

Jemena Limited

Capacity Trading Reform Package

Submission on the GMRG's draft legal and regulatory framework

Public

27 April 2018



An appropriate citation for this paper is:

Jemena submission on the GMRG's proposed Capacity
Trading Reform Package

Contact Person

Jan Peric
General Manager Pipeline Markets
Ph: 03 9173-7000
jan.peric@jemena.com.au

Jemena Limited

ABN 95 052 167 405
Level 16, 567 Collins Street
Melbourne VIC 3000

Postal Address

PO Box 16182
Melbourne VIC 3000
Ph: (03) 9713 7000
Fax: (03) 9173 7516

TABLE OF CONTENTS

1. **Overview**iv

List of appendices

Appendix A GMRG Stakeholder Feedback Template

1. OVERVIEW

Jemena owns and operates a diverse portfolio of energy and water transportation assets across the east coast of Australia. With more than \$10.5 billion worth of major utility infrastructure, we supply millions of households and businesses with essential services every day.

Jemena continues to be committed to proactively implementing the key pipeline recommendations from the Gas Market Reform Package, and is supportive of the establishment of a liquid gas market on the east coast of Australia that contributes to better achieving the National Gas Objective (**NGO**).

Jemena welcomes the opportunity to provide a submission to the Gas Market Review Group's (**GMRG's**) Consultation Paper and the supporting draft package of legislative and regulatory changes dated 19 March 2018. In addition to this submission, Jemena has contributed to and supports the Australian Pipeline and Gas Association's submission on this matter.

Throughout the reform process, Jemena has engaged with the GMRG via formal submissions, membership of working groups and through its Managing Director's representation on the Advisory Panel to provide feedback and advice on the proposed gas market reforms. Despite this, it is not readily apparent that significant concerns from the pipeline sector have been duly considered, nor that industry has been fully consulted by the GMRG in developing detailed design of the reforms. The GMRG's preference for an expedited reform package appears to be in preference to a considered, workable and targeted solution that delivers proven net benefits that are in the long term interests of consumers. Consequently, Jemena is concerned with a number of aspects of the proposed capacity auction design and supporting draft legislation and rules. Specifically, Jemena:

- is concerned with the lack of due process in the design and implementation of the framework, and the limited evidence to show that the GMRG has appropriately considered the reasonable concerns raised by pipeline operators. As a result of the very short development period, Jemena considers that there are likely to be numerous unintended consequences and ambiguity in the detailed draft legal and regulatory framework;
- considers that the GMRG's proposed design has significant operational impacts with questionable benefits of targeted increased market liquidity. Jemena is firmly of the view that the proposed reform design goes beyond the Australian Energy Market Commission's (**AEMC's**) recommendations¹ and will not better achieve the NGO or the GMRG's stated objectives.
- considers that an alternative staged approach is more likely to better achieve the AEMC's recommendations, the NGO and the GMRG's stated objectives;
- is concerned about the achievability of the implementation timetable for the capacity trading and day ahead auctions, and gas day harmonisation; and
- is concerned about how multi-jurisdictional pipelines become subject to the proposed new rules when one of the jurisdictions is not subject to the new rules.

Jemena is less concerned with the design of the proposed capacity trading platform, on the basis that it provides a platform for the shipper to shipper trades which already occur in practice. However, Jemena is concerned by related provisions which seek to set prices for accessing secondary services in a manner similar to full regulation and to oblige pipeline operators to permit the transfer of contractual terms other than capacity. These features do not appear necessary to achieve the stated aims of the AEMC's recommendations. Jemena also notes that the likely industry cost to implement the capacity trading (and indeed auction) platform(s) will be more expensive than current options.

¹ AEMC, Stage 2 Report, East Coast Wholesale Gas Markets and Pipeline Frameworks Review dated 23 May 2016.

Jemena's submission includes:

- a discussion of the above key issues (**Overview**), which must be addressed to ensure that the reforms achieve the AEMC's recommendations, the NGO and the GMRG's stated objectives; and
- responses to the GMRG's questions set out in its stakeholder feedback template (Appendix A).

Jemena is extremely concerned with the lack of due process and evidence in the design of the gas trading and auction reforms

Jemena is surprised and concerned with the complexity of the Gas Market Reform design proposed by the GMRG and notes that generally the proposed reforms are more consistent with what one would expect for a regulated rather than unregulated market. Jemena notes that the Consultation Paper and package of legislative and regulatory changes includes a considerable number of new obligations and processes which have not been consulted on prior to the release of the Consultation Paper. GMRG has developed a long, detailed and complex reform package in a short period of time (that is, primarily, in the last three months). Much further detail is still yet to be developed through AEMO procedures, so the already complex picture is not yet complete less than a year before planned commencement. Jemena has reviewed and responded to the GMRG's questions in this context but is concerned that unintended consequences and ambiguity may be introduced if the package of legislative and regulatory changes is not subject to extensive review and testing beyond this consultation, including by industry specialist groups and/or consultants.

Significant operational impacts with questionable benefits of increased market liquidity

Jemena considers that the GMRG's proposed auction reforms have gone well beyond the intent of the AEMC's recommendations² and that they focus on creating a market more akin to a financial market for capacity services without due consideration of the pipeline physical operational constraints. Some of the complexity which has been introduced into the auction design (such as the inclusion of backhaul services) appear driven by concerns which Part 23 was introduced to address in 2017. Where services such as backhaul are readily available to primary users on terms and prices that are subject to the arbitration process in the absence of agreement, the reasons for creating a parallel Government administered auction are unclear. Jemena's detailed concerns on the capacity auction reforms are set out below and in Appendix A.

The AEMC's recommendations³ for the development of a liquid market for the secondary trade of pipeline capacity were:

- *Introduce a day-ahead auction of contracted but un-nominated pipeline capacity to be conducted shortly after nomination cut-off.*
- *Standardise provisions in capacity agreements to make capacity more fungible and allow shippers greater receipt and delivery point flexibility.*
- *Develop capacity trading platform(s) to facilitate sales by capacity holders ahead of the auction and provide for exchange based trading.*
- *Require the publication of information on secondary trades of pipeline capacity and hub services.*

The AEMC noted that *"..the Commission expects these initiatives to facilitate more secondary capacity trading by using market based processes to allocate capacity on a non-discriminatory basis to those that value it most highly,*

² AEMC, Stage 2 Report, East Coast Wholesale Gas Markets and Pipeline Frameworks Review dated 23 May 2016.

³ Ibid, Executive Summary VIII.

reducing the search and transaction costs associated with secondary trades, reducing information asymmetries, which will aid the price discovery process, and improving the incentive shippers have to trade capacity.

In turn, improvements to capacity markets should improve the liquidity of trading at hubs, the reliability of hub prices, and in turn provide better signals for pipeline investment, and gas consumption and production – and hence promote the NGO. In particular, these recommendations seek to promote much shorter-term trades in pipeline capacity trading, which should support the ability of markets to generate prices that better reflect short-term shifts in supply and demand.”⁴

To give effect to the AEMC’s recommendations, the GMRG Consultation Paper states⁵ the expected outcomes of the reforms to be: “*Together, these reforms are expected to foster the development of a more liquid secondary capacity market and, in doing so, improve the efficiency with which capacity is allocated and used on transportation assets operating under the contract carriage model (i.e. outside the Declared Transmission System (DTS) in Victoria), by:*

- *Using market-based processes to allocate capacity on a non-discriminatory basis to those that value it most;*
- *Improving the incentive shippers have to trade capacity and posing a constraint on the ability of pipeline operators to sell secondary capacity at process in excess of what would be expected in a workably competitive market;*
- *Reducing search and transaction costs; and*
- *Reducing information asymmetries and aiding the price discovery process.”*

Jemena considers that the GMRG’s proposed auction market design will be expensive to implement and not result in increased secondary market trading of capacity to justify the additional expenditure. Jemena considers that the GMRG’s proposal fails to meet the intent of the AEMC’s recommendations, will not fully achieve the GMRG’s statement of outcome above and not necessarily best achieve the NGO for the following reasons:

1. **Investment signal corrupted:** by providing a mechanism whereby potential shippers can potentially access nearly free transport capacity, it is unlikely that any prudent, risk-averse investor in infrastructure will sanction an investment in a new gas pipeline in Australia. It adds material risk, uncertainty and complexity, and most certainly does not promote efficient investment in natural gas services.
2. **Auction process will have limited use:** Putting aside the complexity and cost of implementing the auction (see below), it is unclear whether the auction process will deliver efficient operation in the long-term interests of customers, or whether it will deliver reliability and security of supply because:
 - a. **It is not a long-term service:** the auction process is a daily activity, and a potential shipper does not have the option to lock in weeks or months of forward supply. It is extremely unlikely that shippers and gas consumers will assign any real value to a service that only provides gas on a day-ahead basis.
 - b. **The auction timing does not meet certainty required by producers and shippers (and hence increasing market liquidity):** In Jemena’s experience, shippers value certainty due to managing risks associated with:

⁴ Ibid.

