

**COUNCIL OF AUSTRALIAN  
GOVERNMENTS**

**NATURAL GAS PIPELINES  
ACCESS AGREEMENT**

**NATURAL GAS PIPELINES ACCESS AGREEMENT**

**This Agreement is made on the seventh day of November 1997**

**BETWEEN**

**THE COMMONWEALTH OF AUSTRALIA  
THE STATE OF NEW SOUTH WALES  
THE STATE OF VICTORIA  
THE STATE OF QUEENSLAND  
THE STATE OF SOUTH AUSTRALIA  
THE STATE OF WESTERN AUSTRALIA  
THE STATE OF TASMANIA  
THE AUSTRALIAN CAPITAL TERRITORY and  
THE NORTHERN TERRITORY**

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**NATURAL GAS PIPELINES  
ACCESS AGREEMENT**

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**DATE:** Seventh Day of November 1997

**PARTIES:** THE COMMONWEALTH OF AUSTRALIA  
THE STATE OF NEW SOUTH WALES  
THE STATE OF VICTORIA  
THE STATE OF QUEENSLAND  
THE STATE OF SOUTH AUSTRALIA  
THE STATE OF WESTERN AUSTRALIA  
THE STATE OF TASMANIA  
THE AUSTRALIAN CAPITAL TERRITORY, AND  
THE NORTHERN TERRITORY OF AUSTRALIA

**RECITALS:**

- A. The Council of Australian Governments at its meeting in Hobart on 25 February 1994 agreed to implement complementary legislation so that a uniform national framework applies to access to natural gas transmission pipelines both between and within jurisdictions.
- B. The Parties, after consultation with industry and gas users, have agreed that certain principles are to apply to access negotiations and that there will be a National Third Party Access Code for Natural Gas Pipeline Systems. This Access Code is intended to comply with the requirements of the Competition Principles Agreement.
- C. The Parties have agreed that the National Third Party Access Code for Natural Gas Pipeline Systems should be given legal effect by a uniform Gas Pipelines Access Law. The Gas Pipelines Access Law and the Code should be set out in schedules to legislation of the State of South Australia and be applied by each other Party by means of application legislation (except in the case of Western Australia which will enact the Gas Pipelines Access Law as a law of Western Australia).
- D. The Parties have agreed that the Code and this agreement will apply to natural gas transmission and distribution pipelines.

**OPERATIVE PROVISIONS:**

**1. PRELIMINARY**

- 1.1 This agreement may be referred to as the Natural Gas Pipelines Access Agreement.
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1.2 In this agreement, unless the contrary intention appears:

"**Access Legislation**" means the legislation enacted by a Party pursuant to clause 5 of this agreement and, if applicable, the Gas Pipelines Access Law as applied by that legislation, as amended from time to time (or in the case of Western Australia means the legislation as enacted in Western Australia pursuant to clause 5 of this agreement, as amended from time to time);

"**Appeals Body**" means a person or entity which will determine appeals brought under the Gas Pipelines Access Law as that Law is applied or enacted in a jurisdiction;

"**Code**" or "**Access Code**" means the National Third Party Access Code for Natural Gas Pipeline Systems, which will initially be in the form of Annex D, as that Code is amended from time to time;

"**Gas Pipelines Access Law**" means the Gas Pipelines Access Law giving legal effect to the Code enacted as a schedule to an Act of the Parliament of South Australia in accordance with this agreement, and the Code, each as amended from time to time in accordance with this agreement (or in the case of Western Australia means the Gas Pipelines Access Law enacted by Western Australia in accordance with this agreement, and the Code, each as amended from time to time in accordance with this agreement);

"**Jurisdiction**" means the Commonwealth, a State, the Australian Capital Territory and the Northern Territory of Australia;

"**legislation**" includes subordinate legislation;

"**Ministers**" means the Ministers nominated by each Party under clause 3;

"**Parliament**" includes the Legislative Assembly of a Territory; and

"**Relevant Regulator**" means an independent person or entity which will act as the regulator under the Access Legislation (including the Access Code) with respect to a particular natural gas pipeline.

## 2. ACCESS OBJECTIVES

2.1 The objective of this agreement is to establish a uniform national framework for third Party access to natural gas pipelines that:

- (a) facilitates the development and operation of a national market for natural gas;
  - (b) prevents abuse of monopoly power;
  - (c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders;
  - (d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for both Service Providers and Users; and
  - (e) provides for resolution of disputes.
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### **3. MINISTERS**

Each Party will keep each other Party informed, by written notice, of the Minister responsible for implementing that Party's obligations under this agreement and who will perform the functions conferred on him or her under the Gas Pipelines Access Law (including the Code).

### **4. OPERATION OF AGREEMENT**

4.1 This agreement is effective when executed by all Parties.

4.2 This agreement may be amended by agreement executed by all Parties.

4.3 In relation to the State of Tasmania, the Parties acknowledge the State of Tasmania's commitment to participate as a Party to this agreement and comply with all obligations under this agreement from a time sufficiently before the first natural gas pipeline in that State is approved or any competitive tendering process for a new natural gas pipeline in that State is commenced.

### **5. ENACTMENT OF LEGISLATION**

5.1 The State of South Australia will submit to its Parliament, in that Parliament's 1997 Spring sitting, legislation in the form set out in Annex A (with the Gas Pipelines Access Law in the form set out in Annex B as Schedule 1 and the Code in the form set out in Annex D as Schedule 2), subject in each case to possible minor drafting amendments, and will take all reasonable measures to ensure that legislation is enacted in the form submitted and is enacted and assented to by 31 December 1997 (provided the Commonwealth legislation referred to in clause 5.2 has commenced to the extent necessary to enable the South Australian legislation to have legal effect).

