



Non-scheme Pipeline Arbitration Guide

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1 Introduction

1.1 Overview

On 23 December 2017, a new information disclosure and arbitration framework was established in Western Australia with the aim of facilitating access on reasonable terms to services provided by non-scheme pipelines. A major component of the framework is to provide for the exchange of information between parties during negotiations to achieve access to pipeline services on agreed terms, and in the event negotiations fail, to provide an arbitration mechanism to settle disputes.

Rule 584 of the *National Gas Rules* (NGR) requires the Economic Regulation Authority (ERA) to publish and maintain a non-scheme pipeline arbitration guide (this Guide), which provides guidance for pool arbitrators and any person who may become a party to an access dispute about the process for the determination of access disputes. This includes the matters that may be referred to arbitration, timelines and information requirements.

This Guide may include model arbitration terms and conditions, and model procedures for arbitrations conducted under Part 23 of the NGR. It is not binding on an arbitrator or the parties to an access dispute.

1.2 Legislation

The *National Gas Law* (NGL) as applied in Western Australia is set out in Schedule 1 to the *National Gas Access (WA) Act 2009*. It is a modified version of the NGL that applies in other Australian jurisdictions. In addition to the NGL set out in Schedule 1, further amendments have been declared under section 7A of the Act. These amendments include those contained in the *National Gas (South Australia) (Pipelines Access – Arbitration) Amendment Act 2017*.¹

Under the *National Gas Access (WA) Act 2009*, the NGR applying in Western Australia is version 1 of the Rules, as amended by the Australian Energy Markets Commission in accordance with its rule making power under section 74 of the NGL. The NGR applied in Western Australia also incorporates rule changes made through the application of the *National Gas (Pipelines Access – Arbitration) Amendment Rule 2017*.²

The *National Gas (South Australia) (Pipelines Access – Arbitration) Amendment Act 2017* introduced a new section 83A and new Chapter 6A, amended section 271 and gave the South Australian Minister the power to make the initial rules about, among other things, access proposals, access disputes and arbitrations under Chapter 6A.

The initial rules comprised a new Part 23 in, and a new Schedule 4 to, the NGR. Part 23 sets out provisions to facilitate access to non-scheme pipelines, including provisions for

¹ The *National Gas Access (WA) Adoption of Amendments Order 2017* was published in the Western Australian Government Gazette on 22 December (see page 5984). This Order declared the amendments contained in the *National Gas (South Australia) (Pipelines Access – Arbitration) Act 2017* were relevant to Western Australia.

² The changes to the NGR as applied in Western Australia were implemented by the *National Gas Access (WA) (Act Amendment) Regulations 2017*, which was published in the Western Australian Government Gazette on 22 December (see pages 5985-5986).

the arbitration of access disputes. Schedule 4 sets out derogations and transitional provisions.

This Guide should be read in conjunction with the:

- *National Gas Access (WA) Act 2009* (Schedule 1 – NGL)
- NGR (Part 23 – Access to non-scheme pipelines)
- *Non-scheme Pipeline Financial Reporting Guideline*³
- *Gas Pipeline Information Disclosure and Arbitration Framework*⁴

1.3 Objective of the framework

Rule 546 of the NGR sets out the objective of the information disclosure and arbitration framework, which is to facilitate access to pipeline services on non-scheme pipelines on reasonable terms. *Reasonable terms* is taken to mean at prices and on other terms and conditions that, so as far as practical, reflect the outcomes of a workably competitive market.

The framework achieves this objective by establishing:

- Requirements to publish and exchange information to facilitate timely and effective commercial negotiations for access to non-scheme pipelines.
- A commercially-orientated arbitration process to resolve access disputes in a cost-effective and efficient manner.
- Principles that the arbitrator must have regard to when determining access disputes, which are consistent with the outcomes of a workably competitive market.

1.4 Application and structure

1.4.1 Non-scheme pipelines

The information disclosure and arbitration framework (Part 23 of the NGR) applies to non-scheme transmission and distribution pipelines. The term “non-scheme pipeline” is defined in section 83A of the NGL as a transmission or distribution pipeline that is not a scheme pipeline. The term “scheme pipeline” is defined in section 2 of the NGL as:

- a covered pipeline
- or
- an international pipeline to which a price regulation exemption applies.

This Guide applies to each service provider of a non-scheme pipeline that is not subject to an exemption.

³ Economic Regulation Authority, *Non-Scheme Pipelines – Financial Reporting Guideline (Version 1)*, 23 May 2018.

⁴ Gas Market Reform Group, *Gas Pipeline Information Disclosure and Arbitration Framework Initial Gas Rules Explanatory Note*, 2 August 2017.

A non-scheme pipeline service provider may apply to the ERA for an exemption from the information disclosure and arbitration framework where the pipeline satisfies relevant exemption criteria, which is specified in rule 585 of the NGR. Non-scheme pipeline service providers must apply to the ERA for, and be granted, an exemption under Division 6 of Part 23 for the exemption to apply.

Further information on [exemptions](#) is published on the ERA's website.

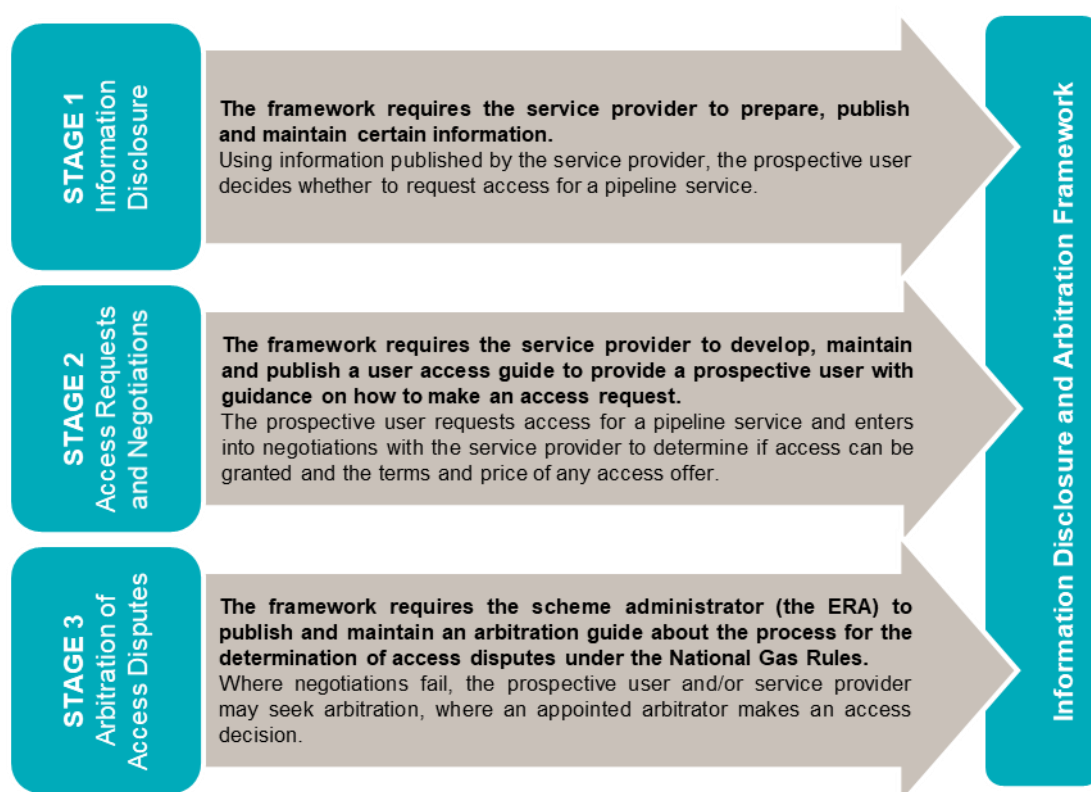
1.4.2 Terminology

The following terminology is used in this Guide:

- The term *prospective user* has the meaning given in section 216B of the NGL, which is a person who seeks or wishes to be provided with a pipeline service by means of a non-scheme pipeline. To avoid doubt, a *user* is also a *prospective user* if the user seeks or wishes to be provided with a pipeline service by means of a non-scheme pipeline other than a pipeline service already provided to them under:
 - a contract
 - or
 - an access determination.
- The term *user* has the meaning given in section 216A of the NGL, which is a person who:
 - is a party to a contract with a service provider under which the service provider provides or intends to provide a pipeline service to that person by means of a non-scheme pipeline
 - or
 - has a right under an access determination to be provided with a pipeline service by means of a non-scheme pipeline.
- The term *service provider* has the meaning given in section 8 of the NGL, which is a person who:
 - owns, controls or operates
 - or
 - intends to own, control or operate, a pipeline or scheme pipeline, or any part of a pipeline or scheme pipeline.

1.4.3 Stages of the framework

The framework set out in Part 23 of the NGR allows prospective users and service providers to manage the process for seeking access to pipeline services (Figure 1). The framework provides for a staged approach to facilitate information exchange, negotiation and access to services on non-scheme pipelines (stages 1 and 2). Where disputes about access arise, the framework provides for arbitration (stage 3).

Figure 1 Stages of the information disclosure and arbitration framework

1.4.4 Structure of the guide

This Guide is structured as follows:

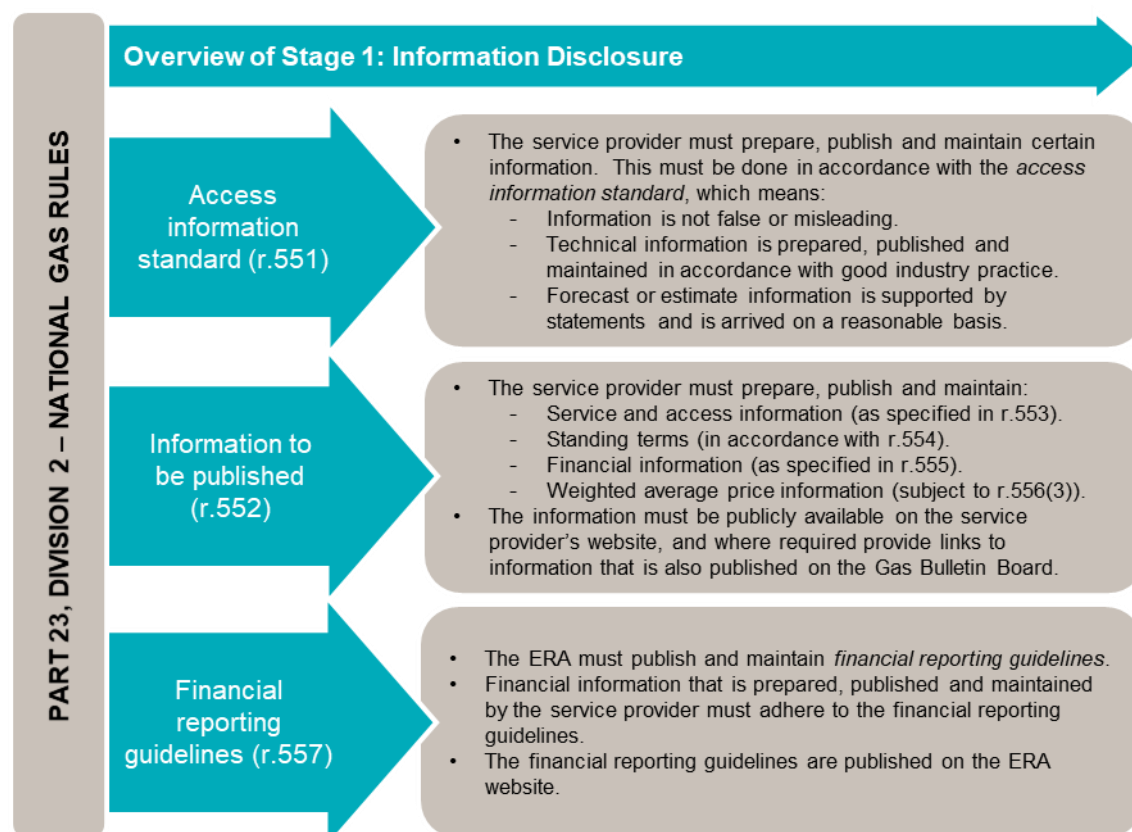
- Section 2 outlines the information disclosure requirements for the service provider.
- Section 3 outlines the provisions to facilitate access requests and negotiations.
- Section 4 outlines the process for the arbitration of access disputes.
- Section 5 outlines the functions of the scheme administrator.

