

# Legal briefing

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## Gas pipeline reforms

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Recent reforms<sup>1</sup> to the National Gas Law (NGL) and National Gas Rules (NGR) significantly change the way natural gas pipelines are regulated.

Under the reforms:

- Two (instead of 3) forms of regulation apply.
- The regulator<sup>2</sup> (rather than the National Competition Council (NCC) and the relevant Minister<sup>3</sup>) will determine which form of regulation should apply, by applying the form of regulation test (rather than the coverage test).
- All pipelines (instead of just scheme pipelines) must provide third party access to pipeline services, and will be subject to the same information disclosure and access negotiation frameworks, as well as the same ring fencing requirements.
- The regulator will monitor the behaviour of pipeline service providers<sup>4</sup> and may initiate the application of the form of regulation test in appropriate circumstances.
- Greenfields pipeline projects<sup>5</sup> are eligible for a greenfields incentive determination (which protects the pipeline from becoming a scheme pipeline for up to 15 years from commissioning)<sup>6</sup> and a greenfields price protection determination (which specifies prices for pipeline services that are binding on an arbitrator in the event of an access dispute).
- Small shippers have greater protections during access disputes.
- A pipeline's classification as a transmission or distribution pipeline will be determined by its jurisdictional licence or the regulator (rather than by the NCC or the service provider).
- Expansions of the capacity of a scheme pipeline are automatically treated as forming part of the scheme pipeline for regulatory purposes.

<sup>1</sup> The reforms are contained in the *Statutes Amendment (National Energy Laws) (Gas Pipelines) Act 2022 (SA)* and the *National Gas Rules (Gas Pipelines) Amendment Rules 2023*.

<sup>2</sup> The regulator is the Australian Energy Regulator, except in Western Australia, where the Economic Regulation Authority performs this role.

<sup>3</sup> The relevant Minister is either the Commonwealth Energy Minister, the Minister designated in the relevant jurisdiction's application Act, the jurisdictional Energy Minister or the Minister nominated by the NCC, depending on the classification and location of the pipeline.

<sup>4</sup> A service provider is a person who owns, controls or operates (or intends to own, control or operate) a pipeline or any part of a pipeline (s 8 of the NGL).

<sup>5</sup> '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.

<sup>6</sup> A pipeline is commissioned when the pipeline is first used for the haulage of natural gas on a commercial basis (s 12 of the NGL).

## Forms of regulation

### Previous forms of regulation

Before the reforms commenced, the NGL provided for 3 forms of regulation: full or light regulation for scheme pipelines, and regulation under Pt 23 of the NGR for non-scheme pipelines that provided third party access to pipeline services.

<i>Previous forms of regulation</i>	<i>Brief description</i>
Full regulation	<p>The service provider must periodically submit an access arrangement to the regulator for approval of the price and non-price terms and conditions of access to nominated reference services.</p> <p>The parties are free to negotiate the terms of access to pipeline services, but in the event of an access dispute, the dispute resolution body<sup>7</sup> must give effect to the approved access arrangement.</p> <p>The arrangement, together with service and access information (distribution pipelines only), must be published on the service provider’s website.</p> <p>Service providers must comply with Ch 4 of the NGL.</p>
Light regulation	<p>The service provider may or, in the case of an international pipeline to which a price regulation exemption applies, must submit a limited access arrangement to the regulator for approval.<sup>8</sup> Price and non-price terms and conditions of access to services are not pre-approved by the regulator, but access disputes may be resolved by the dispute resolution body.</p> <p>If there is no limited access arrangement, service and access information (distribution pipelines only), financial information and weighted average price information must be published on the service provider’s website.</p> <p>Service providers must comply with Ch 4 of the NGL.</p>
Pt 23 regulation	<p>The service provider must publish service and access information, standing terms, financial information and weighted average price information (unless exempted)<sup>9</sup> and must comply with the access negotiation and arbitration regimes in Divs 3 and 4 of Pt 23.</p>

Non-scheme pipelines that did not provide access could apply for an exemption from all of Pt 23 of the NGR, and were effectively unregulated. Third parties wishing to access those pipelines had to apply to the NCC for a coverage recommendation in relation to the pipeline.

