- (a) elections by small shippers to have an access dispute mediated; and
 - (b) appointments of mediators; and
 - (c) mediation procedures; and
 - (d) reports required to be given by mediators to the AER.
- 34 Procedures and time limits for the making of access determinations, including a fast track

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- procedure for scheme pipeline access disputes.
- 35 The appointment of persons to inquire into and report on the safe operation of pipelines for the purpose of enabling the relevant adjudicator to make an access determination.
- 36 Principles to be taken into account by the relevant adjudicator when making an access determination.
- 37 Matters an access determination may deal with.
- 38 The kinds of access determinations that may be made, including determinations—
- (a) requiring prospective users or users to make capital contributions towards a service provider's capital expenditure for the expansion of the capacity of pipelines; and
 - (b) that enable service providers to charge prospective users or users surcharges to recover capital expenditure for the expansion of the capacity of pipelines.
- 39 Circumstances in which an access dispute may be terminated.
- 40 Procedures for varying an access determination.
- 41 Allocation of costs of an arbitration between parties to a non-scheme pipeline access dispute.
- 42 Procedures for correcting errors in an access determination.

Sale and supply of gas to customers

43 Credit support arrangements between service providers and retailers, including the financial obligations of service providers and retailers to support the sale and supply of natural gas to retail customers.

44 Charges for the connection of premises of retail customers.

Regulatory economic methodologies

45 The regulatory economic methodologies (including the use of the methodology known as the “building block approach”) to be applied by—

- (a) the AER in approving or making an access arrangement; or
- (b) the AER in approving revisions or a variation to an applicable access arrangement; or
- (c) the relevant adjudicator in making an access determination.

46 If the Rules provide for the regulatory economic methodology known as the “building block approach” to be applied by—

- (a) the AER for the purpose of approving or making an access arrangement; or
- (b) the AER for the purpose of approving revisions or a variation to an applicable access arrangement; or
- (c) the relevant adjudicator for the purpose of making an access determination,

the determination by the AER or relevant adjudicator (as the case requires) of allowances for—

- (d) depreciation; or

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- (e) the operating costs of a service provider; or
 - (f) if the service provider is a corporation, the income tax payable by corporations.
- 47 The methodology known as “total factor productivity”—
- (a) as a regulatory economic methodology to be applied by—
 - (i) the AER for the purpose of approving or making an access arrangement; or
 - (ii) the AER for the purpose of approving revisions or a variation to an applicable access arrangement; or
 - (iii) the relevant adjudicator for the purpose of making an access determination; and
 - (b) as an economic regulatory tool to inform and assist the AER in applying, or analysing the application of, the regulatory economic methodology known as the “building block approach” by the AER for the purpose of—
 - (i) approving or making an access arrangement; or
 - (ii) approving revisions or a variation to an applicable access arrangement; and
 - (c) as an economic regulatory tool to inform and assist the relevant adjudicator in applying, or analysing the application of, the regulatory

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economic methodology known as the “building block approach” by the relevant adjudicator for the purpose of making an access determination in relation to the dispute.

- 48 The capital base with respect to a pipeline, and of a new facility for the purposes of—
- (a) approving or making an access arrangement; or
 - (b) approving revisions or a variation to an applicable access arrangement; or
 - (c) making an access determination.
- 49 The assessment, or treatment of, investment in pipelines and new facilities by—
- (a) the AER for the purpose of approving or making an access arrangement; or
 - (b) the AER for the purpose of approving revisions or a variation to an applicable access arrangement; or
 - (c) the relevant adjudicator for an access dispute for the purposes of making an access determination in relation to the dispute.
- 50 The economic framework and methodologies to be applied by the AER or relevant adjudicator for the purposes of item 49.
- 51 Incentives for service providers to make efficient operating and investment decisions, including, where applicable, service performance incentive schemes.
- 52 The treatment of capital contributions referred to in item 38(a) when determining the capital base with respect to a pipeline.

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53 The handling of surcharges referred to in item 38(b).

AER economic regulatory function or powers

54 The way in which the AER performs or exercises an AER economic regulatory function or power, including the basis on which the AER makes an AER economic regulatory decision.

