

National Gas Access (WA) Amendment Bill 2016

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
3.	Act amended	2
Part 2 — Amendments commencing on the day after Royal Assent		
4.	Part 6 heading replaced	3
Part 6 — Transitional provisions		
5.	Part 6 Division 1 heading replaced	3
Division 1 — Transitional provisions for <i>National Gas Access (WA) Act 2009</i>		
6.	Section 18 deleted	3
7.	Part 6 Division 2 heading deleted	3
8.	Part 6 Division 2 inserted	4
Division 2 — Transitional provisions for <i>National Gas Access (WA) Amendment Act 2016</i>		
20A.	Terms used	4
20B.	Regulations: transitional matters	6
20C.	Performance of certain functions by AER during transition period	7
20D.	Exercise of powers under provisions not yet in effect	9
20E.	Authorisation of preparatory steps by AER	9
20F.	Provision of information and assistance by ERA	10
20G.	Continuation of certain regulations made before commencement day	11
9.	Part 6A heading inserted	12
Part 6A — Miscellaneous		
10.	Section 21 amended	12

**Part 3 — Amendments commencing
on 1 July 2017**

11.	Section 9 amended	13
12.	Section 20H inserted	13
	20H. Resolution of access disputes commencing before 1 July 2018	13
13.	Section 21 amended	13
14.	Section 22 amended	14
15.	Schedule 1 clause 3 amended	14
16.	Schedule 1 clauses 8 and 9 replaced	14
	8. Chapter 6 Part 1A inserted	14

**Part 4 — Amendments commencing
on 1 July 2018**

17.	Long title amended	15
18.	Section 1 amended	15
19.	Section 3 amended	15
20.	Section 4 amended	16
21.	Section 5 amended	16
22.	Section 6 amended	16
23.	Sections 6A and 6B deleted	17
24.	Part 2 heading replaced	17

**Part 2 — Application of the National Gas Law and
regulations**

25.	Sections 7 to 8 replaced	17
	7. Application of National Gas Law	17
	8. Application of regulations under National Gas Law	17
26.	Section 9 amended	18
27.	Sections 10 and 11 inserted	19
	10. Designated pipelines	19
	11. <i>Interpretation Act 1984</i> does not apply	19
28.	Part 3 deleted	20
29.	Section 14 amended	20
30.	Section 17 amended	20
31.	Section 19 amended	21
32.	Section 20 deleted	21
33.	Section 20B amended	21

34.	Parts 6A and 7 replaced	21
	Part 7 — Regulations	
	21. Regulations	21
	22. Regulations: modification of National Gas Law, National Gas Regulations and National Gas Rules	22
35.	Schedule 1 heading replaced	23
	Schedule 1 — Modifications to National Gas Law	
36.	Schedule 1 clauses 1 and 2 replaced	24
	1. Purpose of this Schedule	24
37.	Schedule 1 clause 3 amended	24
38.	Schedule 1 clauses 4 to 7 replaced	26
	4. Section 3 modified	26
	5. Section 4 modified	26
	6. Section 6 modified	26
	7. Section 24A inserted	26
	7A. Section 26 modified	28
	7B. Section 64 modified	28
	7C. Section 66 modified	29
	7D. Section 84 modified	29
	7E. Chapter 2 Part 6 Division 1A inserted	30
	7F. Chapter 2 Part 7 Division 1A inserted	30
39.	Schedule 1 clause 8 amended	31
40.	Schedule 1 clauses 10 to 13 replaced	31
	10. Chapter 7 Part 1A inserted	31
	11. Section 270A modified	31
	12. Section 290 modified	32
41.	Schedule 1 clauses 15 to 17 deleted	32

Western Australia

LEGISLATIVE COUNCIL

National Gas Access (WA) Amendment Bill 2016

A Bill for

An Act to amend the *National Gas Access (WA) Act 2009*.

The Parliament of Western Australia enacts as follows:

1
2
3
4
5
6
7
8
9
10
11
12

Part 1 — Preliminary

1. Short title

This is the *National Gas Access (WA) Amendment Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 — on the day after assent day;
- (c) Part 3 — on 1 July 2017;
- (d) the rest of the Act — on 1 July 2018.

3. Act amended

This Act amends the *National Gas Access (WA) Act 2009*.

