

7 Gas

NCP commitments

NCP commitments in relation to natural gas arise from specific Council of Australian Governments (CoAG) agreements on natural gas (particularly the 1994 CoAG gas agreement and the 1997 Natural Gas Pipelines Access Agreement) and from general NCP agreements such as the Competition Principles Agreement (CPA).

The 1994 CoAG gas agreement included the following elements:

1. removing all remaining legislative and regulatory barriers to the free trade of gas both within and across State and Territory boundaries;
2. implementing a uniform national access regime for transmission and distribution pipelines;¹
3. adopting Australian Standard AS 2885 to achieve uniform national pipeline construction standards by the end of 1994 or earlier;
4. not issuing any further open-ended exclusive franchises, so as to implement more competitive franchise arrangements;
5. placing publicly owned gas utilities on a commercial footing, through corporatisation, by 1 July 1996; and
6. vertically separating publicly owned transmission and distribution activities, and ring-fencing transmission and distribution activities in the private sector.

The 1997 Natural Gas Pipelines Access Agreement (hereafter called the 1997 Gas Agreement) varied and clarified these obligations. It set out:

- a uniform national framework for access to natural gas transmission and distribution pipelines;
- timetables for the phase-in of competition (contestability timetables), along with other transitional arrangements and derogations agreed among jurisdictions; and

¹ The original agreement only referred to *transmission* pipelines. Jurisdictions agreed in November 1997 to extend the access reforms to *distribution* pipelines.

- agreed franchising and licensing principles.

To the extent of any variance between the 1994 and 1997 agreements, the Council has adopted the 1997 Gas Agreement as the benchmark for assessing jurisdictions' 2001 NCP obligations and progress in reform. Beyond the 1994 CoAG gas agreement and the 1997 Gas Agreement, jurisdictions have obligations under the CPA (particularly clause 5 — the requirement to review legislation) and the Agreement to Implement the National Competition Policy and Related Reforms. Table 7.1 summarises jurisdictions' obligations.

Table 7.1: Summary of jurisdictions' obligations

<i>Obligation</i>	<i>Source of obligation</i>
Corporatisation, vertical separation of transmission and distribution activities and structural reform of Government-owned gas utilities	1994 CoAG gas agreement and CPA
Ring-fencing of privately owned transmission and distribution activities	1994 CoAG gas agreement
Implementation of AS 2885 to achieve uniform pipeline construction standards	1994 CoAG gas agreement
<i>Gas access regime</i>	
Enactment of regime	1997 Gas Agreement, clause 5
Nonamendment of regime without agreement of all Ministers	1997 Gas Agreement, clause 6
Amendment of conflicting legislation and no introduction of new conflicting legislation (except regulation of retail gas prices)	1997 Gas Agreement, clause 7
Certification	1997 Gas Agreement, clause 10.1
Continued effectiveness of regime after certification	1997 Gas Agreement, clause 10.2
Transitional provisions and derogations that do not go beyond annex H and annex I	1997 Gas Agreement, clause 12
Licensing principles	1997 Gas Agreement, annex F
Franchising principles	1997 Gas Agreement, annex E
<i>Legislation review</i>	
Upstream issues, particularly Petroleum (Submerged Lands) Acts and Petroleum Acts	CPA
Industry standards, Trade Measurement Acts and National Measurement Acts	CPA
Consumer protection	CPA
Safety	CPA
Other legislative restrictions (for example, shareholding restrictions, licensing regulations, agreement Acts)	CPA

Access to natural gas pipelines

The 1997 Gas Agreement requires jurisdictions to enact legislation to introduce a uniform Gas Pipelines Access Law (GPAL) and National Gas Access Code establishing a regime for third-party access to the services of natural gas pipelines. The States and Territories are then required to seek certification of their gas access regimes under part IIIA of the *Trade Practices Act 1974* (TPA).²

Where States and Territories have sought but not yet obtained certification of their regimes and have otherwise met their obligations under the 1997 Gas Agreement, the Council considers that they have met their 2001 NCP obligations. Progress by States and Territories in enacting the GPAL and National Gas Access Code and in seeking certification of regimes is reported in table 7.2.

Table 7.2: Enactment and certification of access regimes

<i>Jurisdiction</i>	<i>Legislation enacted</i>	<i>Certified effective</i>
New South Wales	Yes	Certified effective March 2001 for 15 years
Victoria	Yes	Certified effective March 2001 for 15 years
Queensland	Yes	Recommendation of Council with Commonwealth Minister
Western Australia	Yes	Certified effective May 2000 for 15 years
South Australia	Yes	Certified effective December 1998 for 15 years
Tasmania	Yes	No application yet made to Council
ACT	Yes	Certified effective September 2000 for 15 years
Northern Territory	Yes	Recommendation of Council with Commonwealth Minister

Tasmania's obligations under the 1997 Gas Agreement were suspended until 'a time sufficiently before the first natural gas pipeline in that State is approved or any competitive tendering processes for a new natural gas pipeline in that State is commenced' (clause 4.3, 1997 Gas Agreement). In particular, Tasmania's obligation to seek certification of its access regime was suspended until 'as soon after enactment of its Access Legislation as is possible'.

² Tasmania's obligation to do so is suspended under clauses 4.3 and 10.1 of the 1997 Gas Agreement until it develops gas pipeline infrastructure. Western Australia's obligation under clause 5.3 of the 1997 Gas Agreement is to enact legislation having essentially identical effect to that passed in the other States and Territories.

