

## Part 8 Access arrangements

### Division 1 AER's decisions regarding approval of access arrangement proposals

#### 40 [Deleted]

#### 41 Access arrangement proposal to be approved in its entirety or not at all

- (1) The AER's approval of an *access arrangement proposal* implies approval of every element of the proposal.
- (2) It follows that, if the AER withholds its approval to any *element of an access arrangement proposal*, the proposal cannot be approved.
- (3) Subject to other provisions of the *Rules* negating or limiting the AER's discretion, the AER has discretion to accept or approve, or to refuse to accept or approve, any element of an *access arrangement proposal*.

### Division 2 Access arrangement information

#### 42 General requirements for access arrangement information

- (1) *Access arrangement information* for an access arrangement or an *access arrangement proposal* is information that is reasonably necessary for users and prospective users:
  - (a) to understand the background to the access arrangement or the *access arrangement proposal*; and
  - (b) to understand the basis and derivation of the various elements of the access arrangement or the *access arrangement proposal*.
- (2) *Access arrangement information* must include the information specifically required by the *Law*.

#### 43 Requirement to provide access arrangement information

- (1) A service provider, when submitting an *access arrangement proposal* for the AER's approval, must submit, together with the proposal, *access arrangement information* for the *access arrangement proposal*.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

- (2) If particular information (**sensitive information**) is confidential, and its public disclosure could cause undue harm to the legitimate business interests of the service provider, a user or prospective user, the AER may permit the service

provider to submit *access arrangement information* in a form, approved by the AER, in which the sensitive information:

- (a) is aggregated or generalised so as to avoid disclosure of the elements that make it sensitive; or
  - (b) if that is not possible – is entirely suppressed.
- (3) If information submitted as *access arrangement information* is, in the AER's opinion, deficient in its comprehensiveness or in any other respect, the AER may require the proponent:
- (a) to make the revisions necessary to correct the deficiency and to re-submit the *access arrangement information*; or
  - (b) to submit further *access arrangement information* as an addendum to the information already submitted.

#### **44 Publication etc of access arrangement information**

A requirement of the *Law* for publication or the provision of copies of an access arrangement or an *access arrangement proposal* extends, subject to these rules, to *access arrangement information* relating to the access arrangement or *access arrangement proposal*.

### **Division 3 Limited access arrangements**

#### **45 Requirements for limited access arrangement (and limited access arrangement proposal) (Section 116(2) of the NGL)**

- (1) A limited access arrangement for a *light regulation pipeline* must:
- (a) identify the pipeline and include a reference to a website at which a description of the pipeline can be inspected; and
  - (b) set out a list of all the pipeline services that the service provider can reasonably provide on the pipeline, which must be described having regard to the characteristics in rule 47A(2); and
  - (c) state the terms and conditions (other than price) for access to the pipeline services; and
  - (d) if the access arrangement is to contain queuing requirements – set out the queuing requirements; and

**Note:**

Queuing requirements are necessary if the access arrangement is for a transmission pipeline but, if the pipeline is a distribution pipeline, queuing requirements are not necessary unless the AER has given prior notification of the need to include queuing requirements (See rule 103).

- (e) set out the capacity trading requirements; and
- (f) set out the extension and expansion requirements; and
- (g) state the terms and conditions for changing receipt and delivery points; and

- (h) if there is to be a *review submission date* – state the *review submission date* and the revision commencement date; and
  - (i) if there is to be an *expiry date* – state the *expiry date*.
- (2) The *access arrangement information* for the limited access arrangement must include the capacity of the pipeline and the extent to which that capacity is currently utilised.

## Division 4 Full access arrangements

### 46 Submission of full access arrangement proposal (Section 132 of the NGL)

- (1) Within 20 business days after a pipeline becomes a covered pipeline, the service provider must submit for the AER's approval a *reference service proposal* under rule 47A in respect of the *full access arrangement proposal* it is required to make in respect of the covered pipeline.
- (1A) Within 3 months after the AER makes a *reference service proposal decision* in respect of the *reference service proposal* submitted under subrule (1), the service provider for the covered pipeline must submit for the AER's approval a *full access arrangement proposal*.

