

South Australia

National Gas (South Australia) (Market Transparency) Amendment Bill 2020

A BILL FOR

An Act to amend the *National Gas (South Australia) Act 2008*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *National Gas (South Australia) (Market Transparency) Amendment Act 2020*.

2—Commencement

- (1) This Act comes into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

3—Amendment provisions

10 In this Act, a provision in Part 2 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*.

Part 2—Amendment of *National Gas Law***4—Amendment of section 2—Definitions**

- (1) Section 2(1), after the definition of *AER economic regulatory function or power* insert:

AER gas price reporting functions means the functions of the AER performed under section 27(1)(fa);

- (2) Section 2(1), definition of *Bulletin Board information*, (a)—delete "to comply with section 223(1) or 223A(1)" and substitute:

or the AER to comply with Chapter 7 (or any Rules under that Chapter)

- (3) Section 2(1), after the definition of *compression service facility* insert:

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

- (4) Section 2(1), definition of *disposal*—delete the definition

- (5) Section 2(1), after the definition of *greenfields pipeline incentive* insert:

GSOO information means information that—

- (a) a person gives to AEMO to comply with section 91DB; or
- (b) a person gives to AEMO for the preparation of the gas statement of opportunities in circumstances expressly permitted by the Rules;

GSOO Procedures means Procedures directed at regulating the collection of information for the gas statement of opportunities;

- (6) Section 2(1), after the definition of *limited access arrangement decision* insert:

LNG facility means a facility for the processing of natural gas from a gaseous to a liquefied state or from a liquefied to a gaseous state;

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

- (7) Section 2(1), after the definition of *National Energy Retail Rules* insert:

natural gas industry includes—

- (a) activities and transactions relating to—
 - (i) processable gas; or
 - (ii) natural gas (including liquefied natural gas) and natural gas services; or
 - (iii) natural gas industry facilities; or
 - (iv) services provided by means of natural gas industry facilities; and
- (b) activities and transactions relating to petroleum tenements; and
- (c) any other activities or transactions specified by the Regulations for the purposes of this paragraph;

natural gas industry facility means—

- (a) a pipeline; or
- (b) a compression service facility; or
- (c) a gas processing plant; or
- (d) an LNG facility; or
- (e) a storage facility; or
- (f) a user facility; or
- (g) another facility of a type specified by the Regulations for the purposes of this paragraph;

(8) Section 2(1), definition of *Natural Gas Services Bulletin Board*—delete "natural gas services and secondary capacity transactions" and substitute:

the natural gas industry

(9) Section 2(1), after the definition of *participating jurisdiction* insert:

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

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

(10) Section 2(1), after the definition of *pipeline service standard* insert:

price information order has the meaning given by section 46A;

(11) Section 2(1), definition of *primary capacity transaction*—delete the definition

(12) Section 2(1), definition of *regulatory information instrument*—after paragraph (b) insert:

- (c) a price information order;

(13) Section 2(1), definition of *secondary capacity transaction*—delete the definition

(14) Section 2(1), definition of *storage provider* delete the definition and substitute:

storage facility means a facility for storing processable gas or natural gas (including liquefied natural gas) before or after processing;

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

(15) Section 2(1), after the definition of *user* insert:

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

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

(1) Section 10(1), (2) and (3)—delete subsections (1), (2) and (3) and substitute:

(1) This section applies if—

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

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

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

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

(2) Section 10(5)—delete subsection (5) and substitute:

(5) In this section—

controlling facility activity means—

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

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

6—Amendment of section 27—Functions and powers of the AER

Section 27(1)—after paragraph (f) insert:

(fa) in relation to goods or services in the natural gas industry—

(i) to prepare and publish, in accordance with the Rules, aggregated and anonymised information or data about prices for those goods or services; and

(ii) other monitoring, analysing or reporting functions that relate to prices for those goods or services conferred on the AER by this Law or the Rules; and

(iii) for the purposes of subparagraph (i) or (ii)—to collect and analyse information or data about prices from sources determined by the AER or specified in the Rules; and

7—Substitution of heading to Chapter 2 Part 1 Division 4

Heading to Chapter 2 Part 1 Division 4—delete the heading to Division 4 and substitute:

**Division 4—Regulatory information notices, general
regulatory information orders and price information
orders****8—Amendment of section 45—Meaning of general regulatory information
order**

Section 45—after its present contents (now to be designated as subsection (1)) insert:

- (2) A general regulatory information order does not include an order that is made as a price information order.

9—Amendment of section 46—Meaning of regulatory information notice

Section 46—after its present contents (now to be designated as subsection (1)) insert:

- (2) A regulatory information notice does not include an order that is made as a price information order.

