

# Pipeline Regulation Consultation Regulation Impact Statement – Stakeholder feedback template

## Submission from Allgas Energy

Allgas Energy Pty Ltd welcomes the opportunity to comment on the RIS, but will restrict the scope of its comments to those matters of particular relevance to Allgas and light regulation distribution networks.

Allgas' key comments relate to the transitional arrangements required should a decision be made to remove Light Regulation from the regulatory framework.

## 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:	Allgas Energy provides no response to this question.
	(a) enabling shippers to make more informed decisions about whether to seek access and to assess the reasonableness of a service provider's offer?	
	(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?	
2	Do you agree with the observations and recommendations made by:	Allgas Energy provides no response to this question.
	(a) respondents to the OGW shipper survey (see section 5.1)? If not, please explain why not.	

No.	Questions	Feedback
	(b) the Brattle Group in its review of the financial information (see section 5.2)? If not, please explain why not.	
	(c) the ACCC in its review of the operation of Part 23 (see section 5.3)? If not, please explain why not.	
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)?	Allgas Energy provides no response to this question.

## 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?	Allgas Energy provides no response to this question.
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.	Allgas Energy provides no response to this question.
6	Are there any other objectives that you think the Energy Council should be pursuing? If so, please set out what they are.	Allgas Energy provides no response to this question.

## 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 should be based on the combined market power-NGO test proposed by the ACCC (see Box 7.6)?</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>	<p>The Allgas gas distribution network is already a Covered network (under Schedule A of the National Gas Code) and Allgas anticipates it will remain subject to some form of regulatory oversight going forward.</p> <p>Allgas' business model is the provision of access to its network to transport gas to end users. Therefore, to the extent the key feature of "coverage" is an obligation to provide third party access, Allgas accepts that its business model indicates that it is, and will continue to be, a "covered" network.</p> <p>Allgas therefore has no comment regarding the requirement for or the nature of any test for coverage to decide whether a network should be subject to access regulation.</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>Allgas Energy provides no response to this question.</p>

	<p>(b) Do you think this issue should be addressed by:</p> <p>(i) providing these pipelines with a full exemption from regulation?</p> <p>(ii) providing these pipelines with an exemption from the Part 23 arbitration mechanism, but not from the disclosure and negotiation elements of Part 23?</p> <p>(iii) another means?</p>	
9	Why do you think:	Allgas Energy provides no response to this question.
	(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:	Allgas Energy provides no response to this question.
	(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>	Allgas Energy provides no response to this question.
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>Allgas concurs with the AEMC and NCC that the coverage test has been effectively bypassed with the advent of Part 23. The focus, then, is on the Form of Regulation test.</p> <p>Allgas considers that the current Form of Regulation test, based on the Form of Regulation factors in s16 of the National Gas Law, features market power</p>

	<p>(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>considerations, and NGL s122(2) requires the NCC to have regard to the National Gas Objective and the Form of Regulation factors in reaching a Form of Regulation decision.  These matters being required to be considered, it is not clear that there is an impetus to introduce a different test.</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>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>(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"> <li>- the ACCC?</li> <li>- the relevant regulator (i.e. the AER or the ERA in Western Australia)?the NCC?</li> <li>- another organisation?</li> </ul>	<p>As a matter of good regulatory practice, Allgas strongly contends that a single body should not be responsible for a decision on whether, or how, to regulate a pipeline, and then also be responsible for carrying out that regulatory action. This would present a clear conflict of roles and scope for confirmation bias, under which the regulator is predisposed to assume that regulation will deliver benefits to the economy in excess of the costs to the economy.</p> <p>The Productivity Commission considered this matter in its 2004 Review of the Gas Access Regime,<sup>1</sup> and its considered findings remain applicable today. In this review, the ACCC commented that “Effective institutional arrangements are underpinned by appropriate governance mechanisms that separate regulatory, policy and ownership responsibilities amongst different groups rather than combining any two of these within one entity.”</p> <p>With the matter of coverage effectively bypassed, Allgas considers that the NCC is best placed and best skilled to make Form of Regulation decisions.</p>
14	<p>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>	<p>Allgas Energy considers that any Form of Regulation test should be applied by a different body than that undertaking the regulatory action. This question featured in the Productivity Commission’s consideration in the 2004 Gas Access Review.</p>
15	<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>Allgas Energy provides no response to this question.</p>

<sup>1</sup> Review of the Gas Access Regime, Productivity Commission Inquiry Report No 31, 11 June 2004. See pp 509, 516, 523 and Recommendations 12.1 and 12.2..

