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Consultation on Compliance Procedures and Guidelines

Please find below QGC Pty Limited's (**QGC**) submission in response to the Issues Paper and proposed draft AER Compliance Procedures and Guidelines (**Procedures and Guidelines**) published by the AER in August 2024. This submission is structured to state and answer each of the questions raised in the Issues Paper.

Questions for stakeholders on approach to Procedures and Guidelines consultation process

1. *What are your views on the implementation timeframe?*
 - Given the number of competing commitments in Q4 of each year, QGC suggests that it may be more practical for the period for making submissions on the draft decision to end in December 2024, and for the final decision on the Procedures and Guidelines to be published in January 2025.
2. *Do you have any comments on the draft Procedures and Guidelines that are not otherwise covered in subsequent questions?*
 - QGC notes that paragraph 1.6 sets out the AER's obligations regarding confidentiality and disclosure of information provided to it. QGC thanks the AER for allowing service providers to password protect files within a submission. However, QGC suggests that in order to give confidence to service providers that their confidential information is adequately protected, in addition, the Procedures and Guidelines also set out (at a high level) the controls that the AER will implement to ensure the protection of confidential information.

Questions for stakeholders on chapters 1 and 2 of the draft Procedures and Guidelines

3. *Is there any further information that will assist in understanding the application and regulatory framework? If so, what would you find helpful?*
4. *Is there any information in chapters 1 or 2 of the draft Procedures and Guidelines that is not necessary or does not help you understand your obligations?*
 - The information in chapters 1 and 2 of the draft Procedures and Guidelines is relevant, comprehensive and accessible. QGC does not have any further information to suggest be included or excluded.

Questions for stakeholders on chapter 3 of the draft Procedures and Guidelines

5. *Is there any further information that will assist in understanding the AER's use of and the key features of regulatory information instruments? If so, what would you find helpful?*
6. *Is there any further information that will assist in understanding the legal information and exemptions framework? If so, what would you find helpful?*
7. *Is there any information in chapter 3 of the draft Procedures and Guidelines that is not necessary or useful?*

- The information in chapter 3 of the draft Procedures and Guidelines is relevant, comprehensive and accessible. QGC does not have any further information to suggest be included or excluded.

Questions for stakeholders on chapter 4 of the draft Procedures and Guidelines

8. *Is there sufficient information for service providers to know when a single template response would be accepted? If not, what additional information is required?*
 - QGC considers that there is sufficient information for service providers to know when a single template response would be accepted.
9. *Are there other circumstances where a single ACO response template should be allowed?*
 - QGC does not have any other circumstances to suggest.

The following questions relate to our proposed approach to handling responses where:

- a service provider holds a relevant exemption under the NGL or the NGR
- an item only applies to scheme pipeline, or
- an item is dependent on a previous ACO item having a positive response.

10. *Is there sufficient information for service providers to respond to these ACO in these circumstances? If not, what additional information is required?*
 - The table contained in paragraph 4.2.14 is very helpful. QGC suggests it would assist service providers in responding to the ACO if the Procedures and Guidelines contained other similar tables, in particular, in paragraph 4.2.22.
11. *Is there sufficient information for service providers to respond to the items with specific advice? If not, what additional information is required?*
 - QGC is unsure what is meant by “specific advice” and is unable to meaningfully respond to this question.
12. *Is there sufficient information for service providers to understand the basis of preparation requirement in the ACO?*
 - In QGC’s view, completion of the basis of preparation is not intuitive and further guidance is required for service providers to understand this requirement.
 - The guidance contained in paragraphs 4.2.4 and 4.2.6 of the Procedures and Guidelines captures two scenarios. The first, where the service provider’s response produces a document and the second, where the service provider is required to indicate whether or not they have complied with, received or done a particular thing. The items within the ACO are not limited to these two categories. For example, items 1.1-1.3, 4.2, 8.1-8.2, 9.1, 9.3, 10.1-10.5, 11.1-11.2, 12.1, 13.1-13.3, 14.2, 15.1-15.3 and 16.3 are all outside of these two categories. For service providers to understand the basis of preparation requirement, the Procedures and Guidelines need to contain an example response for each category of information request contained within the ACO.
 - The examples at paragraph 4.2.8 are helpful, and QGC requests that the AER include further examples within this paragraph.
13. *Is there sufficient information for service providers to provide responses within columns G and I in the ACO response template? If not, what additional information is required?*
 - QGC does not have any additional information to suggest.
14. *Are there any additional matters that should be covered in chapter 4 of the Procedures and Guidelines?*
 - QGC does not have any additional matters to suggest.

