

House of Assembly

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South Australia

Statutes Amendment (National Energy Laws) (Other Gases) Bill 2023

A BILL FOR

An Act to amend the *National Gas (South Australia) Act 2008* and the *National Energy Retail Law (South Australia) Act 2011*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (National Energy Laws) (Other Gases) Act 2023*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act—

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

Part 2—Amendment of *National Gas (South Australia) Act 2008*

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

Section 9(2)—delete "*Acts Interpretation Act 1915*" and substitute:

Legislation Interpretation Act 2021

5—Amendment of section 17—Exemption from taxes

Section 17(2), definition of *exempt matter*, (a)—delete "natural gas or processable gas" and substitute:

a covered gas, processable gas or biogas

Part 3—Amendment of *National Gas Law*

6—Amendment of section 2—Definitions

- (1) Section 2(1), definition of *BB Procedures*—delete "Natural Gas Services" and substitute:

Gas

- (2) Section 2(1)—after the definition of *BB Procedures* insert:

biogas means a gas derived or recovered from organic matter other than fossilised organic matter;

biomethane means a substance—

- (a) that is in a gaseous state at standard temperature and pressure; and
- (b) the principal constituent of which is methane; and
- (c) that is produced by refining biogas; and
- (d) that is suitable for consumption;

blend processing facility means a facility for 1, or more, of the following:

- (a) the blending of 1 or more primary gases, with or without other substances, for injection into a pipeline;
- (b) the separation of a gas blend withdrawn from a pipeline into constituent gases before re-injection into a pipeline as—
 - (i) a primary gas; or
 - (ii) a gas blend;

blend processing service means a service provided by means of a blend processing facility;

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

- (3) Section 2(1), definition of ***Bulletin Board information***, (b)—delete "Natural Gas Services" and substitute:

Gas

- (4) Section 2(1), definition of ***compression service facility***—delete "natural gas" wherever occurring and substitute in each case:

covered gas

- (5) Section 2(1), definition of ***compression service facility***, (b)(i)—after "upstream producing operation" insert:

for processable gas

- (6) Section 2(1)—after the definition of ***constituent components*** insert:

covered gas means the following:

- (a) a primary gas;
- (b) a gas blend;

covered gas industry includes—

- (a) activities and transactions relating to the following:
 - (i) processable gas;
 - (ii) biogas;
 - (iii) covered gas, including liquefied natural gas, and covered gas services;
 - (iv) covered gas industry facilities;
 - (v) services provided by means of covered gas industry facilities; and
- (b) activities and transactions relating to petroleum tenements; and
- (c) any other activity or transaction, or type of activity or transaction, specified by the Regulations for the purpose of this definition;

covered gas industry facility means the following:

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

covered gas service means the following:

- (a) a pipeline service;

- (b) the supply of covered gas;
 - (c) a service ancillary to the service described in paragraph (b);
- (7) Section 2(1), definition of ***declared wholesale gas market***—delete "natural gas" and substitute:
covered gas
- (8) Section 2(1), definition of ***designated compression service facility***—delete "natural gas" and substitute:
covered gas
- (9) Section 2(1), definition of ***east coast gas system***—delete "natural gas" and substitute:
covered gas
- (10) Section 2(1), definition of ***end user***—delete "natural gas" and substitute:
covered gas
- (11) Section 2(1)—after the definition of ***form of regulation factors*** insert:
gas blend means primary gases that have been blended together;
Gas Bulletin Board means the website maintained by AEMO that contains information of the kind specified in the Rules for the covered gas industry;
- (12) Section 2(1), definition of ***gas powered generator***—delete "natural gas" and substitute:
covered gas
- (13) Section 2(1), definition of ***gas trading exchange***—delete "natural gas" and substitute:
covered gas
- (14) Section 2(1), definition of ***gas trading exchange***—delete "pipeline capacity" and substitute:
a pipeline capacity right
- (15) Section 2(1), definition of ***haulage***—delete "natural gas" wherever occurring and substitute in each case:
covered gas
- (16) Section 2(1)—after the definition of ***LNG service provider*** insert:
local regulation means the regulations under the application Act of a participating jurisdiction;
- (17) Section 2(1), definition of ***natural gas industry***—delete the definition
- (18) Section 2(1), definition of ***natural gas industry facility***—delete the definition
- (19) Section 2(1), definition of ***natural gas service***—delete the definition
- (20) Section 2(1), definition of ***Natural Gas Services Bulletin Board***—delete the definition
- (21) Section 2(1), definition of ***pipeline***—delete "natural gas" wherever occurring and substitute in each case:
covered gas

- (22) Section 2(1), definition of *pipeline*, (f)—after "operation" insert:
for processable gas
- (23) Section 2(1), definition of *pipeline*, (g)—after "machinery" insert:
, plant, facility
- (24) Section 2(1), definition of *pipeline*, (g)—after "gas processing plant" insert:
or blend processing facility
- (25) Section(2)(1), definition of *pipeline*—after paragraph (h) insert:
(i) in relation to a blend processing facility—anything from the point on a pipeline from which covered gas is taken for blend processing to the point where the gas blend is injected into the pipeline or another pipeline;
- (26) Section 2(1), definition of *pipeline capacity right*—delete "natural gas" and substitute:
covered gas
- (27) Section 2(1), definition of *pipeline reliability standard*—delete "natural gas" and substitute:
covered gas
- (28) Section 2(1), definition of *pipeline safety duty*, (a)—delete "natural gas" and substitute:
covered gas
- (29) Section 2(1), definition of *pipeline service*—delete "but does not include the production, sale or purchase of natural gas or processable gas;" and substitute:
but does not include—
(c) the production of a primary gas, a processable gas or biogas; or
(d) the sale or purchase of a covered gas, a processable gas or biogas; or
(e) a blend processing service;
- (30) Section 2(1), definition of *pipeline service standard*—delete "by means of a covered pipeline"
- (31) Section 2(1)—after the definition of *price information order* insert:
primary gas means the following:
(a) natural gas;
(b) hydrogen;
(c) biomethane;
(d) synthetic methane;
(e) a substance prescribed by the Regulations for the purpose of this definition;
(f) a substance prescribed as a primary gas in a participating jurisdiction by a local regulation of the participating jurisdiction;