### New forms of regulation

Under the reforms, the concept of ‘light regulation’ is abolished, and all pipelines are subject to a range of uniform access, transparency and ring fencing requirements (discussed further below). As a result, the main difference now between scheme and non-scheme pipelines is that scheme pipelines must submit an access

<sup>7</sup> The dispute resolution body is the Australian Energy Regulator, except in Western Australia, where the Western Australian Energy Disputes Arbitrator performs this role.

<sup>8</sup> No limited access arrangements were ever submitted to the regulator for approval.

<sup>9</sup> A full exemption from the information disclosure requirements was available for pipelines that do not provide third party access and single user pipelines (a Pt 23 category 2 exemption) and a partial exemption was available for pipelines whose average daily injection rate is less than 10 TJ/day (a Pt 23 category 3 exemption).

arrangement to the regulator for approval,<sup>10</sup> and are subject to a regulatory-oriented access dispute resolution process, whereas non-scheme pipelines are not required to submit an access arrangement to the regulator for approval, and are subject to a commercially-oriented access dispute resolution process.

## Process for becoming a scheme pipeline

### Previous process

Before the reforms commenced, scheme pipelines consisted of covered pipelines and international pipelines to which a price regulation exemption applied.<sup>11</sup> A pipeline was a covered pipeline if a coverage determination applied to it, it was developed through a regulator-approved competitive tender process, or the regulator approved a voluntarily submitted access arrangement for the pipeline.<sup>12</sup>

Coverage determinations were made by the relevant Minister, on the recommendation of the NCC, and could only be made if the Minister was satisfied that all the pipeline coverage criteria<sup>13</sup> were satisfied.

Decisions about whether a covered pipeline should be subject to full or light regulation were made by the NCC, having regard to the form of regulation factors.<sup>14</sup>

### New process

Under the reforms, a pipeline is a scheme pipeline if a scheme pipeline determination or election applies to it, or if it is a designated pipeline.<sup>15</sup> All other pipelines are non-scheme pipelines.

### Scheme pipeline determinations

The regulator may make a scheme pipeline determination on the application of any person or on its own initiative (new s 92 of the NGL). In deciding whether to make the determination, the regulator must consider the effect of regulating the pipeline as either a scheme or non-scheme pipeline on:

- the promotion of access to pipeline services;
- the costs that are likely to be incurred by an efficient service provider and efficient users of pipeline services; and
- the likely costs of end users (new s 112(2)).

The regulator must also consider the national gas objective (set out in s 23 of the NGL) and the form of regulation factors (set out in s 16) (new s 112(3)).

The service provider must give the regulator relevant information, and the regulator may draw an adverse inference from any failure of the service provider to comply with this requirement (new r 16(2) and (4) of the NGR).

### Scheme pipeline elections

Service providers may voluntarily elect for their pipeline to be regulated as a scheme pipeline (new s 95 of the NGL). The election takes effect at a time determined by the regulator, which must be within 6 to 12 months after the election is made (new s 96).

<sup>10</sup> New s 113 (old s 132) of the NGL. The associated provisions relating to access arrangements (old ss 321, 322 and 323, previously located in Pt 1 of Ch 10 of the NGL) have been relocated and renumbered ss 114, 115, and 116.

<sup>11</sup> No price regulation exemptions ever applied to an international pipeline.

<sup>12</sup> No pipeline ever voluntarily submitted an access arrangement to the regulator for approval.

<sup>13</sup> The coverage criteria were set out in old s 15 of the NGL.

<sup>14</sup> The form of regulation factors are set out in s 16 of the NGL.

<sup>15</sup> Designated pipelines are classified as designated pipelines in the *National Gas (South Australia) Regulations* or in the application Act of a participating jurisdiction.

## Scheme pipeline revocation determinations

A pipeline (other than a designated pipeline) ceases to be a scheme pipeline if a scheme pipeline revocation determination applies to it (new ss 97 and 99 of the NGL). The regulator may make a scheme pipeline revocation determination on the application of any person or on its own initiative.

## Treatment of existing pipelines

The transitional arrangements provide that, on commencement of the reforms:

- all existing full regulation scheme pipelines are deemed to be scheme pipelines (new cl 105 of Sch 3 to the NGL)
- any existing pipeline subject to a tender approval decision that has not, before commencement, become irrevocable is deemed to be a scheme pipeline upon the decision becoming irrevocable (new cl 106 of Sch 3)
- any existing pipeline where a voluntarily submitted access arrangement has not, before commencement, been approved is deemed to be a scheme pipeline upon the arrangement taking effect as an applicable access arrangement (new cl 108 of Sch 3)
- all existing designated pipelines are scheme pipelines
- all other pipelines are non-scheme pipelines.

