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Governance Project Team Secretariat
Department of Industry, Science, Energy and Resources
GPO 2013
CANBERRA ACT 2601

To whom it may concern,

COAG Energy Council Proposed Classification of Tiers for the reform of the Australian Energy Regulator Civil Penalty Regime

Thank you for the opportunity to make a submission on the proposed classification of tiers for the reform of the Australian Energy Regulator (AER) civil penalty regime.

The ACCC notes the overarching purpose of a civil penalty regime is to promote compliance with the law, achieved through the imposition of penalties which are sufficient to deter contravening behaviour.

The ACCC supports reform of the AER's civil penalty regime and powers to establish a more flexible and sophisticated penalty regime. The ACCC supports amendment to the National Electricity Law, National Gas Law and National Energy Retail Law (National Energy Laws) to provide for increased civil penalties through the implementation of a tiered penalty structure. The ACCC agrees that increasing the maximum penalties and providing for periodic indexation of those penalties will strengthen and expand the tools available to the AER to carry out its role.

Civil Penalty Provisions as they relate to the Gas Inquiry

One of the objectives of the ACCC's Gas Inquiry 2017-2025 is to improve the transparency of gas supply arrangements and support the efficient operation of the market. To achieve this, the ACCC monitors the quality of the information reported by pipeline operators and the timeliness and outcomes of negotiations on pipelines.

In 2018 the ACCC and Gas Market Reform Group (GMRG) made a series of joint recommendations for measures to improve the transparency of the gas market. This included increased penalties for non-compliance with reporting obligations, to be progressed through the civil penalties review. The ACCC notes the proposed classification of tiers for civil penalty provisions relating to non-compliance with reporting obligations are consistent with the joint recommendations made by the ACCC and GMRG in 2018.

As part of the Gas Inquiry July 2019 Interim Report the ACCC conducted a review of the operation of Part 23 of the National Gas Rules (NGRs). Part 23 of the NGRs was introduced in August 2017 to reduce the information asymmetry and imbalance in bargaining power shippers can face when negotiating with non-scheme pipeline operators.

The purpose of the review was to determine whether key elements of Part 23 were working as intended and the effect its introduction had on pipeline investment. As part of the review the ACCC noted it was concerned that some pipeline operators did not appear to be taking the information disclosure obligations under Part 23 seriously and were continuing to exploit information asymmetries to the detriment of shippers. With this in mind, the ACCC has provided feedback in the attached table.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'N. Ross', is positioned above the typed name.

Nicole Ross
General Manager
ACCC Gas Inquiry

Attachment: Feedback on Proposed Civil Penalty Provisions

Current Proposed Civil Penalty Provisions

Civil Penalty Provision	Conduct	Proposed Tier	Matrix Category	Sub classification
National Gas Rules				
Rule 562(3)	Access negotiation information	Tier 3	-	-

ACCC Proposed Civil Penalty Provisions

Civil Penalty Provision	Conduct	Proposed Tier	Matrix Category	Sub classification	Discussion
National Gas Rules					
Rule 562(3)	Access negotiation information	Tier 1	Adverse Market Impact	Distortion of market	The obligation that this rule creates to respond to requests for information during access negotiations is key to facilitating timely and effective commercial outcomes. Compliance with the rule also establishes the credibility of the threat of arbitration, as the information exchanged during negotiations forms the basis for any potential arbitration. As a result, a breach of this provision may result in or involve the distortion of a market through denying or delaying access to information and therefore the market. We suggest compliance with Rule 562(3) would be more effectively achieved through the imposition of maximum penalties associated with Tier 1.