

17 January 2020

Gas and Governance Branch
Department of the Environment and Energy



By email: gas@environment.gov.au

Dear Secretariat

Submission to the 'COAG Regulation Impact Statement for consultation - Options to improve gas pipeline regulation'

Australia Pacific LNG (APLNG) welcomes the opportunity to make its submission in relation to the COAG Energy Council's Regulation Impact Statement on options to improve pipeline regulation (Pipeline RIS). As requested, APLNG's comments are set out in the attached response template.

APLNG supports a streamlined regulatory framework that provides an efficient gas system and competitive market, removes inefficiencies and regulatory complexity and encourages investment and market-led solutions. APLNG considers a modified Option 2, which includes monitoring and referral functions proposed under Option 3, to be an appropriate regulatory framework and supports future reviews to further streamline and simplify the pipeline regulatory environment.

The key to implementation of any new regulatory threshold is to ensure the governance model selected is appropriate. In APLNG's view, the appropriate decision-making process would be for the Minister to determine whether the proposed market power-NGO test is satisfied based on a recommendation from an expert body in the area of competition law, such as the Productivity Commission or the National Competition Council.

APLNG acknowledges that appropriate information disclosure by market participants is necessary and important for the market to function efficiently, and that even though the Part 23 reforms have brought more disclosure and led to improved market transparency there remains an opportunity to improve outcomes further. An effective approach to addressing these concerns would be to consider the recommendations identified by the ACCC and Brattle Group, including the financial information reported under Part 23. In terms of improving the existing information available, APLNG supports extending the period for the capacity outlook from three years to a minimum of five years.

APLNG is the largest producer and supplier of natural gas to the East Coast domestic gas market, currently supplying more than 30% of the total volume of domestic gas sold into the East Coast domestic market. APLNG remains committed to the domestic market with existing commitments out as far as 2042 to supply over 1,500 Petajoules.

APLNG's extensive operations are underpinned by long-term gas supply and transportation agreements to ensure continued supply to both the LNG export and domestic gas markets. Whilst supportive of streamlining the regulatory regime and simplifying the pathway to regulation, any new regulatory model should not affect existing contractual arrangements associated with gas transportation activities.

Thank you for this opportunity to make a submission in relation to the Pipeline RIS. If you have any questions, or would like to discuss this submission further, please contact Susan Moore on (07) 3028 5111.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Warwick King".

Warwick King
CEO Australia Pacific LNG

Pipeline Regulation Consultation Regulation Impact Statement – Stakeholder feedback template

Submission from Australia Pacific LNG Pty Ltd (APLNG)

This template is to assist you to provide feedback on the COAG Consultation RIS titled *Options to improve gas pipeline regulation*. The template focuses on the questions asked through the RIS, which seek your views on issues which are central to the identified problems and proposed options. You may not wish to answer each question and there is no obligation to do so. If you wish to provide additional feedback outside the template, wherever possible please reference the relevant question to which your feedback relates. Thank you for your feedback.

Chapter 5: Effectiveness of Part 23

No.	Questions	Feedback
1	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:	---
	(a) enabling shippers to make more informed decisions about whether to seek access and to assess the reasonableness of a service provider's offer?	APLNG considers that Part 23 has been generally effective since it was introduced, however APLNG supports making improvements (some of those suggested by the ACCC Gas Inquiry and the Brattle Report) to further enhance the regime.
	(b) reducing the information asymmetries and imbalance in bargaining power that shippers can face in negotiations?	
	(c) facilitating timely and effective commercial negotiations between shippers and service providers?	
	(d) constraining the exercise of market power by service providers during negotiations by providing for a credible threat of intervention by an arbitrator?	
(e) enabling disputes that cannot be resolved through negotiations to be resolved in a cost-effective and efficient manner?	APLNG has no experience with the dispute resolution mechanism.	
2	Do you agree with the observations and recommendations made by:	---

No.	Questions	Feedback
	(a) respondents to the OGW shipper survey (see section 5.1)? If not, please explain why not.	Generally, yes.
	(b) the Brattle Group in its review of the financial information (see section 5.2)? If not, please explain why not.	<p>APLNG broadly supports the recommendations of the Brattle Group report, especially in relation to creating better consistency in information available and ensuring that data sets are comparable and usable.</p> <p>There should be more definitive requirements around the information reported by service providers, with a standard reporting guideline introduced as a first step and regulator oversight made available later if needed.</p>

(c) the ACCC in its review of the operation of Part 23 (see section 5.3)? If not, please explain why not.