1 **Part 2 — Amendments commencing on the day after**
2 **Royal Assent**

3 **4. Part 6 heading replaced**

4 Delete the heading to Part 6 and insert:
5

6 **Part 6 — Transitional provisions**
7

8 **5. Part 6 Division 1 heading replaced**

9 Delete the heading to Part 6 Division 1 and insert:
10

11 **Division 1 — Transitional provisions for *National Gas***
12 ***Access (WA) Act 2009***
13

14 **6. Section 18 deleted**

15 Delete section 18.

16 **7. Part 6 Division 2 heading deleted**

17 Delete the heading to Part 6 Division 2.

1 **8. Part 6 Division 2 inserted**

2 After section 20 insert:

3

4 **Division 2 — Transitional provisions for *National Gas***
5 ***Access (WA) Amendment Act 2016***

6 **20A. Terms used**

7 (1) In this Division —

8 ***commencement day*** means 1 July 2018 (being the day
9 on which the *National Gas Access (WA) Amendment*
10 *Act 2016* Part 4 comes into operation under
11 section 2(d) of that Act);

12 ***ERA*** means the Economic Regulation Authority
13 established by the *Economic Regulation Authority*
14 *Act 2003* section 4;

15 ***new NGL (WA) provisions*** means the provisions of the
16 following, as in force on and from commencement
17 day —

- 18 (a) this Act;
- 19 (b) the National Gas (WA) Law;
- 20 (c) the National Gas (WA) Rules;
- 21 (d) the National Gas (WA) Regulations;
- 22 (e) the regulations made under this Act;

23 ***non-WA NGL provisions*** means the provisions of the
24 following, as in force before commencement day —

- 25 (a) the National Gas Law set out in the Schedule to
26 the South Australian Act as applied as a law of
27 the other participating jurisdictions;
- 28 (b) the regulations under the South Australian Act
29 Part 3 as applied as a law of the other
30 participating jurisdictions;

- 1 (c) the National Gas Rules as applied under the
2 National Gas Law set out in the Schedule to the
3 South Australian Act as applied as a law of the
4 other participating jurisdictions;

5 ***old NGL (WA) provisions*** means the provisions of the
6 following, as in force before commencement day —

- 7 (a) this Act;
8 (b) the National Gas Access (Western Australia)
9 Law;
10 (c) the National Gas Rules as applied under the
11 National Gas Access (Western Australia) Law;
12 (d) the National Gas Access (Western Australia)
13 Regulations;
14 (e) the regulations made under section 21;

15 ***transitional matters*** includes matters of an application
16 or savings nature;

17 ***transition period*** means the period that begins on the
18 day on which the *National Gas Access (WA)*
19 *Amendment Act 2016* Part 2 comes into operation and
20 ends immediately before commencement day.

- 21 (2) During the transition period, a reference in this
22 Division to the National Gas (WA) Law, the National
23 Gas (WA) Regulations or the National Gas (WA)
24 Rules is a reference to that Law, those Regulations or
25 those Rules as they will apply as a law of this State on
26 and after commencement day.
- 27 (3) After the transition period, a reference in this Division
28 to the National Gas Access (Western Australia) Law or
29 the National Gas Access (Western Australia)
30 Regulations is a reference to that Law or those
31 Regulations as in force before commencement day.

- 1 **20B. Regulations: transitional matters**
- 2 (1) Regulations made under section 21 may make
- 3 provision for transitional matters relating to the
- 4 transition from the old NGL (WA) provisions to the
- 5 new NGL (WA) provisions.
- 6 (2) Without limiting subsection (1), the regulations may do
- 7 any of the following —
- 8 (a) provide that a document, agreement or
- 9 instrument made or given for the purposes of a
- 10 provision of the old NGL (WA) provisions —
- 11 (i) ceases to have effect immediately
- 12 before commencement day; or
- 13 (ii) has effect on and from commencement
- 14 day as if it were made or given for the
- 15 purposes of a provision of the new NGL
- 16 (WA) provisions;
- 17 (b) provide that a document, agreement or
- 18 instrument made or given for the purposes of
- 19 the old NGL (WA) provisions that continues in
- 20 effect for the purposes of the new NGL (WA)
- 21 provisions as referred to in paragraph (a)(ii)
- 22 expires on a day specified in the regulations,
- 23 despite anything to the contrary in the new
- 24 NGL (WA) provisions or the document,
- 25 agreement or instrument;
- 26 (c) provide that a thing done or omitted to be done
- 27 before commencement day for the purposes of
- 28 a provision of the old NGL (WA) provisions
- 29 has effect on and from commencement day as if
- 30 it were done or omitted for the purposes of a
- 31 provision of the new NGL (WA) provisions;
- 32 (d) provide that a document or instrument made or
- 33 given, or a thing done or omitted to be done,
- 34 before commencement day for the purposes of

