



22 August 2017

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 – GPR0004**

As the Western Australian Energy Disputes Arbitrator under the *Energy Arbitration and Review Act 1998 (WA)* I propose to lodge this submission only in relation to Question 14.

Question 14(A)

Your note to the comment that there is a perceived uncertainty in relation to arbitration by line users as mentioned on page 57 of the Issues Paper, my observations are as follows:

- (a) In Western Australia energy users do avoid “rocking the boat” to protect broad and long term business interests with pipeline service providers. A number of arbitrations have been commenced but not proceeded with, since parties have reached an amicable arrangement. Effectively, the arbitration process is only in the background, in case agreement cannot be reached, so it constitutes a powerful incentive.
- (b) The timeframe for dispute resolution should not be excessive. The Arbitrator can expedite the process with the assistance of the parties.
- (c) The legal costs are or should not be prohibitive. Indeed, it is not always the case the parties are represented in an arbitration, since in many cases they can put forward their own case quite effectively.
- (d) What should be avoided is any degree of uncertainty in the reference to arbitration. This can be overcome with appropriate amendments.
- (e) Over a period of time, a body of practice will develop in which any uncertainty as to how the regulator will price a disputed service will be dissipated as experience accrues.
- (f) Given arbitrators of reasonable competence, it should be possible for an arbitrator to make a decision as to the key parameters in light of the expert evidence provided by the parties.

Question 14(B)

Wherever possible, the arbitration framework should be standardised, such as to provide for the same rules and procedures in relation to pipeline arbitrations.

Question 14(C)

It follows from the previous answers that no pipeline services should be excluded, with all subject to arbitration if it is not possible for the parties to reach agreement.

Commercial pressures alone are not sufficient to achieve the objectives of the AEMC.

Our Teleconference of 21 August 2017

Further to our teleconference of 21 August, I attach the following examples of how disputes can be defined:

- (a) Page 14 of the Electricity Networks Access Code 2004 (unofficial consolidated version) which includes a very detailed definition of access dispute;
- (b) Page 19 of the Electricity Networks Access Code 2004, which includes a brief but effective definition of contractual dispute; and
- (c) Pages 105-113 inclusive of the Electricity Networks Access Code 2004, which contains key provisions in 10.1 that a proceeding is not an arbitration within the meaning of the *Commercial Arbitration Act 1985*, provisions for expedited hearings and the jurisdiction of the Arbitrator and also a reference to contractual disputes in 10.53.

Under this Code, the Arbitrator can easily see whether he or she has jurisdiction or not. It serves as an example as to how a reference can be appropriately drafted. I hope this will be of some assistance to you, but as always, it needs to be taken to adapt whatever you draft to the actual situation in the particular industry.

Would you treat this letter as being in substitution for my submission of 17 August 2017.

Yours sincerely



**LAURIE JAMES AM
WESTERN AUSTRALIAN ENERGY DISPUTES ARBITRATOR
17 AUGUST 2017**

- (b) between a *revisions commencement date* and the next *revisions commencement date*.

“access arrangement start date” means the day on which an *access arrangement* (other than an *interim access arrangement*) takes effect, and is determined in accordance with 4.26.

{Note: See definition of “**review**” for *access arrangement review*.}

“access contract” has the same meaning as ‘access agreement’ does in Part 8 of the Act, and under section 13.4(d) includes a *deemed access contract*.

{Note: At the time this Code was made, the definition in section 103 of the Act was:

‘ **“access agreement”** means an agreement under the Code between a network service provider and another person (a “network user”) for that person to have access to services. ’}

“access dispute” means a dispute, in connection with an *access application*, between the *applicant* and the *service provider*, including a dispute in relation to any one or more of the following (and the paragraphs of this definition do not limit each other):³

- (a) whether the *applicant* or the *service provider* has complied with, or the manner in which the *applicant* or the *service provider* has purported to comply with, the *applications and queuing policy*; and
- (b) the terms and conditions, including *service standards*, on which the *applicant* should be permitted to acquire *covered services* from the *service provider*; and
- (c) whether *work is required work* and the terms and conditions applying, or proposed to apply, to any such *work*; and⁴
- (ca) anything connected with or arising out of a proposed *contribution*; and⁵
- (cb) a matter heard under section 15.7; and
- (cc) anything connected with or arising out of Appendix 8; and
- (cd) anything connected with or arising out of Appendix 9; and⁶
- (d) whether the *service provider* should grant the *applicant* an exemption to the *technical rules* under section 12.34; and
- (e) the arrangements which will apply in respect of a *supplementary matter* connected with the *access application*.