Standing prices and pricing methodologies

APLNG does not support removing the exemption for single shipper pipelines or pipelines with annual average gas flows of less than 10TJ/day as the regulatory cost would be likely to exceed any benefit.

Non-binding guide

APLNG supports the development of a non-binding guide by the AER.

Weighted average prices information

APLNG acknowledges that appropriate information disclosure by market participants is necessary and important for the market to function efficiently, and that even though the Part 23 reforms have brought more disclosure and led to improved market transparency there remains an opportunity to improve outcomes further. An effective approach to addressing these concerns would be to consider the recommendations identified by the ACCC and Brattle Group, including the financial information reported under Part 23.

Requirement to re-publish

APLNG supports this recommendation.

Improving the accessibility of information

APLNG's view is there is no need to introduce additional prescription around the location and form of information.

Access requests

In APLNG's view, preliminary enquiries should be retained. There are legitimate reasons why an access seeker may wish to make a preliminary inquiry and not trigger a formal access request.

Arbitration

No.	Questions	Feedback
		Subject to some streamlining, in APLNG's view the current arbitration mechanism under Part 23 is effective.
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)?	The regime in Part 23 has not been operating for all that long, but APLNG is not aware of any other changes or major issues that need to be addressed.

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?	<p>APLNG agrees the current pipeline regulatory regime is complex and leads to inefficiencies in the market. Streamlining of the regulatory framework could remove cost and regulatory burden from the system, encourage investment where needed, and better facilitate effective negotiations between the parties.</p> <p>APLNG believes there may be some instances where initial transport prices have been higher than expected, especially in relation to the pricing of short-term transportation or where shippers have not sought firm capacity positions.</p>
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.	<p><i>Rate of regulatory reform and sovereign risk</i></p> <p>Rapid or substantial regulatory changes create instability and may deter investment in the sector, especially when an industry has long investment cycles. APLNG encourages the COAG Energy Council to consider how to</p>

		<p>appropriately balance the need for change within the system with the need for market participants to have a level of long-term certainty.</p> <p><i>Treatment of existing contractual arrangements</i></p> <p>Any new regulatory provisions should not affect existing contractual arrangements for gas shipping.</p> <p><i>Imposing changes to business types</i></p> <p>In the event of Option 4, it may force a shift in the nature of business for participants. Specifically, APLNG envisages potential changes to include:</p> <ul style="list-style-type: none"> - Creation of new pipeline scheduling roles and commercial advisor roles - Implementation of systems for scheduling and allocations and to facilitate required participation in the secondary capacity trading market - Introduction of additional compliance obligations on gas operations functions (and other functions), especially around nominations and daily capacity usage of capacity trading and auction activity.
6	Are there any other objectives that you think the Energy Council should be pursuing? If so, please set out what they are.	No.

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>Part 23 has only been in operation for a relatively short period of time with just one successfully concluded arbitration. Given the long-term nature of gas pipeline assets and investment decisions, stability in the regulatory framework is important for both users and pipeline owners.</p> <p>Part 23 could provide an appropriate balance of the competing interests of shippers and pipeline owners. APLNG believes the threshold of third-party access (with some exemptions) is suitable.</p>
	(A) If you think it is giving rise to over-regulation:	---
	(a) How significant do you think this issue is and what are the consequences likely to be?	---
	(b) Do you think the risk of over-regulation should be addressed by: <ul style="list-style-type: none"> (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? (ii) limiting the application of regulation to those cases where it is established that the pipeline has substantial market power? (iii) another means? 	<p>Given all third-party access pipelines will be captured by Option 2, APLNG supports providing exemptions using the market power-NGO threshold to avoid over regulation.</p> <p>APLNG also supports exemptions similar to those available under Part 23 if Option 2 (as modified per response to question 37) is selected. Further, APLNG supports the exemption process for those pipelines that don't meet the market power-NGO test as an exemption process would be the less burdensome process to implement.</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 should be based on the combined market power-NGO test proposed by the ACCC (see Box 7.6)?	Yes