- 1 a provision of the non-WA NGL provisions has
2 effect on and from commencement day as if it
3 were made, given, done or omitted (as the case
4 requires) for the purposes of a provision of the
5 new NGL (WA) provisions;
- 6 (e) provide for matters arising in connection with
7 the transfer of a function from one person to
8 another person.
- 9 (3) For the purposes of this section, a reference to a
10 transfer of a function from one person to another
11 person is a reference to —
- 12 (a) the first person ceasing on commencement day
13 to have a function under the old NGL (WA)
14 provisions; and
- 15 (b) the other person beginning on commencement
16 day to have a corresponding or related function
17 under the new NGL (WA) provisions.
- 18 (4) The regulations may make provision for transitional
19 matters relating to the transition from the old NGL
20 (WA) provisions to the new NGL (WA) provisions
21 (including the matters referred to in subsection (2)) by
22 modifying, or providing for the modification of, the
23 National Gas Rules in accordance with section 21(1A).

24 **20C. Performance of certain functions by AER during**
25 **transition period**

- 26 (1) During the transition period, the AER may serve a
27 regulatory information notice on a scheme pipeline
28 service provider or a related provider under the
29 National Gas Access (Western Australia) Law
30 section 48(1)(a) if it considers it reasonably necessary
31 for the purposes of —
- 32 (a) performing a function that it has under or
33 because of this Division; or

s. 8

- 1 (b) preparing to perform a function that it will have
2 under the new NGL (WA) provisions on and
3 after commencement day.
- 4 (2) If the AER decides to serve a regulatory information
5 notice under subsection (1) —
- 6 (a) the provisions of the National Gas Access
7 (Western Australia) Law that relate to
8 regulatory information notices apply in relation
9 to that regulatory information notice as if the
10 AER were the regulator; and
- 11 (b) the scheme pipeline service provider or related
12 provider must comply with the notice as if the
13 AER were the regulator for the purposes of
14 those provisions.
- 15 (3) During the transition period —
- 16 (a) a service provider may request a
17 pre-submission conference with the AER under
18 the National Gas Rules as applied under the
19 National Gas Access (Western Australia) Law;
20 and
- 21 (b) the provisions of those Rules that relate to
22 pre-submission conferences apply in relation to
23 that pre-submission conference as if the AER
24 were the regulator; and
- 25 (c) despite paragraph (b), the AER may, but is not
26 required to, comply with the request.
- 27 (4) Subsections (1) to (3) apply despite paragraph (a) of
28 the definition of *regulator* in section 9, as that
29 definition applies for the purposes of the National Gas
30 Access (Western Australia) Law because of the
31 definition of *regulator* in section 2 of that Law.
- 32 (5) A thing done by, to, or in relation to, the AER during
33 the transition period under a provision of the old NGL

1 (WA) provisions as that provision applies because of
2 this section is taken, on and after commencement day,
3 to have been done by, to, or in relation to, the AER
4 under the corresponding provision of the new NGL
5 (WA) provisions.

6 **20D. Exercise of powers under provisions not yet in effect**

7 (1) In this section —
8 ***relevant provision*** means a provision of any of the
9 following, as the provision applies as a law of the State
10 on and from commencement day —

- 11 (a) the National Gas (WA) Law;
- 12 (b) the National Gas (WA) Regulations;
- 13 (c) the National Gas (WA) Rules.

14 (2) The National Gas Access (Western Australia) Law
15 Schedule 2 clause 27 has effect in relation to a relevant
16 provision as if —

- 17 (a) a reference in that clause to a provision of the
18 Law that does not commence on its enactment
19 were a reference to the relevant provision; and
- 20 (b) a reference in that clause to the commencement
21 of the provision were a reference to the
22 National Gas (WA) Law, the National Gas
23 (WA) Regulations and the National Gas (WA)
24 Rules beginning to apply as a law of the State
25 on commencement day.

26 **20E. Authorisation of preparatory steps by AER**

27 (1) This section applies if —
28 (a) the AER is required to do something (a
29 ***preparatory step***) before making a decision or
30 making an instrument under a provision of the
31 new NGL (WA) provisions; and

s. 8

- 1 (b) the AER takes the preparatory step during the
2 transition period.
- 3 (2) For the purposes of the provision of the new NGL
4 (WA) provisions, the AER is taken, on and after
5 commencement day, to have complied with the
6 requirement to take the preparatory step.
- 7 **20F. Provision of information and assistance by ERA**
- 8 (1) Despite any other Act or law, the ERA is authorised,
9 on its own initiative or at the request of the AER —
- 10 (a) to provide the AER with information (including
11 information given in confidence) in the
12 possession or control of the ERA that is
13 reasonably required by the AER to perform a
14 function under the new NGL (WA) provisions;
15 and
- 16 (b) to provide the AER with other assistance that is
17 reasonably required by the AER to perform a
18 function under the new NGL (WA) provisions.
- 19 (2) Despite any Act or other law, the ERA may authorise
20 the AER to disclose information provided under
21 subsection (1) even if the information was given in
22 confidence.
- 23 (3) Nothing done, or authorised to be done, by the ERA
24 under subsection (1) or (2) —
- 25 (a) contravenes the *Economic Regulation Authority*
26 *Act 2003* section 57; or
- 27 (b) constitutes a breach of, or default under, any
28 other Act or law; or
- 29 (c) constitutes a breach of, or default under, a
30 contract, agreement, undertaking or
31 understanding; or

