

South Australia

**GAS PIPELINES ACCESS (SOUTH AUSTRALIA) ACT 1997**

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An Act to make provision for the regulation of third party access to natural gas pipeline systems; to repeal the Natural Gas Pipelines Access Act 1995; to amend the Gas Act 1997 and the Petroleum Act 1940; and for other purposes.

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*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **28 January 2001**.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

**GAS PIPELINES ACCESS (SOUTH AUSTRALIA) ACT 1997**

being

Gas Pipelines Access (South Australia) Act 1997  
No. 74 of 1997 [Assented to 18 December 1997]<sup>1</sup>

as amended by

Statutes Amendment (Federal Courts—State Jurisdiction) Act 2000 No. 74 of 2000 [Assented to 14 December 2000]<sup>2</sup>

<sup>1</sup> Came into operation 30 July 1998 (being the day on which the *Gas Pipelines Access (Commonwealth) Act 1998* received the Royal Assent: *Commonwealth of Australia Gazette* No. GN 34, 26 August 1998): *Gaz.* 2 April 1998, p. 1606.

<sup>2</sup> Part 5 (ss. 31-34) came into operation 28 January 2001: *Gaz.* 25 January 2001, p. 301.

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix.

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**SUMMARY OF PROVISIONS**

**PART 1  
PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation
4. Crown to be bound
5. Application to coastal waters
6. Extra-territorial operation

**PART 2  
GAS PIPELINES ACCESS (SOUTH AUSTRALIA) LAW AND  
GAS PIPELINES ACCESS (SOUTH AUSTRALIA) REGULATIONS**

7. Application in South Australia of the Gas Pipelines Access Law
8. Application of Regulations under Gas Pipelines Access Law
9. Interpretation of some expressions in the Gas Pipelines Access (South Australia) Law and Gas Pipelines Access (South Australia) Regulations

**PART 3  
POWER TO MAKE REGULATIONS FOR THE GAS PIPELINES ACCESS LAW**

10. General regulation-making power for Gas Pipelines Access Law
11. Civil penalty provisions of the Gas Pipelines Access Law
12. Specific regulation-making powers

**PART 4  
NATIONAL ADMINISTRATION AND ENFORCEMENT**

**DIVISION 1—CONFERRAL OF FUNCTIONS AND POWERS**

13. Conferral of functions on Commonwealth Minister and Commonwealth bodies
14. Conferral of power on Commonwealth Minister and Commonwealth bodies to do acts in this State
15. Conferral of power on Ministers, Regulators and appeals bodies of other scheme participants
16. Conferral of functions on Code Registrar
17. Functions and powers conferred on South Australian Minister, Regulator and appeals body

**PART 5  
GENERAL**

22. Exemption from taxes
23. Actions in relation to cross-boundary pipelines
24. Subordinate Legislation Act 1978

**PART 6  
LOCAL ADMINISTRATION AND ENFORCEMENT**

**DIVISION 1—CODE REGISTRAR**

25. Code Registrar
26. Delegation
27. Annual Report
28. Immunity

**Gas Pipelines Access (South Australia) Act 1997**

---

**DIVISION 2—LOCAL REGULATOR**

- 29. South Australian Independent Pricing and Access Regulator
- 30. Functions and powers
- 31. Independence of Regulator
- 32. Term of office etc.
- 33. Delegation
- 34. Conflict of interest
- 35. Acting Regulator
- 36. Staff
- 37. Money required for purposes of Division
- 38. Expenditure
- 39. Financial management
- 40. Annual report
- 41. Immunity

**DIVISION 3—APPEALS BODY**

- 42. South Australian Gas Review Board
- 43. Panels
- 44. Principles governing hearings
- 45. Powers and procedures of the Board
- 46. Immunity

**DIVISION 4—MISCELLANEOUS**

- 47. Regulations

**PART 7**

**LOCAL TRANSITIONAL AND CONSEQUENTIAL PROVISIONS**

**DIVISION 1—TRANSITIONAL PROVISIONS**

- 48. Reference tariffs during transitional period

**DIVISION 2—CONSEQUENTIAL AMENDMENTS**

**Subdivision 1—Preliminary**

- 49. Interpretation

**Subdivision 2—Repeal of Natural Gas Pipelines Access Act 1995**

- 50. Repeal

**Subdivision 3—Amendment of Gas Act 1997**

- 51. Amendment of s. 8—Functions
- 52. Amendment of s. 11—Obligation to preserve confidentiality
- 53. Amendment of s. 18—Obligation to preserve confidentiality
- 54. Amendment of s. 24—Licence fees and returns

**Subdivision 4—Amendment of Petroleum Act 1940**

- 55. Amendment of s. 80L—Minister may require operator to convey petroleum

**Gas Pipelines Access (South Australia) Act 1997**

**SCHEDULE 1**

*Third Party Access to Natural Gas Pipelines*

**PART 1  
PRELIMINARY**

1. Citation
2. Definitions
3. Scheme participants
4. Interpretation generally

**PART 2  
NATIONAL THIRD PARTY ACCESS CODE FOR  
NATURAL GAS PIPELINE SYSTEMS**

5. The Code
6. Amendment of Code
7. Availability of copies of amended Code
8. Evidence

**PART 3  
PIPELINES**

9. Definitions
10. Application for classification and determination of close connection for purposes of coverage under Code
11. Classification when Ministers do not agree
12. Code Registrar to record classification etc.
13. Preventing or hindering access

**PART 4  
ARBITRATION OF ACCESS DISPUTES**

14. Definitions
15. Application of Part
16. Person to conduct arbitration
17. Where ACCC conducts arbitration
18. Hearing to be in private
19. Right to representation
20. Procedure
21. Particular powers of arbitrator
22. Determination
23. Contempt
24. Disclosure of information
25. Power to take evidence on oath or affirmation
26. Failing to attend as a witness
27. Failing to answer questions etc.
28. Intimidation etc.
29. Party may request arbitrator to treat material as confidential
30. Costs
31. Appeal to Court

**PART 5  
PROCEEDINGS FOR BREACH OF LAW**

32. Proceedings
33. Criminal proceedings do not lie
34. Civil penalty
35. Injunctions
36. Actions for damages for contravention of conduct provision
37. Declaratory relief

**PART 6  
ADMINISTRATIVE APPEALS**

38. Application for review

39. Merits review of access arrangements

**PART 7  
GENERAL**

40. Supply and haulage of natural gas  
41. Power to obtain information and documents  
42. Restriction on disclosure of confidential information  
43. Application for review of disclosure notice

**APPENDIX TO SCHEDULE 1  
MISCELLANEOUS PROVISIONS RELATING TO INTERPRETATION**

**PART 1  
PRELIMINARY**

1. Displacement of Appendix by contrary intention

**PART 2  
GENERAL**

2. Law to be construed not to exceed legislative power of Legislature  
3. Every section to be a substantive enactment  
4. Material that is, and is not, part of this Law  
5. References to particular Acts and to enactments  
6. References taken to be included in Act or Law citation etc.  
7. Interpretation best achieving Law's purpose  
8. Use of extrinsic material in interpretation  
9. Compliance with forms

**PART 3  
TERMS AND REFERENCES**

10. Definitions  
11. Provisions relating to defined terms and gender and number  
12. Meaning of may and must etc.  
13. Words and expressions used in statutory instruments  
14. Effect of express references to bodies corporate and individuals  
15. References to Minister  
16. Production of records kept in computers etc.  
17. This scheme participant  
18. References to officers and holders of offices  
19. Reference to certain provisions of Law

**PART 4  
FUNCTIONS AND POWERS**

20. Performance of statutory functions  
21. Power to make instrument or decision includes power to amend or repeal  
22. Matters for which statutory instruments may make provision  
23. Presumption of validity and power to make  
24. Appointments may be made by name or office  
25. Acting appointments  
26. Powers of appointment imply certain incidental powers  
27. Delegation  
28. Exercise of powers between enactment and commencement

**PART 5  
DISTANCE AND TIME**

29. Matters relating to distance and time

**PART 6  
SERVICE OF DOCUMENTS**

30. Service of documents

31. Meaning of service by post etc.

**PART 7**  
**EFFECT OF REPEAL, AMENDMENT OR EXPIRATION**

32. Time of Law ceasing to have effect  
33. Repealed Law provisions not revived  
34. Saving of operation of repealed Law provisions  
35. Continuance of repealed provisions  
36. Law and amending Acts to be read as one

**PART 8**  
**OFFENCES UNDER THIS LAW**

37. Penalty at end of provision  
38. Penalty other than at end of provision  
39. Indictable offences and summary offences  
40. Double jeopardy  
41. Aiding and abetting, attempts etc.

**PART 9**  
**INSTRUMENTS UNDER THIS LAW**

42. Appendix applies to statutory instruments

**SCHEDULE 2**  
*National Third Party Access Code for  
Natural Gas Pipeline Systems*

**Introduction**

1. Coverage  
2. Access Arrangements  
3. Content of an Access Arrangement  
4. Ring Fencing Arrangements  
5. Information and Timelines for Negotiation  
6. Dispute Resolution  
7. General Regulatory and Miscellaneous Provisions  
8. Reference Tariff Principles  
9. Code Change  
10. Interpretation

Attachment A—Information Disclosure by a Service Provider to Interested Parties  
Schedule A—Pipelines to be Covered from Commencement of the Code

**APPENDIX**  
**LEGISLATIVE HISTORY**

*Preamble*

The Council of Australian Governments agreed, in February 1994, to general principles of competition policy reform to enable third parties, in particular circumstances, to gain access to essential facilities.

The Council of Australian Governments, as part of that commitment to reform, agreed to more specific proposals for the development of free and fair trade in natural gas.

The Commonwealth, the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, the Northern Territory and the Australian Capital Territory agreed in November 1997 to the enactment of legislation in the Commonwealth and those States and Territories so that a uniform national framework applies for third party access to all gas pipelines that—

- (a) facilitates the development and operation of a national market for natural gas; and
- (b) prevents abuse of monopoly power; and
- (c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders; and
- (d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for the owners and operators of gas transmission and distribution pipelines and persons wishing to use the services of those pipelines; and
- (e) provides for resolution of disputes.



**Gas Pipelines Access (South Australia) Act 1997**

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**The Parliament of South Australia enacts as follows:**

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Gas Pipelines Access (South Australia) Act 1997*.

**Commencement**

2. (1) This Act will come into operation on a day to be fixed by proclamation, not being a day earlier than the day on which the *Gas Pipelines Access (Commonwealth) Act 1997* of the Commonwealth receives the Royal Assent.

(2) The Governor may, by the same proclamation or by proclamations made on different days, fix different days for the commencement of different provisions of this Act, including the different provisions of Schedule 1.

**Interpretation**

3. (1) In this Act—

"**Gas Pipelines Access Law**" means—

(a) Schedule 1—

(i) as enacted; or

(ii) if amended, as amended and in force for the time being; and

(b) the *National Third Party Access Code for Natural Gas Pipeline Systems* (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2) or, if that Code is amended in accordance with Schedule 1, that Code as so amended and in force for the time being;

"**Gas Pipelines Access (South Australia) Law**" means the provisions applying because of section 7;

"**Gas Pipelines Access (South Australia) Regulations**" means the provisions applying because of section 8.

(2) Words and expressions used in Schedule 1, as applying because of section 7, and in this Act have the same respective meanings in this Act as they have in that Schedule as so applying.

(3) Subsection (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.

**Crown to be bound**

4. This Act, the *Gas Pipelines Access (South Australia) Law* and the *Gas Pipelines Access (South Australia) Regulations* bind the Crown, not only in the right of South Australia but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

**Application to coastal waters**

5. (1) This Act, the *Gas Pipelines Access (South Australia) Law* and the *Gas Pipelines Access (South Australia) Regulations* apply in the coastal waters of this State.

(2) In subsection (1)—

"**coastal waters**", in relation to this State, means any sea that is on the landward side of the adjacent area of this State but is not within the limits of this State.

**Extra-territorial operation**

6. (1) It is the intention of the Parliament that the operation of this Act, the *Gas Pipelines Access (South Australia) Law* and the *Gas Pipelines Access (South Australia) Regulations* should, as far as possible, include operation in relation to the following—

- (a) things situated in or outside this State;
- (b) acts, transactions and matters done, entered into or occurring in or outside this State;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.

(2) Nothing in subsection (1) has effect in relation to a pipeline to the extent that the pipeline is situated, or partly situated, beyond the jurisdictional areas of all the scheme participants.

**Gas Pipelines Access (South Australia) Act 1997**

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**PART 2  
GAS PIPELINES ACCESS (SOUTH AUSTRALIA) LAW AND  
GAS PIPELINES ACCESS (SOUTH AUSTRALIA) REGULATIONS**

**Application in South Australia of the Gas Pipelines Access Law**

**7.** The *Gas Pipelines Access Law*—

- (a) applies as a law of South Australia; and
- (b) as so applying may be referred to as the *Gas Pipelines Access (South Australia) Law*.

**Application of regulations under Gas Pipelines Access Law**

**8.** The regulations in force for the time being under Part 3 of this Act—

- (a) apply as regulations in force for the purposes of the *Gas Pipelines Access (South Australia) Law*; and
- (b) as so applying may be referred to as the *Gas Pipelines Access (South Australia) Regulations*.

**Interpretation of some expressions in the Gas Pipelines Access (South Australia) Law and Gas Pipelines Access (South Australia) Regulations**

**9.** In the *Gas Pipelines Access (South Australia) Law* and the *Gas Pipelines Access (South Australia) Regulations*—

"**Code**" means the *National Third Party Access Code for Natural Gas Pipeline Systems* (a copy of which, as agreed by the Council of Australian Governments on 7 November 1997, is set out in Schedule 2) or, if that Code is amended in accordance with Schedule 1, that Code as so amended and in force for the time being, as it applies because of section 7 as a law of South Australia;

"**the Court**" means the Supreme Court;

"**designated appeals body**" means the local appeals body;

"**designated Minister**" means the local Minister;

"**Gas Pipelines Access Law**" or "**this Law**" means the *Gas Pipelines Access (South Australia) Law*;

"**Legislature**" means the Parliament of South Australia;

"**local appeals body**" means the South Australian Gas Review Board;

"**local Minister**" means the Minister to whom administration of this Act is committed;

"**local Regulator**" means the person holding or acting in the office of the South Australian Independent Pricing and Access Regulator;

"**this scheme participant**" means the State of South Australia;

"**Supreme Court**" means the Supreme Court of South Australia.

**PART 3**

**POWER TO MAKE REGULATIONS FOR THE GAS PIPELINES ACCESS LAW**

**General regulation-making power for Gas Pipelines Access Law**

**10.** (1) The Governor may make regulations for or with respect to any matter or thing necessary to be prescribed to give effect to the *Gas Pipelines Access Law*.

(2) A regulation under this Part may be made only on the unanimous recommendation of the relevant Ministers of the scheme participants.

(3) The appendix to Schedule 1 applies in relation to a regulation under this Part.

(4) Section 10 of the *Subordinate Legislation Act 1978* does not apply to a regulation under this Part.

**Civil penalty provisions of the Gas Pipelines Access Law**

**11.** (1) The regulations may provide that—

(a) a specified regulatory provision or a regulatory provision of a specified class; or

(b) a specified conduct provision or a conduct provision of a specified class,

is, for the purposes of the *Gas Pipelines Access Law*, a civil penalty provision.

(2) The regulations may prescribe, for a breach of a civil penalty provision, an amount not exceeding \$100 000 that the Court may determine is payable by a person who contravenes the provision.

**Specific regulation-making powers**

**12.** The regulations may make provision for or with respect to—

(a) prescribing, for the purposes of the definition of "**pipeline**" in Schedule 1, gas processing plants, exit flanges and connection points;

(b) the procedure and conduct of arbitrations under Part 4 of Schedule 1;

(c) the person or persons required to make available copies of—

(i) the Code as set out in Schedule 2;

(ii) that Code, if amended, as amended and in force for the time being;

(iii) amendments made to that Code;

(d) the place or places at which the copies referred to in paragraph (c) are to be available for inspection by the public.

**PART 4  
NATIONAL ADMINISTRATION AND ENFORCEMENT**

**DIVISION 1—CONFERRAL OF FUNCTIONS AND POWERS**

**Conferral of functions on Commonwealth Minister and Commonwealth bodies**

**13.** (1) The Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal have the functions and powers conferred or expressed to be conferred on them respectively under the *Gas Pipelines Access (South Australia) Law*.

(2) In addition to the powers mentioned in subsection (1), the Commonwealth Minister and the bodies referred to in that subsection have power to do all things necessary or convenient to be done in connection with the performance or exercise of the functions and powers referred to in that subsection.

**Conferral of power on Commonwealth Minister and Commonwealth bodies to do acts in this State**

**14.** The Commonwealth Minister, the ACCC, the NCC and the Australian Competition Tribunal have power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on them respectively by the gas pipelines access legislation of another scheme participant.

**Conferral of power on Ministers, Regulators and appeals bodies of other scheme participants**

**15.** The local Minister, the local Regulator and the local appeals body within the meaning of the gas pipelines access legislation of another scheme participant have power to do acts in or in relation to this State in the performance or exercise of a function or power expressed to be conferred on them respectively by the gas pipelines access legislation of that other scheme participant.

**Conferral of functions on Code Registrar**

**16.** (1) The Code Registrar—

- (a) has the functions and powers conferred or expressed to be conferred on the Code Registrar under the *Gas Pipelines Access (South Australia) Law* or under the *National Gas Agreement*; and
- (b) any other functions and powers conferred on the Code Registrar by unanimous resolution of the relevant Ministers of the scheme participants.

(2) In addition to the powers mentioned in subsection (1), the Code Registrar has power to do all things necessary or convenient to be done in connection with the performance or exercise of the functions and powers referred to in that subsection.

**Functions and powers conferred on South Australian Minister, Regulator and appeals body**

**17.** If the gas pipelines access legislation of another scheme participant confers a function or power on—

- (a) the Minister; or

- (b) the person holding or acting in the office of the South Australian Independent Pricing and Access Regulator; or
- (c) the South Australian Gas Review Board,

the Minister, person or Board—

- (d) may perform that function or exercise that power; and
- (e) may do all things necessary or convenient to be done in connection with the performance or exercise of that function or power.

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**Gas Pipelines Access (South Australia) Act 1997**

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**PART 5  
GENERAL****Exemption from taxes**

**22.** (1) Any stamp duty or other tax imposed by or under a law of this State is not payable in relation to—

- (a) an exempt matter; or
- (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or arising out of, an exempt matter.

(2) In this section—

**"exempt matter"** means a transfer of assets or liabilities that the Minister and the Treasurer are satisfied is made for the purpose of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas in breach of the Code or for the purpose of the separation of certain activities from other activities of a person as required by the Code, and for no other purpose.

**Actions in relation to cross-boundary pipelines**

**23.** (1) If a pipeline is a cross-boundary pipeline, any action taken under the gas pipelines access legislation of a scheme participant in whose jurisdictional area a part of the pipeline is situated—

- (a) by, or in relation to, a relevant Minister, or a relevant Regulator, within the meaning of that legislation; or
- (b) by, or in relation to, an arbitrator appointed by a relevant Regulator within the meaning of that legislation; or
- (c) by the Supreme Court, or the relevant appeals body, within the meaning of that legislation, in relation to the action taken by, or in relation to, a person or body referred to in paragraph (a) or (b),

is taken also to be action taken under the gas pipelines access legislation of each other scheme participant in whose jurisdictional area a part of the pipeline is situated (**"that other legislation"**)—

- (d) by, or in relation to, a relevant Minister, or relevant Regulator, within the meaning of that other legislation; or
- (e) by, or in relation to, an arbitrator appointed by a relevant Regulator within the meaning of that other legislation; or
- (f) by the Supreme Court, or relevant appeals body, within the meaning of that other legislation,

as the case requires.

(1a) Despite subsection (1), the Supreme Court does not have jurisdiction to make a declaration or order about the validity, or affecting the operation, of a decision of a relevant Minister, relevant Regulator or arbitrator in relation to a cross-boundary distribution pipeline unless this State has been determined to be the scheme participant most closely connected to the pipeline (see *Part 3 of Schedule 1*).

(2) In this section—

**"cross-boundary pipeline"** means a transmission pipeline, or a distribution pipeline, that is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants.

(3) A reference in this section to an action that is taken includes a reference to a decision that is made.

**Subordinate Legislation Act 1978**

**24.** The *Subordinate Legislation Act 1978* does not apply to the *National Third Party Access Code for Natural Gas Pipeline Systems* referred to in paragraph (b) of the definition of *Gas Pipelines Access Law* in section 3(1) of this Act.



**PART 6**  
**LOCAL ADMINISTRATION AND ENFORCEMENT**

**DIVISION 1—CODE REGISTRAR**

**Code Registrar**

**25.** (1) There will be a Code Registrar.

(2) The Code Registrar will be appointed by the Governor.

(3) The Code Registrar is appointed, and holds office, in accordance with the *Public Sector Management Act 1995*.

(4) The Code Registrar may be removed from office by resolution passed by at least two-thirds of the relevant Ministers of the scheme participants.

(5) Subsection (4) does not derogate from the provisions of the *Public Sector Management Act 1995* relating to removal of an employee from office.

**Delegation**

**26.** (1) The Code Registrar may delegate functions or powers to a person or body of persons that is, in the Code Registrar's opinion, competent to exercise the relevant functions or powers.

(2) A delegation under this section—

(a) must be in writing; and

(b) may be conditional or unconditional; and

(c) is revocable at will; and

(d) does not prevent the delegator from acting in any matter.

**Annual report**

**27.** (1) The Code Registrar must, within three months after the end of each financial year, deliver to the Minister a report on the Code Registrar's operations during that financial year.

(2) The Minister must have a copy of the report laid before both Houses of Parliament within 12 sitting days after receipt of the report.

(3) The Code Registrar must, as soon as practicable after delivering a report to the Minister, provide a copy of the report to the relevant Minister of each of the other scheme participants.

**Immunity**

**28.** (1) No personal liability attaches to the Code Registrar or a delegate of the Code Registrar for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions of the Code Registrar or delegate.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

**DIVISION 2—LOCAL REGULATOR**

**South Australian Independent Pricing and Access Regulator**

**29.** (1) There will be a South Australian Independent Pricing and Access Regulator.

(2) The Regulator will be appointed by the Governor.

(3) The Regulator is not a member of the Public Service nor is the Regulator an employee for the purposes of the *Public Sector Management Act 1995* (other than Part 2 of that Act).

**Functions and powers**

**30.** (1) The Regulator has—

(a) the functions and powers conferred on the local Regulator under the *Gas Pipelines Access (South Australia) Law*; and

(b) the functions and powers conferred on the local Regulator under the *National Gas Agreement*.

(2) In performing functions the Regulator should make appropriate use of the expertise of the Technical Regulator under the *Gas Act 1997* in relation to safety or technical standards in the gas supply industry.

**Independence of Regulator**

**31.** The Regulator (or a person acting in the office of Regulator) is entirely independent of direction or control by the Crown or any Minister or officer of the Crown in the performance of the Regulator's functions and powers.

**Term of office etc.**

**32.** (1) The Regulator will be appointed for a term of office of not less than 3 years and not more than 5 years and is, on the expiration of a term of office, eligible for reappointment.

(2) The conditions of office of the Regulator will, subject to this Division, be determined by the Governor.

(3) The conditions of office of the Regulator must not be varied while the Regulator is in office so as to become less favourable to the Regulator.

(4) The Governor may remove the Regulator from office for—

(a) misconduct; or

(b) neglect of duty; or

(c) incapacity to carry out official duties satisfactorily; or

(d) failure to comply with this Division or the conditions of the Regulator's appointment.

(5) The office of Regulator becomes vacant if the Regulator—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Governor; or

**Gas Pipelines Access (South Australia) Act 1997**

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- (d) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
- (f) becomes a member of the legislature of this State, another State, a Territory of the Commonwealth or the Commonwealth; or
- (g) is removed from office by the Governor under subsection (4).

**Delegation**

**33.** (1) The Regulator may delegate functions or powers to a person or body of persons that is, in the Regulator's opinion, competent to exercise the relevant functions or powers.

(2) A delegation under this section—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

**Conflict of interest**

**34.** (1) The Regulator must inform the Minister in writing of—

- (a) any direct or indirect interest that the Regulator has or acquires in any business, or in any body corporate carrying on business, in Australia or elsewhere; or
- (b) any other direct or indirect interest that the Regulator has or acquires that conflicts or may conflict with the Regulator's duties.

(2) The Minister may—

- (a) direct the Regulator to resolve a conflict between a direct or indirect interest and a duty of the Regulator in relation to a particular matter; and
- (b) if the conflict is not resolved to the Minister's satisfaction, disqualify the Regulator from acting in relation to the matter.

**Acting Regulator**

**35.** (1) The Governor may appoint a person to act in the office of the Regulator under this section and a person so appointed has, while so acting, all the powers, duties and functions of the Regulator.

(2) A person appointed under subsection (1) may act in the office of the Regulator—

- (a) while the Regulator is temporarily unable to perform official duties;
- (b) while the office of the Regulator is temporarily vacant;
- (c) if the Regulator is disqualified from acting in relation to a particular matter—in relation to that matter.

(3) Subject to this Division, the terms and conditions of appointment of the person appointed under subsection (1) will be as determined, from time to time, by the Governor.

### Staff

**36.** (1) The Regulator's staff consists of—

(a) Public Service employees assigned, from time to time with the agreement of the Regulator, to work in the office of the Regulator; and

(b) persons appointed by the Regulator for the purposes of this Division.

(2) While a public service employee is assigned to work in the office of the Regulator—

(a) the Regulator has administrative authority over the employee to the exclusion of any other person; and

(b) the salary and allowances of the employee must be paid out of moneys appropriated by Parliament for the purposes of this Division.

(3) The Minister may, by notice in the *South Australian Government Gazette*—

(a) exclude Public Service employees on the Regulator's staff from specified provisions of the *Public Sector Management Act 1995*; and

(b) if the Minister thinks that certain provisions should apply to such employees instead of those from which they are excluded under paragraph (a)—determine that those provisions will so apply,

and such a notice has effect in accordance with its terms.

(4) The terms and conditions of employment of a person appointed under subsection (1)(b) will be determined by the Governor and such a person is not a Public Service employee.

(5) The Regulator may, on terms arranged with a person with appropriate authority, make use of the services of a Public Service employee or use facilities of the Public Service.

### Money required for purposes of Division

**37.** The money required for the purposes of this Division is to be paid out of money appropriated by Parliament for those purposes.

### Expenditure

**38.** Except as authorised by the Minister, the Regulator may only incur expenditure in a financial year—

(a) for—

(i) staff purposes; and

(ii) other purposes approved by the Minister; and

(b) within a general expenditure limit fixed by the Minister for that financial year.

### Financial management

**39.** (1) The Regulator must ensure that proper accounting records are kept of its receipts and expenditures.

**Gas Pipelines Access (South Australia) Act 1997**

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(2) The Regulator's accounting records must conform with any applicable instructions issued by the Treasurer under section 41 of the *Public Finance and Audit Act 1987*.

(3) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Regulator.

**Annual report**

**40.** (1) The Regulator must, within three months after the end of each financial year, deliver to the Minister a report on the Regulator's operations during that financial year.

(2) The Minister must have a copy of the report laid before both Houses of Parliament within 12 sitting days after receipt of the report.

**Immunity**

**41.** (1) No personal liability attaches to the Regulator, acting Regulator, delegate of the Regulator or a person acting under the direction or authority of the Regulator for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions.

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

**DIVISION 3—APPEALS BODY**

**South Australian Gas Review Board**

**42.** (1) The South Australian Gas Review Board is established.

(2) The Board will be constituted, in relation to particular proceedings before the Board, of—

- (a) a presiding member, being a legal practitioner chosen by the Attorney-General from a panel of legal practitioners established under this Division; and
- (b) two experts chosen by the presiding member from a panel of experts established under this Division.

(3) The Board may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.

(4) If an expert hearing proceedings dies or is for any reason unable to continue with the proceedings, the Board constituted of the presiding member and the other expert may, if the presiding member so determines, continue and complete the proceedings.

(5) There will be a Registrar of the Board.

**Panels**

**43.** (1) For the purposes of this Division, the Governor will establish—

- (a) a panel of legal practitioners each of whom is of not less than 7 years standing;
- (b) a panel of experts each of whom has relevant expertise in industry, commerce or accounting.

(2) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Board is disqualified from participating in the hearing of the matter.

(3) A member of a panel will be appointed for a term of office of not more than 5 years and is, on the expiration of a term of office, eligible for reappointment.

(4) Despite a person ceasing to be a member of a panel through expiry of a period of office, the person may continue as a member of the Board for the purpose of completing part-heard proceedings.

**Principles governing hearings**

**44.** (1) Subject to the *Gas Pipelines Access (South Australia) Law* and any determination of the Board, proceedings before the Board are to be conducted by way of a fresh hearing and for that purpose the Board may receive evidence given orally or, if the Board determines, by affidavit.

(2) The Board—

- (a) is not bound by the rules of evidence and may inform itself as it thinks fit; and
- (b) must act according to equity, good conscience and the substantial merits of the case and without regard to technicalities and forms.

(3) Questions of law or procedure arising before the Board will be determined by the presiding member and other questions by unanimous or majority decision of the members.

**Powers and procedures of the Board**

**45.** (1) The Board may, for the purposes of proceedings before the Board—

- (a) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the attendance of a person before the Board; or
- (b) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the production before the Board of any relevant books, papers or documents; or
- (c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit and makes copies of any of them or any of their contents; or
- (d) require any person to make an oath or affirmation to answer truly all questions put by a member of the Board, or a person appearing before the Board, relating to a matter before the Board; or
- (e) require any person appearing before the Board to answer any relevant questions put by a member of the Board or by a person appearing before the Board.

(2) A person who—

- (a) has been served with a summons to appear before the Board and fails, without reasonable excuse, to attend in obedience to the summons; or
- (b) has been served with a summons to produce books, papers or documents and fails, without reasonable excuse, to comply with the summons; or
- (c) misbehaves before the Board, wilfully insults the Board or any member of the Board, or interrupts the proceedings of the Board; or

**Gas Pipelines Access (South Australia) Act 1997**

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- (d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Board,

is guilty of an offence.

Maximum penalty: \$10 000.

(3) The Board may—

- (a) sit at any time or place;
- (b) adjourn proceedings from time to time and from place to place;
- (c) refer a matter to an expert for report and accept the expert's report in evidence.

(4) The Registrar must give the parties to proceedings reasonable notice of the time and place of the proceedings.

(5) A party is entitled to appear before the Board personally or by counsel or other representative.

(6) Subject to the *Gas Pipelines Access (South Australia) Law*, a party must be allowed a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board.

(7) The Board may make a determination in any proceedings in the absence of a party to the proceedings if satisfied that the party was given reasonable opportunity to appear but failed to do so.

(8) At the conclusion of proceedings, the Board must give to each party a written statement of the reasons for its decision.

**Immunity**

**46.** No civil liability attaches to a member of the Board or the Registrar of the Board for an act or omission by the Board, or by the member or Registrar, in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions.

**DIVISION 4—MISCELLANEOUS**

**Regulations**

**47.** (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, the application of this Act in this State.

(2) Without limiting the generality of subsection (1), the regulations may fix fees in respect of any matter under this Act and provide for the waiver or refund of such fees.

**PART 7**  
**LOCAL TRANSITIONAL AND CONSEQUENTIAL PROVISIONS**

**DIVISION 1—TRANSITIONAL PROVISIONS**

**Reference tariffs during transitional period**

**48.** (1) In approving access arrangements under the *Gas Pipelines Access (South Australia) Law* that will have effect during the transitional period, the South Australian Independent Pricing and Access Regulator—

- (a) must take into account the need to manage the transition to reference tariffs fixed in accordance with the principles set out in the Law in an orderly fashion so as to avoid sudden significant increases in the prices paid by consumers for services provided by means of Code pipelines; and
- (b) for that purpose, may require adjustments to be made to the reference tariffs that would otherwise apply in accordance with the principles set out in the Law during the transitional period.

(2) An access arrangement must set out the nature of, and the reasons for, an adjustment of a reference tariff under this section.

(3) In this section—

**"transitional period"** means the period from the commencement of this section to the date on which all consumers within the meaning of the *Gas Act 1997* are classified as contestable consumers for the purposes of that Act.

**DIVISION 2—CONSEQUENTIAL AMENDMENTS**

**Subdivision 1—Preliminary**

**Interpretation**

**49.** A reference in this Division to the principal Act is a reference to the Act referred to in the heading to the Subdivision in which the reference occurs.

**Subdivision 2—Repeal of Natural Gas Pipelines Access Act 1995**

**Repeal**

**50.** (1) The *Natural Gas Pipelines Access Act 1995* (the **former legislation**) is repealed.

(2) However, the former legislation (except Part 2) continues to apply in relation to a Code pipeline until an access arrangement is approved under the *Gas Pipelines Access (South Australia) Law* in relation to the pipeline.

(3) The regulations may modify the former legislation (including any regulations made under the former legislation) for the purposes of its continued application under subsection (2).

