

# AER Decision

## Annual Information Orders – Electricity

April 2024

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# 1 Executive summary

This Decision accompanies the Annual Information Orders (Orders) the AER will make regarding the electricity networks it regulates. It describes our positions on matters we have identified as relevant to achieving our long-term vision for how we collect, manage, and share information about regulated electricity networks.

The Orders address issues raised on the draft Orders and set out:

- the class of persons to whom the Orders apply:
  - electricity transmission network service providers
  - electricity distribution network service providers (excluding Power and Water Corporation)
  - electricity interconnectors
- the reporting years for which the Orders apply – 2024-25 to 2027-28
- the annual submission date
  - for 2024-25 – five months after the end of the regulatory year
  - for 2025-26 to 2027-28 – four months after the end of the regulatory year
- data requirements, covering the following data categories
  - 02 – operational outcomes
  - 03 – network metrics
  - 04 – customer numbers (distribution only)
  - 05 – service performance
  - 06 – operating expenditure
  - 07 – capital expenditure
  - 08 – asset base values
  - 09 – financial information
  - 10 – prices
- supporting information requirements:
  - additional information
  - basis of preparation
  - audit and assurance reports from independent assurance practitioners
  - statutory declaration

This Decision sets out our considerations in making the Orders and explains any changes from our draft Orders. Where the Orders reflect the draft Orders, we refer to our previous explanatory statement, and only provide a high-level summary of the outcomes in this Decision.

We have not addressed all issues raised on the draft Orders in this Decision. Our focus has been on material issues raised in submissions, including those that have been raised by multiple stakeholders, issues that have a significant impact on the regulatory burden facing the regulated networks, or issues that are expected to provide significant benefits to the AER or other data users. However, we have reviewed all issues raised. Where issues relate to detailed specific information requirements and have not been addressed in this Decision, we provide a response in our issues register. The issues register has also been published with the Orders.

We were encouraged by the engagement of regulated networks and other stakeholders throughout this process. We are grateful participants found the time to participate and raise issues with the objective of improving the Orders and provide support for the introduction of the Orders. Hearing from those affected by our work helps us make better decisions, provides greater transparency and predictability, and builds trust and confidence in the regulatory regime.

## 2 Networks information requirements review

Publication of the Orders is a key milestone in our Networks Information Requirements Review (the review). Our review is about ensuring the information we collect from, and about, regulated electricity networks is robust, accessible, and fit for purpose into the future. It is also about improving the quality of the information about electricity networks we use and share and improving the efficiency of the data collection processes.

Decision-makers and energy sector participants working for the long-term interests of consumers need consistent, relevant, and transparent information about electricity networks. That information is critical to our ability to undertake our regulatory roles, including making revenue and price determinations and assessing and reporting on the performance of regulated network service providers. It underpins our analysis of regulatory proposals and supports the work of all stakeholders as they contribute to the future development of electricity networks and the energy sector.

We instigated this review due to both the ongoing energy sector transformation and the need to update our current information requirements and collection processes.

The review focused on the information we collect from regulated electricity networks each year. Our annual information requirements support our assessment of regulatory proposals and our performance reporting functions. We use the data in our annual compliance and approval functions, including determination of service performance incentive rewards or penalties, annual pricing approvals, and demand management reports. We also use the information to review and refine our regulatory tools, to assess the impact of our decisions and to develop tools to analyse new areas of interest, such as the incentive arrangements relating to export services.

These Orders will support our regulatory functions, and our ambition to drive data quality improvements across the energy sector.

The decision to make the Orders does not end the review – there is further work to do to change the transmission reporting framework specified in the NER, and to develop new data submission tools. We will progress this work and provide updates to stakeholders as we set timelines and milestones, with initial updates scheduled for May 2024. We have also committed to providing stakeholders with updated information relating to the data use cases for the information requirements set out in the Orders. We will provide the updated data use cases later in 2024.