- 1 (d) constitutes a breach of a duty of confidence
2 (whether arising by contract, in equity, by
3 custom, or in any other way); or
4 (e) constitutes a civil or criminal wrong.
- 5 (4) A reference in this section to the AER performing a
6 function under the new NGL (WA) provisions includes
7 a reference to the AER —
- 8 (a) performing a function that it has under or
9 because of this Division; or
10 (b) preparing, during the transition period, to
11 perform a function that it will have under the
12 new NGL (WA) provisions on and after
13 commencement day.
- 14 (5) It is a function of the AER to receive information and
15 assistance provided to it under this section.

16 **20G. Continuation of certain regulations made before**
17 **commencement day**

- 18 (1) Regulations made under section 21 and in force
19 immediately before commencement day continue in
20 force on and after that day, despite the amendments
21 made by the *National Gas Access (WA) Amendment*
22 *Act 2016* section 34, unless they are repealed on or
23 after that day.
- 24 (2) Subsection (1) does not prevent the regulations to
25 which it applies from being amended.
26

s. 9

1 **9. Part 6A heading inserted**

2 Before section 21 insert:

3

4 **Part 6A — Miscellaneous**

5

6 **10. Section 21 amended**

7 After section 21(1) insert:

8

9 (1A) Regulations under subsection (1) may modify the
10 operation of the National Gas Rules for the purpose of
11 their having effect as a law of the State, on and after
12 1 July 2018, under the National Gas (WA) Law
13 section 26 or provide for the Minister, by instrument, to
14 do so.

15 (1B) Modifications under subsection (1A) cannot have
16 effect before 1 July 2018.

17 (1C) Regulations made for the purposes of subsection (1A)
18 must not authorise the Minister to make an instrument
19 referred to in that subsection on or after 1 July 2019.
20

1 **Part 3 — Amendments commencing on 1 July 2017**

2 **11. Section 9 amended**

3 (1) In section 9(1) delete the definitions of:

4 *dispute resolution body*

5 *WA arbitrator*

6 (2) In section 9(1) in the definition of *this jurisdiction* delete
7 “Western Australia;” and insert:

8

9 Western Australia.

10

11 **12. Section 20H inserted**

12 At the end of Part 6 Division 2 insert:

13

14 **20H. Resolution of access disputes commencing before**
15 **1 July 2018**

16 (1) This section applies to an access dispute if the dispute
17 resolution process for the dispute commences before
18 commencement day.

19 (2) Despite anything in the old NGL (WA) provisions or
20 the new NGL (WA) provisions, the access dispute is to
21 be determined in accordance with regulations made
22 under section 21, which may make provision for and in
23 relation to the resolution of such disputes.

24

25 **13. Section 21 amended**

26 Delete section 21(2) and (3).

s. 14

1 **14. Section 22 amended**

2 In section 22(1)(a) delete “ERA and the WA arbitrator; and”
3 and insert:

4
5 ERA; and
6

7 **15. Schedule 1 clause 3 amended**

8 (1) In Schedule 1 clause 3(1) delete “*dispute resolution body*”.

9 (2) In Schedule 1 clause 3(2) in the insertion delete the definitions
10 of:

11 *dispute resolution body*

12 *WA arbitrator*

13 **16. Schedule 1 clauses 8 and 9 replaced**

14 Delete Schedule 1 clauses 8 and 9 and insert:

15

16 **8. Chapter 6 Part 1A inserted**

17 At the beginning of Chapter 6 insert:

18

19 **Part 1A — Preliminary**

20 **177A. Chapter has no effect for certain disputes**

21 This Chapter does not have effect as a law of
22 this jurisdiction in relation to access disputes to
23 which section 20H of the *National Gas Access*
24 *(WA) Act 2009* of Western Australia applies.
25

1 **Part 4 — Amendments commencing on 1 July 2018**

2 **17. Long title amended**

3 In the long title delete “to amend the *Gas Pipelines Access*
4 *(Western Australia) Act 1998* and various other Acts”.

