

Summary table of responses and submissions

	Issue	Details	AER response	Submissions
Order	Instrument -Use of the statutory declaration as the means of verification	<p>The requirement to submit information using a statutory declaration is not necessary, the ACCC has previously accepted a statement signed by a Director and CEO.</p> <p>One submission considers a certification statement signed by the CEO is sufficient for annual compliance reporting.</p>	<p>The NGL provides for the AER to specify information provided to it is verified by statutory declaration by an officer (s. 55(d)).</p> <p>The AER has considered the submissions and while a statutory declaration is available to the AER to use under the NGL, the AER has determined that verification by way of a Statement of Compliance about the matters identified in the Order at clause 6 is required for the annual compliance process.</p> <p>The AER considers that it is appropriate that a Director or a member of the Board signs the Statement of Compliance.</p> <p>The AER repeats its position in the draft decision, which explains its reasoning:</p> <p>The AER considers that verification by a Director or member of the Board 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 Statement of Compliance.</p>	<p>ActewAGL Jemena Multinet SP AusNet</p>

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			The AER notes that the ACCC's 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.	
Order	Suggested wording for instrument clause 3	Clause 3: "on 31 October" conflicts with the later parts of the Clause. We suggest replacing "on 31 October of each year ... do the following:" with "in accordance with the following:"	Accepted	Jemena
Order	Suggested wording for instrument clause 6	If a statutory declaration is to be required, there are several amendments that might be made to Clause 6: – 6(a): insert "provided" after "information and documentation" – 6(b): replace "... kept or maintained is accurately represented." with "... kept or maintained by the service provider accurately represents that information and documentation." – 6(e): insert "with" after "... reasons why the Order is not complied".	Accepted suggestions in relation to wording for clause 6(a) and 6(e) of the instrument. The AER has not accepted the suggested change to 6(b). This is because the order in parts seeks the service provider to make a representation (provide a statement) as to whether it does certain things for example Q2.4 (c), Q2.3(a) and (c), Q2.2 (b) and (c). This clause seeks verification from the service provider that explanations of information and documentation underlying these statements but not provided to the AER can be relied upon.	Jemena
Order	Rewording of Attachment 1 - Q2.1	Clauses 2.1(a) and (b) as drafted are unclear and raise a number of issues. – Clause 2.1(a) appears to offer the option of two quite different reporting	Accepted. Wording has been modified and simplified to reflect submissions.	Jemena Multinet

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		<p>alternatives</p> <ul style="list-style-type: none"> - The proposed inclusion of “relevant” (in “relevant controlled entities and associates”) is confusing because there is no apparent relevance criterion. - It is unclear whether “providing pipeline services” at the end of clauses 2.1(a) and (b) is intended to qualify “service provider” (in which case it is redundant) or “relevant controlled entities and associates” in which case it is unclear how the resultant list of entities and associates will be relevant to the title of the clause i.e. “Carrying on of a related business”. - In light of these observations, clause 2.1(a) could be better stated as: Provide, in an organisational chart or alternative format, information that identifies: <ul style="list-style-type: none"> (i) any associates of the service provider that are service providers; (ii) any associates of the service provider that take part in a related business; and 		

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		(iii) the principal business units and divisions (if any) of the service provider as at the end of the reporting period.		
Order	Rewording of question 2.3(e) Special Purpose Financial Report	ActewAGL indicates that it does not provide reports to ASIC but prepares reports for the ACT Auditor-General. Wording in the order will be required to account for this difference.	<p>The AER has modified the Order to reflect the difference in both the type of report and relevant reporting agency which may be relevant for different service providers.</p> <p>If all or part of this financial information submitted is commercial-in-confidence, the AER has provided procedures in the Annual Compliance Guideline on how service providers should submit this information. Other more concise financial information that can be made public can also be submitted.</p>	ActewAGL
Framework	Reporting requirements	<p>Reporting requirements are excessive and more extensive than under the Gas Code.</p> <p>Strong case for a lighter-handed approach under the NGL.</p>	<p>The AER's comments made in response to the proposal and outlined in its draft decision are reiterated again to address the submissions made in relation to the reporting requirements:</p> <p>Monitoring compliance is a power and function of the AER under the NGL</p> <p>One of the functions and powers of the AER is to monitor compliance with certain things under the NGL and more specifically compliance with the applicable access arrangements, access determinations and ring fencing obligations under the NGL s. 27(1). Further without limiting the information that the AER may require to be provided, s. 54(c) specifically outlines that a regulatory information instrument such as an information order may be used to verify a service provider's compliance with Chapter 4.</p>	Jemena Multinet SP AusNet

