

# AER Compliance Procedures and Guidelines

for gas pipeline service providers

Explanatory note –  
draft decision

October 2024

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# 1 Overview

## 1.1 Role of the Procedures and Guidelines

The AER is responsible for monitoring, investigating, enforcing and reporting on the compliance of gas pipeline service providers with their obligations under the National Gas Law (NGL), National Gas Rules (NGR) and the Regulations.<sup>1</sup> To support these roles, the AER is required to make the AER Compliance Procedures and Guidelines (Procedures and Guidelines) under section 64F(1) of the NGL.

The aim of the Procedures and Guidelines is to enable gas pipeline service providers and other market participants to better understand and follow their compliance obligations under the NGL and the NGR. The Procedures and Guidelines set out the relevant powers and functions of the AER, and provide guidance, instructions and templates to service providers relating to the various compliance procedures within this new framework. The Procedures and Guidelines serve the following purposes within the AER's compliance monitoring and framework:

- provide background information on the regulatory framework for gas pipelines and the information gathering powers available to the AER
- provide guidance on reporting requirements, including the Annual Compliance Order (ACO), and
- outline the AER's audit powers and requirements for gas pipeline service providers.

Guidance on the requirements of the NGL, the NGR and the Regulations was previously provided in the AER's voluntary Annual Compliance Guideline made in 2010 to complement the prior 2008 Annual Compliance Order (ACO).<sup>2</sup>

## 1.2 Consultation on the Procedures and Guidelines

This is the second stage of consultation, in which we are seeking stakeholder input on the changes set out in the updated draft of the Procedures and Guidelines. This explanatory statement sets out stakeholder submissions in response to the issues paper and our proposed changes in response.

The draft decision publication includes a clean version of the updated draft of the Procedures and Guidelines and a markup version of all changes made to the previous proposed draft. This will allow service providers and other interested stakeholders to identify and review the changes that were made to the proposed draft more easily.

We are seeking stakeholder views on the revised Procedures and Guidelines to inform the final Procedures and Guidelines. We anticipate making a final decision in December 2024.

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<sup>1</sup> See *National Gas (South Australia) Act 2008 (SA)*, *National Gas (South Australia) Law* and *National Gas (South Australia) Regulations, National Gas Rules 2008*.

<sup>2</sup> [AER Annual Compliance Guideline](#), Final, Australian Energy Regulator, July 2010.

### 1.2.1 Consultation process

For the AER's consultation on the Procedures and Guidelines, the AER is required to follow the Standard Consultative Procedure outlined in r. 8 of the NGR.

Consultation on the proposal to make the Procedures and Guidelines commenced on 26 August 2024. [An Issues Paper was published](#) in addition to the draft Procedures and Guidelines. Submissions closed on 16 September 2024.

We received 5 submissions on the proposal to make the Procedures and Guidelines, which are available on [our website](#). Submissions were received from the following stakeholders in addition to an anonymous stakeholder:

- APA Group
- Australian Pipelines and Gas Association (APGA)
- Jemena, and
- Shell QGC.

We also obtained initial feedback on the content of the initial draft Procedures and Guidelines via a stakeholder forum on 9 September 2024, attended by 30 external representatives from 19 interested parties.

### 1.2.2 Making a submission

We invite interested parties to make submissions on the draft decision to make the Procedures and Guidelines for gas pipeline service providers by close of business **15 November 2024**.

Submissions should be sent electronically to [AERGasNetworksCompliance@aer.gov.au](mailto:AERGasNetworksCompliance@aer.gov.au).

Alternatively, you can mail submissions to:

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

### 1.2.3 Publication of submissions

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

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

If the confidentiality claim is accepted, it will be treated in accordance with the terms set out in the ACCC/AER Information Policy. For further information about the use and disclosure of information you provide, see the ACCC/AER Information Policy (June 2014) on [our website](#).

We will place all non-confidential submissions on [our website](#).

For enquiries about this paper, or about lodging a submission, please contact us on 1300 585 165 or [AERGasNetworksCompliance@aer.gov.au](mailto:AERGasNetworksCompliance@aer.gov.au).

## 2 Refinements to draft Procedures and Guidelines in response to submissions

We have considered information and feedback provided through the stakeholder forum, written submissions and other engagement on the proposed draft of the Procedures and Guidelines in formulating our draft position.<sup>3</sup>

We have sought to balance several factors, including the policy intent of the AER's powers in the expanded scope of the NGL, NGR and Regulations and the AER's desire to apply those powers flexibly. The AER is conscious of the burden associated with its enhanced powers, including through information collection and compliance audits, and seeks to minimise burden where appropriate in line with the principles outlined in the draft decision on the Procedures and Guidelines.

