

19 December 2019

Chair  
COAG Energy Council  
GPO Box 787 Canberra ACT 2601  
Via Email: [gas@environment.gov.au](mailto:gas@environment.gov.au)

Dear Chair

**Re: Options to improve Gas Pipeline Regulation - COAG Regulation Impact Statement (RIS)**

Thank you for the opportunity to contribute a submission to the October 2019, **Options to improve Gas Pipeline Regulation - COAG Regulation Impact Statement (RIS)**.

ConocoPhillips Australia (COPA) has invested approximately AUD\$20 billion in Australia and our operated and joint venture projects employ over 4,000 people. In addition to assets in the Northern Territory, ConocoPhillips Australia holds a 37.5% interest in the Australia Pacific LNG (APLNG) joint venture and is the operator of the LNG facility on Curtis Island in Queensland.

Through APLNG, ConocoPhillips Australia has heavily invested and worked to build Australia's leading coal seam gas business. This investment has made APLNG the largest supplier of gas to the East Coast domestic market, meeting over 30 percent of total demand. In 2018, APLNG supplied over 600 terajoules on average per day into the domestic market – more than the entire daily gas demand of Queensland.

ConocoPhillips Australia continues to support the COAG Energy Council's Gas Market Vision. Pipelines should provide transparent, efficient, competitive and non-discriminatory services<sup>1</sup>

ConocoPhillips Australia has a direct interest in the efficient operation of the East Coast gas market. The establishment of a more efficient, effective and well-integrated regulatory framework for gas pipelines is a fundamental aspect of a properly functioning market.

Thank you for your consideration of our submission (attached).  
Please contact James Mathews at +61 429 924 044 or [james.mathews@conocophillips.com](mailto:james.mathews@conocophillips.com), if you require further information.



**Nicholas A McKenna**  
President  
ConocoPhillips – Australia East

<sup>1</sup> See COAG Energy Council Australian Gas Market Vision (December 2014).

# Pipeline Regulation Consultation Regulation Impact Statement – Stakeholder feedback template

## Submission from ConocoPhillips Australia (COPA)

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?	
	(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?	
2	(e) enabling disputes that cannot be resolved through negotiations to be resolved in a cost-effective and efficient manner?	
	Do you agree with the observations and recommendations made by:	
	(a) respondents to the OGW shipper survey (see section 5.1)? If not, please explain why not.	Yes.
	(b) the Brattle Group in its review of the financial information (see section 5.2)? If not, please explain why not.	Yes.

No.	Questions	Feedback
	(c) the ACCC in its review of the operation of Part 23 (see section 5.3)? If not, please explain why not.	Yes.
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)?	

## 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?	Yes, COPA agrees the current pipeline regulatory regime is complex and inefficient, perhaps largely due to it being iteratively and incrementally developed over a long period of time. The result is that as documented by the ACCC, the AEMC and the Vertigan Report, the form of regulation may not be appropriate nor address the potential for monopoly pricing. This has resulted in a pipeline transportation market which is not as efficient, effective nor well-integrated as it should be.
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.	
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>Whether a pipeline may be over or under-regulated depends on the individual pipeline and COPA does not believe it is possible to make a general statement regarding all pipelines which provide third party access.</p> <p>COPA observes, based on the numerous reports on pipeline behaviours, pipeline services and pipeline tariffs over the last several years that there is still a need for additional regulation in certain circumstances.</p> <p>COPA recognises that regulating all pipelines regardless of whether they provide third party access will increase the overall regulatory burden on pipelines. The additional regulatory burden, however, will be far outweighed by the market efficiencies achieved by mandating third party access.</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"> <li>(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?</li> <li>(ii) limiting the application of regulation to those cases where it is established that the pipeline has substantial market power?</li> <li>(iii) another means?</li> </ul>	<p>Limited exemptions for pipelines that can demonstrate a clear lack of substantial market power should be considered. COPA desires a streamlined and objective process.</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>COPA appreciates the difficulty of the issue but believes that the market power NGO test is rather subjective and can be left up to interpretation. However, in the absence of an alternative, we suggest that if the combined market power-NGO is used, that the authority to determine which pipelines have substantial market power be ultimately be determined by a high level authority as a policy decision separate from a typical administrative regulatory function. Further, we believe such determinations should be subject to judicial review.</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>COPA suggests that the burden of demonstrating the test should rest with the service provider, and that potential shippers should be permitted to participate in the process. The decision-making authority should have the power to determine whether the service provider has met its burden. Further, we believe determinations about the test should be subject to judicial review.</p>	

