

National Energy Laws Amendment (Other Gases) Bill 2022

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National Energy Laws Amendment (Other Gases) Bill 2022

1 Name of Act

This Act is the *National Energy Laws Amendment (Other Gases) Act 2022*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of National Gas Law

[1] Section 2—Definitions

Insert in alphabetical order in section 2(1)—

biogas means a gas primarily consisting of methane and carbon dioxide produced by the fermentation of organic matter through a process of anaerobic digestion;

biomethane means a substance—

- (a) that is in a gaseous state at standard temperature and pressure; and
- (b) the principal constituent of which is methane; and
- (c) that is produced from—
 - (i) biogas; or
 - (ii) the methanation of substances derived from the processing of biomass; and
- (d) that is suitable for consumption;

blend processing facility means a facility for 1, or both, of the following—

- (a) the blending of 1 or more primary gases with or without other substances for injection into a pipeline;
- (b) the separation of a gas blend withdrawn from a pipeline into constituent gases before re-injection into a pipeline as—
 - (i) a primary gas; or
 - (ii) a gas blend;

blend processing service means a service provided by means of a blend processing facility;

blend processing service provider means a person who owns, operates or controls a blend processing facility;

covered gas means the following—

- (a) a primary gas;
- (b) a gas blend;
- (c) a gas, or a blend of gases, prescribed as a covered gas in a participating jurisdiction by a local regulation of the participating jurisdiction;

gas blend means primary gases that have been blended together;

local regulation means the regulations under the application Act of a participating jurisdiction;

primary gas means the following—

- (a) natural gas;
- (b) hydrogen;
- (c) biomethane;
- (d) synthetic methane;
- (e) a gas prescribed by the Regulations for the purpose of this definition;

synthetic methane means a substance—

- (a) that is in a gaseous state at standard temperature and pressure; and
- (b) the principal constituent of which is methane; and
- (c) that is produced by the methanation of carbon dioxide captured from air; and

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(d) that is suitable for consumption;

- [2] **Section 2(1), definition of “BB Procedures”**
Omit “Natural Gas Services”. Insert instead “Gas”.
- [3] **Section 2(1), definition of “Bulletin Board information”**
Omit “Natural Gas Services” from paragraph (b). Insert instead “Gas”.
- [4] **Section 2(1), definition of “compression service facility”**
Omit “natural gas” wherever occurring. Insert instead “covered gas”.
- [5] **Section 2(1), definition of “compression service facility” paragraph (b)(i)**
Insert “for processable gas” after “upstream producing operation”.
- [6] **Section 2(1), definition of “declared wholesale gas market”**
Omit “natural gas”. Insert instead “covered gas and related goods and services”.
- [7] **Section 2(1), definition of “designated compression service facility”**
Omit “natural gas”. Insert instead “covered gas”.
- [8] **Section 2(1), definition of “end user”**
Omit “natural gas”. Insert instead “covered gas”.
- [9] **Section 2(1), definition of “gas trading exchange”**
Omit “natural gas” and “pipeline capacity”. Insert instead “covered gas” and “a pipeline capacity right”, respectively.
- [10] **Section 2(1), definition of “haulage”**
Omit “natural gas” wherever occurring. Insert instead “covered gas”.
- [11] **Section 2(1), definition of “natural gas industry”**
Omit the definition. Insert instead in alphabetical order—
covered gas industry includes—
(a) activities and transactions relating to—
(i) processable gas; or
(ii) covered gas, including liquefied natural gas, and covered gas services; or
(iii) covered gas industry facilities; or
(iv) services provided by means of covered gas industry facilities; and
(b) activities and transactions relating to petroleum tenements; and
(c) any other activities or transactions specified by the Regulations for the purpose of this paragraph;
- [12] **Section 2(1), definition of “natural gas industry facility”**
Omit the definition. Insert instead in alphabetical order—
covered gas industry facility means—
(a) a blend processing facility; or
(b) a compression service facility; or

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- (c) a gas processing plant; or
- (d) an LNG facility; or
- (e) a pipeline; or
- (f) a storage facility; or
- (g) a user facility; or
- (h) another facility of a type specified by the Regulations for the purpose of this paragraph;

[13] Section 2(1), definition of “natural gas service”

Omit the definition. Insert instead in alphabetical order—

covered gas service means—

- (a) a pipeline service; or
- (b) the supply of a covered gas; or
- (c) a service ancillary to the service described in paragraph (b);

[14] Section 2(1), definition of “Natural Gas Services Bulletin Board”

Omit the definition. Insert instead in alphabetical order—

Gas Bulletin Board means the website maintained by AEMO that contains information of the kind specified in the Rules for the covered gas industry;

[15] Section 2(1), definition of “pipeline”

Omit “natural gas” wherever occurring. Insert instead “covered gas”.

[16] Section 2(1), definition of “pipeline”, paragraph (f)

Insert “for processable gas” after “operation”.

[17] Section 2(1), definition of “pipeline”, paragraph (g)

Insert “, plant, facility” after “machinery”.

Insert “or blend processing facility” after “gas processing plant”.

[18] Section 2(1), definition of “pipeline capacity right”

Omit “natural gas”. Insert instead “covered gas”.

[19] Section 2(1), definition of “pipeline reliability standard”

Omit “natural gas”. Insert instead “covered gas”.

[20] Section 2(1), definition of “pipeline safety duty”

Omit “natural gas”. Insert instead “covered gas”.

[21] Section 2(1), definition of “pipeline service”

Omit “but does not include the production, sale or purchase of natural gas or processable gas;”.

