

Fact sheet: Guide to the application of the National Gas Law and National Gas Rules in Western Australia

The National Gas Law and National Gas Rules that apply and operate in Western Australia are different to those that apply in every other participating jurisdiction.

This fact sheet explains how Western Australia's National Gas Law and National Gas Rules apply, and the key differences between the regulatory gas regime that applies in Western Australia as compared to other participating jurisdictions.

1 Key points

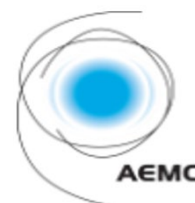
- The National Gas Law (**NGL**) and National Gas Rules (**NGR**) provide the overarching legislative and regulatory framework for Australia's gas pipelines and markets.
 - Western Australia adopted a modified version of the NGL and NGR under its [National Gas Access \(WA\) Act 2009 \(WA\)](#) (**WA Gas Act**). As a result, the NGL and NGR that apply in Western Australia are different to those that apply in every other participating jurisdiction.
 - Key differences in how the NGL and NGR apply in Western Australia include that:
 - amendments that are made to the NGL by the South Australian Parliament are not automatically adopted in Western Australia. Instead, these amendments must be declared as 'relevant' by the Western Australian Minister for Energy (**WA Minister**) to apply in Western Australia. To date, Western Australia has only declared as relevant, and adopted, five out of a total of 18 possible amendments to the NGL passed by the South Australian Parliament;¹ and
 - the South Australian Minister for Energy is only permitted to make gas rules that apply in Western Australia relating to the AER's making of binding rate of return instruments and access to non-scheme pipelines.
 - These differences reflect the different way in which Western Australia's retail and wholesale gas markets are regulated.
 - The AEMC has prepared this fact sheet to assist stakeholders in understanding how the NGL and NGR apply in Western Australia. The fact sheet is not a substitute for obtaining legal advice.
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2 Western Australia's adoption of the National Gas Law

The NGL is set out in a Schedule to the [National Gas \(South Australia\) Act 2008 \(SA\)](#) (**National Gas Act**) and provides the broad legislative and regulatory framework for Australia's gas pipelines and

¹ These amendments relate to, among other things, the timeframe in which the AEMC must publish final NGR determinations in expedited processes, the Australian Energy Regulator's (**AER**) making of binding rate of return instruments, access to non-scheme pipelines, the limited merits review of some access arrangement decisions and the definition of 'designated pipelines'. See Table 1 below.

This fact sheet is current as at January 2023.



markets. With the exception of Western Australia, the NGL applies as law in all Australian states and territories who adopted the NGL in 2008.²

On 1 January 2010, Western Australia adopted a modified version of the NGL under the **WA Gas Act**.³ The modifications are set out in Schedule 1. The modified NGL is known as the National Gas Access (Western Australia) Law (**WA Gas Law**). The WA Gas Law provides for the making of National Gas Rules that apply as law in Western Australia (**WA Gas Rules**).⁴

The full text of the WA Gas Law currently in force is set out in a Note to the WA Gas Act.

2.1 How are amendments to the WA Gas Law made?

As illustrated in Figure 1 below, the WA Gas Law may be amended by:

- the WA Minister declaring an amendment to the NGL passed by the South Australian Parliament as relevant to Western Australia;⁵ or
- the Western Australian Governor making consequential Regulations that amend the WA Gas Law.⁶

² *National Gas (South Australia) Act 2008* (SA), section 7(a). With the exception of Western Australia, each state and territory passed Acts adopting the NGL as law.

