

APIA Response SCO Consultation Paper

No. PC Recommendation	Response and/or proposal in Consultation Paper	APIA Response
<p>5.1 <i>The following overarching objects clause should be incorporated into the Gas Access Regime, with the wording consistent with the Australian Government’s proposed objects clause for the national access regime: To promote the economically efficient operation and use of, and economically efficient investment in, the services of transmission pipelines and distribution networks, thereby promoting effective competition in upstream and downstream markets.</i></p>	<ul style="list-style-type: none"> • SCO proposes to accept the recommendation to insert an overarching objects clause in the regime. • Comments are invited on whether the new clause should be: <ol style="list-style-type: none"> (a) As proposed by the PC, ie consistent with the proposed wording in the NAR; (b) Mirror those contained in the NEL to provide consistency with electricity; or (c) In an alternative formulation that mirrors both the NEL and the wording in the NAR. <p><i>See the discussion at section 4.1 of the Consultation Paper.</i></p>	<p>As part of an integrated package of reform to the GAR, APIA endorses the Productivity Commission’s proposed objects clause and recommendation. The PC’s proposal provides the best outcome for consumers and investors. Changing the objectives clause while still removing the guiding factors in section 2.24 and 6.15 would reduce protection for the legitimate business interests and investments of pipeline owners</p>
<p>5.2 <i>For decisions about coverage, the form of regulation and regulated access terms and conditions, the relevant decision maker should be explicitly guided by the overarching objects clause.</i></p>	<p>SCO proposes to accept this recommendation.</p>	<p>As APIA supports the implementation of the PC recommendations, APIA supports SCO’s acceptance of this recommendation, but not the changes to the objectives clause proposed by SCO. The guidelines for deciding which form of regulation is to apply should be determined now (see PC recommendation 6.5)</p>
<p>5.3 <i>With the implementation of recommendation 5.1, the following objectives in the preamble to the existing legislation and the related objectives in the introduction to the Gas Code should be deleted:</i></p> <ol style="list-style-type: none"> (a) <i>facilitates the development and operation of a national market for natural gas</i> (b) <i>prevents abuse of market power</i> (c) <i>promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders</i> (d) <i>provides for rights of access to natural gas pipelines on conditions that are fair and reasonable for the owners and operators of gas transmission and distribution pipelines and persons wishing to use the services of those pipelines</i> (e) <i>provides for the resolution of disputes.</i> 	<p>SCO proposes to accept this recommendation.</p>	<p>As APIA supports the implementation of the PC recommendations, APIA supports SCO’s acceptance of this recommendation when accompanied by implementation of the PC’s recommended objects clause.</p>

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<p>5.4 <i>The following elements of s.2.24 of the Gas Code do not provide necessary guidance to regulators when assessing access arrangements and should be deleted:</i></p> <ul style="list-style-type: none"> <i>(a) the Service Provider’s legitimate business interests and investment in the Covered Pipeline</i> <i>(d) the economically efficient operation of the Covered Pipeline</i> <i>(e) the public interest, including the public interest in having competition in markets (whether or not in Australia)</i> <i>(f) the interests of Users and Prospective Users</i> <i>(g) any other matters that the Relevant Regulator considers are relevant.</i> 	<p>SCO proposes to further consider this recommendation as part of the development of common rules on regulatory guidance for a national energy access regime (see recommendation 7.1 below).</p>	<p>See APIA’s response to 5.1</p>
<p>5.5 <i>The following elements of s.6.15 of the Gas Code do not provide necessary guidance to arbitrators when arbitrating disputes over access arrangements and should be deleted:</i></p> <ul style="list-style-type: none"> <i>(a) the Service Provider’s legitimate business interests and investment in the Covered Pipeline</i> <i>(b) the costs to the Service Provider of providing access, including any costs of extending the Covered Pipeline, but not costs associated with losses arising from increased competition in upstream or downstream markets</i> <i>(c) the economic value to the Service Provider of any additional investment that the Prospective User or the Service Provider has agreed to undertake</i> <i>(d) the interests of all Users</i> <i>(g) the economically efficient operation of the Covered Pipeline</i> <i>(h) the benefit to the public from having competitive markets.</i> 	<p>SCO proposes to further consider this recommendation as part of the development of common rules on regulatory guidance for a national energy access regime (see recommendation 7.1)</p>	<p>See APIA’s response to 5.1</p>
<p>5.6 <i>An additional factor should be added to s.6.15 of the Gas Code, as follows:</i></p> <p><i>In the event of a dispute about the price of access to a non-reference service, the arbitrator should be guided by the pricing principles in s.8.1 of the Gas Code (as revised by recommendation 7.1).</i></p>	<p>SCO proposes to further consider this recommendation as part of the development of common rules on regulatory guidance for a national energy access regime (see recommendation 7.1)</p>	<p>See APIA’s response to 5.1</p>

