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Western Australia

**Gas Supply (Gas Quality Specifications)
Amendment Regulations 2012**

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Gas Supply (Gas Quality Specifications) Act 2009

Gas Supply (Gas Quality Specifications) Amendment Regulations 2012

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Gas Supply (Gas Quality Specifications) Amendment Regulations 2012*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

3. Regulations amended

These regulations amend the *Gas Supply (Gas Quality Specifications) Regulations 2010*.

4. Regulation 3 amended

In regulation 3(1) insert in alphabetical order:

business day, except in Part 5, means a day that is not a Saturday or a Sunday or a public holiday throughout the State;

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5. Regulation 13 amended

- (1) In regulation 13(2):
 - (a) in paragraph (a) delete “30 days” and insert:
20 business days
 - (b) in paragraph (b) delete “45 days” and insert:
35 business days

- (2) In regulation 13(3) delete “30 days” and insert:
20 business days

6. Regulation 21 amended

- (1) In regulation 21(1) delete “15 days” and insert:
10 business days
- (2) Delete regulation 21(4) and insert:
 - (4) A person cannot apply to have a dispute about the application referred to in subregulation (1) resolved under Part 5 —
 - (a) unless the operator has notified the gas producer, under subregulation (1), that the application does not meet the application criteria; and
 - (b) more than 10 business days after the last day of the period referred to in subregulation (1).

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- (3) In regulation 21(5) delete “45 days of the arbitration commencing.” and insert:

45 business days after the day on which the dispute resolution procedure began (in accordance with regulation 57).

7. Regulation 22 amended

- (1) In regulation 22(2) and (4) delete “30 days” and insert:

20 business days

- (2) Delete regulation 22(6) and insert:

(6) A person cannot apply to have a dispute about the relevant effects or their extent resolved under Part 5 unless —

- (a) the operator has notified the gas producer of the operator’s determination of the relevant effects and their extent, under subregulation (2); or
- (b) the operator fails to comply with subregulation (2).

- (3) In regulation 22(7) delete “60 days of the arbitration commencing.” and insert:

60 business days after the day on which the dispute resolution procedure began (in accordance with regulation 57).

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8. Regulation 23 amended

- (1) In regulation 23(3) delete “30 days” and insert:

20 business days

- (2) Delete regulation 23(4) and insert:

- (4) A person cannot apply to have a dispute about the completeness, accuracy or correctness of the information referred to in subregulation (3) resolved under Part 5 —

- (a) unless —

- (i) the operator has notified the gas producer, under subregulation (3), that the information is not complete, accurate or correct; or
- (ii) the operator has failed to comply with subregulation (3);

and

- (b) more than 6 months after the last day of the period referred to in subregulation (3).

- (3) In regulation 23(5) delete “60 days of the arbitration commencing.” and insert:

60 business days after the day on which the dispute resolution procedure began (in accordance with regulation 57).

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Contents**9. Part 2 Division 5 inserted**

At the end of Part 2 insert:

Division 5 — Short-term situations**28A. Application**

This Division applies to a short-term situation referred to in section 10(2)(a) of the Act, but not to a short-term situation referred to in section 10(2)(b) of the Act.

28B. Period of modification

In this Part —

period of modification, in relation to a short-term situation, means the period specified in regulation 28C in relation to the short-term situation.

28C. Duration of period of modification

- (1) The period of modification in relation to a short-term situation commences when the short-term situation commences.
- (2) Unless the duration of the period of modification is extended (by subregulation (3), the Minister under section 10 of the Act or both), the duration of the period of modification is the shorter of —
 - (a) the duration of the short-term situation; or
 - (b) 48 hours.
- (3) If, within the first 48 hours of a short-term situation, a person asks the Minister for an extension of the duration of the period of modification (under section 10 of the Act), the duration of the period of modification is extended to the shorter of —
 - (a) the duration of the short-term situation; or
 - (b) 5 business days.

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28D. Modification of Part 2 of Act

- (1) If, during the period of modification in relation to a short-term situation, a gas producer cannot supply gas that will flow into the PIA pipeline and comply with section 6(1) of the Act in respect of that supply because of the short-term situation, then —
 - (a) if the supply is the subject of a pipeline impact agreement — section 6(1)(b) and (c) of the Act does not apply to the gas producer in relation to the supply of gas during the period of modification; and
 - (b) if the supply is not the subject of a pipeline impact agreement — section 6 of the Act does not apply to the gas producer in relation to the supply of gas during the period of modification.
- (2) Subregulation (1) applies to a gas producer while —
 - (a) there are contractual arrangements in place intended to take account of the effects of short-term situations or similar situations; and
 - (b) the gas producer complies with any obligations it has under those arrangements that are intended to be complied with during the short-term situation.

28E. Notification of extension of period of modification

- (1) If, in relation to a short-term situation, the Minister (under section 10 of the Act) allows the period of modification to be longer than 5 business days, the Minister must, as soon as practicable, notify —
 - (a) each gas producer that supplies gas that will flow into the PIA pipeline; and
 - (b) the operator of each PIA pipeline affected or potentially affected by the short-term situation.

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- (2) The notice must —
- (a) set out the duration of the period of modification; and
 - (b) include a brief description of the short-term situation and brief reasons why the period of modification needs to be longer than 5 business days; and
 - (c) be published on the Department's website within 48 hours after the day on which the first person was notified under subregulation (1).
- (3) Each operator given a notice under subregulation (1)(b) must, as soon as practicable, give a copy of the notice to —
- (a) each user of the pipeline; and
 - (b) the operator of each downstream gas transmission pipeline connected to the pipeline; and
 - (c) the operator of each gas storage facility connected to the pipeline.
- Penalty: a fine of \$50 000.
- (4) A copy of a notice given under this regulation must be included in the Department's annual report under the *Financial Management Act 2006* Part 5.