Insert instead—

but does not include—

- (c) the production of a primary gas or of processable gas; or
- (d) the sale or purchase of any covered gas or processable gas;

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- [22] **Section 2(1), definition of “pipeline service standard”**
Omit “by means of a scheme pipeline”.
- [23] **Section 2(1), definition of “producer”**
Omit “natural gas”. Insert instead “1 or more primary gases”.
- [24] **Section 2(1), definition of “retail customer”**
Omit “natural gas”. Insert instead “covered gas”.
- [25] **Section 2(1), definition of “short term trading market”**
Omit “natural gas”. Insert instead “covered gas and related goods and services”.
- [26] **Section 2(1), definition of “storage facility”**
Omit “natural gas” where first occurring. Insert instead “covered gas”.
Insert “, blending or separating” after “processing”.
- [27] **Section 2(1), definition of “trader”**
Omit “natural gas” wherever occurring. Insert instead “covered gas”.
- [28] **Section 2(1), definition of “transportation capacity”**
Omit “natural gas”. Insert instead “covered gas”.
- [29] **Section 2(1), definition of “trial project”**
Omit paragraph (b). Insert instead—
 (b) that tests an approach to—
 (i) a covered gas service; or
 (ii) a covered gas service, but by use of a gas that is not a covered gas;
- [30] **Section 2(1), definition of “user facility”**
Omit “natural gas” wherever occurring. Insert instead “covered gas”.
- [31] **Section 2(3)**
Insert after section 2(2)—
 (3) The Minister responsible for the administration of an application Act under which a regulation is made for the definition of *covered gas*, paragraph (c), must have notice of the making of the regulation published in the South Australian Government Gazette.
- [32] **Section 6—Meaning of regulatory obligation or requirement**
Omit “to which an applicable access arrangement applies” from section 6(1)(b)(v).
- [33] **Section 7—Meaning of regulatory payment**
Insert “for the pipeline services to which an applicable access arrangement applies” after “service standard” in section 7(b).
- [34] **Section 8A—Nominated distributors**
Omit “The regulations under the application Act of a participating jurisdiction (a *local regulation*)” from section 8A(1).
Insert instead “A local regulation”.

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[35] Section 10—Things done by 1 service provider to be treated as being done by all of service provider group

Omit “natural gas” wherever occurring. Insert instead “covered gas”.

[36] Section 10(4)

Omit “or section”. Insert instead “, Chapter 5A, Part 3 or section 201,”.

[37] Section 12—Commissioning of a pipeline

Omit “natural gas”. Insert instead “covered gas”.

[38] Section 14

Insert after section 13—

14 Local regulations may exempt pipeline

- (1) A local regulation may declare a pipeline to be a *remote pipeline* if the pipeline—
 - (a) is hauling a covered gas other than natural gas or a natural gas equivalent, as defined in the *National Energy Retail Law*; and
 - (b) is wholly within the jurisdiction for which the regulation is made; and
 - (c) is not interconnected in any way with the system of transmission pipelines and distribution pipelines used to convey gas within and between participating jurisdictions.
- (2) A remote pipeline, and the service provider for the pipeline, but only in respect of the remote pipeline, is exempt from—
 - (a) section 91DB; and
 - (b) Chapter 3; and
 - (c) Chapter 4; and
 - (d) Chapter 5; and
 - (e) section 223; and
 - (f) Chapter 7A.
- (3) Before recommending the making of a local regulation declaring a pipeline to be a remote pipeline, the responsible Minister of the participating jurisdiction must have regard to the national gas objective.
- (4) A pipeline ceases, with immediate effect, to be a remote pipeline if—
 - (a) 1 or more of the requirements in subsection (1) ceases to apply to the pipeline; or
 - (b) the local regulation declaring the pipeline to be a remote pipeline is repealed.

[39] Section 16—Form of regulation factors

Omit “natural gas” wherever occurring. Insert instead “covered gas”.

[40] Section 23—National gas objective

Omit “natural gas” wherever occurring. Insert instead “covered gas”.

[41] Section 24—Revenue and pricing principles relating to scheme pipelines

Insert “relating to a scheme pipeline” after “regulatory payment” in section 24(2)(b).

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- [42] Section 24A—Innovative trial principles**
Omit “natural gas” wherever occurring. Insert instead “covered gas”.
- [43] Section 27—Functions and powers of the AER**
Omit “natural gas” from section 27(1)(fa). Insert instead “covered gas”.
- [44] Section 28—Manner in which AER must perform or exercise AER economic regulatory functions or powers**
Omit “natural gas” wherever occurring in section 28(4). Insert instead “covered gas”.
- [45] Section 30I—Consumer reference group**
Omit “natural gas” from section 30I(2)(a). Insert instead “covered gas”.
- [46] Section 30W—Trial waiver**
Insert after section 30W(3)—
(4) Nothing in this section operates to prevent the granting of an exemption in accordance with a rule made under section 148A.
- [47] Section 54—Further provision about the information that may be described in a regulatory information instrument**
Omit “natural gas” from section 54(1)(d). Insert instead “covered gas”.
- [48] Section 74—Subject matter for National Gas Rules**
Omit “natural gas” from section 74(1)(a)(iii). Insert instead “covered gas”.
- [49] Sections 83A and 83AA**
Omit the sections.
- [50] Section 83B—Standard market timetable**
Omit “natural gas” wherever occurring. Insert instead “covered gas”.
- [51] Section 83B(2)(c)(ii)**
Insert “, blending” after “production”.
- [52] Section 83B(3)**
Insert after paragraph (d)—
(da) a blend processing service provider;
- [53] Section 83D—False or misleading statements**
Omit “natural gas”. Insert instead “covered gas”.
- [54] Section 83D**
Insert after paragraph (d)—
(da) a blend processing service provider;
- [55] Section 91A—AEMO’s statutory functions**
Omit “markets for natural gas” from section 91A(1)(a). Insert instead “gas markets”.
- [56] Section 91A(1)(ba)**
Omit “for natural gas”.