In the sections below we outlined the key issues highlighted by stakeholders during initial consultation, and our response in the draft decision.

### 2.1 Information gathering

The main themes during the stakeholder forum and in submissions were concerns and questions about:

- the potential for our use of our information gathering powers
- how confidential information and documents will be handled, and
- how the AER will grant and amend exemptions from general regulatory information orders, including the ACO.

In this section we address these concerns along with the other concerns raised in relation to information gathering.

#### 2.1.1 Our use of information gathering powers

The AER has a number of tools for gathering information about compliance and verifying the accuracy of the information that we have gathered. Chapter 3 of the draft Procedures and Guidelines sets out our information gathering powers, including our general information gathering powers under s. 42 of the NGL and our use of regulatory information instruments under division 4, chapter 2 of the NGL. Chapter 5 of the draft Procedures and Guidelines sets out our compliance audit program, made pursuant to ss. 64B and 64C of the NGL.

Our main focus when deciding to use these powers is to use the appropriate tools for the given circumstances. This helps reduce the burden on service providers and the AER in reporting and analysing compliance information, respectively.

A stakeholder raised that a general regulatory information instrument, such as the ACO, must not be made solely for the purpose of investigating breaches or possible breaches of the NGL, the NGR or the Regulations (s. 48(3) NGL). The stakeholder submitted that the use

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<sup>3</sup> See the AER's website for a [synopsis of the stakeholder forum](#) and [publicly available submissions](#).

of a compliance audit in response to information provided under the ACO suggests that the ACO is being used predominantly, if not for the sole purpose of investigating breaches.

The stakeholder also submitted that if the AER is seeking to increase its enforcement powers, it should be transparent and appropriately draft a new section in the Procedures and Guidelines.

We note that the AER must not serve a regulatory information notice or make a general regulatory information order **solely** for the purpose of:

- investigating breachers or possible breaches of the NGL, NGR or Regulations
- instituting and conducting proceedings or appeals, or
- any application for review of a decision of the AER under Chapter 8 Part 5 NGL.

As outlined in section 1.3 of the ACO instrument itself, the primary purposes of the ACO are enable the AER to:

- perform its functions and powers under ss. 27(1)(a), 63A and 63B of the NGL by regularly and systematically monitoring compliance with chapter 4 of the NGL, and
- contribute to the achievement of the national gas objective (s. 23 NGL).

The response template for the ACO includes references to the NGL and the NGR that outline what obligation each information request is designed to monitor compliance with. Each year, service providers are required to respond to the ACO, which the AER will assess. We also note that the previous ACO, which was made in 2008, was used for the purpose of monitoring compliance.

The ACO process is not differentiated by service provider (unless a service provider holds a relevant exemption), is based on legislative requirements on the AER and on service providers and does not involve any assumptions about breaches or issues on the part of the service providers subject to the ACO. As such, we view the design of the ACO appropriate for regular and systematic compliance monitoring and to be in line with s. 48 of the NGL.

Once the information is collected, the NGL, NGR and Regulations does not prohibit the AER from using the information for other purposes connected with the performance or exercise of a function or power of the AER under relevant laws. Where appropriate, we may use the information collected for other AER purposes, including, for example, for compliance and enforcement purposes.

### **2.1.2 Use of voluntary information requests**

Some stakeholders raised a preference for the AER to engage with service providers to seek information voluntarily before issuing a formal information collection notice or an audit request (stakeholder forum comments, anonymous submission, APA submission).

In many cases, the AER will request information voluntarily either before or instead of relying on compulsory powers. However, there are circumstances where the AER may consider that seeking information voluntarily is not appropriate. For example, in circumstances where:

- it is important for the AER to have full and complete information on key issues in circumstances where voluntary requests will not deliver the same level of compliance



- a party is unable to provide the information voluntarily because of legal or confidentiality restrictions on disclosure
- critical information required by the AER will be most efficiently sought through the use of a compliance audit or compulsory information notice
- a party may have previously failed to respond or respond fully to a voluntary request
- the AER has concerns that a voluntary request will be met with delays or protracted negotiations impacting the AER's ability to carry out its functions, or
- a party does not want to cooperate with the AER.

The AER's draft position is to retain flexibility as to its approach for information collection. The factors outlined above provide transparency over when the AER would move to use compulsory information gathering powers without relying on the provision of voluntary information in the first instance. We will engage with service providers prior to issuing a formal information collection notice if we consider this to be appropriate in the given circumstances.