- (32) Section 2(1), definition of *producer*—delete "natural gas" and substitute:
1 or more primary gases
- (33) Section 2(1), definition of *retail customer*—delete "natural gas" and substitute:
covered gas
- (34) Section 2(1), definition of *short term trading market*—delete "natural gas" and substitute:
covered gas
- (35) Section 2(1), definition of *storage facility*—delete "or natural gas" and substitute:
, biogas or covered gas
- (36) Section 2(1), definition of *storage facility*—after "processing" insert:
, blending or separating
- (37) Section 2(1)—after the definition of *supply* insert:
synthetic methane means a substance—
(a) that is in a gaseous state at standard temperature and pressure; and
(b) the principal constituent of which is methane; and
(c) that is produced by the methanation of carbon dioxide; and
(d) that is suitable for consumption;
- (38) Section 2(1), definition of *trader*—delete "natural gas" wherever occurring and substitute in each case:
covered gas
- (39) Section 2(1), definition of *transportation capacity*—delete "natural gas" and substitute:
covered gas
- (40) Section 2(1), definition of *trial project*, (b)—delete "natural gas" and substitute:
covered gas
- (41) Section 2(1), definition of *user facility*—delete "natural gas" wherever occurring and substitute in each case:
covered gas
- (42) Section 2—after subsection (3) insert:
(4) The Minister responsible for the administration of an application Act under which a regulation is made for paragraph (f) of the definition of *primary gas* must publish notice of the making of the regulation in the South Australian Government Gazette.

7—Insertion of section 2A

After section 2 insert:

2A—Additives and impurities

The nature of a substance as a primary gas or a gas blend is not changed by the presence in the substance of the following:

- (a) an additive required for safety;
- (b) an impurity.

8—Amendment of section 8A—Nominated distributors

Section 8A(1)—delete "The regulations under the application Act of a participating jurisdiction (a *local regulation*)" and substitute:

A local regulation

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

- (1) Section 10—delete "natural gas" wherever occurring and substitute in each case:
covered gas
- (2) Section 10(4)—delete "or section" and substitute:
or section 201, 202, 204,

10—Amendment of section 12—Commissioning of a pipeline

Section 12—delete "natural gas" and substitute:
covered gas

11—Insertion of section 14

After section 13 insert:

14—Local regulations may exempt pipeline

- (1) A local regulation may declare a pipeline, or a proposed pipeline, to be a *remote pipeline* if the pipeline—
 - (a) is, or will be, hauling covered gas other than natural gas or a natural gas equivalent, as defined in the *National Energy Retail Law*; and
 - (b) is, or will be, wholly within the jurisdiction for which the regulation is made; and
 - (c) is not, or will not be, interconnected in any way with the system of transmission pipelines and distribution pipelines used to convey gas within and between participating jurisdictions.
- (2) A remote pipeline, and the service provider for the pipeline (but only in respect of the remote pipeline) is exempt from the following:
 - (a) section 91DB;

- (b) Chapter 3;
 - (c) Chapter 4;
 - (d) Chapter 5;
 - (e) section 223;
 - (f) Chapter 7A.
- (3) Before recommending the making of a local regulation declaring a pipeline or a proposed pipeline to be a remote pipeline, the responsible Minister of the participating jurisdiction must have regard to the national gas objective.
- (4) A pipeline or a proposed pipeline ceases, with immediate effect, to be a remote pipeline if—
- (a) 1 or more of the requirements in subsection (1) ceases to apply to the pipeline; or
 - (b) the local regulation declaring the pipeline to be a remote pipeline is repealed.

12—Amendment of section 16—Form of regulation factors

Section 16—delete "natural gas" wherever occurring and substitute in each case:
covered gas

13—Amendment of section 23—National gas objective

Section 23—delete "natural gas" wherever occurring and substitute in each case:
covered gas

14—Amendment of section 24A—Innovative trial principles

- (1) Section 24A—delete "natural gas" wherever occurring and substitute in each case:
covered gas
- (2) Section 24A—after paragraph (h) insert:
- (ha) whether the licences, authorisations and consents required for the trial project under jurisdictional gas legislation have been obtained or will be obtained;

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

Section 27(1)(fa)—delete "natural gas" and substitute:
covered gas

16—Amendment of section 28—Manner in which AER must perform or exercise AER economic regulatory functions or powers

Section 28(4)—delete "natural gas" and substitute:
covered gas

17—Amendment of section 30I—Consumer reference group

Section 30I(2)(a)—delete "natural gas" and substitute:
covered gas

18—Amendment of section 30U—Definitions

Section 30U—before "section" insert:
see

19—Amendment of section 30W—Trial waiver

Section 30W—after subsection (3) insert:
(4) Nothing in this section operates to prevent the granting of an exemption in accordance with a rule made under section 148A.

