

# AER Compliance Procedures and Guidelines

for gas pipeline service providers

Explanatory note –  
final decision

**December 2024**

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# 1 Overview

## 1.1 Role of the Procedures and Guidelines

The Australian Energy Regulator (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), the National Gas Rules (NGR) and the Regulations (as defined in the NGL).<sup>1</sup> To support these roles, we are 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, including guidance on responding to the Annual Compliance Order (ACO). The Procedures and Guidelines also outline the AER's compliance audit powers and set out how these audits will be carried out.<sup>2</sup>

Guidance on the requirements of the NGL, the NGR and the Regulations was previously provided in the AER's voluntary Annual Compliance Guideline, which was made in 2010 to complement the prior 2008 ACO. To avoid potential confusion, this publication has now been removed from the AER's website.

## 1.2 Consultation process

In accordance with NGR consultation procedures,<sup>3</sup> we commenced our consultation on the [proposal](#) to make the Procedures and Guidelines on 26 August 2024 with our issues paper. Our draft decision was published for stakeholder consultation in October 2024.

### 1.2.1 Issues paper

To support stakeholder engagement in the development of the first version of the Procedures and Guidelines, we published an [initial proposed draft](#) of the Procedures and Guidelines with our [issues paper](#) on 26 August 2024 to obtain stakeholder feedback.

This stage of the consultation focused on:

- our approach to the Procedures and Guidelines consultation process
- the background and regulatory framework of the Procedures and Guidelines
- our approach to information collection
- the new ACO
- our proposed approach to audits.

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

<sup>2</sup> See section 64D of the NGL.

<sup>3</sup> See rules 8 and 139A of the NGR.

We obtained initial feedback via a [stakeholder forum](#) on 9 September 2024, attended by 30 external representatives from 19 interested parties, as well as 5 written submissions<sup>4</sup>.

The key issues raised that stakeholders sought further detail and clarity on included:

- the potential use of our information gathering powers
- how confidential information and documents will be handled
- our approach to compliance and enforcement, including potential actions when a breach of the NGL is identified
- how the AER will grant and amend exemptions from general regulatory information orders, including the ACO
- examples of information that may be included in basis of preparation of the ACO response template
- aims of compliance audits and the decision to use compliance audits
- terms of reference of compliance audits.

We made amendments to the initial draft Procedures and Guidelines in response to stakeholder feedback and included an updated draft of the Procedures and Guidelines as part of our draft decision.

## 1.2.2 Draft decision

The draft decision was the second stage of consultation on the Procedures and Guidelines. We sought stakeholder input on the changes set out in the updated draft of the Procedures and Guidelines that was published with the draft decision.

Consultation on the [draft decision](#) on the Procedures and Guidelines commenced on 22 October 2024. The draft decision included an [updated draft](#) of the Procedures and Guidelines, a [copy of the updated draft](#) with all changes made to the initial proposed draft in markup and an [Explanatory Note](#) outlining these changes and our responses to the issues raised in the submissions on the proposal.

We received two written submissions during the consultation on the draft decision from Australian Gas Infrastructure Group (AGIG) and Jemena and an email query from a service provider.<sup>5</sup> During the submission period we also met with a stakeholder to discuss the draft decision. In addition, we received two emails from stakeholders who advised they would not be making a submission.

This explanatory statement sets out the stakeholder submissions on our draft decision and the changes we have made to this draft in making our final decision.

We greatly appreciate the time and effort put into the submissions and comments that we have received during the consultation on the Procedures and Guidelines.

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<sup>4</sup> See the AER's website for a [synopsis of the stakeholder forum](#) and the [publicly available submissions](#).

<sup>5</sup> See the AER's website for the [publicly available submissions](#).

## **1.3 Key outcomes of the update draft Procedures and Guidelines consultation**

We have considered the information and feedback provided through the consultation process in preparing the final Procedures and Guidelines. In reaching our positions we have sought to balance several factors, including the policy intent of the amendments made to the NGL in March 2023 that introduced the AER's new compliance audit powers and expanded the scope of the obligations in Chapter 4 of the NGL to non-scheme pipelines, and the AER's desire to apply those powers flexibly.

Our final decision maintains most of the elements of the updated draft of the Procedures and Guidelines. The main elements that we are amending as part of the final decision are contained in section 4.2 of the final Procedures and Guidelines relating to using the ACO response template and are detailed in section 2.

The final decision publication includes a clean version of the final Procedures and Guidelines and a markup version tracking all changes made from our draft decision. This will allow service providers and other interested stakeholders to identify the changes that were made since this draft was published more easily.

## 2 Refinements to the updated draft Procedures and Guidelines

We have considered information and feedback provided in the written submissions on the draft decision and other engagement in making our final decision.<sup>6</sup>

The submissions from AGIG and Jemena mainly focus on the ACO response template and the guidance for completing the ACO response template that was included in chapter 4 of the Procedures and Guidelines, as well as elements of the ACO itself. We also received a query from a stakeholder regarding the ACO response template which has been incorporated in the final decision.

Our responses to the issues raised by stakeholders are set out in Table 1 below. We have amended several paragraphs and table 1 in section 4.2, *Using the ACO response* template of the Procedures and Guidelines in actioning our response.