Exceptions:

- (a) The proposals referred to in subrules (1) and (1A) are not required for a *light regulation pipeline* unless;
    - (i) the service provider wishes the pipeline services to cease to be light regulation services, advises the NCC to that effect, and an obligation to submit a full access arrangement consequently arises under section 117 of the *NGL*; or
    - (ii) the NCC decides to revoke a light regulation determination and an obligation to submit a full access arrangement consequently arises under section 121(1) of the *NGL*.
  - (b) The obligation to submit an *access arrangement proposal* for a *CTP access arrangement* is governed by Part 5 and not by this rule.
- (2) If an obligation to submit a full access arrangement arises in the circumstances described in Exception (a):
  - (a) the *reference service proposal* must be submitted within 20 business days of the obligation arising; and
  - (b) the *access arrangement proposal* must be submitted within 3 months after AER makes a *reference service proposal decision* in respect of the *reference service proposal* submitted under subrule (2)(a).
- (3) The AER may extend the period for submitting an *access arrangement proposal* under this rule, but the period (or aggregate period) of extension cannot exceed 2 months.

**Note:**

This rule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

**47 Voluntary submission of access arrangement proposal for full access arrangement (Section 127 of the NGL)**

- (1) A service provider for a pipeline that is not a covered pipeline may voluntarily submit for the AER's approval an *access arrangement proposal* proposing a full access arrangement for the pipeline.

**Note:**

The pipeline becomes a covered pipeline when the access arrangement takes effect as an applicable access arrangement and ceases to be a covered pipeline when the access arrangement expires. (See Section 127(2) and (3) of the NGL.)

- (1A) If a service provider decides to voluntarily submit for the AER's approval an *access arrangement proposal* proposing a full access arrangement for the pipeline then it must first submit for the AER's approval a *reference service proposal* under rule 47A in respect of the *full access arrangement proposal* it proposes to make in respect of the covered pipeline.
- (2) However:
- (a) at any time before the AER makes a final *decision* to approve the access arrangement, the service provider may withdraw the *reference service proposal* or the *access arrangement proposal*; and
  - (b) the withdrawal terminates the administrative process for approval of the proposed access arrangement.
- (3) When an *access arrangement proposal* for a pipeline that is not currently classified is submitted to the AER for approval under this rule, the AER must, within 20 business days after receiving the *access arrangement proposal*:
- (a) pass on to the NCC a copy of the *access arrangement proposal*, and accompanying *access arrangement information*; and
  - (b) ask the NCC to classify the pipeline in accordance with the pipeline classification criterion.
- (4) The NCC must make an initial classification *decision*:
- (a) classifying the pipeline as a transmission pipeline or a distribution pipeline; and
  - (b) if the pipeline is classified as a transmission pipeline – determining whether the pipeline is also a cross-boundary transmission pipeline; and
  - (c) if the pipeline is classified as a distribution pipeline – determining whether the pipeline is also a cross-boundary distribution pipeline; and
  - (d) if the pipeline is a cross-boundary distribution pipeline – determining, with regard to the jurisdictional determination criteria, the participating jurisdiction with which the pipeline is most closely connected.

- (5) The NCC must notify the AEMC and the AER of an initial classification *decision* under this rule.
- (6) If the service provider withdraws the *access arrangement proposal* before the AER makes a final *decision* to approve the access arrangement:
  - (a) the AER must immediately notify the NCC of the withdrawal; and
  - (b) an initial classification *decision*, if already made, lapses.

