



Western Australia

# **Gas Supply (Gas Quality Specifications) Regulations 2010**

Compare between:

[14 Jun 2013, 00-c0-04] and [29 Jun 2013, 00-d0-03]



## Gas Supply (Gas Quality Specifications) Regulations 2010

### Part 1 — Preliminary

**1. Citation**

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

**2. Commencement**

These regulations come into operation on the day on which section 34 of the Act comes into operation.

**3. Terms used**

(1) In these regulations —

**AS**, followed by a designation consisting of a number and a reference to a year, refers to the text, as from time to time amended and for the time being in force, of the document so designated, published by Standards Australia;

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

**cubic metre**, of gas, means a cubic metre at a pressure of 101.325 kPa (absolute) and a temperature of 15°C;

**Dampier to Bunbury Natural Gas Pipeline** means the pipeline covered by the following licences under the *Petroleum Pipelines*

*Act 1969* or any licence under that Act that replaces one or more of those licences — PL 40, PL 41, PL 47 and PL 69;

**Department** means the department of the Public Service principally assisting in the administration of Part 2 of the Act;

**gas day** means the 24 hour period beginning at 08:00 hours on a day and ending at 08:00 hours on the following day;

**gas facility**, in the definition of **worst possible gas composition**, means a facility by which a gas consumer conducts the consumer's operations, a gas transmission pipeline or a gas storage facility;

**gas transportation service** means a service, provided for by a pipeline services agreement, which entails the receipt of gas at an inlet point on the pipeline and the delivery of gas at an outlet point on the pipeline, whether or not that service is expressed to include the transportation or haulage of gas;

**Goldfields Gas Pipeline** means the pipeline covered by licence PL 24 under the *Petroleum Pipelines Act 1969* or any licence under that Act that replaces that licence;

**higher heating value** means the number of megajoules liberated when one m<sup>3</sup> of gas is completely burnt in air and all the water formed by the combustion reaction is condensed to the liquid state, under the test conditions set down in ISO 6974 — 1984(E) for the analysis of the natural gas, using ISO 6976 — 1995(E) for the calculations from that analysis;

**ISO**, followed by a designation consisting of a number and a reference to a year, refers to the text, as from time to time amended and for the time being in force, of the document so designated, published by the International Organisation for Standardisation;

**Macedon inlet point** means the inlet point on the DBNGP where gas from the Macedon gas field will flow into the DBNGP;

**Mid West Pipeline** means the pipeline covered by licence PL 43 under the *Petroleum Pipelines Act 1969* or any licence under that Act that replaces that licence;

**Mondarra Gas Storage Facility** means the gas storage facility operated under the petroleum production licence L1R1 under the *Petroleum and Geothermal Energy Resources Act 1967* or any licence under that Act that replaces that licence;

**Mondarra Interconnect Pipeline** means the pipeline covered by licence PL 23 under the *Petroleum Pipelines Act 1969* or any licence under that Act that replaces that licence;

**outlet point**, on a gas transmission pipeline, means —

- (a) a point on the pipeline at which gas flows out of the pipeline; or
- (b) a number of such points that are adjacent to each other and that are declared to be a single point by these regulations;

**Parmelia Pipeline** means the pipeline covered by the following licences under the *Petroleum Pipelines Act 1969* or any licence under that Act that replaces one or more of those licences — PL 1, PL 2, PL 3 and PL 5;

**Parmelia Pipeline standard specification** means the gas quality specification set out in Schedule 1 clause 2(2);

**Part 4 pipeline** has the meaning given in section 15 of the Act;

**relevant section of a pipeline** has the same meaning as in regulation 17;

**short-term situation** has the meaning given in section 10 of the Act;

**system use gas**, in relation to a gas transmission pipeline, means gas used or vented in operating the pipeline or lost or unaccounted for;

**Western Australian standard specification** means the gas quality specification set out in Schedule 1 clause 1(1);

**Wobbe index** means the result obtained using the following formula —

$$\frac{\text{Higher heating value}}{\sqrt{\text{Relative density}}}$$

calculated in accordance with ISO 6976 — 1995(E);

**worst possible gas composition**, in relation to a particular person, gas facility and gas quality specification, means the composition of gas that —

- (a) complies with the gas quality specification; and
  - (b) has the most adverse effect for the person on the capacity of the facility or the operations and maintenance of the facility; and
  - (c) is capable of existing in a natural environment; and
  - (d) has been determined in accordance with ISO 6976 — 1995(E).
- (2) A reference in these regulations to the contact details of a business entity (for example, a body corporate, a joint venture or a partnership) is a reference to the address and telephone number of the business entity's principal place of business in the State (or any other address and telephone number in the State provided by the business entity for this purpose) and the Australian email address and the Australian website address of the business.
- (3) If a sequence of letters and numbers is used to identify a point on a gas transmission pipeline (for example, I1-01), that sequence refers to that point as described in the most recent description of the pipeline in the licence or licences in respect of the pipeline under the *Petroleum Pipelines Act 1969*.
- (4) In these regulations these abbreviations are used —

**DBNGP** for the Dampier to Bunbury Natural Gas Pipeline;

**GGP** for the Goldfields Gas Pipeline;

**m<sup>3</sup>** for cubic metres;

**TJ** for terajoules.

*[Regulation 3 amended in Gazette 14 Aug 2012 p. 3853.]*

**4. Use of notes and examples**

A note or example included in these regulations is explanatory and is not part of these regulations.

**5. Gas transmission pipelines**

For the purposes of the definition of *gas transmission pipeline* in section 3(1) of the Act, the DBNGP and the Mid West Pipeline are declared to be gas transmission pipelines.

**6. Gas storage facilities**

For the purposes of the definition of *gas storage facility* in section 3(1) of the Act, the Mondarra Gas Storage Facility is prescribed.

**7. Reference gas quality specifications**

For the purposes of the definition of *reference specification* in section 3(1) of the Act, the reference specifications for gas transmission pipelines are set out in Schedule 2.

## **Part 2 — Gas quality and capacity of PIA pipelines**

### **Division 1 — PIA pipelines**

#### **8. Application for making, amending or revoking a declaration**

- (1) A person may apply for a declaration under section 5 of the Act or for an amendment of, or the revocation of, such a declaration.
- (2) An application for a declaration under section 5 of the Act or for an amendment of, or the revocation of, such a declaration must include, or be accompanied by the following —
  - (a) the applicant's name and contact details;
  - (b) the number of the licence or licences under the *Petroleum Pipelines Act 1969* in respect of the pipeline;
  - (c) a description of the pipeline, which must match or be a subset of the description of the pipeline in the licence or licences;
  - (d) an explanation as to why the applicant considers the pipeline should be a PIA pipeline or an existing declaration should be amended or revoked;
  - (e) any other information required by the Minister.
- (3) The Minister may amend or revoke a declaration under section 5 of the Act that a gas transmission pipeline is a PIA pipeline without an application for the amendment or revocation.

#### **9. Criteria for making a declaration**

- (1) This regulation applies to the Minister when deciding whether to make a declaration under section 5 of the Act.
- (2) The Minister must be satisfied that it is reasonably likely that —
  - (a) if gas that does not comply with the reference specification for the pipeline flows into the pipeline, the capacity of the pipeline will be reduced; and



- (b) as a consequence of that reduction, the operator of the pipeline will fail to comply with the operator's obligations under one or more pipeline services agreements that relate to the pipeline.
- (3) The Minister must take into account the following —
  - (a) the extent to which the failure to comply with the operator's obligations is in relation to firm gas transportation services or interruptible gas transportation services;
  - (b) in relation to a failure to comply with an obligation in relation to an interruptible gas transportation service — the degree of interruptibility of the service;
  - (c) the consequences to the operator of the failure to comply with the operator's obligations, including the possibility and extent of loss of revenue.
- (4) The Minister may take into account the following —
  - (a) the degree of commercial risk taken by the operator of the pipeline;
  - (b) the advantages and disadvantages of making the declaration, in relation to users of the pipeline and other persons whose interests may be affected by the declaration;
  - (c) the public interest;
  - (d) any other matter the Minister considers relevant.

**10. Criteria for revoking a declaration**

- (1) This regulation applies to the Minister when deciding whether to revoke a declaration made under section 5 of the Act.
- (2) The Minister must —
  - (a) be satisfied that the Minister could not make a declaration (under regulation 9) that the gas transmission pipeline is a PIA pipeline; and

- (b) take into account the advantages and disadvantages of revoking the declaration, in relation to the operator of the pipeline, users of the pipeline and other persons whose interests may be affected by the revocation.
- (3) The Minister may take into account the following —
  - (a) the public interest;
  - (b) any other matter the Minister considers relevant.

**11. Criteria for amending a declaration**

- (1) If the Minister is to make an amendment to a declaration under section 5 of the Act that would have the effect that part of a gas transmission pipeline becomes, or becomes part of, a PIA pipeline, regulation 9 has effect in relation to the amendment as if a reference to a declaration were a reference to such an amendment.
- (2) If the Minister is to make an amendment to a declaration under section 5 of the Act that would have the effect that part of a gas transmission pipeline ceases to be, or be part of, a PIA pipeline, regulation 10 has effect in relation to the amendment as if a reference to revoking a declaration were a reference to such an amendment.

**12. Procedure for making, amending or revoking a declaration**

- (1) Before making, amending or revoking a declaration under section 5 of the Act, the Minister must —
  - (a) if the operator of the pipeline is not the applicant for the declaration, amendment or revocation — consult with the operator; and
  - (b) if the Minister calls for submissions — consider all written submissions that are received within the time for receipt of submissions.
- (2) The Minister need only comply with subregulation (1)(b) to the extent practicable.

- (3) The Minister may require the applicant to provide further information to support the application and may refuse to deal with the application until that requirement is met.
- (4) The Minister may deal with an application for a declaration under section 5 of the Act, or for an amendment of such a declaration, by amending an existing declaration or making a new declaration that replaces an existing declaration.
- (5) Subregulation (1) does not limit the procedure that the Minister may follow before making, amending or revoking a declaration.

**13. Content of certain decisions, and to whom copies must be given**

- (1) A declaration under section 5 of the Act, an amendment or a revocation of such a declaration and a decision to reject an application for such a declaration must include —
  - (a) the applicant's name and contact details and those of the operator of the pipeline if the operator is not the applicant; and
  - (b) the number of the licence or licences under the *Petroleum Pipelines Act 1969* in respect of the pipeline; and
  - (c) a description of the pipeline, which must match or be a subset of the description of the pipeline in the licence or licences.
- (2) The Minister must —
  - (a) within 20 business days of making a declaration, amendment or revocation or a decision to reject an application for a declaration (a **decision**) — give a copy of the decision to the operator of the pipeline, and to the applicant for the decision if the applicant is not the operator of the pipeline; and
  - (b) within 35 business days of making the decision — ensure that the decision is published on the website of the Department.

- (3) The operator of the pipeline must, within 20 business days of receiving a copy of the decision, give a copy of it to —
- (a) each user of the pipeline; and
  - (b) the operator of each gas transmission pipeline and each gas distribution system that is connected to the pipeline; and
  - (c) each gas producer who supplies gas that will flow into the pipeline.

Penalty: a fine of \$5 000 for each person the operator fails to give a copy to, up to a maximum of \$50 000.

*[Regulation 13 amended in Gazette 14 Aug 2012 p. 3854.]*

**14. Publishing description of a PIA pipeline**

- (1) The operator of a PIA pipeline must maintain an up-to-date description of the PIA pipeline on the website of the operator.  
Penalty: a fine of \$5 000.
- (2) The description of the PIA pipeline in subregulation (1) must, to the extent practicable, match or be a subset of the description of the pipeline in the licence or licences in respect of the pipeline under the *Petroleum Pipelines Act 1969*.

**15. Transitional provision for DBNGP and GGP**

Regulations 8, 9 and 12 do not apply to the first declarations under section 5 of the Act that the DBNGP and the GGP are, or that parts of those pipelines are, PIA pipelines.

**Division 2 — Content of pipeline impact agreements**

**16. Additional minimum requirements for a pipeline impact agreement**

For the purposes of section 7(1)(g) of the Act, the following matters are prescribed —

- (a) a description of the gas processing plant that will process the gas to be supplied, sufficient to identify the plant;

- (b) an estimate of any increase in the supply of system use gas that will be required as a result of the gas flowing into the pipeline, and how that increase is to be dealt with.

