



20 July 2017

Dr Michael Vertigan
Gas Market Reform Group
Council of Australian Governments
Level 6, 201 Elizabeth Street
Sydney NSW 2001

By email: enquiries@gmrg.coagenergycouncil.gov.au

Dear Dr Vertigan,

**RE: GAS PIPELINE INFORMATION DISCLOSURE AND ARBITRATION FRAMEWORK –
DRAFT INITIAL NATIONAL GAS RULES**

We welcome the opportunity to make a submission on the Gas Market Reform Group's (GMRG) 'draft initial' National Gas Rules.

From the outset, we express our concern about the unusually short consultation period provided and enclose this as our initial, draft response. The COAG energy council communique of 14 July sees new 'information disclosure' and 'commercial arbitration rules' come into legal effect on 1 August – just 12 days after this submission has been made.

Given the (extreme) brevity of the consultation and response period, we have limited our comments to three areas;

1. Our concern about national policymaking in energy generally, and both the content and unseemly haste of these 'draft' changes specifically;
2. Our unease that the 'information disclosure' changes appear to create a 'shadow' regulation framework for uncovered pipelines; and
3. The arbitration framework appears to lack balance between operators and customers (shippers).

Australia's energy markets are suffering from rapid, unpredictable political and regulatory policymaking

Australia's current energy 'crisis' means there are a large number of (very) substantial market interventions underway, spanning from upstream gas reservations; the prospect of direct Federal Government interventions in the wholesale generation market; the unilateral removal of the Limited Merits Review framework being contemplated by the Commonwealth; and the Federal Government's ACCC-led inquiry into retail price margins





– to name but a few. This accompanies the ongoing, unresolved uncertainties about emission reduction frameworks, most recently considered in the Finkel Review.

We are therefore concerned that the GMRG work appears to be occurring with no clear regard to broader gas and electricity market initiatives and changes. Ongoing ad-hoc political or regulatory interventions in energy generally will risk further damage to the national interest.

Transparent, predictable regulatory process is fundamental to investor confidence.

The undue haste in this process means the changes will occur without proper consideration or due time for affected pipeline owners to respond; and outcomes inconsistent with the competitive market envisaged in your *Examination of the Current Test for the Regulation of Gas Pipelines*.

We therefore submit that these changes should be abandoned through the current process – changes should instead be contemplated through a yet-to-be-commissioned uniting national energy policy.

Information disclosure appears to create shadow regulation

While the draft framework contemplates arbitration occurring based on price, the information disclosure bears an uncanny resemblance to the access regime for covered pipelines, meaning it is focused on cost.

This raises legitimate questions about whether these changes effectively introduce a shadow regulatory regime on pipelines for which regulatory coverage is not justified under the National Gas Law criteria.

The arbitration framework appears to lack balance

Our initial reading of the framework also suggests a lack of balance between the binding arbitrated price on the operator, versus the unbound ‘shipper’ or customer, who can walk away if unsatisfied with the determined outcome. This contradicts your Vertigan Report recommendation that arbitration should be binding on each party.

We also question the full discretion granted to the AER to preselect approved arbitrators to determine disputes and suggest that this represents a significant departure from the recommendations in your Vertigan Report that the arbitration mechanism be distinct from judicial or regulator-based approaches and focus on the negotiation between parties.

Conclusion

Michael, our uniting contention is that this draft framework appears to have significant and material deviations from your *Examination of the Current Test for the Regulation of Gas Pipelines* report.





Moreover, the lack of time given for responses from interested parties can only magnify the regulatory and sovereign risks currently concentrated on Australia's energy and wider infrastructure sectors.

We respectfully submit that this process should be abandoned, with your valuable work instead forming an input to a future process to develop a uniting national energy policy.

I thank you for your consideration of this submission. In the meantime, should you require any further information please contact IPA's Senior Policy Advisor Lydia Robertson on (02) 9152 6011 or lydia.robertson@infrastructure.org.au anytime.

Yours sincerely,



BRENDAN LYON
Chief Executive Officer

