

Explanatory Memorandum

Part A: Overview

This Explanatory Memorandum is divided into Part A which provides a general overview, and Part B which provides the clause-by-clause commentary. References in this Part A to paragraph numbers are to paragraphs in Part A unless the contrary is stated.

Introduction

1. The Bill will create a scheme under which gas producers are able to supply gas that will flow through a gas transmission pipeline that has a broader gas quality specification than gas currently able to be transported in Western Australia. By allowing for the transportation of this broader specification gas the Western Australian Government hopes to:
 - (a) increase security of supply of gas in Western Australia;
 - (b) increase competition in the price of gas;
 - (c) encourage innovation in the gas industry; and
 - (d) enable gas producers to choose the most efficient method of developing gas fields.
2. Natural gas is made up of a mixture of gases. It is predominantly methane, but includes other hydrocarbons (ethane, propane, butane, etc.), carbon dioxide, water vapour and other impurities. The composition of gas varies from one reservoir to another. Most “natural” gas sold in WA has in fact been processed to some extent after recovery, to clean and dry it and in some cases to modify its composition.
3. Because pipelines and other gas facilities are engineered to accommodate only certain compositions of gas, almost all gas contracts include some constraints on the quality of gas which may be delivered or received under the contract. This is called a “gas quality specification”. Typically contracts provide remedies (such as a right to refuse the gas) or liability (such as for damage to equipment) if the gas is delivered outside the specification.
4. The word “**specification**” refers to the contractual or regulatory list of upper or lower boundaries for each component in the gas – the bounds within which gas must be delivered. The word “**composition**” refers to a given mix of gases. One measures the composition of gas, then compares it against the specification to see whether it complies.
5. A typical specification for a Western Australian pipeline will prescribe: minimum and maximum HHV (Higher Heating Value, a measure of energy content); minimum and maximum Wobbe index (a related measure); maximum CO₂; maximum inert gases (including CO₂); maximum hydrocarbon dewpoint; and maximum values for each of sulphur, hydrogen sulphide, oxygen, water and radioactive components. This specification will usually be accompanied by a requirement that the gas also be free by normal commercial standards from things such as dust, other solids, hydrogen, mercury and any other dangerous substance.
6. Currently on Western Australian pipelines gas quality is managed using bilateral contracts. For each pipeline there will be a significant number of such contracts: upstream gas supply agreements, gas transportation agreements, interconnection agreements and downstream gas supply agreements. Without the Bill the relevant parties are unlikely to successfully renegotiate these contracts to allow broader specification gas to flow.

Illustration: In one typical permutation, a gas producer will sell gas to a customer under an upstream gas supply agreement, with the point of sale usually being located immediately upstream of where the gas is delivered into the pipeline. That customer (rather than the gas producer) will typically have a gas transportation agreement with the pipeline operator, under which the pipeline operator accepts gas from the customer (usually called a "user" or "shipper" in the gas transportation agreement) at an inlet point to the pipeline, and delivers gas back to the user at an outlet point to the pipeline. The user may be the end consumer of the gas, or it may be a retailer who on-sells the gas to end consumers.

The gas producer will typically sell gas to several such customers, each of whom will have a gas transportation agreement with the pipeline operator. The specifications in all of these contracts would need to be amended, before broader specification gas could flow into the pipeline without causing contractual difficulty. But it does not stop there: once the broader specification gas enters the pipeline, it will be mixed with the rest of the gas in the pipeline, and the commingled stream will flow to all downstream pipelines, storage facilities and consumers, regardless of who they have contracts with. Thus, before the pipeline operator could accept the broader specification gas, it would prudently need to modify all agreements under which it delivers gas at outlet points to allow it to deliver a commingled stream of gas which might now be outside the original contractual specification. This would include agreements with users who have nothing to do with the gas producer in question. If (as is likely) any of those users are retailers, or otherwise have contractual obligations about gas quality to downstream third parties, they could not agree to such a variation until they had renegotiated all those downstream agreements. Thus, a single proposal to deliver broader specification gas at an inlet point could easily require the renegotiation of dozens of contracts, many of which would be between people with no interest in the original transaction.

7. Pipelines almost always sell their services in terms of energy, i.e. a gas transportation agreement typically provides for the receipt and delivery of a number of terajoules of gas per day (TJ/d). However, the capability of any pipeline to transport gas is subject to a physical volume limitation. Once a pipeline is at maximum operating pressure or is otherwise fully utilised, no more cubic metres of gas can be transported. For any given composition of gas, this physical maximum capacity (volume) will produce a corresponding commercial maximum capacity (energy).

Illustration: If a hypothetical pipeline can transport a maximum volume of 1,000,000 m³ of gas in a day, and the pipeline's gas quality specification requires the gas to contain at least 37 megajoules in each cubic metre (MJ/m³), then the operator knows it can contract to transport at least 37,000,000 megajoules in a day (MJ/d), or 37 TJ/d. But if the energy content of the gas were to fall to say 35 MJ/m³, and the pipeline was not modified and hence was still only physically capable of transporting 1,000,000 m³ of gas, then the pipeline's commercial capacity would have fallen to 35 TJ/d. This could cause difficulties for the pipeline operator either in terms of lost revenue, or if it had committed to transport 37 TJ/d and was no longer able to do so.

8. Broader specification gas (that is, gas with less MJ/m³ than is currently permitted in gas transmission pipelines) can thus result in reduced capacity and increased operating and maintenance costs for pipeline operators.
9. For similar reasons it can result in reduced capacity and increased operating and maintenance costs for gas storage facility operators and large gas consumers in respect of their plant and equipment. The operators and large consumers will need to be compensated for these losses (to the prescribed extent).
10. Finally, some pre-1980 gas appliances may be rendered unsafe if the gas specification becomes too broad. Small consumers who have such appliances will need to have them replaced or serviced to make them safe.

Regulations

11. Much of the detail of the scheme implemented by the Bill will appear in regulations, because:
 - (a) it will need to be at a level of detail which is inappropriate for an Act; and
 - (b) there will likely need to be case-by-case treatment of some issues; and
 - (c) flexibility will be needed to deal with changed or unanticipated circumstances or unintended consequences.
12. The regulations are already in the first stages of development. During their development there will be further consultation with industry.
13. Aspects of the scheme involve amending gas contracts. Many of these contracts are confidential, and so the relevant regulations will need to be developed in consultation with the appropriate parties.
14. This Explanatory Memorandum gives various examples of how the regulations are intended to operate. However, these are intended to illustrate certain possible or presently-intended applications of the regulations, and are not intended to limit the scope of other possible regulations. The range of actual regulations may well be broader than the examples given here.

Bill Part 1 – Key concepts

Prescribed Gas Quality Specifications

15. The Bill will create a number of gas quality specifications (to be prescribed in the regulations) to allow the scheme to work. Two of these are central:
 - (a) The **standard specification** is the broadest specification at which gas may be supplied to end users under the scheme. Although the gas reaching end users is not expected to reach the limits of the standard specification for many years (if ever), prescribing a standard specification sets a landmark for the future. It represents both a “floor” below which gas may not be supplied to consumers, and also a signpost to all industry participants of where gas quality is likely to be trending in the long term. Prudent operators and consumers should take this signpost into account, including when designing new facilities, although it will be a commercial matter between the contracting parties as to how this should be addressed in any given circumstances.

The Higher Heating Value (**HHV**) and Wobbe Index components of the standard specification are intended to be the same as those in Australian Standard 4564 (which is in general use throughout Australia), but the components for inerts and impurities are likely to depart from the Australian Standard in order to accommodate Western Australian circumstances and ensure the continued safe operation of Western Australian gas transmission pipelines.

The rectification programme in Part 5 is designed to offer residential gas consumers the opportunity at no cost to replace or service pre-1980 appliances that could be unsafe if operated with gas delivered at the boundaries of the standard specification (see paragraphs 42 to 44, below).

Section 13 permits the regulations to prescribe one or more standard specifications. This allows future flexibility, but the present intention is that there will be a single standard specification prescribed for the entire State.

- (b) A **reference specification** will be prescribed for each pipeline and is intended to be the inlet point specification that was in use by the pipeline on 1 January 2009. The reference specifications will be the critical benchmark for determining whether a:
- (i) pipeline impact agreement (**PIA**) is needed, see paragraphs 19 to 21; and
 - (ii) gas producer must compensate a Part 4 pipeline operator (see paragraph 16(b), below), gas storage facility operator or large gas consumer.

Each reference specification will be prescribed after advice from a technical expert and consultation with the relevant pipeline operator. The present intention is that it will be based on the gas composition used by a pipeline operator as at 1 January 2009 to determine how much “firm” capacity the pipeline could sell. However, it is not intended that prescribing a reference specification should materially change (for better or worse) the pipeline operator’s commercial position, for example regarding any risks it may have agreed to under prior agreements. If the reference specification proposed by a pipeline operator is different to the specification offered publicly to prospective users of the pipeline, there will be consultation with industry before determining what the specification should be.

Classification of Pipelines

16. Gas transmission pipelines will be grouped into one of two classifications:

- (a) **PIA pipelines** will be declared by the Minister under section 5. These are intended to be those pipelines which are “fully utilised”, and which will therefore be immediately adversely impacted by the introduction of broader specification gas (for example, they may be unable to meet existing contractual commitments to transport gas, as discussed in paragraph 7 above). The PIA pipelines will initially likely be the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) and the Goldfields Gas Pipeline (**GGP**). The Bill leaves scope for other pipelines to be prescribed as PIA pipelines in the future. PIA pipelines are compensated under a PIA for capacity impacts *before* the broader gas flows, see paragraphs 19 to 21, below. There is no time limit on compensation for PIA pipelines.
- (b) **Part 4 pipelines** are effectively all other gas transmission pipelines in Western Australia, and all future gas transmission pipelines, and are treated differently to PIA pipelines. Part 4 pipeline operators will not be entitled to a PIA and will only be compensated for impacts of the broader specification gas *after* the gas has been received (see paragraph 31 to 41, below). There is no time limit on compensation for Part 4 pipelines (cf. for consumers under Part 4, see section 17(4) and (5), Part B, below), but the Bill requires a review of the Act after 10 years, and this is intended to include a consideration of whether compensation should continue beyond 2029 (see paragraphs 45 and 46, below).

17. Regulations will set out transitional rules to apply when a Part 4 pipeline subsequently becomes a PIA pipeline.

18. **Appendix 1** contains a map showing the major pipelines in Western Australia.

Bill Part 2 – PIA pipelines

Pipeline impact agreements (PIAs)

19. Before a gas producer supplies gas that will flow (either directly or indirectly) into a PIA pipeline that is below the pipeline’s reference specification, it must enter into a PIA with the PIA pipeline operator. The PIA sets out how the pipeline will be “kept whole” (see paragraph 22, below) despite receiving gas which is below the pipeline’s reference specification. The PIA must set out a range of information (see section 7 in Part B, below), including:
- (a) the specification and maximum quantity of gas permitted to be supplied under the PIA;
 - (b) the “relevant effects” on capacity, operations and maintenance (see paragraphs 22 and 23, below);

- (c) how the relevant effects will be dealt with (see Part B, section 8(3), below); and
- (d) other matters.

The regulations will likely require the parties to the PIA to publish this information.

- 20. The regulations will prescribe default, or “fall back” PIAs which a gas producer may elect to use if it cannot agree with a pipeline operator on the terms of a PIA. The current intention is for there to be 3 standard form PIAs to allow the gas producer the ability to choose one of 3 different mechanisms to deal with capacity impacts: “capacity warehousing”, gas blending arrangements or construction (see the explanation at section 8(3), Part B, below)). The default contracts will also address operations and maintenance effects.
- 21. The regulations will provide for two categories of dispute resolution surrounding the terms of a PIA. The current intention is that:
 - (a) disputes about the relevant effects on the pipeline’s capacity, operations and maintenance will be determined by a technical expert; and
 - (b) there will be limited arbitration available in regard to the other, specified, disputes.