55 Principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power.

AEMO

56 A registration scheme to be administered by AEMO for Registered participants in relation to a regulated gas market; the prudential and other requirements to be met by a Registered participant; exemption from registration; the suspension from registration or deregistration of a Registered participant; the exclusion of a Registered participant from a regulated gas market operated or administered by AEMO.

57 The operation and administration of a regulated gas market.

58 The declared system functions or STTM functions.

59 AEMO's functions, powers and duties, and the duties and obligations of Registered participants, exempted participants and others, in regard to the operation of a declared transmission system or a regulated gas market.

60 The setting of prices (including maximum and minimum prices) for natural gas and

services purchased through the declared wholesale gas market or short term trading market operated and administered by AEMO.

- 61 The regulation of a declared LNG storage provider and liquefied natural gas stored by the provider.
- 62 The metering of natural gas to record the production or consumption of natural gas.
- 63 The registration of metering installations used to meter natural gas.
- 64 The regulation of persons providing metering services relating to the metering of natural gas.
- 65 The matters to be dealt with in the gas statement of opportunities and the obligations of AEMO and other persons in regard to its preparation, review, revision and publication.
- 66 Fees payable to AEMO for services provided, or statutory functions performed, under this Law, the Rules or the Procedures.
- 67 The payment of money (including the payment of interest and the provision of related security)—
- (a) for the settlement of transactions for natural gas or services purchased or supplied through a regulated gas market operated and administered by AEMO; or
 - (b) to or from a Rule fund; or
 - (c) for any service provided, or statutory function performed, for which the Rules require payment.

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- 68 Rules for determining the ownership of, and the transfer of title to, natural gas supplied at an STTM hub and for resolving disputes about ownership.
- 69 The terms and conditions on which service providers, or classes of service providers, may recover costs for allocating quantities of natural gas relating to market operator services.
- 70 The operation and administration of a gas trading exchange.
- 71 The content, operation and administration of a gas trading exchange agreement.
- 72 The duties and obligations of members of a gas trading exchange.
- 73 Other rules relating to the conduct (including suspension) of the members of a gas trading exchange.
- 74 The determination and settlement of payments in relation to a gas trading exchange.

Natural Gas Services Bulletin Board

- 75 The establishment and maintenance of a website that contains information in relation to natural gas services and secondary capacity transactions.
- 76 Principles to be applied, and procedures to be followed, by AEMO in exercising a power or performing a function in relation to the Natural Gas Services Bulletin Board.
- 77 The kinds of information that may or must be given to AEMO, the circumstances in which the information may or must be given, and the procedure for giving the information.

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- 78 The kinds of information that may or must be included on the Natural Gas Services Bulletin Board and the manner in which information is to be dealt with before being put on the Natural Gas Services Bulletin Board, including, but not limited to, the removal of information that would identify the person who gave the information.
- 79 Persons, or classes of persons, to whom the requirement to give information does not apply and the circumstances in which the requirement does not apply, including, but not limited to, the grant of power to AEMO to exempt persons, or classes of persons, from that requirement.
- 80 The circumstances in which the requirement to give information may start to apply again to the persons, or classes of persons, mentioned in item 79.
- 81 Persons, or classes of persons, who may access the Natural Gas Services Bulletin Board and the class, or classes, of information to which they may have access.
- 82 The terms and conditions on which the persons, or classes of persons, mentioned in item 81 may access the Natural Gas Services Bulletin Board.
- 83 The procedure for dealing with information that was, but is no longer, on the Natural Gas Services Bulletin Board.
- 84 Persons, or classes of persons, who may have access to information that was, but is no longer, on the Natural Gas Services Bulletin Board and the class, or classes, of information to which they may have access.
- 85 The terms and conditions on which the persons, or classes of persons, mentioned in

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item 84 may have access to information that was, but is no longer, on the Natural Gas Services Bulletin Board.

86 The terms and conditions on which service providers, or classes of service providers, may recover amounts from AEMO for aggregating Bulletin Board information for the Bulletin Board operator.

87 Matters mentioned in items 75 to 86, in so far as they relate to emergency situations.

Facilitating capacity trades and the capacity auction

88 The making of, and amendment to, an Operational Transportation Service Code, including—

- (a) the establishment, membership and operation of a representative panel for the Code; and
- (b) the functions of AEMO in relation to the panel; and
- (c) the functions of the panel in connection with proposals for amendment of the Code.

