# SUBMISSION

## COAG RIS: GAS PIPELINE REGULATION REFORM
## 23 DECEMBER 2019

EUAA
Energy Users Association of Australia

Gas and Governance Branch
Department of the Environment and Energy

Via Email: gas@environment.gov.au

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## INTRODUCTION

The Energy Users Association of Australia (EUAA) is the peak body representing Australian energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing and materials processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and expect to see all parts of the energy supply chain making their contribution to the National Gas Objective.

Our members are highly exposed to movements in both gas and electricity prices and have been under increasing stress due to escalating energy costs. These increased costs are either absorbed by the business, making it more difficult to maintain existing levels of employment or passed through to consumers in the form of increases in the prices paid for many everyday items.

Our focus in this submission is the east coast gas market. We begin by outlining the key themes of our submission and our preferred regulatory framework. We then discuss the wider context of the impact of Government energy and climate policy on the future of gas pipelines before a more focussed discussion of the role of regulation to address market failure from information asymmetry.

We conclude with specific comment on the regulatory framework we see as best achieving the National Gas Objective (NGO).

### 1. Key themes of this submission

- Government energy and climate policy is beginning to have a profound influence on the future of gas pipelines. With increasing pressure from climate change activist groups, it may be that gas will not have a role in a net zero carbon world and there may be a time where the future of gas pipelines hangs on the economics of hydrogen. This is an issue for the gas industry to manage as consumers are not interested in taking hydrogen development risk.
- We support a move to the ACCC's proposed coverage test on whether full regulation should apply as it better aligns with the current gas market.
- Despite the disappointing experience highlighted in the recent ACCC audit, the EUAA continues to be a strong supporter of the Part 23 reforms and the negotiate arbitrate model in general. At this time, we do not support other models e.g. direct price control
- We support the improvements proposed by the ACCC, Brattle and Oakley Greenwood reports on information disclosure and support an ongoing audit role for the ACCC.
- While information disclosure is a necessary condition for addressing information and negotiation asymmetry between service providers and shippers, it is not a sufficient condition. We outline measures to improve the position of small shippers, whose numbers are expanding, driven by changing gas market dynamics.
- A foundational principle of our approach is that pipelines should only recover their capital once which we see as consistent with the outcome in a workably competitive market.
- We need a regulatory framework that provides the appropriate balance between regulation and the need to facilitate investment in new pipelines to bring new gas sources to market. We see this as being provided:

- where it is developed under the Competitive Tender provisions of the NGR and has met criteria set out in the Rules. This being the case, then it should be exempt from Part 23 for the greenfield pipeline exemption period of 15 years.
- where it is not developed under these rules, an assessment should be made on whether it is full regulation or Part 23.
- Given the recent expansion of Part 23 disclosure requirements to lightly regulated pipelines, we are not convinced of the benefits of retaining this regulatory category.
- In terms of policy options, we do not favor the status quo in any reform focus area; our support varies across options 2,3 and 4 depending on the issue.
- We support fast track implementation of the proposed reforms as part of an overall package combined with the upstream RIS outcomes across the whole gas supply chain.

## 2. Government energy and climate policy context

This RIS should be seen in the context of wider issues impacting on the gas market:

- Reduction in gas reserves as fields decline e.g. Bass Strait
- LNG exports
- Reduction in demand by gas fired power stations
- Various State Government moratoriums and restrictions on new onshore gas exploration and development
- The move of State and Territory Governments to have actual or aspirational policies around a timetable for significant carbon reduction; the ACT Government is the first to actually legislate – in its case for 'net zero emissions" by 2045[1] and other states are likely to follow in the future

These issues reduce the level of competition between pipelines, adversely impact the ability of our members to source gas and increase the prospect of future stranded pipeline assets in the event that hydrogen is not economic. This in turn increases the likelihood of pipelines seeking accelerated depreciation[2] and may lessen the attractiveness of new investment, given uncertainty on asset life[3]. Our members do not see it as their role to take hydrogen development risk and so view new investment in pipeline capacity to expand consumption to new areas of much less interest than new investment to bring new gas sources to market.

## 3. Market failure, information asymmetry and the role of regulation

Historically, pipeline service providers have had no incentive, apart from what is required under their particular regulation category, to provide extensive information to assist potential shippers in access negotiations. This was no different to upstream producers. Information gave negotiation leverage and therefore why should a seller voluntarily give that to a buyer? The gas supply chain was able to sustain this approach for many years. However, this is changing with the advent of LNG exports and the ACCC's ongoing gas reports. These reports have substantiated gas users experience post LNG project commitments - drying up of offers and where offers occurred, a large increase in prices as all parts of the supply chain, including in many cases pipelines, seeking to exercise their market power.

[1] See https://www.environment.act.gov.au/cc/act-climate-change-strategy

[2] Jemena's application for accelerated depreciation for its NSW pipeline assets was rejected by the AER in its Draft Decision on 25th November 2019; see https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/jemena-gas-networks-nsw-access-arrangement-2020-25/draft-decision

[3] For example, key actions in the ACT Climate Change Strategy are "Amend planning regulations to remove the mandating of reticulated gas in new suburbs" by 2020, and "Develop a plan for achieving zero emissions form gas use by 2045, including setting timelines with appropriate transition periods for phasing out new and existing gas connections" see https://www.environment.act.gov.au/cc/act-climate-change-strategy/buildings-and-land-use

Our members have, and still are, feeling the brunt of that exercise in market power. One important impact of a failure to address this market power is that a demand/supply balance is achieved by demand destruction rather than through an efficient market characterized by transparent and informed negotiation.