(4) Arbitration or legal proceedings under the former legislation relating to a Code pipeline that have commenced but not been completed when an access arrangement is approved in relation to the pipeline under the *Gas Pipelines Access (South Australia) Law* may be continued under the former legislation as if an access arrangement had not been so approved.



**Gas Pipelines Access (South Australia) Act 1997**

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(5) For the purposes of this section, arbitration proceedings will be taken to have commenced under the former legislation if a proponent of an access proposal has, in accordance with that legislation, asked the regulator to refer an access dispute to arbitration.

(6) An award of an arbitrator under the former legislation relating to a Code pipeline will have effect as a determination of an arbitrator under the *Gas Pipelines Access (South Australia) Law*.

**Subdivision 3—Amendment of Gas Act 1997**

**Amendment of s. 8—Functions**

**51.** Section 8 of the principal Act is amended by inserting after paragraph (d) of subsection (1) the following paragraph:

(da) the provision of advice in relation to safety or technical standards in the gas supply industry to the South Australian Independent Pricing and Access Regulator at that regulator's request; and

**Amendment of s. 11—Obligation to preserve confidentiality**

**52.** Section 11 of the principal Act is amended by inserting in subsection (2) "or the *Gas Pipelines Access (South Australia) Law*" after "assisting the Pricing Regulator".

**Amendment of s. 18—Obligation to preserve confidentiality**

**53.** Section 18 of the principal Act is amended by inserting in subsection (2) "or the *Gas Pipelines Access (South Australia) Law*" after "assisting the Technical Regulator".

**Amendment of s. 24—Licence fees and returns**

**54.** Section 24 of the principal Act is amended by inserting in subsection (3)(b) "and the *Gas Pipelines Access (South Australia) Act 1997*" after "this Act".

**Subdivision 4—Amendment of Petroleum Act 1940**

**Amendment of s. 80L—Minister may require operator to convey petroleum**

**55.** Section 80L of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) This section does not apply in relation to the conveyance of petroleum by means of a Code pipeline within the meaning of the *Gas Pipelines Access (South Australia) Law* for which there is an approved access arrangement under that Law.

**SCHEDULE 1**

*Third Party Access to Natural Gas Pipelines*

**PART 1**

**PRELIMINARY**

**Citation**

1. This Schedule and the *National Third Party Access Code for Natural Gas Pipeline Systems* set out in Schedule 2 or, if that Code is amended in accordance with this Schedule, that Code as so amended and in force for the time being may together be referred to as the *Gas Pipelines Access Law*.

**Definitions**

2. In this Law—

"ACCC" means the Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974* of the Commonwealth and includes a member of the Commission or a Division of the Commission performing functions of the Commission;

"adjacent area", in respect of a State or Territory, means the area that is identified in section 5A of the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth as the adjacent area in respect of that State or Territory;

"asset" means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes securities, choses in action and documents;

"Australian Competition Tribunal" means the Australian Competition Tribunal referred to in the *Trade Practices Act 1974* of the Commonwealth and includes a member of the Tribunal or a Division of the Tribunal performing functions of the Tribunal;

"civil penalty provision" means—

(a) section 13 or 40; or

(b) a provision of the Code that, under the regulations, is a civil penalty provision for the purposes of this Law;

"Code pipeline" has the same meaning as "covered pipeline" has in the Code;

"Code Registrar" means a person appointed to or acting in the position of Code Registrar appointed under the *Gas Pipelines Access (South Australia) Act 1997* of South Australia;

"Commonwealth Minister" means the local Minister within the meaning of the gas pipelines access legislation of the Commonwealth;

"commencement date", in relation to a provision of this Law, means the date on which that provision comes into operation for this scheme participant;

"conduct provision" means—

(a) section 13; or

(b) a provision of the Code that, under the Code, is a conduct provision for the purposes of this Law;

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**Gas Pipelines Access (South Australia) Act 1997**

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**"cross-boundary pipeline"** means a distribution pipeline that is situated in the jurisdictional areas of 2 or more scheme participants;

**"distribution pipeline"** means a pipeline—

- (a) that is described in the Code as a distribution pipeline and has not been reclassified as a transmission pipeline; or
- (b) that is classified in accordance with this Law as a distribution pipeline,

and includes any extension or expansion of such a pipeline that, under an access arrangement under the Code, is to be treated as part of the pipeline.

**"gas pipelines access legislation"**, in relation to a scheme participant, means—

- (a) in the case of South Australia—
  - (i) Parts 1, 2, 3, 4 and 5 of the *Gas Pipelines Access (South Australia) Act 1997* of South Australia; and
  - (ii) regulations in force under Part 3 of that Act; and
  - (iii) the *Gas Pipelines Access Law* (within the meaning of section 3(1) of that Act), as applying as a law of South Australia; and
- (b) in the case of Western Australia—
  - (i) provisions of an Act of Western Australia that substantially correspond to the provisions of Parts 1, 2, 3, 4 and 5 of the South Australian Act; and
  - (ii) regulations in force under the Western Australia Act that make provisions substantially corresponding to the provisions of regulations under Part 3 of the South Australian Act; and
  - (iii) provisions that substantially correspond to the provisions referred to in paragraph (a) of the definition of *Gas Pipelines Access Law* in section 3(1) of the South Australian Act; and
  - (iv) the provisions referred to in paragraph (b) of that definition, as applying as a law of Western Australia;
- (c) in the case of any other scheme participant—
  - (i) provisions of an Act of the scheme participant that substantially correspond to the provisions of Parts 1, 2, 4 and 5 of the South Australian Act; and
  - (ii) regulations in force under Part 3 of the South Australian Act, as applying as a law of that scheme participant; and
  - (iii) the *Gas Pipelines Access Law* (within the meaning of section 3(1) of the South Australian Act), as applying as a law of that scheme participant;

**"jurisdictional area"**, in relation to a scheme participant, means—

- (a) if the scheme participant is the Commonwealth—
  - (i) if the gas pipelines access legislation in force in the Commonwealth applies in the adjacent area of a State or the Northern Territory because of section 9(1A) or 11(1A) of the P(SL) Act—the adjacent area in respect of that State or Territory; and
  - (ii) if the gas pipelines access legislation in force in the Commonwealth applies in an external Territory under section 8 of the *Gas Pipelines Access (Commonwealth) Act 1997* of the Commonwealth—the area within the limits of that Territory and the adjacent area in respect of that Territory; and
  - (iii) if the gas pipelines access legislation in force in the Commonwealth applies in the Jervis Bay Territory under section 8 of the *Gas Pipelines Access (Commonwealth) Act 1997* of the Commonwealth—the area within the limits of that Territory; and
- (b) if the scheme participant is a State or the Northern Territory—
  - (i) the area within the limits of that State or Territory and includes all waters in the area described in Schedule 2 to the P(SL) Act that relates to that State or Territory that are on the landward side of the adjacent area in respect of that State or Territory; and
  - (ii) if the gas pipelines access legislation of that State or Territory applies in the adjacent area in respect of that State or Territory because of section 9(1) or 11(1) of the P(SL) Act—the adjacent area in respect of that State or Territory; and
  - (iii) if the gas pipelines access legislation of that State or Territory applies in an external Territory in accordance with an Act in force in the Commonwealth—the area within the limits of that external Territory and the adjacent area in respect of that external Territory; and
- (c) if the scheme participant is the Australian Capital Territory—
  - (i) the area within the limits of that Territory; and
  - (ii) if the gas pipelines access legislation of that Territory applies in an external Territory in accordance with an Act in force in the Commonwealth—the area within the limits of that external Territory and the adjacent area in respect of that external Territory; and
  - (iii) if the gas pipelines access legislation in force in that Territory applies in the Jervis Bay Territory in accordance with an Act in force in the Commonwealth—the area within the limits of that Territory;

**"liabilities"** means all liabilities, duties and obligations, whether actual, contingent or prospective;

**Gas Pipelines Access (South Australia) Act 1997**

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**"National Gas Agreement"** means the Natural Gas Pipelines Access Agreement relating to third party access to natural gas pipeline systems entered into by the Commonwealth, the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania and the Australian Capital Territory and the Northern Territory on 7 November 1997;

**"natural gas"** means a substance—

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

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

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

- (a) unless paragraph (b) applies, anything upstream of a prescribed exit flange on a pipeline conveying natural gas from a prescribed gas processing plant; or
- (b) if a connection point upstream of an exit flange on such a pipeline is prescribed, anything upstream of that point; or
- (c) a gathering system operated as part of an upstream producing operation; or
- (d) any tanks, reservoirs, machinery or equipment used to remove or add components to or change natural gas (other than odourisation facilities) such as a gas processing plant; or
- (e) anything downstream of the connection point to a consumer;

**"P(SL) Act"** means the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth;

**"regulation"** means a regulation made under Part 3 of the *Gas Pipelines Access (South Australia) Act 1997* of South Australia;

**"regulatory provision"** means—

- (a) section 40; or
- (b) a provision of the Code that, under the Code, is a regulatory provision for the purposes of this Law;

**"relevant appeals body"** means—

- (a) in relation to a decision of the Commonwealth Minister or the ACCC, the Australian Competition Tribunal;
- (b) in relation to a decision of the local Minister, the designated appeals body;

- (c) in relation to a decision of the local Regulator, the local appeals body;

**"relevant Minister"**—

- (a) in relation to a scheme participant, means the local Minister within the meaning of the gas pipelines access legislation of that scheme participant;
- (b) in relation to a decision under the Code as to whether a transmission pipeline that is, or is to be, situated wholly within the jurisdictional area of this scheme participant should be, or should cease to be, a covered pipeline within the meaning of the Code, means the designated Minister;
- (c) in relation to a decision under the Code as to whether a transmission pipeline that is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants, should be, or should cease to be, a covered pipeline within the meaning of the Code, means the Commonwealth Minister;
- (d) in relation to a decision under the Code as to whether a distribution pipeline that is, or is to be, situated wholly within the jurisdictional area of this scheme participant should be, or should cease to be, a covered pipeline within the meaning of the Code, means the local Minister;
- (e) in relation to a decision under the Code as to whether a distribution pipeline that is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants should be, or should cease to be, a covered pipeline within the meaning of the Code, means the local Minister for the scheme participant with which the pipeline is most closely connected, as determined under Part 3;

**"relevant Regulator"**—

- (a) in relation to a transmission pipeline, or a matter concerning a transmission pipeline or service provider of a transmission pipeline, means the ACCC;
- (b) in relation to a distribution pipeline, or a matter concerning a distribution pipeline or service provider of a distribution pipeline, that is, or is to be, situated wholly within the jurisdictional area of this scheme participant, means the local Regulator;
- (c) in relation to a distribution pipeline, or a matter concerning a distribution pipeline or service provider of a distribution pipeline, that is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants, means the local Regulator for the scheme participant with which the pipeline is most closely connected, as determined under Part 3;

**"rights"** means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

**"scheme participant"** means a State or Territory or the Commonwealth if, under section 3, it is a scheme participant;

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

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

**Gas Pipelines Access (South Australia) Act 1997**

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**"transmission pipeline"** means a pipeline—

- (a) that is described in the Code as a transmission pipeline and has not been reclassified as a distribution pipeline; or
- (b) that is classified in accordance with this Law as a transmission pipeline,

and includes any extension or expansion of such a pipeline that, under an access arrangement under the Code, is to be treated as part of the pipeline.

**Scheme participants**

**3.** (1) The Commonwealth, each of the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, the Australian Capital Territory and the Northern Territory are scheme participants.

(2) If—

- (a) the legislature of a scheme participant, other than South Australia, Western Australia and Tasmania—
  - (i) does not enact a law that substantially corresponds to Parts 1, 2, 4 and 5 of the South Australian Act before the expiration of one year after the enactment of that Act; or
  - (ii) having enacted such a law within that period, repeals it; or
- (b) such a law, having been enacted, is not in operation before the expiration of that period,

and the relevant Ministers of the other scheme participants so declare in writing, the first-mentioned scheme participant ceases to be a scheme participant.

(3) If—

- (a) Parts 1, 2, 3, 4 and 5 of the South Australian Act are not in operation before the expiration of one year after its enactment; and
- (b) the relevant Ministers of the other scheme participants so declare in writing,

South Australia ceases to be a scheme participant.

(4) If—

- (a) the legislature of Western Australia does not enact a law—
  - (i) that contains provisions that substantially correspond to Parts 1, 2, 3, 4 and 5 of the South Australian Act; and
  - (ii) that contains provisions that substantially correspond to the provisions referred to in paragraph (a) of the definition of *Gas Pipelines Access Law* in section 3(1) of the South Australian Act; and
  - (iii) that provides for the provisions referred to in paragraph (b) of that definition to apply as a law of Western Australia; and

(iv) under which there are in force regulations that substantially correspond to the regulations under Part 3 of the South Australian Act,

before the expiration of one year after the enactment of that Act; or

(b) the legislature of Western Australia, having enacted such a law within that period, repeals it; or

(c) such a law, having been enacted, is not in operation before the expiration of that period,

and the relevant Ministers of the other scheme participants so declare in writing, Western Australia ceases to be a scheme participant.

(5) If—

(a) the relevant Ministers of the scheme participants, other than Tasmania, are of the opinion that, in accordance with the *National Gas Agreement*, Tasmania is required to seek the enactment by its legislature of a law that corresponds to Parts 1, 2, 4 and 5 of the South Australian Act; and

(b) those relevant Ministers give notice accordingly to the relevant Minister of Tasmania; and

(c) any of the following circumstances occur—

(i) the legislature of Tasmania does not enact a law that substantially corresponds to Parts 1, 2, 4 and 5 of the South Australian Act before the expiration of 6 months after the giving of the notice; or

(ii) the legislature of Tasmania, having enacted such a law within that period, repeals it; or

(iii) such a law, having been enacted, is not in operation within that period,

and the relevant Ministers of the other scheme participants so declare in writing, Tasmania ceases to be a scheme participant.

(6) If the Commonwealth or a State or Territory ceases to be a scheme participant, the Commonwealth, State or Territory becomes a scheme participant again if—

(a) it is a party to the *National Gas Agreement*; and

(b) there is in force a law of the Commonwealth, State or Territory of a kind that, if not enacted and in operation, would cause the Commonwealth, State or Territory to cease to be a scheme participant on a declaration under this section.

(7) If the Commonwealth or a State or Territory becomes a scheme participant under subsection (6), the Commonwealth, State or Territory ceases to be a scheme participant if—

(a) there ceases to be in force a law of the Commonwealth, State or Territory of the kind referred to in paragraph (b) of that subsection; and

(b) the relevant Ministers of the other scheme participants so declare in writing.



**Gas Pipelines Access (South Australia) Act 1997**

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(8) If, at any time, all scheme participants agree that the Commonwealth or a specified State or Territory will cease to be a scheme participant on a specified date, the Commonwealth, State or Territory ceases to be a scheme participant on that date.

(9) A notice must be published in the *South Australian Government Gazette* of the date on which the Commonwealth or a State or Territory becomes, or ceases to be, a scheme participant under subsection (2), (3), (4), (5), (6), (7) or (8).

(10) If the legislature of the Commonwealth or a State or Territory enacts a law while it is a scheme participant that, in the unanimous opinion of the relevant Ministers of the other scheme participants, is inconsistent with this Law, those other scheme participants may give notice to the relevant Minister of the Commonwealth, State or Territory to the effect that, if the inconsistent law remains in force as an inconsistent law for more than 6 months after the notice is given, the other scheme participants may declare that the Commonwealth, State or Territory has ceased to be a scheme participant.

(11) The Commonwealth or a State or Territory ceases to be a scheme participant upon publication in the *South Australian Government Gazette* of a declaration made by the Ministers of the other scheme participants in accordance with subsection (10).

(12) In this section—

"**South Australian Act**" means the *Gas Pipelines Access (South Australia) Act 1997* of South Australia.

**Interpretation generally**

4. The Appendix to this Schedule contains miscellaneous provisions relating to the interpretation of this Law.

**PART 2**  
**NATIONAL THIRD PARTY ACCESS CODE FOR**  
**NATURAL GAS PIPELINE SYSTEMS**

**The Code**

5. A provision of the Code that is inconsistent with a provision of this Law (other than the Code) or of an Act of the legislature is of no effect to the extent of the inconsistency.

**Amendment of Code**

6. (1) If the relevant Ministers of the scheme participants have received advice in accordance with any relevant provisions of the Code relating to amendment of the Code, the relevant Ministers may, by agreement in accordance with this Law, amend the Code to make provision for or with respect to any matter relevant to the subject matter of the Code as set out in Schedule 2 to the *Gas Pipelines Access (South Australia) Act 1997* of South Australia, as enacted.

(2) An agreement under subsection (1) must be made by all the relevant Ministers unless subsection (3) applies.

(3) An agreement under subsection (1) may be made by two-thirds of the relevant Ministers if it relates only to an amendment that—

- (a) is not an amendment of a core provision within the meaning of the Code; and
- (b) does not extend the application of section 38; and
- (c) does not insert a provision in the Code dealing with a matter not dealt with in the Code as in force immediately before the amendment is made.

(4) An agreement under subsection (1) is of no effect to the extent that it amends, or purports to amend, or makes, or purports to make, provision inconsistent with, a provision of the Code that specifies—

- (a) the matters about which the NCC must be satisfied in making a recommendation under the Code as to whether a pipeline should be, or should cease to be, a covered pipeline within the meaning of the Code; or
- (b) the matters about which the relevant Minister must be satisfied in deciding under the Code whether a pipeline should be, or should cease to be, a covered pipeline within the meaning of the Code.

(5) The relevant Ministers must ensure that—

- (a) a copy of each agreement made under this section is published in the *South Australian Government Gazette*; and
- (b) a notice of the making of each such agreement is published in a daily newspaper circulating generally in Australia.

(6) An amendment of the Code under this section has effect on and from the day on which the copy of the agreement for the amendment is published in the *South Australian Government Gazette* or, if the agreement provides that the amendment comes into operation on a later day, on and from that later day.

(7) All conditions and preliminary steps required for the making of an amendment of the Code are to be presumed to have been satisfied and performed, in the absence of evidence to the contrary.

#### **Availability of copies of amended Code**

7. If the Code has been amended in accordance with section 6, the Code Registrar—

- (a) must make a copy of the Code, as so amended, available for inspection during ordinary working hours on business days at such place or places as are prescribed by the regulations; and
- (b) must ensure that copies of the Code, as so amended, are available for purchase.

#### **Evidence**

8. A document purporting to be a copy of the Code as amended in accordance with section 6 and endorsed with a certificate of the Code Registrar certifying that the document is such a copy is evidence that the document is such a copy.

### **PART 3 PIPELINES**

#### **Definitions**

9. (1) In this Part—

"**authorised applicant**", in relation to a pipeline, means—

- (a) a service provider of the pipeline;
- (b) the ACCC;

**Gas Pipelines Access (South Australia) Act 1997**

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- (c) the NCC;
- (d) a person who is a local Regulator within the meaning of the gas pipelines access legislation of a scheme participant;

"**classification**" includes re-classification;

"**classification criteria**", in relation to a pipeline, means the criteria referred to in subsection (2);

"**determination**" includes re-determination;

"**determination criteria**", in relation to a pipeline and a scheme participant, means the criteria referred to in subsection (3);

"**pipeline**" includes proposed pipeline.

(2) The classification criteria, in relation to a pipeline, are—

(a) whether the primary function of the pipeline is—

- (i) to convey natural gas to a market (which is the primary function of a transmission pipeline); or
- (ii) to reticulate natural gas within a market (which is the primary function of a distribution pipeline);

(b) whether the characteristics of the pipeline are those of a transmission pipeline or a distribution pipeline having regard to the characteristics and classification of the pipelines specified in the Code as transmission pipelines or distribution pipelines and to—

- (i) the diameter of the pipeline;
- (ii) the pressure at which it is designed to operate;
- (iii) the number of points at which gas can be fed into it;
- (iv) the extent of the area served or to be served by it;
- (v) its linear or dendritic configuration.

(3) The determination criteria, in relation to a pipeline and a scheme participant, are—

- (a) whether more gas is to be delivered by the pipeline in the jurisdictional area of that scheme participant than in the jurisdictional area of any other scheme participant;
- (b) whether more customers to be served by the pipeline are resident in the jurisdictional area of that scheme participant than in the jurisdictional area of any other scheme participant;
- (c) whether more of the network for the pipeline is in the jurisdictional area of that scheme participant than in the jurisdictional area of any other scheme participant;

- (d) whether that scheme participant has greater prospects for growth in the gas market served by the pipeline than any other scheme participant;
- (e) whether the regional economic benefits from competition are likely to be greater for that scheme participant than for other scheme participants.

**Application for classification and determination of close connection for purposes of coverage under Code**

**10.** (1) An authorised applicant may apply under this section—

- (a) for the classification of a pipeline as a transmission pipeline or a distribution pipeline; and
- (b) if the pipeline is, or is to be, situated in the jurisdictional area of 2 or more scheme participants and is classified as a result of the application as a distribution pipeline, for the determination of the scheme participant with which the pipeline is most closely connected.

(2) If a distribution pipeline is, or is to be, extended so that it becomes, or will become, a cross-boundary pipeline, an authorised applicant may apply under this section for a determination of the scheme participant with which the pipeline is most closely connected.

(3) An application under subsection (1) or (2) must be made in the form approved by the Code Registrar—

- (a) to the relevant Minister of a scheme participant in the jurisdictional area of which any part of the pipeline is or is to be situated; or
- (b) to the Commonwealth Minister.

(4) A Minister referred to in subsection (3) to whom the application is made must forthwith give notice of the application—

- (a) to each other Minister to whom the application could have been made; and
- (b) to the Code Registrar.

(5) The Ministers to whom the application is made or notified must, as soon as possible—

- (a) in the case of an application under subsection (1)—
  - (i) classify the pipeline, having regard to the classification criteria, as a transmission pipeline or a distribution pipeline; and
  - (ii) if the pipeline is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants, and is classified as a distribution pipeline, determine the scheme participant with which the pipeline is most closely connected, having regard to the determination criteria and such other matters as the Ministers consider relevant; or
- (b) in the case of an application under subsection (2), determine the scheme participant with which the pipeline is most closely connected, having regard to the determination criteria and such other matters as the Ministers consider relevant,

but, if the Ministers are unable to agree within a reasonable time on the classification or determination, they must notify the Code Registrar accordingly.

**Gas Pipelines Access (South Australia) Act 1997**

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(6) If the Ministers agree on a classification and, if applicable, determination, they must cause the Code Registrar and the relevant Ministers of all other scheme participants to be notified of the decision.

(7) The relevant Minister of a scheme participant may, within 14 days after receiving notification under subsection (6), object to the classification or determination by writing given to the Code Registrar.

(8) If the Code Registrar receives no objection within the period referred to in subsection (7), the Code Registrar—

- (a) must record the classification of the pipeline in accordance with the agreement under subsection (6); and
- (b) must record the determination (if any) under that subsection; and
- (c) must notify the NCC accordingly.

**Classification when Ministers do not agree**

**11.** (1) If the Code Registrar—

- (a) is not notified within 42 days after receiving notice of an application under section 10(1)—
  - (i) that a pipeline has been classified by the Ministers as a transmission pipeline or a distribution pipeline; and
  - (ii) if it is classified as a distribution pipeline and is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants, that the scheme participant with which it is most closely connected has been determined; or
- (b) receives an objection under section 10(7),

the Code Registrar must notify the NCC that the classification or determination has not been made or that an objection has been received.

(2) The NCC must, within 14 days after receiving a notification under subsection (1), give to the Commonwealth Minister and the relevant Ministers of the scheme participants—

- (a) its recommendation as to the classification of the pipeline (having regard to the classification criteria); and
- (b) if the pipeline is classified as a distribution pipeline and is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants, its determination (having regard to the determination criteria) as to the scheme participant with which the pipeline is most closely connected.

(3) Unless the Commonwealth Minister and the relevant Ministers unanimously agree within 14 days after receiving the recommendation to classify and, in the case of a distribution pipeline that is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants, make a determination in respect of, the pipeline otherwise than in accordance with the recommendation of the NCC—

- (a) the pipeline is classified in accordance with the NCC's recommendation; and

- (b) if the pipeline is classified as a distribution pipeline and is, or is to be, situated in the jurisdictional areas of 2 or more scheme participants, the scheme participant with which the pipeline is most closely connected is the scheme participant determined by the NCC.

**Code Registrar to record classification etc.**

**12.** The Code Registrar—

- (a) must record the classification of the pipeline in accordance with the decision or recommendation, as the case requires, under section 11; and
- (b) if the pipeline is classified as a distribution pipeline and is a cross-boundary pipeline, must record the scheme participant with which the pipeline is most closely connected in accordance with the decision or recommendation, as the case requires, under section 11; and
- (c) must notify the NCC accordingly.

**Preventing or hindering access<sup>1</sup>**

**13.** (1) A service provider or a person who is a party to an agreement with a service provider relating to a service provided by means of a Code pipeline or, as the result of an arbitration, is entitled to such a service or an associate of a service provider or such a person must not engage in conduct for the purpose of preventing or hindering the access of another person to a service provided by means of the Code pipeline.

(2) For the purposes of subsection (1), a person is deemed to engage in conduct for a particular purpose if—

- (a) the conduct is or was engaged in for that purpose or for a purpose that includes, or included, that purpose; and
- (b) that purpose is or was a substantial purpose.

(3) A person may be taken to have engaged in conduct for the purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

(4) Subsection (3) does not limit the manner in which the purpose of a person may be established for the purpose of subsection (1).

(5) In this section—

- (a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including refusing to supply a service or, without reasonable grounds, limiting or disrupting a service, or 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;
- (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.

**Gas Pipelines Access (South Australia) Act 1997**

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(6) Subsection (1) does not apply to conduct engaged in in accordance with an agreement, if the agreement was in force on 30 March 1995.

(7) In this section—

"**associate**", in relation to a person, has the meaning it would have under Division 2 of Part 1.2 of the *Corporations Law* if sections 13, 14, 16(2) and 17 of that Law were repealed.

<sup>1.</sup> Examples of conduct which may be prohibited if the requisite purpose is established include—

- (a) refusing to supply, or limiting or disrupting the supply of, a service to a user or prospective user for technical or safety reasons without reasonable grounds;
- (b) refusing to sell a marketable parcel (within the meaning of the Code) on reasonable terms and conditions.

## **PART 4 ARBITRATION OF ACCESS DISPUTES**

### **Definitions**

**14.** In this Part—

"**access dispute**" means a dispute between a service provider and another person that, in accordance with the Code, may be referred to arbitration under this Part;

"**arbitrator**" means the relevant Regulator or a person appointed by the relevant Regulator to conduct an arbitration relating to an access dispute;

"**party**" means a service provider or other person involved in an access dispute.

### **Application of Part**

**15.** (1) This Part applies if—

- (a) in accordance with the Code, a service provider or another person notifies the relevant Regulator that an access dispute exists; and
- (b) notification of the dispute is not withdrawn in accordance with the Code.

(2) Subject to this Part, the provisions of the Code applying to an arbitration of an access dispute apply to an arbitration under this Part.

### **Person to conduct arbitration**

**16.** (1) The relevant Regulator must conduct the arbitration or appoint a person to do so.

(2) The relevant Regulator may terminate the appointment of a person to conduct the arbitration if—

- (a) the person is convicted of an indictable offence or an offence that, if committed in the jurisdiction of this scheme participant, would be an indictable offence; or
- (b) the person is an insolvent under administration within the meaning of the *Corporations Law*; or
- (c) the relevant Regulator is satisfied that the person is mentally or physically incapable of carrying out the duties of arbitrator,

and may appoint another person to conduct the arbitration.

**Where ACCC conducts arbitration**

**17.** (1) For the purposes of a particular arbitration where it is the relevant Regulator, the ACCC is to be constituted by 2 or more members of the ACCC nominated in writing by the Chairperson of the ACCC.

(2) Subject to subsection (3), the Chairperson is to preside at an arbitration.

(3) If the Chairperson is not a member of the ACCC as constituted under subsection (1) in relation to a particular arbitration, the Chairperson must nominate a member of the ACCC to preside at the arbitration.

(4) If a member of the ACCC who is one of the members who constitute the ACCC for the purposes of a particular arbitration—

- (a) stops being a member of the ACCC; or
- (b) for any reason, is not available for the purpose of the arbitration,

the Chairperson must either—

- (c) direct that the ACCC is to be constituted for the purposes of finishing the arbitration by the remaining member or members; or
- (d) direct that the ACCC is to be constituted for that purpose by the remaining member or members together with one or more other members of the ACCC.

(5) If a direction under subsection (4) is given, the ACCC as constituted in accordance with the direction must continue and finish the arbitration and may, for that purpose, have regard to any record of the proceedings of the arbitration made by the ACCC as previously constituted.

(6) If the ACCC is constituted for an arbitration by 2 or more members of the ACCC, any question before the ACCC is to be decided—

- (a) unless paragraph (b) applies, according to the opinion of the majority of those members; or
- (b) if the members are evenly divided on a question, according to the opinion of the member who is presiding.

**Hearing to be in private**

**18.** (1) Subject to subsection (2), an arbitration hearing is to be in private.

(2) If the parties agree, an arbitration hearing or part of an arbitration hearing may be conducted in public.

(3) The arbitrator may give written directions as to the persons who may be present at an arbitration hearing that is conducted in private.

(4) In giving directions under subsection (3), the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality.

**Right to representation**

**19.** In an arbitration hearing under this Part, a party may appear in person or be represented by someone else.



**Gas Pipelines Access (South Australia) Act 1997**

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**Procedure**

**20.** (1) In an arbitration hearing under this Part, the arbitrator—

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) must act as speedily as a proper consideration of the dispute allows, having regard to the need carefully and quickly to inquire into and investigate the dispute and all matters affecting the merits, and fair settlement, of the dispute; and
- (c) may gather information about any matter relevant to the access dispute in any way the arbitrator thinks appropriate.

(2) Subject to the Code, the arbitrator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties in the arbitration hearing, and may require that the cases be presented within those periods.

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

(4) The arbitrator may determine that an arbitration hearing is to be conducted by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) any other means of communication.

**Particular powers of arbitrator**

**21.** (1) The arbitrator may do any of the following things for the purpose of arbitrating an access dispute—

- (a) give a direction in the course of, or for the purpose of, an arbitration hearing;
- (b) hear and determine the arbitration in the absence of a party who has been given notice of the 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 arbitrator may make an interim determination.

**Determination**

**22.** (1) The arbitrator must make a determination in writing, signed by the arbitrator, and must include in the determination a statement of reasons for making the determination.

(2) If a determination of an arbitrator under this Part 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,

the arbitrator may correct the determination or the Court, on the application of a party, may make an order correcting the determination.

**Contempt**

**23.** A person must not do any act or thing in relation to the arbitration of an access dispute that would be a contempt of court if the arbitrator were a court of record.

Maximum penalty: Imprisonment for 6 months.

**Disclosure of information**

**24.** (1) An arbitrator may give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of an arbitration unless the person has the arbitrator's permission.

- (2) A person must not contravene an order under subsection (1).

Maximum penalty: Imprisonment for 6 months.

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

**25.** (1) The arbitrator may take evidence on oath or affirmation and for that purpose the arbitrator may administer an oath or affirmation.

(2) The arbitrator may summon a person to appear before the arbitrator to give evidence and to 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 arbitrating an access dispute under this Part.

**Failing to attend as a witness**

**26.** A person who is served, as prescribed by the regulations, with a summons to appear as a witness before the arbitrator must not, without reasonable excuse—

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

Maximum penalty: Imprisonment for 6 months.

**Failing to answer questions etc.**

**27.** (1) A person appearing as a witness before the arbitrator must not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation; or
- (b) refuse or fail to answer a question that the person is required to answer by the arbitrator; or
- (c) refuse or fail to produce a document that he or she is required to produce by a summons under this Part served on him or her as prescribed.

Maximum penalty: Imprisonment for 6 months.

**Gas Pipelines Access (South Australia) Act 1997**

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(2) It is a reasonable excuse for the purposes of subsection (1) for an individual 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 tend to incriminate the individual or to expose the individual to a penalty.

(3) Subsection (2) does not limit what is a reasonable excuse for the purposes of subsection (1).

**Intimidation etc.**

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

Maximum penalty: Imprisonment for 12 months.

**Party may request arbitrator to treat material as confidential**

**29.** (1) A party to an arbitration hearing may—

- (a) inform the arbitrator that, in the party's opinion, a specified part of a document contains confidential information; and
- (b) request the arbitrator not to give a copy of that part to another party.

(2) On receiving a request, the arbitrator 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 arbitrator complying with the request.

(3) If there is an objection to the arbitrator complying with the request, the party objecting may inform the arbitrator of the objection and of the reasons for it.

(4) After considering—

- (a) a request; and
- (b) any objection; and
- (c) any further submissions that any party has made in relation to the request,

the arbitrator may decide—

- (d) not to give the other party or parties a copy of so much of the document as contains confidential information that the arbitrator thinks should not be given; or

- (e) to give the other party or another specified party a copy of the whole, or part, of the part of the document that contains confidential information subject to a condition that the party give an undertaking not to disclose the information to another person except to the extent specified by the arbitrator and subject to such other conditions as the arbitrator determines.