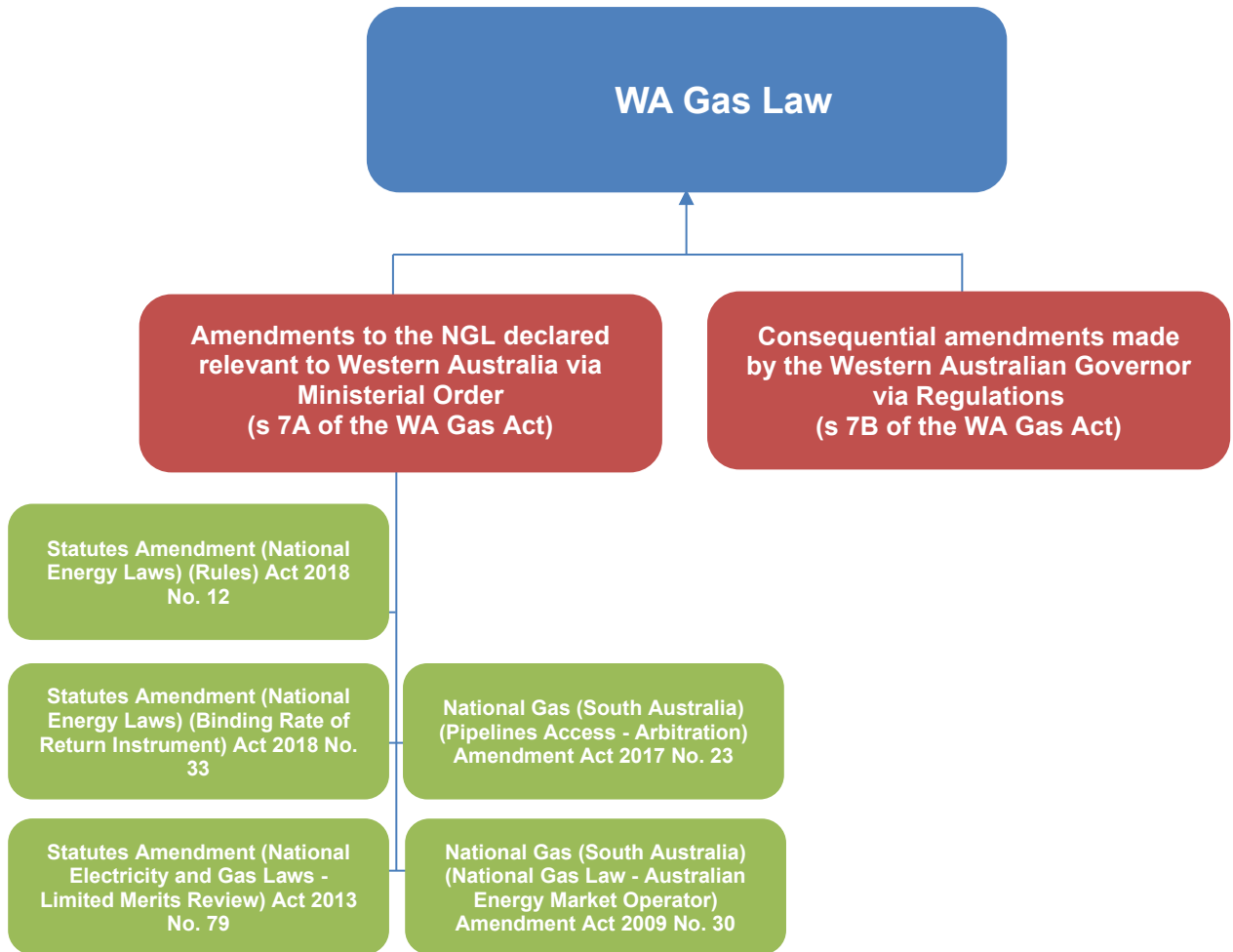
³ *National Gas Access (WA) Act 2009* (WA), Part 2.

⁴ WA Gas Act, Chapter 9. Refer to section 3 of this fact sheet for further information regarding the WA Gas Rules.

⁵ *National Gas Access (WA) Act 2009* (WA), section 7A(2).

⁶ *National Gas Access (WA) Act 2009* (WA), section 7B.

Figure 1: the WA Gas Law



(a) Amendments to the NGL declared relevant to Western Australia

Under section 7A of the WA Gas Act, amendments that are made to the NGL by the South Australian Parliament are not automatically adopted in the WA Gas Law. Instead, the WA Minister must declare the amendment, or part of the amendment, as ‘relevant’ before it will apply to Western Australia and be incorporated into the WA Gas Law. Declarations made by the WA Minister for this purpose must be published in the Western Australia’s Government Gazette in the form of an Order, which is known as an ‘Adoption of Amendment Order’.

Since its enactment, the NGL has been amended by the South Australian Parliament under 18 different amending Acts. To date, five of these 18 amending Acts have been declared relevant (in whole or part) to Western Australia by the WA Minister under Adoption of Amendment Orders and incorporated into the WA Gas Law. See Table 1 for further information on the five amending Acts.