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10. Part 4 Division 4 inserted

At the end of Part 4 insert:

Division 4 — Part 4 pipeline becoming PIA pipeline**49. Transition period**

- (1) The transition period for a pipeline that becomes a PIA pipeline is the period of 12 months commencing on the day on which the pipeline became a PIA pipeline.
- (2) The Minister may extend the transition period for the pipeline, any number of times, if satisfied that it is appropriate to do so.
- (3) The Minister must publish notice of an extension of the transition period on the Department's website.
- (4) The Minister cannot extend the transition period if it has expired.
- (5) The transition period ceases if the pipeline ceases to be a PIA pipeline.

50. Modification of operation of Act during transition period

- (1) During the transition period for the pipeline, section 6(1) of the Act does not apply to a gas producer in relation to the pipeline and a supply of gas if —
 - (a) the supply of gas is the subject of a pipeline impact agreement that was entered into before the transition period commenced; or
 - (b) the supply of gas —
 - (i) commenced to flow (whether or not with interruptions) before the transition period commenced; and

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- (ii) flows directly into the pipeline (that is, not via another gas transmission pipeline); and
 - (iii) under arrangements entered into before the transition period commenced, need not comply with the reference specification for the pipeline.
- (2) During the transition period for the pipeline, a gas producer referred to in subregulation (1) is liable for compensation under Part 4 of the Act in relation to the supply of gas as if the pipeline were a Part 4 pipeline.
- (3) Subregulations (1) and (2) cease to apply in relation to a gas producer and a supply of gas if, during the transition period for the pipeline, a pipeline impact agreement to which the gas producer is a party comes into effect in relation to the pipeline and the supply of gas.

11. Part 5 replaced

Delete Part 5 and insert:

Part 5 — Dispute resolution**Division 1 — Preliminary****51. Terms used**

In this Part, unless the contrary intention appears —

applicant means a party to a dispute who applies under regulation 53 to have the dispute resolved;

arbitrator has the meaning given in the *Energy Arbitration and Review Act 1998* section 61;

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business day means a day that is not —

- (a) a Saturday or a Sunday or a public holiday throughout the State; or
- (b) a day in the period commencing on 24 December in a year and ending on 15 January in the following year;

dispute means a dispute —

- (a) between a gas producer and an operator of a PIA pipeline relating to a pipeline impact agreement or a proposed pipeline impact agreement, including disputes referred to in Part 2 Division 4; or
- (b) arising out of the compensation scheme in Part 4.

52. Application of this Part

If a party to a dispute applies to have the dispute resolved under this Part then —

- (a) in relation to a dispute referred to in regulation 21, 22 or 23 — this Part applies to the resolution of a dispute; and
- (b) in relation to any other dispute — this Part applies to the resolution of the dispute to the extent to which the parties to the dispute do not agree otherwise.

Division 2 — Commencing dispute resolution process**53. Commencing dispute resolution process**

- (1) A party to a dispute may apply to have the dispute resolved under this Part unless —
 - (a) an application for resolution of the dispute has already been made by a party to the dispute,

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- whether or not a determination of the dispute has been made; or
- (b) the dispute is the subject of an order, judgment or other finding by a court or other body or person.
- (2) Despite subregulation (1)(a), a party to a dispute may make a further application to have the dispute resolved under this Part if the application was dismissed on the grounds that it had not been prepared and given in accordance with this regulation.
- (3) To apply to have a dispute resolved under this Part a party to the dispute must —
- (a) prepare a written application; and
 - (b) give it to the arbitrator; and
 - (c) give a copy of it to each other party to the dispute; and
 - (d) provide any deposit or security for the costs of the dispute resolution process that the arbitrator requires under regulation 81(6).
- (4) A person given a copy of the application under subregulation (3)(c) is a **respondent** for the purposes of this Part.
- (5) An application must set out or include —
- (a) the name and contact details of each party to the dispute; and
 - (b) the time limit within which a respondent must respond under regulation 54; and
 - (c) an outline of the dispute, including the basis upon which the applicant considers the respondents are parties to the dispute; and

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- (d) where relevant, the names and contact details of up to 3 persons the applicant considers suitable as a mediator of the dispute; and
- (e) the resolution sought by the applicant, including (if relevant) the amount of any compensation sought, and the basis upon which the applicant seeks the resolution; and
- (f) all other information and documents necessary to support the applicant's claims.

54. Responding to an application for dispute resolution

- (1) A respondent must respond to an application for dispute resolution within 20 business days after the day on which the application was received, unless the dispute is solely about —
 - (a) an application for a pipeline impact agreement referred to in regulation 21; or
 - (b) the completeness, accuracy or correctness of the information referred to in regulation 23(3),in which case the period in which to respond is 10 business days.
- (2) The response must set out or include all information and documents necessary to support the respondent's response.
- (3) The response must be given to each other party to the dispute and to the arbitrator.
- (4) The failure of a respondent to comply with this regulation does not prevent —
 - (a) the dispute resolution process from continuing; or

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- (b) the arbitrator, in his or her discretion, from subsequently receiving a response from the respondent.

