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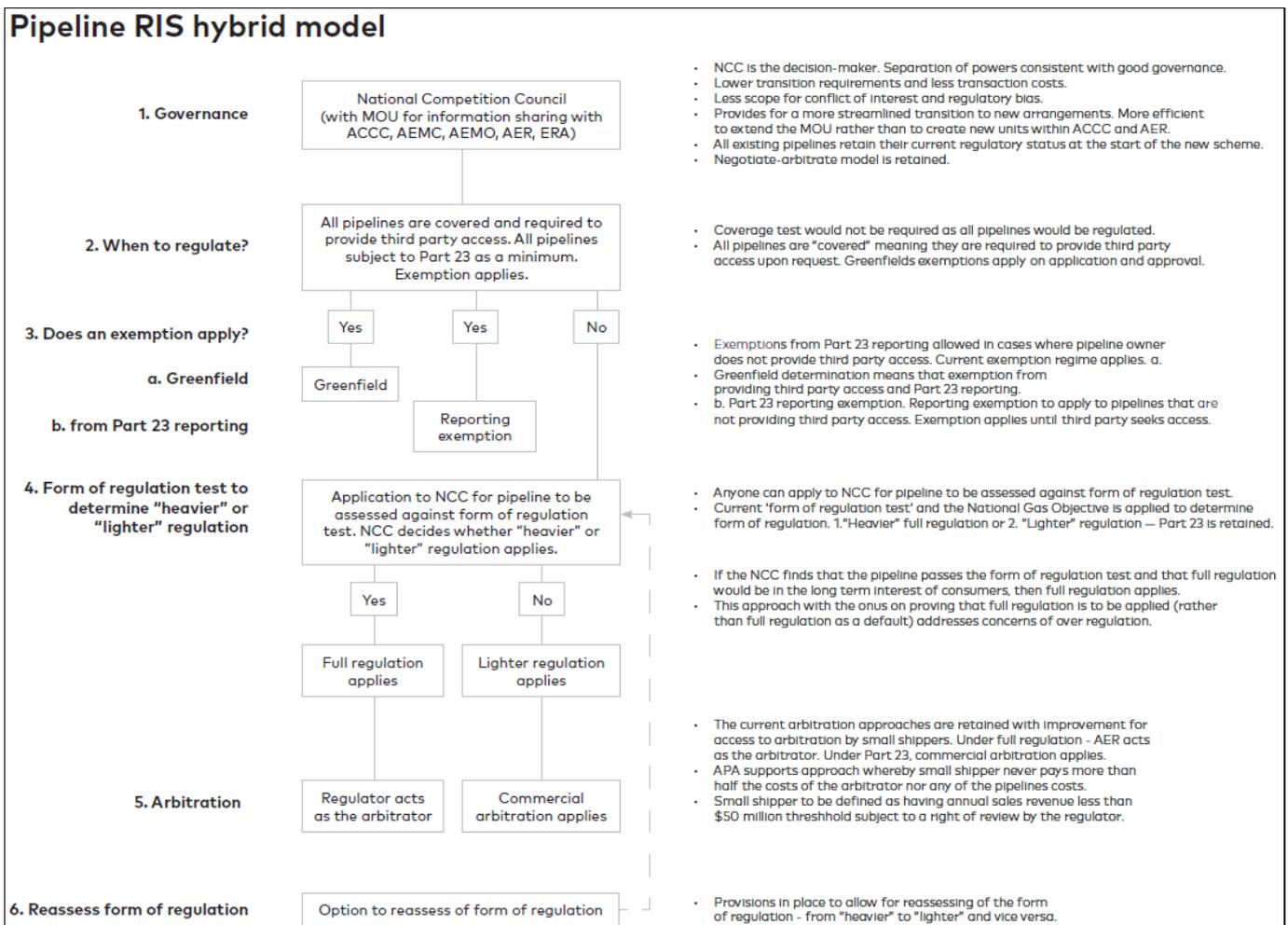
By email: gas@environment.gov.au

Consultation RIS – Gas Pipeline Regulation Reform

APA Group (APA) welcomes the opportunity to comment on the October 2019 COAG Regulation Impact Statement for consultation, "Options to improve gas pipeline regulation".

The consultation RIS includes a number of option "packages" of reforms. These options and the level of detail behind each presented in the RIS have provided a solid basis for discussion. APA believes by blending elements of the various options together, a more effective policy outcome is achievable. APA's "RIS hybrid" proposal reflects many of the attributes outlined in the various RIS option packages, drawing pertinent features from the RIS option packages and combining them into a solution which addresses key concerns identified in the RIS whilst retaining many of the positive features of the existing regulatory framework.

The APA RIS hybrid proposal can be summarised as follows:



APA Group comprises two registered investment schemes, Australian Pipeline Trust (ARSN 091 678 778) and APT Investment Trust (ARSN 115 585 441), the securities in which are stapled together. Australian Pipeline Limited (ACN 091 344 704) is the responsible entity of those trusts. The registered office is Level 25, 580 George Street, Sydney NSW 2000.

The key features of this model are outlined below:

Coverage

The RIS notes the findings of the AEMC and NCC, that the coverage test has been effectively bypassed with the advent of Part 23 of the National Gas Rules. The RIS hybrid model negates the need for a coverage test as all pipelines would be subject to regulation with the minimum being Part 23. The negotiate-arbitrate model would be retained, with exemption for existing greenfield pipelines.

Under this view of the RIS hybrid model, the coverage test would not be required and there would be no need for an additional market power test beyond that included in the Form of Regulation factors.

With all pipelines being subject to regulation (except those qualifying for the greenfield exemption), pipeline regulation in Australia would then be comparable to other countries identified in the RIS where the default position is that pipelines are regulated.

Greenfields exemption

APA considers a modified greenfields exemption mechanism can meaningfully encourage new pipeline investment. The greenfields exemption mechanism needs to align the period of exemption with the developer's investment case and recognise that pipelines are developed in a competitive environment and as a consequence project information is commercially sensitive. The risk of regulation being imposed after a competitive process has been won changes the risk profile of the investment decision-making process. The increased certainty of a greenfields exemption would allow new pipeline investment to occur at lower foundation contract tariffs. This is discussed in more detail in the commentary on chapter 7.

Form of Regulation test

Under the RIS hybrid model, assuming all existing pipelines retain their current regulated status at the start of the new scheme, the current test applying the existing Form of Regulation factors in s16 of the National Gas Law is then utilised to determine which pipelines should move from "lighter" Part 23 regulation to "heavier" full regulation or vice versa.

The current Form of Regulation factors include a "degree of market power" test and together with a consideration of the National Gas Objective negate the need for an additional market power test.

Under the RIS hybrid model, this form of regulation test would be applied by the NCC. The separation of powers between the body determining the form of regulation and the body regulating is consistent with good governance. The NCC currently has access to information held by the ACCC and the Regulator under the August 2018 ACCC – NCC Protocol for handling confidential information.

The RIS hybrid model would incorporate the proposal that any customer or potential customer, regulator or the ACCC could apply for the pipeline to move between Part 23 and full regulation.

"Lighter" regulation

Under the RIS hybrid proposal for "lighter" Part 23 regulation, commercial arbitration using the current "workably competitive market" criteria would be retained.

To address concerns that small customers may not be able to readily access arbitration, APA supports the RIS proposal that the customer should never pay more than half the costs of the Arbitrator, nor any of the pipeline's costs.

A further refinement might be to establish a definition of “small shipper”. One option might be a test based on customer annual sales revenue with the threshold be less than a specified amount such as \$50 million.

The RIS hybrid proposal also supports the AEMC proposed amendments to the full regulation arbitration processes and time frames to align them with the Part 23 provisions.

Information requirements

Information requirements would be framed around those needed to enhance the achievement of the COAG Energy Council objective for developing transparent and liquid gas markets. A key element would be to align information disclosed under Part 23 and full regulation but with the recognition of information currently available on the Gas Bulletin Board.

The current reforms proposed under the RIS present an ideal opportunity to harmonise the package of information available, in light of recent financial reporting guidelines for non-scheme (Part 23) and Light Regulation pipelines, and the requirement for annual reporting Regulatory Information Notices to be published for fully regulated pipelines.

In the context of the Energy Charter’s “Better Together” initiatives, leading members of the gas pipeline industry propose that a series of workshops be undertaken with customers, pipeliners, and other stakeholders to:

- understand the information needs of access seekers;
- understand the information currently available and how to access it;
- identify any gaps between information needs and information currently available; and
- develop a collaborative way forward to address any gaps identified.