The previous RIS on upstream parts of the supply chain and this RIS on pipelines both correctly recognised that regulatory intervention is required to address market failure, particularly around information disclosure. The issues for debate in this RIS are – when should that regulation apply, what form it should take, what information should be required to be disclosed and what negotiation frameworks and dispute resolution mechanisms should apply.

In informing our views, we naturally draw on the experience of our members in their gas supply negotiations. We also very much rely on the findings of independent parties like the ACCC, AEMC, AER and COAG Energy Council to inform our views. Back in 2014-15, our members were voicing their concerns about the lack of offers and very high prices any offer contained. The supply side disputed the claim of a lack of offers. It took the ACCC's information disclosure powers under Part VIIA of the Competition and Consumer Act 2010 to prove consumers views to be correct. We are pleased that the ACCC role in monitoring and publishing data on the gas market in Australia has been extended until December 2025[4].

So, when these peak regulatory organisations highlight the shortcomings of existing regulatory framework and propose solutions to further the NGO, we listen closely.

At a general level the EUAA believes that in the case of a monopoly pipeline asset[5], information transparency is essential to replicate a workably competitive market outcome. The costs associated with information provision are generally low – most if not all of the measures proposed relate to information:

- That is already provided to the ACCC or Governments and their agencies and should require only conformity to standardised guidelines – we believe that the costs associated with this collection and publishing the data and compliance should also be low.
- That should already be available as part of normal business practice within a well-run business – how else are those within the pipeline company undertaking the negotiations with shippers able to advise their Board that a particular new contract is in shareholders' interests?

But it is not just about requiring information disclosure, it is about setting an efficient framework for that disclosure. The complexity of the current information disclosure requirement described in Table 9.1 of the RIS shows the need to reform and rationalisation so that the right information is provided in the right form that is efficient for the service provider and understandable by the shipper.

**4. What form should regulation take?**

The complexity of pipeline regulation can impose large regulatory costs and burden to all stakeholders. This is the especially the case for shippers trying to understand what applies to them and what their rights are when it is not part of their everyday business. There are two ways regulation can go:

- In a direction of more formal regulation that ultimately require all pipelines to be fully regulated – more akin to the US situation

[4] See "Government acts to deliver affordable, reliable gas" https://minister.environment.gov.au/taylor/news/2019/government-acts-deliver-affordable-reliable-gas

[5] While the extent of monopoly power held by a particular pipeline may change over time, it is reasonable to assume that most, if not all, pipelines have some degree of monopoly power at some time over their long asset life.

- Apply the ACCC's proposed coverage test that better reflect the current gas market and simplify the current myriad of regulatory rules by expanding the negotiate arbitrate model in a way that give shippers confidence that they will not be at a disadvantage in the negotiation process.

The EUAA supports the latter approach. We have been a strong supporter of the Part 23 reforms for unregulated pipelines and supported the move to apply the information disclosure requirements to lightly regulated pipelines. Monopoly outcomes thrive on non-disclosure; workably competitive markets thrive on disclosure.

But our support for this approach requires shippers to have confidence that the outcome will meet the NGO in a more efficient manner than extending full regulation to all pipelines. It requires service providers to responsibly undertake their side of the regulatory bargain with consumers and the regulator. It requires shippers to have confidence that service providers are playing "fair". The disappointing results of the recent ACCC Part 23 audit and the Brattle study for this RIS suggest that, while some service providers are "doing the right thing", others are not. The latter's approach influences the overall reputation of the sector.

This is why we support the recommendations from these reviews designed to improve information disclosure and why we support continued oversight by the ACCC through regular audits of what is disclosed. Only then can shippers have confidence that the information asymmetry is less of an issue and they feel confident in engaging in a negotiation and arbitration process. But this information disclosure is a necessary but not sufficient condition to get consumer support for pipeline reforms. We also support less discretion being given to the arbitrator in pricing principals and asset valuation and more transparency around the outcome of any arbitration.

We are a strong supporter of pricing principals based on the asset owner only recovering capital once i.e. initial and sustaining capex. This is simply a reflection of what would occur in a workably competitive market. This approach still allows a service provider to earn a rate of return on that capital that varies by the market assessment of risk, especially in the case of greenfield pipelines. We need to ensure that regulation does not deter new investment designed to efficiently bring new sources of gas to market – so we support continuation of the Competitive Tender Process and the options of these pipelines having a derogation from Part 23 for the greenfield exemption period of 15 years if they meet Rules criteria in the competitive tender process.

The ACCC found no evidence of the Part 23 reforms having an adverse impact on investment. Service providers have continued to seek out new business opportunities to connect new resources to markets and to buy existing pipelines. There will always be a debate around what investors say they "require" as their WACC and what they are willing to accept given the alternatives available at any given time. Electricity networks are currently concerned about the WACCs under the AER binding rate of return guideline being considerably lower than what they say their investors "expect", but that does not seem to have stopped them arguing for increased capital over and above the AER's Draft Decisions. They are, after all, long term investors and the WACC for the next 5-year reset is only a small part of the assets' 50-60-year life.

In assessing regulatory reform against the NGO, we need to understand the diverse nature of the shippers whose interests the framework is seeking to advance. There can be quite a difference in the resources/expertise available to small and captive customers and large retailers.

We expect the numbers of small shippers to expand in the future, driven by the changing gas market. Consumers who previously would have simply bought at a delivered price from a retailer find that this delivered price is now unsustainable. The result is that they are going upstream, taking market risk and hence negotiating transport contracts themselves.

Our focus is on creating the framework for increasing the chances of getting an agreement (better information disclosure and more prescriptive approach to pricing principals and asset valuation in arbitration) which decreases the need for or benefit from, arbitration. If despite these improvements there is still a need for shippers to engage in arbitration then we agree with

the RIS arbitration proposals, particularly regarding small shippers. We propose a definition of "small consumer" being one that has an annual gas transport contract cost of ≤ $20m.