55. Initiator of dispute may respond to responses

- (1) The applicant may respond to any response under regulation 54 within 10 business days after the day on which the response was received, unless the dispute is solely about —
 - (a) an application for a pipeline impact agreement referred to in regulation 21; or
 - (b) the completeness, accuracy or correctness of the information referred to in regulation 23(3),in which case the period in which to respond is 5 business days.
- (2) A response must be given to each other party to the dispute and to the arbitrator.
- (3) A failure by the applicant to respond within the time allowed does not prevent the arbitrator, in his or her discretion, from subsequently receiving a response from the applicant.

56. Choice of dispute resolution procedure

- (1) The dispute resolution procedure in Division 3 is the procedure that applies to the resolution of a dispute unless —
 - (a) the parties to the dispute agree, whether before or during the resolution of the dispute, that some or all of the procedure in Division 4 applies; or
 - (b) the arbitrator directs, whether before or during the resolution of the dispute, that the procedure in Division 4 applies; or

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- (c) the dispute relates to an amount of compensation that exceeds or is likely to exceed \$250 000; or
- (d) the dispute relates to costs under an existing pipeline impact agreement (other than a pipeline impact agreement where the relevant effects on the PIA pipeline are to be dealt with by the warehousing method) and the costs are likely to exceed \$250 000,

in which case, the dispute resolution procedure in Division 4 applies to the resolution of the dispute.

- (2) Despite subregulation (1)(c) and (d), the dispute resolution procedure in Division 3 applies to the resolution of the dispute if —
 - (a) none of the respondents to the dispute respond to the notice within the applicable time limit in regulation 54; or
 - (b) the parties to the dispute agree, before the dispute resolution procedure begins, that the procedure in Division 3 should apply.
- (3) Despite subregulation (1)(a), the parties to a dispute referred to in regulation 21, 22 or 23 cannot agree that some or all of the procedure in Division 4 applies.

57. When a dispute resolution procedure begins

- (1) A dispute resolution procedure begins, in relation to a dispute, on the earlier of —
 - (a) if the respondent or each respondent fails to comply with regulation 54 — the day after the last day on which the respondent or respondents must, under regulation 54, respond to the application; or

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- (b) if the respondent or at least one of the respondents complies with regulation 54 — the earlier of —
 - (i) the day after the last day on which the applicant may make a response under regulation 55; or
 - (ii) the day after the day on which the applicant indicates to the arbitrator that the applicant will make no, or no further, response under regulation 55.
- (2) However, if in the course of the dispute resolution procedure under Division 3 the parties agree or the arbitrator directs that some or all of the procedure in Division 4 applies, the day after the day on which the parties agreed or the arbitrator made the direction becomes the day on which the dispute resolution procedure began.

58. Arbitrator may dismiss dispute

- (1) The arbitrator may dismiss an application for resolution of a dispute if satisfied that —
 - (a) the dispute is not covered by this Part; or
 - (b) the application has not been prepared and given in accordance with regulation 53; or
 - (c) the application is frivolous or vexatious; or
 - (d) a court or other body or person dealing with a matter that relates to the dispute makes an order, judgment or other finding about the dispute that covers all of the matters in dispute.
- (2) The arbitrator may dismiss an application at any time during the dispute resolution process under this Part.

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- (3) If an application for resolution of a dispute is dismissed the arbitrator must —
 - (a) give reasons for doing so; and
 - (b) communicate the decision and the reasons in writing to the parties.

Division 3 — Default dispute resolution procedure**59. Arbitrator's functions**

- (1) In this regulation —
time allowed means —
 - (a) for a dispute referred to in regulation 21 (about an application for a pipeline impact agreement) — 45 business days after the dispute resolution procedure began; and
 - (b) for a dispute referred to in regulation 22 (about the relevant effects on the capacity, operations and maintenance of a pipeline or the extent of those effects) or a dispute referred to in regulation 23 (about the completeness, accuracy or correctness of information) — 60 business days after the dispute resolution procedure began; and
 - (c) for any other dispute — 40 business days after the dispute resolution procedure began or any extension of the time allowed under regulation 60(3).
- (2) In relation to a dispute to which the procedure in this Division applies, the arbitrator must, within the time allowed —
 - (a) determine the dispute; or

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- (b) for a dispute other than one referred to in regulation 21, 22 or 23 — direct that the procedure in Division 4 applies to the dispute.
- (3) If, in relation to an application for resolution of a dispute other than one referred to in regulation 21, 22 or 23, the arbitrator does not determine the dispute or direct that the procedure in Division 4 applies within the time allowed (or any extension of it under regulation 60(3)), the arbitrator may, after the time allowed has elapsed, continue to deal with the dispute but need not consider any information or representations received after that time.
- (4) Despite subregulation (3), if the arbitrator does not determine the dispute or direct that the procedure in Division 4 applies within 6 months after the dispute resolution process began, the procedure in Division 4 applies to the dispute.
- (5) If, in relation to an application for resolution of a dispute referred to in regulation 21, 22 or 23, the arbitrator does not determine the dispute within the time allowed, the application is to be taken to have been dismissed when the time allowed has elapsed.

60. Arbitration procedure

- (1) The arbitrator —
 - (a) must act informally and if possible make a determination on the basis of —
 - (i) the application; and
 - (ii) any responses under regulation 54 or 55;and
 - (b) is not bound by the rules of evidence and may inform himself or herself in any way he or she thinks fit.