The relevant effects

- 22. Relevant effects on capacity

By allowing gas that is below a pipeline’s reference specification into the pipeline, the amount of capacity (TJ/d) that the pipeline may sell is reduced (see paragraph 7 above). If the pipeline is fully contracted at a certain number of TJ/d prior to the introduction of gas at below its reference specification, the pipeline operator may lose revenue or breach pipeline services agreements (*PSAs*, for example, gas transportation agreements) if it can no longer haul that full number of TJ/d. PIA pipeline operators will be compensated to reinstate or otherwise deal with the lost capacity before the below reference specification gas is received, thereby keeping the pipeline “whole”.

- 23. Relevant effects on operations and maintenance

In addition to the effects on capacity, pipelines may face increased operations and maintenance costs. The largest operations and maintenance cost will likely be an increased cost of compressor fuel, because the pipeline will need to move more cubic metres of gas to haul the same amount of TJ/d, and so will likely be running its compressors harder. Other operations and maintenance costs may include cleaning, servicing and corrosion management. The current proposal is for operations and maintenance costs to be compensated on an ongoing basis for the life of the PIA, but this will be considered further as the standard form contracts are being developed.

Bill Part 3 – Amending gas contracts

- 24. To overcome the problem described in paragraph 6 above (i.e. that gas quality is largely regulated by a web of bilateral agreements), Part 3 of the Bill empowers regulations which modify any necessary existing and future gas contracts in order to facilitate the flow of broader specification gas.
- 25. In order to let the broader specification gas flow, regulations may be required to override the gas specification in:
 - (a) gas supply agreements (upstream and downstream);
 - (b) pipeline service agreements;
 - (c) interconnection agreements; and
 - (d) gas storage agreements.

See more detailed discussion in Part B section 14(2), below.

26. These contracts must be amended because the broader specification gas will be commingled in pipelines with other gas. This may result in the commingled stream of gas not complying with a specification in a contract. This could lead to a situation in which the broader specification gas could not flow without causing a party to breach one or more contracts.
27. In addition, it will be necessary to modify other provisions in gas contracts. For example, because many gas contracts are for long terms (often 10 to 20 years), they often contain “change of law” clauses that attempt to deal with future legislative changes, including changes regarding gas specification. Some of these clauses provide for tariff or other adjustments when there is a change in the regulatory regime for gas quality. The intention is that the introduction of broader quality gas and the consequent management of costs and compensation should be dealt with in a single unified way under the Bill, rather than ad hoc by a series of such clauses, not all of which will operate in the same way. Therefore, the regulations will likely override all such contractual provisions.
28. The implementation of this scheme should not result in loss or detriment to any of the parties to the contracts. The intention of the scheme is that all contracts should continue to operate as they would have done, had all gas been injected within each pipeline’s reference specification.
29. The policy is that the gas producer will, under the Bill, be liable (to a prescribed extent) to compensate a pipeline and other parties for the consequences of gas coming into the pipeline at less than its reference specification. All other contracts should thus be able to operate as though the gas was coming in at the pipeline’s reference specification. The displacement or modification of “change in law” and similar clauses is needed to avoid unintended consequences that might arise from, for example, correcting twice for the same event.
30. Similarly, the regulations will override all contractual clauses which deal with compensation or tariff adjustments more generally as a result of things the parties may do to accommodate the broader specification gas. This is to ensure there is no “double recovery” of compensation for the same effect. Thus, for example, if a PSA provides for tariff adjustments when the pipeline operator undertakes construction to increase the pipeline’s (physical or energy) capacity, then the regulations will override that clause in respect of any construction undertaken by the pipeline operator pursuant to a PIA.

Bill Part 4 – Compensation

31. Part 4 of the Bill empowers regulations which create a compensation regime for large gas consumers, Part 4 pipeline operators, and gas storage facility operators, to a prescribed extent. The details of this compensation scheme will be in the regulations, but the following is a summary of how it is proposed to operate.
32. A central policy intention is that compensation will only be available:
 - (a) for the “net direct effect” – meaning that indirect and consequential impacts will not be compensated, and that the adverse impact will be determined net of any offsetting benefits the large consumer or operator may experience;
 - (b) after, and to the extent that, the large consumer or operator actually receives gas that is outside the relevant specification, and has incurred a cost rectifying the effect suffered as a result of receiving the gas.
33. Another policy intention is to preclude speculative and opportunistic claims.
34. The compensation scheme for consumers will only apply to those consuming 1 TJ/a or more at a single site. Gas consumers that consume less than 1 TJ/a will not be entitled to compensation under Part 4, because the impact of their receiving broader specification gas is expected to be marginal. This is in part because these consumers are billed on energy content, not the quantity of gas received (see also discussion in paragraph 7 above), so they should not incur increased charges. Further, the smaller consumers are expected to be in a position to share in the benefits to the gas industry from the development of additional gas fields, before they ever actually receive broader specification gas. A subset of those small use customers will be covered by the rectification programme in Part 5.

35. A gas producer will be required to compensate large gas consumers, Part 4 pipeline operators and gas storage operators for the costs associated with:
- (a) restoring a reduction in capacity of their operations;
 - (b) plant and equipment costs; and
 - (c) operations and maintenance costs,
- attributable to receiving gas that is below the consumer's or operator's "**relevant specification**".
36. The relevant specification:
- (a) for a large consumer is the contractual specification with which gas delivered to the consumer on 1 January 2009 must have complied under the "downstream contract" (see section 15, Part B, below).
 - (b) for a Part 4 pipeline, is the reference specification prescribed for the pipeline under section 3; and
 - (c) for a gas storage facility, is the specification prescribed for the facility under section 18(3) (the present intention is that this will be the contractual specification with which gas delivered into the facility on 1 January 2009 must have complied).
37. Large consumers will be entitled to compensation during the term of a contract that was in force on 1 January 2009 (without extension), or until 1 January 2029, whichever is earlier. In contrast, operators' compensation may continue past 2029 (but see paragraph 46, below).
38. Unlike PIA pipeline operators, consumers and other operators will only be entitled to compensation under Part 4 *after* gas that is below the relevant specification actually arrives. Nothing in the Bill will prevent a consumer from undertaking prudent pre-emptive action to increase its capacity in anticipation of a capacity reduction or rectify or replace its plant and equipment if it wishes, at any time after receiving notice that it may receive broader specification gas. However, it will not be able to claim compensation from a gas producer in respect of that expenditure until it actually receives gas which is outside the relevant specification. Compensation is then only payable to the extent that the gas actually received has (or would have) caused it to incur costs by making the minimum modifications necessary to meet its contractual commitments in light of the quality of gas actually received.

For example, the regime is presently proposed to operate as follows: Suppose that in 2010 the "relevant specification" in a large consumer's downstream contract (which expires in 2025) provides for a minimum HHV of 37.0 MJ/m³, and the consumer is notified that Gas Producer "A" has entered into a PIA with a pipeline operator for the producer to supply a quantity of gas at a minimum HHV of 35.5 MJ/m³.

The consumer can, if it wishes, immediately spend the money necessary to modify its plant so it is capable of operating as before, should it ever receive gas at 35.5 MJ/m³. Suppose that the consumer makes the modifications in 2010 at a cost of \$500,000.

However, suppose that until 2015 the effect of gas from Producer "A" being commingled with other gas in the pipeline (sourced from original Gas Producer "O") is such that the quality of gas actually reaching the consumer remains above the relevant specification of 37.0 MJ/m³. At this stage the consumer is not entitled to any compensation, because it has not yet actually received any gas outside of its relevant specification.

Suppose now that in 2016 the blend in the pipeline changes (although no-one else has entered into a PIA), such that the consumer now receives gas at 36.9 MJ/m³. The consumer can now seek compensation from Producer "A", but only to the extent that it would have needed to modify its plant to run on 36.9 MJ/m³ gas. It cannot (yet) seek compensation for the full scope of its modifications to accommodate gas at 35.5 MJ/m³ (unless the modifications to deal with 36.9 and 35.5 MJ/m³ are identical). Thus, if in 2016 it would have cost the consumer \$300,000 to modify its plant to

accommodate gas at 36.9 MJ/m³, it can recover \$300,000 of its initial \$500,000 expenditure.

Next, suppose that in 2020, Producer “O” ceases production for 2 years, such that the blending benefit in the pipeline is lost and the consumer now receives an unblended stream of gas from Producer “A” at 35.5 MJ/m³. The consumer can now seek compensation from Producer “A” for the remaining \$200,000 of the cost of its original modifications, adjusted to reflect the time value of money in a prescribed manner.

Alternatively, suppose that the change of gas quality reaching the consumer in 2020 was not a reduction in flow from Producer “O”, but the entry into the market of new Gas Producer “B” who had entered into its own PIA with the pipeline for another supply of broader specification gas. In this instance, the obligations to compensate the consumer for the remaining \$200,000 would be shared between Producer “A” and Producer “B”, proportionately to the extent they cause the gas to be below the consumer’s original contractual specification of 37.0 MJ/m³.

Finally, if all the facts were as described above but the original term of the consumer’s downstream contract ended in 2014, before it ever received gas below its original relevant specification of 37.0 MJ/m³, then the consumer would not be entitled to any compensation for its \$500,000 expenditure.

39. Large consumers will not be compensated for costs associated with increasing the capacity of their operations, or for plant and equipment costs, if their plant and equipment has spare capacity which can be used to offset any reduction in efficiency.
40. Likewise, large consumers will only be compensated for increases in operations and maintenance costs *after* they actually receive gas that is below the relevant specification and only to the extent the gas causes them to incur actual expenditure.
41. In addition to the compensation outlined in paragraph 35 above, operators of a depleted-reservoir gas storage facility will likely be entitled to compensation for the loss of its capacity, resulting from being delivered gas at below the relevant specification.

Bill Part 5 – Appliance rectification programme

42. If the energy content of gas in the distribution system decreases as a result of broader specification gas deliveries under Parts 2 to 4 of the Bill, some pre-1980 gas appliances may become unsafe.
43. Accordingly, Part 5 of the Bill provides for a rectification programme under which those with the unsafe appliances will be given the opportunity for them to be either replaced or serviced to make them safe. This work will be undertaken through a scheme funded by the gas producers who supply lower energy content gas. The scheme will apply only to consumers who consumed 0.18 TJ or less in the previous 12 months, and whose appliances have been prohibited from use by the Director of Energy Safety. It is expected that the prohibition will be made in 2009, but will not take effect until after the rectification programme has been completed. These will predominantly be residential and domestic consumers, schools and some institutions such as nursing homes and retirement villages.
44. The programme is intended to operate in the following manner:
 - (a) The Coordinator of Energy intends to engage a prime contractor to implement the programme. The Coordinator of Energy proposes to appoint a Steering Committee, probably comprising members from Government, the prime contractor and the gas producers, which will supervise the prime contractor’s operation of the programme. The prime contractor is expected to appoint a number of subcontractors.
 - (b) To identify where all the old appliances are located and to alert consumers of the opportunity to have them serviced or replaced, there will be extensive advertising, leaflet mail-outs to gas or possibly electricity consumers, and other activities. As people respond to this campaign they will be directed to a call centre operated by the prime contractor. The prime contractor will then likely dispatch inspectors to determine whether the appliance needs to be replaced or serviced. If so, the prime contractor

will despatch a subcontractor to do the work of servicing or replacing the unsafe appliances.