5.2 The Commonwealth of Australia will submit to its Parliament, in that Parliament's 1997 Spring sitting, legislation in the form set out in Annex C, subject to possible minor drafting amendments, and will take all reasonable measures to ensure its legislation is enacted and proclaimed expeditiously and in the form submitted.

5.3 Subject to clause 5.4, each other Party (except Western Australia) will submit to its Parliament as soon as practicable (but in any event no later than six months) after the enactment of the South Australian legislation, application legislation applying the Gas Pipelines Access Law, as that Law is enacted as schedules to the South Australian Act and as amended from time to time, as a law of the Party (including in State or Territory offshore waters). Subject to clause 5.4, Western Australia will submit to its Parliament as soon as practicable (but in any event no later than six months) after the enactment of the South Australian legislation, legislation having an essentially identical effect to the Gas Pipelines Access Law as enacted as schedules to the South Australian Act, except as permitted by this agreement or as otherwise agreed between the Parties. The legislation of each such Party shall:

- (a) be consistent with this agreement; and
- (b) have been agreed in writing by all the Ministers prior to submission to its Parliament.

Each such Party will take all reasonable measures to ensure its legislation is enacted in the form submitted and is proclaimed and commenced by 30 June 1998.

5.4 Each Party's obligations under clause 5.3 are subject to:

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- (a) the South Australian Parliament enacting legislation as required by clause 5.1;
  - (b) the Commonwealth of Australia Parliament enacting legislation as required by clause 5.2; and
  - (c) in the case of Tasmania, clause 4.3.
- 5.5 South Australia will as soon as practicable after the passage of the legislation referred to in clause 5.1 take all reasonable measures to make any regulations under that legislation which have been approved in writing by all the Ministers. After Western Australia has enacted the legislation referred to in clause 5.3 it will take all reasonable measures to make any regulations under that legislation which have been approved in writing by all the Ministers. Western Australia will take all reasonable measures to ensure that at all times regulations made under the Western Australian legislation have an essentially identical effect to those made under the South Australian legislation.

## **6. AMENDING LEGISLATION**

- 6.1 A Party must not amend its Access Legislation (either directly or by making other legislation that would alter its effect, scope or operation) unless the amendment has been approved in writing by all the Ministers.
- 6.2 South Australia will submit to its Parliament a bill amending the Gas Pipelines Access Law that is enacted as Schedule 1 to an Act of the Parliament of South Australia if that bill has been approved in writing by all the Ministers and will take all appropriate steps to secure the passage of that bill and bring it into force in accordance with a timetable agreed by all Ministers.
- 6.3 Western Australia will submit to its Parliament a bill amending the Gas Pipelines Access Law as enacted in Western Australia if that bill has been approved in writing by all the Ministers and will take all appropriate steps to secure the passage of that bill and bring it into force in accordance with a timetable agreed by all Ministers. Western Australia will take all reasonable measures to ensure that at all times the Gas Pipelines Access Law as enacted in Western Australia has (except to the extent permitted by this agreement) essentially identical effect to the Gas Pipelines Access Law as enacted as a schedule to an Act of the South Australian Parliament.

## **7. CONFLICTING LEGISLATION**

- 7.1 Each Party will, no later than the time its Access Legislation commences, take all reasonable measures to repeal, amend or modify any other legislation which is inconsistent with, or would alter the effect, scope or operation of, the Access Legislation (including the Access Code) or this agreement (other than legislation in relation to transitional arrangements and derogations permitted under clause 12 or franchising and licensing arrangements permitted under clauses 13 and 14).
- 7.2 Except as agreed in writing by all the Ministers, a Party will not submit a bill to its Parliament or take other action to bring into force any legislation (by way of amendment of existing legislation or otherwise) which would be inconsistent with, or alter the effect, scope or operation of, the Access Legislation (including the Access Code) or this agreement (other than a bill or legislation in relation to franchising and licensing arrangements permitted under clauses 13 and 14).
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7.3 For the purposes of this agreement, legislation regulating retail gas prices shall not of itself be prohibited under clause 7.1 or 7.2.

**8. ACCESS CODE**

8.1 The Parties agree that the initial Access Code will be a schedule to the South Australian legislation referred to in clause 5.1 and will be in the form set out in Annex D to this agreement.

8.2 The Parties agree that the Access Code will be capable of amendment by agreement between the Ministers in accordance with the procedures set out in the Gas Pipelines Access Law (including the Access Code).

**9. ADMINISTRATION OF THE CODE**

9.1 Administration of the Code will be the responsibility of a National Gas Pipelines Advisory Committee (*NGPAC*), to be established by the Parties under this agreement.

9.2 The NGPAC will be composed as follows:

- (a) an independent Chair to be appointed collectively by the Parties;
- (b) the Code Registrar;
- (c) one person nominated by each Party;
- (d) one person nominated by each of the following industry groups:
  - Australian Gas Association (AGA),
  - Australian Petroleum Production and Exploration Association (APPEA),
  - Australian Pipeline Industry Association (APIA), and
  - Business Council of Australia Energy Working Group (BCA);
- (e) two representatives of State and Territory Relevant Regulators appointed by the Parties on a rotation basis, with Victoria and New South Wales to provide the first two such representatives; and
- (f) one representative nominated by the Australian Competition and Consumer Commission.

