



**FINAL**

# **Annual compliance guideline**

**April 2010**

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# Contents

<b>1</b>	<b>Introduction .....</b>	<b>1</b>
1.1	Overview .....	1
1.2	Role of this Guideline .....	1
1.3	Revision of this Guideline .....	2
<b>2</b>	<b>Relevant pipelines, pipeline services and access arrangements .....</b>	<b>3</b>
	Uncovered pipelines and domestic greenfields pipelines that have been granted a 15-year coverage exemption are other categories of (non-scheme) pipelines defined under the NGL .....	3
2.1	Relevant pipelines and pipeline services for the annual compliance process	3
<b>3</b>	<b>Regulatory framework for covered pipelines .....</b>	<b>8</b>
3.1	Introduction.....	8
3.2	Functions and powers of the AER .....	10
<b>4</b>	<b>Compliance processes.....</b>	<b>12</b>
4.1	Use of information orders to collect information for the annual compliance process.....	12
4.2	Form and content of the annual compliance order.....	14
4.3	Annual Compliance process .....	14
4.4	Other matters.....	16
	<b>Glossary .....</b>	<b>21</b>
	<b>Appendix A: Information order .....</b>	<b>i</b>
	<b>Appendix B: Application for exemption from the Annual Compliance Order ....</b>	<b>xvi</b>
	<b>Appendix C: Information gathering powers under the NGL.....</b>	<b>xviii</b>

# 1 Introduction

## 1.1 Overview

The National Gas Law (NGL) and National Gas Rules (NGR) comprises the legislative framework to establish a new cooperative national access regime for natural gas distribution and transmission pipelines.

This national gas objective is stated in s. 23 of the NGL as:

To promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

The importance of regulation in achieving the objective of the NGL and NGR is set out in the Explanatory Memorandum for the Energy Legislation Amendment Bill 2006:<sup>1</sup>

The appropriate regulation of gas and electricity is essential to efficient infrastructure investment, competitive energy markets and lower energy prices for consumers. Energy specific regulatory arrangements are considered necessary to accommodate the technical aspects of service provision in gas and electricity networks and associated market power issues. A co-ordinated approach to energy access is also essential to maintaining consistency with national arrangements for access to essential infrastructure under the TPA and to promote more competitive energy markets.

The AER must carry out its functions in a manner that will (or is likely to) contribute to achieving the national gas objective (s. 28(1)). One of these functions is to monitor compliance of service providers with the NGL, NGR and National Gas Regulations (Regulations), including compliance with an applicable access arrangement, an access determination and a ring fencing decision (s. 27(1)(a)). The focus of this Guideline is outlining the process by which the AER will undertake this function to monitor what a service provider is required to do under the NGL and NGR.

All references to legislation in the Guideline, unless otherwise specified, are for the NGL and NGR. NGL references are denoted with an 's.' for a single section or 'ss.' for more than one section. Rule references will preface a rule number as an 'r.' for a single rule or 'rr.' if the reference relates to more than one rule.

## 1.2 Role of this Guideline

This Guideline has been formulated to provide information to service providers and interested parties in regard to the annual compliance information to be provided to the AER under the NGL and NGR (annual compliance process).

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<sup>1</sup> Commonwealth of Australia, Explanatory Memorandum for the Energy Legislation Amendment Bill 2006 (Cth), p. 2.

The annual compliance process establishes a consistent framework for all service providers to report compliance with their obligations under the NGL and NGR including structural and operational separation (ring fencing).

This Guideline outlines the general requirements under the NGL and NGR that all covered pipeline service providers have and also specific compliance issues in relation to certain types of covered pipeline service providers.

The annual compliance process does not consider the requirements contained in an individual access arrangement relevant to a pipeline. The annual compliance process is not intended to address or monitor a service provider's compliance with its obligations under an access arrangement in place, such as annual tariff variations, cost pass-through issues, trigger events or revisions of an access arrangement. However, the annual compliance process may consider relevant issues about a service provider's obligations under the NGL in respect of any access arrangement it has in place or is required to put in place.

The relevant provisions and rules that are the subject of the annual compliance process are outlined in chapter 3.

With the aid of this Guideline, it is anticipated that service providers will be able to understand their obligations under the NGL and NGR, some of which may be different from, or additional to, their previous obligations under the Gas Pipelines Access Law (GPAL) and the National Third Party Access Code for Natural Gas Pipeline Systems (gas code). The annual compliance process is a means by which service providers provide information to the AER to demonstrate their compliance with these obligations. The Guideline outlines how the AER will undertake the annual compliance process and provides guidance as to how the AER may follow-up any compliance issues, including how it may report outcomes.

However, parties should not rely solely on this Guideline as the basis for understanding all their obligations under the NGL and NGR, as the focus of the AER's processes may change from time-to-time relevant to the areas of regulatory compliance it considers appropriate to review. Service providers and other interested parties should also refer to the NGL, NGR, Regulations<sup>2</sup> and other supporting material to obtain a complete and comprehensive understanding of their obligations under the legislative framework.

### **1.3 Revision of this Guideline**

The AER may amend and revise this Guideline from time-to-time. A version number and an effective date of issue will identify each version of this Guideline.

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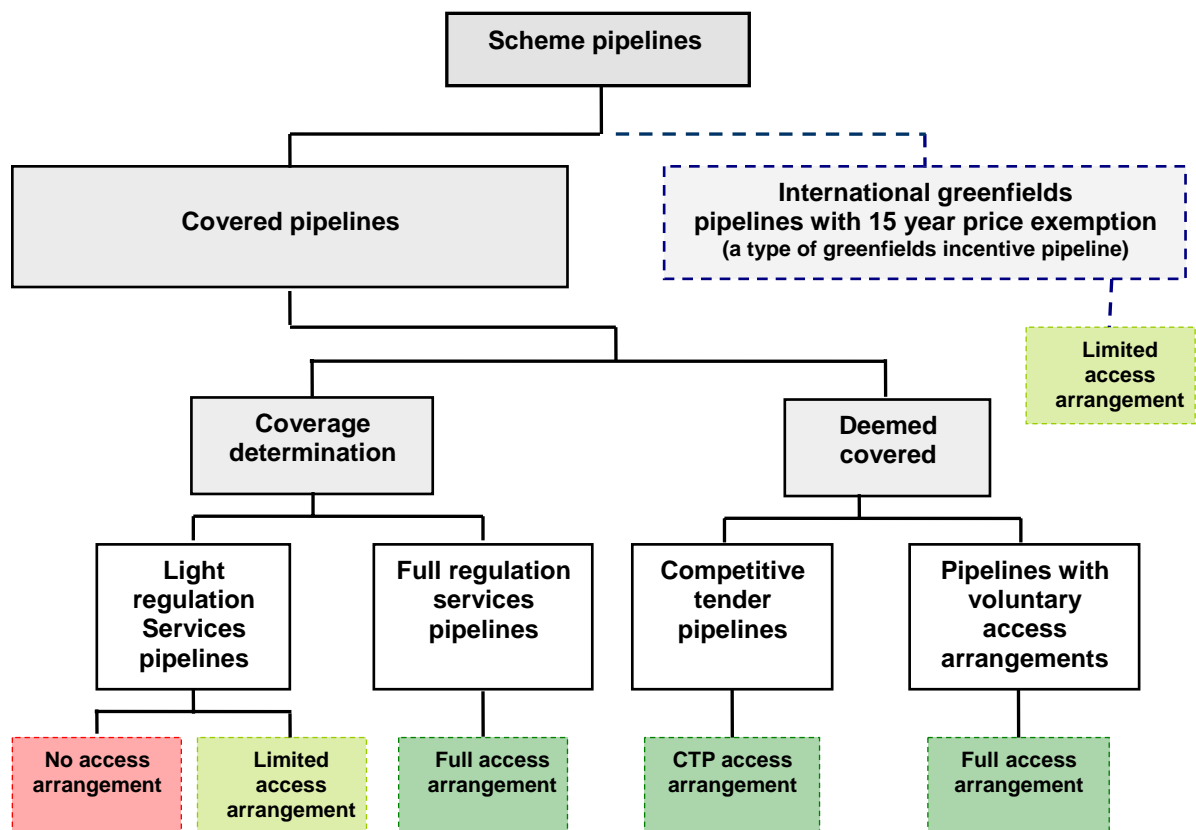
<sup>2</sup> Regulations means the regulations made under Part 3 of the *National Gas (South Australia) Act 2008* of South Australia that apply as a law of this jurisdiction.

## 2 Relevant pipelines, pipeline services and access arrangements

This section discusses which pipelines and access arrangements the annual compliance process applies to.