## 3 Annual Information Orders

### 3.1 Type of Instrument

**The AER has made regulatory information orders imposing annual information reporting obligations on regulated network service providers.**

The Orders reflects our position set out in the draft Orders. We did not receive any submissions relating to the type of regulatory information instrument to be issued. Further discussion can be found in the Explanatory statements to the draft Orders and preliminary Orders.<sup>1</sup>

### 3.2 Class of persons - coverage

**The AER has made Annual Information Orders for transmission networks, distribution networks and regulated interconnectors.**

**The AER has excluded Power and Water Corporation from the distribution Orders and instead will define the annual reporting obligations for Power and Water Corporation under a separate Regulatory Information Notice.**

The Orders reflect our position set out in the draft Orders and will cover the following three classes of persons:

#### **Distribution**

Applies to the following specified class of regulated network service providers:

- regulated distribution system operators that own, control or operate a distribution system located in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania or Victoria

#### **Transmission**

Applies to the following specified class of regulated network service providers:

- regulated transmission system operators that own, control or operate a transmission system located in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania or Victoria.

For the avoidance of doubt, this Order does not apply to regulated interconnectors or AEMO.

#### **Interconnectors**

Applies to the following specified class of regulated network service providers:

- regulated interconnectors.

For each class we have used terms defined in the National Electricity Law or National Electricity Rules to limit the coverage to only those electricity networks we regulate.

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<sup>1</sup> AER, Explanatory Statement – Draft regulatory information orders, section 2.1.1, p. 6.  
AER, Explanatory Statement – preliminary regulatory information orders, section 2.1.1, p. 4-5.

## Power and Water Corporation

We maintain our position to exclude Power and Water Corporation from the distribution Orders and instead impose annual reporting obligations for Power and Water Corporation under a regulatory information notice. This is because, compared to other distribution networks in the National Electricity Market, Power and Water Corporation:

- is smaller in network size
- undertakes unique functions such as management of the technical code, market dispatch operations and transmission functions
- has community service obligations to remote communities
- is transitioning to NEM arrangements.

The Power and Water Corporation Notice will allow for reduced information reporting in circumstances where it has not yet developed its systems and processes to meet the required reporting standards, but otherwise will be consistent with the distribution Orders. We expect to transition Power and Water Corporation to the distribution Orders in the future.

## 3.3 Reporting years

**The Orders impose annual reporting obligations for the reporting years 2024–25 to 2027–28.**

The Orders reflect our position set out in the draft Orders.<sup>2</sup>

The reporting years refers to the years for which the Orders will apply and, consequently, the length of time before we update the Orders. The reporting years correspond to each network service provider's relevant financial years for the duration of the Orders.

The Orders impose an annual obligation on regulated electricity network service providers to provide information relating to the preceding reporting year. We regulate all electricity network service providers on a financial year basis, and for all but AusNet Transmission their reporting years will end on 30 June. AusNet Transmission will continue to report on a Singaporean financial year ending 31 March.

## 3.4 Annual submission date

**The Orders require annual information to be provided:**

- **for the first reporting year - 5 months after the end of the reporting year**
- **for the second, third and fourth reporting years - 4 months after the end of the reporting year**

The Orders reflect our position set out in the draft Orders.<sup>3</sup>

In response to the draft Orders SA Power Networks provided a submission reiterating its concern with the annual submission date applying for the second and subsequent reporting

<sup>2</sup> AER, Explanatory Statement – Draft regulatory information orders, section 2.1.3, p. 8.

<sup>3</sup> AER, Explanatory Statement – Draft regulatory information orders, section 2.1.4, p.8-12.



years. It considers four months is not sufficient time for it to prepare the information required, and notes the timing requires estimated data be provided, which is then updated and resubmitted for the annual pricing approval process.