**Costs**

**30.** The costs of an arbitration, including the fees and costs of the arbitrator, are in the discretion of the arbitrator who may—

- (a) direct to and by whom and in what manner the whole or any part of those costs is to be paid;
- (b) tax or settle the amount of costs to be so paid or any part of those costs;
- (c) award costs to be taxed or settled as between party and party or as between solicitor and client.

**Appeal to Court**

**31.** (1) A party may appeal to the Court, on a question of law, from a determination of an arbitrator under this Part.

(2) An appeal must be instituted—

- (a) not later than the 28th day after the day on which the decision is made or within such further period as the Court (whether before or after the end of that day) allows; and
- (b) in accordance with the relevant Rules of Court.

(3) The Court may make an order staying or otherwise affecting the operation or implementation of the determination of the arbitrator that the Court thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

**PART 5  
PROCEEDINGS FOR BREACH OF LAW**

**Proceedings**

**32.** (1) A person may not bring civil proceedings in respect of a matter arising under this Law except in accordance with this Part or Part 6.

(2) The relevant Regulator may, in accordance with this Part, bring civil proceedings in respect of a civil penalty provision or a regulatory provision.

(3) The relevant Regulator or any other person may, in accordance with this Part, bring civil proceedings in respect of a conduct provision.

(4) Nothing in subsection (1) or (2) affects the right of a person—

- (a) to bring civil proceedings in respect of any matter or thing, or seek any relief or remedy, if the cause of action arises, or the relief or remedy is sought, on grounds that do not rely on this Law; or
- (b) to apply for an order for review under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth; or

**Gas Pipelines Access (South Australia) Act 1997**

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- (c) to bring proceedings for judicial review of a decision under this Law of the local appeals body, local Minister, local Regulator or an arbitrator appointed under Part 4.

**Criminal proceedings do not lie**

**33.** (1) Criminal proceedings do not lie against a person by reason only that the person—

- (a) has contravened a provision of this Law; or
- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
- (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) has conspired with others to contravene such a provision.

(2) Subsection (1) does not apply in respect of a provision of this Law for an offence against which a penalty is prescribed by this Law.

**Civil penalty**

**34.** (1) The relevant Regulator may apply to the Court for an order under this Part in respect of a contravention by a person of a civil penalty provision or the doing by a person of any other thing mentioned in subsection (3).

(2) An application under subsection (1) may not be made in respect of a breach of a civil penalty provision if the breach is or has been the subject of an application for an order under the gas pipelines access legislation of another scheme participant.

(3) If the Court is satisfied that a person—

- (a) has contravened a civil penalty provision; or
- (b) has attempted to contravene such provision; or
- (c) has aided, abetted, counselled or procured a person to contravene such a provision; or
- (d) has induced, or attempted to induce, a person whether by threats or promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) has conspired with others to contravene such a provision,

the Court may order the person to pay to the appropriate Minister such pecuniary penalty, in respect of each act or omission by the person to which this section applies, as the Court determines to be appropriate having regard to all relevant matters including—

- (g) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and

- (h) the circumstances in which the act or omission took place; and
- (i) whether the person has previously been found by the Court in proceedings under this Part to have contravened a civil penalty provision.

(4) The pecuniary penalty payable under subsection (3) must not exceed the penalty prescribed by the regulations for the act or omission to which this section applies.

(5) In this section—

**"appropriate Minister"** means—

- (a) in relation to a contravention of a civil penalty provision relating to a transmission pipeline, or the service provider of a transmission pipeline, the Commonwealth Minister;
- (b) in relation to a contravention of a civil penalty provision relating to a distribution pipeline, or the service provider of a distribution pipeline, situated in the jurisdictional area of 2 or more scheme participants, the local Minister within the meaning of the gas pipelines access legislation of the scheme participant with which the pipeline is most closely connected;
- (c) in any other case, the local Minister.

### **Injunctions**

**35.** (1) If, on an application in accordance with subsection (2), the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of a regulatory provision or a conduct provision; or
- (b) attempting to contravene a regulatory provision or a conduct provision,

the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) An application under subsection (1) may be made—

- (a) in the case of a regulatory provision, or a conduct provision, relating to a transmission pipeline or a service provider of a transmission pipeline, by the ACCC;
- (b) in the case of a regulatory provision, or a conduct provision, relating to a distribution pipeline or the service provider of a distribution pipeline, by the local Regulator;
- (c) in the case of any conduct provision, by any person other than the ACCC or the local Regulator (except as provided in paragraphs (a) and (b)).

(3) If an application for an injunction under subsection (1) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in subsection (1).

(4) If, in the opinion of the Court, it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(5) The Court may rescind or vary an injunction granted under subsection (1) or (3).

**Gas Pipelines Access (South Australia) Act 1997**

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(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

(7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

(8) If an application is made to the Court by the relevant Regulator for the grant of an injunction under this section, the Court will not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(9) Nothing in this section affects any other power the Court may have to grant injunctive relief.

**Actions for damages for contravention of conduct provision**

**36.** (1) A person who suffers loss or damage by conduct of another that was done in contravention of a conduct provision may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

(2) An action under subsection (1) may be commenced at any time within 3 years after the date on which the cause of action accrued and may not be commenced after that period.

(3) A reference in subsection (1) to a person involved in a contravention of a conduct provision is a reference to a person who—

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

**Declaratory relief**

**37.** (1) The Court, on an application under subsection (2), will, by order, declare whether or not the person to which the application relates has contravened a regulatory provision or conduct provision.

- (2) An application under subsection (1) may be made—
- (a) in the case of a regulatory provision, or a conduct provision, relating to a transmission pipeline or a service provider of a transmission pipeline, by the ACCC;
  - (b) in the case of a regulatory provision, or a conduct provision, relating to a distribution pipeline or a service provider of a distribution pipeline, by the local Regulator;
  - (c) in the case of any conduct provision, by any person other than the ACCC or the local Regulator (except as provided in paragraphs (a) and (b)).
- (3) If the order declares the person to have contravened a regulatory provision or conduct provision, the order may include one or more of the following:
- (a) a requirement that the person cease, within a specified period, the act, activity or practice constituting the contravention;
  - (b) a requirement that the person take such action, or adopt such practice, as the Court requires for remedying the contravention or preventing a recurrence of the contravention.

## PART 6 ADMINISTRATIVE APPEALS

### Application for review

**38.** (1) A person adversely affected by a decision to which this section applies may apply to the relevant appeals body for a review of the decision.

(2) The application must be made, in accordance with this Part and any applicable law governing the practice and procedure of the relevant appeals body, within 14 days after the decision is made.

(3) The relevant appeals body must make its determination on the review within 90 days after receiving the application for review.

(4) The relevant appeals body may extend, or further extend, the period referred to in subsection (3) by a period of 30 days if it considers that the matter cannot be dealt with properly without the extension either because of its complexity or because of other special circumstances.

(5) If the relevant appeals body extends the period, it must, before the end of the period, notify the applicant of the extension and the reasons for it.

(6) An application under this section—

(a) that relates to a decision under subsection (13)(c) or section 39(1) does not operate to stay the decision;

(b) in any other case, operates to stay the decision unless, in the case of a decision under subsection (13)(b) or (d), the relevant appeals body otherwise determines.

(7) On the application of a party to the proceedings under this section, the relevant appeals body may conduct the proceedings in the absence of the public.

(8) The relevant appeals body may require the relevant Regulator to give information and other assistance, and to make reports, as specified by the appeals body.



**Gas Pipelines Access (South Australia) Act 1997**

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(9) In proceedings under this section, the relevant appeals body may make an order affirming, or setting aside or varying immediately or as from a specified future date, the decision under review and, for the purposes of the review, may exercise the same powers with respect to the subject matter of the decision as may be exercised with respect to that subject matter by the person who made the decision.

(10) The relevant appeals body may make such orders (if any) as to costs in respect of a proceeding as it thinks fit.

(11) The relevant appeals body may refuse to review a decision if it considers that the application for review is trivial or vexatious.

(12) A determination by the relevant appeals body on the review of a decision has the same effect as if it were made by the person who made the decision.

(13) This section applies to a decision—

- (a) that a pipeline or proposed pipeline is, or is not, or ceases to be, or does not cease to be, a Code pipeline;
- (b) to add to, or to waive, the requirement under the Code that a service provider be a body corporate or statutory authority or not be a producer, purchaser or seller of natural gas or relating to the separation of certain activities of a service provider;
- (c) not to approve a contract, arrangement or understanding between a service provider and an associate of a service provider;
- (d) relating to any other matter that, under the Code, is a decision to which this section applies.

**Merits review of access arrangements**

**39.** (1) If the decision of the relevant Regulator is—

- (a) to draft and approve an access arrangement; or
- (b) to draft and approve revisions of an access arrangement,

either in place of an access arrangement or revisions submitted for approval by a service provider or because a service provider fails to submit an access arrangement or revisions as required by the Code—

- (c) the service provider; or
- (d) a person who made a submission to the relevant Regulator on the access arrangement or revisions submitted by the service provider and whose interests are adversely affected by the decision,

may apply to the relevant appeals body for a review of the decision.

(2) An application under subsection (1)—

- (a) may be made only on the grounds, to be established by the applicant—
  - (i) of an error in the relevant Regulator's finding of facts; or

- (ii) that the exercise of the relevant Regulator's discretion was incorrect or was unreasonable having regard to all the circumstances; or
    - (iii) that the occasion for exercising the discretion did not arise; and
  - (b) may not raise any matter that was not raised in submissions to the relevant Regulator before the decision was made.
- (3) An application under subsection (1) must give details of the grounds for making the application.
- (4) In a review of a decision under this section, the relevant appeals body may give directions to the parties excluding from the review specified facts, findings, matters or actions that the relevant appeals body considers should be excluded having regard to—
- (a) the likelihood of the decision being varied or set aside on account of those facts, findings, matters or actions;
  - (b) the significance to the parties of those facts, findings, matters or actions;
  - (c) the amount of money involved;
  - (d) any other matters that the relevant appeals body considers relevant.
- (5) The relevant appeals body, in reviewing a decision under this section must not consider any matter other than—
- (a) the application under subsection (1) and submissions in support of it (other than any matter not raised in submissions before the decision was made) and any written submissions made to the relevant Regulator before the decision was made;
  - (b) the access arrangement and the access arrangement information prepared by the service provider in accordance with the Code;
  - (c) any reports relied on by the relevant Regulator before the decision was made;
  - (d) any draft decision, and submissions on any draft decision made to the relevant Regulator;
  - (e) the decision of the relevant Regulator and the written record of it and any written reasons for it;
  - (f) the transcript (if any) of any hearing conducted by the relevant Regulator.
- (6) Except as otherwise provided in this section, section 38 (except subsections (1) and (13)) applies to an application under this section.

**Gas Pipelines Access (South Australia) Act 1997**

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**PART 7  
GENERAL**

**Supply and haulage of natural gas**

**40.** (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 Code 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.

(4) In this section—

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

**Power to obtain information and documents**

**41.** (1) If a relevant Regulator has reason to believe that a person has information or a document that may assist the Regulator in the performance of any of the Regulator's prescribed duties under this Law, the Regulator may require the person to give the Regulator the information or a copy of the document.

(2) A requirement must be made in a written notice that identifies the information or document and that specifies—

(a) by when the requirement must be complied with; and

(b) in what form the information or copy of the document is to be given to the relevant Regulator.

(3) The notice must also state that the requirement is made under this section and must include a copy of this section.

(4) A person must not, without lawful excuse, fail to comply with any requirement made under this section in a notice given to the person.

Maximum penalty: \$10 000 or imprisonment for 12 months.

(5) If the person is a natural person, it is a lawful excuse for the purpose of subsection (4) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence.

(6) A person must not, in purported compliance with a requirement made under this section, knowingly give the relevant Regulator information that is false or misleading.

Maximum penalty: \$10 000 or imprisonment for 12 months.

(7) A person must not—

- (a) threaten, intimidate or coerce another person; or
- (b) take, threaten to take, incite or be involved in any action that causes another person to suffer any loss, injury or disadvantage,

because that other person complied, or intends to comply, with a requirement made under this section.

Maximum penalty: \$10 000 or imprisonment for 12 months.

(8) A person is not liable in any way for any loss, damage or injury suffered by another person because of the giving in good faith of a document or information to the relevant Regulator under this section.

(9) In this section—

**"prescribed duty"** means—

- (a) deciding whether to approve an access arrangement under the Code;
- (b) deciding whether to approve changes to an access arrangement under the Code;
- (c) deciding whether to approve a contract, arrangement or understanding between a service provider and an associate of a service provider;
- (d) monitoring compliance with the Code.

**Restriction on disclosure of confidential information**

**42.** (1) This section applies if information or a document is given to the relevant Regulator under section 41 and, at the time it is given, the person giving it states that it is of a confidential or commercially-sensitive nature.

(2) Except as otherwise provided in the Code, the relevant Regulator must not disclose the information or the contents of the document to any person unless—

- (a) the relevant Regulator is of the opinion—
  - (i) that the disclosure of the information or document would not cause detriment to the person supplying it or to the person from whom that person received it; or
  - (ii) that, although the disclosure of the information or document would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment; and
- (b) the relevant Regulator has given the person who supplied the information or document a written notice—
  - (i) stating that the relevant Regulator wishes to disclose the information or contents of the document, specifying the nature of the intended disclosure and setting out detailed reasons why the Regulator wishes to make the disclosure; and
  - (ii) stating that the Regulator is of the opinion required by paragraph (a) and setting out detailed reasons why it is of that opinion; and

**Gas Pipelines Access (South Australia) Act 1997**

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- (iii) setting out a copy of this section and section 43; and
  - (c) if the relevant Regulator is aware that the person who supplied the information or document in turn received the information or document from another person and is aware of that other person's identity and address, the relevant Regulator has given that other person a written notice—
    - (i) containing the details required by paragraph (b); and
    - (ii) stating that the relevant Regulator is of the opinion required by paragraph (a) in relation to that other person and setting out detailed reasons why it is of that opinion; and
  - (d) if the relevant Regulator is the ACCC and the information or document is or includes personal information within the meaning of the *Privacy Act 1988* of the Commonwealth, the person to whom it is disclosed undertakes to comply with the Information Privacy Principles set out in section 14 of that Act in respect of the information or document; and
  - (e) an application for review is not lodged in respect of any notice given under paragraph (b) or (c) within the time permitted by section 43(3).
- (3) Subsection (2) does not prevent the relevant Regulator—
- (a) from disclosing information or the contents of a document to a member of the staff of the relevant Regulator employed or engaged for the purposes of this Law or to another relevant Regulator; or
  - (b) from using information or a document for the purposes of civil or criminal proceedings; or
  - (c) from supplying the information or document to the member of a relevant appeals body for the purpose of proceedings in relation to the information or document.
- (4) If an application for review of a decision of the relevant Regulator is lodged under section 43 with a relevant appeals body and—
- (a) the application is withdrawn or dismissed or the decision is affirmed, the relevant Regulator may disclose any information, or the contents of any document, that was the subject of the review in the manner set out in the notice given under subsection (2)(b) or (c); or
  - (b) the decision is varied or set aside, the relevant Regulator may disclose anything that the relevant appeals body permits the relevant Regulator to disclose under section 43(4)(b) in the manner specified by the relevant appeals body.
- (5) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the relevant Regulator wishes to disclose it cannot cause detriment to any person referred to in subsection (2)(b) or (c).

**Application for review of disclosure notice**

**43.** (1) A person who is given a notice under section 42(2)(b) or (c) and who is aggrieved by a decision of the relevant Regulator to disclose information or the contents of a document may apply to the relevant appeals body for a review of the decision.

- (2) An application may only be made on the ground that—
  - (a) the decision was not made in accordance with law; or
  - (b) the decision is unreasonable having regard to all relevant circumstances.
- (3) The person must lodge the application with the relevant appeals body within 7 working days after the person is given the notice.
- (4) In granting an appeal under this section the relevant appeals body may—
  - (a) forbid disclosure by the relevant Regulator of the information or document that is the subject of the review; or
  - (b) restrict the intended disclosure by the relevant Regulator of the information or document within limits specified by the relevant appeals body.
- (5) Except as otherwise provided in this section, section 38 (except subsections (1), (2), (6) and (13)) applies to a review under this section.

**APPENDIX TO SCHEDULE 1  
MISCELLANEOUS PROVISIONS RELATING TO INTERPRETATION**

**PART 1  
PRELIMINARY**

**Displacement of Appendix by contrary intention**

1. The application of this Appendix may be displaced, wholly or partly, by a contrary intention appearing in this Law.

**PART 2  
GENERAL**

**Law to be construed not to exceed legislative power of Legislature**

2. (1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this scheme participant.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature—

- (a) it is a valid provision to the extent to which it is not in excess of the power; and
- (b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

**Every section to be a substantive enactment**

3. Every section of this Law has effect as a substantive enactment without introductory words.

**Material that is, and is not, part of this Law**

4. (1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule, or Appendix to a Schedule, to this Law is part of this Law.

(3) A heading to a section or subsection of this Law does not form part of this Law.

**References to particular Acts and to enactments**

5. In this Law—

- (a) an Act of this scheme participant may be cited—
  - (i) by its short title; or
  - (ii) in another way sufficient in an Act of this scheme participant for the citation of such an Act; and
- (b) a Commonwealth Act may be cited—
  - (i) by its short title; or
  - (ii) in another way sufficient in a Commonwealth Act for the citation of such an Act, together with a reference to the Commonwealth; and
- (c) an Act of another scheme participant may be cited—
  - (i) by its short title; or
  - (ii) in another way sufficient in an Act of the scheme participant for the citation of such an Act, together with a reference to the scheme participant.

**References taken to be included in Act or Law citation etc.**

6. (1) A reference in this Law to an Act includes a reference to—

- (a) the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference, the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to—

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference, the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) Subclauses (1) and (2) apply to a reference in this Law to a law of another scheme participant as they apply to a reference in this Law to an Act and to a provision of an Act.

#### **Interpretation best achieving Law's purpose**

7. (1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

#### **Use of extrinsic material in interpretation**

8. (1) In this clause—

"**extrinsic material**" means relevant material not forming part of this Law, including, for example—

(a) material that is set out in the document containing the text of this Law as printed by authority of the Government Printer of South Australia; and

(b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Legislative Council or House of Assembly of South Australia before the provision concerned was enacted; and

(c) a relevant report of a committee of the Legislative Council or House of Assembly of South Australia that was made to the Legislative Council or House of Assembly of South Australia before the provision was enacted; and

(d) a treaty or other international agreement that is mentioned in this Law; and

(e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Legislative Council or House of Assembly of South Australia by the member bringing in the Bill before the provision was enacted; and

(f) the speech made to the Legislative Council or House of Assembly of South Australia by the member in moving a motion that the Bill be read a second time; and

(g) material in the Votes and Proceedings of the Legislative Council or House of Assembly of South Australia or in any official record of debates in the Legislative Council or House of Assembly of South Australia; and

(h) a document that is declared by this Law to be a relevant document for the purposes of this clause;

"**ordinary meaning**" means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure, to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or

(c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.



(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

- (a) the desirability of a provision being interpreted as having its ordinary meaning; and
- (b) the undesirability of prolonging proceedings without compensating advantage; and
- (c) other relevant matters.

**Compliance with forms**

**9.** (1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

- (a) the form to be completed in a specified way; or
- (b) specified information or documents to be included in, attached to or given with the form; or
- (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

PART 3  
TERMS AND REFERENCES

**Definitions**

**10.** In this Law—

"**Act**" means an Act of the Legislature;

"**affidavit**", in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

"**amend**" includes—

- (a) omit or omit and substitute; or
- (b) alter or vary; or
- (c) amend by implication;

"**appoint**" includes re-appoint;

"**Australia**" means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

"**breach**" includes fail to comply with;

"**business day**" means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done;

"**calendar month**" means a period starting at the beginning of any day of one of the 12 named months and ending—

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no such corresponding day, at the end of the next named month;

"**calendar year**" means a period of 12 months beginning on 1 January;

"**commencement**", in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation;

"**Commonwealth**" means the Commonwealth of Australia but, when used in a geographical sense, does not include an external territory;

"**confer**", in relation to a function, includes impose;

"**contravene**" includes fail to comply with;

"**definition**" means a provision of this Law (however expressed) that—

- (a) gives a meaning to a word or expression; or
- (b) limits or extends the meaning of a word or expression;

"**document**" includes—

- (a) any paper or other material on which there is writing; or
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

"**estate**" includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

"**expire**" includes lapse or otherwise cease to have effect;

"**fail**" includes refuse;

"**financial year**" means a period of 12 months beginning on 1 July;

"**function**" includes duty;

"**Gazette**" means the *Government Gazette* of this scheme participant;

"**Governor**" means the Governor acting with the advice and consent of the Executive Council;

"**instrument**" includes a statutory instrument;

"**interest**", in relation to land or other property, means—

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property;

"**internal Territory**" means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

"**Jervis Bay Territory**" means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth;

"**make**" includes issue or grant;

"**minor**" means an individual who is under 18;

"**modification**" includes addition, omission or substitution;

"**month**" means a calendar month;

"**named month**" means one of the 12 months of the year;

"**Northern Territory**" means the Northern Territory of Australia;

"**number**" means—

- (a) a number expressed in figures or words; or
- (b) a letter; or
- (c) a combination of a number so expressed and a letter;

"**oath**", in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise;

"**office**" includes position;

"**omit**", in relation to a provision of this Law or an Act, includes repeal;

"**party**" includes an individual or a body politic or corporate;

"**penalty**" includes forfeiture or punishment;

"**person**" includes an individual or a body politic or corporate;

"**power**" includes authority;

"**prescribed**" means prescribed by, or by regulations made or in force for the purposes of or under, this Law;

"**printed**" includes typewritten, lithographed or reproduced by any mechanical means;

"**proceeding**" means a legal or other action or proceeding;

"**property**" means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

"**provision**", in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

- (a) a Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Law or the Act; or
- (b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act; or
- (c) the long title and any preamble to the Act;

"**record**" includes information stored or recorded by means of a computer;

"**repeal**" includes—

- (a) revoke or rescind; or
- (b) repeal by implication; or
- (c) abrogate or limit the effect of this Law or instrument concerned; or
- (d) exclude from, or include in, the application of this Law or instrument concerned any person, subject matter or circumstance;

"**sign**" includes the affixing of a seal or the making of a mark;

"**statutory declaration**" means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

"**statutory instrument**" means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument;

"**swear**", in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

"**word**" includes any symbol, figure or drawing;

"writing" includes any mode of representing or reproducing words in a visible form.

**Provisions relating to defined terms and gender and number**

**11.** (1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

**Meaning of may and must etc.**

**12.** (1) In this Law, the word "may", or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word "must", or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

**Words and expressions used in statutory instruments**

**13.** (1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

**Effect of express references to bodies corporate and individuals**

**14.** In this Law, a reference to a person generally (whether the expression "person", "another" or "whoever" or another expression is used)—

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Law there is particular reference to an individual (however expressed).

**References to Minister**

**15.** (1) In this Law—

(a) a reference to a Minister is a reference to a Minister of the Crown of this scheme participant; and

(b) a reference to a particular Minister by title, or to "the Minister" without specifying a particular Minister by title, includes a reference to another Minister, or a member of the Executive Council of this scheme participant, who is acting for and on behalf of the Minister.

(2) In a provision of this Law, a reference to "the Minister", without specifying a particular Minister by title is a reference to—

(a) the Minister of this scheme participant administering the provision; or

(b) if, for the time being, different Ministers of this scheme participant administer the provision in relation to different matters—

(i) if only one Minister of this scheme participant administers the provision in relation to the relevant matter, the Minister; or

(ii) if 2 or more Ministers of this scheme participant administer the provision in relation to the relevant matter, any one of those Minister; or

- (c) if paragraph (b) does not apply and, for the time being, 2 or more Ministers administer the provision, any one of the Ministers.

(3) For the removal of doubt, it is declared that if—

- (a) a provision of this Law is administered by 2 or more Ministers of this scheme participant; and  
 (b) the provision requires or permits anything to be done in relation to any of the Ministers,

the provision does not require or permit it to be done in a particular case by or in relation to more than one of the Ministers.

**Production of records kept in computers etc.**

**16.** If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

- (a) to produce the information or a document containing the information to a court, tribunal or person; or  
 (b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs—

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and  
 (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

**This scheme participant**

**17.** In this Law—

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this scheme participant; and  
 (b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this scheme participant.

**References to officers and holders of offices**

**18.** In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

**Reference to certain provisions of Law**

**19.** If a provision of this Law refers—

- (a) to a Part, section or Schedule by a number and without reference to this Law, the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or  
 (b) to a Schedule without reference to it by a number and without reference to this Law, the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or  
 (c) to a Division, Subdivision, subsection, paragraph, subparagraph, subsubparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law, the reference is a reference to—
- (i) the Division, designated by the number, of the Part in which the reference occurs; and
  - (ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and
  - (iii) the subsection, designated by the number, of the section in which the reference occurs; and
  - (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and
  - (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and
  - (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

- (vii) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs; and
  - (viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,
- as the case requires.

PART 4  
FUNCTIONS AND POWERS

**Performance of statutory functions**

**20.** (1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

**Power to make instrument or decision includes power to amend or repeal**

**21.** If this Law authorises or requires the making of an instrument or decision—

- (a) the power includes power to amend or repeal the instrument or decision; and
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

**Matters for which statutory instruments may make provision**

**22.** (1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

- (a) an Act or statutory instrument; or
- (b) another document (whether of the same or a different kind),

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

- (a) apply generally throughout the jurisdictional area of this scheme participant or be limited in its application to a particular part of that area; or
- (b) apply generally to all persons, matters or things or be limited in its application to—
  - (i) particular persons, matters or things; or
  - (ii) particular classes of persons, matters or things; or
- (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may—

- (a) apply differently according to different specified factors; or
- (b) otherwise make different provision in relation to—
  - (i) different persons, matters or things; or
  - (ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

**Presumption of validity and power to make**

**23.** (1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

**Appointments may be made by name or office**

**24.** (1) If this Law authorises or requires a person or body—

- (a) to appoint a person to an office; or
- (b) to appoint a person or body to exercise a power; or
- (c) to appoint a person or body to do another thing,

the person or body may make the appointment by—

- (d) appointing a person or body by name; or
- (e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

**Acting appointments**

**25.** (1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

- (a) a person by name; or
- (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

- (a) determine the terms and conditions of the appointment, including remuneration and allowances; and
- (b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than one year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—

- (a) the appointer otherwise directs; or
- (b) the vacancy is filled; or
- (c) the end of a year from the day of the vacancy,

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

- (a) the appointee has all the powers and functions of the holder of the office; and
- (b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

- (a) the occasion for the appointment had not arisen; or
- (b) the appointment had ceased to have effect; or
- (c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

**Powers of appointment imply certain incidental powers**

**26.** (1) If this Law authorises or requires a person or body to appoint a person to an office—

- (a) the power may be exercised from time to time as occasion requires; and
- (b) the power includes—
  - (i) power to remove or suspend, at any time, a person appointed to the office; and
  - (ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and
  - (iii) power to reinstate or reappoint a person removed or suspended; and
  - (iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and
  - (v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.



(4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

**Delegation**

**27.** (1) If this Law authorises a person to delegate a function or power, the person may, in accordance with this Law, delegate the function or power to—

- (a) a person by name; or
- (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) The delegation—

- (a) may be general or limited; and
- (b) may be made from time to time; and
- (c) may be revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or if the delegator is a body corporate, by a person authorised by the body corporate for the purpose.

(4) A delegated function or power may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated function or power, do anything that is incidental to the delegated function or power.

(6) A delegated function or power that purports to have been exercised by the delegate is taken to have been duly exercised by the delegate unless the contrary is proved.

(7) A delegated function or power that is duly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function or power is, under this Law, dependent on the delegator's opinion, belief or state of mind in relation to a matter, the function or power, when exercised by the delegate, is dependent on the delegate's opinion, belief or state of mind in relation to the matter.

(9) If a function or power is delegated to a particular officer or the holder of a particular office—

- (a) the delegation does not cease to have effect merely because the person who was the particular officer or the holder of the particular office when the power was delegated ceases to be the officer or the holder of the office; and
- (b) the function or power may be exercised by the person for the time being occupying or acting in the office concerned.

(10) A function or power that has been delegated may, despite the delegation, be exercised by the delegator.

**Exercise of powers between enactment and commencement**

**28.** (1) If a provision of this Law (the "**empowering provision**") that does not commence on its enactment would, had it commenced, confer a power—

- (a) to make an appointment; or
- (b) to make a statutory instrument of a legislative or administrative character; or
- (c) to do another thing,

then—

- (d) the power may be exercised; and

- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(2) If a provision of an Act of South Australia (the "**empowering provision**") that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—

- (a) to make an appointment; or
- (b) to make a statutory instrument of a legislative or administrative character; or
- (c) to do another thing,

then—

- (d) the power may be exercised; and
- (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(3) If—

- (a) this Law has commenced and confers a power to make a statutory instrument (the "**basic instrument-making power**"); and
- (b) a provision of an Act of South Australia that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the "**additional instrument-making power**"),

then—

- (c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and
- (d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of—

- (a) enabling the exercise of a power mentioned in the subclause; or
- (b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect—

- (c) on the making of the instrument; or
- (d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

- (a) an appointment is made under subclause (1) or (2); or
- (b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),

the appointment, instrument or provision take effect—

- (c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.

(8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

PART 5  
DISTANCE AND TIME

**Matters relating to distance and time**

**29.** (1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days, by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case, by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

PART 6  
SERVICE OF DOCUMENTS

**Service of documents**

**30.** (1) If this Law requires or permits a document to be served on a person (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the document may be served—

(a) on an individual—

(i) by delivering it to the person personally; or

(ii) by leaving it at, or by sending it by post, telex, facsimile or similar facility to, the address of the place of residence or business of the person last known to the person serving the document; or

(b) on a body corporate—

(i) by leaving it at the registered office of the body corporate with an officer of the body corporate; or

(ii) by sending it by post, telex, facsimile or similar facility to its registered office.

(2) Nothing in subclause (1)—

(a) affects the operation of another law that authorises the service of a document otherwise than as provided in the subclause; or

- (b) affects the power of a court or tribunal to authorise service of a document otherwise than as provided in the subclause.

**Meaning of service by post etc.**

**31.** (1) If this Law requires or permits a document to be served by post (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), service—

- (a) may be effected by properly addressing, prepaying and posting the document as a letter; and
- (b) is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

(2) If this Law requires or permits a document to be served by a particular postal method (whether the expression "deliver", "give", "notify", "send" or "serve" or another expression is used), the requirement or permission is taken to be satisfied if the document is posted by that method or, if that method is not available, by the equivalent, or nearest equivalent, method provided for the time being by Australia Post.

PART 7

EFFECT OF REPEAL, AMENDMENT OR EXPIRATION

**Time of Law ceasing to have effect**

**32.** If a provision of this Law is expressed—

- (a) to expire on a specified day; or
- (b) to remain or continue in force, or otherwise have effect, until a specified day,

this provision has effect until the last moment of the specified day.

**Repealed Law provisions not revived**

**33.** If a provision of this Law is repealed or amended by an Act of South Australia, or a provision of an Act of South Australia, the provision is not revived merely because the Act or the provision of the Act—

- (a) is later repealed or amended; or
- (b) later expires.

**Saving of operation of repealed Law provisions**

**34.** (1) The repeal, amendment or expiry of a provision of this Law does not—

- (a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or
- (b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or
- (c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or
- (d) affect a penalty incurred in relation to an offence arising under the provision; or
- (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

**Continuance of repealed provisions**

**35.** If an Act of South Australia repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

**Law and amending Acts to be read as one**

**36.** This Law and all Acts of South Australia amending this Law are to be read as one.

PART 8  
OFFENCES UNDER THIS LAW

**Penalty at end of provision**

37. In this Law, a penalty specified at the end of—

- (a) a section (whether or not the section is divided into subsections); or
- (b) a subsection (but not at the end of a section); or
- (c) a section or subsection and expressed in such a way as to indicate that it applies only to part of the section or subsection,

indicates that an offence mentioned in the section, subsection or part is punishable on conviction or, if no offence is mentioned, a contravention of the section, subsection or part constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

**Penalty other than at end of provision**

38. (1) In this Law, a penalty specified for an offence, or a contravention of a provision, indicates that the offence is punishable on conviction, or the contravention constitutes an offence against the provision that is punishable, on conviction, by a penalty not more than the specified penalty.

(2) This clause does not apply to a penalty to which clause 37 applies.

**Indictable offences and summary offences**

39. (1) An offence against this Law that is not punishable by imprisonment is punishable summarily.

(2) An offence against this Law that is punishable by imprisonment is, subject to subclause (3), punishable on indictment.

(3) If—

- (a) a proceeding for an offence against this Law that is punishable by imprisonment is brought in a court of summary jurisdiction; and
- (b) the prosecutor requests the court to hear and determine the proceeding,

the offence is punishable summarily and the court must hear and determine the proceeding.

(4) A court of summary jurisdiction must not—

- (a) impose, in relation to a single offence against this Law, a period of imprisonment of more than 2 years; or
- (b) impose, in relation to offences against this Law, cumulative periods of imprisonment that are, in total, more than 5 years.