### **Division 3 — Relevant effects on a PIA pipeline**

#### **17. Working out the relevant effect on a pipeline's capacity**

- (1) For the purposes of section 7(3) of the Act, the relevant effect on the capacity of a PIA pipeline is to be worked out for each relevant section of the pipeline.
- (2) The relevant sections of a pipeline are set out in Schedule 3.
- (3) In working out the relevant effect on the capacity of a relevant section of a pipeline attributable to gas the subject of a, or a proposed, pipeline impact agreement flowing into the section of the pipeline, the following method applies —
  - (a) work out the capacity of the section of the pipeline that would be required for the operator of the pipeline to provide a firm gas transportation service in respect of the gas, on the basis that the gas is supplied by the gas producer at —
    - (i) the maximum quantity permitted by the pipeline impact agreement; and
    - (ii) the reference specification for the pipeline;
  - (b) work out the capacity of the section of the pipeline that would be required for the operator of the pipeline to provide a firm gas transportation service in respect of the gas, on the basis that the gas is supplied by the gas producer at —
    - (i) the maximum quantity permitted by the pipeline impact agreement; and
    - (ii) the gas quality specification in the pipeline impact agreement;

- (c) the difference between the capacity worked out under paragraph (a) and the capacity worked out under paragraph (b) is the change in the capacity of the section of the pipeline;
  - (d) the change in capacity is to be expressed as, or converted into, TJ/gas day.
- (4) In working out a capacity of a section of a pipeline for the purposes of subregulation (3), the following assumptions are to be made —
  - (a) that the assumed conditions apply;
  - (b) that the same assumed conditions apply each time that capacity is to be worked out;
  - (c) that the amount and proportion of the gas in the section of the pipeline does not change along the length of the section.
- (5) The assumed conditions (for example, ambient temperature, ground temperature, load conditions and line pack) are those most recently assumed by the operator of the pipeline when determining the maximum capacity of the pipeline, or the relevant section of the pipeline, available for firm gas transportation services.
- (6) In subregulation (3), a reference to supplying gas at a particular gas quality specification is a reference to supplying the gas at the worst possible gas composition for the operator of the pipeline in relation to the section of the pipeline and the gas quality specification.

**18. Working out the relevant effect on a pipeline's operations and maintenance**

- (1) For the purposes of section 7(3) of the Act, in working out the relevant effect on the operations and maintenance of a pipeline attributable to gas the subject of a, or a proposed, pipeline impact agreement flowing into the pipeline, the following apply —

- (a) only those changes to the operations and maintenance programme of the operator that result directly from the gas flowing into the pipeline may be considered as a relevant effect;
  - (b) only those changes to the operations and maintenance programme of the operator that a reasonable and prudent operator of the pipeline would undertake, while seeking to efficiently and sustainably minimise costs, may be considered as a relevant effect.
- (2) Changes in the amount of system use gas required as a result of the gas flowing into the pipeline are to be determined in TJ/gas day.

#### **Division 4 — Formation of pipeline impact agreements**

##### **19. Default procedure**

- (1) For the purposes of section 8 of the Act, this Division sets out the default procedure for the formation of a pipeline impact agreement in respect of the supply of gas that flows or that will flow into a PIA pipeline at an inlet point.
- (2) The default procedure does not apply to the formation of the pipeline impact agreement if —
  - (a) the gas the subject of the pipeline impact agreement does not comply with the standard specification for the pipeline; and
  - (b) the gas producer proposes that the relevant effects be dealt with by the warehousing method (prescribed by regulation 25).

##### **20. Extension of time**

- (1) A time period in a provision of this Division, within which a person must or may do a thing, may be extended by the Minister in a particular case if the Minister is satisfied that extenuating circumstances apply.

- (2) If the Minister extends a time period in a particular case, a reference in this Division to that time period is a reference to that period as extended.
- (3) The Minister cannot extend a time period that has expired.
- (4) The Minister may extend a time period any number of times.

**21. Application for a pipeline impact agreement — step 1**

- (1) If a gas producer gives the operator of the PIA pipeline an application for a pipeline impact agreement in relation to the supply of gas, the operator must, within 10 business days after the day on which the gas producer gave the application, determine whether or not the application meets the application criteria and notify the gas producer accordingly.
- (2) The application criteria are that the application sets out the approximate location of the inlet point, and sets out the quantity and quality of the gas to be supplied by —
  - (a) setting out the maximum quantity of gas to be supplied (in TJ/gas day); and
  - (b) setting out a gas quality specification, with which the gas is to comply, that includes the following components (assuming metric standard conditions) —
    - (i) maximum total inert gasses (in mol%);
    - (ii) maximum carbon dioxide (in mol%);
    - (iii) minimum and maximum higher heating values (in MJ/m<sup>3</sup>);
    - (iv) minimum Wobbe Index;
    - (v) maximum Wobbe Index;
    - (vi) maximum total sulphur, unodorised gas (in mg/m<sup>3</sup>);
    - (vii) maximum total sulphur, odorised gas (in mg/m<sup>3</sup>);
    - (viii) maximum hydrogen sulphide (in mg/m<sup>3</sup>);
    - (ix) maximum oxygen (in mol%);



- (x) maximum water (in mg/m<sup>3</sup>);
  - (xi) hydrocarbon dewpoint over the pressure range 2.50 to 8.72 MPa (absolute) (in °C).
- (3) If the operator fails to comply with subregulation (1) and no arbitration of a dispute about the application has commenced before the end of the last day of the period referred to in subregulation (1), the operator is to be taken —
- (a) to have notified the gas producer that the application meets the application criteria; and
  - (b) to have done so on the last day of the period referred to in subregulation (1).
- (4) A person cannot apply to have a dispute about the application referred to in subregulation (1) resolved under Part 5 —
- (a) unless the operator has notified the gas producer, under subregulation (1), that the application does not meet the application criteria; and
  - (b) more than 10 business days after the last day of the period referred to in subregulation (1).
- (5) An arbitrator of a dispute about the application must determine whether or not the application meets the application criteria within 45 business days after the day on which the dispute resolution procedure began (in accordance with regulation 57).

*[Regulation 21 amended in Gazette 14 Aug 2012 p. 3854-5.]*

**22. Determining the relevant effects on the pipeline — step 2**

- (1) This regulation applies if —
- (a) the operator has notified the gas producer that the application meets the application criteria; or
  - (b) an arbitrator has determined that the application meets the application criteria.
- (2) If this regulation applies, the operator must —

- (a) determine what are the relevant effects on the capacity, operations and maintenance of the pipeline of the gas flowing into it, and the extent of those effects; and
  - (b) notify the gas producer of that determination,within 20 business days after the day on which —
  - (c) the operator notified the gas producer that the application meets the application criteria; or
  - (d) the arbitrator determined that the application meets the application criteria.
- (3) If the operator complies with subregulation (2), the gas producer may, as many times as is necessary until the operator gives the gas producer a notice of acceptance under subregulation (4)(a), propose changes to the operator's determination of the relevant effect and their extent.
- (4) If the gas producer proposes changes to the operator's determination, the operator must, within 20 business days after the day on which the gas producer proposes the changes, give the gas producer a notice —
  - (a) accepting the changes; or
  - (b) setting out the operator's determination of the relevant effects and their extent, whether it incorporates any of those changes or not.
- (5) If —
  - (a) the gas producer proposes a change to the operator's determination of the relevant effect and their extent; and
  - (b) the operator fails to comply with subregulation (4) in relation to the proposed change; and
  - (c) no arbitration of a dispute about the relevant effects or their extent, has commenced before the end of the last day of the period referred to in subregulation (4) in relation to the proposed change,

the operator is to be taken to have given the gas producer a notice of acceptance under subregulation (4)(a) and to have done so on the last day of the period referred to in subregulation (4) in relation to the proposed change.

- (6) A person cannot apply to have a dispute about the relevant effects or their extent resolved under Part 5 unless —
- (a) the operator has notified the gas producer of the operator's determination of the relevant effects and their extent, under subregulation (2); or
  - (b) the operator fails to comply with subregulation (2).
- (7) An arbitrator of a dispute described in subregulation (6) must determine the relevant effects and their extent, within 60 business days after the day on which the dispute resolution procedure began (in accordance with regulation 57).

*[Regulation 22 amended in Gazette 14 Aug 2012 p. 3855.]*

**23. Choosing a method to deal with the relevant effects — resolving dispute — step 3**

- (1) The following indicate that the relevant effects on the capacity, operations and maintenance of the pipeline of the gas flowing into it, and the extent of those effects, are not in dispute —
- (a) that an arbitrator has, under regulation 22(7), determined what the relevant effects are and their extent;
  - (b) that the gas producer, after receiving the operator's determination of the relevant effects and their extent (whether an initial or subsequent determination), has given the operator a notice under subregulation (3) proposing that the relevant effects be dealt with by a particular method prescribed by regulation 25;
  - (c) that the operator gives the gas producer a notice of acceptance under regulation 22(4)(a).
- (2) Subregulation (1) is not an exhaustive list.

- (3) If, for the purposes of section 8(3) of the Act the gas producer —
- (a) proposes that the relevant effects be dealt with by a particular method prescribed by regulation 25; and
  - (b) gives the operator all of the necessary information in relation to the matters identified, in the default pipeline impact agreement for the particular method, as matters that the parties may resolve,

the operator must, within 20 business days after the day on which the gas producer gives the information, determine whether or not the information is complete, accurate and correct, and notify the gas producer accordingly.

- (4) A person cannot apply to have a dispute about the completeness, accuracy or correctness of the information referred to in subregulation (3) resolved under Part 5 —
- (a) unless —
    - (i) the operator has notified the gas producer, under subregulation (3), that the information is not complete, accurate or correct; or
    - (ii) the operator has failed to comply with subregulation (3);
- and
- (b) more than 6 months after the last day of the period referred to in subregulation (3).
- (5) An arbitrator of a dispute about the completeness, accuracy or correctness of the information must determine whether or not the information is complete, accurate and correct within 60 business days after the day on which the dispute resolution procedure began (in accordance with regulation 57).

*[Regulation 23 amended in Gazette 14 Aug 2012 p. 3856.]*

**24. Lapse of procedure for delay by gas producer**

- (1) A step in the default procedure in this Division that can be taken by a gas producer cannot be taken more than 12 months after the first day on which that step could have been taken.
- (2) Subregulation (1) does not apply to a step in the procedure for which an express time limit is provided.

**25. Prescribed method**

- (1) For the purposes of section 8(3)(b) of the Act, the warehousing method is prescribed.
- (2) The warehousing method entails the gas producer reserving, directly or indirectly, a specified amount of the capacity of the pipeline, or of one or more relevant sections of the pipeline, by committing to pay for and committing not to use that capacity.

**26. Default pipeline impact agreements**

For the purposes of section 8(3) of the Act, the default pipeline impact agreement for the warehousing method is —

- (a) in relation to the DBNGP — the standard form agreement, titled “Standard Form Agreement — Warehousing Method — DBNGP”, most recently published in the *Gazette* prior to the gas producer proposing, under regulation 23(3), that the relevant effect be dealt with by the warehousing method; and
- (b) in relation to the GGP — the standard form agreement, titled “Standard Form Agreement — Warehousing Method — GGP”, most recently published in the *Gazette* prior to the gas producer proposing, under regulation 23(3), that the relevant effect be dealt with by the warehousing method.

**27. Standard form agreements — publishing requirements**

For the purposes of section 8(7) of the Act, a standard form agreement must be published in the *Gazette*.

### **Division 5 — Short-term situations**

*[Heading inserted in Gazette 14 Aug 2012 p. 3857.]*

#### **28A. Application**

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

*[Regulation 28A inserted in Gazette 14 Aug 2012 p. 3857.]*

#### **28B. Period of modification**

In this Part —

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

*[Regulation 28B inserted in Gazette 14 Aug 2012 p. 3857.]*

#### **28C. Duration of period of modification**

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

*[Regulation 28C inserted in Gazette 14 Aug 2012 p. 3857.]*

**28D. Modification of Part 2 of Act**

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

*[Regulation 28D inserted in Gazette 14 Aug 2012 p. 3858.]*

**28E. Notification of extension of period of modification**

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

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- (2) The notice must —
- (a) set out the duration of the period of modification; and
  - (b) include a brief description of the short-term situation and brief reasons why the period of modification needs to be longer than 5 business days; and
  - (c) be published on the Department's website within 48 hours after the day on which the first person was notified under subregulation (1).
- (3) Each operator given a notice under subregulation (1)(b) must, as soon as practicable, give a copy of the notice to —
- (a) each user of the pipeline; and
  - (b) the operator of each downstream gas transmission pipeline connected to the pipeline; and
  - (c) the operator of each gas storage facility connected to the pipeline.

