

Attachment B

Stakeholder feedback template

Submission from Australia Pacific LNG Pty Limited

The template below has been developed to enable stakeholders to provide feedback on the draft amendments to the NGL, Regulations and NGR. ESOM strongly encourages stakeholders to use this template, so that it can have due regard to the views expressed by stakeholders on each issue.

1. National Gas Law Amendments

Section	Feedback
[Insert section and subsection reference]	

2. National Gas Regulations Amendments

Section	Feedback
[Insert regulation reference]	

3. National Gas Rules Amendments

Amendment	Feedback
Part 15B Procedures	
135EE(2)(b) & 135EF(3)(c)	As a general point, sufficient time for consultation is requested for making changes to proposed Procedures in order that market participants have adequate time to review and comment. Six months is considered an appropriate consultation period.
Part 15D Gas statement of opportunities	
135 KB – 135 KH	<p>Potential for GSOO Procedures to overreach - There is a concern the new rules providing for the GSOO (including the GSOO Procedures and GSOO Survey) may allow AEMO to make mandatory information requests that go beyond the scope contemplated by the Decision Regulatory Impact Statement (DRIS). Whilst the broadening of the scope of the information to be contained in the GSOO was contemplated by the DRIS, there is little constraint around the contents of the GSOO Procedures (which set out the surveying process, the production of information etc.) and may inadvertently empower the AEMO to request information that was not contemplated by the DRIS. Accordingly, without specific requirements around preparation of the GSOO Procedures, there is a risk the GSOO Procedures may evolve into a document containing onerous information requirements.</p> <p>10-year period for forecasting gas production and contracted volumes -Whilst the DRIS contemplated producers reporting gas production and contracted volume forecasts, there was no indication in the DRIS that producers must forecast gas production and</p>

Amendment	Feedback
	<p>contracted volumes for a period of 10 years as contemplated in the proposed rules. Industry participants did not have a chance comment on the appropriateness of 10 years as a forecasting period for these particular new reporting aspects. In APLNG's view, the GSOO forecast horizon of 10 years is excessive and imposes onerous obligations which were not endorsed in the DRIS. There is considerable uncertainty and variability associated with forecasting over such a long period and concerns arise around market participants relying on these forecasts as certain. As a result, there is a potential risk that producers may face claims around the accuracy of these forecasts, which are reliant on various assumptions that may change over time. A similar concern exists with respect to the reporting of natural gas reserves (per r135KB(2)) which proposes a reserve forecast horizon of 20 years.</p> <p>Concerns regarding anonymity - The other issue associated with this forecasting timeframe for gas production and contracted volumes is that, even with the data aggregated and anonymised, it may be possible to identify entities to whom the information relates, given the relatively small number of participants and the long timeframe. The key will be ensuring the effectiveness of the methodology used by the AEMO to anonymise and aggregate data in a manner that will not lead to the identification of the party to whom the confidential information relates (refer r 135KH).</p> <p><i>Recommendations:</i></p> <ul style="list-style-type: none"> - Provide greater specificity in respect of the GSOO Procedures to ensure that AEMO's information requests under the GSOO Procedures are consistent with and limited to the documentation and information contemplated by the DRIS. - Reduce the forecast horizon for gas production and contracted volume forecasts to 5 years and reduce the reserves forecast horizon to 10 years.
135K Definitions Demand-supply balance information	It is considered that inserting "annual estimated" before "quantity" in parts (a) and (b) of the definition would provide additional clarity. The numerous contractual provisions in gas and LNG sale and purchase agreements allowing gas and LNG purchasers to vary the amount of gas taken in any contract year mean it is not possible to definitively quantify production or supply volumes.
135K Definitions LNG export project	Consider amending to "...for supply to the facility to conversion to LNG <i>or supply to the domestic market.</i> " as the current definition does not reflect the fact that an "LNG export project" such as APLNG does not produce or purchase gas solely for supply to an LNG export facility, particularly given the new definition of "demand-supply balance information" for an LNG export project makes reference the quantity of gas required to supply to other gas supply contracts.
135KB(1)(ac)	AEMO has previously retained consultants to determine production cost estimates which is considered appropriate given that GSOO reporting entities will base their respective production cost estimates on varying assumptions and metrics. The rules should be clarified to this effect to provide certainty to AEMO and GSOO reporting entities.
135KB(3)	The generic requirement that "forecasts made for the purposes of the GSOO must be made as far as possible on a consistent basis" should be re-visited to provide more clarity and detail on the requirements of this provision and should not exceed the horizon period in r 135KB(1).
135KE(3) Note	Should the reference to section 91DB(1) be to section 91F?
135KE(4)	Should these references to subsection 91DB(4)(a) or (b) be to subsection 91FC(6)(a) or (b)?
Part 17 Miscellaneous provisions relating to the AER	
140B(1) and 140B(2)	Open-ended AER Reporting function not contemplated by DRIS - The AER reporting function proposed by the legislative changes is significantly broader than contemplated by the DRIS. The legislative changes to the rules appear to extend to reporting price forecasts and