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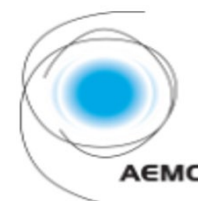


Table 1: Amending Acts to the NGL declared relevant in Western Australia

Amending Acts to the NGL declared relevant to Western Australia	Summary of amendments adopted in Western Australia to the WA Gas Law
Statutes Amendment (National Energy Laws) (Rules) Act 2018 No. 12	Amending the timeframe for when the AEMC must publish a final NGR determination when using the expedited process for making non-controversial or urgent NGRs from 6 weeks to 8 weeks. ⁷
Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018 No. 33	Requiring and setting out the process for the AER to make a binding rate of return instrument. ⁸
National Gas (South Australia) (Pipelines Access - Arbitration) Amendment Act 2017 No. 23	Including various new provisions that govern persons seeking access to a non-scheme pipeline, including a framework for enhanced disclosure and transparency of non-scheme pipeline information. ⁹
Statutes Amendment (National Electricity and Gas Laws - Limited Merits Review) Act 2013 No. 79	Including various new provisions relating to the limited merits review of certain applicable access arrangement decisions made under the WA Gas Law. ¹⁰
National Gas (South Australia) (National Gas Law - Australian Energy Market Operator) Amendment Act 2009 No. 30	Minor amendments replacing the definition of 'designated pipeline' under the WA Gas Law. ¹¹

(b) Amending Regulations made by the Western Australian Governor

Section 7B of the WA Gas Act empowers the Western Australian Governor to make Regulations that amend the WA Gas Law if necessary or expedient to deal with the consequences of an amendment to the WA Gas Law made as a result of an NGL amendment being declared relevant to Western Australia.¹² The Western Australian Governor is also separately empowered under Part 3 of the WA Gas Act to make certain Regulations relating to the WA Gas Law.¹³

Regulations made by the Western Australian Governor under the WA Gas Act are available [online](#) at Western Australia's legislation database.

2.2 What are the key differences between the NGL and WA Gas Law?

There are a number of differences between Western Australia's WA Gas Law and the NGL as it currently applies in all other participating jurisdictions. A summary of the key differences is set out in Table 2 below.

The differences between the WA Gas Law and NGL primarily relate to the different way in which retail and wholesale gas markets are regulated in Western Australia. At a high level, in Western Australia, the retail gas market is separate to the retail gas markets in other states and territories and is not regulated under the NGL or WA Gas Law but under other state-based legislation known as the *Energy*

⁷ [National Gas Access \(WA\) Adoption of Amendments Order 2020](#).

⁸ [National Gas Access \(WA\) Adoption of Amendments Order 2019](#).

⁹ [National Gas Access \(WA\) Adoption of Amendments Order 2017](#).

¹⁰ [National Gas Access \(WA\) Adoption of Amendments Order 2014](#).

¹¹ [National Gas Access \(WA\) Adoption of Amendments Order 2009](#).

¹² For example, fixing the date in which new sections of the WA Gas Law commence. See *National Gas Access (WA) (Act Amendment) Regulations 2020* (WA).

¹³ For example, prescribing certain pipelines as designated pipelines within the meaning of the WA Gas Law. See *National Gas Access (WA) (Part 3) Regulations 2009* (WA).

Coordination Act 1994 (WA). Unlike those in other participating jurisdictions, Western Australia's wholesale gas market is deregulated and is not governed by the WA Gas Law or WA Gas Rules.

Accordingly, many of the provisions in the NGL that relate to the regulation of retail gas markets and their registered participants, as well as to the various types of wholesale gas markets that exist in the other participating jurisdictions,¹⁴ have not been adopted in the WA Gas Law and do not apply in Western Australia.

