



Western Australia

GAS CORPORATION ACT 1994

## **Gas Referee Regulations 1995**

These regulations continued to have effect in relation to the “privatised DBNGP system”, as part of the “repealed access scheme” until an “Access Arrangement” was approved under the Gas Pipelines Access (Western Australia) Law.

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Ceased on 07 Jan 2008

Version 00-d0-06

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## Gas Referee Regulations 1995

### Contents

#### Part 1 — Preliminary

1.	Citation	2
2.	Commencement	2
3.	Definitions	2
3A.	Application	5

#### Part 3 — Jurisdiction and powers of referee

13.	Referee bound by the Act and the regulations	6
14.	Referee is not an arbitrator	6
15.	General jurisdiction	6
16.	Exclusive jurisdiction with respect to prescribed disputes	7
17.	Exceptions to referee's exclusive jurisdiction with respect to prescribed disputes	7
18.	Referee may disqualify himself or herself	7
19.	Referee may extend ambit of proceedings regarding prescribed disputes	8
20.	Referee may extend ambit of consent proceedings	8
21.	Referral of prescribed disputes by the Court	8
22.	Jurisdictional disputes to be heard by referee	9
23.	Authority of referee	9
24.	Rules of natural justice	9
25.	Referee may give practice directions	9
26.	Miscellaneous powers of the referee	10
27.	Referee may dismiss matters before him or her	12
28.	Referee may consolidate matters	12

**Part 4 — Commencement and  
conduct of proceedings**

29.	Time bar	14
30.	Referral of prescribed disputes	14
32.	Referral of non-prescribed disputes	14
33.	Informality and expedition	15
34.	Referee may issue summons	15
35.	Protection and liabilities of witnesses	16
36.	Evidence before referee	16
37.	Representation	17
38.	Effect of appointment of new referee on evidence previously given and awards and determinations previously made	17
39.	Determination to be made according to law	18
40.	Confidentiality	19
41.	Death of a party	20
42.	Duties of parties	20

**Part 5 — Determinations, interest  
and costs**

43.	Determinations which may be made	21
44.	Form of determination	22
45.	Publication of determinations	22
46.	Time limits for making and default in making	23
47.	Interim determinations	23
48.	Consent determinations	23
49.	Power to correct determination	24
50.	Determination binding on all parties	24
51.	Certain determinations to be of no effect	24
52.	Determinations are subject to the Act	25
53.	Enforcement of determination	25
54.	Interest up to making of determination	26
55.	Interest on debt under determination	27
56.	Costs at discretion of referee	27
57.	Taxation	27
58.	No prospective agreement that parties bear their own costs	28
59.	When no provision in a determination for costs	28
60.	Conduct of parties is relevant	28

**Part 6 — Appeals, judicial review  
and the court**

61.	No appeal generally	30
62.	Appeal on questions of law	30
63.	Effect of variation	30
64.	Stay of execution of determination pending appeal	30
65.	Referee may state case for a Judge	30
66.	No exclusion of appeals and references	31

**Notes**

	Compilation table	32
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Western Australia

GAS CORPORATION ACT 1994

## **Gas Referee Regulations 1995**

Made by His Excellency the Governor in Executive Council.

## **Part 1 — Preliminary**

### **1. Citation**

These regulations may be cited as the *Gas Referee Regulations 1995*.

### **2. Commencement**

These regulations come into operation on the day on which they are published in the *Government Gazette*.

### **3. Definitions**

- (1) In these regulations, unless the contrary intention appears —
- “**Act**” means the *Gas Corporation Act 1994* or the *Dampier to Bunbury Pipeline Act 1997*, according to which of them is the Act under which the dispute concerned arises;
- “**Coordinator**” means the Coordinator of Energy under the *Energy Coordination Act 1994*;
- “**corporation**” means the Gas Corporation established under the *Gas Corporation Act 1994*;
- “**Court**” means the Supreme Court of Western Australia;
- “**DBNGP access contract**” means an access contract as defined in the *Dampier to Bunbury Pipeline Regulations 1998*;
- “**determination**” means a determination of the referee, whether interim or final, and includes award, order and direction;
- “**dispute**” means any dispute or difference and includes any prescribed dispute;
- “**dispute notice**” means any notice given by one party to a dispute to the other party or parties which describes the nature of the dispute between them and is stated to be a dispute notice for the purposes of regulation 30;
- “**exclusive jurisdiction**” means the jurisdiction granted to the referee by regulation 16;

**“grant of access”** means a grant of access under the *Gas Distribution Regulations 1996*;

**“Judge”** means a single judge of the Court;

**“misconduct”** includes corruption, fraud, partiality, bias or lack of independence from a party to a dispute;

**“party”** means a party to any dispute or proceedings, and includes any person claiming through or under a party, and also includes any permitted representative of that party;

**“prescribed DBNGP transmission dispute”** means a dispute between the DBNGP owner and the Coordinator or the corporation in its capacity as the operator of the gas distribution system, or between the DBNGP owner and any shipper or prospective shipper, dealing with —