Amendment	Feedback
	<p>non-price information. Under the proposed r 140B, the AER has the ability to determine categories of information it will publish, the publication intervals and circumstances, the methodologies and inputs used to calculate the information, and circumstances around modifying, measures for anonymising and aggregating information and other measures AER considers appropriate.</p> <p>The rules empower the AER, in accordance with a determination made by the AER under r 140B(2), to publish information 'relating to' the matters in r 140B(1). In making such a determination, the proposed rules allow the AER to decide whether it will publish "non-price information or price forecasts". This does not appear to be contemplated by the DRIS. Accordingly, the proposed rules afford significantly greater scope to the AER and it is not clear why more specificity and clarity cannot be included in the rules from the outset. Further, in terms of the potential for reporting entities being required to provide forecasts and the AER publishing such information, APLNG is concerned reliance may be placed on those forecasts by market participants as there are various reasonable approaches to calculating forecasts and the assumptions and variables employed to develop those forecasts are subject to change. There is a concern the reporting regime may lead to the assumption the forecast figures possess a degree of accuracy which is misleading.</p> <p><i>Recommendation:</i> The legislative changes to the proposed rules are tightened and more specificity provided in relation to the AER's ability to make determinations to ensure the scope of the reporting function aligns to the form set out in the DRIS.</p>
140B(2)(d)	<p>Support for further strengthening of anonymity and aggregation provisions - In terms of anonymity and aggregation of information, APLNG supports the inclusion of these clauses and believes they could be further strengthened. The rule change proposes the AER make a determination on the measures for anonymising data, in accordance with section 328 and 328B of the <i>National Gas Law</i>.</p> <p>However, given the critical importance and legal requirements of retaining confidentiality over commercially sensitive information (especially where disclosure may impact on competition), APLNG believes the rules should set out the measures for ensuring anonymity of data (rather than it being left as a determination of the AER).</p> <p>This is especially so, given the relatively shallow nature of the Australian gas market and limited number of east coast LNG export projects where volume weighted data or certain aggregations of data will likely disclose confidential and commercially sensitive information, particularly to those within the industry. A further issue APLNG believes should be dealt with in the rule changes is to provide clarity on the aggregation of data, given the broad spectrum of terms and conditions attached to gas sales.</p> <p>If information is not appropriately aggregated then a party may be able to identify another's customers, and with careful tracking, draw conclusions about that entity's pricing and strategy which can be used to inform the first party's own pricing and strategy. APLNG is concerned this could lead to an increased risk of market participants being in receipt of commercially sensitive information that would not otherwise have been available, adversely impacting competition and potentially causing harm to the party (or parties) whose commercially sensitive information has been disclosed and to broader market participants. As these are recognised risks, the key will be ensuring the effectiveness of the methodology to be used by the AER to anonymise and aggregate data which has not been disclosed. It is considered necessary for the methodologies to be sufficiently robust to address these competition risks.</p> <p><i>Recommendation:</i> Include provisions within the rule changes that sets out specifically how anonymity and aggregation of data should be achieved in the disclosure of information, rather than allowing a determination by the AER at a later date.</p>
140A(3)	<p>To maintain confidentiality and given the competition risks identified above, amend to "must be anonymised in accordance with section 328 of the <i>NGL</i> and aggregated in accordance with section 328B of the <i>NGL</i>". This is consistent with the proposed r 140(B)(7).</p>

