

Attachment One: Summary of submissions and responses

	Issue	Details	AER response	Submissions
Order	Statutory declaration/Sign-off	<p>Several responses were received:</p> <ul style="list-style-type: none"> ▪ An assurance signed by the CEO should suffice this requirement [as per previous ACCC form] ▪ A statutory declaration should be reserved for more serious cases and may be requested; sanctions exist for providing false and misleading information ▪ There is no reason for requiring board sign-off, suggesting lack of confidence in the integrity of the CEO and of the compliance culture of the business ▪ The statutory declaration requirement should be removed in favour of a more light-handed regulatory regime ▪ A mandatory statutory declaration is not necessary, it diminishes the value attributed to statements by Directors, an endorsement or approval by a Director should suffice ▪ Question the value and efficiency of reporting such information under a sworn statements, as the AER's 	<p>The AER considers that verification by a Director or member of the Board by way of statutory declaration is an integral component of the annual compliance framework. This demonstrates a commitment of the organisation (decision makers) to a sound corporate governance framework. It also provides verification and the high-level endorsement of the service provider's compliance with its NGL obligations. The AER considers that satisfying the regulator that a service provider has complied with these obligations is a serious and significant enough issue to warrant verification by a Director or member of the Board using a statutory declaration.</p> <p>The AER provides the following responses to the key issues raised by interested parties.</p> <p>First the AER notes that the ACCC's</p>	<p>APIA Envestra Jemena Mulitnet</p>

		<p>objective is simply to obtain confirmation of applicable obligations</p>	<p>requirement was that a Director (or a member of the Board) and the CEO sign a Statement of Compliance verifying ring fencing compliance. The requirements under the annual compliance process do not require both a Director and CEO sign-off.</p> <p>Second, the use of a Statutory Declaration is the specified verification tool provided to the AER under the NGL when making orders. The AER notes that it is different in form to the statement of compliance developed by the ACCC under the code and may have consequences attaching to the provision of false and misleading information. The AER also notes that s. 63 affords a person protection from self incrimination.</p> <p>Third, the use of a Statutory Declaration is at the AER's discretion, the AER has indicated the importance of verification that a service provider has complied with its obligations under the NGL.</p>	
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			<p>The AER has considered the submissions and considers that the statutory declaration is the appropriate form of verification that will be used to confirm compliance.</p> <p>In respect of who signs the statutory declaration the AER considers that it is appropriate that a Director or a member of the Board is the signatory.</p> <p>The AER notes that there is only one objection to obtaining verification from an officer to confirm compliance with obligations under the NGL and NGR. Most other interested parties have provided suggestions as to the form of the verification and the relevant officer that should sign the statutory declaration.</p>	
Order	Annual Report	<p>Two issues are submitted:</p> <ul style="list-style-type: none"> ▪ “most recently submitted reports” will not be consistent with the period of compliance ▪ how would 2.3 (b) and (d) operate in consolidated group accounting structure and/or groups with a deed of cross guarantee 	<p>The AER understands this is the limitation of the proposal. The AER has changed the reporting date for the Order to 31 October so that the statutory financial reports provided relate to the same year as the compliance report.</p>	<p>APIA Jemena Multinet</p>

			The AER is aware that class orders exist to exempt certain entities (wholly owned entities that undertake deeds of cross guarantee with every other company in a closed group). These entities are not required to prepare or lodge a financial report if the conditions in Class Order CO 98/1418 are met but there are still requirements to maintain separate records so that this activity can be reported as part of the relevant consolidated group. In these circumstances, there may be a difference in the name of the reporting entity and the entity that maintains or keeps separate accounts as required under the NGL.	
Order	Deadline for annual compliance reporting	Several suggestions were made to change the reporting date from the 31 July deadline including: <ul style="list-style-type: none"> ▪ 31 August ▪ 1 October [as provided by the ICRC] ▪ 31 October (so that financial reports provided relate to the same (compliance) year) 	The Order is amended to reflect a new reporting date of 31 October each year	ActewAGL APIA Country Energy Jemena Multinet
Order	Related businesses and organisational	Several submissions seek an explanation as to why the AER is seeking organisation charts and how this will assist the AER to undertake	The intention of the organisational chart is a diagrammatical/schematic/tabular	APIA Jemena Multinet