#### **47A Reference services**

- (1) A service provider in respect of a *full regulation pipeline* must, whenever required to do so under subrule (3), submit to the AER a *reference service proposal* in respect of a forthcoming *full access arrangement proposal* that:
  - (a) identifies the pipeline and includes a reference to a website at which a description of the pipeline can be inspected;
  - (b) sets out a list of all the pipeline services that the service provider can reasonably provide on the pipeline and a description of those pipeline services having regard to the characteristics in subrule (2);
  - (c) from the list referred to in subrule (1)(b), identifies at least one of those pipeline services that the service provider proposes to specify as reference services having regard to the *reference service factors* including any supporting information required by the AER; and
  - (d) if the service provider has engaged with pipeline users and end users in developing its *reference service proposal*, describes any feedback received from those users about which pipeline services should be specified as reference services.
- (2) A pipeline service is to be treated as distinct from another pipeline service having regard to the characteristics of different pipeline services, including:
  - (a) the service type (for example, forward haul, backhaul, connection, park and loan);
  - (b) the priority of the service relative to other pipeline services of the same type; and
  - (c) the receipt and delivery points.
- (3) A service provider in respect of a *full regulation pipeline* must submit a *reference service proposal* to the AER:
  - (a) no later than 12 months prior to the *review submission date* for the access arrangement; or
  - (b) if no access arrangement applies, in accordance with rule 46.
- (4) If the AER considers that the *reference service proposal* does not comply, in any respect, with a requirement of the *Rules*, the AER may notify the service provider that it requires resubmission of the *reference service proposal*, and in doing so, must:

- (a) state why, and in what respects, the AER considers the *reference service proposal* to be non-compliant; and
  - (b) state a date by which the service provider is required to resubmit the amended *reference service proposal*.
- (5) If a service provider fails to submit a *reference service proposal* where required to do so under these Rules by the date that is 11 months prior to the *review submission date*, the AER must itself propose a *reference service proposal* for the relevant pipeline.
- (6) As soon as practicable after:
  - (a) receiving a *reference service proposal* from the service provider under subrule (3) that the AER does not consider needs resubmission under subrule (4);
  - (b) receiving the resubmitted *reference service proposal* under subrule (4); or
  - (c) proposing a *reference service proposal* under subrule (5),the AER must *publish*:
  - (d) the *reference service proposal*; and
  - (e) an invitation for written submissions on the *reference service proposal* (which must be for a period of at least 15 business days after the publication of the *reference service proposal*).
- (7) Any person may make written submissions to the AER on the *reference service proposal*, or the issues within the proposal including, without limitation, whether the *reference service proposal* should specify other services as reference services.
- (8) Following receipt of submissions under subrule (7), the AER may, at its discretion, undertake further consultation on the *reference service proposal*.
- (9) No later than 6 months prior to the *review submission date* for the access arrangement, the AER must make a *reference service proposal decision* and give a copy of the *decision* to the service provider and publish its *decision*, together with its reasons for the *decision*, on its website.
- (10) A *reference service proposal decision* is a *decision* to approve, or to refuse to approve, a *reference service proposal*.
- (11) If, in a *reference service proposal decision*, the AER refuses to approve a *reference service proposal* the AER must revise the *reference service proposal* having regard to:
  - (a) the matters that these rules require a *reference service proposal* to include; and
  - (b) the service provider's *reference service proposal*; and
  - (c) the AER's reasons for refusing to approve that proposal,and give a copy of the revised *reference service proposal* to the service provider and publish the revised *reference service proposal* on its website.