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- [57] Section 91A(1)(h)**
Omit “Natural Gas Services”. Insert instead “Gas”.
- [58] Section 91BA—AEMO’s declared system functions**
Omit “markets for natural gas” from section 91BA(1)(d).
Insert instead “the covered gas industry in the adoptive jurisdiction”.
- [59] Section 91BA(1)(e)**
Insert “blend processing service providers,” after “producers,”.
- [60] Section 91BA(2)**
Omit “natural gas”. Insert instead “covered gas”.
- [61] Section 91BC—AEMO’s power of direction**
Omit “natural gas” wherever occurring. Insert instead “covered gas”.
- [62] Section 91BF—Interconnection with facilities**
Omit section 91BF(2)(b). Insert instead—
 (aa) a blend processing facility;
 (b) a storage facility;
- [63] Section 91BI—Market participation**
Omit section 91BI(b). Insert instead—
 (b) a producer or blend processing service provider who injects covered gas into a declared transmission system or a declared distribution system; or
- [64] Section 91BI(c)**
Insert “or a declared distribution system” after “declared transmission system”.
- [65] Section 91BI(d)**
Omit “natural gas”. Insert instead “covered gas”.
- [66] Section 91BP—Title to gas**
Insert “or a declared distribution system” after “declared transmission system” where first occurring.
- [67] Section 91BP(b)**
Omit “into the declared transmission system”.
- [68] Section 91BQ—Immunity**
Insert after section 91BQ(1)(b)—
 or
 (c) in the case of AEMO—for failing to accept gas for injection into, or available for withdrawal from, a declared distribution system,
- [69] Section 91BRB—AEMO’s STTM functions**
Omit “natural gas” from section 91BRB(2). Insert instead “covered gas”.

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- [70] **Section 91BRC—Market participation**
Omit “natural gas” wherever occurring. Insert instead “covered gas”.
- [71] **Section 91BRF—Title to gas**
Omit “natural gas”. Insert instead “gas”.
- [72] **Section 91BRG—Gas supplied to STTM hub must meet quality specifications specified in the Rules**
Omit “natural gas”. Insert instead “gas”.
- [73] **Section 91BRG**
Insert “and gas” after “that STTM hub”.
- [74] **Section 91BRK—AEMO’s gas trading exchange functions**
Omit “natural gas” from section 91BRK(2). Insert instead “covered gas”.
- [75] **Section 91D—Object and content of gas statement of opportunities**
Omit “natural gas” from section 91D(1). Insert instead “covered gas”.
- [76] **Section 91D(2)**
Insert “, for any covered gas specified in the Rules” after “statement of opportunities”.
- [77] **Section 91D(2)**
Omit “natural” from paragraphs (a)–(d) wherever occurring.
- [78] **Section 91DA—AEMO’s obligations in regard to gas statement of opportunities**
Omit “natural gas” from section 91DA(2)(b). Insert instead “covered gas”.
- [79] **Section 91DB—Information for the gas statement of opportunities**
Omit “natural gas” from section 91DB(1). Insert instead “covered gas”.
- [80] **Section 91FEA—Obligation to give information to AEMO**
Insert after section 91FEA(1)(d)—
(da) a blend processing service provider;
- [81] **Chapter 2, Part 6, Division 6, Subdivision 5**
Insert after section 91FEI—

Subdivision 5 Declared wholesale gas market information

91FEJ Information required to be given to AEMO

- (1) A person who has possession or control of information must give the information to AEMO if—
- (a) the information relates to the operation and administration of the covered gas industry, and
 - (b) the information is necessary for AEMO to perform a declared system function under section 91BA(1)(c) or (d), and
 - (c) the person is required by the Rules to give the information to AEMO.

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- (2) The information must be given to AEMO in accordance with the Wholesale Market Procedures or the Rules.
- (3) Subsection (1) does not apply if the person is exempt under the Rules from giving the information.
- (4) Subsection (1) does not require—
 - (a) a person to disclose information that is the subject of legal professional privilege; or
 - (b) a natural person to disclose information that would incriminate the person or make the person liable to a criminal penalty under the law of an Australian jurisdiction, whether or not the jurisdiction is a participating jurisdiction.

91FEK Person cannot rely on duty of confidence to avoid compliance with obligation

A person must not refuse to comply with the requirement in section 91FEJ on the ground of any duty of confidence.

91FEL Giving AEMO false or misleading information

A person must not give information to AEMO under this subdivision that the person knows is false or misleading in a material particular.

91FEM Immunity of persons giving information to AEMO

- (1) A person who gives information to AEMO under this subdivision does not incur any civil monetary liability for an act or omission in giving that information unless the act or omission is done or made in bad faith or through negligence.
- (2) The civil monetary liability for an act or omission of a kind referred to in subsection (1) done or made through negligence may not exceed the maximum amount prescribed by the Regulations.
- (3) The Regulations may, for the purposes of subsection (2), without limitation do all or any of the following—
 - (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;
 - (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;
 - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.
- (4) A person mentioned in subsection (1) may enter into an agreement with another person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.

[82] Section 91GG—Disclosure of protected information for safety, proper operation of the market etc

Omit “natural gas” from section 91GG(1)(a)(i). Insert instead “covered gas”.

[83] Section 91KA—Supply interruption or disconnection in compliance with AEMO's direction

Omit “natural gas” from section 91KA(1). Insert instead “covered gas”.

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[84] Section 91KD—Disclosure of information for purpose of market trials

Omit “natural gas” from section 91KD(1)(a). Insert instead “covered gas”.

[85] Section 91L—Retail gas markets

Omit “The retail market for natural gas” from section 91L(1).

Insert instead “A retail market for a covered gas”.

[86] Section 91LA—Retail market participation

Insert after section 91LA(2)(c)—

(ca) blend processing service providers;

[87] Section 137—Definitions

Omit the definition of *related business*. Insert instead—

related business means the following—

- (a) the provision of a blend processing service;
- (b) the business of producing primary gas or processable gas;
- (c) the business of purchasing or selling covered gas or processable gas, but does not include purchasing or selling covered gas or processable gas to the extent necessary—
 - (i) for the safe and reliable operation of a pipeline; or
 - (ii) to enable a service provider to provide balancing services in connection with a pipeline.