Finally, we think there might be a benefit from looking at how other sectors have approached issues around information asymmetry. In the finance sector the approach in the past has included requirements around extensive product disclosure statements. This approach assumed that either consumers will read and fully understand the sometimes very dense writing or their financial advisors will do that for them. As we have seen form the Hayne Royal Commission, this approach has its shortcomings.

The Royal Commission's report proposed 6 principals for business conduct. These were effectively reduced in a recent Federal Court decision in the Westpac case to one – "be fair"[6]. This approach is one that we consider is worth pursuing in this RIS as we believe it is very consistent with the NGO.

**5. The Energy Charter – deliver energy in line with community expectations**

The Energy Charter gives some insights into how "fair" should be defined. The Charter is:

> "…focused on embedding customer-centric culture and conduct in energy businesses to create real improvements in price and service delivery, through commitment to the Five Principles."[7]

The first being:

> "We will put customers at the centre of our energy business and the energy system"

As the recent ACCC audit of Part 23 disclosure noted, not all the Energy Charter signatories are behaving in a manner consistent with the Principles.

Hence, we welcome the initiative currently being scoped under the auspices of the Energy Charter to bring together pipeline members of the Charter, consumers and regulatory bodies to work together to improve Part 23 information disclosure.

We would welcome further discussions on these issues should the need arise.

Kind regards

Andrew Richards
Chief Executive Officer
Energy Users Association of Australia

[6] See Michael Pelley "Hayne's six principals become one rule: Be fair" Australian Financial Review 1st November 2019 https://www.afr.com/companies/financial-services/hail-the-new-duty-of-fairness-for-financial-services-20191030-p535yh
[7] See https://www.theenergycharter.com.au/about/

# Pipeline Regulation Consultation Regulation Impact Statement – Stakeholder feedback template

## Submission from Energy Users Association

Our response in the template is in two parts:

1. Summary of our preferred Option in each of the 4 areas of reform focus – drawing on the summary in pages viii-ix in the RIS consultation document

2. Provision of specific answers in the questions asked in the template – that serve to provide background for our choices in 1.

## ˙able 2: Policy Options 1-4

| Problem | | Option 1 (Status quo) | Option 2 | Option 3 | Option 4 |
|---|---|---|---|---|---|
| **When should pipelines be regulated** | **When to regulate** | Maintain the current approach, with:<br>▪ all pipelines providing 3rd party access subject to some form of regulation<br>▪ a mechanism available to require those not providing 3rd party access to do so. | Amend framework to allow pipelines providing 3rd party access to obtain an exemption from regulation (but not from the basic information disclosure requirements – see below) if:<br>▪ the service provider can demonstrate the pipeline does not have substantial market power (this exemption could be revoked if conditions change and the service provider can no longer demonstrate it does not have market power)<br>▪ the pipeline has obtained a 15-year greenfield exemption.<br>Maintain the current approach for seeking access to pipelines that are not providing 3rd party access. | Maintain the current approach, with:<br>▪ all pipelines providing 3rd party access subject to some form of regulation<br>▪ a mechanism available to require those not providing 3rd party access to do so if they pass the test for regulation. | Require <u>all</u> pipelines to provide 3rd party access on a non-discriminatory basis. |
| | **Test for regulation** | Retain the existing coverage test. | Replace the coverage test with the hybrid market power-NGO test that would require the decision-making body to be satisfied (see Box 7.6):<br>▪ the pipeline has substantial market power<br>▪ regulation will or is likely to contribute to the achievement of the NGO. | | n.a. |
| | **Governance arrangements** | Retain the existing governance arrangements (NCC/Minister). | Accord a single organisation (either the ACCC or the AER/ERA) responsibility for deciding when a pipeline should be regulated or exempt from regulation. | | n.a. |
| **Forms of regulation and the movement between the alternative forms** | **Forms of regulation** | Retain the existing forms of regulation (i.e. full, light and Part 23). | Adopt the following forms of regulation:<br>▪ Heavier handed regulation - based on the existing full regulation approach (i.e. negotiate-arbitrate with reference tariffs set by the relevant regulator and a regulatory-oriented dispute resolution mechanism)<br>▪ Lighter handed regulation – based on a strengthened Part 23 (i.e. negotiate-arbitrate with a commercially-oriented dispute resolution mechanism plus the safeguards currently available under light regulation). | | Adopt the following forms of regulation:<br>▪ Heavier handed form of regulation based on direct price/revenue control<br>▪ Lighter handed regulation – based on a strengthened Part 23.<br>All pipelines would also be required to:<br>▪ comply with interconnection principles that would be set out in the NGR<br>▪ use incremental pricing where the cost of new capacity would otherwise result in the price of existing capacity increasing |
| | **Monitoring and referral functions** | Retain the existing approach (i.e. the relevant regulator can monitor light regulation negotiations only and is treated like any other interested person in terms of being able to apply for a form of regulation assessment). | | Require the relevant regulator to monitor the behaviour of service providers (e.g. by monitoring service providers' prices, service quality, financial information, the outcome of access negotiations and, where relevant, dealings with associates and ring-fencing arrangements) and refer pipelines for a form of regulation assessment if it suspects market power is being exercised. | |
| | **Form of regulation test** | Retain existing structure of tests, with coverage test acting as a gateway to full and light regulation. | Remove the coverage test and use the existing form of the regulation test for form of regulation decisions. | | |
| | **Governance arrangements** | Retain the exiting governance arrangements (NCC). | Accord a single organisation (either the ACCC or the AER/ERA) responsibility for making form of regulation decisions. | | |

