



20 May 2022

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Sent by email

Dear Mr Sullivan

Consultation paper: Extending the national gas regulatory framework to hydrogen blends & renewable gases – proposed changes to NGL, NERL and National Regulations

Jemena welcomes the opportunity to provide feedback on the draft regulatory package which aims to bring hydrogen blends, biomethane and other renewable gases within the scope of the national gas regulatory framework.

Broadly, we welcome the regulatory package as we consider that the reforms will remove regulatory barriers which could prevent the transition to renewable gas, consistent with the policy goal of Energy Ministers.

We do recognise that extending the regulatory framework – designed for an established market – in the midst of the wider transformation of Australia’s energy system is challenging. It is particularly difficult given that up and down stream markets for renewable gas either don’t yet exist or are in their infancy. Given these uncertainties, there is a real risk that disproportionate extension or expansion of the current regulatory framework stymies the development of a renewable gas industry.

This risk is not theoretical. Conflicting policy goals result in implicit or explicit trade-offs. Economic literature is full of examples of regulation with different policy objectives restricting innovation, firm entry and ultimately consumer outcomes.¹ Regulatory risk is a barrier to entry and market development in new and untested markets. When it comes to renewable gas, the regulatory risk is already naturally high given:

- The complexity, scale and rate of change of the national gas regulatory framework. Operating under this framework is particularly difficult for new or potential entrants who do not have the familiarity or expertise to participate. Regulatory protections and reporting requirements risk entrenching existing producers or preventing smaller operators partnering with other participants (such as gas networks) who are keen to de-risk and facilitate a renewable gas future.

¹ A recent study found that the European Union’s introduction of the General Data Protection Regulation (GDPR) (with the policy intent of improving privacy outcomes) led to the exit of 1/3 of apps from the Google Play Store and the reduction of new apps by half. See Janßen, Kesler, Kummer and Waldfoegel, “GDPR and the Lost Generation of Innovative Apps”, *National Bureau of Economic Research*, 2022 <https://www.nber.org/papers/w30028> Working paper. Another study found that the regulatory requirements of setting up a limited liability company (for tax collection, anti-fraud, information gathering or to improve public decision making reasons) has the consequence of hampering the creation of new firms, force new entrants to be larger and for some firms to grow more slowly. See and Klapper., Laeven, Rajan, “Entry regulation as a barrier to entrepreneurship, 2004, *National Bureau of Economic Research*, 2004, <https://www.nber.org/papers/w10380> Working paper.

- The economic viability or technical feasibility of projects has not yet been demonstrated.
- The incredible value that renewable gas could unlock for Australian energy consumers in terms of security, affordability, reliability, optionality and choice.

Accordingly, we consider that it is vital that policy priority is given to ensuring that the regulatory framework provides sufficient flexibility so that a market can develop. With this lens, we have reviewed the draft regulatory package and identified several areas which we consider could be rebalanced to place greater emphasis on reducing regulatory barriers (consistent with the Energy Ministers' policy intention) while still maintaining the other more traditional policy objectives, such as the potential for market power.

We consider that the reforms could be improved by building in a greater degree of flexibility and optionality for instance by:

- Granting an automatic application of the greenfields incentive and greenfields price protection mechanisms for all hydrogen and renewable gas pipelines (whether they be transmission or distribution) to ensure that regulatory risk does not compound with market, economic and technical risks that are already present.
- Ensuring that in the early stages of industry development, parties involved in pipelines, production and blending activities can work closely together in the interests of innovation and efficiency. We consider that the ringfencing arrangements as contained in the Draft Bill will impede such collaboration and partnerships and that greater flexibility is required. We have identified several aspects which can be modified, such as deeming specific activities as meeting exemption principles. Further, we do not support the AER's recommendations in respect of associate contracts as we consider that the AER's existing powers are sufficient to allow the AER to effectively monitor and enforce compliance.
- Allowing blend processing facilities to be vertically integrated with either producers or pipeline service providers as this is likely to allow a more efficient delivery of services (while still allowing third parties to offer these services).
- Only applying the light-handed access regime to blend processing facilities where it is reasonable to expect that the facility will be able to provide services to third parties.

