

11 November 1996

10. MME012/96CS

Review of Cooper Basin (Ratification) Act
APPROVED

All Ministers

Not Relevant

10
Contact: R A Laws
Ph: 8274 7612

Docket No. SR 27/2/4

CABINET COVER SHEET

1. **TITLE:** Review of Cooper Basin (Ratification) Act 1975
2. **MINISTER:** Stephen Baker.
MINISTER FOR MINES AND ENERGY
3. **PURPOSE:** To seek Cabinet approval to bring forward a public review of the Cooper Basin (Ratification Act) as required under the *Competition Principles Agreement* in order that issues associated with the CoAG agreement on free and fair trade in gas can also be addressed.

4. **RESOURCES REQUIRED FOR IMPLEMENTATION:**

COSTS:	Capital	Recurrent	Total
1995/96	0	75 000	75 000
1996/97	0	27 000	25 000
Subsequent years	0	<u>0</u>	<u>0</u>
		\$100 000	\$100 000

These funds will be provided by Mines and Energy

5. **RELATIONSHIP TO GOVERNMENT POLICY:** Honours Government commitment to Competition Principles Agreement and CoAG Agreement on free and fair trade in gas.
6. **CONSULTATION:**
- | | |
|-------------------------|-----------|
| S. Churchman (P&C) | 8226 2018 |
| P. Walsh (P&C) | 8226 0902 |
| A. Staniford (Treasury) | 8226 9607 |
| G. Cox (Crown Law) | 8207 2541 |
| R. Adler (Santos) | 8218 5111 |
| J. McArdle (Santos) | 8218 5111 |
| M Roberts (Santos) | 8218 5111 |

7. **FAMILY IMPACT STATEMENT:**

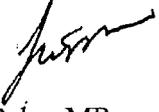
A Family Impact Statement is not relevant and is not included.

8. **URGENCY:**

Urgent as a response to the NCC on this issue is necessary by 11 November.

9. **RECOMMENDATIONS:** It is recommended that Cabinet:

- Agree that the public review of the Cooper Basin (Ratification) Act 1975, currently scheduled to be completed in 1998 under the State's program for review of potentially anti-competitive legislation, be initiated now and that its terms of reference be extended to determine if the Act is a barrier to free and fair trade in gas in terms of the CoAG Agreement of February 1994.
- Authorise the Minister for Mines and Energy to progress implementation of the details of the review.


Stephen Baker MP
MINISTER FOR MINES AND ENERGY

7 November 1996

TO THE PREMIER FOR CABINET

RE: REVIEW OF COOPER BASIN (RATIFICATION) ACT

1. PROPOSAL

To seek Cabinet approval to bring forward a public review of the Cooper Basin (Ratification) Act as required under the *Competition Principles Agreement* in order that issues associated with the CoAG agreement on free and fair trade in gas can also be addressed.

2. BACKGROUND

2.1 The Cooper Basin (Ratification) Act 1975 and the associated Indenture Agreement (together henceforth termed the Ratification Act) provides much of the legislative framework governing Cooper Basin petroleum development. It was last amended in 1991 when revisions were made to royalty arrangements.

2.2 The State Government has already produced a schedule for review of legislation as required under the *Competition Principles Agreement*. Under this schedule a major review of the Ratification Act is to be completed by December 1998.

2.3 The National Competition Council (NCC) is presently assessing the performance of the States in relation to the requirement for receipt of competition payments as set out in *Agreement to Implement the National Competition Policy and Related Reforms* and endorsed by Heads of Government in April 1995. In undertaking the assessment, the NCC will address the undertaking to the free and fair trade in gas agenda as well as conformance with the *Competition Principles Agreement*.

2.4 In the ACCC review of the Trade Practices Act (TPAct) authorisation of the AGL Letter of Agreement (providing for the sale of gas from the Cooper Basin to NSW), three clauses were identified as being anti-competitive. The ACCC noted that authorisation for TPAct purposes is provided by the Ratification Act and considers that therefore this authorisation should be repealed by July 1996 under the terms of the CoAG Agreement of February 1994 on free and fair gas trade in gas.

2.5 CoAG in Darwin in August 1994 agreed that existing State indentures which validly effect exemptions from the TPAct will continue to have that effect. The NCC and ACCC argue, however, that this agreement should not be interpreted as releasing State governments from their obligation to remove existing barriers to free and fair trade in gas by July 1996.

2.6 The NCC in their 1995/96 Annual Report released on 16 October state:

'Any threats to the free and fair trade in gas offered by legislative or regulatory barriers must be removed. Given the importance of the Cooper Basin, South Australia must ensure that the Cooper Basin (Ratification) Act 1975 does not restrict competition'.

2.7 As set out in 2.3 above, the NCC has the role of reporting on whether each State has met the conditions for receipt of competition payments, including whether its legislative arrangements hinder national free and fair trade in gas. Although the draft NCC assessment is scheduled to be available in February 1997, the wording of their 1995/96 Annual Report is already signalling concern with the Ratification Act and this issue is considered a 'big ticket item' by the NCC.

2.8 Advice has been received that the NCC has recently approved the letting of a consultancy to analyse the legal and economic ramifications of the Ratification Act, particularly in the context of the CoAG February 1994 Agreement on free and fair trade in gas. It is likely that such an analysis will focus on the TP Act authorisation of a number of agreements, in particular the AGL Letter of Agreement and the Unit Agreement (which sets out the Cooper Basin Producers joint production arrangements) and any other contracts which may be authorised under the Act.

