

Initial consultation on AER Compliance Procedures and Guidelines for gas pipeline service providers

Stakeholder forum September 2024 - Synopsis

Introduction

In 2023, changes were made to the National Gas Law (NGL) and National Gas Rules (NGR), altering how gas pipelines are categorised and the obligations placed on gas pipeline service providers. Under Chapter 4 of the NGL, the Australian Energy Regulator (AER) monitors compliance through the [2024 Annual Compliance Order \(ACO\)](#) and mandatory reporting. In 2024, the AER is developing the AER Compliance Procedures and Guidelines (Procedures and Guidelines) to provide guidance and information to service providers, as required by section 64F(1) of the NGL.

On August 26, 2024, the AER published a proposal for these guidelines, which included an [Issues Paper and an initial draft of the Procedures and Guidelines](#) for consultation. The Issues Paper sought stakeholder input on the usefulness of the information in the draft Procedures and Guidelines, potential additional topics for each chapter, and views on the proposed consultation timeframe.

As part of the consultation, the AER held a public stakeholder forum on September 9, 2024. This forum built upon the previous consultation process conducted from February to June 2024, which focused on creating a new ACO for gas pipeline service providers.

14 pipeline service providers, 3 legal entities, 2 other gas entities, and one industry association attended the forum. Participants were invited to submit discussion topics with their RSVPs. This document provides a comprehensive summary of the issues discussed during the stakeholder forum. In this summary individual participants and their organisations are de-identified.

The publication of this summary accompanies the AER's draft decision on the proposed Procedures and Guidelines, including an updated draft of the Procedures and Guidelines for further stakeholder consultation. The AER intends to publish the final Procedures and Guidelines for publication in late December, after careful consideration of all feedback received.

Information gathering

Burden of reporting

Several stakeholders expressed concerns about the regulatory burden of reporting similar or identical information to multiple regulatory bodies. One participant suggested streamlining the process by using identical or similar reporting templates, or by facilitating information sharing, for example between the Australian Energy Market Operator (AEMO) and the AER, to reduce the reporting burden.

In response, the AER clarified that it is not proposing to alter the information requested through the ACO or the ACO response template at this stage. The AER noted that during the development of the ACO, efforts were made to reduce reporting overlap where possible.

The initial draft of the Procedures and Guidelines, specifically Chapter 3, section 3.5, outline principles the AER will use for future regulatory information instruments. These principles include the ability to request information gathered through other instruments and the use of suitable public information. However, the AER acknowledged that it may be limited in using information from other agencies such as AEMO or the Australian Competition and Consumer Commission (ACCC) due to information security classifications, confidentiality, and other legislative requirements around data collection. The AER also noted that if a service provider consents to sharing its information with multiple regulatory bodies, this would facilitate information sharing between regulators.

Voluntary information requests and the ACO

A stakeholder asked whether the information supplied in the voluntary information request for the 2023-24 financial year could be leveraged to complete next year's ACO and potential overlaps in reporting requirements.

The AER explained that service providers can use the voluntary information requests as a means to trial the reporting that will take effect with the ACO (first reporting date 31 October 2025), and then provide feedback which will shape the guidance in the Procedures and Guidelines. Depending on the specific information request, service providers may be able to copy elements from other reports or attach relevant documents. For unchanged information in subsequent ACO responses, service providers may reuse the information as the template remains identical.

However, the AER emphasised that new templates must be submitted each year, regardless of whether any information has changed.

Preferences for communication

Stakeholders expressed a preference for the AER to use informal requests for additional information as a first step before exercising coercive information gathering powers.

The AER responded that the initial draft of the Procedures and Guidelines outline when different information gathering methods, including regulatory information orders and notices, are intended to be used. While specific guidance is available in the Procedures and Guidelines, the AER clarified that information gathering methods are generally applied on a

case-by-case basis as required. The AER outlined that there are situations where voluntary information gathering may not result in the AER gathering the information that it requires, consequently coercive information gathering powers would be used. The AER also outlined that where urgency was required, it is desirable for the AER to retain flexibility as to whether to consult voluntarily with service providers before using coercive powers.

Reporting exemptions

Exemptions and general regulatory information orders

The topic of reporting exemptions generated several questions from stakeholders. One participant sought clarification on whether exemptions granted under section 58 NGL are specifically tied to a general regulatory information order, and if amendments to the order would require service providers to reapply for exemptions.

