



# Third Party Access – Water

## Information Session March 2016

Protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services

# Purpose of Session



- To inform stakeholders about the Third Party Access Regime to take effect in South Australia from 1 July 2016.
- Focus is on the requirements of the legislation and the Commission's role.
- For the Commission to gain information on matters that could assist the effectiveness of the regime.

# Structure of Session



- Opening Remarks (Sandy Pitcher CE, DEWNR)
- Overview of ESCOSA (Adam Wilson CEO, ESCOSA)
- Process to date
- Broad overview of the Regime
- Q&A

# Opening Remarks



Sandy Pitcher CE, DEWNR

# Overview of ESCOSA



Adam Wilson CEO, ESCOSA

# Process to date



- 1 July 12 Water Industry Act 2012 commenced (s26)
- 1 Feb 13 Report released for public comment
- 26 Sept 13 Consultation Draft of Bill tabled and released for public comment
- 11 Feb 15 Bill introduced
- 22 Oct 15 Bill passed
- Prior 1 July Proclamation, Ministerial Direction

# Overview of TPA Regime



## PURPOSE

- The *Water Industry (Third Party Access) Amendment Act 2015* amends the Objects of the *Water Industry Act 2012* by inserting the following objective:

***to promote the economically efficient use and operation of, and investment in, significant infrastructure so as to promote effective competition in upstream and downstream markets***