| Problem | | Option 1 (Status quo) | Option 2 | Option 3 | Option 4 |
|---|---|---|---|---|---|
| **Information disclosure requirements** | **Information to be disclosed by <u>non-exempt</u> service providers** | Retain the existing information disclosure requirements across the forms of regulation. | All non-exempt service providers to publish:<br>▪ pipeline information, pipeline service information and service availability information<br>▪ standing terms (i.e. standard terms and conditions, standing prices and the method used to calculate standing prices)<br>▪ information on the prices paid by other shippers in the form set out in the next row<br>▪ historic financial information and historic demand (service usage) information. | | |
| | | | Information on the prices paid by other shippers to be based on the weighted average price and the minimum and maximum prices paid for each service. | Information on the prices paid by other shippers to be based on the individual prices (including key terms and conditions) paid by shippers. | |
| | | | n.a. | The disclosure requirements would be amended in the manner set out in Box 11 to address the information deficiencies that have been identified with the pricing methodologies and financial information and to improve the quality, reliability, accessibility and usability of the information. | |
| | **Exemptions from the disclosure requirements and information to be disclosed by <u>exempt</u> service providers** | Retain the existing exemptions from disclosure under Part 23 and light regulation. | ▪ No exemptions from the disclosure requirements would be available for regulated pipelines.<br>▪ Pipelines that obtain an exemption from regulation (see above) but are providing 3rd party access would still be required to publish the basic information set out in Box 11.1. | Exemptions from the requirement to publish financial information would be available to:<br>▪ single shipper pipelines<br>▪ small pipelines with a nameplate capacity less than 10 TJ/day<br>These pipelines would still, however, be required to publish the basic information set out in Box 11.1. | Exemptions from the requirement to publish financial_information would be available to:<br>▪ pipelines with no 3rd party shippers<br>▪ single shipper pipelines<br>▪ small pipelines with a nameplate capacity less than 10 TJ/day.<br>These pipelines would still, however, be required to publish the basic information set out in Box 11.1. In the case of pipelines that have no 3rd party shippers, the obligation to publish basic information would only commence once a prospective shipper seeks access. |
| **Negotiation frameworks and dispute resolution mechanism*** | **Negotiation framework** | Retain the existing negotiation frameworks. | Implement a single negotiation framework that applies to both the lighter and heavier handed forms of regulation based on the hybrid model (see Box 11.2). | | Use negotiation framework in Box 11.2 for the lighter handed form of regulation. |
| | **Threat of arbitration for small shippers** | Retain the existing arrangements (i.e. no specific measures to strengthen the threat for smaller shippers). | Strengthen the credibility of the threat of arbitration for small shippers by changing the dispute related cost provisions. | Strengthen the credibility of the threat of arbitration for smaller shippers on pipelines subject to the negotiate-arbitrate model by:<br>▪ changing the dispute related cost provisions<br>▪ allowing user bodies to be joined to arbitral proceedings involving smaller shippers<br>▪ allowing the smaller shipper to elect to have the dispute heard by the relevant regulator rather than a commercial arbitrator. | |
| | **Dispute resolution mechanisms** | Retain the existing dispute resolution mechanisms. | Maintain the Part 23 dispute resolution mechanism for the lighter handed regulation and the full regulation mechanism for the heavier handed regulation. | | Maintain the Part 23 dispute resolution mechanism for lighter handed regulation. |
| | | | Implement the amendments to full regulation dispute resolution mechanism set out in Box 11.2. | | n.a. |

# 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? | |
| | (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: | |
| | (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 |
| | (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)? | • See answers to questions below and covering letter |

# 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? | • See answers to questions below and covering letter |
| 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. | • Yes – we comment below on our support for removing the information disclosure exemptions pipelines of >10TJ/day<br>• We would refer you to the submission made by the EUAA member CQMS Razor to the Energy Charter Accountability Panel at https://theenergycharterpanel.com.au/wp-content/uploads/2019/11/CQMS-Razer-2019-Public-Submission.pdf |
| 6 | Are there any other objectives that you think the Energy Council should be pursuing? If so, please set out what they are. | • In our covering letter we suggest consideration of the approach developed by the Hayne Royal Commission and the recent Westpac Federal Court decision on the importance of “fairness” as a guiding principal in information disclosure |

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

| No. | Questions | Feedback |
|---|---|---|
| 7 | 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? | • No. We do not think that the introduction of Part 23 will result in "over-regulation"<br>• Part 23 is about providing information that should already be available within the pipeline operator's organisation assuming that organisation is comfortable with the Energy Council objectives on pp 49-50; the costs of provision of this information should be low, the benefits, large<br>• We support the current approach that for all existing pipelines:<br>  ○ Those providing 3rd party should be subject to some form of regulation<br>  ○ A mechanism be available to require those not providing 3rd party access to do so if they pass the test for regulation<br>• We also think that there should be safeguards against one party e.g. a gas retailer, purchasing all the capacity on a pipeline and then access only being possible through that one party<br>• We have reservations around requiring dedicated pipelines serving one or more co-located end customers to be regulated to provide 3rd party access; but we do not want these reservations to prevent regulation of a pipeline where the denial of 3rd party access is acting as an exercise of market power and so this should be assessed using Option 2 in section 7.3.1<br>  ○ In this case the onus should be on the pipeline owner/shipper to prove that they are not exercising market power if another shipper seeks 3rd party access<br>• With regard to new pipelines, we would suggest consideration of three cases:<br>  ○ If the process to develop the access principals and price/no-price terms are the result of a CTP that meets criteria set out in the rules then the pipeline would be exempt from regulation (full or Part 23) for the same 15-year period as the greenfield exemption<br>  ▪ Consideration be given to the ability of the successful service provider to apply to the ACCC for that exemption to last longer than 15 years<br>  ▪ at the end of the exemption period it reverts to Part 23 or full regulation assessed using Option 2<br>  ○ where the pipeline's 3rd party access is not the result of the CTP provisions then the ACCC should use Option 2 to assess whether regulation is full or Part 23 |