[88] Section 143

Omit section 143. Insert instead—

143 AER ring fencing determinations—individuals

- (1) Subject to this Division and subject to and in accordance with the Rules, the AER may make a determination requiring an affected person to do, or refrain from doing, a thing (an *additional ring fencing requirement*) specified in the determination.
- (2) An affected person must comply with every additional ring fencing requirement that applies to the person.
- (3) The AER must give an affected person a copy of the determination imposing an additional ring fencing requirement affecting the person.
- (4) A determination made under this section must specify the date from which the additional ring fencing requirement applies.
- (5) The date specified under subsection (4) must be at least 10 business days after each affected person is given a copy of the determination.
- (6) In this section—

affected person, for a determination, means the following—

 - (a) a service provider named in the determination,
 - (b) an associate named in the determination.

143A AER ring fencing orders—class

- (1) Subject to this Division and subject to and in accordance with the Rules, the AER may make an order requiring a person (an *affected person*) who is a

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- member of a class of persons specified in the order to do, or refrain from doing, a thing (an *additional ring fencing requirement*) specified in the order.
- (2) An affected person must comply with every additional ring fencing requirement that applies to the person.
 - (3) As soon as practicable after making an order, the AER must—
 - (a) publish the order and a statement of the reasons for making the order on the AER’s website; and
 - (b) have notice of the making of the order published in the South Australian Government Gazette.
 - (4) An order made under this section must specify the date from which the additional ring fencing requirement applies.
 - (5) The date specified under subsection (4) must be at least 10 business days after the statement is published as required by subsection (3).
 - (6) This section applies to an associate of an affected person in the same way as it applies to an affected person.
 - (7) Before making an order under this section, the AER must, in accordance with the Rules, consult with the persons who, in the AER’s opinion, are reasonably likely to be affected by the order.

[89] Section 144—AER to have regard to likely compliance costs of additional ring fencing requirements

Omit section 144. Insert instead—

144 Matters the AER must consider

In specifying an additional ring fencing requirement under section 143 or 143A, the AER must—

- (a) have regard to the following principles—
 - (i) if one business unit of a service provider is providing pipeline services to a separate business unit of the service provider, the service provider must ensure that business units deal with each other as if they were separate unrelated entities;
 - (ii) if a service provider is providing pipeline services to an associate, the service provider must ensure that those services are provided as if the associate were a separate unrelated entity;
 - (iii) users and prospective users should have sufficient information in order to understand whether a service provider is complying with paragraph (i) or (ii);
- (b) have regard to the likely costs that may be incurred by an efficient affected person in complying with an additional ring fencing requirement.

[90] Section 147—Service provider must not enter into or give effect to associate contracts that have anti-competitive effect

Omit “natural gas”. Insert instead “covered gas”.

[91] Section 148A—Exemptions from particular requirements

Omit section 148A. Insert instead—

148A Exemptions from particular requirements

- (1) The Rules may provide for exemptions from the requirements under section 139, 140, 141, 147 or 148.
- (2) An exemption may be given subject to conditions.
- (3) Without limiting the conditions that may be imposed under subsection (2), an exemption may be given subject to conditions requiring a service provider to—
 - (a) ensure that its business and business activities are conducted, structured and arranged in the particular manner specified in the exemption;
 - (b) disclose, in the manner specified in the exemption, to the AER and to the public, specified information about its business activities, operations, structure and arrangements.

[92] Chapter 5A

Insert after section 196—

Chapter 5A Third-party access obligations for non-pipeline facilities

Part 1 Information transparency

197 Definitions

In this Part—

facility means the following—

- (a) a blend processing facility;
- (b) a compression service facility;
- (c) a storage facility;
- (d) a facility, other than a pipeline, prescribed by the Regulations for the purpose of this definition;

provider means the following—

- (a) a blend processing service provider;
- (b) a compression service provider;
- (c) a storage provider;
- (d) the owner, operator or controller of a facility prescribed for the purposes of paragraph (d) of the definition of *facility*.

198 Information and transparency requirements relating to compression service facilities and storage facilities

- (1) Without limiting any other provision, the Rules may provide for such things as—
 - (a) the collection, disclosure, verification, management and publication of information in relation to services that may be provided by means of a facility; and
 - (b) without limiting paragraph (a), requirements about the information that must be provided by a provider in relation to access, or potential access, to services provided by means of a facility, including information about the following—

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- (i) the terms and conditions on which the provider is prepared to make the facility available for use by others;
 - (ii) the procedures that the provider will apply in determining a proposal for access to the facility;
 - (iii) relevant prices, costs and methodologies associated with gaining access to, and using, a facility and relevant or related services;
 - (iv) access contracts and arrangements used, or required to be used, by the relevant provider;
 - (c) without limiting paragraphs (a) and (b), information to be provided by a provider in response to a request for access to services provided by means of a facility; and
 - (d) requirements to ensure that information is accurate and complete; and
 - (e) the imposition or recovery of costs associated with any matter referred to in a preceding paragraph or otherwise associated with facilitating access, or potential access, to services provided by means of a facility.
- (2) Nothing in subsection (1) limits any power to grant an exemption from complying with a provision, or part of a provision, of the Rules.

199 Publication of information relating to facilities

A person required, by the Rules made under section 198, to publish information must do so in accordance with the Rules.

Part 2 Access to certain facilities

200 Definitions

In this Part—

participant means the following persons—

- (a) a blend processing service provider;
- (b) the owner, operator or controller of a relevant facility;
- (c) an associate of a person in paragraphs (a) or (b);

relevant facility means—

- (a) a blend processing facility; and
- (b) a facility of a type prescribed by the Regulations for the purposes of this paragraph.