Tasmania's obligations under the 1997 Gas Agreement have now arisen as it has commenced development of a natural gas industry. Duke Energy International has been investigating the feasibility of supplying natural gas to customers in the Bell Bay area, the North–West Coast and the south of Tasmania, and expects to seek planning and environmental approvals to lay pipelines around the end of 2001.

To meet its obligations, Tasmania enacted the *Gas Pipelines Access (Tasmania) Act 2000* in November 2000 and is developing regulations. Tasmania expects to seek certification of its gas access regime during 2001. The Council considers that Tasmania has met its obligations to date and will monitor progress in the 2002 NCP assessment.

Derogations

Derogations refer to any jurisdiction-specific variations from the GPAL and the National Gas Access Code. States and Territories are obliged to:

- not legislate derogations to their access regimes beyond those agreed in annexes H and I of the 1997 Gas Agreement; and
- phase out derogations by the dates specified in annex H or I, or where no date is specified, by 1 September 2001 (clause 12.1, 1997 Gas Agreement).

Clause 12.2 of the 1997 Gas Agreement emphasises that derogations are to be limited to those essential to the 'orderly introduction of competitive arrangements' with the aim of creating a 'competitive natural gas market characterised by access to all gas consumers and all producers in all States and Territories'. Except for changes in contestability timetables (discussed below), jurisdictions have not legislated derogations beyond those agreed in annexes H and I. Jurisdictions have complied with their 2001 NCP obligations.

Introduction of full retail contestability

Jurisdictions have provided in annex H for the progressive introduction of contestability for all gas consumers. Annex H has been modified by agreement of all jurisdictions since the 1997 Gas Agreement. The latest version of annex H is set out in table 7.3. Table 7.3 does not report on phasing-in of competition for customer classes arising before 1 July 1999.

The introduction of full retail contestability is important to realise the benefits of competition in the gas sector. The introduction of full retail contestability, to promote competition effectively, requires more than the removal of legal barriers. Effective introduction of full retail contestability requires jurisdictions to implement a package of business rules covering such matters as:

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- processes for measuring gas use (whether through metering or other processes);
 - protocols for transferring customers from one gas supplier to another;
 - consumer protection requirements; and
 - safety requirements and gas specification requirements to be met before interconnection can take place.

Most of the legal removal of barriers to competition occurred with the enactment of the GPAL including the National Gas Access Code (although some barriers may remain). The business rules must make it practical for customers to select from among suppliers, thus promoting competition among suppliers to secure customers. This process of supplier selection has promoted effective competition in other network industries such as telecommunications.

Table 7.3: Contestability timetables for the national gas access regime^a

<i>Date</i>	<i>New South Wales</i>	<i>Victoria^b</i>	<i>Queensland</i>	<i>Western Australia</i>	<i>South Australia</i>	<i>ACT</i>	<i>Northern Territory</i>
1 July 1999					> 10 TJ per year		
1 September 1999		100 TJ per year					
1 October 1999	>1 TJ per year					>1 TJ per year	No phase-in arrangements
1 January 2000				>100 TJ per year			
1 July 2000	All customers				Industrial and commercial customers below 10 TJ per year	All customers	
1 September 2000		>10 TJ per year					
1 July 2001			>100 TJ per year		All customers		
1 September 2001		All customers	All customers ^c				
1 January 2002				>1 TJ per year			
1 July 2002				All customers			

^a Unit of measurement: terajoules (TJ), equal to 10¹² joules.

^b Contestability timetable for gas in Victoria does not reflect Orders in Council which are expected to be made by the Governor in Council on 31 July 2001.

^c Queensland has proposed amendments to the *Gas Act 1965* which would have the effect of postponing full retail contestability until 1 January 2003.

Jurisdictions have experienced significant difficulties in introducing effective full retail contestability in accordance with their contestability timetables. Some have announced deferrals of up to 12 months for smaller customer sizes. Difficulties relate to such matters as:

- the introduction of information technology systems to handle customer billing and transfer; and
- the choice and costs of a method of metering (that is, how to measure use by smaller customers cost effectively).

In May 2000 the New South Wales Government announced that legislative barriers to retail contestability would be removed on 1 July 2000, but that the market structures necessary to achieve full retail contestability would not be in place. The Government imposed a deadline of 1 July 2001 on the industry to establish the systems needed to operate a competitive market. The responsible Minister has since announced a date for full retail contestability of 1 January 2002 to coincide with the commencement of competition in the electricity industry.³ Queensland is proposing amendments to the *Gas Act 1965* to defer the introduction of full retail contestability to 1 January 2003. This will require the agreement of all jurisdictions. Queensland's proposed amendment is not an issue for this assessment as its original proposed date for full retail contestability falls after June 2001. Progress by States and Territories in implementing full retail contestability is reported in table 7.4.

Table 7.4: Implementation of full retail contestability

<i>Jurisdiction</i>	<i>Progress</i>
New South Wales	<p>On 1 July 2000 New South Wales removed all legal barriers to contestability for all customers.</p> <p>Recent progress to introduce rules for full retail contestability included:</p> <ol style="list-style-type: none"> 1. forming the Gas Retail Market Company through the Gas Retail Steering Committee; 2. producing business rules to govern transactions between retailers and network operators (awaiting approval by Minister); 3. examining the customer protection regulatory framework; and 4. progressing a legislative and governance framework. <p>Industry systems to support full retail contestability are not yet in place, but industry hopes to have systems in place by the end of 2001.</p>

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³ This date was announced in the Speech for the second reading of the Gas Supply (Retail Competition) Bill 2001 on 4 April 2001.