⁵ Capacity Trading Reform Package: Draft legal and regulatory framework, Consultation Paper, 19 March 2018, , page 7.

- i. gas supply either through their commercial gas supply agreements (**GSAs**) or due to operational constraints of production facilities. Producer GSAs do not typically provide the level of flexibility required for a customer to buy gas to transport via an auction it may or may not win, and production facilities are complex and unable to respond dynamically on short notice.
 - ii. meeting downstream demand requirements. It is unlikely that a shipper will be willing to utilise the gas in operating a plant, generator, or facility without certainty of transportation. This is because the value of consumption of gas to the shipper is far more valuable than the transportation cost.
 - c. **It is not suitable for a spot market (and hence increasing market liquidity):** Gas to be purchased or sold on the Short Term Trading Market (**STTM**)/spot market is unlikely to be suitable for transport bought via the auction process. This is because the process finishes too late in the day, which means it will miss the nomination timing requirements to participate in the STTM. Secondly, if the party is unsuccessful in the auction, or the service is interrupted, then it will face material deviation or imbalance charges in the STTM.
3. **The auction process is complex and likely to be costly and not in the long-term interests of consumers:** For example:
- a. The auction hybrid zonal model leads to inefficient outcomes for determining pipeline capacity and does not reflect the physical constraints of pipelines. This reduces security of supply for all shippers (see Jemena’s response to GMRG question 17).
 - b. Potential inclusion of backhaul services is overly complex, costly and beyond the scope of the AEMC recommendation for the “*development and introduction of a daily, day-ahead capacity auction for **contracted but un-nominated** pipeline capacity.*”⁶ [emphasis added] This is because backhaul services in single direction pipelines are generally not contracted under firm agreements (see Jemena’s response to GMRG question 26).
 - c. Commercial operations will become extremely complex in managing scheduling and curtailments, particularly for pipelines that are not fully contracted and will have a mixture of firm, secondary firm, As-Available from uncontracted capacity, As-available from un-nominated auction capacity, As-Available from unallocated auctioned capacity and interruptible services from uncontracted capacity. Depending on the circumstances, the options presented may require pipeline operators to apply different rules at different times. This will require significant investment in systems and additional personnel to manage the additional complexity. This will be further exacerbated with gas day harmonisation.
 - d. The proposed reforms will require more comprehensive amendments to existing Gas Transport Agreements (**GTAs**) than the GMRG suggests. Jemena also notes that further changes to existing GTAs will be required to give effect to gas day harmonisation. Jemena considers that the required contractual changes of both the capacity trading and auction markets, and gas day harmonisation go well beyond the AEMC’s recommendation that “*Counterparties to existing contracts should not be materially disadvantaged through the standardisation process.*”⁷ (see Jemena’s response to GMRG question 12.)

⁶ AEMC, Stage 2 Report, East Coast Wholesale Gas Markets and Pipeline Frameworks Review dated 23 May 2016, Table 1 Recommendations, Recommendation 5, page 14.

⁷ Ibid, Table 1 Recommendations, Recommendation 7, page 14.

Jemena considers that the only parties that stand to benefit from the auction are sophisticated market participants that can access material flexibility in the form of gas supply or LNG export optionality. Broadly speaking, the following two main categories will benefit, both of which have the portfolio flexibility to opportunistically mop-up cheap transport on a short-term basis:

1. Large integrated retailers who have the flexibility to divert gas into storage or withdraw/deposit gas from/into storage.
2. LNG exporters and producers who have material volume available in their LNG Plants and production facilities.

Generally speaking, because these market participants have an ability to grasp these opportunities Jemena considers the reforms are more likely to result in wealth transfer rather than rather lower gas prices for consumers.

Recommended Alternative Approach

Jemena considers that as a result of above complexity and uncertainty, costs will be high and usage of the auction market will be low. If take up of the auction product is low, service providers will have to recoup the costs of implementing the reforms from primary shippers to achieve full cost recovery.

In addition, significant and potentially unnecessary operational and market risks are likely to result from the all-encompassing scope of the reform package that has key aspects implemented simultaneously.

Lastly, Jemena is of the view that the proposed reforms create more problems than they solve, and it is not clear what the intended market is for short term semi-firm haulage arranged on an hours-ahead basis.

Therefore, Jemena considers that the market design should be stripped back to the original intent, whereby only contracted but un-nominated (**CBU**) firm forward capacity is auctioned on select routes on a Point to Point basis where there is likely to be a net benefit from doing so. This will enable policy makers and the market to test the demand for the reforms as well as trial the software and tools developed by AEMO and the industry to ensure efficient transition.

The routes that could be initially included following a cost/benefit analysis would likely to be pipelines connected to AEMO facilitated markets, pipelines connecting the Northern and Southern markets, and regional laterals if retail contestability is being constrained. Routes could be added based on review by an appropriate independent body, such as the AER, triggered by application of a genuine shipper.

At each of the AEMC's biennial reviews into the effectiveness of the total gas market reforms, the AEMC could assess the extension of more auction products (e.g. backhaul) to determine whether the NGO will be better achieved.

Jemena considers that the benefits of a staged approach revolves around managing uncertainty/risks on net benefits. In particular:

- Investing in the essential infrastructure for the market first and then considering more costly refinements later, once there is a better understanding of benefits, is likely to minimise overall costs and maximise the benefits achieved. There are precedents for this in the early stages of the National Electricity Market (**NEM**). Further, Jemena considers that managing uncertainty/risk in this way is likely to result in efficient costs which better achieve the NGO, the Code objective and the Capacity objective.
- The reference to 'workable competition' in the Code objective suggests that the capacity trading and day ahead auction arrangements need not result in perfect efficiency, rather they need to pragmatically take into account uncertainty and risks about the benefit and costs of the arrangements.

Concern with the implementation timetables

Jemena has the following concerns with the implementation timetables:

1. **Implementation of the capacity trading and day ahead auction by 1 March 2019** - To commit to implementation of the capacity trading and day ahead auction gas reforms, the new obligations that are created must be certain and sufficient detail must be available to determine the scope of works required. Further, Jemena considers the reforms tabled represent a disproportionate change to the industry going beyond the reasons given to justify them and that a reduced and more focussed set of initial reforms could be implemented to achieve this timeframe.

To attempt to legislate and properly implement such wide-ranging reforms in the proposed short timeframes is unlikely to be possible. Given the uncertainties around the scope and timing of the technical specifications, industry cannot determine the likely resources and cost required to implement the solutions until the specifications are finalised and the legal obligations become effective. Therefore, it is not possible to know whether the 1 March 2019 commencement date is achievable. Further, industry is likely to be concerned with commencing implementation prior to obtaining certainty of the technical specifications and the legal obligation.

Jemena considers that in order to ensure appropriate accountability and management of the timing uncertainties, AEMO should be made accountable for industry co-ordination and implementation of the Gas Market Reforms. As soon as practicable AEMO must develop a workable industry project timeline (via industry consultation) and readiness criteria to assess industry readiness to meet the 1 March 2019 commencement date (see Jemena's response to GMRG question 39).

2. **Harmonisation by 1 October 2019** – The draft rules propose that AEMO has until 1 April 2019 to publish information about the arrangements for transition to the standard market timetable, and that facility operators have until 30 June 2019 to publish information about their arrangements for transition.⁸ It is not possible to conclude at this stage whether the 1 October 2019 commencement date is achievable given a lack of guidance at this point in time. Jemena considers that a more prudent approach is for AEMO to be obligated to consult with the market to develop an industry agreed project plan and timetable by 1 April 2019 to determine the gas harmonisation commencement date and the arrangements for transition to the standard market timetable (see Jemena's response to GMRG question 39).

How will multi-jurisdictional pipelines will become subject to the proposed reforms?

For pipelines located in multi-jurisdictions and where one jurisdiction is not subject to the proposed Gas Market Review reforms, the pipeline must be exempt from the proposed reforms until such time that all relevant jurisdictions adopt the reforms. Jemena understands that it is still not decided whether the Northern Territory will adopt the reforms. If not, the Northern Gas Pipeline (**NGP**) is an example of a pipeline that should be exempt until the Northern Territory adopts and implements (including transitional periods) the reforms. Jemena requests that the GMRG exempts such pipelines under the rules in the above circumstances. For the NGP this means changes in the rules are required to include the Queensland component in the exemption.

⁸ Proposed NGR, Schedule 5, Part 6, rules 3 and 4.