# Overview of TPA Regime

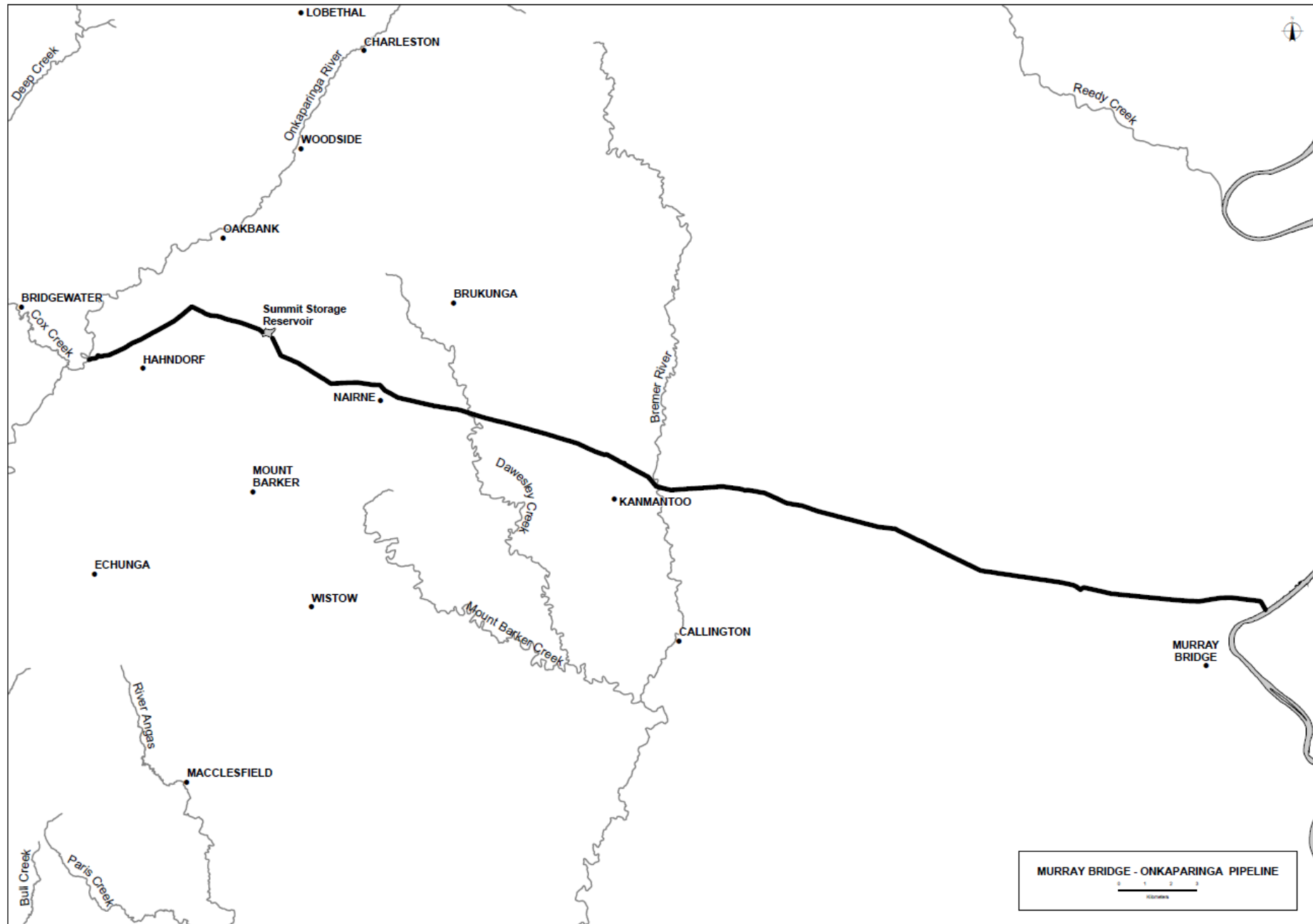


## SCOPE OF COVERAGE

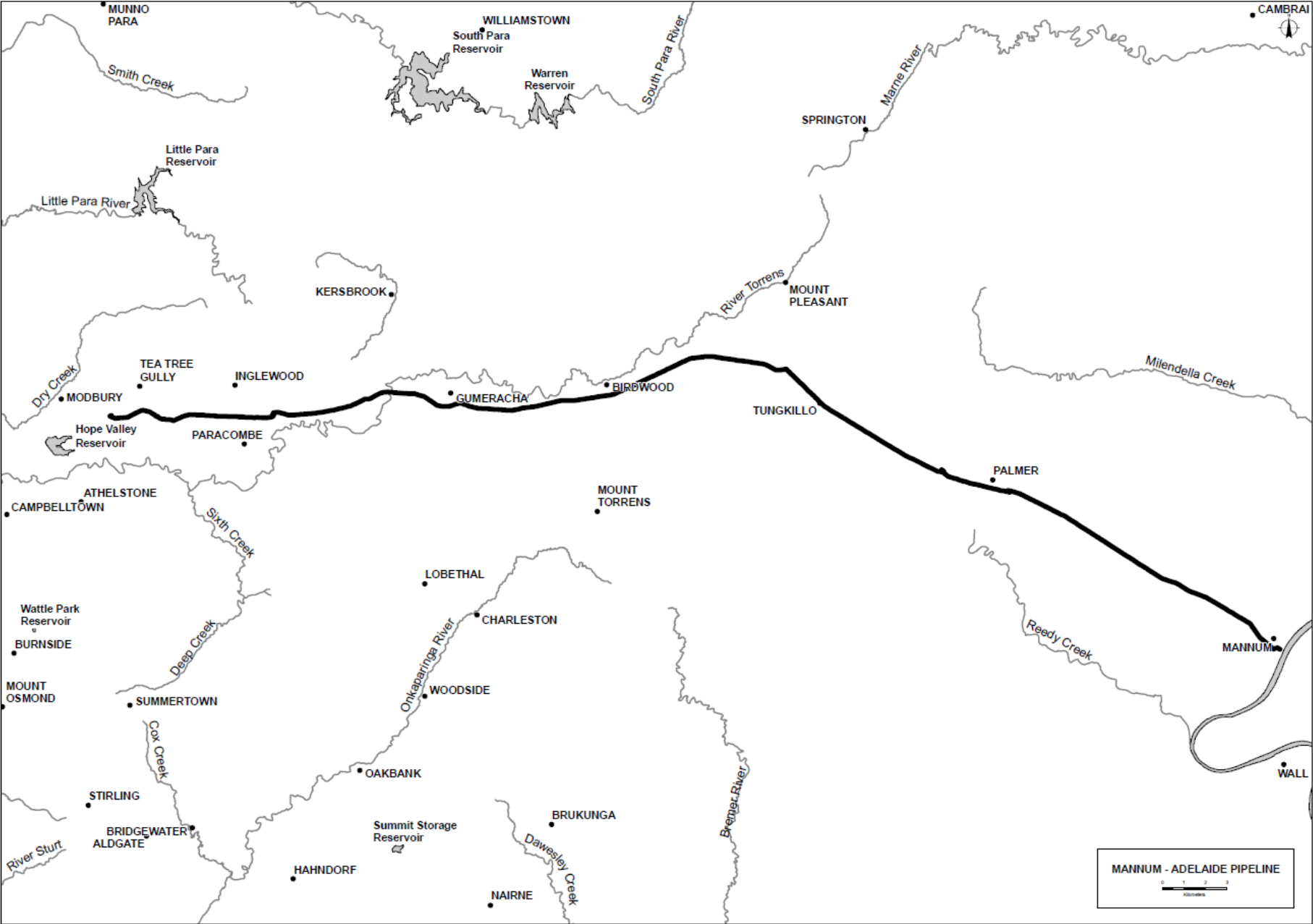
- Determined by Proclamation by the Governor
- SA Water water pipelines:
  - Murray Bridge to Onkaparinga
  - Mannum to Adelaide
  - Swan Reach to Paskerville
  - Myponga to Adelaide
  - Morgan to Whyalla
  - Tailem Bend to Keith
  - Glenelg to Adelaide