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<p>6.1 <i>The Gas Access Regime coverage criteria should provide the same threshold for coverage as declaration under the national access regime, such that a pipeline not satisfying the coverage criteria of the Gas Access Regime also will not satisfy the declaration criteria of the national access regime.</i></p>	<p>SCO proposes to accept this recommendation.</p>	<p>As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.</p>
<p>6.2 <i>The first criterion for assessing coverage (s.1.9[a] of the Gas Code) should be amended to reflect the Australian Government’s proposed change to s.44G92)(a) in Part IIIA of the Trade Practices Act (the national access regime). That is, that the National Competition Council would need to be satisfied:</i> <i>(a) that access (or increased access) to Services provided by means of the Pipeline would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline. The Minister would also be bound by this change as per s.1.15 of the Gas Code.</i></p>	<p>SCO proposes to accept this recommendation.</p>	<p>As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.</p>
<p>6.3 <i>The Gas Access Regime should be modified such that the Minister and National Competition Council, in making a decision and recommendation, respectively, to cover a pipeline, should also decide and recommend, respectively, the form of regulation to apply.</i></p>	<p>SCO proposes to accept this recommendation.</p>	<p>As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.</p>
<p>6.4 <i>The decision and recommendation on the form of regulation to apply should be based on an assessment of the net benefits to the economy of each form of regulation (an access arrangement with reference tariffs or monitoring option). Access arrangements with reference tariffs should be applied only where the net benefits of its application are markedly greater than the net benefits of the monitoring option. Otherwise the monitoring option should be applied.</i></p>	<p>SCO invites comment on the merits or otherwise of this recommendation.</p>	<p>Any form of regulation should be limited to circumstances where it can be clearly shown that the benefits of regulation outweigh the costs.</p>

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<p>6.5 <i>The Gas Access Regime should be amended to give guidance on matters that the Minister and the National Competition Council should consider in deciding and recommending, respectively, which form of regulation should apply to a covered pipeline. In determining the potential benefits of either form of regulation, the following matters should be taken into account:</i></p> <p><i>(a) the nature of demand for the commodities and services of end users of gas</i></p> <p><i>(b) the actual and potential level of competition from substitutes such as gas from other sources delivered through other pipelines, and other forms of energy such as electricity</i></p> <p><i>(c) the nature and extent of any barriers to entry in the market</i></p> <p><i>(d) the degree of countervailing power in the market</i></p> <p><i>(e) the degree of horizontal and vertical integration</i></p> <p><i>(f) any other significant factors, subject to them being consistent with the proposed new objects clause. In determining the potential costs of either form of regulation, the following matters should be taken into account:</i></p> <p><i>(a) direct costs of service providers, governments and users</i></p> <p><i>(b) other costs (for example, distortions in behaviour arising from timeliness, regulatory risk and regulatory error (such as the inherent difficulties in determining efficient costs for services))</i></p> <p><i>(c) any other significant factors, subject to them being consistent with the proposed new objects clause.</i></p>	<p>SCO invites comment on this recommendation in the context of the two monitoring options discussed in the consultation paper.</p>	<p>APIA rejects the SCO proposal that some form of monitoring should be applied to pipelines that are not covered. The application of a monitoring regime to pipelines that do not satisfy the coverage criteria is not justified on economic grounds and the PC’s recommendation should be adopted. Guidelines should be determined now, not left for a regulatory agency to establish.</p>
<p>6.6 <i>The Gas Access Regime should be amended to provide that where a service provider potentially covered by the Gas Code lodges a Part IIIA undertaking, this should trigger an assessment (currently by the National Competition Council) and decision (by the Minister) on whether the pipeline meets the requirements for coverage under the Gas Code. The Australian Competition and Consumer Commission’s assessment of the Part IIIA undertaking should be held over, pending the outcome of the triggered coverage assessment and decision.</i></p>	<p>SCO notes that the Australian Government has introduced legislation to amend the <i>Trade Practices Act 1974</i> to remove the possibility of “forum shopping” between the National Access Regime and the Gas Access Regime.</p>	<p>APIA notes the action by the Government to address this issue.</p>