We considered the annual submission date in detail as we developed the draft Orders. Our explanatory statement to the draft Orders includes consideration of the issues reiterated by SA Power Networks.<sup>4</sup> We note the changes in the Orders that will increase the reporting burden are mitigated by changes that reduce the reporting burden, such as removal of some data requirements and reduced scope of audit and assurance requirements.

In assessing the draft Orders and SA Power Network's submission we note there is further alleviation of the overall reporting burden as we have removed information requirements relating to safety events.

The timing of annual submissions balances the overall need for data that feeds into other regulatory processes against the difficulties the regulated networks may face in compiling the information required. We consider those difficulties will be greatest for the first reporting year, and for that reason have allowed an additional month for the first reporting period. For the remaining reporting years, the submission date reflects current annual information collection processes – four months after the end of the reporting year.

The information collected under the Orders is a key input to the AER's annual assessment processes including the AER's network performance reporting and helps inform stakeholders participating in reviews of regulatory proposals. If the annual reporting date is moved to the end of November, our ability to use and share the information will be impacted. Other stakeholders who rely on access to the data for their own analysis will also be impacted.

### 3.5 Data requirements

**We set out the data requirements in section 3 of the Orders, which refers to the data workbooks and instructions published with the Orders.**

In this section we respond to material issues raised in submissions relating to data requirements set out in the draft Orders. Other issues raised on data requirements are addressed in the issues register published with the Orders.<sup>5</sup>

In specifying the data requirements, we classify the data by category, grouping like concepts together in individual workbooks created for each category:

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Operational outputs	Information about the volume of services delivered by the network service provider.
Network metrics	Information about the configuration of the electricity network and the environment in which it is located.
Customer numbers	Information about the network service provider's customer base.

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<sup>4</sup> AER, Explanatory Statement – Draft regulatory information orders, section 2.1.4, p. 8-12.

<sup>5</sup> AER responses to issues raised – Draft Orders – 5 April 2024  
<https://www.aer.gov.au/node/73928#additional-information>

Service performance	Information about how well the network service provider delivers its services to consumers.
Operating expenditure	Information about expenditure used to operate or maintain the electricity network.
Capital expenditure	Information about expenditure used to build or expand the electricity network.
Asset base values	Information about the value of the assets of the electricity network.
Revenue and financial statements	Information about revenues, financial transactions, and balances
Prices	Information about prices charged or paid by network service providers.
Legacy metering	Information about legacy metering services, expenditures and revenues that is excluded from the above categories

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### 3.5.1 New data requirements

The Orders are substantially based on data requirements that are currently collected via a suite of regulatory information notices and information requests served on the regulated networks. However, the Orders include some new data requirements compared to current arrangements or formalise current data requests. Our draft Orders included the following new data requirements:

- Transmission revenue and pricing information
- Large projects
- Legacy meters
- Export services

We received submissions raising issues in relation to these data requirements. This section focusses on these data requirements, as well as new information relating to tax losses, and the implications of changes in the regulatory framework.

#### Transmission revenue and pricing information

The AER's transmission revenue determinations set limits on the revenue transmission network service providers may recover from customers each year. These so called 'revenue requirements' feed into the process for setting transmission prices, which in turn impact the final charges electricity consumers face. The transmission pricing process is complex, but unlike the equivalent processes for electricity distribution and regulated gas pipelines, the AER does not have a role in approving annual pricing proposals for transmission networks. Our role is limited to approving the pricing methodology transmission network service providers must use to determine transmission charges.

One of the consequences of the existing regulatory framework is the AER does not have a mechanism for reviewing transmission revenue recoveries, or ensuring any over or under revenue recoveries are accurately reflected in subsequent transmission pricing processes. We have introduced a new data requirement to enable us to track transmission revenue requirements and recoveries as part of our annual compliance activities. We worked with

transmission network service providers to develop the data requirement set out in the draft Orders.

Powerlink, while broadly supportive of the transmission revenue and pricing information, suggested further refinements to the data requirements.