The schema below illustrates the categories of scheme pipelines and the relevant pipeline services.

**Figure 1: Categories of Scheme pipelines**



Uncovered pipelines and domestic greenfields pipelines that have been granted a 15-year coverage exemption are other categories of (non-scheme) pipelines defined under the NGL.

### 2.1 Relevant pipelines and pipeline services for the annual compliance process

The annual compliance process does not apply to all service providers of natural gas pipeline services.

The annual compliance process applies to covered pipeline service providers as defined by the NGL. Under the NGL, a covered pipeline is defined as both a pipeline subject to a coverage determination or deemed to be covered by the operation of s. 126 (tender approval pipelines) or s. 127 (pipelines with approved voluntary access

arrangements).<sup>3</sup> In this respect, the annual compliance process applies to both service providers of pipeline services carried by covered (by Ministerial decision or deemed under the NGL) transmission and distribution pipelines in jurisdictions regulated by the AER.

The annual compliance process does not apply to:

1. uncovered pipelines
2. domestic greenfields pipelines that have been granted a 15-year coverage exemption, or
3. international greenfields pipelines that have been granted a 15-year coverage exemption (a category of scheme pipelines illustrated in Figure 1).

The following table summarises the different types of pipelines that exist and whether they are subject to the annual compliance process and this Guideline.

**Table 2: Type of pipeline the Guideline applies to**

Type of pipeline	Does the Guideline apply?
Uncovered pipeline	✗
Greenfields incentive pipeline (domestic and international) - no coverage determination	✗
Scheme pipeline – international pipeline with a price regulation exemption	✗
Covered pipeline – providing full regulation services	✓
Covered pipeline – providing light regulation services	✓
Deemed covered pipeline - with a competitive tender process access arrangement	✓
Deemed covered pipeline - with a voluntary access arrangement	✓

### 2.1.1 Covered pipelines

Covered pipelines can be broadly categorised as pipelines with coverage determinations and pipelines that are deemed to be covered.

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<sup>3</sup> s. 2

For transition purposes, distribution and transmission pipelines that were covered under the previous Gas Code prior to the commencement of the NGL are deemed to be covered pipelines under the NGL.<sup>4</sup> However, regulations in some jurisdictions may deem different classifications for pipelines.

### **2.1.1.1 Pipelines with coverage determinations**

#### *i. Light regulation pipelines*

Light regulation pipelines are a new classification of covered pipelines under the NGL that are not subject to up front price regulation. Relevant pipelines may seek reclassification as a light regulation pipeline from the National Competition Council (NCC).<sup>5</sup>

One key aspect of light regulation services pipeline is that a service provider may, but is not obligated to, submit a limited access arrangement to the AER for approval (s. 116). A limited access arrangement is an access arrangement that is not required to make provisions for price terms but must contain non-price terms of access (s. 2).

Limited access arrangements may include an expiry date (r. 45(1)(i)). Even without a limited access arrangement in place, the service provider of light regulation services still needs to comply with other obligations under the NGL and NGR.

This Guideline applies to service providers of pipelines providing light regulation services, whether or not they have a limited access arrangement in place.

#### *ii. Full regulation pipelines*

A full regulation pipeline is a pipeline that has been subject to a coverage determination, providing full regulation services.

A covered pipeline providing full regulation services is required to submit a full access arrangement proposal to the AER within three months of becoming a covered pipeline (r. 46). A full access arrangement contains price and revenue terms and other (non-price) terms and conditions of access for reference services provided by the pipeline.

Even though an access arrangement for a full regulation pipeline can be revised or varied from time to time, as set out in the access arrangement or under the NGR,<sup>6</sup> these access arrangements do not expire. However, there may be circumstances where these access arrangements do cease to have effect, such as if coverage is revoked or

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<sup>4</sup> NGL, Schedule 3, ss. 6 & 7.

<sup>5</sup> The National Gas Regulations prescribes Victorian and South Australian distribution pipelines and Victorian transmission pipelines as designated pipelines, which prevents the NCC making a light regulation determination for these pipelines.

<sup>6</sup> Revisions are amendments to an access arrangement that are made as required by the access arrangement. This could be as scheduled according to the review submission date or as anticipated by a trigger event in the access arrangement (ss. 49-52). Variations are amendments to an access arrangement that are proposed by the service provider voluntarily.



the relevant Minister makes a light regulation determination regarding the relevant pipeline.

A service provider of a full regulation pipeline must ensure that, on or before, the review submission date of an applicable access arrangement, the service provider submits an access arrangement revision proposal to the AER for approval (r. 52(1)).<sup>7</sup>

The AER may extend the period for submitting an access arrangement revision proposal under this rule, but the period (or aggregate period) of extension cannot exceed 2 months (r. 52(3)).

This Guideline applies to service providers of pipelines providing full regulation services.

### **2.1.1.2 Pipelines deemed to be covered**

The NGL also provides for two types of pipelines with certain access arrangements that are deemed to be covered under the NGL.

These pipelines are discussed below.

#### *i. Voluntary access arrangements*

The NGL allows service providers to voluntarily submit an access arrangement at any time (s. 127).

Any voluntary access arrangement submitted must be a full access arrangement (r. 47(1)). A voluntary access arrangement may contain an expiry date (r. 48(1)(j)). Once the approved full access arrangement takes effect, the pipeline remains a covered pipeline until the full access arrangement expires or a coverage revocation determination made in respect of that pipeline takes effect (s. 127(3)).

This Guideline applies to service providers of pipelines with a voluntary access arrangement in place.

#### *ii. Competitive tender process access arrangements*

Where a tender process is used for the construction of a pipeline, a proponent of a pipeline may obtain approval for this process as a competitive tender process (CTP) (r. 21).

One outcome of the CTP is the need to determine the terms and conditions of access. The tender must set out proposed terms and conditions of access and the CTP proponent must document these in a compliance report provided to the AER after the selection process for the tender is complete (r. 24). At least six months prior to the commissioning of a tender approval pipeline, the service provider (successful

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<sup>7</sup> This sub rule is a civil penalty provision for the purposes of the NGL. (See the Regulations, Clause 6 and Schedule 3.)

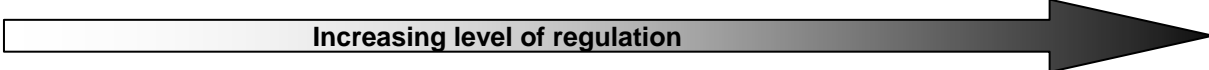
tenderer) must submit a proposed access arrangement which reflects the proposed terms and conditions of access (r. 27(1)).

A CTP access arrangement must include an expiry date of no more than 15 years from the commissioning date of the pipeline (r. 24(2)(c)(vi)). A pipeline with a tender approval is deemed to be a covered pipeline from the date of the tender approval until the expiry date of its CTP access arrangement or when a coverage revocation determination is made (s. 126 (2)).

This Guideline applies to service providers of pipelines with CTP access arrangements.

The following table provides a summary of the nature and extent of regulation for different pipelines as outlined above.

**Table 1: Summary of nature and extent of regulation for different pipelines under the NGL**



Type of pipeline	Light regulation	Voluntary	CTP	Full regulation
<b>Access arrangement</b>				
Mandatory	x	x	✓	✓
Tariff terms and conditions	x	✓	✓	✓
Non-tariff terms and conditions	✓	✓	✓	✓
<b>Access determination</b>				
Tariff terms and conditions	✓	✓	✓	✓
Non-tariff terms and conditions	✓	✓	✓	✓
<b>Other key NGL requirements</b>				
General duties of service provider (Part 4.1 of NGL)	✓	✓	✓	✓
Structural and Operational Separation (ring fencing) (Part 4.2 of NGL)	✓	✓	✓	✓

## **3 Regulatory framework for covered pipelines**

### **3.1 Introduction**

The NGL imposes certain requirements on service providers of covered pipelines. These requirements, which do not extend to uncovered domestic or international greenfields pipelines, are set out in Chapter 4 of the NGL in two parts:

- Chapter 4, Part 1: General requirements for the provision of pipeline services by covered pipelines, and
- Chapter 4, Part 2: Structural and operational separation requirements (ring fencing).

The NGL and NGR also require service providers of covered pipelines that have an access determination and are privy to confidential information, to comply with certain requirements.

In addition, the NGR requires covered pipeline service providers to do or refrain from doing certain things if they have particular types of access arrangements, enter into certain contracts or engage in specific tender processes.

Certain exemptions apply for things done by one service provider for all service providers of a pipeline, but these exemptions do not apply to s. 131 or Chapter 4, Part 2 (s.10).