This approach will benefit from the Energy Charter’s advantages of collaboration, co-design, flexibility, buy-in and peer pressure. Pipeline service providers would voluntarily disclose additional information in response to the feedback received.

Price discrimination

The RIS questions the role of price discrimination in the negotiate-arbitrate regime, although there appears to be a number of conflicting definitions of price discrimination. APA favours the NERA definition, referring to “undue price discrimination”, in which the price falls outside the “guardrails” defined by marginal and stand-alone costs.¹ APA considers that a requirement that all customers pay the same price would inhibit the ability of pipeliners to work with customers to meet their energy needs.

As noted in the inaugural report from the Energy Charter Independent Accountability Panel, APA had worked closely with an important customer, Incitec Pivot, to deliver an affordable outcome in an environment of rising energy prices:

The Panel has noted several examples of energy businesses working together to deliver better outcomes [for customers]. An example from the APA Disclosure describes working with gas producers and another pipeline operator to deliver a complex gas supply to Incitec Pivot. This delivered a better affordability outcome for a large enterprise customer heavily exposed to rising energy prices and competition from international trade.

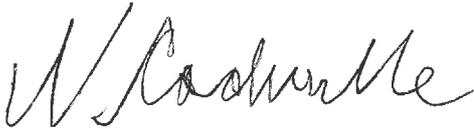
APA supports price discrimination to be permitted within the marginal cost/stand alone cost “guardrails”, which allows for businesses to be flexible and meet the complex needs of customers.

¹ NERA, International Review of Pipeline Regulation: Vol. 1 - Synthesis and Reform Options, Vol 1, 28 June 2019, s5.2.1.

APA's response to the RIS thus represents a package of reforms that will meet the Council's existing concerns and promote the Council's objective of a free and liquid gas market.

APA would value an opportunity to discuss this submission more fully with policy makers. Please contact Peter Bolding, General Manager Strategy and Regulatory on (02) 9693 0053 or peter.bolding@apa.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'N. Codevelle', written in a cursive style.

Nevenka Codevelle
Group Executive
Governance, Risk & Legal

Pipeline Regulation Consultation Regulation Impact Statement – Submission from APA Group

Chapter 5: Effectiveness of Part 23

No.	Questions	Feedback
1	<p>If you are a shipper that has negotiated with the operator of a non-scheme pipeline since August 2017, or a service provider of a non-scheme pipeline, how effective do you think Part 23 has been in terms of:</p> <p>(a) enabling shippers to make more informed decisions about whether to seek access and to assess the reasonableness of a service provider's offer?</p> <p>(b) reducing the information asymmetries and imbalance in bargaining power that shippers can face in negotiations?</p> <p>(c) facilitating timely and effective commercial negotiations between shippers and service providers?</p> <p>(d) constraining the exercise of market power by service providers during negotiations by providing for a credible threat of intervention by an arbitrator?</p> <p>(e) enabling disputes that cannot be resolved through negotiations to be resolved in a cost-effective and efficient manner?</p>	<p>APA considers that Part 23 is working well and as intended.</p> <p>This view has been shared by ACCC in its July 2019 Interim Report:¹</p> <p>In general, the ACCC is of the view that Part 23 is working as intended. In particular, there are signs (outlined above) that Part 23 is having a positive effect on pipeline prices and the contracting environment. The ACCC has not found evidence to suggest that the architecture of Part 23 is fundamentally flawed, but some elements require strengthening to address the issues we have identified.</p> <p>Since Part 23 commenced, APA has signed or varied over 90 contracts that were eligible for the commercial arbitration regime, with no negotiations being referred to arbitration.</p> <p>APA considers, consistent with the vision of Part 23, that the threat of arbitration (combined with information disclosure) contributes to levelling the playing field for negotiation.</p>
2	<p>Do you agree with the observations and recommendations made by:</p> <p>(a) respondents to the OGW shipper survey (see section 5.1)? If not, please explain why not.</p> <p>(b) the Brattle Group in its review of the financial information (see section 5.2)? If not, please explain why not.</p>	<p>APA considers that the OGW survey, due to its low response rate, provides limited useful insights into shipper experiences. APA encourages greater customer engagement, noting the low levels of survey response.</p> <p>The Energy Charter and Better Together initiatives can provide an effective vehicle at the “whole of industry” level.</p>

¹ ACCC, Gas inquiry 2017-2020 Interim report July 2019, p27.

No.	Questions	Feedback
	(c) the ACCC in its review of the operation of Part 23 (see section 5.3)? If not, please explain why not.	<p>Brattle made some valuable observations, particularly relating to the level of explanatory information provided in the Basis of Preparation document. We will take many of these comments on board when we next update the BoP. However, APA is concerned with the Brattle suggestion to reconcile the accounting book value and RCM values. These amounts are developed under different accounting frameworks, and will therefore never reconcile.</p> <p>The ACCC's review of the operation of Part 23 made some very encouraging comments, notably that the contracting environment had improved following the introduction of Part 23 and there were signs Part 23 was having a positive effect on transportation prices.</p> <p>The ACCC's commentary on the quality of information provided reflects the early operation of a new reporting regime. While there will be matters of judgement on which reasonable parties may disagree, improvements in the clarity and consistency of reporting could be expected as experience with the reporting framework matures.</p> <p>In APA's view, these matters are best addressed in a collaborative environment in the context of the proposed "Better Together" workshops.</p>
3	Are there any changes that you think need to be made to Part 23 to make it more effective or efficient in terms of achieving its stated objective (i.e. to facilitate access at prices and on other terms and conditions that, so far as practical, reflect the outcomes of a workably competitive market)?	APA considers that one key area in which there is some work to be done is in clarifying the reporting requirements under Part 23. Moreover, as discussed under Chapter 9 on information provision, APA proposes to work with shippers, regulators and other interested parties to develop a harmonised reporting suite which meets the needs of all parties.

Chapter 6: Potential problems and objectives of action

No.	Questions	Feedback
4	Do you agree with the problems that have been identified and what effect do you think they could have on shippers, service providers, the relevant regulator, consumers and/or other gas market participants?	APA considers that the "when to regulate" question has largely been overtaken by the advent of Part 23 – all pipelines are now effectively regulated. In the context of concerns on over-regulation, APA notes that those pipelines that would reasonably be exempt from regulation (single shipper pipelines, etc) have already been subject to the regulatory framework through the Part 23 exemption process.

		APA also notes that some of the issues raised in the RIS have been addressed by other mechanism that are already in train – for example, information reporting for current Light Regulation and Full Regulation pipelines has been addressed by the recent Financial Reporting Guideline for Light Regulation Pipelines and the Annual Reporting Regulatory Information Notices issued to full regulation pipelines.
5	Are there any other problems that you think should be considered as part of the RIS (e.g. access to regional pipelines)? If so, please set out what they are, what effect you think they could have on shippers, service providers, the relevant regulator, consumers and/or other gas market participants, and how you think the problem should be addressed.	APA has not identified any other pipeline regulation problems that require addressing.
6	Are there any other objectives that you think the Energy Council should be pursuing? If so, please set out what they are.	APA has long held that the answer to the current gas crisis is to increase the amount of gas that is able to get to market – APA considers this is an important policy area for the Energy Council to pursue.

