



EnergyAustralia

LIGHT THE WAY

17 December 2020

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**COAG Energy Council – Gas Market Transparency Measures –
Proposed legal package consultation paper – November 2020**

EnergyAustralia is one of Australia's largest energy companies with around 2.5 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. We also own, operate and contract an energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 4,500MW of generation in the National Electricity Market.

We appreciate the opportunity to comment on the proposed set of legislative amendments. Our detailed comments are in the attached table. The key changes we wish to comment on are as follows:

- The AER's proposed gas price reporting function should be more clearly defined, specifically the NGL amendments would appear to provide for functions that are much broader than the reporting of price series that has been consulted on and reflected in the NGR amendments.
- The large user threshold applied to reporting gas supply agreements (10TJ per year) is too low and inconsistent with the 10TJ per day threshold for Bulletin Board reporting.
- The categorisation around Civil Penalties provisions should be refined. We note these have been based on the proposed classification of tiers from July 2020, which we consider to be excessive in many instances. Following this, the proposed classification of many of the drafted provisions here similarly appear excessive. In any case, the process for reflecting the Energy Ministers' final Matrix and Concepts is not clear and we recommend a further round of consultation once this is released.

If you would like to discuss this submission, please contact me

Regards

Lawrence Irlam
Regulation Affairs Leader (acting)

Submission from EnergyAustralia

1. National Gas Law Amendments

Section	Feedback
AER gas price reporting function - proposed section 27(1)(fa)	<p>Further consideration should be given to defining the AER's functions. Section 5.4 of the consultation paper explicitly refers to several discrete pricing measures, namely LNG Netback prices, gas supply agreements and swaps, import and export prices.</p> <p>In addition to "prices", the NGL drafting provides for "other monitoring, analysing or reporting functions that relate to those prices...". We question whether this is intended to provide the AER discretion to collect and publish other information, including the wide range of data and analysis reported by the ACCC in its gas inquiry that is used to explain price trends, including estimates of participants' costs, supply and demand information, retailer pricing strategies, advertising, product innovation etc. While this could have merit, it appears to be outside the scope of the current consultation and therefore the additional requirement in 27(1)(fa)(ii) should be consulted on before adopted.</p>

2. National Gas Rules Amendments

Section	Feedback
AER reporting thresholds for business customers i.e. above 10TJ p.a, as per 140B(8) – definition of "gas supply agreement"	<p>The reporting threshold applying to gas supply agreements to the AER is too low and will result in a significant burden in reporting pricing and contractual information.</p> <p>We note that the issue of reporting thresholds was raised in prior consultation, and the justifications for applying this threshold to larger users reflects consistency of reporting with Western Australia and other facilities for BB reporting obligations. In response to prior concerns, the proposed rule amendments provide for a reporting entity to appoint an agent under rule 162, which is particularly important for daily gas consumption (under rule 189) which should be available in almost all cases directly from AEMO.</p> <p>There appears to be an inconsistency in the threshold for nameplate ratings for "BB large user facility" (10TJ per day) and large business users (10TJ per year) who must report contract information under the definition of "gas supply agreement". For contractual information, the ACCC currently applies a threshold of 500TJ per year for reporting price and contract terms for analysis in its gas inquiry reports. It may be that this threshold is too high to satisfy the COAG EC's policy intent but this does not appear to have been considered with respect to contract reporting and warrants further discussion. We consider that submitting contractual data for these smaller entities provides little value (including because it would be too voluminous to digest) and could not feasibly be reported by an agent.</p>