2.9 Informal indications are that the NCC will probably not proceed with this analysis if South Australia advises by 11 November of its intention to bring forward the review of the Ratification Act from 1998 to the near future.

3. DISCUSSION

3.1 It would appear that there are two main options with regard to a review of the Ratification Act:

(a) leave the setting of the agenda with the NCC and wait on their analysis of the Ratification Act and assessment of the State's compliance with the *Competition Principles Agreement*; or

(b) take the initiative from the NCC by undertaking a review of the Ratification Act, (including agreements authorised by the Ratification Act for the purposes of the TP Act) noting that this involves bringing forward the public review already scheduled for completion in 1998 and adding another dimension to the review with regard to the State's commitment to removing barriers to free and fair trade in gas.

3.2 The terms of reference for a review of legislation such as the Ratification Act must:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;

- analyse the likely effect of the restriction on competition or on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means for achieving the same result including non legislative approaches.

Such a review would need to call for public submissions and ideally be undertaken by an independent person and include release of a draft report for public comment.

In order to determine the impact of the legislation on free and fair trade in gas in accordance with the CoAG agreement of February 1994, an additional term of reference needs to be included, as follows:

- to determine if any provision of the Ratification Act (or any direct effect of a provision), constitutes a barrier to free trade of gas both within and across State borders in terms of the CoAG Agreement of February 1994 and to recommend how such barriers (if any) should be removed.

3.3 A prompt decision on the undertaking of a review of the Ratification Act by South Australia would probably act to forestall any NCC review. If the two reviews were to proceed in parallel, it would enable an informed defence of South Australia's position to be achieved and establish the State's *bona fides* in carrying out the letter and the spirit of the CoAG agreements.

3.3.1 Economic, financial and budget implications.

If the Commonwealth determine that South Australia is in breach of the CoAG Agreement on free and fair trade in gas or the Competition Principles Agreement, very significant revenues are put at risk (worth \$26 million in 1997/98, \$54 million in 1998/99 and up to \$1 billion over 10 years). The cost of undertaking a review is estimated to be of the order of \$100,000, mainly involving the costs of an independent reviewer. This cost is to be met by Mines and Energy.

3.3.2 State development, social, environmental and other impacts.

Any consideration of a review of an Indenture arrangement can raise widespread sovereign risk and related concerns unless the co-operation of the Indenture parties can be achieved. However, as the review of the Ratification must be completed in 1999 and is scheduled for completion in 1998, the proposal herein would only result in the bringing forward of the review by approximately one year.

3.3.3 Staffing Implications.

Nil.

3.3.4 Consultation.

The Department of Premier and Cabinet, Treasury and Attorney General's have been consulted and concur with the recommendations in this submission.

The recommendation of this submission that the review of the Ratification Act be brought forward from 1998 to the immediate future has been discussed with Santos who have advised that they have reserved their position on this issue (copy of facsimile attached).

3.4.5 Executive Council.

Executive Council approval is not required.

4. RECOMMENDATIONS

It is recommended that Cabinet:

- Agree that the public review of the Cooper Basin (Ratification) Act 1975, currently scheduled to be completed in 1998 under the State's program for review of potentially anti-competitive legislation, be initiated now and that its terms of reference be extended to determine if the Act is a barrier to free and fair trade in gas in terms of the CoAG Agreement of February 1994.
- Authorise the Minister for Mines and Energy to progress implementation of the details of the review.

Stephen Baker MP
MINISTER FOR MINES AND ENERGY

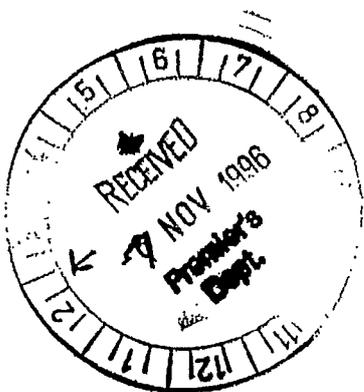
7 November 1996

In Cabinet

11 NOV 1996

APPROVED

PREMIER



Santos Ltd
A.C.N. 007 550 922
91 King William Street
Adelaide SA 5000
GPO Box 2455
Adelaide SA 5001
Telephone: (08) 218 5111

Santos

Telephone: 8218 5985

Facsimile

To: BOB LAWS **Fax:** 8878 3269
Director Petroleum Division
Mines & Energy South Australia

From: J W McARDLE **Return Fax:** 8218 5623

Date: 5 NOVEMBER 1996 **Ref:** EGMC169/96

Subject: REVIEW OF COOPER BASIN (RATIFICATION) **No of pages:** 1
ACT (incl. this one)

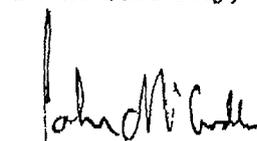
(IF INCOMPLETE TRANSMISSION RECEIVED PLEASE PHONE: 8218 5985)

Message:

Dear Bob,

I refer to your facsimile of 4 November 1996. Given that we remain unclear as to the authority pursuant to which any review, including that proposed by the NCC, is to be conducted, we confirm, as requested, that at this time Santos Ltd reserves its position in regard to the proposal concerning the review of the Cooper Basin (Ratification) Act.

Yours sincerely,



J W McARDLE
Executive General Manager - Commercial

The information contained in this facsimile is intended only for the use of the person(s) to whom it is addressed and may be confidential or contain legally privileged information. If you are not the intended recipient you are hereby notified that any perusal, use, distribution, copying or disclosure is strictly prohibited. If you have received this facsimile in error please immediately telephone us (we will accept reverse charges) on 8218 5985 and return the original facsimile to us by mail without making a copy.