Table 7.4 continued

<i>Jurisdiction</i>	<i>Progress</i>
Victoria	<p>Victoria:</p> <ol style="list-style-type: none"> 1. established an industry-based steering committee to guide implementation of full retail contestability; and 2. introduced contestability for consumers taking over 10 TJ per year. <p>Contestability for customers taking 5–10 TJ per year has been deferred, but is likely to be introduced from 1 September 2001. Delays are expected in introducing full retail contestability for consumers taking less than 5 TJ per year but these customers should become contestable by mid–2002.</p> <p>A number of key consultation papers have been written or are in progress, including:</p> <ol style="list-style-type: none"> 1. a paper on metering/profiling and trading arrangements for full retail contestability, on which a policy decision is expected in early April; 2. a project brief, to be finalised by April; 3. a legal and regulatory framework, that is still in progress; 4. trading arrangement rules, to be finalised by mid-June; 5. Customer Administration and Transfer System business rules, to be finalised by mid-June; and 6. a retail code for administration by the Office of Regulator-General, to be finalised by 30 April.
Queensland	<p>Queensland indicated that it hopes to meet the deadline of 1 July 2001 for introducing contestability for customers taking over 100 TJ per year. It is proposing to amend the <i>Gas Act 1965</i> to defer full retail contestability from 1 September 2001 to 1 January 2003, and is conducting a cost–benefit analysis of the value of contestability for smaller customers.</p>
Western Australia	<p>On 1 January 2000 parties taking 100 TJ per year through a single metered connection to the gas distribution system or from the Dampier–to–Bunbury natural gas pipeline became contestable.</p> <p>Western Australia indicated that it plans to meet its timetable to allow parties taking at least 1 TJ per year to become contestable on 1 January 2002 and to allow full retail contestability from 1 July 2002.</p>
South Australia	<p>Contestability commenced on 1 April 1998 for customers with loads of more than 100 TJ per year and on 1 July 1999 for customers with loads of more than 10 TJ per year. All business sites, irrespective of their load, became contestable on 1 July 2000. A safety net retail tariff is in place until effective retail competition is evident.</p> <p>A draft Network and Consumer Transfer Code was prepared in consultation with an industry steering group. The code covers issues such as connection, disconnection and information requirements, balancing, apportionment and capacity measurement, metering, consumer transfer and dispute resolution.</p> <p>South Australia indicated that full retail contestability is unlikely to be introduced before September 2002.</p>
Tasmania	<p>Tasmania has not put in place a contestability timetable because its commitments under the 1997 Gas Agreement have yet to arise. It is developing a framework for regulating a future gas supply industry and is considering all regulatory options.</p>
ACT	<p>The ACT and New South Wales gas markets are strongly interconnected. The ACT has worked with New South Wales to implement full retail contestability, taking an approach broadly consistent with the New South Wales approach. The ACT adopted New South Wales provisions for contestability for customers taking 1–10 TJ per year, with minor modifications and on a voluntary basis.</p>

(continued)

Table 7.4 continued

<i>Jurisdiction</i>	<i>Progress</i>
Northern Territory	The Northern Territory has no contestability timetable. It stated that retail contestability arrangements are not considered relevant at this point, given it has only one significant gas retail customer (the Power and Water Authority).

One particular implementation issue is the need for full retail contestability business rules to accommodate convergence among jurisdictions and with the electricity industry. The parties selling gas to consumers, particularly small consumers, are generally utility retailers that are in the business of selling gas, electricity and sometimes other utility services. These suppliers generally wish to operate in a number of different States and Territories and offer a number of different utility services to achieve efficiencies of scale and scope. To promote effective competition, States and Territories need to introduce business rules that are similar across jurisdictions and similar across the gas and electricity industries. Without similar rules, retailers will face higher costs (which they will need to recoup from consumers) or will be discouraged from entering more than one State or Territory, limiting consumer choice and competition.

Jurisdictions should ensure that their introduction of new arrangements for full retail contestability does not create barriers to free and fair trade in gas among jurisdictions. They may need to coordinate the introduction of full retail contestability to ensure different contestability rules do not impede interstate trading in gas.

The Council considers that it is important for jurisdictions to introduce rules for full retail contestability as soon as possible in keeping with the 1997 Gas Agreement. The Council will consider jurisdictions' progress more fully in the NCP assessment in 2002. This will be after the date of 1 September 2001 nominated in the 1997 Gas Agreement as the date (where annex H or I specifies no later date) by which access for all customers and suppliers was contemplated. The Council also notes that all jurisdictions anticipated implementation of full retail contestability by 1 July 2002 under annex H.⁴ The Council expects that jurisdictions will have had sufficient time by July 2002 to tackle most, and in some cases all, of the obstacles that have delayed the implementation of full retail contestability.

Structural reform of gas utilities

Jurisdictions have an obligation to:

⁴ The Council notes that Queensland is proposing legislative amendments to defer full retail contestability until January 2003.

- corporatise and vertically separate publicly owned transmission and distribution pipeline entities; and
- require ring-fencing of privately owned transmission and distribution activities.

The Council's 1997 and 1999 NCP assessments found that jurisdictions had complied with their obligations. The National Gas Access Code requires privately owned pipelines to ring-fence the activities of pipelines covered by the code.

Reform of regulatory barriers to competition

For the 2001 NCP assessment, reform of regulatory barriers to competition in natural gas markets involves:

- reviewing legislation that restricts competition in natural gas, particularly in upstream areas such as acreage management. Jurisdictions must review and, where appropriate, reform legislation by 30 June 2002;⁵
- implementing the franchising and licensing principles in the 1997 Gas Agreement; and
- ensuring that consumer protection measures and industry standards in respect of licensing, safety matters and gas quality, are appropriate and do not create unnecessary barriers to entry.