We provide further detail on our proposed changes, as well as our consideration on the AER's recommended changes to the gas ring-fencing framework, in appendix A. Appendix B provides our feedback on the proposed changes to the National Gas Law.

We look forward to continuing to work with you on this important reform package. Should you have any questions please do not hesitate to contact James Turnley, Gas Networks Regulation Manager, on (02) 9867 8659.

Yours sincerely,



Ana Dijanosic

General Manager Regulation

Appendix A: Responses to specific questions

1.1 Proposed approach to specifying the gases and blends within scope of national gas regulatory framework

What are your views on the refined approach to identifying the gases and blends that could fall within the scope of the national framework (see section 3.1)?

We support the approach to identifying gases and blends that could fall within scope of the national framework.

However, there is a distinct difference between:

- a) Combining different sources of methane. While natural gas, biomethane or synthetic methane are identified as separate primary gases they are all principally constituted of methane with the only difference being the source²
- b) Blending methane (natural gas, biomethane or synthetic methane) with hydrogen or another constituent gas.

For the regulatory framework to be proportionate and avoid unintended consequences it is important to recognise this difference and tailor the regulatory approach accordingly. We consider the above distinction needs to be recognised to ensure that regulation is proportionate. Treating blending of gases which are principally constituted of methane in the same manner of blending methane with other gases with result in unnecessary administrative costs and burden.

In the case of the NGL we consider that this means that the definition of blend processing facility should not capture a facility which blends primary gases that are, other than their source, interchangeable. Facilities producing biomethane and synthetic methane will still be captured by the regulatory framework like any other producer of a regulated gas. We have proposed drafting in Appendix B to achieve this.

1.2 Proposed extension of the NGL and National Gas Regulations

What are your views on the refined approach to extending the NGL to covered gases (see section 3.3)? Where appropriate, please comment in relation to the subheadings below.

What are your views on the proposed extension of the pipeline access regime to all pipelines transporting covered gases (i.e. natural gas, biomethane, synthetic methane, hydrogen and blends of these gases) and the impacts it may have on smaller players or new entrants? In responding to this question please consider:

- the proposal to extend to the regime in this way from the commencement of the reforms;
- the potential impact on industry development, including where it may support the development a competitive and cost-efficient hydrogen and renewable gas industry, or may create barriers;
- the proposed changes to the pipeline ring-fencing arrangements; and
- the proposed power to exempt remote pipelines.

What are your views on the proposed new light-handed access regime for blend processing facilities?

When developing the refined approach, a number of steps have been taken to minimise regulatory costs and

² For instance naturally occurring, produced from biogas, methanation of substances derived from the processing of biomass, or methanation of carbon dioxide captured from air.

risks for industry participants and new entrants.

Do you think any additional steps are required? If so, please explain what they are and why they are required.

Do you agree with the AEMC's recommendations (see section 3.2) that the NGL be amended to:

- enable rules to be made so that AEMO can collect information for the purposes of the VGPR and capacity modelling from facilities that do not otherwise participate directly in the DWGM?
- limit the potential for the unintended application of the GSOO provisions in the NGL?

If you disagree with either of these recommendations, please explain why.

Do you agree with the AER's recommendations (see section 3.2) that the NGL be amended to:

- accord the regulator the power to impose additional ring fencing requirements on a class of service providers or associates through a ring-fencing order?
- allow conditions to be imposed on minimum ring-fencing exemptions issued under the NGR?

If you disagree with either of these recommendations, please explain why.

Are any transitional arrangements required in the NGL to accommodate the extension to covered gases? If so, explain what they are and why they are required.

Jemena welcomes the refined approach to extending the NGL to covered gases. With the appropriate exemptions and mechanisms in place, the NGL and NGR reforms have the potential to provide incentives for efficient investment in, and to facilitate a smooth transition to, renewable gases – which is in the long-term interest of consumers.

To facilitate a responsive and competitive market for production of renewable gases it is crucial to keep in mind that:

- many potential participants in the emerging markets are not existing natural gas producers or retailers and therefore do not have existing systems and expertise to participate in complex markets with substantial regulatory compliance obligations. Unless carefully designed, regulatory “protections” could in fact entrench existing producers and retailers.
- provide a supportive framework for facilitation of market development initiatives, including “proof of concept” projects to test technical feasibility, and allowing pipeline service providers to partner or support upstream facilities to reduce the financial and technical risks of projects without ringfencing barriers and cost recovery uncertainties.