## Requirements applying to all pipelines

Under the reforms, a number of new requirements have been inserted into Ch 4 of the NGL. The Chapter, together with the associated rules in new Pts 5, 6, 7, 10 and 11 of the NGR, have been extended to all pipelines (subject to limited exceptions), other than existing greenfields pipeline projects.<sup>16</sup> Regulations may also extend the Chapter to other persons, such as an associate of a service provider (new s 130 of the NGL).

## Existing requirements extended to all pipelines

Existing requirements that have been extended to all pipelines include:

<i>Section</i>	<i>Brief description</i>	<i>Exceptions</i>
131	Service providers must be either a company incorporated under the <i>Corporations Act 2001</i> , a foreign company, a statutory corporation or the Crown in right of a participating jurisdiction	Does not apply to a service provider for an existing pipeline that, on commencement of the reforms, is a non-scheme pipeline (new cl 126 of Sch 3 to the NGL)
133	Prohibition on preventing or hindering access	
135	Requirement to comply with queuing requirements <sup>17</sup>	
136B (old r 109 of the NGR)	Prohibition on bundling services	

<sup>16</sup> Existing pipelines with a 15-year no-coverage determination are not required to comply with amended Ch 4 of the NGL (and by extension, new Pts 5, 6, 7, 10 and 11 of the NGR) for 15 years from the commissioning of the pipeline, unless they provide access to third parties (new cl 119 of Sch 3 to the NGL). The Northern Gas Pipeline is also exempt (new cl 130 of Sch 3).

<sup>17</sup> Queuing requirements for scheme pipelines are specified in the pipeline's access arrangement (new r 68D of the NGR (old r 103)). Under the reforms, Sch 1 to the NGL has been amended to enable queuing requirements for non-scheme pipelines to be specified in the NGR.

<p>137–148 and new s 148A<sup>18</sup></p>	<p><b>Ring fencing provisions</b></p> <p>Service providers must:</p> <ul style="list-style-type: none"> <li>• not carry on a related business (the business of producing, purchasing or selling natural or processable gas)</li> <li>• ensure that their marketing staff are not engaged by an associate that takes part in a related business (and vice versa)</li> <li>• keep separate accounts in respect of their pipeline services</li> </ul> <p><b>Associate contract provisions</b></p> <p>Service providers must not enter into or give effect to an associate contract<sup>19</sup> that has an anti-competitive effect or is inconsistent with the competitive parity rule,<sup>20</sup> unless the contract is approved by the regulator</p>	<p>Service providers may apply to the regulator for an exemption from the ring fencing provisions (new r 34 of the NGR)</p> <p>Pipelines that have a new Pt 10 category 1 exemption (because they have no third party users) are automatically exempted from the ring fencing and associate contract provisions (new r 35 of the NGR)</p>
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## New requirements applying to all pipelines

### Compliance with pipeline interconnection principles (replacement s 136)

Service providers (other than for the Victorian declared transmission system)<sup>21</sup> must comply with the pipeline interconnection principles set out in new Pt 6 of the NGR, including the principle that:

- a person has the right to connect a pipeline or other facility to a pipeline where it is technically feasible and consistent with the safe and reliable operation of the pipeline, and the person agrees to fund the costs associated with making the interconnection (new r 37 of the NGR)
- the interconnecting party has the option to:
  - construct, operate and maintain the interconnection at its own cost, in which case it must do so in accordance with good industry practice and comply with all relevant standards and legislation and any reasonable technical, safety and reliability requirements requested by the existing service provider
  - have the existing service provider do so, in which case the service provider's interconnection fee must be based on the directly attributable cost of constructing, operating and maintaining the interconnection, including so as to achieve the regulated rate of return (scheme pipelines) or a commercial rate of return that reflects the pricing principles set out in new r 113Z(4) of the NGR (non-scheme pipelines)
  - a combination of these options, if both the interconnecting party and the existing service provider will own equipment or infrastructure associated with the interconnection, or agree to share the costs and responsibilities associated with the interconnection (new r 38).