Appendix A

GMRG Stakeholder Feedback Template

Page intentionally blank

A1. GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
3.4 Questions on the overall legal and regulatory framework		
1.	Do you believe the proposed amendments to the NGL, Regulations and NGR implement the design of the capacity trading reforms effectively? If not, why not?	<p>Jemena has addressed specific concerns below when there are obvious errors or when something could possibly be done more efficiently another way. However, Jemena notes that the proposed design of the capacity trading reforms is overly complex and have been developed in a very short period of time, with some detail yet to be developed through various other legal instruments (such as the Capacity Trading and Auction Procedures). Jemena has reviewed and responded to the GMRG’s questions in this context but is concerned that unintended consequences and ambiguity may be introduced if the package of legislative and regulatory changes is not subject to extensive review and testing beyond this consultation, including by industry specialist groups and/or consultants. The package of reforms can be very difficult to follow which may create a barrier to entry as well as introducing unintended consequences and ambiguity. Given this, it is difficult to be confident that the proposed amendments to the National Gas Law (NGL), Regulations and National Gas Rules (NGR) implement the design of the capacity trading reforms effectively.</p> <p>The draft package of proposed legislation runs to 265 pages. Jemena has been involved in working groups looking at auction design and the development of the Operational Transportation Service Code (Code). Nevertheless, Jemena has not previously seen the majority of the materials provided by the GMRG for consultation; there have been further extensive changes (particularly to the capacity auction) made to those elements of which Jemena has received earlier drafts and there are design features which have not previously been proposed by GMRG, whether in working groups or in earlier public consultation. It has not been possible in the space of six weeks to comprehensively review all of this material and to consider the implications of such fundamental and wide-ranging amendments to the industry.</p> <p>Jemena is concerned that these reforms are being rushed to implementation without industry having sufficient opportunity to review and test the proposed reforms, and to adapt in an efficient and cost-effective manner. Furthermore, the scale of the reform goes far beyond the problem originally identified of seeking a means to free up capacity on a handful of fully utilised pipelines where there was a concern that primary shippers were locking out new entrants by contracting more capacity than they regularly used. Applying the reforms to every pipeline, regardless of the availability of capacity, increases the costs that will be passed on to shippers (and ultimately is likely to contribute only to increase the delivered cost of gas). The net benefit of this requires close review.</p> <p>Jemena has less concern with the proposed capacity trading platform, on the basis that it provides a platform for the shipper to shipper trades which already occur in practice. However, Jemena is concerned by related provisions which</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
		<p>seek to set prices for accessing secondary services in a manner similar to full regulation and to oblige pipeline operators to permit the transfer of contractual terms other than capacity. These features do not appear necessary to achieve the stated aims of the AEMC's recommendations. Jemena also notes that the likely cost to implement the capacity trading (and indeed auction) platform will be more expensive than current options.</p> <p>Lastly, Jemena notes that, should the GMRG be willing to revisit the extent of the reforms proposed as set out in Jemena's overview and consider a staged approach to implementation, then the draft regulatory package and legislative changes will need to be amended accordingly.</p>
2.	<p>Do the market bodies have adequate powers to do what they need to do to facilitate the outcomes sought by the reforms?</p>	<p>Jemena is concerned that the proposed governance arrangements do not adequately provide any one party with responsibility for implementing the required reforms by 1 March 2019. We should learn from past experiences in implementing significant reforms (e.g. full retail competition, B2B transactions AMI metering, and most recently Power of Choice).</p> <p>In the case of Power of Choice, management of the industry reform was problematic due to (i) voluntary participation in testing and (ii) the lack of readiness criteria.</p> <p>For the full retail competition, B2B transactions and AMI metering reforms, there were central bodies that had responsibilities to coordinate critical activities including standards development and test management. Most importantly the governing body – with input from the impacted market participants – introduced a robust readiness criteria that required a significant majority of participants to comply with before the market started. This approach was adopted to ensure there were sufficient participants in the market ready to transact, ensures customers could be served and gives confidence amongst the participants that each is ready.</p> <p>Jemena considers that AEMO should be made accountable for the role of industry program manager and given power to determine industry timetable and readiness, including the requirement to develop robust readiness criteria that require a significant majority of participants to comply with before the market starts (or 'go live'). This approach will ensure there are sufficient participants in the market ready to transact, ensure shippers can be served and give confidence amongst the participants that each is ready.</p>
3.	<p>Do you agree with the GMRG's recommendation with regard to which rules are classified as civil penalty and/or conduct provisions (see Appendix A)? If not, why?</p>	<p>As with Jemena's comments at question 1 above, the penalties sought to be imposed and the enforcement burden placed upon the AER appears disproportionate to the problem which was originally reported to give rise to the reforms. To apply civil penalties on pipeline operators for failing to provide services which have to date rarely been requested and for which there may be no demand is unnecessarily draconian and seeks to punish service providers for a</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

Questions	Feedback
	<p>purported issue which is not of their creation – i.e. the purported hoarding of capacity on certain congested pipelines by shippers, not service providers.</p> <p>Jemena agrees that rules need to be enforceable and transgressions addressed. However, given the scale and complexity of the reforms is out of proportion to the issue which they are attempting to address, the risk of inadvertent non-compliance is high. In circumstances where there may be no demand for the relevant secondary service, this again will simply increase the costs of providing transportation for little net industry benefit. In particular, Jemena notes:</p> <ul style="list-style-type: none"> ▪ NGL s 228J – As per comments below, the retrospective application of this provision means that service providers will likely be immediately in breach in respect of post 3 January 2018 contracts. ▪ NGL s 228K – The test that service providers must not discriminate on price except where such discrimination “is conducive to efficient service provision” is uncertain and subjective. ▪ Rule 631(2) – This appears to double-up on rule 631(1) – i.e. if a service provider publishes a non-compliant standard agreement, it is subject to a penalty under rule 631(1) and is subject to a second penalty under rule 631(2) if it does not publish a revised and compliant agreement “as soon as practicable” after becoming aware of a non-compliance. ▪ Rule 632(3) appears to double-up with rule 634 – i.e. service providers face civil penalty under rule 634 if they recover costs in a manner not compliant with rule 634 and face a second civil penalty under rule 632(3) if they do this by means of a standard operational agreement. ▪ Rule 639(4) – as explained below, service providers are required to continue to provide services to secondary shippers in circumstances where the primary service is suspended. Effectively, this presents the service provider with a choice of providing services for free (for an unlimited period) or face a civil penalty. ▪ Rule 650(3) – as explained below, service providers are required to delay the scheduling of ‘lower tier’ services, even where this would involve breach of existing contractual obligations. The only option to avoid this dilemma is where the service provider can persuade the relevant primary user to agree to amend its primary Gas Trading Agreement to delay the scheduling of its services. The user is under no compulsion to do so.
4. Are there any changes to the NGL, Regulations or NGR that you consider are necessary to ensure parties are unable to game or undermine the intended objective of the reform package?	No comment.

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
5.	<p>Are any other transitional rules not currently included in Schedule 5 required? If so, what are they and why are they required?</p>	<p>If the GMRG is open to a staged approach to implementation of the proposed reforms as set out in Jemena’s overview, then obviously the whole draft of the regulatory package and legislative changes, including Schedule 5, will need to be amended.</p> <p>Given the uncertainty at this stage in what is actually required by all of industry to give effect to Gas Day Harmonisation Jemena suggests that the Part 26 transition date be one in which can be determined by AEMO based on further consultation. AEMO should be obligated to consult with the market to develop an industry agreed project plan and timetable by 1 April 2019 to determine the gas harmonisation commencement date and the arrangements for transition to the standard market timetable (see response to question 39).</p>
4.1.1 Exemptions		
6.	<p>Having regard to the objectives of the capacity trading reforms and the Energy Council’s approval of the GMRG’s recommendation on coverage of the auction, do you agree with the proposal to:</p> <ul style="list-style-type: none"> ▪ Apply the same exemption criteria to the obligation to publish a standard operational agreement and the auction? If not, why? <p>Replace the single end-user facility criterion, with a single shipper criterion? If not, why?</p>	<p>As per the comments above, and per Jemena’s overview, Jemena considers that the proposed scale and scope of the reforms is disproportionate to the perceived problem that they are intended to address. Rather than define narrow classes of pipeline which may secure exemption from the reforms, Jemena thinks a more practical and beneficial approach would be to focus initially on firm forward haulage on a selection of pipelines/key routes which are fully contracted. Further pipelines/routes would be progressively added where an independent body assesses the cost benefit analysis support inclusion for firm services and consults with industry on the proposed inclusion.</p> <p>This approach is most likely to result in efficient costs which better meet the intent of the AEMC’s recommendations and achieve the GMRG’s statement of outcome, the NGO, the Code objective and the Capacity objective.</p> <p>Jemena has concerns about the proposal to allow a single shipper exemption to be revoked if another shipper requests into an operational TSA with the service provider. Rather, revocation of an exemption should be decided on a case-by-case basis by an appropriate body (the AER) to test whether there is any realistic prospect of additional shippers emerging who may also wish to seek secondary capacity. This will avoid unnecessary administration costs where prospects are not realistic and it cannot be demonstrated that there is a net / benefit from revoking the exemption.</p> <p>As noted in Jemena’s response to question 40, pipelines that straddle multiple jurisdictions where one jurisdiction has not adopted and implemented the reforms should be exempted from the reforms.</p> <p>Jemena also considers that a power should be included to exempt on a case by case basis pipelines that technically / operationally cannot meet the requirements of the proposed reforms.</p> <p>Lastly, Jemena considers that there should be an exemption mechanism for service facilities that have not observed any trades on the capacity trading platform or day-ahead auction process over the past 12 months. In this instance,</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