10—Insertion of section 46A

After section 46 insert:

46A—Meaning of price information order

- (1) A price information order is an order made by the AER in accordance with this Division that requires a person of a specified class to provide to the AER information—
- (a) that relates to the AER gas price reporting functions; and
 - (b) that is specified in the order.
- (2) The order may require a person to whom the order relates to prepare, maintain or keep information specified in the order in a manner and form specified in the order.

**11—Amendment of section 48—Service and making of regulatory information
instruments**

(1) Section 48—after subsection (2) insert:

- (2a) Subject to this Division, the AER, if it considers it reasonably necessary for the performance of its AER gas price reporting functions, may make a price information order.

(2) Section 48(3)—after "a general regulatory information order" insert:
or a price information order

12—Amendment of section 50—AER must consult before publishing a general regulatory information order

Section 50—after "general regulatory information order" insert:
or the price information order

5 Note—

The heading to section 50 will be amended to "AER must consult before publishing an order" when this section comes into operation.

13—Substitution of section 51

Section 51—delete the section and substitute:

10 **51—Publication requirements for orders**

As soon as practicable after making a general regulatory information order or a price information order, the AER must—

- 15 (a) publish the order on the AER's website; and
(b) arrange for notice of the making of the order to be published in the South Australian Government Gazette.

14—Amendment of section 53—Form and content of regulatory information instrument

(1) Section 53(1)(c)—before "must state" insert:

except in the case of a price information order,

20 (2) Section 53(3)—delete subsection (3) and substitute:

(3) In the case of a general regulatory information order or a price information order, the order must specify the class of persons to whom the order applies.

25 **15—Amendment of section 54—Further provision about the information that may be described in a regulatory information instrument**

(1) Section 54(b)—delete "the scheme pipeline service provider or the related provider" and substitute:

the person

30 (2) Section 54—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) Subsection (1)(c) and (d) do not apply in relation to a price information order.

16—Amendment of section 55—Further provision about manner in which information must be provided to AER or kept

35 (1) Section 55(d)—delete "the scheme pipeline service provider, or of a related provider," and substitute:

the person

- (2) Section 55(e)(ii)—delete "the scheme pipeline service provider or related provider" and substitute:

the person

17—Amendment of section 57—Compliance with general regulatory information order

Section 57(1)—delete subsection (1) and substitute:

- (1) On publication of a general regulatory information order or a price information order in accordance with section 51, a person who is a member of the class of persons to which the order applies must comply with the order.

Note—

The heading to section 57 will be amended to "Compliance with order" when this section comes into operation.

18—Amendment of section 57A—Confidentiality issues

Section 57A—after subsection (4) insert:

- (5) This section does not apply in relation to a price information order.

19—Amendment of section 57B—Disclosure of information given to AER in compliance with regulatory information instrument

- (1) Section 57B—after "with a regulatory information instrument," insert:

other than a price information order,

- (2) Section 57B—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) The AER, in relation to information given to the AER in compliance with a price information order, is to treat the information as having been given to it in confidence and is authorised to disclose the information in accordance with Chapter 10 Part 2 Division 1.

20—Amendment of section 58—exemption from compliance with general regulatory information order

Note—

The heading to section 58 will be amended to "Exemption from compliance with general regulatory information order or price information order" when this section comes into operation.

21—Amendment of section 59—Assumptions where there is non-compliance with regulatory information instrument

Section 59—after subsection (2) insert:

- (3) This section does not apply in relation to a price information order.

22—Amendment of section 63—Protection against self-incrimination

Section 63(2)—after "a general regulatory information order" insert:

or a price information order

23—Amendment of section 74—Subject matter for National Gas Rules

- (1) Section 74(1)(a)(iii)—delete "natural gas services and secondary capacity transactions" and substitute:

the natural gas industry

- 5 (2) Section 74(1)—after paragraph (aa) insert:

(ab) the AER gas price reporting functions; and

24—Insertion of section 83AB

After section 83A insert:

83AB—Information and transparency requirements relating to other facilities

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- (1) Without limiting any other provision, the Rules may provide for such things as—

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- (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—

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- (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

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- (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

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- (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

- 5 (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.

25—Amendment of section 91D—Object and content of gas statement of opportunities

10 Section 91D(1)—delete "pipeline capacity and other aspects of"

26—Amendment of section 91DA—AEMO's obligation in regard to gas statement of opportunities

15 Section 91DA—after its present contents (now to be designated as subsection (1)) insert:

- 15 (2) AEMO also has the following functions in relation to the gas statement of opportunities:
- (a) to collect and collate GSOO information;
 - (b) to collect and collate other information in relation to the natural gas industry;
 - 20 (c) to derive from information of the type mentioned in paragraph (a) or (b) information for inclusion in the gas statement of opportunities.