<sup>18</sup> The extension of the ring fencing requirements to existing non-scheme pipelines is delayed for 12 months (new cl 128 of Sch 3 to the NGL). A 3-year exemption applies to certain Jemena pipelines (new r 27 of Sch 6 to the NGR).

<sup>19</sup> 'Associate contract' means a contract, arrangement or understanding between a service provider and an associate in connection with the provision of an associate pipeline service, or a non-arm's length contract etc between a service provider and any person in connection with the provision of an associate pipeline service that provides a benefit to an associate. An associate pipeline service does not include a service provided by means of a pipeline to which a greenfields incentive determination applies.

<sup>20</sup> The competitive parity rule is the rule that a service provider must ensure that any pipeline services it provides to an associate are provided to the associate as if the associate were a separate unrelated entity.

<sup>21</sup> Section 91BF of the NGL regulates interconnection to Victoria's declared transmission system.

## Prohibition against increasing charges to subsidise particular development (new s 136A)

Service providers for transmission pipelines (other than pipelines in the Victorian declared transmission system) must not increase charges for existing users to subsidise the development of an extension to, or expansion of the capacity of, a pipeline.

### Exceptions:

The regulator may exempt a service provider from this requirement if the service provider can demonstrate that one or both of the exemption criteria set out in new r 39A(3) are satisfied, namely:

- (1) that the overall economic value of the expenditure on the development is positive and no other person is competing to meet the demand for pipeline services that would be met by the development
- (2) the development is necessary to maintain or improve the safety or integrity of pipeline services, to comply with a regulatory obligation or requirement, or to maintain the service provider's capacity to meet existing levels of demand.

## Service providers must publish prescribed transparency information (new s 136C)

<i>Type of information</i>	<i>Brief description</i>	<i>Published by</i>
Service and access information	Pipeline information, such as classification, nameplate rating, delivery points (new r 101B(2))	Within 20 business days <sup>22</sup> after the commissioning of the pipeline (updated within 20 business days after any change) <sup>23</sup>
	Pipeline service information, including a description of the services available on the pipeline, any locational limitations on availability and the priority ranking of the service (new r 101B(3))	Within 20 business days after the commissioning of the pipeline (updated within 20 business days after any change) <sup>24</sup>
	Service usage information, such as total quantity of gas injected and withdrawn from the pipeline during a month (new r 101B(4))	Monthly, for the previous month <sup>25</sup>
	Service availability information, including an outlook of the firm capacity of the pipeline available for sale in the following 36 months, and information about matters expected to affect the capacity of the pipeline during the following 12 months (new r 101B(5))	Monthly, for the next 36 or 12 months, as applicable <sup>26</sup>

<sup>22</sup> 'Business day' means a day that is not a Saturday or Sunday or observed as a public holiday on the same day in each of the participating jurisdictions (except the Commonwealth) (cl 10 of Sch 2 to the NGL).

<sup>23</sup> This requirement is delayed for 6 months after commencement for existing pipelines with a Pt 23 category 2 exemption because they are a single user pipeline and existing transmission pipelines that are scheme pipelines (new r 9(1) and (4) of Sch 6 to the NGR).

<sup>24</sup> This requirement is delayed for 6 months after commencement for existing pipelines with a Pt 23 category 2 exemption because they are a single user pipeline and existing transmission pipelines that are scheme pipelines (new rr 9(1) and (4) of Sch 6 to the NGR).

<sup>25</sup> This requirement is delayed for 6 months after commencement for existing pipelines with a Pt 23 category 2 exemption because they are a single user pipeline, existing transmission pipelines that are scheme pipelines (new rr 9(1) and (4) of Sch 6 to the NGR) and existing pipelines with a Pt 23 category 3 exemption (new r 9(2) of Sch 6).

<sup>26</sup> This requirement is delayed for 6 months after commencement for existing pipelines with a Pt 23 category 2 exemption because they are a single user pipeline, existing transmission pipelines that are scheme pipelines (new rr 9(1) and (4) of Sch 6 to the NGR) and existing pipelines with a Pt 23 category 3 exemption (new r 9(2) of Sch 6).