- (12) If the AER publishes a revised *reference service proposal* under subrule (11) it must as soon as practicable after publishing the revised proposal make a *reference service proposal decision* to give effect to the revised *reference service proposal*.
- (13) In making its *reference service proposal decision*, the AER must have regard to:
  - (a) the *reference service factors*;
  - (b) submissions made in response to its invitation under subrule (7) (within the time allowed in the invitation);
  - (c) where applicable, any feedback the service provider has received from pipeline users and end users, as described in accordance with subrule (1)(d); and
  - (d) any other matters the AER considers relevant.
- (14) In deciding whether or not a pipeline service should be specified as a reference service, the AER must have regard to the *reference service factors*.
- (15) The *reference service factors* are:
  - (a) actual and forecast demand for the pipeline service and the number of prospective users of the service;
  - (b) the extent to which the pipeline service is substitutable with another pipeline service to be specified as a reference service;
  - (c) the feasibility of allocating costs to the pipeline service;
  - (d) the usefulness of specifying the pipeline service as a reference service in supporting access negotiations and dispute resolution for other pipeline services, such that:
    - (i) reference services serve as a point of reference from which pipeline services that are not reference services can be assessed by a user or prospective user for the purpose of negotiating access to those other pipeline services;
    - (ii) a reference tariff serves as a benchmark for the price of pipeline services that are not reference services; and
    - (iii) reference service terms and conditions serve as a benchmark for the terms and conditions of pipeline services that are not reference services;
  - (e) the likely regulatory cost for all parties (including the AER, users, prospective users and the service provider) in specifying the pipeline service as a reference service.

## **48 Requirements for full access arrangement (and full access arrangement proposal)**

- (1) A full access arrangement must:
  - (a) identify the pipeline to which the access arrangement relates and include a reference to a website at which a description of the pipeline can be inspected; and

- (b) describe all of the pipeline services that the service provider can reasonably provide on the pipeline, which must be consistent with the AER's *reference service proposal decision* under rule 47A, unless there has been a material change in circumstances; and
- (c) specify the reference services, which must be consistent with the AER's *reference service proposal decision* under rule 47A, unless there has been a material change in circumstances; and
- (c1) if the information provided under subrules (1)(b) or (1)(c) is different to the AER's *reference service proposal decision* under rule 47A, describe the material change in circumstances that necessitated the change having regard to the *reference service factors*; and
- (d) specify for each reference service:
  - (i) the reference tariff; and
  - (ii) the other terms and conditions on which each reference service will be provided; and
- (e) if the access arrangement is to contain queuing requirements – set out the queuing requirements; and

**Note:**

Queuing requirements are necessary if the access arrangement is for a transmission pipeline but, if the pipeline is a distribution pipeline, queuing requirements are not necessary unless the AER has given prior notification of the need to include queuing requirements (See rule 103).

- (f) set out the capacity trading requirements; and
- (g) set out the extension and expansion requirements; and
- (h) state the terms and conditions for changing receipt and delivery points; and
- (i) if there is to be a *review submission date* – state the *review submission date* and the revision commencement date; and

**Note:**

A full access arrangement must contain a *review submission date* and a revision commencement date unless it is a voluntary access arrangement – See rule 49.

- (j) if there is to be an *expiry date* – state the *expiry date*.

**Note:**

A full access arrangement may contain an *expiry date* if it is a voluntary access arrangement (but not otherwise) – See rule 49.

- (2) This rule extends to an *access arrangement proposal* consisting of a proposed full access arrangement.

## **Division 5            Review and expiry of certain access arrangements**

### **49            Review submission, revision commencement and expiry dates**

- (1) A full access arrangement (other than a voluntary access arrangement):



- (a) must contain a *review submission date* and a revision commencement date; and
  - (b) must not contain an *expiry date*.
- (2) An access arrangement to which this subrule applies:
  - (a) may contain a *review submission date* or both a *review submission date* and an *expiry date*; and
  - (b) must, if it contains a *review submission date*, contain a revision commencement date; and
  - (c) must, if it contains no *review submission date*, contain an *expiry date*.
- (3) Subrule (2) applies to:
  - (a) a full access arrangement that is a voluntary access arrangement; and
  - (b) a limited access arrangement for a *light regulation pipeline*.

## **50 Review of access arrangements**

- (1) A service provider, as part of an *access arrangement proposal* for a full access arrangement (other than a voluntary access arrangement), must propose a *review submission date* and a revision commencement date. The proposed revision commencement date must be not less than 12 months after the proposed *review submission date*.
- (2) The AER must approve the dates proposed by the service provider under subrule (1) if it is satisfied that those dates are consistent with the national gas objective and the revenue and pricing principles and if the proposed revision commencement date is not less than 12 months after the proposed *review submission date*.
- (3) If the AER does not approve the dates proposed by the service provider for the *review submission date* or the revision commencement date (as the case may be), because it considers those dates are not consistent with the national gas objective and the revenue and pricing principles, the AER must fix an alternative *review submission date* or revision commencement date (as the case may be).