- (a) whether the DBNGP owner has complied with the *Dampier to Bunbury Pipeline Act 1997*;
- (b) whether or not, for the purposes of clause 5 (1) of Schedule 1 to the *Dampier to Bunbury Pipeline Act 1997*, it would be technically and economically feasible to do something;
- (c) whether anything in a DBNGP access contract is inconsistent with the *Dampier to Bunbury Pipeline Act 1997* or these regulations;
- (d) whether anything in a DBNGP access contract that the DBNGP owner or the shipper or prospective shipper is seeking to negotiate would be inconsistent with the *Dampier to Bunbury Pipeline Act 1997* or these regulations; or
- (e) the meaning and effect of the *Dampier to Bunbury Pipeline Act 1997* and these regulations,

except that it does not include a dispute about the performance of any of the Coordinator’s functions or about a decision not to act in the performance of any of those functions;

**“prescribed dispute”** means a prescribed DBNGP transmission dispute or a prescribed distribution dispute;

**“prescribed distribution dispute”** means a dispute between the corporation in its capacity as the operator of the gas distribution system and the DBNGP owner, or between the corporation and any user or prospective user dealing with —

- (a) whether or not the corporation —
  - (i) has complied with the obligations imposed on it; and
  - (ii) has properly exercised any power granted to it, by Schedule 6 of the *Gas Corporation Act 1994*, the *Gas Distribution Regulations 1996* (but not any clause of Schedule 1 to the *Gas Distribution Regulations 1996* or any other term of a grant of access) or any other written law which relates to access to, or the granting of access to, capacity in the gas distribution system or the prices payable for such access or grant; or
- (b) subject to regulation 16 (2), whether the price to be paid by any user or prospective user has been determined or redetermined in accordance with the provisions of Part 5 of the *Gas Distribution Regulations 1996* and in accordance with any pricing methods adopted by the corporation;

**“proceedings”** means any proceedings before the referee whether final or interlocutory, and includes any application to the referee in connection with or at any stage of proceedings, and also includes the making of a determination;

**“reasonable and prudent person”** means a person acting in good faith with the intention of performing his or her legal obligations, and who in so doing and in the general conduct of his or her undertaking exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with recognized standards and applicable law engaged in the same type of undertaking under the same or similar circumstances and conditions;

**“referee”** means the person who for the time being holds, or is acting in, the office of the Western Australian Gas Disputes Arbitrator established by section 62 of the *Gas Pipelines Access (Western Australia) Act 1998*;

**“summons”** means a summons issued under regulation 34.

- (2) Terms used in these regulations have, in relation to a dispute, meanings that are consistent with the meanings those terms would have if they were used in the Act under which the dispute arises.

*[Regulation 3 inserted in Gazette 10 March 1998 pp.13512; amended in Gazette 9 February 1999 pp.445-6.]*

### **3A. Application**

These regulations apply in relation to disputes that arise under the *Gas Corporation Act 1994* or the *Dampier to Bunbury Pipeline Act 1997*.

*[Regulation 3A inserted in Gazette 10 March 1998 p.1352].*

*[Part 2 (regulations 4 to 12) Repealed in Gazette 9 February 1999 p.446.]*

### **Part 3 — Jurisdiction and powers of referee**

**13. Referee bound by the Act and the regulations**

The referee may not make a determination which is inconsistent with the Act or regulations made under it.

*[Regulation 13 inserted in Gazette 10 March 1998 p.1353.]*

**14. Referee is not an arbitrator**

The referee is not an arbitrator within the meaning of the *Commercial Arbitration Act 1985*, and the dispute resolution process is not an arbitration within the meaning of that Act.

**15. General jurisdiction**

- (1) The referee may hear and determine any dispute between the corporation and any user or prospective user, between the DBNGP owner and the Coordinator or the corporation in its capacity as the operator of the gas distribution system, or between the DBNGP owner and any shipper or prospective shipper, with respect to or arising out of any relevant legislation, one or more grants of access, one or more DBNGP access contracts, or the operating agreement referred to in regulation 23 (1) of the *Dampier to Bunbury Pipeline Regulations 1998*, including any dispute about —

- (a) the meaning, effect or operation of; or
- (b) the rights or duties of any person in connection with,

any relevant legislation or any of the other instruments referred to in this subregulation, but not including a dispute about the performance of any of the Coordinator's functions or about a decision not to act in the performance of any of those functions.

- (2) In subregulation (1) —

**“relevant legislation”** means the *Gas Corporation Act 1994* or regulations made under it, the *Dampier to Bunbury Pipeline Act 1997*, or the *Dampier to Bunbury Pipeline*

*Regulations 1998*, and includes any provision of the DBNGP access manual referred to in the *Dampier to Bunbury Pipeline Regulations 1998*.

*[Regulation 15 inserted in Gazette 10 March 1998 p.1353; amended in Gazette 9 February 1999 p.446.]*

**16. Exclusive jurisdiction with respect to prescribed disputes**

- (1) Subject to regulation 17, the referee has jurisdiction exclusive of the jurisdiction of courts and other tribunals to hear and determine disputes which are prescribed disputes.
- (2) The referee does not have exclusive jurisdiction in respect of any dispute between the corporation and a user concerning the charging of, or the amount of, an opportunity cost price under regulation 73 of the *Gas Distribution Regulations 1996*.