Legislative restrictions on competition

Legislation directly relevant to natural gas generally falls into one or more of the following categories:

- petroleum (onshore and submerged lands) legislation;
- pipelines legislation;
- restrictions on shareholding in gas sector companies;
- standards and licensing legislation; and

⁵ Satisfactory implementation may include, where justified by a public interest assessment, having in place transitional arrangements that extend beyond 30 June 2002 (CoAG 2000).

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- State and Territory agreement Acts.⁶

Additionally, mining legislation (particularly to the extent that it deals with coal and oil shale, which can produce coal methane gas) and environmental planning legislation may be relevant. Review and reform progress of relevant legislation is reported in table 7.5. Jurisdictions are making good progress in reviewing and reforming legislative restrictions in the gas industry.

⁶ The Council has recognised there are sovereign risk implications in reforming State agreement Acts.

Table 7.5: Legislation relevant to natural gas

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	<i>Petroleum (Submerged Lands) Act 1967</i>	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by the Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
New South Wales	<i>Energy Administration Act 1987</i>	Establishes the Ministry of Energy and the Energy Corporation of New South Wales, and defines its functions.	Review completed.	Licence and approval requirements repealed by <i>Electricity Supply Act 1995</i> . Sections 35A and 35B dealt with as part of structural reform of the gas industry.	Meets CPA obligations (June 1999).
	<i>Gas Industry Restructuring Act 1986</i>	Makes provisions with respect to the structure of AGL.	Review unnecessary due to repeal of Act.	Repealed by <i>Gas Supply Act 1996</i> , which corporatised AGL.	Meets CPA obligations (June 1997).
	<i>Liquefied Petroleum Gas Act 1961</i> and <i>Liquefied Petroleum Gas (Grants) Act 1980</i>		Review completed.	Repealed by <i>Gas Supply Act 1996</i> .	Meets CPA obligations (June 1997).
	<i>Petroleum (Onshore) Act 1991</i>	Regulates the search for, and mining of, petroleum.	Review completed.	Dealt with under the licence reduction program. Authority for exploration retained. Business compliance costs minimised.	Meets CPA obligations (June 1999).

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales Wales (continued)	<i>Petroleum (Submerged Lands) Act 1982</i>	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by the Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
	<i>Pipelines Act 1967</i>	Regulates construction and operation of pipelines in New South Wales.	Review completed, finding that the legislation did not contain any significant anticompetitive provisions.	No reform planned.	Meets CPA obligations (June 2001).
	<i>Trade Measurement Act 1989</i>		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee		Council to assess progress in 2002.
Victoria	<i>Energy Consumption Levy Act 1982</i>			Repealed.	Meets CPA obligations (June 2001).

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria (continued)	<i>Gas Industry Act 1994</i> and Amendment Acts	Substantially amended in 1998 to facilitate privatisation and the NCP. Act currently provides for: (1) a licensing regime administered by the Office of Regulator-General; (2) market and system operation rules for the Victorian gas market; (3) cross-ownership restrictions to prevent re-aggregation of the Victorian gas industry; and (4) prohibitions on significant producers (the Bass Strait producers) engaging in anticompetitive conduct.	Full retail contestability 2000 amendments to facilitate orderly introduction of full retail contestability via: (1) a safety net for domestic customers, including interim reserve price regulation power to be reviewed in August 2004; and (2) a requirement for retailers to enter community service agreements.	Act will be replaced by the <i>Gas Industry Act 2001</i> and the <i>Gas Industry (Residual Provisions) Act 1994</i> , effective 1 September 2001. New Acts are designed to further facilitate orderly introduction of full retail contestability. New Acts are to be as consistent as possible with reforms in electricity industry.	Council to assess progress in 2002.
	<i>Gas Safety Act 1997</i> and Regulations	New restrictive regulations introduced in relation to Gas Appeals Board, gas installations, gas quality and safety case. Aim of new regulations is to ensure safety. Uniform gas quality specifications aim to ensure gas in distribution pipelines is safe for end use.	Efforts made to minimise compliance costs by restricting the scope of restrictions to minimum functional requirements and avoiding prescription of style or format.	No further reforms planned.	Meets CPA obligations (June 2001).

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria (continued)	<i>Petroleum (Submerged Lands) Act 1982</i>	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
	<i>Petroleum Act 1958</i>			Repealed and replaced by <i>Petroleum Act 1998</i> . New Act retains Crown ownership of petroleum resources and permits lease system, and removes obstacles to exploration, production and administrative efficiency.	Meets CPA obligations (June 1999).
	<i>Pipelines Act 1967</i>	Regulates construction and operation of pipelines in Victoria.	Review completed. Review recommendations included: (1) introduction of a nationally consistent regulatory regime; (2) formalised time limits for Government assessment of pipeline projects; (3) some relaxation of restrictions on the tradeability of pipelines, permits, and licences; (4) introduction of appeals to Victorian Civil and Administrative Tribunal against regulatory alteration of permits or licences; (5) removal of open access provisions; (6) that safety provisions be based on guidelines being prepared by Department of Treasury and Finance; and (7) changes to compensation provisions to extend possible liability.	Review recommendations awaiting Government consideration	Council to assess progress in 2002.

