

Annual Compliance Order

General Regulatory Information Order
for gas pipeline service providers

Explanatory note for final
decision

June 2024

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1 Introduction

The national gas objective as stated in section 23 of the National Gas Law (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.

Section 28(1) of the NGL requires the Australian Energy Regulator (AER) to carry out its functions in a manner that will (or is likely to) contribute to achieving this objective.

The functions and powers of the AER are specified in section 27 of the NGL. In particular, section 27(1)(a) states that the AER has the power to monitor the compliance by persons with the NGL, the National Gas Rules (NGR) and the Regulations including compliance with an applicable access arrangement, an access determination and a ring-fencing decision.¹

As stated in section 63A of the NGL, one of these functions is to monitor the compliance of service providers with their obligations under the NGL and the NGR. The [2008 Annual Compliance Order \(ACO\)](#) was the mechanism the AER previously used to obtain information from (scheme) pipeline service providers to monitor their compliance.

A package of reforms made to the NGL and the NGR in March 2023 streamlined the classification of gas pipelines and updated the obligations on gas pipeline service providers. The AER has made anew ACO that reflects these changes. The new ACO is a General Regulatory Information Order (RIO) made pursuant to section 48(1)(b) of the NGL.

1.1 About this document

This explanatory note accompanies the AER's finalised ACO and response template.

The changes to the NGL and NGR mean that the AER, in addition to the above, must monitor new obligations on service providers. These obligations include, amongst other matters, restrictions on increasing charges and additional requirements regarding publishing transparent information.

The purpose of the changes to the NGL and NGR were to:

- pose a more effective constraint on exercises of market power by service providers
- facilitate better access to pipelines
- provide greater support for commercial negotiations between gas users and service providers, and
- streamline governance arrangements.

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

For more information, please see the [AER's Compliance bulletin on new obligations under the gas pipeline reform](#).

The AER has made a new ACO which reflects the obligations that have changed in the NGL and NGR and has updated language to reflect the changes to the legislation. The new ACO also includes new material that requires a basis of preparation that must be included with a response to enable the AER to understand how the service provider has complied with the requirements and how the required information was compiled. As such, there is a new section on the new assurance and audit requirements for service providers.

This Explanatory Note summarises the issues raised by stakeholders in our consultation process for the draft decision. We provide our response to these issues and provide an explanation where our position is different from those expressed by stakeholders.

1.2 The previous 2008 ACO

The ACO is the mechanism the AER previously used to obtain information from scheme pipeline service providers to monitor their compliance. The [2008 ACO](#) was previously only issued to scheme pipeline service providers as the corresponding sections of the legislation only applied to scheme (or covered) pipelines.

Under the NGL and NGR, scheme pipeline service providers were subject to a number of obligations and restrictions. The ACO established a consistent framework for service providers to report their compliance with some of their obligations (including structural and operational separation) to the AER, which streamlined the compliance reporting process for both scheme pipeline providers and the AER.

The obligations monitored using the ACO included, but were not limited to: ring fencing requirements, compliance with access arrangements, determinations and negotiations, maintaining suitable records, appropriately handling confidential information and following bundling requirements.

The ACO was implemented on 7 November 2008 following two consultation periods and had not been amended since implementation. Responses to the 2008 ACO were due on 31 October (or on the first business day following this date) every year from 2009 to 2022.

1.3 Consultation on the new ACO

In accordance with NGR rule 139(1), the AER must follow the standard consultative procedure outlined in NGR rule 8 to make a General RIO, which includes the ACO.

Consultation on the proposal to make a new ACO commenced on 19 February 2024. The proposal included a [consultation paper](#), which included background information on the ACO, an explanation of the draft ACO and response template included with the proposal, specific areas where we sought feedback and a call for submissions on the proposal.

The period for submissions ended on 12 March 2024 to allow stakeholders 15 business days to make a submission. Six submissions were received on the proposal, which are available on [our website](#).

Consultation on the draft decision to make an updated ACO commenced on 17 April 2024. An [explanatory note](#) was published as part of this consultation, which included information on

the consultations the AER is engaging in, responses to the submissions that were received, an explanation of the changes made to the drafts included with the proposal and a call for submissions on the updated drafts.

The note also elaborated on the aspects of the drafts that the AER was seeking feedback on. These included amongst other things:

- the changes made by the AER to the draft ACO and response template in response to the feedback received during the consultation on the proposal
- the AER's responses to the key issues raised during this consultation.

The period for submissions ended on 9 May 2024 to allow stakeholders at least 15 business days to prepare a submission.