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- (2) In order to obtain sufficient information to make a determination, the arbitrator may do any of the following —
 - (a) request a party to make a written submission or a further written submission or provide information or documentation, and may set a deadline for doing so;
 - (b) request the parties to attend a conference with the arbitrator;
 - (c) engage an expert to provide advice in relation to the dispute;
 - (d) invite the parties to respond to any advice under paragraph (c).
- (3) The arbitrator may, with the consent of the parties to the dispute, extend the time allowed for making a determination, except for a dispute referred to in regulation 21, 22 or 23.
- (4) The arbitrator may, with the consent of all the parties concerned, deal with a dispute simultaneously with another dispute.
- (5) If the arbitrator deals with 2 or more disputes simultaneously, the arbitrator may, in dealing with one, take into account information the arbitrator receives in relation to the other, and vice versa.
- (6) The arbitrator's power to make a determination is not affected by the failure of a party to make a submission or provide information within time or comply with the arbitrator's request to attend a conference with the arbitrator.
- (7) To the extent to which the practice and procedure in relation to arbitrations is not regulated by this Part, the arbitrator may determine his or her own procedure.

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In relation to a dispute to which the procedure in this Division applies, the arbitrator must, within 5 business days after the dispute resolution process began —

- (a) appoint a person to be the mediator of the dispute, after taking into account any person nominated by a party to the dispute as a possible mediator of the dispute; and
- (b) give all relevant materials relating to the dispute to the mediator; and
- (c) notify the parties to the dispute of the name and contact details of the mediator; and
- (d) notify the applicant of any additional deposit or security that the arbitrator requires under regulation 67(6) or 81(6) or both, and of the time within which the deposit or security must be provided.

62. Mediator's functions

- (1) The mediator of a dispute must, within 6 months of the dispute resolution process beginning or any extension of that time under regulation 63(2) —
 - (a) assist the parties to resolve the dispute; or
 - (b) if satisfied that there is no realistic prospect of resolving the dispute by mediation — end the mediation and refer the dispute to arbitration under Subdivision 2; or
 - (c) recommend that the arbitrator dismiss the application for resolution of the dispute.

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- (2) If not all of the matters in dispute are resolved or the mediator does not end the mediation within the 6 months allowed (or any extension of it under regulation 63(2)), the dispute, to the extent to which it is not resolved, is to be taken to have been referred to arbitration under Subdivision 2 when the time allowed has elapsed.

63. Mediation procedure

- (1) The mediator of a dispute is to assist the parties to the dispute to —
 - (a) identify the matters in dispute; and
 - (b) resolve the matters in dispute fairly, and as quickly, informally and inexpensively as possible.
- (2) The mediator may, with the consent of the parties, extend the time allowed for resolving the dispute by mediation.
- (3) To the extent to which the practice and procedure in relation to mediation is not regulated by this Part, a mediator may determine his or her own procedure.

64. Mediation proceedings confidential and privileged

- (1) Evidence of —
 - (a) anything said or done; or
 - (b) any communication, whether oral or written; or
 - (c) any admission made,

in the course of, or for the purpose of, mediation is to be taken to be in confidence and is not admissible in any proceedings before any court, tribunal or body unless subregulation (3) applies.

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- (2) Each of the following —
- (a) a document prepared in the course of, or for the purpose of, mediation;
 - (b) a copy of such a document;
 - (c) evidence of such a document,

is to be taken to be subject to a duty of confidence and is not admissible in any proceedings before any court, tribunal or body unless subregulation (3) applies.

- (3) Evidence or a document referred to in subregulation (1) or (2) is admissible in proceedings if —
- (a) the parties to the mediation consent to the admission of the evidence or document; or
 - (b) there is a dispute in the proceedings as to whether the parties to the mediation entered into a binding agreement settling all or any of their differences and the evidence or document is relevant to that dispute; or
 - (c) the proceedings relate to any act or omission in relation to which a disclosure has been made under regulation 65(4)(d).

- (4) A mediator cannot be compelled to give evidence of anything referred to in subregulation (1) or (2) or to produce a document or a copy of a document referred to in subregulation (2) except in proceedings referred to in subregulation (3)(c).

65. Duty of confidence

- (1) A mediator must not disclose any information obtained in the course of, or for the purpose of, carrying out a mediation.

Penalty: a fine of \$5 000.

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- (2) A party to a mediation must not disclose any information obtained in the course of a mediation except to another party to the mediation.
- Penalty:
- (a) for an individual — a fine of \$5 000;
 - (b) for a body corporate — a fine of \$50 000.
- (3) In subregulation (2), a reference to a party to a mediation includes a reference to a person advising or representing the party for the purposes of the mediation.
- (4) Subregulations (1) and (2) do not apply if —
- (a) the disclosure is made with the consent of the parties to the mediation; or
 - (b) the disclosure is of the occurrence of the mediation and that is relevant in proceedings before any court, tribunal or similar body; or
 - (c) there is a dispute as to the existence or content of a binding agreement settling all or any of the parties differences and the information is relevant to that dispute; or
 - (d) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property; or
 - (e) the disclosure is authorised by law or is required by or under a law of the State (other than a requirement imposed by a summons or other compulsory process) or of the Commonwealth.

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- (1) A mediator is disqualified from mediating a dispute if the mediator has a material personal interest in the dispute, in a contract in relation to which the dispute has arisen or in any party to the dispute.
- (2) If the mediator of a dispute is disqualified —
 - (a) the mediator must notify the parties in writing of the disqualification and the reasons for it; and
 - (b) the mediator's appointment ceases at the end of 5 business days after the day on which the mediator's notice was received unless, within that time, all of the parties in writing authorise the mediator to continue as the mediator of the dispute.
- (3) A party to the dispute may, before the mediation ends, apply to the arbitrator for a declaration that the mediator is disqualified under subregulation (1).
- (4) If a mediator's appointment ceases under subregulation (2) or the mediator dies or otherwise becomes unable to continue with the mediation —
 - (a) the arbitrator must comply with regulation 61; and
 - (b) for the purposes of this Part, the dispute resolution process is to be taken to have begun on the day on which the arbitrator is notified of the mediator's appointment having ceased or the mediator having died or otherwise become unable to continue with the mediation.