## 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>(B) If so:</p> <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?</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>(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>Allgas concurs with the findings of the AEMC and NCC that the coverage test has been effectively bypassed with the advent of Part 23 – that all pipelines are effectively “regulated”. The coverage test could therefore be removed from the regime with little effect.</p> <p>However this places greater focus on the Form of Regulation test.</p> <p>Allgas considers that the current Form of Regulation test, based on the Form of Regulation factors in s16 of the National Gas Law, features market power considerations, and NGL s122(2) requires the NCC to have regard to the National Gas Objective and the Form of Regulation factors in reaching a Form of Regulation decision.</p> <p>These matters being required to be considered, it is not clear that there is an impetus to introduce a different 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>Allgas considers that there may be value to the marketplace in having a more streamlined regulatory framework, featuring only three clearly distinct categories:</p> <ul style="list-style-type: none"> <li>▪ Exemption under a Greenfield exemption;</li> <li>▪ “lighter” regulation featuring a negotiate-arbitrate model with commercial arbitration in the event negotiations fail, similar to the existing Part 23; and</li> <li>▪ “heavier” regulation featuring a negotiate-arbitrate model with ex-ante Reference Service and Reference Tariff determination, and regulatory arbitration in the event</li> </ul>

No.	Questions	Feedback
	<p>(i) the heavier handed form of regulation should be based on:</p> <ul style="list-style-type: none"> <li>- full regulation (i.e. negotiate-arbitrate with reference tariffs)?</li> <li>- direct price (revenue) control?</li> <li>- another form of regulation?</li> </ul> <p>(ii) the lighter handed form of regulation should be based on:</p> <ul style="list-style-type: none"> <li>- the existing light regulation?</li> <li>- Part 23?</li> <li>- a strengthened Part 23 (i.e. the existing Part 23 plus the safeguards available under light regulation)?</li> <li>- another form of regulation?</li> </ul>	<p>negotiations fail, similar to that applicable under the current “heavy” regulation conducted under Parts 8-12 of the National Gas Rules.</p> <p>While Allgas sees an ongoing role for the existing Light Regulation approach, it accepts that, with the advent of Part 23, there is merit in the proposed spectrum featuring the “lighter” and “heavier” forms of regulation outlined in the RIS.</p> <p>Allgas would accept deletion 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 questions 41 and 42.</p> <p>Allgas considers that it is important to maintain the negotiate-arbitrate approach. This will be very important going forward as the gas market evolves and shippers require greater flexibility in meeting their energy needs.</p> <p>In this regard, Allgas supports the key distinctions between the two proposed form of regulation:</p> <ul style="list-style-type: none"> <li>▪ “Heavier” regulation featuring a negotiate-arbitrate approach supported by an access arrangement featuring defined Reference Services and Reference Tariffs, with a backup of regulatory arbitration in the event an agreement cannot be reached; and</li> <li>▪ “Lighter” regulation featuring a negotiate-arbitrate approach supported by appropriate information disclosure, with a backup of commercial arbitration in the event an agreement cannot be reached.</li> </ul> <p>Under Light Regulation, Allgas is currently subject to the additional safeguards featured in Light Regulation (prohibitions on preventing or hindering access, bundling, and inefficient price discrimination). Allgas would be comfortable having those additional safeguards added to the “lighter” regulation model.</p>