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<p>7.1 <i>In order to provide more specific and operational guidance for setting reference tariffs under the Gas Access Regime, and ensure consistency with the national access regime, s.8.1 of the Gas Code should be replaced with the following:</i></p> <p><i>s.8.1 A reference tariff or reference tariff policy should be designed with regard to the overarching objects clause, s.2.24 and the following principles:</i></p> <p><i>(a) that reference tariffs should:</i></p> <p><i>(i) be set so as to generate expected revenue for a reference service or services that is at least sufficient to meet the efficient costs of providing access to the reference service or services</i></p> <p><i>(ii) include a return on investment commensurate with the regulatory and commercial risks involved</i></p> <p><i>(b) that reference tariff structures should:</i></p> <p><i>(i) allow multi-part pricing and price discrimination when it aids efficiency</i></p> <p><i>(ii) not allow a vertically integrated service provider to set terms and conditions that discriminate in favour of its associated businesses in upstream or downstream markets, except to the extent that the cost of providing access to non-associates is higher</i></p> <p><i>(c) that reference tariffs should be set so as to provide incentives to reduce costs or otherwise improve productivity.</i></p>	<p><i>SCO invites comment on:</i></p> <p>(a) the pricing principles as recommended by the PC; and</p> <p>(b) the proposal in the consultation paper to develop common rules for a national energy access regime on pricing principles, regulatory guidance and regulatory process (see section 4.6 and 4.7 of the consultation paper).</p> <p><i>Note that SCO expects that any pricing principles developed as part of common rules for a national energy access regime would be substantially similar to the pricing principles in the national access regime and as recommended by the PC for the gas access regime.</i></p>	<p>The PC Gas reforms should be implemented now (without waiting for the development of possible common rules for a national energy market framework) because:</p> <p>(i) the PC recommendations have been considered as an integrated package which makes sense;</p> <p>(ii) waiting for the overall development of an energy market framework risks delaying worthwhile reforms.</p> <p>In respect of the SCO suggestion that the Gas Code process is complex, the SCO proposal adds nothing to the PC’s recommendations for amendments to the Gas Code. The PC recommendation should be adopted.</p>
<p>7.2 <i>To ensure there is no conflict with the pricing principles specified in recommendation 7.1, the following should be deleted from the Gas Code:</i></p> <ul style="list-style-type: none"> • <i>the overview in italics at the beginning of s.8</i> • <i>ss8.2(c), 8.3(a), 8.38–8.43 and 8.45.</i> 	<p>See response to Recommendation 7.1</p>	<p>See APIA’s response to 7.1</p>

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<p><i>7.3 To ensure there is no conflict with the pricing principles specified in recommendation 7.1, the first paragraph of s.8.44 of the Gas Code should be changed to: s.8.44 The Reference Tariff Policy should, wherever the Relevant Regulator considers appropriate, contain a mechanism (an Incentive Mechanism) that permits the Service Provider to retain all, or any share of, any returns to the Service Provider from the sale of Reference Services in aggregate (not individual Reference Services when there is more than one):</i></p> <p><i>And s.8.46 of the Gas Code should be changed to: s.8.46 The design of an Incentive Mechanism should be consistent with achieving the overall objective of the Gas Access Regime and the pricing principles specified in s.8.1.</i></p>	<p>See response to Recommendation 7.1</p>	<p>See APIA’s response to 7.1</p>
<p><i>7.4 To ensure the guidance given to regulators is consistent with recommendation 7.1, s.8.6 of the Gas Code should be changed to the following:</i></p> <p><i>s.8.6 In view of the manner in which the Rate of Return, Capital Base, Depreciation Schedule and Non Capital Costs may be determined (in each case involving various discretions), a range of values may be attributed to the Total Revenue described in section 8.4. In order to assess whether a value proposed by a Service Provider is within this range the Relevant Regulator may have regard to any financial and operational performance indicators it considers relevant in order to determine whether the level of costs nominated by the Service Provider is within the range of plausible outcomes under section 8.4 that is consistent with the pricing principles contained in section 8.1.</i></p>	<p>See response to Recommendation 7.1.</p>	<p>.See APIA’s response to 7.1</p>
<p><i>7.5 To provide greater flexibility for price regulation than that provided by the current building block approach, s.8.5 of the Gas Code should be replaced with the following:</i></p> <p><i>s.8.5 A Service Provider can use another method to calculate Total Revenue, provided the Relevant Regulator is satisfied that the proposed method is more likely to meet the overall objective of the Gas Access Regime.</i></p>	<p>See response to Recommendation 7.1.</p>	<p>See APIA’s response to 7.1</p>