<i>Type of information</i>	<i>Brief description</i>	<i>Published by</i>
Standing terms	<ul style="list-style-type: none"> <li>The applicable arrangement for reference services (scheme pipelines)</li> <li>the price and non-price terms and conditions specified in any relevant greenfields price protection determination, otherwise, the information specified in new r 101C, including standing terms and conditions applicable to each pipeline service</li> <li>the methodology used to calculate standing prices</li> </ul>	Within 20 business days after the commissioning of the pipeline (updated within 20 business days after any change) <sup>27</sup>
Financial information, historical demand information and a cost allocation methodology	Details to be set out in the pipeline information disclosure guidelines to be made by the regulator (new r 101D)	Annually, within 5 months of the end of the service provider's financial year <sup>28</sup>
Actual prices payable information	Information about each pipeline service procured under an access contract, including service term, service type, contracted quantity and the prices payable for the service (new r 101E)	Within 20 business days of entering the contract <sup>29</sup> (updated if the contract is varied)

#### Exceptions:

- A non-scheme pipeline that has no third-party users may apply to the regulator for an exemption from the requirement to publish prescribed transparency information (new r 102(4), referred to as a Pt 10 category 1 exemption).<sup>30</sup>
- A non-scheme pipeline that has a single user or a nameplate rating of (or whose daily capacity is less than) 10 TJ/day may apply to the regulator for an exemption from the requirement to publish financial information, historical demand information and a cost allocation methodology (new r 102(4), referred to as a Pt 10 category 2 exemption).<sup>31</sup>

<sup>27</sup> This requirement is delayed for 6 months after commencement for existing pipelines with a Pt 23 category 2 exemption because they are a single user pipeline, existing pipelines with a Pt 23 category 3 exemption, existing full regulation distribution pipelines and existing transmission pipelines that are scheme pipelines (new r 9(1), (2), (3) and (4) of Sch 6 to the NGR).

<sup>28</sup> For existing pipelines, the initial obligation to publish financial information, historical demand information and a cost allocation methodology only arises in relation to the service provider's financial year (the designated financial year) that immediately follows the year in which the regulator publishes the pipeline information disclosure guidelines. The information must be published within 6 months of the end of the designated financial year (new r 10 of Sch 6 to the NGR). The regulator must publish the pipeline information disclosure guidelines within 5 months after commencement (new r 13 of Sch 6). In the meantime, existing light regulation pipelines must continue to publish information in accordance with old rr 36A, 36B(1)(c), 36B(2)-(5) and 36D (new r 7 of Sch 6) and existing non-scheme pipelines must continue to publish information in accordance with old rr 551, 552(1)(c), 552(2)-(6) and 555 (new r 22 of Sch 6).

<sup>29</sup> The requirement to publish actual prices payable information only applies to access contracts that are in force on the commencement day or are entered into on or after commencement (new r 11(3) of Sch 6 to the NGR). For existing pipelines, the actual prices payable information is not required to be published until 6 months after commencement (new r 11(2) of Sch 6).

<sup>30</sup> Existing pipelines with a Pt 23 category 2 exemption because they are not a third party access pipeline are deemed to have a new Pt 10 category 1 exemption (new r 12(2) of Sch 6 to the NGR).

<sup>31</sup> Existing pipelines with a Pt 23 category 2 exemption because they are a single user pipeline are deemed to have a new Pt 10 category 2 exemption (new r 12(3) of Sch 6 to the NGR). Existing pipelines with a Pt 23 category 3 exemption are deemed to have a new Pt 10 category 2 exemption if their nameplate rating (or maximum daily capacity under normal operating conditions) is less than 10 TJ/day (new r 12(4) of Sch 6 to the NGR).



## Negotiation of access (new s 148C)

Service providers must comply with the access negotiation framework set out in new Pt 11 of the NGR. In particular, they must:

- publish a user access guide (new r 105C of the NGR)<sup>32</sup>  
*Exception:* Pipelines with a new Pt 10 category 1 exemption (because they have no third party users) do not need to publish this guide (new r 105C(8))
- respond to any prospective user's preliminary enquiry about access or access request within the periods stipulated in new r 105D:
  - a service provider must respond to a preliminary enquiry within 10 business days stating whether or not it can provide a service or if further investigations are required (and if so, when it will make an offer). If an offer is made in response to a preliminary enquiry, the parties may proceed directly to the negotiation stage (new r 105D(2) and (3))
  - a service provider must acknowledge receipt of an access request within 5 business days and inform the prospective user if the request is incomplete and, if so, what additional information is required. The service provider must inform the prospective user within 10 business days whether the service can be provided or if further investigations are required (new r 105D(5)-(8))
- make an access offer within an agreed timeframe or otherwise within 20 business days (60, if further investigations are required) of receiving an access request or any required additional information (new r 105E(1) and (2))  
*Exception:* The service provider is not required to make an access offer if access is not technically feasible or consistent with the safe and reliable operation of the pipeline or if the requested service would require an extension of the pipeline (new r 105E(4)).