- (c) The consumer will not have to agree to have its appliance serviced or replaced, but if it does not agree or otherwise render the appliance safe, the consumer's gas supply will be disconnected for safety reasons.
- (d) If the appliance is to be serviced, the subcontractor will make any necessary adjustments (eg. servicing the burners) at no cost to the consumer.
- (e) If the appliance is to be replaced, the consumer will have a choice to select either a standard replacement unit, or to choose from a menu of other, more expensive, units. If the consumer chooses a standard unit, it will be provided free of charge. If the consumer chooses more expensive unit, he or she will have to pay the additional cost above the cost of the standard unit.

Bill Part 6 – General provisions

- 45. The Minister must undertake a review of Act after it has been in operation for 10 years.
- 46. In addition to a general consideration of the effectiveness of the scheme as a whole, the review is intended to address specifically whether Part 4 pipelines and gas storage facilities should continue to receive compensation after 1 January 2029.

Part B: Section-by-section Commentary

Sect	Summary of provision	Commentary
Part 1 – Preliminary		
1. Short title		
2. Commencement		
3. Definitions		
	access determination is a decision by an arbitrator under the relevant gas access law.	Section 19 of the Bill provides that an access determination does not have effect to the extent that any compensation provided for under the determination is inconsistent with the Bill. The definition of “PSA” (section 3, below) includes an access determination.
	Coordinator is the Coordinator of Energy.	The Coordinator will establish the rectification programme under section 23 and has functions under section 31.
	exempt contract	This definition catches the contract, known colloquially as the “Alcoa exempt contract”, which is referred to in the <i>Gas Pipelines Access (Western Australia) Act 1998</i> (s96) and the <i>National Gas Access (WA) Bill 2008</i> (cl19). It is a gas transportation agreement originally between SECWA and Alcoa, and now between the operator of the DBNGP and Alcoa. This term is used in section 16(4).
	Gas Access Law means either the current access law and Code for gas pipelines under the <i>Gas Pipelines Access (Western Australia) Act 1998</i> , or any replacement law.	It is anticipated the current access law will be replaced by the National Gas Law and the National Gas Rules once the <i>National Gas Access (WA) Bill 2008</i> is passed.
	gas distribution system	Relevant consumer installations are to be modified or replaced under Part 5 so they are not rendered unsafe by receiving “lower heating value gas” (as defined in section 22 (1)) through a gas distribution system. The gas distribution system operators’ interests are considered under section 6(7).
	gas consumer is limited to a large consumer, i.e. one taking at least 1 TJ of gas per year at a site.	Gas consumers are eligible for compensation under sections 16 and 17. See discussion at Part A, paragraph 34 regarding the 1 TJ/a threshold. The definition of gas consumer is different from a “consumer” for the purposes of Part 5 (section 22 below).

	<p>gas producer means anyone who holds a relevant gas production licence. There will be scope for the regulations to exclude or include people on a case by case basis.</p>	<p>This definition is central to the Bill. Gas producers who wish to supply gas at below a PIA pipeline’s reference specification must enter into a PIA with the pipeline operator (Part 2), and will be required to compensate large consumers and operators who suffer adverse impacts as a result of receiving gas at below the relevant specification (Part 4).</p> <p>The power to include people in this definition is required because it is foreseeable that someone who does not have a production licence under the relevant legislation may propose to supply gas that will flow into a gas transmission pipeline and hence need to be caught by the definition, for example a coal seam methane producer or the operator of an LNG receiving terminal.</p> <p>The power to exclude people is to avoid unintended consequences.</p>
	<p>gas storage facility</p>	<p>At present the only substantial gas storage facility in WA is the depleted-reservoir facility operated by APA Group at Mondarra, near Dongara. The operator of a gas storage facility will be entitled to compensation under Part 4.</p>
	<p>gas transmission pipeline</p>	<p>The <i>Petroleum Pipelines Act (WA) 1969</i> defines a pipeline as follows: “a pipe or system of pipes used or intended to be used for the conveyance of petroleum; and includes all structures for protecting or supporting a pipeline and all loading terminals, works and buildings and all fittings, pumps, tanks, storage tanks, appurtenances and appliances and any facility, or any facility of a class, which is declared for the time being under section 5 to be a pipeline facility for the purposes of this Act used in connection with a pipeline ...”. There follows a list of exceptions.</p> <p>At present this includes the DBNGP, GGP, Burrup Extension Pipeline (BEP), Pilbara Energy Pipeline (PEP), Telfer, Harriet, Tubridgi, Midwest, Parmelia, Kambalda and Esperance pipelines and their laterals (to the extent the laterals are not part of the main pipeline anyway).</p> <p>This definition will not catch upstream infrastructure such as gas gathering pipelines which are part of an upstream production operation, because they are excluded by the definition in the <i>Petroleum Pipelines Act (WA) 1969</i>.</p> <p>Pipelines are further subdivided into “PIA pipelines” (defined in section 3) and “Part 4 pipelines” (defined in section 15).</p>
	<p>inlet point means any point where gas enters a pipeline.</p>	<p>An inlet point will be either an inlet point into a PIA pipeline or an inlet point into a Part 4 pipeline.</p> <p>A PIA is entered into in respect of an inlet point on a PIA pipeline (section 7(1)(a)).</p> <p>This definition includes an interconnection point, where the gas enters a pipeline from another pipeline.</p>

	<p>operator</p>	<p>The operator of a PIA pipeline is the counterparty to a PIA under section 6(1)(a).</p> <p>Operators of Part 4 pipelines and gas storage facilities are entitled to receive compensation under Part 4.</p>
	<p>PIA pipeline means any pipeline declared as such under section 5.</p>	
	<p>pipeline</p>	<p>This is a machinery definition, used in the definition of “gas transmission pipeline”.</p>
	<p>pipeline impact agreement (PIA)</p>	<p>This is the central instrument used in Part 2 to:</p> <ul style="list-style-type: none"> • deal with the impact of broader specification gas on a PIA pipeline (the “relevant effects”); and • alert consumers and other operators of the impending arrival of broader specification gas. <p>A gas producer must not supply gas at below a PIA pipeline’s reference specification, if the gas will flow into the pipeline, without first entering into a PIA with the operator of the pipeline (section 6).</p>
	<p>pipeline service has the same meaning as in the access law.</p>	<p>This is used in the definition of PSA (section 3). It catches effectively any service a pipeline operator provides by means of the pipeline, and ancillary services.</p>
	<p>pipeline services agreement (PSA) is any agreement between a pipeline operator and a pipeline user under which the pipeline operator provides services to the user.</p>	<p>The most common form of PSA is a gas transportation agreement (also called a “shipper contract”). A PSA may also deal with park and loan services, the provision of swing service into a gas distribution network, or gas blending arrangements. The gas specification in PSAs is intended to be overridden under section 14.</p> <p>This definition includes an access determination, because under the <i>National Gas Access (WA) Bill 2008</i> (once it is passed) a person can get access to a pipeline either by way of contract or by way of an access determination.</p>
	<p>A reference specification will be prescribed in the regulations for each pipeline.</p>	<p>It is intended that every pipeline in WA will have a reference specification prescribed for it.</p> <p>This is another very important concept in the Bill. It provides the “trigger” for when compensation is payable and when a gas producer must enter into a PIA with the operator of a PIA pipeline.</p> <p>The primary “control point” in the Bill is section 6(1), which prohibits a gas producer from supplying gas which will flow into a PIA pipeline at below the relevant reference specification for the PIA pipeline without having first entered into a PIA.</p> <p>See discussion in Part A paragraph 15(b) above.</p>

	site	This is used in the definition of gas consumer . It excludes pipeline and gas storage facilities, to make it clear that the operators of these facilities are not “gas consumers” under the Bill.
	specified	This is a mechanical drafting definition.
	standard specification will be prescribed after consultation.	See discussion in Part A paragraph 15(a) above.
	Third Party Access Code	This expression is used in the definition of pipeline service (section 3). It will be replaced by a reference to the National Gas Law once the <i>National Gas Access (WA) Bill 2008</i> is passed.
	user	These are often referred to as “shippers” in the gas industry. Users’ interests are mentioned in sections 4(c) and 9(2)(c) and can be protected under section 11. Users may be compensated during the transitional period under section 20 (Part 4 pipeline converting to a PIA pipeline).
3(2) & 3(3)		The present intention is that once a standard specification and a reference for a pipeline have been prescribed, they will not be amended. However a future Government may decide to amend them. Because a change to either a standard specification or a reference specification can have significant commercial impacts for a range of parties, the normal consultation and disallowance procedures have been strengthened, such that the amendment will not take effect until after Parliament has had an opportunity to disallow it.

Part 2 – Gas quality and capacity of gas transmission pipelines

		Part 2 deals only with PIA pipelines and the effect gas at below a PIA pipeline’s reference specification will have on the pipeline. Part 4 pipelines, large gas consumers and gas storage facilities are addressed under Part 4 and small gas consumers with pre-1980 appliances are addressed under Part 5.
4. Purposes of Part 2		
		This section sets out the main purposes of Part 2. The purposes will be a guide to the Governor when making regulations, the Minister and Coordinator when performing their functions, and to the expert and arbitrator when determining disputes about PIAs.
5. PIA Pipelines		
	The Minister may declare a pipeline to be a PIA pipeline, or revoke a declaration, in accordance with the criteria and procedure in the regulations.	The present intention is for the DBNGP and the GGP to be declared to be PIA pipelines from the outset of the scheme. The regulations will therefore provide a fast-track procedure for these two pipelines.

		The policy criteria for designating a pipeline as a PIA pipeline will be set out in the regulations, but the intention is that the pipeline be “fully utilised”. See discussion in Part A paragraph 16(a) above.
6. Controlling the quality of gas flowing into PIA pipelines		
		This is the primary “control” provision in Part 2. It requires the gas producer to enter into a PIA and permits the pipeline operator to reject non-compliant gas.
6(1)	A gas producer must not supply gas which will reach a PIA pipeline, if the gas is below the pipeline’s reference specification, unless the gas producer has entered into a PIA and is complying with its quality and quantity limits.	<p>The reference specifications are prescribed under section 3.</p> <p>If a gas producer supplies gas that does not comply with the gas quality specification or quantity set out in the PIA, the pipeline operator has recourse under section 6(3) or 6(4).</p> <p>The reference in section 6(1)(d) to regulations under section 14(2) is intended to prevent a situation arising in which broader specification gas is introduced before the appropriate modifications have been made to other relevant contracts.</p>
6(2)		<p>The 18 month notice period is not connected with the time needed by the PIA pipeline operator to make any necessary adjustments. Rather, the 18 months is for the protection of large gas consumers, operators of Part 4 pipelines, operators of gas storage facilities and operators of gas distribution systems (section 6(7)). It is designed to give those consumers and operators time (if they wish to) to modify their facilities in anticipation of receiving the broader specification gas. The lead time for the PIA pipeline operator will be dealt with separately, in the PIA (see discussion under section 7(1)).</p> <p>Once a gas producer and pipeline operator have given notice of a PIA, they cannot vary the quality or maximum quantity of the gas being supplied under the PIA without giving a further 18 months’ notice from the date of variation, unless given an exemption under section 6(7).</p>
6(3)	This gives the operator of a PIA pipeline the right to reject gas supplied in breach of section 6(1) (i.e. outside the quality and maximum quantity specified in the PIA, or outside the pipeline’s reference specification if there is no PIA).	<p>The pipeline operator can reduce the flow wholly or partially, in accordance with the regulations.</p> <p>If the pipeline operator stops the flow entirely when it is receiving gas in a commingled stream from both an offending gas producer and an innocent gas producer, the innocent producer could be unfairly adversely affected. The present intention is that the pipeline operator’s ability to wholly reduce the flow in such circumstances may be constrained by the regulations, for example to only those situations in which there is an immediate safety issue or risk of physical damage to equipment. However, this is a complex issue on which further consultation will be needed before the regulations are finalised. The intention is that as far as possible (consistent with safety and avoiding physical damage) the pipeline operator should not be able to reject gas supplied by a gas producer which is complying with its PIA.</p>