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

Section 54(1)(d)—delete "natural gas" and substitute:
covered gas

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

- (1) Section 74(1)(a)(iii)—delete "natural gas" and substitute:
covered gas
- (2) Section 74(1)(a)(viiia)—delete "natural gas" and substitute:
covered gas
- (3) Section 74(1)(ab)—redesignate paragraph (ab) second occurring as paragraph (aba)

22—Repeal of sections 83A and 83AA

Sections 83A and 83AA—delete the sections

23—Amendment of section 83B—Standard market timetable

- (1) Section 83B—delete "natural gas" wherever occurring and substitute in each case:
covered gas
- (2) Section 83B(2)(c)(ii)—after "production" insert:
, blending
- (3) Section 83B(3)—after paragraph (d) insert:
(da) a blend processing service provider;

24—Amendment of section 83D—False or misleading statements

- (1) Section 83D(c)—delete "natural gas" and substitute:
covered gas
- (2) Section 83D—after paragraph (d) insert:
(da) a blend processing service provider;

25—Amendment of section 91A—AEMO's statutory functions

- (1) Section 91A(1)(a)—delete "markets for natural gas" and substitute:
gas markets
- (2) Section 91A(1)(ba)—delete "for natural gas"
- (3) Section 91A(1)(h)—delete "Natural Gas Services" and substitute:
Gas

26—Amendment of section 91AD—AEMO's east coast gas system reliability and supply adequacy functions

- (1) Section 91AD—delete "natural gas" wherever occurring and substitute in each case:
covered gas
- (2) Section 91AD(1)(f)—after "compression service provider" insert:
, blend processing service provider

27—Amendment of section 91AF—AEMO's power of direction—east coast gas system reliability and supply adequacy

Section 91AF—delete "natural gas" wherever occurring and substitute in each case:
covered gas

28—Amendment of section 91BA—AEMO's declared system functions

- (1) Section 91BA(1)(d)—delete "markets for natural gas" and substitute:
the covered gas industry in the adoptive jurisdiction
- (2) Section 91BA(1)(e)—after "producers," insert:
blend processing service providers,
- (3) Section 91BA(2)—delete "natural gas" and substitute:
covered gas
- (4) Section 91BA(2)—after "compression service provider" insert:
, blend processing service provider

29—Amendment of section 91BC—AEMO's power of direction

Section 91BC—delete "natural gas" wherever occurring and substitute in each case:
covered gas

30—Amendment of section 91BF—Interconnection with facilities

Section 91BF(2)—delete paragraph (b) and substitute:
(aa) a blend processing facility;
(b) a storage facility;

31—Amendment of section 91BI—Market participation

- (1) Section 91BI—delete paragraph (b) and substitute:
 - (b) a producer or blend processing service provider who injects covered gas into a declared transmission system or a declared distribution system; or
- (2) Section 91BI(c)—after "declared transmission system" insert:

or a declared distribution system
- (3) Section 91BI(d)—delete "natural gas" and substitute:

covered gas

32—Amendment of section 91BP—Title to gas

- (1) Section 91BP—after "declared transmission system" first occurring insert:

"or a declared distribution system"
- (2) Section 91BP(b)—delete "into the declared transmission system"

33—Amendment of section 91BQ—Immunity

- Section 91BQ(1)—after paragraph (b) insert:
- or
- (c) in the case of AEMO—for failing to accept gas for injection into, or to make gas available for withdrawal from, a declared distribution system,

34—Amendment of section 91BRB—AEMO's STTM functions

- Section 91BRB(2)—delete "natural gas" and substitute:

covered gas

35—Amendment of section 91BRC—Market participation

- Section 91BRC—delete "natural gas" wherever occurring and substitute in each case:

covered gas

36—Amendment of section 91BRF—Title to gas

- Section 91BRF—delete "natural gas" and substitute:

gas

37—Amendment of section 91BRG—Gas supplied to STTM hub must meet quality specifications specified in the Rules

- (1) Section 91BRG—delete "natural gas" and substitute:

gas
- (2) Section 91BRG—after "that STTM hub" insert:

and gas

38—Amendment of section 91BRK—AEMO's gas trading exchange functions

Section 91BRK(2)—delete "natural gas" and substitute:
covered gas

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

- (1) Section 91D(1)—delete "natural gas" and substitute:
covered gas
- (2) Section 91D(2)—delete subsection (2) and substitute:
 - (2) The gas statement of opportunities must include the following:
 - (a) for each covered gas specified in the Rules, an assessment of—
 - (i) medium to long term demand (including export demand) for the gas and for pipeline services; and
 - (ii) supply and pipeline capacity to meet existing and foreseeable demand for the gas and pipeline services; and
 - (iii) likely long term production or transmission constraints;
 - (b) forecasts of the outlook for the covered gas industry over a 20 year planning horizon;
 - (c) an assessment of likely long term shortfalls in natural gas reserves;
 - (d) any other information required by the Rules.

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

Section 91DA(2)(b)—delete "natural gas" and substitute:
covered gas

41—Amendment of section 91DB—Information for the gas statement of opportunities

Section 91DB(1)—delete "natural gas" and substitute:
covered gas

42—Amendment of section 91FEA—Obligation to give information to AEMO

Section 91FEA(1)—after paragraph (d) insert:
(da) a blend processing service provider;

43—Insertion of Chapter 2 Part 6 Division 6 Subdivision 5

Chapter 2 Part 6 Division 6—after Subdivision 4 insert:

Subdivision 5—Declared wholesale gas market information

91FEJ—Information required to be given to AEMO

- (1) A person who has possession or control of information must give the information to AEMO if—
 - (a) the information relates to the operation and administration of the covered gas industry; and
 - (b) the information is necessary for AEMO to perform a declared system function under section 91BA(1)(c) or (d); and
 - (c) the person is required by the Rules to give the information to AEMO.
- (2) The information must be given to AEMO in accordance with the Wholesale Market Procedures or the Rules.
- (3) Subsection (1) does not apply if the person is exempt under the Rules from giving the information.
- (4) Subsection (1) does not require—
 - (a) a person to disclose information that is the subject of legal professional privilege; or
 - (b) a natural person to disclose information that would incriminate the person or make the person liable to a criminal penalty under the law of an Australian jurisdiction, whether or not the jurisdiction is a participating jurisdiction.

