Gas Pipeline Information Disclosure and Arbitration Framework

Initial National Gas Rules

Explanatory note for stakeholder consultation

June 2017

GMRG
Gas Market Reform Group

Submissions

Stakeholders are encouraged to make submissions in response to the draft initial rules by **5pm (AEST) Thursday 20 July 2017**.

The GMRG encourages feedback on the drafting of specific rules and stakeholders may wish to utilise the template provided at Appendix B.

Electronic submissions are preferred and can be sent via e-mail addressed to the Gas Market Reform Group (GMRG) at enquiries@gmrg.coagenergycouncil.gov.au.

Stakeholders who wish to provide hard copies by post may do so by addressing their submissions to:

Gas Market Reform Group
c/o Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

The GMRG has a strong preference for public submissions, to generate full and frank debate. All stakeholder submissions will be published on the GMRG's website at http://gmrg.coagenergycouncil.gov.au/ unless stakeholders have clearly indicated that a submission should remain confidential, either in whole or in part.

For further information on making a submission, please contact the GMRG via email at enquiries@gmrg.coagenergycouncil.gov.au.

Abbreviations

Term	Definition
ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Amendment Bill	*National Gas (South Australia) (Pipelines Access-Arbitration) Amendment Bill 2017*
CCA	Commercial Arbitration Act
CCA	*Competition and Consumer Act 2010* (Commonwealth)
COAG	Council of Australian Governments
Council	COAG Energy Council
CPA	Competition Principles Agreement
East Coast Review	AEMC's *Eastern Australian Wholesale Gas Market and Pipelines Framework Review* (May 2016)
ERA	Economic Regulation Authority
Examination	Dr Vertigan's *Examination of the current test for the regulation of gas pipelines* (December 2016)
GMRG	Gas Market Reform Group
GTA	Gas Transportation Agreement
Inquiry	ACCC's *Inquiry into the East Coast Gas Market* (April 2016)
NER	National Electricity Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
Package	COAG Energy Council's Gas Market Reform Package
SCO	Standing Committee of Officials
Vision	COAG Energy Council's *Australian Gas Market Vision* (December 2014)

The following terminology is used in this note:

- the term 'prospective user' is used to refer to existing and prospective shippers and is used interchangeably with the term shipper;
- the term 'service provider' and 'pipeline operator' are used interchangeably; and
- the term 'AER' has been used to jointly refer to both the Australian Energy Regulator and the Economic Regulation Authority (ERA) when discussing the roles that the relevant economic regulator will play under the new framework.

1. Background

On 19 August 2016, the COAG Energy Council ('the Council') directed the Independent Chair of the Gas Market Reform Group (GMRG), Dr Michael Vertigan AC, to examine the current regulatory test for the regulation of gas pipelines, in consultation with stakeholders, and make recommendations on any further actions.

This direction was prompted by the ACCC's *Inquiry into the East Coast Gas Market* (*Inquiry*), which found that while pipeline operators had responded well to the changes underway in the market, there was evidence a large number were engaging in monopoly pricing. The ACCC also found that the ability of pipeline operators to engage in this behaviour was not being constrained by the threat of regulation, so recommended changes to the coverage test.[1]

Dr Vertigan undertook the *Examination of the current test for the regulation of gas pipelines* (*Examination*) in the latter half of 2016. Two of the key observations from the *Examination* were that:

- the operators of existing pipelines have market power and, in some instances, the exercise of this power was resulting in inefficient outcomes that did not promote the National Gas Objective (NGO), or facilitate the achievement of the Council's Australian Gas Market Vision (*Vision*);[2] and
- the test for regulation (the coverage test) did not appear to be posing a credible threat to pipeline operators.[3]

While a change to the coverage test was explored with stakeholders during the *Examination,* most shippers made it clear they were not looking for a traditional regulatory solution. Rather, most shippers wanted to find a way to reduce the imbalance in bargaining power they can face when negotiating with pipeline operators.[4] The *Examination* therefore recommended that a new information disclosure and arbitration framework be introduced, to reduce the information asymmetry and imbalance in bargaining power that shippers can face when negotiating with pipeline operators. Specifically, the *Examination* recommended that steps be taken to strengthen the bargaining power of shippers by:[5]

- requiring pipeline operators to publish the information that shippers need to make an informed decision about whether to seek access to a pipeline service and to assess the reasonableness of an offer made by the pipeline operator; and
- introducing a binding commercially oriented arbitration mechanism into the National Gas Law (NGL) that would be available to parties as a backstop if commercial agreement cannot be reached.

1 ACCC, Inquiry into the East Coast Gas Market, April 2016, pp. 18-20.
2 Vertigan, M., Examination of the current test for the regulation of gas pipelines, 14 December 2016, pp. 9-10.
3 Ibid, pp. 12-13.
4 ibid, p. 78.
5 Ibid, pp. 13-15.

These recommendations were endorsed by the Council on 14 December 2016 and work on the development of the new framework commenced shortly thereafter.

In late 2016 Council officials commenced work on the legislative changes required to give effect to the new framework, which are set out in the *National Gas (South Australia) (Pipelines Access-Arbitration) Amendment Bill 2017 (Amendment Bill).* The draft *Amendment Bill* was agreed by Council on 17 February 2017 and tabled in the South Australian Parliament on 29 March. The *Amendment Bill* passed the South Australian House of Assembly on 17 May 2017 and the South Australian Legislative Council on 20 June 2017. The Bill is expected to be proclaimed in the near future and to be operational on proclamation. Once effective, the amendments to the NGL will apply the framework via jurisdictional Application Acts, across Australia excluding Western Australia. The GMRG understands that the Western Australia Government intends to make similar amendments to apply the framework in due course.

The GMRG's work on the detailed design of the new information disclosure and arbitration framework commenced in early 2017 and on 21 March 2017 an Implementation Options Paper (*Options Paper*) was published. The *Options Paper* identified a number of options for the information disclosure requirements, the arbitration mechanism and principles to guide the arbitrator's decision making, and provided an indication of the GMRG's preliminary view on the package of options that should be implemented.

Stakeholders were provided almost four weeks to provide written feedback on the options presented in the *Options Paper* and were also invited to attend a series of industry roundtable discussions. The roundtables were attended by 24 organisations with interests in non-scheme pipelines, upstream production, retailing, generation and industrial gas use. Written submissions were also received from 27 organisations with interests across the supply chain and from both the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER).[6] Feedback on the design of the new framework was also provided through extensive bilateral discussions with stakeholders. In general, stakeholders were supportive of the development of the framework. Mixed views were, however, expressed about the design and, in particular, the information disclosure requirements and the arbitration principles.

1.1 Final design

On Friday 2nd June 2017, the COAG Energy Council's Standing Committee of Officials (SCO) considered the Gas Market Reform Group's (GMRG) final recommendations on the design of the new information disclosure and arbitration framework for non-scheme pipelines and agreed that the GMRG should proceed with developing the draft National Gas Rules to implement that design.

The design of the framework follows extensive consultation with stakeholders, including in response to the *Options Paper*. The GMRG has been cognisant of the feedback shippers

[6] Public submissions can be accessed on the GMRG website: http://gmrg.coagenergycouncil.gov.au/publications/gas-pipeline-information-disclosure-and-arbitration-framework-implementation-options.

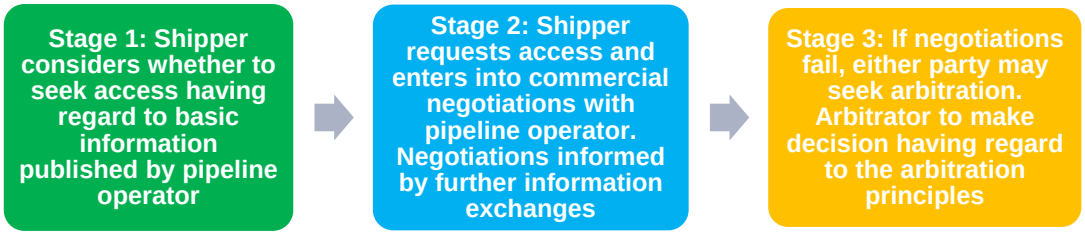
provided during the *Examination,* which was that they had little appetite for heavy-handed regulatory solutions and were looking for a mechanism that would reduce the imbalance in bargaining power and pose more of a constraint on the behaviour of pipeline operators.[7] The final design of the new framework is not therefore intended to replicate the prescriptive rules that apply to pipelines subject to full regulation. It is intended to support commercial negotiations and outcomes that are consistent with what would prevail in a workably competitive market.

The final design provides for:

- The inclusion of an objects clause in the Rules, which will ensure that all parties (including arbitrators) have a good understanding of the objectives of the new regime and how the Rules, including the arbitration principles, are intended to be applied.
- A clearly defined information disclosure regime that will provide for greater disclosure on the part of non-scheme pipeline operators and transparency of the information shippers require when:
  - considering whether to seek access to a pipeline; and
  - assessing the reasonableness of a pipeline operator's offer.
- A robust and commercially oriented arbitration mechanism that will provide a credible threat of intervention to constrain the exercise of market power during negotiations, while also providing for the cost-effective and efficient resolution of disputes.
- Well specified price, non-price and other guiding principles that the arbitrator will be required to have regard to when resolving price and non-price disputes, which embody the workably competitive market concept and also recognise the legitimate interests of the pipeline operator, other users and the safe and reliable operation of the pipeline.

Table 1.1 provides a summary of the key elements of the framework. While not shown in Table 1.1, the final design provides for a staged approach to information disclosure and the negotiation and arbitration processes, with the obligations of each party, and the processes to be followed in each stage, to be specified in the initial rules. Table 1.2 outlines what each stage will involve, while Figure 1.1 depicts the stages at a high level.

Figure 1.1: Stages for information disclosure, negotiation and arbitration



[7] Vertigan, M., Examination of the current test for the regulation of gas pipelines, 14 December 2016, p. 78.

Table 1.1: Final recommendation on the design of the information disclosure and arbitration framework

Information disclosure and arbitration framework			
Objective	The overarching objective of the new information disclosure and arbitration framework is to facilitate access on reasonable terms to services provided by non-scheme pipelines – which for the purposes of the framework, will be taken to mean at prices and on terms and conditions that so far as practical to reflect the outcomes of a workably competitive market. To that end, in order to reduce the imbalance in bargaining power that shippers can face when negotiating with pipeline operators and pose a constraint on the exercise of market power by pipeline operators, the framework will: ▪ provide for the publication and exchange of information to facilitate timely and effective commercial negotiations; ▪ provide an effective and binding process to resolve disputes about proposed terms of access in a cost-effective and efficient manner; and ▪ set out principles for determining disputes consistent with the outcomes reasonably to be expected in a workably competitive market.		
	Information disclosure requirements	**Arbitration mechanism**	**Arbitration principles**
Purpose	Reduce the information asymmetry shippers can face in negotiations and, in so doing, facilitate more timely and effective negotiations.	Provide a credible threat of intervention to constrain the exercise of market power by pipeline operators during commercial negotiations. To pose a credible threat, arbitration must provide for the final resolution of commercial disputes without unnecessary delay or expense.	
Detail	Non-scheme pipeline operators would be required to publish the following information on their website: ▪ The base level of information shippers require when considering whether to seek access, which is to include information on the pricing methodology and the inputs used to calculate the standing offers for each service offered by the pipeline ▪ The weighted average price paid for each service (published on an annual basis). ▪ Independently verified financial reports for each pipeline (prepared on an individual pipeline basis), and a breakdown of demand (by service). This information would be published on an annual basis four months after the end of the financial year and include information on the methods or principles the pipeline operator has used to determine the value of the assets, depreciation allowance and cost allocation. If access is sought, the pipeline operator would be incentivised to provide the shipper with information on the cost of providing the service as the information exchanged during negotiations will form the basis for any arbitration. The information disclosure requirements would be subject to a reporting standard and classified as civil penalty provisions.	The arbitration mechanism is to be based on the conventional arbitration with partial transparency model. Key design elements include: ▪ Arbitration could be used to settle disputes in relation to all aspects of access to all types of services offered (excluding extensions). ▪ Arbitration would be 'on the papers' using information exchanged by parties in negotiations (Stage 2). The arbitrator would have the discretion to conduct hearings and request further information if required, but the parties would not have the right to introduce additional information on their own volition. ▪ If the dispute is price-related, the parties would be required to provide their final offers to the arbitrator and the respective offers would become the bounds of the arbitrator's determination. ▪ The arbitrator may seek administrative support from the AER. ▪ Information on the existence of the arbitration would be published on the AER website.	<u>Pricing principles</u>: ▪ Firm transportation services, ancillary services and augmentations: When assessing the reasonableness of the offer for these types of services, the arbitrator is to have regard to the cost of providing the service, which is to include a commercial rate of return that reflects the risks the pipeline operator faces in providing the service. When determining the value of any assets used in the provision of the service, the arbitrator can have regard to any asset valuation techniques it considers are consistent with the workably competitive market objective, including those that take into account past recoveries of capital. ▪ Derivative services (i.e. services that utilise the capacity of the pipeline but are priced as a multiple of, or discount to, the firm transportation service): When assessing the reasonableness of the offer for these services, the arbitrator is to have regard to the opportunity cost and/or benefit of providing the service relative to the firm service (taking into account effects on cost and/or capacity) and provide a reasonable contribution to joint and common costs. <u>Non-price terms and conditions principles:</u> ▪ When assessing the reasonableness of any non-price terms and conditions of the pipeline operator's offer to provide a service or services, the arbitrator is to have regard, as far as practicable, to what would likely prevail in a workably competitive market. <u>Guiding principles</u>: ▪ The arbitrator will also be required to have regard to the pipeline operator's legitimate business interests, the interests of other persons who have rights to use the service, the value to the providers of extensions including expansions of capacity whose cost is borne by someone else, the value to the provider of interconnections to the facility whose cost is borne by someone else and the operational and technical requirements necessary for the safe and reliable operation of the facility.

