

## COAG Energy Council Secretariat CANBERRA ACT

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### APA submission on AER powers and civil penalty regime

APA Group (APA), a major owner and operator of gas transmission pipelines, is concerned about proposed changes to the national energy laws which will have the effect of giving the Australian Energy Regulator (AER) powers to compel individuals to appear before it, and to give evidence.

APA's concerns are set out in this submission.

The ability to compel appearance and the giving of evidence should be restricted to the AER's performance of its compliance functions and powers. In APA's view, giving the AER powers to compel individuals to appear and give evidence is, in the context of the regulator's economic regulatory functions and powers, inappropriate and unnecessary.

APA understands that a breach of the law may threaten the security of gas supply and public safety. The power to compel appearance and the giving of evidence may then be necessary to the AER's effective performance of its compliance functions and powers under the National Gas Law (NGL) and the National Gas Rules (NGR).

However, the scheme of economic regulation in NGL and the NGR is different. It requires that a pipeline service provider, such as APA, convince the AER that the way in which the service provider has conducted its business in the past, and the way in which it intends to operate the business in the future, contribute to achievement of the national gas objective. If the service provider cannot convince the AER, the regulator can then determine key commercial matters such as terms and conditions of service provision, and the pricing of services. Giving the AER powers to compel appearance and give evidence is, in these circumstances, inappropriate.

The processes and timelines of the NGL and the NGR, and the requirements for the making of written submissions (and for written reasons for decisions by the regulator), are those necessary for convincing the AER. If, at any time, additional information is required, the AER has the means of obtaining it. These means are both formal (the serving a regulatory information notice, or the making of a general regulatory information order), and informal (telephone or e-mail contact between AER staff and the the relevant technical specialists in the service provider's businesses).

Giving the AER the power to compel individuals to appear before it, and give evidence, is not necessary for the regulator's effective performance or exercise of its economic regulatory functions and powers.

APA is of the view that the AER's power to compel the appearance of individuals and their giving of evidence needs to be no broader than the power which the Australian Competition and Consumer Commission currently has to compel individuals in relation to a matter that may constitute a contravention of the Competition and Consumer Act. Moreover, if the AER is to have the power to compel, that power should be accompanied by the same protection against self-incrimination as is provided under section 159 of the Competition and Consumer Act.

APA would be pleased to elaborate on the views in this submission.

A handwritten signature in blue ink, appearing to read 'P. Bolding', with a stylized flourish at the end.

**Peter Bolding**  
**General Manager Strategy and Regulatory**

**29 June 2018**