Questions	Feedback
	the service provider should have the ability to apply to the AER for an exemption. The AER should be given powers to specify the form and content of the application, and to make the final determination on whether the exemption is warranted. This ensures that service providers do not incur unnecessary operational costs that are associated with the reforms in the event that there is insufficient customer demand.
<p>7. Do you think the following definition of 'Part 24 compression service facility' will achieve the objective of capturing stand-alone compressors, such as the Moomba, Ballera, Wallumbilla and Iona compression facilities, but excluding other compression facilities (e.g. compression facilities that form part of the pipeline that are used to provide an integrated service and upstream compression facilities)? If not, please explain what amendments you think need to be made to this definition.</p> <p>Part 24 compression service facility means a compression service facility that is or may be used to transport natural gas between a transmission pipeline operating at lower pressure and a transmission pipeline operating at higher pressure in order to facilitate the flow of natural gas between two or more receipt or delivery points where the receipt or delivery points are located on different transmission pipelines</p>	<p>Again rather than try and define what a Part 24 facility is, Jemena considers that a better approach would be to have a process whereby participants seek inclusion of a compression service facility following a cost benefit analysis by an appropriate independent body (such as the AER). Once a decision is made to include the facility it could then be listed as a Part 24 facility.</p>
<p>8. Do you agree with the proposal to allow facilities with a nameplate rating less than 10 TJ/day and single shipper</p>	<p>Jemena agrees that pipelines which only have one user do not warrant the expense of developing standard operational GTA or listing on the auction. However, despite AER granting an exemption (on application) for such a pipeline (under proposed rule 611), the service provider must still be prepared to provide a standard operational GTA within 60 days of</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
	<p>facilities, up to 60 business days to develop and offer a standard operational agreement? If not, why?</p>	<p>a prospective secondary shipper requesting one. This is regardless of whether the sole primary shipper has any intention of trading any capacity, or whether the service provider can give effect to the standard operational agreement.</p> <p>Jemena considers that the service provider should have the certainty of knowing that the exemption will apply for a certain period. Where an operator faces the prospect of having to treat the exempt pipeline as not exempt on 60 days' notice or face civil penalty, standard GTAs will need to be prepared for exempt and non-exempt pipelines alike.</p> <p>Furthermore, if the act of a 'prospective secondary shipper' requesting a standard operational GTA leads to revocation of the exemption (on grounds that there are now two 'users'), the exemption becomes meaningless. There must be a more rigorous test of whether a facility is 'in' or 'out' and the overall benefits of this than the request of a single individual – especially where there is no subsequent onus on that individual to obtain and use a secondary service. The first step should be an obligation placed on the prospective secondary shipper to seek request from the AER for a standard operational GTA based on demonstrating a net benefit. The AER should be given powers to set out the form of the request and its information requirements.</p> <p>Lastly, consideration must be given to when a standard operational agreement becomes effective. Jemena is concerned with the ability for a service provider to be able to give effect to Parts 24 and 25 of the NGR through compliant systems and processes. Until further detail is seen to enable participants to determine the specification of the required supporting IT systems and business processes it is difficult to know how much time it will take for service providers to implement the necessary IT systems and business processes but Jemena expects that it would take at least 6 months to put the system in place for a new facility operator from scratch. Jemena considers that the service facility should be obligated within 20 business days to submit to the AER a plan for implementing the necessary systems and processes to comply with Parts 24 and 25, and when a new standard operational agreement commences. The AER should be given powers to set out the form of the request and its information requirements to demonstrate the proposed commencement date of a new standard operational GTA.</p>
9.	<p>Do you agree with the proposal to allow a single shipper exemption to be revoked if another shipper enters into an operational TSA with the service provider? If not, please explain why.</p>	<p>See question 8 above.</p>
<p>4.1.2 Governance model for the Code</p>		

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

Questions	Feedback
10. Do you agree with the proposal to allow the AER to play a more proactive role in overseeing modifications to the Code? If not, please explain why.	Jemena notes that the approval of changes to the Code is not a standard role for AER. However, Jemena considers that the AER is possibly the best party to make decisions on modifications to the Code.
11. Do you agree with the proposed composition of the OTS Code Panel, which will comprise: two service providers, two shippers (one of which must be a large end-user) and AEMO? If not, please explain why not and the changes you would suggest be made to the composition of the OTS Code Panel.	Jemena agrees with the proposed composition of the OTS Code Panel. Jemena thinks that it is very important that an equal number of service providers and shippers be represented on the panel to provide the opportunity for balanced input into any OTS Code changes, given that they are the parties to the OTS agreements.
4.1.3 Measures to address contractual limitations in facility agreements	
12. Do you agree with the proposal to use a request and negotiate framework, rather than a standard form agreement model or more prescriptive provisions in the NGR to overcome the limitations on capacity trading in facility agreements? If not, please explain why.	<p>The GMRG’s Consultation Paper does not reflect the realities of the changes required to existing contracts to implement the necessary changes. The ‘request and negotiate’ framework is ineffective, as, even if primary shippers do not wish to participate in capacity transfers, other parts of the reforms require that their primary contracts be amended. In particular, existing customers of as available and interruptible services must agree to their contracts being amended to insert the new auction products higher in priority. Jemena comments in detail as follows:</p> <p>1. In order for primary shippers to transfer a subset of their contracted capacity to a secondary shipper (whether on the capacity trading platform or by other means such as bilateral negotiation)</p> <p>In this case, there are potentially prohibitions on trading capacity which would need to be removed. Jemena notes that proposed s228J of the new NGL provisions clarify that such prohibitions existing in a contract entered into prior to the arbitrary date of 3 January 2018 do not need to be amended. The adoption of 3 January 2018 appears to be based on an assumption that service providers have been aware since 3 January 2018 of the changes necessary to implement the reforms. However, we are only now seeing the draft legislation for the first time and cannot amend our primary GTAs to accommodate the reforms until their design is finalised. Contracts entered into since 3 January 2018 will still require amendment to comply with the legislation as finally enacted. To impose retrospective obligations on service providers implying that they had knowledge of the reforms prior to even the first drafts being published for consultation</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

Questions	Feedback
	<p>is unfair. Jemena suggests that, rather than choose an arbitrary date which has passed, the relevant date should be the date that the reforms take effect.</p> <p>Also, beyond prohibitions, there are a number of practical changes which need to be made to facilitate an operational transfer, such as adopting terminology for the subset of the MDQ to which the primary shipper's rights and obligations continue to apply during the term of an operational transfer and clarifying which rights and obligations do or do not apply to the transferred capacity during such term. Provided that s228J is amended so that it is no longer retrospective in effect, Jemena acknowledges and appreciates the intent that the changes required to effect operational transfer need be made only on application by primary shippers – i.e. only if a primary shipper intends to enter into operational transfers.</p> <p>However, Jemena is concerned by the previously unannounced provisions in proposed rule 642 which would require a pipeline operator to, on request by a primary shipper, agree to changes to that primary shipper's GTA which extend beyond what is reasonably necessary to give effect to operational transfers. Examples specifically given in the rule include:</p> <ul style="list-style-type: none"> • the ability to break a packaged service into its component parts for operational transfer • the ability to transfer to the secondary shipper commercial aspects of the primary contract such as imbalance entitlements, "hourly entitlements" (which Jemena takes to be a reference to scheduling profiles and maximum hourly quantities) and "other contractual entitlements to use the transportation capacity or use it in a given way. <p>The first of these effectively allows a primary shipper to sell a service which is not available to that primary shipper. There is no justification that Jemena can see for the creation of new services.</p> <p>The second of these erodes privity of contract. For example, a secondary shipper which has a standard operational GTA which does not provide an imbalance allowance may nonetheless inherit an imbalance allowance from its primary shipper against the pipeline operator's wishes. This leads to the terms and conditions under which the secondary shipper uses transferred capacity being an amalgam of its contract and parts of other people's contracts which will change depending upon who the relevant primary shipper is. Since the trades on the capacity trading platform are anonymous, the pipeline operator will not know to which capacity the relevant sub-sets of terms apply.</p> <p>Consistent with the overriding message of simplicity, Jemena submits that primary shippers should be able only to transfer capacity in services that they themselves hold and that the secondary shipper should use the transferred capacity in accordance with the terms of its contract such that all that is being transferred is capacity.</p> <p>2. To give effect to the Capacity Auction, numerous changes are required to existing GTAs</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

