

AER Compliance Procedures and Guidelines

For gas pipeline service providers

~~Proposed~~Updated draft for initial consultation –
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October 2024

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1 Introduction

1.1 Overview of legislative regime for gas pipelines

- 1.1.1 The National Gas Law (NGL) and National Gas Rules (NGR) comprise the legislative framework to establish a cooperative national access regime for distribution and transmission pipelines that are used for the haulage of covered gas.
- 1.1.2 The national gas objective, as stated in s. 23 of the NGL, is to promote efficient investment in, and efficient operation and use of, covered gas services for the long-term interests of consumers of covered gas with respect to:
- a) price, quality, safety, reliability and security of supply of covered 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.
- 1.1.3 The Australian Energy Regulator (AER) is responsible for monitoring, investigating and enforcing compliance with obligations under the NGL, NGR and National Gas Regulations (Regulations).¹ We must carry out our economic regulatory functions in a manner that will (or is likely to) contribute to achieving the national gas objective (s. 28(1) of the NGL).

1.2 Purpose of these Procedures and Guidelines

- 1.2.1 We are required to make AER Compliance Procedures and Guidelines (Procedures and Guidelines) pursuant to s. 64F of the NGL.
- 1.2.2 Without limiting what may be included, the NGL outlines that the Procedures and Guidelines may:²
- a) provide guidance for service providers about compliance with the requirements of the NGL, NGR and Regulations
 - b) provide guidance on the carrying out of compliance audits, and the costs payable by service providers, and
 - c) include a statement of the AER's compliance priorities.
- 1.2.3 The focus of these Procedures and Guidelines is to provide guidance about the NGL, NGL, Regulations and the carrying out of compliance audits in line with the above.
- 1.2.4 The AER's compliance priorities will also be elaborated on through other channels, such as the publication of our Compliance and Enforcement priorities on our [website](#).

1.3 The structure of these Procedures and Guidelines

- 1.3.1 These Procedure and Guidelines cover the following topics in each chapter:
- Chapter 2 provides a summary of the regulatory framework for gas pipelines, which is outlined in Chapters 3–5 of the NGL.

¹ See s. 27 NGL.

² See s. 64F NGL.

The chapter covers the classification of pipelines, pipeline determinations, requirements that apply to all pipelines and access arrangements.

This chapter also includes information on the other guidance documents made by the AER to assist service providers in finding information that is relevant to them.

- Chapter 3 outlines the information gathering powers granted to the AER under Chapter 2 of the NGL and how they may be used in connection with the obligations placed on service providers by Chapter 4 of the NGL.
- Chapter 4 provides information and guidance about the process of responding to the [Annual Compliance Order \(ACO\)](#).
- Chapter 5 outlines the compliance audit framework made in connection with ss. 64B and 64C of the NGL.

This includes information on the audit powers available to the AER, the decision-making process for audits, the terms of reference, the use of third-party auditors, the post audit process and audit requirements in general regulatory information orders.

1.4 Application of these Procedures and Guidelines

- 1.4.1 We will monitor, investigate and enforce compliance with the NGL, NGR and Regulations from the date of commencement in each participating jurisdiction.
- 1.4.2 These Procedures and Guidelines apply from the date they are made to service providers and related providers within the jurisdictions in which the NGL, NGR and Regulations are in operation. Service provider is defined in s. 8 of the NGL, as a person who:³
- a) owns, controls or operates; or
 - b) intends to own, control or operate,
- a pipeline or any part of a pipeline.
- 1.4.3 For jurisdictions in which the NGL, NGR and Regulations are not in operation at the time of writing, these Procedures and Guidelines would apply from the date that the NGL, NGR and Regulations come into operation in that jurisdiction.
- 1.4.4 Certain aspects of these Procedures and Guidelines apply to related providers.⁴ Related providers may be subject to regulatory information instruments (s. 48(1) NGL), which are discussed in chapter 3 of these Procedures and Guidelines.
- 1.4.5 The AER will report on service providers' compliance with the NGL, NGR and Regulations as required. For example, ss. 63A and 63B NGL require the AER to monitor and report on service providers' compliance.
- 1.4.6 The NGL, NGR and Regulations differentiate between scheme and non-scheme pipelines. When a pipeline is a scheme pipeline is covered in chapter 2.

³ See ~~sections~~ ss. 2 and 8 of the NGL for the definitions of 'pipeline' and 'service provider'.

⁴ See ~~sections~~ s. 43 of the NGL for the definition of 'related provider'.

1.5 Relationship with other regulatory instruments

1.5.1 These Procedures and Guidelines should be read in conjunction with:

- The NGL, NGR and Regulations
- AER Compulsory notice guidelines⁵
- AER Pipeline Access Dispute Guide⁶
- AER Pipeline Information Disclosure Guidelines⁷
- AER Regulatory Determinations and Elections Guide⁸
- AER Ring Fencing Decision Guide⁹
- AER Wholesale market monitoring guidelines¹⁰
- any other guide or guideline made pursuant to, and other compliance guidance material produced from time to time in relation to the NGL or NGR, and
- any regulatory information notices, general regulatory information orders, and price information orders, served on a person by the AER or made by the AER, under s. 48 of the NGL.

1.5.2 To the extent of any inconsistency, the NGL, NGR and Regulations will take precedence.

1.6 Confidentiality and use of information

1.6.1 The AER's obligations regarding confidentiality and disclosure of information provided to it by regulated entities are governed by the NGL, the National Energy Retail Law, the National Electricity Law and the *Competition and Consumer Act 2010 (Cth)* (CCA). For further information, refer to the [ACCC/AER Information policy, on the AER website](#), which may be amended from time to time.

1.6.2 Where information is obtained by the AER under the NGL or the NGR, the AER may use the information for a purpose connected with the performance or exercise of its functions or powers under the NGL, the NGR, the National Electricity Law, the National Electricity Rules, the National Energy Retail Law or the National Energy Retail Rules (s. 66 NGL) ([together, the National Energy Laws](#)).

1.6.3 The AER is authorised to disclose information to the Australian Energy Market Operator (AEMO), Australian Energy Market Commission (AEMC), the Australian

⁵ [AER Compulsory notice guidelines](#)[Notice Guidelines](#), Final, Australian Energy Regulator, [January 1 February 2021](#).

⁶ [AER Pipeline Access Dispute Guide](#), Final, Australian Energy Regulator, 29 November 2023.

⁷ [AER Pipeline Information Disclosure Guidelines and Price Reporting Guidelines for Part 18A Facilities](#), Final, Australian Energy Regulator, 27 October 2023.

⁸ [AER Regulatory Determinations and Elections Guide](#), Final, Australian Energy Regulator, 16 May 2024.

⁹ [This document is yet to be published by the AER: AER Ring Fencing Decision Guide, Draft, Australian Energy Regulator, 16 September 2024.](#)

¹⁰ [This document is yet to be finalised by the AER: AER Wholesale Market Monitoring Guideline, Draft, Australian Energy Regulator, 2 July 2024.](#)

Competition and Consumer Commission (ACCC) or other regulators under clauses 44AAF and 157A of the *Competition and Consumer Act 2010* (Cth).

1.6.4 The AER will take all reasonable measures to protect the information that is given to it in confidence, or obtained by compulsion, from unauthorised use or disclosure pursuant to section 44AAF of the CCA. This requirement also applies to information obtained by us under a general information gathering notice (for example, our power to obtain information under s. 42 of NGL).¹¹

1.6.5 The National Energy Laws and CCA set out circumstances where disclosure of confidential information is permitted by the AER, including, but not limited to:

- disclosure required or permitted by a law of the Commonwealth, a state or territory
- disclosure to a department or other body or officeholder established or appointed under a law of the Commonwealth
- if the information has been de-identified
- if the information has been aggregated so that it does not reveal any confidential aspects
- if the AER believes the disclosure of the information would not cause detriment to the person or, if the disclosure of the information would cause detriment to a person, the public benefit in disclosing it outweighs that detriment. Further detail about our process for considering public benefit and detriment is set out in section 4.1 of the AER's Confidentiality Guideline.¹²

~~1.6.3~~1.6.6 Pursuant to the ACCC/AER Information Policy, if the ACCC or the AER has obtained information during one matter that is relevant to another matter, the ACCC or the AER will, in general, use that information in the context of the other matter unless there is any specific legal requirement to the contrary.

1.7 Internal handling

1.7.1 AER data is stored in approved agency information management systems and appropriately classified in alignment with the Protective Security Policy Framework and the *Privacy Act 1988* (Cth). Inadvertent disclosures are managed in accordance with established agency processes.

1.7.2 We are committed to effectively managing data and information (sensitive and non-sensitive) across its life cycle. We follow the requirements of external governing frameworks and agency policies and processes to ensure that our data and information is:

- classified according to its sensitivity
- kept in a secure environment
- protected from unauthorised access, loss, damage or degradation

¹¹ See s. 30 NGL; AER Better Regulation: Confidentiality Guideline, Australian Energy Regulator, 30 August 2017.

¹² AER Better Regulation: Confidentiality Guideline, Australian Energy Regulator, 30 August 2017.

- used only for appropriate and authorised activities
- released to appropriate audiences under appropriate non-disclosure/on-provision rules
- subject to procedures that prevent and manage inadvertent disclosure of information.

1.7.3 We secure data and information by:

- assessing it as early as possible (at the time of receipt or creation, where possible)
- applying an information security classification and delimiting marker (if applicable)
- storing it in an approved agency system with appropriate access controls.

1.7.1.8 Processes for revision

1.7.1.8.1 As stated in r. 139A of the NGR, we may amend any part of these Procedures and Guidelines from time to time in accordance with the standard consultative procedure set out in r. 8 of the NGR.

1.8.1.9 Definitions and interpretations

1.8.1.9.1 All references to legislation in the Procedures and Guidelines, unless otherwise specified, are for the NGL and NGR. NGL references are denoted with an 's.' for a single section or 'ss.' for more than one section. NGR references will preface a rule number as an 'r.' for a single rule or 'rr.' if the reference relates to more than one rule.

1.8.1.9.2 In these Procedures and Guidelines, unless the contrary intention appears:

- the singular includes the plural and vice versa
- expressions such as 'includes' or 'for example', in any form, are not words of limitation, ~~and~~
- a reference to any legislation, legislative instrument or other instrument is a reference to that legislation or instrument as is in force from time to time, ~~and~~
- business days are defined as per clause 10 of Schedule 2 to the NGL.

2 Regulatory framework for gas pipelines

2.1 Introduction

- 2.1.1 The NGL and the NGR classify all pipelines as scheme or non-scheme pipelines. These categories of pipelines are subject to differing obligations. Chapter 3 of the NGL ~~provides~~establishes the process for becoming a scheme pipeline.
- 2.1.2 The NGL imposes certain requirements on service providers for the provision of pipeline services. These requirements, which do not extend to existing greenfields pipeline projects (unless such pipelines provide access to third parties),¹³ are set out in Chapter 4 of the NGL in three parts:
- Chapter 4, Part 1: General duties for provision of pipeline services by pipelines
 - Chapter 4, Part 2: Structural and operational separation requirements (ring fencing), and
 - Chapter 4, Part 3: Negotiation of access.
- 2.1.3 We discuss Chapter 4 of the NGL in sections 2.4 and 2.5 below.
- 2.1.4 Chapter 5 of the NGL outlines the framework for users and prospective users to resolve disputes that may arise during negotiations to access pipeline services.
- 2.1.5 The NGR provides further specificity as to how service providers are required to comply with Chapter 4 of the NGL. This includes:
- Part 5: Ring fencing
 - Part 6: Pipeline interconnection principles
 - Part 7: Prohibition against increasing charges to subsidise particular development
 - Part 10: Prescribed transparency information, and
 - Part 11: Access negotiation framework.
- 2.1.6 These requirements may also extend to other persons, such as an associate of a service provider.
- 2.1.7 The NGL and the NGR also require service providers of pipelines that have an access determination and are privy to confidential information, to comply with certain requirements.¹⁴
- 2.1.8 In addition, the NGR requires pipeline service providers to do or refrain from doing certain things if they have particular types of access arrangements or enter into certain contracts.¹⁵

¹³ See clause 119 of Schedule 3 to the NGL. The Northern Gas Pipeline is also exempt (see clause 130 of Schedule 3) to the NGL-).

¹⁴ See r. 137 NGR.

¹⁵ ~~Part 8, See~~ Division 12 of Part 8 NGR.

