

25 August 2005



Mr Paul Hallahan  
Secretary  
Senate Economics Legislation Committee  
Suite SG.64  
Parliament House  
CANBERRA ACT 2600

Dear Mr Hallahan

**Trade Practices Amendment (National Access Regime) Bill 2005**

The Australian Pipeline Industry Association (APIA) provided a submission regarding the above-mentioned Bill and also addressed the Senate Economics Legislation Committee on 11 August 2005 in support of that submission. Officials from the Treasury Department also appeared before the Committee to explain their reasons for not including the Government's pricing principles in the legislation. APIA would now like to respond to Treasury's argument.

Firstly, let me repeat our assertion that this Bill is of great significance to all regulated infrastructure industries, including gas transmission pipelines. APIA is concerned that the Bill does not include the pricing principles, a key element of the Government's response to the *Productivity Commission (PC) Review of the National Access Regime*. These guiding principles are an important model for pricing principles in industry-specific regimes, including the gas regime, and would enhance the certainty, transparency and accountability of the national regulatory processes for access pricing.

Certainty of regulatory processes is a critical pre-requisite for infrastructure investment, given the fact that the initial investment is large and must be recouped over a long period. It is important, therefore, that infrastructure investors know with certainty that regulators dealing with pricing issues are obliged to comply with defined pricing principles. It should be noted that the PC has confirmed its support for the Government's agreed pricing principles. These high-level principles included in the *Trade Practices Act* would be followed in industry access regimes and any further detailed policy would be outlined in those access regimes and adhered to by industry.

The Treasury officials claim that the principles should be introduced in regulation rather than legislation in order to maintain flexibility. APIA maintains that these high-level principles are a high-level, generic guide to other access regime principles and would be unlikely to face major change as the Government is unlikely to make such major policy alteration without further consultation. The Government has already fully considered

these overarching principles. In the words of the Committee Chair, Senator George Brandis, the principles are “very generic and anodyne”. The very flexibility that the officials are arguing for would undermine investment because it would leave investors without clear direction on the likely prices for regulated infrastructure.

Flexibility in legislation is not an issue; it is demonstrated by this very Bill which in itself is an amendment to the *Trade Practices Act*. Surely basic principles that are already agreed by the Government would not face major change so quickly and dramatically that they should be included in regulation rather than legislation. The only feasible reason that Treasury would be determined to exclude these principles from the legislation is to maintain control of overarching pricing principles within the bureaucracy rather than within executive Government.

Clearly, APIA is strongly of the view that the pricing principles set out in the Government's response to the review of the National Access Regime should be included in the amendments to Part IIIA (and ultimately extended to the Competition Principles Agreement). The principles already agreed by the Government are high-level, and such overarching principles are unlikely to need any change in the future. Even Treasury officials admit they are unlikely to change. It therefore seems inappropriate to cause further uncertainty to industry by having such clear pricing directions excluded from this important legislation.

Yours faithfully

CHERYL CARTWRIGHT  
Chief Executive