The National Competition Council will be invited to participate as an observer and adviser.

9.3 Only persons nominated by a Party under clause 9.2(c) will be entitled to vote at NGPAC meetings.

9.4 The functions of the NGPAC will be to:

- (a) monitor, review and report on the operation of the Gas Pipelines Access Law (including the Code);
  - (b) provide advice to the Ministers on interpretation and administration of the Gas Pipelines Access Law (including the Code);
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- (c) prepare information on the Gas Pipelines Access Law (including the Code) for general publication; and
- (d) make recommendations on amendments to the Gas Pipelines Access Law (including the Code) to Ministers.

The Parties may agree to give the NGPAC other functions. NGPAC may determine its own procedures subject to the requirements as set out in the Gas Pipelines Access Law (including the Code).

- 9.5 The Commonwealth will pay one third of the costs of funding the NGPAC (including its Chair) and the Code Registrar (including any damages or legal costs arising out of the Code Registrar performing its functions under the Code). The balance of those costs will be shared by the Parties (other than the Commonwealth) on the basis of population.
- 9.6 The Parties may from time to time unanimously agree on other appropriate mechanisms for administration of the Code.

## **10. EFFECTIVE ACCESS REGIME**

- 10.1 Each State and Territory Party other than Tasmania agrees to submit the access regime embodied in its Access Legislation (including the Code) to the National Competition Council for certification as an effective access regime under Part IIIA of the Trade Practices Act not later than thirty (30) days after enactment of its Access Legislation. Tasmania agrees to submit the access regime embodied in its Access Legislation (including the Code) to the National Competition Council for certification as an effective access regime under Part IIIA of the Trade Practices Act as soon after enactment of its Access Legislation as is possible.
  - 10.2 If the access regime embodied in a Party's Access Legislation (including the Code) has been certified as an effective access regime under Part IIIA of the Trade Practices Act, each Party will take all such actions as may be necessary to ensure that that access regime remains an effective access regime.
  - 10.3 The Parties will as far as possible co-ordinate referrals and submissions to the National Competition Council and do so collectively or concurrently where possible.
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**11. JURISDICTION OF RELEVANT REGULATOR AND OTHER CODE BODIES**

11.1 The Parties agree that in relation to those pipelines classified or determined to be transmission pipelines pursuant to the Gas Pipelines Access Law the Relevant Regulator shall be the Australian Competition and Consumer Commission (except that the Relevant Regulator for all transmission pipelines that are located wholly in Western Australia will be a State-based independent Relevant Regulator, subject to independent review of this position in the event that a significant inter-state pipeline is to be constructed to or from another jurisdiction to the east of Western Australia or five years from the date Western Australia signs this agreement, whichever is the earlier).

11.2 The Parties agree that in relation to those pipelines classified or determined to be distribution pipelines pursuant to the Gas Pipelines Access Law:

- (a) that are located wholly in a particular State or Territory, the Relevant Regulator shall be the body specified in Annex G in relation to that State or Territory (or such other body as the Parties may agree); and
- (b) that are located in more than one State or Territory, the Relevant Regulator shall be the body specified in Annex G in relation to the State or Territory with which the Pipeline concerned is most closely connected as determined pursuant to the Gas Pipelines Access Law (or such other body as the Parties may agree).

Any such Relevant Regulator must at all times be an independent authority established by statute and recognised by the National Competition Council as independent.

11.3 Each Party which has established a body which will act as a Relevant Regulator under the Code agrees to take such actions as are available to it to ensure that the body concerned develops guidelines for the conduct of arbitrations under the Code in relation to pipelines for which it will be the Relevant Regulator, which (amongst other things) contain practices and procedures to establish sufficient independence between arbitration decision making and regulatory decision making under the Code. Such practices and procedures should include provisions to the effect that, if a party to a dispute so requires, the Relevant Regulator will appoint as an arbitrator a person (who may be a Commissioner, member or other officer of the Relevant Regulator) who has not been substantially involved in regulatory decision making in relation to the pipeline to which the arbitration relates.

11.4 The Parties agree that the Appeals Body:

- (a) in relation to decisions made by the Australian Competition and Consumer Commission or the Commonwealth Minister for which administrative appeals are provided in the Gas Pipelines Access Law shall be the Australian Competition Tribunal;
- (b) in relation to decisions made by jurisdictional Relevant Regulators or State or Territory Ministers for which administrative appeals are provided in the Gas Pipelines Access Law shall be the body specified in Annex G in relation to the State or Territory under whose Access Legislation the Relevant Regulator or Minister concerned was acting (or such other bodies as the Parties may agree).