5 **18. Section 1 amended**

6 In section 1 delete “*Access (WA)*” and insert:

7

8 *(Western Australia)*

9

10 **19. Section 3 amended**

11 (1) In section 3(1) delete the definitions of:

12 *National Gas Access (Western Australia) Law*

13 *National Gas Access (Western Australia) Regulations*

14 (2) In section 3(1) insert in alphabetical order:

15

16 *National Gas (WA) Law* means the provisions
17 applying because of section 7;

18 *National Gas (WA) Regulations* means the provisions
19 applying because of section 8;

20 *National Gas (WA) Rules* means the National Gas
21 Rules as they have effect as a law of the State because
22 of the National Gas (WA) Law section 26;

23

24 (3) In section 3(1) in the definition of *South Australian Act* delete
25 “of South Australia as amended from time to time.” and insert:

26

27 (South Australia).

28

s. 20

1 (4) In section 3(2) delete “Access (Western Australia)” and insert:

2

3 (WA)

4

5 **20. Section 4 amended**

6 In section 4 delete “Access (Western Australia)” (each
7 occurrence) and insert:

8

9 (WA)

10

11 **21. Section 5 amended**

12 (1) In section 5(1) delete “Access (Western Australia)” (each
13 occurrence) and insert:

14

15 (WA)

16

17 (2) In section 5(2) in the definition of *adjacent area in respect of*
18 *the State* delete “Access (Western Australia)” and insert:

19

20 (WA)

21

22 **22. Section 6 amended**

23 In section 6 delete “Access (Western Australia)” (each
24 occurrence) and insert:

25

26 (WA)

27

1 **23. Sections 6A and 6B deleted**

2 Delete sections 6A and 6B.

3 **24. Part 2 heading replaced**

4 Delete the heading to Part 2 and insert:

5

6 **Part 2 — Application of the National Gas Law**
7 **and regulations**

8

9 **25. Sections 7 to 8 replaced**

10 Delete sections 7 to 8 and insert:

11

12 **7. Application of National Gas Law**

13 The National Gas Law set out in the Schedule to the
14 South Australian Act, as in force from time to time and
15 as modified to give effect to Schedule 1 —

- 16 (a) applies as a law of the State; and
17 (b) as so applying, may be referred to as the
18 National Gas (WA) Law; and
19 (c) as so applying, applies as if it were an Act.

20 **8. Application of regulations under National Gas Law**

21 The regulations under the South Australian Act Part 3,
22 as in force from time to time and as modified to give
23 effect to regulations made for the purposes of
24 section 22(1)(b) —

- 25 (a) apply as a law of the State; and
26 (b) as so applying, may be referred to as the
27 National Gas (WA) Regulations; and

s. 26

- 1 (c) as so applying, apply, as if they were
2 regulations, for the purposes of the National
3 Gas (WA) Law.
4

5 **26. Section 9 amended**

- 6 (1) In section 9(1) delete “National Gas Access (Western Australia)
7 Law and the National Gas Access (Western Australia)
8 Regulations —” and insert:

9
10 National Gas (WA) Law and the National Gas (WA)
11 Regulations —
12

- 13 (2) In section 9(1) delete the definitions of:

14 ***ERA pipeline***
15 ***regulator***

- 16 (3) In section 9(1) in the definition of ***National Gas Law*** or ***this***
17 ***Law*** delete “means the National Gas Access (Western
18 Australia) Law;” and insert:

19
20 means —

- 21 (a) the National Gas (WA) Law; or
22 (b) if the contrary intention appears or the context
23 otherwise requires — the National Gas Law set
24 out in the Schedule to the South Australian Act;
25

- 26 (4) In section 9(2) delete “Access (Western Australia)” and insert:

27
28 (WA)
29

1 (5) In section 9(3) delete “to the National Gas Law as set out in the
2 Schedule to the South Australian Act in its application, with
3 modifications, as a law of Western Australia.” and insert:

4
5 to the National Gas (WA) Law, the National Gas (WA)
6 Regulations, the National Gas (WA) Rules or instruments under
7 them.

8
9 Note: The heading to amended section 9 is to read:

10 **Interpretation of some terms in National Gas (WA) Law and**
11 **National Gas (WA) Regulations**

12 **27. Sections 10 and 11 inserted**

13 At the end of Part 2 insert:

14
15 **10. Designated pipelines**

16 (1) For the purposes of the National Gas (WA) Law and
17 the National Gas (WA) Regulations, a pipeline or part
18 of a pipeline is a *designated pipeline* if it is prescribed
19 by regulations under this Act to be a designated
20 pipeline.