Table 1.2: Staged approach to information disclosure, negotiations and arbitration

Stage	Detail
Stage 1: Shipper considers whether to seek access	In this stage, non-scheme pipeline operators would be required to publish the following information on their website unless it is subject to an exemption: ▪ the base level of information that shippers require when considering whether to seek access to a pipeline, including the pipeline's standing offer for each service; ▪ the pipeline's financial reports and demand information; and ▪ the weighted average price received for each service if there are more than two shippers using the pipeline (this limitation is required to maintain confidentiality). This information would allow shippers to make an informed decision about whether to seek access and to carry out a high-level assessment of whether the pipeline operator's standing offers are reasonable, having regard to the pipeline's financial reports, the weighted average price per service and information published by the pipeline operator on how the standing offers for each of the services offered by the pipeline have been calculated. Exemptions: Pipelines that are not providing third party access (i.e. the service provider and shipper are related parties) or are servicing a single shipper will be able to apply for an exemption from the information disclosure requirements in Stage 1. An exemption from the requirement to publish financial reports will also be available to pipelines with a nameplate capacity rating of less than 10 TJ/day. If any of these conditions change, the exemption will be extinguished.
Stage 2: Request for service and commercial negotiation	This stage is designed to facilitate timely and effective commercial negotiations and minimise the reliance on arbitration. It involves two key steps: Access request and response The Rules would set out the general requirements that would apply to a shipper making an initial access request, as well as a pipeline operator in responding to an access request, with further detail to be required to be outlined in a pipeline operator's access policy (published in Stage 1) Negotiation The pipeline operator and the shipper would exchange information to try to reach a negotiated outcome. During negotiations, the parties would be required to disclose all of the information, including expert reports, that they would seek to rely on in an arbitration to demonstrate the pipeline's offer or the shipper's counter offer is reasonable. Thus, the pipeline operator would be incentivised to provide the shipper with detailed information on the cost of providing the service sought by the shipper. The Rules would contain provisions to incentivise the parties to articulate their case and disclose all relevant information before the dispute is referred to the arbitrator. If the parties cannot reach an agreement then they can proceed to Stage 3.
Stage 3: Arbitration	The arbitration mechanism provides a backstop, or last resort, for overcoming disputes that cannot be settled through negotiation (Stage 2). Availability: Arbitration would be available when: a shipper is seeking access; when an existing shipper is seeking to add a new service to an existing contract; or when an existing shipper seeks a new contract to take effect on expiry of the existing Gas Transportation Agreement (GTA). Arbitration would not be available for disputes about services already contracted under a GTA or for variations to the service terms for those services and would not be available for extensions Documentation: Arbitration would be 'on the papers' using information exchanged in Stage 2. The arbitrator may request further information and conduct a hearing if required. Determination: The arbitrator would make a determination with respect to the access sought by the shipper; within the bounds of the final offers put forward by the parties if it is a price-related dispute, and having regard to the pricing and other guiding principles outlined in the Rules. Timeframe: The arbitrator would have 50 business days to make a determination, or a maximum of 90 days on the agreement of parties to extend. Binding nature: The shipper must notify the pipeline operator and the AER within 30 days if it intends to proceed with access on the basis determined by the arbitrator. A shipper declining access may seek access at any future time but cannot seek arbitration for a substantially similar service for a period of one year following the determination. Partial confidentiality: Information on the existence of the arbitration would be published on the AER website after the arbitration has concluded, including: the non-scheme pipeline involved; the parties to the arbitration (subject to the consent of the shipper); the name of the arbitrator; and the time taken for the arbitration. Exemption: Non-scheme pipelines that do not provide third party access (i.e. the service provider and shipper are related parties) would be exempt from arbitration. If third party access is provided the exemption would be extinguished. AER role: The AER would provide oversight and administration of the framework, including establishing the panel of arbitrators, providing administrative support to the arbitrator and/or parties, publishing information about the arbitration, and publishing a non-binding procedural guide providing for arbitrators and parties to disputes. The AER would also be responsible for granting exemptions, compliance and enforcement.

The overarching objective of the new information disclosure and arbitration framework is, as noted at the top of Table to facilitate access to services provided by non-scheme pipelines on reasonable terms, which is taken to mean at prices and on terms and conditions that so far as practical reflect the outcomes that would occur in a workably competitive market (see Box 1). To that end and in order to reduce the imbalance in bargaining power shippers can face when negotiating with pipeline operators and pose a constraint on the exercise of market power by pipeline operators, the new framework:

- provides for the publication and exchange of information to facilitate timely and effective commercial negotiations;
- provides for an effective and binding commercially-oriented arbitration process to resolve disputes about proposed terms and conditions of access in a cost-effective and efficient manner; and
- sets out the principles an arbitrator would be required to have regard to when determining disputes, consistent with the outcomes that would be expected in a workably competitive market.

Box 1: Workable competition concept

The concept of workable competition, which underpins a number of access regimes in Australia, was described by the Independent Committee of Inquiry on National Competition Policy (the Hilmer Committee) in 1993 as follows:[8]

> *"In markets characterised by workable competition charging prices above the level of long run average costs will not be possible over a sustained period, for higher returns will attract new market entrants or lead customers to choose a rival supplier or product…*
>
> *Where the conditions for workable competition are absent — such as where a firm has a legislated or natural monopoly, or the market is otherwise poorly contestable — firms may be able to charge prices above the efficient level for periods beyond those justified by past investments and risks taken or beyond a time when a competitive response might reasonably be expected. Such "monopoly pricing" is seen as detrimental to consumers and to the community as a whole."*

It has also been described by the Australian Competition Tribunal (Tribunal) in *Re Queensland Co-operative Milling Association; Re Defiance Holdings* (1976) 25 FLR 169 at 188 as follows:

> *"As was said by the U.S. Attorney General's National Committee to study the Antitrust Laws in its report of 1955 (at p. 320): 'The basic characteristic of effective competition in the economic sense is that no one seller, and no group of sellers acting in concert, has the power to choose its level of profits by giving less and charging more. Where there is workable competition, rival sellers, whether existing competitors or new or potential entrants in the field, would keep this power in check by offering or threatening to offer effective inducements…'."*

More recently it was described by the Tribunal as follows:[9]

> *"Perhaps the best shorthand description of workable competition is to envisage a market with a sufficient number of firms (at least four or more), where there is no significant concentration, where all firms are constrained by their rivals from exercising any market power, where pricing is flexible, where barriers to entry and expansion are low, where there is no collusion, and where profit rates reflect risk and efficiency."*

In a similar vein, the New Zealand High Court has previously observed that:[10]

> *"…the tendencies in workably competitive markets will be towards the outcomes produced in strongly competitive markets. The process of rivalry is what creates incentives for efficient investment, for innovation, and for improved efficiency. The process of rivalry prevents the keeping of all the gains of improved efficiency from consumers, and similarly limits the ability to extract excessive profits".*

8 Independent Committee of Inquiry on National Competition Policy, National Competition Policy Review, 25 August 1993, p. 269.
9 Application by Chime Communications Pty Ltd (No. 2) [2009] ACompT 2, para 37.
10 Wellington International Airport Ltd & Ors v Commerce Commission [2013] NZHC [11 December 2013], para 22.

In the GMRG's view the workably competitive market concept should result in the prices charged for pipeline services better reflecting the cost of service provision. This will, in turn, benefit upstream and downstream users of non-scheme pipelines and should also encourage more efficient investment in, and efficient operation and use of, natural gas services. The ultimate beneficiaries of these improvements will be consumers of natural gas. The adoption of this benchmark can therefore be expected to promote the NGO.

Further information on the final design, including stakeholder feedback, is provided in the GMRG's Final Design Recommendation Report.

1.2 Draft initial rules and next steps

Having regard to the overarching objectives of the new framework and the feedback provided by stakeholders, the GMRG has developed draft initial Rules reflecting the final design agreed by SCO. In developing these draft initial Rules, the GMRG has had regard to:

- the rule making test the AEMC is required to consider when exercising its rule making functions, which requires consideration to be given to the NGO;[11] and
- where relevant, the Council's *Australian Gas Market Vision.*[12]

Stakeholders are encouraged to review the draft initial rules, which should be read in conjunction with this explanatory memorandum, and to provide any feedback they may have to the GMRG by **5pm (AEST) Thursday 20 July 2017**. Once this feedback is received, the GMRG will develop the final initial rules, which will be provided to the Council for its consideration and approval. Council consideration is expected to take place out-of-session in early August.

The initial rules will be made by the South Australian Minister for Mineral Resources and Energy, in accordance with section 294F of the *Amendment Bill*. Once the initial rules are made, future amendments will proceed under the regular Australian Energy Market Commission (AEMC) rule making framework.

1.3 Structure of explanatory note

The remainder of this explanatory note is structured as follows:

- Section 2 provides an overview of the key elements of the new information disclosure and arbitration framework and how they have been reflected in the draft initial rules; and
- Section 3 provides an overview of the forward process.

11 The NGO is set out in section 23 of the NGL.
12 COAG Energy Council, Australian Gas Market Vision, December 2014.

2. Overview of the draft initial Rules

This section provides an overview of the key components of the new framework as reflected in the initial Rules. Appendix A provides a summary of each draft rule proposed.

The rules relating to the new information disclosure and arbitration framework will be set out in Part 23 of the National Gas Rules, which has been structured as follows:

- Division 1 sets out the objectives of the new framework and deals with preliminary matters.
- Division 2 sets out information that must be published by the service provider of a non-scheme pipeline.
- Division 3 provides for access requests and negotiations.
- Division 4 provides for the arbitration of access disputes.
- Division 5 contains provisions about the role of the scheme administrator.
- Division 6 provides for exemptions from the application of this Part.

2.1 Objective

The draft initial rules commence by outlining the objective of the information disclosure and arbitration framework, which reflects the purpose of the framework outlined in section 1.1. Specifically, Rule 546(1) states that:

> *The objective of this Part is to facilitate access to pipeline services provided by non-scheme pipelines on reasonable terms, which for the purposes of this Part is taken to mean at prices and on other terms and conditions that, so far as practical, reflect the outcomes of a workably competitive market.*

The inclusion of the objective in rule 546 is intended to explain the purpose of the mechanisms and principles in Part 23 (summarised in rule 546(2)) so that those mechanisms and principles are applied consistently with and in light of, furthering the objective of the framework.

The GMRG recognises that this objective would more appropriately be incorporated within the NGL to ensure it is not at risk of being amended through a rule change process. Accordingly, the GMRG encourages the Council to amend the NGL in the future to incorporate the objective and any other components of the rules that would more appropriately be incorporated into the NGL. This could occur alongside other amendments to the NGL or be assessed during the review that SCO is scheduled to carry out two years after the implementation of the new framework.

2.2 Stage 1: Prospective user considers whether to seek access having regard to information published by service provider

This stage is intended to provide a prospective user with adequate information to consider whether it should seek access to services on a non-scheme pipeline and to carry out a high-level assessment of the reasonableness of the service provider's standing price, as well as terms and conditions associated with the services available.