2 Information Disclosure

2.1 Overview

Part 23, Division 2 of the NGR sets out information disclosure requirements for the service provider (Figure 2).

Figure 2 Overview of Stage 1 of the information disclosure and arbitration framework (information disclosure)



Rule 551 of the NGR requires the service provider to prepare, publish and maintain certain information. This must be done in accordance with the access information standard, which means that:

- The information is not false or misleading.
- For information of a technical nature, the information is prepared, published and maintained in accordance with the practices, methods and acts that would reasonably be expected from an experienced and competent person engaged in the ownership, operation or control of a pipeline acting with due skill, diligence, prudence and foresight.
- For information that is a forecast or estimate, the information is supported by a statement for the basis of the forecast or estimate and is:
 - arrived at on a reasonable basis; and

- represents the best forecast or estimate possible in the circumstances.

Where the service provider becomes aware that the information required to be published does not comply with the access information standard, it must publish information that does comply as soon as practicable to correct the non-compliance.

Information published by the service provider must include the publication date, the date to which the information is current and, where a different version replaces an earlier version, notice of this replacement.

2.2 Information to be published

Rule 552 of the NGR requires the service provider to prepare, publish and maintain:

- service and access information (as specified in rule 553)
- standing terms (in accordance with rule 554)
- financial information (as specified in rule 555)
- weighted average price information (subject to rule 556(3)).

To publish the information, the service provider must make it publicly available on its website. Where the information is also required to be provided to the Australian Energy Market Operator (AEMO) for publication on the Gas Bulletin Board, the service provider must provide a publicly available link on its website to the part of the Gas Bulletin Board where the information is to be located (rule 552(3)).

Where the service provider publishes financial information and weighted average price information, it must notify the ERA without delay that the information has been published.

The service provider must ensure that historical service usage information, financial information and weighted average price information continues to be publicly available for a period of five years after the date the information is first published, by publishing the information in accordance with rule 552(3).

2.3 Financial reporting guidelines

Rule 557 of the NGR requires the ERA to publish and maintain financial reporting guidelines. Broadly the NGR requires that the guidelines:

- Provide for the publication of financial information about each non-scheme pipeline on a pipeline-by-pipeline basis and in respect of the financial year of the service provider for the pipeline.
- Specify the methods, principles and inputs to be used to calculate weighted average price information and the form this information is to take.
- Specify the level of detail of information required, which must be the level of detail reasonably required given the objectives of Part 23 of the NGR.
- Specify any accounting or audit standards that apply to the reported information.

- Specify the level of audit assurance required for the financial information and weighted average price information.

The ERA published its financial reporting guidelines (version 1) on 23 May 2018, together with a financial reporting template and explanatory statement. These [documents](#) are published on the ERA's website.

3 Access Requests and Negotiations

3.1 Overview

Part 23, Division 3 of the NGR contains provisions to facilitate access requests and negotiations (Figure 3). These provisions:

- Require the service provider to develop a *user access guide* to assist prospective users by providing information about the process for applying for access, including contact details for enquiries, the information that is required to be provided when making an access request and response times.
- Allow a prospective user to make a *preliminary enquiry* before making an *access request*, which allows discussions to take place without triggering the service provider's obligation to make an access offer.
- Create an obligation for the service provider to make an *access offer* within a specified time, once an access request is made by a prospective user.
- Facilitate negotiations between a prospective user and the service provider by creating a framework for negotiations, including requirements for *access negotiation information* that is requested and/or provided by the negotiating parties.

3.2 User access guide

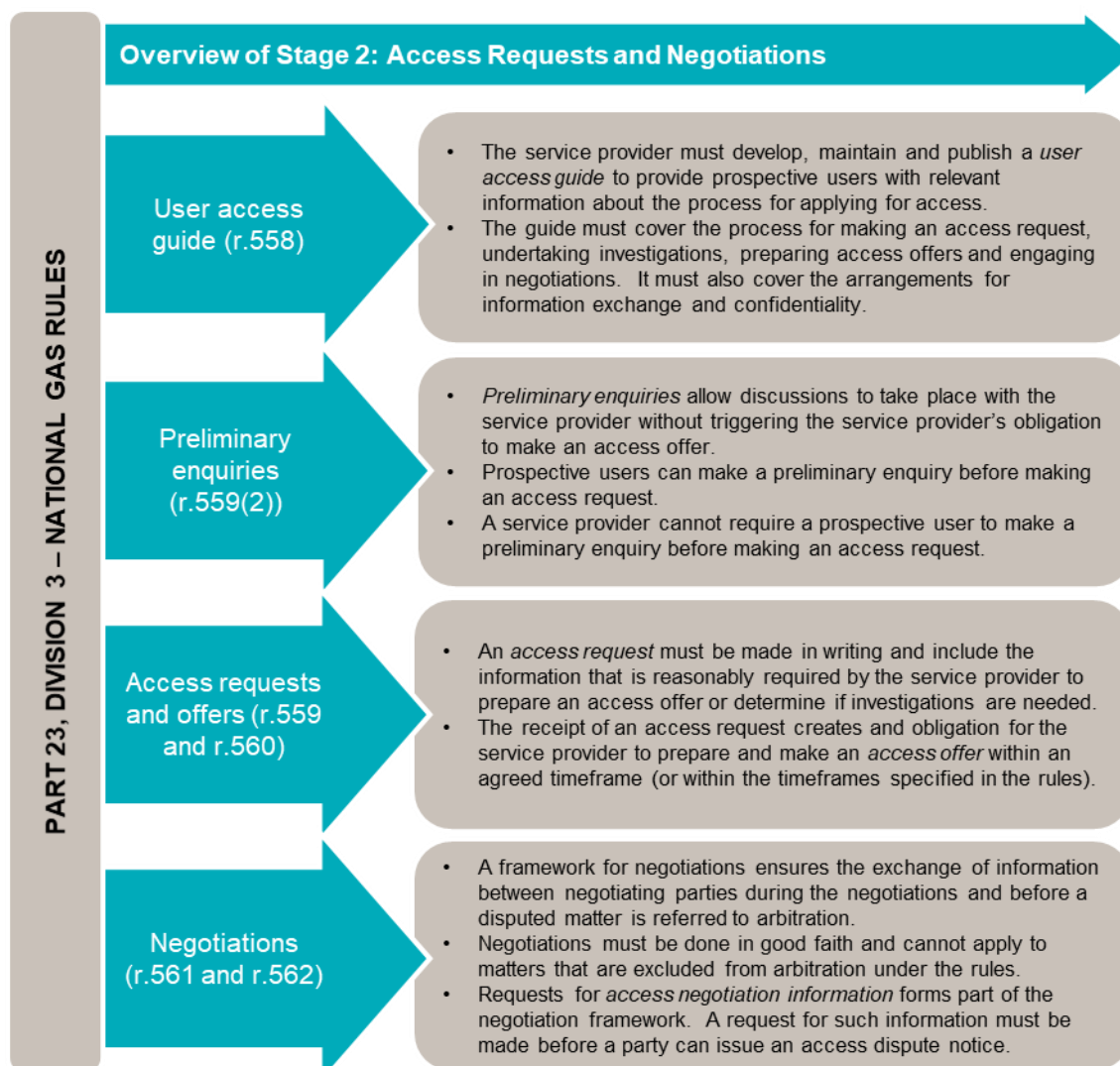
Rule 558 of the NGR requires the service provider to develop, maintain and publish a user access guide that contains the information set out in rule 558(6).

The purpose of the user access guide is to provide prospective users with relevant information about the process for applying for access to a non-scheme pipeline. The same user access guide can apply to one or more of the service provider's non-scheme pipelines.

Before requesting access, prospective users should consult the relevant user access guide, which will include the following information (as required by rule 558(6)).

- Details for the service provider, including officer contact details for preliminary enquiries.
- A description of the process for making an access request, the information that is required to be included with an access request (which must be no more than is reasonably required to allow the service provider to make an access offer) and response times.
- A description of the arrangements for undertaking further investigations.
- An explanation of how confidential information will be dealt with, used and exchanged.
- A description of the process for preparing an access offer and for requesting negotiations.
- A statement of the obligation to negotiate in good faith and the right to refer an access dispute to arbitration.
- A description of the arrangements for the exchange of information during negotiations.

Figure 3 Overview of Stage 2 of the information disclosure and arbitration framework (access requests and negotiation)



3.3 Access requests

A prospective user may make an access request in accordance with the provisions set out in rule 559 of the NGR. The access request must be in writing and must include the information that is reasonably required by the service provider to either prepare an access offer or determine whether further investigations are needed.

In circumstances where the access request is complete and/or further investigations are not needed, the service provider must prepare an access offer that complies with the provisions set out in rule 560 of the NGR (refer to section 3.4 of this Guide).

In circumstances where:

- The access request is *incomplete* – the service provider must notify the prospective user within five business days after receipt of the access request and specify the information that is required to complete the access request.

- *Further investigations* are needed – the service provider must notify the prospective user of this within ten business days after receipt of the access request (or, if applicable, after receipt of further information that was required to complete the access request).

3.3.1 *Further investigations*

Under the NGR, a service provider can only carry out further investigations in relation to an access request when and to the extent reasonably necessary, and must carry out the investigations expeditiously (rule 559(6)).

Further investigations are defined in the NGR (rule 549) to mean investigations to determine the terms and conditions for the provision of a pipeline service that is sought by a prospective user in a manner that is technically feasible and consistent with the safe and reliable operation of the pipeline.

The service provider and prospective user must negotiate in good faith about the terms and conditions on which further investigations will be carried out, including the reasonable costs to be paid by the prospective user and the timing for the investigations (rule 559(7)).

3.3.2 *Preliminary enquiries*

Rule 559(2) of the NGR allows a prospective user to make a preliminary enquiry *before* making an access request. A preliminary enquiry allows discussions to take place with the service provider about access matters without triggering the service provider's obligation to make an access offer.

A prospective user's preliminary enquiry can include a request for the service provider to carry out further investigations based on its enquiry, and before an access request is made (rule 559(2)(b)).

The service provider cannot require a prospective user to make a preliminary enquiry before making an access request (rule 559(2)(a)).

3.4 *Access offers*

The receipt of an access request creates an obligation for the service provider to prepare and make an *access offer* that complies with the provisions set out in rule 560 of the NGR.