- 2.1.9 Certain exemptions apply for things done by one service provider for all service providers of a pipeline, but these exemptions do not apply to s. 131 of the NGL.
- 2.1.10 The requirements in the NGL and the NGR are discussed in further detail below.
- 2.1.11 We note that these Procedures and Guidelines mainly focus the obligations established in Chapter 4 of the NGL, as Chapters 3 and 5 of the NGL and the related aspects of the NGR are covered in other AER guidelines. Further information on:
- the forms of regulation of gas pipelines and on pipeline determinations, revocations and elections outlined in Chapter 3 of the NGL can be found within the Pipeline Regulatory Determinations and Elections Guide¹⁶
 - ring fencing and the process of making an application for an exemption from certain requirements in Chapter 4 of the NGL will be found in the Ring Fencing Decision Guide¹⁷
 - the transparency requirements within s. 136A of the NGL and Part 10 of the NGR can be found in the Pipeline Information Disclosure Guidelines¹⁸
 - the access dispute framework established in Chapter 5 of the NGL can be found in the Pipeline Access Dispute Guide.¹⁹

2.2 When a pipeline is a scheme pipeline

Scheme and non-scheme pipelines

- 2.2.1 Scheme pipelines are subject to additional obligations relating to access arrangements²⁰ and different obligations in relation to access dispute resolutions.²¹
- 2.2.2 Under the NGL, a scheme pipeline is defined as:
- a pipeline to which a scheme pipeline determination applies, or
 - a designated pipeline, or
 - a pipeline in respect of which a scheme pipeline election takes effect.²²
- 2.2.3 A non-scheme pipeline is defined by s. 2 of the NGL as a pipeline other than a scheme pipeline.
- 2.2.4 For the purposes of transitioning from the regulatory framework prior to March 2023 to the current framework:²³
- all existing full regulation scheme pipelines (that is, covered pipelines other than light regulation pipelines) are deemed to be scheme pipelines

¹⁶ [AER Regulatory Determinations and Elections Guide](#), Final, Australian Energy Regulator, 16 May 2024.

¹⁷ ~~This Guide is yet to be published by the AER.~~ [AER Ring Fencing Decision Guide, Draft, Australian Energy Regulator, 16 September 2024.](#)

¹⁸ [AER Pipeline Information Disclosure Guidelines and Price Reporting Guidelines for Part 18A Facilities](#), Australian Energy Regulator, 27 October 2023.

¹⁹ [AER Pipeline Access Dispute Guide](#), Final, Australian Energy Regulator, 29 November 2023.

²⁰ ~~See~~ Part 8 of ~~the~~ NGR.

²¹ ~~Chapter 3,~~ ~~See~~ Part 3 of ~~the~~ [Chapter 3](#) NGL.

²² See s. 2 of ~~the~~ NGL.

²³ ~~See~~ Division 2 of Schedule 3 to the NGL.

- any existing pipeline subject to a tender approval decision that has not, before commencement of the reforms (2 March 2023), become irrevocable is deemed to be a scheme pipeline upon the decision becoming irrevocable
- any existing pipeline where a voluntarily submitted full access arrangement has not, before commencement of the reforms, been approved is deemed to be a scheme pipeline upon the arrangement taking effect as an applicable access arrangement
- all existing designated pipelines are scheme pipelines, and
- all other pipelines are non-scheme pipelines.

Scheme pipeline determinations

2.2.5 Scheme pipeline determinations are made by the AER on its own initiative or on the application of any person (s. 92 NGL).

2.2.6 When making such a determination, the AER must consider the effect of regulating the pipeline as either a scheme or non-scheme pipeline on the following, in accordance with s. 112(2) of the NGL:

- the promotion of access to pipeline services; and
- the costs that are likely to be incurred by an efficient service provider, efficient users and efficient prospective users of pipeline services; and
- the likely costs of end users.

2.2.7 The AER will also consider the national gas objective (s. 23 NGL) and the form of regulation factors (s. 16 NGL) in accordance with s. 112(3) of the NGL. The AER may also have regard to any other matter it considers relevant, including, for example, any information it obtains in the course of performing its functions (s. 112(3)(c) NGL).

Scheme pipeline elections

2.2.8 The NGL allows service providers to voluntarily elect for their pipeline to be regulated as a scheme pipeline (s. 95). The election must be made in accordance with the provisions set out under r. 19 of the NGR.

2.2.9 The election will take effect from a date determined by the AER which will be within 6 to 12 months after the election is made (s. 96 [NGL](#)).

Scheme pipeline revocation determinations

2.2.10 A pipeline other than a designated pipeline will cease to be a scheme pipeline if a scheme pipeline revocation determination applies to it.

2.2.11 Any person can apply for a scheme pipeline revocation determination, so long as the application is made in accordance with s. 97(2) of the NGL. The NGL also allows the AER to make a scheme pipeline revocation determination on its own initiative.

2.2.12 The decision to make, or not make, a scheme pipeline revocation determination must consider the requirements set out in s. 98 of the NGL.

Designated pipelines

2.2.13 Under the NGL, designated pipelines are classified as a designated pipeline by the National Gas (South Australia) Regulations or in the application Act of a participating jurisdiction.

Greenfields incentive determinations and greenfields price protection determinations

2.2.14 Greenfields determinations are regulated under Chapter 3 Part 3 of the NGL. These determinations affect how certain obligations apply to a pipeline.

2.2.15 Greenfields pipeline projects may apply to the AER for a greenfields incentive determination, or a greenfields price protection determination.

2.2.16 A greenfields incentive determination will mean that the pipeline subject to the determination cannot become a scheme pipeline during the operative period for the determination, which may be a maximum of 15 years from the commissioning of the pipeline.²⁴

2.2.17 The AER must have regard to the matters outlined in s. 112 of the NGL when making a greenfields incentive determination. This includes the AER considering whether the form of regulation factors, or any competition between 2 or more unrelated parties to develop the pipeline, will, or is likely to, constrain the service provider's market power over the operative period for the determination (s. 112(3)(b)(ii) NGL).

2.2.18 The transitional arrangements provide that existing 15-year no-coverage determinations, and any price regulation exemptions, that existed before March 2023 are deemed to be greenfields incentive determinations.²⁵

2.2.19 On the application of the service provider for a greenfields pipeline project, the AER may make a greenfields price protection determination for a pipeline to which a greenfields incentive determination applies,²⁶ if the AER is satisfied that:

- the prices and non-price terms and conditions for pipeline services that will be made available to prospective users during the operative period for the greenfields price protection determination were set as a result of a competitive process, or
- the service provider's market power when setting those prices was otherwise constrained.²⁷

2.3 Classification of pipelines as either distribution pipeline or transmission pipeline

2.3.1 The default position is that a pipeline is a distribution pipeline or a transmission pipeline if it is classified as such under a licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation.

²⁴ See s. 102 NGL.

²⁵ ~~Clauses~~See clauses 118 and 124 of Schedule 3 to the NGL.

²⁶ See s. 109 NGL.

²⁷ See s. 110 NGL.

- 2.3.2 For pipelines where the licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation does not classify a pipeline as either a distribution or transmission pipeline, the service provider must apply to the AER for classification.²⁸ A service provider must do so within 20 business days of the commissioning of the pipeline.
- 2.3.3 The AER may on its own initiative, or on the application of a service provider, make a decision for a pipeline to be reclassified as either a distribution pipeline or a transmission pipeline.²⁹
- 2.3.4 In making a classification decision or reclassification decision, the AER must have regard to:³⁰
- the national gas objective, and
 - the pipeline classification criterion (which are set out in s. 13 of the NGL).
- 2.3.5 The transitional arrangements provide that:
- pipelines that were classified by the NCC prior to March 2023 retain that classification (clause 110 of Schedule 3 to the NGL), and
 - any non-scheme pipeline existing before March 2023 that is not classification under a licence or authorisation granted in relation to the pipeline under jurisdictional gas legislation, has the classification noted on the pipeline register maintained by the Australian Energy Market Commission (AEMC) (clause 111 of Schedule 3 to the NGL).

2.4 Requirements applying to all pipelines

General duties for the provision of pipeline services by pipelines (Chapter 4, Part 1 NGL)

- 2.4.1 Chapter 4, Part 1 of the NGL covers the general duties of a service provider providing services on a pipeline. The general requirements of a service provider include:
- being a legal entity of a specified kind (s. 131 NGL)³¹
 - not engaging in conduct that prevents or hinders access of services to a third party on the pipeline (s. 133 NGL)
 - complying with the queuing requirements (on scheme pipelines) that are contained in the NGR or may be contained in an applicable access arrangement (s. 135 NGL)
 - compliance with pipeline interconnection principles (s. 136 NGL)³²

²⁸ See s. 117 NGL.

²⁹ See s. 118 NGL.

³⁰ See s. 119 NGL.

³¹ This does not apply to a service provider for an existing pipeline that, prior to March 2023, is a non-scheme pipeline (clause 126 of Schedule 3 to the NGL).

³² Applies to all pipelines other than for the Victorian declared transmission system, which is regulated by s. 91BF of the NGL.

- prohibition against increasing charges to subsidise particular development (if a transmission pipeline, other than a pipeline within a declared transmission system) (s. 136A NGL)
- prohibition against the bundling of services (s. 136B NGL), and
- publishing information relating to the pipeline and pipeline services in accordance with the NGR (s. 136C NGL).

Corresponding requirements in the NGR

- 2.4.2 The NGR provides additional information on how service providers are required to comply with Part 1 of Chapter 4 of the NGL in Parts 6 and 7.
- 2.4.3 In connection with s. 136 of the NGL, the NGR outlines the rights of a person seeking to establish an interconnection, the process a service provider and a person seeking to establish an interconnection must follow, including costs, and the requirements surrounding the development and publication of an interconnection policy (rr. 37–39 NGR).
- 2.4.4 *Service providers* for transmission pipelines, other than a pipeline within a declared transmission system,³³ must not increase a charge for a pipeline service payable by an existing user to the service provider to subsidise the development of an extension, or expansion of the capacity, of the pipeline pursuant to s. 136A of the NGL. The AER may exempt a *service provider* from this requirement if the exemption criteria in r. 39A of the NGR are satisfied. We note that s. 136A of the NGL does not prevent a service provider from charging an existing user for services provided by means of an extension or capacity of the capacity of a pipeline. Further information on negotiations involving expansions of capacity is provided in the Pipeline Access Dispute Guide.³⁴
- 2.4.5 In connection with s. 136C of the NGL, the NGR outlines the financial information that a service provider is required to publish in Part 10 NGR (rr. 101–101E NGR). There are 2 types of exemptions available in r. 102 NGR, referred to as Part 10 Category 1 and Category 2 exemptions.

Structural and operational separation (ring fencing) requirements (Chapter 4, Part 2 NGL)

- 2.4.6 The minimum ring fencing requirements of structural and operational separation are set out in Chapter 4, Part 2 of the NGL.
- 2.4.7 The purpose of the structural and operational separation (ring fencing) provisions is to segregate related businesses and certain marketing functions from the parts of the business providing pipeline services. This provides a structural and operational framework to encourage behaviour that is intended to reduce or eliminate the incentives and opportunities for behaviour which may not be conducive to the promotion of the national gas objective.
- 2.4.8 The NGL prohibits the service provider from the carrying on of a related business (s. 139 NGL). The NGL also prevents the service provider's marketing staff from taking

³³ Other than the Victorian declared transmission system, which is regulated by s. 91BF of the NGL.

³⁴ [AER Pipeline Access Dispute Guide](#), Final, Australian Energy Regulator, 29 November 2023.

part in a related business or other staff from being the marketing staff of an associate, for example, because of the sensitivity of certain information known to marketing staff about tariff and non-tariff terms and conditions of certain arrangements between service providers and users (s. 140 NGL).

- 2.4.9 The NGL requires service providers to separately account for regulated parts of its business by preparing, maintaining and keeping separate accounts for the pipeline services provided by each pipeline owned ~~or~~, operated or controlled by the service provider (s. 141(a) NGL). Service providers must also prepare, maintain and keep a consolidated set of accounts (s. 141(b) NGL).
- 2.4.10 The AER may, in accordance with ss. 143-145 NGL, make a determination requiring a service provider or associate of a service provider named in the determination to do, or refrain from doing, a thing specified in the determination (an additional ring fencing requirement). Service providers must comply with every additional ring fencing requirement on and from the notified compliance date in a ring fencing determination (s. 143(6) NGL).
- 2.4.11 An additional requirement on service providers in the structural and operational separation provisions is that related businesses should not contract with each other on terms that are different to those that would be ~~entered into with unrelated businesses offered if the business was not related~~. Associate contracts between related business should be neither anti-competitive in effect nor be on terms that ~~are would be~~ different to entities that are unrelated unless approved by the AER under r. 32 of the NGR (ss. 147–148 NGL).

Corresponding requirements in the NGR

- 2.4.12 Ring fencing requirements are elaborated on in Part 5 of the NGR.
- 2.4.13 In connection with ss. 147 and 148 of the NGL, the NGR requires service providers to request the AER to approve associate contracts or notify the AER about the entering into or variation of associate contracts (rr. 33–34 NGR).
- 2.4.14 A service provider may apply to the AER for an exemption from the ring fencing provisions pursuant to r. 34 NGR. Pipelines that have a Part 10 NGR Category 1 exemption (pursuant to r. 102 NGR) are automatically exempt from the ring fencing and associate contract provisions (r. 35 NGR).

