

Annual Compliance Order

Consultation paper

February 2024

© Commonwealth of Australia 2024

This work is copyright. In addition to any use permitted under the *Copyright Act 1968* all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website as is the full legal code for the CC BY 3.0 AU licence.

Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601
Tel: 1300 585 165

AER reference: 16250082

Amendment record

Version	Date	Pages
1.0	February 2024	9

Contents

1	Annual compliance order	1
1.1	Background	1
1.2	Summary of changes	3
1.3	Request for submissions.....	4
1.4	How to make a submission	4
	Glossary	6

1 Annual compliance order

1.1 Background

The National Gas Law (NGL) and National Gas Rules (NGR) form the legislative framework designed to establish a cooperative national access regime for natural gas distribution and transmission pipelines.

The national gas objective is stated in section 23 of the NGL, with the aim to promote efficient investment in, and efficient operation and use of, natural gas services for the long-term interests of consumers of natural gas with respect to:

- a) price, quality, safety, reliability and security of supply of natural gas; and
- b) the achievement of targets set by a participating jurisdiction—
 - i. for reducing Australia's greenhouse gas emissions; or
 - ii. that are likely to contribute to reducing Australia's greenhouse gas emissions.

The Australian Energy Regulator (AER) must carry out its functions in a manner that will (or is likely to) contribute to achieving the national gas objective (NGL section 28(1)).

One of these functions is to monitor the compliance of service providers with this framework (NGL section 63A). The failure of service providers to comply with this framework increases the risk of anticompetitive behaviour in the energy market and unsafe or unreliable operation of the market. This has detrimental effects on:

- i. the ability of a service provider to compete in the market, and
- ii. the reliability and pricing of the services received by consumers.

It is the view of the AER that establishing suitable monitoring mechanisms is necessary in connection with the performance of its functions, in accordance with section 27(2) of the NGL.¹

The Annual Compliance Order (ACO) is the mechanism the AER previously used to obtain information from scheme pipeline service providers to monitor their compliance. The ACO is a General Regulatory Information Order (RIO), which is made under section 48(1)(b) of the NGL. The ACO only applied to scheme pipeline service providers as the legislation applied to covered pipelines only.

Under the NGL and NGR, scheme pipeline service providers were subject to a number of obligations and restrictions. The ACO established a consistent framework for service providers to report their compliance with some of their obligations (including structural and operational separation) to the AER, which streamlined the compliance reporting process for both scheme pipeline providers and the AER.

The obligations monitored using the ACO included, but were not limited to: ring fencing requirements, compliance with access arrangements, determinations and negotiations,

¹ The AER has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions. (NGL, 27(2))

maintaining suitable records, appropriately handling confidential information and following bundling requirements.

1.2 New Annual Compliance Order

Recent changes to the NGL and NGR mean that the AER, in addition to the above, must monitor new obligations on service providers. These obligations include, amongst other matters, restrictions on increasing charges and additional requirements regarding publishing transparent information.

The purpose of the changes to the NGL and NGR were to:

- pose a more effective constraint on exercises of market power by service providers
- facilitate better access to pipelines
- provide greater support for commercial negotiations between gas users and service providers, and
- streamline governance arrangements.

For more information please see the [AER's Compliance bulletin on new obligations under the gas pipeline reform](#).

To assist this monitoring function, the AER has new powers under section 64B of the NGL to carry out compliance audits, or to require a service provider to carry out an audit through an authorised third party under section 64C, the cost of which is borne by the service provider (NGL section 64E). The information collected through the monitoring mechanisms of the AER will now be included in a biennial report to the Energy Ministers. A version of this report will be made publicly available on the AER's website.

In addition to these amendments, there are also significant changes in how pipeline services are defined which means that a greater number of pipeline service providers now have reporting obligations. In particular, the term "covered pipeline" has been removed from the legislation, which means that non-scheme pipelines that were previously regulated under part 23 of the NGR will now be subject to any new RIO issued under the NGL.

The AER is proposing to issue a new ACO which reflects the obligations that have changed in the NGR and NGL and has updated language to reflect the changes to the legislation. The draft ACO also includes new material to explain the basis of preparation that must be included with a response to enable auditors, assurance providers and the AER to understand how the service provider has complied with the requirements and how the required information was compiled. As such, there is a new section on the new assurance and audit requirements for service providers.

Following the Standard Consultative Procedure outlined in NGR rule 8, after considering submissions received on this proposal, the AER will make a draft decision, and if appropriate, modify the proposal. The AER expects to publish a draft decision, and any modification of the proposal made in light of the draft decision in April 2024, with a notice inviting written submissions and comments on the draft decision, and (if applicable) the modified proposal, within the period (at least 15 business days) stated in the notice.