91FEK—Person cannot rely on duty of confidence to avoid compliance with obligation

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

91FEL—Giving AEMO false or misleading information

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

91FEM—Immunity of persons giving information to AEMO

- (1) A person who gives information to AEMO under this Subdivision does not incur any civil monetary liability for an act or omission in giving that information unless the act or omission is done or made in bad faith or through negligence.
- (2) The civil monetary liability for an act or omission of a kind referred to in subsection (1) done or made through negligence may not exceed the maximum amount prescribed by the Regulations.

- (3) The Regulations may, for the purposes of subsection (2), without limitation do all or any of the following:
- (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;
 - (b) prescribe maximum amounts that vary in their application according to the persons to whom, or the events, circumstances, losses or periods to which, they are expressed to apply;
 - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.
- (4) A person mentioned in subsection (1) may enter into an agreement with another person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.

44—Amendment of section 91GG—Disclosure of protected information for safety, proper operation of the market etc

Section 91GG(1)(a)(i)—delete "natural gas" and substitute:
covered gas

45—Amendment of section 91KA—Supply interruption or disconnection in compliance with AEMO's direction

Section 91KA(1)—delete "natural gas" and substitute:
covered gas

46—Amendment of section 91KD—Disclosure of information for purpose of market trials

Section 91KD(1)(a)—delete "natural gas" and substitute:
covered gas

47—Amendment of section 91L—Retail gas markets

Section 91L(1)—delete "The retail market for natural gas" and substitute:
A retail market for 1 or more covered gases

48—Amendment of section 91LA—Retail market participation

Section 91LA(2)—after paragraph (b) insert:
(c) blend processing service providers;

49—Amendment of section 137—Definitions

Section 137, definition of *related business*—delete the definition and substitute:
related business means the following:
(a) the provision of a blend processing service;

- (b) the business of producing primary gas, processable gas or biogas;
- (c) the business of purchasing or selling covered gas, processable gas or biogas, but does not include purchasing or selling covered gas, processable gas or biogas to the extent necessary—
 - (i) for the safe and reliable operation of a pipeline; or
 - (ii) to enable a service provider to provide balancing services in connection with a pipeline.

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

Section 147—delete "natural gas" and substitute:

covered gas

51—Substitution of section 148A

Section 148A—delete the section and substitute:

148AA—Exemptions from section 147(c)

- (1) Section 147(c) does not prevent a service provider from giving effect to a provision of an associate contract if the contract is for an associate pipeline service, and—
 - (a) if the associate pipeline service relates to 1 or more types of relevant covered gas—the provision was entered into before the commencement of the *Statutes Amendment (National Energy Laws) (Other Gases) Act 2023*; or
 - (b) if the associate pipeline service relates to 1 or more types of prescribed primary gas—the provision was entered into before the gas became a prescribed primary gas; or
 - (c) if the associate pipeline service relates to a blend of prescribed primary gases—the provision was entered into before any of the gases became a prescribed primary gas.
- (2) In this section—
 - prescribed primary gas*** means a gas—
 - (a) prescribed by the Regulations for the purpose of paragraph (e) of the definition of ***primary gas***; or
 - (b) prescribed by a local regulation for the purpose of paragraph (f) of the definition of ***primary gas***;
 - relevant covered gas*** means the following:
 - (a) biomethane;
 - (b) hydrogen;
 - (c) synthetic methane;
 - (d) a gas blend.

148A—Exemptions from particular requirements

- (1) The Rules may provide for exemptions from the requirements under section 139, 140, 141, 147 or 148.
- (2) An exemption may be given subject to conditions.
- (3) Without limiting the conditions that may be imposed under subsection (2), an exemption may be given subject to conditions requiring a service provider to—
 - (a) ensure that its business and business activities are conducted, structured and arranged in the particular manner specified in the exemption; or
 - (b) disclose, in the manner specified in the exemption, to the AER and to the public, specified information about its business activities, operations, structure and arrangements.

52—Insertion of Chapter 5A

After Chapter 5 insert:

Chapter 5A—Third-party access obligations for non-pipeline facilities

Part 1—Information transparency

197—Definitions

In this Part—

facility means the following:

- (a) a blend processing facility;
- (b) a compression service facility;
- (c) a storage facility;
- (d) a facility, other than a pipeline, prescribed by the Regulations for the purpose of this definition;

provider means the following:

- (a) a blend processing service provider;
- (b) a compression service provider;
- (c) a storage provider;
- (d) the owner, operator or controller of a facility prescribed for the purpose of paragraph (d) of the definition of *facility*.

198—Information and transparency requirements relating to facilities

- (1) Without limiting any other provision, the Rules may provide for—
 - (a) the collection, disclosure, verification, management and publication of information in relation to services that may be provided by means of a facility; and
 - (b) without limiting paragraph (a), requirements about the information that must be provided by a provider in relation to access, or potential access, to services provided by means of a facility, including information about the following:
 - (i) the terms and conditions on which the provider is prepared to make the facility available for use by others;
 - (ii) the procedures that the provider will apply in determining a proposal for access to the facility;
 - (iii) relevant prices, costs and methodologies associated with gaining access to, and using, a facility and relevant or related services;
 - (iv) access contracts and arrangements used, or required to be used, by the relevant provider; and
 - (c) without limiting paragraphs (a) and (b), information to be provided by a provider in response to a request for access to services provided by means of a facility; and
 - (d) requirements to ensure that information is accurate and complete; and
 - (e) the imposition or recovery of costs associated with any matter referred to in a preceding paragraph or otherwise associated with facilitating access, or potential access, to services provided by means of a facility.
- (2) Nothing in subsection (1) limits any power to grant an exemption from complying with a provision, or part of a provision, of the Rules.

199—Publication of information relating to facilities

A person required by the Rules made under section 198 to publish information must do so in accordance with the Rules.