Negotiations of access (Chapter 4, Part 3 NGL)

- 2.4.15 Chapter 4, Part 3 of the NGL sets out the requirement that service providers must comply with the access negotiation framework set out in Part 11 of the NGR in relation to access to a relevant pipeline service made for the purposes of an access proposal (s. 148C NGL).
- 2.4.16 Part 11 of the NGR sets out the considerations a service provider must have, including:
- publishing a user access guide (r. 105C NGR)³⁵

³⁵ Pipelines with a Part 10 NGR Category 1 exemption are not required to publish this guide (r. 105C(8) NGR).

- responding to any prospective user's preliminary enquiry about access or an access request within the periods stipulated in r. 105D of the NGR, and
- making an access offer within an agreed timeframe or otherwise within 20 business days of receiving an access request or any required additional information (r. 105E NGR).³⁶

2.4.17 The service provider and the user or prospective user seeking access to a relevant pipeline service must negotiate in good faith regardless of whether access is granted or not. To the extent access is granted, good faith negotiations must be reflected in the terms and conditions of the provisions of access to the user or prospective user (s. 148D NGL).

Making access arrangements available

2.4.18 With the potential for certain service providers providing pipeline services not being subject to a full access arrangement under the NGL, there is an increased obligation for certain service providers to maintain and publish access information on their websites. The purpose of mandating the public availability of such information is to assist users and potential users in negotiating contracts for the use of relevant pipeline services. Service providers may also be required to publish other information.

2.4.19 The requirement for making access arrangements available can be found at r. 68A of the NGR. It requires scheme pipeline service providers to ensure that an up-to-date version of any applicable access arrangement is published on the service provider's website.

Other requirements for service providers

2.4.20 A service provider must also:

- maintain confidentiality of relevant information and take all practicable steps to protect relevant confidential information in the service provider's possession against improper disclosure or use (r. 137 NGR), and
- comply with an access determination, if party to an access dispute where an access determination has been made (s. 170(1)(a) NGL).

2.5 Access arrangements for scheme pipelines

2.5.1 Part 5 of Chapter 3 of the NGL outlines certain obligations that are placed on scheme pipeline service providers in relation to access arrangements:

- S. 113 of the NGL requires that a scheme pipeline service provider must submit to the AER, for approval by the AER under the NGR, an access arrangement or revisions to an applicable access arrangement.
- S. 114 of the NGL outlines the pre-existing contractual rights that must be maintained in an access arrangement.
- S. 115 of the NGL states that a service provider may enter into an agreement with a user or prospective user that is different from an existing agreement.

³⁶ A service provider is not required to make an access offer in some circumstances, see r. 105E NGR.

S. 116 of the NGL states that an access arrangement applies regardless of who provides the pipeline service.

2.6 Our approach to ~~noncompliance~~ compliance and enforcement

2.6.1 Our approach to ~~noncompliance~~ compliance and enforcement is consistent with the risk-based approach outlined in the AER Compliance and Enforcement Policy.³⁷ The AER Compliance and Enforcement Policy should be read in conjunction with the Compliance and Enforcement Priorities published on our website.

2.6.2 The AER's compliance and enforcement approach aims to both encourage strong compliance levels across the industry and to address and deter noncompliance.

2.6.3 Our approach broadly involves:

- gathering and assessing compliance information
- considering public interest and broader trends in the sector, and
- assessing the likelihood of noncompliance and the potential for harm.

2.6.4 Our risk-based approach to assessing noncompliance is informed by several factors which are outlined in the AER Compliance and Enforcement Policy. As a summary, these may include:

- the environment in which we operate
- concerns emerging from, or identified through, our monitoring of compliance and performance under relevant energy laws and from our investigative activities
- the nature of the obligation(s), including the potential harm or detriment that can result from noncompliance and the likelihood (and likely extent) of noncompliance
- the party or parties subject to the obligation(s) in question, their compliance culture and history of compliance.

2.6.5 This allows us to ensure that our compliance and enforcement work is focused on the issues of greatest importance to both the protection of consumers and the effective operation of the markets which we regulate, including the market for gas pipeline services.

~~2.6.22.6.6~~ Section 3.5.6 sets out our approach to noncompliance in relation to regulatory information instruments.

³⁷ [AER Compliance and Enforcement Policy](#), Australian Energy Regulator, [13 July 2021](#).

3 Our approach to information collection

- 3.1.1 Service providers are required to provide information to us about their compliance with the relevant provisions and rules outlined in chapter 2 of these Procedures and Guideline and as reflected in relevant information gathering instruments issued by the AER.
- 3.1.2 In this chapter we provide a broad overview of 2 key [types of](#) regulatory information instruments: a general regulatory information order and a regulatory information notice.
- 3.1.3 Chapter 4 will discuss a particular example of a general regulatory information order, namely the ACO, in further detail.

3.2 AER information gathering powers

- 3.2.1 As outlined in the previous chapter, we are required to monitor the behaviour of service providers, including in relation to the price charged by service providers for pipeline service, the information published by service providers, outcomes of access negotiations, dealings with associates and compliance with ring fencing requirements (s. 63A NGL).
- 3.2.2 In carrying out our regulatory functions, we receive information from service providers and interested parties in a variety of forms for different regulatory processes. In some cases, these are required by the NGL, such as when service providers are required to submit a proposal for access arrangements or revisions to access arrangements under r. 46 of the NGR.
- 3.2.3 In other cases, access arrangements prescribe submission of certain information for tariffs such as annual variations and cost-pass through applications under rr. 57 and 97 of the NGR. Service providers may also at any time provide information on a voluntary basis.
- 3.2.4 In circumstances where information is not forthcoming or is required to be complemented by a targeted and specific request, the NGL provides powers to enable us to compel parties to provide information. To support our functions, we have information gathering powers, including:
- market monitoring information notices and orders (s. 30AL NGL)³⁸
 - general information gathering powers (s. 42 NGL)³⁹
 - general regulatory information order (s. 48(1)(b) NGL), which may require the person(s) to which it applies to do either or both of the following:
 - provide to the AER the information specified in the order
 - prepare, maintain or keep information specified in the notice in a manner and form specified in the order.

³⁸ Guidance on market monitoring information notices is provided in the [AER Wholesale Market Monitoring and Reporting Guideline](#), [AER Wholesale Market Monitoring and Reporting Guideline](#), Australian Energy Regulator, ~~which is yet to be published by the AER~~ [Draft, 2 July 2024](#).

³⁹ Refer to the [AER's Compulsory Notice Guidelines](#), Australian Energy Regulator, [1 February 2021](#).

- regulatory information notice (s. 48(1)(a) NGL), which may require the relevant service provider, or a related ~~provide~~ provider, named in the notice to do either or both of the following:
 - provide to the AER the information specified in the notice;
 - prepare, maintain or keep information specified in the notice in a manner and form specified in the notice.
 - price information order (s. 48(2a) NGL), which may require the person(s) to which it applies to provide the AER information:
 - that relates to the AER gas price reporting functions; and
 - that is specified in the order.
- 3.2.5 The NGL refers to general regulatory information orders, regulatory information notices and price information orders as 'regulatory information ~~instruments~~' instruments.⁴⁰
- 3.2.6 The AER can also require service providers to conduct a compliance audit (s. 64C NGL).

3.3 Use of general regulatory information orders and regulatory information notices

- 3.3.1 Under s. 48 of the NGL, we may decide to use a general regulatory information order or regulatory information notice to ~~obtain information that will enable us to verify whether service providers are complying with their general duties and specific requirements under Chapter 4 of the NGL (s. 54(1)(e) NGL) perform any of our roles or functions described in s. 27 of the NGL.~~
- 3.3.2 Given the extent and nature of information that may be required to be provided, prepared, kept or maintained and audited, the NGL requires us to consider certain issues before serving a regulatory information notice or making a general regulatory information order, and to consult with the relevant service providers or related providers to whom the instrument applies.

Our obligations

- 3.3.3 In making or serving a general regulatory information order or regulatory information notice, we must consider it reasonably necessary for the performance or exercise of our powers under the NGL or NGR (s. 48(1) NGL).
- 3.3.4 When considering whether it is reasonably necessary to serve a regulatory information notice, or make a general regulatory information order, we must have regard to:⁴¹
- the matter addressed by the regulatory information notice or general regulatory information order
 - the likely costs that may be incurred by an efficient pipeline service provider or efficient related provider in complying with the notice or order.

⁴⁰ See s. 2 NGL.

⁴¹ See s. 48(2) NGL.

- 3.3.5 Additionally, in considering whether it is reasonably necessary to serve a regulatory information notice or make a general regulatory information order that extends to a related provider or will apply to a class of related providers, we must have regard to:⁴²
- whether they can provide, prepare, maintain or keep the information as specified in the instrument
 - the competitive nature of supply of the service and the relationship of ownership or control between the related provider and the service provider.
- 3.3.6 We must not serve a regulatory information notice or make a general regulatory information order solely for the purpose of:⁴³
- investigating ~~breachers~~breaches or possible breaches of the NGL, NGR or Regulations
 - instituting and conducting proceedings or appeals
 - any application for review of a decision of the AER under Chapter 8 Part 5 NGL.
- 3.3.7 When using a general regulatory information order, the AER is not precluded from supplementing information collected from particular service providers by serving a regulatory information notice or using the general information gathering powers under s. 42 of the NGL. This also allows us to verify information from persons other than the service provider as required.

Form and content

- 3.3.8 A regulatory information notice or general regulatory information order can require the service provider, or a related provider, named in the notice to:⁴⁴
- to provide information to the AER, and
 - prepare, maintain or keep information specified in the notice in a manner and form specified.
- 3.3.9 The type of information that we can require to be provided to us, or be prepared, maintained or kept may include:⁴⁵
- historic, current and forecast information (including financial information)
 - information that is or may be derived from other information in the possession or control of the person to whom the instrument applies
 - information to enable the AER to verify whether the service provider to whom the instrument applies is or has been complying with Chapter 4 of the NGL, and/or

⁴² See s. 49 NGL.

⁴³ See s. 48(3) NGL.

⁴⁴ See ss. 45(1) and 46(1) NGL.

⁴⁵ See s. 54 NGL.

- information to enable the AER to verify compliance with any requirements for the allocation of costs between covered gas services under the NGR or an applicable access arrangement.

3.3.10 In accordance with s. 53 of the NGL, notices served under s. 48(1)(a) of the NGL and orders made under s. 48(1)(b) of the NGL on a service provider or related provider must:

- specify the information to be provided
- specify the information to be prepared, maintained or kept in a particular manner and form
- state reasons why the AER requires the information to be provided or prepared kept or maintained (and if relevant in the particular manner and form)
- specify when the information is to be provided, and
- in the case of a regulatory information notice, name the service provider or related provider to whom it applies, or
- in the case of a general regulatory information order, name the class of the service provider or related provider.

3.3.11 A general regulatory information order or regulatory information notice may require that information be:⁴⁶

- provided, prepared, maintained or kept on an annual basis or some other basis, including on the occurrence of a specified event or state of affairs
- provided, prepared, maintained or kept in accordance with any document, code, standard, rule, specification or method formulated, issued, prescribed or published by the AER or any person, authority or body
- be verified by way of statutory declaration by an officer of the person to whom the instrument applies, and/or
- be audited by a class of person specified in the instrument before it is provided to the AER and at the expense of the person to whom the instrument applies.

~~3.3.12 A general regulatory information order may also specify that the information be verified by an officer by way of a statutory declaration or be audited by a class of person specified in the instrument before it is provided to the AER at the expense of the person to whom the order applies (ss. 55(d) and 55(e) NGL).~~

~~3.3.13~~3.12 If there are any administrative issues (such as contact details) for provision of information to the AER, these may also be addressed in the instrument.

General regulatory information orders – who they can apply to

~~3.3.14~~3.13 A general regulatory information order applies to service providers in a specified class and may apply to related providers. These orders can also be made to

⁴⁶ See s. 55 NGL.

apply to more than one class of service providers or related providers at the same time (s. 45 NGL).

~~3.3.15~~3.3.14 This feature of a general regulatory information order lends itself to the collection of information for us to verify compliance, because most general duties and specific requirements under the NGL apply uniformly to all service providers.

~~3.3.16~~3.3.15 The use of a general regulatory information order also allows information to be collected simultaneously and on a consistent basis from different pipeline service providers. As outlined in chapter 4, we have made a general regulatory information order, namely the ACO, for the purpose of collecting information.

General regulatory information orders – consultation process and publication

~~3.3.17~~3.3.16 The AER is required to conduct public consultation prior to publishing a general regulatory information order (s. 50 NGL). The consultation process mandated for making such an order in the NGR is the standard consultative procedure (r. 139 NGR) outlined in r. 8 of the NGR. The AER is required to publish the order once it is made on its website and in the South Australian Government Gazette (s. 51 NGL).

~~3.3.18~~3.3.17 The process the AER will follow in making a general regulatory information order is set out in **Appendix A**. **Appendix A: How the AER makes a general regulatory information order.**

General regulatory information orders – amending or repealing an order

3.3.18 The AER may amend or repeal an existing general regulatory information order following the consultation process outlined in paragraphs 3.3.16 and 3.3.17 above (clause 20 of Schedule 2 to the NGL).

Regulatory information notice – who they can apply to

3.3.19 A regulatory information notice applies to a particular service provider, or a related provider, named in the notice.