201 Access to relevant facilities

- (1) A participant must not engage in conduct for the purpose of preventing or hindering the access of another person to a service provided by a relevant facility.
- (2) For the purposes of subsection (1), a participant is taken to engage in conduct for a particular purpose if—
 - (a) the conduct is, or was, engaged in for that purpose or for a purpose that includes, or included, that purpose; and
 - (b) that purpose is, or was, a substantial purpose.
- (3) A participant may be taken to have engaged in conduct for the purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the

- conduct of the participant or another person or from other relevant circumstances.
- (4) Subsection (3) does not limit the manner in which the purpose of a person may be established for the purpose of subsection (1).
- (5) In this section—
- (a) a reference to engaging in conduct is a reference to doing, or refusing to do, any act, including the following—
 - (i) refusing to supply a service provided by means of a relevant facility;
 - (ii) without reasonable grounds, limiting or disrupting a service provided by means of a relevant facility;
 - (iii) making, or giving effect to, a provision of a contract or arrangement;
 - (iv) arriving at, or giving effect to, a provision of an understanding;
 - (v) requiring the giving of, or giving, a covenant; and
 - (b) a reference to refusing to do an act includes a reference to—
 - (i) refraining, otherwise than inadvertently, from doing the act; or
 - (ii) making it known the act will not be done.
- (6) Subsection (1) does not apply to conduct engaged in under an agreement, other than conduct in breach of this Law, the Regulations, the Rules or the Procedures, if—
- (a) for conduct relating to a blend processing facility—the agreement was in force immediately before the *National Gas (South Australia) (Other Gases) Amendment Act 2022* commenced; and
 - (b) for conduct relating to any other type of facility—the agreement was in force immediately before the facility was prescribed as a relevant facility.

202 Duty to negotiate in good faith

- (1) A user or prospective user seeking access to a service provided by means of a relevant facility and the person who owns, operates or controls the facility must negotiate in good faith with each other about—
- (a) whether access can be granted to the user or prospective user; and
 - (b) if access is to be granted—the terms and conditions for the provision of access to the user or prospective user.
- (2) Without limiting any other provision, the Rules may make provision for or with respect to the following—
- (a) the negotiation framework;
 - (b) the resolution of disputes between the person who owns, operates or controls a relevant facility and a user or prospective user of the service provided by means of the relevant facility about 1 or more aspects of access to the service.
- (3) Rules made under subsection (2) are not required to adopt, either in whole or in part, an existing dispute resolution mechanism in this Law or the Regulations.

Part 3 Ring fencing

203 Definitions

In this Part—

approved associate service contract means an associate service contract approved by the AER under an associate service contract decision;

associate service contract means a contract, arrangement or understanding between a party and an associate of the party in connection with a service provided by means of a relevant facility owned, operated or controlled by the party;

associate service contract decision means a decision of the AER under the Rules that approves, or does not approve, an associate service contract for the purposes of this Part;

party means the following persons—

- (a) a blend processing service provider;
- (b) a person prescribed by the Regulations for the purpose of this definition;
- (c) an associate of a person in paragraph (a) or (b);

relevant facility means—

- (a) for a blend processing service provider—a blend processing facility; and
- (b) for another person—a facility of a type prescribed by the Regulations for the purpose of this definition.

204 Carrying on related business prohibited

A party must not carry on 1 or more of the following businesses—

- (a) the business of providing pipeline services;
- (b) the business of producing primary gas or processable gas;
- (c) the business of purchasing or selling covered gas or processable gas, not including the purchase or sale of covered gas or processable gas to the extent necessary for the safe and reliable operation of a facility.

205 Associate service contracts with anti-competitive effect

(1) A party must not do 1 or more of the following—

- (a) enter into an associate service contract that is a prohibited arrangement;
- (b) vary an associate service contract so the contract is a prohibited arrangement;
- (c) give effect to a provision of an associate service contract that is a prohibited arrangement.

(2) Subsection (1) does not apply to—

- (a) an associate service contract that is an approved associate service contract; or
- (b) a provision in an approved associate service contract.

(3) In this section—

prohibited arrangement, for a party, means an arrangement that, in the market for the services provided by means of a facility owned, operated or controlled by the party—

- (a) has the purpose of substantially lessening competition; or

- (b) would have, or be likely to have, the effect of substantially lessening competition.

206 Associate service contracts inconsistent with competitive parity rule

- (1) A party must not do 1 or more of the following—
 - (a) enter into an associate service contract that is inconsistent with the competitive parity rule;
 - (b) vary an associate service contract so the contract is inconsistent with the competitive parity rule;
 - (c) give effect to a provision of an associate service contract that is inconsistent with the competitive parity rule.
- (2) Subsection (1) does not apply to—
 - (a) an approved associate service contract, or
 - (b) a provision in an approved associate service contract.
- (3) For the purposes of subsection (1), and Rules made for the purposes of that subsection, the competitive parity rule is the rule that a party must ensure that services provided to an associate by the party are provided as if that associate were a separate unrelated entity.

207 Exemptions

- (1) The Rules may make provisions with respect to exemptions from the requirements under this Part.
- (2) An exemption may be given subject to 1 or more conditions.

[93] Chapter 7, heading

Omit “Natural Gas Services”. Insert instead “Gas”.

[94] Section 217—AEMO to be Bulletin Board operator

Omit “Natural Gas Services”. Insert instead “Gas”.

[95] Section 218—AEMO’s obligation to maintain Bulletin Board

Omit “Natural Gas Services” wherever occurring. Insert instead “Gas”.

[96] Section 218

Omit “natural gas” wherever occurring. Insert instead “covered gas”.

[97] Section 219, heading

Omit “Natural Gas Services”. Insert instead “Gas”.

[98] Section 219

Omit “Natural Gas Services” wherever occurring. Insert instead “Gas”.

[99] Section 219(b)

Omit “natural gas”. Insert instead “covered gas”.

[100] Section 222—Fees for services provided

Omit “Natural Gas Services” from section 222(1)(a). Insert instead “Gas”.

[101] Section 223—Obligation to give information to AEMO

Omit “natural gas” wherever occurring. Insert instead “covered gas”.

[102] Section 223(1)

Omit “Natural Gas Services”. Insert instead “Gas”.

