



22 March 2018

Australian Energy Market Commission

By email:

Sherine.AIShallah@aemc.gov.au

Dear Madam

**SUBMISSION TO THE REVIEW INTO THE SCOPE OF ECONOMIC
REGULATION APPLIED TO COVERED PIPELINES – DRAFT REPORT**

As the Western Australian Energy Disputes Arbitrator under the *Energy Arbitration and Review Act 1998 (WA)* I express my support for draft recommendations 27 to 33 inclusive, subject to the following comments in relation to fast track arbitration.

Time Frames for Arbitration

At page 152 you set out three factors which could influence the length of the arbitration process on a Scheme pipeline. I would recommend a fourth bullet point, namely whether any party to the arbitration seeks a fast track dispute resolution process.

In my experience, the fact that a claimant proceeds to arbitration may not indicate that the claimant desires the matter to proceed to a speedy solution. The commencement of proceedings may merely be a credible threat to service providers to engage in meaningful negotiations with users and prospective users, as mentioned in your report at page 141. Further, neither party may be in a position to proceed with its case as quickly as is contemplated by a fast track process.

Fast track arbitrations provided for in the Resolution Institute model rules in the Commercial Arbitration sphere have not been taken up as frequently as widely supposed for precisely the reasons I have previously mentioned.

Table 8.2

In the box marked “Time Frames for the Dispute Resolution Process”, you have only mentioned 50 business days for fast track dispute resolution in relation to scheme pipeline disputes. This needs to be backed up by having more comprehensive timelines as shown in the non-scheme pipelines dispute box adjacent. The exclusion from the timeframe of periods for waiting upon information by the parties or upon the reports by experts may well be critical in complex matters and prevent a fast track arbitration from being appropriate for that particular dispute.

Draft recommendation 30

I should like to see in this draft recommendation a reference to the willingness of at least one party to the arbitration to proceed with a fast track dispute

resolution process, for the reasons mentioned above. If the dispute is suitable for a fast track process and at least one party seeks that approach, then 50 business days should be achievable. However, if neither party is willing to proceed along those lines and the dispute is complex or not at a sufficient stage of development to be suitable, then a more conventional approach will be necessary.

Summary

In summary, I consider each of the draft recommendations in relation to Arbitration to be appropriate and beneficial and I express my entire support for them, subject to my observations above.

Yours sincerely



**LAURIE JAMES AM
WESTERN AUSTRALIAN ENERGY DISPUTES ARBITRATOR**