*[Regulation 16 amended in Gazette 31 December 1996 p.7325.]*

**17. Exceptions to referee's exclusive jurisdiction with respect to prescribed disputes**

A grant of exclusive jurisdiction to the referee under regulation 16 does not affect the rights of appeal, of judicial review, and to refer questions of law to a Judge under Part 6.

**18. Referee may disqualify himself or herself**

If at any time the referee believes that —

- (a) his or her hearing or determination of a dispute would or might result in misconduct by the referee;
- (b) there is a real danger of undue influence being exercised in relation to the referee; or
- (c) the referee is unsuitable to deal with the particular dispute,

the referee may, by his or her own motion or on the application of a party, disqualify himself or herself from hearing or determining that dispute.

**19. Referee may extend ambit of proceedings regarding prescribed disputes**

Where —

- (a) a prescribed dispute between any two or more parties is referred to the referee; and
- (b) there is some other prescribed dispute between some or all of those parties,

the referee may, upon application to the referee by any one or more of the parties at any time before a final determination is made in relation to the first-mentioned dispute, make an order (on such terms and conditions, if any, as the referee thinks fit) directing that the proceedings be extended so as to include the other prescribed dispute.

**20. Referee may extend ambit of consent proceedings**

Without limiting the referee's jurisdiction under regulation 19 in respect of prescribed disputes, the referee may with the consent of the parties determine any additional dispute that may be raised by any party by way of further claim, set-off, defence or counterclaim, subject to any conditions as to costs or otherwise that the referee may impose, provided that the additional dispute is within the referee's jurisdiction, whether or not a dispute notice has been given in respect of that additional dispute.

**21. Referral of prescribed disputes by the Court**

- (1) Where, on the application of any party to proceedings before a court, the court is satisfied that a prescribed dispute between any of the parties to those proceedings is before the court, the court is to order that the prescribed dispute be transferred to and determined by the referee.
- (2) Where the Court makes an order under subregulation (1), proceedings before the referee are by force of this regulation to be taken to have been commenced at the date of that order.

**22. Jurisdictional disputes to be heard by referee**

Any dispute which arises in proceedings before a referee as to the jurisdiction of the referee is to be heard and determined by the referee, and the referee's determination on the matter is subject to appeal in accordance with Part 6.

**23. Authority of referee**

- (1) Subject to the Act, subregulation (2), and the other provisions of these regulations, the authority of the referee to hear and determine a dispute referred to him or her is irrevocable.
- (2) The parties to a dispute which is not a prescribed dispute may agree unanimously in writing to revoke the referee's authority.  
*[Regulation 23 amended in Gazette 10 March 1998 p.1353.]*

**24. Rules of natural justice**

The rules of natural justice apply at and in connection with all proceedings.

**25. Referee may give practice directions**

- (1) The referee may from time to time give practice directions, whether general or in respect of particular proceedings, regarding all matters relating to the procedure and conduct of proceedings, including without limitation the following —
  - (a) for regulating and prescribing the procedure (including the method of pleading or otherwise defining the issues in a dispute) and the practice to be followed in proceedings before the referee and any matters incidental to or relating to any such procedure or practice;
  - (b) for regulating the sittings of the referee, including the commencement, adjournment and resumption of proceedings;
  - (c) for prescribing matters relating to evidence, including directions that depart from the law of evidence, and

directions regulating the means by which particular facts may be proved, the mode in which evidence thereof may be given, the examination, cross-examination and re-examination of witnesses, and the disclosure of the nature and substance of evidence to be given;

- (d) for the discovery, inspection and production of documents;
  - (e) for the serving and deemed serving of notices or other documents;
  - (f) regarding the manner, timing and costs of publication of determinations;
  - (g) for the setting and determination of time, time limits and extension of time; and
  - (h) for the assessment and taxation of costs, and for the setting of appropriate costs scales.
- (1a) A practice direction under subregulation (1) may authorize or require the referee not to disclose information identified as confidential in accordance with regulation 40 (2) to a person, whether or not a party to the proceedings, either absolutely or for a limited time.
- (2) The power to give practice directions in subregulation (1) may be exercised at any time and from time to time, and includes the power to alter, annul, or add directions, and to prescribe, alter, annul, or add forms.