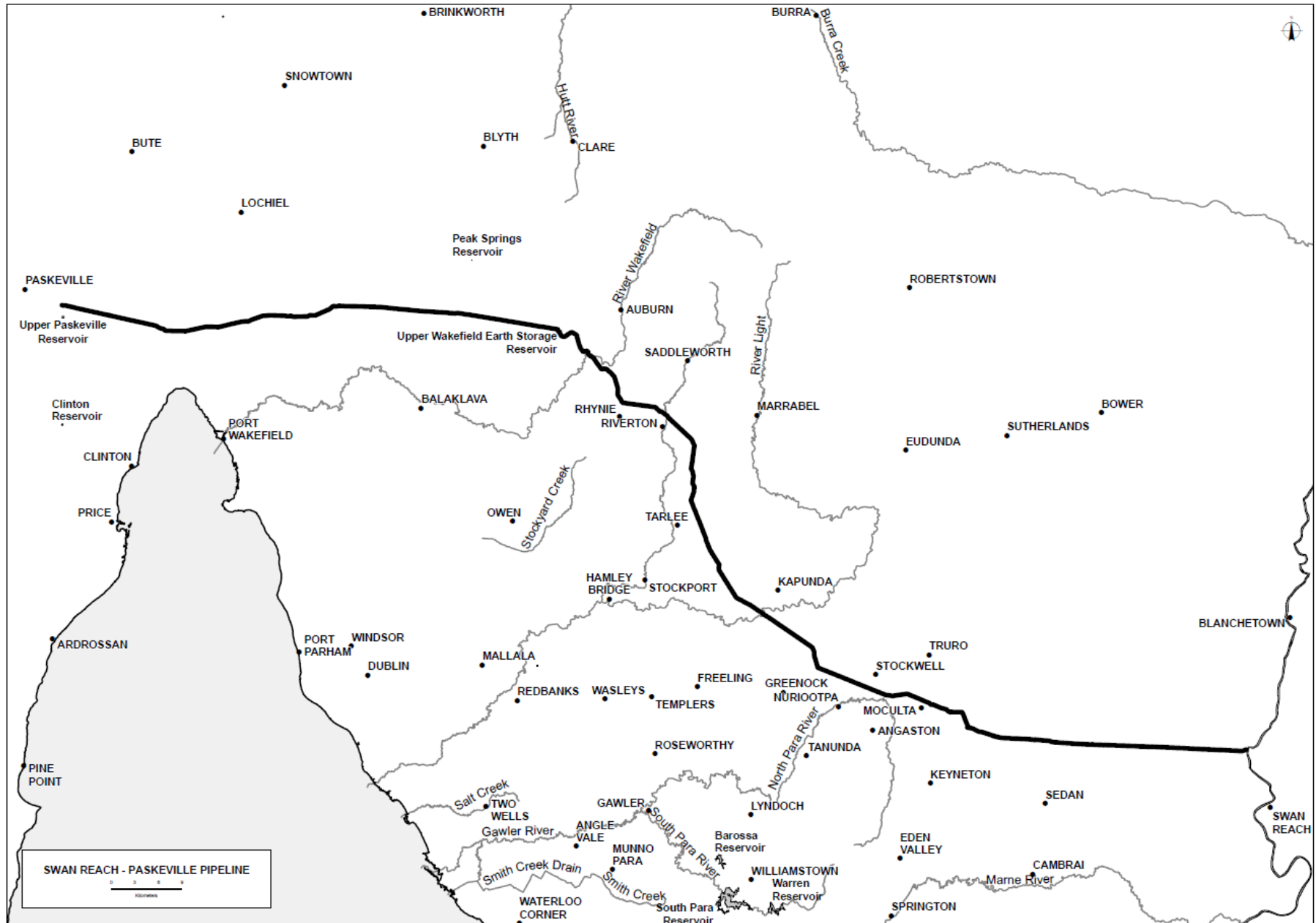
# Murray Bridge to Onkaparinga



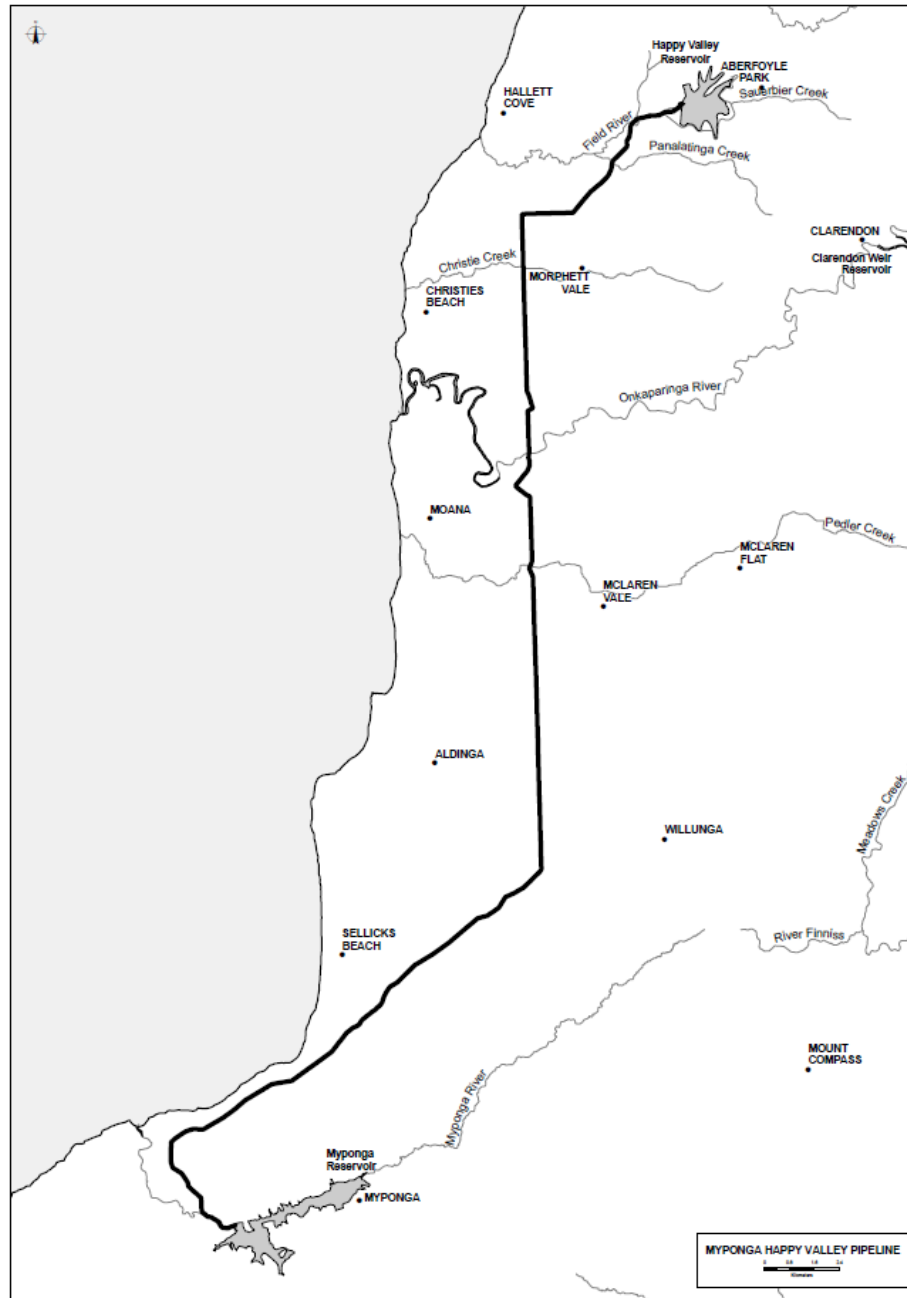
# Mannum to Adelaide



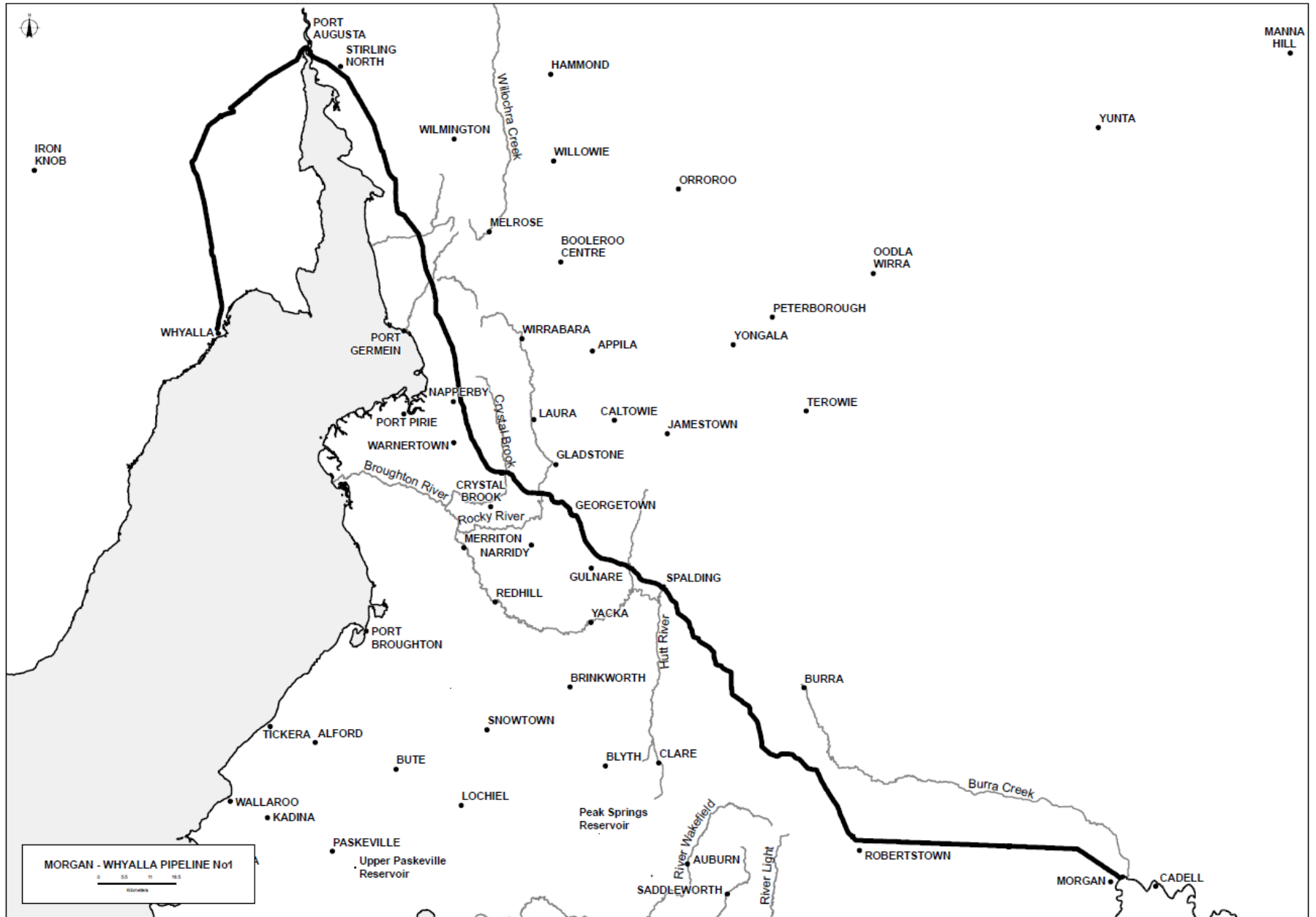
# Swan Reach to Paskerville



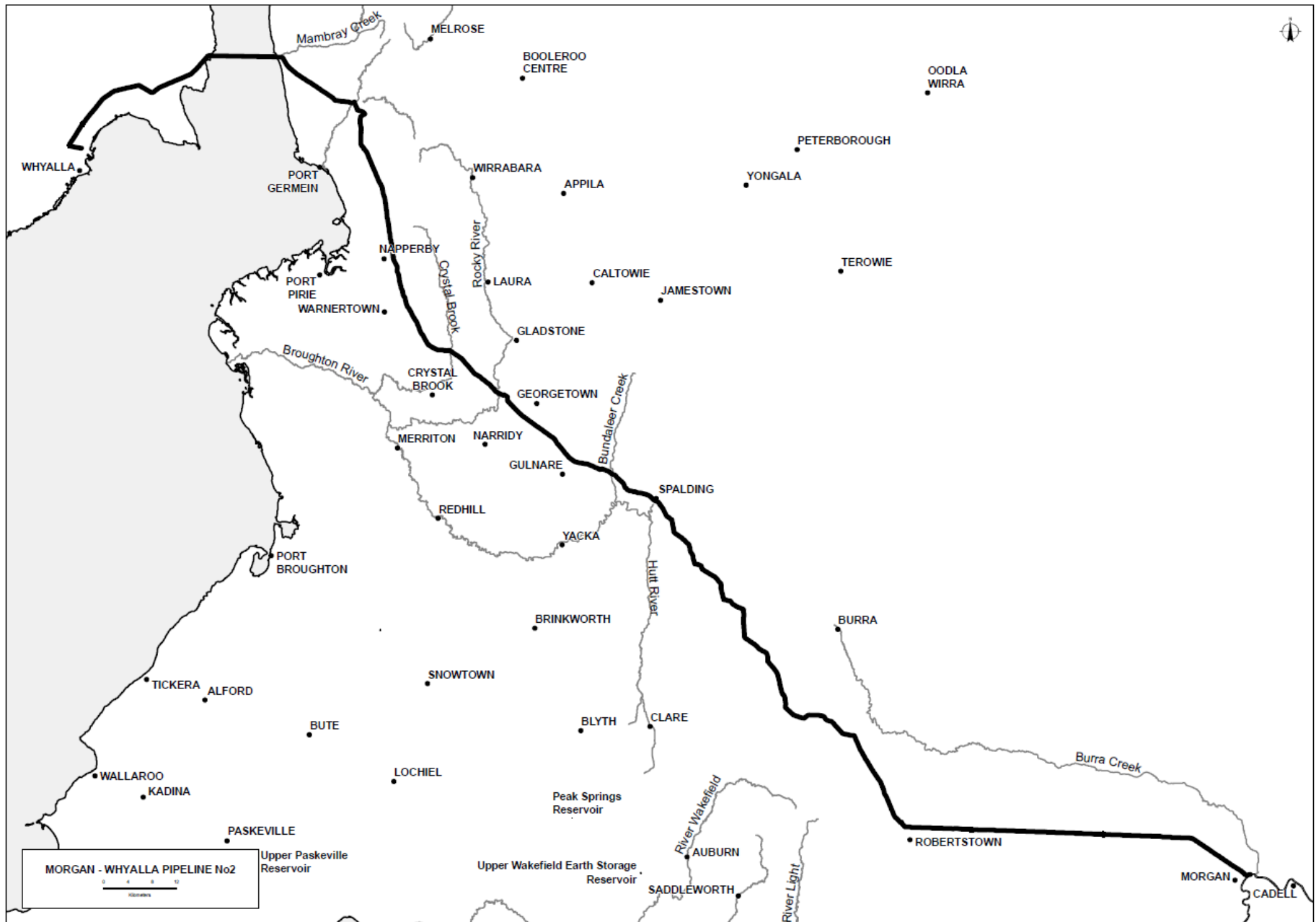
# Myponga to Adelaide



# Morgan to Whyalla



## Morgan to Whyalla (2)



# Tailem Bend to Keith

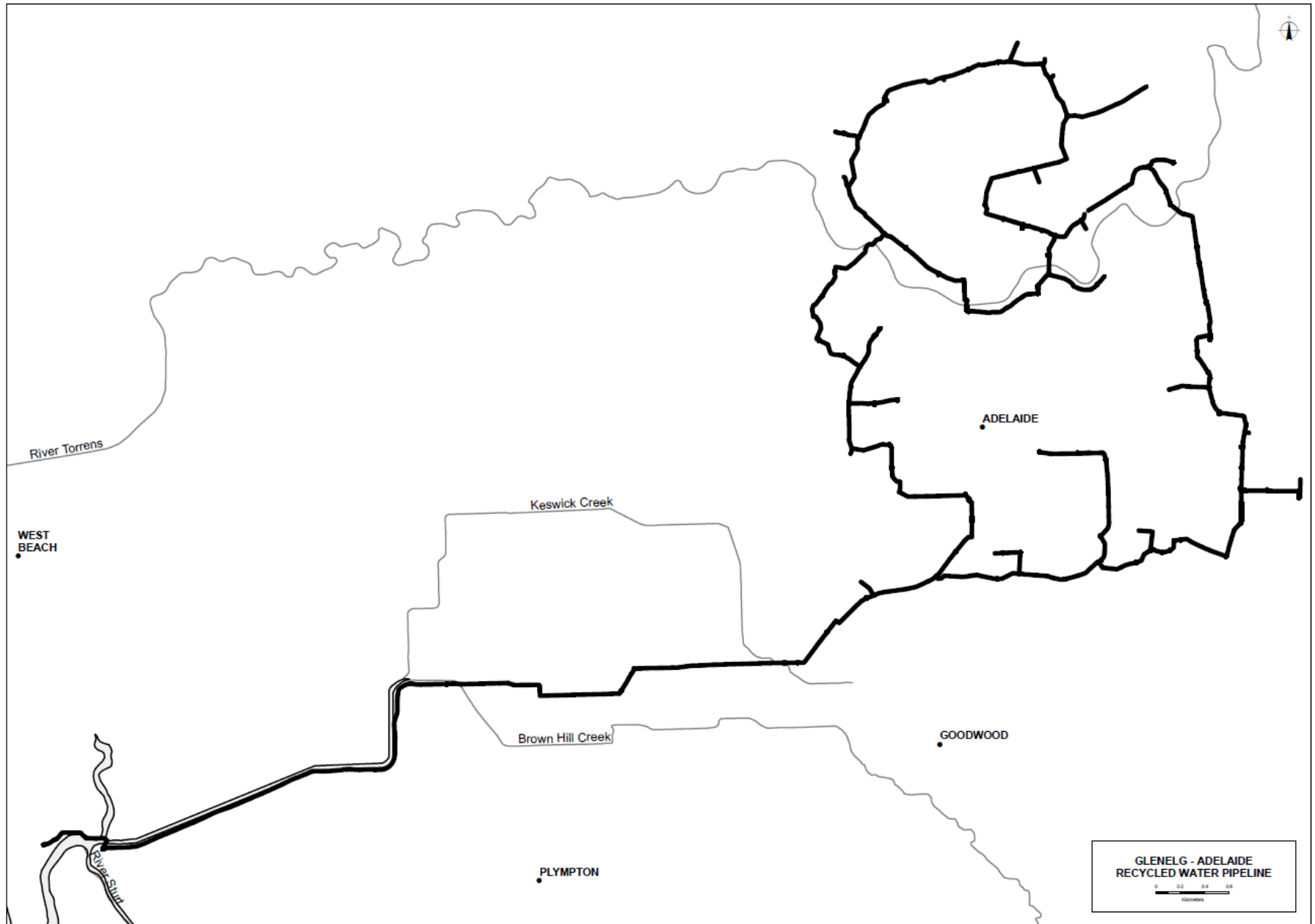


# Eyre Peninsula





# Glenelg to Adelaide



# Overview of TPA Regime



## SCOPE OF COVERAGE

- SA Water's bulk sewage and local sewage networks
- Infrastructure and infrastructure services that are necessary for the transport of water or sewage
- (Although only part of the Act applies):