11.5 The Parties agree that for the purposes of the sections of the Access Code dealing with Coverage:

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- (a) the National Competition Council shall have the functions conferred on it under the Access Code; and
  - (b) in the case of pipelines listed in the Code as transmission pipelines, or classified or determined to be transmission pipelines pursuant to the Gas Pipelines Access Law, the Relevant Minister for the purposes of the Gas Pipelines Access Law (including the Access Code) shall be the Commonwealth Minister or, if a Minister other than the Commonwealth Minister is specified in Annex G, that Minister (or such other Minister as the Parties may agree);
  - (c) in the case of pipelines listed in the Code as distribution pipelines or classified or determined to be distribution pipelines pursuant to the Gas Pipelines Access Law:
    - (i) if the Pipeline is located wholly in a particular State or Territory, the Relevant Minister for the purposes of the Gas Pipelines Access Law (including the Access Code) shall be the Minister of that State or Territory (or, if that State or Territory so elects, the Commonwealth Minister); and
    - (ii) if the Pipeline is located in more than one State or Territory, the Relevant Minister for the purposes of the Gas Pipelines Access Law (including the Access Code) shall be the Minister of the State or Territory with which the Pipeline concerned has the closest connection as determined pursuant to the Gas Pipelines Access Law (or, if that State or Territory so elects, the Commonwealth Minister).
- 11.6 The Commonwealth and each other Party agree for the purpose of section 44ZZM of the Trade Practices Act that each Party may confer on the Australian Competition and Consumer Commission the functions and powers contemplated by this agreement and the proposed Access Legislation of that Party (including the Code) and that these functions and powers shall be performed or exercised in accordance with the proposed Access Legislation of that Party (including the Code).
- 11.7 The Parties agree for the purposes of clause 10 of the Competition Principles Agreement that the functions of the National Competition Council contemplated by this agreement (including consideration of any proposed amendments to the access regime embodied in the Access Legislation (including the Code)) form part of the work program of the National Competition Council.
- 11.8 The Commonwealth and each other Party agree for the purposes of proposed section 44ZZOA of the Trade Practices Act (to be introduced by the legislation to be enacted by the Commonwealth pursuant to clause 5.5) that each Party may confer on the Australian Competition Tribunal the functions and powers contemplated by this agreement and the proposed Access Legislation of the Party concerned and that these functions and powers shall be performed or exercised in accordance with the proposed Access Legislation of that Party (including the Code). The Commonwealth agrees to ensure that the Australian Competition Tribunal is sufficiently resourced to perform functions conferred on it by the Gas Pipelines Access Law.
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**12. PROPOSED TRANSITIONAL ARRANGEMENTS AND DEROGATIONS**

12.1 The Parties agree that transitional arrangements and derogations from the Gas Pipelines Access Law (including the Access Code) will be allowed only if they:

- (a) have been approved by all the Ministers; and
- (b) are specifically identified in their respective Access Legislation or other legislation that is appropriate.

Each Party's timetable for the phase in of access which is intended to be applied as at the date of this agreement is set out in Annex H. The other transitional arrangements and derogations intended to be applied by each Party as at the date of this agreement are set out in Annex I.

The Parties note that the specification of transitional arrangements and derogations in Annex H, Annex I and the Access Legislation of a particular jurisdiction, or the decision of Ministers under clauses 5.3 or 12.1, does not limit the discretion of the Commonwealth Minister to certify or not certify the access regime embodied in a jurisdiction's Access Legislation (including the Code) as an effective access regime under section 44N of the Trade Practices Act or the National Competition Council's discretion under section 44M of the Trade Practices Act.

12.2 Each Party will ensure that any transitional arrangements or derogations will:

- (a) be limited, in duration and extent, to transitional arrangements or derogations essential to the orderly introduction of the competitive arrangements contemplated by the Gas Pipelines Access Law (including the Code); and
- (b) except where otherwise noted in Annex H or Annex I or approved by all the Ministers under clause 12.1(a), be phased out, repealed or terminated no later than 1 September 2001, so that a competitive natural gas market characterised by access to all gas consumers and all producers in all States and Territories exists after this date.

12.3 It is the intention of the Parties that the implementation of the Access Code will not result in additional transitional expenditures for Pipeline owners such as additional taxes. In particular each Party will exempt from stamp duty and other taxes the transfer of assets by a Service Provider (as defined in the Access Code) made to comply with the ring fencing obligations in the Access Code.

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**13. FRANCHISING PRINCIPLES**

- 13.1 Each Party agrees to conform to the Franchising Principles contained in Annex E and put in place arrangements at the time its Access Legislation is enacted to remove, phase out or reform existing exclusive franchise arrangements by 1 September 2001 (except in the case of Kalgoorlie-Boulder in Western Australia in relation to which a ten year non-renewable franchise for the distribution system and a ten year non-renewable franchise for the trading of gas on the system, have been awarded under a competitive tender process and which need not be removed, phased out or reformed until the end of the ten year term).

**14. LICENSING PRINCIPLES**

- 14.1 Each Party agrees to conform to the Licensing Principles contained in Annex F and put in place arrangements at the time its Access Legislation is enacted to remove, phase out or reform existing licensing arrangements incompatible with the Licensing Principles or the Gas Pipelines Access Law (including the Access Code) by 1 September 2001 (or 1 July 2002 in the case of Western Australia).

**15. WITHDRAWAL OF PARTIES**

- 15.1 The Parties agree that if:
- (a) a Party fails to comply with any of its obligations under this agreement;  
or
  - (b) Access Legislation has not been enacted and become effective in a Party's jurisdiction on or before the date applicable to that Party under clause 5,
- it may be required to withdraw from this agreement if all of the other Parties give written notice requiring it to withdraw.
- 15.2 A Party may withdraw from this agreement by giving notice in writing to the other Parties of its intention to do so, and all Parties shall then negotiate in good faith in relation to the terms of withdrawal of the Party which has given notice, including the date upon which the Party will cease to be a Party and any changes to legislation and other arrangements with respect to the Gas Pipelines Access Law (including the Access Code) that may be necessary as a consequence of the withdrawal.
- 15.3 If a Party withdraws, this agreement will nevertheless continue as an agreement between all other Parties.
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SIGNED by

The Honourable John Winston Howard MP )  
Prime Minister of the Commonwealth of Australia )

The Honourable Robert John Carr MP )  
Premier of the State of New South Wales )

The Honourable Jeffrey Gibb Kennett MLA )  
Premier of the State of Victoria )