| | | |
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| | | ○ where the pipeline is dedicated to one or more co-located end customers, use the same test as applying to existing pipelines outlined above |
| | (A) If you think it is giving rise to over-regulation:<br>(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:<br>(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?<br>(ii) limiting the application of regulation to those cases where it is established that the pipeline has substantial market power?<br>(iii) another means? | |
| | (B) If you think that (i) or (ii) should be implemented, do you think the test for establishing whether a pipeline has substantial market power should be based on the combined market power-NGO test proposed by the ACCC (see Box 7.6)? | • Yes – we support the ACCC's proposed coverage test |
| | (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? | • The onus of proof should lie with the service provider as used in the US to address the information asymmetry problem |
| | (b) If not, please explain why and what test you think should be employed. | |
| 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? | • We agree that "…the effect on investment incentives is likely to relatively low given the light-handed nature of Part 23" given the ACCC's findings in its July 2019 Interim Report (p.54)<br>• See answer to Q7 on what should apply |
| | If you think it is distorting investment incentives:<br>(a) How significant do you think this issue is and what are the consequences likely to be? | |
| | (b) Do you think this issue should be addressed by:<br>(i) providing these pipelines with a full exemption from regulation? | |

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| | (ii) providing these pipelines with an exemption from the Part 23 arbitration mechanism, but not from the disclosure and negotiation elements of Part 23?<br>(iii) another means? | |
| 9. | Why do you think: | • As the RIS notes, the greenfield exemption has only been used by LNG projects in eastern Australia.<br>• Given these pipelines would have been built anyway even in the absence of the greenfield provisions, we wonder about the benefit of its retention.<br>• We think that the CTP provisions should be retained e.g. they resulted in Jemena building of the NGP which provides an important additional source of gas for the east coast market. |
| | (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: | • See answer to Q7 |
| | (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? | • See answer to Q7 |
| 11 | 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)? | • See answer to Q 7<br>• We do not think the current coverage test is relevant for determining future third party access as it could lead to under-regulation; the current coverage test is time consuming, incurs significant regulatory costs and do not promote the AGO as shown in Box 7.3 (p. 56) |

| | | | |
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| | 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. | | |
| 12 | 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:<br>(a) the coverage test;<br>(b) an equivalent test to the recently amended Part IIIA test;<br>(c) an NGO-style test; or<br>(d) a combined market power-NGO test? | | • We do not support continuation of the coverage test – it is not fit for purpose. We support Option 4 as set out by the ACCC in its 2016 Report – 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? | | |
| 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)? | | • We agree with the limitations of the NCC performing the governance function and support the ACCC having that role.<br>• We do not see a governance issue by having the ACCC assess whether regulation is required and what form it should take, and then AER/ERA being the economic regulator |
| | If you think the current arrangements could give rise to unnecessary costs and delays:<br>• How significant do you think this issue is and what are the consequences likely to be? | | |
| | • Do you think this issue should be addressed by according a single organisation responsibility for making this decision?<br>If not, please explain why not. | | |
| | If so: | (i) What expertise do you think this organisation should have? | |
| | | (ii) Which of the following organisations do you think should be responsible for making this decision:<br>- the ACCC?<br>- the relevant regulator (i.e. the AER or the ERA in Western Australia)?the NCC? | |

| | | | |
|---|---|---|---|
| | | - another organisation? | |
| 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)? | | • See previous answer. |
| 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 further comment. |

# 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?<br>(A) If not, please explain why not. | We agree with the philosophical position that regulation should have some relation to the potential exercise of static and dynamic market power – noting the comment (p.69) about the costs of multiple forms of regulation and the difficulty of assessing granularity when granularity might not exist in a way that supports multiple regulatory forms e.g. our response to Q7 above.<br>• Yes, there is a risk of under-regulation – because the current coverage test is not fit for purpose in the current gas market<br>• In principle, the negotiate-arbitrate model assumes shippers have a level of countervailing power provided by the information disclosure; it also assumes that shippers have the resources to engage in the negotiation/arbitration process<br>• This means:<br>  ○ Comprehensive information disclosure with an external auditor to ensure compliance<br>  ○ Greater prescription in the arbitration framework e.g. proscribing the method of asset valuation to be used by the arbitrator which is independently audited by the AER - some respondents to the OGW survey supported this and so do our members; this serves to reduce arbitration costs and information asymmetry<br>  • This will increase the chances of getting agreement without arbitration because the service provider is unable to game the asset valuation process during arbitration<br>  ○ Making it easier to get a pipeline changed to the fully regulated without having to go through a complicated, costly and ultimately inappropriate coverage test<br>  ○ Expand the services regulated under the full regulation model<br>• We recognise the improvement flowing from applying the NGL s122 test, but this is best done in the context of a choice between Part 23 and full regulation (as noted below in the answer to the next question we support removal of the lightly regulated category)<br>  ○ With the onus of proof sitting with the service provider to argue why the pipeline should not move from Part 23 to fully regulated<br>  ○ There is a role for the AER in monitoring the behaviour of service providers |

| No. | Questions | | Feedback |
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| | (B) If so: | (a) How significant do you think this issue is? | |
| | | (b) Do you think the coverage test should be removed and a single test used for moving between the alternative forms of regulation?<br>If so, do you think the single test should be based on:<br>(i) the form of regulation test in s. 122 of the NGL (see section 3.1.1)?<br>(ii) another test? | |
| | | (c) Do you think:<br>(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<br>(ii) the onus should be on the service provider to demonstrate why a heavier handed form of regulation is not required? | |
| | | (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? | |