No.	Questions	Feedback
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>Following on from the comments in the response to Q17, Allgas considers that there is merit in reducing the confusion surrounding regulatory regimes, by restricting the model to three clear forms of regulation:</p> <ul style="list-style-type: none"> <li>▪ Exemption under a Greenfield exemption;</li> <li>▪ “lighter” regulation featuring a negotiate-arbitrate model with commercial arbitration in the event negotiations fail, similar to the existing Part 23; and</li> <li>▪ “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.</li> </ul> <p>A “lighter” form of regulation with some form of price control would contaminate the regulatory framework, and be a retrograde step in clarifying the confusion surrounding the regulatory regime.</p> <p>Moreover, the NCC found, in the context of approving Allgas’ application for Light Regulation, that its market power and pricing was significantly constrained by market forces, in particular the availability and viability of alternate fuels.</p> <p>Allgas considers that, with alternate fuels exerting such strong discipline on Allgas pricing, an additional form of regulatory intervention is not required.</p> <p>Moreover, Allgas considers that imposing price regulation on a “lighter” regulation framework is fundamentally the same as imposing “heavier” regulation without going through a Form of Regulation test. As the NCC has recently performed the Form of Regulation test for the Allgas network, imposing a form of price control to “lighter” regulation distribution networks would act contrary to the NCC determination.</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>Allgas Energy provides no response to this question.</p>

No.	Questions	Feedback
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.	Allgas Energy provides no response to this question.

## Chapter 9: Information disclosure requirements

No.	Questions	Feedback
21	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)? (A) If not, please explain why not:	Allgas Energy provides no response to this question.
	(B) If so: <ul style="list-style-type: none"> <li>(a) How significant do you think this issue is?</li> <li>(b) Do you think this issue should be addressed by requiring full regulation pipelines to publish the following information: <ul style="list-style-type: none"> <li>(i) a description of all the reference and non-reference services offered by the pipeline (pipeline service information);</li> <li>(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);</li> <li>(iii) information on the prices paid by shippers for each reference and non-reference service;</li> <li>(iv) historic demand information for each service offered by the pipeline; and</li> <li>(v) historic financial information for the pipeline on an annual basis in accordance with a financial reporting guideline published by the relevant regulator.</li> </ul> </li> </ul>	

No.	Questions	Feedback	
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>Allgas Energy provides no response to this question.</p>	
	(B) If so:	(a) How significant do you think this issue is?	
		<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>	
		(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?	
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>Allgas Energy provides no response to this question.</p>	
	(B) If so:	(a) How significant do you think this issue is?	
		<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>	

No.	Questions	Feedback
	<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)? (A) If not, please explain why not.</p>	<p>Allgas Energy provides no response to this question.</p>
	<p>(c) How significant do you think this issue is?</p>	
	<p>(B) If so:</p> <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"> <li>(i) amending the NGR to provide for greater regulatory oversight of the information reported by service providers?</li> <li>(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?</li> <li>(iii) increasing the penalties for breaches of the information disclosure obligations and the access information standard?</li> <li>(iv) the changes to the Financial Reporting Guideline identified by the ACCC and the Brattle Group (see Appendix B) should be implemented?</li> </ul>	

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>Allgas Energy provides no response to this question.</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>Allgas Energy provides no response to this question.</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>Allgas Energy provides no response to this question.</p>
28	<p>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>	<p>Allgas owns the Moura pipeline, a non-scheme pipeline which is subject to a "size" exemption from Part 23 reporting. Allgas considers that the current reporting exemption regime under Rule 585(4) remains appropriate.</p>

No.	Questions	Feedback
29	<p>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.</p>	<p>Allgas notes that the regulatory framework currently features a myriad reporting requirements, including information published on the Gas Bulletin Board, the AER Financial Reporting Guideline for non-Scheme Pipelines, the AER Financial Reporting Guideline for Light Regulation Pipeline Services, and the new Annual Reporting Regulatory Information Notices for full regulation pipelines. It should not be surprising that shippers are confused with the wide range of inconsistent information being reported in the marketplace.</p> <p>Allgas considers that the current reform process presents an ideal opportunity to revisit the various reporting requirements to develop a consistent suite of information reports that would apply consistently across all pipelines.</p> <p>Allgas proposes to engage with shippers, regulators and policy makers through a series of workshops to ascertain their access information requirements, the information already available on the gas bulletin board and through other regulatory reporting channels, and to undertake a “gap analysis” to ascertain what additional information is required by the market. This would then go to inform the development of consistent and relevant financial reporting frameworks going forward.</p>