“access rights” means all or part of a *user’s rights* under a *contract for services* to obtain a *covered service*.⁷

“additional revenue”, when used in 6.41, has the meaning given to it in section 6.42.

³ Section 1.3 amended by WAGG No 180, 22 October 2008

⁴ Section 1.3 amended by WAGG No 180, 22 October 2008

⁵ Section 1.3 amended by WAGG No 180, 22 October 2008

⁶ Section 1.3 amended by WAGG No 137, 29 June 2007

⁷ Section 1.3 amended by WAGG No 180, 22 October 2008

“contract for services” means an agreement between a *service provider* and another person for the person to have access to *services*, and includes an *access contract*.

{Note: The expression **“contract for services”** is broader than “access contract”, because it catches all such contracts and not merely those entered into under this Code. Hence it includes contracts entered into under the *Electricity Transmission Regulations 1996* and the *Electricity Distribution Regulations 1997*.}²⁴

“contractual dispute” means a dispute between a *service provider* and a *user* that is not an *access dispute* and is referred to the *arbitrator* under a *contract for services*.²⁵

“contributing user” means a *user* that is or may be required to make a *contribution*.²⁶

“contribution” means a *capital contribution*, a *non-capital contribution* or a *headworks charge*.²⁷

“contributions policy” means a policy in an *access arrangement* under section 5.1(h) dealing with *contributions by users*.²⁸

“Coordinator” means the Coordinator of Energy referred to in section 4 of the *Energy Coordination Act 1994*.

“coverage applicant” means a person who lodges a *coverage application*.

“coverage application” means an application under section 3.8 requesting that the whole or part of a *network* be *covered*.

“coverage decision”, for a *coverage application* for a *network*, means either or both of the *draft coverage decision* under section 3.17 by the Minister and the *final coverage decision* under section 3.21 by the Minister.

“covered”, with regard to a *network*, means either:

- (a) that the *network* is referred to in section 3.1, and the coverage has not been revoked under Subchapter 3.4; or
- (b) that the Minister has made a *final coverage decision* that the *network* should be *covered*, and the coverage has not been revoked under Subchapter 3.4.

{Note: Among other things, *coverage* of a *network* means that the *service provider* must submit a *proposed access arrangement* under section 4.1.}²⁹

“covered network” means a *network* that is *covered*.

“covered service” means a *service* provided by means of a *covered network*, including:³⁰

²⁴ Section 1.3 amended by WAGG No 180, 22 October 2008

²⁵ Section 1.3 amended by WAGG No 180, 22 October 2008

²⁶ Section 1.3 amended by WAGG No 180, 22 October 2008

²⁷ Section 1.3 amended by WAGG No 180, 22 October 2008

²⁸ Section 1.3 amended by WAGG No 180, 22 October 2008

²⁹ Section 1.3 amended by WAGG No 180, 22 October 2008

³⁰ Section 1.3 amended by WAGG No 180, 22 October 2008

Chapter 10 – Dispute Resolution

Subchapter 10.1 – Introduction

Commercial Arbitration Act 1985 does not apply

10.1 A *proceeding* under this Chapter 10 is not an arbitration within the meaning of the *Commercial Arbitration Act 1985*.

Procedural rules

10.2 Appendix 5 applies in respect of an *access dispute*.

Subchapter 10.2 – Access Disputes

Notification of a dispute

10.3 An *applicant* or a *service provider* may notify the *Authority* in writing that an *access dispute* exists.

10.4 On receiving a notification under section 10.3, the *Authority* must give notice in writing of the *access dispute* to the other parties to the dispute.

10.5 An *applicant* or *service provider* who has given notice of an *access dispute* under section 10.3 may withdraw notification of the *access dispute* at any time by written notice to the *Authority* and all other parties to the *access dispute*.

10.6 If the notification of an *access dispute* is withdrawn under section 10.5, it is taken for the purposes of this Chapter 10 to never have been given.

Other parties joining

10.7 A person, other than a party to a *dispute*, may apply to the *arbitrator* to join and be heard in the *proceedings*.

10.8 The *arbitrator*:

- (a) must allow a person applying under section 10.7 to join the *proceedings* if the person is affected by the proceedings unless the *arbitrator* determines that doing otherwise is necessary to justly dispose of the issues in the *proceedings*; and
- (b) may make such orders concerning the joinder as the *arbitrator* considers appropriate.