Regulatory information notice – consultation process

3.3.20 Prior to serving a regulatory information notice under s. 48(1)(a) of the NGL, the AER is required to notify the relevant service provider or related provider of its intention to serve a notice, and in doing so provide a copy of the draft of the notice (s. 52(1) NGL).

3.3.21 The AER must also indicate if the regulatory information notice is to be served as an urgent notice and give reasons why (s. 52(2) NGL).

3.3.22 Along with a draft of the regulatory information notice, we must:⁴⁷

- invite the service provider, or the related provider, to make written representations to the AER as to whether the AER should serve the regulatory information notice on them, and
- specify the period within which the service provider, or the related provider, may make the representations.

⁴⁷ See s. 52 NGL.

3.3.23 For an urgent regulatory information notice the service provider is allowed at least five but no more than 10 business days, and for all other notices at least 20 business days, to make written representations (s. 52(5) NGL).

Our engagement

3.3.24 The AER will endeavour to notify service providers subject to a general regulatory information around two months prior to the date that the requested information is due to be provided.

3.3.25 The AER will notify the service provider of any follow-up action or reviews that are required.

3.3.26 Follow-up action may include a review of a service provider's documentation and information that is required to be prepared, kept or maintained.

3.4 Requests for further information

3.4.1 We may consider issuing an additional regulatory information instrument if the information received in response to a regulatory information instrument is not sufficient for us to monitor and assess compliance.

3.4.2 In such circumstances, we will follow the same processes and make use of the same powers outlined within this chapter in order to gather additional information.

3.4.3 In particular, we must take into consideration, among other issues, the matters to be addressed by the regulatory information instrument and the likely costs that may be incurred by an efficient service provider in complying with the instrument (s. 48(2) NGL).

3.5 Efficient information collection

3.5.1 Before seeking information voluntarily or via ~~a regulatory~~our ~~instrument, gathering powers~~ information instrument, we will consider the availability and suitability of any publicly available information, information that the AER has gathered through other regulatory functions and information available to the AER from other agencies or bodies, such as the ACCC.

3.5.2 In the interest of reducing regulatory burden, we will aim, where possible, to avoid requesting information that is already gathered through other information collection instruments made by the AER or other agencies or bodies when making or serving a regulatory information instrument if an alternate source of the information is available to the AER. Additionally, we will consider the timeframes of existing information collection instruments when setting the timeframe of a ~~general~~ regulatory information instrument.

3.5.3 We note that the capacity of the AER to use the information that is obtained from other agencies or bodies may be limited by information security classifications, confidentiality or other requirements.

3.5.4 The AER may also require information to fulfil obligations outside of our monitoring obligations, for example, the requirement to report to Energy Ministers under s. 63B of the NGL.

3.5.5 We also note that if new reporting requirements are introduced, this may reduce our capacity to avoid overlapping reporting timeframes.

3.5.6 While we endeavour to coordinate and harmonise information gathering where possible, for the reasons outlined above it ~~can be~~ may not be possible for the AER to avoid information collection that duplicates existing reporting requirements or to avoid requesting information during periods where service providers have other reporting requirements.

3.6 Noncompliance and legal matters

Potential actions when a breach of the NGL is identified

3.6.1 The AER Compliance and Enforcement Policy sets out how we will respond to breaches and potential breaches of the NGL.

3.6.2 In the circumstances that a potential breach or issue of noncompliance with the NGL is identified in ~~the context of a response to~~ a regulatory information instrument, the AER ~~will~~may provide ~~separate~~ written notification of the nature of the breach identified. This may be in relation to either:

- a) a breach identified through the response provided to a regulatory information instrument; or
- b) a breach of the requirement to comply with a regulatory information instrument.

3.6.3 In relation to situation (a), the AER will provide the service provider with an opportunity to respond and ~~the relevant~~may seek further information from the service provider.

~~3.6.13~~3.6.4 In relation to situation (b), the AER will provide information about the course of action that is to be pursued, for example, the AER may request that information be resubmitted. At this stage, a service provider will be provided with an opportunity to provide a response.

Noncompliance with general information gathering powers

3.6.5 Criminal penalties may apply if a person does not comply with a relevant notice under s. 42 of the NGL. At the time of writing these Procedures and Guidelines, a maximum criminal penalty amount of \$6,790 applies for a person and \$34,800 for a body corporate, respectively (s. 42(3)).⁴⁸

Noncompliance with a regulatory information instrument

~~3.6.2~~—On the serving of a regulatory information notice, a person named in the notice is required to comply with the notice (s. 56 NGL).

~~3.6.3~~3.6.6 Under the NGL, service providers are required to comply with a general regulatory information order if they are a member of the class of person to which the order applies and have not been granted an exemption (s. 57 NGL).

~~3.6.4~~3.6.7 If a person does not comply with a regulatory information instrument and is required to do so under the NGL, the AER can institute civil proceedings under s. 229 of the NGL by making an application for breach of ss. 56 ~~and~~or 57 of the NGL.

⁴⁸ Clause 47B of Schedule 2 to the NGL provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

Providing false and misleading information to the AER

~~3.6.53.6.8~~ A penalty applies if a person knowingly provides information to the AER that is false and misleading ~~in a material particular in complying with an information order.~~ At the time of writing these Procedures and Guidelines, a maximum penalty of \$6,970,790 applies for a person and \$34,800 for a body corporate, respectively (s. 60 NGL).⁴⁹

~~3.6.6~~ ~~Schedule 2 clause 27B of the Regulations provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.~~

Provision of commercial-in-confidence information

~~3.6.73.6.9~~ ~~The~~As outlined in section 3.3, the form in which information needs to be provided to the AER subject to a general regulatory information order is stipulated in the order itself. ~~This may include details about the provision of commercial-in-confidence information.~~

~~3.6.83.6.10~~ The AER expects that service providers or related providers will provide information to the AER in accordance with section ~~4.4.4~~1.6 and ss. 57A and 57B of the NGL.

Information gathered in one regulatory process used in other regulatory processes

~~3.6.93.6.11~~ The AER may use information provided under its general information gathering powers (s. 42 NGL) or under a regulatory information instrument for any purpose connected with the performance and exercise of its function or power (s. 66 NGL).

~~3.6.103.6.12~~ This provides wide scope for the AER to use information gathered in one regulatory process, in other regulatory processes. This includes, but is not limited to, any compliance programmes and reporting functions as appropriate to the development of an open and transparent regulatory framework consistent with the national gas objective (s. 23 NGL).

~~3.6.113.6.13~~ As noted in section ~~4.4.3~~1.6 above, the AER may disclose information gathered using a general regulatory information order with other regulators.

Other issues related to compliance with a regulatory information instrument

~~3.6.123.6.14~~ In complying with a regulatory information instrument, a person cannot refuse to comply with the order, on the ground of a duty of confidence. A person does not incur a liability for breach of confidence, breach of contract or any other civil wrong by complying with ~~the order~~ ~~(s. a regulatory information instrument~~ (s. 61 NGL).

~~3.6.133.6.15~~ A person, however, is not required to provide the AER information in response to a ~~general~~ regulatory information instrument that is subject to legal professional privilege, or provide a document that is the subject of legal professional privilege (s. 62 NGL).

⁴⁹ Clause 47B of Schedule 2 to the NGL provides for criminal penalty amounts to be adjusted every 3 years to reflect movements in the consumer price index. The adjusted amounts are published on the AER's website.

~~3.6.14~~3.6.16 Under the NGL, it is a reasonable excuse that a person does not comply with a regulatory information instrument if in doing so, it might tend to incriminate the person or make the person liable to criminal penalty under a relevant law (s. 63 NGL).

~~3.6.15~~3.6.17 Service providers and related providers are reminded that under ~~ss.~~sections 137.1 and 137.2 of the *Criminal Code Act* 1995 (Cth), it is an offence to provide false or misleading information or to produce a document knowing it is false or misleading to a Commonwealth entity.⁵⁰

3.7 Exemptions from compliance with a general regulatory information order

The framework for exemptions

3.7.1 As outlined in section ~~4.3~~3.3 above, a general regulatory information order applies to specified class of service providers of scheme and non-scheme pipelines, and may apply to a related provider. Under the NGL, a service provider owns, controls or operates, or intends to own, control or operate, a pipeline or any part of a pipeline (s. ~~8~~8 NGL). As a result, general regulatory information orders apply to an owner, controller and operator of a pipeline, and may apply to a related provider.

3.7.2 The AER may grant an exemption under s. 58 of the NGL with conditions, or to the extent specified in the exemption.

3.7.3 These conditions may include, but are not limited to:

- reporting changes in operational circumstances, or
- an expiry date for the exemption.

3.7.4 The ways that extent of an exemption may be modified include, but are not limited to:

- certain general regulatory information orders, or
- certain information requests in a specific general regulatory information order.

~~3.7.23~~3.7.5 S. 11 of the NGL also states that in the case that a service provider is a foreign entity, a local agent is required to do things under the NGL. As a result, a general regulatory information order will apply to the local agent of the service provider. In this way the NGL acknowledges that different organisational and business structures may operate in the gas industry and there may be more than one service provider for a pipeline and that service providers may be foreign entities.

~~3.7.33~~3.7.6 We note that under s. 10 of the NGL, certain things done by one service provider (the complying service provider) can be considered as being done by all service providers within a group of service providers.

~~3.7.43~~3.7.7 In circumstances where there is more than one service provider for a given pipeline, the AER may grant exemptions from complying with a general regulatory information order under s. 58 of the NGL. In these circumstances, a service provider may be nominated to report under the general regulatory information order.

⁵⁰ At the time of writing these Procedures and Guidelines the penalty for breaching sections 137.1 and 137.2 of the *Criminal Code Act* 1995 (Cth) is imprisonment for 12 months.

~~3.7.53~~3.7.8 Even though an exemption may be granted unconditionally, on specified conditions or may be granted wholly or to the extent as is specified in the exemption, the AER will still require at least one service provider to report all of the information under the general regulatory information order. In circumstances where a service provider is provided with exemptions from reporting some of the information required under a general regulatory information order, it will still be required to report some information. This information can be reported by another service provider of the pipeline on its behalf. If an exemption is granted, the information required to be reported under the general regulatory information order and any additional reporting requirements will be outlined in the AER's decision to grant the exemption.

~~3.7.63~~3.7.9 Arrangements as to how the information required to be reported by all the service providers to the AER will be left to the service providers of a pipeline, as these will be specific to the circumstances of each pipeline.

Applying for an exemption from a general regulatory information order

~~3.7.73~~3.7.10 The AER will consider exemption applications from service providers of a pipeline on a case-by-case basis.

3.7.11 When assessing an exemption application, the AER may consider relevant factors, such as:

- the purpose that the general regulatory information order was made for, or
- the factors outlined in s. 49 of the NGL.

~~3.7.83~~3.7.12 An application for exemption from providing the information under ~~the AGOa~~ general regulatory information order must be provided in writing. A pro-forma of the exemption application form that must be used is provided in **Appendix B**. **Appendix B: Pro forma – Exemption from a general regulatory information order.**

~~3.7.93~~3.7.13 In granting an exemption from compliance with some of the reporting requirements the applicant may be required to notify the AER in writing about change in operational circumstances such as:

- a change in the service provider's name to which the exemption applies, or
- if the applicant is no longer a service provider of the pipeline. If this is the case, then one of the conditions of the exemption may require the applicant to notify the AER as to who is the relevant service provider of the pipeline.

~~3.7.103~~3.7.14 As a condition of granting an exemption, the AER may require the applicant to periodically report its status as a relevant service provider of the pipeline. This will ensure that the AER is informed of any changes as to who are the relevant service providers of the pipeline.

~~3.7.111.1.1~~ ~~From time to time, the AER may also need to revisit its decision as to the nature of the exemption and who is required to report under the general regulatory information order.~~

~~3.7.123~~3.7.15 While the AER has provided examples of what conditions may apply in granting an exemption from some of the reporting requirements, these matters will be dealt with on a case-by-case basis specific to the circumstances of the service provider on receipt of the pro-forma exemption application form.

Amending or repealing an exemption

3.7.16 From time-to-time, the AER may also need to revisit its decision as to the nature of the exemption and who is required to report under the general regulatory information order.

3.7.17 The AER may amend or repeal an exemption granted under s. 58 of the NGL in line with clause 20 of Schedule 2 to the NGL. The AER may do so under its own initiative.

3.7.18 An exemption granted in relation to a general regulatory information order will no longer apply if this general regulatory information order is amended in line with clause 20 of Schedule 2 to the NGL.

3.7.19 The AER may choose to grant an exemption under its own initiative in line with paragraph 3.7.17, or the relevant service provider may choose to follow the application process outlined in paragraphs 3.7.10 to 3.7.15.