| No. | Questions | | Feedback |
|---|---|---|---|
| 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?<br>• If not, please explain why not. | | • With the move to apply Part 23 to lightly regulated pipelines, we see no benefit in retaining the lightly regulated category; it is not worth the regulatory cost<br>• Lightly regulated pipelines would become Part 23 pipelines dependent on:<br>  ○ the implementation of the ACCC recommendations on improving the Part 23 disclosure guidelines, including explicit direction on the methodology for asset valuation,<br>  ○ regular monitoring and publishing by the ACCC of the market behaviour of service providers, and<br>  ○ the ACCC or shippers being able to initiate the process to review (based on ACCC information) whether the pipeline should move to full regulation based on observance of that market behaviour; with the onus of proof on pipeline operators to argue against a move to full regulation<br>• The aim is to essentially give pipelines a second chance to make the Part 23 work given the ACCC and Brattle reports suggested some, at least, either were confused about how the information disclosure guideline was meant to work or sought to game the process; it is designed to constrain the exercise of market power against smaller/unsophisticated customers in a lower cost way than full regulation; pipeline service providers will have a stronger incentive to make it work given the treat of full regulation. We comment on this more in the next section |
| | • If so: | (a) How significant do you think this issue is? | |
| | | (b) If the number of forms of regulation was reduced to two, do you think: | |
| | | (i) the heavier handed form of regulation should be based on:<br>• full regulation (i.e. negotiate-arbitrate with reference tariffs)?<br>• direct price (revenue) control?<br>• another form of regulation? | • Full regulation |

| No. | Questions | | Feedback |
|---|---|---|---|
| | | (ii) the lighter handed form of regulation should be based on:<br>- the existing light regulation?<br>- Part 23?<br>- a strengthened Part 23 (i.e. the existing Part 23 plus the safeguards available under light regulation)?<br>- another form of regulation? | |
| 18 | Do you think there is a case for adopting a different lighter handed form of regulation for distribution pipelines?<br>If so, do you think it should be based on:<br>(a) the Default Price Path (DPP) approach used in New Zealand?<br>(b) the negotiated settlements approach used in the US and Canada?<br>(c) another form of regulation?<br>Please explain your responses to these questions. | | • We understand that some service providers wish to retain light regulation of distribution pipelines but we are unsure of the rationale. |
| 19 | Do you think additional measures are required in the regulatory framework to deal with dynamic market power?<br>• If not, please explain why not. | | • Yes, additional measures are required<br>• We agree with amending the NGR to provide for an explicit right to interconnection – following the FERC's policy in the US so it is a proactive rather than reactive mechanism |
| | • If so: | (a) Do you think the NGR should be amended to include: | |
| | | (i) an explicit right to interconnection to regulated pipelines? | • Yes |
| | | (ii) pricing principles for interconnections to regulated pipelines? | |
| | | (b) Do you think the NGR should be amended to prohibit regulated pipelines from cross-subsidising new capacity by requiring incremental pricing to be used where the cost of an expansion or extension would otherwise result in the price of existing capacity increasing? | • Yes |
| 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. | | • No further comments. |

# 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)?<br>• If not, please explain why not: | | • Yes. The current information requirements set out in Table 9.1 are indicative of the inefficiency of and consumer confusion around the current regime – both to pipeline operators and consumers, but particularly to consumers who, unlike the operators are not involved in these matters on a day to day basis as their core business; we agree with the problems outline on p. 92 arising from this complexity and the impact on consumers:<br>○ the information asymmetry<br>○ ability of information disclosure (or lack thereof or confusion around what the disclosure means) to increase the ability of service providers to exercise market power |
| | • If so: | (a) How significant do you think this issue is?<br>(b) Do you think this issue should be addressed by requiring full regulation pipelines to publish the following information:<br>(i) a description of all the reference and non-reference services offered by the pipeline (pipeline service information);<br>(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);<br>(iii) information on the prices paid by shippers for each reference and non-reference service;<br>(iv) historic demand information for each service offered by the pipeline; and<br>(v) historic financial information for the pipeline on an annual basis in accordance with a financial reporting guideline published by the relevant regulator. | • Yes – publishing this information |

| No. | Questions | | Feedback |
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| 22 | 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)?<br>• If not, please explain why not: | | • Yes, given the deficiencies in the reporting to assess the reasonableness of published prices the suggestions for improvement proposed by the ACCC in its July 2019 Interim Report and Brattle in its report to COAG are supported |
| | (B) If so: | (a) How significant do you think this issue is? | |
| | | (b) Do you think the deficiencies that have been identified with the pricing methodologies should be addressed by amending the NGR to require:<br>(i) service providers to publish the inputs used to calculate standing prices?<br>(iii) the relevant regulator to publish a guideline on what information should be contained in the pricing methodology? | • Yes |
| | | (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? | • Yes |
| 23 | 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)?<br>• If not, please explain why not. | | • Yes – the ACCC July 2019 Interim Report highlighted the limitations of weighted average prices; we favour publishing the minimum and maximum prices in addition to the weighted average prices for each service; this should provide some scope for prudent discounts<br>• This disclosure will address the current information asymmetry and lack of transparency, while still providing some level of confidentiality |
| | | (a) How significant do you think this issue is? | |