10.9 The *arbitrator* may on its own initiative:

- (a) direct a party to a *dispute* to provide it with sufficient information to enable it to identify other persons who might wish to apply under section 10.7 to join and be heard in the *proceedings*;

{Note: This may include information as to any (or any other) *applicant's* and details of each *applicant's access application*.}

- (b) notify any person identified by it under section 10.9(a) that the *dispute* exists and the parties to the *dispute*.

10.10 The parties to a *dispute* must promptly comply with a direction under section 10.9(a).

Conciliation and reference to arbitration

10.11 On receiving a request to refer an *access dispute* to arbitration, the *Authority* must:

- (a) subject to section 10.12 and if the parties to the dispute agree, attempt to settle the dispute by conciliation; or
- (b) if the *Authority* does not attempt to settle the dispute by conciliation or conciliation fails to settle the dispute, refer the dispute to the *arbitrator*.

Authority not required to conciliate

10.12 The *Authority* is not obliged to attempt to settle the dispute by conciliation if the *Authority* is satisfied, on the application of a party to the *access dispute*, that there are good reasons why the dispute should not be settled by conciliation.

Expedited hearing of disputes under applications and queuing policy

10.13 Section 10.14 applies in respect of an *access dispute* (“**queuing dispute**”) relating to an interim or procedural matter under an *applications and queuing policy*, in respect of which either:

- (a) the *service provider* and the *applicant* agree in writing to have the matter heard as a *queuing dispute*;
- (b) where the *arbitrator* determines (on application by either party) that a speedy resolution of the *queuing dispute* may permit the *access application* to be further progressed and an *access offer* made without the parties having to resort to a lengthy, full-scale *access dispute*.

10.14 Unless the *arbitrator* considers that the *Code objective* or the just resolution of the *queuing dispute* require a *queuing dispute* to be dealt with in another way, when hearing a *queuing dispute*:

- (a) the parties are to be restricted to one round of written submissions and one round of written submissions in reply (which may not be amended except by leave of the *arbitrator*); and
- (b) the hearing is to be conducted without legal representation (but parties may obtain legal advice in preparing the written submission); and

- (c) the *arbitrator* is to treat the objective of informality and expedition as paramount; and
- (d) the *arbitrator* and the parties must endeavour to ensure that the *queuing dispute* is determined within 10 *business days* after notice of the *queuing dispute* is given.

Factors which the arbitrator must have regard to

10.15 In exercising its functions under this Chapter 10 the *arbitrator* must have regard to:

{Note: Section 2.2 requires the arbitrator to have regard to the Code objective when exercising its functions under this Chapter 10.}

- (a) the geographical location of the *network* and the extent (if any) to which the *network* is interconnected with other *networks*; and
- (b) contractual obligations of the *service provider* or other persons already using the *covered network* (or both); and
- (c) the operational and technical requirements necessary for the safe and reliable operation of the *covered network*.

10.16 Section 10.15 does not limit the matters to which the *arbitrator* may have regard.

The arbitration

10.17 The *arbitrator* must make a decision on the matters the subject of the *access dispute* following the procedure prescribed in Appendix 5.

10.18 The *arbitrator* may at any time terminate an arbitration (without making a decision) if the *arbitrator* considers that:

- (a) the subject matter of the *access dispute* is trivial, misconceived or lacking in substance; or
- (b) the notification of the *access dispute* was vexatious; or
- (c) the party who notified the *access dispute* has not negotiated in good faith or has notified the *access dispute* prematurely or unreasonably.

Arbitrated tariff to be guided by access arrangement and price list

10.19 Subject to section 10.20, if an *access dispute* relates to the *tariff* that should apply to a *covered service*, the *arbitrator* must set the *tariff* payable by the *applicant* under the award having regard to the *access arrangement* and *price list* and Chapter 7.

Arbitrated tariffs for reference services

10.20 If an *access dispute* relates to the *tariff* that should apply to a *reference service*, then an award must not:

- (a) require the *applicant* to pay more than the *reference tariff* for the *reference service*, or

- (b) require the *service provider* to accept less than the *reference tariff* for the *reference service*.

Arbitrated terms for reference services

10.21 Subject to section 10.22, the *arbitrator* must not make an award specifying the terms of an *access contract* for a *reference service* that is inconsistent with the *standard access contract* for the *reference service* set out in the *service provider's access arrangement*.