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4 The Annual Compliance Order (ACO)

4.1 Using the ACO to collect information

- 4.1.1 As detailed in chapter 3 of these Procedures and Guidelines, we may contemplate the use of a general regulatory information order to obtain information from service providers to verify whether they are complying with their general duties and specific requirements under Chapter 4 of the NGL (s. 54(1)(c) NGL).
- 4.1.2 At the time of writing, the AER uses the [ACO](#) to monitor compliance with the obligations in Chapter 4 of the NGL (outlined in chapter 2).
- 4.1.3 The ACO was developed in accordance with the standard consultative procedure outlined in r. 8 of the NGR and summaries in ~~Appendix A~~ **Appendix A**: How the AER makes a general regulatory information order.
- 4.1.4 From time to time, the AER may make a new ACO, or amend or repeal an existing ACO by following the same procedure ([clause 20 of Schedule 2 Part 4 s. 20 of to the Regulations NGL](#)).
- 4.1.5 Service providers must respond to the ACO by the date specified in the order (or on the first business day following this date in years where this is not a business day).
- 4.1.6 The information and documentation in a response must cover the time period that is specified in the order (the Compliance Period).
- 4.1.7 This chapter is designed to help service providers understand how to comply with the [ACO instrument](#) and use the [ACO response template](#) in which responses must be provided.
- 4.1.8 The AER may consider making further general regulatory information orders in the future. Any such orders will be developed according to the standard consultative process outlined in **Appendix A** and published on the [AER's website](#).

4.2 Using the ACO response template

- 4.2.1 This section outlines how the AER expects service providers to fill out various parts of the ACO response template by providing a number of representative examples. We refer to items in the ACO response template with the column A reference number.

4.2.2 We note that these examples are intended to supplement the ACO rather than providing exhaustive and complete descriptions of what is required in response to each item in the response template.

4.2.3 To the extent of any inconsistency, the ACO instrument itself will take precedence.

The use of column F (basis of preparation)

4.2.24.2.4 Section 4.1 of the ACO instrument states that a basis of preparation must:

- a) enable auditors, assurance practitioners and the AER to clearly understand how the Service Provider has complied with the requirements of this Order
- b) identify any policy or operating instructions that are used to direct the compilation and preparation of information required to respond to the Order, and
- c) be consistent with the applicable AER guidelines, including these Procedures and Guidelines.

4.2.34.2.5 Further, section 4.2 of the ACO instrument states that the basis of preparation must:

- a) describe the source of the information provided
- b) document the methodology (if any) used to transform the source data to meet the requirements of Order
- c) list the assumptions used in applying the methodology noted under (b)
- d) classify the information as actual information or estimated information or a NULL response
- e) where estimated information is provided: (i) explain why actual information cannot be provided; and (ii) why the estimated information provided is the Service Providers best estimate
- f) where a NULL response is provided explain why the information requirement is not relevant to the Service Provider, and
- g) explain any changes in the information sources or methodology that have occurred in the reporting period.

4.2.44.2.6 To fulfil these requirements, the AER is broadly seeking:

- information on how the information was sourced
- classification of the information
- any relevant attachments or links that contain information relevant to the item, including policy documents or links to published information
- an explanation of how any attachments or information provided within the information request section of the template relate to and satisfy the requirements of the relevant section of the NGL or rule in the NGR, (to the extent necessary to satisfy clause 4.1.1. of the ACO instrument), and
- an explanation of any relevant internal procedures that provide assurance that the information provided is complete and correct, (to the extent necessary to satisfy paragraph 4.1.1. of the ACO instrument).

4.2.7 Section 4.2 of the ACO instrument is not in itself exhaustive, as basis of preparation responses must also comply with clause 4.1.1. of the ACO instrument. The items identified in section 4.2 of the ACO instrument may not be applicable to each item in the ACO template. The examples in Table 1 below provide an indication of what may be applicable to some items in the context of both sections 4.1 and 4.2 of the ACO instrument. The examples in Table 1 below are not exhaustive and some items may require slightly different approaches to the examples listed, depending on the individual circumstances of the service provider that is producing a response.

4.2.8 We encourage service providers to engage with the AER during the process of compiling their ACO responses as this may assist service providers being satisfied that they have complied with the basis of preparation requirements. However, we note that it is ultimately the responsibility of the service provider to undertake proper diligence in preparing their responses.

4.2.9 The information and/or documents provided in response to the ACO are to be verified by the officer or officers that have signed the accompanying statutory declaration (see section 5 of the ACO instrument).

4.2.54.2.10 There are several categories of items within the ACO response template, including ~~requests for~~:

- a statement of compliance
- specific pieces of information such as lists or documents, and
- documents with financial information.

~~4.2.6~~ ~~Specific examples that relate to these requests are provided below. We note that these examples are not exhaustive and some items may require slightly different approaches to the examples covered depending on the circumstances of the service provider that is producing a response.~~

4.2.74.2.11 Where an item in the ACO template consists of a request for a specific document, such as a request for an internal policy document, the basis of preparation may:

- a) outline the factors considered as part of its development, for example, references to the legislation or company policies
- b) outline where requirements in the legislation are covered in the document.

~~Example: a service provider producing a response to item 4.3 of the ACO response template may attach a copy of their interconnection policy document (which is required under r. 39(1) of the NGR) and outline where each item in r. 39(2) of the NGR is addressed in the document within their basis of preparation.~~

~~Example: a service provider producing a response to item 17.2 of the ACO response template (relating to confidentiality policies) may attach copies of any internal policy documents and outline which sections relate to r. 137(1) of the NGR and any sections that relate to the exceptions within r. 137(3) of the NGR within their basis of preparation.~~

4.2.84.2.12 Where an item in the ACO template requires the service provider to indicate whether or not they have complied with, received, or done a particular thing, the basis of preparation should reflect:

- a) how the service provider receives (if relevant) and then records the information
- b) how the information provided in response to the ACO item was verified as true and correct
- c) how the service provider has complied with specific aspects of the NGL or NGR.

~~Example: in response to Where an ACO item 2.4 requests a list, a service provider may should include an explanation of how communications such as emails or phone calls are processed in a manner that ensures that details about the service provider would be aware of any claims that source of the service provider prevented or hindered access to the services on the list and any relevant pipeline.~~

~~Example: in the context of item 4.1 of the ACO template, where an interconnection request is received and subsequently rejected, it would be appropriate to include:~~

- ~~• how the service provider receives and then records interconnection requests~~
- ~~• how the service provider decides and then records whether interconnection requests are accepted or rejected~~
- ~~• a copy of the request that~~information about how the list was made
- ~~• a copy of the response from the service provider~~
- ~~• any additional details relating to the feasibility of the interconnection, and~~
- ~~• if the service provider did not agree to fund the costs associated with making the interconnection, the factors that were considered in making this decision.~~

~~4.2.9 If no interconnection request is received during the compliance period to which the response applies, a service provider may provide a NULL response and explain that this item is not applicable for that reason. This information, along with the information outlined in section 4.2 of the ACO instrument, will allow the AER to better assess the compliance in line with section 4.1 of the ACO instrument.~~

~~4.2.104.2.13 Example: a service provider producing a response to item 7.1 may include a links to or a description of where each of the four categories of information specified in r. 101A of the NGR are published on their website within their basis of preparation. Responses to this item may also include any basis of preparation templates prepared in relation to the Pipeline Information Disclosure Guidelines as attachments~~verified.

~~4.2.114.2.14~~ 2.14 Where an ACO item requests financial information, a service provider should include any relevant documents that outline the methodology for how the financial documents were produced as attachments and summarise what these documents cover within the basis of preparation. Existing AER guidelines that ~~concern~~relate to the reporting of financial information, such as the [Pipeline Information Disclosure Guidelines](#), may be used to inform the production of these attachments if they were not initially produced with the financial reports requested.

~~Example: In the context of item 10.5, it would be appropriate to include a copy of or a reference to the basis of preparation for the accounts requested within the item. If any of the details that are outlined in section 4.2 are absent from the existing basis of preparation these details should be provided separately in the response template.~~

~~4.2.124.2.15~~ 2.15 If there are no such reports available (i.e., the company has not provided annual final reports to the Australian Securities and Investments Commission or other state or territory department, agency or body), the service provider may provide a NULL response and explain that this item is not applicable for this reason.

~~4.2.16 We expect information that is not estimated or NULL to be classified as actual information.~~

Table 1: Examples of information that may be included in Basis of Preparation column F of the ACO template

<u>Section</u>	<u>Example of what may be included</u>
<u>1. Legal Entity</u>	<u>In response to item 1.1 of the ACO response template:</u>

Section	Example of what may be included
	<ul style="list-style-type: none"> • <u>the kind of entity the service is considered from the list in s. 131 of the NGL and</u> • <u>any relevant documentation that supports this categorisation as an attachment.</u> <p><u>In response to item 1.2 of the ACO response template:</u></p> <ul style="list-style-type: none"> • <u>the date the business name was registered</u> • <u>the date the ABN was registered.</u> <p><u>In response to item 1.3 of the ACO response template:</u></p> <ul style="list-style-type: none"> • <u>if applicable, a relevant document submitted to the Australian Securities and Investment Commission outlining the corporate structure of the service provider as an attachment</u> • <u>if relevant, information about the corporate diagram or chart provided in response to this item, such as when it was made and who approved it as accurate.</u>
<p><u>2. Preventing or hindering access</u></p>	<p><u>In response to item 2.1 of the ACO template:</u></p> <ul style="list-style-type: none"> • <u>the ways in which the service provider can become aware of such claims</u> • <u>who is responsible for handling and tracking of such claims</u> • <u>how such claims are recorded</u> • <u>details of any relevant policy to handling of such claims, or provision of the relevant policy.</u>
<p><u>3. Queuing requirements (only applicable to scheme pipelines)</u></p>	<p><u>In response to item 3.1 of the ACO template:</u></p> <ul style="list-style-type: none"> • <u>if applicable, an attachment outlining any queuing requirements</u> • <u>if applicable, how the service provider records and verifies that they are complying with these requirements.</u>
<p><u>4. Compliance with pipeline interconnection principles</u></p>	<p><u>In the context of item 4.1 of the ACO template, where an interconnection request is received and subsequently rejected:</u></p> <ul style="list-style-type: none"> • <u>how the service provider receives and then records interconnection requests</u> • <u>how the service provider decides and then records whether interconnection requests are accepted or rejected</u> • <u>a copy of the request that was made</u> • <u>a copy of the response from the service provider</u> • <u>any additional details relating to the feasibility of, or cost associated with making the interconnection.</u> <p><u>In response to item 4.3 of the ACO response template:</u></p> <ul style="list-style-type: none"> • <u>a copy of their interconnection policy document (which is required under r. 39(1) of the NGR)</u> • <u>outline where each item in r. 39(2) of the NGR is addressed in the document within an attached policy document.</u> <p><u>If no interconnection request is received during the compliance period to which the response applies, a service provider may provide a NULL</u></p>

Section	Example of what may be included
	<p>response and explain that this item is not applicable for that reason (for <u>items 4.1–4.3</u> of the ACO template).</p>
<p><u>5. Increases to service charges to subsidise development</u></p>	<p>In response to <u>item 5.1</u> of the ACO response template:</p> <ul style="list-style-type: none"> • <u>if applicable, a description of how the service provider ensures that they have not increased charges to subsidise relevant developments</u>
<p><u>6. Bundling of services</u></p>	<p>In response to <u>item 6.1</u> of the ACO response template:</p> <ul style="list-style-type: none"> • <u>if applicable, attachments detailing the bundled services.</u>
<p><u>7. Publishing of prescribed transparency information</u></p>	<p>In response to <u>item 7.1</u> of the ACO response template:</p> <ul style="list-style-type: none"> • <u>how the service provider tracks or records that these obligations have been met</u> • <u>the quality assurance process used to verify the information published is complete and accurate</u> • <u>links to or a description of where each of the four categories of information specified in r. 101A of the NGR are published on the service provider's website</u> • <u>may also include any basis of preparation templates prepared in relation guidelines such as the Pipeline Information Disclosure Guidelines as attachments.</u>
<p><u>8. Carrying on of a related business</u></p>	<p>In response to <u>item 8.1</u> of the ACO response template:</p> <ul style="list-style-type: none"> • <u>how the list was sourced and verified as correct</u> • <u>how associate contracts are tracked or recorded</u> • <u>the description of the nature of any related business was based on descriptions provided by the relevant employees.</u>
<p><u>9. Marketing staff and the taking part in related businesses</u></p>	<p>In response to <u>item 9.1</u> of the ACO response template:</p> <ul style="list-style-type: none"> • <u>how the list was sourced and verified as correct</u> • <u>how associate contracts are tracked or recorded.</u>
<p><u>10. Separate accounts must be prepared, maintained and kept</u></p>	<p>In response to <u>item 10.5</u> of the ACO response template:</p> <ul style="list-style-type: none"> • <u>if applicable, a copy of or a reference to the basis of preparation for the accounts requested within the item.</u> <p>If any of the details that are outlined in section 4.2 are absent from the existing basis of preparation these details should be provided separately in the response template.</p>
<p><u>11. Additional ring fencing requirements</u></p>	<p>In response to <u>item 11.1</u> of the ACO response template:</p> <ul style="list-style-type: none"> • <u>if applicable, any relevant attachments outlining the additional ring fencing requirements.</u>

<u>Section</u>	<u>Example of what may be included</u>
<u>12. Associate contracts</u>	In response to item 12.1 of the ACO response template: <ul style="list-style-type: none"> • <u>if applicable, copies of any relevant contracts.</u>
<u>13. Exemptions from particular requirements</u>	In response to item 11.1 of the ACO response template: <ul style="list-style-type: none"> • <u>if applicable, any relevant attachments outlining the relevant exemptions.</u>
<u>14. Making access arrangement available (only applicable to scheme pipelines)</u>	In response to item 14.3 of the ACO response template: <ul style="list-style-type: none"> • <u>if applicable, any relevant attachments outlining the request.</u>
<u>15. Access determinations</u>	In response to item 15.1 of the ACO response template: <ul style="list-style-type: none"> • <u>if applicable, any relevant attachments outlining the determination that were not made by the AER.</u>
<u>16. Access negotiations</u>	In response to item 16.3 of the ACO response template: <ul style="list-style-type: none"> • <u>a zipped folder of any relevant contracts as an attachment.</u>
<u>17. Confidentiality</u>	In response to item 17.2 of the ACO response template (relating to confidentiality policies): <ul style="list-style-type: none"> • <u>copies of any internal policy documents and outline which sections relate to r. 137(1) of the NGR and any sections that relate to the exceptions within r. 137(3) of the NGR.</u>

How to fill in the ACO template if a service provider holds an exemption (other than an exemption under s. 58 NGL)

4.2.17 This section applies to service providers that hold exemptions from any relevant obligations that are monitored via the ACO. This section does not apply to service providers holding exemptions under s. 58 of the NGL.