*[Regulation 25 amended in Gazette 10 March 1998 p.1353.]*

**26. Miscellaneous powers of the referee**

- (1) The referee may of his or her own motion, but only to the extent reasonably necessary to facilitate the determination of a dispute presently before him or her —
- (a) retain the services of any person suitably qualified in any field of expertise to advise the referee in relation to matters within that field of expertise;

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- (b) retain an accountant, and submit to the accountant's examination such accounts connected with the dispute as the referee thinks fit;
  - (c) retain one or more duly qualified legal practitioners as counsel assisting the referee;
  - (d) consult in the absence of the parties with any person whom the referee thinks proper to consult;
  - (e) undertake his or her own investigations and inquiries;
  - (f) cause any maps, plans, models, reports and measurements to be made, written or taken that he or she considers necessary or expedient; and
  - (g) call witnesses.
- (2) A person retained under subregulation (1) (a) may sit with the referee during the hearing of all evidence relating to the person's field of expertise and may take part in the proceedings.
- (3) The referee, in making a determination, may adopt the opinion of any person retained or consulted under subregulation (1) (a), (b), (c) or (d), after first disclosing the opinion to the parties and receiving the parties' submissions thereon.
- (4) The costs and expenses of —
- (a) any person retained or consulted;
  - (b) any investigations or inquiries undertaken; and
  - (c) any maps, plans, models, reports and measurements made, written or taken,
- by or on behalf of the referee under subregulation (1) are to be reasonable and are to be in the referee's discretion and, without limiting that discretion, may be dealt with as part of the costs of the proceedings.
- (5) The term of retainer of any person retained or consulted under this regulation must end no later than the day on which the referee publishes his or her final determination in the proceedings in question.

**r. 27**

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- (6) Any witness called by the referee under subregulation (1) (g) may be cross-examined by any party, to the same extent (if any) that the party would be entitled to cross-examine that witness if the witness had been called by an opposing party.
- (7) Nothing in this regulation affects the referee's obligation to comply with the rules of natural justice.
- (8) In this regulation, a reference to the referee retaining or consulting any person or causing any maps, plans, models, reports and measurements to be made, written or taken, is to be read as a reference to the Coordinator doing the same at the request of the referee, and until the referee makes an order in the proceedings dealing with the costs and expenses of such persons, maps, plans, models, reports or measurements, the Coordinator is to meet such costs and expenses and keep detailed accounts of such costs and expenses.

**27. Referee may dismiss matters before him or her**

The referee may dismiss any matter before him or her on the grounds that a party's position is wholly without merit, or is vexatious or amounts to an abuse of process of the referee, and that dismissal is a determination for the purposes of the Act, regulations made under it, a DBNGP access contract, or a grant of access.

*[Regulation 27 amended in Gazette 31 December 1996 pp.7325-6; 10 March 1998 p.1353; 9 February 1999 p.447.]*

**28. Referee may consolidate matters**

- (1) Where in relation to two or more proceedings before the referee it appears to the referee upon the application of any one or more of the parties to those proceedings —
  - (a) that some common question of law or fact arises in both or all of them;

- (b) that the rights to relief claimed in both or all of them are in respect of or arise out of the same transaction or series of transactions; or
- (c) that for some other reason it is desirable to make an order under this regulation,

the referee may order those proceedings to be consolidated on such terms as he or she thinks just, or may order them to be heard at the same time, or one immediately after another, or may order any of them to be stayed until after the determination of any other of them.

- (2) Nothing in this regulation is to be construed as preventing the parties to two or more proceedings before the referee, from agreeing to consolidate those proceedings and taking such steps as are necessary to effect that consolidation.

## **Part 4 — Commencement and conduct of proceedings**

### **29. Time bar**

- (1) Proceedings in respect of any prescribed dispute may only be commenced within 2 years after the occurrence of the act or decision which is the subject of the dispute.
- (2) Proceedings in respect of any dispute within the referee's jurisdiction which is not a prescribed dispute may be commenced during any time in which, according to the nature of the dispute in question, proceedings are not time barred under any other written law.

*[(3) repealed]*

*[Regulation 29 amended in Gazette 10 March 1998 pp.1353-4; 9 February 1999 p.446.]*

### **30. Referral of prescribed disputes**

A party to any prescribed dispute may at any time give to the other party or parties to the dispute a dispute notice, and must at the same time lodge with the referee a copy of such notice, and if after 7 days of the lodging of the notice with the referee the dispute is not settled by agreement in writing between the parties then it is hereby referred for hearing and determination by the referee and proceedings before the referee have by force of this regulation commenced.

*[31. Repealed in Gazette 9 February 1999 p.446.]*

### **32. Referral of non-prescribed disputes**

The parties to any dispute which is not a prescribed dispute may, if the dispute is within the referee's jurisdiction, agree in writing to refer the dispute for the hearing and determination by the referee, and if so must lodge with the referee a copy of the agreement, and that dispute is thereby referred for hearing and

determination by the referee and proceedings before the referee have by force of this regulation commenced.

**33. Informality and expedition**

- (1) Subject to these regulations, proceedings must be conducted with as little formality and technicality, and with as much expedition, as the requirements of these regulations, and a proper hearing and determination of a dispute, permits.
- (2) The referee may from time to time make orders regulating the conduct of, and regulating parties' conduct in relation to, proceedings which are, and the parties to a dispute must at all times conduct themselves in a manner which is, directed towards achieving the objectives of subregulation (1).
- (3) An order under subregulation (2) is not a determination, and must be consistent with these regulations, the *Gas Distribution Regulations 1996*, and the *Dampier to Bunbury Pipeline Regulations 1998*, and any practice directions given by the referee under regulation 25.