An access offer must:

- Set out the price and other terms and conditions on which the service provider offers to make the pipeline service(s) requested in the access request available to the prospective user.
- Contain the details of any works to be undertaken by the service provider and prospective user and any applicable technical and performance specifications.
- Be in a form that is capable of acceptance by the prospective user so as to constitute a new access contract or form part of an existing access contract.

The access offer must be made within the time agreed by the prospective user and the service provider. If no time is agreed between the parties, the NGR requires the access offer to be made within the following timeframes:

- Within 20 business days after receiving the access request (or, if applicable, the further information that was requested by the service provider to complete the access request).
- If the service provider is required to carry out further investigations, within 60 business days after receiving the access request (or, if applicable, the further information that was requested by the service provider to complete the access request).

Rule 560(4) sets out three situations where a service provider is *not* required to make an access offer.

- The access request has been withdrawn by the prospective user.
- The service provider has concluded that it is not technically feasible or consistent with the safe and reliable operation of the pipeline to provide the pipeline service requested by the prospective user, having used all reasonable efforts to accommodate the reasonable requirements of the prospective user.
 - In this situation, the service provider must give written reasons explaining why the requested pipeline service cannot be provided.
 - If there is some prospect for access to the requested pipeline service in the future, the service provider must provide details (which are as specific as the circumstances reasonably allow) of when the service is likely to become available.
- The provision of the pipeline service requested by the prospective user would require the extension of the service provider's non-scheme pipeline.

3.5 Negotiations

Rules 561 and 562 of the NGR create a framework for negotiations between a prospective user and the service provider. The framework aims to ensure the exchange of relevant information between negotiating parties during the negotiations and before a matter is referred to arbitration.

Under rule 561(1), a prospective user who has made an access request for a pipeline service may by notice to the service provider request negotiations about any aspect of access, including whether access can be granted and the price and other terms and conditions of an access offer.

Section 216G of the NGL, which creates an obligation for a prospective user and the service provider to negotiate in good faith with each other about whether access can be granted, applies to negotiations that are requested under rule 561(1).

The negotiation framework does not apply to matters that are excluded from arbitration. A notice provided to the service provider under rule 561(1) that requests negotiation about a matter that is excluded from arbitration has no effect.

3.5.1 Negotiation framework

Where a notice requesting negotiations is given by a prospective user to the service provider:

- The parties to the negotiations are the prospective user and the service provider and any other person that the prospective user and service provider agree to include as a party to the negotiations (rule 561(3)).
- Each party to the negotiations must seek to accommodate all reasonable requirements of the other parties to the negotiations about the timetable for negotiations (rule 561(4)).
- The parties to the negotiations must use reasonable endeavours to identify any other person who may become a party to an access dispute about the pipeline service that is the subject of the negotiations (rule 561(5)).
- If an access request is for more than one pipeline service, the prospective user may by notice to the service provider require negotiations about the pipeline services to take place as part of the same negotiation process (rule 561(6)).
- A prospective user may at any time by notice to the service provider bring negotiations to an end, whether or not it also refers or has referred a related access dispute to arbitration (rule 561(7)).

Rules 561(8) and 561(9) of the NGR outline provisions for confidential information during negotiations.

- A party to the negotiations must only use or reproduce confidential information of another party for the purpose for which it was disclosed, and must not disclose the confidential information unless it meets one or more of the criteria set out in subrules (a) to (g).
- Confidential information includes all the information of a party provided to another party to the negotiations other than information that is already in the public domain at the time it was provided or information that subsequently comes into the public domain.

3.5.2 Access negotiation information

Access negotiation information is defined in the NGR (rule 549) to mean, for a party to negotiations, the following information of the party and includes information prepared for the party such as expert and consultant reports, data sets, models and other documents or materials:

- Access offer information.
- Any other information that the party may seek to rely on for the determination of an access dispute in relation to the subject matter of the negotiations.

Access offer information is defined to mean information relevant to the principles and other matters in rule 569 (refer to section 4.6.2 of this Guide) and includes:

- Information about the method used to determine the price in an access offer and the inputs used in the calculation of the price.
- Information regarding the costs associated with the provision of the pipeline service sought by a prospective user.

Each party to the negotiations must, in requesting or providing access negotiation information, do so in a manner and at a time consistent with the duty of the party to negotiate in good faith.

Requests to the service provider and other parties

Under rule 562(2) of the NGR, a prospective user who is a party to negotiations may by notice request the service provider to provide access offer information for any aspect of the matters being negotiated. The service provider must comply with the request within 15 business days, or any longer period as agreed by the prospective user.

The access offer information provided in response to a request under rule 562(2) must:

- Comply with the access information standard set out in rule 551(2).
- Be relevant to the subject matter of the request.
- Be provided in a readily readable form, including where requested in electronic form with all underlying data files and inputs.

Under rule 562(5) of the NGR, a party to the negotiations can also request another party to the negotiations to provide access negotiation information. The request can be made for a specific matter arising in the negotiations or for all of the access negotiation information of the other party.

Obligation to make a request

A party to the negotiations must make a request for all of the access negotiation information of the other party before it can issue an access dispute notice. The party making the request must then wait at least 15 business days after the request before it can issue an access dispute notice (rule 562(6)).

Where a request to provide access negotiation information is made, the information must be provided within 15 business days or any longer period as agreed by the party making the request (rule 562(7)), unless it meets the circumstances for non-disclosure.

Non-disclosure in certain circumstances

The NGR set out circumstances where a party is not required to provide an item of information requested by another party. These circumstances relate to confidentiality and legal professional privilege. Information is not required to be given if:

- To do so it would breach a confidentiality obligation owed for that information to an unrelated third party and the third party has not given consent to disclosure despite reasonable efforts having been made to obtain consent.
- The information is the subject of legal professional privilege.
- The information is in documents that would, if provided, disclose information that is subject to legal professional privilege.

4 Arbitration of Access Disputes

4.1 Overview

An access dispute occurs when agreement cannot be reached between a prospective user and a service provider about one or more aspects of access to a pipeline service.

Part 23, Division 4 of the NGR sets out provisions for the arbitration of access disputes (Figure 4). While the NGR provide for an arbitration mechanism, section 216E of the NGL does not limit how a dispute about access to a pipeline service can be raised or dealt with.

To use the arbitration mechanism outlined in NGR:

- The access dispute must not be related to a matter that is excluded from arbitration.
- An access request must have been made by a prospective user to the service provider in accordance with the NGR.
- Where there are negotiations under Part 23 of the NGR and before an access dispute notice is given, a request for access negotiation information must have been made and 15 business days elapsed since the request (refer to section 3.5 of this Guide).

4.2 Disputes that can be referred to arbitration

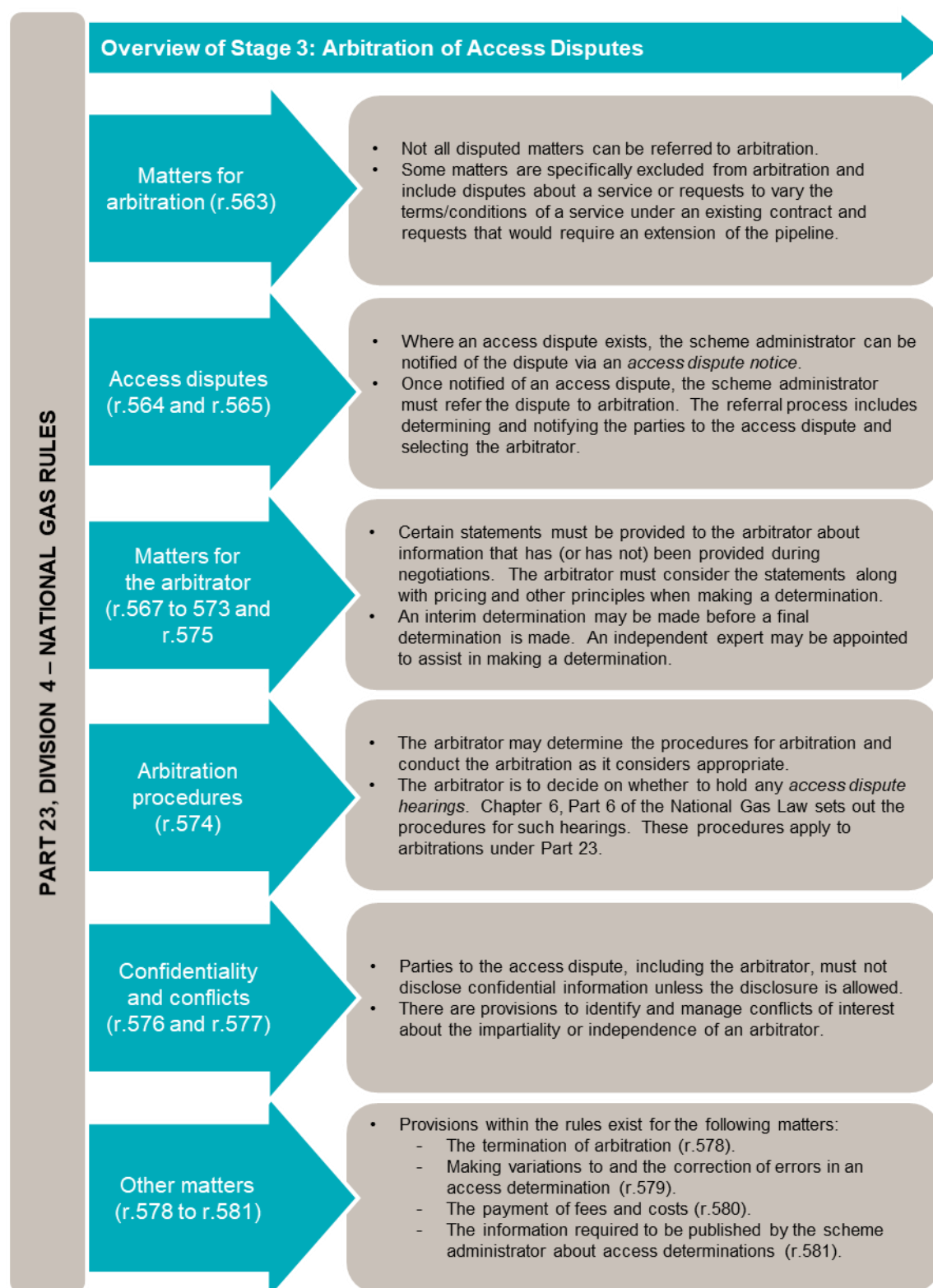
Rule 563(1) of the NGR outlines the matters for which an access dispute notice can be given and includes a request:

- For access to a pipeline service under a new access contract.
- To add a new pipeline service to an existing access contract.
- For a new access contract to take effect on the expiry of an existing access contract.
- For a pipeline service commencing after the expiry of the service term for the same service under an existing access contract.

An access dispute notice cannot be given for matters that are excluded from arbitration by the NGR (as provided for by section 216H of the NGL). These matters are listed in rule 563(2) and include:

- A dispute about a pipeline service provided under an existing access contract.
- A request to vary the terms and conditions of access applicable to a pipeline service provided under an existing access contract for any part of the current service term for that pipeline service.
- An access request that would require the extension of a non-scheme pipeline.
- Access to pipeline services on a non-scheme pipeline to the extent that an exemption from the operation of Part 23 has been granted for the non-scheme pipeline and that exemption remains in effect.
- The standard terms and conditions for secondary trading of capacity excluded from the operation of Part 23 by a provision of the NGL or the NGR.