Part 2—Access to certain facilities

200—Definitions

In this Part—

relevant facility means—

- (a) a blend processing facility; or

- (b) a facility of a type prescribed by the Regulations for the purposes of this paragraph.

201—Preventing or hindering access to relevant facilities

- (1) A person who owns, operates or controls a relevant facility, or an associate of the person, must not engage in conduct for the purpose of preventing or hindering the access of another person to a service provided by a relevant facility.
- (2) For the purposes of subsection (1), a person is taken 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 another 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 the following:
 - (i) refusing to supply a service provided by means of a relevant facility;
 - (ii) without reasonable grounds, limiting or disrupting a service provided by means of a relevant facility;
 - (iii) making, or giving effect to, a provision of a contract or arrangement;
 - (iv) arriving at, or giving effect to, a provision of an understanding;
 - (v) requiring the giving of, or giving, a covenant; and
 - (b) a reference to refusing to do an act includes a reference to—
 - (i) refraining, otherwise than inadvertently, from doing the act; or
 - (ii) making it known the act will not be done.

- (6) Subsection (1) does not apply to conduct engaged in under an agreement, other than conduct in breach of this Law, the Regulations, the Rules or the Procedures, if—
 - (a) for conduct relating to a blend processing facility—the agreement was in force immediately before the *Statutes Amendment (National Energy Laws) (Other Gases) Act 2023* commenced; and
 - (b) for conduct relating to any other type of facility—the agreement was in force immediately before the facility was prescribed as a relevant facility.

202—Terms and conditions must not discriminate

- (1) A person who owns, operates or controls a relevant facility must not set terms and conditions for the use of a service provided by means of the facility that discriminate in favour of the following:
 - (a) the person’s own operations, whether upstream or downstream; or
 - (b) the operations of an associate of the person.
- (2) Subsection (1) does not apply to the extent that the cost of providing a service to another person is higher.
- (3) This section does not apply if the agreement setting the terms and conditions was in force immediately before—
 - (a) for a blend processing facility—the commencement of the *Statutes Amendment (National Energy Laws) (Other Gases) Act 2023*; or
 - (b) otherwise—the facility became a relevant facility.

203—Duty to negotiate in good faith

- (1) A user or prospective user seeking access to a service provided by means of a relevant facility and a person who owns, operates or controls the facility must negotiate in good faith with each other about—
 - (a) whether access can be granted to the user or prospective user; and
 - (b) if access is to be granted—the terms and conditions for the provision of access to the user or prospective user.
- (2) Without limiting any other provision, the Rules may make provision for or with respect to the following:
 - (a) making and responding to a request for access;
 - (b) the negotiation framework;

- (c) the resolution of disputes between the person who owns, operates or controls a relevant facility and a user or prospective user of the service provided by means of the relevant facility about 1 or more aspects of access to the service.
- (3) Where provided for in the Rules, the decision of a dispute resolution body, made in accordance with a rule under subsection (2)(c), has effect as a contract between the parties to the dispute.
- (4) Rules made under subsection (2) are not required to adopt, either in whole or in part, an existing dispute resolution mechanism in this Law or the Regulations.

204—Rules about ring fencing

- (1) The Rules may make provision for matters relating to ring fencing the activities of providers, including the following:
 - (a) requirements for the structural and operational separation of the activities of providers;
 - (b) separate accounting requirements for the activities of providers;
 - (c) dealings by providers with associates.
- (2) In this section—
provider means the following:
 - (a) a blend processing service provider;
 - (b) the owner, operator or controller of a class of facility prescribed by the Regulations.

53—Amendment of heading to Chapter 7

Heading to Chapter 7—delete "Natural Gas Services" and substitute:

Gas

54—Amendment of section 217—AEMO to be Bulletin Board operator

Section 217—delete "Natural Gas Services" and substitute:

Gas

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

- (1) Section 218—delete "Natural Gas Services" wherever occurring and substitute in each case:
Gas
- (2) Section 218(2)(b)—delete "natural gas" and substitute:
covered gas

- (3) Section 218(3)—delete "natural gas" and substitute:
covered gas

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

- (1) Section 219, heading—delete "Natural Gas Services" and substitute:
Gas
- (2) Section 219—delete "Natural Gas Services" wherever occurring and substitute in each case:
Gas
- (3) Section 219(b)—delete "natural gas" and substitute:
covered gas

57—Amendment of section 222—Fees for services provided

- Section 222(1)(a)—delete "Natural Gas Services" and substitute:
Gas

58—Amendment of section 223—Obligation to give information to AEMO

- (1) Section 223—delete "natural gas" wherever occurring and substitute in each case:
covered gas
- (2) Section 223(1)—delete "Natural Gas Services" and substitute:
Gas

59—Amendment of section 226A—Provision of certain information to AER

- Section 226A(1)(a)—before "reserves and resources" insert:
natural gas

60—Amendment of section 228—Nature of BB Procedures

- Section 228—delete "Natural Gas Services" wherever occurring and substitute in each case:
Gas

61—Amendment of section 228I—Service requirements may be specified in the Rules

- Section 228I(g)—delete "natural gas" and substitute:
covered gas

62—Insertion of section 294FD

After section 294FC insert:

294FD—South Australian Minister to make initial Rules relating to other gases

- (1) The South Australian Minister may make Rules—
 - (a) for or with respect to—
 - (i) the other gas amendments; and
 - (ii) any other subject contemplated by, or necessary or expedient for, the other gas amendments; and
 - (b) that revoke or amend a Rule as a consequence of the enactment of the other gas amendments.
- (2) Rules may only be made under this section on the recommendation of the MCE.
- (3) Section 74(3) applies to Rules made under this section in the same way as it applies to a Rule made by the AEMC.
- (4) As soon as practicable after making Rules under this section, the South Australian Minister must—
 - (a) publish a notice of the making of the Rules and the date the Rules commence in the South Australian Government Gazette; and
 - (b) make the Rules publicly available.
- (5) The notice referred to in subsection (4)(a) must state—
 - (a) the date on which the Rules commence operation; or
 - (b) if different Rules will commence operation on different dates, those dates.
- (6) The Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (5).
- (7) Once the first Rules have been made, no further Rules can be made under this section.
- (8) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.
- (9) In this section—

other gas amendments means the amendments made to this Law by the *Statutes Amendment (National Energy Laws) (Other Gases) Act 2023*.