We received four submissions from the following stakeholders in addition to an anonymous submission:

- APA Group
- Australia Pacific LNG (APLNG)
- Jemena
- QGC.

The submissions from APA Group and QGC were late submissions that arrived shortly after the deadline.

The submissions that were received are publicly available on [our website](#).

The AER appreciates the time and effort put into the submissions and comments that it has received during the draft decision stage of this consultation.

A summary of each submission is provided below, and our response to the issues raised in these submissions is provided in Section 2.

1.4 Guidelines consultation

The AER is required to make the AER Compliance Procedures and Guidelines (Guidelines) under section 64F(1) of the NGL. As stated in section 64F(2) and section 64F(3) of the NGL, the Guidelines may provide guidance about:

- compliance with the requirements of the NGL, the NGR and the Regulations
- the carrying out of compliance audits, and the costs payable by service providers, and
- the AER's compliance priorities.

There will be a consultation process on Guidelines in the second half of 2024, after the new ACO comes into effect. In the ACO context, the Guidelines are proposed to include further guidance and information on providing responses to the ACO and the AER's audit powers to assess compliance with the regulatory framework.² The Guidelines will also provide broader

² Pursuant to ss 64B and 64C of the NGL.

information to service providers in relation to compliance with the NGL, Regulations and NGR.

We consider that having additional information about the new ACO in the Guidelines is consistent with the approach taken for the 2008 ACO, where an [Annual Compliance Guideline](#) was issued in 2010. The 2010 Annual Compliance Guideline included guidance on the form and content of the 2008 ACO.

Under rule 139A of the NGL, the AER must follow the standard consultative procedure when making the Guidelines. This means that stakeholders will have the opportunity to provide submissions and comments on the draft of the Guidelines, the reporting process for the ACO and on the parameters and guidance for the AER's proposed use of audit powers in two further consultation periods of at least 15 business days. The AER anticipates making a final decision on the proposal to make the Guidelines by the end of 2024.

We intend the Guidelines to include information in response to specific stakeholder questions raised during the consultation on making the ACO about how to fill in elements of the ACO template. For example, we will provide guidance on what is expected to be included in the responses to each item and the basis of preparation for each item in the response template, and how service providers are expected to fill out the columns within the response template.

Audit powers

As is outlined further in section 2.2 below, the AER had proposed to include a provision in the new ACO requiring service providers to provide audited responses. Taking into consideration stakeholder concerns, the AER has decided to not require audited responses to the ACO (i.e. there is no audit provision within the new ACO pursuant to section 55(e) of the NGL).

The AER proposes to develop a broad compliance audit program to assess the compliance of service providers with their obligations under the NGL, NGR and the Regulations in a more targeted manner and on an 'as requested by the AER' basis (pursuant to sections 64B and 64C of the NGL). As the ACO is an instrument pursuant to section 48(1)(b) of the NGL, these broader audit powers may be used to assess compliance with the ACO instrument. Further detail on the AER's proposed use of these audit powers will form part of the Guidelines, which will be open to public consultation.

The AER is of the view that the development of a broad audit compliance program will allow the AER to appropriately balance the risks associated with non-compliance and the costs and burden placed on service.

2 AER responses to submissions

2.1 Summary of the submissions

A summary of each of the submissions that were received is provided in the table below.

Table 1.1 Summary of each submission

Stakeholder	Submission summary
Anonymous	<ul style="list-style-type: none"> • The stakeholder submitted that the exemptions that apply under the NGR and NGL must be recognised for the ACO. <ul style="list-style-type: none"> ○ For example, pipeline service providers may have exemptions under Part 10 of the NGR, meaning that they are exempt from publishing some information otherwise required by Part 10 of the NGR. Pipeline service providers with such exemptions should also be exempt from responding to the sections of the ACO which seek information about compliance with Part 10 of the NGR. • If the ACO due date cannot be changed from 31 October each year to align with the Part 10 NGR reporting period, the stakeholder suggests that ACO responses in relation to Part 10 of the NGR should only be required to include the most recently published information, with material changes updated only. • Where the ACO requires a service provider to produce financial documents, the service provider cannot be required to report for third parties. Third parties could include the partners of joint ventures.
APA Group	<ul style="list-style-type: none"> • The AER should clearly explain why it proposes to include an audit provision within the ACO and the circumstances in which the AER would use its audit powers.
APLNG	<ul style="list-style-type: none"> • APLNG submitted its understanding of the AER's draft decision is that the AER expects service providers to begin tracking financial information by pipeline as of 1 July 2024, regardless of whether a third-party has been granted access. APLNG submitted that a service provider holding a category 1 exemption under Part 10 of the NGR should not have to track financial information by pipeline until 12 months after a category 1 exemption is revoked (due to third-party access being granted, consistent with rule 35B of the NGR). • In subsequent consultations, the AER should provide as much information as possible about the parameters of its audit programs, including when the AER may require a compliance audit. • APLNG submitted that August to October is a heavy regulatory reporting period for gas pipeline service providers and urged the AER to push back the ACO reporting date to 15 December (rather than it be 31 October). APLNG suggested that the biennial reports to the Energy Ministers, which are currently due in early March, be pushed back to April to allow the ACO to align with the Part 10 NGR reporting period.