Penalty: a fine of \$50 000.

- (4) A copy of a notice given under this regulation must be included in the Department's annual report under the *Financial Management Act 2006* Part 5.

*[Regulation 28E inserted in Gazette 14 Aug 2012 p. 3858-9.]*



### **Part 3 — Modifying gas contracts**

**28. Standard gas quality specifications for pipelines**

For the purposes of section 13 of the Act, the standard gas quality specifications for gas transmission pipelines are set out in Schedule 1.

**29. Application of this Part before 1 July 2012**

This Part does not have effect so as to modify a gas contract until 1 July 2012.

**30. Modifying gas contracts — gas quality specifications**

(1) If —

- (a) a gas contract has effect in relation to the delivery or receipt of gas at or adjacent to a point that is or is of a type listed in the Table; and
- (b) a circumstance listed in the Table in relation to that or that type of point applies in relation to the point,

the contract is modified in relation to the delivery and receipt of gas at or adjacent to the point so that the gas quality specification specified in the Table for the or the type of point, and the circumstance, applies in substitution for the gas quality specification which would otherwise apply in relation to the delivery and receipt of gas at or adjacent to that point.

**Table**

<b>Item</b>	<b>Description of point</b>	<b>Circumstance</b>	<b>Gas quality specification</b>
1.	an inlet point on a gas transmission pipeline	one particular pipeline impact agreement has effect in relation to all gas flowing into the pipeline at that point	the gas quality specification set out in the pipeline impact agreement
2.	an outlet point on a gas transmission pipeline	one particular pipeline impact agreement has effect in relation to all gas flowing out of the pipeline at that point	the gas quality specification set out in the pipeline impact agreement
3.	an inlet point on a gas transmission pipeline	one particular pipeline impact agreement has effect in relation to some but not all gas flowing into the pipeline at that point	the Western Australian standard specification
4.	an outlet point on a gas transmission pipeline	one particular pipeline impact agreement has effect in relation to some but not all gas flowing out of the pipeline at that point	the Western Australian standard specification

Item	Description of point	Circumstance	Gas quality specification
5.	an inlet point on a gas transmission pipeline into which gas from the Parmelia Pipeline flows	one particular pipeline impact agreement has effect in relation to some but not all gas flowing into the pipeline at that point	the Parmelia Pipeline standard specification or the Western Australian standard specification when the Parmelia Pipeline standard specification is not the standard specification for the Parmelia Pipeline
6.	an outlet point on the Parmelia Pipeline	one particular pipeline impact agreement has effect in relation to some but not all gas flowing out of the pipeline at that point	the Parmelia Pipeline standard specification or the Western Australian standard specification when the Parmelia Pipeline standard specification is not the standard specification for the Parmelia Pipeline

<b>Item</b>	<b>Description of point</b>	<b>Circumstance</b>	<b>Gas quality specification</b>
7.	a point at which gas flows out of a gas distribution system	one particular pipeline impact agreement has effect in relation to some but not all gas flowing out of the system at that point	the gas quality specification in AS 4564 — 2005
8.	a point at which gas flows into the Mondarra Gas Storage Facility	one particular pipeline impact agreement has effect in relation to some but not all gas flowing into the facility at the point	the Western Australian standard specification
9.	a point at which gas flows out of the Mondarra Gas Storage Facility	one particular pipeline impact agreement has effect in relation to some but not all gas flowing into the facility at the point referred to in item 8	the Western Australian standard specification

Item	Description of point	Circumstance	Gas quality specification
10.	a point not on a gas transmission pipeline, through which gas, that has already flowed through a gas transmission pipeline, flows (other than a point to which item 7 applies)	one particular pipeline impact agreement has effect in relation to some but not all gas flowing through the point	the Western Australian standard specification
11.	a point not on a gas transmission pipeline, through which gas, that has already flowed through the Parmelia Pipeline, flows (other than a point to which item 7 applies)	one particular pipeline impact agreement has effect in relation to some but not all gas flowing through the point	the Parmelia Pipeline standard specification or the Western Australian standard specification when the Parmelia Pipeline standard specification is not the standard specification for the Parmelia Pipeline

<b>Item</b>	<b>Description of point</b>	<b>Circumstance</b>	<b>Gas quality specification</b>
12.	a point, at or between the point on the DBNGP identified as BP-LPGO and a point just downstream of the AGR off-take, at which gas that will flow into the DBNGP is delivered or received	one particular pipeline impact agreement has effect in relation to some but not all gas flowing into the plant at the inlet point to the plant	the reference specification for the DBNGP

(2) In subregulation (1) item 12 —

*AGR off-take* means the Australian Gold Reagents off-take point within the Wesfarmers LPG plant at Kwinana.

(3) If a particular point is covered by more than one item of the Table, the more specific item applies to the point to the exclusion of the other item or items.

(4) Subregulation (5) applies to a gas contract that has effect in relation to the delivery or receipt of gas at or adjacent to a point described in subregulation (1) item 12 if the contract is modified by subregulation (1).

(5) While gas flowing into the Wesfarmers LPG plant at Kwinana does not comply with one or more components of the reference specification for the DBNGP, the gas contract is to be taken to be further modified in relation to the delivery or receipt of gas at or adjacent to the point referred to in subregulation (4) so that the gas quality specification applicable under subregulation (1) is modified, in relation to gas to be delivered or received at or adjacent to that point, so that each component of the

specification with which the gas did not comply becomes what the gas composition of that gas was in respect of that component.

- (6) However, subregulation (5) does not have effect to modify the gas quality specification applicable under subregulation (1) to provide for a component of the specification that is less stringent than the corresponding component of the Western Australian standard specification.
- (7) Subregulation (9) applies to a gas contract that has effect in relation to the delivery or receipt of gas at or adjacent to a point described in subregulation (1) item 12 if —
  - (a) the contract was in force immediately before 1 January 2009; and
  - (b) the contract is not an extension (by renegotiation, or exercise of an option to extend, on or after 1 January 2009) of such a contract; and
  - (c) the contract is, or would but for subregulation (9) be, modified by subregulation (1).
- (8) Subregulation (9) does not apply in respect of a provision of a contract described in subregulation (7) if the provision is not in the same form as it was immediately prior to 1 January 2009, except for any modification by this regulation.
- (9) Subregulations (1) and (5) do not have effect to modify the contract in relation to the delivery or receipt of gas at or adjacent to the point to the extent to which a modification would otherwise result in the application of a gas quality specification in relation to the delivery or receipt of gas at or adjacent to the point that is more stringent than the gas quality specification which would, by operation of the contract, apply in relation to the delivery or receipt of gas at or adjacent to the point in the absence of subregulations (1) and (5).
- (10) However, a gas quality specification in respect of which subregulation (1) or (5) does not have effect, to some extent,

because of subregulation (9), is modified to the extent necessary to ensure that it does not contain a component of the specification that is less stringent than the corresponding component of the Western Australian standard specification.

**31.        Modifying gas contracts — system use gas**

- (1) Each gas contract under which a person is required to supply system use gas to the operator of the pipeline is modified so that the person cannot be required to supply more system use gas to meet the requirements of the operator arising from gas that does not comply with the reference specification for the pipeline flowing into the pipeline.
- (2) Subregulation (1) does not apply to a gas contract to the extent to which the person and the operator agree otherwise.



## Part 4 — Compensation

### Division 1 — Preliminary

#### 32. Terms used

(1) In this Part —

**facility** means a gas storage facility or a facility by which a gas consumer conducts the consumer's operations;

**fixed cost** means a cost that is not an ongoing cost;

**ongoing cost** means a cost that is incurred repeatedly, for example, the cost of system use gas, an operating or maintenance cost, or the cost of using other fuels;

**OOS gas**, in relation to a particular gas quality specification, means gas that does not comply with the gas quality specification, that is, out of specification gas;

**relevant cost** means a cost that is a relevant cost under regulation 34(1)(c);

**time value rate**, for a particular relevant cost, means an interest rate that is 4 percentage points higher than —

- (a) the average rate (rounded up to 4 decimal places) for bank accepted bills having a term equal to or nearest to 90 days as displayed on the "BBSW" page of the Reuters Monitor System at or about 10.30 a.m. Eastern Standard Time on the relevant day; or
- (b) if the rate is not displayed on that day, the rate displayed on the most recent day before that day;

**total of the claimable ongoing costs**, for a financial year, is the amount worked out under regulation 36(2).

(2) In this Part —

- (a) a reference to the conduct or requirements of a prudent consumer or operator is a reference to what a reasonable and prudent consumer or operator would do or require in

the particular circumstance, while seeking to efficiently and sustainably minimise costs; and

- (b) a reference to delivering or receiving gas at the relevant gas quality specification for a consumer or operator is a reference to delivering or receiving the gas at the worst possible gas composition for the consumer or operator in relation to the facility or pipeline of the consumer or operator and the relevant gas quality specification for the consumer or operator.

## **Division 2 — Entitlement and liability to compensation**

### **33. Agreements as to compensation**

This Part does not prevent parties from entering into agreements that provide for compensation in relation to the costs or losses otherwise provided for by this Part.

### **34. Entitlement to compensation — costs incurred**

- (1) A gas consumer, operator of a Part 4 pipeline or operator of a gas storage facility is entitled to compensation under this Part if —
  - (a) the consumer or operator is delivered gas that does not comply with the relevant gas quality specification for the consumer or operator, other than as a consequence of a short-term situation; and
  - (b) the consumer or operator has incurred a material, direct cost as a result of or in anticipation of the delivery of the gas; and
  - (c) the direct cost is a *relevant cost*, that is, one or more of the following apply —
    - (i) the cost was incurred to restore a reduction, or in anticipation of a reduction, in the capacity of the facility or pipeline, resulting from being delivered the gas;

- (ii) the cost is a plant and equipment cost incurred as a result of, or in anticipation of, being delivered the gas;
    - (iii) the cost was incurred as a result of increases in operating and maintenance requirements resulting from being delivered the gas;
  - and
  - (d) the relevant cost is compensable and claimable under this Part to some extent.
- (2) The extent to which a relevant cost is compensable, at a point in time, is worked out under Division 3.
- (3) The extent to which a relevant cost is claimable, at a point in time, is worked out under regulation 37.
- (4) If a gas consumer, operator of a Part 4 pipeline or operator of a gas storage facility incurs a relevant cost in anticipation of being delivered gas that does not comply with the relevant gas quality specification for the consumer or operator, Division 3 applies to the cost as if it had been incurred after the delivery of the gas in relation to which the cost was incurred had commenced, unless the contrary intention appears.
- (5) A cost that a gas consumer, operator of a Part 4 pipeline or operator of a gas storage facility incurs in anticipation of being delivered gas that does not comply with the relevant gas quality specification for the consumer or operator is not compensable to the extent to which it would otherwise become compensable and claimable under this Part more than 7 years after having been incurred.
- (6) In working out what is a direct cost, the following apply —
- (a) a cost is a payment by the consumer or operator to another person or entity for goods or services, and any financing costs associated with the payment;
  - (b) a cost is direct if it arises in dealing with the effect, or anticipated effect, of being delivered the gas;

- (c) for the purposes of paragraph (b) — the effect being dealt with is a limitation or other detriment to the facility or pipeline of the consumer or operator that has occurred or, in the case of an anticipated effect, that would have occurred but for it being dealt with in advance.
- (7) The employment costs of an employer for an employee for a period are direct costs if —
  - (a) the employee is diverted, for the period, from his or her normal duties to deal with the effect of the employer being delivered gas that does not comply with the relevant gas quality specification; and
  - (b) the employer has a system in place that records the amount of time certain employees spend on particular tasks (for example, a system of cost-coding for employees); and
  - (c) the system was in place before the delivery of the gas commenced; and
  - (d) the employer can verify, using that system, that the employee's time was spent on dealing with the effects described in paragraph (a).
- (8) Subregulation (7) does not limit subregulation (6) except in relation to working out whether employment costs in relation to an employee are direct costs.
- (9) If the effects on the capacity, operations and maintenance of the facility or pipeline of being delivered the gas are dealt with, wholly or in part, by enriching the gas and the enriching fuel is not purchased on the open market, then, for the purposes of subregulation (6)(a) —
  - (a) the consumer or operator is to be taken to have purchased the enriching fuel from another person or entity, if that was not the case; and
  - (b) the cost of the enriching fuel is its market value.