Accordingly the framework needs to feature an appropriate level of flexibility and optionality. We have identified some areas below where we consider that the draft framework could be improved.

1.2.1 Pipeline access regime

Jemena generally supports the proposal to extend the access regime to scheme distribution pipelines as it will support the long term transition to renewable gases.

However, we are concerned that wholesale application of the existing regulatory framework, which was developed for an established market and technology, may impose unnecessary cost or may inhibit market development. In particular, we are concerned that the regulatory burden and potential for the framework to reduce investment incentives compound the economic and technical risks with renewable gas projects, which will stunt or halt investment. To avoid this, appropriate regulatory mechanisms need to be included to provide flexibility for regulators and market participants to facilitate the development of the market and subsequently respond to changing conditions.

A solution to this could be the automatic application of the greenfields incentive and greenfields price protection mechanisms for all hydrogen and renewable gas pipelines (whether they be transmission or distribution), which Energy Ministers have developed to provide better investment incentives and reduce regulatory burden.

1.2.2 Pipeline ring-fencing and associate contract arrangements

In the early stages of industry development, it makes sense for parties involved in pipelines, production and blending activities to work closely together in the interests of innovation and efficiency. If participants have flexibility in creating arrangements for production, blending and delivery of renewable gas, transaction costs will be reduced for all parties, effectively lowering barriers and encouraging new entrants into the market. The ringfencing arrangements as contained in the Draft Bill will impede such collaboration and partnerships.

Greater flexibility is required to enable collaboration across participants, to benefit from the expertise that established natural gas market participants can bring to the gas transition. For this reason, standing exemptions and flexibility should be the starting position, rather than the participants having to seek regulatory approval to collaborate on, or participate in, market innovation initiatives. The regulatory uncertainty created by the need for regulator approval of ringfencing exemptions or associate contract arrangements creates a fundamental disincentive to investment as it represents a risk that cannot be mitigated by businesses. Additionally, the need to seek approval will add uncertainty and inefficient costs, and delay to projects.

Principles-based approach

In general, we support the AER's proposal to establish a principles-based approach to ringfencing exemptions (AER Recommendation 1). We consider the proposal to set out principles consistent with principles in the Electricity Distribution Ring-fencing Guideline in the NGR to be a suitable approach.

Exemptions

The principles-based approach to ringfencing exemptions provides the right overarching framework for guiding the AER's exercise of its regulatory functions and powers. However, additional mechanisms need to be incorporated into the reforms that recognise renewable gas markets are in the early stages of development. So as to not impede development of these markets, Officials and the AEMC should consider, as next steps, that certain types of activities should either be:

- deemed to meet the ringfencing exemption principles. This could be achieved by establishing a standing set of ringfencing exemptions in the savings and transitional provisions that allow participants to work together in relation to renewable gas trials and small scale projects; or
- establishing a review mechanism for the regulator with respect to the exemptions or otherwise a sunset date for exemptions that adequately captures the life cycle of renewable gas trials or small scale projects.

We consider activities that would fall into this category to be:

- a pipeline service provider being able to construct and operate assets (including blending facilities) to enable injection or storage of renewable gas to support the delivery of haulage services to customers, for instance to defer or avoid network augmentation required to supply loads at peak times. This would typically be the most economic solution and may also be necessary as it may not be possible for a third party to provide these services where the safety and security of the network is involved.
- pipeline service providers running trials to test technical and economic concepts to facilitate a renewable gas future. An example of this is the Western Sydney Green Hydrogen Hub (WSGHH) which produces and blends hydrogen with the intent of developing, not hindering the market (See box below).

- deblending services for a specific downstream customer where other customers in the network section are being supplied with a NGE (see Case study in Appendix C).

Western Sydney Green Hydrogen Hub

The Western Sydney Green Hydrogen Hub (WSGHH) facility was constructed in order to identify, understand and remove barriers to the commercialisation of this technology and understand the application of pipelines and the gas network in the future renewable energy landscape. In doing so, we aimed to make it easier for other parties to invest confidently in this technology and create the foundation for a new service for Jemena's gas pipeline infrastructure.