The NGL and NGR requirements relevant to the annual compliance process for covered pipeline service providers are discussed in further detail below.

#### **3.1.1 General requirements for service providers of covered pipeline services**

Chapter 4, Part 1 of the NGL covers the general duties of a service provider providing services on a covered pipeline. The general requirements of a service provider include:

- being a legal entity of a specified kind (s. 131)
- if applicable, submitting a full access arrangement or revisions to a full access arrangement to the AER for approval (s. 132)
- not engaging in conduct that prevents or hinders access of services to a third party on the covered pipeline (s. 133)
- complying with the queuing requirements that may be contained in an applicable access arrangement (s. 135), and
- not to price discriminate when providing light regulation services (s. 136).

Also included in Chapter 4, Part 1 of the NGL is a requirement of producers who supply natural gas to covered pipelines. Section 134 requires producers to provide a statement of reasons if there is a difference between the terms and conditions stated on offer and the terms and conditions stated when there is a request for the supply and haulage of gas along the covered pipeline.

### **3.1.2 Structural and operational separation (ring fencing) requirements for service providers of covered pipeline services**

The minimum ring fencing requirements of structural and operational separation are dealt with in Chapter 4, Part 2 of the NGL.

The purpose of the structural and operational separation (ring fencing) provisions is to segregate related businesses and certain marketing functions from the parts of the business providing pipeline services. This provides a structural and operational framework to encourage behaviour that is intended to reduce or eliminate both the incentives and opportunities for behaviour which may not be conducive to the promotion of the national gas objective.

The NGL prohibits the service provider from carrying on a related business (s. 139). The NGL also prevents the service provider's marketing staff from taking part in a related business or other staff from being the marketing staff of an associate because of the sensitivity of certain information known to marketing staff about tariff and non-tariff terms and conditions of certain arrangements between service providers and users (s. 140).

The NGL requires service providers to separately account for regulated parts of its business by preparing, maintaining and keeping separate accounts for the pipeline services provided by each covered pipeline owned or operated by the service provider (s. 141(a)). Service providers must also prepare, maintain and keep a consolidated set of accounts (s 141(b)).

An additional requirement in the structural and operational separation provisions is that related businesses should not contract with each other on terms that are different to those that would be entered into with unrelated businesses. Associate contracts between related business should be neither anti-competitive in effect nor be on terms that are different to entities that are unrelated (unless approved) (ss. 147-148).

Service providers must also comply with every additional ring fencing requirement on and from the notified compliance date in a ring fencing determination (s. 143(6)).

### **3.1.3 Other compliance requirements for service providers of covered pipeline services**

In addition to the provisions for structural and operational separation under the NGL and NGR, service providers are required to do other things, which are also dealt with in the annual compliance process. The relevant provisions and rules for these other compliance requirements are outlined below.

### **3.1.3.1 Publishing terms and conditions of access**

With the potential for certain service providers providing pipeline services not being subject to a full access arrangement under the NGL, there is an increased obligation for certain service providers to maintain and publish information on their websites about terms and conditions of access. The purpose of mandating the public availability of such information is to assist users and potential users in negotiating contracts for the use of relevant pipeline services, where no full or limited access arrangement is in place. Service providers may also be required to publish other information.

The requirements for publishing the terms and conditions of access are found in Parts 5, 7 and 11 of the NGR. These include that a service provider must:

- ensure that the applicable access arrangement is accessible on its website (r. 107(1)). This includes an access arrangement for an approved competitive tender process (r. 27(4)), and
- publish on its website the tariffs on offer for light regulation services and other terms and conditions of access to those services (r. 36).

### **3.1.3.2 Other compliance obligations of covered pipeline service providers**

A service provider must also:

- report to the AER on access negotiations relating to light regulation services, which the AER may choose to publish from time to time (r. 37)
- respond within a certain time and in a specified way to an access request from a prospective user (r. 112)
- comply with the prohibition against the bundling of services (r. 109)
- maintain confidentiality of relevant information and take all practicable steps to protect relevant confidential information in the service provider's possession against improper disclosure or use (r. 137), and
- comply with an access determination, if party to an access dispute where an access determination has been made (s. 195).

## **3.2 Functions and powers of the AER**

The AER's functions and powers under the NGL include:

- to monitor compliance with an applicable access arrangement, access determination and a ring fencing determination
- to investigate breaches and possible breaches of the NGL, NGR or the Regulations
- to institute and conduct proceedings in relation to such breaches
- to institute and conduct appeals from decisions in proceedings in relation to such breaches
- AER economic regulatory functions and powers (i.e. the economic regulation of pipeline services provided by a service provider by or in connection with a

scheme pipeline that relates to the preparation of performance reports, ring fencing decisions, an applicable access arrangement and an access determination)

- to prepare and publish reports on the financial and operational performance of covered service providers, and
- to approve compliance programs of service providers relating to compliance with the NGL or NGR (s. 27).

In developing this Guideline, the AER has taken into consideration:

- the purpose of the annual compliance process and other means by which regulatory compliance might be achieved in the first instance including an active review and enforcement program
- the differences in requirements and expectations under the GPAL and gas code compared with the NGL and NGR
- how the AER can best undertake the annual compliance process given the powers available to it for collection and reporting of information under the NGL
- the likely costs that may be incurred by an efficient covered pipeline service provider in complying with the order and undertaking the annual compliance process,<sup>8</sup> and
- the likely contribution to the achievement of the national gas objective.

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<sup>8</sup> s. 48(2)(b).

## 4 Compliance processes

As outlined in chapter 2 of this Guideline, the annual compliance process applies to service providers of covered pipelines.

Covered service providers are required to annually provide information to the AER about their compliance with the relevant provisions and rules outlined in chapter 3 of this Guideline and reflected in the regulatory information order. Even though it may be different from a service provider's annual financial reporting period there will be a requirement for service providers to provide the requested information and documentation for the annual compliance process for the 12 month period from 1 July to 30 June each year, consistent with the ACCC's past practice under the gas code.

### 4.1 Use of information orders to collect information for the annual compliance process

The NGL contemplates that regulatory information instruments including orders and notices under s. 48(1) may be used to obtain information to enable the AER to verify whether service providers are complying with their general duties and specific requirements under Chapter 4 of the NGL (s. 54(c)).

An information order applies to service providers and related providers (as outlined in detail in Appendix C to this Guideline).<sup>9</sup> An information order can be made to apply to more than one type or class of service provider or related providers at the same time. This feature of an information order lends itself to the collection of information under the annual compliance process, because the general duties and specific requirements under the NGL apply to covered service providers. The use of an order also allows information to be collected on a consistent basis across scheme service providers at the same time.