Stakeholder	Submission summary
	<ul style="list-style-type: none"> • APLNG submitted that it is pleased that the AER will accept password-protected responses. APLNG notes that the AER would not need to establish a secure portal if password-protected responses are allowed.
Jemena	<ul style="list-style-type: none"> • Jemena submitted that it is not clear why the consultations for the ACO and the Guidelines are separate given the number of interdependencies between them, particularly in relation to the ACO audit provisions. Jemena considers that the separation of these consultations inhibits fully-informed feedback on the ACO itself. • Jemena supports a 3-year or 5-year period for the keeping of the information used to prepare a response to the ACO, rather than 7 years. Jemena submitted its view is due to the costs of archiving the material used and there being no clear benefit for a 7-year period. • Jemena outlines 2 queries in relation to the ACO requirement to provide a basis of preparation for information forming part of an ACO response: <ul style="list-style-type: none"> ○ Whether there will be a separate template for the basis of preparation information, and if so, whether this will be subject to consultation. ○ For the ACO items that require production of documents, clarification on what is required for basis of preparation of these documents. • A column in the ACO response template requests an 'estimated conformance date'. Jemena submitted that the AER should elaborate on how to fill in this column within the template. • Item 16.3 in the ACO response template requires pipeline service providers to provide copies of the terms and conditions of access for new access. Jemena submitted that the terms and conditions of access for reference services are already published on the AER and service provider's websites. Consequently, Jemena suggests that access contracts for reference services are not required, and instead the ACO could request the number of users using each reference service. • Additionally for item 16.3 of the ACO response template, Jemena notes that similar information is collected by the Australian Competition and Consumer Commission (ACCC). Jemena submitted that the AER should explore options to obtain this information directly from the ACCC, or otherwise align the requirements under the ACO with information gathering under the ACCC's Gas Inquiry.
QGC	<ul style="list-style-type: none"> • QGC is broadly supportive of the changes to the response template. QGC is also supportive of allowing password-protected submissions. • QGC submitted that it is currently unclear how the basis of preparation applies to each item in the ACO response template. • QGC seeks clarification on whether service providers who hold an exemption from an obligation are required to respond to the ACO reporting requirement that aligns with that obligation. • In relation to the provision of financial reports under item 10.5 of the ACO template, QGC considers that the changes proposed in the draft

Stakeholder	Submission summary
	<p>decision are unclear. QGC queries whether the AER's inclusion of "if applicable" for this or other items means that if a service provider has an exemption from the relevant requirement in the NGR or NGL, they are also exempt from the ACO items relating to those requirements.</p> <ul style="list-style-type: none"> • QGC maintains that a record keeping period of 3 years could be imposed. QGC submitted that storing data for 7 years increases costs on service providers. QGC also submitted that it is not clear from the AER's consultation to date what the benefit or value of storing the information for a longer period is. • QGC considers that the AER could require service providers to conduct audits under the broader audit power in section 64C of the NGL, rather than including an audit provision within the ACO (which would be pursuant to subsection 55(e) of the NGL). Additionally, QGC submitted that requiring the ACO audit be conducted by external auditors significantly increases the cost of responding to the ACO. • QGC submitted that both audit programs should only be included within the Guidelines. QGC's view is that having requirements about audits in the ACO and the Guidelines may cause inconsistency and confusion. • QGC identifies a typographical error in the ACO response template.

2.2 Responses to key issues

The AER has considered the issues raised in stakeholder submissions in developing final ACO and response template. The AER’s response to the issues raised within the submissions are provided below in table 2.1. A full list of issues related to specific items within the response template and the changes made to the response template is provided in table 2.2 below.