We consider this data is essential to our ongoing compliance work. Reflecting issues raised by Powerlink, in the Orders we amend the data requirements to align with existing NER requirements relating to transmission pricing methodologies. We also include a requirement to allow the transmission networks and interconnectors to provide additional information they consider necessary to clarify any elements of the revenue reconciliation and pricing processes they undertake each year.

### **Large projects**

In response to issues raised on the preliminary Orders, we amended the draft Orders to revise the data requirements relating to contingent projects and projects subject to a Regulatory Investment Test. The amended draft orders introduced data reporting for 'large projects'. Large projects were defined as those with a total forecast expenditure of greater than \$30 million, over the life of the project.

Powerlink raised concerns about the need for this data, noting it was at odds with the regulatory framework. In particular, Powerlink noted any detailed ex-post assessment of expenditure is at odds with the regulatory framework, where the expenditure allowances are not set on a project specific basis.

While we accept Powerlink's characterisation of the regulatory framework, we consider there are a number of other factors that support collecting this information. In particular, we consider information on large project expenditures will:

- support the capital expenditure transparency regime, by enabling all stakeholders to be aware of changes in investment decisions, and the impact of decisions to defer or accelerate large projects
- enable pre-lodgement analysis of both underlying capital expenditure by a network and the additional project expenditure that may distort trend analysis
- support the AER's ability to provide meaningful insights on both specific projects and the overall regulatory regime.

We consider greater transparency also reflects the tailored treatment applying to many large projects, for example, where they have project specific incentive schemes or depreciation schedules.

We have decided to retain this data requirement.

### **Legacy meters**

Legacy meters are assets owned and serviced by electricity distribution network service providers. These are mainly accumulation meters (type 6) but also interval meters (type 5). The term 'legacy meters' refers to meters that cannot be read remotely and do not provide for two-way information flows – they are not 'smart meters'.

The draft Orders required stand-alone legacy meter data to be provided only if the AER's final distribution determination classifies these services as standard control services in the reporting year. We wish to maintain our historical time series data for standard control metering services by continuing to collect standard control services data that excludes legacy metering services, while also collecting specific information relating to legacy metering expenditure, asset volumes and services.

We retain that requirement in the Orders. We specified stand-alone data requirements relating to legacy metering services in Appendix C to the draft Orders, Workbook 11 – Legacy metering. The instructions in Appendix A to the Orders require distribution network service providers to report standard control services information in data categories 6 – Opex, 7 – Capex, 8 – Asset base values and 9 – Revenue and financial data excluding any data related to legacy meters classified as standard control services.

### **Export services**

The AER finalised its incentivising and measuring export services review in March 2023.<sup>6</sup> The final report includes a detailed information request to enable ongoing and consistent measurement of export services outcomes and service delivery to customers. The AER has issued information requests reflecting the outcomes of the export services review and now, reflecting the draft Orders, we have integrated the export services data requirements into the Orders. We address issues raised relating to the detail and definitions underpinning the export services data requirement in the issues register.<sup>7</sup>

### **Tax losses**

We removed the data requirement relating to tax losses from the draft Orders. This issue was raised in submissions on the draft Orders, with concern expressed about alternative sources of information and how such information would be used in the future. To address these concerns, we reinstate the data requirement relating to tax losses (in workbook 09 – financial information). We also clarify the supporting information requirements to make it clear the additional descriptive information sought in section 4 of the Orders is only required where tax losses are reported in workbook 09.

### **Future data requirements**

Powerlink raised an issue relating to potential changes in data requirements, reflecting amendments to underlying regulatory guidelines and schemes. Powerlink specifically referred to the current review of the TNSP service target performance incentive scheme, noting the potential for material changes in data requirements to be introduced, prior to the expiry of the Orders.