Section	Feedback
<p>AER determinations on pricing data and methods under 140B</p>	<p>We support the obligation on the AER to consult on and publish a method/ approach to its price reporting functions. We note that the AER has discretion on how to consult, and whether to have regard to any matters raised in consultation, and these requirements could be additionally specified. However the rule amendments as presented now are an improvement to existing ACCC information gathering and reporting, which is often done with limited transparency in its detailed methods (sometimes reflecting the need to preserve confidential information).</p> <p>The requirement in proposed rule 140B(1) may be unduly restrictive in that it appears to bind any price reports to a method determination in 140B(2). Given changing circumstances and data, this may discourage the AER in providing detail in its method determinations that would unduly bind its future reporting. It may be better to provide the AER an ability to depart from method determinations, provided it can provide reasonable justification e.g. including in response to stakeholder feedback.</p> <p>We consider that the requirement for the AER to have regard to information published on the Bulletin Board be strengthened such that such publicly available information not be requested of participants by the AER in performing its functions. We also understand that the ESB is consulting on a data strategy which may involve sharing of information between AEMO and the AER which we support, and would again reduce unnecessary burden through regulatory information requests.</p>
<p>AER role in gas reserves reporting, including price assumptions (140A), and audits (171C).</p>	<p>We support measures to ensure data provided on gas reserves is robust.</p> <p>We question, however, whether the AER is the appropriate body to require audits on these data (under rule 171C), as well as handle and periodically publish gas price assumptions underlying reserves (140A). The frequency of reporting assumptions to or by the AER might not align with reserves reporting on the Bulletin Board, and it may also not be possible to tie particular assumptions to specific reserves quantities, which appears to be the point of this reporting obligation. For example, reserves reporting in the GSOO might require some further detailed analysis by AEMO to examine detailed pricing assumptions but the rule provisions may restrict this information from being made available to AEMO. Such price sensitivity analysis will be submitted to AEMO by reporting entities under 171(b)(3), and published (in aggregated form) under 194.</p>

3. Proposed civil penalty provisions

Section or rule	Summary of provision	Explanatory notes	Proposed tiers	Selena/ EA comments
Section 57	Requirement for a person to comply with a price information order.	Section 57 of the Law currently applies to general regulatory information orders and is classified as a civil penalty provision under section 3 of the Law. The section will be extended to require compliance with price information orders.	Tier 1 for consistency with regulatory information order provisions in the NEL; Extend its application to include price information order	Our general comment with respect to this section, and many of the proposed tier classifications, are that they relate to the reporting of information which fall under Tier Two of the draft penalties matrix for the NGL/NGR. In this instance, the issue of consistency is that the tier one penalty provisions for the reporting of information under the NEL are excessive and should be classified as tier two or three as likely non-compliance with a regulatory information instrument, noting such instruments typically contain a large amount of individually detailed requirements, would not have a direct impact on market operation, security of supply etc in the same way as other behaviour classified as tier one e.g. blocking market access, not complying with AEMO market direction etc

Section or rule	Summary of provision	Explanatory notes	Proposed tiers	Selena/ EA comments
Section 91DB(1)	Requirement for a person who has possession or control of information in relation to the natural gas industry to give the information to AEMO for use by AEMO in the preparation of the gas statement of opportunities if the person is required to do so under the Rules.	Classification of this provision as a civil penalty provision is consistent with the mandatory nature of the GSOO survey. Proposed section 91DB(1) is similar to the obligation to provide information for the BB under section 223. Section 223 is classified as a civil penalty provision by section 3 of the Law.	Tier 2 – Inappropriate Market Participant Behaviour – General reporting requirements to a regulator	Similar to our general comment above, compliance with information reporting requirements in relation to medium term market forecasting appears to be administrative in nature and may be more appropriately classified as tier three.
Section 91DD	Requirement that a person must not give GSOO information to AEMO that the person knows is false or misleading in a material particular.	An equivalent prohibition applies in relation to BB information under section 225 and is also classified as a civil penalty provision by section 3 of the Law.	Tier 1 – Supply security and reliability – AEMO ability to operate power system efficiently (same as existing equivalent provision s 225)	We consider this should be classified as tier two as it involves an element of culpability or intent.
Section 223(1) of the NGL, as amended by the draft Bill	Requirement for a person who has possession or control of information in relation to the natural gas industry to give the information to AEMO for use by AEMO in connection with the Natural Gas Services Bulletin Board if the person is required to do so under the Rules.	Section 223(1) in its current form is already classified as a civil penalty provision by section 3 of the Law. Section 223A(1) is also classified as a civil penalty provision under the Regulations. The section is to be deleted.	Existing: Tier 2 – Inappropriate Market Participant Behaviour – General reporting requirements to a regulator	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 135KE(2)	Requirement for a GSOO reporting entity to participate in a GSOO survey in accordance with the GSOO Procedures.	Classification of this provision as a civil penalty provision is consistent with the mandatory nature of the GSOO survey.	Tier 2 – Inappropriate Market Participant Behaviour – General reporting requirements to a regulator	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 135KG(1)	Requirement for a GSOO reporting entity to provide GSOO information to AEMO by the time specified in the GSOO Procedures.	Classification of this provision as a civil penalty provision is consistent with the mandatory nature of the GSOO survey.	Tier 2 – Inappropriate Market Participant Behaviour – General reporting requirements to a regulator	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.