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<p><i>7.6 Section 8.21 of the Gas Code should be amended so that regulators can, at their discretion, undertake less public consultation than is required for a proposed revision to an access arrangement under s.2.28. If this discretion is exercised, the regulator should issue a written statement outlining clearly why the reduced public consultation was justified prior to issuing a binding decision under s.8.21 that proposed investment in an extension or expansion of a covered pipeline would meet the requirements for incorporation into the capital base.</i></p>	<p>See response to Recommendation 7.1.</p>	<p>See APIA’s response to 7.1</p>
<p><i>7.7 To ensure there is no conflict with the pricing principles specified in recommendation 7.1, s.8.26(c) of the Gas Code should be deleted.</i></p>	<p>See response to Recommendation 7.1.</p>	<p>See APIA’s response to 7.1</p>

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<p>7.8 <i>To ensure there is no conflict between the depreciation provisions of the Gas Code and the pricing principles specified in recommendation 7.1, ss8.32, 8.33(a) and 8.34(d) should be replaced with the following:</i></p> <p><i>s.8.32 The Depreciation Schedule is the set of depreciation schedules (one of which may correspond to each asset or group of assets that form part of the Covered Pipeline) that is the basis upon which the assets that form part of the Capital Base are to be depreciated for the purposes of satisfying the pricing principles in section 8.1.</i></p> <p><i>s.8.33(a) so as to result in the expected Total Revenue attributable to a Service Provider’s Reference Services in aggregate (not individual Reference Services when there is more than one) changing over time in a manner that is consistent with the efficient operation and use of the Services (and which may involve a substantial portion of the depreciation taking place in future periods, particularly where the calculation of Total Revenue has assumed significant market growth and the Pipeline has been sized accordingly);</i></p> <p><i>s.8.34(d) the expected Total Revenue attributable to a Service Provider’s Reference Services in aggregate (not individual Reference Services when there is more than one) should change over the Access Arrangement Period in a manner that is consistent with the efficient operation and use of the Services (and which may involve a substantial portion of the depreciation taking place towards the end of the Access Arrangement Period, particularly where the calculation of Total Revenue has assumed significant market growth and the Pipeline has been sized accordingly).</i></p>	<p>See response to Recommendation 7.1.</p>	<p>See APIA’s response to 7.1</p>

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<p>7.9 <i>To ensure regulators are given clear guidance about the uncertainty associated with calculating an ex ante regulatory rate of return, s.8.31 of the Gas Code should be changed to the following:</i> <i>s.8.31 If a Rate of Return is used in determining a Reference Tariff then the method used to calculate the Rate of Return and the values used in applying that method shall in the first instance be proposed by the Service Provider. In assessing the Service Provider’s proposal the Relevant Regulator must take account of the fact that there is no single correct method to determine a Rate of Return and there is often a range of plausible estimates that could be used in applying a Rate of Return method. The role of the Relevant Regulator is therefore to assess whether the Service Provider’s:</i> <i>(a) proposed method has a plausible conceptual basis; and</i> <i>(b) values used in applying the method lie within the range of plausible estimates.</i> <i>The Relevant Regulator must approve the proposed method if (a) is satisfied. The Relevant Regulator must approve the values used in applying a method if (b) is satisfied.</i></p>	<p>See response to Recommendation 7.1.</p>	<p>The PC recommendation should be implemented. This recommendation is supported by the empirical evidence and expert commentators.</p>
<p>7.10 <i>To ensure that the Gas Code is consistent with recommendations 7.1 and 7.5, s.8.30 of the Gas Code should be changed to the following:</i> <i>s.8.30 If a Rate of Return is used in determining a Reference Tariff then the Rate of Return should provide a return which is commensurate with prevailing conditions in the market for funds and the risk involved in delivering the Reference Service (as reflected in the terms and conditions on which the Reference Service is offered and any other risk associated with delivering the Reference Service including that resulting from regulation).</i></p>	<p>See response to Recommendation 7.1.</p>	<p>See APIA’s response to 7.1</p>
<p>7.11 <i>A study should be undertaken by a group of recognised experts in the field of financial economics that considers whether a robust method can be developed for setting businesses’ expected rate of return on capital under incentive regulation. This should include a review of the use of the capital asset pricing model by Australian regulators.</i></p>	<p>See response to Recommendation 7.1.</p>	<p>See APIA’s response to 7.1</p>