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			<p>Scope of obligations considered under the annual compliance process</p> <p>The scope of the annual compliance process is broader than solely the ring fencing obligations (considered in questions 2.1 to 2.5) and includes other obligations including:</p> <ul style="list-style-type: none"> ▪ General duties of a service provider (questions 1.1 to 1.5) ▪ Compliance with the confidentiality ▪ Obligations for different access arrangements (question 3.1) ▪ Access determinations (question 3.2) ▪ Confidentiality (question 3.3) ▪ Bundling of services (question 3.4) <p>Past experience</p> <p>Some submitters indicated that they neither have a retail function nor has there been any issue with ring fencing issues in the past. Unfortunately this is not something the relevant service provider nor the AER can act in reliance on to properly ascertain compliance of a service provider with its current obligations under the NGL.</p> <p>Nature of the questions</p> <p>The questions are different in nature to the ACCC's reporting requirements</p> <p>a) Are simpler in most cases: <i>Twelve questions require a yes or no answer, for example:</i> Does the service provider have any additional ring fencing</p>	

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			<p>obligations? (question 2.4(a)) Does the service provider have any exemptions for the minimum ring fencing requirements? (question 2.4(d)) Does the service provider provide light regulation services? <i>Four other questions require the name of an entity, three other questions seek associates' names and two questions seek copies of documents in existence.</i></p> <p>b) Don't apply to all service providers: Two questions relate to CTP access arrangements which applies to two pipelines at present. Four questions relate to light regulation services pipelines of which at the time of making the order there is only one pipeline. Two questions relate to access determinations in place of which presently the AER is aware of none. Question 2.4 only applies if the service provider has additional requirements to, or exemptions from, the minimum ring fencing requirements, the AER understands this question does not apply to most service providers. Question 2.5 only applies if there are any changes to or new associate contracts made in the year.</p> <p>Differences between the approaches under NGL and Code</p> <ul style="list-style-type: none"> ▪ As outlined above the NGL obligations for service providers are more extensive than those in the former ring fencing provisions of the code. ▪ Diverse jurisdictional approaches need to be harmonised ranging from limited reporting of compliance with code provisions (Victoria), 	

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			<p>exceptions based reporting (NSW), to extensive reporting of ring fencing compliance matters eg Queensland and ACCC for transmission pipelines. To this end the AER is establishing a consistent and transparent process to collect information to verify compliance using its information powers across all the pipelines it regulates including light regulation pipelines.</p> <p>Future reporting 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 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 a more detailed reporting of compliance may be required as the annual compliance report may be the only point of reference of information provided periodically to the regulator.</p> <p>The AER considers that even without any changes to the current reporting framework, over time the nature of answers provided in the first year may only require verification of compliance and minor amendments for changes to operations from year-to-year. This has certainly been the experience in the case of the ACCC's ring fencing reporting process.</p>	
NGL definition	Marketing staff definition	The definition of marketing staff under the NGL results in a different effect than under the code.	<p>The AER repeats its position as presented in the draft decision:</p> <p>The AER notes that the definition of marketing staff under</p>	Jemena

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			<p>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 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> <p>As noted in the draft decision responses the expanded definitions of service provider to include a controller has implications for both s. 139 and s. 140. As also outlined in the draft decision response the submission made in relation to this matter attaches wording that goes beyond the code provision.</p> <p>The AER further notes that the mutually exclusive proposition put to it in submission on the draft decision i.e. that a person that is marketing staff of an associate cannot be marketing staff of a service provider, may not be inconsistent with the intent of the policy underlying these provisions.</p> <p>As outlined previously, this is not a matter that can be addressed in this process. That said the AER has previously indicated if the NGL definition has implications for</p>	

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			<p>compliance or reporting of compliance under the annual compliance process, it would be more than willing to attempt to address these concerns, but cannot do so on the basis of the information provided to it to date in submissions and without having a context in which to consider the matter.</p> <p>No submission has indicated that a service provider will not be able to provide answers to this question because of the different definition of marketing staff under the NGL.</p>	