## 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>Allgas Energy provides no response to this question.</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> <ul style="list-style-type: none"> <li>(i) the approach currently applied under full and light regulation (see Table 10.1)?</li> <li>(ii) the approach currently applied under Part 23 (see Table 10.1)?</li> <li>(iii) a hybrid of the two frameworks as described in section 10.3.1?</li> </ul>
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>Allgas Energy provides no response to this question.</p>	
	(B) If so:	(e) How significant do you think this issue is?	
		(f) Do you think the preliminary enquiry process should be removed from Part 23?	
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>Allgas Energy provides no response to this question.</p>	
	(B) If so:	(a) How significant do you think this issue is?	

No.	Questions	Feedback
	<p>(b) Do you think the position of smaller shippers would be improved by:</p> <ul style="list-style-type: none"> <li>(i) making it easier for pipelines to move from lighter to heavier handed forms of regulation as set out in Chapter 8?</li> <li>(ii) requiring individual prices or maximum and minimum prices to be reported by service providers rather than weighted average prices (see Table 9.2)?</li> <li>(iii) improving the usability and accessibility of information reported by service providers in the manner set out in Table 9.2?</li> </ul>	
	<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"> <li>(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?</li> <li>(ii) allow user groups to intervene in arbitral proceedings involving smaller shippers?</li> <li>(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?</li> </ul>	
	<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>	
33	<p>Do you think:</p> <ul style="list-style-type: none"> <li>(a) there are any other groups of shippers for whom the threat of arbitration may not be considered credible by service providers?</li> <li>(b) there any other factors that may discourage shippers from threatening the use of arbitration?</li> </ul>	<p>Allgas Energy provides no response to this question.</p>

No.	Questions	Feedback
	<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>Allgas Energy provides no response to this question.</p>
34	<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"> <li>(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?</li> <li>(ii) require the existence of a dispute to be made public and to set out the process for joining parties?</li> <li>(iii) introduce a 50-day fast-track option for certain disputes under full regulation?</li> <li>(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)?</li> <li>(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?</li> <li>(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)?</li> </ul>	

No.	Questions	Feedback
35	Do you have any concerns with the Part 23 pricing principles (see Box 10.1)?	Allgas Energy provides no response to this question.
	If so:	
	(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.	
	(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?	
(c) Do you think there would be value in providing greater clarity in Part 23 about:		
(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?		
(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?		
36	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.	Allgas Energy provides no response to this question.

## 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?	Allgas Energy provides no response to this question.
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.	Allgas Energy provides no response to this question.
39	Do you agree with the advantages, disadvantages, costs, benefits and risks that have been identified for each option in sections 11.2-11.4?  If not, please set out what other advantages, disadvantages, costs, benefits and/or risks that you think are associated with each option?	Allgas Energy provides no response to this question.
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.	Allgas Energy provides no response to this question.
41	<p>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> <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> <p>(b) deem all light regulation pipelines to be subject to full regulation?</p> <p>(b) deem all light regulation pipelines to be subject to the new lighter handed form of regulation (i.e. the strengthened Part 23)?</p> <p>(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?</p>	<p>This is a matter of considerable importance to Allgas.</p> <p>As found by the National Competition Council (NCC), any market power that Allgas may possess faces significant constraints through "the ability for end users to substitute other forms of energy, namely electricity and LPG. This factor offsets some of the market power which the Allgas Network would otherwise enjoy. Importantly, the level of constraint imposed is unlikely to be reduced if light regulation applies to the Allgas Network."<sup>2</sup></p> <p>As Allgas has recently been subject to a robust Form of Regulation analysis by the NCC, in the context of the NCC's determination to move Allgas to Light Regulation, it would be unnecessary (and potentially unreasonable) to require that the Form of Regulation test should be repeated. As a result, there would be no grounds on which to suggest that Allgas should transition to the "heavier" form of regulation. Should Light Regulation be abolished (as suggested in the RIS), Allgas should transition to the proposed "lighter" form of regulation.</p> <p>Allgas acknowledges that this will mean that the relevant dispute resolution body will change from the AER (as is the case under Light Regulation) to a commercial arbitration form of dispute resolution. Allgas does not consider</p>

<sup>2</sup> National Competition Council, *Application by Allgas Energy Pty Ltd for Light Regulation of the Allgas Gas Distribution Network - Final decision* - 28 April 2015, para 3.18.