Table 1.1 Key issues raised in submissions

	Issue	Submission	Response
1	<p>Two stakeholders raised concerns about the ACO reporting date of 31 October each year.</p> <p>An anonymous stakeholder submitted that there is a timing issue with some ACO items that require reporting on compliance with Part 10 of the NGR. Part 10 of the NGR requires service providers to publish financial information, historical demand information and cost allocation methodology no later than 5 months after the end of the financial year (i.e. by 30 November each year). The stakeholder submitted that if it is not possible to move the 31 October due date, then the ACO should rely on the most recent information published under Part 10 of the NGR rather than requiring separate and additional reporting due to the reporting date.</p> <p>APLNG submitted that the ACO due date should be pushed back to 15 December and this would better align with the Part 10 NGR reporting period. APLNG suggests</p>	<ul style="list-style-type: none"> • Anonymous • APLNG 	<p><i>We have amended the sections of the ACO template which relate to Part 10 of the NGR</i></p> <p>It is not the AER’s intention to require additional reporting or early provision of information that would be published pursuant to Part 10 of the NGR or section 136C of the NGL. We acknowledge stakeholder concerns regarding provision of information relating to Part 10 of the NGR by 31 October each year, in the context of Part 10 of the NGR having later compliance dates.</p> <p>To alleviate stakeholder concerns, item 7.1 of the ACO template has been amended to require a statement of compliance with the Part 10 of the NGR (e.g. rules 101A(1) and 101A(4) of the NGR) and the AER’s Pipeline Information Disclosure Guidelines. This is instead of providing copies of or links to the information that has been published by a service provider in relation to Part 10 of the NGR. In accordance with rule 101A(4) of the NGR, a service provider is required to notify the AER of new financial information, historical demand information and actual prices payable information published and provide a copy of the published information to the AER, in accordance with the Pipeline Information Disclosure Guidelines.</p> <p>This reduces the burden of providing information and documents in response to this item in the ACO. Further details on the changes made to this item can be found in Table 2.2.</p> <p><i>Inconsistent reporting dates between ACO and Part 10 of NGR</i></p> <p>As stated above, item 7.1 has been amended to require a statement of compliance rather than information published in relation to Part 10 of the NGR. A service provider may record the expected publication date in column H of the reporting template sheet if this information</p>

	Issue	Submission	Response
	<p>that the biennial reports to the Energy Ministers, which are currently compiled by the AER by early March and will be informed by ACO information, could be delayed to April.</p>		<p>has not been published in the relevant compliance period. Further details regarding the use of column H are provided in Table 2.2 below and will be provided in the Guidelines.</p> <p>We are of the view that the amendment made to item 7.1 and the flexibility of the response template eliminates the need for these dates to be consistent.</p> <p><i>Changing the ACO due date to 15 December and pushing back the AER's biennial reports</i></p> <p>As the AER outlined in the draft decision, part of the purpose of the ACO is to enable the AER to gather information as an input into the AER's biennial reporting to the Energy Ministers. This report is required by section 63B of the NGL and the first report must be provided to the Energy Ministers by 2 March 2025, and at least every 2 years subsequently.</p> <p>At this stage, the AER intends to continue to deliver this report biennially in March commencing from 2025.</p> <p>This report seeks to provide a summary the information obtained in relation to the matters mentioned in section 63A of the NGL. This includes the reporting of financial information, the outcomes of access negotiations, service providers' dealings with associates and service providers' compliance with ring fencing requirements, which are monitored via the ACO.</p> <p>We note that the proposed due date is identical to the due date used for the previous 2008 ACO, which was also developed in consultation with service providers and other stakeholders.</p> <p>Based on the above we are proposing to retain the 31 October due date.</p> <p>We acknowledge stakeholder concerns with the reporting date, and in this final decision we have streamlined aspects of the ACO and reduced burden of reporting where possible (such as in relation to item 7.1 of the ACO template). We anticipate that this will help to alleviate some of the concerns raised about the due date raised in these submissions.</p>
2	<p>Several stakeholders requested clarification on whether exemptions to some requirements in the NGL and NGR mean that the service provider is not required to</p>	<ul style="list-style-type: none"> • Anonymous • APLNG • QGC 	<p><i>Part 10 NGR exemptions and their interaction with the ACO reporting template</i></p> <p>As item 7.1 now requires a statement of compliance rather than published information, service providers with an exemption from reporting under Part 10 of the NGR or section</p>