The parties must negotiate access in good faith (new s 148D of the NGL). If negotiations fail, the access dispute may be resolved by the making of an access determination in accordance with the applicable access dispute resolution process.

Prospective users are not required to enter into an access contract that gives effect to an access determination, but if they don't, they cannot issue a new access dispute notice in relation to the same or a substantially similar service for 12 months (new r 113ZE(5) of the NGR).

## The regulator will monitor the behaviour of service providers

Under the reforms, the regulator is required to monitor the behaviour of service providers, including in relation to prices charged for pipeline services, the information published by service providers, outcomes of access negotiations, dealings with associates and compliance with ring fencing requirements (new s 63A of the NGL). The regulator may initiate a scheme pipeline determination process if it considers this appropriate.

To support this function, the regulator's power to issue regulatory information notices and general regulatory information orders has been extended to all pipelines (amended Div 5 of Pt 1 of Ch 2 of the NGL) and service providers may be required to conduct a compliance audit (new s 64C).

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<sup>32</sup> For existing pipelines, the initial user access guide does not need to be published until 2 months after the regulator publishes the initial pipeline information disclosure guidelines (which must be published within 5 months of commencement) (new rr 13 and 18(1) of Sch 6 to the NGR). In the meantime, existing non-scheme pipelines must continue to publish a user access guide under old r 558 (new r 18(2) of Sch 6).



## Greenfields pipeline projects

### Previous process

Before the reforms commenced, 15-year no-coverage determinations were made by the relevant Minister, on the recommendation of the NCC. The Minister was required to make the determination unless satisfied that all the coverage criteria were satisfied.

### New process

Under the reforms, greenfields pipeline projects may apply to the regulator (before commissioning) for a greenfields incentive determination. They may also apply for a greenfields price protection determination, either as part of the greenfields incentive determination application process or later.

### Greenfields incentive determinations

A greenfields incentive determination prevents a pipeline from becoming a scheme pipeline for 15 years from commissioning (or any lesser period determined by the regulator). For these determinations, the regulator must consider whether the form of regulation factors, or any competition between unrelated parties to develop the pipeline, will or is likely to constrain the service provider's market power over the operative period for the determination (new s 112(3)(b)(ii) of the NGL).

In the event of an access dispute, and if a greenfields price protection determination does not also apply, the arbitrator may consider the risks that the service provider faced when it decided to make the investment and the way in which the service provider expected to recover capital over the economic life of the pipeline (new r 113Z(7) of the NGR).

### Greenfields price protection determinations

The regulator may make a greenfields price protection determination for a pipeline to which a greenfields incentive determination applies if satisfied that:

- the prices that will be made available to users during the determination's operative period were set as a result of a competitive process for the development of the pipeline, or
- the service provider's market power when setting those prices was otherwise constrained (new s 110 of the NGL).

The relevant prices will be specified in the greenfields price protection determination and must be reflected in any access determination made by an arbitrator in the event of an access dispute (new r 29C of the NGR).

### Treatment of existing greenfields pipeline incentives

The transitional arrangements provide that, on commencement of the reforms, existing 15-year no-coverage determinations, and any price regulation exemptions, are deemed to be greenfields incentive determinations (new cl 118 and 124 of Sch 3 to the NGL).

## Access disputes

Under the reforms, Chs 6 and 6A of the NGL have been consolidated into a new Ch 5 and are supported by a new Pt 12 of the NGR. A number of protections have been inserted for small shippers,<sup>33</sup> and a number of changes have been made to the scheme pipeline dispute resolution process.

<sup>33</sup> Small shippers are those whose daily capacity right under one or more contracts with the same service provider and by means of the same pipeline is less than 5 TJ/day or 20% of the pipeline's nameplate rating (whichever is less). A shipper with a market capitalisation of more than \$500,000,000 is excluded.