10.22 The *arbitrator* must, in an award specifying the terms of an *access contract* for a *reference service*, deal with each matter which in the *standard access contract* for the *reference service* in the *access arrangement* is left to be agreed by the parties or determined by the *arbitrator* in a manner which:

- (a) has regard to the factors contained in section 10.15; and
- (b) is consistent with:
 - (i) any instructions about the matter contained in the *access arrangement*; and
 - (ii) the *Code objective*.

Arbitrated tariffs for non-reference services

10.23 Where the *arbitrator* is setting the *tariff* payable by the *applicant* for a *non-reference service*, the award should endeavour to achieve the following objectives:

- (a) when the awarded *tariff* is compared with the *reference tariff* for a comparable *reference service* (if any):
 - (i) if the *non-reference service* involves the provision of *services* to a higher standard, the differential between the awarded *tariff* and the *reference tariff* should reflect the increase in the *service provider's incremental cost of service provision* as a result of the provision of *services* to that higher standard;

and
 - (ii) if the *non-reference service* involves the provision of *services* to a lower standard, the differential between the awarded *tariff* and the *reference tariff* should reflect the amount of the *service provider's avoided cost of service provision* as a result of the provision of *services* to that lower standard;

and
- (b) subject to the *discount* provisions in the *service provider's access arrangement*, other *users* should not pay individual *reference tariffs* for *reference services* that are higher as a result of the differential referred to in section 10.23(a).

10.24 Where the *arbitrator* is awarding the *tariff* payable by the *applicant* for a *non-reference service*, the award must have regard to Chapter 7 and the *service*

provider's access arrangement including the *standard access contract* contained in the *service provider's access arrangement*.

10.25 Section 10.24 does not limit the matters to which the *arbitrator* must or may have regard.

Award by the arbitrator

10.26 The *arbitrator* must make a written award on *access* to the *network* by the *applicant*.

10.27 The award referred to in section 10.26:

- (a) must deal with the matter that was the basis for the notification of the dispute; and
- (b) may, subject to section 10.28, deal with any other matter which a party has requested the *arbitrator* to deal with that the *arbitrator* considers expedient to justly dispose of any *proceedings* before it.

10.28 The *arbitrator* cannot make an award under section 10.26 that deals with a matter that is, by agreement between the parties, no longer a matter which is in dispute.

10.29 Without limiting the generality of section 10.24 and subject to section 10.32, the award may, without limitation, do any one or more of the following:

- (a) specify the manner in which a party must comply with the *applications and queuing policy*; or
- (b) deal with the costs, timing or performance of functions in relation to the undertaking of proposed *work*, and may require a party to undertake any such function in a specified manner; or
- (c) require the *service provider* to provide *access* to a *covered service* requested by the *applicant*; or
- (d) subject to section 10.35, require the *applicant* to accept, and pay for, *access* to a *service*; or
- (e) specify the terms of the *access contract* including the *discount* to the *reference tariff* to which the *user* is entitled (if any) and the amount of any *contribution* and the terms on which it is to be provided; or
- (f) require the *service provider* to undertake and fund any *required work* including to *augment* the *network*; or
- (g) specify the extent to which the award overrides an earlier award or *contract for services*.¹⁷²

10.29A The paragraphs of section 10.29 do not limit each other.¹⁷³

10.30 Before making an award, the *arbitrator* must give a draft award to the parties to the arbitration and may have regard to representations that any of them may make on the proposed award.

¹⁷² Section 10.29 amended by WAGG No 180, 22 October 2008

¹⁷³ Section 10.29A inserted by WAGG No 180, 22 October 2008

10.31 When the *arbitrator* makes an award, the *arbitrator* must give the parties to the arbitration written *reasons* for the award.