Division 2 of the draft initial rules require service providers of non-scheme pipelines, not subject to an exemption, to publish the following information on their website (or provide a link to the information if it is published on a Gas Bulletin Board[13]):

- Service and access information (see rule 553), including:
  - Pipeline information: details of receipt and delivery points, the pipeline's nameplate rating, a schematic map of the pipeline, technical or physical characteristics of the pipeline that may affect access or use of the pipeline or the price payable for access and any policies affecting access or use of the pipeline or the price payable for access.
  - Pipeline service information: a description of the services offered by the pipeline, any locational limitations on availability of services and the priority ranking of services.
  - Service usage information: the total quantity of gas actually injected and withdrawn from the pipeline during the month, the total quantity of gas scheduled to be injected and withdrawn from the pipeline during the month and the quantities attributable to each category of pipeline service as identified in the pipeline service information.
  - Service availability information: an outlook of uncontracted primary capacity of the non-scheme pipeline for each month in the following 36 month period and information about matters (including any planned expansions) expected to affect the capacity of the non-scheme pipeline for that outlook period.
- Standing terms for each pipeline service offered and the methodology used to determine the standing prices (see rule 554), including:
  - the service provider's standard terms and conditions for the service;
  - the standing price for the service; and
  - other information about prices and charges applicable to the service including the charging structure, any minimum charge and any additional charges such as imbalance or overrun charges.
- Financial information for the non-scheme pipeline (see rule 555), which is to be published annually in the form and manner specified within the financial reporting guideline published by the AER (see rule 556). The financial information must be audited and certified in the manner provided for in the financial reporting guidelines. The financial information reported by service providers is not intended to bind the arbitrator if there is an access dispute.
- Weighted average price information for each pipeline service offered (see rule 557), including the methodology and inputs used by the service provider to calculate the weighted average prices. The weighted average price must be calculated in a manner consistent with the standing price for the relevant service and allows for a direct comparison to the standing price.[14] The weighted average price information must also

[13] Natural Gas Services Bulletin Board or the Gas Bulletin Board WA

[14] The methods are likely to differ depending on whether the service has a capacity based charge, or a throughput or per unit based charge. For example:

be audited and certified in the same manner provided for in the financial reporting guidelines. To maintain the confidentiality of shippers, the service provider will only be required to publish the weighted average price if the pipeline service was provided, directly or indirectly, to fewer than 3 users of the non-scheme pipeline and the service provider gives a notice to the AER before the date required for publication certifying the pipeline service was provided to fewer than 3 users during the relevant period. When such a notice is given, the AER may require services to be combined for the purpose of calculating the weighted average price (to mitigate the risk of gaming).

The disclosure of this information is intended to allow shippers to make an informed decision about whether to seek access, but it may not provide sufficient information for the prospective users to determine whether the price offered is cost reflective (as this will depend on the methodology the pipeline operator uses determine its standing price). Further information is therefore expected to be disclosed in Stage 2.

In effect, rule 552(2), when read together with the definition of the application date in rule 549, provides for the publication of the information outlined above in accordance with the timelines set out in Table 2.1.

- if the service is a firm forward haul service that is charged on a $/GJ of MDQ basis, then the weighted average price is likely to be calculated as the revenue received from the provision of that service in the last year divided by the capacity that shippers using that service had reserved over the same period; and
- if the service is an interruptible transportation service that is charged on a $/GJ basis, then the weighted average price is likely to be calculated as the revenue received from the provision of that service in the last year divided by the volume of gas transported under the interruptible service over the same period.

The method may also differ if the pipeline utilises a distance, zonal or postage stamp tariff structure. For example, if the pipeline utilises a per km charge then the weighted average price will also need to be expressed on a per km basis, while if the pipeline utilises a postage stamp tariff structure then the weighted average price will also need to be expressed on this basis. If the pipeline utilises a zonal stamp tariff structure then weighted average prices would also need to be calculated for each zone.

Table 2.1: Publishing timeframes of the information disclosure obligations

Information type		Timeframe
Service and access information	Pipeline information	For existing non-scheme pipelines, within 5 months of the commencement date (expected to be 1 February 2018). For new non-scheme pipelines, when commissioned or when the pipeline ceases to be covered. Updated information must be published whenever there is a change.
	Pipeline service information	As for the pipeline information.
	Service usage information	By the last business day of each month for the prior month.
	Service availability information	By the last business day of each month for the next 36 months.
Standing terms		For existing non-scheme pipelines, within 5 months of the commencement date (expected to be 1 February 2018). For new non-scheme pipelines, when commissioned or when the pipeline ceases to be covered. Updated information must be published whenever there is a change
Financial information		Annually within four months of the end of the service provider's financial year. Under the transitional rules, initial financial information covering a 6 month period will be published in October or December 2018, depending on the service provider's financial year.
Weighted average price information		Annually within four months of the end of the service provider's financial year. Under the transitional rules, initial weighted average price information cover the 12 month period ending on 31 December 2017 will be published by 1 February 2018.

Rule 551(1) requires the information published under Part 23 to be prepared and maintained in accordance with the *access information standard*. The access information standard means that the information:

- is not false or misleading in a material particular;
- is prepared in accordance with:
  - where applicable to the information, the financial reporting guidelines; and
  - all applicable laws;
- in relation to information of a technical nature, is prepared in accordance with the practices, methods and acts that would reasonably be expected from an experienced and competent person engaged in the ownership, operation or control of a pipeline in Australia acting with all due skill, diligence, prudence and foresight; and

- in relation to a forecast or estimate, is supported by a statement of the basis of the forecast or estimate and:
  - is arrived at on a reasonable basis; and
  - represents the best forecast or estimate possible in the circumstances.

Compliance

Section 27 of the NGL requires the AER[15] to monitor, investigate and enforce compliance with the NGL, NGR and Procedures. The AER will therefore have those roles in relation to the information disclosure requirements in Part 23, including with regard to the financial information reporting in accordance with the guideline.

Under the NGL, the enforcement tools that the AER could employ if a pipeline operator failed to comply with the disclosure requirements will depend on whether the disclosure framework is classified as a civil penalty provision. If it is not classified in this way, then the AER would only be able to:

- seek an administrative resolution, which may include a voluntary commitment by the operator to rectify non-compliance; or
- institute civil proceedings in the Federal Court and seek an injunction or an order that the pipeline operator cease or remedy the conduct.

If, however, it was classified as a civil penalty then the AER would also be able to issue an infringement notice to the pipeline operator, or institute civil proceedings in the Federal Court seeking an order that the penalty be paid.

The GMRG recommends the obligation to publish the information outlined above in accordance with rules 551 and 552 be classified as civil penalty provisions.[16] This classification is appropriate given the broader range of enforcement options available to the AER under that classification and the role that the information plays in the Part 23 framework.[17]

2.3 Stage 2: Prospective user requests access and enters into commercial negotiations with the service provider

If the shipper decides to seek access, then it would make an access request to the non-scheme pipeline operator and commence negotiations. The negotiations would be informed by further information exchanges between the parties, which should include further detail on the costs associated with providing the service sought by the shipper.

In this stage, the prospective user may submit a preliminary enquiry or an access request to the service provider. The service provider must respond to the prospective user with an access offer after taking further investigations if required. Assuming the prospective user

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16 To give effect to these recommendations, the National Gas Regulations will need to be amended to specify these provisions as civil penalty provisions.

17 The GMRG is aware that in its *East Coast Review* the AEMC considered the value of classifying the bulletin board provisions in the NGR as civil penalty provisions and concluded that this classification was appropriate given the reliance market participants can place on the information when making decisions.

does not wish to accept the access offer, commercial negotiations will commence. Given the arbitration mechanism is to provide for disputes to be resolved using the information provided in this stage (subject to some caveats), the service provider and prospective user will be incentivised to exchange any information that they may want to rely upon in an arbitration during this stage. This will allow the commercial negotiations to be carried out on a more informed basis than they otherwise might and is intended to facilitate timely and effective commercial negotiations.

User access guide – rule 558

Rule 558(1) requires a service provider for a non-scheme pipeline to develop and publish on its website a user access guide for each non-scheme pipeline. The user access guide must contain information about who to contact in relation to access and also describes the process for seeking access including the information that is required to be included in an access request to enable the service provider to respond.

The aim of the user access guide is to provide prospective users with timely information about what prospective users must do to make an access request.

To limit the potential for the user access guide to become a means by which the service provider can hinder access or give itself an advantage in negotiations, rule 558(2) requires the user access guide to:

- comply with and give effect to Division 3;
- not contain anything directly or indirectly inconsistent with Division 3 or that may otherwise operate the objective of Part 23, timely and effective negotiations or the dispute resolution process; and
- not operate or be applied by a service provider in a manner that prevents or delays a prospective user from referring an access dispute to arbitration.

The initial rules in turn describes a narrow category of information the service provider can require in an access request, limits the scope for delay through further investigations and sets timeframes for responding to access requests with an access offer.

The GMRG is recommending that rule 558(1) and (2) are civil penalty provisions.

The user access guide may apply to one or more of the service provider's non-scheme pipelines but must be published by the service provider on its website within 5 months of the commencement date (for existing non-scheme pipelines) and within 20 business days of becoming a non-scheme pipeline.

Access requests and offers – rule 559 and 560

Stage 2 of the framework involves two key steps:

- the service provider making an access offer in response to an access request; and
- commercial negotiations in which the parties can request information, including expert reports, required for negotiations and to resolve an access dispute if the negotiations fail.

Rule 559 and 560 provide the prospective user and service provider with clarity as to the overall process for making an access request with further detail required to be outlined in a service provider's user access guide.

Rule 559 defines access requests, consistent with section 216F of the *Amendment Bill*.

Subrule (2) allows for a prospective user to make a preliminary enquiry about access to a pipeline service before an access request and requires the service provider to respond within 10 business days. The preliminary enquiry process is intended to enable a prospective user to find out quickly if the service they seek is available on the standard terms at the time sought or to explore the options available and the costs of any works that may be required before making a formal access request. This preliminary enquiry may be used by parties that are not yet ready to formally request access to a service but want to ascertain the availability and expected price of a service in the future to inform their decision-making.

An access request by a prospective user is required under subrule (3) to be made in writing and must include sufficient detail to enable the service provider to identify the prospective user and the pipeline service to which the access request relates.

If an access request is incomplete, under subrule (4) the service provider must tell the prospective user within 5 business days after the access request is received, specifying the additional information required.

Under subrule (5), if the service provider needs to undertake further investigations in relation to the access request, it must notify the prospective user within 10 business days of receiving the access request. A prospective user can also ask the service provider to undertake further investigations following a preliminary inquiry under subrule (2).

Subrule (6) requires that a service provider must, for any further investigations:

- carry out further investigations expeditiously and at reasonable cost; and
- negotiate in good faith with the prospective user about the terms and conditions on which further investigations are to be carried out.

Rule 560(1) requires an access offer to be made within 20 business days for a request that can be met using existing capacity and 60 business days if further investigations are needed. The GMRG recommends that this rule be classified as a civil penalty provision.

The access offer must:

- set out the terms and conditions on which the service provider offers to make the pipeline service available to a prospective user including price;
- for an interconnection, contain the details of any works to be undertaken by the service provider and prospective user and the technical and performance specifications for the interconnected plant and equipment;
- for an extension or expansion or any other service requiring the service provider to complete works before the pipeline service starts, contain details of those works including expected timing; and
- be in a form capable of acceptance by the prospective user.

A service provider is not required to make an access offer if the access request has been withdrawn or where, after further investigations, the service provider has concluded that it is not technically feasible to provide the service requested by the prospective user. In that

case, the service provider must give the prospective user its reasons and indicate when the pipeline service might be available.

Prospective users seeking access must submit an access request before they can submit an access dispute notification to the AER.[18]

Negotiations – rule 561

The prospective user may request negotiations on the access offer made, or if the service provider indicates it cannot provide the access sought, that decision. Prospective users and service providers will be able to decide their own timing and needs in this stage, subject to the requirement for the service provider to accommodate all reasonable requirements of the prospective user regarding the timetable for negotiations, the good faith under the NGL and the arrangements for the exchange of information in rule 562.

Under rule 561, a prospective user may request negotiation in relation to any aspect of access to the relevant pipeline service or services sought including:

- whether access can be granted, including where the service provider has notified the prospective user that it is not able to provide the service; and
- the price and other terms and conditions of an access offer.

A prospective user may at any time bring negotiations to an end, whether or not it also refers a related access dispute to arbitration.

Access negotiation information – rule 562

A prospective user seeking access may need more information than the information disclosed in Stage 1 to assess the reasonableness of the offer made in response to a particular access request.

Rule 562 sets out a process for requesting information to inform negotiations about an access offer. Information can be requested more than once. Each party to the negotiation must provide access negotiation information, which comprises information reasonably required or relied on by a party for negotiations or to determine an access dispute in relation to the subject matter of negotiations. Access negotiation information includes:

- information relevant to determining whether an access offer made by the service provider is an offer for access to the pipeline service sought by the prospective user on reasonable terms as defined in rule 546(1);
- information relevant to the principles and other matters in rule 569, which may include:
    - information about the method used to determine the price in an access offer and the inputs used in the calculation of the price;
    - information regarding the costs associated with the provision of the pipeline service sought by the prospective user; and
    - any reports and materials (including consultant reports, data sets, models or other documents) that a party may seek to rely on; and

[18] Note there is a transitional arrangement that will, in some instances, allow parties to bypass this step. Further information on this potential transitional arrangement is provided in section 2.7.