Section or rule	Summary of provision	Explanatory notes	Proposed tiers	Selena/ EA comments
Rule 135KG(2)	Requirement for a GSOO reporting entity to provide GSOO information to AEMO in the manner and form specified in, and otherwise in accordance with, the GSOO Procedures.	Classification of this provision as a civil penalty provision is consistent with the mandatory nature of the GSOO survey.	Tier 2 – Inappropriate Market Participant Behaviour – General reporting requirements to a regulator	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 135KG(3)	<p>Requirement for a GSOO reporting entity to ensure that information it provides for a GSOO survey is prepared and submitted in accordance with the practices, methods and acts that would reasonably be expected from an experienced and competent person:</p> <ul style="list-style-type: none"> ▪ engaged in the activity in which the GSOO reporting entity engages in Australia; ▪ having the qualifications and experience reasonably to be expected of a person preparing the information in Australia; and ▪ acting with all due skill, diligence, prudence and foresight and in compliance with all applicable legislation (including these rules), authorisations and industry codes of practice. 	Classification of this provision as a civil penalty provision is consistent with the classification of other provisions in the Rules specifying information standards.	Tier 2 – Inappropriate Market Participant Behaviour – General reporting requirements to a regulator	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 135KG(4)	Requirement for a GSOO reporting entity to ensure that a forecast or estimate provided for a GSOO survey is arrived at on a reasonable basis and represents the best forecast or estimate possible in the circumstances.	Classification of this provision as a civil penalty provision is consistent with the classification of other provisions in the Rules specifying information standards.	Tier 2 – Inappropriate Market Participant Behaviour – General reporting requirements to a regulator	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.

Section or rule	Summary of provision	Explanatory notes	Proposed tiers	Selena/ EA comments
Rule 150(1)	Requirement for a facility operator to register under Part 18 as the BB reporting entity for each BB facility for which it is a facility operator.	Proposed new rule 150(1) will replace current rules 150(1), 151(1) and 156(1)(b), which are classified as civil penalty provisions.	Existing provision is Tier 1 – Supply Security & Reliability – Security and safety of supply in the gas system. New equivalent provision would remain at this classification.	As per our general comment above, this appears to be administrative in nature. However as it applies to upfront registration and is probably more important than periodic reporting obligations, a tier two classification is appropriate.
Rule 150(2)	Requirement for a facility operator to apply to register not later than: <ul style="list-style-type: none"> ▪ for a new BB facility, including a natural gas industry facility that becomes a BB facility following an extension or expansion, 20 business days before the facility or the relevant expansion or extension to the facility is commissioned; ▪ where there is a change to the facility operator for a BB facility, 20 business days after the facility operator becomes a facility operator for the BB facility; or ▪ where applicable, 20 business days after an exemption from registration under Part 18 ceases to apply. 	Proposed new rule 150(2) will replace current rules 150(2), 151(2), 156(3)(b) and 156(5), which are classified as civil penalty provisions.	Existing provision is Tier 1 – Supply Security & Reliability – Security and safety of supply in the gas system. New equivalent provision would remain at this classification.	As per our general comment above, this appears to be administrative in nature. However as it applies to upfront registration and is probably more important than periodic reporting obligations, a tier two classification is appropriate.
Rule 151(1)	Requirement for a field owner to register under Part 18 as the BB reporting entity for each BB field interest for which it is a field owner.	This is a new requirement. Classification as a civil penalty provision is consistent with the classification of the equivalent existing provision for registrations relating to BB facilities.	Existing provision is Tier 1 – Supply Security & Reliability – Security and safety of supply in the gas system.	As per our general comment above, this appears to be administrative in nature. However as it applies to upfront registration and is probably more important than periodic reporting obligations, a tier two classification is appropriate.