## **2.1.3 Confidentiality**

### **2.1.3.1 How the AER handles confidential information**

In section 1.6 of the proposed Procedures and Guidelines, we set out our approach to confidentiality and the use of information. As part of our draft decision, we have expanded this section with additional information about our approach to protecting information that is submitted to us in confidence and the circumstances where the disclosure of confidential information by the AER may be permitted.

The AER has well-established procedures for the internal handling of data and information, both sensitive and non-sensitive. To increase transparency, we have included an overview of our internal handling procedures in a new section 1.7 of the Procedures and Guidelines draft decision. We have also provided further information on the AER's confidentiality procedures and use of information in section 1.7 of the Procedures and Guidelines draft decision.

Shell QGC indicated support in its submission for the AER allowing password-protected files and suggested that the AER should set out the controls that it will implement to ensure the protection of confidential information. Further information about this is provided in this new section. We have included that the use of password-protected files requires agreement with the AER. This is to retain flexibility for the AER, as our systems for ACO responses currently support the use of password-protected files, there may be future situations where this is not possible.

### **2.1.4 Exemptions from general regulatory information orders**

In its submission, Jemena requested clarification on the operation of exemptions from responding to a general regulatory information order, as outlined previously in relation to s. 58 NGL, and we also received comments in the context of the ACO at the stakeholder forum. In particular, questions were raised about:

- whether exemptions under s. 58 NGL are tied to a specific general regulatory information order

- if a general regulatory information is amended, whether an exempted provider under s. 58 NGL would need to reapply for an exemption, and
- what process the AER will follow when revoking or amending a s. 58 NGL exemption.

We have included additional guidance about section 58 exemptions in section 3.7 of the Procedures and Guidelines draft decision. As outlined in this new guidance, the scope of s. 58 NGL permits the AER to grant an exemption to any general regulatory information instrument, including with conditions, or to the extent specified in the exemption.

We have also clarified that a service provider is responsible for determining their own eligibility to apply for an exemption, applying for it and then assessing whether any exemptions that they hold are relevant to items in the ACO template or to the ACO itself.

## 2.1.5 Other issues relating to information collection

Table 1 below outlines the remaining issues raised by stakeholders that are relevant to Chapter 3 of the Procedures and Guidelines draft decision and our response to those issues.

**Table 1: Other issues raised in relation to information collection**

#	Issue raised by stakeholders	Our response
1	In its submission, Jemena sought further clarity on the circumstances in which the AER would use regulatory information instruments rather than general information gathering powers (s. 42 NGL) and the differences between these powers.	Further information on s. 42 NGL compulsory notices is available in the <a href="#">AER's Compulsory Notice Guidelines</a> , which includes penalty information.
2	In its submission, Jemena also requested elaboration on price information orders, including the process for obtaining information under such an order.	Price information orders (pursuant to s. 48 NGL) are linked to the AER's 'gas reporting functions'. Under transitional rule 81 NGL, the use of those functions by the AER are largely limited until after the ACCC's gas inquiry (which is still ongoing) has concluded.  For this reason, we have not included information on the AER's use of these powers in the Procedures and Guidelines. We anticipate revisiting the coverage of price information orders at a later time.
3	Some stakeholders raised that the AER should work to streamline or harmonise reporting processes across various regulatory bodies, to reduce industry burden and costs (stakeholder forum comments, anonymous submission).	Section 3.5 of the Procedures and Guidelines draft decision outlines the principles the AER will use for future regulatory information instruments or voluntary information requests. Where there is overlap with information collected by other agencies, we will consider the feasibility of: <ul style="list-style-type: none"> <li>• obtaining relevant information from the other agency</li> <li>• seeking consent of relevant service providers, where the legislation allows this, and</li> </ul>

#	Issue raised by stakeholders	Our response
		<ul style="list-style-type: none"> <li>• harmonising our collection instruments with those made by other agencies.</li> </ul> <p>There are numerous reasons why the above options may not be feasible, such as information security classification, confidentiality or other requirements (which may be legislative restrictions). It may be possible to overcome such limitations if service providers are prepared to consent to the provision of information to the AER. We will endeavour to work with service providers to identify opportunities where information collection can be streamlined or harmonised.</p>
4	<p>In its submission, Jemena sought clarification on paragraph 3.6.1 of the proposed Procedures and Guidelines. In particular, Jemena sought further guidance on the AER's approach where it deems that information requested under a regulatory information instrument is incomplete or inconsistent, and whether the AER would provide written notice to the service provider and an opportunity to respond.</p>	<p>We have clarified in what is now paragraph 3.6.2 of the Procedures and Guidelines draft decision that there may be 2 kinds of issues that arise from information the AER obtains from a regulatory information instrument:</p> <ul style="list-style-type: none"> <li>• a compliance issue identified through the response provided to a regulatory information instrument, and</li> <li>• a compliance issue in providing the information required by the regulatory information instrument itself.</li> </ul> <p>For both scenarios, the AER will provide written notification of the nature of the compliance issue identified.</p> <p>For the first scenario, the AER will provide the service provider with an opportunity to respond. In the draft decision, the AER retains flexibility as to subsequent steps, which may include seeking further information. This aligns with the AER's broader approach to compliance and enforcement, as outlined in section 2.6 of the Procedures and Guidelines draft decision.</p> <p>In relation to the second scenario, the AER will provide information about a course of action, such as resubmission of information, and the service provider will have an opportunity to respond.</p>