## **51 Acceleration of review submission date**

- (1) The *review submission date* fixed in an access arrangement advances to an earlier date if:
  - (a) the access arrangement provides for acceleration of the *review submission date* on the occurrence of a trigger event; and
  - (b) the trigger event occurs; and
  - (c) the *review submission date* determined, in accordance with the access arrangement, by reference to the trigger event, is earlier than the fixed date.
- (2) A trigger event may consist of any significant circumstance or conjunction of circumstances.

**Examples:**

- 1 A re-direction of the flow of natural gas through the pipeline.
  - 2 A competing source of natural gas becomes available to customers *served* by the pipeline.
  - 3 A significant extension, expansion or interconnection occurs.
- (3) The AER may require the inclusion in an access arrangement of trigger events and may specify the nature of the trigger events to be included.

## **52 Access arrangement revision proposal**

- (1) A service provider must, on or before the *review submission date* of an applicable access arrangement, submit an *access arrangement revision proposal* to the AER.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

- (2) The *access arrangement revision proposal* must:
- (a) set out the amendments to the access arrangement that the service provider proposes for the ensuing *access arrangement period*; and
  - (b) incorporate the text of the access arrangement in the revised form.
- (3) The AER may extend the period for submitting an *access arrangement revision proposal* under this rule, but the period (or aggregate period) of extension cannot exceed 2 months.

## **Division 6 Division or consolidation of access arrangements**

### **53 Access arrangement proposal for division or consolidation of access arrangements**

- (1) The AER may, by notice to a service provider for a covered pipeline, direct the service provider to submit separate *access arrangement proposals* for different parts of the covered pipeline.
- (2) If pipeline services provided, or to be provided, by a service provider are (or are to be) provided by means of 2 or more covered pipelines, the AER may, by notice to the service provider, direct the service provider to submit a consolidated *access arrangement proposal* for all the relevant covered pipelines.

**Example:**

The AER might direct the submission of a consolidated *access arrangement proposal* for 2 or more covered transmission pipelines, 2 or more covered distribution pipelines or a combination of covered transmission and covered distribution pipelines.

- (3) The AER may give a direction under this rule either on its own initiative or on application by the service provider.

- (4) In deciding whether to give a direction under this rule, the AER must have regard to:
  - (a) the nature of the pipeline or pipelines; and
  - (b) the nature of the pipeline services provided or to be provided by means of the pipeline or pipelines; and
  - (c) any other matter the AER considers relevant.
- (5) Before the AER gives the direction, it must consult on the proposed terms of the direction with the service provider and any other persons with whom it considers consultation appropriate.
- (6) A service provider must comply with a direction under this rule.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

- (7) A direction under this rule may be subject to such conditions as the AER thinks fit and includes in the direction.

## **Division 7                      Procedure for dealing with limited access arrangement proposal**

### **54                      Application of this Division**

This Division applies to a *limited access arrangement proposal*.

Exception:

This Division does not apply to an *access arrangement variation proposal* relating to a limited access arrangement if the proposal is approved by the AER under Division 10 as a proposal for a non-material variation.

### **55                      Decision on limited access arrangement proposal**

- (1) The AER must deal with a *limited access arrangement proposal* for a *light regulation pipeline* in accordance with the *expedited consultative procedure*.
- (2) However:
  - (a) at any time before the AER makes a final *decision* to approve a limited access arrangement, the service provider may withdraw the *access arrangement proposal*; and
  - (b) the withdrawal terminates the administrative process for approval of the proposed limited access arrangement.
- (3) If the AER, in its final *decision* on a *limited access arrangement proposal* for a *light regulation pipeline*, approves the proposal, the access arrangement, or the revision or variation, to which the proposal relates, takes effect on a date fixed in the final *decision* or, if no date is so fixed, 10 business days after the date of the final *decision*.