(5) Nothing in this clause renders a person liable to be punished more than once in relation to the same offence.

**Double jeopardy**

40. If an act or omission constitutes an offence—

- (a) under this Law; or
- (b) under another law of this scheme participant or a law of another scheme participant,

and the offender has been punished in relation to the offence under a law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence under this Law.

**Aiding and abetting, attempts etc.**

41. (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Law is taken to have committed that offence and is liable to the penalty for the offence.

(2) A person who attempts to commit an offence against this Law commits an offence and is punishable as if the attempted offence had been committed.

PART 9

INSTRUMENTS UNDER THIS LAW

**Appendix applies to statutory instruments**

**42.** (1) This Appendix applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Appendix refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

**Gas Pipelines Access (South Australia) Act 1997**

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**SCHEDULE 2***National Third Party Access Code for Natural Gas Pipeline Systems***INTRODUCTION**

*This Code establishes a national access regime for natural gas pipeline systems.*

*The objective of this Code is to establish a framework for third party access to gas pipelines that:*

- (a) facilitates the development and operation of a national market for natural gas; and*
- (b) prevents abuse of monopoly power; and*
- (c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders; and*
- (d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for both Service Providers and Users; and*
- (e) provides for resolution of disputes.*

*Under the Code, the owner or operator of a Pipeline that is Covered under the Code is required to lodge an Access Arrangement with the Relevant Regulator. The Access Arrangement is similar in many respects to an undertaking under Part IIIA of the Trade Practices Act and is designed to allow the owner or operator of the Covered Pipeline to develop its own Tariffs and other terms and conditions under which access will be made available, subject to the requirements of the Code. The Relevant Regulator will seek comments on the Access Arrangement and then may either accept it or reject it and specify amendments it requires to be made to the Access Arrangement. If rejected, the Access Arrangement must be modified and resubmitted. Under certain circumstances, the Relevant Regulator may draft and approve its own Access Arrangement. The legislation which implements the Code provides for administrative review of certain regulatory decisions made under the Code.*

*Important features of the Code are:*

- Coverage - the mechanism by which Pipelines (including distribution systems) become subject to the Code;*
- reliance on an up-front Access Arrangement outlining Services and Reference Tariffs applicable to a Covered Pipeline;*
- pricing principles;*
- ring fencing;*
- information disclosure requirements;*
- binding arbitration where there is a dispute; and*
- specific timelines for all processes.*

*The aim of the Code is to provide sufficient prescription so as to reduce substantially the number of likely arbitrations, while at the same time incorporating enough flexibility for the parties to negotiate contracts within an appropriate framework. The Code has also been designed to provide a clear national access regime, with consistency between different jurisdictions.*

*This introduction to the Code and the overview in italics at the beginning of each section of the Code do not form part of the Code but in certain circumstances regard may be had to them in interpreting the Code (see Sections 10.4 and 10.5).*

## 1. COVERAGE

*This section of the Code describes the kinds of gas infrastructure which are subject to the Code and the basis on which particular infrastructure is or may become subject to the Code.*

*In relation to the first issue, the scope of the Code is limited to Pipelines used for the haulage of Natural Gas. The definition of Pipeline includes gas transmission pipelines and distribution networks and related facilities, but excludes upstream facilities.*

*In relation to the second issue, a Pipeline may become Covered in one of four ways.*

- *Schedule A lists the Pipelines which are automatically Covered by the Code (section 1.1).*
- *In relation to other Pipelines, a case by case approach applies under which specific criteria are applied to individual Pipelines to determine whether they are Covered (sections 1.2-1.19).*
- *In addition, where a Pipeline is not Covered a Service Provider may itself request Coverage by proposing an Access Arrangement for the Pipeline to the Relevant Regulator for approval (sections 1.20 and 2.3).*
- *Finally, if a competitive tender process approved by the Relevant Regulator is used to select the Service Provider for a new Pipeline, that new Pipeline will be Covered from the time the Relevant Regulator approves the outcome of the competitive tender (section 1.21).*

*The Code accordingly provides a high degree of certainty for the Pipelines identified in Schedule A, while retaining the flexibility to bring in other or new Pipelines on a case-by-case basis. Additional flexibility to respond to changing circumstances exists as a result of the potential for Coverage to be Revoked where the criteria for Coverage cease to be satisfied.*

*In simple terms, the process for case by case Coverage is as follows:*

- *any person may seek Coverage of a Pipeline by applying to the National Competition Council (the NCC);*
- *the NCC publishes a public notice on the application and seeks submissions, including from the Service Provider;*
- *the NCC considers the submissions and makes a recommendation to the Relevant Minister, applying specified criteria; and*
- *the Relevant Minister considers the recommendation and decides on Coverage.*

*The term "Pipeline" is defined in the Gas Pipelines Access Law to include part of a Pipeline. Consequently, an application can be made for the Coverage of the whole or any part of a Pipeline provided the Pipeline or the relevant part of the Pipeline is owned or operated by the same Service Provider or group of Service Providers.*



**Gas Pipelines Access (South Australia) Act 1997**

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*The process for Revocation is similar to the process for Coverage.*

*As a decision to Cover a Pipeline or revoke Coverage of a Pipeline can have major commercial implications for the Service Provider and Prospective Users, the Gas Pipelines Access Law provides a mechanism for review of the decision by the Relevant Appeals Body.*

*An extensions/expansions policy in the Access Arrangement for a Covered Pipeline will define when an extension to, or expansion of the Capacity of, a Covered Pipeline will be treated as part of the same Covered Pipeline and when that extension or expansion is to be regarded as a separate Pipeline which may be the subject of a separate Coverage application.*

***Pipelines in Schedule A are Covered***

- 1.1 Each Pipeline listed in Schedule A is a Covered Pipeline from the date of commencement of the Code.

***NCC to Recommend on an Application for Coverage***

- 1.2 Pipelines other than those listed in Schedule A may become Covered after the commencement of the Code where a person applies to the NCC for the Pipeline to be Covered and, after receiving a recommendation from the NCC, the Relevant Minister decides that the Pipeline should be Covered.

- 1.3 Any person, including the Relevant Regulator, may make an application to the NCC requesting that a particular Pipeline be Covered. A single application may be made under this section 1.3 for the Coverage of the whole or any part of a Pipeline, provided that all of that Pipeline, or all of that part of a Pipeline, is owned or operated by the same Service Provider or group of Service Providers. The NCC may publish guidelines concerning the form and content of Coverage applications and specifying the amount of any fee to be paid on the making of an application. If it does so, applications must be made in accordance with those guidelines.

- 1.4 When the NCC receives an application under section 1.3 the NCC must:

(a) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; and

(b) in all other cases within 14 days after receipt of the application:

(i) inform the Service Provider and each other person known to the NCC who the NCC believes has a sufficient interest in the matter that it has received the application; and

(ii) publish a notice in a national daily newspaper which at least:

(A) describes the Pipeline to which the application relates;

(B) states how copies of the application may be obtained; and

(C) requests submissions within 21 days after the date of the notice.

- 1.5 The NCC must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the NCC.

- 1.6 Within 35 days (but not earlier than 21 days) after the day on which a notice is published under section 1.4(b), the NCC must prepare a draft recommendation on the application and provide a copy of the draft recommendation to the applicant, the Service Provider, each person who made a submission and any other person who requests a copy. In preparing the draft recommendation the NCC must consider any submissions received within the time specified in the notice published under section 1.4(b) and it may (but is not obliged to) consider any submissions received after that time.
- 1.7 Within 28 days (but not earlier than 14 days) after the day on which its draft recommendation became publicly available, the NCC must submit a recommendation to the Relevant Minister:
- (a) that the Pipeline be Covered; or
  - (b) that the Pipeline not be Covered.
- If the NCC recommends that the Pipeline be Covered, the NCC may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Pipeline that is necessary to provide Services that Prospective Users may seek, the NCC considers it appropriate. The NCC may not recommend Coverage of a greater part of a Pipeline than is owned or operated by the same Service Provider or group of Service Providers.
- 1.8 In forming its recommendation the NCC must consider any submissions received from the Service Provider, the applicant or any other person within 14 days after the date on which its draft recommendation became publicly available and it may (but is not obliged to) consider submissions received after that time.
- 1.9 Subject to sections 1.4(a) and 1.10, the NCC must recommend that the Pipeline be Covered (either to the extent described, or to a greater or lesser extent than that described, in the application) if the NCC is satisfied of all of the following matters, and cannot recommend that the Pipeline be Covered, to any extent, if the NCC is not satisfied of one or more of the following matters:
- (a) that access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline;
  - (b) that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline;
  - (c) that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety; and
  - (d) that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest.
- 1.10 At any time prior to the NCC making a recommendation the relevant Service Provider may notify the NCC that it agrees to Coverage of the Pipeline to the same extent as specified in the application. The NCC may then recommend that the Pipeline be Covered to the same extent as specified in the application without considering the matters set out in paragraphs (a) to (d) of section 1.9. The NCC must forward the Service Provider's notice to the Relevant Minister with its recommendation.

**Gas Pipelines Access (South Australia) Act 1997**

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1.11 The NCC must provide a copy of its recommendation and the reasons for the recommendation to the Service Provider, the applicant, each person who made a submission and any other person who requests a copy.

1.12 The applicant may withdraw the application by notice to the NCC at any time before the Relevant Minister makes a decision concerning Coverage of the Pipeline.

***Relevant Minister to Decide on a Coverage Recommendation***

1.13 Within 21 days after a Coverage recommendation is received by the Relevant Minister, the Relevant Minister must make a decision:

(a) that the Pipeline is Covered; or

(b) that the Pipeline is not Covered.

If the Relevant Minister decides that the Pipeline is Covered, the Relevant Minister may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Pipeline that is necessary to provide Services that Prospective Users may seek, the Relevant Minister considers it appropriate. The Relevant Minister may not decide that a greater part of a Pipeline is Covered than is owned or operated by the same Service Provider or group of Service Providers.

1.14 The Relevant Minister may require the NCC to provide such information, reports and other assistance as the Relevant Minister considers appropriate for the purpose of considering the application.

1.15 Subject to section 1.16, the Relevant Minister must decide that the Pipeline is Covered (either to the extent described, or to a greater or lesser extent than that described, in the application) if the Relevant Minister is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the Relevant Minister cannot decide that the Pipeline is Covered, to any extent, if not satisfied of one or more of those matters.

1.16 If the NCC receives a notice under section 1.10, the Relevant Minister may decide that the Pipeline is a Covered Pipeline without considering the matters set out in paragraphs (a) to (d) of section 1.9.

1.17 Promptly after making a decision the Relevant Minister must provide a copy of the decision and reasons for the decision to the NCC, the Relevant Regulator, the Service Provider, the applicant, each person who made a submission to the NCC and any other person who requests a copy.

1.18 The decision on Coverage and the notice and reasons referred to in section 1.17 must contain a detailed description of the Pipeline the subject of the decision.

1.19 The decision on Coverage is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, a decision on Coverage has effect on the date specified by the Relevant Minister, which date must not be earlier than 14 days after the day the decision was made.

***Pipelines subject to Access Arrangements submitted under section 2.3 are Covered***

- 1.20 A Pipeline which is subject to an Access Arrangement submitted under section 2.3 is Covered from the date that the Access Arrangement becomes effective until the expiry date, if any, as contemplated under section 3.20. An application may be made under section 1.3 requesting that such a Pipeline remain Covered after the Access Arrangement expires if the period from the date of the application to the date on which the Access Arrangement expires is not more than 90 days.

***New Pipelines the subject of an approved competitive tender are Covered***

- 1.21 If the Relevant Regulator makes a decision under section 3.32 approving the outcome of a competitive tender the Pipeline concerned shall be a Covered Pipeline from the time of that decision.

***Prospective Service Provider may seek Opinion of NCC***

- 1.22 A Prospective Service Provider may request an opinion from the NCC as to whether a proposed Pipeline would meet the criteria for Coverage in section 1.9.
- 1.23 The NCC may provide an opinion in response to a request under section 1.22 but the opinion does not bind the NCC in relation to any subsequent application for Coverage of the Pipeline.

***Revocation of Coverage***

- 1.24 Pipelines listed in Schedule A and Pipelines that have become Covered after the commencement of the Code may cease to be Covered where a person applies to the NCC for Coverage of the Covered Pipeline to be revoked and, after receiving a recommendation from the NCC, the Relevant Minister determines that Coverage of the Covered Pipeline should be revoked.
- 1.25 Any person, including the Relevant Regulator, may make an application to the NCC requesting that Coverage of a particular Covered Pipeline be revoked. The NCC may publish guidelines concerning the form and content of revocation applications and specifying the amount of any fee to be paid on the making of an application. If it does so, applications must be made in accordance with those guidelines.
- 1.26 When the NCC receives an application it must:
- (a) (except where the application has been made by the Relevant Regulator) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration;
  - (b) in all other cases within 14 days after the receipt of the application:
    - (i) inform the Service Provider and each other person known to the NCC who the NCC believes has a sufficient interest in the matter that it has received the application; and
    - (ii) publish a notice in a national daily newspaper which at least:
      - (A) describes the Covered Pipeline to which the application relates;
      - (B) states how copies of the application may be obtained; and

**Gas Pipelines Access (South Australia) Act 1997**

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- (C) requests submissions within 21 days after the date of the notice.
- 1.27 The NCC must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the NCC.
- 1.28 Within 35 days (but not earlier than 21 days) after the day on which a notice is published under section 1.26(b), the NCC must prepare a draft recommendation on the application and provide a copy of the draft recommendation to the Service Provider, the applicant, each person who made a submission and any other person who requests a copy. In preparing the draft recommendation the NCC must consider any submissions received within the time specified in the notice published under section 1.26(b) and it may (but is not obliged to) consider any submissions received after that time.
- 1.29 Within 28 days (but not earlier than 14 days) after the day on which its draft recommendation became publicly available, the NCC must submit a recommendation to the Relevant Minister:
- (a) that Coverage of the Covered Pipeline be revoked; or
  - (b) that Coverage of the Covered Pipeline not be revoked.

If the NCC recommends that Coverage of the Covered Pipeline be revoked, it may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Covered Pipeline that is necessary to provide services that Prospective Users may seek, the NCC considers it appropriate.

- 1.30 In forming its recommendation the NCC must consider any submissions received from the Service Provider, the applicant or any other person within 14 days after the date on which its draft recommendation became publicly available and it may (but is not obliged to) consider any submissions received after that time.
- 1.31 Subject to section 1.26(a), the NCC cannot recommend that Coverage of the Covered Pipeline be Revoked, to any extent, if the NCC is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the NCC must recommend that Coverage of the Covered Pipeline be revoked (either to the extent described, or to a greater or lesser extent than that described, in the application) if the NCC is not satisfied of one or more of those matters.
- 1.32 The NCC must provide a copy of its recommendation and the reasons for the recommendation to the Service Provider, the applicant, each person who made a submission and any other person who requests a copy.
- 1.33 The applicant may withdraw the application by notice to the NCC at any time before the Relevant Minister makes a decision concerning revocation of Coverage of the Covered Pipeline.

***Relevant Minister to Decide on a Revocation Recommendation***

- 1.34 Within 21 days after a revocation recommendation is received by the Relevant Minister, the Relevant Minister must make a decision:
- (a) that Coverage of the Covered Pipeline is revoked; or
  - (b) that Coverage of the Covered Pipeline is not revoked.

- If the Relevant Minister decides that Coverage of the Covered Pipeline is revoked, the Relevant Minister may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Pipeline that is necessary to provide Services that Prospective Users may seek, the Relevant Minister considers it appropriate.
- 1.35 The Relevant Minister may require the NCC to provide such information, reports and other assistance as the Relevant Minister considers appropriate for the purpose of considering the application.
- 1.36 The Relevant Minister must decide not to revoke Coverage of the Covered Pipeline, to any extent, if the Relevant Minister is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the Relevant Minister must decide to revoke Coverage of the Covered Pipeline (either to the extent described, or to a greater or lesser extent than that described, in the application) if not satisfied of one or more of those matters.
- 1.37 Promptly after making a decision the Relevant Minister must provide a copy of the decision and reasons for the decision to the NCC, the Relevant Regulator, the Service Provider, the applicant, each person who made a submission to the NCC and any other person who requests a copy.
- 1.38 The decision on revocation and the notice and reasons referred to in section 1.37 must, if the decision is to revoke Coverage for part or all of the Covered Pipeline, contain a detailed description of the Covered Pipeline the subject of the decision.
- 1.39 A decision on revocation is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, the decision on revocation has effect on the date specified by the Relevant Minister, which date must not be earlier than 14 days after the day the decision was made.

#### ***Extensions/Expansions of a Covered Pipeline***

- 1.40 An extension to, or expansion of the Capacity of, a Covered Pipeline shall be treated as part of the Covered Pipeline for all purposes under the Code if the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline provides for that extension or expansion to be treated as part of the Covered Pipeline.
- 1.41 The Service Provider must notify the Code Registrar of any extension to, or expansion of the Capacity of, a Covered Pipeline which is to be treated as part of the Covered Pipeline pursuant to section 1.40 when the extension or expansion would require an amendment to the description of the Covered Pipeline on the Public Register in order for that description to remain an accurate description of the Covered Pipeline.

## **2. ACCESS ARRANGEMENTS**

*Where a Pipeline is Covered, this section of the Code requires a Service Provider to establish an Access Arrangement to the satisfaction of the Relevant Regulator for that Covered Pipeline. An Access Arrangement is a statement of the policies and the basic terms and conditions which apply to third party access to a Covered Pipeline. The Service Provider and a User or Prospective User are free to agree to terms and conditions that differ from the Access Arrangement (with the exception of the Queuing Policy). If an access dispute arises, however, and is referred to the Relevant Regulator, the Relevant Regulator (or any other Arbitrator it appoints) must apply the provisions of the Access Arrangement in resolving the dispute. If a Pipeline is not Covered a Service Provider may voluntarily propose an Access Arrangement to the Relevant Regulator for approval. Upon approval the Pipeline becomes a Covered Pipeline.*

**Gas Pipelines Access (South Australia) Act 1997**

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*An Access Arrangement must be submitted to the Relevant Regulator for approval. The Relevant Regulator may approve an Access Arrangement only if the Access Arrangement satisfies the minimum requirements set out in section 3. The Relevant Regulator must not refuse to approve an Access Arrangement solely for the reason that the proposed Access Arrangement does not address a matter that section 3 does not require an Access Arrangement to address. Subject to this limit, the Relevant Regulator has a broad discretion to refuse to accept an Access Arrangement. If section 3 permits a range of outcomes on a particular issue (for example, any Revisions Commencement Date is permitted), the Relevant Regulator may reject an outcome proposed by the Service Provider which is within the permitted range and require a particular outcome be included in the Access Arrangement (for example, a particular Revisions Commencement Date).*

*An Access Arrangement submitted to the Relevant Regulator for approval must be accompanied by Access Arrangement Information. Access Arrangement Information should enable Users and Prospective Users to understand the derivation of the elements of the proposed Access Arrangement and form an opinion as to the compliance of the Access Arrangement with the Code. The Access Arrangement Information must include the categories of information identified in Attachment A to the Code.*

*The process whereby a compulsory Access Arrangement is approved can be summarised as follows:*

- *The Service Provider submits a proposed Access Arrangement, together with the Access Arrangement Information, to the Relevant Regulator.*
- *The Relevant Regulator may require the Service Provider to amend and resubmit the Access Arrangement Information.*
- *The Relevant Regulator publishes a public notice and seeks submissions on the application.*
- *The Relevant Regulator considers the submissions, issues a draft decision and then, after considering any submissions received on the draft, makes a final decision which either:*
  - *approves the proposed Access Arrangement; or*
  - *does not approve the proposed Access Arrangement and states the revisions to the Access Arrangement which would be required before the Relevant Regulator would approve it; or*
  - *approves a revised Access Arrangement submitted by the Service Provider which incorporates amendments specified by the Relevant Regulator in its draft decision.*
- *If the Relevant Regulator does not approve the Access Arrangement, the Service Provider may propose an amended Access Arrangement which incorporates the revisions required by the Relevant Regulator. If the Service Provider does not do so, the Relevant Regulator can impose its own Access Arrangement.*
- *The Gas Pipeline Access Law provides a mechanism for the review of a decision by the Relevant Regulator to impose an Access Arrangement.*

*A similar process applies in relation to voluntary Access Arrangements, except that the Service Provider may withdraw the application at any time prior to approval of the Access Arrangement and the Relevant Regulator may only approve or disapprove the Access Arrangement; it may not impose its own Access Arrangement.*

*An Access Arrangement must include a date for review. In addition, changes to an Access Arrangement may be made before a review date if the Relevant Regulator and the Service Provider agree. In either case if revisions to the Access Arrangement are proposed, a process of public consultation and approval by the Relevant Regulator, similar to that followed for approving a compulsory Access Arrangement, must be followed. The Relevant Regulator may, however, dispense with public consultation if changes proposed between reviews are sufficiently minor.*

#### ***Submission of Access Arrangements***

- 2.1 The Relevant Regulator may at any time prepare and release for public comment, discussion or issues papers and hold public consultations concerning any matter relevant to its functions under the Code.
- 2.2 If a Pipeline is Covered, the Service Provider must submit a proposed Access Arrangement together with the applicable Access Arrangement Information for the Covered Pipeline to the Relevant Regulator:
  - (a) within 90 days after the Pipeline becomes Covered under section 1.19 or 1.21 if the Covered Pipeline is not described in Schedule A; or
  - (b) within 90 days after the commencement of the Code if the Covered Pipeline is described in Schedule A.
- 2.3 If a Pipeline is not Covered, a Service Provider may (or, in respect of a proposed Pipeline, a Prospective Service Provider may) apply to the Relevant Regulator for approval of an Access Arrangement by submitting the proposed Access Arrangement to the Relevant Regulator together with the applicable Access Arrangement Information. In sections 2.4 to 2.27 (inclusive) the term "Service Provider" includes a Prospective Service Provider. In section 2.24 the term "Covered Pipeline" includes the Pipeline the subject of an Access Arrangement submitted under this section 2.3.
- 2.4 If the Relevant Regulator so requires by a notice in writing (which may be given either before or after the Service Provider submits an Access Arrangement), the Service Provider must submit separate Access Arrangements (together with Access Arrangement Information) for different parts of the Covered Pipeline as specified by the Relevant Regulator, so that the separate Access Arrangements in total apply to the whole of the Covered Pipeline. The Service Provider may (if the Relevant Regulator agrees) voluntarily submit separate Access Arrangements (together with Access Arrangement Information) for different parts of the Covered Pipeline, so that the separate Access Arrangements in total apply to the whole of the Covered Pipeline. If separate Access Arrangements are submitted in accordance with this clause each part of a Pipeline that is the subject of an Access Arrangement will be treated as a separate Covered Pipeline for all purposes under the Code.
- 2.5 An Access Arrangement may include any relevant matter but must include at least the elements described in sections 3.1 to 3.20.



**Gas Pipelines Access (South Australia) Act 1997**

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- 2.6 Access Arrangement Information must contain such information as in the opinion of the Relevant Regulator would enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the Code.
- 2.7 The Access Arrangement Information may include any relevant information but must include at least the categories of information described in Attachment A.
- 2.8 Information included in Access Arrangement Information, including information of a type described in Attachment A, may be categorised or aggregated to the extent necessary to ensure the disclosure of the information is, in the opinion of the Relevant Regulator, not unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User. However, nothing in this section 2.8 limits the Relevant Regulator's power under the Gas Pipelines Access Law to obtain information, including information in an uncategorised or unaggregated form.

***Public Consultation and Approval***

- 2.9 At any time after the receipt of the applicable Access Arrangement Information under section 2.2 or 2.3 and before a decision is made to approve an Access Arrangement, the Relevant Regulator:
- (a) may, of its own volition, require the Service Provider to make changes to the Access Arrangement Information if the Relevant Regulator is not satisfied that the Access Arrangement Information meets the requirements of sections 2.6 and 2.7; and
  - (b) must, if requested to do so by any person, consider whether the Access Arrangement Information meets the requirements of sections 2.6 and 2.7 and decide whether or not to require the Service Provider to make changes to the Access Arrangement Information accordingly.

If the Relevant Regulator requires the Service Provider to make changes to the Access Arrangement Information it must specify the reasons for its decision and must specify a reasonable time by which the proposed Access Arrangement Information that rectifies the matters identified by the Relevant Regulator must be resubmitted. The Relevant Regulator must not require information to be included in Access Arrangement Information the release of which in the Relevant Regulator's opinion could be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User. If the Relevant Regulator requires the Service Provider to make changes to the Access Arrangement Information, the Service Provider must submit Access Arrangement Information amended as required by the Relevant Regulator, by the date specified by the Relevant Regulator.

- 2.10 After receiving a proposed Access Arrangement the Relevant Regulator must:
- (a) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received the proposed Access Arrangement and Access Arrangement Information; and
  - (b) publish a notice in a national daily newspaper which at least:
    - (i) describes the Covered Pipeline to which the proposed Access Arrangement relates;

- (ii) states how copies of the proposed Access Arrangement and the Access Arrangement Information may be obtained; and
  - (iii) requests submissions by a date specified in the notice.
- 2.11 The Relevant Regulator must provide a copy of the proposed Access Arrangement and the Access Arrangement Information to any person within 7 days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.
- 2.12 The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 2.10(b) and it may (but is not obliged) to consider any submissions received after that date.
- 2.13 After considering submissions received by the date specified in the notice published under section 2.10(b) the Relevant Regulator must issue a draft decision which either:
  - (a) proposes to approve the Access Arrangement; or
  - (b) proposes not to approve the Access Arrangement and states the amendments (or nature of the amendments) which would have to be made to the Access Arrangement in order for the Relevant Regulator to approve it.
- 2.14 The Relevant Regulator must:
  - (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and
  - (b) request submissions from persons to whom it provides the draft decision by a date specified by the Relevant Regulator.
- 2.15 The Relevant Regulator must consider any submissions received by the date specified by the Relevant Regulator under section 2.14 and it may (but is not obliged) to consider any submissions received after that date.
- 2.16 After considering submissions received by the date specified by the Relevant Regulator under section 2.14, the Relevant Regulator must issue a final decision which:
  - (a) approves the Access Arrangement; or
  - (b) does not approve the Access Arrangement and states the amendments (or nature of the amendments) which would have to be made to the Access Arrangement in order for the Relevant Regulator to approve it and the date by which a revised Access Arrangement must be resubmitted by the Service Provider; or
  - (c) approves a revised Access Arrangement submitted by the Service Provider which the Relevant Regulator is satisfied incorporates the amendments specified by the Relevant Regulator in its draft decision.
- 2.17 The Relevant Regulator must provide a copy of its final decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy.
- 2.18 If the Relevant Regulator decides not to approve the Access Arrangement under section 2.16(b), the Service Provider must by the date specified by the Relevant Regulator under section 2.16(b) submit a revised Access Arrangement to the Relevant Regulator.

**Gas Pipelines Access (South Australia) Act 1997**

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- 2.19 If the Service Provider submits a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(b), which the Relevant Regulator is satisfied incorporates the amendments specified by the Relevant Regulator in its final decision, the Relevant Regulator must issue a final decision that approves the revised Access Arrangement.
- 2.20 If the Service Provider does not submit a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(b) or submits a revised Access Arrangement which the Relevant Regulator is not satisfied incorporates the amendments specified by the Relevant Regulator in its final decision, the Relevant Regulator must:
- (a) in the case of an Access Arrangement submitted under section 2.2, draft and approve its own Access Arrangement, instead of the Access Arrangement proposed by the Service Provider; or
  - (b) in the case of an Access Arrangement submitted voluntarily under section 2.3, not approve the Access Arrangement.
- 2.21 The Relevant Regulator must issue a final decision under section 2.16 (and sections 2.19 and 2.20, if applicable) within six months of receiving a proposed Access Arrangement. The Relevant Regulator must also ensure that:
- (a) there is a period of at least 28 days between the publication of a notice under section 2.10(b) and the last day for submissions specified in that notice; and
  - (b) there is a period of at least 14 days between the publication of a draft decision under section 2.14 and the last day for submissions on the draft decision specified by the Relevant Regulator; and
  - (c) there is a period of at least 14 days between the publication of a final decision under section 2.16(b) and the date specified by the Relevant Regulator as the last day for the Service Provider to submit a revised Access Arrangement.
- In all other respects the timing for the taking of each of the steps set out in sections 2.9, 2.10 and 2.12 to 2.20 (inclusive) is a matter for the Relevant Regulator to determine.
- 2.22 The Relevant Regulator may increase the period of six months specified in section 2.21 by periods of up to two months on one or more occasions provided it publishes in a national newspaper notice of the decision to increase the period.
- 2.23 If a Service Provider fails to submit a proposed Access Arrangement within the time required under section 2.2, the Relevant Regulator may draft and approve its own Access Arrangement. Before approving its own Access Arrangement under this section 2.23 the Relevant Regulator must:
- (a) prepare an information package which, to the extent practicable, meets the requirements of sections 2.6 and 2.7; and
  - (b) follow the process set out in sections 2.10 to 2.15 (inclusive) to the extent practicable as though the Access Arrangement drafted by the Relevant Regulator had been proposed by the Service Provider and the information package prepared by the Relevant Regulator had been Access Arrangement Information proposed by the Service Provider.

- 2.24 The Relevant Regulator may approve a proposed Access Arrangement only if it is satisfied the proposed Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20. The Relevant Regulator must not refuse to approve a proposed Access Arrangement solely for the reason that the proposed Access Arrangement does not address a matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. In assessing a proposed Access Arrangement, the Relevant Regulator must take the following into account:
- (a) the Service Provider's legitimate business interests and investment in the Covered Pipeline;
  - (b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
  - (c) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
  - (d) the economically efficient operation of the Covered Pipeline;
  - (e) the public interest, including the public interest in having competition in markets (whether or not in Australia);
  - (f) the interests of Users and Prospective Users;
  - (g) any other matters that the Relevant Regulator considers are relevant.
- 2.25 The Relevant Regulator must not approve an Access Arrangement (or draft and approve its own Access Arrangement) any provision of which would, if applied, deprive any person of a contractual right in existence prior to the date the proposed Access Arrangement was submitted (or required to be submitted), other than an Exclusivity Right which arose on or after 30 March 1995.
- 2.26 A decision by the Relevant Regulator under section 2.20(a) or 2.23 is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, the Relevant Regulator's decision to approve the proposed Access Arrangement has effect on the date specified by the Relevant Regulator, which date must be not less than 14 days after the day the decision was made.
- 2.27 A Service Provider may withdraw a proposed Access Arrangement submitted under section 2.3 at any time before it is approved by the Relevant Regulator. In those circumstances the Service Provider is not required to comply with a related decision made under section 2.9.

***Review of an Access Arrangement***

- 2.28 By the date provided for in the Access Arrangement as the Revisions Submission Date (or as otherwise required by an Access Arrangement), the Service Provider must, and at any other time the Service Provider may, submit to the Relevant Regulator proposed revisions to the Access Arrangement together with the applicable Access Arrangement Information.
- 2.29 The Access Arrangement as revised by the proposed revisions may include any relevant matter but must include at least the elements described in sections 3.1 to 3.20.

**Gas Pipelines Access (South Australia) Act 1997**

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2.30 At any time after receipt of the applicable Access Arrangement Information under section 2.28 and before a decision is made to approve revisions to an Access Arrangement the Relevant Regulator:

- (a) may, of its own volition, require the Service Provider to make changes to the Access Arrangement Information if the Relevant Regulator is not satisfied that the Access Arrangement Information meets the requirements of sections 2.6 and 2.7; and
- (b) must, if requested to do so by any person, consider whether the Access Arrangement Information meets the requirements of sections 2.6 and 2.7 and decide whether or not to require the Service Provider to make changes to the Access Arrangement Information accordingly.

If the Relevant Regulator requires the Service Provider to make changes to the Access Arrangement Information it must specify the reasons for its decision and must specify a reasonable time by which the proposed Access Arrangement Information that rectifies the matters identified by the Relevant Regulator must be resubmitted. The Relevant Regulator must not require information to be included in the Access Arrangement Information the release of which in the Relevant Regulator's opinion could be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User. If the Relevant Regulator requires the Service Provider to make changes to the Access Arrangement Information, the Service Provider must submit Access Arrangement Information amended as required by the Relevant Regulator, by the date specified by the Relevant Regulator.

2.31 After receiving a proposed revision to an Access Arrangement the Relevant Regulator must:

- (a) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received the proposed revision to the Access Arrangement and Access Arrangement Information; and
- (b) publish a notice in a national daily newspaper which at least:
  - (i) describes the Covered Pipeline to which the proposed revisions to the Access Arrangement relates;
  - (ii) states how copies of the revisions to the Access Arrangement and the Access Arrangement Information may be obtained; and
  - (iii) requests submissions by a date specified in the notice.

2.32 The Relevant Regulator must provide a copy of the proposed revisions to the Access Arrangement and the Access Arrangement Information to any person within 7 days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.