	charts	its statutory functions; statements of assurance and provided as an alternative	<p>representation of the relationships of the service providers businesses. These relationships (usually outlining corporate groups) have been provided previously without controversy to the ACCC for transmission pipelines in tables. The information is important to distinguish functions and operations of a service provider or providers of a covered pipeline, related businesses and associates. This information may not be readily available particularly in the context of a covered pipeline service provider which provides different covered pipeline services through a single legal entity or if the covered pipeline service provider is part of a consolidated group.</p> <p>The AER can mandate the form in which information is provided under an order, but considers this discretion should be provided to the relevant service provider.</p> <p>The Order wording is modified to distinguish between different business models that exist in the sector and</p>	
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			provide flexibility in the format in which the information can be provided.	
Order	Associates	Question 2.2 should be amended to require information about associates in a related business as opposed to all associates. This requirement goes further than those involved in natural gas	Question 2.2 has been altered to reflect that the relevant associate for this question is one which is involved in providing a pipeline service.	APIA Multinet Jemena
Order	Q 3.3	Section 3.2 incorrectly marked – should be 3.3	This has been corrected	APIA
Order	Confidentiality	AER should not require a service provider to provide relevant policy or procedure for handling confidential information	The ACCC has received policies and procedures as part of the ring fencing reporting process. This information is provided as commercial-in-confidence. The AER considers this practice can continue and afford protection for service providers.	APIA
Order	Duration of order	The Annual Compliance Order should have a maximum life rather than being open-ended	The AER has the capacity to modify requirements over time, by revoking and making a new order. The AER does not see any merit in sun setting this instrument.	APIA
Order	Associate Contracts	Submissions seek a rephrasing of Q 2.5 and an explanation about why this is required	Under the NGL (NGR), the AER may approve an associate contract before it is varied or entered into, but notification needs to be provided to	APIA Multinet Jemena

			<p>the AER for all associate contracts.</p> <p>The purpose of the question is to ascertain compliance with rule 33.</p> <p>The wording in the order is modified slightly to reflect the two circumstances (approval and notification) relevant for associate contracts under the NGL.</p> <p>Suggestions provided as to the rephrasing of this question may require a service provider to answer no which may be considered self-incriminating.</p>	
Guideline	Purpose of Attachment 3	Purpose is unclear	The Guideline will include reference to Attachment 3 and its purpose	Jemena Multinet
Guideline	Procedural fairness in circumstance of non-compliance	AER should provide rules of procedural fairness/opportunity for a business to respond to likely findings of non compliance (not included in Draft Guidelines)	Further detail is to be provided in a final version of the Guideline, to assist service providers. Should the AER follow-up any issue of non-compliance the service provider will be provided with written notification identifying the nature of the breach.	APIA
Framework	Applicability of the order for	Should transmission and distribution be covered by the same order as they can be different activities	There are certain general and specific duties/ requirements common to both service providers of distribution and	APIA

	transmission and distribution service providers		<p>transmission pipelines. Other differences in compliance obligations and requirements tend to relate to the nature of the access arrangement rather than the type of pipeline under the NGL.</p> <p>It is important that the annual compliance framework is as consistent across all covered pipelines as possible, diverging for specific requirements as appropriate.</p>	
Framework	Nature and extent of compliance reporting framework information	<p>Several submissions have been received about this issue:</p> <ul style="list-style-type: none"> ▪ Some question why service providers will need to report on the matters that originated from the AER itself, and that are publicly available and why should such information be submitted under a statutory declaration ▪ the proposed scheme is disproportionate in its scope/detail for businesses which has no associated retail business and is demonstrably “ring fenced”; ownership structure has changed; service providers in general 	<p>The AER notes that the use of its information powers to determine and verify compliance is an appropriate use of its functions to carry out its roles and functions to monitor compliance with the NGL, NGR and Regulations (s. 27(1)). It needs information to do so.</p> <p>The annual compliance framework is intended to cover areas of compliance including but not limited to the ring fencing requirements.</p> <p>The AER notes that while the coverage of issues may be broader in</p>	<p>APIA Jemena Multinet</p>

		<p>do not have associated retail businesses (except ActewAGL); beyond what is intended with the NGL and NGR</p> <ul style="list-style-type: none"> ▪ Use of discretionary powers is not warranted and level of compliance reporting is intrusive. ▪ ESC has never required Victorian distribution business to report formally on ring fencing performance; gas networks have never been compelled to report to the regulators with the level of detail or in the manner proposed ▪ users and prospective users have never been dissatisfied with performance where ring fencing is concerned; there has been a record of good compliance over past 10 years and ring fencing has not been a significant issue 	<p>most cases, the information to be reported is simplified. This will mean the level of detail required for each issue is generally much less than required under the ACCC reporting framework. Also the scope of the information required to be reported has been tailored to different classifications of covered pipelines and/or access arrangements and not all questions are relevant for every service provider.</p> <p>As a baseline proposition, the AER’s annual compliance framework seeks to combine the diverse jurisdictional reporting frameworks developed under the code, ranging from exceptions based reporting in NSW to extensive reporting of ring fencing compliance matters and/or financial reporting in other jurisdictions eg Queensland.</p> <p>Over time it may be appropriate to streamline and modify the reporting requirements and or employ different and new techniques such as periodic inquiries about particular areas of</p>	
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			<p>compliance. For some pipelines as this body of knowledge and information is verified this may result in less direct reporting of compliance. For other pipeline classifications it a more detailed reporting of compliance may be required to continue as the only point of reference of information provided periodically to the regulator.</p> <p>As explained in the discussion paper, the AER is using its new information powers to collect information and provide a standardised and transparent reporting function.</p> <p>At present, with the transition to a new regulator and the combining of various compliance and reporting frameworks into a single reporting structure, it is important that this information is consistently collected and a transparent process to verify compliance using this information is implemented.</p>	
	Regulation impact	Several submissions indicate that reporting in the form and detail required will be costly (direct and indirect costs), especially to the	The AER has not been provided with any evidence to substantiate the submissions that the regulation	APIA Multinet Jemena