Figure 4 Overview of Stage 3 of the information disclosure and arbitration framework (arbitration of access disputes)



4.3 Form of access dispute notice

An *access dispute notice* is a notice given under section 216H(1) of the NGL under which a prospective user or a service provider gives notice to the scheme administrator that an access dispute exists (information about the scheme administrator is provided in section 5 of this Guide). The notice must meet the requirements set out in rule 564 of the NGR. In summary, an access dispute notice must be in writing and state:

- The pipeline service to which the access dispute notice relates and where applicable the access request and the access offer made in response to the request.
- The matters mentioned in section 216H(2) of the NGL, being the matters (if any) on which agreement has been reached and the matters that are in dispute.
- The name and address of the person giving the notice.
- The name and address of each other party involved in the access dispute.
- Where the person giving the access dispute notice reasonably believes another person may be joined as a party under section 216I of the NGL, the name and address of that person.

Where there have been negotiations, the access dispute notice must be given to the other parties to the negotiations as soon as practicable after it is given to the scheme administrator.

The scheme administrator may from time to time specify and publish a fee that must accompany the access dispute notice. Further information about the costs of arbitration is provided in section 4.14 of this Guide.

Once given to the scheme administrator, an access dispute notice may be withdrawn in the following circumstances.

- Where the access dispute notice is given by a prospective user, the prospective user may withdraw the access dispute notice at any time *before* the arbitrator appointed to determine the dispute makes a final access determination.
- Where the access dispute notice is given by a service provider, the service provider may only withdraw the access dispute notice if the other parties to the access dispute agree.

4.4 Reference to arbitration and conduct

4.4.1 Referring an access dispute to arbitration

Once notified of an access dispute, the scheme administrator must refer the dispute to arbitration. This must be done no later than 15 business days after the receipt of the access dispute notice (refer to section 4.3 of this Guide).

The procedures that need to be followed to refer the dispute to arbitration are set out in rule 565 of the NGR and include:

- determining and notifying the parties to the access dispute; and
- selecting the arbitrator to determine the access dispute.

Parties to the access dispute

The scheme administrator must within five business days of receiving an access dispute notice determine the parties to the access dispute and give a notice to each party that:

- Identifies the parties to the access dispute.
- Invites the parties to the access dispute to give the scheme administrator written submissions as to which (if any) of the pool arbitrators should be disqualified from appointment within 10 business days of the notice being given.
- Requires the parties to the access dispute to notify the scheme administrator of the identity of the pool arbitrator agreed by the parties to determine the access dispute (if any) within 10 business days of the notice being given.
- Informs the parties that in default of an agreement being reached and notified to the scheme administrator within the time required, the scheme administrator will select the arbitrator.

Selection of the arbitrator

One function of the scheme administrator is to establish a pool of arbitrators (refer to section 5.2 of this Guide). It is from this pool of arbitrators that an arbitrator is selected to determine the access dispute.

The parties who have been identified and notified by the scheme administrator as parties to an access dispute must:

- As soon as practicable notify the other parties to the dispute of at least two pool arbitrators that they will agree to be appointed as the arbitrator to determine the access dispute.
- Negotiate in good faith to agree to the identity of a pool arbitrator to be the arbitrator for the access dispute.
- Notify the scheme administrator if agreement has been reached, including confirmation that the pool arbitrator is available to undertake the arbitration.

Parties to the access dispute must select and agree on the identity of the pool arbitrator and notify the scheme administrator of this within 10 business days of receiving notice of the dispute. Where this does not happen, the scheme administrator must select one of the pool arbitrators to determine the access dispute – the scheme administrator's selection of a pool arbitrator is final and binding on the parties to the dispute.

The scheme administrator must refer the access dispute (with the access dispute notice) to the selected pool arbitrator within 15 business days after receiving the access dispute notice. It must notify the parties to the access dispute of this referral.

Limitations of the arbitrator

Under the NGR, the arbitrator is not liable for anything done or omitted to be done in good faith in his or her capacity as arbitrator.

The arbitrator may require each party to the access dispute (and any one of them) to execute a release and indemnity in favour of the arbitrator for any loss, damage or liability that party may suffer or incur as a consequence of anything done or omitted to be done in good faith in his or her capacity as arbitrator.

In circumstances where the arbitrator does not complete an arbitration, a new pool arbitrator can be appointed under rule 565 of the NGR.

4.4.2 Conduct of the parties

Rule 566 of the NGR requires the parties to the access dispute to:

- Do all things necessary for the proper and expeditious conduct of the arbitration.
- Comply without undue delay with any order or direction of the arbitrator with respect to any procedural, evidentiary or other matter.
- Not wilfully do or cause to be done any act to delay or prevent an access determination being made.

4.5 Information for the arbitrator

Rule 567 of the NGR requires each party to the access dispute to provide certain statements to the arbitrator once the arbitrator is appointed. These statements must also be provided to the other parties to the dispute.

- Within 10 business days of the dispute being referred to the arbitrator a statement:
 - listing the access negotiation information that the party provided to the other parties to the negotiations *before* the access dispute notice was given; and
 - identifying with reasonable particularity any other access negotiation information:
 - a) not provided to the other parties to the negotiations before the access dispute notice was given and that the party seeks leave to submit and rely on in the arbitration; and
 - b) that was requested from another party to the negotiations and that has not been provided by that other party.
- Within 15 business days of the dispute being referred to the arbitrator a statement of the access determination the party claims should be made and the matters supporting the party's claim.
- Within the time determined by the arbitrator, and if required:
 - a statement in response to the first statement(s) required within 10 business days, which must identify any areas of disagreement and state whether the party consents to the provision of any access negotiation information for which leave is now sort; and
 - a statement in reply to the statement(s) provided within 15 business days.

With permission from the arbitrator, a party may amend or supplement any statement provided during the course of arbitration.

The arbitrator can require any statement provided by a party to be verified by statutory declaration of an appropriate officer of the party.

4.6 Considerations for the arbitrator

4.6.1 Access negotiation information

The arbitrator is informed about the access negotiation information that was provided and requested by the parties during negotiations by the statements that it receives under rule 567.

For arbitration, a party can submit and rely on the access arrangement information that it provided *during* negotiations and *before* the access dispute notice was given. It must, however, seek leave of the arbitrator to submit and rely on access negotiation information that it did not provide to other parties during negotiations.

In determining whether to grant leave, the arbitrator must, in accordance with rule 568(2) of the NGR:

- Seek to give effect to rule 562 (rules for access negotiation information) insofar as doing so is consistent with the proper consideration of the access dispute.
- Have regard to whether the party seeking leave was given a reasonable opportunity to provide the access negotiation information to the other parties to the dispute before the access dispute notice was given.

The arbitrator can under rule 568(3) direct a party to an access dispute to provide access negotiation information that it did not provide to the other parties to the negotiations before the access dispute notice was given. Where given, a party must comply with the direction without undue delay.

Under rule 568(4), if the arbitrator is satisfied that there has been inordinate and inexcusable failure by a party to comply with the obligation to provide access negotiation information, or if a party fails to do any other thing necessary for the proper and expeditious conduct of the arbitration, the arbitrator may do any one or more of the following.

- Direct that the party is not entitled to rely on any specified information or materials.
- Draw such adverse inferences from the failure to comply as the circumstances justify.
- Proceed to an access determination solely on the basis of information relied on by that party that has been provided by that party in negotiations in accordance with rule 562.

4.6.2 Pricing and other principles

Rule 569 of the NGR requires the arbitrator to take into account certain pricing and other principles when making a final access determination. The arbitrator must take into account the following principles and requirements.

- The principle that access to pipeline services on a non-scheme pipeline must be on reasonable terms as defined in rule 546(1). That is, access must be at prices and on other terms and conditions that reflect the outcomes of a workably competitive market.
- The pricing principles set out in the NGR (and detailed below).
- Operational and technical requirements necessary for the safe and reliable operation of the pipeline.

Rule 569(3) specifies the pricing principles to be:

- The price for access to a pipeline service on a non-scheme pipeline should reflect the cost of providing that service, including a commercial rate of return that is commensurate with the prevailing conditions in the market for funds and reflects the risks the service provider faces in providing the pipeline service.
- When applying the above principle to a pipeline service that, when used, affects the capacity of the non-scheme pipeline available for other pipeline services and is priced at a premium or a discount to the price for a firm haulage service on the relevant non-scheme pipeline. The premium or discount must:
 - take into account any opportunity cost or benefit to the service provider of providing the pipeline service, having regard to any effect on the cost of providing firm haulage services or the capacity of the non-scheme pipeline; and
 - be consistent with the price for the pipeline service providing a reasonable contribution to joint and common costs.

For the purposes of applying the pricing principles (set out above), the value of any assets used in the provision of the pipeline service is to be calculated in the manner set out in rule 569(4).

The arbitrator may also take into account the:

- Legitimate business interests of the service provider.
- Interests of all persons who have rights to use the pipeline.
- Value to the service provider of any extension or expansion of the pipeline the cost of which is borne by another person.
- Value to the service provider of interconnections to the pipeline the cost of which is borne by another person.

4.7 Access determinations

4.7.1 Content of a determination

As provided for by section 216L of the NGL, a determination may deal with any matter relating to an access dispute and the arbitrator must not make a determination that is inconsistent with the NGR or goes beyond the matters specified by the NGR.

Rule 570(2) of the NGR outlines the possible content of an access determination. An access determination may do the following.

- Require the service provider for a non-scheme pipeline to provide access to a pipeline service.
- Specify the price and other terms and conditions on which the prospective user must be given access to the pipeline service.
- Require the service provider to permit another facility to be connected to the non-scheme pipeline.
- Require the service provider to carry out, either alone or in combination:
 - an expansion of the capacity of a non-scheme pipeline
 - a conversion of a non-scheme pipeline to a bi-directional pipeline
 - the development of a new receipt or delivery point
 - an expansion of an existing receipt or delivery point
 - an interconnection with another pipeline or other facility
 - specify conditions to be satisfied before access to a pipeline service commences.

The NGR also state that:

- An access determination may require access to be provided for a service term different to that sought by the prospective user but must otherwise be made in relation to the pipeline service or services sought by the prospective user (rule 570(3)).
- An access determination does not have to require the service provider to provide access to the pipeline service or services sought by the prospective user or any pipeline service (rule 570(4)).

Restrictions on determinations

Restrictions on access determinations are specified in both the NGR and the NGL.

The NGR specify that:

- An access determination must not require the service provider to provide a pipeline service or carry out any of the activities referred to in rule 570(2)(d) unless the provision of the pipeline service or activity is: (i) technically feasible and (ii) consistent with the safe and reliable operation of the pipeline (rule 570(5)).
- An access determination must not, unless the service provider agrees, require the service provider to: (a) extend the geographical range of a non-scheme pipeline or (b) carry out any of the activities referred to in rule 570(2)(d) unless the prospective user funds the activity in its entirety (rule 570(6)).
- An access determination must not provide for a prospective user to acquire an interest in a non-scheme pipeline by funding an expansion of the capacity of the pipeline unless the service provider agrees (rule 570(6)).