2.33 The Relevant Regulator may dispense with the requirement to produce Access Arrangement Information in respect of proposed revisions and may approve or not approve the proposed revisions without consultation with, or receiving submissions from, persons other than the Service Provider if:

- (a) the revisions have been proposed by the Service Provider other than as required by the Access Arrangement; and

- (b) the Relevant Regulator considers that the revisions proposed are not material and will not result in changes to Reference Tariffs or to the Services that are Reference Services.
- 2.34 The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 2.31(b) and it may (but is not obliged) to consider any submissions received after that date.
- 2.35 After considering submissions received by the date specified in the notice published under section 2.31(b) the Relevant Regulator must issue a draft decision which either:
- (a) proposes to approve the revisions to the Access Arrangement; or
- (b) proposes not to approve the revisions to the Access Arrangement and provides reasons why the Relevant Regulator proposes not to approve the revisions to the Access Arrangement (and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them).
- 2.36 The Relevant Regulator must:
- (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and
- (b) request submissions on the draft decision from persons to whom it provides the draft decision by a date specified by the Relevant Regulator.
- 2.37 The Relevant Regulator must consider any submissions received by the date specified by the Relevant Regulator under section 2.36 and it may (but is not obliged) to consider submissions received after that date.
- 2.38 After considering any submissions received by the date specified by the Relevant Regulator under section 2.36, the Relevant Regulator must issue a final decision which:
- (a) approves the revisions to the Access Arrangement; or
- (b) does not approve the revisions to the Access Arrangement and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them and the date by which the amended revisions to the Access Arrangement must be resubmitted by the Service Provider; or
- (c) approves amended revisions to the Access Arrangement submitted by the Service Provider which the Relevant Regulator is satisfied incorporate the amendments specified by the Relevant Regulator in its draft decision.
- 2.39 The Relevant Regulator must provide a copy of its final decision to the Service Provider, any person who made a submission on the matter and other any person who requests a copy.

**Gas Pipelines Access (South Australia) Act 1997**

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- 2.40 If the Relevant Regulator decides not to approve the revisions to the Access Arrangement under section 2.38(b) the Service Provider must, if the revisions it proposed were proposed as required by the Access Arrangement, submit amended revisions to the Relevant Regulator by the date specified by the Relevant Regulator under section 2.38(b).
- 2.41 If the Service Provider submits amended revisions to the Access Arrangement by the date specified by the Relevant Regulator under section 2.38(b) which the Relevant Regulator is satisfied incorporate the amendments specified by the Relevant Regulator in its final decision, the Relevant Regulator must issue a final decision that approves the amended revisions to the Access Arrangement.
- 2.42 If the Service Provider does not submit amended revisions to the Access Arrangement by the date specified by the Relevant Regulator under section 2.38(b) or submits amended revisions which the Relevant Regulator is not satisfied incorporate the amendments specified by the Relevant Regulator in its final decision, the Relevant Regulator must draft and approve its own revisions to the Access Arrangement, instead of the revisions proposed by the Service Provider.
- 2.43 The Relevant Regulator must issue a final decision under section 2.38 (and sections 2.41 or 2.42 if applicable) within six months of receiving proposed revisions to an Access Arrangement. The Relevant Regulator must also ensure that:
- (a) there is a period of at least 28 days between the publication of a notice under section 2.31(b) and the last day for submissions specified in that notice;
  - (b) there is a period of at least 14 days between the publication of a draft decision under section 2.36(b) and the last day for submissions on the draft decision specified by the Relevant Regulator; and
  - (c) there is a period of at least 14 days between the publication of a final decision under section 2.38(b) and the date specified by the Relevant Regulator as the last day for the Service Provider to submit amended revisions to the Access Arrangement.
- In all other respects the timing for the taking of each of the steps set out in sections 2.30, 2.31 and 2.33 to 2.42 (inclusive) is a matter for the Relevant Regulator to determine.
- 2.44 The Relevant Regulator may increase the period of six months specified in section 2.43 by periods of up to two months on one or more occasions provided it publishes in a national newspaper notice of the decision to increase the period.
- 2.45 If the Service Provider fails to submit revisions to an Access Arrangement as required by the Access Arrangement, the Relevant Regulator may draft and approve its own revisions to the Access Arrangement. Before approving its own revisions to an Access Arrangement under this section 2.45 the Relevant Regulator must:
- (a) prepare an information package which, to the extent practicable, meets the requirements of sections 2.6 and 2.7; and
  - (b) follow the process set out in sections 2.31 to 2.37 to the extent practicable as though the revisions to the Access Arrangement drafted by the Relevant Regulator had been proposed by the Service Provider and the information package drafted by the Relevant Regulator had been Access Arrangement Information proposed by the Service Provider.

- 2.46 The Relevant Regulator may approve proposed revisions to an Access Arrangement only if it is satisfied the Access Arrangement as revised would contain the elements and satisfy the principles set out in sections 3.1 to 3.20. The Relevant Regulator must not refuse to approve proposed revisions to the Access Arrangement solely for the reason that the Access Arrangement as revised would not address a matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. In assessing proposed revisions to the Access Arrangement, the Relevant Regulator:
- (a) must take into account the factors described in section 2.24; and
  - (b) must take into account the provisions of the Access Arrangement.
- 2.47 The Relevant Regulator must not approve revisions to an Access Arrangement (or draft and approve its own revisions to an Access Arrangement) if a provision of the Access Arrangement as revised would, if applied, deprive any person of a contractual right in existence prior to the date the revisions to the Access Arrangement were submitted (or were required to be submitted), other than an Exclusivity Right which arose on or after 30 March 1995.
- 2.48 A decision by the Relevant Regulator under section 2.42 or 2.45 is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, revisions to an Access Arrangement come into effect on the date specified by the Relevant Regulator in its decision to approve the revisions (which date must not be earlier than either a date 14 days after the day the decision was made or, except where the Service Provider submitted the revisions voluntarily or because a mechanism of a type referred to in section 3.18(a) included in the Access Arrangement was triggered, the Revisions Commencement Date).

***Changes to an Approved Access Arrangement between Reviews***

- 2.49 An Access Arrangement which has become effective may only be changed pursuant to this section 2.

***Access Arrangement not to limit Access***

- 2.50 For the avoidance of doubt, nothing (except for the Queuing Policy) contained in an Access Arrangement (including the description of Services in a Services Policy) limits:
- (a) the Services a Service Provider can agree to provide to a User or Prospective User;
  - (b) the Services which can be the subject of a dispute under section 6;
  - (c) the terms and conditions a Service Provider can agree with a User or Prospective User; or
  - (d) the terms and conditions which can be the subject of a dispute under section 6.



**Gas Pipelines Access (South Australia) Act 1997*****Previous Access Arrangements***

- 2.51 If an Access Arrangement or Access Arrangement Information or both with respect to a Covered Pipeline have been accepted by the Relevant Regulator under the Gas Supply Act 1996 (NSW) prior to the commencement of the Gas Pipeline Access Law in New South Wales a Service Provider need not submit a proposed Access Arrangement in accordance with section 2.2 with respect to the Covered Pipeline concerned. In such circumstances the Access Arrangement or Access Arrangement Information or both accepted under the Gas Supply Act 1996 (NSW) shall be deemed to have been accepted under this Code and to be the Access Arrangement or Access Arrangement Information with respect to the relevant Covered Pipeline for all purposes under this Code.
- 2.52 A Service Provider need not submit a proposed Access Arrangement or Access Arrangement Information in accordance with section 2.2 with respect to a Covered Pipeline where:
- (a) before the date on which this Code takes effect, the Service Provider (or, where the Service Provider does not at the relevant time yet exist, a person able to represent and bind the future Service Provider) has submitted a proposed Access Arrangement with respect to the Covered Pipeline together with the applicable Access Arrangement Information (if relevant) to the person who is under this Code the Relevant Regulator for that Covered Pipeline; and
  - (b) that Relevant Regulator, having:
    - (i) in substance done the things it would have been required to do in relation to the proposed Access Arrangement and the applicable Access Arrangement Information submitted in accordance with section 2.2; and
    - (ii) certified in writing that those things have been done,
 has approved the proposed Access Arrangement and Access Arrangement Information.

In such circumstances the proposed Access Arrangement and Access Arrangement Information shall be deemed to have been accepted under this Code and to be the Access Arrangement and Access Arrangement Information with respect to the relevant Covered Pipeline for all purposes under this Code.

**3. CONTENT OF AN ACCESS ARRANGEMENT**

*An Access Arrangement must, as a minimum, include the elements described in section 3 of the Code. Section 3 establishes the following requirements:*

***Services Policy*** - *An Access Arrangement must include a policy on the Services to be offered. The Services Policy must:*

- *include a description of one or more Services which are to be offered;*
- *where reasonable and practical, allow Prospective Users to obtain a Service that includes only those elements that the User wishes to be included in the Service; and*
- *where reasonable and practical, allow Prospective Users to obtain a separate tariff in regard to a separate element of a Service.*

**Reference Tariff** - An Access Arrangement must contain one or more Reference Tariffs (the Relevant Regulator may require more than one Reference Tariff when appropriate). A Reference Tariff operates as a benchmark tariff for a specific Service, in effect giving the User a right of access to the specific Service at the Reference Tariff, and giving the Service Provider the right to levy the Reference Tariff for that Service. Ordinarily a Reference Tariff must be set in accordance with the principles set out in section 8.

As an alternative it is possible to have Reference Tariffs for a new Pipeline set by a competitive tender process. Any person may conduct a competitive tender to determine Reference Tariffs for a new Pipeline (and a review date for those Reference Tariffs). The person conducting a tender must first obtain the approval of the Relevant Regulator for the tender process proposed. Before granting approval the Relevant Regulator must be satisfied, amongst other things, that the successful tenderer will be selected principally on the basis that the tender will deliver the lowest sustainable tariffs to users generally over the life of the proposed Pipeline.

After the tender process has been conducted and the successful tender selected, the person conducting the tender must submit the outcome of the process to the Relevant Regulator for the Relevant Regulator's final approval. Before granting final approval the Relevant Regulator must be satisfied, amongst other things, that the tender process proposed was followed and that the successful tenderer was selected in accordance with the selection criteria set out in the tender approval request. Once final approval is granted the Reference Tariffs proposed by the successful tenderer will become the Reference Tariffs for the proposed Pipeline.

It is intended that by using this process, Reference Tariffs will have been set in a competitive market and will therefore naturally achieve the objectives in section 8.1.

**Terms and Conditions** - An Access Arrangement must include the terms and conditions on which the Service Provider will supply each Reference Service.

**Capacity Management Policy** - An Access Arrangement must state whether the Covered Pipeline is a Contract Carriage Pipeline or a Market Carriage Pipeline.

**Trading Policy** - An Access Arrangement for a Contract Carriage Pipeline must include a policy on the trading of capacity. The Trading Policy must, amongst other things, allow a User to transfer capacity:

- without the Service Provider's consent, if the contract between the User and the Service Provider is unaltered by the Transfer; and
- with the Service Provider's consent, in any other case. Consent may be withheld only on reasonable commercial or technical grounds.

**Queuing Policy** - An Access Arrangement must include a policy for defining the priority that Prospective Users have to negotiate for specific Capacity (a Queuing Policy).

**Extensions/Expansions Policy** - An Access Arrangement must include a policy setting out a method for determining whether an extension or expansion to the Covered Pipeline is or is not to be treated as part of the Covered Pipeline for the purposes of the Code.

**Review Date** - An Access Arrangement must include a date on or by which revisions to the Access Arrangement must be submitted and a date on which the revised Access Arrangement is intended to commence.

**Gas Pipelines Access (South Australia) Act 1997**

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***Services to be Offered***

- 3.1 An Access Arrangement must include a policy on the Service or Services to be offered (a ***Services Policy***).
- 3.2 The Services Policy must comply with the following principles:
- (a) The Access Arrangement must include a description of one or more Services that the Service Provider will make available to Users or Prospective Users, including:
    - (i) one or more Services that are likely to be sought by a significant part of the market; and
    - (ii) any Service or Services which in the Relevant Regulator's opinion should be included in the Services Policy.
  - (b) To the extent practicable and reasonable, a User or Prospective User must be able to obtain a Service which includes only those elements that the User or Prospective User wishes to be included in the Service.
  - (c) To the extent practicable and reasonable, a Service Provider must provide a separate Tariff for an element of a Service if this is requested by a User or Prospective User.

***Reference Tariffs and Reference Tariff Policy***

- 3.3 An Access Arrangement must include a Reference Tariff for:
- (a) at least one Service that is likely to be sought by a significant part of the market; and
  - (b) each Service that is likely to be sought by a significant part of the market and for which the Relevant Regulator considers a Reference Tariff should be included.
- 3.4 Unless a Reference Tariff has been determined through a competitive tender process as outlined in sections 3.21 to 3.36, an Access Arrangement and any Reference Tariff included in an Access Arrangement must, in the Relevant Regulator's opinion, comply with the Reference Tariff Principles described in section 8.
- 3.5 An Access Arrangement must also include a policy describing the principles that are to be used to determine a Reference Tariff (a ***Reference Tariff Policy***). A Reference Tariff Policy must, in the Relevant Regulator's opinion, comply with the Reference Tariff Principles described in section 8.

***Terms and Conditions***

- 3.6 An Access Arrangement must include the terms and conditions on which the Service Provider will supply each Reference Service. The terms and conditions included must, in the Relevant Regulator's opinion, be reasonable.

***Capacity Management Policy***

- 3.7 An Access Arrangement must include a statement (a ***Capacity Management Policy***) that the Covered Pipeline is either:
- (a) a Contract Carriage Pipeline; or
  - (b) a Market Carriage Pipeline.
- 3.8 The Relevant Regulator must not accept an Access Arrangement which states that the Covered Pipeline is a Market Carriage Pipeline unless the Relevant Minister of each Scheme Participant in whose Jurisdictional Area the Pipeline is wholly or partly located has given a notice to the Relevant Regulator permitting the Covered Pipeline to be a Market Carriage Pipeline.

***Trading Policy***

- 3.9 The Access Arrangement for a Covered Pipeline which is described in the Access Arrangement as a Contract Carriage Pipeline must include a policy that explains the rights of a User to trade its right to obtain a Service to another person (a ***Trading Policy***).
- 3.10 The Trading Policy must comply with the following principles:
- (a) A User must be permitted to transfer or assign all or part of its Contracted Capacity without the consent of the Service Provider concerned if:
    - (i) the User's obligations under the contract with the Service Provider remain in full force and effect after the transfer or assignment; and
    - (ii) the terms of the contract with the Service Provider are not altered as a result of the transfer or assignment (a ***Bare Transfer***).

In these circumstances the Trading Policy may require that the transferee notify the Service Provider prior to utilising the portion of the Contracted Capacity subject to the Bare Transfer and of the nature of the Contracted Capacity subject to the Bare Transfer, but the Trading Policy must not require any other details regarding the transaction to be provided to the Service Provider.

- (b) Where commercially and technically reasonable, a User must be permitted to transfer or assign all or part of its Contracted Capacity other than by way of a Bare Transfer with the prior consent of the Service Provider. The Service Provider may withhold its consent only on reasonable commercial or technical grounds and may make its consent subject to conditions only if they are reasonable on commercial and technical grounds. The Trading Policy may specify conditions in advance under which consent will or will not be given and conditions that must be adhered to as a condition of consent being given.
- (c) Where commercially and technically reasonable, a User must be permitted to change the Delivery Point or Receipt Point from that specified in any contract for the relevant Service with the prior written consent of the Service Provider. The Service Provider may withhold its consent only on reasonable commercial or technical grounds and may make its consent subject to conditions only if they are reasonable on commercial and technical grounds. The Trading Policy may specify conditions in advance under which consent will or will not be given and conditions that must be adhered to as a condition of consent being given.

**Gas Pipelines Access (South Australia) Act 1997**

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- 3.11 Examples of things that would be reasonable for the purposes of section 3.10(b) and (c) are:
- (a) the Service Provider refusing to agree to a User's request to change its Delivery Point where a reduction in the amount of the Service provided to the original Delivery Point will not result in a corresponding increase in the Service Provider's ability to provide that Service to the alternative Delivery Point; and
  - (b) the Service Provider specifying that, as a condition of its agreement to a change in the Delivery Point or Receipt Point, the Service Provider must receive the same amount of revenue it would have received before the change.

***Queuing Policy***

- 3.12 An Access Arrangement must include a policy for determining the priority that a Prospective User has, as against any other Prospective User, to obtain access to Spare Capacity and Developable Capacity (and to seek dispute resolution under section 6) where the provision of the Service sought by that Prospective User may impede the ability of the Service Provider to provide a Service that is sought or which may be sought by another Prospective User (a ***Queuing Policy***).
- 3.13 The Queuing Policy must:
- (a) set out sufficient detail to enable Users and Prospective Users to understand in advance how the Queuing Policy will operate;
  - (b) accommodate, to the extent reasonably possible, the legitimate business interests of the Service Provider and of Users and Prospective Users; and
  - (c) generate, to the extent reasonably possible, economically efficient outcomes.
- 3.14 The Relevant Regulator may require the Queuing Policy to deal with any other matter the Relevant Regulator thinks fit taking into account the matters listed in section 2.24.
- 3.15 Notwithstanding anything else contained in this Code, the Service Provider must comply with the Queuing Policy specified in the Service Provider's Access Arrangement.

***Extensions/Expansions Policy***

- 3.16 An Access Arrangement must include a policy (an ***Extensions/Expansions Policy***) which sets out:
- (a) the method to be applied to determine whether any extension to, or expansion of the Capacity of, the Covered Pipeline:
    - (i) should be treated as part of the Covered Pipeline for all purposes under the Code; or
    - (ii) should not be treated as part of the Covered Pipeline for any purpose under the Code;
- (for example, the Extensions/Expansions Policy could provide that the Service Provider may, with the Relevant Regulator's consent, elect at some point in time whether or not an extension or expansion will be part of the Covered Pipeline or will not be part of the Covered Pipeline);

- (b) specify how any extension or expansion which is to be treated as part of the Covered Pipeline will affect Reference Tariffs (for example, the Extensions/Expansions Policy could provide:
  - (i) Reference Tariffs will remain unchanged but a Surcharge may be levied on Incremental Users where permitted by sections 8.25 and 8.26; or
  - (ii) specify that a review will be triggered and that the Service Provider must submit revisions to the Access Arrangement pursuant to section 2.28);
- (c) if the Service Provider agrees to fund New Facilities if certain conditions are met, a description of those New Facilities and the conditions on which the Service Provider will fund the New Facilities.

The Relevant Regulator may not require the Extensions/Expansions Policy to state that the Service Provider will fund New Facilities unless the Service Provider agrees.

***Review and Expiry of the Access Arrangement***

3.17 An Access Arrangement must include:

- (a) a date upon which the Service Provider must submit revisions to the Access Arrangement (a ***Revisions Submission Date***); and
- (b) a date upon which the next revisions to the Access Arrangement are intended to commence (a ***Revisions Commencement Date***).

In approving the Revisions Submissions Date and Revisions Commencement Date, the Relevant Regulator must have regard to the objectives in section 8.1, and may in making its decision on an Access Arrangement (or revisions to an Access Arrangement), if it considers it necessary having had regard to the objectives in section 8.1:

- (i) require an earlier or later Revisions Submission Date and Revisions Commencement Date than proposed by the Service Provider in its proposed Access Arrangement;
- (ii) require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date.

3.18 An Access Arrangement Period accepted by the Relevant Regulator may be of any length; however, if the Access Arrangement Period is more than five years, the Relevant Regulator must not approve the Access Arrangement without considering whether mechanisms should be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving incorrect. These mechanisms may include:

- (a) requiring the Service Provider to submit revisions to the Access Arrangement prior to the Revisions Submission Date if certain events occur, for example:
  - (i) if a Service Provider's profits derived from a Covered Pipeline are outside a specified range or if the value of Services reserved in contracts with Users are outside a specified range;
  - (ii) if the type or mix of Services provided by means of a Covered Pipeline changes in a certain way; or

**Gas Pipelines Access (South Australia) Act 1997**

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- (b) a Service Provider returning some or all revenue or profits in excess of a certain amount to Users, whether in the form of lower charges or some other form.

Where a mechanism is included in an Access Arrangement pursuant to section 3.18(a), the Relevant Regulator must investigate no less frequently than once every five years whether a review event identified in the mechanism has occurred.

- 3.19 Nothing in section 3.18 shall be taken to imply that the Relevant Regulator may not approve an Access Arrangement Period longer than 5 years if the Relevant Regulator considers this appropriate, having regard to the objectives of section 8.1.

- 3.20 An Access Arrangement submitted under section 2.3 may include a date at which time the Access Arrangement will expire. If an Access Arrangement submitted under section 2.3 expires, the Covered Pipeline the subject of the Access Arrangement ceases to be Covered on the expiry date. The Service Provider must notify the Code Registrar if a Pipeline ceases to be Covered under this section and the Code Registrar must update the Public Register accordingly.

***Determining Reference Tariffs through a Competitive Tender Process***

- 3.21 Any person who wishes to conduct a tender in relation to a Pipeline that has not been built may make an application to the Relevant Regulator (a ***Tender Approval Request***) requesting the Relevant Regulator to approve the use of a tender process to determine:

- (a) Reference Tariffs for certain Reference Services to be provided by means of the proposed Pipeline;
- (b) other specified items which are required to be included in an Access Arrangement and which are directly relevant to the determination of the Reference Tariffs concerned (including, without limitation, the Revisions Submission Date and Revisions Commencement Date).

- 3.22 A Tender Approval Request must:

- (a) nominate the location or locations from where the proposed Pipeline will take gas and the location or locations of the gas market to which the proposed Pipeline will deliver gas;
- (b) detail the process (including procedures and rules) proposed to be followed in conducting the tender process, including the minimum requirements which a tender must meet before it will be accepted as a conforming tender (for example, the date by which tenders must be received);
- (c) detail the selection criteria to be applied in selecting the successful tender; and
- (d) specify a possible Revisions Commencement Date or a series of possible Revisions Commencement Dates to be established for the proposed Pipeline, in relation to which tenderers are asked to submit tenders and propose Reference Tariffs.

The specification of a Revisions Commencement Date in a Tender Approval Request and a decision to approve such a Tender Approval Request do not limit in any way the Relevant Regulator's discretion to approve or not approve a Revisions Commencement Date pursuant to section 3.33(d).

- 3.23 Subject to section 3.27, within 14 days after receiving a Tender Approval Request which conforms with section 3.22 the Relevant Regulator must:
- (a) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received a Tender Approval Request; and
  - (b) publish a notice in a national daily newspaper which at least:
    - (i) describes the proposed Pipeline to which the Tender Approval Request relates;
    - (ii) states how copies of the Tender Approval Request can be obtained; and
    - (iii) requests submissions by a date specified in the notice (not being a date earlier than 14 days, or later than 28 days, after the date of the notice).
- 3.24 The Relevant Regulator must provide a copy of those parts of the Tender Approval Request that it has not agreed to keep confidential to any person within seven days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.
- 3.25 Within 28 days of the date specified in the notice published under section 3.23(b), the Relevant Regulator must make a decision in relation to a Tender Approval Request that:
- (a) approves the Tender Approval Request; or
  - (b) does not approve the Tender Approval Request.

In making a decision under this section 3.25 the Relevant Regulator must consider any submissions received within the time specified in the notice published under section 3.23(b) and may (but is not obliged to) consider any submissions received after the time.

- 3.26 The Relevant Regulator may reject a Tender Approval Request without further consideration if it is of the opinion that the application has been made on trivial or vexatious grounds.
- 3.27 The Relevant Regulator may at any time decide not to approve a Tender Approval Request if it is of the opinion that the person who submitted the Tender Approval Request may have, or may appear to have, a conflict of interest if it conducted the tender process. The Relevant Regulator may decide not to approve a Tender Approval Request under this section 3.27 without conducting the public consultation required under section 3.23. If the Relevant Regulator decides not to approve a Tender Approval Request under this section 3.27 on conflict of interest grounds, another person may submit a new Tender Approval Request under section 3.21 in relation to the same proposed Pipeline.
- 3.28 The Relevant Regulator must decide to approve a Tender Approval Request if satisfied of all of the following and must decide not to approve a Tender Approval Request if not satisfied of all of the following:
- (a) (*new pipeline*): that the proposed Pipeline will be a new Pipeline;



**Gas Pipelines Access (South Australia) Act 1997**

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- (b) (**public interest and Reference Tariff objectives**): that using the tender process as outlined in the Tender Approval Request to determine Reference Tariffs is in the public interest and is an appropriate mechanism in the circumstances for ensuring that Reference Tariffs achieve the objectives in section 8.1;
- (c) (**tender process will be competitive**): that the number and character of tenders likely to be received would be such as to ensure a competitive outcome; and
- (d) (**exclusion of certain tenders**): that the proposed procedures and rules to be followed in conducting the proposed tender will result in a tender being excluded from consideration if it:
  - (i) does not include a statement of the Reference Tariffs the tenderer proposes and the Reference Services to which those Reference Tariffs would apply;
  - (ii) does not include a policy on whether the additional revenue which would result if the volume of gas actually transported by the proposed Pipeline exceeds a certain volume will either be retained by the Service Provider or returned in whole or in part to Users in the form of lower charges or some other form (an **Additional Revenue Policy**);
  - (iii) does not provide that the residual value of the proposed Pipeline after the expiration of the initial Reference Tariff will be based on depreciation over the Pipeline's economic life;
  - (iv) limits or purports to limit the Services to which access might be sought under this Code; or
  - (v) otherwise includes elements inconsistent with this Code except as contemplated by section 3.34;
- (e) (**consideration of all conforming tenders**): that the proposed procedures and rules to be followed in conducting the proposed tender will result in no tender being excluded from consideration except in the circumstances outlined in paragraph (d) or if the tender does not conform to other reasonable requirements in the request for tenders or does not meet reasonable prudential and technical requirements;
- (f) (**selection criteria**): that the selection criteria to be applied in conducting the proposed tender:
  - (i) will result in the successful tender being selected principally on the basis that the tender will deliver the lowest sustainable tariffs (including but not limited to Reference Tariffs) to Users generally over the economic life of the proposed Pipeline; and
  - (ii) are likely to result in Reference Tariffs that meet the criteria specified in section 3.33(c);
- (g) (**determination of items with the Reference Tariffs**): that the tender documents specify which items required to be included in an Access Arrangement other than Reference Tariffs will be determined by the tender and that those items are directly relevant to the determination of Reference Tariffs;

- (h) (**configuration of Pipeline not limited**): that the tender documents published by the person conducting the tender will not specify the configuration of the proposed Pipeline, including the areas the proposed Pipeline will service, pipeline dimensions, level of compression or other technical specifications, unless the Relevant Regulator is satisfied it would be appropriate to do so;
  - (i) (**other documents**): that any document supporting or relating to the tender process is consistent with this Code and does not purport to limit:
    - (i) the Services which the Service Provider may provide or to which access may be sought under this Code;
    - (ii) the configuration of the proposed Pipeline including the areas the Proposed Pipeline will service, pipeline dimensions, level of compression and other technical specifications unless the Relevant Regulator is satisfied it would be appropriate to do so; or
    - (iii) the construction or operation of other Pipelines which could deliver gas to the same gas market as the proposed Pipeline.
- 3.29 If the Relevant Regulator has made a decision under section 3.25 approving a Tender Approval Request and a tender process has been conducted, the person who conducted the tender process may apply in writing to the Relevant Regulator for final approval under section 3.32 (a **Final Approval Request**). A Final Approval Request must include a statement of which tender was selected and the reasons for that selection based on the selection criteria.
- 3.30 After the successful tenderer has been selected, the Relevant Regulator may permit the person who conducted the tender process and the successful tenderer to agree to changes to the terms of the tender which result in minor changes to the Reference Tariffs proposed in the tender, provided the Relevant Regulator is satisfied the changes are consistent with the requirements in section 3.28(a) to (i). The amended Reference Tariffs shall be considered to be the Reference Tariffs determined in accordance with the tender process for the purposes of the Relevant Regulator making a decision to approve or not approve a Final Approval Request.
- 3.31 The Relevant Regulator may before it makes a decision under section 3.32 require the person who submitted the Final Approval Request to provide the Relevant Regulator with any information or assistance the Relevant Regulator reasonably requires.
- 3.32 If the Relevant Regulator receives a Final Approval Request, the Relevant Regulator must within 28 days of receiving all information it requires under section 3.31 make a decision that:
- (a) approves the Final Approval Request; or
  - (b) does not approve the Final Approval Request.
- 3.33 The Relevant Regulator must decide to approve the Final Approval Request if satisfied of all of the following and must decide not to approve the Final Approval Request if not satisfied of all of the following:
- (a) that the successful tender was selected in accordance with the selection criteria specified in the Tender Approval Request approved by the Relevant Regulator under section 3.25;

**Gas Pipelines Access (South Australia) Act 1997**

- (b) that the tender process was conducted in accordance with the procedures and rules specified in the Tender Approval Request approved by the Relevant Regulator under section 3.25;
- (c) that the Reference Tariffs determined in accordance with the tender process:
- (i) achieve the objectives in section 8.1; and
  - (ii) contain or reflect an allocation of costs between Services and an allocation of costs between Users which is fair and reasonable;
- (d) that the Revisions Commencement Date in the Access Arrangement for the proposed Pipeline is not later than 15 years after the Access Arrangement for the proposed Pipeline is approved or such later date as the Relevant Regulator considers appropriate for the proposed Pipeline on the basis of the proposed tariffs (including but not limited to Reference Tariffs); and
- (e) that the successful tenderer's Access Arrangement for the proposed Pipeline will contain an Additional Revenue Policy that is appropriate for the proposed Pipeline on the basis of the proposed tariffs (including but not limited to Reference Tariffs).
- 3.34 If the Relevant Regulator makes a decision under section 3.32 approving a Final Approval Request then the proposed Pipeline concerned shall be a Covered Pipeline from the time of that decision. In any Access Arrangement for that Covered Pipeline:
- (a) for each Reference Service for which a Reference Tariff was determined by the tender process, the Reference Tariff shall be the Reference Tariff that was determined in accordance with the tender process and approved by the Relevant Regulator; and
  - (b) each other item required to be included in an Access Arrangement, which the tender documents specified would be determined by the tender process, shall be as determined in accordance with the tender process and approved by the Relevant Regulator.

Nothing in this section 3.34 limits the Reference Services for which the Relevant Regulator can require a Reference Tariff to be established.

- 3.35 If the Relevant Regulator makes a decision under section 3.32 approving a Final Approval Request, then the Access Arrangement Information for that Covered Pipeline need not contain the information required by sections 2.6 and 2.7, or any other information, in respect of Reference Tariffs determined pursuant to section 3.34(a).
- 3.36 Nothing in section 3.34 limits or affects the operation of any provision of this Code except the provisions of section 3 relating to the content of an Access Arrangement to the extent that a Reference Tariff or other item included in the Access Arrangement may, under section 3.34, be determined in accordance with the tender process.

**4. RING FENCING ARRANGEMENTS**

*This section of the Code requires a Service Provider to establish arrangements to segregate or "ring fence" its business of providing Services using a Covered Pipeline. As a minimum, a Service Provider must:*

- *be a legal entity;*

- *not carry on a Related Business (essentially a business of producing, purchasing or selling Natural Gas);*
- *establish and maintain separate accounts for the activity that is the subject of each Access Arrangement;*
- *establish and maintain a consolidated set of accounts for all the activities undertaken by the Service Provider;*
- *allocate costs shared between different accounts in a fair and reasonable manner;*
- *ensure that Confidential Information provided by a User or a Prospective User is used only for the purposes for which it was provided and is not disclosed without the User or Prospective User's consent;*
- *ensure that Confidential Information obtained by a Service Provider which might reasonably be expected to materially affect the commercial interests of a User or Prospective User is not disclosed to any other person without the permission of the User or Prospective User to whom the information pertains;*
- *ensure that Marketing Staff of a Service Provider are not also working for an Associate that takes part in a Related Business; and*
- *ensure that Marketing Staff of an Associate that takes part in a Related Business are not also working for the Service Provider.*

*In addition to these minimum requirements, the Relevant Regulator may require the Service Provider to meet additional ring fencing obligations. The Relevant Regulator also has a discretion to dispense with some of the ring fencing obligations. The Gas Pipelines Access Law provides a mechanism for review by the Relevant Appeals Body of a decision by the Relevant Regulator in relation to imposing additional ring fencing obligations or waiving minimum ring fencing obligations.*

*This section of the Code also requires the Service Provider to establish procedures to ensure compliance with the ring fencing obligations.*

**Ring Fencing Minimum Obligations**

- 4.1 A person who is a Service Provider in respect of a Covered Pipeline (regardless of whether they are also a Service Provider in respect of a Pipeline that is not Covered) must comply with the following (but in the case of paragraphs (a), (b), (h) and (i), as from the date that is 6 months after the relevant Pipeline became Covered):
- (a) be a legal entity incorporated pursuant to the Corporations Law, a statutory corporation, a government or an entity established by royal charter;
  - (b) not carry on a Related Business;
  - (c) establish and maintain a separate set of accounts in respect of the Services provided by each Covered Pipeline in respect of which the person is a Service Provider;
  - (d) establish and maintain a separate consolidated set of accounts in respect of the entire business of the Service Provider;

**Gas Pipelines Access (South Australia) Act 1997**

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- (e) allocate any costs that are shared between an activity that is covered by a set of accounts described in section 4.1(c) and any other activity according to a methodology for allocating costs that is consistent with the principles in section 8.1 and is otherwise fair and reasonable;
- (f) ensure that all Confidential Information provided by a User or Prospective User is used only for the purpose for which that information was provided and that such information is not disclosed to any other person without the approval of the User or Prospective User who provided it, except:
  - (i) if the Confidential Information comes into the public domain otherwise than by disclosure by the Service Provider; or
  - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange;
- (g) ensure that all Confidential Information obtained by the Service Provider or by its servants, consultants, independent contractors or agents in the course of conducting its business and which might reasonably be expected to affect materially the commercial interests of a User or Prospective User is not disclosed to any other person without the approval of the User or Prospective User to whom that information pertains, except:
  - (i) if the Confidential Information comes into the public domain otherwise than by disclosure by the Service Provider; or
  - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange;
- (h) ensure that its Marketing Staff are not also servants, consultants, independent contractors or agents of an Associate that takes part in a Related Business and, in the event that they become or are found to be involved in a Related Business contrary to this section, must procure their immediate removal from its Marketing Staff; and
- (i) ensure that none of its servants, consultants, independent contractors or agents are Marketing Staff of an Associate that takes part in a Related Business and, in the event that any servants, consultants, independent contractors or agents are found to be the Marketing Staff of such an Associate contrary to this section, must procure their immediate removal from their position with the Service Provider.