Chapter 7: When a pipeline should be subject to regulation and how decisions should be made

No.	Questions	Feedback
7	<p>Do you think that the current threshold for regulation (i.e. all pipelines providing third party access are subject to regulation) is giving rise to over-regulation (see sections 7.2.1 and 7.3.1), or do you think the current threshold should be maintained?</p> <p>(A) If you think it is giving rise to over-regulation:</p> <p>(a) How significant do you think this issue is and what are the consequences likely to be?</p> <p>(b) Do you think the risk of over-regulation should be addressed by:</p> <p>(i) including an exemption mechanism in the regulatory framework to enable pipelines that do not have substantial market power to obtain an exemption from regulation?</p> <p>(ii) limiting the application of regulation to those cases where it is established that the pipeline has substantial market power?</p> <p>(iii) another means?</p> <p>(B) If you think that (i) or (ii) should be implemented, do you think the test for establishing whether a pipeline has substantial market power</p>	<p>APA concurs with the findings of the AEMC and NCC – for pipelines not subject to a greenfields exemption, the coverage determination process has been effectively bypassed.</p> <p>APA therefore supports the alternative model in the RIS, in which the coverage test is removed – that is, all pipelines not subject to a greenfields exemption should be considered to be “covered” and therefore subject to some form of regulation. Under this proposal, all pipelines would be “covered” and subject to “lighter” regulation at a minimum.</p> <p>It is important to consider what “coverage” means for a pipeline. In summary, if a pipeline is “covered”, it is required to provide third party access on request, subject to a negotiate-arbitrate access regime. Depending on the outcomes of a “form of regulation” test, access negotiations may be influenced by different levels of regulatory oversight, in particular whether the economic regulator has investigated and published a Reference Tariff for access to the pipeline under a Reference Service.</p>

	<p>should be based on the combined market power-NGO test proposed by the ACCC (see Box 7.6)?</p>	<p>APA's business model is to own and operate pipelines for the purpose of providing third party access. In this respect, the key aspect of "coverage", the requirement to provide third party access on request, has been addressed by the business model rather than the regulatory framework.</p> <p>As the Council notes, the notion of a 'coverage' test is unique in international circles:²</p> <p>There is not a test for 'third party access' in other jurisdictions, because pipelines are generally already vertically separated and sector specific regulation applies. In the US and Canada, third party access on non-discriminatory terms is also mandated.</p> <p>Accordingly APA questions whether the "coverage" test has ongoing applicability in Australia. As the AEMC found,³</p> <p>... an unintended consequence of the introduction of Part 23 of the NGR is that in the case of pipelines that provide third party access, the coverage determination is no longer a test of whether regulation should be applied or not, but instead is a test of which form of regulation should be applied (full or light on the one hand, or Part 23 on the other). ...</p> <p>... as noted by the NCC, the practical effect of introducing Part 23 of the NGR has been to apply near-universal regulation regardless of whether a market failure has been identified on a case-by-case basis. Specifically, the market failure of service providers using market power is assumed. The coverage determination process has in effect been bypassed.</p> <p>Of course, a requirement to provide third party access on request does not mean that third party access will ever be sought in practice – there are many single user or site-specific pipelines for which open access is not at issue. However, these pipelines have already been required to engage with the regulatory framework through the process of requesting exemption from the Part 23 reporting requirements.</p>
<p>(a) If so, do you think the onus of demonstrating this test is met (or not met) should sit with the decision-maker or the service provider?</p>		
<p>(b) If not, please explain why and what test you think should be employed.</p>		

² Consultation RIS p26.

³ AEMC, Review into the scope of economic regulation applied to covered pipelines, July 2018, p44.

		<p>Regarding the risk of over-regulation, APA notes that approximately 80 pipelines are listed on the AER website,⁴ and an additional 39 pipelines are listed on the ERA website,⁵ as having lodged applications for exemption from the Part 23 reporting requirements. This proposal would limit their exposure to over-regulation to that already incurred.</p> <p>As discussed elsewhere in this submission, this proposal would retain the current suite of exemptions (including the “does not provide third party access” exemption) from the Part 23 reporting requirements. While these exempt pipelines would, in fact, be required to provide third party access on request, their involvement with the regulatory regime would be very limited until such time as a formal access request was received.</p>
8	<p>Do you think the application of Part 23 to pipelines providing third party access that have obtained a greenfield exemption is distorting investment incentives for greenfield pipelines (see sections 7.2.2 and 7.3.2), or do you think the current approach should be maintained?</p> <p>If you think it is distorting investment incentives:</p> <p>(a) How significant do you think this issue is and what are the consequences likely to be?</p> <p>(b) Do you think this issue should be addressed by:</p> <ul style="list-style-type: none"> (i) providing these pipelines with a full exemption from regulation? (ii) providing these pipelines with an exemption from the Part 23 arbitration mechanism, but not from the disclosure and negotiation elements of Part 23? (iii) another means? 	<p>It is important to consider the scope of a greenfields exemption in the context of the above recommendations on the coverage test. Chapter 5, Part 2 of the National Gas Law⁶ is clear that the greenfields exemption is an exemption from “coverage”. We note that the role of “coverage” was to impose a requirement to provide third party access on request, and submission to a particular form of regulation, as determined under the application of a Form of Regulation test.</p> <p>The RIS hybrid model recommends that the coverage test should be abandoned in favour of a presumption that all pipelines are covered – as a consequence, the role of the greenfields exemption needs to be refined.</p> <p>As identified in the RIS the greenfields exemption in its current form has little application. The reason for this is that it fails to be suitable for pipelines developed in competitive processes where the maintaining of confidential information is critical to maximising the opportunity to win the competitive process.</p> <p>A key problem with the current greenfields exemption regime is the need to apply for the exemption, and therefore disclose significant amounts of commercial-in-confidence information, before the exemption is granted. Moreover, the time required to undertake the exemption approval process may delay the competitive process associated with approving the pipeline</p>

⁴ <https://www.aer.gov.au/networks-pipelines/non-scheme-pipelines/public-register-of-non-scheme-pipeline-exemptions>

⁵ <https://www.erawa.com.au/gas/gas-access/non-scheme-pipelines/public-register-of-non-scheme-gas-pipelines>

⁶ NGL ss 149-159

investment. These factors considered, the greenfields exemption may be more effective in promoting new pipeline investment if it were to be applied automatically to all greenfields pipelines, rather than being subject to a public application process.

With the removal of the coverage test, the greenfields exemption would be an exemption from all aspects of Part 23 – an exemption from an obligation to submit to both the information disclosure and arbitration provisions associated with regulation.

APA considers that retention of the greenfields exemption framework for pipelines that provide third party access will enhance the development of future pipelines.. To understand the importance of this, it is useful to keep in mind the process under which greenfields investment would occur.

The key feature of greenfields investment is that it occurs in the context of a competitive environment. For a particular project, a number of pipeline companies will compete for the opportunity to build the greenfields pipeline, which will be undertaken through a foundation shipper contract.

While the successful pipeline proponent may be the company that can build the pipeline project at lowest cost, it is more likely that the successful proponent will be the one that makes the most optimistic assumptions regarding the scope for future load growth and contract renewal. Put another way, the successful proponent will be the one that takes the greatest risk regarding the residual value of the pipeline at the end of the foundation contract term – or the lowest proportion of pipeline costs that will be recovered through the initial foundation contract.

The tariffs set through the foundation contract negotiation will therefore reflect the optimistic assumptions on load and revenue growth, and contract renewal, and reflect the competitive tension inherent in the greenfields pipeline development process.

The ability of the pipeline proponent to attract capital to the project will depend on the probability that those optimistic assumptions can be realised. This is where the risk of future regulation (or arbitration) becomes relevant, as uncertainty will ultimately be priced into any investment decisions.

		<p>If the pipeline proponent perceives an increased risk of post-construction regulation or arbitration being imposed, and importantly a risk of a regulator or arbitrator determining lower tariffs being applied to late-coming shippers, the optimistic future revenue assumptions underpinning the pipeline's development will be undermined. This, in turn, will reduce the proponent's willingness to take risk on a larger residual value, and inevitably result in higher foundation contract tariffs. Those gas-using projects unable to carry the higher tariffs will not proceed, with the cascading implications for employment and economic productivity. This would be a sub-optimal economic outcome produced by the failure of the greenfields exemption regime.</p> <p>APA also considers that there needs to be a link between the duration of the greenfields exemption and the pipeline investment horizon. The pipeline investment horizon might be in excess of 30 years, but the current greenfields exemption provides regulatory certainty for only 15 years. A longer greenfields exemption period would allow certainty of capital recovery over a longer time horizon, resulting in lower foundation tariffs.</p>
9	Why do you think:	<p>The limited utilisation of the greenfield exemption and Competitive Tender Process provisions reflects the fact that the construction of new pipelines takes place in a competitive market. Both regimes would require the disclosure of a significant amount of commercial-in-confidence information – it is this disclosure requirement that undermines the attractiveness of the greenfields and CTP approaches.</p> <p>Moreover, in a competitive market, it is the market itself which governs the terms and conditions on which the pipeline is constructed. There is no need for provisions such as the CTP in that environment.</p> <p>The greenfields and CTP provisions fail to be suitable for pipelines developed in competitive processes where the maintaining of confidential information is critical to maximising the opportunity to win the competitive process.</p>
	(a) the greenfield exemptions in the NGL have not been used by a greater number of service providers?	
	(b) the CTP provisions in the NGR have not been used by a greater number of shippers or governments?	
10	Do you think the greenfield exemptions and CTP provisions should be retained in the regulatory framework, or do you think:	<p>With the removal of the coverage test, the RIS hybrid model envisions that the greenfields exemption would be modified to provide an exemption from regulation, including the reporting and arbitration provisions of Part 23, and consequentially being subject to a Form of Regulation test.</p>
	(a) changes to the greenfield exemptions and/or CTP provisions are required?	
	(b) the greenfield exemptions and/or CTP provisions should be replaced with another mechanism that would provide potential developers with	