## 2.2 Audits

The NGL allows the AER to carry out (or require a service provider to carry out) an audit in relation to the service provider's compliance with the requirements of the NGL, NGR and the Regulations.

Compliance audits are a well-established regulatory tool which inform the AER of the effectiveness of a business's existing systems to monitor, identify and report on any potential breaches with the NGL, NGR and the Regulations. Where audits reveal deficiencies in a

business's systems, these can be fixed and the AER can share learnings with other businesses, leading to improvements in overall compliance systems.<sup>4</sup>

## 2.2.1 Aims of compliance audits

Stakeholders raised concerns about the use of audits for an investigative purpose. A stakeholder submitted that compliance audits should be used to assess and confirm records rather than to investigate noncompliance.

Compliance audits have broad application and can be used by the AER to test compliance by any service provider with any obligation under the NGL, NGR and the Regulations. Compliance audits are an impartial and comprehensive assessment of a regulated entity's ability to meet its obligations. In the AER's view, the most common aims of compliance audits may be to:

- Determine compliance status – an audit of a service provider will provide the AER with information as to whether that service provider has the appropriate policies, systems and procedures in place to enable it to:
  - efficiently and effectively monitor its compliance with the NGL, NGR and Regulations, and
  - meet its obligations.
- Encourage improvements in systems and processes – Audit findings are not enforceable, however the AER's experience with audit processes is that audited entities implement audit recommendations promptly. The AER considers that the independent nature of the audit process makes it difficult for audited entities to reject the recommendations. As a result, AER compliance audits in other areas have led to significant system improvements by regulated entities. The AER considers this results in improved outcomes for customers.
- Industry insights – the use of compliance audits allows the AER to look at the compliance behaviour of various entities. For example, audits may provide insights into industry compliance with particular obligations and allow the AER to critically analyse a regulated entity's reporting, such as through the ACO, potentially identifying under-reporting.
- Education – the AER uses audit findings to inform our educative compliance work. This may take the form of compliance bulletins and industry letters to set out our expectations of compliance and best practice.
- Signal to service providers – the use of audit powers signal to industry the AER's expectations on regulatory compliance and discourages complacency regarding appropriate systems and processes.

All of these aims are important and demonstrate the value of a compliance audit as a tool used by the AER.

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<sup>4</sup> See for example, the AER's [audit page](#) for compliance audits carried out under the National Energy Retail Law and the National Energy Retail Rules.

The AER does not consider that audit findings would guarantee absolute compliance or noncompliance regarding a particular obligation. Whilst an audit may uncover potential breaches of the NGL, NGR and Regulations, this is a by-product, not the purpose, of the audit. Although an audit may be required where there are concerns about compliance with certain obligations, they are predominantly a compliance tool.

We note that there are aspects of the AER's audits powers that we are still considering, particularly in terms of when we would use these powers. Consequently, we have not definitively outlined our approach in this draft decision. Our approach will be guided by our risk-based approach to compliance and enforcement, and the aims outlined above.

There are broadly 2 approaches to the use of audits that the AER may consider:

- an audit program to assess and improve general compliance (which could include random audits), and
- the use of audits where the AER suspects specific compliance issue/s.

We are in the process of developing our compliance approach including the potential use of audit powers as a way to foster compliance, noting that it is one of a number of tools that we are able to use in our regulatory role. We will continue to engage with industry throughout this process.

## **2.2.2 We acknowledge the burden compliance audits create**

Several stakeholders raised concerns about the burden of compliance audits, including costs and time.

Some stakeholders raised questions about the AER's engagement with service providers before undertaking a compliance audit. Multiple stakeholders submitted that the AER should engage with a service provider first before proceeding with a compliance audit. Stakeholders also noted that voluntary provision of information is less costly for industry and may provide the AER with the information required more quickly than a compliance audit.