The AER acknowledged that this matter was being considered and further information would be included as part of the draft decision.

Exemptions and reporting under the ACO

Another stakeholder highlighted difficulties in understanding the ACO reporting requirements and their interactions for pipeline operators who hold reporting exemptions to items that the ACO requires reporting on (other than a section 58 NGL exemption).

The AER clarified that the responsibility lies with service providers to determine whether exemptions are applicable and to apply for them. In the context of the ACO, service providers must consider the exemptions they hold and their relevance. The new reporting framework allows service providers to indicate if information requests are not applicable to them due to exemptions, in which case no information is required. However, service providers are still obligated to respond to the ACO if they hold a relevant exemption other than a section 58 exemption.

Exemptions and single-use pipelines

The implications of the reporting framework changes for single-use pipelines (e.g., pipelines with no other users) were also discussed. The AER acknowledged that the legislative changes have broadened to include a broader range of service providers. The AER directed stakeholders to Chapter 2 of the initial draft of the Procedures and Guidelines for a summary of relevant obligations, with Section 2.6 specifically outlining the Compliance and Enforcement approach. Many new providers may be eligible for exemptions, particularly from Part 10 reporting. The AER emphasized its approach of gradually transitioning to the new framework, via voluntary information requests for the 2022-23 and 2023-24 financial years, before the ACO becomes mandatory in the 2024-2025 financial year.

ACO guidance

Multiple stakeholders raised questions about specific sections of the ACO instrument, and basis of preparation requirements.

The AER offered to discuss specific items that may have specific issues for a service provider in detail outside of the forum. Generally, the AER explained that basis of preparation requirements vary depending on the type of information submitted in the ACO. Examples have been provided, and the AER expressed that it would provide further examples and information on basis of preparation requirements for the ACO in the draft decision.

Compliance audits

Frequency of audits, burden

Stakeholders discussed a number of concerns regarding the AER's compliance audit powers, particularly relating to burden (both costs and time). One stakeholder inquired about the AER's intentions for conducting mass audit programs or targeting a specific number of audits each year.

Stakeholders expressed concerns about the potential burden of audits on businesses and requested justification for the costs in terms of customer benefits.

The AER noted that audits are a well-known and well-established compliance tool. It is broadly accepted that audits are appropriate in particular circumstances. Part of the AER's decision-making process involves assessing the burden, including costs, to service providers.

The AER outlined that it would assess whether to require audits on a case-by-case basis. The AER clarified that it is not at this stage targeting a specific number of audits on a yearly basis. Instead, the number of audits conducted will depend on factors such as issues identified in ACO responses, other intelligence the AER gathers, and will be informed by the AER's risk-based approach to compliance. A risk-based approach considers the harms that provisions in the NGL and NGR might prevent, and the risks in terms of probability and impact of a breach of those provisions.

Reasons for audit powers

When asked about the evidence of compliance problems under the previous ACO that led to the new audit requirements, the AER outlined that the audit powers were legislative additions as part of the 2023 suite of amendments.

The AER explained that the audit framework outlined in Chapter 5 of the initial draft of the Procedures and Guidelines was largely based on corresponding sections of the retail law [Compliance Procedures and Guidelines](#) for the National Energy Retail Law, National Energy Retail Rules and applicable regulations. This framework was updated in consultation with energy retailers in the first half of 2024.

Enquiries and audits

In response to a query about whether the AER would make informal inquiries about potential non-compliance before initiating a compliance audit, the AER explained that its approach would depend on the individual situation. In scenarios that the AER considered may be high-risk or require immediate action, an audit might be initiated promptly. However, in most cases, the AER will endeavour to discuss and flag the potential for a compliance audit with service providers in advance. The AER noted that it outlines different types of information requests in the Procedures and Guidelines, which shape its approach to compliance.

Following this discussion, a stakeholder requested that the AER provide industry with some assurance regarding audits. The AER agreed to take this into consideration in the draft decision.

Additional questions

During the forum, a stakeholder inquired about the timeline for consultation on the gas ring-fencing decision guide. The AER confirmed that a consultation would take place and that the gas ring-fencing team ([released in September 2024](#)). The final document is expected to be released in mid-November.

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