



APGA
50 YEARS 1968-2018

Submission to the Consultation Paper

AER Powers and Civil Penalty Regime

29/06/2018

APGA Submission to the National Energy Guarantee Draft Design Consultation Paper

Introduction

The Australian Pipelines and Gas Association (APGA) welcomes the opportunity to comment on the COAG Energy Council's Consultation Paper on AER Powers and Civil Penalty Regime.

APGA is the peak body representing Australasia's pipeline infrastructure, with a focus on gas transmission, but also including transportation of other products. Our members include owners, operators, constructors, advisers, engineering companies and suppliers of pipeline products and services. APGA's members build, own and operate the gas transmission infrastructure connecting the disparate gas supply basins and demand centres of Australia, offering a wide range of services to gas producers, retailers and users. The replacement value of Australia's gas transmission infrastructure is estimated to be \$50 billion.

A stable, predictable regulatory framework is vital to maintaining the attractiveness of the Australian energy sector as a destination for investment. It is in this context that APGA wishes to make a few brief comments on the Consultation Paper, as the powers the AER has at its disposal have significant implications for the perceived stability, consistency and fairness of the regulatory framework.

In this submission, APGA will limit its comments to what we consider the key issue in the consultation paper, which is the scope of the AER's proposed new power to compel individuals to appear before it and give evidence. The issue is whether or not the AER's new power should be limited to investigating a breach of the energy laws or rules, or whether it may be exercised in relation to any of the AER's functions and powers.

Consultation question: *Do you agree that the AER should be able to use its new power, to compel individuals to appear before it and give evidence, in relation to any functions and power?*

In APGA's view, giving the AER the power to compel individuals to appear before it and give evidence in connection with any statutory function or power being exercised by the AER would be too broad an application of such a power. Ordinarily we would expect the scope of any similar power held by an Australian government entity to be limited to circumstances relating to a potential breach of the law. In addition, the application of the AER's new power to all of its existing statutory functions or powers goes beyond what was originally intended by COAG in the 2013 *Review of Enforcement regimes under the National Energy Laws*.

Accordingly, it is APGA's view that the AER's new power to compel individuals to appear before it and give evidence should be limited to circumstances when it is investigating non-compliance with the law. The scope of the AER's new power would therefore be equivalent to that of the ACCC when it exercises a corresponding power under the Competition and Consumer Act 2010.

On a more general note, in APGA's view the Consultation Paper (and the 2013 Review it derives from) does not provide a particularly strong rationale for applying the AER's new power in its broadest sense.

For example, the fact that “information obtained through the current information request process can be highly technical and complex” and “giving the AER the ability to question the relevant personnel and require an explanation would assist its understanding of...such information” and potentially “avoid the need for several rounds of written exchanges” does not, to us, seem sufficient justification for allowing the AER to compel individuals to appear before it and give evidence in situations where it isn’t investigating a non-compliance with the law. (This seems particularly relevant when taking into account the broad range of functions and powers the AER actually has). Instead, it supports the case for – at least initially – aligning the AER’s new power with the with equivalent ACCC powers under the CCA, thereby limiting its authority to compel individuals to appear before it and give evidence to circumstances where it is investigating a potential non-compliance with the law.