Amendment	Feedback
140B(4)	It is unclear what “have regard to” means in this context. The intent of this provision should be amended to state there is no requirement to duplicate the reporting and publication of information that is made available on the Bulletin Board.
140B(8)	The definition of non-price information should include swing rights (load factor).
Part 18 Natural Gas Services Bulletin Board	
171C(2)(a)	<p>Lack of clarity around gas price assumption information required and how that sensitive information will be treated - When a Bulletin Board entity provides a reserves and resources estimate (per r 171C), rule 171(C)(2)(a) requires the entity to provide to the AER the gas price assumptions used to prepare the estimate and a description of the way in which the estimates were derived. The AER must publish the gas price assumptions at least annually (r 140A(1)). Whilst the requirement was contemplated by the DRIS, the proposed new rules create a highly intrusive reporting requirement and r 171C doesn’t provide any indication of the way in which this commercially sensitive information will be treated when published. The reporting requirement also gives rise to possible competition law impacts if information is not appropriately aggregated, adversely impacting competition and potentially causing harm to the party (or parties) whose commercially sensitive information has been disclosed and to broader market participants. Whilst reference is made in r 140A(3) to the information being anonymised in accordance with sections 328 of the NGL, APLNG considers there should also be a reference to aggregation in accordance with section 328B of the NGL.</p> <p><i>Recommendation:</i> The rules should provide greater clarity in relation the type of assumption information required, the treatment of this commercially sensitive information and how any competition law impacts will be managed.</p>
141(1) material change	<p>Amendments to material change definition (setting threshold to 30TJ) is likely result in excessive reporting - Rule 141(1) amends the definition of a ‘material change’ in the context of changes to nominations and for short term capacity outlooks. Importantly, the new threshold will require reporting any changes which exceed 30TJ (presumably this needs to include “per day” as the definition of nameplate rating under r 141(2) refers to the maximum daily capacity). This change will have significant unintended consequences as 30TJ/day is a very small volume variation in the context of large facilities (e.g. main pipelines connecting to LNG facilities) and potentially within the normal operating variances day to day. The definition of ‘material change’ feeds into the obligation to keep accurate records with AEMO (see r 168(4)).</p> <p>Given the significantly lower threshold, it is expected a significantly larger volume of reporting to AEMO be required which results in burdensome reporting requirements and AEMO being required to analyse data to identify changes of significance (as opposed to purely ‘operational’ changes).</p> <p><i>Recommendation:</i> Revise the definition to set the threshold as the greater of 30TJ/day and 10% of the nameplate rating.</p>
141(1) BB compression facility	This definition should carve-out compression facilities which are not accessed by third parties or have a single shipper.
141(1) BB storage facility	This definition should carve-out LNG storage facilities as such storage facilities were developed to manage ongoing operations of the LNG facilities. LNG facilities do not have any regasification capability so, once LNG is in the storage tank, there can be no further effect on the domestic gas market.
141(1) Production facility	It is suggested this definition is amended by substituting “...is produced so that it is in a form suitable for injection...” with “...is gathered and treated so that it is in a form suitable for sale...”.

Amendment	Feedback
141(1) Reporting threshold	It is suggested that part (d) of this definition is refined by adding "...more than 10 TJ of natural gas per day <i>when operating under normal operating conditions</i> ". (i.e. suction and discharge pressures should be contemplated).
141(1) Trade date	It is suggested the definition is amended by inserting the words " <i>and becomes unconditional</i> " after the words "transaction is entered into" as transactions can include conditions which must be satisfied or waived before supply and purchase obligations commence. Reporting requirements, particularly regarding short term LNG export transactions, should only apply to unconditional transactions to avoid unnecessary reporting where transactions do not proceed.
141(1) Transaction	It is suggested the definition is amended by removing the words " <i>or understanding</i> " to provide certainty around reported and published transactions being executed contractual arrangements.
141(1) Short term LNG export transaction information & LNG shipment data	<p>It is strongly recommended part (f) is amended to be determined by reference to the actual price stipulated in the transaction (e.g. whether FOB, DAT and whether indexed linked pricing). If an index linked price is used for pricing, it is further recommended the ACCC determines the forward price index to be used and frequency with which it will be updated. LNG exporters cannot be expected to speculate on the forward price index or update it daily as it adjusts.</p> <p>APLNG wishes to highlight that effective 2 July 2019, the US Office of Fossil Energy (FE) reversed its policy on the publication of prices of each exported LNG cargo following concerns raised by industry participants that the release of their LNG price data at the cargo level was causing competitive harm to them. To address this issue, FE now publishes only volume-weighted average export prices for LNG and other modes of natural gas transportation by point of entry or exit. FE also has a new confidentiality policy for certain data elements. For additional information, please see the Federal Register Notice at https://www.federalregister.gov/documents/2018/08/30/2018-18829/information-collection-extension. APLNG has significant concerns the same consequence will eventuate in Australia.</p> <p>In part (d) transaction quantity, the reference to "(in PJ)" should be replaced with "<i>(in MMBTU)</i>" to reflect how the quantity of LNG is sold contractually (i.e. LNG is not sold on a PJ basis). Similarly, the reference to "(in PJ)" in the definition of "LNG shipment data" should also be replaced with "<i>(in MMBTU)</i>".</p>
141(2B)(i) & (j)	The comments above regarding r 141(1) in respect of short term LNG export transaction information applies also to the proposed transaction price and price structure of short term gas transactions.
149(2)	In the interests of transparency, each biennial report should include a summary of the total operating costs of the Bulletin Board and the costs of funding the Bulletin Board incurred by market participants.
165(3)	As noted above in respect of short term LNG export transaction information and short term gas transaction information, this requires amendment to accommodate gas and LNG sales which are based on a price index. If a gas or LNG seller were to comply with this rule, it would have to speculate on the forward curve of the price index over the term of the transaction and potentially update the transaction price daily. Not only would this place an onerous and disproportionate administrative burden on the seller, but would allow market participants to back calculate the seller's price expectation. This could give rise to possible competition law impacts, potentially adversely impacting competition and causing harm to the party (or parties) whose commercially sensitive information has been disclosed and to broader market participants.