[103] Section 226A—Provision of certain information to AER

Insert “natural gas” in section 226A(1)(a) before “reserves and resources”.

[104] Section 228—Nature of BB Procedures

Omit “Natural Gas Services” wherever occurring. Insert instead “Gas”.

[105] Section 228I—Service requirements may be specified in the Rules

Omit “natural gas” from section 228I(g). Insert instead “covered gas”.

[106] Section 294FC

Insert after section 294FB—

294FC South Australian Minister to make initial Rules relating to other gases

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* (the **South Australian Minister**) may make Rules—
 - (a) for or with respect to—
 - (i) the other gas amendments; and
 - (ii) any other subject contemplated by, or necessary or expedient for, the other gas amendments; and
 - (b) that revoke or amend a Rule as a consequence of the enactment of the other gas amendments.
- (2) Rules may only be made under this section on the recommendation of the MCE.
- (3) Section 74(3) applies to Rules made under this section in the same way as it applies to a Rule made by the AEMC.
- (4) As soon as practicable after making Rules under this section, the South Australian Minister must—
 - (a) publish a notice of the making of the Rules and the date the Rules commence in the South Australian Government Gazette; and
 - (b) make the Rule publicly available.
- (5) The notice referred to in subsection (4)(a) must state—
 - (a) the date on which the Rules commence operation; or
 - (b) if different Rules will commence operation on different dates, those dates.
- (6) The Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (5).
- (7) Once the first Rules have been made, no further Rules can be made under this section.
- (8) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.

Public consultation draft

National Energy Laws Amendment (Other Gases) Bill 2022
Schedule 1 Amendment of National Gas Law

(9) In this section—

other gas amendments means the amendments made to this Law by the *National Gas (South Australia) (Other Gases) Amendment Act 2022*.

[107] Section 294G—South Australian Minister may make Rules on recommendation of MCE and Energy Security Board

Omit “natural gas” from section 294G(3)(a)(ii). Insert instead “covered gas”.

[108] Section 314A—Extension of trial Rule

Omit “natural gas” wherever occurring in section 314A(2)(c). Insert instead “covered gas”.

[109] Schedule 1—Subject matter for the National Gas Rules

Insert after item 42—

Access to facilities including blend processing facilities

42A Development of the framework for negotiating access to blend processing facilities, including—

- (a) matters that must be included in the framework; and
- (b) publication of the framework.

42B Exemptions from the ring fencing provisions in Chapter 5A, Part 3.

[110] Schedule 1, item 43

Omit “natural gas” from item 43. Insert instead “covered gas”.

[111] Schedule 1, item 60

Omit “natural gas”. Insert instead “covered gas”.

[112] Schedule 1, item 62

- (1) Omit “natural gas” wherever occurring. Insert instead “covered gas”.
- (2) Omit “or consumption”. Insert instead “, consumption or quality”.

[113] Schedule 1, item 63

Omit “natural gas”. Insert instead “covered gas”.

[114] Schedule 1, item 64

Omit “natural gas”. Insert instead “covered gas”.

[115] Schedule 1, item 67(a)

Omit “natural gas”. Insert instead “covered gas”.

[116] Schedule 1, item 68

Omit “natural gas”. Insert instead “covered gas”.

[117] Schedule 1, item 69

Omit “natural gas”. Insert instead “covered gas”.

[118] Schedule 1, item 75

Omit “natural gas”. Insert instead “covered gas”.

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National Energy Laws Amendment (Other Gases) Bill 2022
Schedule 1 Amendment of National Gas Law

[119] Schedule 1, item 76

Omit “Natural Gas Services”. Insert instead “Gas”.

[120] Schedule 1, item 78

Omit “Natural Gas Services” wherever occurring. Insert instead “Gas”.

[121] Schedule 1, item 81

Omit “Natural Gas Services”. Insert instead “Gas”.

[122] Schedule 1, item 82

Omit “Natural Gas Services”. Insert instead “Gas”.

[123] Schedule 1, item 83

Omit “Natural Gas Services”. Insert instead “Gas”.

[124] Schedule 1, item 84

Omit “Natural Gas Services”. Insert instead “Gas”.

[125] Schedule 1, item 85

Omit “Natural Gas Services”. Insert instead “Gas”.

[126] Schedule 1, item 118A

Insert after item 118—

118A The establishment and maintenance of a register by the AEMC of the following actions under this Law or the Rules by the AER or a dispute resolution body—

- (a) determinations in relation to covered gas other than determinations recorded on the register kept under item 118; and
- (b) decisions in relation to covered gas.

[127] Schedule 1, item 123A

Insert after item 123—

123A Schemes dealing with the transition of 1 or more types of covered gas facility from a facility that handles natural gas to a facility that handles another covered gas.

[128] Schedule 3—Savings and transitionals

Insert at the end of the Schedule with appropriate Part and clause numbering—

Part Transitional provisions related to other gas amendments

Division 1 Preliminary

Definition

In this Part—

commencement day means the day on which this Part comes into operation.

Division 2 Rules

Information transparency rules

A rule made for the purposes of section 83A and that was in effect immediately before the commencement day is, on and from the commencement day, taken to be a rule made under section 198.

Standard market timetable rules

- (1) This clause applies to a rule made under section 83B and that was in effect immediately before the commencement day.
- (2) On and from the commencement day, a reference to natural gas in a rule to which this clause applies is taken to be a reference to covered gas.

Division 3 Gas Bulletin Board

Gas Bulletin Board

The website to be maintained by AEMO as the Natural Gas Services Bulletin Board immediately before the commencement day is, on and from the commencement day, taken to be the Gas Bulletin Board.

Obsolete references to Natural Gas Services Bulletin Board

A reference in a legislative instrument, a policy, a contract, an agreement or another document in force immediately before the commencement day, to the Natural Gas Services Bulletin Board or to the NGSBB, is, on and from the commencement day, taken to be a reference to the Gas Bulletin Board.