**35. Entitlement to compensation — loss of capacity of gas storage facility**

- (1) An operator of a gas storage facility is entitled to compensation under this Part if —
  - (a) the operator is delivered gas that does not comply with the relevant gas quality specification for the operator, other than as a consequence of a short-term situation; and
  - (b) there is a loss of capacity of the facility resulting from the operator being delivered the gas; and
  - (c) the operator commences restoring, or partly restoring, the capacity of the facility.
- (2) The operator is entitled to compensation for the loss of capacity during a period during which —
  - (a) the gas storage facility is being modified to restore, or partly restore, the loss of capacity; and
  - (b) the operator —
    - (i) fails to provide a storage service that it is obliged to provide as a result of the loss of capacity; or
    - (ii) could have sold the capacity being restored were it available;and
  - (c) the operator minimises, to the extent prudent, the loss of capacity and the duration of the modifications.
- (3) The amount of compensation is the market value, during the period referred to in subregulation (2), of the capacity being restored.
- (4) The operator is not entitled to compensation for the loss of capacity described in subregulation (2) to the extent to which compensation for it has already been provided whether under this Part or under an agreement referred to in regulation 33.

**36. Total amount of compensation**

- (1) The amount of compensation to which a gas consumer, operator of a Part 4 pipeline or operator of a gas storage facility is entitled, at a point in time, is worked out by adding together all of the following amounts —
  - (a) for each relevant cost of the consumer or operator that is a fixed cost — the amount of the compensable and claimable proportion of the relevant cost as adjusted under regulation 38;
  - (b) for the ongoing costs of the consumer or operator incurred in each completed financial year — the total of the claimable ongoing costs for the year, worked out under subregulation (2);
  - (c) for a loss of capacity of a gas storage facility — the amount of compensation to which the operator of the facility is entitled at that time under regulation 35.
- (2) The *total of the claimable ongoing costs* for a financial year is worked out as follows —
  - (a) the amount of the compensable and claimable proportion of each relevant cost that is an ongoing cost incurred in the financial year is added to become the provisional total of the claimable ongoing costs for the financial year; then
  - (b) the provisional total of the claimable ongoing costs for the financial year is reduced by the value of any collateral advantage, determined under subregulation (3), that the consumer or operator derived from the gas in that year; then
  - (c) the amount derived from paragraph (b) is adjusted under regulation 39.
- (3) If, in the financial year, the consumer or operator derived some ongoing (even if not continuous) advantage in relation to the facility or pipeline from the delivery of the gas, the value of the

collateral advantage referred to in subregulation (2)(b) is the value of that advantage for the year.

**37. The extent to which a relevant cost is claimable**

- (1) A relevant cost, to the extent to which it is compensable, is claimable if —
  - (a) in the case of a fixed cost — the cost has been incurred and the delivery of the gas in relation to which the cost was incurred has commenced; and
  - (b) in the case of an ongoing cost — the cost has been incurred, the delivery of the gas in relation to which the cost was incurred has commenced and the financial year in which the cost was incurred has ended.
- (2) A relevant cost, to the extent to which it is compensable, is not claimable to the extent to which compensation for it has already been provided whether under this Part or under an agreement referred to in regulation 33.
- (3) A relevant cost of a gas consumer is not claimable unless the consumer is entitled to the delivery of the gas under a downstream agreement that —
  - (a) was in force immediately before 1 January 2009; and
  - (b) is not an extension (by renegotiation, or exercise of an option to extend, on or after 1 January 2009) of such an agreement.
- (4) A relevant cost of a gas consumer is not claimable if the cost was incurred in relation to gas that was, or is to be, delivered on or after 1 January 2029.

**38. Adjustment of the compensable and claimable proportion of a relevant cost — fixed costs**

- (1) For the purposes of regulation 36(1)(a), the amount of the compensable and claimable proportion of the relevant cost is —
  - (a) increased by 10%; then

(b) if the amount became claimable more than 12 months after the day on which the cost was incurred — increased to adjust for the time value of expended money under subregulation (2).

(2) For the purposes of subregulation (1)(b), the amount is increased in accordance with the following formula —

$$RC_f = RC_i \left( 1 + \frac{TV}{1200} \right)^n$$

where —

n is the number of whole months commencing more than 12 months after the day on which the cost was incurred and ending before the day on which the amount became claimable;

RC<sub>f</sub> is the increased amount;

RC<sub>i</sub> is the amount, after the application of subregulation (1)(a);

TV is the time value rate applicable on the day when the relevant cost was incurred.

(3) If —

(a) the amount, as adjusted under subregulation (1)(a) and (b) (when relevant), has been claimed; and

(b) full compensation for the amount has not been provided within 45 days after the day on which the amount was claimed,

then, while the amount remains uncompensated to some extent, the uncompensated amount (as increased by any previous application of this subregulation) is increased, at the end of each month that commences after the 45 days, and after the 12 months after the day on which the cost was incurred, by the amount (*I*) worked out in accordance with the following formula —



$$I = UA \times \frac{TV}{1200}$$

where —

- I is the amount by which the amount is increased;
- TV is the time value rate applicable on the day when the relevant cost was incurred;
- UA is the uncompensated amount (as increased by any previous application of this subregulation).

**39. Adjustment of the total claimable ongoing costs**

- (1) For the purposes of regulation 36(2)(c), the amount derived from regulation 36(2)(b) is —
  - (a) increased by 10%; then
  - (b) increased (when relevant) to adjust for the time value of expended money under subregulation (2).
- (2) If —
  - (a) the amount (as adjusted under subregulation (1)(a)) has been claimed; and
  - (b) full compensation for the amount has not been provided within 45 days after the day on which the amount was claimed,

then, while the amount remains uncompensated to some extent, the uncompensated amount (as increased by any previous application of this subregulation) is increased, at the end of each month that commences after the 45 days, by the amount (*I*) worked out in accordance with the following formula —

$$I = UA \times \frac{TV}{1200}$$

where —

- I is the amount by which the amount is increased;

TV is the time value rate applicable on the day when the amount was claimed;

UA is the uncompensated amount (as increased by any previous application of this subregulation).

**40. Liability to compensation and extent of liability**

- (1) A gas producer is liable to provide compensation to a gas consumer, operator of a Part 4 pipeline or operator of a gas storage facility who is entitled to compensation under this Part if the gas producer supplies gas —
  - (a) at least some of which flows into the facility or pipeline of the consumer or operator; and
  - (b) which does not comply with —
    - (i) in the case of an operator of a Part 4 pipeline — the reference specification for the pipeline; or
    - (ii) in the case of a gas consumer or an operator of a gas storage facility — the reference specification for a gas transmission pipeline through which the gas flowed before it was delivered to the consumer or operator.
- (2) A gas producer is not liable to provide compensation in relation to a supply of gas the quantity of which does not exceed 1500 TJ/year.
- (3) A gas producer is not liable to provide compensation in relation to a supply of gas for any period during which —
  - (a) the effects on the capacity, operations and maintenance of the first pipeline into which the gas flows are dealt with by way of a gas blending arrangement; and
  - (b) there is no reduction in the capacity of the pipeline attributable to the gas flowing into it.
- (4) In subregulation (3) —

***gas blending arrangement***, in relation to the supply of gas (the ***OOS gas***), means an arrangement, to which the gas producer is

a party, under which a gas producer agrees to supply, or to continue to supply, gas that offsets the effects of the supply of the OOS gas on the capacity, operations and maintenance of the pipeline.

- (5) The extent of the gas producer’s liability to the consumer or operator, at a particular point in time, is worked out in accordance with the following formula —

$$EL = (C_f \times GPP_f) + (C_o \times GPP_o)$$

where —

- $C_f$  is the amount of compensation to which the consumer or operator is entitled under regulation 36, at that point in time, that is made up of fixed costs;
- $C_o$  is the amount of compensation to which the consumer or operator is entitled under regulation 36, at that point in time, that is made up of ongoing costs;
- $EL$  is the extent of the gas producer’s liability;
- $GPP_f$  is the proportion of the producer’s contribution to the OOS gas delivered to the consumer or operator worked out under subregulation (6) in relation to fixed costs;
- $GPP_o$  is the proportion of the producer’s contribution to the OOS gas delivered to the consumer or operator worked out under subregulation (7) in relation to ongoing costs.

- (6) The proportion of the producer’s contribution to the OOS gas delivered to the consumer or operator in relation to fixed costs is worked out in accordance with the following formula —

$$GPP_f = \frac{\sum_{i=1}^n PIAQ_i \times (RHHV - PIAHHV_i)}{\sum_{j=1}^m PIAQ_j \times (RHHV - PIAHHV_j)}$$

where —

- RHHV is the lowest HHV permitted by the relevant gas quality specification for the consumer or operator;
- m is the number of pipeline impact agreements in respect of a supply of gas some of which flows into the facility or pipeline of the consumer or operator;
- n is the number of pipeline impact agreements, to which the producer is a party, in respect of a supply of gas some of which flows into the facility or pipeline of the consumer or operator;
- PIAQ<sub>i</sub> is the maximum quantity (in TJ/gas day) at which gas may be supplied under the i<sup>th</sup> pipeline impact agreement to which the producer is a party;
- PIAQ<sub>j</sub> is the maximum quantity (in TJ/gas day) at which gas may be supplied under the j<sup>th</sup> pipeline impact agreement;
- PIAHHV<sub>i</sub> is the lowest HHV permitted by the gas quality specification in the i<sup>th</sup> pipeline impact agreement to which the producer is a party;
- PIAHHV<sub>j</sub> is the lowest HHV permitted by the gas quality specification in the j<sup>th</sup> pipeline impact agreement.

- (7) The proportion of the producer's contribution to the OOS gas delivered to the consumer or operator in relation to ongoing costs incurred in a financial year is worked out in accordance with the following formula —

$$GPP_o = \frac{\sum_{i=1}^n PIAQ_i \times (RHHV - PIAHHV_i)}{\sum_{j=1}^m PIAQ_j \times (RHHV - PIAHHV_j)}$$

where —

- RHHV is the lowest HHV permitted by the relevant gas quality specification for the consumer or operator;

- m is the number of pipeline impact agreements in respect of a supply of gas some of which flows into the facility or pipeline of the consumer or operator;
- n is the number of pipeline impact agreements, to which the producer is a party, in respect of a supply of gas some of which flows into the facility or pipeline of the consumer or operator;
- PIAQ<sub>i</sub> is the quantity of gas supplied in the financial year under the i<sup>th</sup> pipeline impact agreement to which the producer is a party;
- PIAQ<sub>j</sub> is the quantity of gas supplied in the financial year under the j<sup>th</sup> pipeline impact agreement;
- PIAHHV<sub>i</sub> is the average HHV at which gas was supplied in the financial year under the i<sup>th</sup> pipeline impact agreement to which the producer is a party;
- PIAHHV<sub>j</sub> is the average HHV at which gas was supplied in the financial year under the j<sup>th</sup> pipeline impact agreement.
- (8) If an arbitrator decides that subregulations (5) to (7) do not adequately take into account the particular circumstances, the arbitrator is not bound by the provisions, but may use them as a guide, modified as necessary, to achieve a result that —
- (a) is fair and equitable to all the parties to the arbitration; and
  - (b) to the extent practicable, shares the liability to pay compensation amongst the liable gas producers in proportion to each producer's contribution to the OOS gas delivered to the consumer or operator.

#### **41. Recovery of compensation**

- (1) If an amount of compensation to which a person is entitled under this Part has been determined by arbitration of a dispute, the person may recover the amount from the liable gas producer or producers as a debt in a court of competent jurisdiction.

- (2) If subregulation (1) does not apply, a person who is entitled to compensation under this Part may seek an order for the recovery of the compensation from the liable gas producer or producers in a court of competent jurisdiction.
- (3) A court may issue an order for the purposes of subregulation (2) if satisfied that the person is entitled to the compensation and the gas producer is or the gas producers are liable to provide the compensation.