- any other information that a party to negotiations may seek to rely on if there is an access dispute in relation to the subject matter of negotiations.

Given the arbitrator will be required to take into account cost-based pricing principles (see rule 569) in making a determination, service providers should be incentivised to disclose cost-based information to the prospective user both in an attempt to come to a negotiated outcome, but also to protect themselves against an ill-informed outcome should the dispute proceed to arbitration.

To give the other party a reasonable time to respond, an access dispute notice cannot be given within a 15 business day period after a party requests information that the other party may seek to rely on in arbitration. Making such a request is not intended to commit a party to proceed to give an access dispute notice.

Other provisions in the rule deal with the form of information provided, require it to be relevant and excuse the parties from providing information in breach of confidentiality obligations. To avoid doubt, subrule (1)(a) confirms that the duty to negotiate in good faith extends to this rule.

Combined with the requirement for parties to negotiate in good faith under section 216G of the *Amendment Bill*, this rule is also intended to prevent prospective users from bypassing commercial negotiations and going straight to arbitration.

If negotiations are unsuccessful, either party may refer the matter to arbitration (Stage 3).

2.4 Stage 3: Arbitration mechanism

Division 4 of the initial draft rules outline the detail of the arbitration mechanism.

The draft initial rules in this Division primarily reflect the GMRG's final design but also relevant Parts 6 and 6A of the NGL and (where not covered by those provisions) provisions from jurisdictional Commercial Arbitration Acts (CAA) that reflect the *Model Commercial Arbitration Bill 2010.* The CAAs in each jurisdiction implement the Model Bill in a largely uniform manner, although some minor variations do exist. For the purposes of this note, the *Commercial Arbitration Act 2010* (NSW) is referred to throughout.

This section summarises the key components of the arbitration mechanism with further information provided at Appendix A.

2.4.1 Application of Division 4

If the parties are unable to reach a commercial agreement, then the arbitration mechanism can be triggered by one of the parties by submitting a dispute notice to the scheme administrator.

The arbitration mechanism that will be available where:

- a prospective user is seeking access to a service;
- a user is seeking to add a new service to their existing access contract; and
- a user is negotiating a new contract, to take effect on expiry of an existing access contract, or commencing after the expiry of the service term for the same service under an existing contract.

Arbitration will be available to resolve disputes on any matter, including price or other terms and conditions, associated with seeking access to the following types of services:

- services that require the use of the existing capacity of the pipeline, including transportation, park and loan and ancillary services; and
- services that require further augmentation of the pipeline, which may occur if:
  - an expansion is required;
  - the pipeline needs to be converted to a bi-directional pipeline;
  - a new receipt or delivery point is required (or points need to be expanded); or
  - an interconnection with another pipeline or pipelines is required.

Under draft rule 563(2) the following matters are excluded from reference to arbitration:

- a dispute about a pipeline service provided under an existing access contract;
- a request to vary the terms and conditions of access applicable to a pipeline service provided under an existing access contract;
- an access request that would require the extension of a non-scheme pipeline;[19] and
- an access dispute in relation to a non-scheme pipeline that has an exemption.

As reflected in section 216E of the *Amendment Bill*, parties are still free to resolve their disputes in any manner they deem appropriate. The provision of the arbitration mechanism does not limit how a dispute about access to a pipeline service can be raised or dealt with.

2.4.2 Procedural requirements

The arbitration will be conducted using information exchanged in negotiations, unless the arbitrator grants leave to a party to enable it to provide additional information and/or seeks the assistance of an independent expert.

Access dispute notice – rule 564

Under section 216H(1) of the *Amendment Bill*, if a prospective user and a service provider cannot agree about one or more aspects of access after a request has been made in accordance with the rules, the prospective user, or the service provider may notify the scheme administrator that an access dispute exists. An access dispute notice must be in writing, state the matters specified in rule 564(2) and be accompanied by the fee (if any) set by the scheme administrator and specified on its website.

In the event a prospective user has submitted the access dispute notice, the prospective user may withdraw the notice at any time before the appointed arbitrator makes a final access determination. If the access dispute notice is given by a service provider, the

[19] This exclusion is consistent with rule 118 of the NGR. It is understood that this exclusion exists because there can be competition for the construction and operation of extensions from a range of parties, whereas, expansions can only be provided by the pipeline operator. Therefore, the market power that can be exercised in negotiations for extensions should be constrained by competition from other parties, similarly to the development of new pipelines. Consistent with rule 118, the GMRG recommends excluding disputes in relation to pipeline extensions from being eligible to access the arbitration framework under the Rules.

service provider may only withdraw the access dispute notice if the other party (or parties) to the dispute agree.

Reference to arbitration – rule 565

Rule 565 sets out the procedure by which a scheme administrator refers the dispute to an arbitrator. The arbitrator must be selected from the pool of commercial arbitrators established by the scheme administrator in accordance with rule 583. As provided by section 216K of the *Amendment Bill*, the parties to the access dispute are given an opportunity to agree on the identity of the arbitrator.

The scheme administrator is required to refer an access dispute to a pool arbitrator no later than 15 business days after the receipt of the access dispute notice. Within 5 business days of receipt of an access dispute notice the scheme administrator must determine the parties to the access dispute and give a notice to each party which:

- identifies the parties to the access dispute;
- invites the parties to provide the scheme administrator within 5 business days written submissions as to which if any of the pool arbitrators should be disqualified from appointment, with reasons;
- require the parties to notify the scheme administrator of the identity of the pool arbitrator agreed by the parties to determine the access dispute (if any) within 10 business days; and
- informs the parties that in default of agreement being reached and notified to the scheme administrator within that time, the scheme arbitrator will select the arbitrator.

Under subrule (3) the parties to an access dispute must:

- as soon as practical after an access dispute notice is given notify the other parties to the dispute of at least two pool arbitrators the party will agree to be appointed as the arbitrator to determine the access dispute;
- negotiate in good faith to agree to the identity of the arbitrator for the access dispute from among the pool arbitrators; and
- notify the scheme administrator if agreement has been reached, including confirmation that the pool arbitrator is available to undertake the arbitration.

If the parties to the access dispute do not notify the scheme administrator of the identity of the pool arbitrator agreed by the parties within 10 business days of the dispute notice, the scheme administrator will make the selection. In the event the scheme administrator selects the arbitrator that decision is final and binding on the parties to the access dispute.

To avoid delays, the terms of appointment will be determined by the scheme administrator at the time the arbitrator is appointed to the pool and the parties must execute the terms of appointment after the arbitrator is selected.

Consistent with normal practice and based on an equivalent provision in the National Electricity Rules, an exclusion of liability for the arbitrator is provided by subrule (8).

In the event the arbitrator does not make a final access determination within the time specified in rule 572, withdraws from or abandons the arbitration, or is unable to continue the arbitration, any party to the access dispute may notify the other parties and the scheme administrator that they require a new pool arbitrator to be appointed. The same process as outlined above is followed to make the new appointment.

Statements to be provided to the arbitrator on appointment – rule 567

Given the short time allowed for making determinations, rule 567 provides for the parties to give information to the arbitrator (and the other parties) soon after the appointment is made. The information takes the form of statements about the information they provided in negotiations, any further information they seek to rely on, the determination they say should be made and, in the event of a dispute in relation to price, their price offer (where applicable).

The timeframes required are as follows:

- Within 10 business days of the access dispute being referred to the arbitrator a statement:
    - listing the information provided to the other parties to the negotiations during negotiations and that the party seeks to rely on in the arbitration;
    - identifying with reasonable particularity any further information not provided by the party to the other parties to the negotiations before the access dispute notice was given and that the party seeks leave under rule 568(1) to submit and rely on in the arbitration or; that the party requested from another party to the negotiations and that has not been provided by that other party.
- Within 15 business days of referral to the arbitrator a statement of the access determination the party claims should be made and the matters supporting the party's claim.
- Within 20 business days of referral to the arbitrator, if the subject of the access dispute includes the price for access, the party's statement of its offer in relation to the price the subject of the access dispute. This statement is used under rule 569(3) to set the boundaries for an access determination about price.

These timeframes are intended to reflect that the parties have had a period of negotiation in which to establish the areas of disagreement between them and put forward their arguments and all supporting information before the other party in an effort to negotiate a mutually acceptable outcome.

The arbitrator is left to determine the time within which it must provide statements in response (other than the price offer).

Subrule (5) provides for a party to amend or supplement during the course of the arbitration any statement made by the party under this rule with the agreement of the arbitrator.

Arbitrator to give effect to rule 562 – rule 568

Rule 568 is directed at ensuring the arbitrator, in so far as doing so is consistent with the proper consideration of the access dispute, gives effect to the obligation to exchange information in negotiations.

Subrule (1) requires a party to an access dispute wishing to submit and rely on information that it did not provide to the other parties to the negotiations before the access dispute notice was given, to seek the leave of the arbitrator.

Under subrule (3) an arbitrator may direct a party to an access dispute to provide information that it did not provide to the other parties to the negotiations before the access dispute notice was given and the party must comply with the direction without undue delay.

Drawing on section 25 of the *Commercial Arbitration Act* 2010 (NSW), subrule (4) provides examples of the steps the arbitrator may take if there has been inordinate and inexcusable failure by a party to comply with the obligation of the party to provide information in accordance with rule 562 or subrule (3) or if a party fails to do any other thing necessary for the proper and expeditious conduct of the arbitration, including drawing adverse inferences from the failure to comply.

Arbitration procedures – rule 574

Section 216S of the *Amendment Bill* applies Chapter 6, Part 6 of the NGL (with some exclusions), which provides the arbitrator with broad discretion to determine the procedures to apply in the arbitration.

Consistent with the GMRG's final design and the procedural flexibility afforded to arbitrators under jurisdictional CAAs, rule 574 provides for the arbitrator to determine the procedures for the arbitration and conduct the arbitration in such manner as it considers appropriate, including whether to hold any dispute hearings.

Some additional procedural provisions, based primarily on section 24 of *Commercial Arbitration Act 2010* (NSW) are also included, such as the requirement for the arbitrator to, as soon as practicable after the arbitrator's appointment and after consultation with the parties, notify the parties of the procedures and timetable to apply to the arbitration.

Experts – rule 575

An arbitrator is able to appoint an independent expert to assist it in determining the matters in dispute. The *Amendment Bill*, through the application of Chapter 6, Part 6 of the NGL, permits the arbitrator to refer any matter to an independent expert and accept the expert's report as evidence.[20]

Under rule 575(3), before appointing an independent expert under subrule (1), the arbitrator must notify the parties to the dispute of its intention to refer a matter to an independent expert, identifying: the proposed independent expert and the amount that the independent expert will charge and obtain the consent of the parties to the maximum

[20] *National Gas Law*, section 199(1)(e).

amount that may be charged by the independent expert. This is intended to reduce cost risks for parties.

Confidentiality – rule 576

The parties to an access dispute and an arbitrator must not disclose confidential information in relation to the course of the arbitration unless the disclosure is allowed under rule 576.

Subrule (4) permits an arbitrator to make an order allowing a party to the access dispute to disclose confidential information in relation to the proceedings in circumstances other than those mentioned above but may only do so at the request of one of the parties and after giving each of the parties the opportunity to be heard.

2.4.3 Arbitration principles

Rule 569 sets out the pricing and other principles that the arbitrator must take into account in making an access determination. The arbitration principles are a key element of the new framework, because they establish the basis on which shippers should expect to be able to access the services provided by non-scheme pipelines.

As noted in section 2.1 (see rule 546), the objective of the new framework is to facilitate access to pipeline services provided by non-scheme pipelines on reasonable terms, which is taken to mean at prices and on other terms and conditions that, so far as practical, reflect the outcomes of a workably competitive market. The overriding arbitration principle in subrule (1) reflects this objective.

Price disputes

Consistent with the final design and the objective that the price of access should, so far as practical, reflect the outcomes of a workably competitive market, the draft initial rules provide for the following:[21]

- Rule 569(2) requires the arbitrator to take into account the following principles when making a determination about price:

  (a) The price for a pipeline service must reflect the cost of providing that service, including a commercial rate of return that is commensurate with the prevailing conditions in the market for funds and reflects the risks the service provider faces in providing the pipeline service. For the purposes of this paragraph (a), the value of any assets used in the provision of the pipeline service must be determined having regard to asset valuation techniques consistent with the objective of this Part set out in rule 546(1), including those that take into account past recoveries of capital.

  (b) In applying the above principle to a pipeline service that when used affects the capacity of the non-scheme pipeline available for other pipeline services and is

[21] In a workably competitive market, rivalry between competing firms can be expected in the longer-run to drive prices down to a cost reflective level, where firms are covering their costs plus a rate of return that reflects the risk faced by the firm.

priced at a premium or a discount to the price for a firm haulage service on the relevant non-scheme pipeline (e.g. as available, interruptible or park and loan services),[22] the premium or discount must:

- take into account any opportunity cost or benefit to the service provider of providing the pipeline service, having regard to any effect on the cost of providing firm haulage services or the capacity of the non-scheme pipeline; and
- be consistent with the price for the pipeline service providing a reasonable contribution to joint and common costs.