## Protections for small shippers

The position of small shippers during an access dispute is protected by:

- enabling small shippers to elect to have a user association joined as a party to the dispute (new s 154(1)(c) of the NGL)
- enabling small shippers to elect to have the dispute mediated (new s 156)
- preventing costs from being awarded against small shippers (new s 185(2))
- preventing small shippers from being required to pay more than half of the dispute resolution body's or arbitrator's costs (amended reg 9 of the *National Gas (South Australia) Regulations* and new r 113ZM(5) of the NGR).

## Changes to the dispute resolution process for scheme pipelines

Reforms in relation to the dispute resolution process for scheme pipeline access disputes include:

- a requirement that the dispute resolution body publish the access dispute notice and information about how a person may apply to become a party to the dispute (new r 113A(3) of the NGR)
- a new optional 50-day fast track dispute resolution process (new r 113ZF)
- the imposition of an 8-month time limit on the making of an access determination (new r 113X(1)(a))
- guidance about the matters the dispute resolution body must consider when making an access determination (new r 113Y)
- a requirement that the dispute resolution body publish the access determination, together with related materials (new r 113ZC).

## A note about terminology

A number of provisions refer to both the 'dispute resolution body' (in relation to scheme pipeline access disputes) and 'the AER' (in relation to non-scheme pipeline access disputes). In all jurisdictions bar Western Australia, the 'dispute resolution body' and 'the AER' are the same entity. The distinction is maintained, however, because Western Australia's application Act defines 'dispute resolution body' to mean (in relation to pipelines located within that State) the Western Australian Energy Disputes Arbitrator, and defines 'the AER' to mean the Economic Regulation Authority.

## Classification of pipelines

Before the reforms commenced, the NCC could classify scheme pipelines as either transmission or distribution pipelines. Under the reforms, the default position is that a pipeline is a distribution pipeline if it is classified as a distribution pipeline under its jurisdictional licence or authorisation and similarly, is a transmission pipeline if it is classified as a transmission pipeline under its licence/authorisation. For new pipelines, if the jurisdictional licence contains no classification, the service provider must apply to the regulator for a classification decision (new s 117 of the NGL). A service provider may also apply to the regulator for the reclassification of its pipeline. The regulator must consider the national gas objective and the pipeline classification criterion (set out in s 13) when making a classification or reclassification decision (new s 119).

## Treatment of existing pipelines

The transitional arrangements provide that, on commencement of the reforms:

- existing pipelines that were classified by the NCC retain that classification (new cl 110 of Sch 3 to the NGL)
- any existing non-scheme pipeline that is not classified under its jurisdictional licence or authorisation has the classification noted on the pipeline register maintained by the Australian Energy Market Commission (AEMC) (new cl 111 of Sch 3)
- the classification of all other existing pipelines defaults to the classification assigned by the pipeline's jurisdictional licence or authorisation.

## Expansions of the capacity of a pipeline automatically form part of the pipelines

Extensions of a pipeline increase the geographic range of the pipeline; expansions are augmentations of a pipeline's capacity that are achieved through the addition of compressors or looping. Before the reforms commenced, the access arrangement for a scheme pipeline was required to state whether the arrangement applied to any services provided as a result of an extension to, or an expansion of the capacity of, the pipeline. If it did not apply to expansions, then the expansion was regulated as a non-scheme pipeline. Under the reforms, all expansions of the capacity of a scheme pipeline automatically form part of the scheme pipeline and will be regulated as such. The treatment of extensions is unchanged (new s 18 of the NGL).

Expansions of the capacity of a non-scheme pipeline continue to be treated as part of the non-scheme pipeline and will be regulated as such (new s 19 of the NGL).

## About the NGL

The NGL forms part of a state-based cooperative legislative scheme, with South Australia as the lead legislator. It is a schedule to the *National Gas (South Australia) Act 2008* (SA) and applies as state or territory law in each state and territory in accordance with the application Act in force in the jurisdiction, and as Commonwealth law in offshore areas in accordance with the *Australian Energy Market Act 2004*. Under the Australian Energy Market Agreement, Energy Ministers must unanimously agree to any amendments to the NGL.

Rules are usually made by the AEMC, but in this case, the rules supporting the reforms are made by the South Australian Energy Minister.

## AGS contacts

AGS has a large national team of lawyers with expertise in advising and assisting Government with all matters related to regulating Australia's offshore waters. For Government lawyers wanting further information, please contact any of our lawyers listed below.

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