| No. | Questions | | Feedback |
|---|---|---|---|
| | • If so: | (b) Do you think the deficiencies should be addressed by requiring service providers to report:<br>(i) the individual prices (plus key terms and conditions) paid by each shipper rather than weighted average prices; or<br>(ii) the minimum and maximum prices paid for each service in addition to the weighted average prices? | • We support the publication of actual individual prices and terms and do not see confidentiality issues as a reason not to publish |
| | | 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. | |
| | | 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. | |
| 24 | 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)?<br>• If not, please explain why not. | | • Yes. The standard for updating should be consistent with other areas in the NGR where errors are corrected as soon as practicable after they have been identified |
| | • If so: | (c) How significant do you think this issue is? | |
| | | (d) Do you think this issue should be addressed by implementing one or more of the following measures:<br>• amending the NGR to provide for greater regulatory oversight of the information reported by service providers?<br>• 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?<br>• increasing the penalties for breaches of the information disclosure obligations and the access information standard?<br>• the changes to the Financial Reporting Guideline identified by the ACCC and the Brattle Group (see Appendix B) should be implemented? | • We support the initiative by Jemena, APA and the APGA to develop, under the auspices of the Energy Charter, the “Better Together Initiative to work with consumers, ACCC and the AER to improve pipeline information reporting<br>• In parallel with this initiative we support the list provided here; we support continued audits of the Part 23 information provision by the ACCC as part of their ongoing gas inquiry role |

| No. | Questions | Feedback |
|---|---|---|
| 25 | Do you think the current approach to reporting information should be maintained, or do you think:<br>(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?<br>(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)?<br>(c) all the information reported by service providers should be made available through a single repository?<br>Please explain your response to this question and set out how significant you think the accessibility issue is for shippers. | • The plethora of sources and requirements shown in Table 9.1 means that the NGO would be furthered by a consolidation<br>• We support the ACCC/Brattle proposed financial reporting Guideline in Appendix B |
| 26 | Do you think, the current approach to reporting information should be maintained, or do you think the usability should be improved by requiring:<br>(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<br>(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?<br>Please explain your responses to these questions and set out how significant you think the usability issue is for shippers. | • We agree with the proposals in the RIS to improve information reporting – all this is part of improving access to and understanding of, the detailed information provided to shippers |
| 27 | Do you think the current exemptions from information disclosure under Part 23 should be retained, or do you think the scope should be amended to require exempt pipelines to publish a basic set of information? | • We do not support any exemptions. |
| | 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)? | |
| 28 | Do you think the size threshold used for exemptions under Part 23 should be retained, or do you think it should be aligned with the 10 TJ/day nameplate rating used for the purposes of full and light regulation, the Bulletin Board and the capacity trading reforms? | • No |

| No. | Questions | Feedback |
|---|---|---|
| 29 | Are there any other problems with the information disclosure requirements or exemptions that have not been identified in this chapter, or changes you think should be made to address the information deficiencies, accessibility, usability, reliability and quality issues outlined in section 9.2? If so, please explain what they are. | |

# 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)?<br>(A) If not, please explain why not. | | • Yes. We support the implementation of a single negotiation framework that applies to all heavier and lighter regulated pipelines<br>• We support continuation of the negotiate-arbitrate model if the changes supported in this submission are implemented; we think it can be the most efficient for all parties if it works well<br>a. So, the focus is on improving the chance of a negotiated outcome by:<br>i. Improving the information and disclosure framework – though greater clarity of requirements and ongoing ACCC audits of reporting performance as supported above,<br>ii. Bringing greater prescription into the arbitration process around pricing principles so that the service provider has more incentive to reach a negotiated outcome and little incentive to try to game and "outspend" a shipper during arbitration<br>• As the RIS notes, the purpose of a dispute resolution mechanism was to constrain the exercise of market power during negotiations given the threat of arbitration and if arbitration is required try to ensure it is cost-effective and efficient<br>• But the ACCC, Brattle and OGW reports indicated that these mechanisms were not working as intended and this is the experience of our members. |
| | (B) If so: | (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:<br>(i) the approach currently applied under full and light regulation (see Table 10.1)?<br>(ii) the approach currently applied under Part 23 (see Table 10.1)?<br>(iii) a hybrid of the two frameworks as described in section 10.3.1? | • Yes; we see merit in further investigation of the hybrid option outlined in the RIS |

| No. | Questions | | Feedback |
|---|---|---|---|
| 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)?<br>• If not, please explain why not. | | • Yes, the ACCC evidence is clear on this; there is merit in removing the preliminary inquiry process from Part 23 |
| | • 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)?<br>• If not, please explain why not. | | • Yes – it is and will continue to be a significant issue based on member feedback; as the RIS notes, we highlighted this issue in our submission to the GMRG on this matter; small shippers generally have neither resources nor the expertise to be able to mount an effective argument in arbitration against a pipeline owner; the pipeline owner has the added incentive of not wanting to lose any arbitration given that it may create a precedent for future arbitrations on that and other pipelines in its portfolio<br>• There are a number of matters that would assist small shippers:<br>○ Implementation of the changes in the disclosure guideline recommended above in comments on Chapter 9 (and Table 9.2)<br>○ Strong alignment between the participants in the proposed "Better Together Initiative" discussed above<br>○ AER enforcement of the revised information disclosure guideline based on regular audits and publicly reporting of the results of those audits as was the case in their July 2019 Interim Report |
| | | (a) How significant do you think this issue is? | |