89 The content of an Operational Transportation Service Code.

90 Requirements for a standard OTSA and the services provided under a standard OTSA.

91 Publication of a standard OTSA, entry into a standard OTSA and amendment of a standard OTSA.

92 Requirements for transportation service providers to give effect to operational transfers.

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- 93 The determination of payments to transportation service providers for use of an operational transportation service after termination or suspension of the contract from which the transportation capacity was first derived.
- 94 A registration scheme to be administered by AEMO for registration of transportation service providers and transportation facilities.
- 95 The provision of information to AEMO about the points at or between which transportation services are provided and the publication of that information by AEMO.
- 96 The allocation of service points to zones and the transfer of transportation capacity between service points.
- 97 The recording of information about nominations and renominations for the use of transportation services and the scheduling and curtailment of transportation services and the provision of that information to AEMO or the AER.
- 98 The recovery of the costs of transportation service providers in connection with the provision of a standard OTSA, a capacity auction and the transaction support arrangements and the publication of schedules of charges.
- 99 The negotiation or determination of provisions in agreements with transportation facility users to facilitate sale by operational transfer and the transfer of capacity between service points.
- 100 Exemptions in connection with a standard OTSA or capacity auction.

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Capacity auctions

- 101 The capacity auction functions and the operation and administration of a capacity auction.
- 102 The transportation services to be available through a capacity auction and the determination of the quantities of transportation capacity to be offered in the capacity auction.
- 103 The form of a capacity auction and the rules relating to the conduct (including suspension) of a capacity auction.
- 104 The duties and obligations of transportation service providers in relation to a capacity auction, including the provision of information and the maintenance of records in relation to the nomination, scheduling and supply of transportation services.
- 105 The content, operation and administration of capacity auction agreements.
- 106 The duties and obligations of capacity auction participants.
- 107 The activities of transportation service providers and transportation facility users in connection with a capacity auction.
- 108 The determination and settlement of payments in relation to a capacity auction.
- 109 The order of priority to be given to transportation services using transportation capacity bought in a capacity auction, including in the scheduling, supply or curtailment of transportation services.
- 110 The classification of transportation services as priority services in connection with a capacity auction.

-
- 111 The functions of the AER in relation to transportation services classified as priority services in connection with a capacity auction and variations to those services.

Standard market timetable

- 112 Provision for or with respect to a standard market timetable, including requirements concerning use of a standard market timetable and the measurement of gas flows over periods corresponding to the standard gas day.
- 113 Provision for or with respect to the negotiation or determination of amendments to contracts for transition to the use of a standard market timetable.

Miscellaneous

- 114 Specification of pipeline services as reference services.
- 115 The preparation (including public consultation) and publication by the AER of discussion papers relating to the AER's functions and powers under this Law and the Rules.
- 116 Reviews by or on behalf of—
- (a) the AER or the AEMC; or
 - (b) any other person appointed, in accordance with the Rules.
- 117 Reporting and disclosing information to the AER.
- 118 The establishment and maintenance of a register by the AEMC of all previous and current—
- (a) scheme pipeline determinations; and

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- (b) scheme pipeline revocation determinations; and
 - (c) greenfields incentive determinations; and
 - (d) decisions not to make a scheme pipeline determination; and
 - (e) decisions not to make a scheme pipeline revocation determination; and
 - (f) decisions not to make a greenfields incentive determination; and
 - (g) pipelines, including their description and classification as transmission or distribution pipelines; and
 - (h) applicable access arrangements.
- 119 Time periods within which the AER must make a decision (including an AER economic regulatory decision).
- 120 Extensions to periods of time referred to in item 119.
- 121 Reports into failures to make decisions within a specified period of time and the publication of such reports.
- 122 Confidential information held by service providers, users, prospective users, end users, the AER, the AEMC, AEMO and other persons or bodies conferred a function, or exercising a power or right, or on whom an obligation is imposed, under the Rules, and the manner and circumstances in which that information may be disclosed.
- 123 Dispute resolution, including—