Section or rule	Summary of provision	Explanatory notes	Proposed tiers	Selena/ EA comments
Rule 151(2)	<p>Requirement for a field owner to apply to register not later than:</p> <ul style="list-style-type: none"> ▪ 20 business days after the field owner becomes a field owner for the BB field interest, including by reason of the acquisition of the interest or the grant of a petroleum tenement; or ▪ where applicable, 20 business days after an exemption from registration under Part 18 ceases to apply. 	<p>This is a new requirement. Classification as a civil penalty provision is consistent with the classification of the equivalent existing provision for registrations relating to BB facilities.</p>	<p>Existing provision is Tier 1 – Supply Security & Reliability – Security and safety of supply in the gas system.</p>	<p>As per our general comment above, this appears to be administrative in nature. However as it applies to upfront registration and is probably more important than periodic reporting obligations, a tier two classification is appropriate.</p>
Rule 152(1)	<p>Requirement for a facility developer to register under Part 18 as the BB reporting entity for each facility development project for which it is a facility developer.</p>	<p>This is a new requirement. Classification as a civil penalty provision is consistent with the classification of the equivalent existing provision for registrations relating to BB facilities.</p>	<p>Tier 1 – Supply Security & Reliability – Security and safety of supply in the gas system.</p>	<p>As per our general comment above, this appears to be administrative in nature. However as it applies to upfront registration and is probably more important than periodic reporting obligations, a tier two classification is appropriate.</p>

Section or rule	Summary of provision	Explanatory notes	Proposed tiers	Selena/ EA comments
Rule 152(2)	<p>Requirement for a facility developer to apply to register no later than:</p> <ul style="list-style-type: none"> ▪ for a new facility development project, 20 business days after the facility development project first satisfies the criteria in the BB Procedures to be classified as a proposed development; ▪ where there is a change to the facility developer for a registered facility development project, 20 business days after the facility developer becomes a facility developer for the facility development project; or ▪ where applicable, 20 business days after an exemption from registration due to the appointment of a responsible facility developer ceases to apply. 	<p>This is a new requirement. Classification as a civil penalty provision is consistent with the classification of the equivalent existing provision for registrations relating to BB facilities.</p>	<p>Tier 1 – Supply Security & Reliability – Security and safety of supply in the gas system.</p>	<p>As per our general comment above, this appears to be administrative in nature. However as it applies to upfront registration and is probably more important than periodic reporting obligations, a tier two classification is appropriate.</p>
Rule 153(1)	<p>Requirement for a BB allocation agent to register under Part 18 as the BB reporting entity for each BB allocation point for which it is the BB allocation agent.</p>	<p>Proposed new rule 153(1) will replace current rules 158A(1) and 158B(1) which are classified as a civil penalty provisions.</p>	<p>Existing r 158A(1) is Tier 2 – Market administration – inadequate record keeping or administrative processes</p> <p>Existing 158B(1) is Tier 1 – Supply Security & Reliability – Security and safety of supply in the gas system.</p>	<p>As per our general comment above, this appears to be administrative in nature. However as it applies to upfront registration and is probably more important than periodic reporting obligations, a tier two classification is appropriate.</p>