27—Insertion of sections 91DB to 91DH

After section 91DA insert:

25 91DB—Information for the gas statement of opportunities

- (1) A person who has possession or control of information in relation to the natural gas industry must give the information to AEMO for use by AEMO in the preparation of the gas statement of opportunities if the person is required to do so under the Rules.
- 30 (2) The information must be given to AEMO in accordance with the Rules.
- (3) Subsection (1) does not apply if the person is exempt under the Rules from giving the information.
- (4) Subsection (1) does not require—
- 35 (a) a person to disclose information that is the subject of legal professional privilege; or
 - (b) a natural person to disclose information that would incriminate the person or make the person liable to a criminal penalty under the law of an Australian jurisdiction (whether or not the jurisdiction is a participating jurisdiction).
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91DC—Person cannot rely on duty of confidence to avoid compliance with obligation

A person must not refuse to comply with the requirement in section 91DB on the ground of any duty of confidence.

91DD—Giving AEMO false and misleading information

A person must not give GSOO information to AEMO that the person knows is false or misleading in a material particular.

91DE—Immunity of persons giving GSOO information to AEMO

- (1) A person who gives GSOO information to AEMO does not incur any civil monetary liability for an act or omission in giving that information unless the act or omission is done or made in bad faith or through negligence.
- (2) The civil monetary liability for an act or omission of a kind referred to in subsection (1) done or made through negligence may not exceed the prescribed maximum amount.
- (3) The Regulations may, for the purposes of subsection (2), without limitation do all or any of the following:
 - (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;
 - (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;
 - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.
- (4) A person mentioned in subsection (1) may enter into an agreement with another person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.

91DF—GSOO Procedures

AEMO may, in accordance with the Rules, make GSOO Procedures.

91DG—Nature of GSOO Procedures

- (1) GSOO Procedures are a form of statutory instrument directed at the collection of information for the gas statement of opportunities.
- (2) The GSOO Procedures may deal with the following matters:
 - (a) the matters specified by the Rules;
 - (b) any other matter relevant to the gas statement of opportunities on which this Law or the Rules contemplate the making of Procedures.

- (3) The GSOO Procedures—
- (a) may vary according to the persons, times, places or circumstances to which they are expressed to apply; and
 - (b) may confer functions or powers on, or leave any matter or thing to be decided by, AEMO; and
 - (c) may confer rights or impose obligations; and
 - (d) may confer power on AEMO to make or issue guidelines, tests, standards and other documents of an administrative nature; and
 - (e) may confer power on AEMO to require a person to whom a right is conferred, or an obligation is imposed, under the Procedures—
 - (i) to comply with a guideline, standard or other document of an administrative nature; or
 - (ii) to conduct, or submit to, a test designated by AEMO under the Procedures; and
 - (f) may exempt, or confer a power of exemption, from the application of the Procedures or specified provisions of the Procedures; and
 - (g) may contain provisions of a savings or transitional nature.
- (4) AEMO must not, without the consent of the MCE, make Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.
- (5) The GSOO Procedures cannot—
- (a) create an offence; or
 - (b) provide for a criminal or civil penalty.

91DH—Compliance with GSOO Procedures

- (1) AEMO and each person to whom the GSOO Procedures are applicable must comply with the Procedures.
- (2) However, if there is an inconsistency between an applicable access arrangement and the GSOO Procedures, a person is, to the extent of the inconsistency, not required to comply with the GSOO Procedures.
- (3) If AEMO has reason to believe that a person is not complying with the GSOO Procedures, it may, by notice in writing, direct the person to comply with the relevant provisions of the GSOO Procedures.
- (4) A person to whom a direction is addressed under subsection (3) must comply with the direction.

28—Amendment of section 218—AEMO's obligation to maintain Bulletin Board

- (1) Section 218(2)(b)—delete "natural gas services and secondary capacity transactions" and substitute:

5 the natural gas industry

- (2) Section 218(3)—delete "natural gas services and secondary capacity transactions" and substitute:

 the natural gas industry

29—Amendment of section 219—AEMO's other functions as operator of Natural Gas Services Bulletin Board

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- (1) Section 219(b)—delete "natural gas services and secondary capacity transactions" and substitute:

 the natural gas industry

- (2) Section 219(d)—before "to publish information" insert:

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 subject to the Rules,

30—Substitution of sections 223 and 223A

Sections 223 and 223A—delete the sections and substitute:

223—Obligation to give information to AEMO

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- (1) A person who has possession or control of information in relation to the natural gas industry must give the information to AEMO for use by AEMO in connection with the Natural Gas Services Bulletin Board if the person is required to do so under the Rules.