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria (continued)	<i>Trade Measurement Act 1995</i>		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee.		Council to assess progress in 2002.
Queensland	<i>Gas Act 1965 and Gas Regulations 1989</i>	Aim is to replace <i>Gas Act 1965</i> and <i>Petroleum Act 1923</i> with a single Act covering both areas, dealing with exploration, development, production, transmission, distribution and, in the case of gas, use.	Review completed of those parts of Gas Act and Petroleum Act not the subject of the national review of the Petroleum (Submerged Lands) Acts.	Exposure draft of new Petroleum and Gas Bill released for public comment.	Council to assess progress in 2002.
	<i>Gas Suppliers (Shareholdings) Act 1972</i>			Act repealed October 2000.	Meets CPA obligations (June 2001).
	<i>Petroleum Act 1923</i>		Being reviewed in conjunction with the <i>Gas Act 1965</i> . See above.	Exposure draft of new Petroleum and Gas Bill released for public comment.	Council to assess progress in 2002.
	<i>Petroleum (Submerged Lands) Act 1982 and Regulations</i>	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
	<i>Trade Measurement Act 1990</i>		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee.		Council to assess progress in 2002.

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	Dampier to Bunbury Pipeline Regulations 1998			Repealed 1 January 2000.	Meets CPA obligations (June 2001).
	<i>Energy Coordination Act 1994</i>	Amended to introduce a gas licensing system that provides for regulation of companies operating distribution systems and supplying gas to customers using less than 1 TJ per year.	Review of new provisions found restrictions were minimal and were the most cost-effective means of protecting small customers.	No reform planned.	Meets CPA obligations (June 2001).
	<i>Energy Operators (Powers) Act 1979</i> (formerly known as <i>Energy Corporations (Powers) Act 1979</i>)	Provides monopoly rights over sale of LPG and provides energy corporations with powers of compulsory land acquisition and disposal, powers of entry, certain planning approval and water rights, and indemnity against compensation claims.	Review recommended removal of monopoly over sale of LPG and retention of land use powers of energy corporations. Land use powers necessary to facilitate energy supply.	Restrictions on LPG trading lifted with enactment of <i>Energy Coordination Amendment Act 1999</i> and the <i>Gas Corporation (Business Disposal) Act 1999</i> .	Meets CPA obligations (June 2001).
	<i>Gas Corporation Act 1994</i>	Creates Gas Corporation to run certain publicly owned gas assets.		Repealed December 2000.	Meets CPA obligations (June 2001).
	Gas Transmission Regulations 1994			Repealed. Access and related matters now regulated under <i>Gas Pipelines Access (WA) Act 1998</i> .	Meets CPA obligations (June 2001).

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia (continued)	<i>North West Gas Development (Woodside) Agreement Act 1979</i>			Repealed and replaced by 1994 Act of same name (see next entry).	Meets CPA obligations (June 1999).
	<i>North West Gas Development (Woodside) Agreement Amendment Act 1994</i>		Retained without reform. Retention of restrictions justified in view of sovereign risk issues.		Meets CPA obligations (June 1999).
	<i>Petroleum Act 1967</i>	Regulates onshore exploration for and development of petroleum reserves.	Review to be conducted after outcome of Petroleum Submerged Lands legislation is finalised.		
	<i>Petroleum (Submerged Lands) Act 1982 and Regulations</i>	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
	<i>Petroleum Pipelines Act 1969 and Regulations</i>	Regulates construction and operation of petroleum pipelines in Western Australia.	Review completed. Common carrier provisions to be considered following the Petroleum Submerged Lands legislation review.	Minor amendments to follow.	Meets CPA obligations (June 2001).
South Australia	<i>Cooper Basin (Ratification) Act 1975</i>	Ratifies the contract for the supply of gas by Cooper Basin producers to AGL.	Review completed, finding substantial public benefits in continuing previously granted concessions and exemptions on grounds of sovereign risk.	Some amendments being considered. Draft legislation awaiting comments.	Meets CPA obligations (June 1997).

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia (continued)	<i>Gas Act 1997</i>	Provides for separate licences to operate pipelines and to undertake gas retailing.	Review in 1999 found restrictions to be in the public interest.	No reform planned.	Meets CPA obligations (June 1999).
	<i>Natural Gas (Interim Supply) Act 1985</i>	Ministerial power to restrict the production and sale of natural gas from outside the Cooper Basin, determine the use of ethane from the Basin, and restrict NAGASA from interstate trading in gas.	Reviewed 1996	Key restrictions repealed 1996	Meets CPA obligations (June 1997).
	<i>Natural Gas Pipelines Access Act 1995</i>	Establishes access regime for natural gas pipelines in South Australia.		Act repealed by s50 of the <i>Gas Pipelines Access (South Australia) Act 1997</i> . However, for transitional purposes, the Act continues until access arrangements are set under the National Gas Access Code and any continuing arbitration proceedings are finalised.	Meets CPA obligations (June 1999).
	<i>Petroleum (Submerged Lands) Act 1982</i>	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia (continued)	<i>Petroleum Act 1940</i>	Regulates onshore exploration for and development of petroleum reserves.		Repealed and replaced by the <i>Petroleum Act 2000</i> and Regulations. New Act incorporates principles proposed by the ANZMEC Petroleum Sub-Committee in regard to acreage management. The South Australian Government directed efforts to facilitate new explorers entering Cooper Basin and to encourage the development of a voluntary access code for access to production facilities.	Meets CPA obligations (June 2001).
	<i>Santos Limited (Regulation of Shareholdings) Act 1989</i>		Review completed in July 2001.	No reform planned at this time.	Council to assess progress in 2002.
	<i>Stony Point (Liquids Project) Ratification Act 1981</i>		Review completed in October 2000. No reform recommended.	No reform planned.	Council to assess progress in 2002.
	<i>Trade Measurement Administration Act 1993</i>		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee.		Council to assess progress in 2002.
	<i>Trade Standards Act 1979</i>		Review underway.		Council to assess progress in 2002.