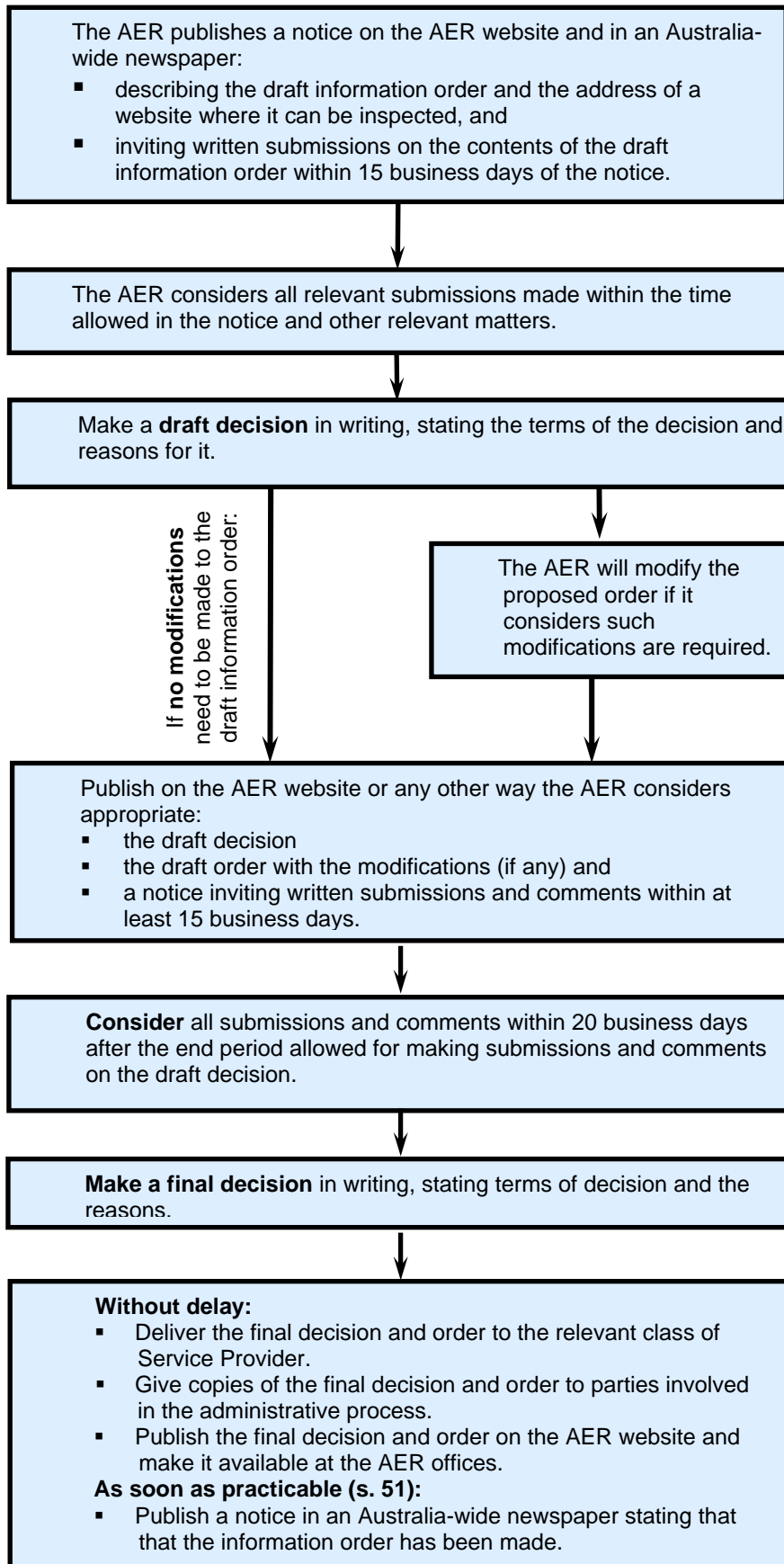
In using an information order for the annual compliance process (annual compliance order), the AER is not precluded from supplementing information collected from particular service providers by serving a regulatory information notice or using the general information gathering powers under s. 42 to verify information from persons other than the service provider as required. The AER may over time contemplate alternative means of collecting information for the annual compliance process.

In making an information order, the AER is required to conduct public consultation prior to publishing a general information order (s. 50). The consultation process mandated for making an order in the NGR is the standard consultative procedure (r. 139). In addition, the AER is required to publish the order once it is made on its website and in a national newspaper (s. 51). The following schema outlines the process the AER will follow in making an information order for the annual compliance process based on the procedure mandated under the NGR:

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<sup>9</sup> Orders can only be made for scheme service providers. A scheme service provider is either a covered pipeline service provider or a service provider who provides or intends to provide pipeline services by means of an international pipeline which a price regulation exemption has been granted (s. 43).

## How the AER makes a general regulatory information order under the NGL





The AER must consider every submission it receives within the period specified in the notice inviting submissions. If submissions are received after this period has elapsed the AER may, but need not, consider these submissions (s. 65).

For a detailed overview of the AER's information gathering powers under the NGL, refer to Appendix C to this Guideline.

## **4.2 Form and content of the annual compliance order**

The annual compliance order is structured and formatted in such a way as to meet the requirements of the NGL to:

- specify the information required to be provided (s. 53(1)(a)(i))
- specify the class of scheme pipeline service provider to whom the information order applies (s. 53(3))
- state the reasons why the AER requires the information to be provided (s. 53(1)(c)(i))
- specify the date when the information must be provided (s. 53(1)(d))
- specify that the information provided may be verified by an officer of the service provider to which the order applies (s. 55(d)), and
- the manner in which information may be provided (s. 53(1)(b)(i)).

The AER is not requiring the information to be provided under the order be audited by an auditor.

The structure of the annual compliance order is as follows:

- Order: outlines what information needs to be provided, by whom and when; the manner in which the information should be provided, why it is required and how it needs to be verified
- Attachment 1: contains the information request i.e. the information to be provided under the order, and
- Attachment 2: provides guidance for service providers in complying with the order and is intended for reference only.
- Attachment 3: is an optional checklist that may assist users in demonstrating compliance with the order.

A copy of the information order relating to information to be provided for the annual compliance process is contained in Appendix A of this Guideline for reference.

## **4.3 Annual Compliance process**

The AER anticipates that the Annual Compliance Order will remain in place for a number of years until it is revoked and/or replaced with another relevant regulatory information instrument or an alternative annual compliance process.

Given the inter-temporal nature of the information order, once the order is made and in place, the AER understands that it will need to review the relevance of the order and general compliance with it over time.

This may be achieved in a number of ways including:

- by use of exemptions (s. 58), which will generally be published on the AER's website and may, if the service provider is known, notify in writing the relevant service provider(s) of the class of service providers to which the exemption applies (refer to section 4.4.5 of this Guideline for further details)
- by supplementing the order with additional information requirements including from time to time the service of a notice or urgent notice (served under s. 48(1)(a)) requesting further information from a particular service provider of the class of service providers to those to which the order applies, or
- by revoking the current information order and making a new order. Circumstances in which a new order may be made include an amendment to the NGL or NGR pertaining to the use of the information regulatory information instruments under s. 48(1) or a change in relation to the content of the information requested in the order.

Any additional information requested will be undertaken using the relevant processes provided under the NGL and NGR, taking into consideration, among other issues, the matters to be addressed by the annual compliance process and the likely costs that may be incurred by an efficient service provider in complying with the regulatory information instrument (s. 48(2)).

Service providers subject to the order will be notified each year around two months prior to the date that the requested information is due to be provided under the information order. If there are any administrative issues such as contact details for the AER to provide information, these may also be addressed in the annual letter to service providers.

Once the annual compliance information is provided by the service provider the AER's process of assessment for the annual compliance process is:

1. Advise a service provider of receipt of its annual compliance information.
2. Internally review the annual compliance information and make a preliminary assessment about this information.
3. If the AER considers a service provider needs to amend or provide further details in its annual compliance information the AER will firstly discuss this with the service provider and allow it an opportunity to submit the revised annual compliance information (if this is required) or propose an alternative appropriate course of action to address the AER's concerns.
4. The AER will then publish the annual compliance information (excised of commercial-in-confidence information if appropriate) on the AER's website.
5. Notify each service provider of the outcome of its assessment in relation to that service provider's annual compliance information. In doing so, notify the service provider of any follow-up action or reviews that are required arising from the annual compliance process. Follow-up action may include a review

of a service provider's documentation and information that is required to be prepared, kept or maintained.

## 4.4 Other matters

### 4.4.1 Provision of commercial-in-confidence information

The form in which information needs to be provided to the AER subject to the annual compliance order is stipulated in the information order itself.

The AER expects that service providers or related providers to which the order applies will in general provide information that is not confidential and can be published. In these circumstances the AER will assume that all information provided under the order will be considered in the public domain and will be posted on the AER's website.

If service providers or related providers in complying with the order need to submit commercial-in-confidence material as part of the information provided to the AER, parties should provide both a public and commercial-in-confidence version of this information. Information must be of a genuinely confidential nature and not otherwise publicly available and a blanket claim for confidentiality over the entirety of the information provided should not be made unless all such information is truly regarded as confidential. The ACCC/AER *Information Policy* requires that unless otherwise indicated, reasons should also be provided in support of this claim.<sup>10</sup>

Confidential information or documentation that is provided to the AER should be clearly identified.<sup>11</sup> The AER suggests that each page of the confidential version of the information or document which contains confidential information be marked in the following way by: inserting 'confidential' in the header, footer and as a background watermark; and underlining/highlighting the confidential information to clearly distinguish the confidential information from non-confidential information on each page.

The non-confidential version of the document or information should be produced by replacing any confidential information with the text '[c-i-c]' or the word 'Confidential'.<sup>12</sup> The pagination for the non-confidential version of the document should be the same as it appears in the confidential version.

In addition, it is not appropriate to provide the ACCC/AER with documents that contain information that is redacted or blacked-out which they do not consider relevant. The AER's position is that confidential submissions should not contain redacted information.<sup>13</sup>

The AER encourages parties to provide information in a way that facilitates the efficient assessment of it for review of a service provider's compliance with its obligations under the NGL, NGR and Regulations, including the verification of any

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<sup>10</sup> ACCC/AER, *Information Policy*, October 2008, p. v. and p. 5.

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*, p. 6.

facts or data upon which the information is based. In this regard, service providers or related providers are encouraged to restrict confidentiality claims over information provided to a minimum.