  - 86F Information Brochure
  - 86H Information provided on a non-discriminatory basis
  - 86ZO Copies of access contracts to be supplied to Regulator
  - 86ZP Regulated operators must supply information to Regulator

# Overview of TPA Regime



## DOES NOT COVER

- Infrastructure operated by an **irrigation infrastructure operator**:

*If the infrastructure operator operates the water service infrastructure for the purposes of delivering water for the primary purpose of being used for irrigation, the operator is an irrigation infrastructure operator.*

- Other water industry entities are also not covered at this stage

# Broad Roles of Parties



## STATE GOVERNMENT/MINISTER

- Determines the extent to which the Regime applies
- Can issue a 'direction' under the *Public Corporations Act 1993* to SA Water which the arbitrator must take into account
- Considers the Commission's 5-yearly review of the Regime into whether or not the Regime should continue to apply

# Broad Roles of Parties



## REGULATED OPERATORS (SA WATER)

- Must keep separate accounts and records
- Must provide certain information to the access seeker
- Must negotiate in good faith
- Must provide information and documents to the Regulator
- Must comply with a requirement of the Arbitrator
- Must provide the Regulator with notice of any access proposals received and every access contract made

# Broad Roles of Parties



## ACCESS SEEKERS (PROPONENTS)

- If Regulated Operator reasonably requires, must provide further information about the Proponent's proposal
- Comply with a requirement of the Arbitrator
- Can terminate arbitration before an award is made, or choose to withdraw from an award

# Broad Roles of Parties



## ARBITRATOR

- Makes an award if conciliation has not been successful
- May obtain information on matters relevant to the dispute in any way the Arbitrator thinks appropriate
- Must take certain principles in the Act into account when making an award
- Must proceed with the arbitration as quickly as properly is allowed