While the aims outlined above are important, we recognise the burden associated with undertaking an audit. The AER applies a risk-based approach to our conduct regulation role; we seek to ensure that the audit tool is deployed in response to specific harms that it will assist in alleviating. A risk-based approach considers the impact of an obligation and the harms that various provisions of the NGL, NGR and Regulations are aimed at preventing. The risk element of our approach considers the probability of that harm arising, and the impact, meaning the consequences if the harm does arise (for example, impacts to competition in markets or impacts to competitors).

To align with other AER guidelines that relate to audits, we have removed sections that specify the AER's risk-based approach and how we will consider other options for information gathering. We have instead outlined this information in this explanatory note.

The guidelines outline the factors that the AER will consider in determining the use of compliance audits (see section 5.4 of the Procedures and Guidelines draft decision). Generally, there is some level of consultation with service providers in relation to the AER's use of audit powers or compulsory information gathering powers. The extent to which we may seek voluntary information from a service provider, or seek input on the exercise of audit

powers, will vary on a case-by-case basis. As noted in relation to seeking voluntary information in the first instance (section 2.1.2 above), there are circumstances where we may consider that seeking information voluntarily is not appropriate. The situations described above are also applicable in relation to audit powers.

The likely burden on service providers in carrying out a compliance audit, including time and cost considerations, are a relevant consideration in the AER's decision to require a compliance audit.

We note that if a compliance concern arises from a regulatory information instrument, such as the ACO, the AER will provide written notification of this to the service provider and provide an opportunity to respond (see section 3.6 of the Procedures and Guidelines draft decision). There are other intelligence gathering mechanisms however that may lead to the AER deciding to use a compliance audit.

The use of compliance audit powers by the AER will be on a case-by-case basis. Generally, we will engage with service providers in the first instance before deciding to require a compliance audit. However, there are instances where this initial engagement may only be for the purpose of notifying the service provider of the AER's intention to use its compliance audit powers, rather than seeking input from the service provider in relation to any compliance concerns of the AER. This may depend on the severity of the AER's concern or where the AER considers timing is critical. There may be circumstances where the AER considers it would not be appropriate to seek information voluntarily from the service provider.

### **2.2.3 Terms of Reference**

A submission raised that the Terms of Reference should be limited to the issue giving rise to the decision to require a compliance audit. Additionally, a stakeholder submitted that where the AER comes to the view that an audit is the only option, the AER should clearly explain why it has come to that view when requiring an audit.

The Terms of Reference will provide the scope and boundaries of the audit, and the service provider will have an opportunity to comment on the Terms of Reference (see section 5.5 of the Procedures and Guidelines draft decision). Audits may vary considerably depending on the service provider and the circumstances. The scope of an audit may not be limited to the issue giving rise to the decision to undertake the audit. As such, we have retained flexibility in the Procedures and Guidelines draft decision as to the scope of audits, as the Terms of Reference will be the primary mechanism for determining this.

There are no specific requirements in the NGL as to the AER's decision to undertake an audit, meaning that an audit being the only option is not a precondition to requiring an audit.

The compliance audit powers are legislative and are contained within the NGL. The AER is not 'increasing' its powers through the Procedures and Guidelines, as submitted by a stakeholder. The purpose of the draft Procedures and Guidelines is to provide transparency in how the AER will use the NGL provisions, while balancing flexibility for the AER in its use of these powers.



## 2.2.4 Multiple service providers

Stakeholders raised that the draft proposed Procedures and Guidelines mentioned that a single compliance audit could cover more than one service provider. At the industry forum, there were a series of questions subsequently in relation to whether the AER intended to conduct mass audits or was targeting a particular number of audits each year.

The AER may decide to issue identical or similar audit requests to each member of a group of service providers in circumstances where there the AER has identical or similar concerns with each member of that group, respectively. The AER is not at this stage targeting a specific number of audits on a yearly basis. The number of audits conducted will depend on the AER's risk-based approach to compliance.

If the AER employs a proactive compliance audit program, which it has done in the past in relation to the National Energy Retail Law and the National Energy Retail Rules, it is our general practice to signal this in advance through our public compliance messaging or reporting.

## 2.2.5 Use of third-party auditors

There were multiple questions raised in relation to the use of third-party auditors. A stakeholder raised that the Procedures and Guidelines should allow for the AER to submit a panel of auditors which the service provider can select third-party auditors from.

Stakeholders also raised queries about how the AER would ensure it is obtaining competitive pricing from its use of third-party auditors. It was also raised that the AER's starting position ought to be to allow service providers to conduct audits and consider third-party audits only in specified circumstances, noting the of internal audit functions of large companies.

Under the NGL, a compliance audit can be carried out by or on behalf of the AER, or the AER can require a service provider to carry out a compliance audit.