	<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>The decision maker, however given that ‘onus’ as a concept does not apply in administrative decisions,¹ it is assumed this question is directed at whether (if the material before the decision maker is non-conclusive), the decision maker should be required to obtain further information in order to form a view one way or the other, or can say that the service provider has not satisfied the onus, presumably that the conditions for the exemption are not made out. This also flows through to a consideration of who is required to provide the documentation to assist a determination about whether the market power-NGO threshold had been met.</p> <p>The requirement for a party to provide information to demonstrate the fulfilment of the test or otherwise should depend on the circumstances. For example, if the regulator is seeking to have a pipeline regulated or a shipper is requesting third-party access, then it would seem sensible that the regulator (or that shipper) be responsible for providing evidence to demonstrate that the threshold had been met. A service provider should also have the right to provide additional information in reply.</p> <p>In the reverse, if a service provider was seeking an exemption from regulation, then the service provider should bear the obligation to provide documentation to support the exemption application with a right of reply afforded to the regulator and shippers.</p>
	<p>(b) If not, please explain why and what test you think should be employed.</p>	<p>----</p>
<p>8</p>	<p>Do you think the application of Part 23 to pipelines providing third party access that have obtained a greenfield exemption is distorting investment</p>	<p>APLNG does not believe the application of Part 23 to third party pipelines which have obtained a greenfield exemption is deterring investment in greenfield pipelines.</p>

¹ Onus or burden of proof is a concept buried in common law rules of evidence and is relevant in judicial fact-finding. See *McDonald v Director-General of Social Security* (1984) 1 FCR 354 at 356; *Sun v Minister for Immigration and Border Protection* (2016) 243 FCR 220; [2016] FCAFC 52 at [63] and [65] (Flick and Rangiah JJ, Logan J agreeing); *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332; [2013] HCA 18 at [10] (French J).

	incentives for greenfield pipelines (see sections 7.2.2 and 7.3.2), or do you think the current approach should be maintained?	
	If you think it is distorting investment incentives: (a) How significant do you think this issue is and what are the consequences likely to be?	----
	(b) Do you think this issue should be addressed by: (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?	APLNG does not have any comments.
9	Why do you think:	
	(a) the greenfield exemptions in the NGL have not been used by a greater number of service providers?	APLNG has used the greenfield exemption and is not aware of any reasons why it has not been used more extensively.
	(b) the CTP provisions in the NGR have not been used by a greater number of shippers or governments?	APLNG does not have any comments on the competitive tender process under Part 5.
10	Do you think the greenfield exemptions and CTP provisions should be retained in the regulatory framework, or do you think:	APLNG considers the greenfield exemptions should be retained.
	(a) changes to the greenfield exemptions and/or CTP provisions are required?	Any changes to the overall framework would need to consider how the existing greenfield exemptions could be retained within a changed regulatory setting. APLNG does not have any comments on the competitive tender process.
	(b) the greenfield exemptions and/or CTP provisions should be replaced with another mechanism that would provide potential developers with	APLNG believes the current greenfield exemptions are functioning as required.