		<p>internal resources for sign-offs</p>	<p>impact will be costly.</p> <p>No submission provides any details as to the quantum or nature of costs associated with internal resource associated with the compliance order. In particular it would be useful to understand whether costs are incremental due to existing internal compliance programs and governance procedures already in place for the previous legislative framework compared with the NGL obligations. And how much regulation impact is associated with the reporting of this information.</p> <p>In the absence of any information about the regulation impact and associated costs the AER can only conclude that these costs are limited or incremental. The AER details other features of the reporting framework which require less qualitative and detailed responses for most questions than the previous ACCC reporting framework.</p>	
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			In addition, the AER notes that it is proposing a streamlined sign-off process that requires only one Director or member of the Board and the CEO to sign off the statutory declaration as has been the case for the ring fencing reporting for the ACCC under the Gas Code.	
	Different approaches	<p>There are other approaches that are more efficient and preferred;</p> <ul style="list-style-type: none"> - annual reporting on exception basis, and immediate reporting of any breaches - making periodic inquiries about compliance 	In respect of exceptions-based reporting, the AER does not consider this an appropriate reporting format for regulated pipelines. It is not possible to provide exceptions reports using a RIO or RIN under the NGL given section 63 of the NGL that allows protection against self-incrimination. The AER considers that reporting on this basis may leave a service provider open to direct enforcement action. The AER does not view exceptions based reporting as less costly. A board, fully meeting its corporate governance responsibilities, needs assurance that a compliance strategy for meeting NGL obligations has been developed and that it is being monitored on a regular basis. The AER seeks the same level of	APIA Multinet

			assurance.	
	Performance reporting	One submission opposes (eventual) pipeline performance reporting beyond that required to support access arrangement benchmarking as such reports are unlikely to take into account valid issues relevant to the comparison of pipelines.	<p>This is not contemplated as an objective arising from the information provided in the annual compliance reporting process. Any performance reporting in a broader sense necessarily needs to comply with the requirements under the NGL and NGR.</p> <p>That said information about the annual compliance process may be published but this would not be in the form of a comparator table, and would most likely mirror the overview report for ring fencing compliance published by the ACCC for transmission pipelines under the code.</p>	APIA
Framework	Access Negotiations	Concerned that the obligation for light regulation pipelines to report annually on access negotiations to the AER, especially if this information is	Any information provided on access negotiations is commercially sensitive and is likely to be classified as commercial-in-confidence. It is assumed that this information would be submitted as confidential information and procedures are provided as to how this information is to be submitted to the AER. There is no intention to disclose this	ERAA

			information in a form that would undermine commercial strategies of users and shippers and any information received by the AER would be subject to the confidentiality handling requirements under the NGL.	
Framework	Duplicate reporting	ActewAGL is currently subject to Independent Competition and Regulatory Commission (ICRC) annual compliance reporting under the Utilities Act 2000 (ACT), and the ActewAGL Distribution Utilities Services Licence (among a wide range of issue, this includes reporting of ringfencing obligations); therefore the concern is that the company is not subject to overlapping or duplication in regulatory reporting obligation as that would be inconsistent with National Gas Law Objective	The AER is discussing with the ICRC a practical means to reduce duplicated reporting requirements. In the circumstances that one or the other reporting requirement was adopted, there ActewAGL would need to agree that information could be shared between the jurisdictional regulators.	ActewAGL
NGL drafting issue	NGL definition	Inconsistency with definition of marketing staff of an associate of a service provider; “ pipeline services ” are included in both ss138(1)(a)(ii) and ss138(b)(ii), there is a conflict due to the prohibition that section 138 and section 140 are trying to achieve	This is a drafting issue and not a matter that can be addressed in the annual compliance process. The AER notes that the definition of marketing staff under the NGL defines the nature of what is marketed i.e. the direct sale marketing or advertising of pipeline services; but the code is silent on what is marketed, referring to	Jemena

			<p>marketing staff directly involved in the sales, sales provision. In addition, the definition of service provider under the NGL has been extended to include a controller, in addition to the owner and operator (under the code).</p> <p>It is unclear overall whether the change in this terminology from the code to the NGL will provide an identical proposition for every service provider under the two different legislative frameworks. This will largely depend on the structure of ownership and control for each covered pipeline.</p>	
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