



**APIA Pipeline Development Forum  
Introductory Remarks and Key Issues  
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**Introduction**

Much will be said today about the development potential of Australia's natural gas transmission system and the steps needed to create a national pipeline grid.

Proposals to bring PNG gas to Queensland, Timor Sea gas to Queensland and southern states via Moomba, development in WA and pipeline proposals to link Victoria to South Australia are all under consideration.

All these potential projects have faced, or can expect to face, significant challenges to their commercial development.

A \$400 million pipeline linking Longford in Victoria to Tasmania is set to commence construction later this year.

The entire history of gas pipeline infrastructure development in this country has been one of challenge and difficulty. To date Australia has been remarkably successful in overcoming many challenges to create a pipeline delivery system totalling over 17,000 kilometres in length.

However, the past is never an accurate guide to the future – particularly given the raft of new difficulties and uncertainties that have been superimposed onto the normal commercial challenges faced by this industry.

**Back to Basics**

The Council of Australian Governments (CoAG) recently indicated in the strongest terms ever that it wants to promote Australia's natural gas potential over coming years.

This could become a bold vision for our nation – alternatively it could be allowed to wither on the vine because entrenched positions on key issues like taxation and regulatory settings continue to hinder new development.

Australia certainly has many of the pre-requisites for turning CoAG's vision into reality.

CoAG's vision requires **sufficient gas resources** – we have ample supplies of uncommitted natural gas, but in general available reserves are a long, long way from markets (this adds to the challenge Australia must overcome given that most of our uncommitted reserves are very remote and often lie a considerable distance offshore)

It requires **potential markets** – in Australia this has looked very promising over recent years, but it must be recognised that Australia operates in an international arena with many competing gas options for potential customers to choose from – in the final analysis it is the view of informed and knowledgeable buyers on delivered price that counts.

It requires **committed developers**, including producers and long distance haulers as well as customers. These pre-requisites are being met at present, but for pipeline development it is important that no one equates "interest" with "certainty" in meeting the development potential. Without major pipelines, both onshore and offshore, and wider customer choice on gas supply options, strong gas market growth is unlikely to emerge.

It requires a **stable and certain economic and fiscal framework (including regulation)** that inspires confidence in investment decision making worth many billions of dollars.

It is this final element where major uncertainties have arisen over recent years.

It is these issues that are placing the future of Australia's gas infrastructure development at greatest risk at present.

It is these issues that need urgent policy attention now by government – not in 12 months or more time.

## **Business Tax**

There is a real risk of development paralysis resulting from proposed changes to the business tax rules for depreciation of long life assets like pipelines.

The pipeline industry is not alone in expressing this concern – it is being shared by an ever-increasing number of industry participants including producer/developers.

This aspect of the investment climate for pipelines has deteriorated substantially over the last 12 months.

The industry has won a six-month "reprieve" from the Australian Taxation Office's (ATO) proposed introduction of a 50 year effective tax life (replacing

depreciation arrangements which stood at around 8 years less than two years ago).

But this is a deferral, not a solution.

The industry has been afforded an important concession that recognises that wider tax policy and infrastructure development issues are at stake (replacing the narrow Commonwealth Treasury rhetoric that this was a technical matter in the hands of ATO).

However, we still don't even know whether the CoAG Energy Review (referenced by ATO in their advice to industry that the matter had been deferred) will even look at the desirable taxation regime!

## **Regulation**

In turning to regulation, the situation becomes even more complex and uncertain.

Predictably, the economic regulators are saying "What's all this fuss about economic regulation?"

They are using – quite inappropriately – the development potential referred to above to justify their narrow regulatory view of the world.

They seek to create a link between the National Access Code, recent development activity and Australia's development potential.

In the real world this linkage has never existed.

APIA could understand the regulator's position if the developments under consideration were willing participants to coverage under the National Access Code – but they are not.

Increasingly, pipeline developers are seeking ... and in my view will continue to seek ... development outside the Code for the simple reason that current interpretation of the Code by regulators cannot and will not encourage new investment.

Private sector developers can adopt a number of approaches in meeting their legitimate future development needs (assuming of course that they retain any passion to invest in Australia):

- They can scale their developments for current (ie foundation contracts), thus avoiding the clear threat that the Code imposes on foundation arrangements in its treatment of spare capacity. This is the approach Epic has taken for its Darwin to Moomba proposal.
- They can seek to avoid coverage under the Code, an approach that has been strengthened as a result of the Eastern Gas Pipeline decision by the

Australian Competition Tribunal. A number of pipeline developers are clearly attracted to this approach.

- They can submit to the Code (as envisaged by the ACCC), but I am not aware of any major developers who envisage that this, on current approaches to regulation, would create the necessary regulatory outcomes.

Thus, in reality, the gas transmission industry has only two mechanisms to reduce regulatory risk to an acceptable level for new development – both are valid and both, on current trends, are likely to find much wider use in the future.

Of course, the idea that the Code could actually be improved to address pipeline development concerns remains a remote possibility, but the fact that the review of the Code was not even mentioned in the recent CoAG communique on Energy Policy leaves this possibility open to serious question.

I would characterise the current impasse as resulting from a situation where policy makers and many governments spend too much time listening to regulators in forming their views and judgements on development issues.

The capture of the policy debate by regulatory bodies appears to be virtually complete.