The final decision (the updated ACO) will be made within 20 business days after the end of the period allowed for making submissions and comments on the draft decision and is expected to be published in late June 2024.

1.3 Matters to be addressed under Annual Compliance Order

Table 1 below contains the information topics to be provided under the draft of the ACO.

Table 1 – Matters to be addressed by servicer providers

General duties for the provision of pipeline services of covered pipeline scheme pipeline services by a service provider	
1. Legal entity information	5. Increases to service charges to subsidise development
2. Preventing or hindering access	6. Bundling of services
3. Queuing requirements	7. Publishing of prescribed transparent information
4. Compliance with pipeline interconnection principles	
Structural and Operational Separation Requirements (Ring Fencing)	
1. Carrying on of a related business	4. Additional ring-fencing requirements
2. Marketing staff and the taking part in related businesses	5. Associate contracts
3. Separate accounts must be prepared, maintained and kept	6. Exemptions from particular requirements
Other Requirements	
1. Making access arrangement available	3. Access negotiations
2. Involvement in any access determinations	4. Treatment of confidential information

1.4 Summary of changes

A summary of the differences between the information sought in the draft of the updated ACO and the previous ACO is provided below.

- The terms “covered pipelines” and the “compliance date” have been removed to reflect the changes to the classification of pipelines.
- References to the NGL and NGR have been updated to reflect changes to the legislation.
- Item 1.3 from the previous ACO (Supply and haulage of natural gas) has been removed due to the removal of section 134 of the previous NGL.
- A new item (Compliance with pipeline interconnection principles) has been added to monitor compliance with section 134 of the amended NGL.
- Item 1.5 from the previous ACO (Service providers providing light regulation services must not price discriminate) has been removed due to section 136 being replaced by sections 136A–C in the amended NGL.
- A new item (Increases to service charges to subsidise development) has been added to monitor compliance with section 136A of the amended NGL.

- A new item (Publishing of prescribed transparent information) has been added to monitor compliance with section 136C of the amended NGL.
- A new item (Does the service provider have any exemptions from the associate contract requirements?) has been added to monitor compliance with section 148A of the amended NGL.
- Item 3.1(ii) from the previous ACO (Publishing approved competitive tender process access arrangement) has been removed due to the removal of the rule 21 from the previous NGR.
- Item 3.1(iii) from the previous ACO (Publishing terms and conditions of access to light regulation services) has been removed due to the removal of rule 36 from the previous NGR.
- A new item (Access negotiations) has been added to reflect the replacement of chapter 4 – part 3 of the previous NGL with chapter 6A – part 2.

There has also been changes to the requirements of how information is provided in response to the ACO:

- Clause 4 of the ACO requires that Service Providers must provide a basis of preparation for their response, with instructions on how to do so, and
- Clause 5 outlines the assurance requirements of the ACO, including information about what must be provided if audit and/or assurance reports are requested by the AER, and the statutory declaration requirements when providing a response to the ACO.

1.5 Request for submissions

In accordance with section 50 of the NGL, the AER is seeking submissions on the contents and form of the [updated ACO](#) from any interested parties. In particular, we seek feedback on:

- whether the information sought in the ACO is clear and understandable
- whether the template for responses to the ACO is accessible and fit for purpose
- the scope of the information sought in the ACO
- the level of assurance sought for information provided as contained in clause 5
- the anticipated burden on businesses in compiling a response to the ACO, and
- any other issues in respect of the draft ACO that you wish to provide comment on.

1.6 How to make a submission

Submissions can be submitted electronically to AERGasNetworksCompliance@aer.gov.au.

Alternatively, you can mail submissions to:

General Manager, Compliance and Enforcement
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

The closing date for submissions on the proposal is by close of business 12 March 2024.

We request that submissions be publicly accessible to facilitate an informed and transparent consultative process. For this reason, we treat submissions as public documents, unless requested otherwise. If you wish to submit confidential information, please:

- clearly identify which information within your submission is subject to the confidentiality claim, and
- provide a non-confidential version of the submission which is suitable for publication.

If the confidentiality claim is accepted, it will be treated in accordance with the terms set out in the ACCC/AER Information Policy. Otherwise, you will be given the opportunity to withdraw your submission before it is published, or any information is disclosed. We will place all non-confidential submissions on [our website](#).

For further information about the use and disclosure of information you provide, see the [ACCC/AER Information Policy \(June 2014\)](#) on [our website](#). For enquiries about this paper, or about lodging a submission, please contact us on 1300 585 165 or AERGasNetworksCompliance@aer.gov.au.

Glossary

Term	Definition
ACO	Annual compliance order
NGL	National Gas Law
NGR	National Gas Rules
RIO	Regulatory information order