21 (2) Regulations made for the purposes of subsection (1)
22 must not prescribe a pipeline or part of a pipeline to be
23 a designated pipeline unless the pipeline or part of a
24 pipeline was a designated pipeline for the purposes of
25 the National Gas Access (Western Australia) Law
26 immediately before the coming into operation of the
27 *National Gas Access (WA) Amendment Act 2016*
28 Part 4.

29 **11. Interpretation Act 1984 does not apply**

30 The *Interpretation Act 1984* does not apply to the
31 National Gas (WA) Law, the National Gas (WA)

s. 28

1 Regulations, the National Gas (WA) Rules or
2 instruments under them.
3

4 **28. Part 3 deleted**

5 Delete Part 3.

6 **29. Section 14 amended**

7 In section 14 delete “Minister or another agency or
8 instrumentality of this State constituted by a law of this State,
9 the Minister or the other agency or instrumentality —” and
10 insert:
11

12 Minister, the Minister —
13

14 Note: The heading to amended section 14 is to read:

15 **Conferral of functions or powers on State Minister**

16 **30. Section 17 amended**

17 (1) Delete section 17(1) and insert:
18

19 (1) The National Gas (WA) Law Schedule 2 clause 2 has
20 effect in relation to the operation of a provision of this
21 Act, or an instrument under it, as if the provision
22 formed part of that Law.
23

24 (2) In section 17(2) delete “or regulation”.

1 **31. Section 19 amended**

2 (1) In section 19(3) delete the definition of *national provisions* and
3 insert:

4
5 *national provisions* means the National Gas (WA)
6 Law, the National Gas (WA) Regulations and the
7 National Gas (WA) Rules;

8
9 (2) In section 19(3) in the definition of *relevant national provisions*
10 delete “Access (Western Australia)” and insert:

11
12 (WA)

13
14 **32. Section 20 deleted**

15 Delete section 20.

16 **33. Section 20B amended**

17 In section 20B(4) delete “section 21(1A).” and insert:

18
19 section 22(1)(c).

20
21 **34. Parts 6A and 7 replaced**

22 Delete Parts 6A and 7 and insert:

23
24 **Part 7 — Regulations**

25 **21. Regulations**

26 (1) The Governor may make regulations prescribing all
27 matters that are required or permitted by this Act to be

s. 34

- 1 prescribed, or are necessary or convenient to be
2 prescribed for giving effect to this Act.
- 3 (2) Regulations may be made for any purpose that is
4 contemplated by the National Gas (WA) Law as a
5 purpose for which regulations may be made under this
6 Act as the application Act of this jurisdiction.
- 7 (3) The regulations may —
- 8 (a) confer functions, or authorise the National Gas
9 (WA) Rules to confer functions, on a person;
10 and
- 11 (b) provide for the relationship between the
12 Minister, or another Minister of the State, and a
13 person referred to in paragraph (a) in respect of
14 the performance of the functions of the person.
- 15 (4) A person on whom functions may be conferred under
16 subsection (3)(a) includes a person from time to time
17 holding, acting in or lawfully performing the functions
18 of, an office under a written law.
- 19 (5) The regulations, or an instrument under them, may
20 apply, adopt or incorporate the whole or a part of a
21 legislative instrument, or other published document,
22 relating to the purposes of this Act —
- 23 (a) with or without modifications; or
24 (b) as in force at a particular time or from time to
25 time.
- 26 **22. Regulations: modification of National Gas Law,
27 National Gas Regulations and National Gas Rules**
- 28 (1) The regulations may —
- 29 (a) amend Schedule 1, but only to the extent
30 necessary or convenient for the purpose of
31 enabling the effective operation of the National
32 Gas (WA) Law as a law of the State; and

- 1 (b) set out modifications to the regulations under
2 the South Australian Act Part 3 for the purposes
3 of section 8; and
- 4 (c) modify the operation of the National Gas Rules
5 for the purpose of their having effect as a law
6 of the State under the National Gas (WA) Law
7 section 26 or provide for the Minister, by
8 instrument, to do so.
- 9 (2) Without limiting subsection (1), modifications for the
10 purposes of subsection (1)(b) or (c) may deal with
11 transitional, application and savings matters.
- 12 (3) Regulations made for the purposes of subsection (1)(c)
13 must not authorise the Minister to make an instrument
14 referred to in that subsection on or after 1 July 2019.
- 15 (4) As soon as practicable after a modification instrument
16 is made, the Minister must give a copy of the
17 modification instrument to the AEMC.
- 18 (5) In subsection (4) —
19 *modification instrument* means regulations made for
20 the purposes of subsection (1)(c) or an instrument
21 made under such regulations.
22