Under section 2016N of the NGL, the arbitrator must not make an access determination that would have any of the following effects:

- The effect of preventing a user obtaining a sufficient amount of a pipeline service under a contract or previous access determination to be able to meet the user's reasonably anticipated requirements, measured at the time that the access dispute was notified.
- The effect of preventing a prospective user or user from obtaining, by the exercise of a pre-notification right, a sufficient amount of a pipeline service to be able to meet the prospective user's or user's actual requirements.
- The effect of depriving a person of a relevant protected contractual right (other than a relevant exclusivity right).⁵

4.7.2 Making a determination

As provided for under section 216L of the NGL the arbitrator must make a determination, unless arbitration is terminated (refer to section 4.12 of this Guide). Rule 572 of the NGR outlines provisions for the timing and form of a final access determination.

The arbitrator must determine the access dispute as quickly as possible, and in any case the arbitrator must make a final access determination within:

- 50 business days after the date the access dispute was referred to it
or
- if agreed by the parties to the access dispute, any greater number of business days, up to a maximum of 90 business days, after the date the access dispute was referred to it (rule 572(1)).

In determining the number of business days elapsed since the date the access dispute was referred to the arbitrator, the following time must be disregarded.

- If the arbitrator appoints an independent expert, any day within a period allowed by the arbitrator for the independent expert to report and that the arbitrator directs must be disregarded.
- Any day within a period allowed by the arbitrator for a party to prepare access negotiation information not provided in negotiations and that the arbitrator directs must be disregarded (rule 572(2)).

A final access determination must:

- Be in writing and dated and signed by the arbitrator.
- Identify the parties to the determination and the place the determination is made.
- Set out the matters agreed by the parties and the matters in dispute.
- Set out the arbitrator's determination of the access dispute.
- Be communicated by email when it is made to the parties to the access dispute and the scheme administrator.

⁵ Under the NGL, a **relevant exclusivity right** means an express contractual right that: (a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or (b) limits or controls a service provider's ability to supply pipeline services to persons who are not parties to the contract, but does not include a user's contractual right to obtain a certain amount of pipeline services.

- Be sent by post to the parties and the scheme administrator within five business days of being made (rule 572(3)).

A statement of reasons must either accompany the final access determination, or be given within 20 business days of the determination being made. The statement of reasons must explain how the arbitrator took into account the pricing and other principles that it needs to consider (refer to section 4.6.2 of this Guide) (rule 572(4)).

Interim determinations

Interim determinations are allowed under rule 571 of the NGR.

An interim access determination can provide for access to a pipeline service *before* a final access determination is made. The interim access arrangement must specify the terms and conditions on which the prospective user must be given access to the pipeline service, including reasonable payment terms.

Where the arbitrator makes an interim access determination that provides for access to a pipeline service before the final access determination is made, the final access determination must provide for adjustments to reflect any differences between the interim and final determinations.

An interim access determination must:

- Be in writing and dated and signed by the arbitrator.
- Identify the parties to the interim access determination and the place the determination is made.
- Be communicated by email when it is made to the parties to the access dispute and the scheme administrator.
- Be sent by post to the parties and the scheme administrator within five business days of being made.

An interim access determination takes effect from the later of the time specified in the access determination and the time it is communicated to the parties to the access dispute.

4.7.3 Effect of a final determination

Rule 573 of the NGR details the effect of a final determination.

A final access determination takes effect from the later of the time specified in the access determination and the time it is communicated to the parties to the access dispute. The determination is binding on the parties to the access dispute.

A prospective user is not bound to seek access on the terms of the access determination, but where it does, it is bound by the determination.

A prospective user wishing to enter into an access contract that gives effect to a final access determination must notify that decision to the other parties to the access dispute and the scheme administrator in writing within 10 business days of the access determination being made.

- Where a notice is given, the parties to the access dispute must enter into an access contract for the provision of access in accordance with the final access determination.
- Where a notice is not given within the required time period:
 - The prospective user and any associate of the prospective user must not give an access dispute notice about the same, or a substantially similar, pipeline service on the non-scheme pipeline that is the subject of the final access determination, for a period of one year from the date of the final access determination.
 - If the prospective user had access under the terms of an interim access determination, that access ends at the end of that period.

4.8 Arbitration procedures

Rule 574 of the NGR set out provisions for arbitration procedures.

Subject to Chapter 6, Part 6 of the NGL and rule 574 of the NGR, the arbitrator may determine the procedures for the arbitration and conduct the arbitration in such manner as it considers appropriate and is to decide whether to hold any access dispute hearings.

Under the NGR:

- The arbitrator must as soon as practicable after its appointment and after consultation with the parties to the access dispute, notify the parties of the procedures and timetable to apply to the arbitration. The arbitrator may in its discretion amend the procedures specified by it during the course of the arbitration.
- If documents are produced to an arbitrator, the arbitrator may take possession of, make copies of, and take extracts from, the documents and may keep the documents for as long as is necessary for the purposes of the arbitration.
- Subject to section 205 of the NGL (which provides for the treatment of material as confidential material):
 - All statements, documents or other information supplied to the arbitrator by a party must be communicated to the other parties.
 - Any expert report or evidentiary document on which the arbitrator may rely in making its decision must be communicated to the parties.

Chapter 6, Part 6 of the NGL sets out procedures for an access dispute hearing. As provided for by section 216S of the NGL, these procedures apply to arbitrations under Part 23 of the NGR. Appendix 2 of this Guide provides a summary of the procedures.

4.9 Appointment of experts

Rule 575 of the NGR allows the arbitrator to appoint an independent expert. Before an appointment is made, the arbitrator must:

- Notify the parties to the access dispute of its intention to refer a matter to an independent expert, the proposed independent expert and the amount the independent expert will charge or the manner in which that amount will be determined.

- Obtain the consent (which must not be unreasonably withheld) of the parties to the maximum amount that may be charged by the independent expert in connection with the reference.

Unless otherwise agreed by the parties:

- The arbitrator may require a party to give the independent expert any relevant information or to produce or to provide access to any relevant documents or places for the independent expert's inspection.
- If a party requests or if the arbitrator considers it necessary, the independent expert must, after delivery of the expert's written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and present expert witnesses in order to testify on the points at issue.

4.10 Confidentiality

Rule 576 of the NGR sets out provisions for the disclosure of confidential information.

The parties to an access dispute, including the arbitrator, must not disclose confidential information about the arbitration unless the disclosure is allowed for under the NGR. Confidential information may be disclosed by a party or the arbitrator in the following circumstances.

- With the consent of all the parties to the access dispute.
- In the case of a party, to a professional or other adviser of the party who agrees to maintain the confidentiality of the confidential information.
- In the case of the arbitrator, to an independent expert appointed by the arbitrator who agrees to maintain the confidentiality of the confidential information.
- If it is necessary to ensure that a party has a reasonable opportunity to present the party's case and the disclosure is no more than reasonable for that purpose.
- If it is necessary for the establishment or protection of a party's legal rights in relation to a third party and the disclosure is no more than reasonable for that purpose.
- If it is necessary for the purpose of enforcing an access determination and the disclosure is no more than reasonable for that purpose.
- If it is required by, or necessary for the purposes of, the NGR or the NGL.
- If the disclosure is in accordance with an order made or a subpoena issued by a court of competent jurisdiction.
- If the disclosure is authorised or required by a law of a participating jurisdiction or required by a competent regulatory body, and the person making the disclosure gives written details of the disclosure (including an explanation of the reasons for the disclosure) to:
 - if the person is a party – the other parties and the arbitrator.
 - if the arbitrator is making the disclosure – all the parties.

4.11 Conflicts of interest

Rule 577 of the NGR sets out provisions to identify and manage conflicts of interest.

Justifiable doubts as to the impartiality or independence of an arbitrator to whom an access dispute has been referred exist only if there is a real danger of bias on the part of the person in conducting the arbitration.

An arbitrator who is approached about the possibility to determine an access dispute must disclose any circumstances likely to give rise to justifiable doubts as to impartiality or independence. Once appointed and throughout the course of the arbitration, the arbitrator must disclose without delay any changed circumstances.

A party may challenge an arbitrator as to its impartiality or independence within 15 business days after becoming aware of any circumstance which gives rise to a justifiable doubt, by sending a written statement of reasons for the challenge to the arbitrator and other parties to the dispute. The NGR require the arbitrator to decide on the challenge, unless the arbitrator withdraws from office or the other parties to the dispute agree to the challenge.

Where the challenge is rejected, the challenging party may request the Court to decide on the challenge within 30 business days of being notified of the rejection. A decision of the Court which is within the limits of its authority is final. While a decision of the Court is pending, the arbitrator may continue with the arbitration and make an access determination.

4.12 Termination of arbitration

Rule 578 of the NGR sets out the circumstances where the arbitration of an access dispute is terminated.

The arbitration of an access dispute is terminated by:

- The making of a final access determination.
- An order of the arbitrator to terminate the arbitration is made under section 216O of the NGL and in accordance with rule 578(3).
- Notice from the prospective user to terminate the arbitration before an access determination is made in accordance with section 216P of the NGL.

Rule 578(3) requires an arbitrator's order to terminate the arbitration to:

- Be in writing and dated and signed by the arbitrator.
- Include a statement of reasons for the termination of the arbitration.
- Be communicated by email to the parties to the access dispute and the scheme administrator.
- Be sent by post to the parties to the access dispute and the scheme administrator within five business days of being made.

A decision of an arbitrator to terminate an arbitration takes effect from the later of the time specified in the decision and the time it is communicated to the parties to the access dispute.

4.13 Variations and correction of errors

Section 216R of the NGL allows an access determination to be varied if all parties to the access determination agree.

Rule 579 of the NGR details the provisions that allow the scheme administrator to correct errors in an access determination, including the time limits in which corrections can be made. The arbitrator may themselves correct certain types of errors⁶ within 30 business days of making an access determination (rule 579(3)).

Corrections to a final access determination must:

- Be in writing and dated and signed by the person making the correction.
- Identify the final access determination and set out the corrections.
- When the correction is made, be communicated by email to the parties to the access dispute and the scheme administrator or arbitrator as applicable.
- Be sent by post to the parties to the access dispute and the scheme administrator or arbitrator, as applicable, within five business days of being made.

4.14 Fees and costs

As provided for by section 216V of the NGL, the parties to an access dispute must bear their own costs.

Under rule 580(2), and subject to rule 580(3), the parties to an access dispute must each pay an equal share of the following arbitration costs.

- The fees and expenses of the arbitrator, including the fees and expenses of any expert retained by the arbitrator.
- The costs of room hire.
- The cost of any additional input agreed by the parties to be necessary to the conduct of the arbitration.

Rule 580(3) allows the arbitrator to direct that the parties to an access dispute pay the above arbitration costs in unequal shares. The arbitrator must take into account the matters set out in rules 580(3)(a) to (e) when giving such a direction. The direction can be made as part of the final access determination or within 30 business days after the determination is made.

Costs that are payable under rule 580 are a debt due by the party to the arbitrator or the person to whom the arbitrator has ordered that they be paid and may be recovered by that person in a court of competent jurisdiction.

⁶ The types of errors that the arbitrator may correct are detailed in section 216T of the *National Gas Law*.

4.15 Information about access determinations

Rule 581 of the NGR sets out the information that must be published within a reasonable time of a final access determination being made. The scheme administrator must publish on its website the following information.

- The non-scheme pipeline to which the determination relates.
- With the consent of the prospective user, the parties to the access dispute.
- The name of the arbitrator who made the final access determination, the time elapsed between the access dispute being referred to the arbitrator and the making of the final access determination.
- Which of the pipeline services offered on the non-scheme pipeline was the subject of the access dispute.
- Whether the prospective user has given notice that it wishes to enter into an access contract in accordance with the final access determination.
- If the final access determination includes a determination with respect to asset valuation, the valuation method adopted, the assets to which the valuation applied and the determination of the asset value.

