

2 Bills and Regulations in Principle

Not Relevant

3 Bills for Introduction

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MMRD0027/03CS

**Cooper Basin (Ratification) Amendment Bill 2003
APPROVED AS AMENDED (NEW
RECOMMENDATIONS)**

All Ministers

Not Relevant

301

CABINET COVER SHEET

1. **TITLE:** Cooper Basin (Ratification) Amendment **Bill, 2003**
2. **MINISTER:** Paul Holloway
Minister for Agriculture, Food and Fisheries
Minister for Mineral Resources Development
3. **PURPOSE:** To seek Cabinet approval to draft and introduce the Cooper Basin (Ratification) Amendment Bill, 2003 in the Second session of Parliament.
4. **RESOURCES REQUIRED FOR IMPLEMENTATION:** There are no significant costs associated with the proposal.
5. **RELATIONSHIP TO GOVERNMENT POLICY:** The Bill reflects the final response to the Dyki National Competition Policy review of the Act initiated and approved by the previous Government. The Bill reflects Government commitment to continue the development and implementation of micro-economic reform aimed at encouraging competitive markets.
6. **CONSULTATION:** Extensive consultation has occurred with National Competition Council, Energy SA, Santos, Premier and Cabinet and the Crown Solicitor's Office over a number of years. All these organisations are supportive of the proposed amendments.
7. **IMPACT STATEMENTS:** There will be no significant impact on **SANTOS**, the petroleum exploration industry or the public
8. **URGENCY:** National Competition policy requires that all legislative reforms are completed by June 2003 to ensure competition payments are not put at risk.
9. **RECOMMENDATIONS:**
It is recommended that Cabinet:
4.1 Approve that the Cooper Basin (Ratification) Amendment Bill 2003 as drafted by the Parliamentary Counsel be introduced into the second session of Parliament.

**SIGNATURE OF MINISTER:
PORTFOLIO:**


**MINISTER FOR AGRICULTURE, FOOD AND FISHERIES
MINISTER FOR MINERAL RESOURCES DEVELOPMENT**

DATE: 22/5/03

TO: THE PREMIER FOR CABINET

RE: Cooper Basin (Ratification) Amendment Bill, 2003

1. PROPOSAL

- 1.1 To seek Cabinet approval to draft and introduce to Parliament the *Cooper Basin (Ratification) Amendment Bill, 2003* during the Second session 2003.

2. BACKGROUND

- 2.1 A review of the *Cooper Basin (Ratification) Act* was carried out during 1997 by an independent consultant, Mr Nick Dyki, as part of the Government's National Competition Policy ("NCP") obligations. These obligations require the removal of legislative barriers to free and fair trade in gas (CoAG, February 1994) and, except where the benefits to the community outweigh the cost of the restriction and the objectives of the legislation can only be received by restricting competition, that legislative restrictions on competition be removed by December 2000 (CoAG, April 1995).
- 2.2 Significant financial payments from the Commonwealth may depend on effective implementation of these obligations as determined by the National Competition Council ("NCC") by June 2003.
- 2.3 The Government formally responded to NCC on the recommendations to the Dyki review on 24 December 1999. Some of the recommendations were not agreed to. The NCC responded on 10 April 2000 and substantially agreed with the Government's position with one exception – access to existing pipelines by third parties. The Government responded to this on 16 June, 2000, by providing further argument supporting its stance.
- 2.4 Cabinet has considered reforms to the *Cooper Basin (Ratification) Act* three times previously:
- 20 December 1999 – Final response to Dyki review. Cabinet endorsed the final response to the Dyki review and approved a letter to be sent to the NCC on the outstanding issues. This Cabinet decision was to amend the Act with minimal changes, but without requiring Santos approval.

The draft Bill does not fully reflect these responses, due to later (post change of Government) request that Santos agreement be reached and changes to gas market since 1999 which has made this a less contentious issue.

- **24 August 1998** – Cabinet’s formal response to the Dyki report and included strategy for negotiation with Santos (attempted to get other concessions from Santos in exchange for the reforms), but due to difficulties in getting Santos agreement these were not pursued.
- **19 May 1998** – Cabinet’s initial response to the Dyki Report

3. DISCUSSION

3.1 Summary of Proposed Changes

3.1.1 Trade Practice Authorisations

- 3.1.1.1 The Unit Agreement and the AGL Letter of Agreement will continue their exemption from the *Trade Practices Act* (TPA) and other agreements.
- 3.1.1.2 Other relevant agreements have been included in this section for the first time, and all exempt agreements have been more explicitly defined.
- 3.1.1.3 All Liquids Contracts exemptions have been consolidated in the Ratification Act for convenience and transparency. Liquids Contracts exemptions were previously in the *Stony Point (Liquids Project) Ratification Act* and the *Ratification Act*.
- 3.1.1.4 Future agreements or changes to authorised agreements will be automatically granted TPA authorisation unless the Minister objects to the change or agreement on the basis that it is not in the public interest.

