

Creating a culture of compliance starts at the top. Without strong leadership and commitment at the highest levels of an organisation, it is impossible to create an effective compliance program let alone an organisational culture of compliance. It is inevitable that the spotlight will focus on the leaders and senior executives when the effectiveness of a compliance program or organisational culture of compliance is being assessed.

Ultimately of course, compliance depends on the behaviour and choices of individuals confronted by challenging choices. That is, choices or circumstances that require an individual to implicitly or explicitly consider 'whether the end justifies the means'.

It is at those critical moments that the context provided by an organisation's culture as well as an individual's circumstances will be crucial in measuring the effectiveness of a compliance program.

Achieving an organisational culture of compliance that is integrated with the performance of the company needs leaders able to establish a shared vision and sense of purpose, and to inspire, coach and enable that achievement.

Establishing a compliance system is not a one-off activity. An ongoing commitment and effective mechanisms are needed to ensure that the Act is complied with at all times.

Traditionally, businesses have instituted trade practices compliance programs because they do not want to be caught breaching the law. This is a risk-averse, reactive approach. It is understandable that companies want to avoid heavy fines, adverse publicity and being diverted from their major aim of generating profits. However, there are sound commercial reasons why companies should take a pro-active approach to instituting comprehensive compliance programs.

Companies are finding that it is smart and profitable to develop an effective compliance program with substance and are appreciating the value of being publicly recognised for their high-quality corporate image.

## Key issues in gas reform

*The following is a summary of a speech given by Commission Chairman, Professor Allan Fels, to the Australian Gas Association 2000 Conference.*

### Introduction

During the past decade the way gas is supplied has been improved, but many unfinished tasks and new challenges remain. It is timely to evaluate the extent to which reform objectives are being met and the issues that are currently dominating the regulatory process.

### Upstream issues

The National Gas Code focuses attention on midstream and downstream sectors of the gas supply chain. However, the Commission believes that the full benefits of the gas reform process will not be realised without greater supply competition and continuing reform of the upstream gas industry sector. It is therefore worth assessing the state of the upstream gas market.

The Commission expects greater supply competition to develop through new entry and inter-basin competition via new pipelines. There are various new prospective gas supply sources, including Papua New Guinea and the Timor Sea, that can feed into an east Australian pipeline grid. Also, the use of swaps, backhauls and other flexible marketing and transportation arrangements would affect gas supply throughout the region.

The threat of competition will encourage pipelines and upstream gas industry players to reassess pricing and marketing strategies, resulting in lower prices and better service. Recent significant price reductions in Western Australia demonstrate the potential benefits of greater supply competition.

### Regulation

#### *Pricing and incentives*

Some industry players have criticised the Commission's regulatory approach.

As the gas transmission regulator the Commission aims to achieve a balance between the pipeline owner receiving a fair return that will encourage appropriate new investment in the industry and producing efficient tariffs that allow gas users to compete and invest in other markets. In achieving these aims the Commission is aware of the need to ensure compliance costs are minimised and that the regulatory process is objective, transparent and as light handed as possible.

The code establishes minimum obligations for submitting an access arrangement, and allows a service provider to structure a tariff package that best suits its business while providing effective access to users.

It is up to service providers to propose incentive mechanisms that bring benefits for pipelines and users. The Commission expects that pipeline operators will develop innovative incentive mechanisms to enhance their revenue streams.

### Returns

One of the main concerns appears to be that the rates of return used in regulatory decisions are too low to encourage new investment in energy infrastructure. The Commission believes its decisions are providing gas transmission businesses with the opportunity to earn returns that compare favourably with returns achieved elsewhere on the Australian share market, and by regulated gas and electricity transmission businesses overseas.

The Commission has made a number of decisions on regulated energy businesses, starting with the Victorian gas transmission system in 1998 through to the recently released final approval on the Central West Pipeline access arrangement. The return on equity underlying these decisions has been 13.2–15.4 per cent.

In light of these figures it would appear that investment in gas and electricity transmission in Australia is yielding highly favourable returns, thus supporting the Commission's view that current regulatory returns provide a solid base for future investment in electricity and gas transmission and a secure future for the energy industry.