# Broad Roles of Parties

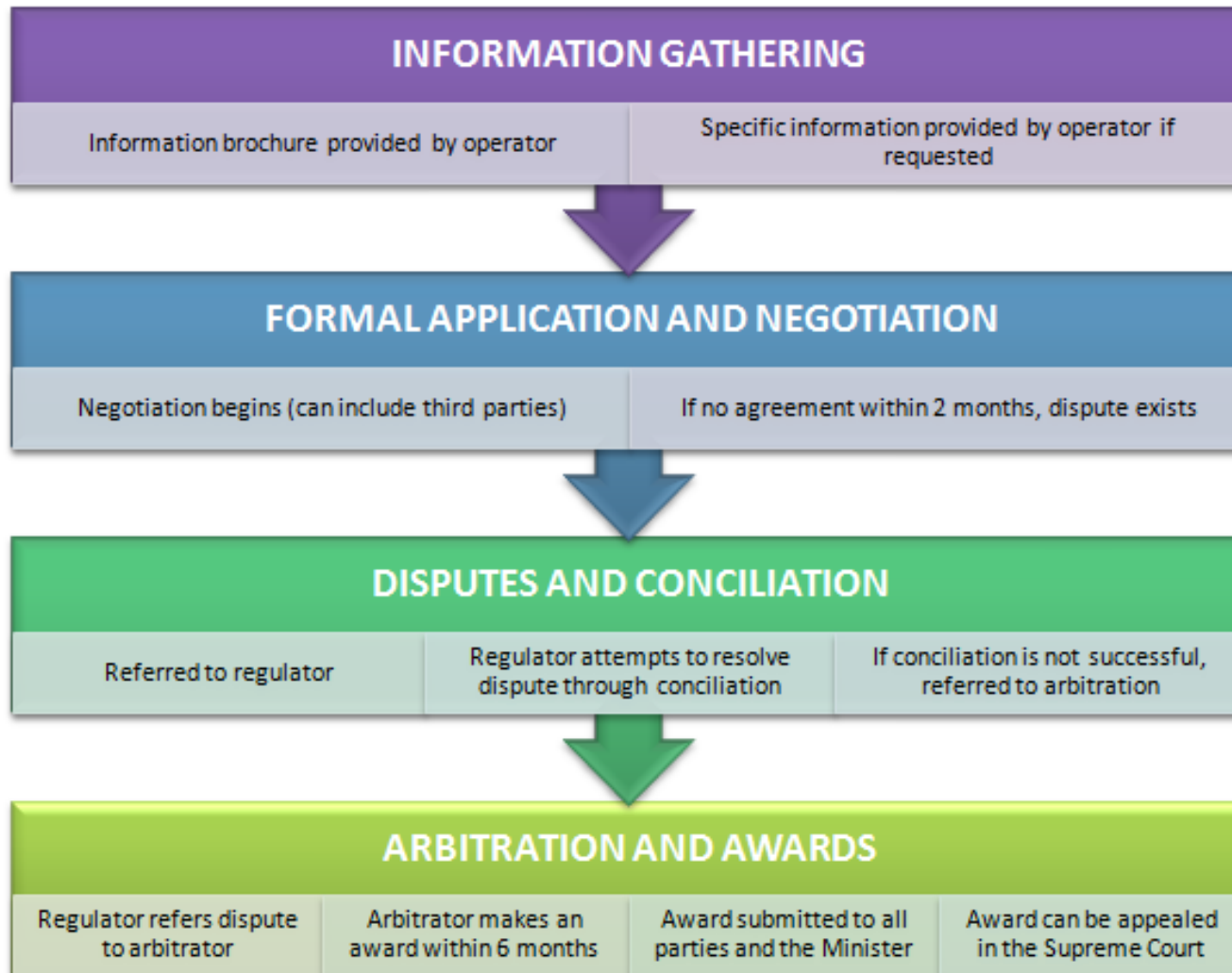


## THE COMMISSION

- Is the Regulator of the Regime, and provides an overall compliance and monitoring role
- Must seek to resolve a dispute by conciliation
- Determines whether a dispute should be referred to arbitration
- Reports annually on the work carried out by the Regulator as part of the Regime, and conducts 5 yearly reviews of Regime



# Overview of the Process



# Overview of the Process



## STAGE 1: INFORMATION GATHERING

### ■ Information Brochure

- the **terms and conditions** on which the Regulated Operator is prepared to make regulated infrastructure available for use
- the **procedures** that the Regulated Operator will apply in determining a proposal for access
- information about **relevant prices and costs** associated with gaining access
- a copy of a standard **access contract**
- **contact details** of the Operator's representative

# Overview of the Process



## STAGE 1: INFORMATION GATHERING

- **Specific information to assist proponent**
  - the extent to which the regulated infrastructure is **currently being utilised**
  - the extent to which it would be necessary, and technically and economically feasible, to **alter/add** to the Operator's infrastructure
  - whether the Operator is **prepared to provide access**:
    - if so, **general terms and conditions (including an indication of the likely price)** on which the Regulated Operator would be prepared to provide access;
    - if not, the **reasons why access cannot be provided**.

# Overview of the Process



## STAGE 2: FORMAL APPLICATION FOR ACCESS AND NEGOTIATION

### ■ Application

- If a Proponent wants access, they can make a **written access** proposal setting out:
  - the **nature and extent** of the required access (or variation)
  - **terms and conditions** for access (or variation), that Proponent considers reasonable and commercially realistic.
- Within 1 month, Operator is to notify Proponent of any affected third parties, and give an indication of:
  - **whether the Operator is prepared to provide access** and, if so, on what terms and conditions
  - if some **alteration/addition** is required, whether they would agree to this, and on what terms.