	Issue	Submission	Response
	<p>respond to the corresponding items of the ACO.</p> <p>Stakeholders provided 2 examples of exemptions.</p> <ul style="list-style-type: none"> QGC raised the question of whether the AER’s addition of ‘if applicable’ to item 10.5 of the ACO template (provision of annual financial reports) meant that if a service provider has an exemption under section 141 of the NGL, it would not be required to respond to item 10.5 of the ACO. Item 10.5 of the ACO template requests information about compliance with s 141 NGL. An anonymous stakeholder and APLNG both queried whether Part 10 NGR exemptions means that the service provider is not required to respond to the sections of the ACO that seek information about compliance with Part 10 of the NGR. Further, APLNG submitted that the tracking financial information for the ACO should only be required 12 months after a Part 10 NGR exemption expires or is revoked. <p>In general, the stakeholders’ views were that a service provider with an exemption from an NGR of NGL obligation should not be required to respond to the corresponding</p>		<p>136C(2) may state that they are compliant with their obligations due to being exempt from these requirements.</p> <p>We note that under Rule 35B of the NGR, a service provider for a pipeline with a category 1 exemption under Part 10 NGR is exempt from the requirements under sections 139, 140, 141, 147 and 148 of the NGL with respect to this pipeline. Pursuant to Rule 35B(3), if an exemption is revoked, the exemption continues to apply for a period of at least 12 months after the revocation takes effect.</p> <p>This means that items 8, 9, 10 and 12 within the ACO response template may not be applicable in relation to certain pipelines, including pipelines with category 1 exemptions under Part 10.</p> <p><i>Section 141 NGL exemptions</i></p> <p>We note that service providers that own, operate or control a pipeline without an exemption from section 141 are required to maintain separate accounts in relation to all pipelines owned. Where an exemption from section 141 has been granted which applies to a service provider or a pipeline, the ACO only requires that records be maintained in a manner consistent with the exemption. This will depend on the nature of the exemption, including any conditions imposed.</p> <p><i>General approach to exemptions under NGR and NGL</i></p> <p>To avoid doubt, the ACO does not seek information about compliance with any requirements in the NGL or NGR that a service provider has exemptions from.</p> <p>The statement “if applicable” was added to certain items within the ACO template to reflect that some items may not apply due to exemptions. However, given the potential for confusion with this terminology, we have removed this.</p> <p>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.</p>

	Issue	Submission	Response
	ACO items and column H of the ACO template should reflect this.		<p>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.</p> <p>Additional amendments have been made to the response template to reflect that certain items may not be applicable to every pipeline. These changes are elaborated on below.</p>
3	A service provider’s obligation in the ACO to produce financial documents should not require it to provide such information on behalf of any third parties, such as partners of a joint venture.	<ul style="list-style-type: none"> Anonymous 	<p>All the information covered by the ACO is information that is relevant for the AER’s monitoring and reporting functions under NGL or NGR. Section 8 of the NGL provides a definition of a service provider, and section 131 of the NGL provides that a service provider must be a legal entity of a specified kind if it is to provide pipeline services. Stakeholders should refer to the definition of service provider to determine who is required to respond to the ACO</p>
4	<p>The AER should provide further information about the ACO audit provisions, specifically:</p> <ul style="list-style-type: none"> Why the ACO allows for the AER to request an audit The circumstances in which the AER would request an ACO audit. <p>The AER should require audits under section 64C of the NGL rather than including an audit provision within the ACO.</p> <p>Including an audit provision within the ACO and the Guidelines could cause inconsistency and may cause confusion within the market.</p>	<ul style="list-style-type: none"> APA Group APLNG QGC 	<p><i>We have removed the audit provision from within the ACO, and instead propose to require audits on an ‘as requested by the AER’ basis</i></p> <p>The AER originally proposed to include an audit provision within the ACO (pursuant to section 55(e) of the NGL). Inclusion of such a provision would have required that information specified in the ACO be audited before it was provided to the AER, and at the expense of the person to whom the ACO applies. This would mean that all responses to the ACO would require auditing prior to submission to the AER.</p> <p>We have considered stakeholder concerns in relation to the audit provision within the ACO (based on section 55(e) of the NGL) and have decided to remove this requirement from the new ACO. The AER instead intends to consult on the use of audit powers to verify ACO responses where required under sections 64B and 64C of the NGL, and also in a broader compliance context, during the Guidelines consultation process. We view using the powers under sections 64B and 64C of the NGL as being a more flexible and efficient method for verifying compliance that will reduce the burden and costs placed on service providers without limiting the efficacy of any audit.</p> <p>In the ACO context, the AER considers that the audit functions provide the AER with the ability to take greater regulatory oversight of the information that is provided under the ACO (which is a General RIO). The AER considers that this will provide a greater level of discipline</p>