The project's initial focus is on identifying and determining solutions to managing real and perceived technical, regulatory, environmental, social and economic barriers to gas distribution networks being used for large-scale renewable energy storage and distribution. WSGHH allows for both research in the better management of the real barriers and will act as a nucleus for the communication required to break perceived barriers. The trial is key in understanding the future integration of the gas and electricity networks and how gas networks can help support a managed transition to a renewable energy future.

The WSGHH objectives are to:

- ensure a sound understanding and address technical, regulatory, environmental, social and economic barriers to this technology in an Australian context – including knowledge of cost, deployment, utilisation and scalability;
- promote the awareness of large-scale renewable energy storage and distribution offered by gas pipeline infrastructure, thus providing additional opportunities for the installation of renewable energy generation;
- enable gas pipelines to accommodate renewable gas injection to support the uptake of power-to-gas technology more broadly (as well as other forms of renewable/distributed gas production);
- provide a vehicle for the engagement of stakeholders in the downstream supply chain (eg appliance manufactures/original equipment manufacturers) to accommodate up to 10% (or potentially greater) of hydrogen/natural gas mixtures;
- share the information gained with industry; and
- evaluate the complementary application of hydrogen for zero carbon transport fuel applications through third parties.

Conditions on ringfencing exemptions

We support the AER having the power to impose conditions on exemptions consistent with its powers in other parts of the NGL and NGR, and in the interest of providing a more flexible ringfencing framework overall.

The power to impose conditions on an exemption is sufficiently broad to enable the AER to tailor exemptions to suit the particular circumstances, including where necessary to impose time limitations or review mechanisms.

However if every exemption included a specific time limitation, this will have the adverse effect of:

- undermining the regulatory certainty that would otherwise attach to the exemption, and in turn hinder investment decisions and business innovation;
- increasing the AER's workload to review exemptions where there has been no material change in circumstances.

Associate contracts

We consider the existing framework to be fit for purpose, and that no changes are required. In particular, Jemena does not support the AER's recommendation 5, as we consider that the existing provisions of the NGL and NGR—including the mandatory notification of associate contracts to the AER and the AER's existing powers to compel the provision of information as part of a compliance investigation—are

sufficient to allow the AER to effectively monitor and enforce compliance with the NGL's associate contract provisions. However, should the AER be given a more active role in approving associate contracts, Officials and the AEMC should consider the implementation of a more proportionate and efficient role for the AER. Specifically, some considerations include the following:

- to give the AER the power to require further information from the service provider where the service provider has not demonstrated that the associate contract meets the requirements of the NGL and NGR;
- to require the AER to approve the associate contract where the service provider has provided evidence from a third party consultant or advisor that the associate contract does not contravene the associate contract requirements under the NGL/NGR and the AER has no reason to question that evidence. In this regard, we consider precedent can be taken from the savings and transitional provisions for the capacity trading reforms for transitional firm services.³ This would not limit the AER's power to impose restrictions or revoke that approval.

Associate contracts relating to trials and other short term ventures should not require AER notification or approval (noting that the associate contract provisions under the NGL will still apply).

Class determinations

We do not support expanding the scope of the AER's powers so that it can impose additional ring fencing requirements on a class of service providers or associates (s. 143A of the Draft Bill). There is no need to further empower the AER with the ability to impose such requirements on a class basis (and conversely, there is no need to impose exemptions on a class basis). The difficulty in establishing a class will dangerously impose requirements and exemptions in unjustified circumstances.

The AER already has a role in gas ringfencing and to date, we see no basis to change the scope and purpose of that role. Unlike electricity, the NGL and NGR contain a clear framework which ensures service providers are not vertically integrated with other related businesses. The AER's role is to monitor compliance with these requirements and to intervene where compliance is not clear. The AER already has the regulatory tools to carry out this function.

To the extent that the AER considers that a class of participants should be subject to specific ringfencing requirements, it is open to the AER to undertake an analysis of those participants on a case-by-case basis and then impose a consistent set of requirements on those participants. The AER has not demonstrated how the current exercise of its function and powers have failed to deliver the objectives of the ringfencing framework.