- Rule 569(3) states that when making an access determination, the arbitrator must determine a price that falls within the boundaries of the price offers made by the parties to the dispute under rule 567(3).

The GMRG understands from bilateral discussions with numerous stakeholders since the final design was agreed, that stakeholders have some concerns about the limited guidance the arbitrator would be provided on how to determine the starting asset value of a non-scheme pipeline under the drafting set out in paragraph (a). The main concerns that stakeholders have raised relate to:

- the resources that negotiating parties and the arbitrator will have to spend on considering a range of alternative asset valuation techniques, which stakeholders have noted may affect the cost-effectiveness, timeliness and efficiency of the negotiation and arbitration process;
- the uncertainty that it would create for service providers and their financiers, which one pipeline operator noted could affect future investment in non-scheme pipelines; and
- the uncertainty that it would create for shippers, which could affect their investment in upstream and downstream facilities and the efficient utilisation of gas.

To address these concerns, some stakeholders have suggested that the arbitrator should be required to employ the same asset valuation principles that would apply to scheme pipelines, as outlined in rule 77 of the NGR. An overview of these principles is provided in Box 2.

The adoption of these principles would represent a significant departure from the final design, which noted that the intention of the new framework was not to replicate the prescriptive rules that apply to pipelines subject to full regulation. However, given the nature of the concerns that have been raised (including by one pipeline operator) and the significance of the asset valuation to the calculation of the cost of providing the service, the GMRG thinks there would be merit in consulting on this issue further. To aid this consultation, the GMRG has developed an alternative drafting for rule 569(2)(a), which provides for the value of non-scheme pipelines to be determined in a consistent manner to scheme pipelines. The alternative drafting is as follows:

> *The price for a pipeline service must reflect the cost of providing that service, including a commercial rate of return that is commensurate with the prevailing conditions in the market for funds and reflects the risks the service provider faces in providing the pipeline service. For the purposes of this paragraph (a), the value of*

[22] In the original *Options Paper,* it was also noted that this type of principle could be applied to backhaul services, however, as noted in the *Final Design,* backhaul services do not actually involve the use of the pipeline's capacity. The GMRG therefore intends the price of backhaul services to be determined using the principles in paragraph (a).

any assets used in the provision of the pipeline service must be determined as if the pipeline were a covered pipeline, with the asset value to be determined as follows:

(i) if the non-scheme pipeline was commissioned before 1 July 2008, in the manner provided for in rule 77(1)(a);

(ii) if the non-scheme pipeline was commissioned after 1 July 2008, in the manner provided for in rule 77(1)(b); or

(iii) if the non-scheme pipeline has previously been subject to an access arrangement, in the manner provided for in rule 77(3).

The GMRG is interested in obtaining further feedback from stakeholders on whether they think the alternative drafting is appropriate, or if the drafting that is more consistent with the final design as outlined on the preceding page (i.e. the arbitrator can have regard to any asset valuation technique that is consistent with rule 546(1)) should be maintained. Table 2. sets out the two alternatives that the GMRG would like to get further feedback from stakeholders on.

Table 2.2: Alternative drafting for the rule 569(2)(a)

Greater discretion on asset valuation	More direction on asset valuation
The price for a pipeline service must reflect the cost of providing that service, including a commercial rate of return that is commensurate with the prevailing conditions in the market for funds and reflects the risks the service provider faces in providing the pipeline service. For the purposes of this paragraph (a), the value of any assets used in the provision of the pipeline service must be determined having regard to asset valuation techniques consistent with the objective of this Part set out in rule 546(1), including those that take into account past recoveries of capital.	The price for a pipeline service must reflect the cost of providing that service, including a commercial rate of return that is commensurate with the prevailing conditions in the market for funds and reflects the risks the service provider faces in providing the pipeline service. For the purposes of this paragraph (a), the value of any assets used in the provision of the pipeline service must be determined as if the pipeline were a covered pipeline, with the asset value to be determined as follows: (i) if the non-scheme pipeline was commissioned before 1 July 2008, in the manner provided for in rule 77(1)(a); (ii) if the non-scheme pipeline was commissioned after 1 July 2008, in the manner provided for in rule 77(1)(b); or (iii) if the non-scheme pipeline has previously been subject to an *access arrangement*, in the manner provided for in rule 77(3).

Box 2: Asset valuation techniques applied to scheme pipelines

Rule 77 of the NGR, when read in conjunction with the Gas Code, provides for the following asset valuation techniques to be applied to scheme pipelines:

- **Pipelines constructed prior to November 1997 that have not had an initial asset value determined** – Section 8.10 of the Gas Code requires regard to be had to the following factors when establishing the value of the assets:

  a. the value that would result from taking the actual capital cost of the Covered Pipeline and subtracting the accumulated depreciation for those assets charged to Users (or thought to have been charged to Users) prior to the commencement of the Code;

  b. the value that would result from applying the "depreciated optimised replacement cost" methodology in valuing the Covered Pipeline;

  c. the value that would result from applying other well recognised asset valuation methodologies in valuing the Covered Pipeline;

  d. the advantages and disadvantages of each valuation methodology applied under paragraphs (a), (b) and (c);

  e. international best practice of Pipelines in comparable situations and the impact on the international competitiveness of energy consuming industries;

  f. the basis on which Tariffs have been (or appear to have been) set in the past, the economic depreciation of the Covered Pipeline, and the historical returns to the Service Provider from the Covered Pipeline;

  g. the reasonable expectations of persons under the regulatory regime that applied to the Pipeline prior to the commencement of the Code;

  h. the impact on the economically efficient utilisation of gas resources;

  i. the comparability with the cost structure of new Pipelines that may compete with the Pipeline in question (for example, a Pipeline that may by-pass some or all of the Pipeline in question);

  j. the price paid for any asset recently purchased by the Service Provider and the circumstances of that purchase; and

  k. any other factors the Relevant Regulator considers relevant.

  Section 8.11 of the Gas Code also states that the value normally should not fall outside the range of values determined under (a) and (b).

- **Pipelines constructed after commencement of Gas Code (i.e. post November 1997) –** Rule 77 of the NGR and section 8.13 of the Gas Code require the asset valuation to be based on the cost of constructing the pipeline *plus* any capital expenditure that has occurred since the pipeline was commissioned *less* the value of the capital recovered (depreciation), *less* the value of asset disposals and *less* the value of any redundant capital.

- **Pipelines that were previously covered and had an asset value determined by the relevant regulator** – Rule 77(3) of the NGR requires regard to be had to the opening capital base at the end of the last full access arrangement (the relevant date) *plus* any capital expenditure that has occurred since the relevant date *less* the value of the capital recovered (depreciation) since the relevant date and *less* the value of asset disposals since the relevant date.

Irrespective of the approach that is taken to asset valuation, if the arbitrator requires assistance when considering how the pricing principles should be applied, or how an asset should be valued, then it could seek the assistance of a suitably qualified expert in accordance with rule 575. The arbitrator could also have recourse to the substantial

amount of publicly available information on the methods that regulators and other parties use to measure the cost of service and inputs into this calculation.

Once an asset value has been set the GMRG expects that the financial guidelines will require the financial information provided by the service provider will need to reflect the determined asset value (of which there will be transparency of in accordance with rule 581) and be updated annually (i.e. to adjust for subsequent capital expenditure, capital recoveries and asset disposals) on that basis.

Non-price disputes

In relation to disputes regarding non-price terms and conditions, the arbitrator would be required to assess the reasonableness of the pipeline's offer having regard, as far as practicable, to what would likely prevail in a workably competitive market.

Other matters the arbitrator may have regard to

Rule 569(4) allows the arbitrator to have regard to the following matters, where it is not inconsistent with subrules (1) to (3):

- the legitimate business interests of the service provider;
- the interests of all persons who have rights to use the pipeline;
- the value to the service provider of any extension or expansion of the pipeline the cost of which is borne by another person;
- the value to the service provider of interconnections to the pipeline the cost of which is borne by another person; and
- the operational and technical requirements necessary for the safe and reliable operation of the pipeline.

These matters are based on the principles set out in the Competition Principles Agreement and the *Competition and Consumer Act 2010* (Cth) (CCA).[23] The way in which these provisions have previously been interpreted in the context of an access dispute under Part IIIA of the CCA is outlined in Box 3. When applying these principles, the arbitrator would be expected to do so consistently with and in light of, furthering the overarching objective of the framework.

[23] This list mirrors the list of principles in the CPA although the GMRG has removed two principles (i.e. the direct costs of providing access to the service and the economically efficient operation of the pipeline) because they are already reflected in the pricing principles.

Box 3: Interpretation of guiding principles

On 19 July 2007, the ACCC issued its Arbitration Report regarding an access dispute between Services Sydney Pty Ltd and Sydney Water Corporation. The dispute related to the methodology for pricing access to declared (under the then *Trade Practices Act 1974*) sewage transportation services supplied by Sydney Water by means of its North Head, Bondi and Malabar sewerage reticulation networks. The ACCC interpreted the relevant principles as follows:[24]

Legitimate business interests of the provider, and the provider's investment in the facility

"The term 'legitimate business interests of the provider' refers to the commercial considerations of the service provider such as the provider's obligations to shareholders and other stakeholders, including the need to earn normal commercial returns on the facility. The term '…and the provider's investment in the facility' reinforces that the access provider should be able to recover the costs (including earning a normal commercial return) of its efficient investment in the facility. Consideration of section 44X(1)(a) also includes ensuring that the access provider has appropriate incentives to maintain, improve and invest in the efficient provision of the facility".

The interests of all persons who have rights to use the service

"All persons that have rights to use the service refers to the access provider, current users of the service and future potential access seekers. The Commission considers that access prices should reflect efficient provision of the service and should not incorporate pricing designed to generate monopoly profits or to artificially favour some persons who have rights to use the service over other such persons".

The value to the provider of extensions whose cost is borne by someone else

"This criterion requires that if an extension is made to the facility at the cost of someone other than the access provider, then access terms and conditions should take into account the economic value to the access provider of the extension. For example, if an access seeker bears the cost of extending the facility, and this extension is expected to provide benefits to the access provider, then the access price could be lower than it would otherwise be, so as to reflect the value to the provider of such benefits".

The value to the provider of interconnections whose cost is borne by someone else

"This criterion operates in a similar fashion to section 44X(1)(e). It requires that if an interconnection is made to the facility at the cost of someone other than the access provider, then the access terms and conditions should take into account the economic value to the access provider of the interconnection".

Operational and technical requirements necessary for safe and reliable operation

"The Commission notes in the ACCC's guide to the resolution of telecommunications access disputes that an access price should not lead to arrangements between access providers and access seekers that encourage the unsafe or unreliable operation of a facility. This criterion may often be more relevant to the consideration of non-price terms and conditions."

2.4.4 Access determinations

Matters that may be dealt with in determinations – rule 570

Rule 570 provides guidance to the arbitrator about the matters that may be included in an access determination. While a determination does not have to require the service

[24] The ACCC's Arbitration Report, including the final determination and statement of reasons, is available at: http://registers.accc.gov.au/content/index.phtml/itemId/867741.

provider to provide access to the service sought by the prospective user, an access determination may:

- require the service provider for a non-scheme pipeline to provide access to a pipeline service;
- specify the price and other terms and conditions on which the prospective user has access to the pipeline service;
- require the service provider to permit another facility to be connected to the non-scheme pipeline; or
- subject to subrule (5), require the service provider to carry out, either alone or in combination:
    - an expansion of the capacity of a non-scheme pipeline;
    - a conversion of a non-scheme pipeline to a bi-directional pipeline;
    - the development of a new receipt or delivery point;
    - an expansion of an existing receipt or delivery point; or
    - an interconnection with another pipeline or other facility.

Rule 570 sets four constraints on what the arbitrator may do when making a determination, which are that determinations:

- must relate to the access sought by the prospective user, including the service type, the capacity sought and the service term start and end dates;
- cannot require extensions to the geographical range of a non-scheme pipeline;
- cannot require works on the pipeline that are not fully funded by the prospective user; and
- cannot require works on the pipeline unless the activity is technically feasible and consistent with the safe and reliable operation of the pipeline.

Further, unless the service provider agrees otherwise, a determination must not provide for a user to acquire an interest in a non-scheme pipeline by funding an expansion of the capacity of the pipeline.

Interim access determinations – rule 571 (NGL section 199(2))

Under Chapter 6, Part 6 of the NGL as applied by the *Amendment Bill*, the arbitrator may provide an interim determination.

Given the terms of rule 570 (which extends to both final and interim determinations), an interim determination may put terms and conditions of access in place for the short term while a final determination is made.