	<p>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?</p>	<p>APLNG does not have any comments on the competitive tender process under Part 5.</p>
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>APLNG considers using a threshold to apply regulation, such as the market power-NGO test, would result in a suitable level of regulation for the market.</p> <p>In APLNG's view, any move to a system with mandatory third-party access on a non-discriminatory basis must provide benefits that outweigh the risk of increased regulatory burden. In particular, the benefit must be particularly clear in relation to those pipelines that would not be captured by Options 2 or 3, but be automatically caught under Option 4.</p> <p>Accordingly, APLNG is concerned that regulating all pipelines (regardless of purpose or design) would create a regulatory burden, with potentially little benefit to the overall market.</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;</p> <p>(b) an equivalent test to the recently amended Part IIIA test;</p> <p>(c) an NGO-style test; or</p> <p>(d) a combined market power-NGO test?</p>	<p>APLNG supports adoption of the proposed combined market power-NGO test.</p> <p>APLNG believes this is a suitable threshold for regulation, but notes it is important the decision-maker applying the test is functionally separate from the regulator. As such, APLNG recommends the Minister is an appropriate decision-maker based on a recommendation from the National Competition Council or the Productivity Commission (both experts in the field of competition and markets).</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>	<p>Given that 'onus' as a concept does not apply in administrative decisions,² it is assumed that this question is directed at whether (if the material before the decision maker is non-conclusive), the decision maker should be required to obtain further information in order to form a view one way or the other, or can say that the service provider has not satisfied the onus, presumably that the conditions for the exemption are not made out. This also flows through to a consideration of who is required to provide the documentation to assist a determination about whether the market power-NGO threshold had been met.</p> <p>The requirement for a party to provide information to demonstrate the fulfilment of the test or otherwise should depend on the circumstances. For example, if the regulator is seeking to have a pipeline regulated or a shipper is requesting third-party access, then it would seem sensible that the regulator (or that shipper) be responsible for providing evidence to demonstrate that the threshold had been met. A service provider should also have the right to provide additional information in reply.</p> <p>In the reverse, if a service provider was seeking an exemption from regulation, then the service provider should bear the obligation to provide documentation to support the exemption application with a right of reply afforded to the regulator and shippers.</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>APLNG supports the retention of the current two-step decision-making governance model for deciding whether third-party access should be granted for a pipeline or whether a greenfield exemption should be granted.</p> <p>As noted above, a decision as to whether a pipeline should be regulated involves policy considerations which are separate and distinct from</p>

² Onus or burden of proof is a concept buried in common law rules of evidence and is relevant in judicial fact-finding. See *McDonald v Director-General of Social Security* (1984) 1 FCR 354 at 356; *Sun v Minister for Immigration and Border Protection* (2016) 243 FCR 220; [2016] FCAFC 52 at [63] and [65] (Flick and Rangiah JJ, Logan J agreeing); *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332; [2013] HCA 18 at [10] (French J).

		<p>administrative type regulatory functions,³ and even if the test were to change, it would be a similar situation.</p> <p>This rationale is the primary reason for the coverage decision being vested in the Minister, and such an approach has been endorsed by both the Productivity Commission and the Hilmer Review.</p> <p>In practice, the inquiries undertaken by the Minister and the National Competition Council (NCC) are different in scope with the NCC conducting a full public consultation and, based on the NCC's process and recommendation, the Minister is placed in a position to form a view without the need for any separate public consultation. It may be appropriate to consider giving the recommendation function to the Productivity Commission if there are concerns about ongoing resourcing of the NCC to undertake this work.</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>It should be noted only a small number of pipelines have been subject to a decision by the Minister on the coverage test (whether for the purpose of a greenfield exemption or to designate as a scheme pipeline). Given this, and the practical application of the system (as explained in Q13 above), the magnitude of costs and time delays associated with the current arrangements is relatively small.</p>
	<p>(b) Do you think this issue should be addressed by according a single organisation responsibility for making this decision?</p> <p>If not, please explain why not.</p>	<p>APLNG prefers a two-step model for the reasons above.</p> <p>This was the primary reason for the coverage decision being vested in the Minister and, as such, APLNG supports retention of this.</p>

³ See *National Competition Policy Review* (1993) (**Hilmer Review**) at page 250 and Productivity Commission, *Review of the Gas Access Regime* (June 2004) at page 227 and Chapter 12.

	If so:	(i) What expertise do you think this organisation should have?	Given the decision involves consideration of broader policy issues and competition law, APLNG believes the Minister is an appropriate decision-maker based on the recommendation of the NCC or the Productivity Commission (both expert bodies in the fields of competition and markets).
		(ii) Which of the following organisations do you think should be responsible for making this decision: - the ACCC? - the relevant regulator (i.e. the AER or the ERA in Western Australia)?the NCC? - another organisation?	As noted in relation to Q13(b)(i), APLNG believes the Minister should continue to make these determinations based on advice from either the NCC or the Productivity Commission. For reasons explained above in Q13, there is good policy rationale for ensuring the decision-making power about regulation is functionally separate from the regulator’s role and, as such, APLNG does not believe the ACCC or AER would be the most appropriate decision-makers.
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)?	As noted above, APLNG supports a system that creates separation between decision-making about the application of regulation to a pipeline and the function of the regulator in applying the regulation. For this reason, APLNG believes the NCC or the Productivity Commission would be suitable.
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.	APLNG does not have any comments.