**Note:**

In the case of an *access arrangement revision proposal*, this date may, but will not necessarily, be the revision commencement date fixed in the access arrangement.

- (4) A final *decision* on a *limited access arrangement proposal* for a *light regulation pipeline* must be made within 4 months after submission of the proposal for the AER's approval.
- (5) The time limit fixed by subrule (4) cannot be extended by more than a further 2 months.

## **Division 8                      Procedure for dealing with full access arrangement proposal**

### **56                      Application of this Division**

This Division applies to a *full access arrangement proposal*.

Exception:

This Division does not apply to an *access arrangement variation proposal* relating to a full access arrangement if the proposal is approved by the AER under Division 10 as a proposal for a non-material variation.

### **57                      [Deleted]**

### **58                      Notification of submission of full access arrangement proposal for approval**

- (1) As soon as practicable after receiving a *full access arrangement proposal*, or referring it (in the case of an *access arrangement variation proposal*) to be dealt with under this Division, the AER must publish a notice (an **initiating notice**) on its website:
  - (a) notifying receipt of the proposal; and
  - (b) describing the proposal and giving the address of a website at which the proposal can be inspected; and
  - (c) inviting written submissions on the proposal by a date specified in the notice (which must fall at least 20 business days after the first publication of the notice).
- (2) The AER may, however, defer publication of an initiating notice for up to 30 business days after the submission of the *access arrangement proposal* if, on a preliminary examination of the proposal, the AER considers the proposal or the related *access arrangement information* deficient in some respect, and allows the service provider an opportunity to correct the deficiency.
- (3) A service provider may, with the AER's consent, revise a *full access arrangement proposal* even though an initiating notice has been published.

## 59 Access arrangement draft decision

- (1) After considering the submissions made within the time allowed in the initiating notice, and any other matters the AER considers relevant, the AER must make an access arrangement draft *decision*.
- (2) An access arrangement draft *decision* indicates whether the AER is prepared to approve the *access arrangement proposal* as submitted and, if not, the nature of the amendments that are required in order to make the proposal acceptable to the AER.

### Examples:

1. If the AER is not satisfied that the *access arrangement proposal* adequately describes the pipeline services offered, or to be offered, by the service provider, the *decision* might indicate the amendment or the nature of the amendment required to correct the deficiency.
  2. If the AER is not satisfied that the *access arrangement proposal* designates as reference services all pipeline services that it considers should be specified as reference services under rule 47A, the *decision* might indicate that further or other pipeline services should be designated as reference services.
  3. The *decision* might indicate that specified changes, or changes of a specified nature, should be made to a reference tariff.
  4. The *decision* might indicate changes to queuing requirements, capacity trading requirements, or extension and expansion requirements needed to make the access arrangement acceptable to the AER.
- (3) If an access arrangement draft *decision* indicates that revision of the *access arrangement proposal* is necessary to make the proposal acceptable to the AER, the *decision* must fix a period (at least 30 business days) for revision of the proposal (the **revision period**).
  - (4) An access arrangement draft *decision* must include a statement of the reasons for the *decision*.
  - (5) When the AER makes an access arrangement draft *decision*, it must:
    - (a) give a copy of the *decision* to the service provider; and
    - (b) publish the *decision* on the AER's website; and
    - (c) publish on its website a notice:
      - (i) stating that an access arrangement draft *decision* has been made and giving a reference to a website at which the relevant *access arrangement proposal* and the relevant draft *decision* may be inspected; and
      - (ii) if a period has been allowed for revision of the proposal – specifying the revision period; and

- (iii) inviting written submissions within the time allowed in the notice (which must be at least 20 business days from the end of the revision period).

## **60 Revision of access arrangement proposal in response to draft decision**

- (1) The service provider may, within the revision period, submit additions or other amendments to the *access arrangement proposal* to address matters raised in the access arrangement draft *decision*.
- (2) The amendments must be limited to those necessary to address matters raised in the access arrangement draft *decision* unless the AER approves further amendments.