**Division 3 — Extent to which relevant costs compensable**

**42. Extent to which relevant costs are compensable**

- (1) A relevant cost incurred to restore a reduction in the capacity of a facility or pipeline resulting from the consumer or operator being delivered the gas is compensable —
  - (a) to the extent to which the cost is necessary to restore the reduction in the capacity attributable to the gas not complying with the relevant gas quality specification for the consumer or operator, as worked out under regulation 43; and
  - (b) to the extent to which a prudent consumer or operator would have incurred —
    - (i) the cost, as worked out under regulation 44(2); or
    - (ii) to the extent to which it is preferable that increased operating and maintenance costs have been incurred instead — operating and maintenance costs, as worked out under regulation 44(1);and
  - (c) when and to the extent to which the capacity is needed, as worked out under regulation 45.
- (2) A relevant cost that is a plant and equipment cost that is not covered by subregulation (1) is compensable —

- (a) to the extent to which the cost is attributable to the gas not complying with the relevant gas quality specification for the consumer or operator, as worked out under regulation 43; and
  - (b) to the extent to which a prudent consumer or operator would have incurred —
    - (i) the cost, as worked out under regulation 44(2); or
    - (ii) to the extent to which it is preferable that increased operating and maintenance costs have been incurred instead — operating and maintenance costs, as worked out under regulation 44(1).
- (3) A relevant cost incurred because of an increase in operating and maintenance requirements is compensable to the extent to which the increase is attributable to the gas not complying with the relevant gas quality specification for the consumer or operator, that is, the extent to which the increase is attributable to the difference between —
- (a) what the operating and maintenance requirements of the facility or pipeline would be, on the basis of the gas being delivered at the relevant gas quality specification for the consumer or operator, to the extent to which those requirements are what a prudent consumer or operator would require; and
  - (b) what the operating and maintenance requirements of the facility or pipeline would be, on the basis of the averaged quality and quantity of the gas actually being delivered, to the extent to which those requirements are what a prudent consumer or operator would require.

**43. Costs to restore capacity, or plant and equipment costs — compensable to the extent attributable to the gas not complying with the relevant gas quality specification**

- (1) For the purposes of regulation 42(1)(a), the reduction in capacity that is attributable to the gas not complying with the

relevant gas quality specification for the consumer or operator is the reduction in capacity from what the capacity of the facility or pipeline would be on the basis of —

- (a) all gas being supplied by gas producers at the relevant gas quality specification for the consumer or operator; and
- (b) the facility or pipeline as it was immediately before 1 January 2009; and
- (c) the averaged conditions,

to what the capacity of the facility or pipeline would be on the basis of —

- (d) the averaged quality and quantity of the gas actually being delivered; and
- (e) the facility or pipeline as it was immediately before 1 January 2009; and
- (f) the averaged conditions.

- (2) For the purposes of regulation 42(2)(a), only that part or proportion of a plant and equipment cost that it is necessary for the consumer or operator to incur —

- (a) to receive gas that does not comply with the relevant gas quality specification for the consumer or operator; and
- (b) to continue the consumer's operations, or to provide pipeline or gas storage facility services, as carried on or provided immediately before 1 January 2009,

is attributable to the gas not complying with the relevant gas quality specification for the consumer or operator.

**44. Costs to restore capacity, or plant and equipment costs — compensable to the extent prudent**

- (1) To the extent to which it is preferable that the reduction in capacity or the effect produced by rectifying or replacing the plant and equipment have been accommodated or brought about by incurring increased operating and maintenance costs — the



extent to which a prudent consumer or operator would have incurred operating and maintenance costs is, for the purposes of regulation 42(1)(b), the extent to which a prudent consumer or operator would have incurred increased operating and maintenance costs to accommodate the reduction in capacity or bring about the effect produced by rectifying or replacing the plant and equipment.

- (2) To the extent to which it is not preferable that the reduction in capacity or the effect produced by rectifying or replacing the plant and equipment have been accommodated or brought about by incurring increased operating and maintenance costs — the extent to which a prudent consumer or operator would have incurred the cost (referred to in regulation 42(2)) is, for the purposes of regulation 42(1)(b), the extent to which a prudent consumer or operator would have incurred the cost.
- (3) For the purposes of this regulation, it is preferable that a reduction in capacity or an effect produced by rectifying or replacing plant and equipment be accommodated or brought about by incurring increased operating and maintenance costs if —
  - (a) a prudent consumer or operator would have done so; and
  - (b) to do so does not exceed normal, safe operation of the facility or pipeline of the consumer or operator.
- (4) Without limiting subregulation (2), it is prudent for a consumer or operator, in restoring a reduction in capacity of a facility or pipeline, to incur costs to increase the capacity of the facility or pipeline beyond what was needed if —
  - (a) for reasons not inherently within the control of the consumer or operator, the increase could not be limited to what was needed; and
  - (b) the increase was reasonable and prudent.

Example: An increase in compression of 2 units is necessary to restore a loss in capacity. However, compression can only be increased in increments of 5 units, for engineering reasons or because of the nature of the compressors reasonably available in the market. The

compensable amount of the relevant cost is limited (for the purposes of regulation 42(1)(b)) to the amount that a prudent gas consumer would incur to increase compression by 5 units.

- (5) In a case where the relevant cost was incurred to increase the capacity of a facility or pipeline in anticipation of a reduction in the capacity of the facility or pipeline that would have resulted from being delivered the gas, an assessment as to what is preferable or what a prudent consumer or operator would have done is to be made on the basis of the circumstances at the time that decision to incur the costs was made.

**45. Costs to restore capacity — compensable when, and to the extent to which, capacity needed**

- (1) For the purposes of regulation 42(1)(c), an amount of capacity is needed when —
- (a) the consumer or operator fails to provide goods or supply a service that it is obliged to provide or supply as a result of the reduction in capacity; or
  - (b) the consumer or operator is prevented from selling or supplying goods or a service that it would ordinarily be able to sell or supply as a result of the reduction in capacity; or
  - (c) in a case where the relevant cost was incurred to increase the capacity of a facility or pipeline in anticipation of a reduction in the capacity of the facility or pipeline that would have resulted from being delivered the gas — the consumer or operator would have failed, as a result of the reduction in capacity, to provide goods or supply a service that it ordinarily provides or supplies, had the consumer or operator not increased the capacity of the facility or pipeline.
- (2) A relevant cost incurred to restore a reduction in the capacity of a facility or pipeline is not compensable to the extent to which the capacity of the facility or pipeline is increased beyond what it was immediately before 1 January 2009 unless incurring the

cost to increase the capacity beyond what was needed is prudent as described in regulation 44(4).

**46. Averaged quality, quantity and conditions**

- (1) For the purposes of regulations 42(3) and 43(1), the averaged quality and quantity of gas and the averaged conditions are to be —
- (a) worked out using the method and time period agreed to by the parties to the compensation arrangement; or
  - (b) determined by the arbitrator of a dispute covering those matters,
- as necessary.
- (2) The parties to a compensation arrangement are the person entitled to the compensation and the, or each, gas producer liable to provide the compensation.

**47. Relevant gas quality specification for operator of the Mondarra Gas Storage Facility**

For the purposes of section 18(3) of the Act, the relevant gas quality specification for the operator of the Mondarra Gas Storage Facility is the reference specification for the DBNGP set out in Schedule 2 clause 1.

**48. Operating and maintenance costs — method**

For the purposes of this Part, in working out costs incurred because of increased operating and maintenance requirements, the following apply —

- (a) for a Part 4 pipeline — changes in the amount of system use gas required as a result of the gas flowing into the pipeline are to be determined in TJ/gas day;
- (b) other changes to the operating and maintenance requirements of the consumer or operator are to be determined on an annual basis, in dollars per annum.

**Division 4 — Part 4 pipeline becoming PIA pipeline**

*[Heading inserted in Gazette 14 Aug 2012 p. 3860.]*

**49. Transition period**

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

*[Regulation 49 inserted in Gazette 14 Aug 2012 p. 3860.]*

**50. Modification of operation of Act during transition period**

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

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

*[Regulation 50 inserted in Gazette 14 Aug 2012 p. 3860-1.]*

## **Part 5 — Dispute resolution**

*[Heading inserted in Gazette 14 Aug 2012 p. 3861.]*

### **Division 1 — Preliminary**

*[Heading inserted in Gazette 14 Aug 2012 p. 3861.]*

#### **51. Terms used**

In this Part, unless the contrary intention appears —

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

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

**business day** means a day that is not —

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

**dispute** means a dispute —

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

*[Regulation 51 inserted in Gazette 14 Aug 2012 p. 3861-2.]*

#### **52. Application of this Part**

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

- (a) in relation to a dispute referred to in regulation 21, 22 or 23 — this Part applies to the resolution of a dispute; and

- (b) in relation to any other dispute — this Part applies to the resolution of the dispute to the extent to which the parties to the dispute do not agree otherwise.

*[Regulation 52 inserted in Gazette 14 Aug 2012 p. 3862.]*

## **Division 2 — Commencing dispute resolution process**

*[Heading inserted in Gazette 14 Aug 2012 p. 3862.]*

### **53. Commencing dispute resolution process**

- (1) A party to a dispute may apply to have the dispute resolved under this Part unless —
  - (a) an application for resolution of the dispute has already been made by a party to the dispute, whether or not a determination of the dispute has been made; or
  - (b) the dispute is the subject of an order, judgment or other finding by a court or other body or person.
- (2) Despite subregulation (1)(a), a party to a dispute may make a further application to have the dispute resolved under this Part if the application was dismissed on the grounds that it had not been prepared and given in accordance with this regulation.
- (3) To apply to have a dispute resolved under this Part a party to the dispute must —
  - (a) prepare a written application; and
  - (b) give it to the arbitrator; and
  - (c) give a copy of it to each other party to the dispute; and
  - (d) provide any deposit or security for the costs of the dispute resolution process that the arbitrator requires under regulation 81(6).
- (4) A person given a copy of the application under subregulation (3)(c) is a **respondent** for the purposes of this Part.

- (5) An application must set out or include —
- (a) the name and contact details of each party to the dispute; and
  - (b) the time limit within which a respondent must respond under regulation 54; and
  - (c) an outline of the dispute, including the basis upon which the applicant considers the respondents are parties to the dispute; and
  - (d) where relevant, the names and contact details of up to 3 persons the applicant considers suitable as a mediator of the dispute; and
  - (e) the resolution sought by the applicant, including (if relevant) the amount of any compensation sought, and the basis upon which the applicant seeks the resolution; and
  - (f) all other information and documents necessary to support the applicant's claims.

*[Regulation 53 inserted in Gazette 14 Aug 2012 p. 3862-4.]*

**54. Responding to an application for dispute resolution**

- (1) A respondent must respond to an application for dispute resolution within 20 business days after the day on which the application was received, unless the dispute is solely about —
- (a) an application for a pipeline impact agreement referred to in regulation 21; or
  - (b) the completeness, accuracy or correctness of the information referred to in regulation 23(3),
- in which case the period in which to respond is 10 business days.
- (2) The response must set out or include all information and documents necessary to support the respondent's response.



- (3) The response must be given to each other party to the dispute and to the arbitrator.
- (4) The failure of a respondent to comply with this regulation does not prevent —
  - (a) the dispute resolution process from continuing; or
  - (b) the arbitrator, in his or her discretion, from subsequently receiving a response from the respondent.

*[Regulation 54 inserted in Gazette 14 Aug 2012 p. 3864-5.]*

**55. Initiator of dispute may respond to responses**

- (1) The applicant may respond to any response under regulation 54 within 10 business days after the day on which the response was received, unless the dispute is solely about —
  - (a) an application for a pipeline impact agreement referred to in regulation 21; or
  - (b) the completeness, accuracy or correctness of the information referred to in regulation 23(3),

in which case the period in which to respond is 5 business days.

- (2) A response must be given to each other party to the dispute and to the arbitrator.
- (3) A failure by the applicant to respond within the time allowed does not prevent the arbitrator, in his or her discretion, from subsequently receiving a response from the applicant.