	(b) If not, please explain why and what test you think should be employed.	NA
8	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?	No, COPA does not believe investment incentives are distorted.
	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?	NA
	(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?	
	Why do you think:	
	(a) the greenfield exemptions in the NGL have not been used by a greater number of service providers?	COPA questions the need for greenfield exemptions as any proposed pipeline would get certainty from the application of the current regime and its initial contracts and not from an exemption from the regime.  Currently, the majority of pipelines are not under light handed or full regulation, thus COPA speculates that most pipeline developers did not require the certainty that the exemption may provide.
	(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:	
	(a) changes to the greenfield exemptions and/or CTP provisions are required?	No, the greenfield exemptions are not 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?	COPA questions the need for greenfield exemptions (of any length of time) as any proposed pipeline would get certainty from the application of the current regime and its initial contracts and not from an exemption from the regime.

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>COPA believes the current approach needs to be reviewed. However, COPA notes the distinct differences between pipeline access regimes in Australia versus the US and Canada and elsewhere. Just providing third party access to Australian pipelines without implementing the other safeguard provisions, transparency and terms offered in the US and Canada does not seem effective. These provisions are:</p> <ol style="list-style-type: none"> <li>1) Australia's pipeline industry has been established allowing for discriminatory pipeline services (foundation shipper contracts and non-standard provisions like most favoured nations) to assist with the initial infrastructure investment. Shippers in the US and Canada pay the same publicly available tariff from point A to point B for the same level of service and same T&amp;C's which are publicly posted. Only by rare exemption are services amended from these standard terms and these exemptions are publicly posted. Overlaying non-discriminatory services for new contracts over existing contracts could be problematic and only until the older contracts have completed their term, would there be totally equal service.</li> <li>2) Australia has no restrictions on pipelines being vertically integrated whereas US and Canadian pipeline owners are very restricted with owning any business which has services on a related party owned pipeline. Where pipeline owners do own competing services, there are severe restrictions in place on how this business is conducted. Until such safeguards are put in place in Australia, it would be difficult to guarantee non-discriminatory service.</li> <li>3) In Australia, there is no transparency on the amount of capacity, the location of service and the terms of services which each shipper has contracted. In markets offering non-discriminatory third-party access, all shipper contract terms and point to point capacity entitlements are known, even to the detail of publishing the amount a shipper utilises their capacity each day. Even the terms of all capacity release market transactions (equivalent to Australia's combined day ahead auction and capacity trading platform) are public with the counterparties.</li> </ol> <p>Unless these additional requirements are implemented in Australia, COPA does not believe that just mandating third party access would be effective.</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>As observed by the ACCC 2015-2016 Inquiry, the AEMC 2015-2016 Review and the Vertigan Review, the coverage test no longer seems appropriate.</p> <p>COPA's preference is that the standard for exemptions should be definitive and not subjective and be reviewed/determined by the appropriate authority (and subject to judicial review). The NGO-style test is embedded within the</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?	combined market power NGO test, so there is not much difference. Without defined objective criteria for the hybrid market power test, COPA questions whether there is potential for too much discretion and subjectivity around the application and satisfaction of the tests. Thus, COPA prefers the amended Part IIIA Test as the highest standard and as a secondary preference, the combined market power-NGO test.
	Do you think the onus of demonstrating the test is met (or not met) should sit with the decision-maker or service provider?	COPA suggests that the burden of demonstrating the test rest squarely with the service provider. Shippers and potential shippers should be able to participate in the process, including presentation of other market views. All determinations should be made by an appropriate decision-maker. Further, we believe determinations about the test should be subject to judicial review.
13	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)?	No, as third-party access decisions are an important decision hurdle. COPA believes that the benefits associated with third-party access outweigh any potential regulatory burdens faced by the service provider.
	If you think the current arrangements could give rise to unnecessary costs and delays:  (a) How significant do you think this issue is and what are the consequences likely to be?	Not very significant as only a minority of pipelines have gone through the process currently or have applied for a greenfield exemption.
	(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.	No. As relatively few pipelines have gone through the process and the impact is great, COPA does not think cost or time should be the main focus.
	If so:  (i) What expertise do you think this organisation should have?	A decision as to whether a pipeline should be regulated involves policy considerations which are separate and distinct from administrative type regulatory functions. <sup>1</sup> This was the reason for the coverage decision being vested in the Minister. COPA supports this continuing. In practice, the inquiries undertaken by the Minister and the NCC are different in scope with the NCC conducting a full public consultation and, by reason of the NCC's process and recommendation, the Minister is in a position to form a view without the need for any separate public consultation (a narrow participation by shippers and potential shippers, however, may be helpful to the decision maker). It may be appropriate to consider giving the recommendation function to the Productivity Commission if there are concerns about the NCC's resources.