	greater certainty as to how new pipelines will be treated from a regulatory perspective, while also protecting potential users of these pipelines from exercises of market power?	
11	<p>Do you think the current approach to seeking access to pipelines that are not providing third party access should be maintained (i.e. a decision must be made by the relevant Minister having regard to the NCC's recommendations and the coverage test), or do you think it should be mandatory for all pipelines to offer third party access on a non-discriminatory basis, as it is in the US and Canada (see sections 7.2.3 and 7.3.3)?</p> <p>Please explain your response to this question and set out what you think the costs, benefits and risks are likely to be of mandating third party access.</p>	<p>APA's business model is to own and operate pipelines for the purpose of providing third party access. In this respect, the key aspect of "coverage", the requirement to provide third party access on request, has been addressed by the business model rather than the regulatory framework.</p> <p>APA considers that pipelines that do not normally provide third party access should be exempt from preparing the information required under Part 23 until such time as a formal access request is received. The current exemptions framework is suitable to this task.</p>
12	<p>If the current threshold for economic regulation is maintained and a test for regulation is only required for third party access and greenfield exemption decisions, which of the following tests do you think should be employed (see section 7.3.4) and why:</p> <p>(a) the coverage test; (b) an equivalent test to the recently amended Part IIIA test; (c) an NGO-style test; or (d) a combined market power-NGO test?</p>	<p>Under the RIS hybrid model, the coverage test is not required, in favour of a presumption that all pipelines are required to provide third party access on request removes the need for a discussion on the form and application of a coverage test.</p> <p>Removal of the coverage test also removes one of its biggest concerns - the high hurdle created by the criterion (a) "material" increase in competition in upstream or downstream markets.</p> <p>APA notes that a requirement for all pipelines to provide third party access on request does not mean that third party access would be sought on all pipelines. To address the risk of over-regulation, APA proposes that small pipelines, single shipper pipelines and those on which third party access has not been sought should not be required to prepare and publish the information required under Part 23, subject to the current reporting exemption regime in Rule 585(4).</p>
	<p>Do you think the onus of demonstrating the test is met (or not met) should sit with the decision-maker or service provider?</p>	
13	<p>Do you think the governance arrangements associated with third party access and greenfield exemption decisions are giving rise to unnecessary costs and delays, or do you think the current arrangements should be maintained (see sections 7.2.4 and 7.3.5)?</p>	<p>APA is concerned, from a governance perspective, that there is a risk of confirmation bias associated with the regulator deciding whether a business should be subject to regulation.</p> <p>The regulator, who is executing the regulatory arrangements, should not be the body deciding whether the regulatory economic action should be exercised</p>
	<p>If you think the current arrangements could give rise to unnecessary costs and delays:</p>	

	<p>(a) How significant do you think this issue is and what are the consequences likely to be?</p>	<p>– a different test requires different skills and perspectives. The ACCC is equally unsatisfactory, as it would be assigning the regulatory role to the AER, a subsidiary body.</p> <p>APA considers that this role has been ably filled by the NCC, a specialist body skilled in making these types of decisions. APA has not observed any unnecessary costs or delays associated with the current governance arrangements. Continuing to place this role in the hands of the NCC meets the skillset and separation of decision-making criteria.</p> <p>While the NCC already has access to all relevant public and confidential information held by the ACCC and AER through the August 2018 ACCC – NCC Protocol for handling confidential information,⁷ APA considers that the NCC could be empowered to request the ACCC to use its statutory information gathering powers to assist the NCC in the execution of its functions.</p> <p>The Productivity Commission considered the governance question in its 2004 Review of the Gas Access Regime,⁸ and its considered findings remain applicable today:</p> <p>[p509] The current arrangements clearly distinguish between a decision on whether a pipeline is to be covered and decisions on access arrangements for covered pipelines. ...</p> <p>This role differentiation is consistent with the principle of separating policy-type functions from administrative-type regulatory functions. The incentives of the NCC are not clouded by the prospect of having to implement and administer its own policy decision. If the same entity was responsible for both policy and administration, it is conceivable that decisions on policy could be inappropriately influenced by the administration experience. Similarly, there could be a contagion of administration decisions from a decision on coverage.</p> <p>[p516] A central principle for the design of the institutional arrangements for the Gas Access Regime is the distinction between</p>
<p>(b) Do you think this issue should be addressed by according a single organisation responsibility for making this decision? If not, please explain why not.</p>	<p>If so:</p> <p>(i) What expertise do you think this organisation should have?</p> <p>(ii) Which of the following organisations do you think should be responsible for making this decision:</p> <ul style="list-style-type: none"> - the ACCC? - the relevant regulator (i.e. the AER or the ERA in Western Australia)?the NCC? - another organisation? 	

⁷ ACCC – NCC Protocol for handling confidential information August 2018 [http://ncc.gov.au/images/uploads/ACCC-NCC_Protocol_for_Handling_Confidential_Information_\(PDF,_199KB\).pdf](http://ncc.gov.au/images/uploads/ACCC-NCC_Protocol_for_Handling_Confidential_Information_(PDF,_199KB).pdf)

⁸ Review of the Gas Access Regime, Productivity Commission Inquiry Report No 31, 11 June 2004.

			<p>policy and regulatory functions which has implications for the allocation of responsibilities among government agencies and decision makers.</p> <p>[p523] Whether to regulate and the form of regulation to apply are both policy decisions that require assessments of the scope for increased efficiency and thus the need for, and the intrusiveness of, regulation. The method of, and factors relevant to, making these assessments are similar. This similarity suggests that the same agency should make both assessments, which would be the NCC under current arrangements.</p> <p>[Recommendation 12.1] <i>The agency that recommends coverage of a pipeline, should also be responsible for recommending the form of regulation to apply to the pipeline.</i></p> <p>[Recommendation 12.2] <i>The agency responsible for making recommendations on pipeline coverage and form of regulation decisions (currently the National Competition Council) should be separate from the regulator actually responsible for administering the regulation (either monitoring or access arrangements with a reference tariff).</i></p>
14	If a change is made to the governance arrangements, do you think the same organisation should also be responsible for making form of regulation decisions (see Chapter 8)?		<p>APA considers, consistent with the principles of good governance, that it is important that different organisations make decisions surrounding the form of regulation and the application of that regulation. The current governance arrangements meet this criterion.</p>
15	Are there any other problems with this aspect of the regulatory framework that have not been identified in this chapter? If so, please outline what they are and how you think they should be addressed.		<p>None identified</p>

Chapter 8: Forms of regulation

No.	Questions	Feedback
16	<p>Do you think the use of the coverage test as a gateway between Part 23 and full regulation is resulting in under-regulation?</p> <p>(A) If not, please explain why not.</p>	<p>With the coverage test removed, the primary focus of the RIS hybrid model falls to the "Form of Regulation" test. In summary, APA considers that this should be a meaningful test, rigorously applied, which should not be taken lightly.</p>