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Gas Franchises Act 1973</i>			Repealed.	Meets CPA obligations (June 2001).
	<i>Hobart Town Gas Company's Act 1854</i>			Repealed	Meets CPA obligations (June 2001).
	<i>Hobart Town Gas Company's Act 1857</i>			Repealed.	Meets CPA obligations (June 2001).
	<i>Launceston Gas Company Act 1982</i>			Substantially amended by new legislation. Remaining sections to be repealed once an accurate map of the pipeline network has been completed.	Council to assess progress in 2002.
	<i>Petroleum (Submerged Lands) Act 1982</i>	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
ACT	<i>Essential Services (Continuity of Supply) Act 1992</i>			Repealed and replaced by the <i>Utilities Act 2000</i> .	Meets CPA obligations (June 2001).
	<i>Gas Act 1992</i>			Repealed.	Meets CPA obligations (June 1999).
	<i>Gas Levy Act 1991</i>			Repealed.	Meets CPA obligations (June 1999).

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
ACT (continued)	<i>Gas Supply Act 1998</i>			Repealed and replaced by the <i>Utilities Act 2000</i> and <i>Gas Safety Act 2000</i> .	Meets CPA obligations (June 2001).
	<i>Trade Measurement (Administration) Act 1991</i>		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee.		Council to assess progress in 2002.
	<i>Trade Measurement Act 1991</i>	As above for <i>Trade Measurement (Administration) Act 1991</i>			
Northern Territory	<i>Energy Pipelines Act</i>	Establishes the regulatory framework for construction, operation, and maintenance of energy pipelines in the Northern Territory.	Review completed. Review found anticompetitive provisions in Act were justified in public interest. Impact of restrictions considered to be low. Potential public safety and environmental benefits derived from regulating construction and operation of energy pipelines likely to exceed direct enforcement, industry compliance and broader economic costs. Approaches such as negative licensing, co-regulation and self-regulation rejected as being unlikely to achieve the objective of the Act more efficiently than the existing legislative framework.	No reform planned.	Meets CPA obligations (June 2001).

(continued)

Table 7.5 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory (continued)	<i>Oil Refinery Agreement Ratification Act</i>	Imposes conditions on Mereenie Joint Venture in respect of the proposed oil refinery in Alice Springs. Refinery was not constructed because it is currently uneconomic, so legislation is of no practical effect.	Review completed. Act not considered to be anticompetitive.	In view of lack of relevance, to be considered for repeal at time of renewal of Mereenie petroleum leases in 2002-03.	Council to assess progress in 2002.
	<i>Petroleum Act</i>	Regulates onshore exploration for and development of petroleum reserves.	Review Steering Committee considering final review report. Government endorsement of review outcomes to be sought March 2001.		Council to assess progress in 2002.
	<i>Petroleum (Submerged Lands) Act</i>	Regulates exploration for and development of undersea petroleum resources. This legislation forms part of a national scheme.	National review completed. Endorsed by ANZMEC Ministers.	Amendments to be developed by Commonwealth and reflected in State and Territory legislation.	Council to assess progress in 2002.
	<i>Petroleum (Prospecting and Mining) Act</i>			Repealed by <i>Petroleum Act</i> .	Meets CPA obligations (June 1999).
	<i>Trade Measurement Act</i>		Review underway. Report by consultant considered by Review Committee. Supplementary report being finalised by Review Committee.		Council to assess progress in 2002.

Franchising principles

Jurisdictions must adhere to the franchising principles in annex E of the 1997 Gas Agreement: (1) to allow bypass and interconnection of pipelines; and (2) not grant new exclusive franchises for the sale of gas in a geographic area or through a specific facility, except in exceptional circumstances. Apart from as discussed below, the Council is not aware that any new exclusive franchises have been granted. Prior to 1997, Western Australia granted an exclusive 10-year franchise to AlintaGas for pipelines laid in the Kalgoorlie/Boulder area, following a competitive tender process. This franchise was approved as a derogation under annex I of the 1997 Gas Agreement and was granted before the obligation not to grant *new* exclusive franchises arose. The Council examined the franchise arrangement in the context of its assessment of the effectiveness of the Western Australian gas regime under the TPA. The Council found that the franchise had little effect on competition because it permitted bypass to contestable customers and did not limit retailers (or others) from seeking access to relevant pipelines. Moreover, this arrangement is listed as a derogation in the 1997 Gas Agreement and, as such, does not raise assessment issues. Accordingly, the Council considers that Western Australia has met its 2001 NCP obligations in this area.

Tasmania reported that it is in the process of developing a tender process for awarding distribution and retail franchises. These franchises will be granted in the context of developing extensive new gas transmission and distribution infrastructure. Tasmania stated that the award of new franchises will be in accordance with the requirements of the National Gas Access Code. The Code provides that jurisdictions may elect to determine new reference tariffs for pipelines that have not been built through a competitive tender process.

The Council will need to monitor Tasmania's processes to ensure that any new franchises granted by Tasmania do not go beyond the scope of annexes E and F and the reference tariff setting principles in the National Gas Access Code. In particular, the Council will need to examine the interaction between the reference tariff setting principles in the National Gas Access Code and the franchise awarding principles setting out in annex E. This is because the focus of the competitive tender processes under the National Gas Access Code is on setting reference tariffs rather than defining exclusive areas to be supplied by particular pipelines.