An interim determination is only likely to be sought in instances where an existing contract is about to conclude and a user is seeking continuance of service provision. For example, in the event a contract would roll off while the arbitration is underway, an interim determination could be made to continue a user's access on existing terms and conditions until a determination is made (assuming the capacity is still available).

Under rule 571(1), if an interim determination is made that provides access to a non-scheme pipeline service, the final determination must provide for payment adjustments or other measures to account for any differences between the interim determination and the final determination.

Under subrule (3) an interim access determination takes effect from the later of the time specified in the access determination and the time it is communicated to the parties to the access dispute.

Final access determinations – rule 572 and 573

Under rule 572, the time limit for making a final access determination is 50 business days, which may be extended by agreement between the parties up to 90 business days. The time can be further extended if the parties agree to stop the clock, if the arbitrator seeks advice from an independent expert, or if the arbitrator allows a party time to prepare new information where it was unable to do so in negotiations due to the conduct of the other party.

The rule sets the administrative requirements for the form of the access determination and how it is communicated to the parties and the scheme administrator, including that it:

- be in writing and dated and signed by the arbitrator;
- identify the parties to the determination and the place the determination is made;
- set out the matters agreed by parties and the matters in dispute;
- set out the arbitrator's determination of the matters in dispute;
- be communicated by email when it is made to the parties to the access dispute and the scheme administrator; and
- be sent by post to the parties and the scheme administrator within 5 business days of being made.

Under rule 572(4), the arbitrator must provide the parties and scheme administrator a statement of reasons for the arbitrator's determination, which must explain how the arbitrator took into account the pricing and other principles outlined in the rules. The statement of reasons may be provided with the final access determination or provided within 20 business days of the final access determination being made.

Under rule 573, a final access determination takes effect from the later of the time specified in the determination and the time it is communicated to the parties to the access dispute. A final access determination is binding on the parties unless the prospective user chooses not to seek access to the service to which the final determination relates under 216Q(2) of the *Amendment Bill*.

A prospective user wishing to enter into an access contract giving effect to a final determination must notify in writing that decision to the other party to the access dispute and the scheme administrator within 20 business days of the determination being made. If the prospective user gives such a notice, the parties to the access dispute must enter into an access contract for the provision of access in accordance with the final access determination.

If a prospective user decides not to seek access to the service the prospective user and any associate (as defined in the NGL) of the prospective user must not seek arbitration under the rules in relation to the same or a substantially similar pipeline service for a period of one year from date of the final access determination.

2.4.5 Costs

Section 216V(1) of the *Amendment Bill* stipulates that the costs of arbitration will be shared equally between parties to the arbitration. Rule 580(2) specifies the costs of arbitration include: the fees and expenses of the arbitrator; the fees and expenses of any expert retained by the arbitrator under rule 575; the costs of room hire; and the cost of any additional input (including expert reports) agreed by the parties to be necessary to the conduct of the arbitration.

In accordance with section 216V(3) of the *Amendment Bill*, rule 580 provides the arbitrator the discretion to direct the arbitration costs be paid in unequal shares, taking into account:

- in the case of a party to the access dispute other than the service provider or prospective user – the role of the party in the access dispute and the arbitration;
- whether the prospective user elects not to enter into an access contract in accordance with the access determination;
- whether a party has conducted the dispute itself in the arbitration in a way that that unnecessarily disadvantaged another party:
- whether a party has been responsible for unreasonably prolonging the time taken to complete the arbitration; and
- any other matter the arbitrator considers relevant.

The costs of the arbitration are a debt due by the party to the arbitrator, or the person to whom the arbitrator has ordered that they be paid.

Under 580(1) the parties to an arbitration must bear their own costs in accordance with section 216V(4) of the *Amendment Bill*. The draft initial rules do not provide for the arbitrator to order payment by one party of the other party's costs.

2.4.6 Termination of arbitration

Section 266O(3) of the NGL allows the rules to specify circumstances in which an access dispute may be terminated (in addition to those in the NGL). Under the draft initial rules, the only additional specified circumstance will be where the parties agree the arbitration should terminate.

In discussions with GMRG, stakeholders have also questioned whether an arbitration should terminate where, during the course of an arbitration about access to capacity, the service provider enters into an access contract such that the capacity is no longer available. GMRG has not included this event as grounds for termination since the NGL protects capacity contracts with other users only if they are in force before the access dispute notice is given (refer to section 216N). Consistent with that approach, the service provider will need to manage the risks associated with selling capacity the subject of an access dispute during the course of the access dispute.

2.4.7 Information to be published on access determinations

Under the draft initial rules, information on the existence of the arbitration but not the content of the final determination will be published on the AER website. The confidentiality of the content of the final determination, including the price and other terms and conditions, will protect the commercial interest of the parties from the disclosure of sensitive information.

Under rule 581(1), within a reasonable time of a final access determination being made, the scheme administrator will be required to publish the following information on its website:

- the non-scheme pipeline the subject of the arbitration;
- with the consent of the prospective user, the parties to the arbitration;
- the name of the arbitrator who made the final determination;
- the time elapsed between the appointment of the arbitrator and the making of the final determination;
- the pipeline service or services included in the final determination;
- if an access contract has been entered into by parties that gives effect to the final determination; and
- if the access determination includes a determination with respect to asset valuation, the valuation method adopted, the assets to which the valuation applied and the determination of the asset value.

The reputational harm to parties that may arise from this transparency and is intended to further incentivise commercial agreements. It may also assist others in selecting an arbitrator with relevant experience. Further, the information published will be important inputs to the review that SCO is scheduled to undertake two years following implementation and will assess whether the framework is effectively advancing its objectives or if further action is required.

In the event a final determination is not made (for example if an arbitrator or prospective user terminates an arbitration), none of the information required by rule 581(1) would be published. Instead, under rule 581(2) the scheme administrator will be required to publish on its website information about the number of access disputes referred to arbitration and brought to an end before a final determination is made. This information would not reveal the identities of the parties or the arbitrator involved in the arbitration.

2.5 Scheme administrator and regulator roles

The AER will play an important role under the new framework, both as the scheme administrator and regulator.[25]

In its role as scheme administrator, the AER will provide oversight and administration of the arbitration mechanism in accordance with the *Amendment Bill* and Division 4 and 5 of the draft initial rules. This will include the following roles:

- Establishing a pool of arbitrators and determining the terms of appointment to act as arbitrator for an access dispute (see rule 583).
- Referring access disputes to arbitration (see rule 565).
- Selecting an arbitrator in the event parties are unable to agree (see rule 565(4)).
- Publishing information about the arbitration (see rule 581).
- Correcting errors in access determinations (see rule 579).
- Publishing non-binding guides on the AER website providing procedural guidance to an arbitrator and potential parties to an arbitration (see rule 584). This should help ensure potential parties and arbitrators understand the procedural requirements associated with arbitration under the NGL. Reflecting that any such guides will be procedural in nature and non-binding, the development and updating of any guides will not be subject to the AER's standard consultation procedures.

In its role as regulator, the AER will be responsible for:

- Developing and publishing, and from time to time updating, the financial reporting guidelines, which provides for the publication of financial information about each non-scheme pipeline (see rule 556). The financial reporting guidelines will be binding on service providers, but the arbitrator will not be bound to have regard to the information or the methods used by the service provider in the generation of the financial reports.
- Compliance and enforcement of the information disclosure obligations of service providers in relation to non-scheme pipelines under Division 2 that are not subject to an exemption.
- Granting exemptions in accordance with Division 6.

2.6 Exemptions

Division 6 of the draft initial rules includes an exemption mechanism, which allows non-scheme pipeline operators to apply to the AER for an exemption from the framework in its entirety, or some or all the information reporting requirements in certain circumstances.

Consistent with the final design, under rule 585 the AER may only grant exemptions in relation to three categories of exemption (as outlined in Table 2.3) and the following exemption criteria:

- **A non-scheme pipeline not providing third party access:** In those cases where the pipeline operator is not providing third party access (i.e. the service provider and

[25] The ERA will play these roles in Western Australia.

shipper are related parties), a third party shipper wanting access to such a pipeline should be required to apply for coverage. While coverage is often thought about as the test for regulation, it is also the process by which third parties can try and obtain access to facilities that would not otherwise provide that access. In the GMRG's view this is still the appropriate means by which third party access to a pipeline that is not already providing that access should be sought. Some examples of the types of pipelines that could fall into this category include:

  - pipelines servicing gas fired generators, where the pipeline operator and gas fired generator are related parties; and
  - pipelines servicing LNG facilities, where the pipeline operator and LNG proponents are related parties.

- **Non-scheme single shipper pipelines:** The costs of requiring the operators of single shipper pipelines to publish the information contained in Division 2 of the draft initial rules will likely outweigh the benefits. The operators of these pipelines will, however, still be subject to the requirements of Division 3 and Division 4.
- **Non-scheme pipelines with a nameplate capacity of less than 10TJ/day:**[26] **F**or small pipelines the costs of some of the information disclosure in Division 2 is likely to outweigh the benefits. In the case of the pipeline information, pipeline service information weighted average price per service, the cost of this disclosure is expected to be relatively low. However, the costs of providing financial information by these pipelines would likely outweigh the benefits. In the case of the service usage information and service availability information, the frequency of reporting required by rule 552(2) under rule 553(5) would likely mean that the costs would outweigh the benefits of this information. Thus, as discussed below, this category of exemptions will be subject to the conditions in rule 586(1). Like single shipper pipelines, the operators of these pipelines will still be subject to the requirements of Division 3 and Division 4.

[26] The 10TJ/day reporting threshold aligns with the Bulletin Board reporting threshold.

Table 2.3: Exemption framework

Exemption category	Exemption criteria
1. An exemption excluding any access dispute in relation to pipeline services on the non-scheme pipeline from the operation of Division 4.	The non-scheme pipeline does not provide third party access (i.e. the pipeline operator and shipper are related parties).
2. An exemption from the obligation to publish information under Division 2 in relation to the non-scheme pipeline.	The non-scheme pipeline does not provide third party access (i.e. the pipeline operator and shipper are related parties). The pipeline is a single shipper pipeline – that is, the pipeline provides third party access but all relevant services are provided to a single user.
3. An exemption from the obligations to publish service usage information under rule 553(4), service availability information under rule 553(5) and financial information under rule 555 in relation to the non-scheme pipeline.	The nameplate capacity rating of the non-scheme pipeline is less than 10 TJ/day.

On the application of a service provider, the AER may grant exemptions when satisfied on reasonable grounds that the non-scheme pipeline falls within one of the three categories listed above. The service provider should provide sufficient information to substantiate their application. In assessing an application for exemption the AER will have the discretion to review all relevant matters, including the ownership structure of the service provider. This discretion has been incorporated into the rules to address the concern that was raised by a number of stakeholders that pipeline operators may be able to circumvent the new framework by restructuring their business and only selling transportation services to related parties who then supply end-users.

Exemptions may be granted subject to conditions. As specified in rule 586(1), each category 3 exemption is subject to the condition that the service provider for the non-scheme pipeline must, at the same time that it publishes the weighted average price information under rule 557, publish the service usage information (rule 553(4)) and the service availability information (rule 553(5)), with the information to be published annually rather than monthly.

This exemption condition recognises the costs likely to be involved for small pipelines to report service usage and service availability information on a monthly basis. Rather than imposing such cost, the exemption condition permits pipelines that are less than 10TJ/day to submit this information on an annual basis at the same time as publishing their weighted average price information.

Under rule 588, an application for an exemption must be in the form, and contain the information, specified in any guidelines issued by the AER. Within 20 business days of receiving an exemption application, the AER may seek further information if, in the AER's reasonable opinion, the application is incomplete or requires clarification.

Under rule 589, the AER must decide whether to grant or refuse to grant an exemption application within 40 business days after the application is made, unless the AER has extended the 40 business day time period by a further 20 business days by giving the

applicant written notice of the extension no later than 30 business days after the application was made.

The AER may also revoke or vary exemptions, including any conditions associated with an exemption, on the application of the service provider, any other interested party or on the initiative of the AER.

Exemptions granted by the AER will take effect on the date specified by the AER in its decision to grant the exemption and end on the date specified in the exemption or, if earlier, the date a revocation of the exemption comes into effect.

If a service provider is granted an exemption and the circumstances of the non-scheme pipeline change such that the pipeline no longer qualifies for an exemption, the service provider must notify the AER without delay. To encourage service providers to notify the AER of changes in circumstances of this nature, rule 585(7) is intended to be a civil penalty provision. It would also be open to the AER to impose conditions to facilitate compliance monitoring, such as requiring providers to report to it on an annual basis on whether the exemption is still valid. This is similar to the approach the AER uses to monitor the compliance of scheme pipelines with a range of other provisions in the NGL and NGR.

Under rule 585(6), the AER must establish and maintain a register of exemptions and exemption revocations made under Division 6.