# Overview of the Process



## STAGE 2: FORMAL APPLICATION FOR ACCESS AND NEGOTIATION

### ■ Negotiation

- If negotiations begin, the Regulated Operator must negotiate in **good faith**, with a view to reaching agreement on whether the Proponent's requirements could reasonably be met, and, if so, **the terms and conditions**
- The Operator may seek **input from other regulatory bodies** (e.g. EPA, Health, OTR).

# Overview of the Process



## STAGE 2: FORMAL APPLICATION FOR ACCESS AND NEGOTIATION

- **Pricing: Disclosure of access price**
  - *information brochure* must include information about **relevant prices and costs** (general in nature)
  - *specific information to assist the formulation of a proposal*, should include general terms and conditions – including an indication of the **likely price**
  - *after receiving the formal access proposal*, the Operator must notify the Proponent as to whether they are prepared to provide access and, if so, on what **terms and conditions**

# Overview of the Process



## STAGE 2: FORMAL APPLICATION FOR ACCESS AND NEGOTIATION

### ■ Pricing: Setting of the access price

- Minister for Water and the River Murray indicated in Parliament during the debate of the Bill, that

*“SA Water would be expected to establish contracts for access to its network infrastructure services on the basis of **retail prices minus avoidable costs** that SA Water, as the access provider, could avoid”*

[Hansard, 16 June 2015]

- This is to be achieved through the issuance of a Direction to SA Water by the Minister prior to 1 July 2016, which the Arbitrator must take into account.

# Overview of the Process



## STAGE 3: DISPUTES AND CONCILIATION

### ■ Dispute

- If, **after 2 months**, the Regulated Operator, the Proponent, and any interested third parties have not agreed on terms for the provision of access, **a dispute automatically exists**.
- A party to the dispute may then refer the dispute to the Regulator.



# Overview of the Process



## STAGE 3: DISPUTES AND CONCILIATION

### ■ Conciliation

- The Regulator must, in the first instance, seek to resolve the dispute by conciliation.
- The Regulator **need not attempt to resolve a dispute** by conciliation if, in the Regulator's opinion:
  - the subject-matter of the dispute is **trivial, misconceived or lacking in substance**; or
  - the parties **have not negotiated in good faith**.

# Overview of the Process



## STAGE 4: ARBITRATION AND AWARDS

### ■ Arbitration

- If a dispute is **not resolved by conciliation**, after Regulator has made reasonable attempts to do so, or
- It **appears unlikely** that a dispute can be resolved by conciliation, or
- If the dispute is not resolved **within 6 months** of being referred to the Regulator, the Regulator may refer the dispute to arbitration

# Overview of the Process



## STAGE 4: ARBITRATION AND AWARDS

### ■ **Arbitration**

- The Arbitrator:
  - Selected by the Regulator
  - Properly qualified
  - Independent of the parties of the dispute
  - is not subject to the control or direction of the South Australian Government in any capacity
  - has no direct, or indirect, interest in the outcome of the dispute.

# Overview of the Process



## STAGE 4: ARBITRATION AND AWARDS

### ■ Arbitration

- Principles the Arbitrator must take into account:
  - **Objects** of the Act
  - Operator's **business interests** and investment
  - **Costs** to the operator of providing access
  - Current **contractual obligations** of the Regulated Operator
  - Any **operational and technical requirements**
  - The **economically efficient operation** of any regulated infrastructure

# Overview of the Process



## STAGE 4: ARBITRATION AND AWARDS

### ■ Arbitration

- Arbitrator cannot make an award inconsistent with:
  - *The Natural Resources Management Act 2004*
  - *The Safe Drinking Water Act 2011*
  - *The South Australian Public Health Act 2011*
  - *The Environmental Protection Act 1993*
  - Any other law or legislative requirement relating to health, safety or the environment.

# Overview of the Process



## STAGE 4: ARBITRATION AND AWARDS

### ■ Arbitration

- Other procedural matters relating to Arbitrator:
  - May order the **delivery, discovery and inspection of documents**, or require someone to appear to **give evidence**
  - Do **anything else necessary** for the expeditious hearing and determination of the dispute
  - May give **public notice** of arbitration outcome
  - The Arbitrator has a duty to proceed with the arbitration as **quickly as is possible**, allowing for proper investigation and consideration of all relevant matters
  - An award must be made **within 6 months**.

# Overview of the Process



## STAGE 4: ARBITRATION AND AWARDS

### ■ Award

- A Proponent can (within 7 days) elect not to be bound by the award.
- If this happens
  - the Proponent is precluded from making another proposal related to the same matter for 2 years
  - the Proponent must bear all costs of the arbitration
- Otherwise, the costs of an arbitration are to be divided amongst the parties in proportions determined by the Arbitrator

# Overview of the Process



## STAGE 4: ARBITRATION AND AWARDS

### ■ Appeals

- An award, or the decision to not make an award, can only be appealed in the Supreme Court.
- Unless the Court decides to suspend the award, it continues to be in operation, pending the outcome of the appeal

### ■ Review of Regime

- A public review, to be conducted by the regulator every 5 years to determine whether the regime should continue to apply.



# Q&A



Thank You