Section or rule	Summary of provision	Explanatory notes	Proposed tiers	Selena/ EA comments
Rule 153(2)	<p>Requirement for a BB allocation agent to apply to AEMO to register under Part 18 in respect of a BB allocation point not later than:</p> <ul style="list-style-type: none"> ▪ for a new BB allocation point, 20 business days after the relevant point becomes a BB allocation point; and ▪ where the BB allocation agent for a BB allocation point changes, 20 business days after the person becomes the BB allocation agent for the BB allocation point. 	<p>Proposed new rule 153(2) will replace current rules 158A(2), 158B(2) and 158B(5) which are classified as civil penalty provisions.</p>	<p>As above; plus r 158B(5) is Tier 1 - Supply Security & Reliability – Security and safety of supply in the gas system.</p>	<p>As per our general comment above, this appears to be administrative in nature. However as it applies to upfront registration and is probably more important than periodic reporting obligations, a tier two classification is appropriate.</p>
Rule 155(3)	<p>Requirement for each member of a facility operator group, field owner group or facility developer group to procure, and where necessary facilitate, the compliance of the relevant responsible reporting entity with its obligations under Part 18 in relation to (as applicable) the relevant BB facility, relevant group of BB field interests or relevant facility development project.</p>	<p>To the extent it deals with facility operator groups, proposed new rule 155(3) will replace current rule 152(6)(e) which is classified as a civil penalty provision.</p>	<p>Existing rule is Tier 1 – Unacceptable Market Participant Behaviour – Financial gain to contravener</p>	<p>As per our general comment above, this appears to be administrative in nature. However as it applies to upfront registration and is probably more important than periodic reporting obligations, a tier two classification is appropriate.</p>
Rule 156(2)	<p>Requirement for the outgoing BB reporting entity to give notice within 5 business days to AEMO of the change.</p>	<p>To the extent it deals with a change relating to a BB facility, proposed new rule 156(2) will replace current rules 156(1)(a) and 156(4) which are classified as civil penalty provisions.</p> <p>To the extent it deals with a change relating to a BB allocation point, proposed new rule 156(2) will replace current rule 158B(3)(b) which is classified as civil penalty provision.</p>	<p>Existing rule: 156(1) and 156(4) are Tier 1 - Supply Security & Reliability – Security and safety of supply in the gas system.</p>	<p>As per our general comment above, this appears to be administrative in nature and should be classified as tier three.</p>

Section or rule	Summary of provision	Explanatory notes	Proposed tiers	Selena/ EA comments
157(8)	Requirement for a BB reporting entity to comply with conditions of registration, which AEMO may impose to ensure that defects in applications are remedied and information required on registration is provided.	Classification of this provision as a civil penalty provision is consistent with classification of the primary obligation to register as a civil penalty provision.	Tier 1 – Supply Security & Reliability	As per our general comment above, this appears to be administrative in nature. However as it applies to upfront registration and is probably more important than periodic reporting obligations, a tier two classification is appropriate.
Rule 158(2)	Requirement for a responsible reporting entity to update the information about the relevant facility operator group, field owner group or facility developer group provided to AEMO on registration if there is any change.	To the extent it deals with a change relating to a BB facility, proposed new rule 158(2) will replace current rule 157 which is classified as a civil penalty provision.	Tier 1 – Supply Security & Reliability	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 165(1)	Requirement to comply with the BB information standard as set out in rule 165(2). Rule 165(2) is to be amended to extend it to reporting for BB field interests and facility development projects.	Rule 165(1) is already classified as a civil penalty provision. Its operation will be extended to new BB reporting entities as a consequence of the change to rule 165(2).	Tier 1 – Supply Security & Reliability	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 165(4)	Requirement to comply with the BB information standard when submitting updated information or data to AEMO under Part 18.	Rule 165(4) is already classified as a civil penalty provision. Its operation will be extended to new BB reporting entities as a consequence of the change to rule 165(2).	Tier 1 – Supply Security & Reliability	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 171(2)	Requirement that where information to be reported relating to reserves and resources requires a thing to be classified, it must be classified in accordance with: <ul style="list-style-type: none"> ▪ SPE-PRMS, in the most specific resource class in which petroleum resources can be classified under SPE-PRMS; or ▪ where SPE-PRMS does not provide for its classification, the BB Procedures. 	Classification of this provision as a civil penalty provision is consistent with classification of the requirement to comply with the BB information standard as a civil penalty provision.	Tier 1 – Consistent with classification of BB provisions – Supply Security & Reliability	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.