Amendment	Feedback
	It is suggested sufficient transparency would be achieved by a seller initially reporting the index-based price structure then reporting the final realised price on completion of the relevant transaction.
168(4)	It is unclear why BB large user facilities are not required to report updates to nameplate capacity given that nameplate capacities seldom change.
171(2)	In the interests of certainty, it is suggested that “thing” is replaced with “ <i>reserve or resource</i> ”.
171(C)	As drafted, the AER has unlimited power to use an independent auditor to audit the BB reporting entity at any time and any number of times at the BB reporting entity’s cost. It is considered appropriate to include a standard contractual term in respect of audits to the effect that, if the independent auditor determines that total reserves are within 15% of the BB reporting entity’s estimate, the costs will be for the AER’s account to act as an appropriate deterrent to over-use of this power.
175	it is necessary to ensure the requirement to provide a 36-month uncontracted primary capacity outlook does not result in any overlap (i.e., double counting) across LNG reporting requirements.
181(1)	It is unclear why BB large user facilities are not required to report medium term capacity outlooks.
190CA	An equivalent provision to 190CB(2) is needed in respect of short term LNG export transactions.
190CA(2) & 190CB(3)	<p>The times by which relevant information in respect of a short term LNG export transaction and a short term gas transactions must be reported to AEMO are considered unduly onerous and would result in a significantly increased administrative burden. To balance the requirement that information be current with the need for sufficient time to report, an appropriate timeframe of within 3 business days of loading the export cargo (for FOB cargoes or 3 business days after discharge for DES cargoes) or the trade date of the short term gas transaction is considered reasonable.</p> <p>With regard to export cargoes, both volumes and prices can change in the period leading up to the completion of cargo loading, particularly where either seller or buyer contract quantity flex is contemplated in the transaction. It is reasonable and appropriate for the relevant export cargo transaction information to be reported to AEMO following cargo loading (or after discharge for DES cargoes) (rather than the trade date) once all relevant information is known and final (including final quantity, price and shipping costs if DAT) to avoid unnecessary multiple reporting and publishing requirements prior to the cargo loading. Linking the reporting obligation to the loading date (or after discharge for DES cargoes) is consistent with the proposed rule 188A(1) requiring the reporting of LNG shipment data to AEMO following completion of loading.</p>
190CA(3)	It should be noted it is logistically impossible for an LNG supply period to commence on the trade date for the transaction given vessel chartering and cargo scheduling requirements. Consider deleting as this information will be reported under 190CB(4) regarding short term gas transactions.
190CA(5) & 190CB(5)	It is recommended these requirements are restricted to fixed price transactions only. As noted above in respect of short term LNG export transaction information (see above regarding 141(1)) and short term gas transactions (see above regarding 141(2B)(i)), this requires amendment to accommodate gas and LNG sales which are based on a price index otherwise sellers would potentially be required to provide daily updates.
192	<p>It is suggested it would be appropriate to delete these provisions in their entirety given that:</p> <ul style="list-style-type: none"> (i) it would drive further market liquidity through the Wallumbilla Gas Hub; and (ii) the provisions do not reflect the purpose of the Bulletin Board which is primarily an information service.