The Honourable Robert Edward Borbidge MLA )  
Premier of the State of Queensland )

The Honourable John Olsen MP )  
Premier of the State of South Australia )

The Honourable Richard Fairfax Court MLA )  
Premier of the State of Western Australia )

The Honourable Anthony Maxwell Rundle MHA )  
Premier of the State of Tasmania )

Kate Carnell MLA )  
Chief Minister of the Australian Capital Territory )

The Honourable Shane L Stone QC MLA )  
Chief Minister of the Northern Territory of Australia )

## ANNEX E

### FRANCHISING PRINCIPLES

The following are the Franchising Principles:

1. By-pass to, and interconnection in order to supply gas to, contestable customers should be allowed if the operator has the necessary operating licences and can meet the requirements of the relevant network operating procedures (contestable customers being customers who are able to choose their supplier of gas from any appropriately licensed retailer or other supplier in accordance with the phase in timetable as contained in Annex H).
  2. No new exclusive franchises should be granted for the sale of gas in a geographic area or through a specific facility except for a prospective natural gas pipeline service which meets all of the following criteria:
    - (a) a franchise for the sale of gas must be limited to significant "greenfields" projects (infill and extensions to existing networks would be excluded) where there is evidence that investment in pipelines would not otherwise occur, or the services provided to some customer classes would be severely limited, and the franchise has been justified on the balance of public interest;
    - (b) any retail franchise applies to specific small use customer classes and is limited in duration and non-renewable:
      - limited to customer classes that normally fall into a consumption range of no more than 1 terajoule per year;
      - limited to a period from the grant of the franchise of normally no more than 5 years, consistent with the maximum period for grant of a franchise for provision of Gas Pipeline services (but in any event no more than 10 years);
    - (c) the pipeline service operator is selected through a competitive tender process, Prospective Users are consulted, where possible, in determining the conditions of the franchise, and any other conditions that are considered necessary to protect the public interest are met;
    - (d) consideration is given to the longer term benefits and feasibility of encouraging market structures which enhance competition by splitting the franchise into smaller or multiple franchise areas to be allocated to competing bidders; and
    - (e) there is prices oversight, by an independent body, for franchise customers over the duration of any proposed franchise.
  3. No new exclusive franchises should be granted for provision of natural gas pipeline services in a geographic area or through a specific facility except for a prospective natural gas pipeline service which meets all of the following criteria:
    - (a) the pipeline service will be provided through an integrated pipeline network which will require systematic development over a significant period in order to achieve the lowest expected long term cost;
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- (b) there is a strong likelihood that in the absence of an exclusive franchise the pipeline network will not be developed in line with the lowest expected long term cost;
- (c) the pipeline service operator is selected through a competitive public tender process, prospective users are consulted in determining the conditions of the franchise, and any other conditions that are considered necessary to protect the public interest are met; and
- (d) the exclusive franchise is limited to a period of not more than 5 years, and is non-renewable.



## ANNEX F

### LICENSING PRINCIPLES

The licensing requirements and conditions will be consistent with the requirements of CoAG agreements in relation to free and fair trade in gas (for example, the agreement to remove legislative or regulatory barriers to both inter- and intra-jurisdictional trade in gas).

Specifically, the Parties agree to the following Licensing Principles:

1. Licences to operate natural gas pipelines to be unbundled from any other type of licence and open to all appropriately qualified pipeline service operators;
  2. Licensing will not be used to restrict the construction or operation of pipelines that could deliver gas to the same market as a licensed pipeline;
  3. A licence will not limit the services an operator may provide;
  4. By-pass to, and inter-connection in order to supply gas to, contestable customers should be allowed if the operator has the necessary operating licences and can meet the requirements of the relevant network operating procedures (contestable customers being customers who are able to choose their supplier of gas from any appropriately licensed retailer or other supplier in accordance with the phase in timetable as contained in Annex H);
  5. Licence conditions may include an obligation to connect customers onto the natural gas pipeline network. This may include an obligation to undertake minor or infill extensions to the geographic range of the network;
  6. There will be full transparency in decision-making on licensing through public notification and accountability for decisions.
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## ANNEX G

### NATIONAL ACCESS CODE BODIES AND APPEALS BODIES - DISTRIBUTION PIPELINES

<b>Jurisdiction</b>	<b>Function</b>	<b>Code Body</b>	<b>Appeal</b>
<b>NSW</b>	CAB	NCC	
	CDM	NSW/Commonwealth Minister <sup>1</sup>	Judicial review - Federal Court Admin appeal - ACT
	Regulator	IPART/ACCC <sup>1</sup>	Judicial review - Federal Court Admin appeal - ACT
	Arbitrator	IPART/ACCC <sup>1</sup>	Judicial review - Federal Court
<b>VIC</b>	CAB	NCC	
	CDM	Vic. Minister	Judicial review - Federal Court Admin appeal - ACT
	Regulator	ORG	Judicial review - Federal Court Admin appeal - ORG Appeal Panel
	Arbitrator	ORG	Judicial review - Federal Court
<b>QLD</b>	CAB	NCC	
	CDM	Qld Minister	Judicial review - Supreme Court (Qld JR Law) Admin appeal - Qld Gas Appeals Tribunal
	Regulator	Qld Competition Authority (QCA)	Judicial review - Supreme Court (Qld JR Law) Admin appeal - Qld Gas Appeals Tribunal
	Arbitrator	QCA	Judicial review - Supreme Court (Qld JR Law)
<b>SA</b>	CAB	NCC	
	CDM	SA Minister	Judicial review - Federal Court Admin appeal - SA Gas Review Board
	Regulator	SA Independent Pricing & Access Regulator	Judicial review - Federal Court Admin appeal - SA Gas Review Board
	Arbitrator	SA Independent Pricing & Access Regulator	Judicial review - Federal Court