<sup>1</sup> 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.

	(ii) Which of the following organisations do you think should be responsible for making this decision: <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>	COPA believes the Minister should continue to make these determinations with the possible substitution of the Productivity Commission for the NCC. COPA does not believe the ACCC or AER taking on this function is preferred as this was not an acceptable finding from the Hilmer Review Report or the Productivity Commission’s Review of Gas Access Regimes.
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)?	No, see response to 13 (b) above.
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.	No additional comments.

## Chapter 8: Forms of regulation

No.	Questions	Feedback
16	Do you think the use of the coverage test as a gateway between Part 23 and full regulation is resulting in under-regulation? (A) If not, please explain why not.	No. As identified by the ACCC, the AEMC and the Vertigan Report, the coverage test may not be the appropriate test for fair pricing, so the coverage test may not be appropriate as a gateway to determine the most appropriate type of regulation.
	(B) If so: <ul style="list-style-type: none"> <li>(a) How significant do you think this issue is?</li> </ul>	
	(b) Do you think the coverage test should be removed and a single test used for moving between the alternative forms of regulation? If so, do you think the single test should be based on: <ul style="list-style-type: none"> <li>(i) the form of regulation test in s. 122 of the NGL (see section 3.1.1)?</li> <li>(ii) another test?</li> </ul>	Yes. COPA does not see the benefit of s.122 as it depends mostly on the coverage test. COPA prefers a single test but whatever test is adopted should be specific, definitive and objective so that discretion is removed from the determination.
	(c) Do you think: <ul style="list-style-type: none"> <li>(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</li> <li>(ii) the onus should be on the service provider to demonstrate why a heavier handed form of regulation is not required?</li> </ul>	COPA suggests that the burden should fall on the service provider to demonstrate which form of regulation is required. Shippers and potential shippers should be permitted to participate in the process. All determinations should be subject to review and final determination by the decision maker authority. And, that decision should be subject to judicial review.

No.	Questions	Feedback	
	(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?	The relevant regulator should, at the request of shippers or potential shippers, be allowed to request a review of suspicions of abuse of market power/wrongful conduct with the relevant regulator.	
17	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? (A) If not, please explain why not.	Yes.	
	(B) If so:	(a) How significant do you think this issue is?	
	(i) the heavier handed form of regulation should be based on: <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>	(b) If the number of forms of regulation was reduced to two, do you think:	
		(ii) the lighter handed form of regulation should be based on: <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>	COPA does not fully understand the justification for the difference between light-handed and heavier handed regulation and how it is applied, nor the specific benefit heavy handed regulation has provided to the gas industry. COPA believes that if the recommendations from the ACCC and Brattle Group are implemented and combined with the light handed regulation form to make a strengthened Part 23 regulation, the COAG/DOEE should review the potential for just one form of regulation, which would be based on a strengthened Part 23. If continuing with both heavy handed and light regulation, COPA suggests modifying all forms of regulation so that they are aligned as much as possible.  The heavy-handed form should be based on full regulation but with a streamlined negotiate / arbitrate model based on the strengthened Part 23 and a recovered cost method for capital allocation. The regulations would be based on the revenue/tariff across the entire pipeline and not just one reference tariff. Aligning the forms of regulation as much as possible to make them consistent (and better understood) will benefit the industry and the confidence of shippers.
	The light-handed form of regulation should be combined with Part 23 to make a strengthened Part 23 which should also include all the recommendations from the ACCC and Brattle Group as well as incorporating some of the forecasted costs rather than just historic costs.		