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- (5) The new mediator is, to the extent practicable, to continue with the mediation rather than commencing the mediation from the beginning.

67. Costs of mediation

- (1) The mediator of a dispute is entitled —
- (a) to be paid for his or her work —
 - (i) at a rate agreed between the mediator and the parties; or
 - (ii) if a rate was not agreed, at \$370 per hour;
 - and
 - (b) to be reimbursed any expenses reasonably incurred in connection with that work.
- (2) If a mediator's appointment ceases under regulation 66 or the mediator dies or otherwise becomes unable to continue with the mediation, the mediator (or, where relevant, the mediator's estate) has the entitlements in subregulation (1) in respect of any mediation work done before the disqualification or inability.
- (3) The parties involved in a dispute are jointly and severally liable to pay the entitlements of the mediator and, as between themselves, the parties are liable to pay the entitlements of the mediator in equal shares.
- (4) Subregulation (3) does not prevent a decision being made under regulation 82(2).
- (5) The mediator of a dispute may at any time require one or more parties to the dispute to provide a reasonable deposit, or reasonable security, for the anticipated entitlements of the mediator.

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- (6) The arbitrator may require the applicant to provide a deposit, or reasonable security, for the anticipated entitlements of the mediator.
 - (7) If a party involved in the mediation of a dispute has paid more than the party's share of the entitlements of the mediator, having regard to subregulation (3), the arbitrator may decide that another party must pay to the first mentioned party an amount that will result in all the parties paying an equal amount of the entitlements.
 - (8) If the arbitrator makes a decision under subregulation (7) —
 - (a) the arbitrator must include in the decision the date on which the amount is payable; and
 - (b) Division 6, with any necessary changes, applies to the decision as if it were a determination of the arbitrator.
 - (9) A mediator may recover the entitlements of the mediator from a person liable to pay the entitlements, and may seek an order for the recovery of the entitlements in a court of competent jurisdiction.
- 68. Limitation of liability of mediator**
- (1) An action in tort does not lie against a mediator for anything that the mediator has done, in good faith, in the performance or purported performance of the functions of a mediator under this Subdivision.
 - (2) The State is also relieved of any liability that it might otherwise have had for a person having done anything as referred to in subregulation (1).
 - (3) The protection given by this regulation applies even though the thing done as referred to in subregulation (1) may have been capable of being done whether or not this Subdivision had been made.

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- (4) In this regulation, a reference to the doing of anything includes a reference to an omission to do anything.

Subdivision 2 — Arbitration**69. Arbitrator's functions**

- (1) In relation to a dispute referred to arbitration under this Subdivision, the arbitrator must determine the dispute within 12 months of the day on which the dispute was referred to arbitration or any extension of that time under regulation 60 as applied by regulation 70.
- (2) If, in relation to an application for resolution of a dispute, the arbitrator does not determine the dispute within the 12 months allowed (or any extension of it under regulation 60 as applied by regulation 70), the arbitrator may, after the time allowed has elapsed, continue to deal with the dispute but need not consider any information or representations received after that time.
- (3) Despite subregulation (2), if the arbitrator does not determine the dispute within 18 months after the day on which the dispute was referred to arbitration, the application is to be taken to have been dismissed at the end of the 18 months.

70. Arbitration procedure

The provisions of regulation 60 apply in relation to the arbitration of a dispute under this Subdivision, except that the arbitrator may only extend the time allowed for making a determination once, by up to 3 months.

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Contents**Division 5 — Joinder of parties****71. Arbitrator may join a party**

The arbitrator may direct that another person be joined as a party to a dispute that is being dealt with by way of arbitration and the arbitrator may make any consequential directions the arbitrator thinks necessary.

72. Notice of joinder

- (1) If a person is joined as a party to a dispute as a consequence of an application by a party to the dispute, the party that made the application must, within 5 business days after the direction is made, give to the person being joined —
 - (a) written notice advising the person of the joinder and of the time within which the person may respond under regulation 73(1); and
 - (b) a copy of the application for arbitration and each response under regulation 54 or 55; and
 - (c) any other relevant materials relating to the dispute.
- (2) If a person is joined as a party to a dispute on the arbitrator's own initiative, the arbitrator must give to the person the notice and other materials referred to in subregulation (1).

73. Response by person joined

- (1) A person who is joined as a party to a dispute may respond to the material given under regulation 72 within 20 business days after the day on which the person was given notice of the joinder, unless the dispute is solely about —

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- (a) an application for a pipeline impact agreement referred to in regulation 21; or
 - (b) the completeness, accuracy or correctness of the information referred to in regulation 23(3),
in which case the period in which to respond is 10 business days.
- (2) The response must be given to the arbitrator and the parties to the dispute.
 - (3) A person who is joined as a party to a dispute and who wishes to object to the joinder must include in the response the reasons why the person should not be included as a party to the dispute.

74. Mediation

Nothing in this Division prevents the mediator of a dispute from joining a party to the dispute if all the parties concerned agree.

Division 6 — Effect and enforcement of determinations**75. Content of determinations**

The arbitrator's determination of a dispute must —

- (a) be in writing; and
 - (b) include the name and contact details of the parties to the dispute; and
 - (c) set out the determination and the reasons for the determination; and
 - (d) be given to the parties to the dispute.
- 76. Effect of determinations**
- (1) A determination of the arbitrator is binding on the parties to the dispute.