Service providers should note that the AER may disclose information marked as confidential in the following circumstances:

- if it is already in the public domain
- where it has prior written consent (s. 325)
- if it is being used for the purposes of court and tribunal proceedings and to accord natural justice (s. 326)
- if a redacted form of the documentation is provided by a party and excised of all confidential information, the redacted version of the document can be released (s. 327)
- if it is arranged in a form or combined with other information so that the identity of the party is not possible (s. 328), and
- where the public benefit of disclosing the information outweighs the detriment and after certain processes are followed prior to disclosing that information (s. 329).

#### **4.4.2 Information gathered in one regulatory process used in other regulatory processes**

The AER may use information provided under its general information gathering powers or under a regulatory information instrument for any purpose connected with the performance and exercise of its function or power (s. 66).

This provides wide scope for the AER to use information gathered in one regulatory process, in other regulatory processes. This includes but is not limited to any enforcement programmes and reporting functions as appropriate to the development of an open and transparent regulatory framework consistent with the national gas objective (s. 23).

#### **4.4.3 Matters in relation to compliance with the information order**

##### **4.4.3.1 Non-compliance with the order**

The information collection for the annual compliance process is by way of a general regulatory information order. Under the NGL, service providers are required to comply with the order, if they are a member of the class of person to which the order applies and have not been granted an exemption (s. 57).

If a person does not comply with the order and is required to do so under the NGL, the AER can institute civil proceedings under s. 229, by making an application for breach of s. 57.

#### **4.4.3.2 Providing false and misleading information to the AER**

If a person knowingly provides information to the AER that is false and misleading in complying with the information order, a penalty of \$2000 applies for a person and \$10 000 for a body corporate (s. 60).

#### **4.4.3.3 Other issues related to compliance with the order**

In complying with the information order for the annual compliance process, a person cannot refuse to comply with the information order, on the ground of a duty of confidence. A person does not incur a liability for breach of confidence, breach of contract or any other civil wrong by complying with the order (s. 61).

A person however is not required to provide the AER information for the annual compliance process that is subject to legal professional privilege, or provide a document that is the subject of legal professional privilege (s. 62).

Under the NGL, it is a reasonable excuse that a person does not comply with the information order for the annual compliance process, if in doing so, it might tend to incriminate the person or make the person liable to criminal penalty under a relevant law (s. 63(2)).

Service providers and related providers are reminded that under ss. 137.1 and 137.2 of the *Criminal Code 1995* (Cth), it is an offence to provide false or misleading information or to produce a document knowing it is false or misleading to a Commonwealth entity.

#### **4.4.3.4 Compliance with requirements under section 134 of the NGL**

The requirements set out under section 134 of the NGL that are captured in question 1.3 of the Annual Compliance Order are relevant to the producers supplying gas rather than the services providers of covered pipelines. As a consequence in general the AER does not consider that question 1.3 of the Annual Compliance Order is relevant to most service providers.

#### **4.4.4 Matters in relation to non-compliance with the NGL**

In the circumstances that a potential breach or issue of non-compliance with the NGL is identified in the context of the annual compliance process, the AER will provide separate written notification of the nature of the breach identified and the relevant course of action that is to be pursued. At this stage, a service provider will be provided with an opportunity to provide a response.

#### **4.4.5 Exemptions from compliance with the information order**

As outlined above the annual compliance order applies to service providers of a covered pipeline. Under the NGL, a service provider owns, controls or operates a pipeline or scheme pipeline (s. 8). As a result the annual compliance order applies to an owner, controller and operator of a covered pipeline. Section 11 also contemplates in the case that a service provider is a foreign service provider, a local agent is required to do things under the NGL, so in the case of a foreign service provider, the annual compliance order will apply to the local agent of the service provider. In this way the NGL acknowledges that different organisational and business structures may

operate in the gas industry and there may be more than one service provider for a covered pipeline and that service providers may be foreign.

The AER also notes that under s. 10 certain things done by one service provider (the complying service provider) can be considered as being done by all service providers. This relates to the obligations of service providers under the NGL. However, as outlined above there are some obligations such as being a legal entity (s. 131) and the ring fencing obligations (Chapter 4, Part 2).

In circumstances where there is more than one service provider for a given covered pipeline, the AER may grant exemptions from complying with the annual compliance order under s. 58 of the NGL, in these circumstances a service provider may be nominated to report the NGL obligations under the annual compliance process.

Even though an exemption may be granted unconditionally or on specified conditions or may be granted wholly or to the extent as is specified in the exemption, the AER will still require at least one service provider to report all of the information under the annual compliance process. In circumstances where a service provider is provided with exemptions from reporting some of the information required under the annual compliance process, it will still be required to report some information. This information can be reported by another service provider of the covered pipeline on its behalf. If an exemption is granted, the information required to be reported under the annual compliance process and any additional reporting requirements will be outlined in the AER decision's to grant the exemption.

Arrangements as to how the information required to be reported by all the service providers to the AER will be left to the service providers of a covered pipeline, as these will be specific to the circumstances of each pipeline.

#### **4.4.5.1 Exemption order process**

The AER will consider exemption applications from service providers of a covered pipeline on a case-by-case basis.

An application for exemption from providing the information under the annual compliance order must be provided in writing. A pro-forma of the exemption application form that must be used is provided in Appendix B.

In granting an exemption from compliance with some of the reporting requirements the applicant may be required to notify the AER in writing about change in operational circumstances such as:

- a change in the service provider's name to which the exemption applies, or
- if the applicant is no longer a service provider of the covered pipeline. If this is the case then one of the conditions of the exemption may require the applicant to notify the AER as to who is the relevant service provider of the covered pipeline.

As a condition of granting an exemption, the AER may require the applicant to periodically report its status as a relevant service provider of the covered pipeline. This will ensure that the AER is informed of any changes as to who are the relevant service providers of the covered pipeline.

From time-to-time the AER may also need to revisit its decision as to the nature of the exemption and who is required to report annual compliance matters under the annual compliance order.

While the AER has provided examples of what conditions may apply in granting an exemption from some of the reporting requirements these matters will be dealt with on a case-by-case basis specific to the circumstances of the service provider or providers of a covered pipeline service on receipt of the pro-forma exemption application form.

# Glossary

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<b>Term</b>	<b>Explanation</b>
AER	Australian Energy Regulator
Access arrangement	An arrangement setting out terms and conditions about access to pipeline services provided or to be provided by means of a pipeline (s.2)
Annual compliance order	The regulatory information order to be used for the annual compliance process as outlined in this Guideline
Annual compliance process	The process relevant to service providers for providing annual compliance information to the AER, in meeting their duties under the NGL and the NGR, including the structural and operational separation (ring fencing) obligations (as outlined in this Guideline).
Covered pipeline	A pipeline to which a coverage determination applies or deemed to be a covered pipeline by operation of s. 126 or 127 of the NGL
Gas code	National Third Party Access Code for Natural Gas Pipeline Systems
GPAL	Gas Pipeline Access Law
Guideline	Annual Compliance Guideline
NCC	National Competition Council
NGL	National Gas Law 2008
NGR	National Gas Rules 2008
Regulations	National Gas Regulations 2008
Related provider	A related provider is a person who supplies a contributing service to a



	covered pipeline service provider (s. 43)
Scheme pipeline	A covered pipeline or an international pipeline to which a price regulation exemption applies (s. 2)
Service provider	A service provider is a person who owns, controls or operates or intends to own, control or operate a pipeline or any part of a pipeline. A service provider may also be a gas market operator that controls or operates a pipeline or part of a pipeline (s. 8)
TPA	Trade Practices Act 1974 (Cth)

# Appendix A: Information order

## Annual Compliance Order

### Relevant Class to whom this order applies

This order applies to the following classes of pipeline service providers (Specified Class):

- service providers of covered pipeline services provided by a transmission pipeline, and
- service providers of covered pipeline services provided by a distribution pipeline.

This Order does not apply, in part or in whole, to any person belonging to the Specified Class where that person has been granted a conditional or unconditional exemption under section 58 of the *National Gas Law*.

*Made under section 48(1)(b) of the National Gas Law  
on 7 November 2008.*

### Order

Pursuant to sections 43 – 63 of the *National Gas Law* (NGL) the Australian Energy Regulator (AER) makes the following order:

1. Service providers or related providers are required to do certain things including provide information to the AER and prepare, maintain or keep information under the NGL, *National Gas Rules* (NGR) and Regulations.<sup>1</sup>
2. The AER's primary purpose in making this Order is to monitor compliance with the NGL, Regulations and NGR of service providers; and undertake the AER's economic regulatory functions or powers (under sections 27 (1)(a) and (e) of the *National Gas Law*). In addition to the monitoring of compliance of persons and service providers under the NGL, NGR and Regulations, the AER may also use this information to investigate breaches or possible breaches of provisions under section 27(1)(b). However, this Order is not made solely for this purpose.
3. The Specified Class of service providers must provide to the AER the information and documentation specified in this Order by doing the following:

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<sup>1</sup> Regulations means the regulations made under Part 3 of the *National Gas (South Australia) Act 2008* of South Australia that apply as a law of this jurisdiction.