*[Regulation 33 amended in Gazette 31 December 1996 p.7326; 10 March 1998 p.1354.]*

**34. Referee may issue summons**

- (1) The referee may, of his or her own motion or on the application of any party, issue a written summons requiring a person —
  - (a) to appear before the referee to give evidence, or to produce specified documents, or to do both; and
  - (b) to attend proceedings from day to day unless excused, or released from further attendance, by the referee.
- (2) A summons may be issued to a person under subregulation (1) whether or not the person is a party to the dispute.
- (3) A summons issued under subregulation (1) has the same force and effect as a subpoena issued by the Court, and may be enforced by the referee in the same manner.

- (4) If a party to a dispute —
- (a) refuses or fails to attend before the referee for examination when required under a summons by the referee to do so; or
  - (b) fails within the time specified by the referee or, if no time is so specified, within a reasonable time to comply with the requirement of the referee,

the referee may continue with the proceeding in default of appearance or of any other act by the party.

**35. Protection and liabilities of witnesses**

A witness summoned to attend or appearing before the referee has the same protection and is subject to the same liabilities as a witness in any case tried in the Court in any civil or criminal proceedings.

**36. Evidence before referee**

- (1) Evidence before the referee —
- (a) may be given orally or in writing; and
  - (b) must, if the referee so requires, be given on oath or affirmation or by affidavit.
- (2) The referee may administer an oath or affirmation or take an affidavit for the purposes of proceedings.
- (3) The referee in conducting proceedings is not bound by rules of evidence but may inform himself or herself in relation to any matter in such manner as he or she thinks fit.
- (4) The referee may make orders as he or she thinks fit for the remuneration of witnesses in accordance with the rules set out in Item 30 of Schedule 4 of the *Rules of the Supreme Court 1971* as if the proceedings conducted before him or her had been conducted before the Court.

**37. Representation**

- (1) A party to a dispute may, in any proceedings, be represented by a duly qualified legal practitioner or other representative.
- (2) The referee may require the parties to a dispute to attend a conference in the absence of their legal representatives or other representatives.
- (3) To the extent that a provision of a DBNGP access contract, a grant of access or any other agreement purports to limit or exclude any party's right to legal representation in any proceedings, that provision is of no effect.

*[Regulation 37 amended in Gazette 31 December 1996 p.7326; 10 March 1998 p.1354; 9 February 1999 pp.446 and 447.]*

**38. Effect of appointment of new referee on evidence previously given and awards and determinations previously made**

- (1) Where a new person takes over the functions of referee in place of a previous referee who has begun but not completed the hearing and determination of a dispute —
  - (a) the new referee may order the proceedings to be re-heard —
    - (i) in full, in which case all evidence heard by the previous referee is to be disregarded by the new referee; or
    - (ii) in part, in which case any evidence heard by the previous referee during the parts of the proceedings which are re-heard is to be disregarded by the new referee;
  - (b) if no order is made under paragraph (a), then the proceedings are to continue as though the new referee had been present from the commencement of the proceedings;
  - (c) if an order is made under paragraph (a) (ii), then —

- (i) the proceedings are to continue as though the new referee had been present during the earlier proceedings; and
  - (ii) the new referee is to treat any evidence given, document produced or thing done in the course of the earlier proceedings in the same manner in all respects as if it had been given, produced or done in the course of the proceedings conducted by the new referee;
  - (d) any interim determination made in the course of the earlier proceedings is by force of this regulation to be taken to have been made by the new referee; and
  - (e) the new referee may adopt and act on any determination of a matter made in the course of the earlier proceedings without applying his or her own judgment to the matter.
- (2) Subregulation (1) does not limit the ability of a person acting under section 71 of the *Gas Pipelines Access (Western Australia) Act 1998* to complete the hearing of a matter in accordance with section 72 of that Act.
- (3) In subregulation (1), “**earlier proceedings**” means the proceedings or parts of the proceedings which the new referee does not order to be re-heard under subregulation (1) (a) (ii).  
[Regulation 38 amended in Gazette 9 February 1999 p.447.]

**39. Determination to be made according to law**

- (1) Any question that arises for determination in the course of proceedings is to be determined according to law.
- (2) The referee, in making a determination which involves ascertaining the meaning of any provision of the Act or regulations made under it —
  - (a) must have due regard to any relevant prior determination of the referee; and
  - (b) is bound by any relevant prior judgment of the Court,

as to the meaning of the provision in question.

*[Regulation 39 amended in Gazette 31 December 1996 p.7326;  
10 March 1998 p.1354.]*

**40. Confidentiality**

- (1) All proceedings are to be conducted in private.
- (2) If a person, whether or not a party, who produces or discloses information in the course of any proceedings relating to a dispute, identifies the information as confidential before producing or disclosing it, the information is to be kept confidential by any other person who is a party and any person advising that other person, and by the referee and any person retained or consulted by the referee, for such period as may be reasonably required by the person producing or disclosing the confidential information.
- (3) If the dispute is a prescribed dispute, the application of subregulation (2) is subject to subregulation (4), any agreement with the person who identified the information as confidential, and any direction by the referee.
- (4) The referee in publishing his or her reasons under regulation 45 (4) is to —
  - (a) determine whether information identified as confidential under subregulation (2) has been reasonably so identified; and
  - (b) if it is practicable to do so and so far as is consistent with such publication, endeavour to protect any information reasonably identified as confidential and disclosed by any party in the course of proceedings,

but the referee or any person retained or consulted by the referee is not liable in respect of any loss or damage suffered by any person by reason of the referee's failure to protect such information.