*[Regulation 55 inserted in Gazette 14 Aug 2012 p. 3865.]*

**56. Choice of dispute resolution procedure**

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

- (b) the arbitrator directs, whether before or during the resolution of the dispute, that the procedure in Division 4 applies; or
- (c) the dispute relates to an amount of compensation that exceeds or is likely to exceed \$250 000; or
- (d) the dispute relates to costs under an existing pipeline impact agreement (other than a pipeline impact agreement where the relevant effects on the PIA pipeline are to be dealt with by the warehousing method) and the costs are likely to exceed \$250 000,

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

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

*[Regulation 56 inserted in Gazette 14 Aug 2012 p. 3865-6.]*

**57. When a dispute resolution procedure begins**

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

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

*[Regulation 57 inserted in Gazette 14 Aug 2012 p. 3866-7.]*

**58. Arbitrator may dismiss dispute**

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

- (b) communicate the decision and the reasons in writing to the parties.

*[Regulation 58 inserted in Gazette 14 Aug 2012 p. 3867-8.]*

### **Division 3 — Default dispute resolution procedure**

*[Heading inserted in Gazette 14 Aug 2012 p. 3868.]*

#### **59. Arbitrator's functions**

- (1) In this regulation —  
*time allowed* means —
  - (a) for a dispute referred to in regulation 21 (about an application for a pipeline impact agreement) — 45 business days after the dispute resolution procedure began; and
  - (b) for a dispute referred to in regulation 22 (about the relevant effects on the capacity, operations and maintenance of a pipeline or the extent of those effects) or a dispute referred to in regulation 23 (about the completeness, accuracy or correctness of information) — 60 business days after the dispute resolution procedure began; and
  - (c) for any other dispute — 40 business days after the dispute resolution procedure began or any extension of the time allowed under regulation 60(3).
- (2) In relation to a dispute to which the procedure in this Division applies, the arbitrator must, within the time allowed —
  - (a) determine the dispute; or
  - (b) for a dispute other than one referred to in regulation 21, 22 or 23 — direct that the procedure in Division 4 applies to the dispute.
- (3) If, in relation to an application for resolution of a dispute other than one referred to in regulation 21, 22 or 23, the arbitrator does not determine the dispute or direct that the procedure in

Division 4 applies within the time allowed (or any extension of it under regulation 60(3)), the arbitrator may, after the time allowed has elapsed, continue to deal with the dispute but need not consider any information or representations received after that time.

- (4) Despite subregulation (3), if the arbitrator does not determine the dispute or direct that the procedure in Division 4 applies within 6 months after the dispute resolution process began, the procedure in Division 4 applies to the dispute.
- (5) If, in relation to an application for resolution of a dispute referred to in regulation 21, 22 or 23, the arbitrator does not determine the dispute within the time allowed, the application is to be taken to have been dismissed when the time allowed has elapsed.

*[Regulation 59 inserted in Gazette 14 Aug 2012 p. 3868-9.]*

**60. Arbitration procedure**

- (1) The arbitrator —
  - (a) must act informally and if possible make a determination on the basis of —
    - (i) the application; and
    - (ii) any responses under regulation 54 or 55;and
  - (b) is not bound by the rules of evidence and may inform himself or herself in any way he or she thinks fit.
- (2) In order to obtain sufficient information to make a determination, the arbitrator may do any of the following —
  - (a) request a party to make a written submission or a further written submission or provide information or documentation, and may set a deadline for doing so;
  - (b) request the parties to attend a conference with the arbitrator;

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

*[Regulation 60 inserted in Gazette 14 Aug 2012 p. 3869-70.]*

#### **Division 4 — Significant dispute resolution procedure**

*[Heading inserted in Gazette 14 Aug 2012 p. 3871.]*

##### **Subdivision 1 — Mediation**

*[Heading inserted in Gazette 14 Aug 2012 p. 3871.]*

#### **61. Arbitrator to appoint mediator**

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

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

*[Regulation 61 inserted in Gazette 14 Aug 2012 p. 3871.]*

**62. Mediator's functions**

- (1) The mediator of a dispute must, within 6 months of the dispute resolution process beginning or any extension of that time under regulation 63(2) —
  - (a) assist the parties to resolve the dispute; or
  - (b) if satisfied that there is no realistic prospect of resolving the dispute by mediation — end the mediation and refer the dispute to arbitration under Subdivision 2; or
  - (c) recommend that the arbitrator dismiss the application for resolution of the dispute.
- (2) If not all of the matters in dispute are resolved or the mediator does not end the mediation within the 6 months allowed (or any extension of it under regulation 63(2)), the dispute, to the extent to which it is not resolved, is to be taken to have been referred to arbitration under Subdivision 2 when the time allowed has elapsed.

*[Regulation 62 inserted in Gazette 14 Aug 2012 p. 3871-2.]*

**63. Mediation procedure**

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

*[Regulation 63 inserted in Gazette 14 Aug 2012 p. 3872.]*

**64. Mediation proceedings confidential and privileged**

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

in the course of, or for the purpose of, mediation is to be taken to be in confidence and is not admissible in any proceedings before any court, tribunal or body unless subregulation (3) applies.
- (2) Each of the following —
  - (a) a document prepared in the course of, or for the purpose of, mediation;
  - (b) a copy of such a document;
  - (c) evidence of such a document,

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



- (3) Evidence or a document referred to in subregulation (1) or (2) is admissible in proceedings if —
- (a) the parties to the mediation consent to the admission of the evidence or document; or
  - (b) there is a dispute in the proceedings as to whether the parties to the mediation entered into a binding agreement settling all or any of their differences and the evidence or document is relevant to that dispute; or
  - (c) the proceedings relate to any act or omission in relation to which a disclosure has been made under regulation 65(4)(d).
- (4) A mediator cannot be compelled to give evidence of anything referred to in subregulation (1) or (2) or to produce a document or a copy of a document referred to in subregulation (2) except in proceedings referred to in subregulation (3)(c).

*[Regulation 64 inserted in Gazette 14 Aug 2012 p. 3872-3.]*

**65. Duty of confidence**

- (1) A mediator must not disclose any information obtained in the course of, or for the purpose of, carrying out a mediation.  
Penalty: a fine of \$5 000.
- (2) A party to a mediation must not disclose any information obtained in the course of a mediation except to another party to the mediation.  
Penalty:
- (a) for an individual — a fine of \$5 000;
  - (b) for a body corporate — a fine of \$50 000.
- (3) In subregulation (2), a reference to a party to a mediation includes a reference to a person advising or representing the party for the purposes of the mediation.

- (4) Subregulations (1) and (2) do not apply if —
- (a) the disclosure is made with the consent of the parties to the mediation; or
  - (b) the disclosure is of the occurrence of the mediation and that is relevant in proceedings before any court, tribunal or similar body; or
  - (c) there is a dispute as to the existence or content of a binding agreement settling all or any of the parties differences and the information is relevant to that dispute; or
  - (d) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property; or
  - (e) the disclosure is authorised by law or is required by or under a law of the State (other than a requirement imposed by a summons or other compulsory process) or of the Commonwealth.

*[Regulation 65 inserted in Gazette 14 Aug 2012 p. 3873-4.]*

**66. Mediator — conflicts of interest and replacing mediator**

- (1) A mediator is disqualified from mediating a dispute if the mediator has a material personal interest in the dispute, in a contract in relation to which the dispute has arisen or in any party to the dispute.
- (2) If the mediator of a dispute is disqualified —
- (a) the mediator must notify the parties in writing of the disqualification and the reasons for it; and
  - (b) the mediator's appointment ceases at the end of 5 business days after the day on which the mediator's notice was received unless, within that time, all of the parties in writing authorise the mediator to continue as the mediator of the dispute.

- (3) A party to the dispute may, before the mediation ends, apply to the arbitrator for a declaration that the mediator is disqualified under subregulation (1).
- (4) If a mediator's appointment ceases under subregulation (2) or the mediator dies or otherwise becomes unable to continue with the mediation —
  - (a) the arbitrator must comply with regulation 61; and
  - (b) for the purposes of this Part, the dispute resolution process is to be taken to have begun on the day on which the arbitrator is notified of the mediator's appointment having ceased or the mediator having died or otherwise become unable to continue with the mediation.
- (5) The new mediator is, to the extent practicable, to continue with the mediation rather than commencing the mediation from the beginning.

*[Regulation 66 inserted in Gazette 14 Aug 2012 p. 3875-6.]*

#### **67. Costs of mediation**

- (1) The mediator of a dispute is entitled —
  - (a) to be paid for his or her work —
    - (i) at a rate agreed between the mediator and the parties; or
    - (ii) if a rate was not agreed, at \$370 per hour;and
  - (b) to be reimbursed any expenses reasonably incurred in connection with that work.
- (2) If a mediator's appointment ceases under regulation 66 or the mediator dies or otherwise becomes unable to continue with the mediation, the mediator (or, where relevant, the mediator's estate) has the entitlements in subregulation (1) in respect of any mediation work done before the disqualification or inability.

- (3) The parties involved in a dispute are jointly and severally liable to pay the entitlements of the mediator and, as between themselves, the parties are liable to pay the entitlements of the mediator in equal shares.
- (4) Subregulation (3) does not prevent a decision being made under regulation 82(2).
- (5) The mediator of a dispute may at any time require one or more parties to the dispute to provide a reasonable deposit, or reasonable security, for the anticipated entitlements of the mediator.
- (6) The arbitrator may require the applicant to provide a deposit, or reasonable security, for the anticipated entitlements of the mediator.
- (7) If a party involved in the mediation of a dispute has paid more than the party's share of the entitlements of the mediator, having regard to subregulation (3), the arbitrator may decide that another party must pay to the first mentioned party an amount that will result in all the parties paying an equal amount of the entitlements.
- (8) If the arbitrator makes a decision under subregulation (7) —
  - (a) the arbitrator must include in the decision the date on which the amount is payable; and
  - (b) Division 6, with any necessary changes, applies to the decision as if it were a determination of the arbitrator.
- (9) A mediator may recover the entitlements of the mediator from a person liable to pay the entitlements, and may seek an order for the recovery of the entitlements in a court of competent jurisdiction.

*[Regulation 67 inserted in Gazette 14 Aug 2012 p. 3876-7.]*

**68. Limitation of liability of mediator**

- (1) An action in tort does not lie against a mediator for anything that the mediator has done, in good faith, in the performance or purported performance of the functions of a mediator under this Subdivision.
- (2) The State is also relieved of any liability that it might otherwise have had for a person having done anything as referred to in subregulation (1).
- (3) The protection given by this regulation applies even though the thing done as referred to in subregulation (1) may have been capable of being done whether or not this Subdivision had been made.
- (4) In this regulation, a reference to the doing of anything includes a reference to an omission to do anything.

*[Regulation 68 inserted in Gazette 14 Aug 2012 p. 3877-8.]*

**Subdivision 2 — Arbitration**

*[Heading inserted in Gazette 14 Aug 2012 p. 3878.]*

**69. Arbitrator's functions**

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

was referred to arbitration, the application is to be taken to have been dismissed at the end of the 18 months.

*[Regulation 69 inserted in Gazette 14 Aug 2012 p. 3878.]*

**70. Arbitration procedure**

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

*[Regulation 70 inserted in Gazette 14 Aug 2012 p. 3878.]*

**Division 5 — Joinder of parties**

*[Heading inserted in Gazette 14 Aug 2012 p. 3879.]*

**71. Arbitrator may join a party**

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

*[Regulation 71 inserted in Gazette 14 Aug 2012 p. 3879.]*

**72. Notice of joinder**

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

- (2) If a person is joined as a party to a dispute on the arbitrator's own initiative, the arbitrator must give to the person the notice and other materials referred to in subregulation (1).

*[Regulation 72 inserted in Gazette 14 Aug 2012 p. 3879.]*

**73. Response by person joined**

- (1) A person who is joined as a party to a dispute may respond to the material given under regulation 72 within 20 business days after the day on which the person was given notice of the joinder, unless the dispute is solely about —
- (a) an application for a pipeline impact agreement referred to in regulation 21; or
  - (b) the completeness, accuracy or correctness of the information referred to in regulation 23(3),

in which case the period in which to respond is 10 business days.

- (2) The response must be given to the arbitrator and the parties to the dispute.
- (3) A person who is joined as a party to a dispute and who wishes to object to the joinder must include in the response the reasons why the person should not be included as a party to the dispute.