We consider data requirements will change during the life of the Orders, possibly in relation to the transmission STPIS, but also in relation to multiple other data requirements. We take

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<sup>6</sup> See AER website: <https://www.aer.gov.au/industry/registers/resources/reviews/incentivising-and-measuring-export-services-performance>

<sup>7</sup> Issues on the export services information requirements were raised by Ausgrid, Ausnet services, Citipower, Powercor, United Energy and SA Power Networks.

the view that setting the information requirements at a point in time and responding to changing requirements on an as needed basis is the best, and most pragmatic way forward.

In future, when responding to changing requirements, we may consider supplementing the Orders with information requests or varying the Orders.<sup>8</sup> In other cases, where differences in reporting obligations are known (such as the customer service incentive schemes), we have incorporated flexibility into the orders.

We will assess each change in data requirements on an individual basis, balancing the cost and benefits of each option available to us to define and collect the required information. We will address the transmission STPIS review outcomes when they are known.

## 3.6 Supporting information requirements

**We set out the supporting information requirements in section 4 – supporting information; section 5 – basis of preparation; and section 6 – assurance requirements of the Orders.**

In this section we address material issues relating to supporting information requirements. Other issues raised on supporting information requirements are addressed in the issues register published with the Orders.<sup>9</sup>

### 3.6.1 Section 4 – supporting information

#### Policies and procedures

Consistent with the draft Orders, we limit the information requirement relating to submission of policies and procedures to the following policies:

- regulatory accounting principles and policies,
- capitalisation policy; and
- policies or procedures governing the allocation of overheads in accordance with the approved cost allocation method.

Powerlink noted it provides the required policies and procedure documents to the AER as part of a regulatory determination process, and therefore it is not necessary to request them every year.

We consider these core policies and procedures critical to understanding the way in which financial information will be prepared and reported in response to the Orders. We may supplement these reporting requirements with specific requests for more detailed policy or procedural documents if we consider such information will assist our analysis of the data provided. We require this information annually to ensure we are aware of changes and can consider the impact of any changes in these policies on the comparability of time series data used for our regulatory analysis and reporting.

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<sup>8</sup> See section 4.1 of this Decision.

<sup>9</sup> AER responses to issues raised – Draft Orders – 5 April 2024  
<https://www.aer.gov.au/node/73928#additional-information>

We retain this requirement in the Orders, however we have modified the requirement so that where the documents have not changed in the reporting year they do not need to be resubmitted.

### **Regulatory adjustments**

Regulatory adjustments provide information that links the financial outcomes of the regulated networks to its statutory reporting framework – its audited statutory accounts as required under Corporations law.

The draft Orders included requirements to reference journal entries relating to regulatory adjustments – so that we could understand the nature and impact of the transactions. This requirement reflects current reporting requirements under the transmission information guideline but differs from the obligations in our distribution reporting framework.

Many regulated networks raised concerns about the new requirements. Issues raised included:

- existing systems do not include formal regulatory accounts, and regulatory adjustments are undertaken outside of the financial system
- the regulatory adjustments information will be confusing
- regulatory adjustments are not a doubled-sided journal entries, but are single sided entries made in working papers for auditors to verify
- the current special purpose reporting framework is cost efficient and fit for purpose.

Our purpose in introducing the requirement was to provide clarity about transactions in the regulatory accounts. However, we accept that there are valid alternatives to the double-sided journal entries that will provide us with the information we are seeking but will not impose additional costs on the regulated networks.

In the Orders, we have reframed the information requirement to better reflect the existing reporting standards.

### **Material differences**

Powerlink requested the removal of the requirement to explain material differences in total capital and operating expenditures (compared to the forecast allowances) stating the requirement is at odds with the regulatory framework, reflecting the issue it also raised relating to reporting annual expenditures on large projects.

The inclusion of this explanatory material as part of annual reporting requirements has been consistently applied in the distribution sector. Again, it allows for increased transparency about the expenditure decisions being made by regulated networks and supports better analysis of regulated networks expenditures, for transmission networks as well as distribution networks. By incorporating a similar requirement into the transmission and interconnector Orders, we are driving consistency in the information requirements across the sector to support better analysis for all regulated networks.