### **Example:**

The AER might approve amendments to the *access arrangement proposal* to deal with a change in circumstances of the service provider's business since submission of the *access arrangement proposal*.

- (3) If the service provider submits amendments to the *access arrangement proposal*, the service provider must also provide the AER (together with the amendments) with a revised proposal incorporating the amendments.
- (4) As soon as practicable after receiving the revised *access arrangement proposal*, the AER must publish it on its website.

## **61 Hearing relating to access arrangement draft decision**

- (1) The AER may, on its own initiative or on request by any person, hold a hearing about an access arrangement draft *decision*.
- (2) A request for a hearing must:
  - (a) be made in writing within 10 business days after publication of the draft *decision*; and
  - (b) state the applicant's name and *contact details*; and
  - (c) state the applicant's reasons for requesting a hearing.
- (3) If the AER refuses a request for a hearing, it must give the applicant written reasons for the refusal.

### **Example:**

The AER might refuse the request on the ground that the applicant failed to make written submissions in response to the initiating notice or that the applicant's request does not disclose a sufficient reason for a hearing.

- (4) If the AER decides to hold a hearing (on request or on its own initiative), it must appoint a time and place for the hearing and give notice of the appointed time and place on its website.

## **62 Access arrangement final decision**

- (1) After considering the submissions made in response to the access arrangement draft *decision* within the time allowed in the notice, and any other matters the AER considers relevant, the AER must make an access arrangement final *decision*.
- (2) An access arrangement final *decision* is a *decision* to approve, or to refuse to approve, an *access arrangement proposal*.
- (3) If the *access arrangement proposal* has been revised since its original submission, the access arrangement final *decision* relates to the proposal as revised.
- (4) An access arrangement final *decision* must include a statement of the reasons for the *decision*.
- (5) When the AER makes an access arrangement final *decision*, it must:
  - (a) give a copy of the *decision* to the service provider; and
  - (b) publish the *decision* on the AER's website.
- (6) If an access arrangement final *decision* approves an *access arrangement proposal*, the access arrangement, or the revision or variation, to which the *decision* relates, takes effect on a date fixed in the final *decision* or, if no date is so fixed, 10 business days after the date of the final *decision*.

### **Note:**

In the case of an *access arrangement revision proposal*, this date may, but will not necessarily, be the revision commencement date fixed in the access arrangement.

- (7) An access arrangement final *decision* must be made within 8 months of the date of receipt of the *access arrangement proposal*.
- (8) The time limit fixed by subrule (7) cannot be extended by more than a further 2 months.

## **Division 9 Power of the AER to make and approve its own proposal for an arrangement or revisions to an access arrangement**

### **63 AER's power to make or revise access arrangement on failure by service provider to submit an access arrangement proposal**

- (1) If a service provider fails to submit an *access arrangement proposal* in one of the following cases, the AER must itself propose an access arrangement or revisions to the access arrangement (as the case requires) for the relevant pipeline.

Cases to which this subrule applies:

- (a) the service provider is required to submit an *access arrangement proposal* for a full access arrangement under section 132 of the *NGL* and rule 46, and fails to do so;

- (b) the service provider is required to submit an *access arrangement revision proposal* under section 132 of the *NGL* and rule 52, and fails to do so.
- (2) The AER must make a *decision* giving effect to its proposal (or some modified version of its proposal resulting from the *decision* making process) within 6 months after the end of the period allowed for submission of an *access arrangement proposal* by the service provider.
- (3) In making a *decision* under subrule (2), the AER must:
  - (a) if the proposal is, or relates to, a limited access arrangement – proceed in accordance with the *expedited consultative procedure*; or
  - (b) if the proposal is, or relates to, a full access arrangement – proceed in accordance with the *standard consultative procedure*.