Questions for stakeholders on chapter 5 of the draft Procedures and Guidelines

15. *Is the AER’s proposed approach to include all information about audits within the Procedures and Guidelines suitable?*
 - Yes, QGC considers is suitable to capture all information within the one document.

16. *Are the requirements for auditors suitable in the context of regulating gas pipelines? If not, how should they be adjusted?*

- In circumstances where service providers are operating in an environment of ever increasing regulatory burden and associated costs, QGC suggests that starting position ought to be to allow service providers to conduct the audit, and then only in specified circumstances the use of third-party auditors is required. The Procedures and Guidelines should establish the circumstances in which an audit will be carried out by a third-party auditor.
- QGC appreciates the AER's statement in paragraph 5.4.11 but observes that this does not differentiate between third-party auditors and the role of the internal audit function of large companies.

17. *Is there sufficient information for service providers to understand the decision-making process and what will be in the terms of reference for compliance audits? If not, what additional information is required?*

- Paragraph 5.5.1 states that the AER will determine the Terms of Reference for a compliance audit. QGC suggests that the Procedures and Guidelines make clear that the Terms of Reference will be limited to the issue giving rise to the decision to use a compliance audit. For example, if there are concerns around compliance by service providers with a particular obligation contained in the NGL and NGR, then the audit should be confined to that issue. This is particularly relevant in circumstances where the AER can elect for a third party audit to be performed and the service provider then bears the cost of that audit.

18. *Are the requirements on audits carried out by the AER or by a service provider:*

- *suitable in the context of regulating gas pipelines? If not, how should they be adjusted?*
- *provide sufficient information for service providers to understand the processes to be followed? If not, what additional information is required?*

- Paragraphs 5.6.2 and 5.7.3 contain reference to a requirement to provide access to all relevant sources of information. QGC notes that if the Terms of Reference are not adequately precise and set a threshold for the information to be given access to, the requirement to provide access to "all relevant sources of information" may be unduly burdensome (both to the service provider and auditor) and prevent the efficient and accurate performance of the audit as well as creating unnecessary cost. For example, if a 30 page document contains one sentence that is peripherally relevant to the subject matter of the audit, if it were to be considered a "relevant source of information", then it is not inconceivable that there may be thousands of responsive documents.
- Paragraphs 5.6.2 and 5.7.3 also include 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. QGC requests that the AER identify the legislative basis for it being able to require service providers to ensure access to documents that would otherwise be protected by legal privilege.
- QGC understands that the AER can recover all reasonable costs incurred in conducting a compliance audit. In these circumstances, it would be appropriate for the Procedures and Guidelines to address how the AER will ensure it is obtaining competitive pricing from its third party auditors.
- Appendix C contains a flow that is unclear: "require a business to carry out a compliance audit...The AER can choose to use its powers under section 64C of the NGL – the AER can carry out a compliance audit..." It would be helpful if the legislative basis for this flow was extrapolated within Appendix C.

19. *Are the requirements on post audit and response process:*

- *suitable in the context of regulating gas pipelines? If not, how should they be adjusted?*
- *provide sufficient information for service providers to understand the post audit and response process? If not, what additional information is required?*
- Rather than "reasonable opportunity", QGC suggests that the Procedures and Guidelines include a timeframe (such as 20 business days) for service providers to comment on any factual errors in the final audit report.

- Given the potential reputational impacts for service providers, where a factual error has been identified by the service provider, QGC suggests that 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.
- Paragraph 5.8.1 provides for the AER to publish a summary of outcomes of each audit on its website at the conclusion of the audit process. Audits may consider confidential and commercially sensitive information. QGC suggests that the Procedures and Guidelines provide service providers with the opportunity to consider the summary of outcomes and for the AER to consult with the service provider prior to publication so that the service provider has the opportunity to request redaction of any confidential or commercially sensitive information.

20. Are there any additional matters that should be covered in chapter 5 of the Procedures and Guidelines?

- The cost of both internal and external audit can be significant, and it can reasonably be anticipated that a service provider may be audited, and the outcome of that audit is that there has been no non-compliance by the audit. To minimise cost and encourage efficiency, QGC suggests that where the AER is considering requiring the audit of a service provider, the first step in that process is for the AER to meet with the service provider to outline its concerns and provide the service provider with an opportunity to address those concerns before proceeding with an audit.

Thank you for the opportunity to provide input into the draft ACO. We look forward to further engagement on the issues raised in this submission. Please contact Marion Carthew for matters relating to this submission.