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<p>7.12 <i>To enable regulators to assess the cost allocations used to determine a service provider’s total revenue, a new clause should be inserted in s.7 of the Gas Code as follows:</i> <i>During the Access Arrangement Period the Service Provider should collect and maintain data on the variables used as the basis of cost allocations for the purpose of deriving Total Revenue.</i></p>	See response to Recommendation 7.1.	See APIA’s response to 7.1
<p>7.13 <i>The Gas Code should be amended so that the information that service providers are required to provide under ss2.6– 2.7 and attachment A does not include information on cost allocations between different reference services (where there is more than one) or between users.</i></p>	SCO invites comments on this recommendation.	See APIA’s response to 7.1
<p>7.14 <i>To ensure that regulators cannot use State-based powers to access information beyond that specified in the Gas Access Regime, a new clause should be inserted into s.7 of the Gas Code as follows:</i> <i>The Relevant Regulator for the purposes of approving a Service Provider’s Access Arrangement can only use information collected under the information collection powers specified in the Gas Access Regime.</i></p>	SCO invites comments on this recommendation.	See APIA’s response to 7.1
<p>7.15 <i>Section 3.16 of the Gas Code should be amended so that it unambiguously clarifies that any expansion of a covered pipeline will also be covered.</i></p>	SCO proposes to accept this recommendation.	As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.
<p>8.1 <i>The Gas Access Regime should be amended to provide for a light-handed form of regulation as an alternative to regulation involving an access arrangement with reference tariffs. The light-handed alternative should be a monitoring regime. It is important that the monitoring regime not develop into an intrusive and costly form of regulation.</i></p>	SCO proposes to accept this recommendation in principle.	As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.

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<p>8.2 <i>The proposed monitoring form of regulation to be incorporated into the Gas Access Regime should have the following features:</i></p> <ul style="list-style-type: none"> • <i>a third party access policy formulated by the service provider which would have some minimum requirements relating to processes for negotiating access and binding arbitration in the event of a dispute over access</i> • <i>subjecting service providers to provisions for anticompetitive conduct (the current s.13 of schedule 1 of the Gas Pipelines Access Law)</i> • <i>minimum ring fencing provisions</i> • <i>public disclosure of specified information by the service provider for monitoring purposes only (which would be well short of the ‘access arrangement information’ currently required under the Gas Code)</i> • <i>scope for the service provider to adopt, at its discretion, additional features, such as a voluntary code of conduct.</i> 	<p>SCO invites comment on the scope and required elements of a proposed monitoring regime.</p> <p><i>Note that an alternative monitoring option is proposed for comment in section 4.2 of the Consultation Paper.</i></p>	<p>The application of a monitoring regime to pipelines that do not satisfy the coverage criteria is not justified and the PC’s recommendation 8.1 should be adopted.</p> <p>The form of monitoring should be based on the 8 principles underpinning APIA’s draft code of conduct.</p> <p>The PC did not identify concerns such as those expressed by SCO in relation to complication of assessment of coverage, and SCO does not demonstrate such concerns are well founded.</p>
<p>8.3 <i>The access policy prescribed by service providers under the proposed monitoring regime should include at a minimum:</i></p> <ul style="list-style-type: none"> • <i>processes for negotiating access</i> • <i>dispute resolution procedures (including provision for binding commercial arbitration).</i> 	<p>SCO invites comment on the scope and required elements of a proposed monitoring regime.</p>	<p>See APIA’s response to 8.2</p>
<p>8.4 <i>Under the proposed monitoring regime, to encourage service providers to provide third party access, service providers and related parties should be subject to the anticompetitive conduct provisions of the Gas Pipelines Access Law dealing with preventing or hindering access (s.13 of schedule 1 of the Gas Pipelines Access Law).</i></p>	<p>SCO invites comment on scope and required elements of a proposed monitoring regime.</p>	<p>See APIA’s response to 8.2</p>