63—Amendment of section 294G—South Australian Minister may make Rules on recommendation of MCE and Energy Security Board

Section 294G(3)(a)(ii)—delete "natural gas" and substitute:
covered gas

64—Amendment of section 314A—Extension of trial Rule

Section 314A(2)(c)—delete "natural gas" and substitute:
covered gas

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

- (1) Schedule 1, item 43—delete "natural gas" and substitute:
covered gas
- (2) Schedule 1, item 55W—after "must" insert:
or, without limitation, may
- (3) Schedule 1, item 55X—delete "natural gas" and substitute:
covered gas
- (4) Schedule 1, item 55Z—delete "natural gas" and substitute:
covered gas
- (5) Schedule 1, item 55ZA—delete "natural gas" and substitute:
covered gas
- (6) Schedule 1, item 55ZC—delete "natural gas" and substitute:
covered gas
- (7) Schedule 1, item 61—delete "natural gas" and substitute:
covered gas
- (8) Schedule 1, item 63—delete "natural gas" wherever occurring and substitute in each case:
covered gas
- (9) Schedule 1, item 63—delete "or consumption" and substitute:
, consumption or quality
- (10) Schedule 1, item 64—delete "natural gas" and substitute:
covered gas
- (11) Schedule 1, item 65—delete "natural gas" and substitute:
covered gas
- (12) Schedule 1, item 70(a)—delete "natural gas" and substitute:
covered gas
- (13) Schedule 1, item 71—delete "natural gas" and substitute:
covered gas

- (14) Schedule 1, item 72—delete "natural gas" and substitute:
covered gas
- (15) Schedule 1, heading before item 78—delete "Natural Gas Services" and substitute:
Gas
- (16) Schedule 1, item 78—delete "natural gas" and substitute:
covered gas
- (17) Schedule 1, item 79—delete "Natural Gas Services" and substitute:
Gas
- (18) Schedule 1, item 81—delete "Natural Gas Services" wherever occurring and substitute
in each case:
Gas
- (19) Schedule 1, item 84—delete "Natural Gas Services" and substitute:
Gas
- (20) Schedule 1, item 85—delete "Natural Gas Services" and substitute:
Gas
- (21) Schedule 1, item 86—delete "Natural Gas Services" and substitute:
Gas
- (22) Schedule 1, item 87—delete "Natural Gas Services" and substitute:
Gas
- (23) Schedule 1, item 88—delete "Natural Gas Services" and substitute:
Gas
- (24) Schedule 1—after item 121 insert:
- 121A The establishment and maintenance of a register by the AEMC of the
following actions under this Law or the Rules by the AER or a dispute
resolution body:
- (a) determinations in relation to covered gas other than
determinations recorded on the register kept under item 121;
- (b) decisions in relation to covered gas.
- (25) Schedule 1—after item 126 insert:
- 126A Schemes dealing with the transition of 1 or more types of covered gas
facility from a facility that handles natural gas to a facility that handles
another covered gas.

66—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after Part 20 insert:

Part 21—Transitional provisions related to other gas amendments

Division 1—Preliminary

139—Definition

In this Part—

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

transition period means the period—

- (a) commencing on 1 November 2022; and
- (b) ending on the commencement day.

Division 2—Gas Bulletin Board

140—Gas Bulletin Board

The website maintained by AEMO as the Natural Gas Services Bulletin Board immediately before the commencement day is taken to be the Gas Bulletin Board.

141—References to Natural Gas Services Bulletin Board

A reference in a legislative instrument, a policy, a contract, an agreement or another document in force immediately before the commencement day, to the Natural Gas Services Bulletin Board or to the NGSBB, is taken to be a reference to the Gas Bulletin Board.

Division 3—Other matters

142—Greenfields incentive determinations

- (1) Despite section 100(2)(a) an application for a greenfields incentive determination may be made after a pipeline is commissioned if—
 - (a) the pipeline was commissioned during the transition period; and
 - (b) the application is made within 90 days after the commencement day.
- (2) This clause does not apply to a pipeline for natural gas.

143—Greenfields price protection determinations

- (1) Despite section 109(2)(a) an application for a greenfields price protection determination may be made after a pipeline is commissioned if—
 - (a) the pipeline was commissioned during the transition period; and
 - (b) the application is made within 90 days after the commencement day.
- (2) This clause does not apply to a pipeline for natural gas.

144—Information transparency rules

A rule made for the purposes of section 83A and that was in effect immediately before the commencement day is taken to be a rule made under section 198.

Part 4—Amendment of *National Energy Retail Law (South Australia) Act 2011*

67—Amendment of section 2—Commencement

Section 2(2)—delete "Section 7(5) of the *Acts Interpretation Act 1915*" and substitute:
Section 27(6) of the Legislation Interpretation Act 2021

68—Amendment of section 7—Exclusion of legislation of this jurisdiction

- (1) Section 7(1)(a)—delete "*Acts Interpretation Act 1915*" and substitute:
Legislation Interpretation Act 2021
- (2) Section 7(1)(b)—delete "*Subordinate Legislation Act 1978*" and substitute:
Legislative Instruments Act 1978

69—Amendment of section 14—Exclusion of legislation of this jurisdiction

Section 14—delete "*Subordinate Legislation Act 1978*" wherever occurring and substitute in each case:

Legislative Instruments Act 1978

70—Amendment of section 41—Transitional regulation-making power

Section 41(1)—after paragraph (b) insert:

or

- (c) relating to the operation or effect of the *National Energy Retail Law (South Australia)* on account of, or in connection with, the commencement of the *Statutes Amendment (National Energy Laws) (Other Gases) Act 2023*.