		<p>this to be substantive issue, noting that it has not been the subject of any access disputes under heavy or light regulation.</p>
42	<p>Are there any other transitional arrangements that need to be considered? If so, please outline what they are.</p>	<p>Further to the response to Q41 above, in which Allgas submits that it should transition from Light Regulation to the proposed “lighter” regulation, there are a number of key transitional issues that need to be addressed surrounding the value of the Regulatory Capital Base. This is particularly important given the myriad financial reporting guidelines currently in play.</p> <p>The key issues are:</p> <ul style="list-style-type: none"> <li>▪ Grandfathering the Regulatory Capital Base as determined by the AER in the context of a full regulation access arrangement; and</li> <li>▪ The method applied for rolling forward the Regulatory Capital Base during the periods that 1) the network was subject to the approved access arrangement, 2) the network was subject to Light Regulation, and 3) the period following the implementation of these reforms.</li> </ul> <p>This is a key consideration, as the methodology for rolling forward the capital base (in particular, the definition of “depreciation” or “return of capital”) is starkly different between the AER’s Roll Forward Material methodology and the Part 23 Financial Reporting Guideline for non-Scheme Pipelines. This difference in approach presents sharply different signals for investment.</p> <p>In summary, Allgas submits that any change to the approach to rolling forward the Regulatory Capital Base should be implemented prospectively rather than retrospectively.</p> <p>On grandfathering the Regulatory Capital Base – Allgas submits that any calculation of a regulatory capital base must accept the previously determined Regulatory Capital Base. This is consistent with the AER Financial Reporting Guideline for non-Scheme Pipelines which provides that “If a pipeline was previously regulated and a determination made on the asset value, the service provider may use this as the opening balance for the calculation...” (p21)</p> <p>Regarding the Roll Forward Methodology, Allgas submits that the AER Roll Forward Material should apply, featuring an indexed straight-line depreciation approach, for all periods in which the Allgas network was a covered pipeline. This would be consistent with the approach approved by the AER in the last Allgas access arrangement (and indeed applied by the AER in all access arrangements to date) and also consistent with the approach required in section 4 of the October 2019 Financial Reporting Guideline for Light</p>

		<p>Regulation Pipeline Services<sup>3</sup>. This Roll Forward Material should apply for all years in which the Allgas network is a covered pipeline and subject to a regulatory arbitration form of dispute resolution (ie with the AER as the dispute resolution body).</p> <p>Should the Part 23 Recovered Capital Method asset valuation approach continue to be applied in the context of “lighter” regulation going forward, this should be applied prospectively to avoid imposing retrospective regulation on historical investment.</p>
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<sup>3</sup> AER, *Financial Reporting Guideline for Light Regulation Pipeline Services*, October 2019, p14 “For the purposes of preparing the statement of pipeline revenues and expenses, the depreciation expense is to be determined in accordance with the RFM Material. ... The depreciation calculated is to be the regulatory depreciation (based on the Regulatory Asset Base). ... noting that the asset value will also be adjusted for indexation...” [noting that this definition is referenced in “Rolling forward the RAB value” in section 4.2]

## 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>Allgas Energy provides no response to this question.</p>	
44	Do you:	(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>Allgas Energy provides no response to this question.</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.	
		(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.	
		(d) think there are other input variables that should be subject to a sensitivity analysis? If so, please explain what those inputs are.	
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>Allgas Energy provides no response to this question.</p>	
46	<p>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:</p>	<p>Allgas Energy provides no response to this question.</p>	
	(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?		