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<p>8.5 <i>Under the proposed monitoring regime, a service provider should comply with the minimum ring fencing requirements in s.4.1 of the Gas Code. However, s.4.1(e) should not apply for monitored pipelines, rather a new alternative provision should apply as follows: allocate any costs that are shared between an activity that is covered by a set of accounts described in s.4.1(c) and any other activity according to a methodology for allocating costs that is transparent and disclosed as part of the monitoring regime information disclosure requirements.</i></p>	<p>SCO invites comments on the ring fencing arrangements which should apply under either or both options for a monitoring regime.</p>	<p>See APIA’s response to 8.2</p>
<p>8.6 <i>Under the proposed monitoring regime, information disclosure requirements should involve:</i></p> <ul style="list-style-type: none"> • <i>focusing more on trend performance, including profitability</i> • <i>reporting and monitoring after the event, without any need for prior endorsement by the regulator</i> • <i>the regulator particularly recording cases where access negotiations have been unsuccessful.</i> 	<p>SCO invites comment on the scope and required elements of a proposed monitoring regime.</p>	<p>See APIA’s response to 8.2</p>
<p>8.7 <i>To improve regulatory certainty, and reduce the possibility of regulatory creep, information disclosure requirements of the proposed monitoring regime should be set out in disclosure guidelines developed prior to implementation of the monitoring regime. The National Competition Council, or another suitable organisation other than the regulator undertaking the monitoring function, should be responsible for developing this generic set of guidelines. This should involve an open and transparent consultative process. It should be the responsibility of the entity developing the guidelines (the National Competition Council, for example) to update the guidelines when substantive need arises.</i></p>	<p>SCO invites comment on the scope and required elements of a proposed monitoring regime.</p>	<p>See APIA’s response to 8.2</p>
<p>8.8 <i>The relevant regulator should collate and publish annually the information disclosed by a service provider under the proposed monitoring regime. Any commentary made by the regulator should be of a factual nature only, for example, the regulator should not make any determinations on the appropriateness of costs and prices.</i></p>	<p>SCO invites comment on the scope and required elements of a proposed monitoring regime.</p>	<p>See APIA’s response to 8.2</p>

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<p>8.9 <i>To ensure the data disclosed by service providers under the proposed monitoring regime are accurate: chief executive officers (CEOs) should be required to sign a declaration stating that the data are true</i></p> <ul style="list-style-type: none"> • <i>financial information and financial performance measures should be certified by an auditor</i> • <i>financial penalties should be available through the courts if companies refuse to provide the required monitoring data within the established deadlines.</i> 	<p>SCO invites comment on the scope and required elements of a proposed monitoring regime</p>	<p>See APIA’s response to 8.2</p>
<p>8.10 <i>Where the proposed monitoring option is applied, it should apply for a minimum period of five years, during which there would be no shift to access arrangement with reference tariffs regulation. Following this period, monitoring would continue to apply, subject to a decision by the Minister, following a recommendation by the National Competition Council, and an application from the monitoring regulator that access arrangement with reference tariffs regulation should apply. A decision to continue with monitoring would apply for a five-year period. Any person can apply for revocation of coverage of a monitored pipeline at any time.</i></p>	<p>SCO invites comments on the time periods which should apply to pipelines subject to monitoring.</p>	<p>See APIA’s response to 8.2</p>
<p>8.11 <i>For pipelines that are covered and subject to the proposed monitoring regime, only the relevant regulator should be able to apply to the National Competition Council to shift the form of regulation to access arrangements with reference tariffs.</i></p>	<p>SCO invites comment on this recommendation.</p>	<p>See APIA’s response to 8.2</p>
<p>8.12 <i>Pipelines currently covered with cost-based price regulation should remain covered, and continue to be subject to the access arrangement with reference tariffs regulation. Movement from this price regulation would require an application to the National Competition Council for revocation. Following a recommendation from the National Competition Council, the Minister would make a decision on coverage, and the form of regulation where coverage is retained.</i></p>	<ul style="list-style-type: none"> • SCO proposes to accept this recommendation. • SCO also invites comment on the appropriate mechanisms for movement of a monitored pipeline to price regulation with reference tariffs. 	<p>As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.</p> <p>See APIA’s response to 8.2</p>