Questions	Feedback
	<p>While the auction design is not yet complete in terms of timescales and procedures, the following features appear to be fixed:</p> <ul style="list-style-type: none"> • The auction procedure introduces a new category of service which needs to be accommodated into the priority of service of primary GTAs in order to give effect to proposed rule 651. In order for service providers to be able to effect the priorities stated in the rules, each of the GTAs needs to be amended to reflect the new classes of service. Otherwise, the service provider would be in breach of the priorities set out in the contract. • At present, shippers nominating as available or interruptible services submit those nominations alongside firm service nominations and the service provider schedules all services and confirms nominations in one go. Usually GTAs contain binding time limits on the pipeline operator to respond to and schedule those nominations. In calculating whether as available and interruptible nominations can be accepted and scheduled, the service provider currently assesses both uncontracted capacity and, on pipelines with little uncontracted capacity, contracted but un-nominated firm capacity. Upon the introduction of the auction, the service provider will not know the total capacity available for as available and interruptible services until after the auction results are known. • This necessitates amendments to the nomination and scheduling process in existing GTAs to reflect the following: <ul style="list-style-type: none"> ○ (1) Nominations are received from primary shippers ○ (2) Firm nominations and AA/interruptible from unreserved capacity are scheduled and confirmed ○ (3) Contracted but un-nominated firm capacity is referred to auction ○ (4) Auction process closes and service provider is advised of results ○ (5) Service provider schedules the auction (secondary firm) nominations ○ (6) Service provider can schedule any remaining nominations from non-auction shippers for AA/interruptible which depends upon contracted but un-nominated firm capacity • In this regard, Jemena notes rule 650(3) obliges service providers to ensure that 'lower tier' services are scheduled after auction products and proposes to enforce this by applying a civil penalty on the service provider. Jemena considers this unfair in at least two regards: <ul style="list-style-type: none"> ○ Where a pipeline is not fully contracted and 'lower tier' services can be met from uncontracted capacity, there is no good reason why the users of such services should be made to wait later in the day than is presently the case for confirmation of their nominations. ○ Where (as is usually the case) the service provider is already under a binding contractual obligation to schedule 'lower tier' services by a certain time, if the user refuses to agree to amend its contract, the

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
		<p>service provider has no legally compliant option – they are inevitably either in breach of the Rules or in breach of contract.</p> <p>3. To give effect to Gas Day harmonisation, changes are required to existing GTAs</p> <p>While the design of Part 26 is likely in most cases to trigger change in law provisions in GTAs, this does not in itself have the effect of substituting the new timescales for those already stated. The change provides a prompt to amend agreements, but the process of agreeing and entering into amendments still needs to take place.</p> <p>Therefore, while the ‘request and negotiate’ framework will have the effect of making some changes to GTAs optional at the shipper’s discretion, it is crucial to understand that, even if this option is not exercised, the reforms will result in the need for primary GTAs to be amended. The cost of doing this will ultimately be passed on to shippers and their customers.</p>
13.	Do you think the 30 day period allowed for service providers to respond to a shipper seeking an amending agreement is appropriate? If not, why?	As explained in the response to question 12, this applies only to the discretionary elements of GTA amendment. If, as proposed rule 642 is currently drafted, primary shippers can use this process to seek to assign or delegate certain commercial features of their GTAs to others, the process will become bespoke and prolonged. If, as Jemena recommends, the rule is limited to a finite scope of changes necessary to give effect to operational transfers, a 30 days window for a response, followed by a negotiation and signature process would be achievable.
14.	Do you agree with the principles that service providers will be required to give effect to when amending the facility agreement in rule 642?	<p>Jemena is concerned by the previously unannounced provisions in proposed rule 642 which would require a pipeline operator to, on request by a primary shipper, agree to changes to that primary shipper’s GTA which extend beyond what is reasonably necessary to give effect to operational transfers. Examples specifically given in the rule include:</p> <ul style="list-style-type: none"> • the ability to break a packaged service into its component parts for operational transfer • the ability to transfer to the secondary shipper commercial aspects of the primary contract such as imbalance entitlements, “hourly entitlements” (which Jemena takes to be a reference to scheduling profiles and maximum hourly quantities) and “other contractual entitlements to use the transportation capacity or use it in a given way. <p>The first of these effectively allows a primary shipper to sell a service which is not available to that primary shipper. There is no justification that Jemena can see for the creation of new services.</p> <p>The second of these erodes privity of contract. For example, a secondary shipper which has a standard operational GTA which does not provide an imbalance allowance may nonetheless inherit an imbalance allowance from its primary shipper against the pipeline operator’s wishes. Since the trades on the capacity trading platform are</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
		<p>anonymous, we do not understand how the service provider would apply different terms to different elements of capacity dependent upon what terms were sold by the relevant primary shipper.</p> <p>The scope of the rule goes far beyond what is required to give effect to operational transfers and would require service providers to maintain separate T&Cs with secondary shippers for different services depending upon which primary shipper is the source of the capacity. The design of the capacity trading platform makes this unworkable.</p> <p>Consistent with the overriding message of simplicity, Jemena submits that primary shippers should be able only to transfer capacity in services that they themselves hold and that the same terms should apply to use of the transferred capacity by the secondary shipper, regardless of who that capacity was bought from.</p> <p>Jemena recommends that a much simpler approach is adopted whereby primary GTAs are amended only to the minimum extent required to give effect to operational transfers and that only capacity is transferred from primary to secondary shipper. The rights relating to the use of the capacity by the secondary shipper should be defined only by the secondary shipper's GTA.</p>
15.	Do you agree with the proposal to require service providers to comply with the change in receipt and delivery point provisions in rule 643?	No this should be covered in standard operational agreements (i.e. secondary shippers GTA) not the NGR as there are individual operational considerations that need to be factored in to such a request which will be specific to each pipeline. The Code already deals with such request and each potential shipper has the ability to seek an operational agreement under the Code. Therefore, this rule is unnecessary.
16.	<p>Do you agree with the proposal in rule 643(6) to restrict the ability of service provider's to make its consent on a receipt or delivery point change conditional on obtaining the consent of a third party but only:</p> <p>only:</p> <p>(a) where the transportation service provider would be in breach of contract if it gave effect to the request without the consent of the third party; and</p> <p>(b) if the third party is another transportation facility user or an associate of another transportation facility user, the requirement to obtain</p>	Jemena considers that the secondary capacity services should be 'Point to Point' to facilitate administration, but that secondary shippers should have similar rights in their operational agreements as primary shippers to request use of other delivery and receipt points. However, this must be subject to entering into allocation agreements and facility specific charges where these apply to primary shippers requesting the same. It should be sufficient to include this right in the standard terms set out in the Code.

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
	<p>that person's consent arises under a contractual provision entered into before 3 January 2018. If not, why?</p>	
4.1.4 Governance arrangements for the specification of zones		
<p>17.</p>	<p>Do you agree with the GMRG's proposed change to the governance arrangements for the specification of zones? If not, please explain why not and set out the arrangements that you think should be employed.</p>	<p>Whilst Jemena is comfortable with AEMO overseeing the specification of the zones, Jemena considers that the specification of zones is an operational matter and the obligation should be left to service providers. However, Jemena notes that the design of the auctions hybrid zonal model does not reflect the physical constraints of pipelines, reduces security of supply for all shippers without proper consideration of the complexity and risks. These concerns are discussed further below.</p> <p>1. Specification of zones by AEMO</p> <p>While specification of zones by AEMO appears to be a simple solution, in practice it introduces technical complexity and uncertainty into the process. In most cases the capacity on a pipeline is not a simple, single number, and depends on the delivery and receipt locations, pressures and flows, quality of gas and hourly profile which is unique to each pipeline. Jemena offers its products to customers on a Point to Point basis as this provides Jemena with sufficient certainty regarding these assumptions, resulting in an optimised estimate of available capacity. Point to Point ensures that Jemena can maximise the available capacity and efficiency of the invested infrastructure, and meet its contractual obligations. If zones are not defined correctly there is a real likely risk that points in single zones will not be of equivalent capacity and the ability of the transporter to optimise the asset will be compromised. The hybrid zonal model creates ambiguity in these assumptions which will reduce the amount of capacity that is available for trade and auction.</p> <p>2. Auctions hybrid zonal model</p> <p>The auctions hybrid zonal model does not reflect the physical constraints of pipelines, reduces security of supply for all shippers without proper consideration of the complexity and risks. The method to break a pipeline into segments between either delivery or receipt point zones does not reflect how pipelines operate hydraulically. Only when pipelines are broken into hydraulic sections (points where pipeline operators have control over pressure and/or flow) can the capacity of a pipeline segment be determined. To overcome this technical reality Jemena would need to materially reduce the operational nameplate capacity of its pipelines for the purposes of the capacity trading and auction zonal model (Zonal Capacity Reduction). The consequence must be that when determining the "contracted capacity" there</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