	Issue	Submission	Response
			<p>on service providers and will enable the AER to further understand issues of comparability between ACO responses where required.</p> <p>It is the AER's view that compliance audits contribute to the achievement of the national gas objective in accordance with section 28(1)(a) of the NGL by enabling greater transparency and allowing the AER to better verify compliance with the relevant laws and rules.</p> <p>Compliance with the NGL and NGR helps maintain the efficiency and fairness of the gas market. Increased fairness directly benefits service providers and these benefits flow through to consumers in terms of better quality service and/or prices.</p> <p><i>The circumstances in which the AER would request an audit relating to ACO information</i></p> <p>The AER proposes to utilise the audit powers in sections 64B and 64C of the NGL on a case-by-case basis. We note that the audit powers under sections 64B and 64C of the NGL allow the AER to verify compliance in a wider variety of circumstances than just in relation to the ACO.</p> <p>In the context of the ACO, the AER is likely to consider triggering an audit in cases where we have concerns around the integrity, completeness or veracity of the information provided to it.</p> <p>We note that further information will be included as part of the consultation process for the Guidelines. We will consult on the carrying out of and costs associated with compliance audits as part of the upcoming consultation on the Guidelines.</p>
5	<p>The draft ACO refers to an ACO audit being conducted by external auditors. However, section 64D of the NGL states that a compliance audit is to be carried out in accordance with the Guidelines.</p> <p>By requiring market participants to use external auditors rather than internal audit teams, the AER is significantly increasing the cost to gas market participants of responding to the ACO.</p>	<ul style="list-style-type: none"> • QGC 	<p>As noted above at item 5, the AER will conduct compliance audits using the powers under sections 64B and 64C of the NGL rather than section 55(e) of the NGL.</p> <p>We will consult on the carrying out of and costs associated with compliance audits as part of the upcoming consultation on the Guidelines.</p>

	Issue	Submission	Response
6	A secure portal is not necessary if password protection is allowed.	<ul style="list-style-type: none"> APLNG 	<p>We acknowledge that we will accept password protected files in response to the ACO. As outlined in section 2.3 we have added further clarification that this is permitted to the ACO.</p> <p>We note that the AER is still likely to consider alternative ways for providing responses to the ACO in future, including the use of a secure portal.</p>
7	It is not clear why the consultations for the ACO and the Guidelines are separate given the number of interdependencies between them. Separation inhibits fully-informed feedback on the ACO itself.	<ul style="list-style-type: none"> Jemena 	<p>Under the NGL and the NGR, the making of the ACO and the Guidelines are separate decisions, which means that the AER is required to run separate consultations on these documents. The ACO is made under section 48(1)(b) of the NGL, while the Guidelines will be made under section 64F(1) of the NGL.</p> <p>The consultation on the Guidelines is occurring after the consultation on the ACO rather than concurrently so that service providers have the greatest opportunity to provide feedback on the guidance surrounding reporting process for the finalised ACO.</p> <p>Were the consultations on these documents to be run concurrently rather than sequentially, service providers would not be able to provide feedback on the guidance relating to items in the ACO that may have been changed in response to feedback received on the draft decision before the Guidelines are finalised.</p> <p>Stakeholder feedback has indicated that concurrent consultations make it difficult to produce adequate responses to all consultations. We consider that consulting sequentially on the ACO and the Guidelines reduces the burden of providing a response to both consultations at the same time. We also consider sequential consultation as the most suitable approach to allow the AER greater capacity to consider and respond to the issues raised in the consultations. This is particularly given the relatively tight consultation timeframes (submissions to the AER within 15 business days of a proposal/consultation paper and draft decision) that are specified by rule 8 of the NGR, and required by rules 139 and 139A of the NGR.</p>
8	A 3-year or 5-year period would be more appropriate than a 7-year period for the keeping the information used to inform an ACO response.	<ul style="list-style-type: none"> Jemena QGC 	<p>We note that Jemena supported a 3- or 5-year period for keeping of information, and QGC supported a 3-year period. Other stakeholders did not comment on the period of keeping records in response to the draft decision.</p> <p>The AER proposed a 7-year period initially because it would:</p>