<sup>1</sup> Queanbeyan and Yarrowlunla will be regulated as for the Canberra distribution system. Access regulation of NSW distribution to be transferred to the Commonwealth at a future date

CAB = Coverage Advisory Body  
 ACCC = Australian Competition and Consumer Commission  
 IPART = Independent Pricing and Regulatory Tribunal  
 IP&RC = ACT Independent Pricing & Regulatory Commission

CDM = Coverage Decision Maker  
 ACT = Australian Competition Tribunal  
 ORG = Office of the Regulator General

Jurisdiction	Function	Code Body	Appeal
WA	CAB	NCC	
	CDM	WA Minister	Judicial review - Supreme Court Admin appeal - WA Gas Review Board
	Regulator	Office of Gas Access Regulation	Judicial review - Supreme Court Admin appeal - WA Gas Review Board
	Arbitrator	Office of Gas Access Regulation	Judicial review - Supreme Court
TAS	CAB	To be determined	
	CDM	To be determined	To be determined
	Regulator	To be determined	To be determined
	Arbitrator	To be determined	To be determined
ACT	CAB	NCC	
	CDM	ACT/CTwealth Minister <sup>2</sup>	Judicial review - Federal Court. Admin appeal - ACT
	Regulator	IP&RC/ACCC <sup>2</sup>	Judicial review - Federal Court Admin appeal - ACT
	Arbitrator	IP&RC/ACCC <sup>2</sup>	Judicial review - Federal Court
NT	CAB	NCC	
	CDM	NT Minister	Judicial review - Federal Court Admin appeal - ACT
	Regulator	ACCC	Judicial review - Federal Court Admin appeal - ACT
	Arbitrator	ACCC	Judicial review - Federal Court

<sup>2</sup> ACT & NSW agree to a single regulator (either IPRC or IPART) for the Canberra/Queanbeyan/Yarrowlunla distribution system. Access regulation of ACT/NSW cross border distribution pipelines to be transferred to the Commonwealth at a future date.

CAB = Coverage Advisory Body  
ACCC = Australian Competition and Consumer Commission  
IPART = Independent Pricing and Regulatory Tribunal  
IP&RC = ACT Independent Pricing & Regulatory Commission

CDM = Coverage Decision Maker  
ACT = Australian Competition Tribunal  
ORG = Office of the Regulator General

**NATIONAL ACCESS CODE BODIES AND APPEALS BODIES**  
**- TRANSMISSION PIPELINES**

<b>Jurisdiction</b>	<b>Function</b>	<b>Code Body</b>	<b>Appeal</b>
<b>NSW</b>	CAB	NCC	
	CDM	Commonwealth Minister	Judicial review - Federal Court Admin appeal - ACT
	Regulator	ACCC	Judicial review - Federal Court Admin appeal - ACT
	Arbitrator	ACCC	Judicial review - Federal Court
<b>VIC</b>	CAB	NCC	
	CDM	Commonwealth Minister	Judicial review - Federal Court Admin appeal - ACT
	Regulator	ACCC	Judicial review - Federal Court Admin appeal - ACT
	Arbitrator	ACCC	Judicial review - Federal Court
<b>QLD</b>	CAB	NCC	
	CDM	Commonwealth Minister	Judicial review - Federal Court Admin appeal - ACT
	Regulator	ACCC	Judicial review - Federal Court Admin appeal - ACT
	Arbitrator	ACCC	Judicial review - Federal Court
<b>SA</b>	CAB	NCC	
	CDM	SA Minister	Judicial review - Federal Court. Admin appeal - SA Gas Review Board
	Regulator	ACCC	Judicial review - Federal Court Admin appeal - ACT
	Arbitrator	ACCC	Judicial review - Federal Court

CAB = Coverage Advisory Body  
ACCC = Australian Competition and Consumer Commission  
IPART = Independent Pricing and Regulatory Tribunal  
IP&RC = ACT Independent Pricing & Regulatory Commission

CDM = Coverage Decision Maker  
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<b>Jurisdiction</b>	<b>Function</b>	<b>Code Body</b>	<b>Appeal</b>
<b>WA</b>	CAB	NCC	
	CDM	WA Minister	Judicial review - Supreme Court Admin appeal - WA Gas Review Board
	Regulator	Office of Gas Access Regulation <sup>1</sup>	Judicial review - Supreme Court <sup>1</sup> Admin appeal - WA Gas Review Board <sup>1</sup>
	Arbitrator	Office of Gas Access Regulation <sup>1</sup>	Judicial review - Supreme Court <sup>1</sup>
<b>TAS</b>	CAB	To be determined	
	CDM	To be determined	To be determined
	Regulator	ACCC	Judicial review - Federal Court Admin appeal - ACT
	Arbitrator	ACCC	Judicial review - Federal Court Admin appeal - ACT
<b>ACT</b>	CAB	NCC	
	CDM	Commonwealth Minister	Judicial review - Federal Court Admin appeal - ACT
	Regulator	ACCC	Judicial review - Federal Court Admin appeal - ACT
	Arbitrator	ACCC	Judicial review - Federal Court
<b>NT</b>	CAB	NCC	
	CDM	NT Minister	Judicial review - Federal Court Admin appeal - ACT
	Regulator	ACCC	Judicial review - Federal Court Admin appeal - ACT
	Arbitrator	ACCC	Judicial review - Federal Court

<sup>1</sup> Applies only to transmission pipelines solely intra-state. The position for intra-state transmission pipelines will be reviewed if there is a significant pipeline from the east or in 5 years, whichever is the earlier.