Should the AER be able to impose requirements on a class of participants, the criteria in s. 144 needs to specifically take into the account the implications of imposing a ringfencing order on a class. In particular:

- ensuring that the imposition of a class ringfencing order will apply equally across the class having regard to the size, geographic location and market in which each member of the class is or will be providing goods or services;
- ensuring that the imposition of a class ringfencing order will not adversely affect the development of competition and innovation in the markets in which the class is providing goods or services;
- whether the requirements adequately take into account how the characteristics of the class will change over time.

³ Schedule 5 of the NGR.

Grandfathering arrangements

Existing facilities which have been developed in compliance with the current regulatory framework should be exempt from the reforms as the investment and business were established based on the regulatory requirements that were in place at a different point in time.

For example, at the Jemena Western Sydney Green Hydrogen Hub, JGN produces renewable hydrogen, blends that hydrogen with natural gas, then injects the blended gas into the network. In the interests of maximising the likelihood of success of the trial, JGN built and operates the facility, including blending. The project does not involve multiple entities in order to minimise the risk that arise at each hand-over point (even between related entities) and to avoid the costs which would have been incurred in developing agreements between entities. It does not and will not inhibit new entrants from undertaking similar projects and trials.

We suggest that existing facilities such as this should not be required to restructure, or alternatively the service provider should be given the right to recover its costs incurred in restructuring, including any taxes or stamp duty incurred as the result of transferring assets. If such an exemption is considered too wide, we suggest the AER could be given power to revoke the exemption if the AER determines that the ongoing grandfathering was adversely affecting competition.

Ringfencing requirements

If facilities are not grandfathered, a reasonable period to transition into the new ringfencing requirements is required, to ensure that entities impacted by the new ringfencing requirements have a reasonable period to ensure compliance with the new rules, including developing inter-party agreements and transferring assets. We consider that a reasonable period would be 24 months, particularly if it will be required to obtain exemptions or approval of contracts.

1.2.4 Blend processing facilities

Light handed access regime

Conceptually, Jemena supports a light handed access regime for blend processing facilities, where those facilities are likely able to provide services to a range of parties, as this provides a proportionate regulatory approach to blending activities.

We do not consider that the drafting for Chapter 5A as contained in the Draft Bill reflects a proportionate regulatory response.⁴ In particular, the recommendation and drafting automatically apply the light-handed access regime to all blend processing facilities, with no requirement for an assessment of whether there is any likely demand for use of those services by third parties, or whether it is technically or economically feasible for that access to be provided.

Vertical separation of blend processing facilities

We do not support the prevention of all forms of vertical integration between a blend processing facility and other parts of the gas market supply chain. Vertical separation is a regulatory tool of last resort and should be applied with caution.

We consider there to be strong market development benefits from a regime which provides the flexibility for participants to operate a number of activities involved in the production, processing and management of renewable gas, to the overall benefit of customers. From a technical perspective, they serve similar

⁴ We also note that the definition of 'party' in s. 203 includes an associate of a blend processing service provider which means that no associate of a blending processing service provider can undertake any related business. We understand that this is a drafting oversight and is not intended to make blending processing services mutually exclusive from any other related business within a corporate group. In our view, ringfencing between related businesses is sufficient to address any competition related concerns.

roles in the market and have comparable transactions with service providers (being the main subject of ringfencing obligations).

The Draft Bill and preferred approach (as reflected in both the DISER and AEMC papers) does not seem to consider the possibility that the market for production or processing of renewable gas does not yet exist and will not develop as intended.

The current approach assumes that if blend processing facilities are vertically separated they will be developed by third parties, that they will be located in a position where it is feasible to receive and blend renewable gases produced by a number of producers (akin to a natural gas processing hub) and that natural competition drivers will work more efficiently than vertical integration. It similarly equates blend processing facilities to retail markets, suggesting firm separation between other parts of the supply chain are required in order to drive competition and meet the long term interests of consumers.