4.2.134.2.18 There are exemptions to some requirements in the NGL and NGR which, if a valid exemption is held by a service provider, may mean that the service provider is not required to comply with some provisions of the NGL or NGR. For example, under rr. 34 or 35B of the NGR, a service provider may be exempt from the requirements under ss. 139, 140, 141, 147 or 148 of the NGL in relation to a given pipeline. This list of exemptions is not exhaustive and the AER recommends that a service provider seek legal advice if further information on exemptions is needed.

4.2.144.2.19 To avoid doubt, the ACO does not require information about compliance with any requirements in the NGL or NGR that a service provider has exemptions from. In

circumstances where a question or item within the ACO template is not applicable to a given pipeline due to an exemption from the associated sections or rules within the NGL or NGR, service providers may state that the question or item is not applicable with reference to the appropriate exemption.

4.2.20 We note that in general it is up to a service provider to determine whether they are eligible for an exemption, to apply for an exemption and to determine whether or not an exemption is relevant in relation to a given item in the ACO response template.

4.2.154.2.21 In cases where a service provider has an exemption to the obligations relating to an item in the ACO, the service provider is considered to be compliant with the obligation. In the ACO template, the service provider may respond with “yes” in column G and leave column H blank.

Example: a service provider producing an ACO response that only covers pipelines with exemptions from the requirements under ss. 139, 140 or 141 may reference this exemption rather than providing further details when responding to **items 8.1–8.2, 9.1–9.3 or 10.1–10.5** in the ACO, respectively. The service provider is still required to provide an ACO response template to the AER.

Example: a service provider producing an ACO response for a pipeline with an exemption from s. 139 may respond to **item 8.1** as in the following table.

Table 42: Possible responses to item 8.1 (with some columns not shown)

Reference	Service provider response	Basis of preparation	Compliance with requirement	Attachment provided	Attachment name
8.1	This item is not applicable.	There is an exemption under rule 34 of the NGR for this pipeline granted by the AER on [date]. <u>This is actual information and the AER is the source of this information.</u>	Yes.	NULL – exemption granted by AER	NULL

Responding to specific items

4.2.164.2.22 A service provider may choose to submit an organisational chart in lieu of a written explanation of their organisational structure in response to **item 1.3**. Such a chart may be provided as a separate file within the submission or included within a new worksheet within the response template. As noted in paragraph 4.2.36, responses to item 1.3 must identify all relevant pipelines that the service provider is providing a response for.

4.2.174.2.23 As noted in section 4.2.2, responses to ~~In the context of~~ **item 1.3** must identify all relevant pipelines that the ~~4.2, a~~ service provider is provided a response for ~~should~~

explain which option outlined in r. 38(1) of the NGR aligns with how the interconnection was funded.

4.2.184.2.24 R. 39 of the NGR applies to all gas pipeline service providers, regardless of whether or not there are any existing or potential third parties that make use of the provider's services. As such, all service providers must develop and maintain an interconnection policy in accordance with r. 39 of the NGR and provide a response to **item 4.3**.

4.2.194.2.25 We note that s. 136A of the NGL is only applicable to transmission pipelines which are not within a declared transmission system. If a service provider produces an ACO response that only covers pipelines that are not subject to s. 136A, a service provider may state that this item is not applicable for this reason. If a service provider has no existing users, then a service provider may provide a statement that there are no such users as a response to **item 5.1**.

4.2.204.2.26 **Item 9.1** is intended to capture the identity of associates that take part in a related business (rather than all associates or associates that undertake a pipeline service) and are involved in the sale, marketing or advertising of the service provider's pipeline services (rather than the associate's pipeline services). If the list of associates provided in response to item 8.1 clearly identifies all associates as relevant to s. 140 NGL (i.e., those that are directly involved in the sale, marketing or advertising of pipeline services, service), then a service provider may refer to this list rather than reproducing the entire list in response to **item 9.1**.

4.2.214.2.27 In relation to **item 16.3**, a service provider ~~is only~~ must include all contracts resulting from successful access negotiations with third parties during the relevant compliance period (as defined in paragraph 4.1.6 above). Relevant contracts are those that stem from a user or prospective user accepting an access offer under r. 105E NGR. Service providers are required to include contracts that start within the relevant compliance period ~~(as defined in section 4.1 above) rather than all current contracts, including variations or renewals that occurred during the compliance period. Contracts where the contract terms remained the same as for the prior compliance period are not required.~~

4.2.224.2.28 A service provider may provide several documents in response to **item 17.2** if there is no specific internal policy document that covers the handling of confidential information in relation to r. 137 of the NGR. A response that includes multiple documents must have a written explanation of where the guidance relating to compliance with this rule may be found.

Responding to items that only apply to scheme pipelines

4.2.234.2.29 We note that part 8 of the NGR is only applicable to scheme pipelines service providers. If a service provider produces an ACO response that only covers non-scheme pipelines, a service provider may state that **items 3.1, 14.1, 14.2 and 14.3** are not applicable for this reason rather than elaborating on whether the requirements in rr. 68A or 68D of the NGR have been complied with.

Example: a service provider producing an ACO response for a non-scheme pipeline may respond to **item 14.2** as in the following table.

Table 3: Possible responses to item 14.2 (with some columns not shown)

<u>Reference</u>	<u>Service provider response</u>	<u>Basis of preparation</u>	<u>Compliance with requirement</u>	<u>Attachment provided</u>	<u>Attachment name</u>
<u>14.2</u>	<u>This item is not applicable in relation to this response as all relevant pipelines are non-scheme pipelines.</u>	<u>NULL</u>	<u>Yes.</u>	<u>NULL</u>	<u>NULL</u>

Responding to items that rely on certain conditions

4.2.244.2.30 If a service provider has a negative response to **item 4.1, 11.1, 12.1 or 15.1**, then the service provider may respectively state that **item 4.2, 11.2, 12.1 or 15.2** is not applicable for this reason rather than providing additional information.

4.2.254.2.31 If a service provider has not provided services to a user or negotiated access with a prospective user within the compliance period (as defined in ~~section 4.1~~paragraph 4.1.6 above), then a service provider may state that they have not made bundling a condition of the provision of a service in response to **item 6.1** rather than providing further information.

4.2.264.2.32 If a service provider does not engage the services of any third parties to prepare, maintain and keep the accounts required under s. 141 of the NGL, then a service provider may state this in response to **items 10.2 and 10.4** rather than providing any further information.

4.2.274.2.33 If a service provider has not provided any financial reports to the Australian Securities and Investments Commission or any relevant state or territory body within the compliance period (as defined in ~~section 4.1~~paragraph 4.1.6 above), then the service provider may state that **item 10.5** is not applicable for this reason.

Creating additional tabs in lieu of attaching separate files

4.2.34 A service provider may create an additional worksheet to store diagrams or other reference material in lieu of attaching the material in a separate file, provided that the worksheet is appropriately labelled and referenced.

Using elements of previous responses

4.2.35 A service provider may use content from a previous response to the ACO provided that this information is still current and applicable. While elements of a response may be reused, a new template must be submitted each year.

Example: a service provider producing an ACO response may copy and paste their response for **item 1.2** if their ABN has not changed since the previous compliance period.

Using one template for multiple pipelines

[4.2.284.2.36](#) A service provider may choose to use one ACO response template to cover multiple pipelines, provided that:

- a) the answers to all questions are identical

Example: if a service provider has claims relevant to **item 2.1** in the ACO response template that relate to one pipeline only, a separate response template must be prepared for that pipeline.

Example: if a service provider has published all required information relevant to **item 7.1** in the ACO response template, this may be covered in the one response template even if there are different publication requirements for each pipeline.

- b) and the pipelines that each completed response template applies to are clearly identified within the template or are outlined in a separate attachment.

Note: each relevant pipeline should be identified as part of a service provider's response to **item 1.3** in the ACO response template.

The use of columns G and I (compliance and estimated compliance date)

[4.2.294.2.37](#) A service provider should respond with "yes" in column G if an item is not applicable for any reason outlined above.

[4.2.304.2.38](#) Column I is intended to capture the estimated date that a service provider will be compliant with the corresponding obligations where there is noncompliance.

For example, when a service provider is not compliant with their obligation to develop and maintain an interconnection policy document under r. 39 NGR, the service provider would include the estimated date that such a document will be developed.

The use of columns J and K (attachments)

[4.2.39](#) A service provider may select 'No' in column J and 'NULL' in column K if there is no attachment related to the item.

4.3 Other matters

Password protection for ACO submissions

- 4.3.1 A service provider may choose to include password protection on any file within a submission or to compress and password protect all files within a submission, if agreed to by the AER.
- 4.3.2 If any file within a submission is password protected, the relevant passwords must be provided to the AER prior to the due date in a manner that is agreed upon by the AER and the service provider.

Reviews of the ACO

- 4.3.3 The ACO will continue to be in force in its current form until it is either amended or repealed. Considering the enduring nature of the ACO, we will review the ACO as needed.
- 4.3.4 We may adjust the requirements placed on an individual service provider or a class of service providers in a number of ways, including:
- the use of exemptions (s. 58 NGL), which will generally be published on the AER's website and may, if the service provider is known, notify in writing the relevant service provider(s) of the class of service providers to which the exemption applies (refer to section 3.7 for further details).
 - the supplementing of the ACO with additional information requirements, including from time to time, the service of a notice or urgent notice (served under s. 48(1)(a) of the NGL) requesting further information from a particular service provider of the class of service providers to those to which the ACO applies, or
 - amending or repealing the current ACO and making a new general regulatory information order. Circumstances in which a new order may be made include a change in relation to the content of the information that is requested in the order or an amendment to the NGL or the NGR pertaining to the use of regulatory information instruments under s. 48(1) of the NGL.

5 Audits

5.1.1 As part of our compliance and enforcement activities, the NGL permits the carrying out of compliance audits.⁵¹ Compliance audits are a valuable tool ~~for~~to assist the AER in assessing the compliance practices, systems and procedures a service provider uses, in order for the AER to monitor, identify and report on the behaviour of service providers, including potential breaches of ~~key provisions in~~ the NGL and NGR relating to the efficiency and efficacy of pipeline services. In doing so, an audit allows any deficiencies to be identified and fixed, improving the quality of the compliance approach and reducing the risk of future noncompliance.

5.2 AER's power to carry out or require compliance audits or audited responses to a regulatory information instrument

5.2.1 The AER may:

- a) require the information specified in a regulatory information instrument to be audited by a class of person specified in the instrument before it is provided to the AER⁵²
- b) carry out or arrange for the carrying out by contractors or other persons of a compliance audit of any or all activities of the service provider⁵³; or
- c) require a service provider to carry out or arrange for the carrying out of a compliance audit in connection with specified aspects of the activities of the service provider.⁵⁴

5.2.2 The AER may:

- a) require the service provider to bear the cost of an audit carried out in relation to a ~~regulator~~regulatory information instrument⁵⁵
- b) recover the cost of carrying out an audit carried out by a third party or the AER⁵⁶
- c) require a service provider to bear the costs of conducting a compliance audit.⁵⁷

5.2.3 A compliance audit under ss. 64B or 64C of the NGL must be carried out in accordance with these Procedures and Guidelines.⁵⁸

5.2.4 In sections 5.3–~~5.9~~5.8 of these Procedures and Guidelines, 'compliance audits' refers to audits pursuant to ss. 64B or 64C of the NGL.

⁵¹ See ss. 64B and 64C NGL.

⁵² See s. 55(e)(i) ~~of the~~ NGL.