Table 2: Key differences between the NGL and WA Gas Law

Feature	NGL	WA Gas Law
Establishing Act	<i>National Gas (South Australia) Act 2008 (SA)</i> .	<i>National Gas Access (WA) Act 2009 (WA)</i> .
Regulator	The AER.	<ul style="list-style-type: none"> The Economic Regulation Authority (ERA) (for ERA pipelines);¹⁵ or The AER (for non-ERA pipelines).
Dispute Resolution Body	Eligible pipeline access disputes are determined by the AER (section 2(1)).	Eligible pipeline access disputes in Western Australia are determined by the: <ul style="list-style-type: none"> WA Energy Disputes Resolution Arbitrator (for ERA pipelines); or AER (for non-ERA pipelines), (section 2(1)).
The role of AEMO	AEMO has extensive statutory functions which are set out in s 91A of the NGL. These functions broadly include the operation and administration of markets for natural gas and, for adoptive jurisdictions, the declared system functions or short-term trading functions as applicable.	AEMO has no functions conferred on it under the WA Gas Law. ¹⁶
Regulation of retail gas markets	Regulated retail gas markets in each participating jurisdiction are primarily regulated under Part 7 of Chapter 2 of the NGL.	The WA Gas Law does not regulate Western Australia's retail gas market scheme, which is primarily regulated under the <i>Energy Coordination Act 1994 (WA)</i> .
Regulation of wholesale gas markets	Chapter 2 of the NGL contains provisions relating to the following wholesale gas markets: <ul style="list-style-type: none"> Victoria's declared wholesale gas market; STTM hubs; and gas supply exchanges. 	Western Australia's wholesale gas market is deregulated and does not fall within the scope of the WA Gas Law.
Natural Gas Services Bulletin Board	The NGL establishes and governs the operation of the Natural Gas Services Bulletin Board, which is a website maintained by AEMO that contains information covering covers all major gas production fields, major demand	Western Australia's Natural Gas Services Bulletin Board is established under the state-

¹⁴ For example, the Victorian declared wholesale gas market, the short term trading market (**STTM**) in Adelaide, Brisbane and Sydney, and the Gas Supply Hubs in Walumbilla, Queensland and Moomba, South Australia.

¹⁵ ERA pipelines are pipelines other than international pipelines and pipelines for which the WA Minister is not responsible.

¹⁶ AEMO operates Western Australia's retail gas market scheme pursuant to WA Gas Retail Market Agreements between AEMO and Gas Market Participants in accordance with section 11ZOF(a) of the *Energy Coordination Act 1994 (WA)*.

Feature	NGL	WA Gas Law
	centres and natural gas transmission pipelines (Chapter 7).	based <i>Gas Services Information Act 2012</i> (WA). ¹⁷
Gas Statement of Opportunities	The NGL establishes and governs the Gas Statement of Opportunities, which provides information to assist persons in making informed decisions about investment in the natural gas industry (Chapter 2, Division 4).	The WA Gas Law does not regulate Western Australia's Gas Statement of Opportunities, which is established separately under the state-based <i>Gas Services Information Act 2012</i> (WA).
Amendments to the NGL	Amendments to the NGL passed by the South Australian Parliament are automatically incorporated into the NGL in each jurisdiction at the relevant commencement date.	Amendments to the NGL passed by the South Australian Parliament do not apply unless the Western Australian Minister declares that the amendment is relevant (section 7A of the WA Gas Act).
Power of the AEMC to make National Gas Rules¹⁸	The AEMC can make rules on a broad range of subject matter under section 74 and Schedule 1 of the NGL.	The AEMC can make Rules on a narrower range of subject matter under section 74 and Schedule 1 of the WA National Gas Law, with the AEMC's predominant Rule making power relating to regulating access to pipeline services and the provision of pipeline services.
Power of the South Australian Minister to make National Gas Rules	The South Australian Minister may make Rules applying under the NGR that fall within a broad range of subject matter (sections 294 to 294FA).	The South Australian Minister may only make Rules under the <i>Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018</i> and the <i>National Gas (South Australia) (Pipelines Access—Arbitration) Amendment Act 2017</i> (sections 294CA and 294F).

3 Western Australia's adoption of the National Gas Rules

The NGL provides for the making of NGR that apply in each participating jurisdiction and govern access to natural gas pipeline services and elements of broader natural gas markets. Like its adoption of the NGL, Western Australia adopts a modified version of the NGR that apply in each other participating jurisdiction under the WA Gas Law.

Under section 294 of the WA Gas Law, Western Australia adopts Version 1 of the NGR¹⁹ as amended by:

- Rules made by the South Australian Minister for Energy (**SA Minister**) under the *Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018* (**Rate of Return Act**) and the *National Gas (South Australia) (Pipelines Access—Arbitration) Amendment Act 2017* (**Pipelines Access – Arbitration Act**);²⁰ and

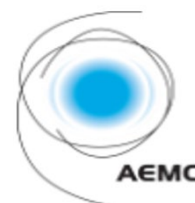
¹⁷ The provisions in the WA Gas Law relating to the Natural Gas Services Bulletin Board do not currently apply in Western Australia (see section 20A of the WA Gas Law).