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- (2) If the arbitrator determines a dispute the arbitrator cannot subsequently amend or cancel the determination except as follows —
 - (a) if a determination contains an accidental slip or omission, a material arithmetic error or a material mistake in the description of any person, thing or matter — the arbitrator may correct the determination;
 - (b) if the parties to a dispute (other than one referred to in regulation 21, 22 or 23) consent — the arbitrator may amend or cancel the determination.

77. Determinations may be enforced as judgments

- (1) A determination of the arbitrator may, with the leave of a court of competent jurisdiction, be enforced in the same manner as a judgment or order of the court to the same effect, and if such leave is given, judgment may be entered in terms of the determination.
- (2) For the purposes of subregulation (1), a determination signed by the arbitrator is to be taken to have been made under this Part.

Division 7 — General provisions**78. Arbitration hearings in public**

- (1) A hearing, or a part of a hearing, conducted as part of the arbitration of a dispute may be held in private if a party to the dispute requests that and the arbitrator agrees.
- (2) The arbitrator may give written directions as to the persons who may be present at a hearing that is conducted in private.

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- (3) In giving directions under subregulation (2), the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality.
- 79. Party to dispute may request that certain material be treated as confidential**
- (1) A party to a dispute may —
- (a) inform the arbitrator that, in the party's opinion, a specified part of a document contains confidential information; and
 - (b) request the arbitrator not to give a copy of that part to another party.
- (2) On receiving a request, the arbitrator must —
- (a) inform the other party or parties to the dispute that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and
 - (b) ask the other party or parties whether there is any objection to the arbitrator complying with the request.
- (3) If there is an objection to the arbitrator complying with the request, the party objecting may inform the arbitrator of the objection and of the reasons for it.
- (4) After considering a request and any objection and any further submissions that any party has made in relation to the request, the arbitrator may —
- (a) decide not to give the other party or parties a copy of so much of the document as contains confidential information that the arbitrator thinks should not be given; or
 - (b) decide to give a party a copy of some or all of the part of the document that contains confidential information, subject to the party

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giving an undertaking not to disclose the information to another person (except to the extent specified by the arbitrator) and subject to any other conditions the arbitrator determines.

- (5) This regulation does not limit how a mediator may deal with a request by a party not to give a copy of a document or a part of a document to another party to the mediation.

80. Order preventing disclosure of information

- (1) The arbitrator may order that a person not disclose specified information that the person obtained in the course of the dispute resolution process.
- (2) A person subject to an order under subregulation (1) must comply with the order.

Penalty:

- (a) for an individual — a fine of \$5 000;
- (b) for a body corporate — a fine of \$50 000.

81. Costs of dispute

- (1) For the purposes of this regulation the costs of a dispute are —
- (a) the entitlements of the arbitrator under subregulation (2); and
- (b) the costs of any testing done, or of any expert engaged under regulation 60(2)(c).
- (2) The arbitrator is, in relation to a dispute, entitled —
- (a) to be paid for his or her work at the rate provided for in his or her conditions of office under the *Energy Arbitration and Review Act 1998* section 69; and

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- (b) to be reimbursed any expenses reasonably incurred in connection with that work.
- (3) The arbitrator may refuse to communicate his or her decision or determination in relation to a dispute until he or she has been paid the costs of the dispute.
- (4) The parties involved in a dispute are jointly and severally liable to pay the costs of the dispute and, as between themselves, the parties are liable to pay the costs in equal shares.
- (5) The arbitrator may recover the costs of a dispute from a person liable to pay the costs, and may seek an order for the recovery of the cost in a court of competent jurisdiction.
- (6) The arbitrator may at any time require one or more parties to a dispute to provide a reasonable deposit, or reasonable security, for the anticipated costs of the dispute.
- (7) If a party involved in a dispute has paid more than the party's share of the costs of the dispute, having regard to subregulation (4), the arbitrator may decide that another party must pay to the first mentioned party such amount of the costs as would result in all the parties paying an equal amount of the costs.
- (8) If the arbitrator makes a decision under subregulation (7) —
 - (a) the arbitrator must include in the decision the date on which the amount is payable; and
 - (b) Division 6, with any necessary changes, applies to the decision as if it were a determination of the arbitrator.

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- (1) Subject to subregulation (2), parties to a dispute bear their own costs in relation to the resolution of the dispute under this Part.
- (2) If the arbitrator is satisfied that a party to a dispute incurred costs in the resolution of the dispute under this Part because of frivolous or vexatious conduct on the part of, or unfounded submissions by, another party, the arbitrator may decide that the other party must pay some or all of those costs.
- (3) If the arbitrator makes a decision under subregulation (2) the arbitrator must —
 - (a) decide the amount of the costs and the date on which the amount is payable; and
 - (b) give reasons for the decisions; and
 - (c) communicate the decisions and the reasons in writing to the parties.
- (4) Division 6, with any necessary changes, applies to a decision made under subregulation (2) as if it were a determination of the arbitrator.

83. When certain documents are taken to have been received

- (1) In this regulation —
relevant document means an application for resolution of a dispute, a response under regulation 54 or 55 or a notice under regulation 66(2)(a).
- (2) If a relevant document is sent (which includes being delivered) to a person, as referred to in this regulation, then, for the purposes of this Part, the document is to be taken to have been received by the person and to

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have been received on the day worked out under this regulation.