The scheme administrator must also publish information about the number of access disputes referred to arbitration and brought to an end before a final access determination is made.

5 Scheme Administrator

The ERA was established by the *Economic Regulation Authority Act 2003* and is responsible for regulating third party access to gas pipelines in Western Australia.

The ERA has two roles under Chapter 6A of the NGL and Part 23 of the NGR, as both regulator and scheme administrator. This Guide is published by the ERA in its capacity as the scheme administrator.

5.1 Functions of the scheme administrator

Rule 582(2) of the NGR details the functions of the scheme administrator, which include:

- establishing a pool of arbitrators
- publishing relevant guides (including this Guide)
- referring access disputes to arbitration and appointing the arbitrator⁷
- if required, correcting errors in access determinations
- publishing information about access determinations.

The scheme administrator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions (rule 582(3)).

The scheme administrator does not incur any civil monetary liability for an act or omission done or made under or for the purposes of Part 23 unless the act or omission is done or made in bad faith (rule 582(4)).

5.2 Pool of arbitrators

Rule 583 of the NGR requires the scheme administrator to establish and maintain a pool of qualified and experienced commercial arbitrators who may be appointed to determine access disputes referred to arbitration under Part 23.

The scheme administrator:

- May at any time change the composition of the pool of arbitrators and may include commercial arbitrators in the pool of arbitrators on a temporary basis.
- Must publish on its website and keep up to date the name, contact details and a professional profile of each person in the pool of arbitrators.
- May determine in its discretion from time to time the process for identifying candidates for the pool of arbitrators.

⁷ While parties to a dispute may choose and agree to use a particular arbitrator, it is the scheme administrator who must advise the arbitrator of their appointment and refer the access dispute to them. In instances where parties cannot agree on an arbitrator, the scheme administrator will choose the arbitrator.

- Must establish and maintain for each pool arbitrator an indicative schedule of fees for the conduct of arbitrations under Part 23 by the pool arbitrator, which may include fixed or capped rates for specified categories of access dispute.
- Must at the request of a prospective user, a service provider or any party to an access dispute provide the indicative schedule of fees⁸ of one or more pool arbitrators.

5.2.1 *Current pool of arbitrators*

The ERA, as scheme administrator, has established and published on its website a [pool of arbitrators](#) to determine access disputes under Part 23 of the NGR.

Queries about the pool of arbitrators, including requests for an indicative schedule of fees, should be directed to the ERA, Regulation and Inquiries, Assistant Director Gas.

5.3 Arbitration guide

Rule 584 requires the scheme administrator to publish and maintain a non-scheme pipeline arbitration guide (this Guide) containing guidance for pool arbitrators and any person who may become a party to an access dispute about the process for the determination of access disputes under the NGL and NGR, including the matters that may be referred to arbitration, timelines and information requirements.

The arbitration guide:

- May include model arbitration terms and conditions and model procedures for arbitrations conducted under Part 23 of the NGR.
- Is not binding on an arbitrator or the parties to an access dispute.

The scheme administrator may in its discretion develop and publish and may from time to time amend, other non-binding guides relating to Part 23.

⁸ Rule 583(7) provides that each indicative schedule of fees is confidential information and may only be disclosed by the person to whom it is provided in the circumstances provided for in rule 561(8).

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Appendix 1 Checklists

The following checklists summarise the processes and requirements, including timeframes, during each stage of the information disclosure and arbitration framework. These checklists should be read in conjunction with the relevant legislative provisions.

References to parts, divisions and rules are all references to parts, divisions and rules of the *National Gas Rules* (NGR) unless stated otherwise.

Table 1 Information disclosure checklist

STAGE 1 CHECKLIST – INFORMATION DISCLOSURE	
Part 23, Division 2 sets out information disclosure requirements for the service provider of a non-scheme pipeline.	
OVERARCHING CONSIDERATIONS	
Information that is prepared, published and maintained by the service provider must be done in accordance with the access information standard (rule 551).	
The ERA must publish and maintain financial reporting guidelines (rule 557). Financial information that is prepared, published and maintained by the service provider must adhere to the guidelines. The ERA's financial reporting guidelines are published on the ERA website.	
AS THE SERVICE PROVIDER:	AS THE PROSPECTIVE USER:
<p>Disclosing certain information (rule 552)</p> <ul style="list-style-type: none"> <input type="checkbox"/> You must prepare, publish and maintain service access information, standing terms, financial information and weighted average price information as required by rules 553, 554, 555 and 556. <input type="checkbox"/> The requirement to publish weighted average price information is subject to rule 556(3). 	<p>Using disclosed information</p> <ul style="list-style-type: none"> <input type="checkbox"/> You can use the information that is prepared, published and maintained by the service provider to decide whether you will seek access to the non-scheme pipeline.
<ul style="list-style-type: none"> <input type="checkbox"/> Service and access information (rule 553): <ul style="list-style-type: none"> • Pipeline information <ul style="list-style-type: none"> – Published no later than 20 business days after the application date for the non-scheme pipeline. – Updated pipeline information must be published within 20 business days after there is a change. • Pipeline service information <ul style="list-style-type: none"> – Published no later than 20 business days after the application date for the non-scheme pipeline. – Updated pipeline service information must be published within 20 business days after a new pipeline service is added or an existing pipeline service changes or is withdrawn. 	

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| <ul style="list-style-type: none"> • Service usage information <ul style="list-style-type: none"> – Published each month after the application date for the non-scheme pipeline, by the last business day of the month for the prior month. • Service availability information <ul style="list-style-type: none"> – Published each month after the application date for the non-scheme pipeline, by the last business day of the month for the next 36 or 12 months as applicable. <input type="checkbox"/> Standing terms (rule 554): <ul style="list-style-type: none"> • Published no later than 20 business days after the application date for the non-scheme pipeline. • Updated standing terms must be published within 20 business days after a new pipeline service is added or an existing pipeline service changes or is withdrawn. <input type="checkbox"/> Financial information (rule 555): <ul style="list-style-type: none"> • Published annually no later than four months after the end of the financial year for the non-scheme pipeline. <input type="checkbox"/> Weighted average price information (rule 556): <ul style="list-style-type: none"> • Published annually no later than four months after the end of the financial year for the non-scheme pipeline. | |
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Table 2 Access requests and negotiations checklist

STAGE 2 CHECKLIST – ACCESS REQUESTS AND NEGOTIATIONS	
Part 23, Division 3 sets out provisions to facilitate requests for access to a non-scheme pipeline and a framework for negotiations.	
OVERARCHING CONSIDERATIONS	
<p>A <i>user access guide</i> must be developed, maintained and published by the service provider to provide prospective users with relevant information about the process for applying for access to a non-scheme pipeline (rule 558). The same user access guide can apply to one or more of the service provider's non-scheme pipelines.</p> <p>The receipt of an <i>access request</i> creates an obligation for the service provider to prepare and make an <i>access offer</i> within agreed or prescribed timeframes. <i>Preliminary enquiries</i> can be made by the prospective user before making an access request – these enquiries do not trigger the service provider's obligation to respond with an access offer.</p> <p><i>Negotiations</i> about access matters can be requested by the prospective user once it makes an access request. The negotiation framework facilitates the exchange of relevant information during negotiations to achieve a negotiated service agreement, and where negotiations fail, before the matter is referred to arbitration.</p> <p><i>Access negotiation information</i> is information that is requested or provided during negotiations about access matters and includes access offer information (from the service provider) and any other information (from any party to the negotiations). This is the information that is relied on for the determination of an access dispute when negotiations fail.</p>	
AS THE SERVICE PROVIDER:	AS THE PROSPECTIVE USER:
<p>Developing a user access guide (rule 558)</p> <ul style="list-style-type: none"> <input type="checkbox"/> You must develop, maintain and publish a user access guide that contains the information set out in rule 558(6). <ul style="list-style-type: none"> • Published no later than 20 business days after the application date for the non-scheme pipeline. • Where facts or circumstances cause the guide to be updated, a revised version of the guide must be published as soon as practicable after the facts or circumstances arise. 	<p>Consulting a user access guide</p> <ul style="list-style-type: none"> <input type="checkbox"/> Before requesting access, you should consult the user access guide. This guide will provide you with relevant information to assist you with your access request. The user access guide will provide you with contact details for the service provider and a description of the access request process, including the information you must provide.
<p>Responding to preliminary enquires (rule 559(2))</p> <ul style="list-style-type: none"> <input type="checkbox"/> You should respond to a preliminary enquiry as soon as practicable – a preliminary enquiry does not trigger your obligation to make an access offer. 	<p>Making preliminary enquiries (rule 559(2))</p> <ul style="list-style-type: none"> <input type="checkbox"/> You may make preliminary enquiries to the service provider before making an access request. Enquires can include a request for the service provider to carry out further investigations (based on your enquiry) before you make an access request.

<ul style="list-style-type: none"> <input type="checkbox"/> If requested by a prospective user to carry out further investigations based on its preliminary enquiry, you must carry out the further investigations. <input type="checkbox"/> You cannot require a prospective user to make a preliminary enquiry before making an access request. 	<ul style="list-style-type: none"> <input type="checkbox"/> The service provider cannot require you to make a preliminary enquiry before making an access request.
<p>Responding to an access request (rule 559)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Where the prospective user's access request is complete and/or no further investigations are required, you must prepare an access offer in accordance with rule 560. <input type="checkbox"/> Where the access request is incomplete, you must notify the prospective user of this within five business days after receiving the request and specify the information required to make it complete. <input type="checkbox"/> Where further investigations are required, you must notify the prospective user of this within 10 business days after receiving the request (or the additional information that was required to make it complete). 	<p>Making an access request (rule 559)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Your access request must be made in accordance with rule 559 – it must be in writing and include the information that is reasonably required by the service provider to make an access offer or determine if further investigations are needed. <input type="checkbox"/> If your access request is incomplete, or further investigations are needed the service provider will notify you. <input type="checkbox"/> Once you make an access request, you may request to negotiate with the service provider about access (see 'requesting negotiations' below).
<p>Undertaking further investigations (rule 559)</p> <ul style="list-style-type: none"> <input type="checkbox"/> You can only carry out further investigations for an access request when and to the extent reasonably necessary. The investigations must be carried out expeditiously (rule 559(6)). <input type="checkbox"/> You must negotiate in good faith with the prospective user about the terms and conditions on which further investigations will be carried out, including reasonable costs to be paid by the prospective user and the timing of the investigations (rule 559(7)). <input type="checkbox"/> Further investigations undertaken in response to a request by a prospective user making a preliminary enquiry should adhere to the above principles. 	<p>Assisting with further investigations (rule 559)</p> <ul style="list-style-type: none"> <input type="checkbox"/> You must negotiate in good faith with the service provider about the terms and conditions on which further investigations will be carried out, including reasonable costs to be paid by you and the timing of the investigations (rule 559(7)). <input type="checkbox"/> Further investigations undertaken in response to a request by you when making a preliminary enquiry should adhere to the above principles.
<p>Making an access offer (rule 560)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Once in receipt of a complete access request, you must prepare and make an access offer within the time agreed with the prospective user. Where no time is agreed, the access offer must be made: 	<p>Responding to an access offer</p> <ul style="list-style-type: none"> <input type="checkbox"/> Your access request (once complete) creates an obligation for the service provider to prepare and make an access offer. <input type="checkbox"/> The service provider must make its access offer within the time agreed with you, or if no time was agreed within: <ul style="list-style-type: none"> • 20 business days after receiving your access request; and