We retain this requirement in the Orders.

## Compliance

The transmission Orders include a requirement to describe processes in place to identify negative change cost pass through events<sup>10</sup> and the relevant materiality threshold applying to such events. Cost pass throughs can relate to changes in tax laws, or regulatory obligations, and can lead to increases or decreases in revenue allowances, within a regulatory control period.

We include this requirement, which is similar to compliance obligations imposed on distribution networks, to ensure regulated networks have processes in place to identify negative cost pass throughs. We consider this obligation is not onerous and is appropriate to include in the Orders to ensure negative cost past through events are considered by regulated networks.

We have not amended the Orders.

### **Small scale incentive schemes: Customer service incentive scheme, Export service incentive scheme**

In the draft Orders we included an obligation on distribution network service providers to report against the CSIS or ESIS - if one applies to them in a reporting year. We defined the information requirement by reference to the AER's relevant final distribution determination and not by specific data or information requirements. That detail will be set out in the relevant distribution determination and the distribution networks are required to provide information as specified in the distribution determination.

Essential Energy pointed to an inconsistency between the assurance requirements set out in the draft Orders, and the AER's CSIS guideline. We consider this issue is also relevant to the information requirements for the ESIS.

Essential Energy noted the CSIS guideline states that information must be 'able to be audited' but does not mandate a specific audit or review standard, stating this decision should be incorporated into the AER decision to apply the CSIS, and the Orders should reflect the AER decision on applying the CSIS.<sup>11</sup>

We recognise the application of the CSIS and ESIS allows for the schemes to be tailored to individual business requirements, reflecting proposals from the regulated networks. The Orders recognise the need for annual reporting data requirements to be tailored to the specific schemes applied, and we agree it is appropriate for the assurance requirements to also reflect the CSIS or ESIS as applied to the regulated network.

We have amended the distribution Order, so the application of audit or review requirements now reflect the AER's decision to apply a CSIS or ESIS.

## Safety events

In the draft Orders we removed data requirements relating to the impact of safety events but introduced supporting information requirements for information on safety events. Critically we

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<sup>10</sup> A negative change event is an event that is likely to reduce the revenue requirement for a transmission network in a reporting year. It is defined in the NER, rule 6A.7.3(f).

<sup>11</sup> Essential Energy, Submission on draft information orders, 17 January 2024.

defined safety events by reference to the regulated networks Electrical Network Safety Management System – as required under Australian safety standards. We received many submissions on the draft Orders, raising issues such as<sup>12</sup>:

- responsibility of the data collection being with the jurisdiction safety regulator rather than the AER
- duplicate reporting obligations
- the usefulness of the data to the AER as a lagging indicator.

Safety, reliability and security of supply of electricity are all factors that impact the achievement of the National Electricity Objective. However, we accept we have alternative sources of relevant information, including data on maintenance cycles, asset age, inspection activities, service performance and expenditure targeting safety risks. We may also request data from jurisdictional safety regulators if we need information to inform our revenue assessments or future development of assessment tools.

We note the difficulties regulated networks have described about preparing information, and also note the existing and potential alternative sources of information. Reflecting the concerns raised, we have not included the safety event information requirement in the Orders.

### 3.6.2 Basis of Preparation

The *Basis of preparation* is critical to understanding how the regulated network service providers compile their data. We use it to identify sources and understand the methods used to prepare information provided to the AER, and to assess year on year movements in data against changes in data sources or methodologies. It is also critical to the independent assurance process where an independent auditor assesses the data against the audit or review standards, Order requirements and the *Basis of preparation* before supplying an opinion or review report.

Some regulated network service providers raised concerns about using a table structure to report the basis of preparation, given the volume of information to be presented, and consequent difficulties in formatting.

The information we require reflects the instructions in the Orders (section 5.2) and is consistent with current requirements in regulatory information notices. However, we seek additional information covering the reporting of NULL responses, explanations for NULL responses, and description of changes from the previous year's *Basis of preparation*.