*[Regulation 73 inserted in Gazette 14 Aug 2012 p. 3879-80.]*

**74. Mediation**

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

*[Regulation 74 inserted in Gazette 14 Aug 2012 p. 3880.]*

**Division 6 — Effect and enforcement of determinations**

*[Heading inserted in Gazette 14 Aug 2012 p. 3880.]*

**75. Content of determinations**

The arbitrator's determination of a dispute must —

- (a) be in writing; and
- (b) include the name and contact details of the parties to the dispute; and
- (c) set out the determination and the reasons for the determination; and
- (d) be given to the parties to the dispute.

*[Regulation 75 inserted in Gazette 14 Aug 2012 p. 3880.]*

**76. Effect of determinations**

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

*[Regulation 76 inserted in Gazette 14 Aug 2012 p. 3880-1.]*

**77. Determinations may be enforced as judgments**

- (1) A determination of the arbitrator may, with the leave of a court of competent jurisdiction, be enforced in the same manner as a judgment or order of the court to the same effect, and if such



leave is given, judgment may be entered in terms of the determination.

- (2) For the purposes of subregulation (1), a determination signed by the arbitrator is to be taken to have been made under this Part.

*[Regulation 77 inserted in Gazette 14 Aug 2012 p. 3881.]*

### **Division 7 — General provisions**

*[Heading inserted in Gazette 14 Aug 2012 p. 3881.]*

#### **78. Arbitration hearings in public**

- (1) A hearing, or a part of a hearing, conducted as part of the arbitration of a dispute may be held in private if a party to the dispute requests that and the arbitrator agrees.
- (2) The arbitrator may give written directions as to the persons who may be present at a hearing that is conducted in private.
- (3) In giving directions under subregulation (2), the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality.

*[Regulation 78 inserted in Gazette 14 Aug 2012 p. 3881-2.]*

#### **79. Party to dispute may request that certain material be treated as confidential**

- (1) A party to a dispute may —
- (a) inform the arbitrator that, in the party's opinion, a specified part of a document contains confidential information; and
  - (b) request the arbitrator not to give a copy of that part to another party.
- (2) On receiving a request, the arbitrator must —
- (a) inform the other party or parties to the dispute that the request has been made and of the general nature of the

matters to which the relevant part of the document relates; and

- (b) ask the other party or parties whether there is any objection to the arbitrator complying with the request.
- (3) If there is an objection to the arbitrator complying with the request, the party objecting may inform the arbitrator of the objection and of the reasons for it.
- (4) After considering a request and any objection and any further submissions that any party has made in relation to the request, the arbitrator may —
  - (a) decide not to give the other party or parties a copy of so much of the document as contains confidential information that the arbitrator thinks should not be given; or
  - (b) decide to give a party a copy of some or all of the part of the document that contains confidential information, subject to the party giving an undertaking not to disclose the information to another person (except to the extent specified by the arbitrator) and subject to any other conditions the arbitrator determines.
- (5) This regulation does not limit how a mediator may deal with a request by a party not to give a copy of a document or a part of a document to another party to the mediation.

*[Regulation 79 inserted in Gazette 14 Aug 2012 p. 3882-3.]*

**80. Order preventing disclosure of information**

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

Penalty:

- (a) for an individual — a fine of \$5 000;

(b) for a body corporate — a fine of \$50 000.

*[Regulation 80 inserted in Gazette 14 Aug 2012 p. 3883.]*

**81. Costs of dispute**

- (1) For the purposes of this regulation the costs of a dispute are —
  - (a) the entitlements of the arbitrator under subregulation (2); and
  - (b) the costs of any testing done, or of any expert engaged under regulation 60(2)(c).
- (2) The arbitrator is, in relation to a dispute, entitled —
  - (a) to be paid for his or her work at the rate provided for in his or her conditions of office under the *Energy Arbitration and Review Act 1998* section 69; and
  - (b) to be reimbursed any expenses reasonably incurred in connection with that work.
- (3) The arbitrator may refuse to communicate his or her decision or determination in relation to a dispute until he or she has been paid the costs of the dispute.
- (4) The parties involved in a dispute are jointly and severally liable to pay the costs of the dispute and, as between themselves, the parties are liable to pay the costs in equal shares.
- (5) The arbitrator may recover the costs of a dispute from a person liable to pay the costs, and may seek an order for the recovery of the cost in a court of competent jurisdiction.
- (6) The arbitrator may at any time require one or more parties to a dispute to provide a reasonable deposit, or reasonable security, for the anticipated costs of the dispute.
- (7) If a party involved in a dispute has paid more than the party's share of the costs of the dispute, having regard to subregulation (4), the arbitrator may decide that another party must pay to the first mentioned party such amount of the costs

as would result in all the parties paying an equal amount of the costs.

- (8) If the arbitrator makes a decision under subregulation (7) —
- (a) the arbitrator must include in the decision the date on which the amount is payable; and
  - (b) Division 6, with any necessary changes, applies to the decision as if it were a determination of the arbitrator.

*[Regulation 81 inserted in Gazette 14 Aug 2012 p. 3883-4.]*

**82. Costs of parties to disputes**

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

*[Regulation 82 inserted in Gazette 14 Aug 2012 p. 3885.]*

**83. When certain documents are taken to have been received**

- (1) In this regulation —  
*relevant document* means an application for resolution of a dispute, a response under regulation 54 or 55 or a notice under regulation 66(2)(a).
- (2) If a relevant document is sent (which includes being delivered) to a person, as referred to in this regulation, then, for the purposes of this Part, the document is to be taken to have been received by the person and to have been received on the day worked out under this regulation.
- (3) The relevant document is to be taken to have been received —
  - (a) if the document was sent by post to an address in the State — on the second day after the day on which it was posted; or
  - (b) if the document was sent electronically —
    - (i) on the day on which it was sent, if the document was received before 4 p.m. on the day on which it was sent; otherwise
    - (ii) on the day after the day on which it was sent;or
  - (c) if the document was delivered to the person —
    - (i) on the day on which it was delivered, if the document was delivered before 4 p.m. on the day on which it was delivered; otherwise
    - (ii) on the day after the day on which it was delivered.
- (4) If more than one method of sending a relevant document is used then the document is to be taken to have been received on the earliest of the days provided for in subregulation (3).

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

*[Regulation 83 inserted in Gazette 14 Aug 2012 p. 3885-7.]*

**84. Relationship of this Part to other proceedings**

- (1) This Part does not prevent a party to a dispute from instituting proceedings before a court or other body in relation to the dispute.

- (2) To the extent to which a dispute is an access dispute under a Gas Access Law, this Part does not prevent the dispute from being dealt with as an access dispute under the Gas Access Law.
- (3) If proceedings are instituted in relation to a dispute that is being resolved under this Part, the dispute resolution process under this Part is to continue despite those proceedings unless all of the parties, in writing, require the arbitrator or mediator to discontinue the process.

[Regulation 84 inserted in Gazette 14 Aug 2012 p. 3887-8.]

### Division 8 — Arbitrator funding

[Heading inserted in Gazette 14 Aug 2012 p. 3888.]

#### 85. Terms used

In this Division —

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

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

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

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

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

**standing charge** means a charge under regulation 86.

[Regulation 85 inserted in Gazette 14 Aug 2012 p. 3888.]

#### 86. Standing charges

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

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

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

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

where —

- C is the amount of the core functions costs for the quarter;  
N is the number of pipeline impact agreements at the end of the quarter.

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

*[Regulation 86 inserted in Gazette 14 Aug 2012 p. 3888-9.]*

## **87. Assessment and payment of standing charges**

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



- (iii) the day on which the notice of assessment was issued.
- (2) A gas producer given a notice of assessment must pay the assessment amount to the arbitrator within 30 days after the day on which the notice of assessment was issued or a later day allowed by the arbitrator.
- (3) If the gas producer does not pay the assessment amount in full within the allowed period, interest on the outstanding amount is payable to the arbitrator at the prescribed rate, calculated daily.
- (4) In subregulation (3) —
- prescribed rate*** means an interest rate that is 5 percentage points higher than —
- (a) the rate quoted on Reuters Screen BBSW as the Bank Bill Reference Rate (Mid Rate) for a one month bill at or about 10 a.m. (Sydney time) on the first day after the allowed period; or
- (b) if a rate is not quoted as referred to in paragraph (a) — the rate determined by the arbitrator having regard to comparable indices then available.

*[Regulation 87 inserted in Gazette 14 Aug 2012 p. 3889-90.]*

**88. Recovery of unpaid amounts**

- (1) The arbitrator may recover any unpaid assessment amount, together with any interest payable under regulation 87(3), in a court of competent jurisdiction as a debt due to the arbitrator.
- (2) In proceedings under subregulation (1) a certificate —
- (a) purporting to be signed by the arbitrator; and
- (b) specifying an amount as being an assessment amount; and
- (c) specifying an amount as being interest payable under regulation 87(3); and

- (d) specifying a person as being liable to pay the specified amounts; and
- (e) stating that the specified amounts are unpaid,

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

*[Regulation 88 inserted in Gazette 14 Aug 2012 p. 3890-1.]*

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

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

*[Regulation 89 inserted in Gazette 14 Aug 2012 p. 3891.]*

## Part 6 — Provision of certain information

[Heading inserted in Gazette 14 Aug 2012 p. 3891.]

### 90. Notice of pipeline impact agreement

- (1) Within 20 business days after the day on which a pipeline impact agreement is entered into in relation to a PIA pipeline, the operator of the pipeline must notify the following of that event —
- (a) each user of the pipeline;
  - (b) the operator of each gas transmission pipeline connected to the pipeline;
  - (c) the operator of each gas storage facility connected to the pipeline;
  - (d) the operator of each gas distribution system connected to the pipeline;
  - (e) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Petroleum Pipelines Act 1969*.

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

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

[Regulation 90 inserted in Gazette 14 Aug 2012 p. 3891-2.]

### ~~[91. — Information about pipeline impact agreements~~

- ~~(1) A gas producer that is a party to a pipeline impact agreement must give to the Coordinator, and keep up to date, a summary of those parts of the agreement that cover the requirements of~~

~~section 7(1)(a), (b), (c) and (d) of the Act that indicates how the agreement meets those requirements.~~

~~(2) The summary must be in a form approved by the Coordinator.~~

~~(3) The gas producer must comply with subregulation (1) within~~

~~(a) 20 business days after the day on which the pipeline impact agreement was entered into or relevantly amended; and~~

~~(b) in relation to a pipeline impact agreement entered into or relevantly amended before this regulation came into operation 20 business days after the day on which this regulation came into operation.~~

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

~~(4) In relation to each pipeline impact agreement in effect, the Coordinator must publish, on the Department's website, and keep up to date, sufficient information to indicate how the pipeline impact agreement meets the requirements of section 7(1)(a), (b), (c) and (d) of the Act.~~

~~(5) The Coordinator must maintain on the website the information under subregulation (4) in relation to a pipeline impact agreement for 24 months after the agreement has ended.~~

~~[Regulation 91 inserted 94. Deleted in Gazette 14 Aug 2012 p. 3892-3.]~~

**92. Daily average higher heating values for PIA pipelines**

~~(1) The operator of a PIA pipeline must, within 5 business days after the end of each gas day, give to the Coordinator the following information—the average higher heating value of the gas stream for that gas day as calculated from measurements~~

~~taken at the last metering station before the first outlet point to a gas distribution system.~~

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

~~(2) The Coordinator must publish, on the Department's website, the information given under subregulation (1) within 3 business days after the day on which it was received.~~

~~(3) This regulation applies on and after 1 January [Jun](#) 2013.~~

~~[Regulation 92 inserted in Gazette 14 Aug 2012 p. 3893-4.]~~

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

~~(1) If a gas producer is a party to a pipeline impact agreement and gas the subject of the agreement has commenced to flow into a PIA pipeline from a gas processing plant of the gas producer, the gas producer must comply with subregulation (5) for each gas day—~~

~~(a) from and including the gas day on which the gas commenced to flow;~~

~~(b) to and including the gas day on which the agreement ceases to have effect in relation to the flow of gas out of the processing plant.~~

~~(2) If, in relation to a PIA pipeline, the Coordinator is satisfied that the average higher heating value of the gas stream, calculated as referred to in regulation 92(1), is, on trend, likely to be below 5% above the minimum higher heating value in the reference specification for the pipeline, the Coordinator must notify each gas producer with a processing plant that produces gas that flows into the pipeline of the relevant gas day.~~