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>As a result of piecemeal development of the current regulatory framework, the coverage test is no longer functioning as it was originally intended, and it is not clear whether under-regulation is occurring.</p> <p>In any event, APLNG believes there is an opportunity to streamline the regulatory regime (by reducing the number of regulatory forms through combining Part 23 and 'light regulation') and to simplify the pathway to regulation.</p>
	<p>(B) If so:</p> <p>(a) How significant do you think this issue is?</p>	<p>The coverage test is no longer functioning as it was originally intended, and the issue should be addressed.</p>

No.	Questions	Feedback
	<p>(b) Do you think the coverage test should be removed and a single test used for moving between the alternative forms of regulation?</p> <p>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>Given the significant implications of moving to the heavier-handed regulation form, APLNG believes the threshold must be set high enough to ensure investment in the pipeline sector is not deterred and the gas transportation sector can achieve commercial, market-led outcomes.</p> <p>Whilst it may be appropriate to adapt the test in s.122 of the National Gas Law for movements between the two different forms of regulation, APLNG suggests that, whichever the test selected, it must be prescriptive, definitive and objective, and set a sufficiently high threshold. Removing interpretation and discretion from the determination will signal to all market participants when heavier-handed regulation will apply.</p> <p>In terms of a 'default' level of regulation, APLNG suggests that, at the commencement of any new regime, a pipeline that has met the regulation threshold should be deemed to be subject to lighter-handed regulation (unless and until a determination is made otherwise). Applications could be made by the regulator to the decision-maker if there is a view a pipeline should be subject to the heavier-handed form of regulation. The only exception to this should be in relation to those pipelines currently designated to be subject to full regulation. These designated pipelines should be deemed to be subject to the heavier-handed form of regulation with provision for a service provider to seek a decision reversing the position.</p>

No.	Questions	Feedback
	<p>(c) Do you think:</p> <ul style="list-style-type: none"> (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 (ii) the onus should be on the service provider to demonstrate why a heavier handed form of regulation is not required? 	<p>As discussed in relation to Q16(B)(b), any new regulatory framework should deem lighter-handed regulation applies to all regulated pipelines unless a determination is made by the decision-maker that the heavier-handed form applies.</p> <p>Given that 'onus' as a concept does not apply in administrative decisions,⁴ it is assumed that this question is directed at whether the decision maker should be required to obtain further information to form a view one way or the other on the level of regulation to apply. APLNG's view is that this role should sit with the decision maker.</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>APLNG supports the position that a regulator should be able to monitor the market to ensure behaviour is meeting the desired standard. APLNG suggests the regulator be able to refer pipelines for an assessment of whether heavier-handed regulation should apply if they hold reasonable suspicions that market power is being exercised, or where shippers or potential shippers have raised suspicions of abuse of market power with the regulator. That regulator should not, however, be the body that determines whether regulation should occur. In this regard, APLNG refers to its response to question 7(B).</p>

⁴ Onus or burden of proof is a concept buried in common law rules of evidence and is relevant in judicial fact-finding. See *McDonald v Director-General of Social Security* (1984) 1 FCR 354 at 356; *Sun v Minister for Immigration and Border Protection* (2016) 243 FCR 220; [2016] FCAFC 52 at [63] and [65] (Flick and Rangiah JJ, Logan J agreeing); *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332; [2013] HCA 18 at [10] (French J).

No.	Questions	Feedback	
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>APLNG supports the streamlining of the regulatory environment through reducing regulatory forms from three to two in the near-term.</p> <p>To create efficiency and enhance the negotiating environment, the Pipeline RIS should seek to achieve alignment on the following areas:</p> <ul style="list-style-type: none"> - Information disclosure requirements - Negotiation models and the trigger for disputes - Safeguards <p>APLNG encourages future reviews that seek to further streamline the regulatory environment in time by ultimately simplifying the complexities existing between lighter and heavier-handed regulation.</p>	
	(B) If so:	(a) How significant do you think this issue is?	---
		<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>If the framework changes to two forms of regulation, APLNG suggests the heavier-handed form of regulation be based on full regulation (adopting the new hybrid negotiation model) and applied as determined by a test that is prescriptive, definitive and objective and encompass a broader range of services across the whole pipeline, and not just one reference tariff.</p>