Restrictions on access awards

10.32 The *arbitrator* cannot make an award that:

- (a) would impede the right of a *user* under a *contract for services* to obtain *services* unless the *user* agrees or the *arbitrator* is satisfied that the *user* is or will be compensated on just terms for in respect of the impeded right; or
- (b) is inconsistent with the *access arrangement* for the *covered network*; or
- (c) requires the *service provider* to provide *access* to a *service* designated as an *excluded service* in the *access arrangement*; or
- (d) affects an area of the State that is the subject of the *exclusive license* of another *service provider*; or
- (e) requires the *service provider* or another person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.¹⁷⁴

Arbitrated award requiring work to be undertaken¹⁷⁵

10.33 The *arbitrator* may make an award that would have the effect of requiring the *service provider* to undertake *work* only where the *arbitrator* is satisfied that:

- (a) the *work* is technically and economically feasible and consistent with the safe and reliable operation of the *network*; and
- (b) in the case of a *major augmentation*, sections 10.40 to 10.43 have been complied with.¹⁷⁶

Effect of awards

10.34 Subject to section 10.35, an award is binding on the parties to the arbitration in which it is made.

10.35 An *applicant* may, within 5 *business days* after an award is made which orders the parties to enter into an *access contract*, elect not to enter into an *access contract* as specified by the award by giving written notice of the election to the *arbitrator* and the *service provider*, in which case (subject to any *applications and queuing policy* provisions about lapse of *access applications* due to passage of time) the *applicant's access application* remains in effect.

10.36 Unless the *applicant* elects not to be bound by an award in accordance with section 10.35, if the award orders the parties to enter into an *access contract* then the *service provider* and *applicant* must enter into an *access contract* in the form specified in the award within 15 *business days* after it is made.

¹⁷⁴ Section 10.32(a) amended by WAGG No 180, 22 October 2008

¹⁷⁵ Heading to section 10.33 amended by WAGG No 180, 22 October 2008

¹⁷⁶ Section 10.33 amended by WAGG No 180, 22 October 2008

Costs of arbitration

- 10.37 Subject to sections 10.38 and 10.39, the costs of an arbitration (including the fees and costs of the *arbitrator*, if the parties are required to pay the fees and costs) are to be determined in the discretion of the *arbitrator* who may:
- (a) direct to and by whom and in what manner the whole or any part of the costs is to be paid; and
 - (b) fix or settle the amount of costs to be so paid or any part of the costs; and
 - (c) award costs to be fixed or settled as between party and party or as between solicitor and client; and
 - (d) award costs by reference to the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002* as amended or substituted from time to time.
- 10.38 The costs of complying with Subchapter 10.3 are to be borne equally by the parties unless the *arbitrator* considers there are compelling reasons to order otherwise.
- 10.39 If an award is made substantially in the form sought by an *applicant*, and the *applicant* elects under section 10.35 not to be bound by the award, then the fees and costs of the *arbitrator*, to the extent the parties are required to pay the fees and costs, are to be borne by the *applicant* unless the *arbitrator* considers there are compelling reasons to order otherwise.

Subchapter 10.3 – Application of the regulatory test in an arbitration

Arbitrator must make proposed award if award would require major augmentation

- 10.40 Before making an award under section 10.33 that would require a *service provider* to undertake a *major augmentation*, the *arbitrator* must:
- (a) make and provide to the parties to the dispute a *proposed award*; and
 - (b) direct the *service provider* to apply the process outlined in section 10.41 in relation to the *major augmentation* in the *proposed award* and specify a time by which the *service provider* must complete each step in the process.

Service provider must consult and submit major augmentation report

- 10.41 The *service provider* must, within the time specified by the *arbitrator*:
- (a) conduct a consultation process in respect of the *major augmentation* in the *proposed award* which complies with section 9.16(c); and
 - (b) then, submit a *major augmentation report* to the *Authority* that:
 - (i) demonstrates compliance with section 10.41(a); and

- (ii) states whether, in the *service provider's* view, the *major augmentation* in the *proposed award* maximises the *net benefit after considering alternative options*.

10.42 The *service provider* must use its best endeavours to ensure that there are no unnecessary or unreasonable costs or delays in complying with section 10.41.

Service provider's costs of compliance, if applicant withdraws

10.43 If an *applicant* withdraws its notice of an *access dispute* under section 10.5 and the *service provider*:

- (a) has complied with sections 10.41 and 10.42; or
- (b) is in the process of complying with section 10.41 and 10.42,

then the *applicant* must indemnify the *service provider* for the *service provider's* costs of complying with sections 10.41 and 10.42 up to the date that the *service provider* receives the withdrawal notice.

Authority must publish determination regarding major augmentation report

10.44 The *Authority* must in respect of a *major augmentation report* make and *publish* a determination whether the test in section 10.46 is satisfied or is not satisfied, and must do so:

- (a) if the *Authority* has consulted the public under section 10.45 — within 45 *business days*; and
- (b) otherwise — within 25 *business days*,

after receiving the *major augmentation proposal*.