- (a) provide the information and documentation covering the 12 month period ending 30 June of that year (Compliance Period)
  - (b) provide the information and documentation **by 5.00 pm A.E.D.T. on 31 October of that year, or where this day falls on a weekend or a public holiday, by 9.00 am A.E.D.T. on the next business day after 31 October**, and
  - (c) provide the information and documentation to the **nominated contact officer** as outlined by the AER in correspondence provided from time to time about the annual compliance process.
4. The information and documentation provided must answer information requests contained in the Attachment 1 to this Order. Specified Class of service providers should refer to Attachment 2 for guidance in addressing the information and documentation requests contained in this order. Attachment 2 also contains the relevant references to the NGL and NGR for each question.
5. Information and documentation provided must be verified by way of a Statement of Compliance by an officer of the covered pipeline service provider or of a related provider to which the Order applies. The AER requires that the officer providing the Statement of Compliance to be a Director of the service provider or if there is no Director a person making or participating in the decisions that affect the whole, or a substantial part, of the business of the corporation or have the capacity to affect significantly the service provider's financial standing such as a member of the Board of the service provider.
6. The Statement of Compliance must address the following issues:
- (a) verification by a Director or member of the Board of the service provider per clause 5 of this Order, that the information and documentation provided in compliance with this Order are accurate and can be relied on to provide a true and fair representation of the service provider's operations or ownership of a pipeline that can be relied on by the AER in the performance or exercise of its functions or powers under the NGL or the NGR,
  - (b) verification by a Director or member of the Board of the service provider per clause 5 of this Order, that the information and documentation provided in compliance with this Order in reliance on information and documentation that is prepared, kept or maintained is accurately represented,
  - (c) verification by a Director or member of the Board of the service provider per clause 5 of this Order, that the information and documentation provided is not false and misleading,
  - (d) verification by a Director or member of the Board of the service provider per clause 5 of this Order, that the information and documentation provided is in accordance with the Order and is complete, and

(e) in instances where the Order is not complied with, the Director or member of the Board of the service provider sets out the reasons why the Order is not complied with including all relevant references to any exemptions or provisions of the NGL as applicable.

7. The information and documentation must, where practicable:
  - (a) be provided in a soft copy format (MS Word or PDF) that will allow the AER to 'copy and paste' text. In addition a read-only PDF copy of the information and documentation may be submitted to the AER;
  - (b) include as attachments a copy of any extraneous material (such as consultants' reports or quotes from court or tribunal decisions) that is relied on with the relevant referenced sections clearly marked.
8. The information and documentation that contains confidential information should be provided in accordance with the Annual Compliance Guideline.
9. This Order is subject to any future Orders that may be inconsistent with these Orders.
10. This Order shall take effect as and from the date it is made, and will remain in force until this Order is varied or revoked.

.....  
Steve Edwell

.....  
Andrew Reeves

.....  
Edward Willett

Dated this 7<sup>th</sup> day of November 2008

# **Attachment 1 - Matters to be specifically addressed annually by service providers and related providers**

Note: In addressing these matters, the information and documentation provided must only cover the relevant Compliance Period as defined in the Order.

## **1. General duties for the provision of pipeline services of covered pipeline services by a service provider**

### **1.1 Legal entity**

- (a) Nominate the type of legal entity the service provider is according to the specified kinds of legal entity in section 131 of the NGL.*
- (b) What is the registered business name and ABN of the service provider legal entity providing the covered pipeline service?*
- (c) Provide an outline of the group structure which is controlled by or which the service provider is a part (including identification of the head company, nature of investment or entity, relationship to the service provider and proportion of assets owned/share of investment within the group). This should include any assets (businesses) it owns or that own it. The group structure should include business that are beneficially controlled such as trustee companies, jointly owned or operated business such as partnerships or joint ventures, businesses that are significant investments or controlled. This can also be represented as an organisational chart.*

### **1.2 Preventing or hindering access**

- (a) Is the service provider aware of any claims that it has prevented or hindered access to services on the covered pipeline within the terms of section 133 of the NGL?*

### **1.3 Supply and haulage of natural gas**

- (a) Does a producer supply natural gas through the covered pipeline at a place other than the exit flange of the producer's processing plant?*

### **1.4 Queuing requirements**

- (a) Has the service provider complied with the queuing requirements of the applicable access arrangement during the year?*

### **1.5 Service provider providing light regulation services must not price discriminate**

- (a) Does the service provider provide light regulation services?*

- (b) *If so, are there any differences in the prices of the provision of those services?  
Please provide an explanation as to why these price differences exist.*

## **2. Structural and Operational Separation Requirements (Ring Fencing)**

### **2.1 Carrying on of a related business**

- (a) *Provide a list of associates of the service provider that take part in a related business and for each associate describe what the nature of the related business is.*
- (b) *Provide a list of associates that are service providers and/or provide pipeline services.*

### **2.2 Marketing staff and the taking part in related businesses**

- (a) *Provide a list of associates of the service provider that are directly involved in the sale, marketing or advertising of pipeline services.*
- (b) *Provide a statement as to whether or not any of the service provider's marketing staff are also officers, employees, consultants, independent contractors or agents of an associate of the service provider that takes part in a related business.*
- (c) *Provide a statement as to whether or not any of the service provider's officers, employees, consultants, independent contractors or agents are also marketing staff of an associate of the service provider that takes part in a related business.*

### **2.3 Separate accounts must be prepared, maintained and kept**

- (a) *Provide a statement as to whether or not the service provider has prepared, maintained and kept a separate set of accounts in respect of the services provided by every covered pipeline owned or operated by the service provider.*
- (b) *Name the legal entity or entities in which the separate accounts are reported, maintained or kept for the services provided by each covered pipeline owner or operator?*
- (c) *Provide a statement as to whether or not the service provider has prepared, maintained and kept a consolidated set of accounts in respect of the whole of the business of the service provider.*
- (d) *Name the legal entity in which the consolidated set of accounts are reported, maintained or kept for the services provided by each covered pipeline owner or operator?*
- (e) *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.*

## **2.4 Additional ring fencing requirements or exemptions**

- (a) Does the service provider have any additional ring fencing requirements?*
- (b) What are these requirements?*
- (c) Provide a statement that these additional ring fencing requirements have or have not been met.*
- (d) Does the service provider have any exemptions for the minimum ring fencing requirements?*
- (e) What are these exemptions?*
- (f) By what jurisdictional regulator and when where these exemptions granted?*

## **2.5 Associate contracts**

- (a) Has the service provider entered into or given effect to any new associate contracts, or varied the terms and conditions of an existing associate contract?*
- (b) For each new or varied associate contract, please indicate the date the new or varied associate contract was entered into or given effect?*
- (c) For each new or varied associate contract, please indicate if the contract or variation was approved by the AER and the date that it was approved?*
- (d) If the associate contract was not approved by the AER, please indicate what date the new or varied associate contract was provided to the AER?*

Note: An 'associate contract' is defined under the NGL to include arrangements or understandings and is not limited to written contracts.