		<p>A reduction of flows under this provision can have significant consequences for producers and their customers. It is intended that any dispute resolution procedures will provide for the matter to be resolved as expeditiously as possible.</p> <p>The power in section 6(3)(a) to reduce the flow is backed up by a power in section 6(3)(b) to allocate gas quantities at the inlet point. The expectation is that any quantity of gas which is permitted into the pipeline will be allocated to users of the pipeline who are obtaining their gas from producers other than the offending producer.</p> <p>To ensure the pipeline operator can monitor whether a gas producer is complying with a PIA, regulations made under section 34(2)(a) will give the pipeline operator reasonable access to data showing the quality and quantity of gas leaving the processing plant.</p> <p>The regulations will likely require the pipeline operator to give advance warning to a gas producer before exercising its rights under section 6(3). This requirement will likely not apply if the pipeline operator (acting to a standard of “reasonable and prudent person” or similar, as prescribed) judges that the situation calls for urgent action without prior warning.</p>
6(4)	In addition to reducing the flow of gas under subsection 6(3), the pipeline operator may apply for an injunction under section 12.	This is needed because reducing the flow of gas under section 6(3)(a) may have adverse impacts on the pipeline operator, innocent producers or their customers, or may otherwise not be practicable or desirable.
6(5)		<p>This is a mechanical provision designed to ensure that PSAs do not hinder the operation of these protections for the pipeline operator.</p> <p>The intention is that there will in fact be little scope for conflict between the pipeline operator’s actions under sections 6(3) and 6(4) and a PSA, because the amendments made to the PSA under section 14 should mean that the gas specification applying in the PSA is adjusted appropriately (see discussion at section 14, below). If so, then the pipeline operator’s rights under the PSA to reject out-of-specification gas should align with its rights under section 6(3) and 6(4).</p>
6(6)		This is a mechanical provision, preserving any other rights the parties may have.
6(7)	The Minister may shorten the 18 month notice period under section 6(2).	<p>This has no effect on any lead time built into the PIA to allow the PIA pipeline operator to adapt to the broader specification gas.</p> <p>An example of when the Minister might exercise this discretion is as follows: it may be that due to other factors, such as the existing flows and composition of gas coming from other producers, the introduction of the broader specification gas will not cause the blended stream in the pipeline to go outside the pipeline’s reference specification for at least 18 months anyway.</p>

6(8)		This is a mechanical provision. Section 177 of the <i>Criminal Code</i> applies criminal sanctions for breach of certain statutory duties. Criminal sanctions are not appropriate in this scheme.
7. Content of PIAs		
		This section sets out what a PIA is. Section 8 details how a PIA is to be formed.
7(1)	This sets out the central aspects of a PIA.	<p>Paragraph (a) is needed because each PIA applies in relation to a specific inlet point on a specific PIA pipeline.</p> <p>Paragraphs (b) and (c) are needed because they set the outer limits of how much impact the relevant supply of gas will have. This is a critical part of the scheme, because it sets the scope of the gas producer's ability to sell broader specification gas.</p> <p>Paragraph (d) is needed because it lets the market know when the broader specification gas will start to be delivered. Importantly, this date will be determined through the PIA process and is not necessarily the same as the 18 months under section 6(2). If the PIA provides for the relevant effect on capacity to be addressed by looping or compression, then this lead time could be 3 years or longer. The reference in section 6(2) to 18 months does not suggest an expectation that the lead time in the PIA will be any particular length, and will not constrain an arbitrator's determination (if the length of the lead time is ever left to arbitration, which it may not be (see section 8)).</p> <p>If a gas producer must enter a PIA with two PIA pipeline operators, the dates agreed under section 7(1)(d) will need to be aligned (or, alternatively, the gas must not flow until the latest gas delivery day in the PIAs).</p> <p>Paragraph (e) is critical information. The "relevant effects" are what the PIA pipeline operator is being "compensated" for. This is the adverse impact that Part 2 of the Bill exists to remediate. "Relevant effects" are defined in section 7(2). They will be determined by a technical expert if the parties to the PIA are unable to agree upon them (section 9(2)(b)).</p> <p>Paragraph (f) allows the industry to know how long the effect of the broader specification gas is going to last.</p> <p>Regulations are likely to be made under paragraph (g) which:</p> <ul style="list-style-type: none"> • require the parties to set out in the PIA, and publish, the predicted resultant blend of gas in the pipeline once the PIA is fully implemented, and the assumptions to be made in determining this number (this predicted "in-pipe blend" will likely be picked up under section 14(2) and applied to some or all downstream gas contracts); • require a PIA to include a clause that entitles the pipeline operator to reject gas, if accepting the gas would force the pipeline operator to breach its gas quality commitments at an outlet point.

		<p>These matters will require some consultation, may be complex, and may need to be expressed differently for different pipelines, which is why they are being left to the regulations rather than being included in section 7(1).</p> <p>This section does not prevent a PIA from addressing other matters as well.</p>
7(2)	This defines “relevant effects”, a central concept in Part 2.	<p>The fundamental policy objective is that the PIA should put the PIA pipeline operator back in the position it would have been in, had the gas producer chosen to supply gas at the pipeline’s reference specification rather than supplying broader specification gas.</p> <p>All other things, such as PSAs and the access regime, can then proceed on the assumed position that the gas is coming in at the pipeline’s reference specification.</p>
7(3)	This empowers regulations which prescribe how the relevant effects are to be worked out.	<p>Determining the impact of a certain quantity and quality of gas on the pipeline involves a technical assessment and computer modelling of the pipeline’s gas flows. The assumptions made in this process can significantly alter the result.</p> <p>To enable the effects on a pipeline’s capacity to be determined in a way which is fair to both parties, the regulations will include assumptions upon which reductions and increases in capacity are to be determined. For example, it is presently envisaged that the effect on capacity will be determined on the assumption that all gas is entering the pipeline at the “worst permitted quality” and the “maximum permitted quantity” under every PSA and PIA. This assumption may change after consultation with a technical expert and industry.</p> <p>By providing a method by which the effects on capacity, operations and maintenance are determined there will be reduced scope for disagreement by the parties. If the parties are still unable to agree on the impact a technical expert will determine it under section 9(2)(b).</p>
7(4)	This provides a transitional mechanism for “PIAs” to be entered into before the Bill becomes law.	<p>Industry was notified of the Government’s intention to facilitate gas producers to supply broader specification gas since late 2008. Parties may therefore have been contracting in ways which anticipated the Bill’s scheme during that time.</p> <p>This provision is limited to contracts entered into after 1 January 2009, because it is not intended to convert any prior similar agreements into “PIAs”. Those agreements (for example if a pipeline has entered into a gas blending agreement with a gas producer who supplies out-of-specification gas) will, to the extent necessary, be dealt with separately, possibly by special treatment under the regulations or by Ministerial exemption under section 32.</p>
8. Formation of PIAs		
		<p>This section sets out the process by which the parties may enter into a PIA. It should be read with section 9 which empowers regulations dealing with PIA disputes.</p>

		<p>The bulk of the PIA dispute process will be set out in regulations and other instruments. The following is a description of the current intentions in this regard, but there will be further consultation on the regulations.</p> <p>The overriding policy objectives for the PIA process are to balance two competing interests:</p> <ul style="list-style-type: none"> • the gas producer’s interest in securing speedy access to a PIA on reasonable terms; and • the PIA pipeline operator’s interest in not being forced into a PIA that exposes it to additional risk or expense. <p>Another objective is to minimise the scope for dispute because it increases the cost and delay.</p> <p>The current proposal is to structure the dispute resolution process as follows (assuming the parties have been unable to agree their own process or PIA under section 8):</p> <ul style="list-style-type: none"> • the parties attempt to agree on the “relevant effects” (section 7(2)) on the pipeline’s capacity, operations and maintenance; • if they cannot agree, this matter will be referred to binding expert determination; • the gas producer can then choose which of the prescribed standard form PIAs it wishes to use, depending on the methodology it selects for addressing the capacity impact (section 8(3)); • the party given authority by the standard form PIA to fill in the relevant blanks does so; • <u>if</u> the prescribed standard form PIA leaves any matters to be agreed or determined by arbitration, the parties attempt to agree those matters and otherwise their dispute about <i>only</i> those matters may be referred to arbitration.
8(1)	<p>This provides that the parties may “contract out of” anything in section 8. In other words, a gas producer and a PIA pipeline operator may enter into a PIA in any form, using any process they agree, so long as the PIA complies with the minimum requirements in section 7(1).</p>	<p>This ensures that section 8 does not stand in the way of commercial negotiations.</p>
8(2)	<p>If the parties cannot reach an agreement under section 8(1), the regulations will prescribe the procedure by which a PIA is to be entered.</p>	<p>These regulations will prescribe a relatively straightforward applications procedure, with details of the form of application, and timelines for responses by either party. The process will contain clear trigger points to enable the parties to identify that a dispute has arisen. These regulations will link in with dispute resolution regulations under section 9.</p>

<p>8(3)</p>	<p>This provides that once the parties have established the relevant effects, then the gas producer gets to select from the menu of default PIAs offered by the regulations.</p>	<p>Section 8(7) provides for the Minister to publish pro-forma PIAs, and for the regulations to adopt these published forms. The current intention is to adopt three standard forms of PIA, one for each of the following basic methodologies for addressing the relevant capacity effect:</p> <ul style="list-style-type: none"> • “capacity warehousing” in which the gas producer acquires a PSA for firm capacity on the PIA pipeline and undertakes to pay for but not use that capacity, thus offsetting the relevant capacity effect in a way which avoids the need for construction or a gas blending agreement with the pipeline operator and another gas producer; • “gas blending” in which the gas producer enters into an agreement with the PIA pipeline operator and another gas producer (possibly at a different inlet point) in which the second gas producer will provide richer gas to offset the broader specification gas being supplied by the first gas producer; • “construction” in which the PIA pipeline operator undertakes looping, compression or other construction to restore the capacity lost. <p>(In addition, each form of default PIA will need to address operations and maintenance effects. This will likely be done by annual payments of actual costs incurred, supplemented by an option for the gas producer to provide fuel gas in kind.)</p> <p>The effect of section 8(3) is that the gas producer may choose the methodology it prefers, and the pipeline operator cannot dispute that choice.</p> <p>There may be different standard form PIAs for each PIA pipeline,</p>
<p>8(4)</p>	<p>Once the “blanks” in the chosen standard PIA have been filled in, either by agreement or dispute resolution, the PIA has effect as an agreement by force of this section.</p>	<p>This mechanism creates a deemed contract between the parties, to avoid any last minute hitches in which one party refuses to sign.</p>
<p>8(5) & (6)</p>	<p>A standard form PIA prescribed under section 8(7) will identify which terms may be the subject of a dispute. Only terms identified as such may be referred to dispute resolution under section 9 or the access regime.</p>	<p>This prevents the parties from asking the dispute resolver to second-guess the prescribed standard form PIA.</p> <p>The standard form PIAs are intended to give the parties a relatively simple and quick path through PIA negotiations. These documents are currently under development. The following describes the policy outcome sought to be achieved, but the detail cannot be finalised until the draft standard form PIAs have been prepared. Ideally:</p> <ul style="list-style-type: none"> • the “capacity warehousing” default PIA will provide for the gas producer to fill in all the blanks, and present the default PIA to the PIA pipeline operator, ideally with no scope for the pipeline operator to dispute any of the terms (provided the blanks are filled in correctly);