-
- (a) definition of the class of disputes subject to the dispute resolution provisions of the Rules; and
 - (b) the appointment of persons to arbitrate, mediate or assist in some other way in the resolution of such disputes; and
 - (c) the appointment of a person to manage and facilitate the dispute resolution process (without, however, derogating from that person's power to act personally as an arbitrator or mediator in a particular dispute); and
 - (d) the dispute resolution process; and
 - (e) rights of appeal on questions of law against decisions made in the course of the dispute resolution process.
- 124 Energy Consumers Australia (including provisions for its funding).
- 125 The modification of section 3, 8 or 10.8 of the Gas Code as those sections apply to a transitioned access arrangement (as defined in clause 1 of Schedule 3 to this Law).
- Note—*
See also clause 30 of Schedule 3 to this Law.
- 126 Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the Gas Code as in operation and effect immediately before the commencement of section 20 of the *National Gas (South Australia) Act 2008* of South Australia.
- 127 Any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the superseded jurisdictional rules.
- 128 Any matter or thing relating to gas prescribed by the Regulations.

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83 Amendment of Schedule 2, section 31 (Definitions)

Schedule 2, section 31, definition *decision maker*, ‘a relevant Minister, the NCC,’—

omit.

84 Amendment of Schedule 2, section 34 (Evidentiary certificates—AER)

(1) Schedule 2, section 34(d)(iii), ‘a full’—

omit, insert—

an

(2) Schedule 2, section 34(d)(iv)—

omit.

(3) Schedule 2, section 34(d)(v)—

renumber as Schedule 2, section 34(d)(iv).

85 Omission of Schedule 2, section 36 (Evidentiary certificates—NCC)

Schedule 2, section 36—

omit.

86 Omission of Schedule 2, section 37 (Evidentiary certificates—relevant Minister and Commonwealth Minister)

Schedule 2, section 37—

omit.

87 Amendment of Schedule 2, section 53A (Invalid rate of return instrument)

Schedule 2, section 53A(6), definition *affected access arrangement decision*, ‘a full’—

omit, insert—

an

88 Amendment of Schedule 3 (Savings and transitionals)

Schedule 3, after Part 18—

insert—

**Part 19 Transitional provisions
related to pipeline
regulation amendments**

Division 1 Preliminary

104 Definitions

In this Part—

15-year no coverage determination means a 15-year no coverage determination within the meaning of section 2 of the pre-amended Law;

commencement day means the day on which this Part comes into operation;

covered pipeline means a covered pipeline within the meaning of section 2 of the pre-amended Law;

limited access arrangement means a limited access arrangement within the meaning of section 2 of the pre-amended Law;

pre-amended Law means this Law as in force immediately before the commencement day;

price regulation exemption means a price regulation exemption within the meaning of section 2 of the pre-amended Law;

relevant entity means—

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- (a) a relevant Minister within the meaning of section 2 of the pre-amended Law; or
- (b) the NCC within the meaning of section 2 of the pre-amended Law.

tender approval decision means a tender approval decision within the meaning of section 2 of the pre-amended Law;

tender approval pipeline means a pipeline to which a tender approval decision relates under section 126 of the pre-amended Law;

voluntary access arrangement pipeline means a pipeline in relation to which a full access arrangement was voluntarily submitted under section 127 of the pre-amended Law.

Division 2 Regulation and classification of pipelines

Subdivision 1 Covered pipelines generally

105 Particular covered pipelines deemed to be scheme pipelines

- (1) This clause applies in relation to a pipeline that, immediately before the commencement day, was a covered pipeline, other than a light regulation pipeline.

Note—

A covered pipeline includes a pipeline deemed to be a covered pipeline by operation of section 126 or 127 of the pre-amended Law.

- (2) On the commencement day—

-
- (a) the covered pipeline is deemed to be a scheme pipeline; and
 - (b) a scheme pipeline determination is deemed to have been made in relation to the pipeline.
- (3) In this section—
- light regulation pipeline* means a covered pipeline by means of which light regulation services, within the meaning of section 2 of the pre-amended Law, are supplied under a light regulation determination, within the meaning of section 2 of the pre-amended Law.

Subdivision 2 Provisions for tender approval pipelines

106 Particular tender approval pipelines become scheme pipelines

- (1) This clause applies in relation to a tender approval pipeline if the tender approval decision for the pipeline has not become irrevocable before the commencement day.
- (2) On the tender approval decision becoming irrevocable—
 - (a) the pipeline becomes a scheme pipeline; and
 - (b) a scheme pipeline determination is deemed to have been made in relation to the pipeline.