⁵³ See s. 64B ~~of the~~ NGL.

⁵⁴ See s. 64C ~~of the~~ NGL.

⁵⁵ See s. 55(e)(i) ~~of the~~ NGL.

⁵⁶ See s. 64E(1) ~~of the~~ NGL.

⁵⁷ See s. 64E(2) ~~of the~~ NGL.

⁵⁸ See s. 64D ~~of the~~ NGL.

5.3 Auditors

- 5.3.1 Compliance audits are an impartial and comprehensive assessment of a service provider's ability (including whether it has policies, systems and procedures in place) to meet its obligations under the NGL and the NGR. It is essential that the person or persons carrying out the compliance audit, or providing an audited response to a regulatory information instrument (Auditors):
- a) are able to act without bias and without any actual or potential conflicts of interest
 - b) have the professional competence to apply established audit standards⁵⁹ and techniques to carry out the compliance audit to a high standard
 - c) have a system of quality controls to ensure audit reports are of a professional standard
 - d) have relevant expertise including experience in the NGL, the NGR and the Regulations, and
 - e) be able to comply with any specifications in the Terms of Reference, which the AER determines are necessary in relation to the compliance audit matter in question, including the capacity to deliver the results of the audit in accordance with the specified timeframes.

5.4 Decision to use compliance audits

~~5.4.1 When deciding to carry out a compliance audit or require a service provider to carry out a compliance audit, the AER will:~~

- ~~a) apply a risk-based framework, and~~
- ~~b) consider all other options available to the AER under the NGL.~~

~~5.4.25.4.1~~ The use of our compliance audit powers will be decided on a case-by-case basis. ~~See Appendix C~~See Appendix C: How the AER will make a decision to require a compliance audit for a flowchart which outlines the AER's compliance audit decision making process.

~~5.4.35.4.2~~ The factors ~~for~~the AER will consider in determining the use of compliance audits ~~are~~may include:

- a) concerns with compliance by service ~~providers of~~provider(s) with their obligations under the NGL and the NGR, including possible breaches or the risk of future breaches
- b) the level of risk and potential impact of a breach of the requirements of the NGL and the NGR to which the compliance audit relates
- c) the ability of the AER to assess the service provider's compliance with requirements under the NGL and the NGR via other monitoring activities including voluntary information requests, and

⁵⁹ In determining the approach of the audit (see ~~section~~paragraph 5.5.1 of these Procedures and Guidelines), the AER will consider the most suitable guideline and/or standard in the circumstances of each case. The AER may require that audits are conducted in accordance with the Standard on Assurance Engagements ASAE 3100 *Compliance Engagements*, as may be amended from time to time.

d) any other relevant consideration.

Risk based approach

~~5.4.4—We will use a targeted risk based approach to compliance audits informed by a service provider’s compliance with its obligations under the NGL and the NGR.~~

~~5.4.5—In determining the level of risk, we will consider the potential consequences of noncompliance and broader market impact.~~

~~5.4.6—For example, compliance audits may be warranted if we consider that there are significant deficiencies in a service provider’s compliance systems and processes (i.e., an inability to identify and report on potential breaches or to provide information of sufficient quality in response to a general regulatory information order, including the AGO) and/or where conduct may cause detriment to the operation of the gas market or a customer of the service provider.~~

Consideration of other options

~~5.4.7—Section 3.4 of these Procedures and Guidelines also provides that we will consider if there are other means of obtaining the required information before deciding to use compliance audits.~~

~~5.4.8—Our powers under the NGL allow us to monitor and investigate compliance issues. At first instance, we will generally seek voluntary information from service providers, but where necessary we can use compulsory information notices to compel an entity to provide certain information and data.⁶⁰~~

~~5.4.9—To determine if a service provider has effective compliance systems, we will first consider if we can obtain this information through our other powers under the NGL. However, there may be instances where this information can only be provided via an audit process. For example, a third party audit can provide an impartial and comprehensive assessment to resolve concerns as to whether a service provider has adequate systems and processes in place to effectively monitor and report under the reporting framework.~~

Use of Third-Party Auditors

~~5.4.10—The application of a risk based framework may mean that the level of risk and harm associated with a compliance matter will influence our decision on whether a third-party auditor is necessary to ensure an impartial and comprehensive assessment can be made.~~

~~5.4.11—Using third party auditors assures that a compliance audit is conducted competently with a level of professional scepticism and carried out according to established auditing standards (as specified in the Terms of Reference). Moreover, where the audit involves an assessment of the adequacy of a service provider’s systems or processes, a third party auditor can provide a different perspective and identify any discrepancies or areas of improvement. This ensures we can be confident that the audit is impartial and objective. As such, a compliance audit may at times be best carried out by a third party auditor.~~

⁶⁰ See s. 42 of the NGL.

~~5.5 Terms of reference~~

5.5 Terms of Reference

- 5.5.1 The AER will determine the Terms of Reference for a compliance audit. This includes the scope, approach, coverage, timeline and required output, and any other specifications which the AER determines are necessary, for a compliance audit of a service provider.
- 5.5.2 In general, the Terms of Reference will include:
- a) The scope and approach of the compliance audit – details the terms of engagement, i.e., the involvement of third parties, personnel and expertise requirements. We may also specify the appropriate design and sources of evidence, for example, that an audit be conducted in accordance with certain guidelines and/or standards⁶¹ in the circumstances of each case and propose scenarios to test a service provider's compliance with specific obligations.
 - b) Coverage of the compliance audit – details on the purpose and subject matter of the audit. This includes, for example, the characteristic or criteria of the regulatory obligation and the criteria for which an entity may not be compliant.
 - c) A timeline and required output for the audit process – details on the timing of the audit process, including when we expect to receive a draft and final audit report.
- 5.5.3 The service provider to be audited will be given a period of at least 2010 business days, or as otherwise agreed with the AER, to provide submissions on the Terms of Reference.
- 5.5.4 The timeline of the compliance audit may include a requirement for a draft audit/mid-term progress report to be provided to the AER or the service provider to review.
- 5.5.5 If a mid-term progress report is required under the Terms of Reference, the AER may give the service provider feedback on the mid-term progress report, including any failure to address the Terms of Reference and/or other identified deficiencies of the audit process to date.

5.6 Compliance audits carried out by the AER

- 5.6.1 Where the AER exercises its powers to carry out a compliance audit under s. 64B NGL, the AER will carry out the compliance audit in accordance with the following requirements.
- 5.6.2 A compliance audit may be carried out in relation to any or all activities of a service provider for the purpose of assessing the entity's compliance with the requirements of the NGL, the NGR and the Regulations.
- 5.6.3 The AER will typically appoint a third-party Auditor to carry out the compliance audit on its behalf.
- 5.6.4 The AER will provide the service provider with notice of the compliance audit. The notice will include:

⁶¹ e.g., the Standard on Assurance Engagements ASAE 3100 *Compliance Engagements*, which may be amended from time to time.

- a) the Terms of Reference, and
 - b) details of the appointed Auditor.
- 5.6.5 The AER will arrange an initial meeting between the service provider and the Auditor. Representatives of the service provider must attend the initial meeting. The purpose of the initial meeting is to ensure that all arrangements and protocols are in place to enable the compliance audit to be carried out.
- 5.6.6 The service provider must take all reasonable steps to ensure that the Auditor has access to all relevant sources of information in the entity's control or possession, including access to:
- a) relevant information from any officers, employees, representatives or agents of the service provider
 - b) any relevant records, including its complaints registers/reports and any documents relevant to the training or induction program, and
 - c) any documents created by the service provider's consultants or legal advisors for use in relation to the activities of the service provider.
- 5.6.7 The service provider must take all reasonable steps to ensure the timelines determined by the AER for the compliance audit are satisfied.
- 5.6.8 The AER will recover all reasonable costs incurred in conducting a compliance audit from the service provider as per ~~5.6.7 to 7.6.11~~5.6.11 to 5.6.14 below.⁶²
- 5.6.9 The AER will procure the services of the third-party Auditor in accordance with the *Public Governance, Performance and Accountability Act 2013* (Cth) and the *Commonwealth Procurement Guidelines*Rules⁶³, which may be amended from time to time.
- ~~5.6.10~~ 5.6.10 The Prior to commencing an audit, the AER will inform the relevant regulated entity of the reasonable costs that it expects to recover from the regulated entity upon completion of the audit, based on the outcomes of the AER's procurement of the relevant services and the cost of the engagement.
- ~~5.6.10~~5.6.11 At the conclusion of the audit, the AER will determine the reasonable costs to be paid by the service provider for the AER carrying out of the compliance audit.~~In determining these costs, the AER will have~~ having regard to:
- a) whether the work done was within the scope of the Terms of Reference
 - b) the complexity or difficulty of the issues to be addressed
 - c) the place or circumstances in which the audit was carried out, and
 - d) the timetable within which the compliance audit was to be carried out.
- ~~5.6.11~~5.6.12 The reasonable costs of the compliance audit will be no more than the costs that are actually incurred by the AER.

⁶² See s. 64E(1) NGL.

⁶³ See the Commonwealth Procurement Rules.

~~5.6.12 Where a single audit covers more than one service provider, the costs of the audit will be itemised for each service provider.~~

5.6.13 The AER will provide the service provider with an invoice that identifies the amount payable and provides details of how payment is to be made. The invoice will be accompanied by:

- a) a copy ~~pf~~of the invoice issued to the AER by the auditor in relation to the cost of carrying out the compliance audit, or
- b) if less than the full cost of the audit is to be recovered from the service provider, the components of the invoice that will be payable to the service provider.

5.6.14 The service provider is required to pay the invoice no later than 30 business days after the AER issues the invoice.

~~5.6.15 Prior to commencing an~~ The Terms of Reference for a compliance audit, carried out by or on behalf of the AER may inform will include opportunities for the relevant service provider or entities of the expected cost(s) of conducting to respond to the audit, findings, including:

- a) an opportunity to review and respond to any draft findings prior to completion of the audit report; and
- b) a requirement for management to provide comments in response to each finding in the costs that the AER intends to recover from final audit report, including a documented implementation plan setting out how, and in what timeframes, the service provider (or each) proposes to address those findings with reference to any recommendations for improvements and/or corrective actions made by the auditor.

The AER will allow the service provider) upon completion of the audit a minimum period of 10 business days for each of these responses.

5.7 Compliance audits carried out by service providers

5.7.1 Where the AER requires a service provider to carry out a compliance audit under s. 64C NGL, the AER will provide the service provider with notice of the requirement to carry out a compliance audit (the Notice) and the Terms of Reference for the compliance audit. The service provider must carry out the compliance audit in accordance with the Notice, the Terms of Reference and the following requirements.

5.7.2 A compliance audit may be required to be conducted in connection with specified aspects of the activities of the service provider in relation to the entity's compliance with the requirements of the NGL, the NGR, or the Regulations.

The service provider must submit an Audit Proposal

5.7.3 The service provider must submit, within 20 business days after receiving notice of the compliance audit, an Audit Proposal setting out:

- a) whether the compliance audit will be conducted by the service provider or a third party on behalf of the service provider
- b) how the person or persons can carry out the compliance audit in accordance with section 5.3 of the Procedures and Guidelines and the Terms of Reference under section 5.5, and

- c) if a contractor or other persons carries out the compliance audit, the reasonable steps the service provider ~~must~~will take ~~all reasonable steps~~ to ensure the relevant persons have access to all relevant sources of information in the entity's control or possession, including access to:
- i) relevant information from any officers, employees, representatives or agents of the service provider
 - ii) any relevant records, including its complaints registers/reports and any documents relevant to the training or induction program, and
 - iii) any documents created by the service provider's consultants or legal advisors for use in relation to the activities of the service provider.
- 5.7.4 If the service provider proposes to arrange for a third party to carry out the audit on its behalf, the proposal must clearly identify, and be prepared with the input of, that third party.
- 5.7.5 The AER may reject the Audit Proposal submitted if it is not satisfied that the compliance audit can be carried out in accordance with the Procedures and Guidelines and the Terms of Reference under section 5.5: of these Procedures and Guidelines. This includes, without limitation, where the AER considers the nominated auditor will not be able to satisfy the experience and independence criteria set out in paragraph 5.3.1 of the Procedures and Guidelines. This may be particularly relevant where the service provider proposes to carry out the compliance audit on its own behalf.
- 5.7.6 If the AER rejects an audit proposal, the AER may, at its discretion:
- a) require the service provider to submit a revised audit proposal, or
 - b) elect to carry out the audit itself (or engage in a third party to do so on the AER's behalf) under s. 64B.

Requirements of the audit report

- 5.7.7 The findings of a compliance audit must be set out in a written report and address each of the following:
- a) ~~Details~~details of the evidence gathered and examined during the audit.
 - b) ~~The~~the name and relevant qualifications and experience of the Auditors carrying out the audit.
 - c) ~~The~~the findings of the compliance audit in relation to the matters raised in the Terms of Reference.
 - d) ~~Recommendations~~recommendations that the Auditor considers are reasonably necessary to ensure effective compliance.
- 5.7.8 We require that compliance audit reports are:
- a) comprehensive and address the Terms of Reference
 - b) clear in their findings and written in plain English that is unambiguous
 - c) evidence based and include findings that can be substantiated, and
 - d) free from errors.