Licensing principles

Jurisdictions must adhere to the licensing principles for the construction and operation of new natural gas pipelines set out in annex F of the 1997 Gas Agreement. Under these principles:

- licences to operate natural gas pipelines must be unbundled from other types of licence;

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- licences must not be used to restrict the construction or operation of pipelines that could deliver gas to the same markets as existing licensed pipelines;
 - licences will not limit the services that an operator may provide;
 - bypass and interconnection to contestable customers should be allowed;
 - licence conditions may require an obligation to interconnect or undertake minor or in-fill extensions to a geographic range; and
 - full transparency is required in decision-making on licensing.

Jurisdictions are required to adhere to these CoAG-agreed licensing principles in conducting legislation reviews. Pipeline construction and licensing conditions are commonly set out in each jurisdiction's respective Pipeline Act.

In New South Wales the *Pipeline Act 1967* and Regulations govern the granting of pipeline licences. New South Wales reviewed the Act and Regulations in 1999-2000, but did not find any provisions that unduly restricted competition. New Regulations were introduced in 2000.

The New South Wales Act and new Regulations meet the licensing principles in annex F. The Act allows anyone to apply for a permit to survey a pipeline route and allows permit-holders to apply for licences to build pipelines. The Act and Regulations do not provide for bundling of such licences with other types of licence. The Act's provisions governing the granting of permits and licences set out requirements for applicants to provide technical and financial information, to provide information about environmental and safety plans, and to require compensation and restorative work, but they do not specify that pipelines cannot be built to compete with existing pipelines. The Act contains some measures to promote transparency of decision-making. It provides that the Governor may refuse a pipeline licence on the advice of the relevant Minister; however, if the Minister is minded to recommend refusal of an application for a pipeline licence, then the Minister must give one month's notice to the applicant with reasons, and the Governor must take into account any information supplied in response by the applicant.

The Act and Regulations do not make specific provision for interconnection. However, the Governor can attach conditions to pipeline licences, which could include a requirement to interconnect. Further, if the pipeline becomes a covered pipeline under the *Gas Pipelines Access (NSW) Act 1998*, then it could expect to become subject to the interconnection requirements of that legislation.

Pipeline licences are granted in Western Australia under three Acts: the Petroleum (Submerged Lands) Act (the Western Australian or Commonwealth Act as appropriate), the *Petroleum Pipelines Act 1969* and the *Energy Coordination Act 1994*. The Council has examined the provisions of the Petroleum Pipelines Act and Regulations, and they comply with the

pipeline licensing principles in annex F. The Act and Regulations do not prevent parties from applying the licences to construct pipelines. Instead, they require applicants for pipeline licences to satisfy the Minister on technical, financial, and land use matters. Where the Minister wishes to refuse a pipeline licence, the Minister must provide 90 days notice to the applicant, provide reasons, give the applicant the opportunity to respond, and take into account any response. The Act and Regulations do not provide for bundling such licences with other types of licence. As in New South Wales, the Minister may require interconnection as a condition of a licence, and the *Gas Pipelines Access (WA) Act 1998* provides for a right of interconnection for covered pipelines.

South Australia reported that pipeline licences issued under its new Petroleum Regulations 2000 comply with the licensing requirements. The ACT stated that the new licensing regime contained in the *Utilities Act 2000* does not create exclusive licences and accords with the licensing principles in annex F.

The Council has indicated above that all the Acts and Regulations outlined comply with the licensing principles in annex F. However, the Council notes that the Acts and Regulations in some cases give the relevant Minister significant discretion to impose conditions in granting licences. These discretions give the Minister significant flexibility to attach conditions relating to matters such as the laying of pipelines in environmentally sensitive areas. The Council would be concerned if the exercise of these discretions resulted in the imposition of licence conditions which restricted competition (for example, conditions that restricted the services that pipeline operators could offer). The Council considers it would be desirable to set out guidelines (if jurisdictions have not already done so) for decision-makers about the exercise of regulatory discretions.

Industry standards

Industry standards are relevant to pipeline safety, gas appliance safety, gas quality and specifications, and consumer protection. Jurisdictions have enacted a range of legislation to deal with matters covered in industry standards. They have an obligation to review this legislation to ensure industry standards do not create barriers to competition, and they have a specific obligation to implement AS 2885 to achieve uniform national pipeline construction standards.

The ACT is the first jurisdiction to comprehensively rationalise legislation covering utilities industries. It recently enacted the Utilities Act to integrate the regulation of gas, electricity, water and sewerage services. The Act replaced eight separate gas and utility-related Acts, including the *Essential Services (Continuity of Supply) Act 1992* and the *Gas Supply Act 1998*, and deals with: (1) licensing of utilities; (2) licence compliance; (3) utilities' powers and duties; (4) codes of practice; (5) customer contracts; (6) complaints

handling and applications for relief from hardship; and (7) community service obligations.

The Utilities Act creates separate licenses for distribution and retail services, with specific conditions attached to each class of licence. Some licence conditions are embodied in industry codes such as the consumer protection code. The overall regulatory structure consists of:

- the Act and consequential legislation;
- service licences;
- standard customer contracts for services, including gas services; and
- industry codes, including technical and safety codes covering matters such as network safety, metering and supplier of last resort.

Safety issues

Jurisdictions' obligations in this area are to:

- review legislation that restricts competition to see examine the case for the present safety standards; and
- implement AS 2885 to achieve uniform pipeline construction standards. AS 2885 sets a standard for the safe construction and operation of pipelines carrying hydrocarbons.