		<ul style="list-style-type: none"> • the “construction” default PIA will be the reverse, and provide for the PIA pipeline operator to fill in all the blanks and present it to the gas producer, ideally with no scope for the gas producer to dispute any of the terms (once again, provided the blanks are filled in correctly); and • the “gas blending” agreement may be hardest to set up in this fashion, and so will likely have some issues which may need to be referred to arbitration if they cannot be agreed by the parties. <p>The effect of the above structure would be that the details of the construction PIA, which is judged to be riskiest for the pipeline operator, were left wholly within the pipeline operator’s control. This would of course hand effective veto to the pipeline operator over this methodology for addressing the capacity impact. It is intended however that the pipeline operator’s bargaining power would be constrained by the fact that the gas producer would have access to alternative methodologies, including the capacity warehousing option which on the model described above would be wholly within the gas producer’s control.</p> <p>One assumption underlying this approach is that for most foreseeable projects, the “relevant effect” on the pipeline’s capacity will in fact be relatively modest, such that it will hopefully be a realistic option for the gas producer to acquire the necessary amount of firm capacity to warehouse. Also, if the sale of gas from the project itself is going to trigger the construction of developable capacity in the pipeline, then the gas producer’s need for a few TJ/d of capacity for warehousing should be able to piggy-back on the main project relatively easily. If these assumptions prove unsustainable, it may be necessary to adjust some of the above process.</p> <p>Equally, if the above scheme is implemented, but then transpires to be working unsatisfactorily (for example because it produces deadlocks or permits either party to unfairly shift cost or risk to the other), the structure will need to be revisited.</p>
8(7)	The Minister may prescribe default PIAs.	See discussion at sections 8(3), 8(5) and 8(6).
8(8)		This is a mechanical drafting provision, ensuring that section 34(4) (which permits the regulations to incorporate external material) will not be “read down” by reference to the specific provision in section 8(7).
9. PIAs – dispute resolution		
		<p>This provision enables regulations dealing with PIA disputes. See the structure described under section 8.</p> <p>This section should be read with sections 34(2)(f), (g) and (h) which also empower regulations dealing with dispute resolution.</p>

9(1)	This empowers regulations to deal with disputes between a gas producer and a pipeline operator.	<p>There are three classes of disputes which may be dealt with under these regulations:</p> <ul style="list-style-type: none"> • disputes as to the terms of a PIA; • disputes under a PIA; and • disputes about a pipeline operator blocking, reducing or allocating gas flows under section 6(3).
9(2)	This sets out some specific matters which the regulations may deal with.	<p>The regulations will prescribe whether a dispute is to be heard by an arbitrator or a technical expert.</p> <p>The technical expert is intended to be given exclusive jurisdiction (under section 34(2)(f)) to determine the “relevant effects” for the purposes of a PIA (see discussion at section 7(2) above).</p> <p>An arbitrator and expert’s determinations are intended to be final and binding except in specified, limited circumstances, including fraud and manifest error.</p> <p>The regulations will likely provide that rulings of an arbitrator and expert may be appealed to the Supreme Court in specified, limited circumstances.</p> <p>Regulations under section 30 may provide how a dispute under the Bill and a dispute under the <i>Gas Pipelines Access (Western Australia) Law</i> are to be dealt with. For example, the regulations may permit an arbitrator to determine that he or she will hear the disputes concurrently, or to stay one dispute while the other is determined.</p> <p>Other users of a PIA pipeline should not be adversely affected by the flow of gas at below a pipeline’s reference specification. (The possibility of compensation for such users is discussed under section 11, below.) Section 9(2)(c) empowers regulations which allow users’ interests to be taken into account. However it is not intended to allow users or other interested parties to join a PIA dispute, because that may jeopardise the speedy hearing and resolution of the issues.</p>
9(3)	The relevant terms of a determination by an arbitrator or technical expert become terms of the PIA by default.	This is a mechanical provision designed to avoid the need for a final step in which the parties to the PIA have to draft, and agree upon, a PIA based on the terms of the determination.
10. Short-term situations		
		This section provides for regulations which deal with emergencies and short-term “excursions”.

<p>10</p>	<p>A short-term situation is defined as a planned or unplanned situation which prevents:</p> <ul style="list-style-type: none"> • a gas producer from complying with section 6(1); or • a person from complying with a PSA or gas supply agreement modified under section 14. <p>The short-term situation must not last beyond 7 days. The Minister may allow this to increase to 3 months.</p> <p>The regulations may modify obligations under Part 2 of the Bill for the duration of the situation, or may enable the Minister to make directions to a similar effect.</p>	<p>The policy rationale for section 10 is as follows: Part 2 of the Bill is targeted at structural changes in the gas market, such as the entry of new fields, which take place over the medium to long term. It is not intended to create new points of liability or control in respect of normal fluctuations such as currently occur. The policy intention is that, wherever possible, those fluctuations will be dealt with under existing contractual arrangements, or under negotiated short-term arrangements, as now. However, regulations under section 10 may be needed to:</p> <ul style="list-style-type: none"> • ensure that Part 2 and section 14 mechanisms do not stand in the way of such negotiated solutions; and • modify the operation of Part 2 and section 14 mechanisms themselves, to avoid unintended consequences during a short-term situation. <p>Most planned and unplanned outages are concluded within 72 hours, so the 7 day allowance should be adequate grace for most events (plant failures, cyclones, maintenance shutdowns, etc.). This section can deal with “emergencies”, but is not limited to them.</p> <p>If a short-term situation will last longer than one week (or up to 3 months with the Minister’s approval), the gas producer who is having (or is about to have) the excursion (who may not otherwise be a party to the PIA) and pipeline operator will need to enter into a short-term PIA, and will likely need to obtain the Minister’s waiver of the 18 month notice period required under section 6(2).</p>
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11. Compensation for adverse effects on certain users under PIAs

<p>11(1)</p>	<p>This empowers regulations which create a scheme of compensation for users of a PIA pipeline, if their PSA rights are impeded by the way a PIA deals with the relevant capacity impact.</p>	<p>This provision appears in Part 2, and not in Part 4, because it deals with a situation in which a user is adversely affected by the PIA itself, rather than by the delivery of broader specification gas.</p> <p>This provision addresses a rather esoteric risk, which may nonetheless be of considerable value if it ever materialises.</p> <p>The risk could arise because the gas producer and the pipeline operator are given a very wide latitude by section 8(1) to negotiate their own agreed mechanism for dealing with the “relevant effects” on the PIA pipeline’s capacity (see section 7(2)). Some of the means which might be chosen to address the relevant effects may work satisfactorily for the gas producer and the pipeline operator, but could adversely impact on other pipeline users, for example by degrading the reliability of their services or constraining a previously-available nominations flexibility. However, most mechanisms which are likely to be adopted in a PIA to address the relevant effects on capacity should have no adverse impact on other users.</p> <p>The problem is that the person at risk (the user) is not represented in the PIA negotiations and so is not in a position to object. One option would be to allow users to intervene in PIA negotiations or a PIA dispute, but that would carry the risk that a user’s involvement may add</p>
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		<p>complications or delay. The first level of protection for such users is the ability for the user's interests to be taken into account in PIA dispute resolution (see section 9(2)(c) above).</p> <p>Regulations under this section can if necessary provide a second level of protection, by enabling a user to claim compensation if it later emerges that the methodology in the PIA causes it loss.</p> <p>There is no immediate plan to make regulations under this section. It is there to enable the regulations to address this particular risk, if it emerges.</p> <p>Compensation payable under this section will not extend to all users' rights. It will be limited by regulations made under section 11(2). Careful thought will be given to the scope of any compensation, if regulations are made. For example, not all PSAs bestow the same rights on the user. A user with a "fully interruptible" contract may not be entitled to any compensation if the rate of interruptions increases, because its contract did not entitle it to any particular level of service anyway.</p> <p>It is envisaged that a test comparable to section 188 of the National Gas Law might be adopted in any regulations made under section 11, in order to identify which PSAs were entitled to protection. However the detail of this will be addressed if the regulations are ever called upon to be made.</p>
<p>11(2)</p>	<p>This sets out the things the regulations may do under section 11(1)</p>	<p>The regulations will prescribe whether a dispute is to be heard by an arbitrator or a technical expert.</p> <p>An arbitrator and expert's determinations are intended to be final and binding except in specified, limited circumstances, including fraud and manifest error.</p> <p>The regulations will likely provide that rulings of an arbitrator and expert may be appealed to the Supreme Court in specified, limited circumstances.</p>
<p>12. Injunctions</p>		
<p>12</p>	<p>A pipeline operator may apply for an injunction against a gas producer who is supplying gas that will flow into its PIA pipeline in breach of section 6(1).</p>	<p>This right is in addition to the right to reduce the flow of gas under section 6(3).</p> <p>The right is needed because in some instances the commingled stream arriving at the inlet point will be such that the pipeline operator cannot practically reject the offending gas, while at the same time:</p> <ul style="list-style-type: none"> • meeting its commitments to all other users; and • protecting itself from having to accept out-of-specification gas. <p>The rest of section 12 is procedural.</p>

Part 3 – Modifying gas contracts		
13. Standard gas quality specifications for pipelines		
		This section empowers regulations which prescribe a “standard specification” (discussed in Part A paragraph 15(a) above).
14. Modifying contracts and prescribing standard specifications		
14(1)	This defines <i>gas contract</i> .	The definition is broad, to capture any necessary contract. It will catch gas supply agreements (upstream and downstream), gas transportation agreements, pipeline services agreements, gas storage agreements, gas swap agreements and so on.
14(2)		<p>The main objectives of regulations under section 14 are:</p> <ul style="list-style-type: none"> • to amend any necessary gas contract to “let the gas flow” – that is, to allow broader specification gas which has been the subject of a PIA to be received into, transported through and delivered out of a pipeline, and to be the subject of any necessary gas supply agreements, gas storage agreements and other gas contracts, without any of those contracts gas quality provisions being breached or becoming a hindrance; • to displace “change of law” provisions as described in Part A paragraph 27 above; • to avoid any other unintended consequences, and to preserve so far as possible the position parties were in under their gas contracts before the enactment and operation of the Bill. <p>Sections 14(2)(a) to (c) are dealt with in subsequent rows.</p>
14(2)(a)		<p>These regulations will be the subject of further development in consultation with industry and on receipt of advice from a technical expert.</p> <p>The following is an initial assessment of the classes of points at which gas quality specifications may need to be amended, or other obligations regarding gas quality may need to be modified:</p> <ul style="list-style-type: none"> • gas supply agreements, possibly needing to differentiate between some or all of: <ul style="list-style-type: none"> ➤ delivery points located at or upstream of a pipeline inlet point; ➤ delivery points located at or downstream of a pipeline outlet point • gas storage agreements, possibly needing to differentiate between inlet to and outlet from storage;

- pipeline services agreements, possibly needing to differentiate between some or all of:
 - inlet points to a Part 4 pipeline or a PIA pipeline, where gas is coming from a PIA pipeline, or a Part 4 pipeline, or not from a pipeline;
 - outlet points from a Part 4 or from a PIA pipeline, where gas is flowing into a PIA pipeline, or a Part 4 pipeline, or not into a pipeline.

The following is an initial assessment of some of the possible alternative gas quality specifications which may need to be imposed:

- a reference specification;
- the standard specification;
- a weighted average specification;
- a specification to be found in a PIA or another gas contract.