- (2) The information must be given to AEMO in accordance with the Rules.

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- (3) Subsection (1) does not apply if the person is exempt under the Rules from giving the information.

- (4) Subsection (1) applies subject to any provision made by the Regulations as to any person, transaction or activity that is not to be the subject of any Rules made under this section.

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- (5) AEMO must make available for the operation of the Bulletin Board information about natural gas, natural gas services or the use of natural gas that it acquires in its capacity as the operator or administrator of a regulated gas market.

- (6) Subsection (1) does not require—

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- (a) a person to disclose information that is the subject of legal professional privilege; or

- (b) a natural person to disclose information that would incriminate the person or make the person liable to a criminal penalty under the law of an Australian jurisdiction (whether or not the jurisdiction is a participating jurisdiction).

31—Amendment of section 224—Person cannot rely on duty of confidence to avoid compliance with obligation

Section 224—delete "223A(1)" and substitute:

under section 226A

32—Amendment of section 225—Giving AEMO false and misleading information

Section 225—after "AEMO" insert:

or the AER

Note—

The heading to section 225 will be amended to "Giving false or misleading information" when this section comes into operation.

33—Amendment of section 226—Immunity of persons giving information to AEMO

Section 226(1)—after "AEMO" insert:

or the AER

Note—

The heading to section 226 will be amended to "Immunity of persons giving information to AEMO or AER" when this section comes into operation.

34—Insertion of section 226A

After section 226 insert:

226A—Provision of certain information to AER

- (1) Without limiting any other provision, the Rules may provide for—
- (a) requirements for persons subject to the operation of this Chapter to give to the AER gas price assumptions and forecasts connected with estimates of reserves and resources; and
 - (b) requirements to ensure that information satisfies the requirements of the Rules; and
 - (c) requirements for the AER to publish information obtained under paragraph (a) on an anonymised basis.
- (2) The AER, in relation to information given to the AER in compliance with a requirement under subsection (1), is to treat the information as having been given to it in confidence and is authorised to disclose the information in accordance with Chapter 10 Part 2 Division 1.

35—Insertion of section 294FA

After section 294F insert:

294FA—South Australian Minister to make initial Rules relating to enhanced market transparency

- 5 (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* (the ***South Australian Minister***) may make Rules—
- (a) for or with respect to any 1 or more of the following subjects:
- 10 (i) the AER gas price reporting functions;
- (ii) the Natural Gas Services Bulletin Board;
- (iii) the matters referred to in section 83AB;
- (iv) the collection and use of information for, or the content of, the gas statement of opportunities;
- 15 (v) the subject matter of a new head power added to Schedule 1 by the market transparency amendments;
- (vi) any other subject contemplated by, or consequential on, the market transparency amendments; and
- 20 (b) that revoke or amend a Rule as a consequence of the market transparency amendments and any of the Rules referred to in paragraph (a).
- (2) Rules may only be made under subsection (1) on the recommendation of the MCE.
- 25 (3) Section 74(3) applies to the 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—
- 30 (a) publish a notice of the making of the Rules in the South Australian Government Gazette; and
- (b) make the Rules publicly available.
- (5) The notice referred to in subsection (4)(a) must state—
- (a) the date on which the Rules commence operation; and
- 35 (b) if different Rules will commence operation on different dates, those dates.
- (6) The Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (5).
- 40 (7) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.

(8) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.

(9) In this section—

market transparency amendments means the amendments made to this Law by the *National Gas (South Australia) (Market Transparency) Amendment Act 2020*.

36—Amendment of Schedule 1—Subject matter for the National Gas Rules

(1) Schedule 1—after item 50 insert:

AER gas price reporting functions

50A The AER gas price reporting functions.

(2) Schedule 1—after item 55J insert:

55JA Principles to be applied, and procedures to be followed, by AEMO in exercising a power or performing a function in relation to the gas statement of opportunities.

55JB The kinds of information that may or must be given to AEMO for the gas statement of opportunities, who must give AEMO the information, the circumstances in which the information may or must be given, and the procedure for giving the information.

(3) Schedule 1, item 56—delete "natural gas services and secondary capacity transactions" and substitute:

the natural gas industry

(4) Schedule 1, item 58—after "to AEMO," insert:

who must give AEMO the information,