- ~~— (3) — The relevant gas day is the gas day that the Coordinator considers should be the gas day on which the gas producers commence to comply with subregulation (5), which must be at least 10 gas days after the gas day on which the gas producers are notified.~~
- ~~— (4) — A gas producer notified under subregulation (2) in relation to a gas processing plant must comply with subregulation (5) for each gas day —~~
  - ~~— (a) — from and including the relevant gas day;~~
  - ~~— (b) — to and including the gas day on which the gas processing plant ceases to produce gas that flows into the pipeline.~~
- ~~— (5) — The gas producer must give to the Coordinator the following information —~~
  - ~~— (a) — the quantity of gas (in m<sup>3</sup>) that has flowed out of the gas processing plant on that gas day;~~
  - ~~— (b) — the average higher heating value of that gas on that gas day,~~
    - ~~— as calculated from measurements taken at each metering station that measures the composition of the gas flowing out of the gas processing plant before it mingles with any other gas.~~
- ~~— (6) — A gas producer to whom subregulation (1) or (4) applies in relation to a gas day must comply with that subregulation within 5 business days after the day on which the gas day commenced.~~
- ~~— Penalty: a fine of \$40 000 and a daily penalty of \$2 000 for each day or part of a day during which the contravention continues after the Coordinator has given the gas producer a notice indicating that the Coordinator is of the opinion that the gas producer has contravened this provision.~~
- ~~— (7) — The Coordinator must publish, on the Department’s website, the information given under subregulation (5) within 5 business days after the day on which it was received, and must maintain that information, in a form that is accessible to the public, on the website for 3 years after the day on which it was first published.~~

~~[Regulation 93 inserted in Gazette 14 Aug 2012 p. 3894-5.]~~

~~94. Immunity from liability under this Part~~

~~(1) In this regulation—~~

~~*civil monetary liability* means a liability to pay damages or compensation or any other similar amount ordered in a civil proceeding.~~

~~(2) Neither the Coordinator nor any other officer or employee of the Department incurs any civil monetary liability for an act or omission done in good faith in the performance, or purported performance, of a function under this Part.~~

~~(3) A person who gives information that the person is obliged to give to the Coordinator under this Part does not incur any civil monetary liability for an act or omission done in good faith in giving that information.~~

~~[Regulation 94 inserted in Gazette 14 Aug 2012 p. 3896  
[p. 2236.](#)]~~

cl. 1

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**Schedule 1 — Standard gas quality specifications for gas transmission pipelines**

[r. 28]

**1. Western Australian standard specification**

- (1) The standard gas quality specification for each gas transmission pipeline is, subject to this clause, set out in the Table.

**Table**

<b>Item</b>	<b>Component</b>	<b>Amount or range</b>
1.	Maximum total inert gasses	7.0 mol%
2.	Maximum carbon dioxide	4.0 mol%
3.	Minimum higher heating value	35.1 MJ/m <sup>3</sup>
4.	Maximum higher heating value	42.0 MJ/m <sup>3</sup>
5.	Minimum Wobbe Index	46.0
6.	Maximum Wobbe Index	52.0
7.	Maximum total sulphur	unodorised gas odorised gas
		10 mg/m <sup>3</sup> 20 mg/m <sup>3</sup>
8.	Maximum hydrogen sulphide	2.0 mg/m <sup>3</sup>
9.	Maximum oxygen	0.2 mol%
10.	Maximum water	48.0 mg/m <sup>3</sup>
11.	Hydrocarbon dewpoint over the pressure range 2.50 to 8.72 MPa (absolute)	below 0°C

- (2) Each amount or range assumes metric standard conditions.
- (3) The gas must also be free, by normal commercial standards, from dust and other solid or liquid matter, waxes, gums and gum forming



constituents, aromatic hydrocarbons, radioactive components and levels of mercury, that might cause injury to or interfere with the proper operation of equipment through which it flows.

- (4) This clause does not apply in relation to a pipeline while the Parmelia Pipeline standard specification in clause 2 does.

**2. Parmelia Pipeline standard specification**

- (1) In this clause —

*lateral pipeline connected to the Parmelia Pipeline* means a gas transmission pipeline —

- (a) connected to the Parmelia Pipeline, other than one that is also connected to the DBNGP; and
- (b) first issued a licence before 1 January 2010.

- (2) The standard gas quality specification for the Parmelia Pipeline and a lateral pipeline connected to the Parmelia Pipeline is, subject to this clause, set out in the Table.

**Table**

Item	Component	Amount or range
1.	Maximum total inert gasses	7.0 mol%
2.	Maximum carbon dioxide	4.0 mol%
3.	Minimum higher heating value	35.1 MJ/m <sup>3</sup>
4.	Maximum higher heating value	42.0 MJ/m <sup>3</sup>
5.	Minimum Wobbe Index	46.0
6.	Maximum Wobbe Index	52.0
7.	Maximum total sulphur unodorised gas	10 mg/m <sup>3</sup>
8.	Maximum hydrogen sulphide	4.6 mg/m <sup>3</sup>
9.	Maximum oxygen	0.2 mol%

**Gas Supply (Gas Quality Specifications) Regulations 2010**

**Schedule 1** Standard gas quality specifications for gas transmission pipelines

**cl. 2**

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<b>Item</b>	<b>Component</b>	<b>Amount or range</b>
10.	Maximum water	100.0 mg/m <sup>3</sup>
11.	Hydrocarbon dewpoint over the pressure range 1.50 to 7.50 MPa (absolute)	below 10°C

- (3) Each amount or range assumes metric standard conditions.
- (4) The gas must also be free, by normal commercial standards, from dust and other solid or liquid matter, waxes, gums and gum forming constituents, aromatic hydrocarbons, radioactive components and levels of mercury, that might cause injury to or interfere with the proper operation of equipment through which it flows.
- (5) The Parmelia Pipeline standard specification is the standard gas quality specification for the Parmelia Pipeline and a lateral pipeline connected to the Parmelia Pipeline while —
- (a) gas that does not comply with the maximum water component of the Western Australian standard specification (set out in clause 1) flows into the Parmelia Pipeline; and
  - (b) the gas is supplied by a gas producer whose production licence (as referred to in the definition of *gas producer* in section 3(1) of the Act) was granted before 1 January 2009.

## Schedule 2 — Reference specifications

[r. 7]

**1. Reference gas quality specification — the DBNGP, Mid West Pipeline and Mondarra Interconnect Pipeline**

- (1) The reference specification for the DBNGP, the Mid West Pipeline and the Mondarra Interconnect Pipeline is, subject to this clause, set out in the Table.

**Table**

<b>Item</b>	<b>Component</b>	<b>Amount or range</b>
1.	Maximum total inert gasses	7.0 mol%
2.	Maximum carbon dioxide	4.0 mol%
3.	Minimum higher heating value	37.0 MJ/m <sup>3</sup>
4.	Maximum higher heating value	42.3 MJ/m <sup>3</sup>
5.	Minimum Wobbe Index	46.5
6.	Maximum Wobbe Index	51
7.	Maximum total sulphur    unodorised gas odorised gas	10 mg/m <sup>3</sup> 20 mg/m <sup>3</sup>
8.	Maximum hydrogen sulphide	2 mg/m <sup>3</sup>
9.	Maximum oxygen	0.2 mol%
10.	Maximum water	48 mg/m <sup>3</sup>
11.	Hydrocarbon dewpoint over the pressure range 2.50 to 8.72 MPa (absolute)	below 0°C

- (2) Each amount or range assumes metric standard conditions.
- (3) The gas must also be free, by normal commercial standards, from dust and other solid or liquid matter, waxes, gums and gum forming

**cl. 2**

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constituents, aromatic hydrocarbons, radioactive components and levels of mercury, that might cause injury to or interfere with the proper operation of equipment through which it flows.

**2. Reference gas quality specification — the Parmelia Pipeline**

- (1) The reference specification for the Parmelia Pipeline is, subject to this clause, set out in the Table.

**Table**

<b>Item</b>	<b>Component</b>	<b>Amount or range</b>
1.	Maximum total inert gasses	7.0 mol%
2.	Maximum carbon dioxide	4.0 mol%
3.	Minimum higher heating value	37.0 MJ/m <sup>3</sup>
4.	Maximum higher heating value	42.3 MJ/m <sup>3</sup>
5.	Minimum Wobbe Index	46.5
6.	Maximum Wobbe Index	51
7.	Maximum total sulphur unodorised gas	10 mg/m <sup>3</sup>
8.	Maximum hydrogen sulphide	4.6 mg/m <sup>3</sup>
9.	Maximum oxygen	0.2 mol%
10.	Maximum water	100 mg/m <sup>3</sup>
11.	Hydrocarbon dewpoint over the pressure range 1.50 to 7.50 MPa (absolute)	below 10°C

- (2) Each amount or range assumes metric standard conditions.
- (3) The gas must also be free, by normal commercial standards, from dust and other solid or liquid matter, waxes, gums and gum forming constituents, aromatic hydrocarbons, radioactive components and

levels of mercury, that might cause injury to or interfere with the proper operation of equipment through which it flows.

**3. Reference gas quality specification — certain lateral pipelines**

(1) In this clause —

*lateral pipeline* means a gas transmission pipeline —

- (a) connected to the DBNGP (downstream of the Macedon inlet point) or the Parmelia Pipeline; and
- (b) the first licence for which was issued before 1 January 2010; and
- (c) that does not have a reference specification under clause 1 or 2.

(2) The reference specification for —

- (a) a lateral pipeline connected to the DBNGP is the reference specification for the DBNGP; and
- (b) a lateral pipeline connected to the Parmelia Pipeline, other than one that is also connected to the DBNGP, is the reference specification for the Parmelia Pipeline.

**4. Reference gas quality specification — new pipelines and extensions**

(1) The reference specification for —

- (a) a new pipeline (that is, a gas transmission pipeline the first licence for which was issued on or after 1 January 2010); and
- (b) an extension of an existing gas transmission pipeline as at 31 December 2009 (other than of the Parmelia Pipeline),

is the Western Australian standard specification.

(2) The reference specification for an extension of the Parmelia Pipeline as at 31 December 2009 is the Parmelia Pipeline standard specification.

cl. 1

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### **Schedule 3 — Relevant sections of PIA pipelines**

[r. 17]

**1. Relevant sections of the DBNGP**

The relevant sections of the DBNGP are as follows —

- (a) from the DOMGAS Dampier plant inlet point (I1-01) to the Macedon inlet point;
- (b) from the Macedon inlet point to Kwinana Junction (BP-KW);
- (c) from Kwinana Junction (BP-KW) to Clifton Road, Bunbury (OS6-01).

**2. Relevant sections of other PIA pipelines**

A PIA pipeline not covered by clause 1 has one relevant section, the whole length of the pipeline.

### Notes

<sup>1</sup> This is a compilation of the *Gas Supply (Gas Quality Specifications) Regulations 2010* and includes the amendments made by the other written laws referred to in the following table<sup>1a</sup>.

#### Compilation table

Citation	Gazettal	Commencement
<i>Gas Supply (Gas Quality Specifications) Regulations 2010</i>	26 Mar 2010 p. 1191-252	27 Mar 2010 (see r. 2 and <i>Gazette</i> 26 Mar 2010 p. 1133)
<i>Gas Supply (Gas Quality Specifications) Amendment Regulations 2012</i>	14 Aug 2012 p. 3849-96	r. 1 and 2: 14 Aug 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 15 Aug 2012 (see r. 2(b))

<sup>1a</sup> ~~On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

#### Provisions that have not come into operation

Citation	Gazettal	Commencement
<del><i>Gas Supply (Gas Quality Specifications) Amendment Regulations 2013</i> r. 3-4<sup>2</sup></del>	<del>14 Jun 2013 p. 2236</del>	<del>Operative on commencement of the <i>Gas Services Information Amendment Regulations (No. 2) 2013</i> r. 5 (see r. 2(b)) r. 1 and 2: <a href="#">14 Jun 2013 (see r. 2(a));</a> <a href="#">Regulations other than r. 1 and 2: 29 Jun 2013 (see r. 2(b) and <i>Gazette</i> 28 Jun 2013 p. 2933)</a></del>

<sup>2</sup> ~~On the date as at which this compilation was prepared, the *Gas Supply (Gas Quality Specifications) Amendment Regulations 2013* r. 3-4 have not come into operation. They read as follows:~~

~~**3. Regulations amended**~~

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

~~**4. Regulations 91 to 94 deleted**~~

~~Delete regulations 91, 92, 93 and 94.~~

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