No.	Questions	Feedback
	<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>If the framework changes to two forms of regulation, APLNG suggests the lighter-handed form of regulation be based on a strengthened Part 23, with inclusion of the existing 'light regulation' safeguards.</p>
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>APLNG has no comment on this.</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>(a) Do you think the NGR should be amended to include:</p> <p>(B) If so:</p> <p>(i) an explicit right to interconnection to regulated pipelines?</p> <p>(ii) pricing principles for interconnections to regulated pipelines?</p>	<p></p> <p></p> <p>Yes</p> <p>Yes</p>

No.	Questions	Feedback
	(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?	Yes, service charges on existing pipelines should not be used to cross-subsidise new capacity.
20	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.	APLNG does not have any comments.

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>	Yes. APLNG supports the recommendation to align information requirements across both forms of regulation.
	(B) If so: (a) How significant do you think this issue is?	

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>In the interests of streamlining the regulatory framework, information requirements should be aligned as much as possible.</p> <p>In relation to the questions under (b), APLNG is of the view that:</p> <ul style="list-style-type: none"> (i) Pipelines under heavier-handed regulatory form should be required to publish all the services offered and not just a reference service. (ii) Yes, it should align with the requirement under Part 23 to publish standing terms of any service that attracts charges. (iii) Possibly. APLNG acknowledges that appropriate information disclosure by market participants is necessary and important for the market to function efficiently, and that even though the Part 23 reforms have brought more disclosure and led to improved market transparency there remains an opportunity to improve outcomes further. An effective approach to addressing these concerns would be to consider the recommendations identified by the ACCC and Brattle Group, including the financial information reported under Part 23. (iv) Yes. (v) Yes.
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>Yes, APLNG notes the statements made in the ACCC Gas Inquiry Interim Report (July 2019) and the Brattle Group report.</p>

No.	Questions	Feedback
	<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> <p>(i) service providers to publish the inputs used to calculate standing prices?</p> <p>(iii) the relevant regulator to publish a guideline on what information should be contained in the pricing methodology?</p> <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>Yes, APLNG notes the statements made in the ACCC Gas Inquiry Interim Report (July 2019) and the Brattle Group report. APLNG acknowledges that appropriate information disclosure by market participants is necessary and important for the market to function efficiently, and that even though the Part 23 reforms have brought more disclosure and led to improved market transparency there remains an opportunity to improve outcomes further. An effective approach to addressing these concerns would be to consider the recommendations identified by the ACCC and Brattle Group, including the financial information reported under Part 23.</p> <p>Yes, currently, Part 23 and light regulation are not aligned in this respect.</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>Yes, APLNG notes the statements made in the ACCC Gas Inquiry Interim Report (July 2019) and the Brattle Group report.</p>
	<p>(B) If so: (a) How significant do you think this issue is?</p>	---

No.	Questions	Feedback
	<p>(b) Do you think the deficiencies should be addressed by requiring service providers to report:</p> <p>(i) the individual prices (plus key terms and conditions) paid by each shipper rather than weighted average prices; or</p> <p>(ii) the minimum and maximum prices paid for each service in addition to the weighted average prices?</p> <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>	<p>APLNG acknowledges that appropriate information disclosure by market participants is necessary and important for the market to function efficiently, and that even though the Part 23 reforms have brought more disclosure and led to improved market transparency there remains an opportunity to improve outcomes further. An effective approach to addressing these concerns would be to consider the recommendations identified by the ACCC and Brattle Group, including the financial information reported under Part 23.</p> <p>If information about standing terms (price and terms) is required, shippers may be better able to compare their proposed terms with the market and evaluate the value of arbitration.</p> <p>---</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> <p>(c) How significant do you think this issue is?</p>	<p>Yes, APLNG notes the statements made in the ACCC Gas Inquiry Interim Report (July 2019) and the Brattle Group report.</p>

No.	Questions	Feedback
	<p>(d) Do you think this issue should be addressed by implementing one or more of the following measures:</p> <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>In response to the specific questions raised, APLNG is of the view that:</p> <ul style="list-style-type: none"> (i) There should be more definitive requirements around the information reported by service providers, with a standard reporting guideline introduced as a first step and regulator oversight made available later if needed. (ii) Yes, information should be updated if found to be inaccurate. (iii) Potentially, with an increase to penalties only being implemented if issues are not being addressed in response to the above steps. (iv) Yes, APLNG is generally supportive of the changes proposed to the Financial Reporting Guideline and Template proposed by the Brattle Group.