4.2 In complying with sections 4.1(c), (d) and (e) a Service Provider must:

- (a) if the Relevant Regulator has published general accounting guidelines for Service Providers which apply to the accounts being prepared, comply with those guidelines; or
- (b) if the Relevant Regulator has not published such guidelines, comply with guidelines prepared by the Service Provider and approved by the Relevant Regulator or, if there are no such guidelines, comply with such guidelines (if any) as the Relevant Regulator advises the Service Provider apply to that Service Provider from time to time.

Such guidelines may, amongst other things, require the accounts to contain sufficient information, and to be presented in such a manner, as would enable the verification by the Relevant Regulator of the calculation of the Reference Tariffs for Covered Pipelines.

***Additional Ring Fencing Obligations***

4.3 The Relevant Regulator may by notice to a Service Provider require the Service Provider to comply with obligations in addition to those contained in section 4.1, having regard to the following objectives:

- (a) ensuring that the Service Provider does not have regard to the interests of an Associate in priority to the interests of other Users or Prospective Users with respect to the supply of Services (except as provided for on a basis that deals fairly between all Users and Prospective Users under an applicable Queuing Policy); and
- (b) ensuring that ring fencing obligations do not impose unreasonable compliance costs on the Service Provider or its Associates.

The Service Provider must comply with any additional obligations imposed under this section 4.3.

4.4 Without limiting the additional obligations that may be imposed under section 4.3, the Relevant Regulator may require that:

- (a) the Service Provider ensure its Additional Staff are not also servants, consultants, independent contractors or agents of an Associate that takes part in a Related Business and, in the event that they become or are found to be involved in a Related Business, ensure their immediate removal from the Additional Staff;
- (b) at least one director of the Service Provider is not also a director of a company (whether or not an Associate) that takes part in a Related Business or is or may become a User; and
- (c) the electronic, physical and procedural security measures employed in respect of the offices of the Service Provider and of all offices of its Associates are satisfactory to the Relevant Regulator.

The examples given in this section 4.4 shall not be construed as limiting the types of action a Service Provider may have to take in order to comply with section 4.1.

***Procedures for Adding Ring Fencing Obligations***

4.5 The Relevant Regulator must before issuing a notice under section 4.3:

- (a) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it is considering issuing a notice under section 4.3 with respect to a particular Service Provider; and
- (b) publish a notice in a national daily newspaper which at least:
  - (i) states who the Service Provider concerned is and the obligations the Relevant Regulator is considering adding;
  - (ii) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice).

**Gas Pipelines Access (South Australia) Act 1997**

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- 4.6 The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 4.5(b) and may (but is not obliged) to consider any submissions received after that date.
- 4.7 Within 14 days after the last day for submissions specified in the notice published under section 4.5(b) the Relevant Regulator must issue a draft decision stating whether or not it intends to issue a notice under section 4.3.
- 4.8 The Relevant Regulator must:
- (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and
  - (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued).
- 4.9 The Relevant Regulator must consider any submissions it receives by the date specified by the Relevant Regulator under section 4.8 and it may (but is not obliged) to consider any submissions received after that date.
- 4.10 Within 21 days after the last day for submissions on the draft decision specified by the Relevant Regulator, the Relevant Regulator must issue a final decision stating whether or not it will issue a notice under section 4.3.
- 4.11 Subject to the Gas Pipelines Access Law, a notice under section 4.3 has effect 14 days after the notice is given to the Service Provider or such later date as the Relevant Regulator specifies in the notice. A Service Provider may under the Gas Pipelines Access Law have a decision to issue a notice under section 4.3 reviewed by the Relevant Appeals Body.

***Compliance Procedures and Compliance Reporting***

- 4.12 A Service Provider must establish and maintain appropriate internal procedures to ensure it complies with its obligations under this section 4. The Relevant Regulator may require the Service Provider to demonstrate the adequacy of these procedures upon reasonable notice. However, any statement made or assurance given by the Relevant Regulator concerning the adequacy of the Service Provider's compliance procedures does not affect the Service Provider's obligations under this section 4.
- 4.13 A Service Provider must provide a report to the Relevant Regulator, at reasonable intervals determined by the Relevant Regulator, describing the measures taken by the Service Provider to ensure compliance with its obligations under this section 4, and providing an accurate assessment of the effect of those measures.
- 4.14 A Service Provider must provide a report of any breach of any of its obligations under this section 4 to the Relevant Regulator immediately upon becoming aware that the breach has occurred.

***Waiver of Ring Fencing Obligations***

- 4.15 The Relevant Regulator may by notice to a Service Provider waive any of a Service Provider's obligations under:
- (a) section 4.1(b) where the Relevant Regulator is satisfied that:
    - (i) either the Covered Pipeline is not a significant part of the Pipeline system in any State or Territory in which it is located or there is more than one Service Provider in relation to the Covered Pipeline and the Service Provider concerned does not have a significant interest in the Covered Pipeline and does not actively participate in the management or operation of the Covered Pipeline; and
    - (ii) the administrative costs to the Service Provider and its Associates of complying with that obligation outweighs any public benefit arising from the Service Provider meeting the obligation, taking into account arrangements put in place by the Service Provider (if any) to ensure that Confidential Information the subject of sections 4.1(f) and (g) is not disclosed to the Service Provider or is not disclosed to the servants, consultants, independent contractors or agents of the Service Provider who take part in a Related Business; and
    - (iii) an arrangement has been established between the Service Provider and the Relevant Regulator which the Relevant Regulator is satisfied replicates the manner in which section 7.1 would operate if the Service Provider complied with section 4.1(b); and
  - (b) sections 4.1(h) and (i) where the Relevant Regulator is satisfied that the administrative costs to the Service Provider and its Associates of complying with that obligation outweigh any public benefit arising from the Service Provider meeting the obligation.

***Procedures for Waiving Ring Fencing Obligations***

- 4.16 A Service Provider may apply to the Relevant Regulator requesting the Relevant Regulator to issue a notice under section 4.15.
- 4.17 When the Relevant Regulator receives an application under section 4.16 the Relevant Regulator must:
- (a) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; or
  - (b) in all other cases within 14 days after receipt of the application:
    - (i) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received the application; and
    - (ii) publish a notice in a national daily newspaper which at least:
      - (A) states who the Service Provider concerned is and the obligations that the application seeks to have waived;



**Gas Pipelines Access (South Australia) Act 1997**

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- (B) states how copies of the application can be obtained;
- (C) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice).
- 4.18 The Relevant Regulator must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.
- 4.19 The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 4.17(b) and it may (but is not obliged) to consider any submissions received after that date.
- 4.20 Within 14 days after the last day for submissions specified in the notice published under section 4.17(b) the Relevant Regulator must issue a draft decision stating whether or not it intends to issue a notice under section 4.15.
- 4.21 The Relevant Regulator must:
- (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and
- (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued).
- 4.22 The Relevant Regulator must consider any submissions it receives by the date specified by the Relevant Regulator under section 4.21 and it may (but is not obliged) to consider any submissions received after that date.
- 4.23 Within 21 days after the last day for submissions on the draft decision specified by the Relevant Regulator, the Relevant Regulator must issue a final decision stating whether or not it will issue a notice under section 4.15.
- 4.24 Subject to the Gas Pipelines Access Law, a notice under section 4.15 has effect 14 days after the notice is given to the Service Provider or such later date as the Relevant Regulator specifies in the notice. A Service Provider or other person adversely affected may under the Gas Pipelines Access Law have a decision by the Relevant Regulator to issue or not issue a notice under section 4.15 reviewed by the Relevant Appeals Body.

**5. INFORMATION AND TIMELINES FOR NEGOTIATION**

*This section of the Code places obligations on Service Providers and Users to disclose to the market information relevant to obtaining access to Services provided by means of a Covered Pipeline.*

*Service Providers are required to:*

- *establish, and provide to bona fide Prospective Users who request it, an Information Package containing general information on the terms and conditions of access and explaining how to make a specific access request;*
- *respond within 30 days to a specific request for access; and*
- *establish and maintain a public register of Spare and Developable Capacity.*

*Users with Contracted Capacity which they do not expect to use must make available to any person who requests it information about the quantity, type and timing of that unutilised Contracted Capacity. The User may notify the Service Provider of its unutilised Contracted Capacity so that it is included on the Service Provider's public register.*

***General Requests from Prospective Users***

- 5.1 A Service Provider must establish and maintain an Information Package in relation to each Covered Pipeline that contains at least the following information:
- (a) the Access Arrangement and Access Arrangement Information for the relevant Covered Pipeline;
  - (b) a summary of the contents of the public register referred to in section 5.9, updated at reasonable intervals;
  - (c) information relating to all major trunk and mains pipes comprised in the relevant Covered Pipeline (for example, a map showing the location and size of those pipes);
  - (d) a description of the Service Provider's procedures relating to specific access requests, including a detailed description of the information the Service Provider requires in order to consider an access request; and
  - (e) any other information the Relevant Regulator reasonably requires to be included under section 5.2.
- 5.2 The Relevant Regulator may require the Service Provider to amend or include additional information in the Information Package if the Relevant Regulator considers the amendment or additional information will assist Prospective Users to decide whether or not to seek Services from the Service Provider or to determine how to go about seeking Services from the Service Provider. The Relevant Regulator must not require information to be included in the Information Package if its disclosure could in the Relevant Regulator's opinion be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.
- 5.3 The Service Provider must provide a copy of the Information Package to any bona fide Prospective User within 14 days after the Prospective User requests a copy and pays any applicable fee. The Service Provider may require the payment of a reasonable fee (determined in a manner approved by the Relevant Regulator) for copying the Access Arrangement Information, but must not charge a fee for any other item included in the Information Package.

***Specific Requests from Prospective Users***

- 5.4 If a Service Provider receives a specific request for access to a Service provided by means of a Covered Pipeline it must, within 30 days after it has received the information required to consider the request (as set out in the Information Package), respond to the Prospective User:
- (a) confirming that Spare Capacity exists to satisfy the request and specifying the charges and terms and conditions upon which it will make the Service available; or
  - (b) advising that Spare Capacity does not exist to satisfy the request; or

**Gas Pipelines Access (South Australia) Act 1997**

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- (c) advising that investigations are required to be undertaken prior to responding to the request.

5.5 If the Service Provider advises that investigations are required to be undertaken prior to responding to the request, it must also advise the Prospective User of:

- (a) the nature of the investigations;
- (b) a plan, including a time schedule, for completing the investigations; and
- (c) any reasonable costs which the Prospective User may be required to meet in respect of the investigations.

Upon obtaining the Prospective User's consent to the plan and the proposed allocation of costs, the Service Provider must proceed forthwith with the agreed plan.

5.6 If the Service Provider advises that Capacity does not exist to satisfy the request, it must provide an explanation outlining those aspects of the request which cannot be satisfied and indicating, based on current commitments, when the requirement might be able to be satisfied.

5.7 If a Prospective User or a Service Provider provides the other with information pursuant to section 5.4, 5.5 or 5.6 which it notifies the other is confidential, the recipient must not disclose that information to any other person except:

- (a) if the information comes into the public domain otherwise than by disclosure by the recipient; or
- (b) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange.

***Information Provided by Users to the Market***

5.8 Notwithstanding anything contained in an Access Arrangement, where a User does not expect to utilise fully its Contracted Capacity and where the unutilised Contracted Capacity is a Marketable Parcel then the User:

- (a) must promptly provide to any person who requests it information about the quantity, type and timing of the unutilised Contracted Capacity and may make publicly available the proposed terms and conditions (which may include price) for the sale of the unutilised Contracted Capacity; and
- (b) may notify the Service Provider of the unutilised Contracted Capacity, including the quantity, type and timing of the unutilised Contracted Capacity and the proposed terms and conditions (which may include price) for the sale of the unutilised Contracted Capacity.

***Public Register of Capacity***

- 5.9 The Service Provider must establish and maintain a public register which includes:
- (a) an indication of the Spare Capacity that it reasonably believes exists for delivery to defined points along the Covered Pipeline (being defined points that are likely to be relevant commercially for a significant number of Prospective Users and the number of which is reasonable on commercial and technical grounds);
  - (b) to the extent that it is commercially and technically reasonable to include it, information on planned or committed Developable Capacity and reasonably expected additions to Spare Capacity at the defined points along the Covered Pipeline referred to in paragraph (a), except where such disclosure may be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User; and
  - (c) information provided to the Service Provider by a User under section 5.8(b).

Where a Covered Pipeline comprises a hierarchy of pipes that are differentiated by, amongst other things, pipeline operating pressure and pipeline diameter, the information referred to in paragraphs (a) and (b) may be limited to the trunk and mains pipes.

**6. DISPUTE RESOLUTION**

*This section of the Code establishes a mechanism whereby disputes between Prospective Users and Service Providers about the terms and conditions of access can be submitted to the Arbitrator for arbitration. This section of the Code sets out rules relating to notification of a dispute, withdrawal and termination of a dispute, the nature of the arbitration decision to be made and certain guidelines and restrictions the Arbitrator must follow in making its decision. The Gas Pipelines Access Law contains the detailed procedural rules that will apply in an arbitration.*

*The Code does not limit the ability of a Service Provider and User to reach an agreement about access without recourse to these dispute resolution procedures. The Code also does not limit the terms and conditions on which a Service Provider and User can reach agreement. In particular, parties can agree to a Tariff other than the Reference Tariff. The provisions in section 6 will apply only if parties cannot reach agreement and a dispute is notified to the Relevant Regulator.*

*The dispute resolution mechanism applies only to a dispute about Service provided by means of a Covered Pipeline (for example, a dispute about access to Spare or Developable Capacity or a dispute about interconnection). Spare Capacity is defined as meaning, in the case of a Contract Carriage Pipeline, essentially, capacity that has not already been reserved in a contract plus contractually reserved capacity that is not being used. Although the Arbitrator can determine that access should be provided to contractually reserved capacity that is not being used, it must not make a decision that deprives a person of a contractual right. Consequently, access to contracted but unused capacity can be ordered on an interruptible basis but the original contract holder retains a priority right to that capacity.*

**Gas Pipelines Access (South Australia) Act 1997**

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*Although an Access Arrangement (apart from the Queuing Policy) cannot limit the scope for commercial negotiation, or limit the range of matters that can be the subject of an access dispute, the Arbitrator is bound to apply the provisions of the Access Arrangement in an access arbitration. The implications of this are that:*

- *except in relation to the Queuing Policy, the dispute resolution procedure is the mechanism through which a User can require the Service Provider to grant access according to the terms of the Access Arrangement (for example, to grant access to the Reference Service at the Reference Tariff); and*
- *the Access Arrangement provides a degree of certainty as to the outcome of an access dispute.*

*The Arbitrator may before arbitrating a dispute:*

- *require the parties to continue negotiations or engage in some alternative dispute resolution process; and*
- *require written reports from the parties.*

*If the Arbitrator decides the sole subject of dispute is what tariff should apply to a Reference Service, the Arbitrator may short cut the dispute resolution process and make an immediate decision requiring the Reference Service to be provided at the Reference Tariff.*

*In any other case, the arbitrator must in reaching a decision:*

- *apply the provisions of the Access Arrangement; and*
- *take into account the factors listed in section 6.15.*

*The Arbitrator must not make a decision that:*

- *is inconsistent with the Access Arrangement;*
- *would prevent a User from obtaining a Service to the extent provided for in a contract;*
- *deprives a person of any contractual right that existed prior to the notification of the dispute, other than an Exclusivity Right which arose on or after 30 March 1995;*
- *affects the valid priority rights of another person under the Queuing Policy; or*
- *requires a Service Provider, User or Prospective User to accept a tariff for a Reference Service other than the Reference Tariff.*

*Because the Arbitrator cannot deprive a person of a contractual right, "foundation shippers" contracts cannot be overturned by the Arbitrator at either the Service Provider's or foundation shipper's request.*

*The Arbitrator is also precluded from granting access where the Service Provider reasonably believes that access is incompatible with the safe operation of the Covered Pipeline and prudent pipeline practice accepted in the industry. If the Arbitrator is precluded from granting access on these grounds, the Service Provider must disclose to the Prospective User the assumptions it used in forming its belief. The Prospective User also has the option of requiring an independent expert to provide an opinion on the matter. The expert opinion cannot override the Service Provider's reasonable belief on safety. In certain circumstances, however, further action could be taken by the Relevant Regulator or the Prospective User under the hindering provisions of the Gas Pipelines Access Law if the advice of the expert contradicts the position of the Service Provider. In certain circumstances, the Arbitrator may require a Service Provider to install a New Facility to expand capacity.*

*The final decision has effect 14 days after the decision is made. The Service Provider is bound by the decision. The Prospective User is also bound by the decision unless it notifies the Arbitrator within 14 days of the decision that it does not intend to be bound by the decision. As part of a decision, the Arbitrator may require the parties to represent the decision in the form of a binding contract.*

### ***Notification of a Dispute***

- 6.1 If a Prospective User and a Service Provider are unable to agree on one or more aspects of access to a Service the Prospective User or Service Provider may notify the Relevant Regulator in writing that a dispute exists. A Prospective User or Service Provider may not give a notice to the Relevant Regulator under this section unless an Access Arrangement has been accepted by the Relevant Regulator (or the Relevant Regulator has drafted and approved its own Access Arrangement) with respect to the Covered Pipeline concerned.
- 6.2 On receiving the notification, the Relevant Regulator must give notice in writing of the access dispute to:
- (a) the Service Provider, if another person notified the access dispute;
  - (b) the other person, if the Service Provider notified the access dispute.

The parties to an arbitration are the Prospective User or Users and the Service Provider or Providers who are in dispute and no other persons.

- 6.3 Before arbitrating a dispute, the Arbitrator may:
- (a) require the parties to continue negotiations or engage in an alternative dispute resolution process; and
  - (b) require reports from each party setting out the nature of the latest offers, the basis upon which those offers were made and the nature of any conflicts of interest that the Service Provider may have that may affect its willingness to resolve the dispute with the Prospective User.

- 6.4 Unless the Arbitrator makes a decision under section 6.3, the Arbitrator must require the parties to make submissions to the Arbitrator regarding the dispute by a specified date.

### ***Withdrawal and Termination of a Dispute***

- 6.5 The person who notified the dispute under section 6.1 or the Prospective User may withdraw notification of a dispute at any time by notice to the Arbitrator. If the notification is withdrawn, it is taken for the purposes of this section 6 never to have been given.

**Gas Pipelines Access (South Australia) Act 1997**

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- 6.6 The Relevant Regulator may at any time terminate an arbitration (without making a decision) if the Relevant Regulator considers that:
- (a) the notification of the dispute was vexatious; or
  - (b) the subject-matter of the dispute is trivial, misconceived or lacking in substance; or
  - (c) the party who notified the dispute has not engaged in negotiations in good faith.

***The Arbitration***

- 6.7 Unless the Arbitrator terminates the arbitration under section 6.6, the Arbitrator must make a decision on access by the Prospective User to a Service.
- 6.8 The Arbitrator's decision may deal with any matter relating to the provision of a Service to a Prospective User. By way of example, the decision may:
- (a) require the Service Provider to offer to enter into a contract to provide a Service to the Prospective User at a specified Tariff and on specified terms and conditions; or
  - (b) require the Service Provider to install a New Facility to increase the Capacity of the Covered Pipeline pursuant to section 6.22.

The decision does not have to require the Service Provider to provide a Service to the Prospective User.

- 6.9 Subject to section 6.14, in making a decision under section 6.7 the Arbitrator must:
- (a) consider submissions received from the parties before the date specified by the Arbitrator under section 6.4;
  - (b) after considering submissions received by the date specified by the Arbitrator under section 6.4, provide a draft decision to the parties and request submissions from the parties by a specified date;
  - (c) consider submissions received from the parties before the date specified by the Arbitrator under paragraph (b); and
  - (d) after considering submissions received by the date specified by the Arbitrator under paragraph (b) provide a final decision to the parties.
- 6.10 The Arbitrator may, but need not, by whatever means it considers appropriate seek written submissions from persons who are not parties to the dispute and take those submissions into account in making its decision under section 6.7.
- 6.11 The Arbitrator must provide a final decision under section 6.7 within three months of requiring parties to make submissions under section 6.4. The Arbitrator must also ensure that there is a period of at least 14 days:
- (a) between requiring parties to make submissions under section 6.4 and the last day for such submissions specified by the Arbitrator; and
  - (b) between providing a draft decision to the parties under section 6.9(b) and the last day for submissions on the draft decision specified by the Arbitrator.

In all other respects the timing for the taking of each of the steps set out in section 6.9 is a matter for the Arbitrator to determine.

6.12 The Arbitrator may increase the period of three months specified in section 6.11 by periods of up to one month on one or more occasions provided it provides the parties (and each person who has made a written submission to the Arbitrator) with a notice of the decision to increase the period.

6.13 Subject to sections 6.19 and 6.20, if:

- (a) the sole subject of a dispute is the question of which Tariff should apply to a Reference Service; and
- (b) a decision requiring the Service Provider to provide the Prospective User with the Reference Service that the Prospective User seeks would not be inconsistent with sections 6.18 and 6.21,

the Arbitrator must make a decision requiring the Service Provider to provide the Prospective User with the Reference Service that the Prospective User seeks at the Reference Tariff and on the terms and conditions specified under section 3.6.

6.14 The Arbitrator need not before making a decision under section 6.13 issue a draft decision.

***Guidance for the Arbitrator***

6.15 When arbitrating a dispute the Arbitrator must, subject to sections 6.18(b), (c) and (d), apply the provisions of the Access Arrangement for the Covered Pipeline concerned. In addition, the Arbitrator must take into account:

- (a) the Service Provider's legitimate business interests and investment in the Covered Pipeline;
- (b) the costs to the Service Provider of providing access, including any costs of extending the Covered Pipeline, but not costs associated with losses arising from increased competition in upstream or downstream markets;
- (c) the economic value to the Service Provider of any additional investment that the Prospective User or the Service Provider has agreed to undertake;
- (d) the interests of all Users;
- (e) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
- (f) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
- (g) the economically efficient operation of the Covered Pipeline; and
- (h) the benefit to the public from having competitive markets.

6.16 A Service Provider must comply with a decision of the Arbitrator made under this section 6 from the date specified by the Arbitrator.



**Gas Pipelines Access (South Australia) Act 1997**

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- 6.17 The Arbitrator may refuse to make a decision that requires the Service Provider to provide a particular Service to the Prospective User if, without limitation, the Arbitrator considers there is substantial competition in the market for the provision of the Service in question.

***Restrictions on Decisions***

- 6.18 Subject to sections 6.19 and 6.20 and to the Queuing Policy contained in the Access Arrangement, the Arbitrator must not make a decision that:
- (a) subject to paragraphs (b), (c) and (d), is inconsistent with the Access Arrangement;
  - (b) would impede the existing right of a User to obtain Services;
  - (c) would deprive any person of a contractual right that existed prior to the notification of the dispute, other than an Exclusivity Right which arose on or after 30 March 1995;
  - (d) is inconsistent with the applicable Queuing Policy; or
  - (e) requires the Service Provider to provide, or the User or Prospective User to accept, a Reference Service at a Tariff other than the Reference Tariff.

***Effect of a Surcharge***

- 6.19 If:
- (a) a dispute relates (wholly or partly) to the Tariff to be charged for a Service; and
  - (b) but for this section, the Arbitrator would have made a decision requiring the Service Provider to provide a specified Service at a specified Tariff (which could be the Reference Service at the Reference Tariff); and
  - (c) the Prospective User is a Prospective Incremental User; and
  - (d) there is a Surcharge relating to the relevant Incremental Capacity,

the Arbitrator's decision under section 6.7 or section 6.13 may require the Service Provider to provide the Service that would (but for this section) have been specified under paragraph (b) at a Tariff equal to the Tariff that would (but for this section) have been specified under paragraph (b) plus the Surcharge.

***Prior Capital Contributions***

- 6.20 If a User or Prospective User claims it has funded the construction of all or part of a Covered Pipeline, either directly or by agreeing to pay the Service Provider a higher charge than it would have paid in the absence of such a capital contribution, then in making a decision the Arbitrator must:
- (a) consider whether the User or Prospective User did make a capital contribution to the construction of all or part of the Covered Pipeline; and
  - (b) consider the extent to which the User or Prospective User has recouped any such capital contribution.

If the Arbitrator considers that the User or Prospective User has made a capital contribution which has not been fully recouped, the Arbitrator's decision under section 6.7 or section 6.13 may require the Service Provider to provide the Service at a Tariff set in a way that allows the User or Prospective User to recoup some or all of the unrecouped portion of the capital contribution.

***Safe Operation of a Covered Pipeline***

- 6.21 Where the Service Provider reasonably believes that it is not possible to accommodate a Prospective User's requirement for a Service consistently with the safe operation of the Covered Pipeline and prudent pipeline practices accepted in the industry:
- (a) the Arbitrator must not make a decision that the Service Provider reasonably believes is not consistent with the safe operation of the Covered Pipeline and prudent pipeline practices accepted in the industry;
  - (b) where the Service is being sought by the Prospective User on a non interruptible basis, the Arbitrator may require the Service Provider to offer a similar Service on an interruptible basis and for the corresponding interruptible price, where that would be consistent with the safe operation of the Covered Pipeline and prudent pipeline practices accepted in the industry; and
  - (c) the Service Provider must disclose to the Prospective User the assumptions it has used in determining that it is not possible to accommodate the Prospective User's requirement for a Service consistently with the safe operation of the Covered Pipeline and prudent pipeline practices accepted in the industry and must provide the Prospective User with the option of having an independent expert nominated by the Service Provider, at the cost of the Prospective User, give a (nonbinding) opinion on the matter.

***Obligation to Develop Capacity***

- 6.22 In making a decision under section 6.7 or section 6.13 the Arbitrator may require the Service Provider to expand the Capacity of a Covered Pipeline to meet the requirements of a Prospective User, provided that:
- (a) the Service Provider is not required to extend the geographical range of a Covered Pipeline;
  - (b) the expansion is technically and economically feasible and consistent with the safe and reliable provision of the Service;
  - (c) the Service Provider's legitimate business interests are protected;
  - (d) the Prospective User does not become the owner of a Covered Pipeline or part of a Covered Pipeline without the agreement of the Service Provider; and
  - (e) the Service Provider is not required to fund part or all of the expansion (except where the Extensions/Expansions Policy in the Access Arrangement for the Covered Pipeline states that the Service Provider will fund the New Facility and the conditions specified in the Extensions/Expansions Policy have been met).
- 6.23 If the Arbitrator requires the Service Provider to install a New Facility under section 6.22 and the Prospective User bears the cost of the expenditure on the New Facility, then:
- (a) all expenditure on the New Facility constitutes New Facilities Investment by the Service Provider for the purposes of determining the Reference Tariffs;

**Gas Pipelines Access (South Australia) Act 1997**

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- (b) the Service Provider must levy a Surcharge on Incremental Users (apart from the Prospective User) consistent with the principles for Surcharges contained in section 8 (with the Prospective User treated as if it were paying a Surcharge for the purposes of calculating a fair and reasonable Surcharge for other Incremental Users); and
- (c) the terms of access for the Prospective User shall reflect the value to the Service Provider of the contribution made by the Prospective User.

***Prospective User May Decide Not to Take a Service***

6.24 Where a decision made under section 6.7 or section 6.13 requires the Service Provider to provide, and the Prospective User to accept, a Service on terms and conditions specified in the decision, then:

- (a) subject to paragraph (b), the Prospective User becomes bound by the decision on the 14th day after the day on which the decision was made, or, if earlier, on the day the Prospective User notifies the Service Provider that it intends to be bound by the decision; and
- (b) the Prospective User is not bound by the decision if it notifies the Arbitrator that it does not intend to be bound by the decision within 14 days after the day on which the decision was made (unless it has previously notified the Service Provider under paragraph (a), in which case paragraph (a) applies).

***Reservation of Capacity During an Access Dispute***

6.25 No priority rights of a User or Prospective User who is a party to a dispute shall be altered during the period of that dispute until the Arbitrator's decision has been made under section 6.7 or section 6.13.

***Obligation to Reflect the Decision in a Draft Contract***

6.26 Where a decision under section 6.7 or section 6.13 requires the Service Provider to provide a Service to the Prospective User on terms and conditions specified in the decision, the Arbitrator may, as part of that decision, require the Service Provider and Prospective User to represent that decision in the form of a contract between the parties and to submit to the Arbitrator, within 14 days following the date the decision comes into effect, either (at the choice of the Service Provider or Prospective User):

- (a) a copy of a draft contract; or
- (b) a copy of a signed contract.

6.27 If the parties do not submit the draft contract (or a copy of a signed contract) to the Arbitrator within the 14 day period referred to in section 6.26, then the Arbitrator may make a decision on the form of any terms and conditions in the draft contract that have not been resolved within that time.

**7. GENERAL REGULATORY AND MISCELLANEOUS PROVISIONS**

*This section of the Code contains a number of miscellaneous provisions, including provisions dealing with the following.*

**Associate Contracts** - A Service Provider is required to obtain the Relevant Regulator's consent before entering into certain contracts (principally any contract with an Associate for the provision of a Service provided by means of a Covered Pipeline). The Relevant Regulator's decision to not approve an Associate Contract may be subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law.

**Decisions of the NCC, Relevant Minister, Relevant Regulator and Arbitrator** - Each decision to be made by the NCC, Relevant Minister, Relevant Regulator or Arbitrator under the Code must include reasons. A copy of the decision and the reasons for it should be placed on a Public Register.

**Extensions to Time Limits** - Provision is made for the extension of certain time limits in the Code.

**Approval of Relevant Regulator Required for Associate Contracts**

- 7.1 A Service Provider must not enter into an Associate Contract without first obtaining the approval of the Relevant Regulator. The Relevant Regulator must not refuse to approve a proposed Associate Contract unless it considers that the contract would have the effect, or would be likely to have the effect, of substantially lessening, preventing or hindering competition in a market.
- 7.2 If an Associate Contract provides for the supply of Services at the Reference Tariff the Relevant Regulator may make a decision under section 7.1 without conducting public consultation.
- 7.3 In all other cases the Relevant Regulator must, prior to making a decision under section 7.1, conduct such public consultations as it considers appropriate. In conducting such public consultations the Relevant Regulator may, but need not, make public the content of part or all of the Associate Contract. The Relevant Regulator must not make public any part of the Associate Contract which the Service Provider claims is confidential or commercially sensitive except where the Relevant Regulator is of the opinion the disclosure of the part of the Associate Contract concerned would not be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.
- 7.4 The Relevant Regulator is deemed to have approved an Associate Contract if it does not notify the Service Provider that it does not approve the Contract within:
- (a) 21 days after the day on which the Service Provider's application to enter into the Associate Contract was received by the Relevant Regulator; or
  - (b) if, within that 21 day period, the Relevant Regulator notifies the Service Provider that it requires additional information from the Service Provider to consider the application - the period of 21 days after the day on which the Service Provider's application to enter into the Associate Contract was received by the Relevant Regulator plus the number of days in the period commencing on the day on which the Relevant Regulator gave notice to the Service Provider and ending on the day on which the Relevant Regulator receives the additional information from the Service Provider.
- 7.5 If the Relevant Regulator conducts a public consultation in relation to an Associate Contract the references in clause 7.4 to 21 days shall be read as references to 49 days.
- 7.6 A decision by the Relevant Regulator not to approve an Associate Contract is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law.