**Table 1: Issues raised on draft Procedures and Guidelines**

#	Issue raised by stakeholders	AER response
1	<p>AGIG suggested that the statutory declaration in section 5.2 of the ACO should be reviewed to better reflect the structure of the ACO response template, possibly by deleting the following text:</p> <p><i>Where it is not possible to provide actual information to comply with the Order, [the Service Provider] has, to the best of my information, knowledge, and belief:</i></p> <ul style="list-style-type: none"> <li><i>provided its best estimate of the information in accordance with the requirements of the Order, and</i></li> <li><i>provided the basis for each estimate, including assumptions made and reasons why the estimate is the best estimate, given the information sought in the Order.</i></li> </ul>	<p>AGIG’s suggestion relates to the content of the ACO itself, as opposed to the Procedures and Guidelines.</p> <p>Under rule 139 of the NGR and clause 20 of Schedule 2 to the NGL, the AER must follow the standard consultative procedure in amending or repealing a general regulatory information order, a category which includes the ACO.</p> <p>As such, to adopt the suggested change the AER would need to commence another full consultation on the ACO. We do not consider this is warranted at this time, however we will seek stakeholders’ views on the statutory declaration requirements in any future revisions to the ACO.</p>
2	<p>AGIG submitted that Column G in the ACO response template should allow for a “N/A” option, and that selecting “Yes” to “Compliance with requirement” is neither correct or accurate when the criterion is not applicable.</p>	<p>Similarly to the above, we must engage in a separate consultation to amend the ACO in the manner suggested. We view the current guidance in the Procedures and Guidelines as sufficient given the need to engage in a consultative process to make further changes.</p> <p>As such, we do not propose to make any changes based on this feedback as part of this final decision. However, we may consider this suggestion further in future consultations to amend to the ACO.</p>

<sup>6</sup> The [publicly available submissions](#) can be found on the AER’s website.

#	Issue raised by stakeholders	AER response
3	<p>Jemena submitted that the examples in table 1 of the draft Procedures and Guidelines are too focused on the submission of documentary evidence and do not adequately consider the other sources of information that a service provider may draw on, including relevant staff’s first-hand knowledge or details of internal processes.</p> <p>Jemena went on to note that responses are required to include a statutory declaration, which means service providers are required to ensure they are relying on the best sources and methodologies when preparing a response, so service providers should have sufficient flexibility to rely on the sources and methodologies they see fit to and to explain these in the basis of preparation.</p> <p>Jemena stated that it is overly burdensome for service providers to provide documents if staff knowledge and attestation is used to substantiate a response and no documents are used.</p> <p>Jemena noted the commentary in section 4.2.7 about the examples in Table 1 being indicative only, but consider that the examples may cause confusion.</p> <p>Jemena raised the following examples:</p> <ul style="list-style-type: none"> <li>• With respect to item 1.2 of the ACO, service providers are unlikely to rely on “the date the business name was registered” to determine its registered business name or ABN.</li> <li>• With respect to item 4.3 of the ACO, the AER states that “if no interconnection request is received during the period to which the response applies, a service provider may provide a NULL response and explain that this item is not applicable for this reason (for items 4.1–4.3 of the ACO template)”. A service provider is required to develop an interconnection policy under rule 39 of the NGR even in the absence of requests, therefore a NULL response would not be appropriate here.</li> <li>• With respect to items 8.1 and 9.1 of the ACO, it is not clear how “records of associate contracts” are useful, as associates may fall within the scope of these items without such a contract.</li> </ul>	<p>We broadly agree that there should be a degree of flexibility in the types of information sources that can be provided to satisfy the requirements for the basis of preparations. The text in paragraph 4.2.7 of the Procedures and Guidelines aims to detail this.</p> <p>To avoid potential confusion about where service providers may make such references, we have added further examples to Table 1, including the guidance for item 1 of the ACO.</p> <p>We have restructured the guidance for ACO item 4 and removed the quoted text. We agree with the issue raised in the submission and note that the quoted text was intended to refer to items 4.1–4.2 and not include item 4.3.</p> <p>We have amended the guidance relating to ACO items 8.1 and 9.1 to refer to lists of associates rather than associate contracts.</p>



#	Issue raised by stakeholders	AER response
4	<p>Jemena submitted that the wording of item 9.1 of the ACO does not align with the clarification provided in the draft Procedures and Guidelines, so the ordinary meaning of item 9.1 in the ACO will take precedence.</p> <p>Jemena went on to state that there is a material risk of non-compliance with the requirements of the ACO if service providers answer 9.1 in line with the Procedures and Guidelines rather than the actual question in the template.</p> <p>Jemena suggested it would be most appropriate to remove the clarification and amend item 9.1 in the next iteration of the ACO.</p>	<p>We have amended the wording of this guidance to align with the text from item 9.1.</p> <p>We may consider the suggestion to amend this item in future consultations to revise the ACO.</p>
5	<p>We received a query from a stakeholder about the possibility of inserting additional columns to the ACO response template to enable the provision of a consolidated portfolio response.</p>	<p>We have added paragraph 4.2.37 to the Procedures and Guidelines to clarify that service providers may add additional columns provided that it is clear which pipeline or pipelines each column corresponds to.</p>

# Glossary

Term	Definition
ACO	Annual Compliance Order.
AER	Australian Energy Regulator.
AGIG	Australian Gas Infrastructure Group.
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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