	Issue	Submission	Response
			<ul style="list-style-type: none"> enable service providers to refer back to up to the ACO responses that were used to compile the 3 previous biennial reports, for example if the AER were to seek information about certain data items used for previous biennial reports. be consistent with the timeframes adopted in other AER General RIOs. <p>Upon considering the submissions that were received in response the draft decision, the AER has decided to change the 7-year period to a 5-year period.</p> <p>We are of the view that this provides a more suitable balance between appropriate record keeping and the burden placed on service providers. A 5-year period will enable service providers to refer back to the ACO response material that was used to inform the previous two AER biennial reports. This approach is also consistent with Rule 101A(6) which relates to the ACO through the inclusion of item 7.1. While this item does not apply to all service providers that are subject to the ACO, we are of the view that all service providers should have the same requirements on retaining information to ensure consistency in our approach.</p> <p>We further note that the AER has limitation period to take enforcement actions within 6 years, which aligns more closely with a 5-year period and not a 3-year period.</p>
9	<p>Two stakeholders commented on the basis of preparation requirement and how this can be applied to each item in the response template.</p> <p>Jemena queried whether the AER would provide a separate basis of preparation template, and whether that would be subject to consultation. Jemena also submitted that the basis of preparation would not be applicable to the items of the ACO that require documents to be produced and sought clarification in relation to this.</p>	<ul style="list-style-type: none"> Jemena QGC 	<p>The basis of preparation template referred to in clause 4.2.3 of the ACO instrument is column F of the ACO response template, rather than a separate/additional template.</p> <p>Where the response to an item in the ACO template consists of a document, such as an internal policy document, the basis of preparation may simply outline the factors considered as part of its development, for example, references to the legislation or company policies.</p> <p>Further guidance on the level of detail expected for basis of preparation responses will be provided within the Guidelines, which will be consulted on with service providers in the second half of 2024.</p>

	Issue	Submission	Response
10	<p>Item 16.3 of the ACO template requires a service provider to provide the terms and conditions governing the provision of access to a relevant pipeline service. Jemena submitted that the burden of this item could be reduced in 2 ways:</p> <ul style="list-style-type: none"> • A scheme pipeline service provider should not be required to provide access contracts for each reference service that a user has procured, and instead state the number of users using each reference service. This is because the terms and conditions of a scheme pipeline are in the Reference Service Agreement are already published on the AER and service provider's website. • The AER should explore ways to obtain overlapping information directly from the ACCC, for example from the ACCC's Gas Inquiry. 	<ul style="list-style-type: none"> • Jemena 	<p><i>Provision of access contracts for reference services</i></p> <p>We note that item 16.3 requests information from the compliance period to which it applies rather than all access arrangements, which reduces the amount of information that is to be provided in response to the ACO.</p> <p>The AER is of the view that the provision of new access arrangements will allow us to better assess the compliance of service providers with aspects of access arrangements that are not included in the reference terms that are published publicly. Guidance about responding to this item will be provided within the Guidelines.</p> <p>As this is consistent with the current wording of the item, we do not propose to amend it.</p> <p><i>Avoiding duplication with other regulatory information collection processes, such as the ACCC's processes</i></p> <p>We note that information collection processes outside of the ACO are subject to change independently of the ACO and therefore may not collect the information required to monitor compliance with NGL or NGR obligations. This is particularly true for the functions of the ACCC that are pursuant to legislation other than the NGL or NGR, and that exist for different purposes. Information obtained from the ACCC may also be subject to restrictions on how the information can be used by the AER.</p> <p>The AER considers that requiring this information through the ACO is necessary to ensure we obtain information that is adequate for the AER's purposes. Obtaining the information through the ACO will also ensure that the information can be used for the AER's purposes in accordance with the NGL and the NGR. This will avoid unnecessary amendments to the ACO in future and ensure the information captured is consistent over time.</p>
11	<p>The AER should provide clarification on what is expected in the 'estimated conformance date' column of the ACO response template.</p>	<ul style="list-style-type: none"> • Jemena 	<p>Column I of the ACO template which refers to 'estimated conformance date' is intended to capture the date at which a service provider is expects to be compliant with an obligation, if the service provider is not yet compliant. For example, if a service provider is not compliant with item 4.3 of the ACO response template, column I for that item would include an estimated date that the service provider expects to have developed an interconnection policy.</p>

2.3 Summary of changes to the ACO instrument and ACO response template

The following changes have been made to the final ACO instrument as compared with the draft instrument included with the draft decision:

- the requirement to retain the information used in preparing a response has been changed from 7 years to 5 years
- incorrect references to the response template have been corrected
- added a reference to ensuring ACO responses are consistent with the applicable AER Guidelines, including the AER Compliance Procedures and Guidelines made pursuant to section 64F of the NGL
- added clarification that password protected submissions are allowed
- added clarification that the ACO commences on 1 July 2024
- added clarification that the General Regulatory Information Order for gas pipeline service providers may also be referred to as the ACO
- removed the audit requirements within clause 5 of the ACO instrument and the reference to the requirements in clause 2.4.3.

A list of changes to the response template for the AER’s final decision compared to the draft decision, and the AER’s responses to comments on specific aspects of the response template are provided in Table 2.2 below. Text that has been added is italicised and text that has been removed is struck through.