**r. 41**

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- (5) An action for damages lies against any person (other than the referee) in respect of any breach by that person of the provisions of subregulation (2).

*[Regulation 40 amended in Gazette 10 March 1998 p.1354.]*

**41. Death of a party**

Where a party to a dispute dies, any proceedings before the referee are not to be discharged (either as respects the deceased or any other party) and the proceedings are to continue by or against the personal representative of the deceased.

**42. Duties of parties**

- (1) The parties to proceedings before the referee must at all times do all things which the referee requires to enable a just determination to be made and no party may wilfully do or cause to be done any act to delay or prevent a determination being made.
- (2) An action for damages lies against any party in respect of any breach by that party of the provisions of subregulation (1).

## **Part 5 — Determinations, interest and costs**

### **43. Determinations which may be made**

- (1) The referee may, subject to the Act and these regulations, and in particular but without limitation regulation 13, make any determination which the referee considers expedient to justly dispose of any proceedings before him or her.
- (2) Without limiting the generality of subregulation (1), the referee may —
  - (a) award damages (except in the case of a prescribed dispute);
  - (b) order any party to a dispute to do any thing or to refrain from doing any thing, whether permanently or for a specified time;
  - (ba) order the DBNGP owner and a prospective shipper, if they are parties to the dispute, to enter into an access contract —
    - (i) for capacity in Tranche 1; or
    - (ii) if there is no spare capacity in Tranche 1, for spare capacity in Tranche 2,on terms and conditions set out in the DBNGP access manual in accordance with clause 3 (3) of Schedule 1 to the *Dampier to Bunbury Pipeline Act 1997*;
  - (c) interpret the provisions of any written law or any contract;
  - (d) make a determination ordering specific performance of any contract if a Judge would have power to order specific performance of that contract;
  - (e) determine whether a DBNGP access contract, a grant of access or any other agreement has been frustrated and the consequences of that frustration;
  - (f) order rectification of a DBNGP access contract, a grant of access or any other agreement;

**r. 44**

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(g) make any order which a Judge may make under sections 76, 77, 78 and 79 of the *Fair Trading Act 1987* in relation to any dispute or prescribed dispute.

(3) In subregulation (2) (ba) —  
“**Tranche 1**” and “**Tranche 2**” have the same meanings as they have in the *Dampier to Bunbury Pipeline Regulations 1998*.

(4) Subregulation (2) (ba) limits subregulation (2) (b) and subregulation (1) to the extent only that an order that a DBNGP access contract be entered into can only be made under subregulation (2) (ba).

*[Regulation 43 amended in Gazette 31 December 1996 p.7326; 10 March 1998 pp.1354-5; 9 February 1999 p.447.]*

**44. Form of determination**

The referee must —

- (a) make any determination in writing;
- (b) sign the determination; and
- (c) provide a statement of the reasons for making the determination.

**45. Publication of determinations**

(1) The referee must, as soon as possible after making a determination, give copies of that determination to all parties.

(2) The corporation must give a copy of every final determination to the Minister.

*[(3) repealed]*

(4) The referee must, within a reasonable time after making a final determination in respect of a prescribed dispute that in any way relates to the gas distribution system, cause the statement of reasons for the determination to be given to the Coordinator, and the statement of reasons may be made public.

*[Regulation 45 amended in Gazette 31 December 1996 p.7327;  
10 March 1998 p.1355.]*

**46. Time limits for making and default in making**

- (1) The referee must make a determination within a reasonable time, and in any event but subject to subregulation (2) must do so within 3 months, after the conclusion of the hearing of the proceedings.
- (2) The referee may, with the agreement in writing of all parties to a dispute, make a determination later than 3 months after the conclusion of the hearing of the proceedings.

*[(3) repealed]*

*[Regulation 46 amended in Gazette 9 February 1999 p.447.]*

**47. Interim determinations**

The referee may make an interim determination.

**48. Consent determinations**

- (1) The parties to any dispute may lodge with the referee written consent to the making of a determination in any proceedings before the referee.
- (2) Upon receipt of written consent, the referee may settle and sign the consent determination in accordance with the terms of the consent.
- (3) A party may by notice in writing to the referee withdraw his or her consent at any time before the referee signs the consent determination.
- (4) The consent determination must state that it is made by consent and is to be of the same force and validity as if it had been made after a hearing by the referee.
- (5) If the referee is not satisfied by the written consent that the consent determination should be made, the parties to the dispute

are to be notified to appear before the referee to make submissions in support of the written consent.

- (6) The referee may not make any determination by consent that he or she could not have made after hearing the dispute.
- (7) If the consent determination is in respect of a prescribed dispute, the referee must cause the terms of the consent determination to be given to the Coordinator and the terms of the consent determination may be made public.