#### **64 AER's power to make or revise access arrangement on refusing to approve an access arrangement proposal**

- (1) If, in an access arrangement final *decision*, the AER refuses to approve an *access arrangement proposal* (other than a variation proposal), the AER must itself propose an access arrangement or revisions to the access arrangement (as the case requires) for the relevant pipeline.

Exception:

If the *access arrangement proposal* is for a limited access arrangement for an international pipeline to which a price regulation exemption applies, the AER may (but need not) exercise its powers under this rule. (See section 167(2) of the *NGL*)

- (2) The AER's proposal for an access arrangement or revisions is to be formulated with regard to:
  - (a) the matters that the *Law* requires an access arrangement to include; and
  - (b) the service provider's *access arrangement proposal*; and
  - (c) the AER's reasons for refusing to approve that proposal.
- (3) The AER may (but is not obliged to) consult on its proposal.
- (4) The AER must, within 2 months after the access arrangement final *decision*, make a *decision* giving effect to its proposal.
- (5) When the AER makes a *decision* under this rule, it must:
  - (a) give a copy of the *decision* to the service provider; and
  - (b) publish the *decision* on the AER's website.
- (6) The access arrangement or the revisions to which the *decision* relates takes effect on a date fixed in the determination or, if no date is so fixed, 10 business days after the date of the *decision*.



## **Division 10            Supplementary power to vary applicable access arrangement**

### **65            Application for variation of applicable access arrangement**

- (1) A service provider may submit for the AER's approval a proposal for variation of the applicable access arrangement (an *access arrangement variation proposal*).
- (2) An *access arrangement variation proposal* cannot, however, be submitted between a *review submission date* for the applicable access arrangement and the commencement of the new *access arrangement period*.
- (3) An *access arrangement variation proposal* must:
  - (a) be in writing; and
  - (b) state the variation sought and the reasons for it; and
  - (c) if the service provider considers the variation non-material – state that opinion and the reasons for it.

### **66            Preliminary assessment of access arrangement variation proposal**

- (1) Within 20 business days after receiving an *access arrangement variation proposal* from a service provider, the AER must decide whether or not it considers the variation non-material.
- (2) If the AER considers the variation non-material, the AER may, without consultation, approve the proposal.
- (3) If the AER does not consider the proposed variation non-material, the AER must refer the *access arrangement variation proposal* to be dealt with as a *limited access arrangement proposal* under Division 7 or a *full access arrangement proposal* under Division 8 (as the case requires).
- (4) If the service provider considers the proposed variation non-material and the AER disagrees with the service provider on that point, the AER must give the service provider written reasons for its contrary opinion.

### **67            Decision on access arrangement variation proposal**

A *decision* by the AER on an *access arrangement variation proposal* under this Division must:

- (a) be in writing; and
- (b) state the terms of the *decision* and the reasons for it; and
- (c) if the *decision* is to approve the variation as a non-material variation:
  - (i) set out the terms of the approved variation; and
  - (ii) state the commencement date of the variation; and
- (d) be given to the applicant service provider without delay; and

- (e) be published on the AER's website.

## **Division 11      AER's power to vary or revoke access arrangement**

### **68      AER may vary or revoke access arrangement**

- (1) The AER may vary or revoke an access arrangement during an *access arrangement period* if it appears to the AER that the determination is affected by a material error or deficiency of one or more of the following kinds:
  - (a) a clerical mistake or an accidental slip or omission;
  - (b) a miscalculation or misdescription;
  - (c) a defect in form;
  - (d) a deficiency resulting from the provision of false or materially misleading information to the AER.
- (2) If the AER revokes an access arrangement under subrule (1), the AER must make a new access arrangement to apply for the remainder of the *access arrangement period* for which the revoked access arrangement was to apply.
- (3) A substituted access arrangement must not differ from the revoked access arrangement more than necessary to correct the relevant error or deficiency.
- (4) The AER may only vary an access arrangement, or revoke and substitute an access arrangement, under this rule if it has first consulted with the relevant service provider and any other persons with whom it considers consultation appropriate.