## **3. Other requirements**

### **3.1 Making access arrangement or terms and conditions of access available**

- (i) Ensuring applicable access arrangement and other specified information is available on website*

- (a) *Has the service provider published the approved access arrangement on its website?*
- (b) *Please provide the website address where this access arrangement can be accessed and the date that this access arrangement was provided on the website.*
- (c) *Has the service provider received any requests from the AER to provide to prospective users generally other information specified as reasonably necessary to determine if access should be sought.*
- (d) *Please provide details of when and how this request was met.*

(ii) Publishing approved competitive tender process access arrangement

- (a) *Where there is an approved competitive tender process access arrangement in place for a covered pipeline, has the service provider published the approved access arrangement on its website?*
- (b) *Please provide the website address where this access arrangement can be accessed and the date that this access arrangement was provided on the website.*

(iii) Publishing terms and conditions of access to light regulation services

- (a) *Where there is access to light regulation services on a covered pipeline, has the service provider published tariffs and other terms and conditions for these services on its website?*
- (b) *Please provide the website address where this information can be accessed and the date that this information was first made available on the website.*
- (c) *Has the service provider had access negotiations regarding light regulation services? If so, the following will need to be reported, the name of the party requesting the service, the pipeline service requested, and the outcome of the access negotiations.*

*The following table format may be of assistance in reporting this information.*

<i>Party requesting access</i>	<i>Date negotiations commenced</i>	<i>Pipeline service subject to access negotiation</i>	<i>Date negotiations completed</i>	<i>Outcome of access negotiations</i>
<i>1. [ name of party]</i>	<i>[date]</i>	<i>[name the service]</i>	<i>[date]</i>	<i>[Note:</i> <ul style="list-style-type: none"> <li>▪ <i>if negotiation resulted in access being provided/ not provided</i></li> <li>▪ <i>if service provider was not able to meet all aspects of</i></li> </ul>



				<i>access requested]</i> <i>[Name any contracts made, varied or revoked as a result of access negotiations]</i>
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### 3.2 Access determinations

- (a) Has the service provider been party to an access determination?*
- (b) When did the access determination become operative?*
- (c) For what period is the access determination in place?*

### 3.3 Confidentiality

- (a) Provide a statement that the confidentiality requirements under rule 137 of the National Gas Rules have or have not been met.*
- (b) Has the service provider established an internal protocol or policy guideline or procedure manual for the handling of confidential information?*

*If so please provide the AER with the relevant policy document*

### 3.4 Bundling

- (a) Has the service provider bundled any of its services when providing access or negotiating access with a prospective user?*
- (b) If so, provide a description of the bundled services and related conditions of access.*

# **Attachment 2 - Guide to complying with Information order – Annual compliance process**

## **Reference only**

This document outlines the relevant statutory requirements to assist service providers and related providers in understanding their obligations under the NGL and the NGR and for providing information requested in this Order.

The NGL and NGR references and explanations are in the same sequence and numbering as they appear in Attachment 1 to the Order.

Service providers are also directed for further guidance on providing information and documentation for this Order and about the annual compliance process to the Annual Compliance Guideline.

### **R. 1 General duties for the provision of covered pipeline services by service providers**

The first set of questions relate to the general duties of a service provider under the NGL as set out in Chapter 4 Part 1.

#### **R.1.1 Legal entity**

Section 131 of the NGL stipulates that a service provider must be a legal entity of a specified kind to provide pipeline services by covered pipeline.

The service provider must be:

- (a) a legal entity registered under the *Corporations Act 2001* of the Commonwealth; or
- (b) a foreign company; or
- (c) a corporation established by or under a law of this jurisdiction or another participating jurisdiction, whether or not that corporation has been established for a public purpose; or
- (d) the Crown in right of this jurisdiction or another participating jurisdiction; or
- (e) a person referred to in (a) to (d) and that person provides a pipeline service by means of a covered pipeline together with another person referred to in (a) to (d).

### **R. 1.2 Preventing or hindering access**

A service provider; or a person who is party to an agreement with a service provider relating to pipeline services provided on a covered pipeline; or a person who is entitled to a pipeline service on a covered pipeline; or an associate of a service provider or a person referred to above, must not engage in conduct for the purposes of preventing or hindering the access of another person to a pipeline service on the covered pipeline (s.133).

Rule 112 requires that when a service provider receives a request for a pipeline service from a prospective user, the service provider must respond within a certain time and deal with the request in a specified way. That is, the service provider must respond within 20 days and inform the prospective user:

- whether the service provider can provide the pipeline service
- whether any further investigations need to be conducted before provision is decided
- of the terms and conditions, if providing the service
- of the reasons if refusing to provide the service and
- whether there is prospect of provision in the future if the service can not be presently provided.

### **R. 1.3 Supply and haulage of natural gas**

If there is a difference in the tariff stated, the producer must include in the terms offered for the supply of gas at the exit flange a statement of the reasons for the difference (s.134).

### **R. 1.4 Queuing requirements**

A service provider must in providing a service by means of a covered pipeline, comply with the queuing requirements of an applicable access arrangement (s.135).

### **R. 1.5 Service provider providing light regulation services must not price discriminate**

A service provider must not engage in price discrimination when providing light regulation services. The exception is when it is conducive to the efficient provision of the service (s.136).

## **R. 2 Structural and Operational Separation Requirements (Ring Fencing)**

The second set of questions relate to the structural and operational separation requirements (including minimum ring fencing requirements) under the NGL as set out in Chapter 4 Part 2.

### **R. 2.1 Carrying on of a related business**

Section 139 of the *National Gas Law* requires that a service provider not carry on a related business.

### **R. 2.2 Marketing staff and the taking part in related businesses**

Section 140 of the *National Gas Law* requires that a service provider ensures that none of its marketing staff are officers, employees, consultants, contractors or agents of an associate of the service provider that takes part in a related business, and its employees, consultants, contractors or agents are not marketing staff of an associate that takes part in a related business.

An associate in relation to a service provider has the same meaning it would have under Division 2 of Part 1.2 of the *Corporations Act 2001*.

Part 1.2 section 11 of the *Corporations Act 2001* states that *(i) if the primary person is a body corporate, the associate reference includes a reference to:*

- (a) a director or secretary of the body;*
- (b) a related body corporate; and*
- (c) a director or secretary of a related body corporate.*

### **R. 2.3 Separate accounts must be prepared, maintained and kept**

Section 141 of the *National Gas Law* requires that a service provider must prepare, maintain and keep:

- (a) separate accounts in respect of services provided by means of every covered pipeline owned or operated by the service provider; and
- (b) a consolidated set of accounts in respect of the whole of the business of the service provider.

### **R. 2.4 Additional ring fencing requirements and exemptions**

The AER may make a determination requiring a covered pipeline service provider or an associate named in the determination to do, or refrain from doing, a thing specified in the determination (s.143).

The service provider or an associate named must comply with every additional ring fencing determination on and from the notified compliance date.

The AER subject to and in accordance with the NGR, may exempt a covered pipeline service provider from the minimum ring fencing requirements under sections 139, 140 or 141 (s. 146).

## **R. 2.5 Associate contracts**

Sections 147-148 requires that a service provider must not:

- (a) enter into an associate contract that has or
- (b) vary an associate contract so that contract, as varied, is; or
- (c) give an effect to a provision of an associate contract

that would have or is likely to substantially lessen competition or is inconsistent with the competitive parity rule unless approved.

A service provider may apply to the AER for approval of an associate contract or a proposed associate contract; or a proposed variation of an approved associate contract (r. 32 (1)).

Within 5 business days after entering into, or varying, an associate contract (whether approved or not), a service provider must give written notice to the AER of the contract or variation together with a copy of the contract or contract as varied (r. 33). By complying with this rule a service provider incurs no liability for breach of contract, breach of confidence, or any other civil wrong.

## **R. 3 Other requirements**

The third set of questions relate to other requirements of a service provider (including publishing requirements under Parts 5 and 7 of the NGR, compliance with access determinations under Chapter 6 Part 5 of the NGL and confidentiality requirements under Part 16 of the NGR).

### **R. 3.1 Making access arrangement or terms and conditions of access available**

- (i) Ensuring applicable access arrangement is available on website

A scheme pipeline service provider must ensure that the applicable access arrangement is accessible on the service provider's website (r. 107(1)).

- (ii) Publishing approved competitive tender process access arrangement

An approved competitive tender process access arrangement must be published on the service provider's website (r. 27(4)).

- (iii) Publishing terms and conditions of access to light regulation services

A service provider for a light regulation pipeline must publish on its website the tariffs on offer for light regulation services and other terms and conditions of access to those services. If, however, a limited access arrangement is in force and is accessible on the service provider's website, the terms and conditions of access (other than tariff) need not be separately published on the website (r. 36).

A service provider for a light regulation pipeline must also report to the AER on access negotiations relating to light regulation services (r. 37).

### **R. 3.2 Access determinations**

A party to an access dispute in respect of which an access determination is made must comply with the access determination (s. 195).

### **R. 3.3 Confidentiality**

Under rule 137, the service provider must not:

- (a) disclose relevant confidential information; or
- (b) use relevant confidential information for a purpose other than the purpose for which the information was given to the service provider.

The service provider must take all practicable steps to protect relevant confidential information in the service provider's possession against improper disclosure or use. This does not prevent:

- (a) disclosure or use of relevant confidential information with consent of the person to whom the information relates; or
- (b) disclosure of information that is in the public domain; or
- (c) disclosure or use of relevant confidential information in order to comply with:
  - the law of a participating jurisdiction; or
  - an order of a court or tribunal of a participating jurisdiction; or
  - a requirement imposed by or under the NGL; or
  - the listing rules of a recognized stock exchange.

The duty imposed by this rule is a non-delegable duty.