Part 5—Amendment of *National Energy Retail Law*

71—Amendment of section 2—Interpretation

- (1) Section 2(1)—after the definition of *Court* insert:

covered gas has the same meaning as in the NGL;
- (2) Section 2(1), definition of *gas*—delete the definition and substitute:

gas means the following:

 - (a) natural gas;
 - (b) a natural gas equivalent;
 - (c) a prescribed covered gas;
- (3) Section 2(1)—after the definition of *jurisdictional energy legislation* insert:

jurisdictional gas legislation has the same meaning as in the NGL;
- (4) Section 2(1)—after the definition of *National Energy Retail Rules* insert:

natural gas has the same meaning as in the NGL;
natural gas equivalent—see section 2A;
- (5) Section 2(1)—after the definition of *prepayment meter system* insert:

prescribed covered gas means a covered gas, other than natural gas, prescribed for this definition by the National Regulations that has not, for a participating jurisdiction, been excluded by a local instrument of the jurisdiction;
- (6) Section 2(1)—after the definition of *small market offer customer* insert:

South Australian Minister means the Minister of the Crown in right of South Australia administering Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia;
- (7) Section 2—after subsection (6) insert:
 - (7) A local instrument may provide that a prescribed covered gas is not a *prescribed covered gas* in the relevant participating jurisdiction.

72—Insertion of section 2A

After section 2 insert:

2A—Natural gas equivalent

- (1) A covered gas is a *natural gas equivalent* if the gas is suitable for use as natural gas and—
 - (a) the gas has been prescribed by a local instrument for use in a jurisdiction or a specified area in the jurisdiction as a natural gas equivalent; or
 - (b) the gas is supplied through an existing distribution system or an extension of an existing distribution system.

- (2) The following are not natural gas equivalents:
 - (a) natural gas;
 - (b) a prescribed covered gas.
- (3) In this section—
 - existing distribution system* means a distribution system that—
 - (a) on the NGL extension date was a natural gas distribution system; and
 - (b) after the NGL extension date is authorised to haul a covered gas, other than natural gas or a prescribed covered gas;
 - NGL extension date* means the date on which the *Statutes Amendment (National Energy Laws) (Other Gases) Act 2023* commenced.

73—Insertion of section 3A

After section 3 insert:

3A—Application to prescribed covered gas

The National Regulations may modify the way that this Law, the National Regulations and the Rules apply to a prescribed covered gas.

74—Amendment of section 10—Ministers of participating jurisdictions

Section 10(a)—delete paragraph (a) and substitute:

- (a) the South Australian Minister; and

75—Amendment of section 11—Local area retailers

Section 11(4)—delete subsection (4) and substitute:

- (4) A nomination of a retailer may relate to 1 or more of the following:
 - (a) electricity;
 - (b) natural gas and natural gas equivalents;
 - (c) 1 or more types of prescribed covered gas.

76—Amendment of section 13A—Innovative trial principles

Section 13A—after paragraph (h) insert:

- (ha) whether the licences, authorisations and consents required for the trial project under jurisdictional gas legislation have been obtained or will be obtained;

77—Amendment of section 16—Application of Law and Rules to energy

Section 16(1)—delete subsection (1) and substitute:

- (1) This Law and the Rules apply to—
 - (a) the sale and supply to customers of 1 or more of the following:
 - (i) electricity;
 - (ii) natural gas or natural gas equivalents, or both;
 - (iii) 1 or more types of prescribed covered gas; and
 - (b) a retailer to the extent that the retailer sells 1 or more of the following:
 - (i) electricity;
 - (ii) natural gas or natural gas equivalents, or both;
 - (iii) 1 or more types of prescribed covered gas; and
 - (c) a distributor to the extent that the distributor supplies 1 or more of the following:
 - (i) electricity;
 - (ii) natural gas or natural gas equivalents, or both;
 - (iii) 1 or more types of prescribed covered gas.

78—Amendment of section 88—Requirement for authorisation or exemption

Section 88(2)(b)(ii)—delete "natural gas" and substitute:

gas

79—Amendment of section 94—Notice of decision to grant application

- (1) Section 94(b)—delete paragraph (b) and substitute:
 - (b) stating that the applicant is, when the retailer authorisation is issued under section 96, authorised to sell—
 - (i) electricity; or
 - (ii) gas; and
 - (ba) if the applicant is authorised to sell gas—stating the types of gas the applicant is authorised to sell; and
- (2) Section 94—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
 - (2) The AER must be satisfied the applicant satisfies the entry criteria in section 90 for each type of gas the applicant is authorised to sell.

80—Amendment of section 99—Variation of retailer authorisation

Section 99—after subsection (1) insert:

- (1a) An amendment must not change the type or types of gas a retailer is authorised to sell unless—
 - (a) the retailer makes an application under this Division; and
 - (b) the AER determines the application under this Division.

81—Amendment of section 137—RoLR notice—direction for gas

(1) Section 137(1)—after paragraph (c) insert:

- (d) a blend processing service provider must make available to a designated RoLR the capacity in its blend processing facility that, immediately before the transfer date, was available to the failed retailer.

(2) Section 137—after subsection (5) insert:

- (5a) The terms and conditions for access by the designated RoLR to a blend processing facility are to be the same terms and conditions applicable to the failed retailer immediately before the transfer date.