<ul style="list-style-type: none"> • 20 business days after receiving the access request (or if applicable, any further information that was needed to complete the access request); and • if further investigations are needed, 60 business days after receiving the access request (or if applicable, any further information that was needed to complete the access request). <p><input type="checkbox"/> Your access offer must meet the requirements of rule 560(3).</p> <p><input type="checkbox"/> You are not required to make an access offer if:</p> <ul style="list-style-type: none"> • the access request has been withdrawn; • you have concluded that it is not technically feasible or consistent with the safe and reliable operation of the pipeline to provide the requested pipeline service; or • the provision of the requested pipeline service would require an extension of the pipeline. 	<ul style="list-style-type: none"> • if further investigations were needed, 60 business days after receiving your access request. <p><input type="checkbox"/> There are three situations where the service provider is not required to make an access offer to you (rule 560(4)).</p> <p><input type="checkbox"/> You should consider and respond to your access offer as required.</p>
<p>Participating in negotiations (rule 561)</p> <p><input type="checkbox"/> If requested by a prospective user, you must participate in negotiations.</p> <ul style="list-style-type: none"> • Where a request is made, the parties to the negotiations will include you, the prospective user any other person that you both agree to include as a party to the negotiations. • The prospective user may at any time bring the requested negotiations to an end by providing notice to you. <p><input type="checkbox"/> A prospective user cannot request negotiations about matters that are excluded from arbitration (these matters are listed under rule 563(2)).</p> <p><input type="checkbox"/> Negotiations must adhere to the negotiation requirements set out in rule 561.</p> <p><input type="checkbox"/> Access negotiation information must be requested or provided in accordance with rule 562. A prospective user's request for access negotiation information may include a request for access offer information from you – you must provide this information in accordance with rule 562(4)).</p>	<p>Requesting negotiations (rule 561)</p> <p><input type="checkbox"/> You can request (by notice) for the service provider to participate in negotiations about any aspect of access to a pipeline service, including whether access can be granted and the price and other terms/conditions of an access offer.</p> <ul style="list-style-type: none"> • Where a request is made, the parties to the negotiations will include you, the service provider any other person that you both agree to include as a party to the negotiations. • You may at any time bring the requested negotiations to an end by providing notice to the service provider. <p><input type="checkbox"/> You cannot request negotiations about matters that are excluded from arbitration (these matters are listed under rule 563(2)).</p> <p><input type="checkbox"/> Negotiations must adhere to the negotiation requirements set out in rule 561.</p> <p><input type="checkbox"/> Access negotiation information must be requested or provided in accordance with rule 562. Your request may include a request for access offer information from the service provider.</p>

Table 3 Arbitration of access disputes checklist

STAGE 3 CHECKLIST – ARBITRATION OF ACCESS DISPUTES		
Part 23, Division 4 sets out provisions for the arbitration of access disputes when negotiations fail to achieve a negotiated service agreement.		
OVERARCHING CONSIDERATIONS		
While Part 23, Division 4 provides for an arbitration framework, it does not limit how an access dispute can be raised or dealt with.		
To use the Part 23 arbitration framework:		
1) The access dispute must not relate to a matter that is excluded from arbitration (these matters are listed in rule 563(2)). 2) An access request must have been made by a prospective user to the service provider in accordance with rule 559. 3) Where there are negotiations under Part 23 and before an access dispute notice is given, a request for access negotiation information must have been made and 15 business days elapsed since the request (rule 562(6)).		
Under Part 23, the <i>scheme administrator</i> for access disputes is the Economic Regulation Authority (ERA).		
The scheme administrator must establish and maintain a <i>pool of arbitrators</i> who may be appointed to determine access disputes that are referred to it under Part 23. The pool of arbitrators is published on the ERA website.		
AS THE SERVICE PROVIDER:	AS THE PROSPECTIVE USER:	AS THE ARBITRATOR:
Notifying of an access dispute <input type="checkbox"/> You may give notice to the scheme administrator that an access dispute exists. <ul style="list-style-type: none"> • The access dispute notice must be in writing and meet the requirements set out in rule 564. • If there have been negotiations, the access dispute notice must also be given to the other parties to the negotiations. • You may only withdraw your access dispute notice if the other parties to the access dispute agree. 	Notifying of an access dispute <input type="checkbox"/> You may give notice to the scheme administrator that an access dispute exists. <ul style="list-style-type: none"> • The access dispute notice must be in writing and meet the requirements in rule 564. • If there have been negotiations, the access dispute notice must also be given to the other parties to the negotiations. • You may withdraw your access dispute notice at any time before the arbitrator appointed to determine the dispute makes a final determination. 	N/A

<p>Referring the access dispute to arbitration</p> <ul style="list-style-type: none"> <input type="checkbox"/> Once notified of a dispute, the scheme administrator must refer the dispute to arbitration within 15 business days after receiving the access dispute notice. The procedures set out in rule 565 must be followed, which involves determining and notifying the parties to the dispute and selecting the arbitrator. <input type="checkbox"/> You may receive a notice from the scheme administrator identifying you as a party to the dispute. The notice will set out what you need to do, including any timeframes that need to be met. 	<p>Referring the access dispute to arbitration</p> <ul style="list-style-type: none"> <input type="checkbox"/> Once notified of a dispute, the scheme administrator must refer the dispute to arbitration within 15 business days after receiving the access dispute notice. The procedures set out in rule 565 must be followed, which involves determining and notifying the parties to the dispute and selecting the arbitrator. <input type="checkbox"/> You may receive a notice from the scheme administrator identifying you as a party to the dispute. The notice will set out what you need to do, including any timeframes that need to be met. 	N/A
<p>Selecting the arbitrator (rule 565)</p> <ul style="list-style-type: none"> <input type="checkbox"/> The scheme administrator is required to establish a pool of arbitrators – it is from this pool that an arbitrator is selected to determine the access dispute (rule 583). <input type="checkbox"/> As a party to the dispute you must, within 10 business days of being notified negotiate with the other identified parties to the dispute to select and agree on an arbitrator from the pool and notify the scheme administrator of this. <ul style="list-style-type: none"> • Where agreement is not reached or notification is not received within the timeframe, the scheme administrator must select the arbitrator. • The scheme administrator's selection is final and binding on the parties to the dispute. <input type="checkbox"/> The scheme administrator must refer the dispute to the selected arbitrator within 15 business days after receiving the access 	<p>Selecting the arbitrator (rule 565)</p> <ul style="list-style-type: none"> <input type="checkbox"/> The scheme administrator is required to establish a pool of arbitrators – it is from this pool that an arbitrator is selected to determine the access dispute (rule 583). <input type="checkbox"/> As a party to the dispute you must, within 10 business days of being notified negotiate with the other identified parties to the dispute to select and agree on an arbitrator from the pool and notify the scheme administrator of this. <ul style="list-style-type: none"> • Where agreement is not reached or notification is not received within the timeframe, the scheme administrator must select the arbitrator. • The scheme administrator's selection is final and binding on the parties to the dispute. <input type="checkbox"/> The scheme administrator must refer the dispute to the selected arbitrator within 15 business days after receiving the access 	<p>Selecting the arbitrator (rule 565)</p> <ul style="list-style-type: none"> <input type="checkbox"/> As a pool arbitrator, you may be contacted by an identified party to an access dispute, or the scheme administrator to confirm your availability to act as the arbitrator. <input type="checkbox"/> Where you have been selected by the parties to the dispute as the agreed arbitrator, you will be advised of this by the scheme administrator and will receive a copy of the access dispute notice at this time. <input type="checkbox"/> As the selected arbitrator, you are not liable for anything done or omitted to be done in good faith in your capacity as the arbitrator (rule 565(7)).

dispute notice – you will be notified of this referral.	dispute notice – you will be notified of this referral.	
<p>Information for the arbitrator (rule 557)</p> <ul style="list-style-type: none"> <input type="checkbox"/> As a party to the access dispute, you must provide certain statements to the selected arbitrator once they are appointed. These statements must also be provided to the other parties to the dispute. <ul style="list-style-type: none"> • Within 10 business days a statement listing the access negotiation information provided to the other parties in negotiations and sought to be relied on and any other further information that you seek to rely on. • Within 15 business days a statement of the determination that is sought. <input type="checkbox"/> You may, with leave from the arbitrator, amend or supplement any statement provided during the course of the arbitration. <input type="checkbox"/> The arbitrator can require your statements to be verified by a statutory declaration. 	<p>Information for the arbitrator (rule 557)</p> <ul style="list-style-type: none"> <input type="checkbox"/> As a party to the access dispute, you must provide certain statements to the selected arbitrator once they are appointed. These statements must also be provided to the other parties to the dispute. <ul style="list-style-type: none"> • Within 10 business days a statement listing the access negotiation information provided to the other parties in negotiations and sought to be relied on and any other further information that you seek to rely on. • Within 15 business days a statement of the determination that is sought. <input type="checkbox"/> You may, with leave from the arbitrator, amend or supplement any statement provided during the course of the arbitration. <input type="checkbox"/> The arbitrator can require your statements to be verified by a statutory declaration. 	<p>Information for the arbitrator (rule 557)</p> <ul style="list-style-type: none"> <input type="checkbox"/> As the appointed arbitrator, you will be informed about the access negotiation information that was provided and requested during negotiations. <input type="checkbox"/> You may be asked by a party for leave to submit and rely on access negotiation information that was not provided during negotiations. Your decision to grant leave must take into account the provisions of rule 568.
<p>Considerations of the arbitrator (rule 569)</p> <ul style="list-style-type: none"> <input type="checkbox"/> The arbitrator must take into account certain pricing and other principles when making an access determination. 	<p>Considerations of the arbitrator (rule 569)</p> <ul style="list-style-type: none"> <input type="checkbox"/> The arbitrator must take into account certain pricing and other principles when making an access determination. 	<p>Considerations of the arbitrator (rule 569)</p> <ul style="list-style-type: none"> <input type="checkbox"/> You must take into account certain pricing and other principles when making an access determination.
<p>Access determinations</p> <ul style="list-style-type: none"> <input type="checkbox"/> The matters that may be dealt with in an access determination are outlined in rule 570. <input type="checkbox"/> The arbitrator must make a final determination within 50 business days after the dispute was referred to it, or within a 	<p>Access determinations</p> <ul style="list-style-type: none"> <input type="checkbox"/> The matters that may be dealt with in an access determination are outlined in rule 570. <input type="checkbox"/> The arbitrator must make a final determination within 50 business days after the dispute was referred to it, or within a 	<p>Access determinations</p> <ul style="list-style-type: none"> <input type="checkbox"/> The matters that may be dealt with in an access determination are outlined in rule 570. <input type="checkbox"/> You must make a final determination within 50 business days after the dispute was referred to you, or within a time agreed by