	(B) If so:	<p>(a) How significant do you think this issue is?</p> <p>(b) Do you think the coverage test should be removed and a single test used for moving between the alternative forms of regulation? If so, do you think the single test should be based on:</p> <p>(i) the form of regulation test in s. 122 of the NGL (see section 3.1.1)?</p> <p>(ii) another test?</p> <p>(c) Do you think:</p> <p>(i) the onus of demonstrating that a particular form of regulation should apply to a pipeline should sit with the applicant or decision making body; or</p> <p>(ii) the onus should be on the service provider to demonstrate why a heavier handed form of regulation is not required?</p> <p>(d) Do you think the relevant regulator should play a greater role in monitoring the behaviour of service providers and be able to refer pipelines for a form of regulation assessment if it suspects market power is being exercised?</p>	<p>The RIS process has identified two primary approaches:</p> <ul style="list-style-type: none"> the existing test applying the Form of Regulation factors outlined in s16 of the National Gas Law; and a new “hybrid” market power plus National Gas Objective test. <p>The current test, requiring assessment against the Form of Regulation factors in s16 of the National Gas Law, already features market power tests, including such key factors as (a) barriers to entry, (d) market power and countervailing market power, (e, f) substitutes and elasticity of demand and (g) information available to aid negotiation.</p> <p>Moreover, NGL s122(2) requires:</p> <p>122—Principles governing the making or revoking of light regulation determinations</p> <p>(2) ...the NCC—</p> <p>(a) must have regard to the national gas objective; and</p> <p>(b) must have regard to the form of regulation factors; and</p> <p>(c) may have regard to any other matters it considers relevant.</p> <p>It is not clear that the proposed hybrid market power/NGO test differs substantially from the test currently in place. A change to the test has scope to introduce confusion into the marketplace.</p> <p>In summary, it is not clear that there is an identified need to change the current Form of Regulation test.</p>
17	<p>Do you agree that the inconsistencies and overlap between the three forms of regulation that are currently available under the regulatory framework are increasing the complexity and administrative burden for regulators, shippers and service providers?</p> <p>(A) If not, please explain why not.</p> <p>(B) If so:</p>	<p>(a) How significant do you think this issue is?</p> <p>(b) If the number of forms of regulation was reduced to two, do you think:</p> <p>(i) the heavier handed form of regulation should be based on:</p> <ul style="list-style-type: none"> full regulation (i.e. negotiate-arbitrate with reference tariffs)? direct price (revenue) control? another form of regulation? 	<p>There may be value to the marketplace in having a more streamlined regulatory framework, featuring only two categories as envisioned in the RIS hybrid model:</p> <ul style="list-style-type: none"> “lighter” regulation featuring a negotiate-arbitrate model with commercial arbitration in the event negotiations fail, similar to the existing Part 23; and “heavier” regulation featuring a negotiate-arbitrate model with ex-ante Reference Service and Reference Tariff determination, and regulatory arbitration in the event negotiations fail, similar to that applicable under the current “heavy” regulation conducted under Parts 8-12 of the National Gas Rules. <p>The exemption for greenfield pipelines would be retained.</p> <p>APA therefore sees merit in the proposed spectrum featuring the “lighter” and “heavier” forms of regulation outlined in the RIS.</p> <p>APA supports removal of Light Regulation subject to appropriate transitional arrangements. In particular, existing Light Regulation pipelines should default to a Part 23 style of “lighter” regulation. These transitional arrangements are discussed in response to question 41.</p>

	<p>(ii) the lighter handed form of regulation should be based on:</p> <ul style="list-style-type: none"> - the existing light regulation? - Part 23? - a strengthened Part 23 (i.e. the existing Part 23 plus the safeguards available under light regulation)? - another form of regulation? 	<p>On the question of further strengthening Part 23 for the features of light regulation, APA supports the “lighter” form of regulation including a prohibition on preventing or hindering access. The NGLs136 prohibition on inefficient price discrimination is more problematic, in that it would inhibit the operation of negotiations under the negotiate-arbitrate model.</p> <p>A constraint on price discrimination would inhibit the operation of the negotiate-arbitrate model and restrict the types of flexibility demanded by shippers to meet their energy needs.</p> <p>The RIS questions the role of price discrimination in the negotiate-arbitrate regime, although there appears to be a number of conflicting definitions of price discrimination. APA favours the NERA definition, referring to “undue price discrimination”, in which prices fall outside the “guardrails” defined by marginal and stand-alone costs.⁹ APA considers that a requirement for all shippers pay the same price would inhibit the ability of pipeliners to work with shippers to meet their energy needs.</p> <p>Flexibility to set different prices for customers allows businesses to be flexible and adapt to changing circumstances. For example, as noted in the inaugural report from the Energy Charter Independent Accountability Panel, APA had worked closely with an important customer, Incitec Pivot, to deliver an affordable outcome in an environment of rising energy prices:</p> <p style="padding-left: 40px;">The Panel has noted several examples of energy businesses working together to deliver better outcomes [for customers]. An example from the APA Disclosure describes working with gas producers and another pipeline operator to deliver a complex gas supply to Incitec Pivot. This delivered a better affordability outcome for a large enterprise customer heavily exposed to rising energy prices and competition from international trade.¹⁰</p> <p>APA supports price discrimination to be permitted within the marginal cost/stand alone cost “guardrails”, which allows businesses the flexibility to meet the complex needs of customers.</p>
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⁹ NERA, International Review of Pipeline Regulation: Vol. 1 - Synthesis and Reform Options, Vol 1, 28 June 2019, s5.2.1.

¹⁰ The Energy Charter Independent Accountability Panel, Building Trust Together Evaluation Report November 2019 2019 Energy Charter Disclosures, p.55

18	<p>Do you think there is a case for adopting a different lighter handed form of regulation for distribution pipelines?</p> <p>If so, do you think it should be based on:</p> <p>(a) the Default Price Path (DPP) approach used in New Zealand?</p> <p>(b) the negotiated settlements approach used in the US and Canada?</p> <p>(c) another form of regulation?</p> <p>Please explain your responses to these questions.</p>	<p>While not directly relevant to APA, it considers that, similar to the discussion on Light Regulation above, such a form of regulation would confuse the spectrum of regulatory models proposed.</p>
19	<p>Do you think additional measures are required in the regulatory framework to deal with dynamic market power?</p> <p>(A) If not, please explain why not.</p> <p>(B) If so:</p> <p>(a) Do you think the NGR should be amended to include:</p> <p>(i) an explicit right to interconnection to regulated pipelines?</p> <p>(ii) pricing principles for interconnections to regulated pipelines?</p> <p>(b) Do you think the NGR should be amended to prohibit regulated pipelines from cross-subsidising new capacity by requiring incremental pricing to be used where the cost of an expansion or extension would otherwise result in the price of existing capacity increasing?</p>	<p>APA's business model is the ownership and operation of pipelines for the purpose of providing third party access, including by way of interconnection. In this regard, APA considers that a Rule change is not required to mandate an activity that it undertakes as part of its normal business.</p> <p>Regarding rolled-in vs incremental pricing, the one-way rolled in pricing test (roll in only if average tariffs will fall) would undermine the scope for efficient pipeline expansions in which the cost of the expanded capacity is greater than the current average cost, but lower than the stand-alone cost of a new pipeline.</p>
20	<p>Are there any other problems with this aspect of the regulatory framework that have not been identified in this chapter? If so, please outline what they are and how you think they should be addressed.</p>	<p>No response to this question.</p>

Chapter 9: Information disclosure requirements

No.	Questions	Feedback
21	<p>Do you think the limited information available on full regulation pipelines is hindering the ability of shippers to negotiate access to non-reference services or having any other adverse effects (see section 9.2.1)?</p> <p>(A) If not, please explain why not:</p> <p>(B) If so:</p> <p>(a) How significant do you think this issue is?</p>	

No.	Questions	Feedback
	<p>(b) Do you think this issue should be addressed by requiring full regulation pipelines to publish the following information:</p> <ul style="list-style-type: none"> (i) a description of all the reference and non-reference services offered by the pipeline (pipeline service information); (ii) the standing terms for non-reference services (i.e. the standard terms and conditions, the standing prices and methods used to calculate standing prices); (iii) information on the prices paid by shippers for each reference and non-reference service; (iv) historic demand information for each service offered by the pipeline; and (v) historic financial information for the pipeline on an annual basis in accordance with a financial reporting guideline published by the relevant regulator. 	<p>This issue is being addressed by the new requirement to publish information under an Annual Reporting RIN for full regulation pipelines. . It is also addressed through the requirements of Rules 47A and 48(1)(b).</p> <p>There are no standing terms for non-reference services published in the relevant access arrangements, as these services tend to be bespoke by their nature. However, with the exception of the VTS (for which there are no non-reference services), APA publishes its suite of non-reference services on its website.</p> <p>Given that the AER now has powers to determine what services are to be provided as reference or rebateable services, any service which is sufficiently common for standing terms and conditions to exist, may be specified in the access arrangement as either a reference or rebateable service.</p>
22	<p>Do you think the deficiencies that have been identified with the pricing methodologies and financial information published by service providers are limiting the reliance that shippers can place on this information and making them more susceptible to exercises of market power (see section 9.2.2)?</p> <p>(A) If not, please explain why not:</p> <p>(B) If so:</p> <p>(a) How significant do you think this issue is?</p> <p>(b) Do you think the deficiencies that have been identified with the pricing methodologies should be addressed by amending the NGR to require:</p> <ul style="list-style-type: none"> (i) service providers to publish the inputs used to calculate standing prices? (iii) the relevant regulator to publish a guideline on what information should be contained in the pricing methodology? 	<p>The current reforms present an ideal opportunity to harmonise the package of information available, given recent financial reporting guidelines for non-scheme (Part 23) and Light Regulation pipelines, and the requirement for</p>