**Gas Pipelines Access (South Australia) Act 1997**

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***Decisions by the NCC, Relevant Minister, Relevant Regulator and Arbitrator***

- 7.7 If the NCC, Relevant Minister, Relevant Regulator or Arbitrator is required under this Code to make a draft decision or a final decision, the NCC, Relevant Minister, Relevant Regulator or Arbitrator concerned must include its reasons in its draft decision or final decision.
- 7.8 Subject to section 7.12, the NCC shall as soon as possible provide to the Code Registrar to place on the Public Register a copy of:
- (a) each application for Coverage of a Pipeline and application for revocation of Coverage of a Pipeline;
  - (b) each submission received by the NCC in relation to any such application;
  - (c) each recommendation made by the NCC in relation to any such application and the reasons given for such a recommendation; and
  - (d) each decision made by the Relevant Minister (and the Relevant Appeals Body under the Gas Pipelines Access Law, if applicable) in relation to any such application and the reasons given for such a decision, including a description of the Pipeline the subject of that decision.
- 7.9 Subject to section 7.12, each Relevant Regulator shall as soon as possible provide to the Code Registrar to place on the Public Register:
- (a) in relation to Access Arrangements a copy of:
    - (i) each proposed Access Arrangement or proposed revisions of an Access Arrangement;
    - (ii) each proposed Access Arrangement Information or proposed revisions of Access Arrangement Information;
    - (iii) each submission received by the Relevant Regulator in relation to the Access Arrangement or revisions to the Access Arrangement;
    - (iv) each submission received by the Relevant Regulator in relation to the Access Arrangement Information or revisions to the Access Arrangement Information;
    - (v) each draft decision and final decision made by the Relevant Regulator (and the Relevant Appeals Body under the Gas Pipelines Access Law if applicable) in relation to a proposed Access Arrangement, proposed revisions to an Access Arrangement, proposed Access Arrangement Information or proposed revisions to Access Arrangement Information and the reasons given for each such draft or final decision;
    - (vi) if an Access Arrangement submitted under section 2.3 is accepted, a description of the Pipeline which thereby became Covered;
  - (b) in relation to competitive tender processes a copy of:
    - (i) each Tender Approval Request and Final Approval Request the Relevant Regulator receives;

- (ii) each submission and other document the Relevant Regulator receives relating to a Tender Approval Request and Final Approval Request;
  - (iii) each decision by the Relevant Regulator relating to a Tender Approval Request or Final Approval Request and the reasons given for each such decision;
  - (iv) a description of any proposed Pipeline that becomes a Covered Pipeline pursuant to section 3.34;
- (c) in relation to arbitrations, if the Regulator considers it appropriate, a copy of each draft or final decision of the Relevant Regulator (or an Arbitrator appointed by it) under section 6 of the Code and the reasons given for each such draft or final decision;
- (d) in relation to ring fencing a copy of:
- (i) each application received by the Relevant Regulator under section 4;
  - (ii) each submission received by the Relevant Regulator in relation to adding to or waiving ring fencing obligations;
  - (iii) any draft or final decision by the Relevant Regulator (and the Relevant Appeals Body under the Gas Pipelines Access Law if applicable) to add to or waive ring fencing obligations and the reasons given for any such draft or final decision;
- (e) in relation to Associate Contracts a copy of:
- (i) each decision made by the Relevant Regulator under section 7.1 and the reasons given for any such decision;
  - (ii) if the Relevant Regulator considers it appropriate, the proposed Associate Contract.

***Public Register***

- 7.10 Subject to section 7.12 the Code Registrar shall keep a Public Register and place on that register:
- (a) a description of each Covered Pipeline;
  - (b) each document provided to it by the NCC under section 7.8 of the Code and section 10 or 11 of the Gas Pipelines Access Law;
  - (c) each document provided to it by a Relevant Regulator under section 7.9; and
  - (d) each document provided to it by a Service Provider under either section 1.41 or section 3.20.

**Gas Pipelines Access (South Australia) Act 1997**

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***Treatment of Confidential Information***

- 7.11 Where a person furnishes information or a document to the NCC, Relevant Minister or Relevant Regulator (other than in compliance with a notice given by the Relevant Regulator under section 41 of the Gas Pipelines Access Law) the person may, at the time when the document is furnished, state that the information or document or part of the information or document is of a confidential or commercially sensitive nature.
- 7.12 The NCC, Relevant Minister and Relevant Regulator must not disclose the contents of any such information or document or any such part of the information or document to any person or provide it to the Code Registrar to place on the Public Register except where the NCC, Relevant Minister or Relevant Regulator is of the opinion that the disclosure of the information or document or part of the information or document would not be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.
- 7.13 Notwithstanding section 7.12 the information provided to the Code Registrar by the Relevant Regulator under section 7.9 must include at least the information stated below for the decision identified:
- (a) A decision in relation to an Access Arrangement or revisions to an Access Arrangement:
    - (i) the valuations derived from employing each asset valuation methodology to which regard was had pursuant to section 8.10(a) and (b) and the assumptions on which those valuations were based;
    - (ii) the Initial Capital Base for a Covered Pipeline that is in existence at the Commencement of the Code;
    - (iii) a summary of the assumptions and reasoning that resulted in the figure adopted as the Initial Capital Base for a Covered Pipeline that is in existence at the commencement of the Code, including if the Initial Capital Base for a Covered Pipeline that is in existence at the commencement of the Code is outside the range of values determined according to sections 8.10(a) and (b), detailed reasons as to why a figure outside that range was selected.
  - (b) A decision in relation to an Access Arrangement or revisions to an Access Arrangement where the decision was to approve a proposed Access Arrangement or proposed revisions: details of where the assumptions adopted by the Regulator in approving the (or drafting and approving its own) Access Arrangement differ from the assumptions described in the Access Arrangement Information and reasons for that difference.
- 7.14 The Relevant Regulator may provide a person who makes a request for further information with such further information relevant to the decision as it sees fit, other than information which could not be provided to the Code Registrar under section 7.12.

***Operational Guidelines***

- 7.15 In exercising any functions under the Code the Relevant Regulator and the Arbitrator may take into account any guidelines on operational procedures approved by the Relevant Ministers of all the Scheme Participants on the recommendation of the NGPAC.

***Extensions to Time Limits***

- 7.16 If any section of this Code requires the NCC or the Relevant Minister to do something within a certain period, the NCC or the Relevant Minister, as the case may be, may, in a particular case, increase the period it has to do the thing in question by the period originally specified in the section of the Code concerned.
- 7.17 The NCC or the Relevant Minister may only increase the period it has to do a thing under section 7.16 if, before the day on which the Code would have required the thing to be done, it publishes in a national newspaper notice of the decision to increase the period.
- 7.18 The NCC and the Relevant Minister may increase the period it has to do a thing any number of times provided on each occasion it does so it complies with section 7.17.
- 7.19 The Relevant Regulator may on one or more occasions, at its discretion, grant extensions to any time period in this Code that applies to a person other than the Relevant Regulator, the NCC or the Relevant Minister, provided that an application for that extension has been received by it before the expiration of the time period in question. Time periods applying to the Relevant Regulator, NCC or Relevant Minister may be extended as otherwise provided in this Code.

**8. REFERENCE TARIFF PRINCIPLES**

*This section of the Code sets out the principles with which Reference Tariffs and a Reference Tariff Policy (the principles underlying the calculation of Reference Tariffs) included in an Access Arrangement must comply.*

***General Principles***

*The Reference Tariff Principles are designed to ensure that certain key principles are reflected in the Reference Tariff Policy and in the calculation of all Reference Tariffs. Within these parameters, the Reference Tariff Principles are designed to provide a high degree of flexibility so that the Reference Tariff Policy can be designed to meet the specific needs of each pipeline system. The overarching requirement is that when Reference Tariffs are determined and reviewed, they should be based on the efficient cost (or anticipated efficient cost) of providing the Reference Services.*

*The Principles also require that, where appropriate, Reference Tariffs be designed to provide the Service Provider with the ability to earn greater profits (or less profits) than anticipated between reviews if it outperforms (or underperforms against) the benchmarks that were adopted in setting the Reference Tariffs. The intention is that, to the extent possible, Service Providers be given a market-based incentive to improve efficiency and to promote efficient growth of the gas market (an Incentive Mechanism).*

*The Reference Tariff Policy and all Reference Tariffs should be designed to achieve a number of objectives, including providing the Service Provider with the opportunity to earn a stream of revenue that recovers the costs of delivering the Reference Service over the expected life of the assets used in delivering that Service, to replicate the outcome of a competitive market, and to be efficient in level and structure.*



**Gas Pipelines Access (South Australia) Act 1997**

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***Principles for determining the Total Revenue***

*Reference Tariffs are to be set on the basis of the sales of all Services provided by the Covered Pipeline delivering (or being forecast to deliver) a certain amount of revenue (Total Revenue) over the period for which the Reference Tariffs remain in effect (the Reference Tariff Period).*

*The Reference Tariff Principles specify three methodologies for determining the Total Revenue:*

- *Cost of Service: where the Total Revenue is set to recover 'costs' with those costs to be calculated on the basis of a return (Rate of Return) on the value of the assets that form the Covered Pipeline (Capital Base), depreciation on the Capital Base (Depreciation) and the operating, maintenance and other non-capital costs (Non-Capital Costs) incurred in delivering all Services.*
- *IRR: where the Total Revenue is set to provide an acceptable Internal Rate of Return (IRR) for the Covered Pipeline on the basis of forecast costs and sales.*
- *NPV: where the Total Revenue is set to deliver a Net Present Value (NPV) for the Covered Pipeline (on the basis of forecast costs and sales) equal to zero, using an acceptable discount rate.*

*While these methodologies are different ways of assessing the Total Revenue, their outcomes should be consistent (for example, it is possible to express any NPV calculation in terms of a Cost of Service calculation by the choice of an appropriate depreciation schedule). In addition, other methodologies that can be translated into one of these forms are acceptable (such as a method that provides a real rate of return on an inflation-indexed capital base).*

*The principles that guide the determination of the Reference Tariff Period are set out in Section 3 of the Code. These principles permit the Reference Tariff Period to be any length of time that is consistent with the objectives for setting Reference Tariffs. However, the Relevant Regulator must consider (but is not bound to require) inserting safeguards against excessive forecast error if the Reference Tariff Period is over five years.*

*The Reference Tariff Principles recognise that these methods for calculating the Total Revenue may provide a range of feasible outcomes. In narrowing this range, the Relevant Regulator is permitted to have regard to various financial and performance indicators.*

*Broad principles for establishing the Capital Base when Reference Tariffs are set initially and reviewed are set out, including principles for:*

- *establishing the Initial Capital Base (including principles for valuing pipelines in existence at the commencement of the Code and those that come into existence after the commencement of the Code);*
- *valuing investment in new facilities (including principles for determining whether New Facilities Investment may be included in the Capital Base, and for addressing differences between forecast and actual capital expenditure) and*
- *reducing the Capital Base where assets cease to contribute, or make a reduced contribution, to the delivery of Services.*

*These principles apply equally to all of the methodologies for assessing Total Revenue, and to clarify this, certain detailed principles are translated into a form that is applicable to the IRR and NPV methodologies.*

*Broad principles for determining the Rate of Return are also set out, essentially requiring a return which is commensurate with the prevailing conditions in the market for funds and the risks involved in delivering the Reference Service.*

*A number of principles are specified for the Depreciation Schedule, which include that:*

- the time-path for Reference Tariffs that is implied by the Depreciation Schedule be consistent with efficient market growth, and in particular, to avoid delivering Reference Tariffs that are excessively high in early years and low in later years;*
- depreciation should be over the economic life of the assets that form the Covered Pipeline; and*
- assets be depreciated only once for the purposes of setting Reference Tariffs.*

*Again, these principles apply equally to all of the methodologies for assessing Total Revenue, and to clarify this, certain detailed principles are translated into a form that is applicable to the IRR and NPV methodologies.*

*Finally, the Reference Tariff Principles specify that Non Capital Costs are the operating, maintenance and other costs incurred (or forecast to be incurred) in the delivery of all Services provided by the Pipeline, and provide that these can be factored into Reference Tariffs if 'prudent'.*

#### **Allocation of the Total Revenue**

*The Reference Tariff Principles set out broad principles for determining the portion of the Total Revenue that a Reference Tariff should be designed to recover from sales of the Reference Service, and the portion of revenue that should be recovered from each User of that Reference Service. These principles essentially require that the Charge paid by any User of a Reference Service be cost reflective, although substantial flexibility is provided.*

*An exception to the allocation rule is the case of 'prudent discounts'. Where a User is receiving a discount (which implies the Service Provider is receiving less revenue from that User than that assumed in the calculation of Reference Tariffs), and such a discount is 'prudent', the Relevant Regulator has the discretion (when Reference Tariffs are set initially or reviewed) to permit the Service Provider to recover some or all of that shortfall in revenue by raising Reference Tariffs to other Users (if the discount is prudent, the Reference Tariff would be lower for all Users).*

#### **Other Principles**

*This section also establishes:*

- principles concerning the use and design of Incentive Mechanisms;*
- a mechanism whereby certain parts of the Reference Tariff Policy cannot be changed at a review of the Access Arrangement for a certain period; and*
- principles for the charging of Surcharges in relation to Incremental Capacity.*

**Gas Pipelines Access (South Australia) Act 1997**

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***General Principles***

- 8.1 A Reference Tariff and Reference Tariff Policy should be designed with a view to achieving the following objectives:
- (a) providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient costs of delivering the Reference Service over the expected life of the assets used in delivering that Service;
  - (b) replicating the outcome of a competitive market;
  - (c) ensuring the safe and reliable operation of the Pipeline;
  - (d) not distorting investment decisions in Pipeline transportation systems or in upstream and downstream industries;
  - (e) efficiency in the level and structure of the Reference Tariff; and
  - (f) providing an incentive to the Service Provider to reduce costs and to develop the market for Reference and other Services.

To the extent that any of these objectives conflict in their application to a particular Reference Tariff determination, the Relevant Regulator may determine the manner in which they can best be reconciled or which of them should prevail.

- 8.2 The factors about which the Relevant Regulator must be satisfied in determining to approve a Reference Tariff and Reference Tariff Policy are that:
- (a) the revenue to be generated from the sales (or forecast sales) of all Services over the Access Arrangement Period (the **Total Revenue**) should be established consistently with the principles and according to one of the methodologies contained in this section 8;
  - (b) to the extent that the Covered Pipeline is used to provide a number of Services, that portion of Total Revenue that a Reference Tariff is designed to recover (which may be based upon forecasts) is calculated consistently with the principles contained in this section 8;
  - (c) a Reference Tariff (which may be based upon forecasts) is designed so that the portion of Total Revenue to be recovered from a Reference Service (referred to in paragraph (b)) is recovered from the Users of that Reference Service consistently with the principles contained in this section 8;
  - (d) Incentive Mechanisms are incorporated into the Reference Tariff Policy wherever the Relevant Regulator considers appropriate and such Incentive Mechanisms are consistent with the principles contained in this section 8; and
  - (e) any forecasts required in setting the Reference Tariff represent best estimates arrived at on a reasonable basis.

***Form of Regulation***

- 8.3 Subject to these requirements and to the Relevant Regulator being satisfied that it is consistent with the objectives contained in section 8.1, the manner in which a Reference Tariff may vary within an Access Arrangement Period through implementation of the Reference Tariff Policy is within the discretion of the Service Provider. For example, a Reference Tariff may be designed on the basis of:
- (a) a "price path" approach, whereby a series of Reference Tariffs are determined in advance for the Access Arrangement Period to follow a path that is forecast to deliver a revenue stream calculated consistently with the principles in this section 8, but is not adjusted to account for subsequent events until the commencement of the next Access Arrangement Period;
  - (b) a "cost of service" approach, whereby the Tariff is set on the basis of the anticipated costs of providing the Reference Service and is adjusted continuously in light of actual outcomes (such as sales volumes and actual costs) to ensure that the Tariff recovers the actual costs of providing the Service; or
  - (c) variations or combinations of these approaches.

***Total Revenue***

- 8.4 The Total Revenue (a portion of which will be recovered from sales of Reference Services) should be calculated according to one of the following methodologies:

**Cost of Service:** The Total Revenue is equal to the cost of providing all Services (some of which may be the forecast of such costs), and with this cost to be calculated on the basis of:

- (a) a return (***Rate of Return***) on the value of the capital assets that form the Covered Pipeline (***Capital Base***);
- (b) depreciation of the Capital Base (***Depreciation***); and
- (c) the operating, maintenance and other non-capital costs incurred in providing all Services provided by the Covered Pipeline (***Non-Capital Costs***).

**IRR:** The Total Revenue will provide a forecast Internal Rate of Return (IRR) for the Covered Pipeline that is consistent with the principles in sections 8.30 and 8.31. The IRR should be calculated on the basis of a forecast of all costs to be incurred in providing such Services (including capital costs) during the Access Arrangement Period.

The initial value of the Covered Pipeline in the IRR calculation is to be given by the Capital Base at the commencement of the Access Arrangement Period and the assumed residual value of the Covered Pipeline at the end of the Access Arrangement Period (***Residual Value***) should be calculated consistently with the principles in this section 8.

**NPV:** The Total Revenue will provide a forecast Net Present Value (NPV) for the Covered Pipeline equal to zero. The NPV should be calculated on the basis of a forecast of all costs to be incurred in providing such Services (including capital costs) during the Access Arrangement Period, and using a discount rate that would provide the Service Provider with a return consistent with the principles in sections 8.30 and 8.31.

**Gas Pipelines Access (South Australia) Act 1997**

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The initial value of the Covered Pipeline in the NPV calculation is to be given by the Capital Base at the commencement of the Access Arrangement Period and the assumed Residual Value at the end of the Access Arrangement Period should be calculated consistently with the principles in this section 8.

The methodology used to calculate the Cost of Service, an IRR or NPV should be in accordance with generally accepted industry practice.

- 8.5 Other methodologies may be used provided the resulting Total Revenue can be expressed in terms of one of the methodologies described above.
- 8.6 In view of the manner in which the Rate of Return, Capital Base, Depreciation Schedule and Non Capital Costs may be determined (in each case involving various discretions), it is possible that a range of values may be attributed to the Total Revenue described in section 8.4. In order to determine an appropriate value within this range the Relevant Regulator may have regard to any financial and operational performance indicators it considers relevant in order to determine the level of costs within the range of feasible outcomes under section 8.4 that is most consistent with the objectives contained in section 8.1.
- 8.7 If the Relevant Regulator has considered financial and operational performance indicators for the purposes of section 8.6, it must identify the indicators and provide an explanation of how they have been taken into account.

***Principles for Establishing the Capital Base***

- 8.8 Principles for establishing the Capital Base for the Covered Pipeline when a Reference Tariff is first proposed for a Reference Service (ie, for the first Access Arrangement Period) are set out in sections 8.10 to 8.14.
- 8.9 Sections 8.15 to 8.29 then describe the principles to be applied in adjusting the value of the Capital Base over time as a result of additions to the Covered Pipeline and as a result of parts of the Covered Pipeline ceasing to be used for the delivery of Services. Consistently with those principles, the Capital Base at the commencement of each Access Arrangement Period after the first, for the Cost of Service methodology, is determined as:
- (a) the Capital Base at the start of the immediately preceding Access Arrangement Period; plus
  - (b) the New Facilities Investment or Recoverable Portion (whichever is relevant) in the immediately preceding Access Arrangement Period (adjusted as relevant as a consequence of section 8.22 to allow for the differences between actual and forecast New Facilities Investment); less
  - (c) Depreciation for the immediately preceding Access Arrangement Period; less
  - (d) Redundant Capital identified prior to the commencement of that Access Arrangement Period,

and for the IRR or NPV methodology, is determined as:

- (e) the Residual Value assumed in the previous Access Arrangement Period (adjusted as relevant as a consequence of section 8.22 to allow for the differences between actual and forecast New Facilities Investment); less

- (f) Redundant Capital identified prior to the commencement of that Access Arrangement Period.

***Initial Capital Base - Existing Pipelines***

8.10 When a Reference Tariff is first proposed for a Reference Service provided by a Covered Pipeline that was in existence at the commencement of the Code, the following factors should be considered in establishing the initial Capital Base for that Pipeline:

- (a) the value that would result from taking the actual capital cost of the Covered Pipeline and subtracting the accumulated depreciation for those assets charged to Users (or thought to have been charged to Users) prior to the commencement of the Code;
- (b) the value that would result from applying the "depreciated optimised replacement cost" methodology in valuing the Covered Pipeline;
- (c) the value that would result from applying other well recognised asset valuation methodologies in valuing the Covered Pipeline;
- (d) the advantages and disadvantages of each valuation methodology applied under paragraphs (a), (b) and (c);
- (e) international best practice of Pipelines in comparable situations and the impact on the international competitiveness of energy consuming industries;
- (f) the basis on which Tariffs have been (or appear to have been) set in the past, the economic depreciation of the Covered Pipeline, and the historical returns to the Service Provider from the Covered Pipeline;
- (g) the reasonable expectations of persons under the regulatory regime that applied to the Pipeline prior to the commencement of the Code;
- (h) the impact on the economically efficient utilisation of gas resources;
- (i) the comparability with the cost structure of new Pipelines that may compete with the Pipeline in question (for example, a Pipeline that may by-pass some or all of the Pipeline in question);
- (j) the price paid for any asset recently purchased by the Service Provider and the circumstances of that purchase; and
- (k) any other factors the Relevant Regulator considers relevant.

8.11 The initial Capital Base for Covered Pipelines that were in existence at the commencement of the Code normally should not fall outside the range of values determined under paragraphs (a) and (b) of section 8.10.

***Initial Capital Base - New Pipelines***

8.12 When a Reference Tariff is first proposed for a Reference Service provided by a Covered Pipeline that has come into existence after the commencement of the Code, the initial Capital Base for the Covered Pipeline is, subject to section 8.13, the actual capital cost of those assets at the time they first enter service. A new Pipeline does not need to pass the tests described in section 8.16.

**Gas Pipelines Access (South Australia) Act 1997**

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- 8.13 If the period between the time the Covered Pipeline first enters service and the time the Reference Tariff is proposed is such as reasonably to warrant adjustment to the actual capital cost in establishing the initial Capital Base, then that cost should be adjusted to account for New Facilities Investment or the Recoverable Portion (whichever is relevant), Depreciation and Redundant Capital incurred or identified during that period (as described in section 8.9).

***Initial Capital Base - After the Expiry of an Access Arrangement***

- 8.14 Where an Access Arrangement has expired, the initial Capital Base at the time a new Access Arrangement is approved is the Capital Base applying at the expiry of the previous Access Arrangement adjusted to account for the New Facilities Investment or the Recoverable Portion (whichever is relevant), Depreciation and Redundant Capital (as described in section 8.9) as if the previous Access Arrangement had remained in force.

***New Facilities Investment***

- 8.15 The Capital Base for a Covered Pipeline may be increased from the commencement of a new Access Arrangement Period to recognise additional capital costs incurred in constructing New Facilities for the purpose of providing Services.

- 8.16 The amount by which the Capital Base may be increased is the amount of the actual capital cost incurred (***New Facilities Investment***) provided that:

- (a) that amount does not exceed the amount that would be invested by a prudent Service Provider acting efficiently, in accordance with accepted good industry practice, and to achieve the lowest sustainable cost of delivering Services; and
- (b) one of the following conditions is satisfied:
  - (i) the Anticipated Incremental Revenue generated by the New Facility exceeds the New Facilities Investment; or
  - (ii) the Service Provider and/or Users satisfy the Relevant Regulator that the New Facility has system-wide benefits that, in the Relevant Regulator's opinion, justify the approval of a higher Reference Tariff for all Users; or
  - (iii) the New Facility is necessary to maintain the safety, integrity or Contracted Capacity of Services.

- 8.17 For the purposes of administering section 8.16(a), the Relevant Regulator must consider:

- (a) whether the New Facility exhibits economies of scale or scope and the increments in which Capacity can be added; and
- (b) whether the lowest sustainable cost of delivering Services over a reasonable time frame may require the installation of a New Facility with Capacity sufficient to meet forecast sales of Services over that time frame.

- 8.18 A Reference Tariff Policy may, at the discretion of the Service Provider, state that the Service Provider will undertake New Facilities Investment that does not satisfy the requirements of section 8.16. If the Service Provider incurs such New Facilities Investment, the Capital Base may be increased by that part of the New Facilities Investment which does satisfy section 8.16 (the ***Recoverable Portion***).

- 8.19 The Reference Tariff Policy may also provide that an amount in respect of the balance of the New Facilities Investment may subsequently be added to the Capital Base if at any time the type and volume of services provided using the increase in Capacity attributable to the New Facility change such that any part of the Speculative Investment Fund (as defined below) would then satisfy the requirements of section 8.16. The amount of the *Speculative Investment Fund* at any time is equal to:
- (a) the difference between the New Facilities Investment and the Recoverable Portion, less any amount the Service Provider notifies the Relevant Regulator (at the time the expenditure is incurred) that it has elected to recover through a Surcharge under section 8.25 (*Speculative Investment*); plus
  - (b) an annual increase in that amount calculated on a compounded basis at a rate of return approved by the Relevant Regulator which rate of return may, but need not, be different from the rate of return implied in the Reference Tariff; less
  - (c) any part of the Speculative Investment Fund previously added to the Capital Base under this section 8.19.

***Forecast Capital Expenditure***

- 8.20 Consistent with the methodologies described in section 8.4, Reference Tariffs may be determined on the basis of New Facilities Investment that is forecast to occur within the Access Arrangement Period provided that the New Facilities Investment is reasonably expected to pass the requirements in section 8.16 when the New Facilities Investment is forecast to occur.
- 8.21 If the Relevant Regulator agrees to Reference Tariffs being determined on the basis of forecast New Facilities Investment, this need not (at the discretion of the Relevant Regulator) imply that such New Facilities Investment will meet the requirements of Section 8.16 when the Relevant Regulator considers revisions to an Access Arrangement submitted by a Service Provider. However, the Relevant Regulator may, at its discretion, agree (on written application by the Service Provider) at the time at which the New Facilities Investment takes place that it meets the requirements of section 8.16, the effect of which is to bind the Relevant Regulator's decision when the Relevant Regulator considers revisions to an Access Arrangement submitted by the Service Provider. For the purposes of public consultation, any such application must be treated as if it were a proposed revision to the Access Arrangement submitted under section 2.28.
- 8.22 For the purposes of calculating the Capital Base at the commencement of the subsequent Access Arrangement Period, either the Reference Tariff Policy should describe or the Relevant Regulator shall determine when the Relevant Regulator considers revisions to an Access Arrangement submitted by a Service Provider, how the New Facilities Investment is to be determined for the purposes of section 8.9. This includes whether (and how) the Capital Base at the commencement of the next Access Arrangement Period should be adjusted if the actual New Facilities Investment is different from the forecast New Facilities Investment (with this decision to be designed to best meet the objectives in section 8.1).



**Gas Pipelines Access (South Australia) Act 1997**

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***Capital Contributions***

- 8.23 New Facilities Investment may also be added to the Capital Base when a User makes a Capital Contribution (as defined below) in respect of a New Facility. Nothing in this Code prevents a User agreeing to pay the Service Provider a Charge which exceeds the Charge that would apply under a Reference Tariff for a Reference Service (or, in relation to another Service, under the Equivalent Tariff) in any circumstance including, without limitation, if the excess is paid in respect of the funding of a New Facility (in which case the extra payment is a ***Capital Contribution***).
- 8.24 Any expenditure on a New Facility in respect of which a User makes a Capital Contribution constitutes New Facilities Investment incurred by the Service Provider for the purposes of this section 8. The User's obligations to the Service Provider and the Service Provider's obligations to the User with respect to the Capital Contribution shall be as agreed between the Service Provider and User.

***Surcharges***

- 8.25 As contemplated in section 8.19(a), unless precluded by the Service Provider's Extensions/Expansions Policy, a Service Provider may elect by written notice to the Relevant Regulator to recover all or part of an amount that it would not recover at the Prevailing Tariffs through a Surcharge (after commencement of the next Access Arrangement Period, this amount is that amount that would otherwise constitute Speculative Investment). A ***Surcharge*** is a Charge in addition to the Charge that would apply under a Reference Tariff for a Reference Service (or, in relation to another Service, under the Tariff that would be determined by the Arbitrator in arbitrating an access dispute under section 6) that is levied on Users of Incremental Capacity in order for the Service Provider to recover some or all of the cost of New Facilities Investment that can not be recovered at the Prevailing Tariffs (and so cannot be included in the Capital Base in subsequent Access Arrangement Periods). If the Relevant Regulator receives such a written notice, it may approve the Surcharge, with an approval having the effect of binding the Arbitrator in an access dispute under section 6. For the purposes of public consultation, the notice shall be treated as if it were a proposed revision to the Access Arrangement submitted under section 2.28.
- 8.26 A Service Provider may levy a Surcharge on Users of Incremental Capacity provided the following principles apply:
- (a) the Surcharges are designed to recover only that part of the New Facilities Investment that satisfies the requirement in section 8.16(a);
  - (b) the costs that the Surcharges are designed to recover do not include any costs that are included in the Speculative Investment Fund; and
  - (c) the structure of the Surcharges reflect a fair and reasonable sharing of the total recoverable cost between Incremental Users (and for this purpose any User who is paying a Capital Contribution should be assumed to be paying a Surcharge).

***Capital Redundancy***

- 8.27 A Reference Tariff Policy may include (and the Relevant Regulator may require that it include) a mechanism that will, with effect from the commencement of the next Access Arrangement Period, remove an amount from the Capital Base (***Redundant Capital***) for a Covered Pipeline so as to:
- (a) ensure that assets which cease to contribute in anyway to the delivery of Services are not reflected in the Capital Base; and
  - (b) share costs associated with a decline in the volume of sales of Services provided by means of the Covered Pipeline between the Service Provider and Users.

Before approving a Reference Tariff which includes such a mechanism, the Relevant Regulator must take into account the uncertainty such a mechanism would cause and the effect that uncertainty would have on the Service Provider, Users and Prospective Users. If a Reference Tariff does include such a mechanism, the determination of the Rate of Return (under sections 8.30 and 8.31) and the economic life of the assets (under section 8.33) should take account of the resulting risk (and cost) to the Service Provider of a fall in the revenue received from sales of Services provided by means of the Covered Pipeline or part of the Covered Pipeline.

- 8.28 If assets that are the subject of Redundant Capital subsequently contribute, or make an enhanced contribution, to the delivery of Services, the assets may be treated as a New Facility having New Facilities Investment (for the purpose of sections 8.16, 8.17, 8.18 and 8.19) equal to the Redundant Capital Value increased annually on a compounded basis by the Rate of Return from the time the Redundant Capital Value was removed from the Capital Base.
- 8.29 A Reference Tariff Policy may include (and the Relevant Regulator may require it to include) other mechanisms that have the same effect on Reference Tariffs as the above but which do not result in the removal of any amount from the Capital Base.

***Rate of Return***

- 8.30 The Rate of Return used in determining a Reference Tariff should provide a return which is commensurate with prevailing conditions in the market for funds and the risk involved in delivering the Reference Service (as reflected in the terms and conditions on which the Reference Service is offered and any other risk associated with delivering the Reference Service).
- 8.31 By way of example, the Rate of Return may be set on the basis of a weighted average of the return applicable to each source of funds (equity, debt and any other relevant source of funds). Such returns may be determined on the basis of a well accepted financial model, such as the Capital Asset Pricing Model. In general, the weighted average of the return on funds should be calculated by reference to a financing structure that reflects standard industry structures for a going concern and best practice. However, other approaches may be adopted where the Relevant Regulator is satisfied that to do so would be consistent with the objectives contained in section 8.1.

**Gas Pipelines Access (South Australia) Act 1997**

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***Depreciation Schedule - Cost of Service***

- 8.32 The Depreciation Schedule is the set of depreciation schedules (one of which may correspond to each asset or group of assets that form part of the Covered Pipeline) that is the basis upon which the assets that form part of the Capital Base are to be depreciated for the purposes of determining a Reference Tariff (the ***Depreciation Schedule***).
- 8.33 The Depreciation Schedule should be designed:
- (a) so as to result in the Reference Tariff changing over time in a manner that is consistent with the efficient growth of the market for the Services provided by the Pipeline (and which may involve a substantial portion of the depreciation taking place in future periods, particularly where the calculation of the Reference Tariffs has assumed significant market growth and the Pipeline has been sized accordingly);
  - (b) so that each asset or group of assets that form part of the Covered Pipeline is depreciated over the economic life of that asset or group of assets;
  - (c) so that, to the maximum extent that is reasonable, the depreciation schedule for each asset or group of assets that form part of the Covered Pipeline is adjusted over the life of that asset or group of assets to reflect changes in the expected economic life of that asset or group of assets; and
  - (d) subject to section 8.27, so that an asset is depreciated only once (that is, so that the sum of the Depreciation that is attributable to any asset or group of assets over the life of those assets is equivalent to the value of that asset or group of assets at the time at which the value of that asset or group of assets was first included in the Capital Base).

