

10 August 2020

COAG Energy Council  
Governance Project Team Secretariat

By Email: [GPTSecretariat@industry.gov.au](mailto:GPTSecretariat@industry.gov.au)

To Whom it May Concern

### **Proposed Classification of Tiers for the Reform of the Australian Energy Regulator Civil Penalty Regime**

Thank you for the opportunity to comment on the proposed classification of tiers as part of the reform of the civil penalty regimes managed by the Australia Energy Regulator (AER). This submission focuses on the classification of tiers as proposed to apply under *National Gas Law* and *National Energy Retail Law*, and their respective rules. Australian Gas Infrastructure Group (AGIG) has interests relating to transmission and distribution pipelines under both of these regimes.

AGIG is one of Australia's largest gas infrastructure businesses and combines the operations of Multinet Gas Networks (MGN), Australian Gas Networks (AGN) and Dampier Bunbury Pipeline (DBP). We have over two million customers across every Australian mainland state and the Northern Territory. Our assets include 34,000km of gas distribution networks, over 4,000km of gas transmission pipelines and 57PJ of storage capacity.

We support the overarching goals of the civil penalty regime. The regime should be flexible and promote the public interest in compliance with law as outlined in the National Energy Objectives. As outlined in the consultation guide the tiers and maximum penalty amounts adopted should represent a hierarchy of potential harm and 'penalties which are sufficient to deter contravening behaviour'.

It is also important that the tier which applies to a specific civil penalty provision should be proportionate to the nature of the contravention and the potential harm that could occur as a result of a breach of that provision. In doing so the tier selected should recognise the existing mechanisms within the relevant Law and Rules that act to both deter contravention and enforce compliance.

AGIG broadly supports the proposed classifications, save for the following matters:

- We suggest that proposed Tier 2 provisions in the subcategories of 'General reporting obligations to the regulator' and 'Inadequate record keeping or administrative processes' may not warrant inclusion in Tier 2. These provisions mostly relate to the submission of information to the AER, or the provision of information to pipeline users and gas consumers. Compliance with these provisions is clearly important. However, in respect of provisions relating to deadlines and content of submissions and information to be provided to the regulator, (such as NGL 56, 57, NGR 37, 43(1), 52(1)), a Tier 3 penalty is sufficient to deter contravention. A Tier 2 penalty seems disproportionate.
- In relation to requirements to publish information on a service provider's website (NGR 107, 108), we consider the Tier 2 civil penalties and infringement penalties are not necessary to deter compliance. Other provisions (eg NGR 112) outline timeframes in which service providers must undertake various steps following an access request. These provisions are subject to the access dispute provisions which form a significant incentive to ensure actions are undertaken within the required timeframes.

- Having regard to the compliance incentives in the regulatory framework and the proportionality of the harm caused by contravention, we consider classifying the majority of provisions proposed in the subcategories, 'General reporting obligations to the regulator' and 'Inadequate record keeping or administrative processes' as Tier 3 rather than Tier 2, will achieve the objectives of the penalty regime and better balance the proportionality of the response.
- In regard to National Energy Retail Law (NERL) and Rules we consider the tiers should take into account the AER Compliance Procedures and Guidelines (the Procedures and Guidelines).<sup>1</sup> The Procedures and Guidelines assess the civil penalty provisions in the NERL and NERR, and then based on the potential harm caused by a breach of a specific provision, sets out reporting requirements. For example some provisions require a breach to be immediately reported (within 2 days), while others are reported annually. The immediacy of the reporting requirement under the Procedures and Guidelines should align with the tier adopted in the civil penalty arrangements.
- The NERL and Rule provisions included in the proposed tier 1 do not align with the most serious breaches in the AER Procedures and Guidelines. Specifically, breaches of NERR 90 and 91(c) are only required to be reported every six months, but are included in Tier 1. Similarly for NERR 122 breaches are reported quarterly, but also included in Tier 1. Given the AER's assessment is that these provisions do not require immediate reporting we consider they may warrant inclusion in a different tier.

If you have any queries regarding this submission please contact Drew Pearman, Manager Policy and Government Relations (drew.pearman@agig.com.au, 0417 544 731) to discuss this issue further.

Yours sincerely



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<sup>1</sup> Australian Energy Regulator, AER Compliance Procedures and Guidelines: National Energy Retail Law, Retail Rules and Regulations Version 6,  
[https://www.aer.gov.au/system/files/AER%20compliance%20procedures%20and%20guidelines%20-%20Version%206%20-%20September%202018\\_2.pdf](https://www.aer.gov.au/system/files/AER%20compliance%20procedures%20and%20guidelines%20-%20Version%206%20-%20September%202018_2.pdf)