No.	Questions	Feedback
	<p>(c) Do you think the deficiencies that have been identified with the financial information should be addressed by requiring service providers to report on the extent to which future costs are likely to be in line with historic costs, and historic information on contracted capacity and volumes transported?</p>	<p>annual reporting Regulatory information Notices to be published for fully regulated assets.</p> <p>In the context of the “Better Together” initiative, leading members of the pipeline industry propose that a series of workshops be undertaken with shippers, pipeliners, and other stakeholders, to:</p> <ul style="list-style-type: none"> ▪ understand the information needs of access seekers; ▪ understand the information currently available and how to access it; ▪ identify any gaps between information needs and information currently available; and ▪ develop a collaborative way forward to address any gaps identified. <p>This approach will benefit from the Energy Charter’s advantages of collaboration, co-design, flexibility, buy-in and peer pressure. Pipeline service providers would voluntarily disclose additional information in response to the feedback received.</p> <p>Future cost reporting is problematic from a number of perspectives: First, all other information reported outside an access arrangement proposal is historical in nature – forecast information should only be reported in an ex ante price regulation framework. Second, any assurance requirements are very problematic on forecast information, increasing the cost of information provision.</p>
23	<p>Do you think the deficiencies that have been identified with the weighted average prices are limiting the reliance that shippers can place on this information and making them more susceptible to exercises of market power (see section 9.2.2)?</p> <p>(A) If not, please explain why not.</p> <p>(B) If so: (a) How significant do you think this issue is?</p>	<p>Information requirements are best addressed in a collaborative co-design environment in the context of the proposed “Better Together” workshop series.</p> <p>However, APA has consistently stated that it does not support reporting of individual contract terms and conditions, as this would disclose the commercially confidential information of the subject shippers.</p>

No.	Questions	Feedback
	<p>(b) Do you think the deficiencies should be addressed by requiring service providers to report:</p> <ul style="list-style-type: none"> (i) the individual prices (plus key terms and conditions) paid by each shipper rather than weighted average prices; or (ii) the minimum and maximum prices paid for each service in addition to the weighted average prices? <p>If you are a shipper, please explain what, if any effect, the disclosure of individual prices may have on competition in the markets in which you compete.</p> <p>If you are a service provider, please explain what effect the disclosure of individual prices or the price range may have on your incentive to offer prudent discounts to shippers.</p>	
24	<p>Do you think the quality and reliability issues identified by the ACCC are limiting the reliance shippers can place on the information reported by service providers and making them more susceptible to exercises of market power (see section 9.2.3)?</p> <p>(A) If not, please explain why not.</p> <p>(B) If so:</p> <ul style="list-style-type: none"> (c) How significant do you think this issue is? (d) Do you think this issue should be addressed by implementing one or more of the following measures: <ul style="list-style-type: none"> (i) amending the NGR to provide for greater regulatory oversight of the information reported by service providers? (ii) amending the access information standard in the NGR to require information to be updated as soon as practicable if the information is found to no longer be accurate? (iii) increasing the penalties for breaches of the information disclosure obligations and the access information standard? (iv) the changes to the Financial Reporting Guideline identified by the ACCC and the Brattle Group (see Appendix B) should be implemented? 	<p>APA acknowledges the ACCC commentary on information quality and reliability.</p> <p>However, APA considers that the Part 23 reporting regime is a new, complex regime, and some experience reporting under the regime should be gained before further Rule changes or compliance initiatives are considered.</p> <p>APA would value the opportunity to engage with the ACCC to understand their expectations and address their concerns in a collaborative environment before any further regulatory oversight is contemplated.</p>

No.	Questions	Feedback
25	<p>Do you think the current approach to reporting information should be maintained, or do you think:</p> <p>(a) the NGR should be amended to require the relevant regulator to prepare a guideline that sets out where and how the information is to be disclosed on a service provider’s website and to inform the regulator whenever changes are made?</p> <p>(b) links to all the information reported by service providers should be published in a single location (e.g. the regulator’s website, the Bulletin Board or AEMC register)?</p> <p>(c) all the information reported by service providers should be made available through a single repository?</p> <p>Please explain your response to this question and set out how significant you think the accessibility issue is for shippers.</p>	<p>APA considers that the Part 23 reporting regime is a new, complex regime, and some experience reporting under the regime should be gained before changes are considered.</p> <p>Importantly, APA considers that it is important to understand the extent to which the current reporting framework may not be meeting customers’ needs. In APA’s view, this is best accomplished in a collaborative environment through the “Better Together” workshop series.</p>
26	<p>Do you think, the current approach to reporting information should be maintained, or do you think the usability should be improved by requiring:</p> <p>(a) a summary tab to be included in the financial reporting template to provide a high level summary of the key financial and pricing information; and/or</p> <p>(b) a template to be developed to enable shippers to use the information published by service providers to calculate one or more the pricing benchmarks identified by the Brattle Group?</p> <p>Please explain your responses to these questions and set out how significant you think the usability issue is for shippers.</p>	<p>Information requirements are best addressed in a collaborative environment in the context of the proposed “Better Together” workshop series.</p>
27	<p>Do you think the current exemptions from information disclosure under Part 23 should be retained, or do you think the scope should be amended to require exempt pipelines to publish a basic set of information?</p> <p>If you think a basic set of information should be reported by all pipelines, what do you think it should include (e.g. pipeline service information, standing terms, the prices paid by other shippers, service availability and pipeline information)?</p>	<p>APA notes that there may be “small” or “single user” pipelines for which third party access may never be sought in practice. APA considers that these pipelines should be subject to an exemption, similar to that currently in place under Rule 585(4), that would require less information to be posted. However, should a formal request for access be lodged, the full information would be able to be demanded through the Rules’ negotiation and information exchange process.</p> <p>In the context of avoiding over-regulation, pipelines on which open access is less likely to be sought have already been granted reporting exemptions under the Part 23 regime, and those exemptions should stand.</p>

No.	Questions	Feedback
28	Do you think the size threshold used for exemptions under Part 23 should be retained, or do you think it should be aligned with the 10 TJ/day nameplate rating used for the purposes of full and light regulation, the Bulletin Board and the capacity trading reforms?	<p>The current “size” threshold under Rule 585(4) is appropriate and should be retained. APA supports consistency with the GBB requirements to avoid confusion, subject to the requirement to provide information once access is sought as discussed above.</p> <p>However, a more robust “size” definition is required for the purposes of determining cost sharing in the context of an arbitration. One option might be a test based on shipper annual sales revenue with the threshold being less than \$50 million.</p>
29	Are there any other problems with the information disclosure requirements or exemptions that have not been identified in this chapter, or changes you think should be made to address the information deficiencies, accessibility, usability, reliability and quality issues outlined in section 9.2? If so, please explain what they are.	No response.