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>So long as shippers and potential shippers have a full opportunity to participate in a proceeding, COPA suggests that a negotiated settlement approach used in the US and Canada presents a workable regulatory framework.</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>Yes</p>	
	(B) If so:	<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>Yes</p>
		<p>(ii) pricing principles for interconnections to regulated pipelines?</p>	<p>Yes</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>Yes, pipes should not be allowed to cross-subsidise new capacity.</p>		
20	<p>Are there any other problems with this aspect of the regulatory framework that have not been identified in this chapter? If so, please outline what they are and how you think they should be addressed.</p>	<p>No comment.</p>	

## Chapter 9: Information disclosure requirements

No.	Questions	Feedback
	<p>Do you think the limited information available on full regulation pipelines is hindering the ability of shippers to negotiate access to non-reference services or having any other adverse effects (see section 9.2.1)?</p> <p>(A) If not, please explain why not:</p>	<p>Yes. COPA questions the reasonableness of only having one regulated reference service on a pipeline as this only contributes to the complexities associated with current regulatory regime. Just as the ACCC and the Brattle Group identified issues with the useability of the Part 23 financial statements, financial statements which support an access arrangement are very difficult for shippers to interpret and understand.</p>
21	<p>(B) If so:</p> <p>(a) How significant do you think this issue is?</p> <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"> <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>	<p>(i) They should publish all the services offered and not just a reference service.</p> <p>(ii) and (iii) Yes, the same as provided for under Part 23 for any service that attracts charges</p> <p>(iv) Yes</p> <p>(v) Yes</p>
22	<p>Do you think the deficiencies that have been identified with the pricing methodologies and financial information published by service providers are limiting the reliance that shippers can place on this information and making them more susceptible to exercises of market power (see section 9.2.2)?</p> <p>(A) If not, please explain why not:</p>	<p>Yes, as per the recent Brattle and ACCC Inquiry (July 2019) reports.</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 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>	Yes, as per ACCC Inquiry and Brattle Group recommendations.
	<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>	Yes, this is the biggest gap between Part 23 and light handed regulation.
23	<p>Do you think the deficiencies that have been identified with the weighted average prices are limiting the reliance that shippers can place on this information and making them more susceptible to exercises of market power (see section 9.2.2)?</p> <p>(A) If not, please explain why not.</p> <p>(B) If so:</p> <p>(a) How significant do you think this issue is?</p> <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>Yes</p> <p>(i) Yes. If the goal is non-discriminatory access, service providers should report the contracted prices, contracted quantities, length of term and key terms &amp; conditions by each shipper, otherwise how would a shipper know that the terms are non-discriminatory.</p> <p>(ii) If the contracted prices plus contracted quantities are reported, there would not be need for the minimum and maximum prices as well.</p>

No.	Questions	Feedback
	<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>Yes, both the ACCC Inquiry and Brattle report assisted with identifying these issues.</p>
24	<p>(B) If so:</p> <p>(c) How significant do you think this issue is?</p> <p>(d) Do you think this issue should be addressed by implementing one or more of the following measures:</p> <p>(i) amending the NGR to provide for greater regulatory oversight of the information reported by service providers?</p> <p>(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?</p> <p>(iii) increasing the penalties for breaches of the information disclosure obligations and the access information standard?</p> <p>(iv) the changes to the Financial Reporting Guideline identified by the ACCC and the Brattle Group (see Appendix B) should be implemented?</p>	<p>(i) more definitive requirements particularly around a standard reporting guideline should be introduced first and if necessary, oversight as well.</p> <p>(ii) Yes</p> <p>(iii) Yes, but only as a last resort if the current issues are not addressed.</p> <p>(iv) Yes.</p>
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>(a) COPA doesn't see the necessity as this information is accessible on service provider's websites. The more significant issue is the relevance of the available information.</p> <p>(b) A single location is not going to address the main issue.</p> <p>(c) As per (b) above.</p>

No.	Questions	Feedback
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, COPA agrees that as the goal of the information reporting is for a potential shipper to determine if the proposed tariff is reasonable, the current template does not provide this information in an acceptable format. COPA supports the Brattle recommendations and possible the Brattle Group should keep updating their review until consistency is reached.</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>Yes current exemptions should be retained. COPA sees no value in requiring pipelines that are not providing third party access to report basic information, some of which is already on the GBB.</p> <p>COPA believes that some of the basic information is already reported to the GBB which includes capacity, 12 month outlook, and daily volumes.</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>	
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>No.</p>

## Chapter 10: Negotiation frameworks and dispute resolution mechanisms

No.	Questions	Feedback
30	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)? (A) If not, please explain why not.	Yes, it is too complex.
	(B) If so:	Yes, COPA thinks a single framework mainly based on Part 23 but with: <ul style="list-style-type: none"> <li>• ability to seek additional information</li> <li>• possibly with the longer prescribed timeline days of the full/light regulation as the Part 23 timeline seems aggressive.</li> <li>• include historic financial information with some additional forecast financial outlook.</li> </ul>
	(a) How significant do you think this issue is? (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: <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	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)? (A) If not, please explain why not.	COPA does not consider this to be a significant issue and understands service providers may not be provided with enough information initially from prospective shippers.
	(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	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.	Yes.
	(B) If so:	(d) How significant do you think this issue is?