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<p>8.13 <i>To remove uncertainty, pending a decision by the Minister following a recommendation from the National Competition Council that the Gas Access Regime would be certified as effective, clause 6 of the Competition Principles Agreement should be modified as supported by the Australian Government in its response to the recommendation in the Commission’s review of the national access regime.</i></p>	<p>SCO addresses this recommendation in relation to its proposed response to PC recommendations 6.1, 6.2, 6.6.</p>	<p>See APIA’s response to 6.6</p>
<p>9.1 <i>The Gas Access Regime should be amended so that the relevant Minister, after receiving a recommendation from the National Competition Council, can provide a binding no-coverage ruling for a proposed pipeline if it does not meet the coverage criteria. A binding no coverage ruling should remain in effect for 15 years from when the pipeline commences operations, unless the information relied on by the relevant Minister or National Competition Council was intentionally misleading. After 15 years of operation, a pipeline that was subject to a binding no-coverage ruling should continue to remain uncovered unless there is a successful coverage application.</i></p>	<p>SCO invites comments on the different options discussed at section 4.4 of the paper for facilitating investment in greenfield gas pipelines.</p>	<p>APIA strongly supports the need for reforms that improve the incentives for investment in greenfields pipelines. As part of an integrated package of reform to the GAR, APIA supports the implementation of the Productivity Commission’s recommendations 9.1 and 9.2. The implementation of these recommendations will improve the incentives for investment in greenfields pipelines.</p>
<p>9.2 <i>If recommendation 9.1 is implemented, then the national access regime (Part IIIA of the Trade Practices Act 1974) should be amended so that a gas pipeline cannot be declared while it is subject to a binding no-coverage ruling under the Gas Access Regime.</i></p>	<p>SCO notes that should 9.1 be implemented, a binding no-coverage ruling option would be part of the Gas Access regime. Certification of the regime as effective can provide immunity from declaration.</p>	<p>See APIA’s response to 9.1</p>
<p>10.1 <i>Section 7.1 of the Gas Code should be amended so that a service provider entering an associate contract for the supply of a reference service at the reference tariff is not required to seek authorisation. However, the service provider must provide the contract and any necessary information to the relevant regulator to satisfy the regulator that it is a contract for a reference service at the reference tariff.</i></p>	<ul style="list-style-type: none"> • SCO invites comment on this recommendation. • SCO also invites comments on how associate contracts should be handled in respect of pipelines subject to a monitoring regime. 	<p>As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.</p> <p>See APIA’s response to 8.2</p>
<p>10.2 <i>The associate contract provisions should be amended to clarify that these provisions do not apply to asset management contracts.</i></p>	<p>SCO invites comment on this recommendation.</p>	<p>As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.</p>

APIA Response SCO Consultation Paper

No. PC Recommendation	Response and/or proposal in Consultation Paper	APIA Response
<p>10.3 <i>To ensure regulators can adequately assess the costs of an associated business that undertakes activities under service agreements and contractual arrangements with a service provider in relation to a covered pipeline, the following subsections should be added to s.4.1 of the Gas Code:</i></p> <p><i>s.4.1B An Associate of a Service Provider of a Covered Pipeline that undertakes activities under service agreements and contractual arrangements with a Service Provider in relation to the Covered Pipeline must (if requested by the Relevant Regulator):</i></p> <p><i>(a) establish and maintain a separate set of accounts in respect of the Services provided to the Covered Pipeline</i></p> <p><i>(b) allocate any costs that are shared between an activity that is covered by a set of accounts described in s.4.1B(a) and any other activity according to a methodology for allocating costs that is transparent.</i></p> <p><i>s.4.1C A Service Provider when entering service agreements and contractual arrangements with an Associate for activities undertaken in relation to a covered pipeline, must ensure that the terms and conditions of the contract will allow s.4.1B to be implemented.</i></p>	<p>SCO invites comment on this recommendation (see section 4.7 of the consultation paper).</p>	<p>As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.</p>