¹⁸ Refer to Table 4 below for a summary of the differences between the AEMC's rule making power in Western Australia and all other participating jurisdictions.

¹⁹ Version 1 of the NGR was in effect in all other participating jurisdictions between 1 July 2008 and 30 June 2009. Version 1 of the NGR is [available online](#) on the AEMC's website.

²⁰ WA Gas Law, sections 294, 294CA and 294F.

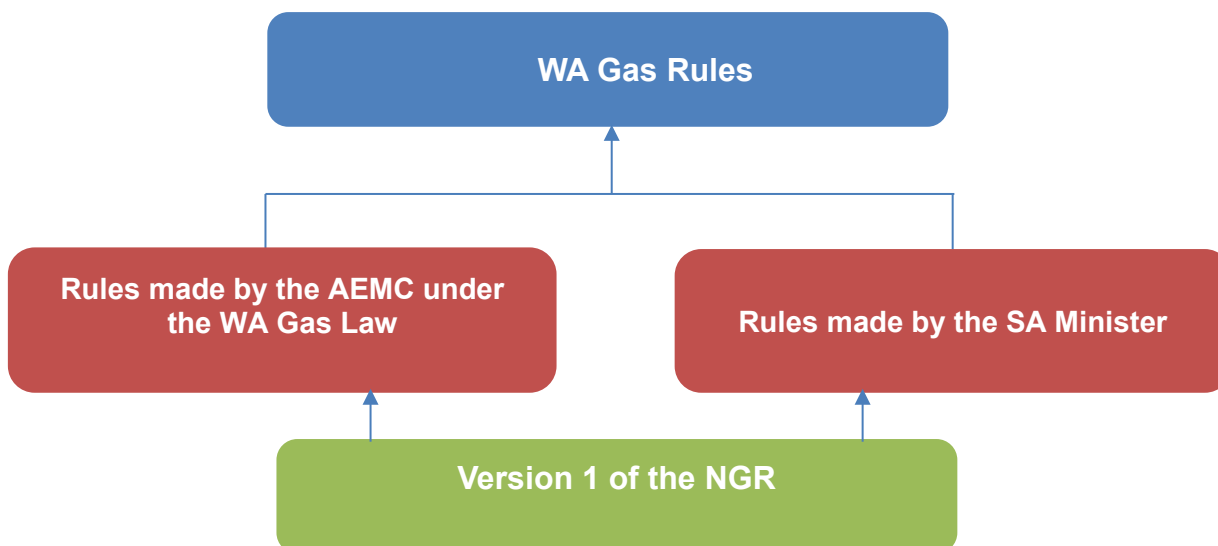
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- Rules made by the AEMC in accordance with its rule making power under sections 74 and 313 of the WA Gas Law.

Figure 2 below illustrates Western Australia’s adoption of the NGR under the WA Gas Law.

Figure 2: the WA Gas Rules



3.1 How are amendments to the WA Gas Rules made?

Amendments to the WA Gas Rules may be made by both the SA Minister and the AEMC in limited circumstances. The Rule making powers of each of these entities is considered in further detail below.

(a) Rules made by the SA Minister

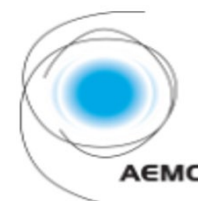
The SA Minister does not have an enduring general power under the NGL to make Rules in Western Australia, or other participating jurisdictions. Any amendments to the NGR made by the SA Minister do not apply in Western Australia unless they have been made under the Rate of Return Act and the Pipelines Access – Arbitration Act.²¹

To date, the SA Minister has made two Rule changes under these Acts in accordance with sections 294CA and 294F of the WA Gas Law. Table 3 below summarises these Rule changes.

Table 3: Rule changes made by the SA Minister that apply to the WA Gas Rules

Rule change	Summary of amendments under the Rule change
National Gas (Binding Rate of Return Instrument) Amendment Rule 2019	This amending Rule is part of broader amendments to the NGL and NGR adopted in Western Australia to introduce a binding rate of return instrument for gas network businesses that is published by the AER. The binding rate of return instrument sets out the methodology the AER will use to determine the rate of return in its regulatory determinations for all regulated gas network businesses.

²¹ WA Gas Law, sections 294CA and 294F.