Questions	Feedback
	<p>must be a deduction for the Zonal Capacity Reduction to calculate the “contracted but un-nominated capacity”. Not doing so, although potentially increasing flexibility for shippers in transferring capacity between these delivery points, will place significant risk on secondary shippers of not being able to utilise the capacity they have purchased in an auction and risk delivery to primary shippers on subsequent gas days due to the change in conditions affecting modelled capacity assumptions.</p> <p>Preferred approach</p> <p>Jemena considers that it is beyond the scope of the auction process to attempt to force-fit simplifying zonal assumptions to all points on all pipelines. The service provider is best placed to provide this information for each point on each pipeline and recommend which points may be suitable for including in a zone. Further, service providers are incentivised to maximise capacity, best understand the asset are the parties who are at risk if the service cannot be provided based on the terms of the GTA. If AEMO is made accountable for determining zones as proposed by the GMRG then AEMO must be made accountable if it overrules a service provider and as a consequence a shipper does not receive its contracted service.</p> <p>Jemena proposes that:</p> <ul style="list-style-type: none"> • Service providers are responsible for determination the zones consistent with the principles • If required by AEMO, the determined zones be subject to an independent 3rd party certification by an engineering consultant.
18. Do you agree with the specification of the principles that AEMO would be required to have regard to when determining the allocation of service points to zones? If not, please set out why not and any amendments you would propose to these principles.	<p>As noted in question 17 above, the obligation should be on service providers to determine the allocation of service points to zones by application of the principles. Additional principles required are:</p> <ul style="list-style-type: none"> • A zone must take account of the physical characteristics of the service facility • A zone must take account of the rights of relevant shippers and the obligations of the service providers under existing contractual arrangements (including that zones should not overlap already existing commercial zones).
19. Do you agree with the information disclosure obligations that service	<p>Previous design decisions have been made that are result in unnecessary and onerous reporting requirements. For example, the recommendation to allow auction participants to only pay for transportation based on scheduled nominations if curtailed (as opposed to quantity bought at auction). The data and information required to facilitate this</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
	providers would be subject to under the NGR?	<p>feature is considerable given the number of nominations by shippers in a day. Furthermore, Jemena is accountable in providing information that it has no means to verify, as curtailment could be on facilities not owned or operated by Jemena, and is reliant on shippers, yet responsible for the data.</p> <p>This seemingly small design feature adds greatly to the costs, and given Jemena's expectation on the resultant auction prices, Jemena considers that the costs will outweigh the benefits to shippers.</p>
20.	Do you think any additional guidance on the specification of zones is required in the NGR?	<p>As stated in Jemena's response to question 17, Jemena considers that service providers are best placed to determine zones (if they must apply) given their detailed operational knowledge of their pipelines and the underlying allocation of risks between them and shippers. The determined zones could be subject to independent verification.</p> <p>Jemena also notes, that until Jemena sees AEMO's Capacity Transfer and Auction Procedures it's difficult to conclude whether additional guidance on the specification of zones is required in the NGR.</p>
4.1.5 Other matters		
21.	Do you think the proposed service provider cost recovery arrangements provide sufficient protection against the risk of 'gold plating' or 'cost shifting'? If not, please explain why and identify any other measures you think should be employed.	<p>Jemena agrees with the intent that transportation service providers should have a reasonable opportunity to recover their costs as proposed by rule 634(2), which is consistent with the pricing principles set out in NGL clause 24(2).</p> <p>The GMRG states in section 4.1.5 of its Consultation Paper that the intent is to provide service providers the opportunity to recover their incremental costs (and as reflected in proposed rule 634(1)). Proposed rule 634 does not specify who can be charged – only that service providers must have reasonable opportunity to recover (634(2)) and that charges may be allocated in a reasonable manner among 'transportation facility users' (whether under operational GTAs or otherwise) (634(5)).</p> <p>For the benefit of clarity, standardisation costs should explicitly include all costs incurred in implementing the reforms (including amending and renegotiating primary GTAs) plus a rate of return commensurate with the regulatory and commercial risks (consistent with NGL clause 24(5)) involved. This should expressly apply to establishing and maintaining the standard operational agreements and the systems and processes to comply with the obligations under Parts 24, 25 and 26 (which captures gas harmonisation) of the NGR (and not just Part 24), and the Capacity Transfer and Auction Procedures and any other relevant procedures or protocols developed by AEMO on an ongoing basis.</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

Questions	Feedback
	<p>Jemena is not clear on the level of the costs required to implement the reforms under Parts 24, 25 and 26 of the NGR (noting that greater clarity through AEMO’s draft Capacity Transfer and Auction Procedures and draft interface protocol will be provided from late May / early June).</p> <p>The draft rules are unclear as to how service providers can recover their costs and from whom. Since it is not possible at this stage to forecast the volume of use of secondary services, it appears not to be feasible to recover costs solely from the administration charges charged to secondary shippers. It will be necessary (hopefully, on a temporary basis) to levy additional charges on existing primary shippers as a ‘change in law’ cost.</p> <p>Consistent with Jemena’s overriding theme that the reforms should be introduced on a simplified and focussed basis only, Jemena is concerned that the need to amend all existing GTAs and to implement new systems on all facilities – regardless of whether they are currently fully contracted – will inevitably lead to a substantial cost burden on shippers in the initial years of the reforms. This is likely to result in upward pressures on the price of delivered gas which may be disproportionate to the perceived issues which the reforms have set out to address.</p>
5.1.1 Grandfathered rights	
<p>22. Do you think the proposal to limit the availability of grandfathered rights to gas fired generators for use at their generation plant is appropriate? If not, please explain why</p>	<p>Jemena is very concerned that its existing customers have rights which are being taken away under the proposed Gas Market Reforms. As available and interruptible services which Jemena’s existing customers have under primary GTAs will be scheduled later in the day and be curtailed in favour of a newly created secondary product. It is not clear to us why one group of customers (defined only by how the transported gas is ultimately used) is afforded grandfathering arrangements whilst other customers are not.</p> <p>Gas fired generation is, of course, an important class of gas use, but industrial and domestic supply are also important. It should be remembered that, unlike emergency provisions to sacrifice some classes of user in the event of gas shortage, this is an intentional decision driven by a perceived need to change market dynamics. Not only will the affected primary shippers not receive compensation for the downgrading of their existing services, but they will be asked to bear the costs of implementation.</p> <p>Jemena maintains that all existing primary services should maintain priority over new secondary services.</p>
<p>23. Do you think the proposed two-year transitional period for grandfathered rights is appropriate? If not, please explain why.</p>	<p>No comment.</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
24.	Are there any other limitations that you think should be placed on the availability and/or use of grandfathered rights?	See question 22 above.
5.1.2 Contract path specification		
25.	<p>Do you agree with the GMRG's proposal to use the hybrid model for forward haul and compression services? If not, please explain why and in doing so:</p> <ul style="list-style-type: none"> ▪ set out the approach you think should be employed; and ▪ why you think this approach is more consistent with the objectives of the capacity trading reform package, the NGO and the Energy Council's Vision. 	<p>Our response to questions 1 (on overall complexity of the reforms and the need to pare back and have a staged implementation) and 17 (dealing with the proposed hybrid model) applies equally to compression services.</p>
26.	Do you agree with the proposal to allow AEMO to determine the backhaul receipt and delivery points to be included in the auction? If not, please explain why	<p>Potential inclusion of backhaul services is overly complex and costly. It is not clear to us how AEMO will determine the backhaul receipt and delivery points to be included in the auction in a way which will be easy to implement and easy for customers to utilise the backhaul services.</p> <p>Jemena notes that much of the complexity around backhaul is to be developed by AEMO in procedures. As stated in earlier submissions, Jemena does not agree with the GMRG's suggested approach to include within auctioned products for interruptible backhaul services for single direction pipelines. Further, Jemena finds it difficult to understand how the proposal to include an interruptible backhaul service in the auction for single direction pipelines fits within the objective of the original reform to maximise flow on contractually congested pipelines with un-nominated capacity. Jemena also considers that inclusion of backhaul services is inconsistent with the AEMC recommendation for the <i>“development and introduction of a daily, day-ahead capacity auction for contracted but un-nominated [emphasis]</i></p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