23 **35. Schedule 1 heading replaced**

24 Delete the heading to Schedule 1 and the reference after it and
25 insert:

26
27 **Schedule 1 — Modifications to National Gas Law**

28 [s. 7]
29

s. 36

1 **36. Schedule 1 clauses 1 and 2 replaced**

2 Delete Schedule 1 clauses 1 and 2 and insert:

3

4 **1. Purpose of this Schedule**

5 This Schedule sets out modifications for the purposes of
6 section 7.

7

8 **37. Schedule 1 clause 3 amended**

9 (1) Delete Schedule 1 clause 3(1) to (3) and insert:

10

11 (1) In section 2 delete the definitions of:

12 *old access law*

13 *Regulations*

14 (2) In section 2 insert in alphabetical order:

15

16 *old access law* means Schedule 1 to the *Gas*
17 *Pipelines Access (Western Australia) Act 1998* of
18 Western Australia as in force from time to time
19 before the commencement of section 30 of the
20 *National Gas Access (WA) Act 2009* of Western
21 Australia;

22 *Regulations* means —

23 (a) the regulations made under Part 3 of the
24 *National Gas (South Australia) Act 2008*
25 of South Australia, as they have effect as a
26 law of this jurisdiction because of
27 section 8 of the *National Gas (Western*
28 *Australia) Act 2009* of Western Australia;
29 and

30 (b) if the contrary intention appears or the
31 context otherwise requires — the
32 regulations made under Part 3 of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

National Gas (South Australia) Act 2008
of South Australia;

(3) In section 2 in the definition of *designated pipeline* delete
“in the application Act” and insert:

in or under the application Act

(2) Delete Schedule 1 clause 3(5) and insert:

(5) At the end of section 2 insert:

(3) A reference in this Law to the National Gas Rules or the Rules is a reference to the Rules as modified under the *National Gas (Western Australia) Act 2009* of Western Australia, unless the contrary intention appears or the context otherwise requires.

(4) A reference in the definition of *initial National Gas Rules, National Gas Rules* or *Rules* to Rules made under this Law or a provision of this Law —

(a) includes a reference to Rules made before the day on which Part 4 of the *National Gas Access (WA) Amendment Act 2016* of Western Australia comes into operation; and

(b) is, in relation to Rules made before that day, a reference to Rules made under, or made under the corresponding provision of, this Law as applied as a law of the other participating jurisdictions.

s. 38

1 **38. Schedule 1 clauses 4 to 7 replaced**

2 In Schedule 1 delete clauses 4 to 7 and insert:

3

4 **4. Section 3 modified**

5 (1) In section 3 in the Table delete items 2A to 2G.

6 (2) In section 3 in the Table delete items 18 and 19.

7 **5. Section 4 modified**

8 In section 4 in the Table delete items A1 to A3.

9 **6. Section 6 modified**

10 (1) Delete section 6(1)(b)(ia).

11 (2) In section 6(2)(b) delete “Rules, the National Energy
12 Retail Law or the National Energy Retail Rules” and
13 insert:

14

15 Rules

16

17 **7. Section 24A inserted**

18 At the end of Part 3 Division 2 insert:

19

20 **24A. Reference tariff for small use customers**

21 (1) In this section —

22 *delivery point* means a point on a distribution
23 pipeline at which gas is withdrawn from the
24 pipeline and delivered to an end user;

25 *reference tariff variation mechanism* has the
26 meaning given by the Rules;

27 *small delivery point* means a delivery point at
28 which gas is delivered to a user for delivery
29 by the user to a small use customer;

- 1 **small delivery service** means a reference
2 service to the extent that it is or may be used
3 for the delivery of gas to a small delivery
4 point;
- 5 **small use customer** means an end user —
- 6 (a) to whom gas is delivered at a delivery
7 point; and
- 8 (b) to whom less than 1 terajoule of gas is
9 delivered at that delivery point in any
10 12-month period; and
- 11 (c) who is not a user;
- 12 **tariff area** means one of the following areas
13 as defined in regulation 4(1) of the *Energy*
14 *Coordination (Gas Tariffs) Regulations 2000*
15 of Western Australia —
- 16 (a) the Albany area;
- 17 (b) the Kalgoorlie-Boulder area;
- 18 (c) the Mid-West/South-West area.
- 19 (2) This section applies despite anything to the
20 contrary in this Law or the Rules.
- 21 (3) This section applies only in relation to a
22 distribution pipeline.
- 23 (4) A reference tariff for any small delivery
24 service provided for in an access arrangement
25 for a distribution pipeline must not vary
26 according to the geographical location of the
27 small delivery point to which the gas is
28 delivered.
- 29 (5) A reference tariff for any small delivery
30 service provided for in an access arrangement
31 (**arrangement A**) for a distribution pipeline
32 must be the same as the reference tariff for