2.7 Transitional arrangements

The draft initial rules also contain proposed transitional rules that would form part of Schedule 1 of the NGR. The proposed transitional rules address two issues: the initial financial reporting guideline and reporting; and access requests that occur in advance of the commencement of the draft initial rules.

Information disclosure requirements

The initial rules are assumed to commence from 1 September 2017.

Under rule 552(2), non-scheme pipeline service providers will be required to publish service and access information, the standing terms and weighted average prices on their websites no later than 20 business days after the application date for the non-scheme pipeline (expected by 1 February 2018).

The GMRG recognises that it will take longer for pipeline operators to be in a position to publish financial reports, because before this information can be published:

- the guideline on the preparation of financial reports will need to be developed and published by the AER; and
- pipeline operators may need time to amend their financial reporting systems to be able to produce the information required and comply with the guideline.

The commencement of financial reporting by pipeline operators is linked to the publication of the financial reports guideline which is required by rule 556(1) to be published by the AER no later than 4 months after the commencement of the initial rules (1 January 2018).

To ensure this timeframe is achieved, the development of the initial guideline is being accelerated by commissioning the assistance of a consulting firm with expertise and experience in financial reporting requirements. The GMRG is currently working with the AER and ERA to engage a suitable consultant and expects to procure a consultant by mid-July. The draft initial guidelines will be publicly released and consulted on, with the consultation period expected to occur in mid-September and be open for four weeks. The initial guidelines are expected to be published in December 2017.

Proposed transitional rule 51 requires the service provider of a non-scheme pipeline to prepare and publish the financial information specified by the financial reporting guidelines under rule 555 as follows:

- where the financial year of the service provider current on 31 January 2018 ends on or before 30 June 2018 – 31 October 2018 for the six month period ending on 30 June 2018; and
- where the financial year of the service provider current on 1 January 2018 ends after 30 June 2018 – 31 December 2018 for the six month period ending on 30 September 2018.

Following the provision of the initial financial information, service providers will be required to provide this information annually in accordance with rule 552(2).

Proposed transitional rule 52 requires initial weighted average price information to be provided by service providers by 1 February 2018 for the 12 month period ending on 31 December 2017.

Arbitration mechanism

The arbitration mechanism will commence before any information under Division 2 is required to be disclosed. Rather than delaying the commencement of the arbitration mechanism until this information is available:

- the mechanism will come into effect upon commencement of the initial rules (expected 1 September 2017); and
- the arbitrator will have the ability to grant leave to parties to provide any additional information the arbitrator requires to apply the pricing principles and make a determination, including cost and financial information.[27]

The GMRG has considered a number of potential transitional issues associated with the implementation of the arbitration mechanism, including if the arbitration mechanism should be available to parties immediately in the absence of parties having met the requirements set out in Division 3 of the rules. Proposed transitional rule 53 provides for the following to apply in relation to the period starting when Part 23 is made by the South Australian Minister under section 294F of the *NGL* and ending 20 business days after the commencement date:

- A request for access to pipeline services provided by a non-scheme pipeline made before the commencement of the initial rules may at the election of the prospective user be treated as an access request under Part 23 received by the service provider on the date the election is communicated to it.

[27] While the pipeline operator may not be in a position to provide information in the manner specified in the financial guideline, it should still be in a position to provide the arbitrator with the information it requires to apply the pricing principles.

- Where the service provider for a non-scheme pipeline has provided a response to a request for access made before the commencement date, that response may at the election of the prospective user be treated as an access offer under Part 23 made on the date the election is communicated to the service provider.
- Where an election is made as above, for the purposes of rule 568, information provided during negotiations includes information exchanged during any negotiations that may have occurred before the commencement date.

In these circumstances, the parties may be more likely to seek leave from the arbitrator to submit, potentially significant, additional information to apply the arbitration principles in the absence of the information published in accordance with Division 2 and the exchange of cost and other relevant information in Division 3. More time may also be required for the determination to be made than the standard 50 day period provided by rule 572(1)(a).

2.8 Issues for stakeholder consideration

Stakeholders are encouraged to review and comment on all aspects of the draft initial rules, including identifying any areas that they think should be moved into the NGL in the future.

Stakeholders are asked to consider the following questions in providing their feedback:

1. Are the information disclosure obligations of service providers in Division 2 sufficiently clear and can they be complied with by both transmission and distribution pipelines? If not, what changes could be made to clarify the information disclosure obligations?

2. Given the potential for the capacity of a pipeline to be affected by the assumption made about gas specification, should the draft rules require the daily capacity and the primary pipeline capacity to be measured using the gas specification set out in AS 4564-2011 (as amended or replaced from time to time)?

3. The obligation to provide access negotiation information when requested during negotiations is not currently assumed to be classified as either a civil penalty or conduct provision. Do you think there would be any value in classifying the obligation to provide this information as:

   - a civil penalty provision – if a provision is classified as a civil penalty provision then the AER may issue an infringement notice to the relevant party, or institute civil proceedings in the Federal Court seeking an order that the penalty be paid; and/or

   - a conduct provision – if a provision is classified as a conduct provision then persons other than the AER that suffer loss or damage as a result of the conduct of another person that was done in breach of a conduct provision can seek to recover the amount of the loss or damage by action against that person in court?

   Please note that similar provisions in Part 11 of the NGR (see rule 107), have been classified as both civil penalty and conduct provisions.

4. Do the draft initial rules provide a credible threat of arbitration, whilst still incentivising commercial negotiation as the preferred approach for access to non-scheme pipelines?

5. Are there any changes to the draft rules that you consider are necessary to ensure parties are unable to game or circumvent the framework?

6. Are the exemption categories and criteria sufficiently clear and can they be applied to both transmission and distribution pipelines? If not, what changes could be made to clarify the exemptions?

    - One exemption criterion that has been identified as potentially problematic is the nameplate capacity criterion, which the GMRG has been informed may not be appropriate for distribution pipelines. If this is the case, what is an alternative criterion that could be used to achieve the same objective (i.e. to identify small pipelines)?

7. Do you think the pricing principles should provide the arbitrator with:

    - More guidance on how to determine the value of the assets used in the provision of services? If so, please explain why you think more prescription is necessary.

    - Greater discretion on how to determine the value of the assets used in the provision of services, subject to the caveat that the asset valuation techniques are consistent with the workably competitive market objective? If so, please explain why you think greater discretion is required.

    If you think more guidance on asset valuation is required, do you think the arbitrator should be required to employ the same techniques that would apply to scheme pipelines (as set out in rule 77 of the NGR), or are there are alternative approaches that you think are feasible and appropriate?

8. Is there anything in the draft initial rules which may suggest that the expeditious resolution of the access dispute will not occur?

9. Are any other transitional rules required? If so, what are they and why are they required?

10. Section 83A(2)(e) of the *Amendment Bill* contemplates that the rules may provide for ring-fencing requirements, similar to those contained in Chapter 4, Part 2 of the NGL that apply to scheme pipelines. Are similar requirements necessary under the draft initial rules? Why/why not?

11. Should anything in the rules be moved to the NGL in a future review?

3. Forward process

Stakeholders are encouraged to make submissions in response to the draft initial rules by **5pm (AEST) Thursday 20 July 2017**. Stakeholders may wish to utilise the template provided at Appendix B. Further details on how to make a submission is provided at the commencement of this explanatory note.

The final initial rules will be provided to Council for its consideration and approval. Council consideration is expected to take place out-of-session in early August.

Following Council agreement to the initial rules, in accordance with the *Amendment Bill*, the South Australian Minister for Mineral Resources and Energy must as soon as practicable: publish notice of the making of the Rules in the South Australian Government Gazette stating the date of commencement or, if they commence at different times, various dates of commencement; and making the Rules publicly available.[28]

Once the initial rules have been made, all subsequent rules and proposed amendments will be made through the ordinary rule-making process by the AEMC.

Further information on timeframes is provided in Table 3.1.

Table 3.1: Timeframes

Date	Process
21 March 2017	Release of Options Paper
3-5 April 2017	Roundtable discussions by industry sector
13 April 2017	Stakeholder submissions on the Options Paper due
Early June 2017	SCO review and approval of framework design
Late June 2017	Draft Rules released for public consultation (open for three weeks)
Late July	SCO consideration of the final Rules
Early August 2017	Rules presented to Energy Council Ministers
Late August	SA Minister for Mineral Resources and Energy publishes a notice in the SA Government Gazette stating the dates of commencement and makes the Rules publicly available.

[28] See section 294F(4) of the *Amendment Bill.*

Appendix A Summary of the draft initial rules

Draft Rules	Issue	Explanation
DIVISION 1	**PRELIMINARY**	
546	Objective	The objective is consistent with the objective stated in the final design. In Part 23, the objective is the overriding principle to be applied when making determinations and provides a reference point for the conduct of service providers when dealing with prospective users.
547	Application	The rule references section 83A of the NGL which underpins the information obligations and Chapter 6A of the NGL which underpins the provisions dealing with arbitration. Part 23 will not apply in Western Australia until provisions are made under the law in Western Australia.
548	Structure of this Part	The rule provides a guide to the structure of the new Part. Divisions 2, 3 and 4 respectively deal with publication of information, access requests and negotiation and commercial arbitration.
549	Definitions	A number of the definitions provide a cross-reference to the location of the defined term in the NGL both for ease of reference and to provide certainty where the NGL defines the same term more than once. Other definitions are new. The definition of confidential information reflects the definition in the CAA.
550	Interpretation	The NGL contains a set of interpretation rules which will be applicable to this Part under the terms of the NGL – refer to section 20 and Schedule 2. Rule 550(1) has been included to clarify that the phrase “pipeline service on a pipeline” covers services in both limbs of the definition of pipeline service in the NGL Rules 550(2) and (3) provide for pipeline services to be categorised by reference to general type (forward haul, back haul etc) and priority (firm, non-firm etc) and in addition, for users, capacity and service term. Rule 550(4) explains when a service provider provides a pipeline service ‘indirectly”, using the associate definition in the NGL. The indirect provision of a service is relevant to exemptions.
551	Access information standard	The access information standard has a number of limbs to accommodate the different types of information required to be published under this Part. Rule 551(2)(c) relating to technical information reflects the proposed information standard for the Gas Bulletin Board (rule 164 in proposed new Part 18). Rule 551(2)(d) reflects the standard applicable to forecasts and estimates in rule 74.

Draft Rules	Issue	Explanation
DIVISION 2	**INFORMATION**	
552	Obligation to publish information	The rule identifies different categories of information required to be published and timing. The times are summarised in table 2.1 in the main body of the paper. To accommodate possible overlap with obligations to provide information to the Gas Bulletin Board, the rule allows information to be published by providing a link to the information on the Gas Bulletin Board. Because financial information and weighted average price information is published at different times for different service providers, subrule (4) requires the information to be sent to the AER when published, to assist monitoring. Subrule (5) acknowledges that an exemption from the obligation to publish information may be granted by the AER under Division 6.
553	Service and access information	The service and access information is described in four categories: – pipeline information intended to describe the physical assets – pipeline service information covering the services provided on the non-scheme pipeline – service usage information capturing historical use patterns – service availability information describing pipeline capacity over a three year outlook period. The last category is similar to the information expected to be provided under the new Part 18 for the Gas Bulletin Board but given the longer outlook period, rule 553 does not require the same level of detail. Information about historical use is intended to allow pipeline users to understand how much gas has flowed through the pipeline and the extent to which each service provided on the pipeline is being used (which cannot be derived from gas flow information alone).
554	Standing terms	Service providers will be required to publish standing terms for services offered on the non-scheme pipeline including price. The standing terms are not binding on the service provider or a prospective user but will provide an indication of price and non-price terms and a reference point for prospective users in receipt of an access offer.
555	Financial information	Financial information will be required on a pipeline-by-pipeline basis and for each financial year of the service provider. The detailed form of the financial information is to be specified in a binding financial reporting guidelines. Under transitional rules, the first financial information will be for the 6 month period ending 30 June 2018 or 30 September 2018 (depending on the service provider's financial year), to be published by 31 October 2018 or 31 December 2018 as applicable.
556	Financial reporting guidelines	The AER will develop and publish financial reporting guidelines specifying the financial information to be published by service providers. The first financial reporting guidelines will be published within 4 months of the commencement date. The consultative procedure will not apply, as the GMRG is expected to consult on the initial guidelines over the coming months. The standard consultative procedure in Rule 8 applies to any changes.
557	Weighted average prices	The rule requires weighted average price information to cover a financial year and to be published in a way that is directly comparable with the standing price. To maintain the confidentiality of shippers, the service provider will only be required to