*[Regulation 48 amended in Gazette 31 December 1996 p.7327; 10 March 1998 p.1355.]*

**49. Power to correct determination**

Where a determination contains —

- (a) a clerical mistake;
- (b) an error arising from an accidental slip or omission;
- (c) a miscalculation of figures or a mistake in the description of any person, thing or matter referred to in the determination; or
- (d) a defect of form,

the referee may correct the determination.

**50. Determination binding on all parties**

Subject to regulations 51 and 52, a determination is binding on all parties to the dispute in respect of which it is made.

**51. Certain determinations to be of no effect**

If a determination requires the corporation or the DBNGP owner to do or refrain from doing any thing which the corporation or the DBNGP owner, in its discretion as a reasonable and prudent person, certifies in writing to the referee and all other parties to the dispute would jeopardise —

- (a) the continued safe operation and integrity of —

- (i) the gas transmission system; or
- (ia) the privatized DBNGP system;
- (ii) the gas distribution system;

or

- (b) the safety of any person,

then the whole of the determination is of no effect.

*[Regulation 51 amended in Gazette 31 December 1996 p.7328;  
10 March 1998 p.1355.]*

**52. Determinations are subject to the Act**

If a determination requires the corporation or the DBNGP owner to do —

- (a) any thing that is subject to approval under a written law, and in respect of which approval is not given; or
- (b) any thing that, under a written law, the corporation or the DBNGP owner has been or is directed not to do,

and the corporation or the DBNGP owner, as the case requires, certifies in writing to the referee and all other parties to the dispute that the approval is not given or that the direction was given, then the whole of the determination is of no effect.

*[Regulation 52 inserted in Gazette 10 March 1998 p.1355.]*

**53. Enforcement of determination**

- (1) A determination must be entered as a judgment of the Court, upon presentation to the Registrar of the Court of a copy of the determination signed by the referee, and on entry judgment of the Court is deemed to have been given in terms of the determination.
- (2) A determination may, once entered as a judgment of the Court, be enforced by a Judge in the same manner as a judgment or order of the Court to the same effect.

**54. Interest up to making of determination**

- (1) Subject to subregulation (4), in proceedings relating to a dispute which is not a prescribed dispute, where the referee makes a determination for the payment of money (whether on a claim for a liquidated or an unliquidated amount), the referee may include in the sum for which the determination is made interest at such rate as the referee may direct (being a rate not exceeding the rate at which interest is payable on a judgment debt of the Court) on the whole or any part of the money for the whole or any part of the period between the date of the occurrence of the act or decision which is the subject of the dispute and the date on which the determination is made.
- (2) Subject to subregulation (4), where —
  - (a) proceedings before the referee have been commenced for the recovery of a debt or liquidated damages; and
  - (b) payment of the whole or a part of the debt or damages is made during the currency of the proceedings and prior to or without a determination being made in respect of the debt or damages,the referee may order that interest be paid at such rate as the referee may direct (being a rate not exceeding the rate at which interest is prescribed for the purposes of section 142 of the *Supreme Court Act 1935*) on the whole or any part of the money paid for the whole or any part of the period between the date of the occurrence of the act or decision which is the subject of the dispute and the date of the payment.
- (3) Without limiting subregulation (2), proceedings before the referee are, for the purposes of that subregulation, by force of this regulation to be taken to have been commenced if a dispute capable of reference to the referee has arisen, and proceedings are deemed to have been commenced by regulation 30.
- (4) This section does not —
  - (a) authorise the payment of interest upon interest; or

- (b) apply in relation to any amount upon which interest is payable as of right whether by virtue of a DBNGP access contract, a grant of access or any other agreement or otherwise.

*[Regulation 54 amended in Gazette 31 December 1996 p.7328; 10 March 1998 p.1356; 9 February 1999 p.447.]*

**55. Interest on debt under determination**

Where the referee makes a determination for the payment of money, the referee may direct that interest at the same rate as that at which interest is payable on a judgment debt of the Court, is to be payable on and from the date of the making of the determination or such later date as the referee may specify on so much of the money as is from time to time unpaid and any interest that so accrues is by force of this regulation to be taken to form part of the determination.

**56. Costs at discretion of referee**

The costs of proceedings before the referee are to be in the discretion of the referee, who may —

- (a) direct to and by whom and in what manner the whole or any part of those costs is to be paid; and
- (b) tax or settle the amount of costs to be so paid, or any part of those costs, in accordance with regulation 57.

**57. Taxation**

- (1) Any costs of the proceedings (other than the fees or expenses of persons retained or consulted by the referee under regulation 26 (1) which are payable in accordance with an order of the referee and are not taxable) that are directed to be paid by a determination are to be taxed or settled by the referee.
- (2) Costs are to be taxed or settled under subregulation (1) by reference to —
  - (a) the scale of costs to be established by the referee; or

- (b) failing establishment of such scale, by reference to the costs scale applicable to matters brought in the Court and —
  - (i) if such scale does not specially provide for matters in respect of which costs are claimed, the referee may allow costs by way of analogy according to the item in the scale which is most nearly applicable thereto; or
  - (ii) if in the opinion of the referee there is no such item, the costs are to be fixed at such sum as in the opinion of the referee is adequate in the circumstances.