3.1.2 Criteria for Petroleum Production Licenses (PPL’s):

- 3.1.2.1 Section 9 of the Ratification Act, and clause 6 of the Indenture have been amended retrospectively, so that any PPLs granted to the Producers after 30 October, 1997 were assessed under the criteria in the *Petroleum Act*.

3.1.2.2 As *quid pro quo* for receiving PPLs over the Nappamerri Trough, the Managing Director of Santos Limited wrote to the Premier on 30 October 1997 agreeing that, for future PPLs, the Producers would voluntarily place themselves under the section 27 & 28 *Petroleum Act* regime. Thus this clause simply gives legal effect to that agreement.

3.1.2.3 No further PPLs may be granted under the Ratification Act, as the Producers lost rights to apply for further PPLs after 27 February 1999 when PELs 5 & 6 expired.

3.1.3 GST amendments

3.1.3.1 Minor amendments have been made to the Indenture to clarify that GST is to be ignored in Royalty calculations

3.1.3.2 No impact in royalty will result from these changes

3.2 Implications and impacts

3.2.1 Economic, Financial and Budget Implications

3.2.1.1 There are no direct costs associated with implementation of the recommendations of this submission.

3.2.2 State Development, environmental, social, small business and regulatory impacts

3.2.2.1 Although the response to the Dyki report was largely formulated by the previous Government, the amendments proposed reflect Government commitment to continue the development and implementation of micro-economic reform aimed at encouraging competitive markets.

3.2.2.2 There is a need to commit to the amendments by June 2003, or risk a threat to South Australia's competition Payments.

3.2.3 Regional impacts

3.2.3.1 There are no regional impacts associated with the amendments.

3.2.4 Other Business impacts

3.2.4.1 There will be no significant impact on the Producers (SANTOS and partners).

3.2.4.2 The wider petroleum exploration industry may still perceive that continuation of some provisions of the Ratification Act gives a competitive advantage to the Producers.

3.2.5 Family impact

3.2.5.1 There is no family impact associated with the amendments.

3.3 Consultation

3.3.1 The Producers

3.3.1.1 Extensive consultation over several years has occurred with Santos as operator for the producers.

3.3.1.2 The early response from Santos was non-co-operative, but the changes now proposed are minimal and have their support.

3.3.1.3 None of the proposed changes to the *Ratification Act* (or placing the *Stony Point Act* Liquids Contracts exemption in the *Ratification Act*) impact adversely on the Producers' commercial position, nor "modify the rights or increase the obligations of the Producers" in terms of clause 2(4) of the Indenture.

3.3.2 The NCC

3.3.2.1 Consultation with the NCC occurred in the early stages of the review, and in April, 2000 the NCC wrote to the then Deputy Premier, expressing the view that the NCC were satisfied that the SA Government had substantially met its obligations in respect of free and fair trade in gas and legislation review.

3.3.2.2 The NCC also noted that the SA Government had committed to ensuring the Producers established an Industry Access Code for the production facilities in the Cooper Basin; this

has not occurred, but third parties are selling oil production to the Producers at Moomba and are therefore indirectly accessing the facilities.

3.3.2.3 The NCC in their August, 2002 assessment have noted that review had been completed finding substantial public benefits in continuing granted concessions and exemptions on grounds of sovereign risk.

3.3.2.4 The 2002 assessment has concluded that the review meets the CPA obligations since June 1997.

3.3.2.5 Advice from the Department of Premier and Cabinet is that no further consultation on the draft Bill with the NCC is required.

3.4 Executive Council

3.4.1 The proposal does not require the approval of Executive Council.

3.5 Urgency

3.5.1 To meet competition policy obligations, the amendments should be enacted by end of June 2003. To assist in meeting this tight deadline, Parliamentary Counsel was requested to commence preparation of the draft Bill to enable Cabinet to approve an early introduction of the Bill into Parliament. The draft Bill is attached.

4. RECOMMENDATIONS

It is recommended that Cabinet:

4.1 Approve that the Cooper Basin (Ratification) Amendment Bill 2003 as drafted by the Parliamentary Counsel be introduced into the second session of Parliament.

4.2 Note that the Bill may be amended, to the satisfaction of the Minister for Mineral Resources Development, to add a reference to the 'Competition Code of South Australia' or as otherwise recommended by Parliamentary Counsel.

Paul Holloway
Minister for Agriculture, Food and Fisheries
Minister for Mineral Resources Development

Date: 2/6/03

In Cabinet

2 JUN 2003

APPROVED

PREMIER

Draft Bill
Cooper Basin (Ratification) Amendment Bill 2003

11 pages removed

Exempt clause 10(1) – legal professional privilege