### **R. 3.4 Bundling**

Under rule 109, a service provider must not make it a condition of the provision of a particular pipeline service to a prospective user that the prospective user accept another non-gratuitous service from the service provider unless the bundling of the services is reasonably necessary.

The description of pipeline services in an access arrangement must conform with this principle.

# Attachment 3 - Annual compliance checklist

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NGL/NGR

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## 1. General duties for the provision of pipeline services of covered pipeline services by a service provider

**1.1 Legal entity** s. 131

- (a)
- (b)
- (c)

**1.2 Preventing or hindering access** s. 133, r. 112

- (a)

**1.3 Supply and haulage of natural gas** s. 134

- (a)

**1.4 Queuing requirements** s. 135

- (a)

**1.5 Service provider providing light regulation services must not price discriminate** s. 136

- (a)
- (b)

## 2. Structural and Operational Separation Requirements (Ring Fencing)

**2.1 Carrying on of a related business** s. 139

- (a)
- (b)

**2.2 Marketing staff and the taking part in related businesses** s. 140

- (a)
- (b)
- (c)

**2.3 Separate accounts must be prepared, maintained and kept** s. 141

- (a)
- (b)
- (c)
- (d)
- (e)

**2.4 Additional ring fencing requirements or exemptions** ss. 143, 146

- (a)
  - (b)
  - (c)
  - (d)
  - (e)
-

- (f)

**2.5 Associate contracts**

ss. 147, 148,  
rr. 32(1),33

- (a)
- (b)
- (c)
- (d)

**3. Other requirements**

**3.1 Making access arrangements or terms and conditions of access available**

rr. 107(1)(3),  
27(4), 36, 37

- (i) Ensuring applicable access arrangement and other specified information is available on website

- (a)
- (b)
- (c)
- (d)

- (ii) Publishing approved competitive tender process access arrangement

- (a)
- (b)

- (iii) Publishing terms and conditions of access to light regulation services

- (a)
- (b)
- (c)

**3.2 Access determinations**

s. 195

- (a)
- (b)
- (c)

**3.3 Confidentiality**

r. 137

- (a)
- (b)

**3.4 Bundling**

r. 109

- (a)
  - (b)
-



# Appendix B: Application for exemption from the Annual Compliance Order

## National Gas Law

### Application for exemption from General Regulatory Information Order

#### Annual Compliance Order

**To: The Australian Energy Regulator (“AER”)**

Application is made for an exemption under section 58 of the *National Gas Law* (“NGL”) from complying with the annual compliance order dated [insert date] made by the AER under section 48(1)(b) of the NGL (“Annual Compliance Order”).

**11. (a) Name and ABN of applicant:**

[insert full legal name and ABN of applicant]

**(b) Short description of the business carried on by applicant:**

[eg. The applicant is a service provider of covered pipeline services provided by a pipeline]

**(c) Name of covered pipeline:**

[insert pipeline name]

**(d) Is the covered pipeline a transmission or distribution pipeline?**

**(e) Please identify whether the applicant is either an owner, controller or operator of the pipeline.**

**(f) List any other owners, controllers or operators of the pipeline:**

**12. Grounds for grant of exemption:**

**13. Name and address of persons authorised by the applicant to provide additional information in relation to this application:**

[name]

[job title]

[address]

[telephone]

[email]

**Signed** on behalf of the applicant by:

.....  
Signature

.....  
Print name

.....  
Position

Dated this            day of [Month] [Year]

# Appendix C: Information gathering powers under the NGL

## Information gathering powers

In carrying out its regulatory functions, the AER receives information from service providers and interested parties in a variety of forms for different regulatory processes. In some cases these are required by the NGL, such as when service providers are required to submit a proposal for access arrangements or revisions to access arrangements. In other cases, access arrangements prescribe submission of certain information for tariffs such as annual variations and cost-pass through applications. Service providers may also at any time provide information on a voluntary basis.

In circumstances where information is not forthcoming or is required to be complemented by a targeted and specific request, the NGL provides powers to enable the AER to compel parties to provide information. The three relevant powers are:

- service of a notice to any person capable of providing relevant information or documentation under the general information gathering powers (s. 42(1))
- service of an information notice to a scheme service provider or related provider (s. 48(1)(a)), and
- making of an information order to a class of scheme service providers or class of related providers (s. 48(1)(b)).

## Key features of the different means to collect information under the NGL

These powers have different features and may lend themselves more to certain regulatory processes than others. The suitability of these powers for different applications may change over time based on experience and use.

The key features of each of these information gathering powers are summarised below.

### What information can be collected and from whom?

Regulatory information instruments under s. 48(1) apply to scheme pipeline service providers or related providers, and may be used (as outlined in ss. 45-46):

- to provide information
- to prepare, maintain or keep information in a specific form including historic, current or forecast information

The information may include:

- information derived from other information possessed or controlled by the party to whom the instrument applies (s. 54(b)), and

- information to enable the AER to verify compliance with Chapter 4 requirements and allocation of costs between natural gas services provided by the service provider (s. 54(c)).

The regulatory information instrument may require that information be provided, prepared, maintained or kept on an annual basis or for a specified event.

The regulatory information instrument may also specify that the information be verified by an officer by way of a statutory declaration or be audited.

General notices under s. 42(1):

- can be served on any person capable of providing information or documentation that the AER requires for the performance or exercise of its powers and functions under the NGL, NGR and Regulations
- relate to providing information or producing a document, and
- may require written information signed by an officer of a body corporate or the person on the notice.

#### **What should regulatory information instruments contain?**

The form and content of an instrument depends on which powers are being used to collect information.

Notices served under the general information gathering powers (s. 42(1)) do not have any prescribed form but require that a person is named in the notice and may require that person to provide information or produce a document within a specific time or manner and signed.

Notices served under s. 48(1)(a) and orders made under s. 48(1)(b) on a service provider or related provider must:

- specify the information to be provided, and
- specify the information to be prepared, maintained or kept in a particular manner and form, and
- state reasons why the AER requires the information to be provided or prepared kept or maintained (and if relevant in the particular manner and form), and
- specify when the information is to be provided, and
- either the name of the service provider or related provider (in the case of a notice), or
- the class of the service provider or related provider (in the case of an order).

In addition, the regulatory information instrument

- may specify the manner and form the information is to be provided to the AER or prepared, maintained or kept.

### **Consultation processes before serving a notice and making an order**

Different consultation processes may apply prior to the serving of a notice (either under s. 42(1) or s. 48(1)(a)) or making of an order under s. 48(1)(b).

In the case of notices served under the general information gathering powers (s. 42(1)), the AER has no express obligations under the NGL to consult before serving the notice. The premise underlying this approach for information collected under the general powers is that either the information or the documentation is already in existence, and the costs and effort in complying with the notice should be minimal.

The approach to consultation for collection of information using regulatory information instruments under s. 48(1) is somewhat different. Given the extent and nature of information that may be provided, prepared, kept or maintained and that it may be audited, the NGL requires the AER to not only consider certain issues<sup>2</sup> before serving a notice or making an order, but to also consult with the relevant service providers or related providers to whom the instrument applies.

One of the issues that the AER must consider prior to making an order or serving a notice is to consider whether it is reasonably necessary to make or serve an order or notice. It must also examine the likely costs that may be incurred by an efficient covered pipeline service provider or efficient related provider in complying with the notice or order. Notices and orders under s. 48(1) must not be made solely for investigating possible breaches of the NGL, NGR or Regulations, instituting and conducting proceedings or appeals, preparation of performance reports, or review applications (s. 48(3)).

In addition, one of the key issues the AER must consider if it extends the compliance process to related providers is whether they can provide, prepare, maintain or keep the information as specified in the instrument, the competitive nature of supply of the service and the relationship of ownership or control between the related provider and the service provider (s. 49(2)).

Prior to serving a notice under s. 48(1)(a), the AER is required to notify the relevant service provider or related provider of its intention to serve a notice, and in doing so provide a copy of the draft of the notice (s. 52(1)). The AER must also indicate if the regulatory information notice is to be served as an urgent notice and give reasons why (s. 52(2)). The service provider is invited to make submissions on whether a notice should be served (s. 52 (4)). For an urgent notice the service provider is allowed at least five but no more than 10 business days, and for all other notices at least 20 business days, to make written representations (s. 52(5)).

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<sup>2</sup> Refer to ss. 47 and 48 for further details

The AER is required to consult with the public on its proposal to make an order before it makes the order (s. 50). The consultation process for making an order is stipulated in the NGR and is discussed along with other relevant issues related to collecting information for the annual compliance process in chapter 4 of this Guideline.