We accept that details about data sources and methods do not necessarily present well in a table format. The Orders allow for alternative presentation formats but mandate the use of the information headings set out in the example table provided at appendix C to the Orders.

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<sup>12</sup> See submissions to the Draft Orders from Ausnet Services, Powerlink, SA Power Networks, Ausgrid, Energex and Ergon Energy.



### 3.6.3 Assurance requirements

**The Orders require company officers to endorse the information provided to the AER and that information must be reviewed by independent audit or assurance providers.**

**The audit or review standards reflect the type of data, quality of data, AER use case, maturity of data requirements and other factors.**

Our current regulatory information notices require company officers to endorse the information by way of statutory declaration.<sup>13</sup> That position was included in the draft Orders and is retained in the Orders.

The historical data we collect using regulatory information notices is also subject to independent assurance assessment (audit or review). The assurance requirements give us confidence the data we use to perform our regulatory functions is reliable and accurate, meets the requirements specified in a regulatory information notice and is supported by evidence or documented methodologies.

We consider the benefits arising from the audit or review of information outweigh the additional costs to regulated network service providers. Our regulatory decisions impact all energy consumers and should be based on the best information available. It is not enough to demonstrate that data meets the basic validation rules, or that information is current, the regulated network service providers must also be able to say it is the best information available that meets our requirements. Quality assurance imposes additional costs on regulated network service providers because it requires an independent assessment of the information and whether or not it has been prepared in accordance with our requirements, as set out in a regulatory information instrument.

The framework for the audit opinion relating to financial information is a 'fair presentation framework'. Ausnet Services has questioned the use of this framework and suggested a 'compliance' framework is more appropriate. The fair presentation framework allows for additional disclosures to be included in the audit review, a compliance framework does not.

We consider the complexity of the information required in the Orders, the inter-relationships between the regulatory financial information and audited statutory information and the need for regulatory adjustments are all factors that may require additional disclosures to ensure the information is presented fairly. Due to this we require the auditor to form an opinion as to whether the financial information presents fairly.

The Orders reflect our position in the draft Orders. We include independent assurance requirements reflecting both the type and quality of the data sought but also our data use case, the maturity of the data requirements, timing of data submissions and any existing independent scrutiny (for example from AEMO or jurisdictional regulators) of the data. We require the audit opinion be expressed under a fair presentation framework.

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<sup>13</sup> AER, *Networks Information Requirements Review – Discussion Paper*, March 2022, p 11.

## 4 Other matters

### 4.1 Compliance and flexibility

#### Compliance framework

The Orders impose a legal obligation on network service providers covered by the Order. Section 28O of the National Electricity Law (NEL) requires regulated network service providers to comply with a general regulatory information order. Section 28O of the NEL is a 'Tier 1 civil penalty provision'.<sup>14</sup> Tier 1 civil penalty provisions carry the most severe penalties for non-compliance, reflecting the importance of the obligations to the regulatory framework and operation of the National Electricity Market.

The AER has a range of options to address non-compliance with an Order, including:

- Administrative resolution – accept a voluntary commitment from a network to address the non-compliance and undertake steps to minimise non-compliance in the future.
- Issue guidance notes / compliance bulletins – the AER may publish education / guidance materials to clarify and inform expectations around non-compliance.
- Issue an infringement notice – for a tier 1 civil penalty provision, a payment of \$67,800 (for body corporates) applies. Payment of an infringement notices does not constitute an admission of a breach, but if a business chooses to make payment the AER cannot later bring proceedings in relation to that breach.
- Depending on the nature / severity of the breach, the AER may also:
  - commence court proceedings to seek a declaration by the court of the breach and payment of a civil penalty amount, or
  - accept a court enforceable undertaking (which is used to obtain commitments from the company to undertake steps to ensure the network service provider identifies the cause of the breach and mitigates the risk of future breaches, and/or other types of commitments which, for example, could relate to customer redress).