CAB = Coverage Advisory Body  
ACCC = Australian Competition and Consumer Commission  
IPART = Independent Pricing and Regulatory Tribunal  
IP&RC = ACT Independent Pricing & Regulatory Commission

CDM = Coverage Decision Maker  
ACT = Australian Competition Tribunal  
ORG = Office of the Regulator General

## ANNEX H

### TRANSITIONAL ARRANGEMENTS - TIMING OF PHASE-IN OF CUSTOMER CLASSES

TIMING	NSW <sup>1, 2</sup>	VIC	QLD	WA <sup>3</sup>	SA <sup>2</sup>	ACT	NT <sup>5</sup>
1 Jan 98				≥ 250 TJ pa			
1 April 98					> 100 TJ pa		
1 July 98	≥ 10 TJ pa					≥ 10 TJ pa	
1 Sept 98		≥ 500 TJ pa					
1 July 99	All customers				≥ 10 TJ pa	All customers	
1 Sept 99		≥ 100 TJ pa					
1 Jan 2000				≥ 100 TJ pa			
1 July 2000					< 10 TJ pa <sup>4</sup>		
1 Sept 2000		≥ 5 TJ pa					
1 July 2001					All customers		
1 Sept 2001		All customers					
1 January 2002				≥ 1 TJ pa			
1 July 2002				All customers			

<sup>1</sup> From August 97, ≥ 100 TJ pa, with aggregation of loads ≥ 10 TJ pa permitted within a corporation or among related corporations.

<sup>2</sup> Any quantity in a new/significantly extended distribution system.

<sup>3</sup> From Jan 97, ≥ 500 TJ pa. Pilbara & Eastern Goldfields customers can contract directly with any supplier.

Kalgoorlie/Boulder distribution customers between 100 TJ pa and 1 TJ pa are not contestable until 1 January 2002, and <1 TJ pa until 1 July 2002.

Amounts apply to loads per customer at a single site.

<sup>4</sup> Industrial and commercial customers.

<sup>5</sup> No phase-in arrangements to apply.

## ANNEX I

### TRANSITIONAL ARRANGEMENTS AND DEROGATIONS

**The following are the proposed derogations of the respective jurisdictions.**

JURISDICTION	OUTLINE
Commonwealth	<ul style="list-style-type: none"> <li>• There will be a derogation to allow for the continuation of any existing arbitration Determinations which rely on Part 6 of the Moomba-Sydney Pipeline Systems Sale Act for their continuing enforcement.</li> </ul>
New South Wales	<ul style="list-style-type: none"> <li>• Undertakings submitted or approved under the NSW Access Code to be deemed to be Access Arrangement respectively submitted or approved in accordance with the National Code.</li> <li>• Section 3, section 8, sections 9.1, 9.2 9.3, 9.5 and 9.6 of the NSW Access Code will apply to Undertakings referred to in paragraph 1 above, in place of the corresponding provisions of the National Code, provided that any transitional component included in any Access Arrangements resulting from the first review of those Undertakings ceases to apply by no later than 1 July 2002.</li> <li>• Access disputes referred to arbitration under the Gas Supply Act 1996 (NSW) prior to commencement of the Gas Pipelines Access Law, are to be resolved in accordance with that Act and the NSW Access Code.</li> <li>• The following pipelines described as transmission pipelines in Schedule A of the National Code will be deemed to be distribution pipelines until 1 July 2002: <ul style="list-style-type: none"> <li>• Wilton to Horsley Park</li> <li>• Horsley Park to Plumpton</li> <li>• Plumpton to Killingworth</li> <li>• Killingworth to Walsh Point</li> <li>• Wilton to Wollongong.</li> </ul> </li> <li>• Details of the phase-in of access are at Annex H.</li> </ul>
Victoria	<ul style="list-style-type: none"> <li>• Details of the timetable for phase-in of access are at Annex H.</li> </ul>
Queensland	<p><u>Coverage</u> The following pipelines, which are currently under construction or soon to be constructed, will be deemed to be covered for the purposes of the Code:</p> <ul style="list-style-type: none"> <li>• PPL32 Gatton to Gympie</li> <li>• PPL41 Ballera to Mt Isa</li> </ul> <p><u>Access Principles</u></p> <ul style="list-style-type: none"> <li>• The owners of the following pipelines will be required to establish an Access Arrangement in accordance with the National Access Code. For this purpose the tariff and tariff-related sections of the existing access principles for the following pipelines are to be rewritten as reference tariffs (and reference tariff policy) for reference services to conform, as close as possible to the National Access Code, while preserving the existing tariff principles embodied in the original access arrangements: <ul style="list-style-type: none"> <li>• PPL2 Wallumbilla to Brisbane</li> <li>• PPL24 Ballera to Wallumbilla</li> <li>• PPL30 Wallumbilla to Gladstone</li> <li>• PPL30 Gladstone to Rockhampton</li> <li>• PPL32 Gatton to Gympie</li> <li>• PPL41 Ballera to Mt Isa</li> </ul> </li> </ul> <p>This will be accomplished in the following manner: The Access Arrangement including the rewritten tariff and tariff-related sections of the existing access principles will be submitted to the ACCC, in accordance with the Code, under the following conditions:</p>