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>Overall, APLNG doesn’t see accessibility as the critical issue to address in any reforms around information.</p> <p>In response to the questions asked:</p> <p>(a) there is no need for further prescription in the NGR around the location and form of information.</p> <p>(b) the requirement for all information to be located at a single external location will not directly address these issues, but it may create a stronger focus from service providers on ensuring information is accurate (given they are uploading it to a regulator/operator’s website) and it may assist shippers to access the information more easily.</p> <p>(c) Again, as noted above, APLNG has been able to locate the relevant information (if required) but there may be benefits for such a requirement for small shippers.</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>Yes, APLNG supports reforms improving appropriate information disclosure and market transparency to enable a potential shipper to assess the reasonableness of proposed tariffs and supports the Brattle recommendations in relation to this aspect.</p>

No.	Questions	Feedback
27	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?	APLNG is of the view the existing exemptions from information disclosure available under Part 23 should be retained.
	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)?	APLNG believes basic information is already reported to the Gas Bulletin Board, which includes capacity, 12-month outlook, and daily volumes. APLNG suggests this requirement is retained in its current form.
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?	APLNG supports regulatory streamlining and, as such, can see the benefit in reducing complexity by aligning the size thresholds across Part 23, Light Regulation and Full Regulation (or between the proposed lighter-handed and heavier-handed regulatory forms).
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.	APLNG does not have any comments.

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>It is APLNG's view that misalignment of the negotiating frameworks would be contributing to inefficiencies and confusion.</p> <p>In support of a streamlined regulatory model, APLNG would agree with the proposal to align the processes under the lighter handed and heavier handed regulatory forms.</p>	
	(B) If so:	(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> <p>(i) the approach currently applied under full and light regulation (see Table 10.1)?</p> <p>(ii) the approach currently applied under Part 23 (see Table 10.1)?</p> <p>(iii) a hybrid of the two frameworks as described in section 10.3.1?</p>	<p>Yes, APLNG supports the adoption of a single negotiation framework.</p> <p>Broadly, APLNG would recommend a hybrid framework (as proposed in the Pipeline RIS) for both forms of regulation with the following elements:</p> <ul style="list-style-type: none"> • a structure similar to the existing Part 23 regime; • requirement for all service providers to publish a user access guide; • ability to seek additional information and include historic information with some additional forecast outlook; • prescription of timeframes similar to those recently implemented for scheme pipelines, with an ability to extend by agreement. 	
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>No. APLNG believes that the preliminary enquiry process should be retained.</p>	
	(B) If so:	(e) How significant do you think this issue is?	---

No.	Questions	Feedback	
	(f) Do you think the preliminary enquiry process should be removed from Part 23?	No, APLNG supports the preliminary enquiry process to retain flexibility within the negotiation system.	
32	Do you agree that the credibility of the threat of arbitration is weaker for smaller shippers (see section 10.2.2)? (A) If not, please explain why not.	Possibly, although APLNG does not have experience in this regard.	
		(a) How significant do you think this issue is?	
	(B) If so:	(b) Do you think the position of smaller shippers would be improved by: (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?	---