- 5.7.9 The auditor report must include a summary of the key findings of the audit. The summary is to be in the form of an audit summary template which will be supplied by the AER.
- 5.7.10 The ~~regulated entity~~service provider must provide a copy of the final audit report to the AER within 20 ~~business~~ days of the conclusion of the audit, (the completion of the final audit report), or as otherwise agreed with the AER.⁶⁴
- 5.7.11 If a draft audit report is required under the Terms of Reference, the AER may give the ~~regulatory entity~~service provider notice of any deficiencies in the draft audit report to meet the requirements under the Procedures and Guidelines, including a failure to address the Terms of Reference, and/or that the report is not comprehensive, clear, evidence based or free from errors.
- 5.7.12 The final audit report must be accompanied by a signed letter from the service provider on company letterhead acknowledging the findings of the audit. This letter should include:
- how, and in what timeframe, the service provider proposes to address each finding
 - how the service provider will keep the AER informed of the progress and completion of each item
 - if the service provider considers any or all of the audit findings do not need to be addressed, an explanation of why this is the case.
- 5.7.13 The letter must be signed by the ~~CEO~~Chief Executive Officer or Managing Director (or acting ~~CEO~~Chief Executive Officer or Managing Director) of the service provider before it is submitted to the AER.

~~5.7.14 The AER will publish a summary of outcomes of each audit on its website at the conclusion of the audit process.~~

~~5.7.15~~5.7.14 The AER may refuse to accept receipt of audit reports that do not comply with the Procedures and Guidelines and the Terms of Reference.

~~5.7.16~~5.7.15 Failure to provide audit reports within the period specified in the Terms of Reference is a breach of a civil penalty provision under the NGL.⁶⁵

~~5.7.17~~5.7.16 At any stage, if the AER is not satisfied that a compliance audit can be or is conducted in accordance with the Procedures and Guidelines, including the Terms of Reference, the AER may revoke the requirement for the service provider to carry out a compliance audit and then exercise its power to carry out a compliance audit under s. 64B of the NGL.

5.8 Post Audit

- 5.8.1 ~~In order to promote transparency, the~~The AER ~~will~~may publish a summary of outcomes of each audit ~~carried out pursuant to ss. 64B or 64C of the NGL~~ on its website at the conclusion of the audit process.

⁶⁴ See s. ~~64B~~64C(3) NGL.

⁶⁵ See s. 64C(3) NGL.

~~5.8.2—If we conduct a compliance audit, the service provider will have a reasonable opportunity to provide us comments on any factual errors it identifies in the final audit report. If these factual errors are accepted, the audit report will be rectified before the report or the findings in the audit report is made publicly available.~~

~~5.9 Proportionate Response~~

~~5.9.1—After the final audit report following an audit carried out pursuant to ss. 64B or 64C of the NGL, we will seek a response from the relevant service provider in relation to the findings of the report. This may include any proposed corrective actions and timeframes to rectify any noncompliance.~~

~~5.9.2—We will consider the information in the final audit report and any submissions from the service provider and respond in a proportionate manner to any noncompliance identified through the audit process.~~

5.105.9 Audits required in regulatory information instruments

~~5.10.15.9.1~~ 5.9.1 Where the AER exercises its powers to require an audit of the information provided in response to a regulatory information instrument under s. 55(e) of the NGL, the requirements of the audit will be outlined within the regulatory information instrument.

~~5.10.25.9.2~~ 5.9.2 All information that is provided in response to a regulatory information instrument must be audited when audits are carried out pursuant to s. 55(e-.) of the NGL.

~~5.10.35.9.3~~ 5.9.3 The requirements outlined in a regulatory information instrument may include:

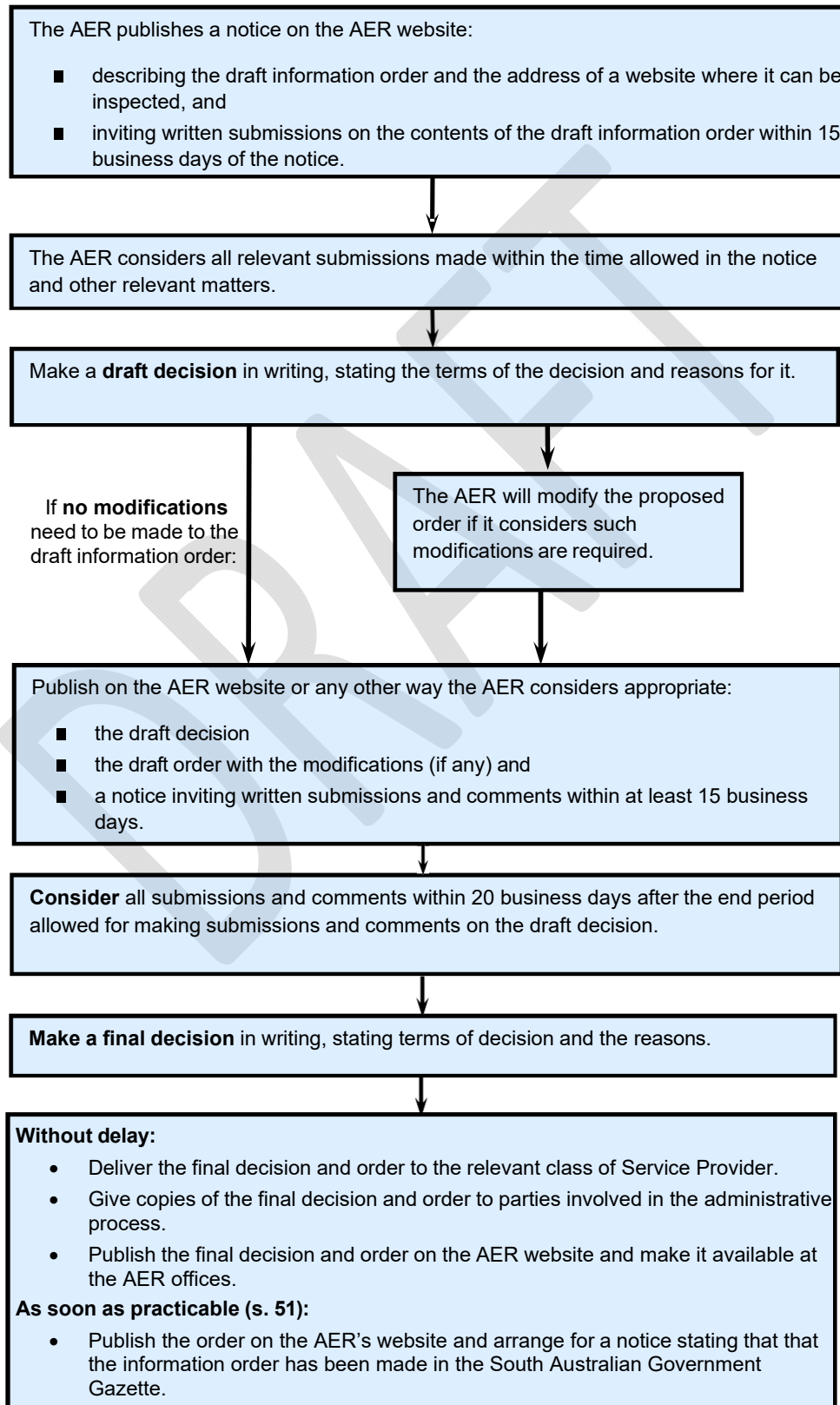
- a) assurance requirements
- b) the class or classes of persons that may conduct audits or reviews, and
- c) statutory declaration requirements.

Glossary

Term	Definition
ACO	The Annual Compliance Order. This is a general regulatory information order that is used to collect compliance information from gas pipeline service providers after the end of each financial year.
ACCC	Australian Competition and Consumer Commission
ACCC/AER Information Policy	The ACCC/AER policy for the collection, use and disclosure of information, available from the AER's website
Access arrangement	An arrangement setting out terms and conditions about access to pipeline services provided or to be provided by means of a scheme pipeline (s.2 NGL)
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Gas code <u>CCA</u>	National Third Party Access Code for Natural Gas Pipeline Systems <u>Competition and Consumer Act 2010 (Cth)</u>
NGL	National Gas Law
NGR	National Gas Rules
Procedures and Guidelines	These AER Compliance Procedures and Guidelines
Regulations	National Gas Regulations
Related provider	A related provider is a person who supplies a contributing service to a service provider (s. 43 NGL)
Service provider	A service provider is a person who owns, controls or operates or intends to own, control or operate a pipeline or any part of a pipeline (s. 8 NGL)

Appendix A: How the AER makes a general regulatory information order

Figure 1: Summary of how the AER follows the standard consultative procedure when making a regulatory information order



Appendix B: Pro forma – Exemption from a general regulatory information order

To be submitted on company letterhead

[Date]

From: [Name]
[Position title]
[Regulated entity]

To: Chief Executive Officer
Australian Energy Regulator
AERCompliance@aer.gov.au

AERGasNetworksCompliance@aer.gov.au

Application is made for an exemption under section 58 of the *National Gas Law* (“NGL”) from complying with the general ~~regulator~~regulatory information order dated [insert date] made by the AER under section 48(1)(b) of the NGL([insert name of the order]).

1. (a) **Name and ABN of applicant:**
[insert full legal name and ABN of applicant]
- (b) **Short description of the business carried on by applicant:**
[e.g. The applicant is a service provider of pipeline services]
- (c) **Name of the pipeline:**
[insert pipeline name]
- (d) **Is the pipeline a transmission or distribution pipeline?**
- (e) **Please identify whether the applicant is either an owner, controller or operator of the pipeline.**
- (f) **List any other owners, controllers or operators of the pipeline:**

2. Grounds for grant of exemption:

3. Name and address of persons authorised by the applicant to provide additional information in relation to this application:

[name]

[job title]

[address]

[telephone]

[email]

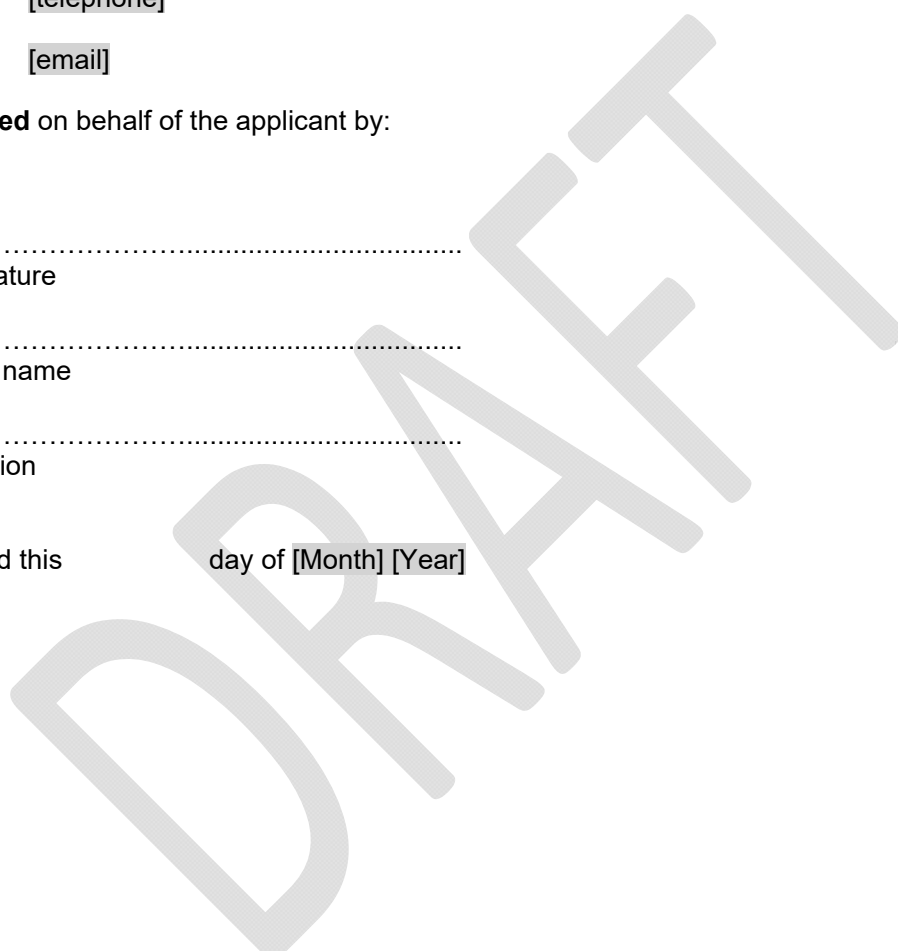
Signed on behalf of the applicant by:

.....
Signature

.....
Print name

.....
Position

Dated this day of [Month] [Year]



Appendix C: How the AER will make a decision to require a compliance audit

Figure 2: Summary of the AER's compliance audit decision making process for audits carried out under ss. 64B and 64C of the NGL