- (3) The relevant document is to be taken to have been received —
- (a) if the document was sent by post to an address in the State — on the second day after the day on which it was posted; or
 - (b) if the document was sent electronically —
 - (i) on the day on which it was sent, if the document was received before 4 p.m. on the day on which it was sent; otherwise
 - (ii) on the day after the day on which it was sent;
- or
- (c) if the document was delivered to the person —
 - (i) on the day on which it was delivered, if the document was delivered before 4 p.m. on the day on which it was delivered; otherwise
 - (ii) on the day after the day on which it was delivered.
- (4) If more than one method of sending a relevant document is used then the document is to be taken to have been received on the earliest of the days provided for in subregulation (3).
- (5) For the purposes of this regulation —
- (a) a document is sent by post if it is properly addressed and posted (by pre-paid post) to the last known address of the person; and

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- (b) a document is sent electronically if —
 - (i) it is properly addressed to the last known Australian email address of the person; and
 - (ii) the sender has not received an electronic message indicating that the document was not successfully sent or received;and
 - (c) a document is delivered to a person if it is delivered to the last known address of the person.
- (6) In this regulation —
- (a) a reference to a person includes a reference to a business entity (for example, a body corporate, a joint venture or a partnership); and
 - (b) a reference to a person's last known address is, in the case of a business entity, a reference to the last known address of the business entity's principal place of business in the State (or any other address in the State provided by the business entity for this purpose).
- (7) The provisions of the *Interpretation Act 1984* concerning the service of documents apply in relation to this Part, except to the extent to which they are inconsistent with this regulation.

84. Relationship of this Part to other proceedings

- (1) This Part does not prevent a party to a dispute from instituting proceedings before a court or other body in relation to the dispute.
- (2) To the extent to which a dispute is an access dispute under a Gas Access Law, this Part does not prevent the

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dispute from being dealt with as an access dispute under the Gas Access Law.

- (3) If proceedings are instituted in relation to a dispute that is being resolved under this Part, the dispute resolution process under this Part is to continue despite those proceedings unless all of the parties, in writing, require the arbitrator or mediator to discontinue the process.

Division 8 — Arbitrator funding**85. Terms used**

In this Division —

allowed period means the period within which an assessment amount must be paid under regulation 87(2);

assessment amount means the total amount payable as specified in a notice of assessment under regulation 87(1)(b)(i);

core functions costs, for a quarter, means costs that —

- (a) are incurred in the quarter in connection with the performance by the arbitrator of the arbitrator's functions under these regulations; and
- (b) are not otherwise provided for under these regulations;

quarter means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April, but does not include a quarter beginning before 1 July 2012;

standing charge means a charge under regulation 86.

86. Standing charges

- (1) For each pipeline impact agreement in force at the end of the quarter, a charge is payable in connection with

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the performance by the arbitrator of the arbitrator's functions under these regulations.

- (2) A charge for a pipeline impact agreement for a quarter is payable by the gas producer who was a party to the agreement at the end of the quarter.
- (3) The amount of the charge payable by a gas producer for a pipeline impact agreement for a quarter is determined in accordance with the following formula —

$$\frac{C}{N}$$

where —

C is the amount of the core functions costs for the quarter;

N is the number of pipeline impact agreements at the end of the quarter.

- (4) If there is more than one gas producer who is liable for a charge for a pipeline impact agreement for a quarter, the gas producers are jointly and severally liable for the charge, but the charge need only be paid once.

87. Assessment and payment of standing charges

- (1) As soon as is practicable after the end of each quarter the arbitrator must —
 - (a) assess the standing charges payable by each gas producer for a quarter; and
 - (b) give a notice of assessment to the gas producer specifying —
 - (i) the amount of each of those charges and the total amount payable; and

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- (ii) the amount of the core functions costs used in calculating those charges; and
 - (iii) the day on which the notice of assessment was issued.
 - (2) A gas producer given a notice of assessment must pay the assessment amount to the arbitrator within 30 days after the day on which the notice of assessment was issued or a later day allowed by the arbitrator.
 - (3) If the gas producer does not pay the assessment amount in full within the allowed period, interest on the outstanding amount is payable to the arbitrator at the prescribed rate, calculated daily.
 - (4) In subregulation (3) —
prescribed rate means an interest rate that is 5 percentage points higher than —
 - (a) the rate quoted on Reuters Screen BBSW as the Bank Bill Reference Rate (Mid Rate) for a one month bill at or about 10 a.m. (Sydney time) on the first day after the allowed period; or
 - (b) if a rate is not quoted as referred to in paragraph (a) — the rate determined by the arbitrator having regard to comparable indices then available.
- 88. Recovery of unpaid amounts**
- (1) The arbitrator may recover any unpaid assessment amount, together with any interest payable under regulation 87(3), in a court of competent jurisdiction as a debt due to the arbitrator.
 - (2) In proceedings under subregulation (1) a certificate —
 - (a) purporting to be signed by the arbitrator; and

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- (b) specifying an amount as being an assessment amount; and
- (c) specifying an amount as being interest payable under regulation 87(3); and
- (d) specifying a person as being liable to pay the specified amounts; and
- (e) stating that the specified amounts are unpaid,

is, without proof of the appointment of the arbitrator or of the authenticity of the signature, sufficient evidence of the matters specified or stated.

89. Matters to be included in arbitrator's annual report

The annual report submitted by the arbitrator under the *Financial Management Act 2006* section 61 must include details of the total amount of standing charges for each gas producer in respect of the financial year to which the annual report relates.