### Greenfields investment

Concerns have also been raised that regulators are failing to take account of additional risks associated with greenfields pipelines. However, the code is a flexible instrument enabling the Commission to assess proposed greenfields pipelines case-by-case. This flexibility permits it to address the specific risks and rewards that arise for each new pipeline.

For example, in the Central West Pipeline decision the Commission provided a 15.4 per cent return on equity, an amount substantially above previous returns for existing pipelines. The Commission went further by providing an extended regulatory period of 10 years. This extension allows for any increased return to be retained by the service provider, although the service provider is able to seek an early review at any time — including if forecast volumes do not eventuate.

In addition there is provision for the owners to capitalise early revenue losses so that they can be recovered once demand grows. This has the effect of significantly mitigating risk.

The code also includes special provisions for treatment of new pipeline systems, such as via the competitive tender process. Thus, the returns available to the developer are determined by the tender process and are not subject to regulatory review except as provided for within the known terms of the tender.

The code also distinguishes between new and existing pipelines in the determination of the initial capital base for regulatory purposes. For pipelines that were built after the code, the initial capital base is the actual cost of the pipeline; there is no scope for regulatory review.

### Looking forward

#### Convergence

As the reform process continues, competition will drive changes in the Australian utility market that will facilitate the emergence of multi-utility companies.

State boundaries are becoming less relevant in the energy sector, as are industry boundaries. National markets are developing in many industries, making consistency in approach across jurisdictions critical.

*Consistency in regulation*

It is critical that governments unite to continue energy reform. At present, some States are starting to diverge from the original goals of the Hilmer Report, or are using different methods to achieve these goals. This has the potential to create barriers to interstate trade in the future.

We are conscious of the costs to industry of dealing with multiple regulators and have been trying to ameliorate this administratively.

*Competition in the retail market*

The introduction of full-scale contestability across all customer classes offers many new opportunities for gas retailers, but also many new challenges.

The arrival of competition will create pressure for incumbents to maintain market share and a balanced customer portfolio. In this newly competitive environment there may be temptations to engage in restrictive trade practices or unfair trading activities.

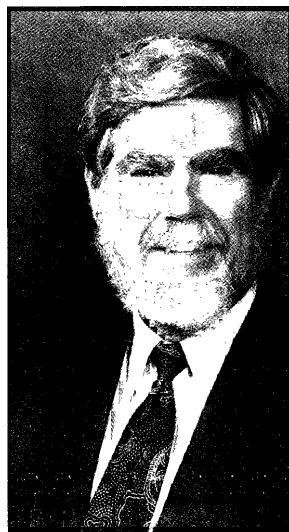
Though the Commission regulates gas transmission pipelines under the code, conduct at the retail end of the market is covered by the Trade Practices Act. Companies must be mindful that anti-competitive or anti-consumer practices can stall the benefits of reform and, importantly, may constitute a breach of the law.

**Conclusion**

In general, while there have been some positive efficiency gains from the implementation of gas reform to date, they have not been as significant as in electricity or telecommunications. The slow pace of reform and a less competitive supply sector are the key reasons for this.

It is my view that, unfortunately, the reform process appears to be losing momentum and Australia risks losing its place and could quickly fall behind other industrialised countries; therefore forfeiting opportunities to grow and prosper.

## Telecommunications



*The following are summaries of two talks given by Commissioner Rod Shogren on telecommunications regulation and issues. The first was to the Communications Research Forum 2000 on 5 October 2000 and the second to the SPAN-ATUG Industry Forum on 6 December 2000.*

## Regulatory issues

Australia is one of a number of countries currently re-examining its regulatory arrangements for telecommunications. All are seeking to ask whether telecommunications-specific competition regulation is still required and, if so, of what sort and in what form.

Subsidiary questions include who should be regulated — all carriers in a particular market, or just those meeting certain criteria — and who should do the regulating.

The review currently being conducted by the Productivity Commission is limited to competition and related provisions of the overall regulatory scheme. (Other countries have embarked on more comprehensive reviews.) However, other aspects of the regulatory regime affecting competition are also being reviewed or are undergoing change. These include the price control arrangements for Telstra and a new legislative framework for the provision of services under the Universal Service Obligation.