Section or rule	Summary of provision	Explanatory notes	Proposed tiers	Selena/ EA comments
Rule 171(5)	Requirement that reserves and resources estimates provided to AEMO must be prepared by, or under the supervision of a qualified gas industry professional.	Classification of this provision as a civil penalty provision is consistent with classification of the requirement to comply with the BB information standard as a civil penalty provision.	Tier 2 – Analogous to 158A(1) and (2).	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 171(6)	<p>Requirement for gas price assumptions used to prepare reserves and resources estimates to:</p> <ul style="list-style-type: none"> ▪ for contracted reserves, take into account contract prices and price escalation mechanisms over the contract term and any extension to it, if there is a reasonable expectation) that the contract will be extended; and ▪ for uncontracted reserves, use prices the BB reporting entity forecasts it will receive for the gas which must be verified by an independent qualified gas industry professional as falling within the range of gas price forecasts used or adopted by qualified gas industry professionals for the purpose of preparing such estimates or published by reputable independent Australian sources of gas price forecast information for Australia. 	Classification of this provision as a civil penalty provision is consistent with classification of the requirement to comply with the BB information standard as a civil penalty provision.	Tier 1 – Analogous to 165(4) – Supply Security & Reliability	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 198D(1)	Requirement for a service provider required by Part 18A to prepare, publish and maintain information to do so in accordance with the Part 18A information standard	Classification of this provision as a civil penalty provision is consistent with classification of the equivalent provision in Part 23.	Equivalent provision in Part 23 (r 552(1)(a)) is proposed as Tier 2 – Inappropriate Market Participant Behaviour – General reporting obligations	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.

Section or rule	Summary of provision	Explanatory notes	Proposed tiers	Selena/ EA comments
Rule 198D(3)	Requirement that a service provider who becomes aware that information required to be published by it under Part 18A does not comply with the Part 18A information standard or Part 18A, or is inaccurate, the service provider must publish information that does comply as soon as practicable after the service provider becomes aware of the non-compliance or inaccuracy.	Classification of this provision as a civil penalty provision is consistent with classification of the equivalent provision in Part 23.	Equivalent provision in Part 23 (r 552 (1)(a)) is proposed as Tier 2 – Inappropriate Market Participant Behaviour – General reporting obligations	Tier two may be justified as it relates to a party becoming aware of inaccuracy and in that knowledge does not take action to correct it.
Rule 198E(1)	Requirement that a service provider for a Part 18A facility must prepare, publish and maintain standing terms in accordance with rule 198E and weighted average price information in accordance with rule 198F in accordance with the NGL, Part 18A and the price reporting guidelines.	Classification of this provision as a civil penalty provision is consistent with classification of the equivalent provision in Part 23.	Equivalent provision in Part 23 (r 552 (1)(b)) is proposed as Tier 2 – Inappropriate Market Participant Behaviour – General reporting obligations	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 198J(7)	Requirement that a service provider for a Part 18A facility for which an exemption has been granted under Part 18A must notify the AER without delay if circumstances change such that the Part 18A facility no longer qualifies for the exemption.	Classification of this provision as a civil penalty provision is consistent with classification of the equivalent provision in Part 23.	Equivalent provision in Part 23 (r 585(8)) is proposed as Tier 2 – Inappropriate Market Participant Behaviour – General reporting obligations	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.
Rule 198K(2)	Requirement that a service provider for a Part 18A facility for which an exemption has been granted must comply with any conditions of the exemption.	Classification of this provision as a civil penalty provision is consistent with classification of the equivalent provision in Part 23.	Equivalent provision in Part 23 (r 586(2)) is proposed as Tier 1 – Unacceptable Market Participant Behaviour – Failure to comply with notice or request from regulator	As per our general comment above, this appears to be administrative in nature and should be classified as tier three.