Table 2.2 Comments on the response template by item

Item	Issue	Submissions	AER response
2.1	There is a typographical error.	<ul style="list-style-type: none"> • N/A 	<p>We have removed the incorrect inclusion of “scheme”. The item now reads as follows:</p> <p>Are you aware of any claims that the Service Provider has prevented or hindered access to services on the scheme-pipeline?</p>
3.1 4.1 4.2 6.1 11.2	The use of “if applicable” in the changes introduced in the response template is not clear.	<ul style="list-style-type: none"> • QGC 	<p>We have removed the instances of “if applicable” from items 3.1, 4.1, 4.2, 6.1, 11.2, 12.2, 12.3, 13.3, 14.1, 14.2, 15.2 and 15.3.</p> <p>These occurrences were replaced by “if so” or “if yes” in items 4.1, 4.2, 11.2, 14.3, 15.2 and 15.3.</p> <p>Items 6.1, 10.5 and 13.3 have been amended as follows:</p>

Item	Issue	Submissions	AER response
12.2 13.3 14.1 14.2 15.2 15.3			<p>Has the Service Provider made it a condition of the provision of a particular service to bundle services when providing access or negotiating access with a prospective user? If so, was this requirement reasonably necessary? If applicable, provide details of why the requirement was reasonably necessary. If applicable, provide <i>and</i> a description of the bundled services and related conditions of access.</p> <p>If applicable, provide a copy of the most recently lodged annual financial reports with the Australian Securities and Investments Commission or if no such reports exists other similar audited financial reports prepared for or provided to a state or territory department, agency or body under relevant state or territory legislation. These financial reports may be the consolidated set of accounts in respect to the whole of the business of the Service Provider, and if also separately lodged with the Australian Securities and Investments Commission the most recently lodged annual separate set of accounts in respect of the services provided by the Service Provider.</p> <p>If applicable, <i>yes to either of the above</i>, by what jurisdictional regulator and when where these exemptions granted?</p>
7.1	Item 7.1 should avoid any separate and additional reporting.	<ul style="list-style-type: none"> • Anonymous • APLNG • QGC 	<p>To avoid duplication in reporting, we have amended this item as follows:</p> <p>Provide a statement as to whether the Service Provider has published all required information relating to pipelines and pipeline services (including, without limitation, service and access information, the standing terms, financial information and actual prices payable information) and has done so in the manner required in Part 10 of NGR (e.g. rules 101A(1) and 101A(4)), section 136C of the NGL, or the AER’s Pipeline Information Disclosure Guidelines?</p> <p>Provide any published information relating to pipelines and pipeline service (including, without limitation, the standing terms, financial information and actual prices payable information) or a link to where the public materials may be found.</p>

Explanatory note - Annual Compliance Order - General Regulatory Information Order for gas pipeline service providers

Item	Issue	Submissions	AER response
			<p>Such information should be provided in the form, and comprise of details, set out in the NGR.</p> <p>Rule 101A has been added to the list of references for this item.</p>
N/A	The template should reflect that a service provider may hold an exemption to one or more of the corresponding obligations.	<ul style="list-style-type: none"> • Anonymous • APLNG • QGC 	<p>The following statement has been included in the reporting template sheet:</p> <p>This Order does not require a Service Provider to provide information in response to an Information Request if an exemption applies in relation to that information under the NGL or NGR.</p>
N/A	The template has typographical errors.	<ul style="list-style-type: none"> • QGC 	<p>The reporting template sheet has had some minor errors corrected.</p> <p>The checklist and obligation sheets have been corrected and made more consistent with the reporting template sheet.</p>
N/A	The AER should elaborate on the 'conformance date' column in the response template.	<ul style="list-style-type: none"> • Jemena 	<p>This column is intended to capture the estimated date that a service provider will be compliant with the obligations corresponding to an item in cases where there is non-compliance.</p> <p>For example, if a service provider has not developed and maintained an interconnection policy that complies with Rule 39 of the NGR, the entry in this column would be the estimated date that the service provider expects to have developed such a policy.</p> <p>The headings of columns G, H and I have been amended to more clearly identify what information is being requested:</p> <p>Conformance <i>Compliance with requirement</i></p> <p>If not conformant <i>compliant</i>, why?</p> <p><i>If not compliant, estimated conformance compliance date</i></p>

Glossary

Term	Definition
ACO	Annual Compliance Order
NGL	National Gas Law
NGR	National Gas Rules
RIO	Regulatory Information Order
The Guidelines	The AER Compliance Procedures and Guidelines
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.