Chapter 10: Negotiation frameworks and dispute resolution mechanisms

No.	Questions	Feedback		
30	<p>Do you think the differences in negotiation frameworks applying under Part 23 and full/light regulation is causing confusion, imposing unnecessary costs on negotiating parties or otherwise hindering the ability of shippers to negotiate access (see section 10.2.1)?</p> <p>(A) If not, please explain why not.</p> <p>(B) If so:</p> <table border="1" data-bbox="322 416 1061 930"> <tr> <td data-bbox="322 416 427 464">(a) How significant do you think this issue is?</td> </tr> <tr> <td data-bbox="322 464 1061 930"> <p>(b) Do you think this issue should be addressed by adopting a single negotiation framework that would apply under all negotiate-arbitrate models that is based on:</p> <ul style="list-style-type: none"> (i) the approach currently applied under full and light regulation (see Table 10.1)? (ii) the approach currently applied under Part 23 (see Table 10.1)? (iii) a hybrid of the two frameworks as described in section 10.3.1? </td> </tr> </table>	(a) How significant do you think this issue is?	<p>(b) Do you think this issue should be addressed by adopting a single negotiation framework that would apply under all negotiate-arbitrate models that is based on:</p> <ul style="list-style-type: none"> (i) the approach currently applied under full and light regulation (see Table 10.1)? (ii) the approach currently applied under Part 23 (see Table 10.1)? (iii) a hybrid of the two frameworks as described in section 10.3.1? 	<p>APA regularly offers multi-asset services across its various pipelines. In some Multi Asset Service contracts, a single shipper can traverse all of light regulation, full regulation and Part 23 pipelines. However, as APA's contracting experience shows, this has not imposed unnecessary costs on negotiating parties or otherwise hindered the ability of shippers to negotiate access. Importantly, shippers have not found it necessary to invoke the formal access request process in Rule 559(3).</p> <p>There could be scope for confusion where different negotiating frameworks apply under different regulatory regimes. Reducing the number of negotiating frameworks from three to one could reduce confusion in contracting.</p> <p>APA considers that the Part 23 negotiating framework, as outlined in Table 10.1 of the RIS, represents the current best practice in this area.</p>
(a) How significant do you think this issue is?				
<p>(b) Do you think this issue should be addressed by adopting a single negotiation framework that would apply under all negotiate-arbitrate models that is based on:</p> <ul style="list-style-type: none"> (i) the approach currently applied under full and light regulation (see Table 10.1)? (ii) the approach currently applied under Part 23 (see Table 10.1)? (iii) a hybrid of the two frameworks as described in section 10.3.1? 				
31	<p>Do you agree with the ACCC that the preliminary enquiry process in Part 23 could delay a shipper's access to arbitration if negotiations fail and also allow service providers to avoid the rules relating to access requests (including response times)?</p> <p>(A) If not, please explain why not.</p> <p>(B) If so:</p> <table border="1" data-bbox="322 1155 1061 1200"> <tr> <td data-bbox="322 1155 427 1200">(e) How significant do you think this issue is?</td> </tr> </table>	(e) How significant do you think this issue is?		
(e) How significant do you think this issue is?				

No.	Questions	Feedback
	<p>(f) Do you think the preliminary enquiry process should be removed from Part 23?</p>	<p>The ACCC recommended that the “preliminary enquiry” concept be removed from the Rules, so that the rules regarding offers, negotiations and access to the arbitration mechanism apply to all requests made by shippers.¹¹</p> <p>APA considers that the Rule 559(2) preliminary enquiry process is a critically important aspect of any commercial negotiation process.</p> <p>APA often receives inquiries for indicative tariffs and capacity availability for projects that are still in the conceptual phase, often with limited detail - these preliminary enquiries could not in any way be considered to be a “request for access”.</p> <p>The preliminary enquiry phase is also the opportunity for the pipeliner to work with the shipper to develop a bespoke service to meet its unique needs.</p> <p>This is a critical aspect of the framework that is important to retain.</p> <p>Moreover, if a shipper disagreed with the preliminary enquiry approach it is open to the shipper to advise it is a formal request subject to the requirements of Rule 559(3).</p> <p>For all the reasons above APA does not agree that preliminary enquiry process causes delay.</p>
32	<p>Do you agree that the credibility of the threat of arbitration is weaker for smaller shippers (see section 10.2.2)?</p> <p>(A) If not, please explain why not.</p> <p>(B) If so:</p> <p>(a) How significant do you think this issue is?</p>	

¹¹ ACCC Gas Inquiry, Interim Report, July 2019, s6.4.1 p156.

No.	Questions	Feedback
	<p>(b) Do you think the position of smaller shippers would be improved by:</p> <ul style="list-style-type: none"> (i) making it easier for pipelines to move from lighter to heavier handed forms of regulation as set out in Chapter 8? (ii) requiring individual prices or maximum and minimum prices to be reported by service providers rather than weighted average prices (see Table 9.2)? (iii) improving the usability and accessibility of information reported by service providers in the manner set out in Table 9.2? <p>(g) Do you think any of the following should occur to further strengthen the position of smaller shippers:</p> <ul style="list-style-type: none"> (i) amend the cost provisions to prevent the dispute resolution body from awarding the service provider's costs against smaller shippers (relevant to full and light regulation only) and making smaller shippers pay more than half the dispute resolution body's costs? (ii) allow user groups to intervene in arbitral proceedings involving smaller shippers? (iii) give smaller shippers the option under Part 23 to have the dispute heard by the relevant regulatory dispute resolution body or a commercial arbitrator? <p>(h) If any of the measures outlined in (c) are implemented, how should 'smaller shipper' be defined? If you think it should be based on a size threshold, what threshold do you think should be adopted?</p>	<p>APA does not consider that the credibility of the threat of arbitration is weaker for smaller shippers.</p> <p>However, to address concerns that small shippers may not be able to readily access arbitration, APA supports the RIS proposal on arbitration costs that the shipper never pays more than half the costs of the Arbitrator, nor any of the pipeline's costs.</p> <p>The question of whether additional information provision would assist smaller shippers should be a subject of the proposed "Better Together" workshop series suggested in the Information Disclosure section.</p> <p>A definition of "small shipper" needs to be established. A test based on shipper (and related entities) annual sales revenue, with the threshold being less than \$50 million may be suitable.</p> <p>The AEMC proposed amendments to the full regulation arbitration processes and time frames to align them with the Part 23 provisions would also helpfully streamline any arbitration process.</p> <p>APA does not support giving smaller shippers the option to have the dispute heard by the relevant regulatory dispute resolution body, for two reasons: First, commercial arbitration is a core feature of the "lighter" form of regulation. Similar to the comments regarding the inappropriateness of price controls for "lighter" regulation distribution networks, a special case would undermine the integrity of the broader regulatory regime. Second, commercial arbitration is a specialist skill, distinct from regulatory processes, and this is not within the AER/ERA core skill set.</p>
33	<p>Do you think:</p> <ul style="list-style-type: none"> (a) there are any other groups of shippers for whom the threat of arbitration may not be considered credible by service providers? (b) there any other factors that may discourage shippers from threatening the use of arbitration? 	<p>APA sees all shippers as possessing the credible threat of arbitration.</p>

No.	Questions	Feedback
34	<p>Do you agree that the limited guidance provided in the NGL/NGR on the matters to be considered by the dispute resolution body under full and light regulation as set out in section 10.2.3 are adversely affecting the efficiency, effectiveness and credibility of the dispute resolution mechanism applying to full and light regulation pipelines?</p> <p>(A) If not, please explain why not.</p>	<p>APA does not consider that the limited guidance provided in the NGL/NGR on the matters to be considered by the dispute resolution body under full and light regulation are adversely affecting the efficiency, effectiveness and credibility of the dispute resolution mechanism applying to full and light regulation pipelines. APA has been successful in reaching bilaterally agreed outcomes with its shippers without ever having to resort to the dispute resolution mechanism.</p> <p>An access dispute for a full regulation pipeline must have regard to the current regulator-approved access arrangement. For a regulatory arbitration, the pricing principles in Part 9 of the NGR should be relevant to the arbitration.</p> <p>APA supports the time frame recommendations on the settlement of disputes, and would propose that these time frames should be adopted for either “lighter” or “heavier” pipeline access disputes.</p> <p>Commercial arbitration is, by its nature, a confidential process. To respect this confidentiality, the access determination, statement of reasons, relevant financial calculations and information provided in the course of the dispute should not be published.</p> <p>APA supports the provision that a shipper should not be able to launch another arbitration on substantially the same matter within 12 months.</p>
	<p>(B) If so:</p> <p>(a) How significant do you think this issue is?</p> <p>(b) Do you think these deficiencies should be addressed by amending the NGL/NGR to:</p> <ul style="list-style-type: none"> (i) require the dispute resolution body to have regard to the NGO, the revenue and pricing principles, an applicable AA (where relevant), previous AAs or access determinations, pre-existing contractual rights and the price and revenue regulation provisions in Part 9 of the NGR? (ii) require the existence of a dispute to be made public and to set out the process for joining parties? (iii) introduce a 50-day fast-track option for certain disputes under full regulation? (iv) specify the maximum period of time to be taken by the dispute resolution body to resolve a dispute (e.g. 8 months or 12 months)? (v) only require the access determination to be binding on a shipper if the shipper decides to enter into a contract that reflects the access determination and to prevent a shipper that decides not to enter into such a contract from seeking arbitration for the same or a substantially similar service for 12 months? (vi) require the dispute resolution body to publish the access determination, statement of reasons, relevant financial calculations and information provided in the course of the dispute (subject to the confidentiality provisions in the NGL)? 	