Rule change	Summary of amendments under the Rule change
	<p>The AER publishes a binding rate of return instrument once every four years.</p> <p>The specific amendments to give effect to this process under the amending Rule include:</p> <ul style="list-style-type: none"> • the insertion of new definitions and various amendments to the text of certain provisions relating to the applicable rate of return instrument published by the AER; and • the revocation of rule 9B, which provided for a rate of return consultative procedure. The current rate of return consultative procedure is set out in Chapter 2 of the WA Gas Law.
<p>National Gas (Pipelines Access – Arbitration) Amendment Rule 2017</p>	<p>The amending Rule is part of broader amendments to the NGL and NGR adopted in Western Australia to introduce a regime for access to pipeline services on non-scheme pipelines. Non-scheme pipelines are pipelines not covered under the NGL or WA Gas Law. Prior to the commencement of the amending Rule, access to non-scheme pipelines was a matter of commercial negotiation only. The amending Rule introduces:</p> <ul style="list-style-type: none"> • various obligations on eligible service providers for non-scheme pipelines to publish certain information relating to service, access, usage and availability of the pipeline; and • a framework in which prospective users may request the service provider of a non-scheme access pipeline to provide access to a pipeline service; and • a commercial arbitration framework which can be used by parties where commercial negotiations break down. <p>The specific amendments to give effect to these changes under the amending Rule include the insertion of a new Part 23 'Access to non-scheme Pipelines' and Schedule 4 'Transitional Provisions and derogations for Pipeline Access – Arbitration Framework'.</p>

(b) Rules made by the AEMC

The AEMC has the power to make Rules that apply in Western Australia under the WA Gas Law.

Section 74 and Schedule 1 of the WA Gas Law specify the subject matter for Rules that can be made by the AEMC in Western Australia. While the structure of these provisions mirrors those in the NGL, the scope of the AEMC's Rule making power in Western Australia is significantly narrower than in other jurisdictions because Western Australia has not adopted many of the amendments to the NGL that have expanded the AEMC's rule making power under section 74 and Schedule 1.

Table 4 below sets out the key subject matter for Rules that can be made by the AEMC under the NGL, and whether the AEMC can make corresponding Rules on the same subject matter in Western Australia.

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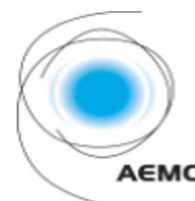


Table 4: Summary of the key differences in the AEMC's Rule making powers under the NGL and WA Gas Law

Subject matter for Rules that can be made by the AEMC under the NGL	Does it currently apply in Western Australia?
Access to, and the provision of, pipeline services (including access arrangements and access disputes).	✓
The collection, use, disclosure, copying, recording, management and publication of information in relation to the natural gas industry.	✓
Any matter or thing contemplated by the NGL, or necessary or expedient for the purposes of the NGL.	✓
Classification and coverage of pipelines.	✓
Price regulation exemptions.	✓
Light regulation determinations.	✓
Tender approvals for the construction of pipelines.	✓
Regulatory economic methodologies and the AER's economic regulatory functions or powers (including power to approve associate contracts).	✓
Ring fencing requirements.	✓
Procedures to be followed by the National Competition Council or relevant Minister when dealing with applications for, among other things, coverage determinations, price regulation exemptions, reclassification decisions and light regulation determinations.	✓
Natural Gas Services Bulletin Board.	✗ ²²
Facilitating capacity trades and the capacity auction.	✗
The operation of a regulated retail gas market.	✗
AEMO and its functions, including in relating to declared systems, STTM, capacity auctions and gas trade exchanges.	✗
The activities of registered participants, users, end users and other persons in a regulated gas market.	✗
The safety, security and reliability of pipelines.	✗
The connection of premises of retail customers.	✗
Transaction support arrangements.	✗
Access to and the provision of operational transportation services.	✗
Facilitating and supporting the provision of services to retail customers.	✗
The AER's gas price reporting functions.	✗
Sale and supply of gas to customers.	✗
Credit support arrangements between service providers and retailers.	✗
Charges for the connection of premises of retail customers.	✗

²² The WA Gas Law lists the 'Natural Gas Services Bulletin Board' as a subject matter under sections 56 to 68 of Schedule 1 to the WA Gas Law that the AEMC may make rules about. However, section 20A of the WA Gas Law provides that to the extent any provisions of the WA Gas Law relate to the Natural Gas Services Bulletin Board, these provisions do not apply in Western Australia until a day fixed by the WA Minister via an Order (which has not yet occurred).