APIA Response SCO Consultation Paper

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<p>10.4 <i>To ensure regulators can adequately assess the costs of an associated business that undertakes activities under service agreements and contractual arrangements with a service provider in relation to the covered pipeline, the following subsection should be added to s.4.2 of the Gas Code: s.4.2A In complying with ss4.1B(a) and (b) an Associate of a Service Provider must:</i></p> <p><i>(a) if the Relevant Regulator has published general accounting guidelines for Associates which apply to the accounts being prepared, comply with those guidelines; or</i></p> <p><i>(b) if the Relevant Regulator has not published such guidelines, comply with guidelines prepared by the Associate and approved by the Relevant Regulator or, if there are no such guidelines, comply with such guidelines (if any) as the Relevant Regulator advises the Associate apply to that Associate from time to time. Such guidelines may, amongst other things, require the accounts to contain sufficient information, and to be presented in such a manner, as would enable the assessment (and benchmarking) by the Relevant Regulator of the costs of the activities undertaken in relation to the Covered Pipeline by an Associate under service agreements and contractual arrangements with a Service Provider.</i></p>	<p>SCO invites comment on this recommendation (see section 4.7 of the consultation paper).</p>	<p>As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.</p>
<p>10.5 <i>To remove potentially conflicting objectives from the Gas Access Regime, s.4.1(e) of the Gas Code should be amended to delete reference to the term ‘otherwise fair and reasonable’.</i></p>	<p>SCO invites comment on this recommendation (see section 4.7 of the consultation paper).</p>	<p>See APIA’s response to 5.1</p>
<p>11.1 <i>The Gas Access Regime should be amended, whereby the regulator would be able to extend the period for approval of an access arrangement by two months only once. If judicial proceedings commence, the regulator’s time should automatically be extended by the length of time taken to complete the judicial proceedings.</i></p>	<p>SCO invites comment on this recommendation, noting that regulatory process is to be further considered as part of the development of common rules for regulatory process under a national energy access regime.</p>	<p>See APIA’s response to 7.1 and 7.2</p>
<p>11.2 <i>The Gas Access Regime should be amended whereby the ‘further final decision’ should be removed from the approval process for access arrangements.</i></p>	<p>SCO invites comment on this recommendation, noting that regulatory process is to be further considered as part of the development of common rules for regulatory process under a national energy access regime.</p>	<p>See APIA’s response to 7.1 and 7.2</p>

APIA Response SCO Consultation Paper

No. PC Recommendation	Response and/or proposal in Consultation Paper	APIA Response
<p>11.3 <i>The Gas Access Regime should be amended so regulators can specify a date by which the service provider must submit proposed amendments to an access arrangement.</i></p>	<p>SCO invites comment on this recommendation, noting that regulatory process is to be further considered as part of the development of common rules for regulatory process under a national energy access regime.</p>	<p>See APIA's response to 7.1 and 7.2</p>
<p>11.4 <i>Limitations on the grounds of appeal under s.39 of the Gas Pipelines Access Law should be removed to allow a full merits review on access arrangements drafted and approved by the regulator. This would be consistent with the grounds of merits review for coverage decisions.</i></p>	<p>A MCE SCO consultation paper will be released later in 2005 to canvass views on the issue of merit review principles and the decisions under the NEL and NGL which may be appropriate for merits review.</p>	<p>SCO does not give any explanation as to why the PC recommendations should not be introduced at this time nor why there should be any suggestion that the existing review rights should be otherwise modified. There has been nothing in the experience to date under the Gas Code to remove the need for review rights which was accepted as a fundamental aspect of the GAR in 1997.</p>
<p>11.5 <i>The material that can be introduced to the appeal body for a merits review of a coverage decision under s.38 of the Gas Pipelines Access Law should be restricted to material that has already gone before the primary decision maker. This would be consistent with the merits review process for access arrangements drafted and approved by the regulator.</i></p>	<p>See response to Recommendation 11.4.</p>	<p>See APIA's response to 11.4</p>
<p>12.1 <i>The agency that recommends coverage of a pipeline, should also be responsible for recommending the form of regulation to apply to the pipeline.</i></p>	<p>SCO will consider this recommendation as part of the further consideration of the scope and requirements of a monitoring option.</p>	<p>See APIA's response to 8.1</p>
<p>12.2 <i>The agency responsible for making recommendations on pipeline coverage and form of regulation decisions (currently the National Competition Council) should be separate from the regulator actually responsible for administering the regulation (either monitoring or access arrangements with a reference tariff).</i></p>	<p>SCO proposes to accept this recommendation.</p>	<p>As part of an integrated package of reform to the GAR, APIA supports the implementation of the PC recommendations.</p>