It is also assumed that there is a risk that pipeline service providers will foreclose competition resulting in higher prices for consumers.⁵ However, as Joskow (2010) has identified, there is little comprehensive empirical analysis of this theory of vertical integration and little empirical support, except under extreme conditions where firms controlling bottleneck monopoly facilities have the incentive and ability to exercise an anticompetitive foreclosure strategy.⁶

Before vertical separation is required, consideration should have regard to the appropriate organisational governance arrangement for blend processing facilities, using a transaction cost lens, to identify the arrangements which will deliver the best outcomes for consumers. Specifically:

- Whether the blend processing facility, in terms of scale, complexity and operation are akin to other existing interconnections, meter stations, custody transfer stations and equivalent infrastructure, which are parts of a pipeline or associated equipment. In turn this means:
 - It is unlikely that a third party (other than the pipeline or producer) could operate the blend processing facility at a lower cost or would be willing to provide the service.
 - There are opportunities for pipeline operators and producers to knowledge share to encourage greater innovation and spur industry development.
- Recognition that pipeline service providers have an incentive to grow and maintain utilisation of their pipelines generally and in particular to facilitate a renewable gas future. Similarly, producers have an incentive to blend their product at the lowest possible cost.
- That pipelines are subject to access regulation (either full regulation or a negotiate arbitrate model).

In our view this indicates that the most efficient outcome would likely be either pipeline service providers or producers own and operate any blend processing facility that is required. In particular there seems to be limited market benefits in preventing producers also being blend processing facility providers and may prevent producers from providing technical and economic efficiencies in seeking access and connection to pipelines. Further, if vertical separation is not imposed but is more efficient it can still occur as a third party is still able to provide this function.

⁵ Energy Ministers Officials, *Extending the national gas regulatory framework to hydrogen and renewable gases and blends, Proposed changes to NGL, NERL and National Regulations*, Consultation paper, p.62

⁶ Joskow 2010,, *Vertical integration*, p.40 and p.49 Available here: <https://economics.mit.edu/files/5510#:~:text=Transaction%20cost%2Dbased%20theories%20of,and%20benefits%20of%20internal%20organization>.

Recommended approach

Overall, we believe the approach should be revisited as follows:

- only apply the light-handed access regime to facilities where it is reasonable to expect that the facility will be able to provide services to third parties (for example, Jemena produces renewable hydrogen at its Western Sydney Green Hydrogen Hub, undertakes blend processing at the facility, then injects the gas into the network. There is no other production facility planned or anticipated in the vicinity);
- allowing the service to be provided by a service provider as part of its access arrangement (effectively applying the same form of regulation applicable to the pipeline to the blend processing service) and if approved by the regulator, Chapter 5A would not apply. Essentially, this allows the AER to classify a service provided by a blending facility as a pipeline service and allow it to be regulated accordingly;
- permitting service providers and other participants to seek approval to participate in blend processing facilities where the regulator does not consider there would be a substantially lessening of competition (informed by an independent assessment put forward by the applicant);
- transitional standing exemptions based on capacity thresholds to enable trials and small scale projects and blend processing facilities as part of a greenfields project to proceed outside of the Chapter 5A third party access regime. While we recognise that it would be possible to use the regulatory sand-boxing this process still requires regulatory approval and delays potentially creating an insurmountable regulatory hurdle, particularly for new entrants or those seeking to undertake a small project or trials.

1.3 Proposed extension of the NERL and National Energy Retail Regulations

What are your views on the refined approach to extending the NERL to covered gases (see section 3.4)? Where appropriate, please comment in relation to the questions below.

What are your views on the approach to identifying NGEs and defining prescribed covered gases?

What are your views on the separate authorisation and exemption of natural gas and NGEs (as one group) and prescribed covered gases (as separate products)?

Are any transitional arrangements required in the NERL to accommodate the extension to covered gases? If so, explain what they are and why they are required.

We support the approach to identifying NGEs and defining prescribed covered gases given the distinct difference between NGE's (which can be used interchangeable) and other covered gases.