The AER uses the compliance and enforcement factors to determine an appropriate compliance outcome. These are set out in our compliance and enforcement policy.<sup>15</sup>

#### Amending Orders or obligations

To amend an Order the AER must follow the same process it uses to develop an Order – that is, issue and consult on a draft amendment prior to issuing a final amendment. The consultation process is open to all stakeholders, and we must allow a minimum of 20 business days for stakeholders to respond to our draft amendments. We expect it to take a

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<sup>14</sup> Regulation 6(2) of the *National Electricity (South Australia) Regulations* (Regulations) provides that a civil penalty provision listed in Schedule 1 Part 1 is prescribed for the purposes of section 2AB(1)(c) of the NEL and is a tier 1 civil penalty provision. Section 28O of the NEL is included as a Tier 1 civil penalty provision in Schedule 1 Part 1 of the Regulations.

<sup>15</sup> See AER Website: <https://www.aer.gov.au/publications/reports/compliance/aer-compliance-enforcement-policy>

minimum of 3 months to amend an Annual Information Order, depending on the complexity of the change.

The AER also has the power to exempt networks from complying with an Order.<sup>16</sup> That power allows the AER to impose conditions to limit the application of the exemption to specific networks for a specific period, and/or specific obligations under the Order. We cannot use these powers to vary the Orders, but they do provide us with the ability to address exceptional circumstances a regulated network service provider may face from time to time.

For these reasons we consider making the Orders does not materially increase the risk of non-compliance faced by regulated network service providers compared to the situation where we have issued a regulatory information notice. As noted in section 2.1.1, the annual reporting process is not new, and the timing and extent of the obligations are well known. We consider regulated network service providers able to manage those risks where the reporting obligations transfer to regulatory information orders.

## 4.2 Transmission information guideline

Currently transmission network service providers are required to submit information in accordance with an Information Guideline, most recently updated by the AER in April 2015.<sup>17</sup> The National Electricity Rules (NER) require the AER to have the guideline in force, and for it to include the manner, form and date by which transmission networks must submit to the AER certified annual statements, and any other information required by the AER.

The AER must develop and publish the Information Guidelines and these guidelines must be in force at all times from 28 September 2007.<sup>18</sup> We consider the development of the Orders renders this rule redundant and have flagged our intention to propose a rule change to remove the obligation on the AER to develop and publish the Information Guidelines.

The AER intends to progress this rule change in 2024 to provide clarity to the regulated transmission networks and interconnectors regarding the applicable reporting frameworks.

## 4.3 Annual information submission process and tools

Consistent with our earlier statements, the Orders do not mandate any specific technology or tool by which regulated network service providers must provide information. The Orders are 'technology neutral' to allow for information exchange to keep pace with changing technological solutions, but also to allow all networks (and the AER) time to transition to alternative technologies.

The AER will commence work with the regulated networks on the development of a data reporting tool in May 2024.

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<sup>16</sup> Section 28P of the NEL allows the AER to exempt a person or class of persons from complying with a regulatory information order.

<sup>17</sup> AER, *Final Electricity Network Service Provider Information Guideline*, Version 2, April 2015, <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/information-guideline-2015/final-decision>

<sup>18</sup> NER, Rules 6A.17.2(a) and 6A.17.2(c).

While we expect to move to alternative technologies in the future, we may not have achieved that prior to the first submission date (August 2025 for Ausnet service transmission, and November 2025 for all other regulated networks.) For that reason, we intend to develop a reporting tool adapted from the existing excel templates associated with current annual regulatory information notices and information requests.

#### **4.4 Data use cases**

As part of the preliminary consultation undertaken by the AER, we reviewed the use cases for our existing data requirements (as set out in regulatory information notices and information requests). Stakeholders have asked us to provide an updated 'use case' to account for the entirety of the information being requested under the Orders. We intend to provide that use case update as soon as possible in 2024.