No.	Questions	Feedback
35	<p>Do you have any concerns with the Part 23 pricing principles (see Box 10.1)?</p> <p>If so:</p> <p>(a) Please explain what your concerns are, how significant you think they are and what, if anything, you think could be done to address these concerns.</p> <p>(b) Do you think these concerns will be addressed by making it easier for pipelines to move from lighter to heavier handed forms of regulation?</p> <p>(c) Do you think there would be value in providing greater clarity in Part 23 about:</p> <p>(d) how prior regulatory decisions are to be accounted for by an arbitrator, in those cases where a pipeline has previously been subject to full regulation, particularly if it becomes easier to move between forms of regulation?</p> <p>(ii) shared costs are to be allocated between other assets that are operated by the service provider and between the services offered by the pipeline?</p>	<p>The Part 23 pricing principles are unique to Part 23 and, importantly, differ from those relating to an access arrangement for a full regulation pipeline. However the difference in pricing principles should not act as a barrier to moving between forms of regulation.</p> <p>Therefore, (subject to transitional provisions regarding the regulatory capital base for pipelines previously subject to Light Regulation) there should be no scope for prior regulatory determinations to be considered by a commercial arbitrator – these determinations are conducted in different frameworks.</p>
36	<p>Are there any other problems with the negotiation frameworks and dispute resolution mechanisms that have not been identified in this chapter, or changes you think should be made to address the issues identified in section 10.2? If so, please explain what they are.</p>	<p>No response.</p>

Chapter 11: Policy options

No.	Questions	Feedback
37	Of the four policy options that have been identified in Chapter 11, which option do you think should be implemented (i.e. Option 1, Option 2, Option 3 or Option 4) and why?	<p>The RIS does not suggest that the four policy options presented represent rigid packages. The RIS hybrid model discussed in this submission is, we believe, a more optimal combination of the elements from across the range of policy options, rather than being confined to a single “package” or reforms.</p> <p>We note that there does not appear to be any policy driver to adopt Package 4.</p>
38	If there are other policy options or refinements to these policy options that you think should be considered, please explain what they are, what they would involve and what the advantages, disadvantages, costs, benefits and risks are with these options.	<p>APA supports the RIS hybrid model as discussed in this submission.</p>
39	<p>Do you agree with the advantages, disadvantages, costs, benefits and risks that have been identified for each option in sections 11.2-11.4?</p> <p>If not, please set out what other advantages, disadvantages, costs, benefits and/or risks that you think are associated with each option?</p>	<p>As discussed in the response to Q43, APA considers that the risks identified in Table A.2 have been significantly overstated, particularly those rated as “Severe” or with consequences rated as “Critical”.</p>
40	If you think any of the policy options out in Chapter 11 could be implemented through alternative means (i.e. non-regulatory), please explain how you envisage this would work.	<p>The scope of information reporting requirements are best be developed through a collaborative workshop process in the “Better Together” workshops discussed in this submission.</p> <p>Through its “Better Together” initiative under the Energy Charter, the gas pipeline industry proposes to convene a series of workshops with industry participants, users, and other stakeholders to identify shippers’ information needs, the extent of and access to information currently available, and to conduct a “gap analysis” to develop a suite of information provision reports that could be consistent across the regulatory spectrum.</p> <p>Such a collaborative approach would allow greater flexibility and engender greater buy-in, resulting in greater effectiveness in meeting users’ informational needs than a policy response.</p>
41	If options 2, 3 or 4 were implemented and ‘light regulation’ removed, which of the following transitional arrangements do you think should be employed for the 5.5 pipelines that are currently subject to this form of regulation:	<p>Many Light Regulation pipelines have already been found by the NCC, through the application of the Form of Regulation factors and the NGO, not to have sufficient market power to justify full regulation. It would therefore be inappropriate that they would transition to a “heavy” form of regulation without</p>

	(a) grandfather the existing light regulation arrangements until an application is made for the form of regulation to change on the 5.5 pipelines?	<p>a re-application of the Form of Regulation test showing that they do indeed have sufficient market power to warrant “heavy” regulation.</p> <p>APA believes Light Regulation pipelines should therefore default to the new “lighter” form of regulation.</p> <p>Light Regulation pipelines currently have (and have always had) the ability to opt in for heavy regulation under NGL s117, so the default to “lighter” regulation is consistent with the existing model.</p>
	(b) deem all light regulation pipelines to be subject to full regulation?	
	(b) deem all light regulation pipelines to be subject to the new lighter handed form of regulation (i.e. the strengthened Part 23)?	
	(c) require the decision making body to carry out an assessment of whether the pipelines should be subject to the heavier handed or lighter handed form of regulation using the form of regulation test?	
42	Are there any other transitional arrangements that need to be considered? If so, please outline what they are.	To avoid concerns over retrospective application of regulation to historical investment, it will be important for Light Regulation pipelines’ regulatory capital base to be grandfathered, and rolled forward from the last determination, using the regulatory “indexed straight line” rollforward approach in the AER’s Roll Forward Material.

Chapter 12: Regulatory impact assessment

No.	Questions	Feedback
43	<p>Do you agree with the risks that have been identified for:</p> <p>(a) the status quo in Tables A.1 and A.2?</p> <p>(b) identified for Options 2-4 in Tables A.3 and A.4?</p> <p>If not, please explain why not.</p> <p>If you think there are other risks and treatments that should be accounted for, please explain what they are.</p>	<p>Generally, APA considers that the risk assessment significantly overstates the risks.</p> <p>In particular, the “critical” consequence for “Inappropriate forms of regulation” is overstated. The pipeline would either be</p> <ul style="list-style-type: none"> - subject to full regulation and therefore subject to an access arrangement; or - subject to Part 23, in which pipelines are subject to the commercial arbitration provisions that deliver the outcomes of a workably competitive market; Part 23 presumes that the costs for shippers and decision makers is not excessive. <p>The likelihood of the risk being realised should not be rated as “highly likely” in light of market experience. In APA’s experience in over 90 contract negotiations there have not been any referrals to arbitration.</p> <p>Inadequate information – this has been addressed by Part 23 information disclosure . It is at best “unlikely” and not “highly likely”. Access to “commercial arbitration” has reduced the consequence to at best moderate.</p> <p>“Inadequate negotiation framework” is addressed by Part 23. A small shipper could not result in a consequence above moderate.</p>
44	<p>Do you:</p> <p>(a) agree with the categories of costs and benefit categories set out in Table 12.1, or are there other categories that you think should be considered in the CBA?</p> <p>(b) have any information on the costs and benefits outlined in Table 12.1? If so, please elaborate on the source and quantum of those costs and benefits.</p> <p>(c) agree with the proposed discount rate and appraisal periods to be used for the central case and sensitivity testing? If not, please explain why.</p> <p>(d) think there are other input variables that should be subject to a sensitivity analysis? If so, please explain what those inputs are.</p>	<p>We understand that PwC uses the Victoria University Regional Model (VURM) to assess the net economic benefits of the RIS options. The VURM is a large scale computable general equilibrium model. Potentially, it takes into account all relevant economic costs and benefits of change.</p> <p>In order to be confident in the cost benefit analysis, policy makers would need to understand how well the VURM models the gas sector, and how well it models future investment in the pipeline sector.</p> <p>Our understanding of the VURM is that it seems to rely on externally set hurdle rates of return, and does not take into account uncertainty. This is important, as there is much uncertainty surrounding long term investment in energy infrastructure which is not captured by “mechanical” modelling.</p>
45	<p>Do you have any information on the compliance costs associated with the policy options set out in Chapter 11 that could be used for the CRBM? If so, please elaborate on the source and quantum of the costs.</p>	<p>APA considers that it will be important to recognise the costs of regulation to the broader economy (stifling innovation, etc) rather than simply the direct administrative cost to pipeliners.</p>

No.	Questions	Feedback
46	What, if any effect, do you think the policy options summarised in Chapter 11 will have on competition in the gas market and, in particular on:	In this submission, APA has proposed a hybrid model that draws on some of the best features of the various policy options presented. APA therefore does not comment on the impact of the individual policy “packages” proposed in the RIS.
	(a) the relative bargaining power of shippers and service providers?	
	(b) the search and transaction costs associated with contracting pipeline services?	
	(d) the potential for collusive behaviour in competitive segments of the market?	
	(e) changes to any barriers to entry that could promote or deter market entry?	
	(f) the long-term outlook for investment in the sector?	