For example, by way of illustration only, one treatment of the gas quality provisions in PSAs at an inlet point to a PIA pipeline at which more than one specification of gas is being delivered as part of a commingled stream, might be to provide as follows:

“Even if the commingled stream of gas being delivered at the inlet point fails to comply with the specification set out in a PSA for the inlet point, the gas is deemed to be in-specification for the purposes of the PSA if the commingled stream of gas complies with a weighted average specification derived by:

- *taking each component in turn of the specifications applying at the inlet point (eg. minimum HHV, then maximum HHV, then maximum inerts, etc.); then*
- *weighting the component from each PSA by the quantity of gas nominated and scheduled to be delivered at the inlet point under the PSA on the day; then*
- *taking the average of the weighted components to produce a weighted average for that particular component; then*
- *assembling all such weighted average components to produce a ‘weighted average specification’.”*

Care will be needed in establishing any such weighted average clauses, to ensure as far as possible that the clause works appropriately when one or more parties are supplying gas in breach of a PIA specification or the relevant reference specification.

		<p>The intent is that any party who has had to determine a specification (weighted average or otherwise) under the regulations will be required to publish (either generally or to affected parties) the specification and the location to which it relates. The Coordinator may appoint a person to audit the calculations at any time.</p> <p>Regulations will oblige gas producers and pipeline operators to cooperate and provide information to the extent necessary to implement the above scheme.</p>
14(2)(b)		<p>Regulations under this paragraph will likely make other amendments to gas contracts. For example, some contracts have contractual rights in which the quantity of capacity made available is determined by reference to gas quality. The DBNGP service known as “Tp Service” is likely to be addressed by regulations under this paragraph.</p>
14(2)(c)		<p>Regulations under section 14(2)(c) may be needed to (as necessary) ensure that the modifications described above, the enactment of the Bill or the regulations made under it, or the delivery of gas under the Bill, do not (of themselves): trigger a breach of the agreement; give rise to a right (such as a right to claim force majeure relief); trigger any liability; or give rise to a right to terminate.</p> <p>Regulations under this section may also need to:</p> <ul style="list-style-type: none"> • displace any “change of law” clauses which might otherwise operate to adjust prices etc. under the contract; and • displace those contractual provisions which are designed to change the gas quality specification immediately upon gas quality regulations being prescribed. The intention is to displace those ad hoc and unpredictable mechanisms with the single integrated solution set out in the Bill. <p>There will need to be careful stakeholder consultation when developing these regulations.</p>
14(3) to (5)		<p>These are machinery provisions to support section 14(2) above.</p>
<p>Part 4 – Compensation for certain gas consumers and operators of gas storage facilities and gas transmission pipelines</p>		
		<p>Part 4 provides for regulations which create a compensation scheme for three classes of people: large consumers, operators of all pipelines which are not PIA pipelines, and gas storage operators.</p> <p>Compensation payable under Part 4 is distinct from the relief (which may include compensation) available to a PIA pipeline operator through a PIA under Part 2</p>

15. Terms used		
	<i>downstream agreement</i>	<p>If a large consumer is supplied gas by a third party (such as a retailer) under a gas supply agreement at a point somewhere downstream (including immediately downstream) of a pipeline outlet point, this definition will catch that gas supply agreement.</p> <p>If a large consumer transports its own gas under a PSA, and hence is delivered the gas directly by the pipeline operator at a pipeline outlet point, this definition will catch the PSA.</p>
	<i>Part 4 pipeline</i>	Part 4 pipelines are all gas transmission pipelines that are not PIA pipelines (see the definition of PIA pipeline, section 3).
	<i>plant and equipment costs</i>	This definition reflects the policy that Part 4 compensation is directed to enabling the large consumer or operator to return to the status quo.
	<i>relevant gas quality specification</i>	This is a machinery provision, identifying the benchmark specification for consumers and operators. It is used in sections 16, 17 and 18.
16. Regulations may provide for compensation scheme		
		This provides for regulations which create the overall structure. It is then supported by sections 17 and 18 which provide more detailed rules for, respectively, large consumers and operators.
16(1)	This describes the basic goal of the compensation scheme, which is to offset the costs of receiving broader specification gas.	<p>Compensable costs of a Part 4 pipeline operator, gas storage facility operator or large consumer are its direct costs offset by its benefits (section 16(3)). These costs are limited to those specified under sections 17(3) and 18(4).</p> <p>The entitlement to compensation under section 16(1)(a) will after the expenditure has been incurred.</p> <p>In the case of section 16(1)(b), the entitlement to compensation will arise when the operator is actually deprived from the loss in capacity as a result of receiving the broader specification gas. It is intended that compensation for lost capacity will be available only when the impact results in the large consumer or operator being unable to meet its contractual commitments or to enter into new contracts (up to the original level of capacity).</p> <p>Lost capacity is intended to be compensated under section 16(1)(a) by way of compensation for the costs of reinstating that capacity, where possible. In the case of a depleted-reservoir gas storage facility, where the reinstatement of capacity is not feasible, the operator will be compensated for the lost capacity by regulations made under section 16(1)(b).</p>

16(2)	This sets out the things the regulations can do in creating the compensation scheme and providing for dispute resolution under that scheme.	<p>The regulations will prescribe whether a dispute is to be heard by an arbitrator or a technical expert.</p> <p>The expert and arbitrator may be given exclusive jurisdiction under section 34(2)(f) to hear specified disputes.</p> <p>An arbitrator and expert's determinations are intended to be final and binding except in specified, limited circumstances, including fraud and manifest error.</p> <p>The regulations will likely provide that rulings of an arbitrator and expert may be appealed to the Supreme Court in specified, limited circumstances.</p>
16(3)	Costs are limited to direct costs, net of any benefits.	<p>Direct costs may include (among other things) additional costs arising from carbon reduction legislation, if the gas contains more carbon dioxide than would have been permitted by the relevant specification.</p> <p>Carbon also provides an illustration of a potential offsetting benefit. If the large consumer or operator receives lower heating value gas (an adverse impact) but the gas is also lower in carbon dioxide, its costs under carbon reduction legislation will be lower (an offsetting benefit).</p>
16(4)	This provides for Part 4 to operate differently in regard to the Alcoa exempt contract.	See definition of "exempt contract" at section 3 above.
16(5)	This provides that the boundaries of compensation set out in sections 16, 17 and 18 are outer limits, but that the regulations may further limit the compensation payable.	<p>This is a very important provision because the policy intention is to provide more limited compensation than may theoretically be possible under sections 16, 17 and 18.</p> <p>For example, it might be argued that a Part 4 pipeline or gas storage facility has suffered a notional "loss" the minute its capacity is affected, because it has suffered the notional opportunity loss of its future ability to sell the capacity. The operator may therefore seek to immediately expand the pipeline or facility whether or not there is <i>actual</i> demand for the lost capacity. The operator will be free to do so, as discussed in the example in Part A, paragraph 38, but the regulations will not permit the operator to claim compensation for that cost until the pipeline or facility is actually required to expand the facility to meet contractual obligations in light of the quality of gas actually received.</p> <p>See section 17(3) for another example.</p>
16(6)	This important limitation makes it clear that gas producers are not liable to compensate pipeline and storage operators or consumers until they supply gas at below an applicable reference specification.	<p>The reference specifications are the central trigger points for the policy implemented in the Bill.</p> <p>Each gas transmission pipeline will be prescribed a reference specification under section 3.</p>

17. Compensation scheme for certain gas consumers		
		This supports the general rules in section 16 by setting the specific rules for gas customers.
17(1)	This section applies to gas consumers that consume 1TJ or more of gas per year at a single site.	See discussion at Part A, paragraph 34, above. Consumers that consume 0.18 TJ or less of gas per year and have pre-1980 appliances are dealt with in Part 5.
17(2)	This provides that the “relevant specification” against which a large consumer’s compensation is judged, the contractual specification the consumer was entitled to at 1 January 2009.	If the relevant specification is determined by reference to legislation or regulations as in force from time to time, it is the specification that would have been in force under the legislation or regulations on 31 December 2008. (See discussion at the definition of “downstream agreement” in section 15 above, for an explanation on which contractual specification is applicable for this purpose.)
17(3)	This sets the scope of the compensation, as being: <ul style="list-style-type: none"> • the costs of restoring any reduction in capacity; • the costs of replacing plant and equipment in order to restore previous operations; and • increased operating and maintenance costs, to the extent those costs were made necessary by receipt of the gas at below the relevant specification (see 17(2), above).	Unlike PIA pipelines, who may be compensated for prudent pre-emptive action pursuant to a PIA produced under Part 2, consumers are only entitled to compensation <i>after</i> they actually receive gas at below the relevant specification. The Bill will not prevent large consumers from undertaking prudent pre-emptive action if they wish, but they will not be able to claim compensation until they actually receive broader specification gas, and then only to the extent that the gas actually received would have caused them to incur those costs. See Part A, paragraph 38, above. Large consumers are not proposed to be compensated for lost capacity or plant and equipment costs unless the broader specification gas leads to an actual reduction in their ability to meet contractual commitments (for example as to the quantity or quality of goods to be supplied) resulting in a direct financial cost.
17(4)	Gas consumers’ right to compensation is limited to the initial duration (excluding any options to extend the duration) of downstream agreements which commenced before 1 January 2009.	The policy rationale for this is that large consumers who enter into gas supply agreements on or after 1 January 2009 had knowledge of the scheme at the time they entered into the new contract and are expected to have contracted accordingly. In addition, any large consumer which has an opportunity to go back to the market after that date will likely have received the benefits of the more competitive market which is intended to be created by the Bill. Those benefits should outweigh what would otherwise be the compensable loss caused by receiving broader specification gas.
17(5)	Gas consumers’ compensation will end on 1 January 2029.	This is to provide a certain end-date to the compensation regime. It is anticipated that very few downstream agreements currently in force would still be in effect (without having gone through the exercise of an option) in 20 years time.

18. Compensation scheme for Part 4 pipeline operators and operators of gas storage facilities		
		This supports the general rules in section 16 by setting the specific rules for these two classes of operators.
18(1)		Part 4 pipelines are any gas transmission pipelines that are not PIA pipelines. Gas storage facility is defined in section 3.
18(2)	This provides that the “relevant specification” against which operator of a Part 4 pipeline’s compensation is determined is the applicable reference specification.	A reference specification for each gas transmission pipeline will be prescribed under section 3.
18(3)	This provides that the “relevant specification” against which the compensation for the operator of a gas storage facility is determined, is a specification prescribed for the purposes of this section.	This has the same effect as there being a “reference specification” for the gas storage facility. The relevant gas quality specification to be prescribed for a gas storage facility under this subsection will likely be determined after receiving advice from a technical expert and consultation with the relevant gas storage facility operator.
18(4)	This sets the scope of the compensation. It mirrors section 17(3).	See discussion at section 17(3) above. Unlike the time limitations imposed on compensation payable to large consumers under sections 17(5) and 17(6), there is no time limit on compensation payable to operators. However, under section 33 the Minister must review the Act at least 10 years after it is enacted. It is intended that one aspect of this review will be for the Minister to consider whether operators should continue to receive compensation after 1 January 2029.
19. No double compensation		
19	This provides that a party eligible to receive compensation under the Bill may only be compensated once in respect of any capacity effect, increased operations and maintenance costs or plant and equipment costs incurred as a result of receiving gas at below the relevant specification under the Bill. If a party <i>may</i> be compensated under the Bill, the party <i>must not</i> seek compensation other than under the Bill.	The policy intention is that all issues associated with the gas producer supplying gas at below the reference specification for a PIA pipeline or the relevant specification for a Part 4 pipeline, gas storage facility or large gas consumer should be dealt with under the Bill. All other contracts, and any access regulation, should proceed on the basis that the gas is entering each pipeline at its reference specification, because the effects of the gas being below the reference specification should have been dealt with under the Bill.