Amendment	Feedback
194(4)(b)	As gas fired power plants are substantial users of gas, the data is historical and anonymity should be ensured through aggregation. Consider if this should refer to disclosure of the nominating party rather than disclosure of the nomination itself. It is unclear why this information has been excluded.
195C	<p>Support for further strengthening of anonymity and aggregation provisions –The comments on item 140B(2)(d) above also apply to the AEMO. APLNG recommends the inclusion of anonymity and aggregation provisions associated with the AEMO publishing short term LNG export and short term gas transaction information and believes they should be further strengthened. The rule change proposes the AEMO make a determination on the aggregation method to be used by AEMO and other associated rights. APLNG refers to its comments above under item 140B(2)(d) regarding AER determination rights and the concerns raised on the risks associated with the disclosure of confidential, commercially sensitive information.</p> <p>If information is not appropriately aggregated then a party may be able to identify another’s customers, and, with careful tracking, draw conclusions about that entity’s pricing and strategy which can be used to inform the first party’s own pricing and strategy. APLNG is concerned this could lead to an increased risk of market participants being in receipt of commercially sensitive information that would not otherwise have been available, adversely impacting competition and potentially causing harm to the party (or parties) whose commercially sensitive information has been disclosed and to broader market participants. As these are recognised risks, the key will be ensuring the effectiveness of the methodology to be used by the AEMO to anonymise and aggregate data which has not been disclosed. It is considered necessary for the methodologies to be sufficiently robust to address these competition risks.</p> <p><i>Recommendation:</i> Include provisions within the rule changes that sets out specifically how anonymity and aggregation of data should be achieved in the disclosure of information, rather than allowing a determination by the AEMO later.</p>
195C(3)(a)	For completeness, it is recommended including a provision that location gas swaps by a single party will not be published. Swaps will identify two locations (buy and sell) and it is likely at least one of those locations would identify the party to the transaction.
Part 18A Compression and storage terms and prices	
[insert rule and sub-rule reference]	

4. Policy clarifications

Sections 6.1.1, 7.2.1 and 8.6 of the Consultation Paper set out a number of policy clarifications that have been made since the DRIS was published. If you would like to provide feedback on any of these clarifications, please do so in the table below.

Consultation paper section	Amendment	Issue	Feedback
5.6.1	Rule 195C(2)(b)	Reporting times for short term LNG export information	In line with APLNG’s comments above on item 190CA(2), with regard to short term LNG export information, both volumes and prices can change in the period leading up to the completion of cargo loading, particularly where either seller or buyer contract quantity flex is contemplated in the

Consultation paper section	Amendment	Issue	Feedback
			transaction. It is reasonable and appropriate for the relevant export cargo transaction information to be reported to the AEMO following cargo loading (or after discharge for DES cargoes) (rather than the trade date) once all relevant information is known and final (including final quantity, price and shipping costs if DAT) to avoid unnecessary multiple reporting and publishing requirements prior to the cargo loading. In turn, the publication of this information should occur after it has been reported. Linking the reporting obligation to the loading date (or after discharge for DES cargoes) is consistent with the proposed rule 188A(1) requiring the reporting of LNG shipment data to AEMO following completion of loading.
7.2.1	Rule 188A(1)	Reporting times for LNG shipment information	In line with APLNG's comments above on item 190CA(2), for consistency purposes an appropriate timeframe for reporting LNG shipment data to AEMO is 3 business days of loading (for FOB cargoes, or 3 business days after discharge for DES cargoes) and is consistent with APLNG's suggestion on the reporting of short term LNG export transaction information.

5. Transitional arrangements

Section 10 of the Consultation Paper sets out the proposed transitional arrangements. If you would like to provide feedback on any of these transitional arrangements, please do so in the table below.

Transitional measure	Feedback
Part 15, rule 76	Publication of AEMO Procedures is requested by no later than 6 months before the commencement date in order that market participants have adequate time to review and comment.

6. Incidental amendments to Parts 15B and Part 18 of the NGR

Section 11 of the Consultation Paper sets out a number of incidental rule amendments that have been identified for Part 15B and Part 18 of the NGR. If you would like to provide feedback on any of these incidental amendments, please do so in the table below.

Amendment	Feedback
[insert rule and sub-rule reference]	

7. Proposed civil penalty provisions

Section 12 of the Consultation Paper sets out the proposed tiers for the list provisions in the Law and Rules that are proposed to be classified as civil penalty provisions. These are based on the proposed classification of tiers for the reform of the Australian Energy Regulator Civil Penalty Regime, which was released for public consultation in July 2020. Energy Ministers' approval of the final classification of tiers, Decision Matrix and Concepts Table is anticipated in late 2020 or early 2021. If you would like to provide feedback on the proposed tiers, please do so in the table below.

Section or rule	Feedback on proposed tiers
General	APLNG suggests an appropriate grace period be considered in respect of the application of penalties whilst reporting entities establish and implement systems and processes to help facilitate significant additional reporting requirements.

8. Potential duplication reduction in the National Gas Law

While not part of the Draft Bill or within scope of the transparency regulatory impact statement, the table in section 13 of the Consultation Paper identifies a number of areas in the Law that would benefit from the removal of some of the duplication that has emerged over time. If you would like to provide feedback on any of the proposed changes, please do so in the table below.

Item number	Feedback on potential changes