Gas pipeline safety is regulated under the Pipeline Acts in each jurisdiction. Additionally, part V of the TPA provides for the development of safety standards for particular product classes such as gas appliances. State and Territory legislation also deals with the safety of gas appliances, and jurisdictions have empowered regulators to deal with safety issues.

New South Wales recently reviewed its Pipelines Act and found no anticompetitive provisions (see earlier discussion in the section on licensing principles). Similar reviews in Western Australia and the Northern Territory reached the same outcome.

Victoria recently reviewed its Pipelines Act. The review's recommendations included: (1) introducing a nationally consistent regulatory regime; (2) formalising time limits for government assessment of pipeline projects; (3) relaxing restrictions on the tradeability of pipelines, permits and licences; (4) introducing appeals to the Victorian Civil and Administrative Tribunal against regulatory alteration of permits or licences; (5) removing open access provisions; (6) that safety provisions be based on guidelines being developing by the Department of Treasury and Finance; and (7) changing compensation provisions to extend possible liability. The Government has not yet responded to the review findings. The Council will further consider progress in its NCP assessment in 2002.

Table 7.6 reports jurisdictions' progress in implementing AS 2885. The Council will monitor jurisdictions' progress in adopting AS 2885 to achieve uniform pipeline construction standards for its NCP assessment in 2002.

Table 7.6: Implementation of AS 2885

<i>Jurisdiction</i>	<i>Progress</i>
New South Wales	Section 17(2)(a) of the Pipeline Regulations 2000 applies AS 2885.
Victoria	A separate schedule in each pipeline licence requires construction in accordance with AS 2885.
Queensland	Regulation 237 of the Petroleum Regulations 1966 requires gas pipelines to be constructed in accordance with AS CB28, the SAA Gas Pipeline Code, and any revisions or amendments thereto for gas pipelines.
Western Australia	Regulations under the <i>Gas Standards Act 1972</i> apply AS 2885 for pipelines with operating pressures in the range of 200 KPa to 1.9 MPa. The <i>Petroleum Pipeline Act 1969</i> and Regulations 1970 do not appear to apply AS 2885 to pipelines with operating pressures over 1.9 MPa.
South Australia	Regulation 29(a) of the Petroleum Regulations 2000 applies AS 2885. Previously, the Petroleum Regulations 1940 applied AS 2885.
Tasmania	Not relevant to Tasmania at this time. Tasmania stated that it will apply AS 2885 in the regulations to be developed under the <i>Gas Pipelines Access (Tasmania) Act 2000</i> .
ACT	The <i>Dangerous Goods Act 1984</i> applies the New South Wales Dangerous Goods Regulations 1975 within the ACT. The New South Wales Dangerous Goods Regulations 1975 apply AS 2885 to certain pipelines. The Gas Manual specifies AS 2885 as the standard for gas reticulation systems. The ACT noted that there are no plans to construct transmission pipelines in the ACT.
Northern Territory	Energy Pipelines Regulations s3 applies AS 2885.

Consumer protection

The Council recognises the strong public benefit in ensuring appropriate standards of safety and consumer protection. However, it is important that regulatory reviews and the introduction of new codes and regulatory schemes to ensure consumer protection measures do not constitute unwarranted barriers to competition. This could occur, for example, if gas specifications are overly prescriptive and unduly limit sources of supply to particular markets.

The retail sale of gas is dealt with under each jurisdiction's fair trading legislation. The unconscionable conduct provisions of part IVA of the TPA are also relevant to retail sales to small businesses. Part V of the TPA, which deals with misleading and deceptive conduct, may be relevant to representations about the standard, quality or price of gas. The ACCC noted

that misrepresentation was common following deregulation of the telecommunications market, suggesting that similar issues could arise in the short to medium term when gas markets are opened to full contestability.

Service quality standards will need to be developed in the introduction of full retail contestability, to cover issues such as disconnection, billing/metering, connection, prompt repair of faulty equipment, disruption procedures, readability of bills, staff responsiveness, complaints lines, retailers of last resort (where retailers refuse to provide service to a particular customer) and the provision of consumer advice.

Jurisdictions preparing to introduce full retail contestability are examining the implementation of additional legislative (and other) safeguards for consumer protection. A number of these issues were addressed in the New South Wales review of the Gas Supply (Consumer Protection) Regulations 1997. Victoria also completed considerable work on rules governing these matters. The ACT Utilities Act provides for the creation of industry codes covering matters such as supplier of last resort. The legislation creates an Essential Services Consumer Council, which has the power to prevent disconnection on hardship grounds and can hear consumer complaints about amounts up to \$10 000. The Council will examine new legislation as it is enacted.

Removing barriers to convergence

In reviewing legislation, jurisdictions need to be mindful not to place unjustified barriers in the way of utilities convergence. Convergence between gas and other industries (particularly electricity) may offer efficiencies in areas such as billing. Regulatory or other barriers to convergence may limit the feasibility of such cost savings. Further, barriers to convergence may advantage one industry over another.

Earlier discussions covered the need to ensure that the introduction of full retail contestability did not create barriers to convergence. While the removal of barriers to convergence is an important issue in boosting the efficiency of the energy and utility sector, the Council does not consider it as an issue apart from as a consideration in legislation reviews.

Summary

Jurisdictions have made good progress in implementing natural gas reform. The most significant remaining issue is the implementation of full retail contestability. The Council will monitor progress in this area for the NCP assessment in 2002.