20. Part 4 pipeline becoming a PIA pipeline		
20		<p>The definition of “Part 4 pipeline” in section 15 makes it clear that a gas transmission pipeline may not be both a PIA pipeline and a Part 4 pipeline under the Act.</p> <p>A Part 4 pipeline may become fully utilised (see discussion in Part A, paragraph 16(a) above) after the commencement of the scheme. In such circumstances the pipeline operator may apply to the Minister under section 5 to have the pipeline declared a PIA pipeline. If the Minister decides to declare it to be a PIA pipeline, regulations under this section 20 will cover the transition of that pipeline from being a Part 4 pipeline to being a PIA pipeline.</p> <p>The regulations are likely to provide for transitional compensation rules, separate from Part 2 and sections 16, 17 and 18. The transitional compensation may apply to pipeline operators, pipeline users and large gas consumers during the transitional period between the Minister’s declaration under section 5 and the time at which the PIA has been entered into <i>and</i> the agreed remediation has come into effect (whether that remediation consists of construction or something else). It is presently proposed that if the broader specification gas has caused a loss of capacity in the pipeline such that the pipeline is not able to provide all users’ reserved firm capacity during the transitional period, then the gas producer will be called upon to compensate the pipeline operator for any resultant lost revenue. The gas producer will also likely be required to compensate users for losses arising from them not receiving their full gas deliveries.</p> <p>The regulations may also be required to modify the application of other (non-compensation related) provisions of the Bill to in relation to the transition. For example, if a gas producer is already supplying gas under a PIA at the time a Part 4 pipeline becomes a PIA pipeline, the 18 month lead time requirement under section 6(2) should probably not apply, and the pipeline operator probably should not immediately get the right to reduce gas flows under section 6(3) or seek an injunction under section 6(4).</p>
Part 5 - Rectifying gas installations and gas appliances		
21. Purposes of Part 5		
		<p>Some pre 1980 gas appliances could be made unsafe as a result of receiving gas at below a Wobbe Index of less than 46.5 MJ/m³ or an HHV of 37.0 MJ/m³ (lower heating value gas), as a result of arrangements being made under Part 2. Gas producers who supply lower heating value gas which flows into a gas distribution system must fund a scheme by which small consumers’ gas appliances are replaced or serviced to make them safe.</p> <p>This part applies to consumers who consume equal to or less than 0.18 TJ/a of gas at any site (as opposed to</p>

		<p>consumers who consume 1 TJ/a or more of gas at any site who are dealt with under Part 4).</p> <p>There is no “gap” between these two annual thresholds; the two tests are quite separate. The 1 TJ/a threshold in Part 4 identifies consumers which are large enough to justify the provision of compensation by a gas producer. The 0.18 TJ/a threshold in Part 5 defines the outer bounds of who is entitled to participate in the appliance rectification programme.</p>
22. Terms used		
	Account	Gas producers liable to contribute to the rectification programme under section 24(1)(a) must deposit monies into the Account, to be applied by the Coordinator under section 24(2).
	Authority is the Economic Regulation Authority.	The ERA may be given functions in relation to the reimbursement scheme under section 28(4)(b).
	consumer	<p>The definition of consumer is different from a “gas consumer” under section 3.</p> <p>See discussion in Part A paragraph 43 above.</p>
	consumer installation	<p>Relevant consumer installations will be modified or replaced under the rectification programme (section 23).</p> <p>The use of “occupied” means that consumers who are tenants will be entitled to seek replacement or servicing under the scheme.</p>
	contribution	All contributions must be credited to the Account (section 24(1)). A contribution includes any amount made available by a gas producer and credited to the Account before the commencement of this Part (section 22(2)).
	Department is the Office of Energy.	The Department will administer the Account (defined in section 22) for the appliance replacement scheme under section 26(2).
	gas appliance	<p>This means an appliance that consumes gas as fuel.</p> <p>Regulations may be made in relation to the ownership of gas appliances under section 23(4)(b).</p>
	gas installation	<p>This is any appliance, pipes, fittings or other apparatus installed or to be installed for the conveyance, control, supply or use of gas.</p> <p>Some gas installations will be relevant consumer installations which will be modified or replaced under the rectification programme (section 23).</p>
	lower heating value gas is defined as gas that does not meet the heating value standards as in force on 1 January 2009 under the regulations cited.	<p>These regulations apply to gas supplied to a consumer through the gas distribution system, and provide for a Wobbe Index of between 46.5 and 51.0 MJ/m³, and an HHV of 37.0 to 42.3 MJ/m³.</p> <p>This is the trigger point for determining which appliances are “relevant consumer installations” and hence eligible for servicing or replacement.</p>

		It is also the trigger point for determining who has to pay for the programme: Gas producers who supply 10TJ or more per day of lower heating value gas are subject to the reimbursement scheme under section 28.
	rectification programme	This is the method by which relevant consumers will be offered the opportunity to have their “relevant consumer installations” modified or replaced under section 23.
	reimbursement period means a 10 year period commencing on the day determined by the Minister.	The reimbursement period is intended to start when the rectification programme is complete. Only gas producers who supply lower heating value gas during the reimbursement period may be required to make payments to parties under section 28(4).
	site	Used in the definition of “consumer” in section 22.
22(2)	This deals with contributions to the rectification programme before Part 5 becomes law.	A gas producer that supplies lower heating value gas during the reimbursement period will be required to reimburse contributors, including those that contribute before this Part 5 becomes law.
22(3)	This defines the scope of the cost of the rectification programme.	Costs are to include all the amounts charged to the Account established under section 22. Costs are to include the expenditure incurred on the rectification programme before Part 5 becomes law.
23. Coordinator to establish and implement the rectification programme		
23(1)	relevant consumer installation is any installation likely to become unsafe if it receives gas at below the 1 January 2009 regulated gas distribution system specification.	This is a central definition. It is these installations which may be serviced or replaced under the rectification programme. It is intended that the Director of Energy Safety will make an order under the <i>Gas Standards Act 1972</i> , s13H prohibiting the use of such installations. It is expected that these will be appliances used in residential homes, schools, and institutions such as retirement villages and nursing homes.
23(2)	This makes it a function of the Coordinator to establish and implement the rectification programme, to give the owners of relevant consumer installations a chance to have them modified or replaced before they are prohibited.	If relevant consumer installations are not replaced or modified under the rectification programme their use is intended to be controlled or prohibited. The decision on when to make the order prohibiting these appliances rests with the Director of Energy Safety, but the current expectation is that this order will be made later in 2009, to take effect on 1 January 2012.
23(3)	The Coordinator need not progress the scheme if it is unfunded.	The rectification programme is reliant on gas producers making contributions to the Account. If gas producers do not provide the funding to enable the appliances to be made safe, then the regulations that enable broader gas specification to be supplied will be repealed.
23(4)	This is a regulation-making power to facilitate the implementation of the scheme.	Regulations may be made to clarify issues such as the disposal of prohibited appliances, preventing fraud, and dealing with the making good of consumers’ cupboards that hold the replacement appliance.

		<p>Regulations may also be required to deal with ownership of appliances located in rented accommodation.</p> <p>Regulations may also establish penalties in connection with the programme.</p>
24. Payments into and out of the Account		
24	This is a financial machinery provision, setting out which funds must be credited into the Account and what funds in the Account may be spent on.	
25. Surplus funds repaid to producers		
25(1)	This provides for closure of the scheme and repayment to the gas producers of any monies left in the account.	When the rectification program is complete the unspent monies are to be returned to the contributors in the proportion they contributed.
26. Financial Management and Audit		
26	These are financial machinery provisions.	Money from the Account must not be credited to the Government's Consolidated Account.
27. The Office of Energy's Annual Report		
27	After the scheme is completed, the Office of Energy must report on who contributed, what the scheme cost, and how much was refunded at the end of the scheme.	This section applies to the Office of Energy's first annual report after the Coordinator of Energy gives notice that the rectification programme has been completed. This will be the public record to enable future gas producers to estimate their liability during the 10 year reimbursement period
28. Regulations may provide for a reimbursement scheme		
28(1)	contributor means any gas producer who made a contribution.	<p>If a contributor does not supply lower heating value gas during the reimbursement period, they will be entitled to be reimbursed the total amount of their contribution under clause 28(4)(a).</p> <p>"Contribution" is defined in section 22(1). The Bill does not provide any compulsion for gas producers to be contributors during the rectification programme. There is, however, a compulsion for gas producers supplying lower heating value gas during the reimbursement period to pay a proportional share of the reimbursements to the contributor or contributors.</p>
28(1)	relevant gas transmission pipeline means a pipeline supplying the Coastal Supply Area.	<p>The Coastal Supply Area includes Geraldton, Perth and Bunbury. It excludes Albany and Kalgoorlie. See the map in Appendix 2.</p> <p>Thus only the gas producers that supply lower heating value gas during the reimbursement period whose gas flows to a gas distribution system in the Coastal Supply Area will be required to reimburse the initial contributors.</p>
28(1)	supply means to supply gas into a relevant gas transmission pipeline.	

28(2)	This scheme does not require contributions from a producer who supplies less than 10 TJ/d.	Small gas producers are excluded from the operation of this Part and the volumes of gas they supply are not included in the calculations under clause 28(4)(a) regarding reimbursement.
28(3)	This is a regulation making power to set up the reimbursement scheme which shares the cost of the programme between all gas producers who supply low heating value gas. In particular it provides for the reimbursement from later-coming gas producers to the gas producer(s) who funded the scheme in the first instance (the “contributors”).	Gas producers should pay an amount to the rectification programme proportionate to the amount of lower heating value gas they supply during the reimbursement period. The proportional allocation will be based on the total quantity supplied, not the extent to which the lower heating value gas is less than a Wobbe Index of 46.5 MJ/m ³ or an HHV of 37.0 MJ/m ³ .
28(4)		<p>Regulations made under this clause will ensure gas producers ultimately only pay to the rectification programme an amount proportionate to the amount of gas they supply during the reimbursement period. This may be despite the fact they in the interim they may make a greater or lesser contribution than required.</p> <p>The regulations will enable the initial contributors to recover a reasonable cost of capital for funding the rectification programme.</p> <p>The regulations will confer on the ERA the task of determining the proportions to be paid by each gas producer, and will set out the methods and principles the ERA is to use. It is proposed that reimbursement will be on an approximate basis during the reimbursement period, with a single reconciliation at the end of the period once the final amount of gas supplied by each gas producer is known.</p> <p>It is intended that all reimbursement cash flows will be adjusted to reflect the time value of money, although this is likely to involve the use of a lower discount rate than that used to compensate the initial contributors for being deprived of the use of their capital.</p>
28(5)		Only gas producers who supply lower heating value gas during the reimbursement period are required to make a contribution to the rectification programme established under section 23(2) or reimburse gas producers or consumers under section 28(4).
29. Minister may determine when the reimbursement period starts		
29	The Minister may determine when the 10 year reimbursement period starts.	The present intention is that this period will commence after the completion of the rectification programme.