107 When particular scheme pipelines become non-scheme pipelines

- (1) This clause applies in relation to a pipeline that, before the commencement day, was a tender approval pipeline and—

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- (a) is deemed to be a scheme pipeline under clause 105; or
 - (b) becomes a scheme pipeline under clause 106.
- (2) On the earlier of the following events happening, the pipeline becomes a non-scheme pipeline—
- (a) if there is an applicable access arrangement that applies to the pipeline services provided by means of that pipeline—when that arrangement expires;
 - (b) when a scheme pipeline revocation determination made in relation to that pipeline takes effect.

Subdivision 3 Provisions for voluntary access arrangement pipelines

108 Particular voluntary access arrangement pipelines become scheme pipelines

- (1) This clause applies in relation to a voluntary access arrangement pipeline if the full access arrangement voluntarily submitted to the AER has not been approved before the commencement day.
- (2) On the day the full access arrangement takes effect as an applicable access arrangement—
 - (a) the pipeline becomes a scheme pipeline; and
 - (b) a scheme pipeline determination is deemed to have been made in relation to the pipeline.

109 When particular scheme pipelines become non-scheme pipelines

- (1) This clause applies to a pipeline that, before the commencement day, was a voluntary access arrangement pipeline and—
 - (a) is deemed to be a scheme pipeline under clause 105; or
 - (b) becomes a scheme pipeline under clause 108.
- (2) On the earlier of the following events happening, the pipeline becomes a non-scheme pipeline—
 - (a) if there is an applicable access arrangement that applies to the pipeline services provided by means of that pipeline—when that arrangement expires;
 - (b) when a scheme pipeline revocation determination takes effect in relation to the pipeline.

Subdivision 4 Classification of pipelines

110 Classification under pre-amended Law continues in effect

- (1) On the commencement day—
 - (a) a pipeline that, immediately before the commencement day, is a distribution pipeline within the meaning of section 2 of the pre-amended Law continues to be a distribution pipeline; and
 - (b) a pipeline that, immediately before the commencement day, is a transmission pipeline within the meaning of section 2 of the pre-amended Law continues to be a transmission pipeline.

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- (2) Nothing in subclause (1) prevents a pipeline from being reclassified, under this Law, as a distribution pipeline or transmission pipeline.

111 Classification of Northern Territory pipelines

- (1) This clause applies in relation to a pipeline located wholly or partly in the Northern Territory.
- (2) On the commencement day, the pipeline has the same classification as it had immediately before the commencement day as shown in the register known as the 'Gas pipeline register' that is maintained by the AEMC under Part 15 of the Rules.
- (3) Nothing in subclause (2) prevents the pipeline from being reclassified, under this Law, as a distribution pipeline or transmission pipeline.

112 Notice to be given about classification of particular pipelines

- (1) This clause applies in relation to a pipeline that—
 - (a) immediately before the commencement day, was a pipeline to which the pre-amended Law applied; and
 - (b) is a pipeline to which clause 110 or 111 does not apply.
- (2) Within 2 months after the commencement day, the service provider for the pipeline must notify the AEMC whether the pipeline is classified as a distribution pipeline or as a transmission pipeline under the licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation.

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**Division 3 Pending matters under
Chapter 3 of pre-amended
Law**

**113 Pending applications under Chapter 3 of
pre-amended Law**

- (1) This clause applies despite clause 43(1)(b) and (c) of Schedule 2 to this Law.
- (2) On the commencement day, any application under Chapter 3 of the pre-amended Law in respect of which a decision has not been made under that Chapter immediately before that day lapses.

**114 Recommendation-making process under
Chapter 3 of pre-amended Law**

- (1) This clause applies if, immediately before the commencement day, a relevant entity—
 - (a) is deciding whether to make a recommendation (however described) under a requirement of Chapter 3 of the pre-amended Law; and
 - (b) has not made the recommendation.
- (2) On the commencement day—
 - (a) the requirement to make the recommendation stops having effect; and
 - (b) the relevant entity must stop deciding whether to make the recommendation.