| No. | Questions | | Feedback |
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| | • If so: | (b) Do you think the position of smaller shippers would be improved by:<br>(i) making it easier for pipelines to move from lighter to heavier handed forms of regulation as set out in Chapter 8?<br>(ii) requiring individual prices or maximum and minimum prices to be reported by service providers rather than weighted average prices (see Table 9.2)?<br>(iii) improving the usability and accessibility of information reported by service providers in the manner set out in Table 9.2? | • Yes; we prefer maximum, minimum and average prices including conditions to be published rather than individual prices |
| | | (g) Do you think any of the following should occur to further strengthen the position of smaller shippers:<br>(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?<br>(ii) allow user groups to intervene in arbitral proceedings involving smaller shippers?<br>(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? | • Yes; however, we consider that the best way of protecting small shippers from being disadvantaged is reform on the information disclosure and a more prescriptive approach for the arbitrator's assessment of pricing principals and asset valuation; this increases the chances of agreement being concluded without the need to go to arbitration<br>• If, despite these improvements there is still the need for arbitration then the proposed approaches are supported to limit the cost exposure a small shipper would face |
| | | (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? | • We recognise the difficulty of defining "small shipper" e.g. as some large companies might be a "small" gas user; we would support a measure based on the NPC of the transport contract with any contract with an annual cost of ≤$20m be considered "small"; even a large company with a small gas contract is unlikely to want to spend a considerable portion of the value of its transport contract on a complex arbitration; by contrast a service provider has a strong incentive to do just that given the precent the arbitration may create not only for that pipeline but other pipelines in its portfolio |

| No. | Questions | | Feedback |
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| 33 | Do you think: | (a) there are any other groups of shippers for whom the threat of arbitration may not be considered credible by service providers? | |
| | | (b) there any other factors that may discourage shippers from threatening the use of arbitration? | |
| 34 | 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?<br>(A) If not, please explain why not. | | • We agree with the concerns highlighted in the AEMC's review |
| | (B) If so: | (a) How significant do you think this issue is? | |

| No. | Questions | | Feedback |
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| | | (b) Do you think these deficiencies should be addressed by amending the NGL/NGR to:<br>(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?<br>(ii) require the existence of a dispute to be made public and to set out the process for joining parties?<br>(iii) introduce a 50-day fast-track option for certain disputes under full regulation?<br>(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)?<br>(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?<br>(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)? | • Yes |

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| 35 | Do you have any concerns with the Part 23 pricing principles (see Box 10.1? | • Yes, we do have some concerns about the pricing principles for Part 23 arbitration and would support more direction/less discretion for the arbitrator:<br>  ○ There is no requirement to use the relevant regulators binding rate of return instrument as there is for full and light regulation arbitration; as the ACCC showed in its Part 23 audit, some pipelines were using WACC somewhat higher that would be the case from the application of the AER binding guideline; we think the arbitrator should be required to use the AER's binding guideline<br>  ○ While the GMRG argued for some flexibility, we favour (and did at the time of the GMRG review) greater prescription in the pricing principals around the use of the recovered capital method of asset valuation; for example:<br>  ▪ If the sales price is below the asset value as calculated in arbitration then the sales price becomes the new asset value - we see no justification in consumers paying a tariff based on a valuation higher than the asset purchase price; consumers should not give the new owners a windfall gain<br>  ▪ If the sales price is higher than the asset value then the pricing should be based on the asset value – again we see no justification for consumers to pay a tariff based on the new owner's willingness to pay above a regulated asset value<br>  ○ This would create a precedent list for future arbitration of the same pipeline<br>• Our support for more prescription is strengthened by the variety of methods used by pipeline owners in providing their information disclosure as shown by the recent ACCC audit<br>  ○ we see the greater prescription as part of addressing the information and negotiating asymmetry between service providers and particularly smaller shippers; shippers have no desire to be embroiled in lengthy arguments before a very expensive arbitrator on the finer points of asset valuation, even if they had the resources to do so<br>• Given the greater prescription in the pricing methodology we wonder what is the benefit of having an external arbitrator given the potentially large cost – which is why we support consideration of using the AER as the arbiter for Part 23. |

| No. | Questions | | Feedback |
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| | 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:<br>(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?<br>(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 |
| 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. | | |

# 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? | • As shown in our summary at the beginning of this submission:<br>  ○ In no case do we support Option 1, status quo<br>  ○ Our support varies between options 2-4 depending on the Reform Focus |
| 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. | |
| 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?<br>If not, please set out what other advantages, disadvantages, costs, benefits and/or risks that you think are associated with each option? | • Yes, generally |
| 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. | |
| 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? | • No |
| | (b) deem all light regulation pipelines to be subject to full regulation? | • No |
| | (b) deem all light regulation pipelines to be subject to the new lighter handed form of regulation (i.e. the strengthened Part 23)? | • Yes – given that they now comply with the Part 23 information disclosure requirements |
| | (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? | • No |
| 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 | Do you agree with the risks that have been identified for:<br>(a) the status quo in Tables A.1 and A.2?<br>(b) identified for Options 2-4 in Tables A.3 and A.4?<br>If not, please explain why not.<br>If you think there are other risks and treatments that should be accounted for, please explain what they are. | • Yes – in particular we agree with the "High" and "Severe" risk ratings. |
| 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? | • Yes |
| | Do you: (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. | |
| | Do you: (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. | • Yes |
| | Do you: (d) think there are other input variables that should be subject to a sensitivity analysis? If so, please explain what those inputs are. | |
| 45 | Do you have any information on the compliance costs associated with the policy options set out in Chapter 11 that could be used for the CRBM? If so, please elaborate on the source and quantum of the costs. | |
| 46 | What, if any effect, do you think the policy options summarised in Chapter 11 will have on competition in the gas market and, in particular on: | • We think that the package of measure we are supporting in this submission (mixture of Options 2,3 and 4) will result in significant progress towards a pipeline sector that is closer to what a workably competitive market might achieve and hence contribute to achieving the NGO by reducing:<br>○ the information and bargaining asymmetry between shippers and service providers<br>○ search and transactions costs for shipper<br>○ the potential of service providers to exercise market power<br>while not adversely impact on the incentive to make efficient investments that meet the NGO |

| No. | Questions | Feedback |
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| | (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? | |