No.	Questions	Feedback
	<p>(e) 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>COPA is unsure of the benefit of (i) to smaller shippers or any shipper but agrees that the other provisions will assist all shippers including smaller shippers. Adopting a negotiated settlement approach may provide the largest benefit to small shippers as it would be a collective benefit.</p>
	<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>COPA appreciates the issues of smaller shippers but in principle, COPA does not believe that all shippers should subsidise smaller shippers. Thus, COPA thinks that option (ii) may be the best option.</p>
	<p>(h) If any of the measures outlined in (c) are implemented, how should 'smaller shipper' be defined? If you think it should be based on a size threshold, what threshold do you think should be adopted?</p>	<p>&lt;10 TJ/d of contracted capacity on any pipeline during a year.</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>No.</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>Yes. COPA supports aligning all the dispute resolutions provisions (full, light and Part 23) as much as possible for consistency and greater confidence by the industry.</p> <p>For the reasons set out in the Vertigan report, COPA supports a dispute resolution mechanism which permits variation based on particular circumstances. There is no need made out for further prescription.</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>	<p>(i) through (vi) – COPA supports the implementation of the AEMC’s recommendations and others identified per Table 10.2 in the RIS document.</p>

No.	Questions	Feedback	
35	Do you have any concerns with the Part 23 pricing principles (see Box 10.1)?		
	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.	<p>1) 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 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.</p> <p>2) The pricing principles in Part 23 use the recovered capital method (<b>RCM</b>) as the default asset valuation methodology. For speculative and/or materially under-utilised pipelines, the sum of historical costs may exceed the sum of historical revenues. According to the RCM methodology, this negative net sum must be added to the value of the capital base which can cause a significant uplift to the pipeline's capital base value. However, in a workably competitive market, negotiation or re-negotiation with a shipper would not present an opportunity 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 in Part 23 do not expressly address this issue and it is something that should be clarified.</p> <p>3) The pricing principles should also include an expectation for changes expected in the future.</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?	No, as this assumes that heavier handed regulations have more competitive terms, which may not be correct.
	(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?	Yes to both. The greater clarity which is provided would provide the possibility that arbitration may be avoided by the next shipper seeking access.	

No.	Questions	Feedback
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.	No.

## 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?	Believing that pipelines should provide transparent, efficient, and competitive services, COPA has a preference for Option 4 as it provides the best chance of non-discriminatory pipeline access over time which supports the Gas Vision.
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.	None.
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?	Yes. COPA notes that section 11.5 (Regulation of all pipelines) should also be referenced in the question.  Without defined objective criteria for the hybrid market power tests, COPA questions whether there is potential for too much discretion and subjectivity around the application and satisfaction of the tests.  Regardless of which option is chosen it only makes sense to combine the best parts of light-handed regulation and Part 23 to eliminate some of the complexity in the regime. As discussed in response to 17 (b), COPA would like to understand if it is possible to only have one form of regulation.
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.	No alternative envisaged.
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 the new lighter handed form of regulation (i.e. the strengthened Part 23)?	Yes, this is COPA's preferred option

	(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.	

## 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>COPA agrees with the categories.</p> <p>Until the specific option is determined and the pipelines that will be included in the new market power test, COPA does not think it would be possible to determine the specific costs.</p> <p>COPA is concerned how any potential reform will be implemented considering the existing arrangements, thus any cost and benefit should consider this having a delayed impact.</p> <p>COPA understands that these discount rates are standard for government's reviews but does not understand how they were determined. We urge that the Department provide additional explanation for why they are applicable for this type of review.</p> <p>Assuming that existing shipper contracts will remain in place, COPA suggests that a delayed implementation will have a significant impact on any potential benefit of the option selected.</p>
45	<p>Do you have any information on the compliance costs associated with the policy options set out in Chapter 11 that could be used for the CRBM? If so, please elaborate on the source and quantum of the costs.</p>	
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>(a) the relative bargaining power of shippers and service providers?</p> <p>(b) the search and transaction costs associated with contracting pipeline services?</p>	<p>Until the specific option is determined and the pipelines that will be included in the new market power test, COPA does not think it would be possible to determine the impact on competition in the gas market.</p>

No.	Questions	Feedback
	(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?	