**115 Decision-making process under Chapter 3 of
pre-amended Law**

- (1) This clause applies if, immediately before the commencement day, a relevant entity—

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- (a) is deciding whether to make a decision (however described) or determination (however described) under a requirement of Chapter 3 of the pre-amended Law; and
 - (b) has not made the decision or determination.
- (2) On the commencement day—
- (a) the requirement to make the decision or determination stops having effect; and
 - (b) the relevant entity must stop deciding whether to make the decision or determination.

Division 4 Provisions for limited access arrangements

116 Limited access arrangements

- (1) This clause applies in relation to a limited access arrangement that is in force immediately before the commencement day.
- (2) On the commencement day, the limited access arrangement lapses.

117 Submission of limited access arrangement

- (1) This clause applies if, before the commencement day—
 - (a) a service provider has submitted a limited access arrangement to the AER for approval; and
 - (b) the AER has not approved the limited access arrangement.
- (2) On the commencement day, the submission lapses.

**Division 5 Provisions for 15-year no
 coverage determinations**

Subdivision 1 General provisions

**118 15-year no coverage determinations deemed
to be greenfields incentive determinations**

- (1) On the commencement day, a 15-year no coverage determination that was in force immediately before the commencement day is deemed to be a greenfields incentive determination.
- (2) The determination continues in operation for a period of 15 years from the commissioning of the pipeline.

**119 Exemption for pipelines to which a 15-year
no-coverage determination applied**

- (1) This clause applies to a pipeline if a 15-year no-coverage determination that applied to the pipeline before the commencement day is deemed to be a greenfields incentive determination under clause 118.
- (2) During the period mentioned in clause 118(2), Chapters 4 and 5 do not apply to the pipeline unless the pipeline becomes a third party access pipeline.
- (3) A pipeline is a third party access pipeline for the purposes of this clause if any pipeline services provided by means of the pipeline are provided, directly or indirectly, to any person other than—
 - (a) the service provider for the pipeline; or
 - (b) a related body corporate of the service provider for the pipeline; or

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- (c) a joint venture in which the service provider for the pipeline or a related body corporate of the service provider is a joint venture participant.

120 Pending applications for 15-year no-coverage determinations under pre-amended Law

- (1) This clause applies in relation to an application for a 15-year no-coverage determination under Chapter 5 Part 2 of the pre-amended Law in respect of which a decision has not been made under that Part immediately before the commencement day.
- (2) Chapter 5 Part 2 as in force immediately before the commencement day continues to apply to the application as if that Part were still in force.
- (3) To remove any doubt, a relevant entity may, in relation to the application, make a recommendation or determination under Chapter 5 Part 2 as in force immediately before the commencement day as if that Part were still in force.
- (4) A 15-year no-coverage determination made on or after the commencement day, under the operation of this clause, is deemed to be a greenfields incentive determination.
- (5) The greenfields incentive determination continues in operation for a period of 15 years from the commissioning of the pipeline.

Subdivision 2 Price regulation exemptions

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121 Pending applications for price regulation exemption

On the commencement day, any application for a price regulation exemption under section 160 of the pre-amended Law in respect of which a decision has not been made under Chapter 5 Part 3 of the pre-amended Law immediately before that day lapses.

122 Making of recommendations for price regulation exemptions

- (1) This clause applies if the NCC—
 - (a) has received under section 160 of the pre-amended Law an application for a price regulation exemption for a pipeline the subject of the application; and
 - (b) immediately before the commencement day, has not made a recommendation under section 162 of the pre-amended Law.
- (2) On the commencement day—
 - (a) the requirement to make the recommendation stops having effect; and
 - (b) the NCC must not make the recommendation.

123 Granting of price regulation exemptions

- (1) This clause applies if, immediately before the commencement day, the Commonwealth Minister—
 - (a) is deciding whether to make a decision to grant a price regulation exemption under section 164 of the pre-amended Law; and
 - (b) has not granted the exemption.
- (2) On the commencement day—

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- (a) the requirement to decide whether to make a decision to grant the exemption stops having effect; and
- (b) the Commonwealth Minister must stop deciding whether to make a decision to grant the exemption.

124 Price regulation exemptions deemed to be greenfields incentive determinations

- (1) This clause applies in relation to a price regulation exemption if the exemption—
 - (a) has been granted before the commencement day; and
 - (b) immediately before the commencement day, is not ineffective only because of section 167(2) of the pre-amended Law.