(3) Section 137—after subsection (6) insert:

- (6a) Despite subsection (5a), the AER may specify terms and conditions if—
 - (a) the terms and conditions under which the failed retailer accessed the blend processing facility materially differ from those that otherwise prevail in the market; and
 - (b) the AER considers that the terms and conditions it specifies better accord with the terms and conditions that otherwise prevail in the market.
- (6b) For subsection (6a), the terms and conditions specified by the AER may be specified in—
 - (a) the RoLR notice; or
 - (b) an amendment to the RoLR notice, which may have effect back to the transfer date.

(4) Section 137(7)—after "subsection (6)" insert:

or (6a)

(5) Section 137—after subsection (8) insert:

- (8a) The designated RoLR and a relevant blend processing service provider must, as soon as practicable after the transfer date, commence negotiations for a replacement contract for access to the blend processing facility.

(6) Section 137(14)—after "*access determination*" insert:

, *blend processing facility, blend processing service provider*

82—Amendment of section 144—RoLR Procedures

Section 144(2)(a)—delete paragraph (a) and substitute:

- (a) apply separately to—
 - (i) electricity; or
 - (ii) natural gas and natural gas equivalents; or
 - (iii) 1 or more types of prescribed covered gas; and

83—Amendment of section 237—Subject matters of Rules

Section 237(2)—after paragraph (ha) insert:

- (hb) the transition from the sale or supply of natural gas to the sale or supply of a natural gas equivalent or a prescribed covered gas, including, without limitation, matters relating to the following:
 - (i) the process to be followed, or the transition scheme to be applied, in making the change;
 - (ii) the powers and functions of the AER in relation to the transition;
 - (iii) the technical capabilities that must be demonstrated by a retailer or distributor in relation to the sale of a natural gas equivalent before making the change;

84—Amendment of section 238—South Australian Minister to make initial National Energy Retail Rules

Section 238(1)—delete "The Minister in right of the Crown of South Australia administering Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia (the *South Australian Minister*) and insert:

The South Australian Minister

85—Amendment of section 238AA—South Australian Minister to make initial Rules relating to regulatory sandboxing

Section 238AA(1)—delete "The Minister in right of the Crown of South Australia administering Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia (the *South Australian Minister*) and insert:

The South Australian Minister

86—Amendment of section 238A—South Australian Minister may make initial Rules related to consumer protections and smart meters

Section 238A(1)—delete "The Minister in right of the Crown of South Australia administering Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia (the *South Australian Minister*) and insert:

The South Australian Minister

87—Amendment of section 238AB—South Australian Minister may make initial Rules relating to stand-alone power systems

Section 238AB(1)—delete "The Minister in right of the Crown of South Australia administering Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia (the *South Australian Minister*) and insert:

The South Australian Minister

88—Insertion of section 238AD

After section 238AC insert:

238AD—South Australian Minister to make initial Rules relating to other gases

- (1) The South Australian Minister may make Rules—
 - (a) for or with respect to—
 - (i) the other gas amendments; and
 - (ii) any other subject contemplated by, or necessary or expedient for, the other gas amendments; and
 - (b) that revoke or amend a Rule as a consequence of the enactment of the other gas amendments.
- (2) Rules made under this section may revoke or amend an existing Rule.
- (3) Rules may only be made under this section on the recommendation of the MCE.
- (4) Section 237(3) applies to Rules made under this section in the same way as it applies to a Rule made by the AEMC.
- (5) As soon as practicable after making Rules under this section, the South Australian Minister must—
 - (a) publish a notice of the making of the Rules in the South Australian Government Gazette; and
 - (b) make the Rules publicly available.
- (6) The notice referred to in subsection (5)(a) must state—
 - (a) the date on which the Rules commence operation; or
 - (b) if different Rules will commence operation on different dates—those dates.
- (7) The Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (6).
- (8) Once the first Rules have been made, no further Rules can be made under this section.

(9) In this section—

other gas amendments means the amendments made to this Law by the *Statutes Amendment (National Energy Laws) (Other Gases) Act 2023*.

89—Amendment of section 238B—South Australian Minister may make Rules on recommendation of MCE and Energy Security Board

Section 238B(1)—delete "The Minister in right of the Crown of South Australia administering Part 2 of the *National Energy Retail Law (South Australia) Act 2011* of South Australia (the *South Australian Minister*) and insert:

The South Australian Minister

90—Amendment of Schedule 1—Savings and transitionals

Schedule 1—after Part 4 insert:

Part 5—Transitional provisions related to other gas amendments

13—Definition

In this Part—

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

14—Retailer authorisations

A retailer authorisation authorising the sale of natural gas and in effect immediately before the commencement day is taken to authorise the sale of natural gas and natural gas equivalents.

15—Exempt sellers

- (1) A person who immediately before the commencement day was an exempt seller for natural gas is taken to be an exempt seller for natural gas and natural gas equivalents to the same extent and on the same conditions as applied immediately before the commencement day.
- (2) In this clause—

exempt seller means a person who is exempt, under Part 5, Division 6 of this Law, from the requirement to hold a retailer authorisation.

16—RoLR arrangements

- (1) A retailer who immediately before the commencement day was appointed and registered as the default RoLR for a gas distribution system continues to be the default RoLR for that distribution system whether the distribution system is used for natural gas or a natural gas equivalent.

- (2) A retailer who immediately before the commencement day was registered as an additional RoLR for a gas distribution system continues to be an additional RoLR for that distribution system whether the distribution system is used for natural gas or a natural gas equivalent.
- (3) A retailer who immediately before the commencement day was appointed as a designated RoLR for a gas distribution system continues to be the designated RoLR for that distribution system whether the distribution system is used for natural gas or a natural gas equivalent.
- (4) Nothing in this clause limits the power of the AER to terminate the appointment and registration of a retailer as a default RoLR in accordance with section 125(9) of this Law.
- (5) Nothing in this clause limits the power of the AER to terminate the registration of a retailer as a RoLR in accordance with section 128 of this Law.