Division 4 Ring fencing and third-party access

Additional ring fencing determinations

An additional ring fencing determination made under section 143 as in force immediately before the commencement day is, on and from the commencement day, taken to be an additional ring fencing determination under section 143, as substituted by the other gas amendments, and has effect accordingly.

Contracts entered into before commencement day

Sections 205(1)(c) and 206(1)(c) apply to a contract entered into before the commencement day.

Schedule 2 Amendment of National Gas (South Australia) Regulations

- [1] **Clause 5—Definition of pipeline**
Omit “natural gas” from clause 5(b). Insert instead “covered gas”.
- [2] **Clause 10—Maximum civil monetary liabilities**
Insert “91FEM,” after “91FEH,” in clause 10(1).
- [3] **Clause 10(1)**
Insert “DWGM information or” before “GSOO information” wherever occurring.
- [4] **Clause 10(1a)**
Insert “, DWGM information” after “Bulletin Board information” where first occurring.
- [5] **Clause 10(1a)**
Insert “DWGM information and” before “GSOO information” where secondly occurring.
- [6] **Clause 10(2)**
Insert “DWGM information,” before “GSOO information” wherever occurring.
- [7] **Clause 10(3)**
Insert in alphabetical order—
DWGM information means information that a person gives to AEMO to comply with the Act, section 91FEJ;
- [8] **Clause 10(3), definition of “prescribed amount”**
Insert “DWGM information or,” before “GSOO information” in paragraph (e).
- [9] **Clause 10(3), definition of “relevant event”**
Omit “National Gas Services” from paragraph (a)(ii). Insert instead “Gas”.
Insert “DWGM information or,” before “GSOO information” wherever occurring in paragraph (bc).
- [10] **Schedule 3—Civil penalty provisions**
Insert in Part 1 in appropriate numerical order under the heading “Provisions of the NGL”—
Section 91FEJ
Section 91FEL
Section 143(2)
Section 143A(2)
Section 204
Section 205
Section 206
- [11] **Schedule 3, Part 1**
Omit “Section 143(6)”.

Schedule 3 Amendment of National Energy Retail Law

[1] Section 2—Interpretation

Omit the definition of “*gas*” from section 2(1). Insert instead—

gas means the following—

- (a) natural gas;
- (b) natural gas equivalents;
- (c) prescribed covered gases.

[2] Section 2(1)

Insert in alphabetical order—

deemed natural gas equivalent distribution system means a distribution system that—

- (a) on the NGL extension date was a distribution system, including an extension of that distribution system; and
- (b) is subsequently authorised to haul a covered gas, other than natural gas or a prescribed covered gas;

natural gas means natural gas within the meaning of the NGL;

natural gas equivalent means a gas that is a covered gas within the meaning of the NGL that is—

- (a) prescribed by a local instrument for use in a jurisdiction or a specified area in a jurisdiction as a natural gas equivalent; or
- (b) supplied through a deemed natural gas equivalent distribution system;

NGL extension date means the date on which the *National Gas (Other Gases) Act 2022* commenced;

prescribed covered gas means covered gas within the meaning of the NGL that is prescribed by the *National Energy Retail Regulations*;

[3] Section 2(1), definition of “trial project”

Insert “or the sale or supply of a covered gas within the meaning of the NGL, that is not a gas for the purposes of this Law, by a retailer to a customer at premises” after “customer retail services” in paragraph (b) of the definition.

[4] Section 2(7)

Insert after section 2(6)—

- (7) A local instrument may be made to exclude 1 or more prescribed covered gases from paragraph (c) of the definition of *gas* in the relevant participating jurisdiction.

[5] Section 3A

Insert after section 3—

3A Application to prescribed covered gas

The National Regulations may modify the way that this Act, the National Regulations and the Rules apply to a prescribed covered gas.

[6] Section 11—Local area retailers

Omit section 11(4). Insert instead—

- (4) A nomination of a retailer may relate to 1 or more of the following—
 - (a) electricity;
 - (b) natural gas and natural gas equivalents;
 - (c) 1 or more types of prescribed covered gas.

[7] Section 16—Application of Law and Rules to energy

Omit section 16(1). Insert instead—

- (1) This Law and the Rules apply to—
 - (a) the sale and supply to customers of 1 or more of the following—
 - (i) electricity;
 - (ii) natural gas or natural gas equivalents, or both;
 - (iii) 1 or more types of prescribed covered gas; and
 - (b) a retailer to the extent that the retailer sells 1 or more of the following—
 - (i) electricity;
 - (ii) natural gas or natural gas equivalents, or both;
 - (iii) 1 or more types of prescribed covered gas; and
 - (c) a distributor to the extent that the distributor supplies 1 or more of the following—
 - (i) electricity;
 - (ii) natural gas or natural gas equivalents, or both;
 - (iii) 1 or more types of prescribed covered gas.

[8] Section 88—Requirement for authorisation or exemption

Omit “natural gas” from section 88(2)(b)(ii). Insert instead “gas”.

[9] Section 94—Notice of decision to grant application

Omit section 94(b). Insert instead—

- (b) stating that the applicant is, when the retailer authorisation is issued under section 96, authorised to sell—
 - (i) electricity; or
 - (ii) natural gas and natural gas equivalents; or
 - (iii) 1 or more types of prescribed covered gas; and

[10] Section 100—Form of energy authorised to be sold

Omit “electricity or gas.” from section 100(1). Insert instead—

- - (a) electricity; or
 - (b) natural gas and natural gas equivalents; or
 - (c) 1 or more types of prescribed covered gas.

[11] Section 137—RoLR notice—direction for gas

Insert after section 137(1)(c)—

- (d) a blend processing service provider must make available to a designated RoLR the capacity in its blend processing facility that, immediately before the transfer date, was available to the failed retailer.