Questions	Feedback
	<p><i>pipeline capacity and hub services which happens shortly after nomination cut-off time.</i>⁹ It is also not clear to Jemena how inclusion of backhaul services will better achieve the NGO given the complexity of implementing such services. If the GMRG is intent on including backhaul services, it should demonstrate the net benefit of doing so and how inclusion better achieves the NGO.</p> <p>Availability of backhaul services appears to Jemena (to the extent it is a problem at all) to be a problem which should be addressed under Part 23, not by means of the auction. In practice, it is rare that backhaul services cannot be provided due to a lack of uncontracted capacity.</p> <p>Lastly, if AEMO is tasked with choosing the points AEMO should ensure that points can be managed on behalf of multiple shippers. If backhaul services are included the service provider should decide what backhaul points are included as they best understand the assets.</p>
<p>27. If AEMO is to determine the backhaul points to be included in the auction, do you think any principles need to be included in the NGR to guide this decision, or should it just be carried out by reference to the Part 25 objective and the NGO?</p>	<p>As stated in Jemena’s overview and question 1, Jemena considers that the market reforms should focus on only contracted but un-nominated firm forward capacity is auctioned on select routes on a Point to Point basis where there is likely to be a net benefit from doing so to work first. As part of the AEMC’s biennial reviews into the effectiveness of the total gas market reforms, the AEMC could assess the extension of more auction products (e.g. backhaul) to determine whether the NGO will be better achieved and make a recommendation on whether the reforms should be more broadly applied including whether backhaul points should also be included.</p> <p>It is not clear how AEMO, or anyone other than the service providers, would determine the backhaul points to be included in the auction. Lastly, if the GMRG still insists on including backhaul points, as with the allocation of service points to zones, service providers should be responsible for determining the backhaul points rather than AEMO (see question 26).</p> <p>In determining backhaul points service providers should be able to consider the following principles:</p> <ul style="list-style-type: none"> • The impact of the Backhaul on the total available capacity for auction • The rights of relevant shippers and the obligations of the service providers under existing contractual arrangements • The operational and technical requirements necessary for the safe and reliable operation of the pipeline

⁹ Ibid, Table 1 Recommendations, Recommendation 5, page 14

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
		<ul style="list-style-type: none"> The impact on commercial matters and the likely impact on the legitimate business interest of the service provider and the interests of all persons who have rights to use the pipeline.
5.1.3 Methodology used to calculate auction quantity limits		
28.	<p>Do you agree with the proposal to require the methodology to be used to calculate the auction quantity limits to be specified in the Auction Procedures? If not, why?</p>	<p>Yes, Jemena considers that this makes sense, however, AEMO shouldn't calculate the auction quantity limits. That task should be completed by facility operators because they are ultimately responsible for fulfilling the sales administered by AEMO at auction. Capacity in a transportation pipeline is not a constant – it varies day to day dependent upon operational factors and natural factors beyond the control of service providers. Based on the GMRG proposal for AEMO to calculate the auction quantity limits, there is the risk that AEMO will undertake a formulaic process that will produce infeasible results brought about by a lack of understanding of the complexities of the assets.</p> <p>Jemena is concerned to note that proposed rule 653(1) provides that AEMO will determine the quantity of the pipeline's capacity which will be offered for sale by auction "where applicable using the auction information ... provided by the facility operator". This appears to assume that:</p> <ol style="list-style-type: none"> (1) The auction information which facility operators provide may not be relied upon (2) AEMO may on occasion substitute its own assessment of the capacity which is offered for sale by auction. <p>Jemena notes that proposed s91FEG of the NGL prohibits facility operators knowingly giving false or misleading auction information and that proposed s91FEH leaves facility operators open to possible civil action for negligently providing incorrect auction information. Therefore, if it was left to facility operators to determine the auction capacity made available, it would not be without responsibility.</p> <p>By making AEMO responsible for determining auction capacity, AEMO may, on a day, sell services through auction which the facility operator cannot fulfil as, in the facility operator's reasonable opinion, to do so would adversely affect the safe or efficient operation of the facility. Jemena considers that this approach is likely to result in curtailment of services – both of primary shippers using as available and interruptible services and possibly the auction participants.</p> <p>Jemena submits that there is no benefit in AEMO having the power to determine a higher auction quantity on the day than the quantity advised by the facility operator, as, if the additional capacity is sold and the operator considers it unsafe or not possible to fulfil the additional nominations, the service will in any event be curtailed. It is more prudent for the facility operator to determine how much capacity can be offered for use on a given day. It would still be open for</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

Questions	Feedback
	<p>disappointed prospective users to question the facility operator's judgement and, if on investigation, it was found that the information was misleading, the facility operator would be made accountable.</p> <p>Alternatively, if the GMRG does not change its view of AEMO determining the auction quantity limits, a provision is required in the NGL providing immunity for facility operators from civil liability due to subsequent curtailments of service.</p>
<p>29. Do you think any additional principles need to be included in the NGR to guide AEMO's development of this methodology? If so, please specify the principles and why you think they are required.</p>	<p>As per response 28, Jemena considers that facility operator's should develop the methodology.</p> <p>Jemena considers that the following principles should be considered when determining the auction quantity limit such that the methodology must:</p> <ul style="list-style-type: none"> • consider the impact of the zones on the total available capacity for auction • take account of the rights of relevant shippers and the obligations of the service providers under existing contractual arrangements • take account of the operational and technical requirements necessary for the safe and reliable operation of the pipeline • take account the impact on commercial matters and the likely impact on the legitimate business interest of the service provider and the interests of all persons who have rights to use the pipeline. .
5.1.4 Other matters	
<p>30. Do you think the balance that has been struck between the various legal and regulatory instrument is appropriate? If not, what changes do you think need to be made to achieve a better balance?</p>	<p>As per Jemena's overriding theme, the scope and scale of the reforms is disproportionate to the issue which they attempt to address. In addition, the reforms have introduced unexpected new elements of market intervention such as:</p> <ul style="list-style-type: none"> • Proposed s228K NGL which provides that service providers "must not engage in price discrimination when providing operational transportation services". It is not the case that unregulated pipelines must charge the same tariff to all primary users. Primary shippers have the benefit of Part 23 which provides safeguards to ensure that prices and terms are reasonable and reflect the outcome of a workably competitive market. Secondary shippers instead have Part 24 which echoes the same objective. However, Jemena understands s228K to be stating that (subject to the exception noted below) every secondary user must be charged exactly the same charges by the service provider, which Jemena considers is not reflective of a workably competitive market. <p>The majority of the transportation cost borne by secondary shippers is likely to be the tariff paid either to the primary shipper or as the successful auction bid. There seems to be no justification provided as to why</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
		<p>primary shippers are free to sell operational transfers to the highest bidder, but it is unlawful for the service provider to charge different charges (that is, any charges other than the tariff) to different customers.</p> <p>Jemena notes the provision at s 228K(2) that price discrimination is permitted where it “is conducive to efficient service provision”. We are unclear as to what this means or how it would be applied in practice. What a service provider may genuinely consider to meet this test may be ruled to be unlawful discrimination. We consider that the Code should exhaustively set out controls and expectations to be considered in the setting of secondary charges.</p> <ul style="list-style-type: none"> • Proposed rule 639 requires service providers to honour secondary services sold by primary shippers which have not complied with the terms of their GTAs. Jemena objects to two features: <ul style="list-style-type: none"> ○ Where the primary GTA has been terminated, the service provider must nevertheless continue to provide secondary services for at least 14 days afterwards at a tariff to be determined by AEMO. This could lead to service providers being obliged to offer services at a tariff determined by others when there are potential primary shippers to whom the released capacity could be sold. ○ Where the primary GTA has been suspended (e.g. for non-payment), the service provider must continue to provide services to the secondary shipper regardless of the fact that the service provider may not be paid at all. • Proposed rule 642 (see responses to questions 12 and 14) appears to exceed what is required as part of the reforms and instead drive harmonisation of primary and secondary GTA terms such that the contracts of all users would eventually be the same. Again, this is inconsistent with the stated objective of promoting reasonable terms which replicate a workably competitive market. In competitive, unregulated markets, terms and conditions other than just price are variables which are adjusted as part of overall deals. There are many good reasons why different customers of a service might have secured negotiated differences in their contractual terms.
31.	Do you think there are any contractual or other legal impediments to prevent auction facility operators giving effect to the results of the auction and auction service priorities? If so, what are they and how do you think they could be addressed?	<p>Jemena considers that (as detailed in Jemena’s response to question 12) significant changes will need to be made to its primary GTAs to give effect to the auction, which will impact on the existing rights of its customers.</p> <p>In addition (as detailed in Jemena’s response to question 28), since facility operators must fulfil auction results within the constraints of safe and responsible operation of their facilities and contractual obligations to their users, Jemena thinks it is necessary for facility operators to have the final say (on the day) on the auction quantities and to take responsibility for any miscalculation that may be discovered on subsequent investigation. Alternatively, if AEMO has the power to determine an auction quantity different from that advised by the operator, the facility operator should be immune from liability for the consequences of this.</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
32.	<p>Do you think information on intra-day curtailments to capacity sold in the auction should be published on the Bulletin Board during the gas day? If so:</p> <ul style="list-style-type: none"> ▪ What benefit do you think it would provide? ▪ Do you think the obligation to report this information should be limited to material curtailments (e.g. where the capacity sold in the auction is curtailed by more than 10%)? 	<p>Refer to question 19. Jemena considers the consideration of curtailment in the auction to be an overly complex and costly feature relative to the benefit that it provides. Increasing the volume and frequency of reporting only adds to the cost.</p>
33.	<p>Do you think information on the grandfathered rights that have been scheduled ahead of the auction should be published on the Bulletin Board after the gas day? If so, what benefit do you think it would provide?</p>	<p>The information on grandfathered rights might be subject to confidentiality which may limit AEMO's ability to publish it.</p>
34.	<p>Are there any other types of information that you think could be published that have not already been identified, which would allow auction participants to better understand the risks?</p>	<p>No comment.</p>
7.1 Allocation arrangements		
35.	<p>Do you have any concerns with allocation agents that operate at points through which gas is injected into or withdrawn from a Part 24 facility being</p>	<p>No comment.</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
	required to provide AEMO with the information set out in Table 7.1?	
36.	Is there other information regarding allocation arrangements that should be published to ensure these agreements do not act as a barrier to trade?	No comment.
8.1 Transitional arrangements		
37.	Are the provisions in the NGL and Part 26 of the NGR sufficient to trigger change of law provisions and enable changes required to existing contracts to implement the harmonisation of the gas day start time and, as applicable, the nomination cut-off time? If not, why?	<p>Please see Jemena's comments in answer to question 12. Jemena expects the changes to trigger change in law provisions in most or all of its GTAs. The effect of this is not to automatically incorporate the changes into the contract, but to trigger the need to negotiate amendments to each contract. Jemena also notes that there may be consequential changes to shippers' agreements with their customers to give effect to the reforms. Jemena would like to understand from the GMRG whether the Part 26 change of law provisions trigger changes to shippers' customer contracts, and if not, what the implication may be on implementation the reforms.</p> <p>Please also see Jemena's response to question 21 about the need to have recovery for costs incurred in making changes to Jemena's existing GTAs and processes to implement gas harmonisation.</p>
38.	<p>With regard to the information required to be published by facility operators:</p> <ul style="list-style-type: none"> Do you think transitional rule 4, Part 6 (Schedule 5) will facilitate coordination between interconnected facilities and AEMO without being overly burdensome on facility operators? If not, why? <p>Is the 30 June 2019 cut-off date for publication appropriate? If not, when should this information be required to be published and why?</p>	<p>There is a lack of clarity in the reforms in the event that interconnected parties have different views on the method of transition. For example, will AEMO act as a tiebreaker? Jemena expects AEMO to play a greater role in coordinating this activity and suggesting mechanisms for managing the transition given the size of and complexity of the change.</p> <p>As per question 39 below, Jemena considers that a more prudent approach is for AEMO to be obligated to consult with the market to develop an industry agreed project plan and timetable by 1 April 2019 to determine the gas harmonisation commencement date and the arrangements for transition to the standard market timetable (see response to question 5). That process would also determine the cut-off date for publication of information required by facility owners.</p>
9.1 Key timings		
39.	Do you have any concerns with the timings outlined Chapter 9? If so, what	1 March 2019 commencement date