s. 38

- 1 the equivalent reference service provided for
2 in any access arrangement that —
3 (a) applies to a distribution pipeline —
4 (i) that is operated by the same
5 service provider as the pipeline to
6 which arrangement A relates; and
7 (ii) by means of which gas is or may
8 be delivered to small delivery
9 points anywhere in the tariff area
10 in which gas is or may be
11 delivered by means of a small
12 delivery service provided for in
13 arrangement A;
14 and
15 (b) is not an access arrangement that is
16 to be revised or varied by
17 arrangement A.
18 (6) This section does not permit the approval of
19 an access arrangement that does not include a
20 reference tariff variation mechanism in
21 accordance with the Rules.
22

23 **7A. Section 26 modified**

24 In section 26 delete “Rules have the force of law in” and
25 insert:
26

27 Rules, as modified under the *National Gas (Western*
28 *Australia) Act 2009* of Western Australia, have effect as a
29 law of
30

31 **7B. Section 64 modified**

32 Delete section 64(4A).

- 1 **7C. Section 66 modified**
- 2 In section 66:
- 3 (a) in paragraph (b) delete “Rules; or” and insert:
- 4
- 5 Rules.
- 6
- 7 (b) delete paragraph (c).
- 8 **7D. Section 84 modified**
- 9 (1) In section 84 delete “The AEMC” and insert:
- 10
- 11 (1) Subject to subsection (2), the AEMC
- 12
- 13 (2) At the end of section 84 insert:
- 14
- 15 (2) The AEMC must update the copies of the
- 16 National Gas Rules referred to in
- 17 subsection (1) to reflect each modification
- 18 provided for by a modification instrument —
- 19 (a) if notified of the making of the
- 20 modification instrument at least 10
- 21 business days before the modification
- 22 commences — on the day the
- 23 modification commences; or
- 24 (b) otherwise — within 10 business days
- 25 of being notified of the making of the
- 26 modification instrument.
- 27 (3) In this section —
- 28 **modification** means a modification to the
- 29 National Gas Rules under the *National Gas*
- 30 (*Western Australia*) *Act 2009* of Western
- 31 Australia;

s. 38

1 *modification instrument* means a regulation
2 made for the purposes of section 22(1)(c) of
3 the *National Gas (Western Australia)*
4 *Act 2009* or an instrument made under such
5 regulations;

6 *notified* means notified by the Minister of this
7 jurisdiction.
8

9 **7E. Chapter 2 Part 6 Division 1A inserted**

10 At the beginning of Chapter 2 Part 6 insert:
11

12 **Division 1A — Preliminary**

13 **91AA. Part has no effect**

14 This Part does not have effect as a law of this
15 jurisdiction.
16

17 **7F. Chapter 2 Part 7 Division 1A inserted**

18 At the beginning of Chapter 2 Part 7 insert:
19

20 **Division 1A — Preliminary**

21 **91KE. Part has no effect**

22 This Part does not have effect as a law of this
23 jurisdiction.
24

1 **39. Schedule 1 clause 8 amended**

2 In Schedule 1 clause 8 in the insertion delete “*Access (WA)*” and
3 insert:

4
5 *(Western Australia)*
6

7 **40. Schedule 1 clauses 10 to 13 replaced**

8 Delete Schedule 1 clauses 10 to 13 and insert:

9

10 **10. Chapter 7 Part 1A inserted**

11 At the beginning of Chapter 7 insert:

12

13 **Part 1A — Preliminary**

14 **216A. Chapter has no effect**

15 This Chapter does not have effect as a law of
16 this jurisdiction.
17

18 **11. Section 270A modified**

19 After section 270A(f) insert:

20

21 (fa) if this Law is applied as a law of Western
22 Australia and a rule dispute is heard and
23 determined in that State —

24 (i) a reference to the procedural Parts of
25 the Commercial Arbitration Act is a
26 reference to Parts 5 and 6 of the
27 *Commercial Arbitration Act 2012* of
28 Western Australia; and

s. 41

1
2
3
4
5
6
7
8
9
10
11

(ii) a reference to the review provisions of the Commercial Arbitration Act is a reference to Part 7 of that Act;

12. Section 290 modified

In section 290 in the definition of *gas market regulatory body* delete paragraph (c).

41. Schedule 1 clauses 15 to 17 deleted

Delete Schedule 1 clauses 15 to 17.

=====