Note—

Under section 167(2) of the pre-amended Law, a price regulation exemption is ineffective unless a limited access arrangement, approved by the AER, is in force in relation to the relevant pipeline.

- (2) On the commencement day, the exemption is deemed to be a greenfields incentive determination.
- (3) The greenfields incentive determination continues in operation for a period of 15 years from the commissioning of the pipeline.

Note—

Under section 167(1) of the pre-amended Law, if a price regulation exemption is granted, the exemption remains in force for a period of 15 years from the commissioning of the pipeline.

Division 6 Access disputes

125 Access disputes started under pre-amended Law

- (1) This clause applies if—
 - (a) an access dispute has been started under Chapter 6 or 6A of the pre-amended Law; and
 - (b) the access dispute has not been finally dealt with or decided immediately before the commencement day.
- (2) An access dispute started under Chapter 6 of the pre-amended Law must be dealt with and decided under that Chapter as if it were still in force and despite Chapter 5.
- (3) An access dispute started under Chapter 6A of the pre-amended Law must be dealt with and decided under that Chapter as if it were still in force and despite Chapter 5.

Division 7 Miscellaneous provisions

126 Service provider for non-scheme pipeline not required to comply with section 131

- (1) This clause applies in relation to a service provider for a pipeline that—
 - (a) was in operation before the commencement day; and
 - (b) on the commencement day, is a non-scheme pipeline.
- (2) The service provider is not required to comply with section 131.

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127 Exemptions from minimum ring fencing requirements

- (1) This clause applies in relation to a service provider who held an exemption under section 146 of the pre-amended Law that was in force immediately before the commencement day.
- (2) On the commencement day, the exemption continues in force.

128 Provision for Northern Gas Pipeline

- (1) This clause applies in relation to the Northern Gas Pipeline.
- (2) On the commencement day, Chapters 4 and 5 do not apply to the pipeline.
- (3) However, Chapters 4 and 5 start applying to the pipeline—
 - (a) if the pipeline becomes a scheme pipeline—when the pipeline becomes a scheme pipeline; or
 - (b) otherwise—at the end of a period of 15 years from the commissioning of the pipeline.
- (4) In this clause—

access principles means the arrangements agreed between the service provider for the Northern Gas Pipeline and the Northern Territory Government under which a prospective user may gain access to pipeline services on the Northern Gas Pipeline;

Northern Gas Pipeline means the pipeline between Tennant Creek in the Northern Territory and Mount Isa in Queensland, the subject of Pipeline Licence 34 granted under the *Energy Pipelines Act 1981* of the Northern Territory and Pipeline Licence 2015 granted under the *Petroleum and Gas (Production and Safety) Act*

2004 of Queensland, including any extension to, or expansion of the capacity of, that pipeline that is subject to the access principles.

129 Pending applications under Rules for approval of tender process

- (1) This clause applies—
 - (a) in relation to an application that has been made to the AER under the Rules for the approval, by the AER, of a tender process for the construction and operation of a proposed pipeline as a competitive tender process; and
 - (b) in respect of which the AER has not made a tender approval decision before the commencement day.
- (2) On the commencement day, the application lapses despite clause 43(1)(b) and (c) of Schedule 2 to this Law.

130 Decision-making process under Rules for approval of tender process

- (1) This clause applies if, before the commencement day, the AER—
 - (a) is deciding whether to make a tender approval decision; and
 - (b) has not made the decision.
- (2) On the commencement day—
 - (a) the requirement to make the tender approval decision stops having effect; and
 - (b) the AER must stop deciding whether to make the tender approval decision.

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Part 6 **Amendment of National Gas (South Australia) Regulations**

89 **Amendment of Regulation 8 (Service of summons to appear as witness)**

- (1) Regulation 8(1), ‘AER under Part 6.6’—
omit, insert—
relevant adjudicator under section 181
- (2) Regulation 8(1)(c), (3)(e) and (f), ‘AER’—
omit, insert—
relevant adjudicator

90 **Amendment of Regulation 9 (AER to be able to charge for costs of access disputes)**

- (1) Regulation 9, heading, ‘AER’—
omit, insert—
Dispute resolution body
- (2) Regulation 9, before ‘Pursuant’—
insert—
(1)
- (3) Regulation 9, ‘216 of the NGL, the AER’—
omit, insert—
187 of the NGL, the dispute resolution body
- (4) Regulation 9—
insert—
(2) However, no more than 50% of costs can be apportioned, under this section, to a party to an access dispute that is a small shipper.