***Application of Depreciation Principles to the IRR/NPV Methodology***

- 8.34 If the IRR or NPV methodology is used, then the notional depreciation over the Access Arrangement Period for each asset or group of assets that form part of the Covered Pipeline is:
- (a) for an asset that was in existence at the commencement of the Access Arrangement Period, the difference between the value of that asset in the Capital Base at the commencement of the Access Arrangement Period and the value of that asset that is reflected in the Residual Value; and
  - (b) for a New Facility installed during the Access Arrangement Period, the difference between the actual cost or forecast cost of the Facility (whichever is relevant) and the value of that asset that is reflected in the Residual Value,

and, to comply with section 8.33:

- (c) the Residual Value of the Covered Pipeline should reflect notional depreciation that meets the principles of section 8.33; and

- (d) the Reference Tariff should change over the Access Arrangement Period in a manner that is consistent with the efficient growth of the market for the Services provided by the Pipeline (and which may involve a substantial portion of the depreciation taking place towards the end of the Access Arrangement Period, particularly where the calculation of the Reference Tariffs has assumed significant market growth and the Pipeline has been sized accordingly).

8.35 In implementing the principles in section 8.33 or 8.34, regard must be had to the reasonable cash flow needs for Non Capital Costs, financing cost requirements and similar needs of the Service Provider.

***Non Capital Costs***

8.36 Non Capital Costs are the operating, maintenance and other costs incurred in the delivery of the Reference Service.

8.37 A Reference Tariff may provide for the recovery of all Non Capital Costs (or forecast Non Capital Costs, as relevant) except for any such costs that would not be incurred by a prudent Service Provider, acting efficiently, in accordance with accepted and good industry practice, and to achieve the lowest sustainable cost of delivering the Reference Service.

***Allocation of Revenue (Costs) between Services***

8.38 Subject to sections 8.40 and 8.43, to the maximum extent that is commercially and technically reasonable, the portion of the Total Revenue (referred to in section 8.4) that a Reference Tariff should be designed to recover (which may be based on forecasts) should include:

- (a) all of the Total Revenue that reflects costs incurred (including capital costs) that are directly attributable to the Reference Service; and
- (b) a share of the Total Revenue that reflects costs incurred (including capital costs) that are attributable to providing the Reference Service jointly with other Services, with this share to be determined in accordance with a methodology that meets the objectives in section 8.1 and is otherwise fair and reasonable.

8.39 If the Relevant Regulator requires that a different methodology be used to determine the portion of Total Revenue to be recovered from particular Reference Services pursuant to section 8.38 than that proposed by the Service Provider and described in the Access Arrangement Information, the Relevant Regulator shall in its decision on the Access Arrangement or revisions to an Access Arrangement concerned provide a detailed explanation of the methodology that it requires be used to allocate costs pursuant to section 8.38.

**Gas Pipelines Access (South Australia) Act 1997**

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- 8.40 Notwithstanding section 8.38, if the revenue assumed in the Total Revenue calculation under section 8.4 reflects costs (including capital costs) that are attributable to providing the Reference Service jointly with a Rebatable Service, then all or part of the Total Revenue that would have been recovered from the Rebatable Service under section 8.38 (if that Service was a Reference Service) may be recovered from the Reference Service provided that an appropriate portion of any revenue realised from sales of any such Rebatable Service is rebated to Users of the Reference Service (either through a reduction in the Reference Tariff or through a direct rebate to the relevant User or Users). The structure of such a rebate mechanism should be determined having regard to the following objectives:
- (a) providing the Service Provider with an incentive to promote the efficient use of Capacity, including through the sale of Rebatable Services; and
  - (b) Users of the Reference Service sharing in the gains from additional sales of Services, including from sales of Rebatable Services.
- 8.41 Alternative approaches to allocating the costs described in section 8.4 may be used provided they have substantially the same effect as the approach outlined in sections 8.38 and 8.40.

***Allocation of Revenue (Costs) between Users***

- 8.42 Subject to section 8.43, a Reference Tariff should, to the maximum extent that is technically and commercially reasonable, be designed so that a particular User's share of the portion of Total Revenue to be recovered from sales of a Reference Service (which may be on the basis of forecasts) is consistent with the principles described in section 8.38.

***Prudent Discounts***

- 8.43 If:
- (a) the nature of the market in which a User or Prospective User of a Reference Service or some other Service operates, or the price of alternative fuels available to such a User or Prospective User, is such that the Service, if priced at the nearest Reference Tariff (or, if the Service is not a Reference Service, at the Equivalent Tariff) would not be used by that User or Prospective User; and
  - (b) a Reference Tariff (or Equivalent Tariff) calculated without regard to revenues from that User or Prospective User would be greater than the Reference Tariff (or Equivalent Tariff) if calculated having regard to revenues received from that User or Prospective User on the basis that it is served at a price less than the Reference Tariff (or Equivalent Tariff),

then the Relevant Regulator may, with effect from the commencement of an Access Arrangement Period, permit some or all of any discount given to, or to be given to, that User or Prospective User (where the discount is the difference between the Reference Tariff (or the Equivalent Tariff) and the Tariff actually paid or to be paid by the User or Prospective User) to be either:

- (c) recovered from other Users of the Reference Service under section 8.42, in a manner that the Relevant Regulator is satisfied is fair and reasonable; or

- (d) recovered from the Reference Service or some other Service or Services under section 8.38 in a manner that the Relevant Regulator is satisfied is fair and reasonable.

*Use of Incentive Mechanisms*

- 8.44 The Reference Tariff Policy should, wherever the Relevant Regulator considers appropriate, contain a mechanism that permits the Service Provider to retain all, or a share of, any returns to the Service Provider from the sale of a Reference Service during an Access Arrangement Period that exceeds the level of returns expected at the beginning of the Access Arrangement Period (an *Incentive Mechanism*), particularly where the additional returns are attributable (at least in part) to the efforts of the Service Provider. Such additional returns may result, amongst other things, from lower Non Capital Costs or greater sales of Services than forecast.
- 8.45 An Incentive Mechanism may include (but is not limited to) the following:
- (a) specifying the Reference Tariff that will apply during each year of the Access Arrangement Period based on forecasts of all relevant variables (and which may assume that the Service Provider can achieve defined efficiency gains) regardless of the realised values for those variables;
  - (b) specifying a target for revenue from the sale of all Services provided by means of the Covered Pipeline, and specifying that a certain proportion of any revenue received in excess of that target shall be retained by the Service Provider and that the remainder must be used to reduce the Tariffs for all Services provided by means of the Covered Pipeline (or to provide a rebate to Users of the Covered Pipeline); and
  - (c) a rebate mechanism for Rebatable Services pursuant to section 8.40 that provides for less than a full rebate of revenues from the Rebatable Services to the Users of the Reference Service.
- 8.46 An Incentive Mechanism should be designed with a view to achieving the following objectives:
- (a) to provide the Service Provider with an incentive to increase the volume of sales of all Services, but to avoid providing an artificial incentive to favour the sale of one Service over another;
  - (b) to provide the Service Provider with an incentive to minimise the overall costs attributable to providing those Services, consistent with the safe and reliable provision of such Services;
  - (c) to provide the Service Provider with an incentive to develop new Services in response to the needs of the market for Services;
  - (d) to provide the Service Provider with an incentive to undertake only prudent New Facilities Investment and to incur only prudent Non Capital Costs, and for this incentive to be taken into account when determining the prudence of New Facilities Investment and Non Capital Costs for the purposes of sections 8.16 and 8.37; and

**Gas Pipelines Access (South Australia) Act 1997**

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- (e) to ensure that Users and Prospective Users gain from increased efficiency, innovation and volume of sales (but not necessarily in the Access Arrangement Period during which such increased efficiency, innovation or volume of sales occur).

***Certain Reference Tariff Principles Not Subject to Periodic Review***

- 8.47 The Reference Tariff Policy may provide that certain principles are fixed for a specified period and not subject to change when a Service Provider submits reviews to an Access Arrangement without the agreement of the Service Provider. A Fixed Principle is an element of the Reference Tariff Policy that can not be changed without the agreement of the Service Provider (***Fixed Principle***). The period during which the Fixed Principle may not be changed is the Fixed Period (***Fixed Period***).
- 8.48 A Fixed Principle may include any Structural Element, but in assessing whether any Structural Element may be a Fixed Principle regard must be had to the interests of the Service Provider and the interests of Users and Prospective Users. A Market Variable Element can not be a Fixed Principle. The Fixed Period may be for all or part of the duration of an Access Arrangement, but in determining a Fixed Period regard must be had to the interests of the Service Provider and the interests of Users and Prospective Users.

***Assessment of Compliance with Section 8***

- 8.49 Subject to the requirement for public consultation, the Relevant Regulator may determine its own policies for assessing whether a Reference Tariff meets the requirements of this section 8. For example, the Relevant Regulator may:
- (a) draw an inference that an appropriate Incentive Mechanism will result in:
- (i) New Facilities Investment that meets the requirements of section 8.16(a) and 8.16(b)(i); and/or
  - (ii) that Non Capital Costs meet the requirements of section 8.37;
- (b) draw an inference that an appropriate policy by the Service Provider in relation to New Facilities Investment and/or Non Capital Costs will, if adhered to, result in:
- (i) New Facilities Investment that meets the requirements of section 8.16; and/or
  - (ii) Non Capital Costs that meet the requirements of section 8.37;
- (c) assess whether New Facilities Investment in relation to a number of New Facilities (for example, an investment program) considered together meet the requirements of section 8.16, and then use this to draw an inference as to whether the New Facilities Investment when considered in relation to each individual New Facility meets the requirements of section 8.16.

**9. CODE CHANGE**

9.1 This Code may be amended by agreement between the Relevant Ministers of the Scheme Participants in accordance with the Gas Pipelines Access Law if, not earlier than eight weeks prior to the agreement, the NGPAC has provided a report to all Relevant Ministers of the Scheme Participants in accordance with section 9.2 which:

- (a) makes a recommendation in relation to an amendment to the Code;
- (b) sets out reasons for that recommendation; and
- (c) sets out a summary of the views of any member of the NGPAC who does not agree with the recommendation.

9.2 A report by the NGPAC for the purposes of section 9.1(a) must state whether the NGPAC considers the amendment it recommends to be significant or not significant. If the amendment is considered to be significant, the report must confirm that the recommendation is made following a public consultation process under which the NGPAC has:

- (a) prepared an information memorandum setting out the amendment being considered and a statement of why such amendment may be desirable;
- (b) published a notice in a national daily newspaper which at least:
  - (i) stated that the NGPAC was considering recommending an amendment to the Code;
  - (ii) stated how copies of the information memorandum could be obtained; and
  - (iii) requested submissions by a specified date, being a date not less than 21 days after the date of the notice; and
- (c) considered any submissions received within the time period specified in the notice.

9.3 In accordance with the Gas Pipelines Access Law, the Relevant Ministers of the Scheme Participants must ensure that:

- (a) a copy of each agreement amending the Code is published in the South Australian Government Gazette; and
- (b) a notice of the making of each such agreement is published in a newspaper circulating generally in Australia.

9.4 In accordance with the Gas Pipelines Access Law an amendment to the Code has effect on and from the day on which a copy of the agreement for the amendment is published in the South Australian Government Gazette or, if the agreement provides the amendment is to come into effect on a later day, on that later day.



**Gas Pipelines Access (South Australia) Act 1997**

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**10. INTERPRETATION*****How this Code applies to Multiple Service Providers***

- 10.1 (a) This section 10.1 applies if there is more than one Service Provider in connection with a Covered Pipeline, including if:
- (i) the Covered Pipeline is owned or operated by two or more persons as a joint venture or partnership; or
  - (ii) the Covered Pipeline is owned and operated by different persons; or
  - (iii) a Covered Pipeline is legally owned by a person or persons on trust for others.

In such a case each Service Provider in connection with the Covered Pipeline is referred to in this section 10.1 as a "Participant".

- (b) If this Code requires or permits something to be done by the Service Provider, that thing may be done by one of the Participants on behalf of all the Participants. So, for example, a proposed Access Arrangement may be submitted under section 2.2 by one Participant on behalf of all Participants.
- (c) If a provision of this Code refers to the Service Provider bearing any costs, the provision applies as if the provision referred to any of the Participants bearing any costs.
- (d) If a provision of this Code, other than section 4, refers to the Service Provider doing something, the provision applies as if the provision referred to one or more of the Participants doing the thing on behalf of all the Participants.

10.2 Where:

- (a) there is more than one Service Provider in connection with a Covered Pipeline;
- (b) one is the owner and another is the operator; and
- (c) responsibility for complying with the obligations imposed by this Code on the Service Provider is allocated among them by their Access Arrangements or their Access Arrangement,

each Service Provider is responsible for complying with the obligations allocated to it.

***How this Code applies to successor Service Providers***

10.3 If a person becomes a Service Provider in relation to a Covered Pipeline (for example, if the person purchases a Covered Pipeline):

- (a) the Covered Pipeline shall remain a Covered Pipeline;
- (b) any Access Arrangement approved pursuant to the Code shall continue to apply to the Covered Pipeline concerned despite the change in Service Provider and shall bind the person in the same way it bound other Service Providers immediately before the person became a Service Provider with respect to the Covered Pipeline concerned; and

- (c) any arbitration decision made pursuant to the Code shall continue to apply to the Covered Pipeline concerned despite the change in Service Provider and shall bind the person in the same way it bound other Service Providers immediately before the person became a Service Provider with respect to the Covered Pipeline concerned.

***Overviews***

- 10.4 The introduction to this Code and the overview in italics at the beginning of each section of this Code do not form part of this Code.
- 10.5 In interpreting a provision of this Code consideration should be given to the introduction to this Code and the overview in italics at the beginning of the relevant section of this Code:
- (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision; or
- (b) to determine the meaning of the provision when:
- (i) the provision is ambiguous or obscure; or
- (ii) the ordinary meaning conveyed by the text of the provision leads to a result that is manifestly absurd or unreasonable.

***Notices***

- 10.6 Where this Code requires or contemplates the giving or making of any notice, application, submission, opinion, consent, approval, agreement, reason, explanation, report or other communication it must be given or made in writing.

***Regulatory and Conduct Provisions***

- 10.7 For the purposes of the Gas Pipelines Access Law:
- (a) The following sections shall be Regulatory Provisions:
- 2.2 and 2.28 (Service Provider must submit a proposed Access Arrangement or proposed revisions to the Access Arrangement, together with Access Arrangement Information);
  - 2.4 (Relevant Regulator may require more than one Access Arrangement);
  - 2.9 and 2.30 (Relevant Regulator may require changes to Access Arrangement Information);
  - 4.1(a), (b), (c), (d), (e), (h) and (i) and 4.2 (basic ring fencing obligations other than in relation to confidential information);
  - 4.3 (additional ring fencing obligations);
  - 4.12 (establishing compliance procedures);
  - 4.13 (report to the Relevant Regulator);

**Gas Pipelines Access (South Australia) Act 1997**

- 4.14 (reporting own non-compliance);
  - 5.1 and 5.2 (establishing information package);
  - 5.3 (provide information package);
  - 5.4 to 5.6 (inclusive) (response to access request);
  - 5.8 (information to be provided to the market about unutilised contract capacity);
  - 5.9 (public register of capacity);
- (b) the following sections shall be Conduct Provisions:
- 3.15 (enforcement of queuing policy);
  - 4.1(f) and (g) (basic ring fencing obligations in relation to confidential information);
  - 5.7 (keeping additional information confidential);
  - 6.16, 6.24(a) and 6.26 (requiring compliance with outcome of arbitration);
  - 7.1 (Associate contracts).

**Definitions**

10.8 The following definitions apply unless the context otherwise requires:

‘**Access Arrangement**’ means an arrangement for access to a Covered Pipeline that has been approved by the Relevant Regulator.

‘**Access Arrangement Information**’ means information provided by a Service Provider to the Relevant Regulator pursuant to section 2.2, 2.3, 2.9, 2.28 or 2.30.

‘**Access Arrangement Period**’ means the period from when an Access Arrangement or revisions to an Access Arrangement take effect (by virtue of a decision pursuant to section 2) until the next Revisions Commencement Date.

‘**Additional Staff**’ means servants, consultants, independent consultants and agents of a Service Provider who are not Marketing Staff and who the Regulator regards as indirectly involved in the sale or advertising of Services.

‘**Additional Revenue Policy**’ has the meaning given in section 3.28(d).

‘**Anticipated Incremental Revenue**’ means the present value (calculated at the Rate of Return) of the reasonably anticipated future revenue from the sale of Services at the Prevailing Tariffs which would not have been generated without the Incremental Capacity, minus the present value (calculated at the Rate of Return) of the best reasonable forecast of the increase in Non Capital Costs directly attributable to the sale of those Services.

‘**Arbitrator**’ has the meaning given the Gas Pipelines Access Law.

‘**Associate**’ has the meaning given in the Gas Pipelines Access Law.

**‘Associate Contract’** means;

- (a) a contract, arrangement or understanding between the Service Provider and an Associate in connection with the provision of a Service; or
- (b) a contract, arrangement or understanding between the Service Provider and any person in connection with the provision of a Service which provides a direct or indirect benefit to an Associate and which is not an arm’s length transaction.

**‘Bare Transfer’** has the meaning given in section 3.10.

**‘Capacity’** means the measure of the potential of a Covered Pipeline as currently configured to deliver a particular Service between a Receipt Point and a Delivery Point at a point in time.

**‘Capacity Management Policy’** has the meaning given in section 3.7.

**‘Capital Base’** has the meaning given in section 8.4.

**‘Capital Contribution’** has the meaning given in section 8.23.

**‘Charge’**, for a Service, means the amount that is payable by a User to the Service Provider for that Service.

**‘Code’** means this National Third Party Access Code for Natural Gas Pipeline Systems as changed from time to time in accordance with the Gas Pipelines Access Law.

**‘Code Registrar’** has the meaning given in the Gas Pipelines Access Law.

**‘Confidential Information’** means information that is by its nature confidential or is known by the other party to be confidential and includes:

- (a) any information relating to the financial position of the party and in particular includes information relating to the assets or liabilities of the party and any other matter that affects or may affect the financial position or reputation of the party;
- (b) information relating to the internal management and structure of the party or the personnel, policies and strategies of the party;
- (c) information of the party to which the other party has access, other than information referred to in paragraphs (a) and (b), that has any actual or potential commercial value to the first party or to the person or corporation which supplied that information; and
- (d) any information in the party’s possession relating to the other party’s clients or suppliers and like information.

**‘Contracted Capacity’** means that part of the Capacity which has been reserved by a User or Users pursuant to a contract entered into with the Service Provider.

**‘Contract Carriage’** is a system of managing third party access whereby:

- (a) the Service Provider normally manages its ability to provide Services primarily by requiring Users to use no more than the quantity of Service specified in a contract;

**Gas Pipelines Access (South Australia) Act 1997**

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- (b) Users normally are required to enter into a contract that specifies a quantity of Service;
- (c) charges for use of a Service normally are based at least in part upon the quantity of Service specified in a contract; and
- (d) a User normally has the right to trade its right to obtain a Service to another User.

**‘Core Provisions’** means sections 2.24, 3.1 to 3.4 (inclusive), 3.28, 3.33, 3.34, 4.1 to 4.4 (inclusive), 6.15, 6.18, 8.1 and 9.1 to 9.4 (inclusive) and this definition of Core Provisions.

**‘Coverage/Covered’** means, in relation to a Pipeline or part of a Pipeline, that that Pipeline or part of a Pipeline is subject to the provisions of this Code pursuant to sections 1.1, 1.13, 1.20 or 1.21.

**‘Covered Pipeline’** means, subject to sections 2.3 and 2.4, the whole or a particular part of a Pipeline which is Covered and any extension to, or expansion of the Capacity of, that Covered Pipeline which is to be treated as part of the Covered Pipeline in accordance with the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline and any expansion of that Covered Pipeline required to be installed under section 6.22.

**‘Delivery Point’** means the point or points within the Covered Pipeline at which the custody of Natural Gas is transferred from a Service Provider to a User.

**‘Depreciation’** means, in any year and on any asset or group of assets, the amount calculated according to the Depreciation Schedule for that year and for that asset or group of assets.

**‘Depreciation Schedule’** has the meaning given in section 8.32.

**‘Developable Capacity’** means the difference between the Capacity and the Capacity which would be available if additions of plant and/or pipeline were made, but does not include any extension of the geographic range of a Covered Pipeline.

**‘Equivalent Tariff’** means, in relation to a Service that is not a Reference Service, the Tariff that it is reasonably likely would have been set as the Reference Tariff had the Service been a Reference Service.

**‘Exclusivity Right’** means a contractual right that by its terms either:

- (a) expressly prevents a Service Provider supplying Services to persons who are not parties to the contract; or
- (b) expressly places a limitation on the Service Provider’s ability to supply Services to persons who are not parties to the contract,

but does not include a User’s contractual right to obtain a certain volume of Services.

**‘Final Approval Request’** has the meaning given in section 3.29.

**‘Fixed Period’** has the meaning given in section 8.47.

**‘Fixed Principle’** has the meaning given in section 8.47.

**‘Gas Pipelines Access Law’**, in relation to a Scheme Participant, means:

- (a) in the case of South Australia:
  - (i) the provisions referred to in paragraph (a) of the definition of "Gas Pipelines Access Law" in section 3(1) of the Gas Pipelines Access (South Australia) Act 1997 of South Australia, as applying as a law of South Australia; and
  - (ii) Regulations in force under Part 3 of that Act; and
- (b) in the case of Western Australia:
  - (i) the provisions of an Act of Western Australia corresponding to the provisions of the South Australian Act that are referred to in paragraph (a)(i); and
  - (ii) Regulations in force under the Western Australian Act that make provisions corresponding to the provisions of Regulation under Part 3 of the South Australian Act; and
- (c) in the case of any other Scheme Participant:
  - (i) the provisions referred to in paragraph (a) of the definition of "Gas Pipelines Access Law" in section 3(1) of the South Australian Act, as applying as a law of that Scheme Participant; and
  - (ii) Regulations in force under Part 3 of the South Australian Act, as applying as a law of that Scheme Participant.

**‘Incentive Mechanism’** has the meaning given in section 8.44.

**‘Incremental Capacity’** means the increase in Capacity attributable to a New Facility.

**‘Incremental Revenue’** means revenue generated by sales of Incremental Capacity.

**‘Incremental User’** is a User that could not have been serviced without the addition of the Incremental Capacity.

**‘Information Package’** means the Information Package described in section 5.1.

**‘Jurisdictional Area’** has the meaning given in the Gas Pipelines Access Law.

**‘Market Carriage’** is a system of managing third party access whereby:

- (a) the Service Provider does not normally manage its ability to provide Services primarily by requiring Users to use no more than the quantity of Service specified in a contract;
- (b) Users are normally not required to enter a contract that specifies a quantity of Service;
- (c) charges for use of Services are normally based on actual usage of Services; and
- (d) a User normally does not have a right to trade its right to obtain a Service to another User.

**Gas Pipelines Access (South Australia) Act 1997**

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**‘Market Variable Element’** means a factor that has a value assumed in the calculation of a Reference Tariff, where the value of that factor will vary with changing market conditions during the Access Arrangement Period or in future Access Arrangement Periods, and includes the sales or forecast sales of Services, any index used to estimate the general price level, real interest rates, Non Capital Cost and any costs in the nature of capital costs.

**‘Marketable Parcel’** means all or part of a User’s Contracted Capacity which the User reasonably expects:

- (a) that the User will not utilise and does not require for technical or safety reasons;
- (b) to be of a size and type capable of being sold to another User or to a Prospective User; and
- (c) to be able to sell without incurring transaction costs which exceed the price which that User would receive from another User or Prospective User.

**‘Marketing Staff’** means servants, consultants, independent contractors or agents directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include servants, consultants, independent contractors or agents involved only in:

- (a) strategic decision making, including the executive officer or officers to whom Marketing Staff report either directly or indirectly;
- (b) technical, administrative, accounting or service functions.

**‘Natural Gas’** has the meaning given in the Gas Pipelines Access Law.

**‘NCC’** means the National Competition Council established by section 29A of the Trade Practices Act, 1974 (Commonwealth).

**‘New Facilities Investment’** has the meaning given in section 8.16.

**‘New Facility’** means:

- (a) any extension to, or expansion of the Capacity of, a Covered Pipeline which is to be treated as part of the Covered Pipeline in accordance with the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline; and
- (b) any expansion of the Capacity of a Covered Pipeline required to be installed under 6.22.

**‘NGPAC’** means the National Gas Pipelines Advisory Committee to be established under the National Gas Agreement (which term has the meaning given in the Gas Pipelines Access Law).

**‘Non Capital Costs’** has the meaning given in section 8.4.

**‘Pipeline’** has the meaning given in the Gas Pipelines Access Law.

**‘Prevailing Tariff’** for a Reference Service means the applicable Reference Tariff, and for any other Service, means the Equivalent Tariff.

**‘Prospective Incremental User’** means a person which may become an Incremental User.

**‘Prospective Service Provider’** means a person who seeks or may seek to become a Service Provider.

**‘Prospective User’** means a person who seeks or who is reasonably likely to seek to enter into a contract for a Service and includes a User who seeks or may seek to enter into a contract for an additional Service.

**‘Public Register’** means the public register to be kept by the Code Registrar pursuant to section 7.10.

**‘Queuing Policy’** has the meaning given in section 3.12.

**‘Rate of Return’** has the meaning given in section 8.4.

**‘Rebatable Service’** is a Service where:

- (a) there is substantial uncertainty regarding expected future revenue from sales of that Service due to the nature of the Service and/or the market for that Service; and
- (b) the nature of the Service and the market for that Service is substantially different to any Reference Service and the market for that Reference Service.

**‘Receipt Point’** means the point or points within the Covered Pipeline at which the custody of Natural Gas is transferred from a User to a Service Provider.

**‘Recoverable Portion’** has the meaning given in section 8.18.

**‘Redundant Capital’** has the meaning given in section 8.27.

**‘Reference Service’** means a Service which is specified in an Access Arrangement and in respect of which a Reference Tariff has been specified in that Access Arrangement.

**‘Reference Tariff’** means a Tariff specified in an Access Arrangement as corresponding to a Reference Service and which has the operation that is described in sections 6.13 and 6.18.

**‘Reference Tariff Policy’** has the meaning given in section 3.5.

**‘Related Business’** means the business of producing, purchasing or selling Natural Gas, but does not include purchasing or selling of Natural Gas to the extent necessary:

- (a) for the safe and reliable operation of a Covered Pipeline; or
- (b) to enable a Service Provider to provide balancing services in connection with a Covered Pipeline.

**‘Relevant Appeals Body’** has the meaning given in the Gas Pipelines Access Law.

**‘Relevant Minister’** has the meaning given in the Gas Pipelines Access Law.

**‘Relevant Regulator’** has the meaning given in the Gas Pipelines Access Law.

**‘Residual Value’** has the meaning given in section 8.4.



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**Gas Pipelines Access (South Australia) Act 1997**

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**‘Revisions Commencement Date’** has the meaning given in section 3.17.

**‘Revisions Submission Date’** has the meaning given in section 3.17.

**‘Scheme Participant’** has the meaning given in the Gas Pipelines Access Law.

**‘Service’** means a service provided by means of a Covered Pipeline (or when used in section 1 a service provided by means of a Pipeline) including (without limitation):

- (a) haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul);
- (b) the right to interconnect with the Covered Pipeline; and
- (c) services ancillary to the provisions of such services,

but does not include the production, sale or purchasing of Natural Gas.

**‘Services Policy’** has the meaning given in section 3.1.

**‘Service Provider’** has the meaning given in the Gas Pipelines Access Law.

**‘Spare Capacity’** means:

- (a) in relation to a Covered Pipeline described in the Access Arrangement as a Contract Carriage Pipeline:
  - (i) the difference between the Capacity and the Contracted Capacity; plus
  - (ii) the difference between the Contracted Capacity and the Contracted Capacity which is being used; and
- (b) in relation to a Covered Pipeline described in the Access Arrangement as a Market Carriage Pipeline, the capacity to provide a Service without impeding the provision of the Service to any other User.

**‘Speculative Investment’** has the meaning given in section 8.19.

**‘Speculative Investment Fund’** has the meaning given in section 8.19.

**‘Structural Element’** means any principle or methodology that is used in the calculation of a Reference Tariff where that principle or methodology is not a Market Variable Element and has been structured for Reference Tariff making purposes over a longer period than a single Access Arrangement Period, and includes the Depreciation Schedule, the financing structure that is assumed for the purposes of section 8.30, and that part of the Rate of Return (calculated pursuant to section 8.30) that exceeds the return that could be earned on an asset that does not bear any market risk.

**‘Surcharge’** has the meaning given in sections 8.25 and which has the effect defined in section 6.19.

**‘Tariff’**, for a Service, means the criteria that, when applied to a User’s characteristics and requirements, determine the Charge that is payable by that User to the Service Provider (this shall not provide any limitation on the Tariff that may apply to a Service).

**‘Tender Approval Request’** has the meaning given in section 3.21.

**‘Total Revenue’** has the meaning given in section 8.2.

**‘Trading Policy’** has the meaning given in section 3.9.

**‘User’** means a person who has a current contract for a Service or an entitlement to a Service as a result of an arbitration.

10.9 Schedule 1 to the Gas Pipelines Access Law contains miscellaneous provisions which relate to the interpretation of the Gas Pipelines Access Law and this Code.

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**ATTACHMENT A— INFORMATION DISCLOSURE BY A SERVICE PROVIDER TO INTERESTED PARTIES**

Pursuant to Section 2.7 the following categories of information must be included in the Access Arrangement Information.

The specific items of information listed under each category are examples of the minimum disclosure requirements applicable to that category but, pursuant to Sections 2.8 and 2.9, the Relevant Regulator may:

- allow some of the information disclosed to be categorised or aggregated; and
- not require some of the specific items of information to be disclosed,

if in the Relevant Regulator's opinion it is necessary in order to ensure the disclosure of the information is not unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.

**Category 1: Information Regarding Access & Pricing Principles**

Tariff determination methodology  
Cost allocation approach  
Incentive structures

**Category 2: Information Regarding Capital Costs**

Asset values for each pricing zone, service or category of asset  
Information as to asset valuation methodologies - historical cost or asset valuation  
Assumptions on economic life of asset for depreciation  
Depreciation  
Accumulated depreciation  
Committed capital works and capital investment  
Description of nature and justification for planned capital investment  
Rates of return - on equity and on debt  
Capital structure - debt/equity split assumed  
Equity returns assumed - variables used in derivation  
Debt costs assumed - variables used in derivation

**Category 3: Information Regarding Operations & Maintenance**

Fixed versus variable costs  
Cost allocation between zones, services or categories of asset & between regulated/unregulated  
Wages & Salaries - by pricing zone, service or category of asset  
Cost of services by others including rental equipment  
Gas used in operations - unaccounted for gas to be separated from compressor fuel  
Materials & supply  
Property taxes

**Category 4: Information Regarding Overheads & Marketing Costs**

Total service provider costs at corporate level  
Allocation of costs between regulated/unregulated segments  
Allocation of costs between particular zones, services or categories of asset

**Category 5: Information Regarding System Capacity & Volume Assumptions**

Description of system capabilities

Map of piping system - pipe sizes, distances and maximum delivery capability

Average daily and peak demand at "city gates" defined by volume and pressure

Total annual volume delivered - existing term and expected future volumes

Annual volume across each pricing zone, service or category of asset

System load profile by month in each pricing zone, service or category of asset

Total number of customers in each pricing zone, service or category of asset

**Category 6: Information Regarding Key Performance Indicators**

Industry KPIs used by the Service Provider to justify "reasonably incurred" costs

Service provider's KPIs for each pricing zone, service or category of asset

**SCHEDULE A— PIPELINES TO BE COVERED FROM COMMENCEMENT  
OF THE CODE**

This schedule includes a complete list of Gas Transmission and Distribution Systems that are agreed jointly by governments as passing the coverage tests and are to be covered at the commencement of the Code.

The assets described within each box shown in this Schedule constitute a Covered Pipeline for the purposes of section 1.1.

**I N D E X**

	<b><u>Page No.</u></b>
GENERAL MAP ( <i>Identifies existing natural gas transmission pipelines and major centres of distribution.</i> )	
Queensland - Natural Gas Transmission Pipelines	1
Queensland - Natural Gas Distribution Systems	2
New South Wales & Australian Capital Territory - Natural Gas Transmission Pipelines	3
New South Wales & Australian Capital Territory - Natural Gas Distribution Systems	4
Victoria - Natural Gas Transmission Pipelines	5
Victoria - Natural Gas Distribution Systems	6
South Australia - Natural Gas Transmission Pipelines	7
South Australia - Natural Gas Distribution Systems	8
Western Australia - Natural Gas Transmission Pipelines	9
Western Australia - Natural Gas Distribution Systems	10
Northern Territory - Natural Gas Transmission Pipelines	11
Northern Territory - Natural Gas Distribution Systems	12

## APPENDIX

### LEGISLATIVE HISTORY

Section 9:	definition of "the Court" amended by 74, 2000, s. 31
	Division 2 of Part 4 comprising ss. 18, 19 and heading repealed by 74, 2000, s. 32
	Division 3 of part 4 comprising ss. 20, 21 and heading repealed by 74, 2000, s. 32
Section 23(1):	amended by 74, 2000, s. 33(a), (b)
Section 23(1a):	inserted by 74, 2000, s. 33(c)
Schedule 1	
Clause 2:	definition of "Federal Court" repealed by 74, 2000, s. 34(a)
Clause 32(4):	amended by 74, 2000, s. 34(b), (c)