10.45 The *Authority* may consult the public under Appendix 7 before making a determination under section 10.44.

10.46 The test in this section 10.46 is satisfied if the *Authority* is satisfied that:

- (a) the *service provider's* statement under section 10.41(b)(ii) is defensible; and
- (b) the *service provider* has applied the *regulatory test* properly to the *major augmentation* in the *proposed award*:
 - (i) using reasonable market development scenarios which incorporate varying levels of demand growth at relevant places; and
 - (ii) using reasonable timings, and testing alternative timings, for project commissioning dates and construction timetables for the *major augmentation* and for *alternative options*;

and

- (c) the consultation process conducted by the *service provider* under section 10.41(a) meets the criteria in section 9.16(c).

- 10.47 The *Authority* must make a determination under section 10.44 on the basis of all the material before it and must have regard to, but is not bound by, the *service provider's* view under section 10.41(b)(ii).
- 10.48 The *Authority* must give the *arbitrator* and the parties to the dispute a copy of its determination under section 10.44.
- 10.49 If the *Authority* is unable to make a determination under section 10.44 because the *service provider* has not provided adequate information (despite the *Authority's* having notified the *service provider* of this fact and given the *service provider* a reasonable opportunity, having regard to the time periods specified in section 10.44, to provide adequate information), then the *Authority*:
- (a) must notify the *arbitrator* and the parties to the dispute of the fact and provide a description of the circumstances; and
 - (b) is not required to make a determination under section 10.44 in relation to the *major augmentation* in the *proposed award*.

Arbitrator must have regard to Authority's determination

- 10.50 In determining whether to make an award that would have the effect of requiring the *service provider* to undertake the *major augmentation* described in the *proposed award* or an *augmentation* of a different nature (whether a *major augmentation* or not) the *arbitrator* must have regard to, but is not bound by, the *Authority's* determination under section 10.44.
- 10.51 For the purposes of section 10.50, without limiting the matters to which the *arbitrator* must or may have regard, the *arbitrator* may have regard to the manner in which the *service provider* complied with sections 10.41 and 10.42.

Subchapter 10.4 – Contractual Disputes

Jurisdiction of arbitrator

- 10.52 The *arbitrator* has jurisdiction to hear a *contractual dispute*.

Procedural rules

- 10.53 Except to the extent that the *contract for services* provides otherwise, sections 10.3 to 10.6 and Appendix 5 apply to the *arbitrator's* hearing of a *contractual dispute*, with appropriate modifications including the substitution of "contractual dispute" for all references to "*access dispute*".¹⁷⁷

¹⁷⁷ Section 10.53 amended by WAGG No 180, 22 October 2008

Chapter 11 – Service standards

Service provider must comply with service standards

- 11.1 A *service provider* must provide *reference services* at a *service standard* at least equivalent to the *service standard benchmarks* set out in the *access arrangement* and must provide *non-reference services* to a *service standard* at least equivalent to the *service standard* in the *access contract*.

Authority to monitor service standards

- 11.2 The *Authority* must monitor and, at least once each year, *publish* a *service provider's* actual *service standard* performance against the *service standard benchmarks*.
- 11.3 The *Authority* may, acting reasonably, request a “**service standard performance report**” from a *service provider* for the purposes of monitoring the *service provider's* actual *service standard* performance and the *service provider* must provide the *Authority* with a *service standard performance report* within the time specified by the *Authority* in its request, which time must not be less than 20 *business days*.
- 11.4 In a request under section 11.3 the *Authority* may specify:
- (a) a period of time which must be covered in the *service standard performance report*; and
 - (b) criteria to be addressed in the *service standard performance report*; and
 - (c) the format required for the *service standard performance report*,
- and the *service provider* must comply with the *Authority's* specifications.
- 11.5 The *Authority* may from time to time, for the purposes of monitoring a *service provider's* actual *service standard* performance:
- (a) consult with *users* of the *service provider's network*; and
 - (b) *advertise* a request for submissions from *consumers* supplied using the *network*.

Penalties for breach of service standards

- 11.6 If a *service provider* does not comply with section 11.1, then in order to minimise the likelihood of the *service provider* being excessively penalised for its failure to comply with section 11.1, the *Authority* must have regard to:
- (a) any remedies awarded (or likely to be awarded) against the *service provider* under contracts for *services* in relation to the act or omission which resulted in the *service provider* not complying with section 11.1; and
 - (b) the *service standards adjustment mechanism*,