Where the AER carries out the compliance audit pursuant to s. 64B of the NGL, the AER will typically appoint a third-party Auditor to carry out the compliance audit on its behalf. The AER will procure the services of third-party auditors in accordance with the *Public Governance, Performance and Accountability Act 2013* (Cth) and the Commonwealth Procurement Rules, which may be amended from time to time. Achieving value for money is a core rule in the Commonwealth Procurement Rules and requires the consideration of the financial and non-financial costs and benefits associated with procurement.

The service provider may arrange for a contractor or another person to carry out the audit on its behalf, but the service provider will remain responsible for ensuring the audit is carried out in the manner required by the AER, and that the results are provided to the AER on time. We will determine the appropriate approach depending on the particular circumstances.

The Procedures and Guidelines do not preclude the use of an internal person. However, in practice, where the AER requires a service provider to carry out a compliance audit, we are unlikely to agree to an audit proposal that involves a person internal to the service provider carrying out that compliance audit. Given the potential significant costs flowing from NGL, NGR and Regulations noncompliance, we consider it is important that the person or contractor carrying out the compliance audit is sufficiently independent, and able to act

without bias or actual or potential conflicts of interest. It is unlikely that an internal person will meet these criteria, which are detail in section 5.3 of the Procedures and Guidelines draft decision.

As set out in section 5.5 of the Procedures and Guidelines draft decision, the AER will provide a service provider an opportunity to provide submissions on the Terms of Reference in the written notice, with a timeframe of at least 10 business days to provide the submissions to the AER, or as otherwise agreed with the AER. We value a service provider's perspective on the Terms of Reference, including in relation to the proposed timeline and expected regulatory burden of the audit. The AER may amend the Terms of Reference having regard to any matters raised in the service provider's submissions, and will notify the service provider in writing of any amendments made.

## **2.2.6 Scope of information and documents**

Stakeholders raised issues of confidentiality and restricting the scope of information and documents provided to the auditor and to the AER. A stakeholder submitted that it was unduly burdensome to require the service provider to provide access to all 'relevant sources of information' to the auditor. As noted above, our main focus when using our compliance tools to use the appropriate tool and focus the for the given circumstances, which includes considering whether the scope is appropriate.

A stakeholder also raised that there was a requirement to provide access to any documents created by the service provider's legal advisors. This information is protected by legal privilege and should not be provided to auditors.

A submission raised that there should be provisions for auditors to enter into confidentiality agreements and/or there should be an obligation on auditors to keep information confidential, and to only share the findings of an audit with the AER. The submission also raised that the scope of documents and information provided to an auditor should be restricted so as to not have a 'scatter gun' approach.

The AER has maintained the requirement for the service provider to take all reasonable steps to ensure auditors have access to all relevant sources of information (paragraphs 5.6.6 and 5.7.3(c) of the Procedures and Guidelines draft decision). This is the practice for other AER audits, and aligns with the AER's guidance on compliance audits in the [Retail Compliance procedures and guidelines](#). The provision of documents and information is required in order for the auditor to properly discharge their role.

We note that the scope of audits will be determined by the Terms of Reference on a case-by-case basis. This will provide the boundaries of which documents or information are relevant to the audit. A service provider to be audited will be given a period of at least 10 business days to provide submissions on the Terms of Reference (paragraph 5.5.3 of the Procedures and Guidelines draft decision).

When audits are carried out under ss. 64B or 64C of the NGL, the AER will have access to the final audit report, but generally not the materials the auditors have assessed as provided by the service provider. This is because the AER is interested in the overall assessment made by the auditor and potential improvements, rather than using audits to access base material used to inform the auditor's findings.



Further, the legal documents created by legal advisors specified in paragraph 5.7.3(c) of the Procedures and Guidelines does not include documents that are covered by legal professional privilege. Service providers are not required to provide such materials to an auditor.

## **2.2.7 Alignment with other AER guidelines**

In the draft decision, the AER has made amendments to the audit component of the Procedures and Guidelines to align with established audit processes in other areas, namely the [Retail Compliance procedures and guidelines](#). This has primarily resulted in the streamlining of the audit chapter of the Procedures and Guidelines draft decision.

### **2.2.7.1 Publishing the outcomes of an audit**

Stakeholders raised concerns about section 5.8 of the proposed draft Procedures and Guidelines, which outlined the AER would publish a summary of outcomes from an audit. Some stakeholders strongly objected to the AER publishing a summary of outcomes. A stakeholder raised that given the potential reputational impacts for service providers, where a factual error has been identified by the service provider, the Procedures and Guidelines include a meeting between the AER and the service provider to discuss the factual error prior to the AER making its decision.