Part 6 – General Provisions

30. Relationship to Gas Access Law

		<p>These regulations will need to clarify the relationship between the Bill and the Gas Access Law. This is likely to include the following:</p> <ul style="list-style-type: none"> • In undertaking their activities under the Gas Access Law, the ERA and arbitrator will in effect need to proceed on a hypothetical basis, for example that all gas is entering a covered pipeline at the reference specification. This is to reflect the policy division between the two pieces of legislation: this Bill is intended (in effect) to restore the position to what it would have been, had the relevant gas been delivered into the pipeline at the reference specification. The Gas Access Law should be able to disregard any consequences which arise from the gas being broader specification gas, because those consequences should be dealt with under this Bill. • The ERA will need to disregard any expenditure which relates to gas entering a covered pipeline at less than the reference specification that is the subject of a PIA, to ensure that there is no double-recovery. • The modifications made to contracts under the Bill, especially section 14, will need to prevail over any access contract or access determination made under the Gas Access Law.
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31. Coordinator to monitor and inquire into

		<p>This is a machinery provision, to ensure that the Coordinator has adequate statutory powers under the <i>Energy Coordination Act 1994</i> to properly administer the Bill.</p>
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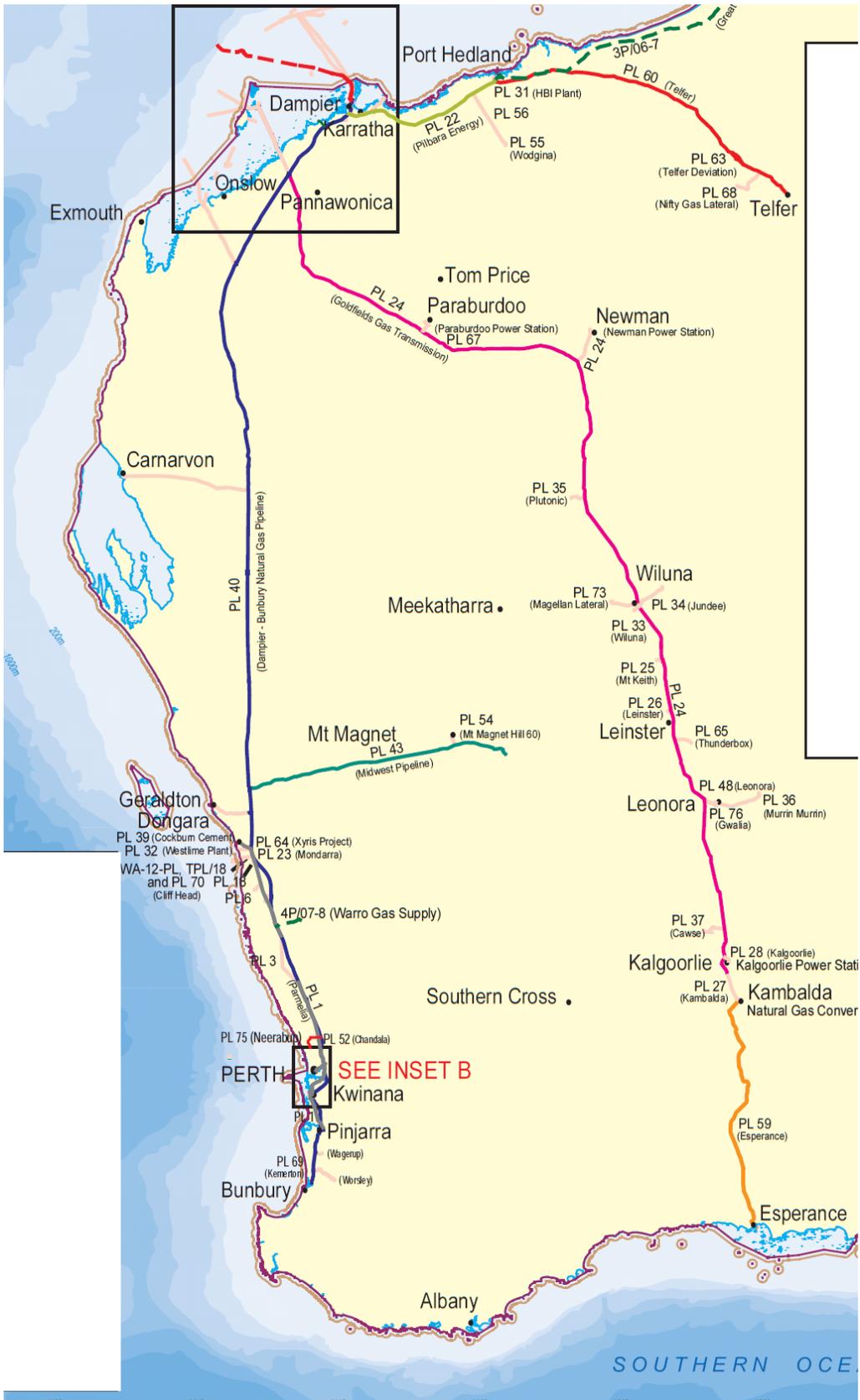
32. Exemptions may be granted by the Minister

<p>30(1)</p>	<p>The Minister is given a wide power to grant exemptions in a range of circumstances. The Minister is to undertake appropriate consultation before granting an exemption.</p> <p>An exemption is a disallowable instrument: it must be tabled in Parliament and either House may disallow it.</p>	<p>The Bill, and especially Parts 2, 3 and 4, attempts to regulate a very complex suite of contractual relationships in order to bring about the results described. The complexity of the subject matter, and the fact that a considerable amount of the contractual details are confidential, means that there is a sensible risk of unintended consequences. Some of those consequences will be of a general nature and will be appropriately dealt with by amending the regulations, but others may be individual to a particular (or a particular class of) person, thing, contract or activity. In the latter circumstance an exempting Ministerial order seems the better mechanism, subject to Parliamentary scrutiny.</p> <p>Examples of exemptions under this section may include:</p> <ul style="list-style-type: none"> • exempting parties supplying small quantities of gas at below a pipeline's reference specification, from the definition of gas producer; and
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		<ul style="list-style-type: none"> dealing, if necessary, with an “exempt contract”. <p>An exemption may be subject to conditions under section 32(3) and may be amended or revoked under section 32(4).</p> <p>An order under this section is disallowable by Parliament under section 42 of the <i>Interpretation Act (WA) 1984</i>.</p>
33. Review of the Act		
33	This is a standard provision calling for a review of the Act. In this case the review is to be after 10 years of operation.	<p>The review is set for 10 years, rather than the more normal 5 years, because it is not expected that the gas actually delivered to downstream parties will go outside the reference specifications and relevant specifications within the first 5 years. Consequently the rules establishing the compensation scheme may not have been properly tested.</p> <p>In addition to reviewing the Act generally, the policy intention is that the review and report will focus specifically on whether compensation payable to Part 4 pipeline operators and gas storage facility operators under Part 4 should continue past 1 January 2029.</p>
34. Regulations		
		The Bill contains an extensive general regulation-making power in addition to the various specific powers discussed above.
34(2)(a)		<p>Section 32(2)(a) is important. There will be a range of information needed by various market participants in order for the schemes implemented by the Bill to operate, and for the participants to understand their position and rights. Much or all of that information is currently available to some parties, but most of it is not in the public domain. It is anticipated that regulations will be needed to compel the provision of this information because much of it is covered by bilateral confidentiality arrangements. Examples of information that the regulations may prescribe to be published under this section include:</p> <ul style="list-style-type: none"> the minimum terms of a PIA under section 7(1); gas processing plant meter readings detailing the gas quality and aggregated quantity of gas being produced by a plant, to allow a PIA pipeline operator to determine if section 6(1) or a specification prescribed under section 14 is being breached, and whether it is entitled to reduce the flow of gas at the inlet point under section 6(3), and if so to what extent; and information from several points upstream of or in a pipeline, on gas quality and aggregated volume at the point, so that parties can monitor both compliance with section 6(1) and a PIA, and also so that parties can assess the risk posed by broader specification gas to their operations over time. This information will be necessary to establish that broader specification gas has been delivered and the party is entitled to compensation.

34(2)(b)		In some instances, especially if metering data is being provided in real time (so the person providing it will not have an opportunity to verify the data), it will be appropriate for regulations under this paragraph to provide protection to the person providing the information.
34(2)(c) & (d)		Regulations under these two paragraphs are intended to make provision (among other things) regarding the: <ul style="list-style-type: none"> • measurement and estimation of gas quality and quantity; and the • calculation, substitution, verification and audit of gas quantity and quality values; and • the configuration, capabilities, sensitivity and accuracy of metering equipment and the adjustment and reconciliation of gas quantity and quality values due to variations between different pieces of metering equipment in configuration, capabilities, sensitivity and accuracy
34(2)(e)		Regulations made under this paragraph complement the Minister's powers of exemption under section 32. Part 2 contains general provisions which are intended to operate in most foreseeable circumstances, but there is a very wide range of possible permutations (of both physical gas flows and contractual arrangements) and it is impossible to cover all possibilities. Regulations under this paragraph will be able to extend the provisions of Part 2 to any persons, circumstances or things which might otherwise "fall through the cracks". Regulations under this paragraph will be constrained by the objectives of Part 2 set out in section 4.
34(2)(f) & (g)		These are mechanical provisions to support the dispute resolutions regulations discussed above.
34(2)(h) to (m) & 34(3) to (7)		These too are mechanical provisions.
Part 7 – Acts Amended		
35 and 36		Sections 26(3), (4) and (5) of the <i>Energy Coordination Act 1994</i> empower regulations which permit the Coordinator of Energy to establish a gas quality specification for the DBNGP. This Bill makes those provisions redundant.
37 and 38		This is a machinery provision, to ensure that the Gas Disputes Arbitrator has the function of hearing disputes under the Bill

Appendix 1: Major pipelines in Western Australia



Source: http://www.dmp.wa.gov.au/documents/WA_Pipelines_Map_Poster.pdf (extract)

Appendix 2: The Coastal Supply Area

WESTERN AUSTRALIA'S GAS SUPPLY AREAS

1 KIMBERLEY

Brome
Derby-West Kimberley
Halls Creek
Wynham-East Kimberley

2 PILBARA

Ashburton
East Pilbara
Port Hedland
Roebourne

3 GASCOYNE

Carnarvon
Exmouth
Shark Bay
Upper Gascoyne

5 WHEATBELT

Beverley	Lake Grace	Toodyay
Brookton	Marrocin	Trayning
Bruce Rock	Moora	Victoria Plains
Corrigin	Mount Marshall	Wagin
Cuballing	Mukinbudin	Wandering
Cunderdin	Narembeen	West Arthur
Dalwallinu	Narrogin (Shire)	Westonia
Dowerin	Narrogin (Town)	Wickegin
Dumbleyung	Northam (Shire)	Williams
Goomalling	Northam (Town)	Wongan-Ballidu
Kellerberrin	Nungain	Wyalkatchem
Kendinn	Pingelly	Yigarn
Koorda	Quairading	York
Kulin	Tammin	

4 MID-WEST

Cue	Northampton
Moakatharra	Perenjori
Morawa	Sandstone
Mount Magnet	Wiluna
Murchison	Yalgoo

8 COASTAL

Armadale	Greenerough
Augusta-Margaret River	Harvey
Bassendean	Inwin
Bayswater	Joondalup
Belmont	Kalamunda
Beddington	Kwinana
Boyp Brook	Mandurah
Bridgetown-Greenbushes	Manjimup
Bunbury	Melville
Busselton	Mingenew
Cambridge	Mosman Park
Canning	Mullewa
Capel	Mundaring
Carnamah	Murray
Chapman Valley	Nannup
Chittering	Nedlands
Claremont	Peppermint Grove
Cockburn	Perth
Collie	Rockingham
Coorow	Serpentine-Jarrahdale
Cottesloe	South Perth
Dandaragan	Stirling
Dardanup	Subiaco
Donnybrook-Balingup	Swan
East Fremantle	Three Springs
Fremantle	Victoria Park
Geraldton	Vincent
Gingin	Wanneroo
Gosnells	Waroona

6 GOLDFIELDS-ESPERANCE

Coolgardie	Leonora
Dundas	Menzies
Esperance	Ngaanyaljaraku
Kalgoorlie-Boulder	Ravensthorpe
Laverton	

7 GREAT SOUTHERN

Albany	Katanning
Broomhill	Kent
Cranbrook	Kojonup
Denmark	Plantagenet
Growangerup	Tamballup
Jerramungup	Woodanilling

SCALE - 1 : 10,000,000

NB: Each Supply Area consists of a number of Local Government districts which are specified above.

Source: http://www.era.wa.gov.au/2/325/51/western_austral.pm.