Public consultation draft

National Energy Laws Amendment (Other Gases) Bill 2022
Schedule 3 Amendment of National Energy Retail Law

[12] Section 137(5A)

Insert after section 137(5)—

- (5A) The terms and conditions for access by the designated RoLR to a blend processing facility are to be the same terms and conditions applicable to the failed retailer immediately before the transfer date.

[13] Section 137(6A)

Insert after section 137(6)—

- (6A) Despite subsection (5A), if the terms and conditions under which the failed retailer accessed the blend processing facility materially differ from those that otherwise prevail in the market, the AER may specify in the RoLR notice, or an amendment, which may have effect back to the transfer date, terms and conditions that, in its opinion, better accord with those that otherwise prevail in the market.

[14] Section 137(7)

Insert “or (6A)” after “subsection (6)”.

[15] Section 137(8A)

Insert after section 137(8)—

- (8A) The designated RoLR and a relevant blend processing service provider must, as soon as practicable after the transfer date, commence negotiations for a replacement contract for access to the blend processing facility.

[16] Section 137(14)

Insert “*blend processing facility, blend processing service provider,*” after “*access determination*”.

[17] Section 144—RoLR Procedures

Omit section 144(2)(a). Insert instead—

- (a) apply separately to—
- (i) electricity; or
 - (ii) natural gas and natural gas equivalents; or
 - (iii) 1 or more types of prescribed covered gas; and

[18] Section 237—Subject matter of rules

Insert after section 237(2)(ha)—

- (hb) the transition from the sale or supply of natural gas to the sale or supply of a natural gas equivalent or a prescribed covered gas, including, without limitation, matters relating to the following—
- (i) the process to be followed, or the transition scheme to be applied, in making the change;
 - (ii) the powers and functions of the AER in relation to the transition;
 - (iii) the technical capabilities that must be demonstrated by a retailer or distributor in relation to the sale of a natural gas equivalent before making the change;

[19] Section 238AC

Insert after section 238AB—

238AC South Australian Minister to make initial Rules relating to other gases

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* (the **South Australian Minister**) may make Rules—
 - (a) for or with respect to—
 - (i) the other gas amendments; and
 - (ii) any other subject contemplated by, or necessary or expedient for, the other gas amendments; and
 - (b) that revoke or amend a Rule as a consequence of the enactment of the other gas amendments.
- (2) Rules made under this section may revoke or amend an existing Rule.
- (3) Rules may only be made under this section on the recommendation of the MCE.
- (4) Section 237(3) applies to Rules made under this section in the same way as it applies to a Rule made by the AEMC.
- (5) As soon as practicable after making Rules under this section, the South Australian Minister must—
 - (a) publish a notice of the making of the Rules and the date the Rules commence in the South Australian Government Gazette; and
 - (b) make the Rule publicly available.
- (6) The notice referred to in subsection (5)(a) must state—
 - (a) the date on which the Rules commence operation; or
 - (b) if different Rules will commence operation on different dates, those dates.
- (7) The Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (6).
- (8) Once the first Rules have been made, no further Rules can be made under this section.
- (9) In this section—

other gas amendments means the amendments made to this Law by the *National Gas (South Australia) (Other Gases) Amendment Act 2022*.

[20] Schedule 1—Savings and transitionals

Insert at the end of the Schedule with appropriate Part and clause numbering—

Part Transitional provisions related to other gas amendments

Definition

In this Part—

commencement day means the day on which this Part comes into operation;

Retailer authorisations

A retailer authorisation in effect immediately before the commencement day that authorises the sale of natural gas is taken, on and from the commencement day, to authorise the sale of natural gas and natural gas equivalents.

Exempt sellers

- (1) A person who immediately before the commencement day was an exempt seller for natural gas is taken, on and from the commencement day, to be an exempt seller for natural gas and natural gas equivalents to the same extent and on the same conditions as applied immediately before the commencement day.
- (2) In this clause—
exempt seller means a person who is exempt, under Part 5, Division 6, from the requirement to hold a retailer authorisation.

RoLR arrangements

- (1) A retailer who immediately before the commencement day was appointed and registered as the default RoLR for a gas distribution system continues, on and from the commencement day, to be the default RoLR for that distribution system whether the distribution system is used for natural gas or a natural gas equivalent.
- (2) A retailer who immediately before the commencement day was registered as an additional RoLR for a gas distribution system continues, on and from the commencement day, to be an additional RoLR for that distribution system whether the distribution system is used for natural gas or a natural gas equivalent.
- (3) A retailer who immediately before the commencement day was appointed as a designated RoLR for a gas distribution system continues, on and from the commencement day, to be the designated RoLR for that distribution system whether the distribution system is used for natural gas or a natural gas equivalent.
- (4) Nothing in this clause limits the power of the AER to terminate the appointment and registration of a retailer as a default RoLR in accordance with section 125(9).
- (5) Nothing in this clause limits the power of the AER to terminate the registration of a retailer as an RoLR in accordance with section 128.

Schedule 4 Amendment of National Energy Retail Regulations

[1] Clause 13—Retailers

Omit “gas” wherever occurring in clause 13(2). Insert instead “natural gas and natural gas equivalents”.

[2] Schedule 2—Retailers under transitional provisions

Omit “Gas” wherever occurring in column 2 of the table. Insert instead “Natural gas and natural gas equivalents”.

[3] Schedule 2

Omit “Electricity and gas” wherever occurring in column 2 of the table.

Insert instead—

- (a) Electricity, and
- (b) natural gas and natural gas equivalents

[4] Schedule 3—Exempt sellers under transitional provisions

Omit “Electricity and gas” wherever occurring in column 2 of the table.

Insert instead—

- (a) Electricity, and
- (b) natural gas and natural gas equivalents

[5] Schedule 3

Omit “Gas” wherever occurring in column 2 of the table. Insert instead “Natural gas and natural gas equivalents”.

[6] Schedule 4—Retailers of last resort under transitional provisions

Omit “Gas” wherever occurring in column 2 of the table. Insert instead “Natural gas and natural gas equivalents”.