Appendix B: Feedback on proposed changes to the National Gas Law

Section of Draft Bill	Feedback
Sch 1 [1] Section 2 - Definitions	<p>Blend processing facility means a facility for 1, or both, of the following-</p> <ul style="list-style-type: none"> (a) the blending of 1 or more primary gases with another primary gas, 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- <ul style="list-style-type: none"> (i) a primary gas; or (ii) a gas blend; <p>but does not include a facility that only blends biomethane, natural gas and synthetic methane.</p>
Sch. 1 [88] Section 143A	<p>Delete or:</p> <p>(7) Before making an order under this section, the AER:</p> <ul style="list-style-type: none"> (a) be satisfied that the order will have a consistent effect on each member of the class of persons specified in the order; and (b) in accordance with the Rules, consult with the persons who, in the AER's opinion, are reasonably likely to be affected by the order.
Sch. 1 [89] Section 144	<p>In specifying an additional ring fencing requirement under section 143 or 143A, the AER must-</p> <ul style="list-style-type: none"> (a) have regard to the following principles: <ul style="list-style-type: none"> (iv) a ringfencing order on a class of persons must have a substantially uniform effect on all members of the class having regard to the size of the person's business, geographic location and markets in which each member of the class is, or will be, providing goods or services; (v) the additional ring fencing requirement must not adversely affect the development of competition or innovation for the relevant services or goods; (b) have regard to the likely costs that may be incurred by an affected person in complying with an additional ring fencing requirement.
Sch. 1 [92] Chapter 5A Section 200 Definitions	<p>In the definition of 'participant', delete paragraph (c).</p>
Sch. 1 [92] Chapter 5A Section 203 Definitions	<p>In the definition of 'party', delete paragraph (c).</p>
Sch. 1 [92] Chapter 5A Section 204 Carrying on related business prohibited	<p>A party must not carry on 1 or more of the following businesses –</p> <ul style="list-style-type: none"> (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; and (d) a business prescribed by the Regulations for the purpose of this section.

Appendix C

Case study – Deblending service to bring a 20% hydrogen gas blend back to a 5% blend, to deliver to a downstream industrial customer

Context

- A network service provider produces renewable hydrogen as part of a trial to assess the feasibility of converting a high-pressure section of the network to a hydrogen-blend (20%).
- While most customers downstream of the hydrogen facility can tolerate higher blends of hydrogen, a particular large customer connected to that upstream segment of the network cannot exceed 5% hydrogen due to the nature of their plant and end use.
- The most efficient approach is for the deblending facility to be integrated with the network to allow gas, which meet the customer's requirements, to be delivered to the customer.

Blend processing facilities would have to comply with proposed ringfencing provisions:

- The network service provider identifies that it is possible to deblend the gas stream for that particular customer to enable the trial to occur while minimising customer impacts.
- The proposed reforms for blend processing would mean that the network service provider has to comply with ringfencing requirements to be able to undertake the deblending function, in order to bring the blended gas back to the customer's required specifications.

Issues

Option 1. The network service provider applies for a ringfencing exemption, so that it can deblend the gas. For the network service provider to carry out both hydrogen production and the deblending, two exemptions are required – one for the hydrogen production facility, and another for the blending facility.⁷ It seems unnecessarily onerous and costly for the service provider to have to obtain an exemption to deblend, if it has already been granted an exemption to produce hydrogen for the purposes of the trial. Given that the deblending service only processes gas from a single network section, it is unlikely that a third party would be willing to provide the service on a commercial basis given the relatively small volume of gas and the fact that the project is a trial. Even if a third party was interested in providing the service, they would be expected to charge more than the incremental costs which the service provider would incur.

Option 2. Two separate entities (whether individual associates of the service provider or other parties) undertake the hydrogen production and carry out the blending. This requires that two additional entities to be involved in the process with associated costs (including developing contracts) and the risk created by hand-over points.

The main issue is that at the early stages of market development, there are unlikely to be third parties that are interested in providing standalone production services, or standalone blending services. It would make more economic sense for the network to do the blending or, at least for the producer to also be able to undertake deblending.

Solution

There should be standing ringfencing exemptions that commence at the start of the reforms, that apply to blending facilities or services where:

- A blending or deblending service is relatively well integrated into the network, in order to process a gas to meet the requirements of commercial or industrial customers; or
- A facility is only able to process gas from a single source, in which case there is no benefit to requiring a third party to be involved. This exemption could be revisited if additional sources of renewable gas are subsequently developed in the vicinity of the blending facility and access to the facility is requested by third parties.

⁷ The network service provider would have to first obtain an exemption under the ringfencing provisions to be permitted to blend and produce gas. In theory this is two exemptions, but could be addressed in the same application. The network service provider would also then have to obtain an exemption under Chapter 5A (on the basis it is a blend processing service provider) to also produce gas.