Draft Rules	Issue	Explanation
		publish the weighted average price if the pipeline service was provided to fewer than 3 users of the non-scheme pipeline and the service provider gives a notice to the AER before the date required for publication that the service provider is not publishing the information for that financial year, specifying the pipeline service to which the notice relates and certifying the pipeline service was provided to fewer than 3 users. The AER can require services to be combined for the purpose of calculating the weighted average price (to mitigate the risk of gaming).
DIVISION 3	**ACCESS REQUESTS AND NEGOTIATIONS**	
558	User access guide	Service providers will be required to publish a guide for prospective users of their non-scheme pipelines. One aim of the guide is to require the service provider to describe the information a prospective user should include in access requests. This is proposed to be a civil penalty provision. To limit the potential for the user access guide to become a means by which the service provider can hinder access or give itself an advantage in negotiations, the user access guide must be consistent with the rules dealing with access requests and access offers and must not contain anything directly or indirectly inconsistent with rule 546 (the objective) or that would prevent reference to arbitration. This is proposed to be a civil penalty provision.
559	Access requests	This rule defines access requests, consistent with section 216F of the NGL and describes what the service provider should do if the access request is incomplete or it is evident that further investigations are needed before making an offer. The rule also allows for preliminary enquiries.
560	Access Offer	Service providers must give an access offer within the time required by this rule– in general, 20 business days for a request that can be met using existing capacity and 60 business days if further investigations are needed. The access offer must be in a form capable of acceptance by the prospective user. The GMRG recommends that this rule be classified as a civil penalty provision. If the access sought is not technically feasible, the service provider must tell the prospective user why.
561	Negotiations	The rule provides for a prospective user to request negotiations, in terms consistent with section 216G of the NGL. Negotiations about multiple services can be combined. Subrule (3) has been included due to the power of the scheme administrator to join other parties to an access dispute, in order to give those parties an opportunity to submit information in negotiations under rule 562.
562	Access negotiation information	The rule provides for one or more requests to be made for information (including expert reports) reasonably required for negotiations or that may be relied on in an arbitration or is needed to determine an access dispute – defined as “access negotiation information”. The rule is subject to the general duty to negotiate in good faith and other provisions are intended to mitigate the risk of excessive information, late information requests, requests for confidential information and request for information (such as expert reports) that cannot be produced without information from the other party.
DIVISION 4	**ARBITRATION OF ACCESS DISPUTES**	
563	Application of Division 4	This rule implements the principle that arbitration under Part 23 should not be available to re-open existing access contracts.

Draft Rules	Issue	Explanation
564	Access Dispute Notice	This rule specifies the content of access dispute notices as contemplated by section 216H of the NGL and allows the scheme administrator to specify the fee that must accompany the notice (see section 216H(3)). The rule also allows a prospective user to withdraw an access dispute notice given by it at any time before an arbitration determination is made. A service provider may only withdraw an access dispute notice with consent.
565	Reference to arbitration	This rule sets out the procedure by which a scheme administrator refers the dispute to an arbitrator. The arbitrator must be selected from the pool of commercial arbitrators appointed by the scheme administrator. As required by the NGL, the parties to the access dispute are given an opportunity to agree on the identity of the arbitrator and in default of agreement, the scheme administrator will make the selection. To avoid delays, the terms of appointment will be determined by the scheme administrator at the time the arbitrator is appointed to the pool and the parties must execute the terms of appointment after the arbitrator is selected. Subrule (8) is an exclusion of liability for the arbitrator consistent with usual practice. It is based on an equivalent provision in the National Electricity Rules. See also section 39 of the CAA.
566	Conduct of the parties	This rule requires the parties to conduct themselves in a manner consistent with the proper and expeditious conduct of the arbitration. The rules reflects the requirements of the commercial arbitration legislation of participating jurisdictions – refer to section 24B of the CAA.
567	Statements to be provided to the arbitrator on appointment	This rule requires the parties to the access dispute to give statements about the information they provided in negotiations, any further information they seek to rely on, their statement of the determination they say should be made and their price offer (where applicable). The timeframes, extending from 10 to 20 business days from the reference to arbitration, are intended to reflect that the parties have had a period of negotiation in which to establish the areas of disagreement between them and put their arguments and all supporting information before the other party in an effort to negotiate a mutually acceptable outcome.
568	Arbitrator to give effect to negotiation principles	This rule requires the parties to seek leave to submit information in the arbitration that it did not provide in negotiations. In deciding whether to grant leave, the arbitrator is required to seek to give effect to rule 562 (ie the obligations to exchange of information during negotiations), so far doing so is consistent with the proper consideration of the access dispute. Subrule (3) provides for the arbitrator to direct information to be provided. Subrule (4) gives examples of the steps the arbitrator may take if there has been inordinate and inexcusable failure by a party to comply with the obligations to exchange of information during negotiations or comply with a direction, including drawing adverse inferences. This rule draws on section 25 of the CAA.
569	Pricing and other principles	The overriding principle is that access to a non-scheme pipeline should be available on reasonable terms, as defined in the objective. The pricing principle is to the effect that prices should be cost reflective, as specified in the Final Design. Paragraph (b) is directed at services such as available services or park and loan and is a specific example of the requirement for prices to be cost

Draft Rules	Issue	Explanation
		reflective (rather than for example, costs being set strategically to deter use of a service). The price determined by the arbitrator must nonetheless fall within the boundaries of the price offers made by the parties to the dispute. The arbitrator may also have regard to other matters such as the legitimate business interests of the service provider and the interests of all other pipeline users.
570	Matters that may be dealt with in the determination	This rule provides guidance to the arbitrator about the matters that may be included in an access determination. It sets four constraints on what the arbitrator may do: – determinations must relate to the access sought by the prospective user - for example, a non-firm service cannot be substituted if firm service was requested – determinations cannot require extensions to the geographical range of a non-scheme pipeline – determinations cannot require works on the pipeline that are not fully funded by the prospective user – determinations cannot require works on the pipeline unless the activity is technically and economically feasible and consistent with the safe and reliable operation of the pipeline.
571	Interim access determinations	The arbitrator has the power to make an interim access determination, such as a determination allowing for access while the dispute is determined. Adjustments must be made once the final access determination is complete to account for any differences, even if the prospective user does not proceed with access on the terms of the final access determination.
572	Final access determinations	The time limit for making a final access determination is 50 business days and may be extended by agreement between the parties up to 90 business days. The time can be further extended if the parties agree to stop the clock, if the arbitrator seeks advice from an independent expert or if the arbitrator allows a party time to prepare new information where it was unable to do so in negotiations due to the conduct of the other party. A statement of reasons can be given after the determination itself has been made. The rule sets out the administrative requirements for the form of the access determination and how it is communicated to the parties and the scheme administrator.
573	Effect of final access determination	The final access determination is binding but the prospective user is not required to enter into an access contract. The prospective user must make its election within 20 business days of determination being made. If it elects not to proceed, the user (or any associate, as defined in the NGL) cannot apply for arbitration of an access dispute about the same or substantially similar access for a period of 12 months.
574	Arbitration procedures	Part 6 of Chapter 6 of the NGL (applied under section 216S) already gives the arbitrator broad discretion to determine the procedures to apply in the arbitration. Some additional procedural provisions based on section 24 of the commercial arbitration legislation of the jurisdictions have been included.
575	Experts appointed by the arbitrator	Consistent with section 199(1)(e) of the NGL, the arbitrator may appoint an independent expert to assist it in determining the matters in dispute. The cost of the independent expert must first be agreed with the parties.
576	Confidentiality	This confidentiality provision is modelled on section 27E, 27F and 27G of the CAA.

Draft Rules	Issue	Explanation
577	Conflict of interest	This rule provides the mechanism for parties to an access dispute to challenge the independence of the arbitrator. The provision is modelled on sections 12 and 13 in the CAA and allows for appeal to a court.
578	Termination of arbitration	Section 266O(3) of the NGL allows the rules to specify circumstances in which an access dispute may be terminated. This rules provides for termination by agreement of the parties.
579	Correction of errors	This rule sets out the procedure for the correction of errors as allowed for in section 261T of the NGL. Errors can be corrected by the scheme administrator or by the arbitrator on its own initiative.
580	Costs	The NGL will require the parties to an arbitration to bear their own costs, which will include legal costs. As to the arbitrator's costs, the default position is that these must be borne equally by the parties. The arbitrator is given discretion to allocate those costs in different proportions. This might occur due to the behaviour of the parties or, for a party included as a party to the access dispute by the scheme administrator, where it has a very limited ability to influence the negotiations or the conduct of the dispute.
581	Information to be published about access determinations	The scheme administrator will publish information about access disputes that proceed to a final access determination and disputes which were notified but terminated before a final access determination is made.
DIVISION 5	**SCHEME ADMINISTRATOR**	
582	Role of the scheme administrator	This rule summarises the role of the scheme administrator under this Part, to keep it distinct from the role of the AER as regulator.
583	Pool of arbitrators	A key function of the scheme administrator is to establish a pool of commercial arbitrators with the experience necessary to determine access disputes within the timeframe required under the rules. The scheme administrator is given a broad discretion to determine how it goes about identifying candidates for the pool. The rules direct the scheme administrator to reach agreement about the terms of appointment that would apply between the arbitrator and the parties to an access dispute if the arbitrator is selected to conduct the arbitration and directs that wherever possible, the arbitrator's fees be fixed (rather than time or percentage based).
584	Non-scheme pipeline arbitration guide	The scheme administrator will be required to publish a guide for use by arbitrators and parties to the access dispute about arbitration under Part 23. The guide is non-binding.

Draft Rules	Issue	Explanation
DIVISION 6	**EXEMPTIONS**	
585	Exemption categories	Exemptions will be available in three categories: – exemption from the arbitration mechanism – exemption from the obligations to publish information under Division 2 – exemption from the obligation to publish financial information and (when coupled with the conditions in rule 587(1)), replacing the obligation to publish information about historic and expected use each month with an obligation to do so annually. The first category is available only to pipelines who do not provide third party access. The third category is available only to small pipelines. Exemption from the obligation to publish information will be available both to pipelines who do not provide third party access and single shipper pipelines.
586	Exemption conditions	This rule allows the AER to determine conditions of exemptions.
587	Revocation	This rule sets out the procedure under which the AER can revoke exemptions.
588-590	Exemption applications	This set of rules describes the process for making an application for exemption and how decisions about applications, variations to conditions or revocations are made.
Proposed Transitional Rules		
Item 51, schedule 1	Initial financial reporting	For rule 552, the first financial information will be for the 6 month period ending 30 June 2018 or 30 September 2018 (depending on the service provider's financial year), to be published by 31 October 2018 or 31 December 2018 as applicable.
Item 52, schedule 1	Initial weighted average prices	For rule 557, initial weighted average price information will be required by 1 February 2018 for the 12 month period ending on 31 December 2017.
Item 53, schedule 1	Access requests before the commencement date	For Division 2, and for the purposes of identifying information provided in negotiations under rule 568, a prospective user has a period of time to elect to treat an access request, access offer and related negotiations as if they had been commenced under Part 23.

Appendix B Stakeholder feedback template

Draft Rules	Issue	Feedback
DIVISION 1	**PRELIMINARY**	
546	Objective	
547	Application	
548	Structure of this Part	
549	Definitions	
550	Interpretation	
551	Access information standard	
DIVISION 2	**INFORMATION**	
552	Obligation to publish information	
553	Service and access information	
554	Standing terms	
555	Financial information	
556	Financial reporting guidelines	
557	Weighted average prices	
DIVISION 3	**ACCESS REQUESTS AND NEGOTIATIONS**	
558	User access guide	
559	Access requests	
560	Access Offer	
561	Negotiations	
562	Access negotiation information	
DIVISION 4	**ARBITRATION OF ACCESS DISPUTES**	
563	Application of Division 4	
564	Access Dispute Notice	
565	Reference to arbitration	
566	Conduct of the parties	

Draft Rules	Issue	Feedback
567	Statements to be provided to the arbitrator on appointment	
568	Arbitrator to give effect to negotiation principles	
569	Pricing and other principles	
570	Matters that may be dealt with in the determination	
571	Interim access determinations	
572	Final access determinations	
573	Effect of final access determination	
574	Arbitration procedures	
575	Experts appointed by the arbitrator	
576	Confidentiality	
577	Conflict of interest	
578	Termination of arbitration	
579	Correction of errors	
580	Costs	
581	Information to be published about access determinations	
DIVISION 5	**SCHEME ADMINISTRATOR**	
582	Role of the scheme administrator	
583	Pool of arbitrators	
584	Non-scheme pipeline arbitration guide	
DIVISION 6	**EXEMPTIONS**	
585	Exemption categories	
586	Exemption conditions	
587	Revocation	

Draft Rules	Issue	Feedback
588	Making and form of application	
589	Decision on application	
590	Decision to vary or revoke an exemption	
Proposed Transitional Rules		
Item 51, schedule 1	Initial financial reporting	
Item 52, schedule 1	Initial weighted average prices	
Item 53, schedule 1	Access requests before the commencement date	