Part 6 — Provision of certain information**90. Notice of pipeline impact agreement**

- (1) Within 20 business days after the day on which a pipeline impact agreement is entered into in relation to a PIA pipeline, the operator of the pipeline must notify the following of that event —
 - (a) each user of the pipeline;
 - (b) the operator of each gas transmission pipeline connected to the pipeline;
 - (c) the operator of each gas storage facility connected to the pipeline;
 - (d) the operator of each gas distribution system connected to the pipeline;

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- (e) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Petroleum Pipelines Act 1969*.

Penalty: a fine of \$30 000 and a daily penalty of \$1 000 for each day or part of a day during which the contravention continues after the Coordinator has given the operator a notice indicating that the Coordinator is of the opinion that the operator has contravened this provision.

- (2) In relation to a pipeline impact agreement entered into before this regulation came into operation, the operator must comply with subregulation (1) within 20 business days after the day on which this regulation came into operation.

91. Information about pipeline impact agreements

- (1) A gas producer that is a party to a pipeline impact agreement must give to the Coordinator, and keep up-to-date, a summary of those parts of the agreement that cover the requirements of section 7(1)(a), (b), (c) and (d) of the Act that indicates how the agreement meets those requirements.
- (2) The summary must be in a form approved by the Coordinator.
- (3) The gas producer must comply with subregulation (1) within —
 - (a) 20 business days after the day on which the pipeline impact agreement was entered into or relevantly amended; and
 - (b) in relation to a pipeline impact agreement entered into or relevantly amended before this regulation came into operation — 20 business

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days after the day on which this regulation came into operation.

Penalty: a fine of \$30 000 and a daily penalty of \$1 000 for each day or part of a day during which the contravention continues after the Coordinator has given the gas producer a notice indicating that the Coordinator is of the opinion that the gas producer has contravened this provision.

- (4) In relation to each pipeline impact agreement in effect, the Coordinator must publish, on the Department's website, and keep up-to-date, sufficient information to indicate how the pipeline impact agreement meets the requirements of section 7(1)(a), (b), (c) and (d) of the Act.
- (5) The Coordinator must maintain on the website the information under subregulation (4) in relation to a pipeline impact agreement for 24 months after the agreement has ended.

92. Daily average higher heating values — for PIA pipelines

- (1) The operator of a PIA pipeline must, within 5 business days after the end of each gas day, give to the Coordinator the following information — the average higher heating value of the gas stream for that gas day as calculated from measurements taken at the last metering station before the first outlet point to a gas distribution system.

Penalty: a fine of \$20 000 and a daily penalty of \$2 000 for each day or part of a day during which the contravention continues after the Coordinator has given the operator a notice indicating that the Coordinator is of the opinion that the operator has contravened this provision.

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- (2) The Coordinator must publish, on the Department's website, the information given under subregulation (1) within 3 business days after the day on which it was received.
- (3) This regulation applies on and after 1 January 2013.

93. Qualitative and quantitative information on gas flowing into PIA pipeline

- (1) If a gas producer is a party to a pipeline impact agreement and gas the subject of the agreement has commenced to flow into a PIA pipeline from a gas processing plant of the gas producer, the gas producer must comply with subregulation (5) for each gas day —
 - (a) from and including the gas day on which the gas commenced to flow;
 - (b) to and including the gas day on which the agreement ceases to have effect in relation to the flow of gas out of the processing plant.
- (2) If, in relation to a PIA pipeline, the Coordinator is satisfied that the average higher heating value of the gas stream, calculated as referred to in regulation 92(1), is, on trend, likely to be below 5% above the minimum higher heating value in the reference specification for the pipeline, the Coordinator must notify each gas producer with a processing plant that produces gas that flows into the pipeline of the relevant gas day.
- (3) The relevant gas day is the gas day that the Coordinator considers should be the gas day on which the gas producers commence to comply with subregulation (5), which must be at least 10 gas days after the gas day on which the gas producers are notified.

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- (4) A gas producer notified under subregulation (2) in relation to a gas processing plant must comply with subregulation (5) for each gas day —
- (a) from and including the relevant gas day;
 - (b) to and including the gas day on which the gas processing plant ceases to produce gas that flows into the pipeline.
- (5) The gas producer must give to the Coordinator the following information —
- (a) the quantity of gas (in m³) that has flowed out of the gas processing plant on that gas day;
 - (b) the average higher heating value of that gas on that gas day,

as calculated from measurements taken at each metering station that measures the composition of the gas flowing out of the gas processing plant before it mingles with any other gas.

- (6) A gas producer to whom subregulation (1) or (4) applies in relation to a gas day must comply with that subregulation within 5 business days after the day on which the gas day commenced.
- Penalty: a fine of \$40 000 and a daily penalty of \$2 000 for each day or part of a day during which the contravention continues after the Coordinator has given the gas producer a notice indicating that the Coordinator is of the opinion that the gas producer has contravened this provision.
- (7) The Coordinator must publish, on the Department's website, the information given under subregulation (5) within 5 business days after the day on which it was received, and must maintain that information, in a form that is accessible to the public, on the website for 3 years after the day on which it was first published.

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94. Immunity from liability under this Part

- (1) In this regulation —
civil monetary liability means a liability to pay damages or compensation or any other similar amount ordered in a civil proceeding.
- (2) Neither the Coordinator nor any other officer or employee of the Department incurs any civil monetary liability for an act or omission done in good faith in the performance, or purported performance, of a function under this Part.
- (3) A person who gives information that the person is obliged to give to the Coordinator under this Part does not incur any civil monetary liability for an act or omission done in good faith in giving that information.

By Command of the Governor,

R. KENNEDY, Clerk of the Executive Council.