Submissions also raised that the AER provide the service provider with the opportunity to consider the summary of outcomes and for the AER to consult with the service provider prior to publication. This is such that the service provider can request redaction of any confidential or commercially sensitive information.

The AER may publish a summary of outcomes of each audit on its website at the conclusion of the audit process. The disclosure of this information would not breach confidentiality, privacy or legal professional privilege.

The intention of publishing the results of a compliance audit is to promote transparency and share learnings with industry. It is an established practice in the context of compliance audits carried out in connection with [the National Energy Retail Law and the National Energy Retail Rules](#).

The published audits relating to the National Energy Retail Law give a high-level overview of the findings of the audit in connection with compliance. We have aligned these Procedures and Guidelines with the [Retail Compliance procedures and guidelines](#) in this respect.

In relation to the opportunity to respond to findings in any draft audit report and in the final audit report, this is relevant to the situation where the AER has conducted the audit. As such, we have aligned section 5.6 with the [Reliability Compliance Procedures and Guidelines](#).

## **2.3 Further guidance on responding to specific ACO items**

Stakeholders raised that they would find further guidance on how to respond to specific ACO items helpful and sought further detail beyond that included in the initial proposed draft of the Procedures and Guidelines.

While we do not consider it practical to cover exhaustively how to respond to the ACO instrument given the variation in responses that will occur between service providers, we have provided additional examples and clarified specific points raised by stakeholders where possible.

Table 2 outlines the specific issues raised about this guidance in greater detail and includes our responses to these issues.

**Table 2: Key issues raised in relation to responding to specific ACO items**

#	Issue raised by stakeholders	Our response
5	<p>Jemena submitted it would be helpful for the AER to clarify the intent of item 9.1 of the ACO template, which requires service providers to provide a list of associates that are directly involved in the sale, marketing or advertising of pipeline services. Jemena queried whether this related to associates that undertake a related business, as opposed to all associates, or associated that undertake a pipeline service.</p>	<p>We have specified in the Procedures and Guidelines draft decision that Item 9.1 of the ACO template is intended to capture the identity of associates that take part in a related business and are involved in the sale, marketing or advertising of the service provider’s pipeline services. This aligns with s. 140 of the NGL which this ACO item is intended to monitor.</p>
6	<p>Stakeholders (stakeholder forum comments, Jemena submission) sought further clarification on item 16.3 of the ACO template, which requires a service provider to provide the terms and conditions governing the provision of access to pipeline services during the compliance period.</p> <p>Jemena queried whether item 16.3 of the ACO template related to associate contracts (r. 32A NGR). Jemena also queried whether this item requires service providers to produce all access contracts entered into during the compliance period, including those renewed or varied. Jemena sought further information on how the AER intends to use the information collected under this item, noting</p>	<p>Item 16.3 of the ACO template is not limited to associate contracts only. Associate contracts are monitored in items 12.1 – 12.4 of the ACO template. Item 16.3 of the ACO template applies to all contracts that stem from a user or prospective user accepting an access offer, see for example r. 105E of the NGR and s. 148D of the NGL.</p> <p>Item 16.3 of the ACO template is not limited to the granting of access to new users or prospective users. R. 105E of the NGR refers to both new access contracts and existing access contracts. As such, all contracts during the relevant period, including variations or renewals that occurred, are required by item 16.3 of the ACO template. Contracts where the contract terms remained the same as for the prior compliance period and have already been provided to the AER are not required.</p> <p>We note that the consultation period for the ACO instrument and template itself has concluded, and the purpose of this consultation is to provide guidance on responding to the ACO. The intention of item 16.3 of the ACO template is to monitor compliance with rr. 105C – 105D of the NGR, as well as ss. 148C and 148D of the NGL. Review of whole access contracts will enable the AER to assess compliance with these obligations more thoroughly.</p>

#	Issue raised by stakeholders	Our response
	the sensitive nature and potential number of access contracts that may be required.	Assessing whether negotiations occurred in good faith by analysing the outcomes of the negotiations will lead to a fairer gas market, which benefits participants and end users.  We recognise the sensitive nature of these contracts and have included additional information in the draft Procedures and Guidelines in relation to AER handling of data and information.
7	Shell QGC noted that the table contained in paragraph 4.2.14 of the draft proposed Procedures and Guidelines was helpful, and suggested other tables, particularly for paragraph 4.2.22.	We have included an additional table for the basis of preparation examples. We have also included an additional table in what is now paragraph 4.2.31 of the Procedures and Guidelines draft decision (previously paragraph 4.2.22 in the proposed draft Procedures and Guidelines).
8	Stakeholders raised that additional guidance on other elements of the ACO instrument would be useful (stakeholder forum comments,, Jemena submission) and sought information about whether elements from previous ACO responses could be used in a new compliance period (stakeholder forum comments).	We have included additional guidance on the following items in response to stakeholder feedback: <ul style="list-style-type: none"> <li>• responding to item 4.2 from the ACO response template</li> <li>• responding to item 8.1 from the ACO response template</li> <li>• responding to item 9.1 from the ACO response template</li> <li>• responding to item 14.2 from the ACO response template</li> <li>• service provider’s requirements in relation to exemptions</li> <li>• the use of columns J and K</li> <li>• inserting additional worksheets, and</li> <li>• using elements from previous responses.</li> </ul>