91 Amendment of Regulation 14 (Fees)

Regulation 14(2), '181'—

omit, insert—

152

92 Omission of Regulation 14A (Greenfields pipeline incentive—extension of period)

Regulation 14A—

omit.

93 Amendment of Schedule 1 (Designated pipelines)

(1) Schedule 1, clause 3(1), '(1)'—

omit.

(2) Schedule 1, clause 3(2)—

omit.

(3) Schedule 1, clause 3 as amended by this section, at the end—

insert—

Note—

A designated pipeline includes an extension to, or expansion of the capacity of, the pipeline that is taken to be part of the pipeline under section 18 of the NGL.

94 Amendment of Schedule 3 (Civil penalty provisions)

(1) Schedule 3, Part 1, entry for Section 134—

omit.

(2) Schedule 3, Part 1, after entry for Section 136—

insert—

Section 136A

Section 136B

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- (3) Schedule 3, Part 1, after entry for Section 148—

insert—

Section 148E

- (4) Schedule 3, Part 1, entries for Sections 169(3), 170 and 195—

omit, insert—

Section 170(1)(a)

- (5) Schedule 3, Part 1, entry for Rule 109—

omit, insert—

Rule 43(1)

Rule 46

Rule 52(1)

Rule 68A

Rule 68C(1)

Rule 68C(2)

Rule 101(1)

Rule 101(3)

Rule 101A(1)

Rule 102(7)

Rule 102A(2)

Rule 105A(1)

Rule 105A(2)

Rule 105B(1)

Rule 105B(2)

Rule 105D(1)

Rule 105F(3)

- (6) Schedule 3, Part 1, after entry for Rule 165(4)—

insert—

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Rule 198D(1)

Rule 198D(3)

Rule 198E(1)

Rule 198J(7)

Rule 198K(2)

- (7) Schedule 3, Part 1, entries for Rule 560(1), 562(3) and 586(2)—

omit.

- (8) Schedule 3, Part 2, entry for Section 168—

omit, insert—

Section 136C

- (9) Schedule 3, Part 2, entries for Rules 36, 37, 43(1), 46 and 52(1)—

omit.

- (10) Schedule 3, Part 2, entries for Rules 107, 108, 110 and 112—

omit, insert—

Rule 104(1)

Rule 104(2)

Rule 134A(2)

- (11) Schedule 3, Part 2, entries for Rules 551(1), 551(3), 558(1), 558(2) and 585(8)—

omit.

- (12) Schedule 3, Part 3, entry for Rule 27(4)—

omit.

95 Amendment of Schedule 4 (Conduct provisions)

- (1) Schedule 4, before entry for Section 228C—

insert—

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Section 136A

Section 136B

Section 170(1)(a)

- (2) Schedule 4, entries for Rules 36, 107, 108, 109, 110, 112 and 115(3)—

omit, insert—

Rule 68A

Rule 104(1)

Rule 104(2)

Rule 105D(1)

Rule 105F(3)

Rule 113ZK(3)

- (3) Schedule 4, entry for ‘All provisions in Division 4 of Part 21’—

omit, insert—

Rule 514

Rule 515

Rule 516

Rule 517

Rule 518

Rule 519

Rule 520

- (4) Schedule 4, entry for Rule 543A(1)—(2)—

omit, insert—

Rule 543A(1)

Rule 543A(2)

- (5) Schedule 4, entries for Rules 560(1) and 562(3)—

omit.

96 Replacement of Schedule 5 (Fees)

Schedule 5—

omit, insert—

Schedule 5 Fees

	\$
1 Application for a scheme pipeline determination	7 500.00
2 Application for a scheme pipeline revocation determination	7 500.00
3 Application for a greenfields incentive determination	7 500.00
4 Application for the classification of a pipeline under section 114 of the NGL	2 000.00
5 Application for the reclassification of a pipeline under section 115 of the NGL	2 000.00
6 Notice of an access dispute under section 152 of the NGL	2 750.00

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