**58. No prospective agreement that parties bear their own costs**

A provision in a DBNGP access contract, a grant of access or any other agreement to the effect that the parties or a particular party to future proceedings before the referee are in any event to pay their own or any party's costs of any future proceedings, or any part of those costs, is of no effect.

*[Regulation 58 inserted in Gazette 10 March 1998 p.1356; 9 February 1999 p.447.]*

**59. When no provision in a determination for costs**

If no provision is made by a determination with respect to the costs of the proceedings, a party to the dispute may, within 14 days of the determination being given to that party pursuant to regulation 45 (1), apply to the referee for directions as to the payment of those costs, and the referee must, after hearing any party who wishes to be heard, amend the determination by adding to it such directions as the referee may think proper with respect to the costs of the proceedings.

**60. Conduct of parties is relevant**

The referee, in exercising the discretion as to costs conferred on the referee by regulation 56 —

- (a) must take into account any refusal or failure by a party to the dispute to comply with regulation 42; and
- (b) may take into account any other conduct by a party to the dispute.

## **Part 6 — Appeals, judicial review and the court**

**61. No appeal generally**

Other than in accordance with this Part, no appeal lies from a determination.

**62. Appeal on questions of law**

An appeal is to lie to a Judge on any question of law arising out of a final determination, and that appeal may be brought by any of the parties to a dispute within 21 days after the final determination is made, or within such further time as the Judge may allow.

**63. Effect of variation**

Where the determination of a referee is varied on an appeal under regulation 62, the determination as varied has effect (except for the purposes of this Part) as if it were the determination of the referee.

**64. Stay of execution of determination pending appeal**

- (1) Prior to the determination of an appeal, a Judge may make any order that he or she thinks fit relating to the stay or continuation in effect of any final determination or order made by the referee.
- (2) A Judge may by further order revoke, substitute or amend an order under subregulation (1).

**65. Referee may state case for a Judge**

- (1) The referee may of his or her own motion at any time prior to making a final determination refer any question of law raised by the dispute in question to a Judge, and a Judge has jurisdiction to determine that question of law.
- (2) A Judge, on any question of law referred to him or her under this regulation, may make whatever order (if any) as to costs that he or she thinks fit.

**66. No exclusion of appeals and references**

The rights —

- (a) of appeal under regulation 62; and
- (b) to refer questions of law to a Judge under regulation 65,

cannot be excluded or limited by any agreement, and to the extent that a provision of a DBNGP access contract, a grant of access or any other agreement purports to limit or exclude any or all of those rights, that provision is of no effect.

*[Regulation 66 amended in Gazette 31 December 1996 p.7328; 10 March 1998 p.1356; 9 February 1999 p.447.]*

### Notes

<sup>1</sup> This is a compilation of the *Gas Referee Regulations 1995* and includes the amendments referred to in the following Table.

*[The provisions under which these regulations were repealed by the Gas Pipelines Access (Western Australia) Act 1998 Sch. 3 but they continue under Sch. 3 cl. 9 to the extent that they relate to the privatised DBNGP system until an Access Agreement is approved in relation to that system.]*

### Compilation table

Citation	Gazettal	Commencement
<i>Gas Referee Regulations 1995</i>	30 May 1995 p.2155-72	30 May 1995 (see regulation 2)
<i>Gas Referee Amendment Regulations 1996</i>	31 Dec 1996 p.7323-8	1 Jan 1997 (see regulation 2 and <i>Gazette</i> 31 Dec 1996 p.7356)
<i>Gas Referee Amendment Regulations 1998</i> <sup>2</sup>	10 Mar 1998 p.1351-6	11 a.m. on 25 Mar 1998 (see regulation 2 and <i>Gazette</i> 10 Mar 1998 p.1317)
<i>Gas Referee Amendment Regulations 1999</i> <sup>3</sup>	9 Feb 1999 p.445-7	9 Feb 1999 (see regulation 2 and <i>Gazette</i> 8 Feb 1999 p.441)

**These regulations continued to have effect in relation to the “privatised DBNGP system”, as part of the “repealed access scheme” until an “Access Arrangement” was approved under the Gas Pipelines Access (Western Australia) Law.**

<sup>2</sup> Regulation 23 of the *Gas Referee Amendment Regulations 1998* reads as follows —

“

**23. Transitional provisions**

The referee may deal with a dispute arising before the commencement of these regulations that could have been dealt with if these regulations had not commenced, and may substitute the DBNGP owner for the corporation as a party to the dispute..

”

<sup>3</sup> Regulation 14 of the *Gas Referee Amendment Regulations 1999* reads as follows —

“

**14. Transitional provision**

The amendments made by these regulations do not apply in relation to any proceedings or appeal referred to in section 46A(2)

of the *Dampier to Bunbury Pipeline Act 1997* or section 90A(2) of  
the *Gas Corporation Act 1994*.

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