## 2.4 Other feedback

### 2.4.1 Summarising the regulatory framework for gas pipelines

Chapters 1 and 2 of the draft Procedures and Guidelines outline the regulatory framework for gas pipelines that is set out in the NGL, the NGR and the Regulations.

In chapter 2 of the proposed Procedures and Guidelines, we included summary information of the regulatory framework. We included this information due to the extensive changes that have been made to the legislative framework and the more uniform application of Chapter 4 of the NGL and part 10 of the NGR meaning there are service providers who may be unfamiliar with Chapter 4 of the NGL. During our initial consultation, we sought feedback on whether service providers found this content useful.

Shell QGC was the only stakeholder to expressly comment, stating that this information was relevant, comprehensive and accessible. Given submissions generally sought further detail on particular aspects of the regulatory framework, we have maintained chapter 2 in the Procedures and Guidelines draft decision.

During the industry forum and in submissions, we received several questions on the AER's approach to compliance and enforcement. Some stakeholders raised questions about how the AER balances its compliance and enforcement role with the burden (including time and costs) that the exercise of relevant powers will create on service providers.

We have provided additional information in section 2.6 of the Procedures and Guidelines draft decision to outline our risk-based approach to assessing noncompliance. This includes the types of factors that the AER considers in deciding where to focus our compliance and enforcement attention. We also refer to the AER's Compliance and Enforcement Policy, and Compliance and Enforcement Priorities, which are available on the AER's website and inform all of our compliance and enforcement related activities.

A stakeholder (in an anonymous submission) submitted that paragraph 2.4.18 of the proposed Procedures and Guidelines, which discusses the public availability of access arrangements, did not adequately consider Part 10 exemptions and may incorrectly lead the service providers holding these exemptions to believe that they are required to comply with these requirements. This paragraph only directly refers to r. 68A of the NGR and notes that other requirements 'may' be applicable, so we are of the view that it already addresses this concern and as such we propose to keep the existing wording.

## **2.4.2 The timing of our consultation**

Shell QGC raised in its submission that there are a number of commitments in quarter 4 of each year and as such, it may be more practical for the draft decision submission period to end in December 2024 and for the final decision to be published in January 2025.

We appreciate the number of commitments at the end of the year and the difficulty this leads to in scheduling. It is for this reason that we provided a draft of the Procedures and Guidelines with the proposal and gave stakeholders two opportunities to provide feedback. There is also a legislative timeframe of 20 business days within which the AER is required to make a final decision, starting from the date that submissions to the draft decision close. Therefore, we do not consider that an extended timeframe for consultation is warranted.

## **2.4.3 Minor refinements**

As noted in section 1.2, our draft decision includes a version of the Procedures and Guidelines with all changes made to our proposed draft in track so that interested stakeholders can identify the minor changes made to the document easily.

A number of administrative and editorial suggestions were made in the submissions regarding the following paragraphs from the proposed draft Procedures and Guidelines:

- 2.4.11
- 3.2.4
- 3.3.8
- 3.3.12 (now deleted)

- 3.3.23
- 3.3.24
- 3.5.2
- 3.6.7 (now 3.6.9)
- 3.6.9 (now 3.6.11)
- 3.6.11 (now 3.6.13)
- 3.6.12 (now 3.6.14)
- 3.6.13 (now 3.6.15)
- 3.7.1
- 3.7.8 (now 3.7.12)
- 4.2.14 (now 4.6.16)
- 4.2.16 (now 4.2.22)
- 5.5.5
- 5.7.10
- 5.7.11
- 5.8.1
- 5.9.1 (now deleted).

There were also comments on section 2.6, Appendix B and Appendix C. We have made minor amendments to these sections where we considered it appropriate.

# Glossary

Term	Definition
ACO	Annual Compliance Order
NGL	National Gas Law
NGR	National Gas Rules
Procedures and Guidelines	The AER Compliance Procedures and Guidelines for gas pipeline service providers
The Regulations	The regulations made under Part 3 of the <i>National Gas (South Australia) Act 2008</i> of South Australia that apply as a law of this jurisdiction

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