Subject matter for Rules that can be made by the AEMC under the NGL	Does it currently apply in Western Australia?
Dispute resolution under Part 15C of the NGR.	x
Energy Consumers Australia (including provisions for its funding).	x

3.2 What are the key differences between the NGR and the WA Gas Rules?

There are a number of Parts of the current NGR that have not been adopted in Western Australia's WA Gas Rules. As described in section 2.2 above, retail and wholesale gas markets in Western Australia are regulated differently to gas markets in all other states and territories. Accordingly, the Parts of the NGR that have not been adopted in Western Australia largely reflect these differences in its retail and wholesale gas market regulation.

The current version of the NGR that applies in each participating jurisdiction is version 64.²³ Table 5 below summarises the Parts of version 64 of the NGR that have not been adopted in the WA Gas Rules and do not apply in Western Australia.

Table 5: Parts of the current NGR that do not apply in Western Australia

Parts of the current NGR that <u>do not apply</u> in Western Australia	What does this Part regulate?
Part 12A – Gas connection for retail customers	The provision of gas connection services between distributors and retail customers, including the types of connection services, charges and the formation of connection contracts.
Part 15A – Registered participants	The processes for the registration of participants in the declared wholesale gas market, regulated retail market and STTM, including prescribing participant fees. Part 15A also sets out AEMO's responsibilities in respect of the registration of these participants.
Part 15B – Procedures	The matters that can be dealt with in the Retail Market Procedures, Wholesale Market Procedures and the procedures for regulating the Natural Gas Services Bulletin Board, and the process to be followed by AEMO when making these Procedures.
Part 15C – Dispute resolution	The dispute resolution procedures for disputes concerning, among other things, the application and interpretation of the NGR, a liability or alleged liability under the NGR. Part 15C does <u>not</u> apply to access disputes. Examples of disputes that may fall within part 15C include disputes between AEMO and a registered participant concerning the interpretation of a term used in a NGR provision.
Part 15D – Gas statement of opportunities	The requirements for the gas statement of opportunities published by the AEMO, including contents of the statement, annual revisions and republication, and publication of supplements where significant new information arises that is relevant to the statement.

²³ Version 64 of the NGR commenced on 15 December 2022. The current and historical versions of the NGR are available online on the AEMC's [website](#).

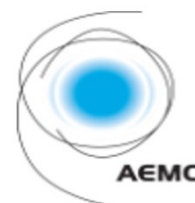
Parts of the current NGR that <u>do not apply</u> in Western Australia	What does this Part regulate?
Part 18 – Natural Gas Services Bulletin Board²⁴	The reporting of information to facilitate trade and informed decision making in relation to the provision and use of natural gas and natural gas services, and negotiation for access to Bulletin Board pipelines.
Part 19 – Declared Wholesale Gas Market	The rules that govern the operation of the declared transmission system, the declared distribution systems and the operation and administration of the Declared Wholesale Gas Market.
Part 20 – Short Term Trading Market	The operation and administration of the STTM by AEMO.
Part 21 – Retail support obligations between distributors and retailers	Retail support obligations in respect of distributors and retailers who have shared customers, including billing and payment rules for distributors' service charges to retailers, and a credit support regime in respect of retailers' liability for outstanding charges
Part 22 – Gas trading exchange	The rules relating to the gas trading exchange.
Part 24 – Facilitating capacity trades and the capacity auction	A number of measures to facilitate capacity trading and the day-ahead auction, including the Operational Transportation Service Code, standard operational transportation service agreements, transaction support arrangements and transportation service provider obligations.
Part 25 – Capacity Auction	The conduct and operation of the day-ahead auction and includes rules for auction design, priority principles, market conduct, auction participant and service provider obligations, and payments
Part 26 – Standard market timetable	The standard gas day start time, standard nomination cut-off time and auction service nomination cut-off time.

4 Disclaimer

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²⁴ Part 18 of the NGR is included in Version 1 of the NGR adopted by WA. However, pursuant to rule 144 of the WA Gas Rules and section 20A of the WA Gas Law, Part 18 does not apply in Western Australia until a day fixed by the WA Minister (which has not yet occurred). Currently, Western Australia's Natural Gas Services Bulletin Board is established under the state-based *Gas Services Information Act 2012* (WA).

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