No.	Questions	Feedback
	<p>(c) Do you think any of the following should occur to further strengthen the position of smaller shippers:</p> <p>(iv) 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?</p> <p>(v) allow user groups to intervene in arbitral proceedings involving smaller shippers?</p> <p>(vi) 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>	<p>APLNG's view is that market participants should be on a level playing field and that medium and large sized shippers should not be forced to subsidise small shippers.</p>
	<p>(g) 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><10TJ/day of "firm capacity".</p>
33	<p>Do you think:</p> <p>(a) there are any other groups of shippers for whom the threat of arbitration may not be considered credible by service providers?</p> <p>(b) there any other factors that may discourage shippers from threatening the use of arbitration?</p>	<p>No.</p> <p>As noted in section 10.2.3, a determination under Part 23 is not binding on a shipper. One of the reasons for this is that a shipper may not be able to enter or continue in the relevant related market depending on the transport price. It would be a significant disincentive if the shipper were required to proceed with a gas transportation agreement regardless of the impact on its downstream investment decisions.</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>In any dispute as to access terms and conditions, there needs to be an evaluation of the specific circumstances and a weighing of relevant factors. The alternative is prescriptive tariffs. APLNG supports a dispute resolution mechanism which permits variation based on particular circumstances. Arbitrators for the purposes of pipeline access are highly experienced and capable of evaluating and weighing the relevant considerations. There is no need for further prescription.</p>
	<p>(B) If so: (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)? 	<p>---</p>
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No.	Questions	Feedback
35	Do you have any concerns with the Part 23 pricing principles (see Box 10.1)?	
	<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>	<ul style="list-style-type: none"> • Regarding the commercial rate of return (specifically the cost of equity) allowed to be used in the pricing, these may not reflect the prevailing conditions or risk in the market for an asset that receives most of its revenue from long-term fixed fee contracts. Cost of equity and cost of debt should be reviewed. • The pricing principles under Part 23 should expressly recognise that the RCM method is not likely to be appropriate for pipelines that have historically been under-utilised. Under the RCM method set out in Part 23, it allows for the automatic increase of the pipeline's capital base under the RCM method. This is not consistent with the outcomes likely to be achieved in a workably competitive market. In such a market, a shipper would not allow for the pipeline owner to make up for past under recovery of capital or to impose prices which make up for the failure of the pipeline owner to secure other transport customers into the future. The pricing principles should make explicit that the RCM is likely to need to be displaced as the relevant principle in such a situation. • To the extent Part 23 only provides for addressing historical cost, the pricing principles could consider allowing for increases/decreases in projected costs if forecast to depart from historical costs.

No.	Questions	Feedback
	<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>No.</p> <p>Yes.</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>	

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?	APLNG supports a streamlined, regulatory framework that encourages participants to find commercial, market led solutions and considers a modified Option 2 (which adopts the hybrid market power-NGO test) to be appropriate, by including the monitoring and referral functions proposed under Option 3 (refer to RIS Table 11.1: Key Elements of Policy Options 1 – 4) as well as consideration being given to the recommendations identified by the ACCC and Brattle Group.
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>APLNG recommends that:</p> <ul style="list-style-type: none"> - Any new regulatory provisions should not affect existing contractual arrangements for gas shipping. - 15-year greenfield exemptions should be retained as an exemption from application of the market power-NGO test.
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>	Yes, APLNG broadly agrees with the analysis.
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.	APLNG has no alternative means to propose.

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:	---
	(a) grandfather the existing light regulation arrangements until an application is made for the form of regulation to change on the 5.5 pipelines?	---
	(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)?	Given the similarities between Part 23 and the existing light regulation, APLNG believes this option is a sound policy position.
	(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.	As stated above, any new regulatory provisions should not affect existing contractual arrangements for gas shipping. Additionally, consideration should be given to the adequacy of implementation 'grace periods' to enable pipelines that become regulated under the new regime to achieve compliance with regulation (given the potentially significant structural, capability and system changes required).

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>	
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>APLNG agrees with the categories.</p> <p>Without a greater level of detail, it is difficult to identify and quantify costs and benefits at this time. In APLNG's view, there will be greater clarity around these once the preferred option has been selected and it is then possible to identify which pipelines are likely to be subject to regulation.</p> <p>APLNG notes there are many long-term existing contractual arrangements in place, which should remain unaffected. Once a decision has been made about how any changes are overlayed with these existing arrangements, the analysis should consider any delayed costs and benefits occurring as a result of the gradual expiry of these long-term agreements over the coming years.</p> <p>No. An annual real discount rate of 7% is too low and does not reflect market conditions.</p> <p>Possibly consider delayed versus not delayed implementation per (b) above.</p>

No.	Questions	Feedback
45	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.	---
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:	Without a greater level of detail, it is difficult to adequately identify and quantify the impacts on competition at this time. In APLNG's view, there will be greater clarity around the impacts on competition once the preferred option has been selected and it is then possible to identify which pipelines are likely to be subject to regulation.
	(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?	---