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

Questions	Feedback
<p>are they and how do you suggest the timings are adjusted?</p>	<p>As set out in Jemena’s overview, sufficient detail and certainty is required around the new obligations to determine the scope of works required to determine whether the 1 March 2019 commencement date is achievable.</p> <p>The GMRG Consultation Paper sets out that approval of the proposed pack of legislative and regulatory changes are targeted to occur in South Australian Parliament after 30 September 2018 but before 1 December 2018. Committing to an investment in new IT systems and business processes prior the obligation being made could be a significant risk which it is unable to be assessed at this time given the lack of clarity and detail.</p> <p>In relation to determining the scope of works required, AEMO plans to release its detailed procedures and protocols progressively from the end of this month with its draft Procedures in late April (which Jemena understands will form the basis of the technical specification, with refinements over time), its draft guide to capacity and auction transactions in early May, its draft interface protocol in early June, and its detailed build pack by 1 August 2018 (this being the detail normally required to implement IT projects). AEMO is to publish its final Procedures by 1 December 2018. If AEMO provides clarity of the IT requirements in May 2018, and the technical specification does not require any major and/or new technology/platform changes for IT (leveraging existing technology), then possibly the 1 March 2019 commencement date could be met. However, if major and/or new technology/platform changes for IT are required, and/or the detailed technical specification is not available until later in the year, and/or there is still legal uncertainty, then commencement on 1 March 2019 will be compromised. Industry is likely to be concerned with commencing implementation prior to obtaining certainty of the technical specifications and the legal obligations.</p> <p>Jemena considers that in order to ensure appropriate accountability and management of the timing uncertainties, AEMO should be made accountable for industry co-ordination and implementation of the Gas Market Reforms. As soon as practicable AEMO must develop a workable industry project timeline (via industry consultation) and readiness criteria to assess industry readiness to meet the 1 March 2019 commencement date (see Jemena’s response to question 2).</p> <p>Gas harmonisation date 1 October 2019</p>

APPENDIX A — GMRG STAKEHOLDER FEEDBACK TEMPLATE

	Questions	Feedback
		<p>Jemena notes that the draft rules propose that AEMO has until 1 April 2019 to publish information about the arrangements for transition to the standard market timetable, and that facility operators have until 30 June 2019 to publish information about their arrangements for transition. It is not possible to conclude at this stage whether meeting the 1 October 2019 commencement date is possible given a lack of guidance at this point in time. Jemena considers that a more prudent approach is for AEMO to be obligated to consult with the market to develop an industry agreed project plan and timetable by 1 April 2019 to determine the gas harmonisation commencement date and the arrangements for transition to the standard market timetable (see response to question 5).</p>
40.	<p>In the event the capacity trading reforms are applied in the Northern Territory, do you believe the timings set out in Table 9.4 are appropriate? For example:</p> <ul style="list-style-type: none"> – Part 18 of the NGR uses ‘NT application date’, defined as the date falling 90 days after the date on which the first NT interconnector is commissioned, to determine when Part 18 applies to facilities in the NT. Following this 90 day period, BB facilities that are also NT facilities have 20 business days to apply to AEMO to register under Part 18. In practice, this means that NT auction facilities may be subject to the capacity auction (which commences on the date falling 80 business days after commissioning), prior to publishing information on the 	<p>Jemena considers that the timing of the introduction of the reforms to the NT is ultimately a question for the NT Government.</p> <p>For pipelines located in multi-jurisdictions and where one jurisdiction is not subject to the proposed Gas Market Review reforms, the pipeline must be exempt from the proposed reforms until such time that all relevant jurisdictions adopt the reforms. Jemena understands that it is still not decided whether the Northern Territory will adopt the reforms. If not, the NGP is an example of a pipeline that should be exempt until the Northern Territory adopts and implements (including transitional periods) the reforms. Jemena requests that the GMRG exempts such pipelines under the rules in the above circumstances. For the NGP this means changes in the rules are required to include the Queensland component in the exemption.</p> <p>Northern Gas Pipeline</p> <p>Table 9.4 of the Consultation Paper sets out the activities that Jemena must complete and by when once the NGP falls within the scope of Parts 24 and 25. As set out in question 39, it is not clear at this stage what the scope or timing requirements are to comply with the new Part 24 and 25 arrangements. Rather than set out a requirement for Jemena to comply with various rules based on a number of business days after the commissioning date, Jemena considers that a more prudent approach is for it to supply to an appropriate body, such as the AER, a plan within 20 business days of the commissioning date on how it will comply with Parts 24 and 25 (as shown in Table 9.4 of the Consultation Paper) which must include dates for compliance. The relevant body would then consider and approve the plan. This process will ensure that Jemena can reasonably comply with proposed Parts 24 and 25 of the NGR.</p>

	Questions	Feedback
	Bulletin Board. Should the Part 18 obligations come into effect for NT auction facilities prior to the commencement of the auction?	

A2. NATIONAL GAS LAWS AMENDMENTS (CAPACITY TRADING AND AUCTIONS), NATIONAL GAS RULES AND OPERATIONAL GAS TRANSPORTATION AGREEMENT CODE

Jemena’s comments on specific clauses or rules of the proposed new package of legislative and regulatory changes that support the GMRG’s proposed reforms are set out in Jemena’s overview in response to the GMRG’s Consultation Paper and the GMRG’s questions above. Most importantly, Jemena notes that its proposed staged approach, which it considers better achieves the intent of the AEMC’s recommendations, the GMRG’s statement of outcomes, and the NGO, will require substantial changes to the GMRG’s draft package of legislative and regulatory changes.

Jemena has not had the opportunity in the time available to comment on the reform package clause by clause. This does not mean that Jemena chooses not to comment.