<p>time agreed by the parties (up to a maximum of 90 business days).</p> <ul style="list-style-type: none"> • Certain time periods can be disregarded when determining the number of business days elapsed (rule 572(2)). • The arbitrator may make an interim determination before making a final determination (rule 571). <p><input type="checkbox"/> The final determination is binding on the parties to the access dispute (rule 573).</p> <ul style="list-style-type: none"> • The prospective user is not bound to seek access on the terms of the determination, but where it does, it is bound by the determination. • Where the prospective user wishes to give effect to the determination it must notify this to the other parties and scheme administrator within 10 business days of the determination being made. 	<p>time agreed by the parties (up to a maximum of 90 business days).</p> <ul style="list-style-type: none"> • Certain time periods can be disregarded when determining the number of business days elapsed (rule 572(2)). • The arbitrator may make an interim determination before making a final determination (rule 571). <p><input type="checkbox"/> The final determination is binding on the parties to the access dispute (rule 573).</p> <ul style="list-style-type: none"> • You are not bound to seek access on the terms of the determination, but where you do, you are bound by the determination. • Where you wish to give effect to the determination you must notify this to the other parties and scheme administrator within 10 business days of the determination being made. 	<p>the parties (up to a maximum of 90 business days).</p> <ul style="list-style-type: none"> • You can direct that certain time periods be disregarded when determining the number of business days elapsed (rule 572(2)). • You may make an interim determination before making a final determination (rule 571). <p><input type="checkbox"/> Your final determination must meet the requirements set out in rule 572(3).</p> <p><input type="checkbox"/> You must provide a statement of reasons for the determination either with the final determination or within 20 business days of the determination being made (rule 572(4)).</p>
<p>Arbitration procedures (rule 574)</p> <p><input type="checkbox"/> The arbitrator may determine the procedures and conduct for arbitration and decide whether to hold any dispute hearings.</p> <p><input type="checkbox"/> Chapter 6, Part 6 of the <i>National Gas Law</i> sets out the access dispute hearing procedure, which applies to arbitrations under Part 23.</p>	<p>Arbitration procedures (rule 574)</p> <p><input type="checkbox"/> The arbitrator may determine the procedures and conduct for arbitration and decide whether to hold any dispute hearings.</p> <p><input type="checkbox"/> Chapter 6, Part 6 of the <i>National Gas Law</i> sets out the access dispute hearing procedure, which applies to arbitrations under Part 23.</p>	<p>Arbitration procedures (rule 574)</p> <p><input type="checkbox"/> You may determine the procedures and conduct for arbitration and decide whether to hold any dispute hearings.</p> <ul style="list-style-type: none"> • You must notify the parties to the dispute of the procedures and timetable to apply to the arbitration. <p><input type="checkbox"/> Chapter 6, Part 6 of the <i>National Gas Law</i> sets out the access dispute hearing procedure, which applies to arbitrations under Part 23.</p>

<p>Termination of arbitration (rule 578)</p> <ul style="list-style-type: none"> <input type="checkbox"/> The arbitration of an access dispute is terminated by: <ul style="list-style-type: none"> • the making of a final access determination • an order of the arbitrator to terminate arbitration or • notice from the prospective user to terminate before an access determination is made. 	<p>Termination of arbitration (rule 578)</p> <ul style="list-style-type: none"> <input type="checkbox"/> The arbitration of an access dispute is terminated by: <ul style="list-style-type: none"> • the making of a final access determination • an order of the arbitrator to terminate arbitration or • notice from the prospective user to terminate before an access determination is made. 	<p>Termination of arbitration (rule 578)</p> <ul style="list-style-type: none"> <input type="checkbox"/> The arbitration of an access dispute is terminated by: <ul style="list-style-type: none"> • the making of a final access determination • an order of the arbitrator to terminate arbitration or • notice from the prospective user to terminate before an access determination is made. <input type="checkbox"/> An order by you to terminate the arbitration must meet the requirements of rule 578(3).
<p>Other matters</p> <ul style="list-style-type: none"> <input type="checkbox"/> The arbitrator may appoint an independent expert as allowed for by rule 575. <input type="checkbox"/> As a party to the access dispute: <ul style="list-style-type: none"> • You must adhere to the provisions set out in rule 576 for the disclosure of confidential information. • You can challenge an arbitrator as to its impartiality or independence under the provisions of rule 577. • You must pay your share of the arbitration costs as identified under rule 580. <input type="checkbox"/> The access determination can be varied if all parties to the determination agree. The correction of errors in an access determination is provided for under rule 579. 	<p>Other matters</p> <ul style="list-style-type: none"> <input type="checkbox"/> The arbitrator may appoint an independent expert as allowed for by rule 575. <input type="checkbox"/> As a party to the access dispute: <ul style="list-style-type: none"> • You must adhere to the provisions set out in rule 576 for the disclosure of confidential information. • You can challenge an arbitrator as to its impartiality or independence under the provisions of rule 577. • You must pay your share of the arbitration costs as identified under rule 580. <input type="checkbox"/> The access determination can be varied if all parties to the determination agree. The correction of errors in an access determination is provided for under rule 579. 	<p>Other matters</p> <ul style="list-style-type: none"> <input type="checkbox"/> You may appoint an independent expert to assist you in making a determination under rule 575. <input type="checkbox"/> As a party to the access dispute you must adhere to the provisions set out in rule 576 for the disclosure of confidential information. <input type="checkbox"/> The access determination can be varied if all parties to the determination agree. The correction of errors in an access determination is provided for under rule 579.

Table 4 Functions of the scheme administrator**Functions of the scheme administrator**

Part 23, Division 5 sets out functions of the scheme administrator. The scheme administrator is the Economic Regulation Authority (ERA).

Establish a pool of arbitrators (rule 583)

- ☐ The ERA must establish and maintain a pool of arbitrators who may be appointed to determine access disputes that are referred to arbitration.
 - The pool of arbitrators must be published on the ERA website.
 - An indicative schedule of fees for each pool arbitrator must be established and maintained for confidential disclosure to a prospective user, a service provider or any other party to an access dispute upon request.

Publish relevant guides (rule 584)

- ☐ The ERA must publish and maintain a non-scheme pipeline arbitration guide. The guide may include model arbitration terms and conditions and model procedures for arbitrations. The guide is not binding on an arbitrator or the parties to an access dispute.

Refer access disputes and appoint the arbitrator (rule 565)

- ☐ The ERA must refer an access dispute to arbitration no later than 15 business days after receipt of an access dispute notice.
 - Within five business days of receiving an access dispute notice, the ERA must determine the parties to the dispute and give notice to each party. The notice must address the matters detailed in rule 565(2), which includes inviting parties to make written submissions about any pool arbitrators that should be disqualified and requesting parties to identify the pool arbitrator agreed by the parties to determine the dispute.
 - Where the parties cannot agree and/or do not notify the ERA of an arbitrator within the time required, the ERA must select the arbitrator (rule 565(4)).
 - The ERA must notify the parties to the access dispute once it refers the access dispute to the arbitrator. The ERA must make this referral within 15 business days after receiving the access dispute notice.
- ☐ If required, the ERA must refer the access dispute to a new pool arbitrator no later than 15 business days after being notified that a new pool arbitrator is needed (rule 565(10)).

Correct errors in access determinations (rule 579)

- ☐ If requested by a party to the access dispute, the ERA may correct errors in an access determination.
 - Corrections must be limited to the matters specified in section 216T of the *National Gas Law* and the ERA must first consult with the parties to the access dispute and the arbitrator before making a correction.
 - When a correction is made, the ERA must communicate this in email to the parties to the access dispute and arbitrator, and then by post (within five business days of the correction being made).

Publish information about access disputes (r.581)

- ☐ Within a reasonable time of a final access determination being made, the ERA must publish certain information about access determinations. Rule 581 details the information that must be published. The information must be published on the ERA website.

Appendix 2 Access Dispute Hearing Procedures

Chapter 6, Part 6 (sections 196 to 205) of the *National Gas Law* details the procedures for an access dispute hearing. As provided for by section 216S of the Law, this procedure applies to arbitrations under Part 23 of the *National Gas Rules*.

Table 5 Summary of requirements for access dispute hearing procedures

Section	Summary of requirements (Chapter 6, Part 6 of the National Gas Law)
196	<p>Hearings are to be conducted in private, unless the parties agree that the hearing may be conducted in public.</p> <p>The resolution body (arbitrator) may give written directions as to the persons who may be present at the hearing that is conducted in private. In giving such directions, the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality.</p>
197	In a hearing, a party may appear in person or be represented by another person.
198	<p>In a hearing, the resolution body (arbitrator):</p> <ul style="list-style-type: none"> • Is not bound by technicalities, legal forms or rules of evidence. • Must act as quickly as a proper consideration of the dispute allows. • May inform itself about any matter relevant to the dispute in any way it thinks appropriate. <p>The arbitrator may determine the periods that are reasonably necessary for the fair and adequate presentation of the parties' cases and may require the cases to be presented within those periods.</p> <p>The arbitrator may require evidence or arguments to be presented in writing and may decide the matters on which it will hear oral evidence or arguments.</p> <p>The arbitrator may determine that a hearing is to be conducted by telephone, closed circuit television or any other means of communication.</p>
199	<p>The resolution body (arbitrator) may do any of the following things to determine an access dispute:</p> <ul style="list-style-type: none"> • Give a direction in the course of, or for the purpose of, a hearing. • Hear and determine the access dispute in the absence of a party who has been given notice of the hearing. • Sit at any place. • Adjourn to any time and place. • Refer any matter to an independent expert and accept the expert's report as evidence. <p>The arbitrator may make an interim determination.</p>
200	The resolution body (arbitrator) may give an oral or written order to a person not to divulge or communicate to anyone specified information that was given to the person in the course of an access dispute unless the arbitrator provides its permission.
201	<p>The resolution body (arbitrator) may take evidence on oath or affirmation and for that purpose the arbitrator may administer an oath or affirmation.</p> <p>The arbitrator may summon a person to appear before it to give evidence and/or produce documents (if any) as are referred to in the summons.</p> <p>The arbitrator may only exercise these powers for the purpose of hearing and determining an access dispute.</p>
202	A person who is served with a summons to appear as a witness before the resolution body (arbitrator) must not, without a reasonable excuse, fail to attend as required.

203	<p>A person appearing as a witness before the resolution body (arbitrator) must not, without reasonable excuse:</p> <ul style="list-style-type: none"> • Refuse or fail to be sworn or to make an affirmation. • Refuse or fail to answer a question that the person is required to answer by the arbitrator. • Refuse or fail to produce a document that the person is required to produce by a summons.
204	<p>A person must not threaten, intimidate or coerce another person, or cause or procure damage, loss or disadvantage to another person because that other person proposes to produce, or has produced, documents or proposes to appear, or has appeared, as a witness before the resolution body (arbitrator).</p>
205	<p>A party in a hearing may inform the dispute resolution body (arbitrator) that, in its opinion, a specified part of a document contains confidential information and may request the arbitrator not to give a copy of that part to another party.</p> <p>If such a request is received, the arbitrator must inform the other party/parties that the request has been made and of the general nature of the matters to which the part of the document relates. The arbitrator must ask the other party/parties whether there is any objection to it complying with the request.</p> <p>If there is an objection to the arbitrator complying with the request, the party objecting may inform the arbitrator of the objection and the reasons for it.</p> <p>After considering a request, any objection or any further submissions that any party has made about the request, the arbitrator may decide:</p> <ul style="list-style-type: none"> • Not to give parties a copy of parts of the document that the arbitrator thinks should not be given. • To give the other party a copy of the whole or part of the document that contains confidential information subject to the party giving an undertaking not to disclose the confidential information.