

Ref: mag1415.5

20 April 2004

Mr Tony Hinton
Presiding Commissioner
Productivity Commission
Locked Bag 2, Collins St East
Melbourne Vic 8003

Dear Mr Hinton

Further to the Council's submission of 10 March 2004, the Council would like to clarify the position of the potential operation of the declaration provisions of part IIIA of the *Trade Practices Act 1974* (TPA) to pipelines not covered by the National Gas Access Regime.

The National Gas Access Regime has been determined to be an effective access regime under section 44N of the TPA (certified) in its application in New South Wales, Victoria, Western Australia, South Australia, the Australian Capital Territory and the Northern Territory. Within these jurisdictions, all pipelines covered by the National Gas Access Regime are protected from declaration (section 44G(4) of the TPA so long as they remain covered). These pipelines may have been covered either by being on Schedule A of the Code since its commencement, or may have become covered subsequently through a coverage process, the competitive tender process or the submission of a voluntary access arrangement.

The declaration provisions of part IIIA potentially apply to pipelines that are not covered by the National Gas Access Regime. The fact that the National Gas Access Regime has been certified as effective in a number of jurisdictions does not mean that all pipelines within those jurisdictions are protected from the application of the declaration provisions. Whether a pipeline that is not covered under the National Gas Access Regime

satisfies the declaration criteria in section 44H of the TPA would need to be determined in the context of an application for declaration under s44G of the TPA.

The current coverage criteria in the National Gas Access Regime are substantially the same as the declaration criteria in part IIIA of the TPA. This means that pipelines that do not meet the criteria for coverage under the National Gas Access Regime also would not meet the criteria for declaration under part IIIA. If the coverage criteria were to be amended so that the hurdle for coverage was higher than the hurdle for declaration, it would be possible that some pipelines may not meet the criteria for coverage, but would meet the criteria for declaration. Once again, this would need to be determined in the context of particular applications.

Please contact me if you wish to discuss this further or have any questions.

Yours sincerely

John Feil
Executive Director