Queensland (contd)	<ul style="list-style-type: none"> <li>• reference tariffs (and reference tariff policy) will be those taken from the existing access principles and will be included in the deeming provisions of the Queensland Access Legislation. These will not be subject to public and ACCC scrutiny until the nominated review date expressed in the individual access arrangements</li> <li>• non-tariff related matters will be submitted to the ACCC for consideration by the ACCC in the normal manner</li> <li>• other derogations required to achieve these outcomes will be included in the Queensland Access legislation.</li> </ul> <p><i>[The Access Arrangements for the "Chevron" pipeline from PNG to Townsville/Gladstone, currently under development, will be deemed to conform with the National Access Code.]</i></p> <p><u>Judicial Review</u></p> <p>Judicial review of decisions by the Queensland Minister and the QCA (Queensland Competition Authority) will occur under the Queensland Judicial Review Act.</p>
South Australia	<ul style="list-style-type: none"> <li>• Provide a mechanism to allow the Regulator to include a transparent transitional component in the Reference Tariffs to permit the orderly transition to cost-reflective pricing.</li> <li>• The precise timing of the final tranche of contestable customers (ie domestic) will be the subject of a review prior to 2001 of any technical and economic constraints.</li> <li>• Details of the timetable for phase-in of access are at Annex H.</li> </ul>
Western Australia	<ul style="list-style-type: none"> <li>• The Gas Pipelines Access Law, which attaches the uniform National Access Code as a schedule, will be enacted by means of complementary legislation.</li> <li>• A State-based Independent Gas Pipeline Access Regulator will regulate all intra-state gas transmission and distribution pipelines, subject to review in respect of intra-state gas transmission pipelines in the event that a significant transmission pipeline delivering gas to/from another State or Territory is to be constructed or 5 years from the date Western Australia signs this agreement whichever is the earlier.</li> <li>• Relevant Minister in relation to all intra-state transmission pipelines means the Designated State Minister.</li> <li>• A State Appeals Body will be established to deal with all appeals in respect of State bodies including the Independent Gas Pipelines Access Regulator and the Designated State Minister in respect of Coverage.</li> <li>• The Supreme Court of Western Australia will have exclusive jurisdiction in respect of all matters relating to the access regulation by the Independent Gas Pipelines Access Regulator of intra-state gas transmission and distribution pipelines.</li> <li>• A transitional access regime, which is to enable negotiability of tariffs under a statutory declining capped reference tariff, to be deemed to comply with the National Access Code in respect of Dampier to Bunbury Natural Gas Pipeline (DBNGP) until 1 January 2000. The DBNGP will be covered by an access arrangement under the National Access Code after that date. Existing contracts for transmission capacity on the DBNGP will need to be grandfathered, although after that date the option will be available for the shipper which is not an exempted shipper under the Gas Transmission Regulations 1994, to adopt terms and conditions (including prices) of an access arrangement under the National Access Code in respect of such contracts. Access will be subject to contestable customer classes as for the transitional arrangements in Annex H.</li> </ul>



Western Australia (Contd)	<ul style="list-style-type: none"> <li>• In relation to existing privately owned intra-state transmission pipelines that become covered by the Code, the State will take all reasonable steps including negotiation with the service provider to seek to ensure that any rights of the service provider pertaining to third party access (which exist at the date of the State signing the Intergovernmental Agreement and derive from a licence under the Petroleum Pipelines Act 1969 or in the case of the Goldfields Gas Pipeline from the Goldfields Gas Pipeline Agreement Act 1994) do not prevent or impede the application of the Code to that pipeline. The access arrangement applicable under the Goldfields Gas Pipeline Agreement Act is to be deemed to comply with the Code to 1 January 2000.</li> <li>• Until 1 January 2000 the existing access regime for the AlintaGas distribution system in the Mid and South West of the State to be deemed to comply with the Code. From 1 January 2000 this distribution system to be covered by an access arrangement under the National Access Code in accordance with the transitional arrangements set out in Annex H which phase in access to all customers by 1 July 2002, subject to by-pass provisions to contestable customers.</li> <li>• Existing distribution franchises and licensing arrangements are to be retained until 1 July 2002.</li> <li>• Ring fencing of the gas distribution and trading activities of AlintaGas in respect of the Mid and South West distribution system, to be introduced by 1 July 2002. In the interim, existing ring fencing provisions under the WA law will remain.</li> <li>• A ten year trading franchise has been awarded for the Kalgoorlie/Boulder distribution system initially limited to customer classes that fall into a consumption range of no more than 100 terajoules per year declining beyond 1 January 2002 in accordance with the transitional arrangement for the Mid and South West set out in Annex H. In addition, a ten year distribution franchise has been awarded to the distribution franchisee to own, construct and operate the Kalgoorlie/Boulder distribution system, subject to by-pass provisions for contestable customers.</li> <li>• Details of the timetable for phase-in of access are at Annex H.</li> </ul>
Tasmania	<ul style="list-style-type: none"> <li>• No transitional arrangements/derogations are proposed.</li> </ul>
Australian Capital Territory	<ul style="list-style-type: none"> <li>• Details of the timetable for phase-in of access are at Annex H.</li> </ul>
Northern Territory	<ul style="list-style-type: none"> <li>• No transitional arrangements/derogations are proposed.</li> </ul>

Note that Clause 12.2 of the IGA requires that these arrangements, except where otherwise specified in Annexures H or I, not apply after 1 September 2001.