APIA contends that this was never what governments envisaged – and in turn creates an important opportunity for First Ministers to define and ensure early implementation of their preferred policy path.

### **ACCC – Utilicon**

Let me comment on some aspects of last week's speech by the ACCC to the Utilicon 5<sup>th</sup> Annual National Gas Conference.

The opening statement by Dr David Cousins indicates:

*"I believe it is clear that we have made significant advances in all three of these industries [gas, electricity and telecommunications] in the past six years."*

This is a very brave assertion indeed as it relates to gas.

Contrast the ACCC's position with what the International Energy Agency concluded in its recently released review of Australia's Energy Policies:

*"As far as the outcomes of [gas] reform are concerned it is too early to say how much of the anticipated benefits have materialised. Price data for the eligible customer groups do not yet exist."*

The ACCC also appears to be perpetuating the myth that current commercial interest in pipeline development can be attributed, directly, to the National Access Regime.

The ACCC points to two pipelines (Moomba-Sydney and the Eastern Gas Pipeline) delivering gas to Sydney. But the Australian Competition Tribunal has determined that the EGP should not be covered under the Code and, as a consequence, action has been commenced to revoke coverage of the Moomba-Sydney pipeline.

Most of the other developments under contemplation are at the development stage, relate to commercial markets yet to materialise, and are in many cases competing – contestable - proposals with no agreement by proponents that the Code should be applied.

This seems to be very much as case of counting chickens before any eggs have been laid, let alone before they have hatched!

The ACCC also made some outrageous assertions about the role of this industry in seeking to have legitimate industry development issues addressed through better, more efficient and certain regulation.

The Commission asserts:

*“Rent seeking behaviour is manifest in the large quantity of resources being channelled into trying to influence the outcomes of current inquiries by the Productivity Commission and Government decisions.”*

They are probably hoping for an industry reaction and, given the issues at stake, I won't disappoint them.

I am not aware of the Government decisions to which the ACCC refers, so I shall focus on the Productivity Commission review into the National Access Regime because there are a number of important facts on the table.

Let's examine the first round submissions to the inquiry and the submissions made in relation to the Position Paper released by the Productivity Commission.

These are publicly available on the Productivity Commission's web site and – as with any inquiry - provide a fair indication of attempts to “influence” outcomes.

A total of 112 submissions have been made, amounting to 2230 pages.

Government Agencies (including corporatised utilities) account for 31 per cent of submissions, users (26 per cent), service providers (20 per cent), industry groups (representing both service providers/users as well as other industry parties) (17 per cent) and academics (6 per cent).

Who were the top submitters to the inquiry?

BHP Petroleum came first at 240 pages (remembering that BHP is not only a user of existing pipeline infrastructure, but stands to lose from any arrangements that would lead to a substantive increase in gas-on-gas competition in eastern states such as would result from new infrastructure development).

The National Competition Council ran second at 233 pages

The ACCC ran a close third at 219 pages.

In fact these three submissions accounted for nearly one third of the total submissions by volume.

So when it comes to the issue of seeking to “influence” the Productivity Commission in terms of sheer resources, the attempted influence of regulatory bodies like the ACCC and NCC reigns supreme!

(For the record APIA was a cosignatory and was involved – together with a wide range of other infrastructure owners and developers – in providing views on submissions by the NECG totalling 130 pages and also made submissions in its own right totalling 35 pages).

Perhaps, against this background, one could forgive asset owners their difficulties in seeing the forest for the trees on economic regulatory access issues.

## **The Future**

Where do we go over the next 12 months?

Many of the objectives articulated by First Ministers in the CoAG Communique are laudable and are strongly supported by the pipeline industry.

What will it take to get genuine and concerted whole of government action to facilitate gas development?

At this stage the process appears to lack any real momentum and leadership.

Will it take a series of major project deferrals? – I trust not because it will be too late to assist an outcome by closing the barnyard door after the horse has bolted and disappeared over the horizon!

Major pipeline development in this country is set to falter and stumble unless clear and decisive action is taken now on a number of key issues:

1. The Commonwealth Government must clear up the confusion and uncertainty created by its proposed “effective life” taxation regime now -

this is a tax policy issue that needs to be addressed urgently and in a way that encourages new investment, not simply be left out to dry by the Federal Government in the hope that the issues will go away. They won't!

2. There must be a substantial shift in regulatory attitudes towards new major project development. It's time for governments to show real leadership and resolve to see major projects go ahead, rather than rely on regulatory bodies like the ACCC to both set and implement their narrow policy agenda.
3. Use the CoAG Energy Policy Forum to clean up and resolve other long standing issues such as effective project approval arrangements for gas development – but recognise that the minimum 12 month timetable for the CoAG process means that, even if issues 1 and 2 above were included, this would simply add to current uncertainties for new investment.

With Energy Policy and Infrastructure Development now on CoAG's agenda, First Ministers – not energy bureaucrats – must lead the process wisely, fairly and quickly to resolve the current parlous state of affairs for new development.

First Ministers need to run strongly with the agenda they have now created – by taking a raft of issues out of the “too hard” basket and moving ahead strongly to implement a new framework that creates an effective investment climate.

Above all APIA urges First Ministers to address – before it is too late – the current situation that has been allowed to continue to erode without any checks and balances over recent years.

This, in essence, is the challenge faced by First Ministers – and APIA strongly supports them in their endeavours.