

Submission from Australian Gas Infrastructure Group (AGIG)

The template below has been developed to enable stakeholders to provide feedback on the draft amendments to the NGL, Regulations and NGR as per the consultation paper. Energy Senior Officials strongly encourage stakeholders to use this template, so that it can have due regard to the views expressed by stakeholders on each issue.

1. Questions for stakeholders

Number	Question	Response
1 Page 22	Do you agree with the proposal to allow Chapter 4 of the NGL, or particular provisions in this chapter, to be applied to a person other than a service provider if prescribed in Regulations? If not, please explain why not.	No comment.
2 Page 22	Do you think it is necessary to prescribe any persons other than a service provider in the Regulations at the commencement of the legal package, or should it be assessed at a later stage? If you think the Regulations should prescribe any persons other than a service provider at the commencement of the legal package, please explain why.	No comment.
3 Page 22	Do you agree with the proposal to replace the voluntary access arrangement mechanism with a scheme election option? If not, please explain why not.	<p>AGIG considers that this replacement would reduce the likelihood of election occurring, and is therefore counter to the policy intent of enabling service providers to voluntarily seek a stronger form of regulation.</p> <p>The regulatory framework should enable and encourage pipeline service providers (SPs) to submit voluntary access arrangements (AAs) where this might be beneficial. The proposed election approach would mean a voluntary AA is unlikely to be initiated given the risk of unforeseen access terms and conditions being imposed by the relevant regulator.</p> <p>The draft changes remove voluntary AAs and replace them with the scheme election option where an SP can elect for its pipeline to become subject to stronger regulation.</p> <p>The key difference between voluntarily submitting an AA for approval under the old provisions and electing to be subject to stronger regulation under the new provisions is that under the current rules SPs can withdraw a voluntary AA proposal at any time before the regulator's final decision. That means SPs can effectively stop the process if they expect the regulator is not going to approve the proposed access terms.</p> <p>Under the draft amendments there is no ability to change an SP's election – a SP simply notifies the regulator of its election and the pipeline then becomes a scheme</p>

Number	Question	Response
		<p>pipeline subject to all the usual rules for AAs for stronger regulation pipelines with no certainty whether the regulator will accept your proposed AA.</p> <p>This change leads to a loss of control and certainty for SPs in relation to the terms of the AA compared with the previous provisions. AGIG expects this to be a strong disincentive for the election option to be used, and considers it is therefore less preferable than the status quo voluntary AA mechanism.</p>
<p>4 Page 25</p>	<p>Do you agree with the proposal to allow the relevant regulator to determine that a pipeline should be subject to full regulation if the service provider has not provided any of the required information in a timely manner and to the reasonable satisfaction of the relevant regulator? If not, please explain why not.</p>	<p>AGIG understands that the policy intent is that <i>'this would operate in a similar manner to the adverse inference provision in rule 568(4)(b) in Part 23 of the NGR'</i> as stated in footnote 15 of the consultation paper. However, as presently drafted, it is not qualified in the same way as the existing rule 568.</p> <p>As presently drafted, rule 16(4) provides that if the service provider does not provide the information requested, the AER may <i>'draw such adverse inferences from the failure to comply as the circumstances justify'</i> and <i>'proceed to make a scheme pipeline determination in relation to the pipeline on the basis of such information as the AER considers relevant'</i>. It isn't qualified in the same way as the existing rule 568 the consultation paper claims it is based on, which only applies if there has been an <i>'inordinate and inexcusable failure'</i> to provide information.</p> <p>Not including the equivalent qualification is likely to be problematic for previously unregulated (non-scheme) pipelines to be held to a standard used on scheme pipelines for the purpose of setting regulated access terms and conditions. There may be myriad legacy asset and ownership reasons why information may not be available as was experienced when implementing Part 23. The equivalent qualification would allow the relevant regulator to appropriately consider the circumstances. See the feedback on proposed drafting changes below.</p>
<p>5 Page 27</p>	<p>Do you agree with the proposal to employ the same test for form of regulation and greenfields incentive determinations, but modified in the manner set out above?</p>	<p>AGIG does not consider that the current drafting gives effect to the stated policy.</p> <p>The consultation paper says on the amended greenfields provisions at page 5: <i>'This incentive will provide the pipeline with an exemption from the stronger form of regulation and give effect to any competitive outcome to develop the pipeline for up to 15-years.'</i> However the rules do not appropriately implement this decision by giving effect to competitive outcomes for the development of the pipeline.</p> <p>It remains important that where willing and not anxious parties enter into a contested greenfield development, the regulator has regard to that competitive process when determining whether to grant a greenfield incentive determination. The proposed tests for a greenfields incentive determination do not appear to require or allow the regulator to consider whether the competitive processes for the development of the pipeline is evidence of a constraint on the service provider's market power. This leads to a lack of clarity and a risk a service provider could fail the test for a greenfields</p>

Number	Question	Response
		<p>incentive determination even where there was a highly competitive tender process for the pipeline.</p> <p>The consultation paper also states (at page 26) that the NGR will be amended to 'revise the non-scheme pipeline access dispute provisions in the new Part 12 to require the arbitrator to give effect to the prices and non-price terms and conditions established through a competitive process'. However, the NGR amendments do not appear to achieve that intention and this results in a material risk that an access seeker could seek terms that are inconsistent with the outcomes and terms of the competitive tender process on which the pipeline was constructed.</p> <p>These issues and proposed drafting changes to give effect to the stated policy are discussed in more detail in the proposed drafting changes in Part 2 below.</p>
6 Page 28	Do you agree with the proposal to remove the 15-year price regulation exemption and to treat all pipelines in the same manner for the purposes of any greenfields incentive? If not, please explain why not.	AGIG agrees but see the drafting comments in Part 2 below.
7 Page 30	Do you agree with the proposal to require expansions of non-scheme pipelines to be treated as part of the same pipeline for the purposes of the NGL and NGR? If not, please explain why not.	AGIG agrees.
8 Page 32	Do you agree with the proposed changes to the pipeline classification and reclassification mechanism? If not, please explain why not.	No comment.
9 Page 34	<p>Rule 109 currently prohibits a service provider from making it a condition of the provision of a particular pipeline service that the prospective user accept a non-gratuitous service unless the bundling of services is reasonably necessary. Do you:</p> <p>(a) Agree with the scope of this prohibition, which has been adopted in the draft legal package and only applies to the bundling of non-gratuitous services?</p> <p>(b) Think the prohibition should apply more broadly to any bundling of services (i.e. gratuitous and non-gratuitous services) unless it is reasonably necessary?</p>	No comment.
10 Page 35	Do you think s. 134 of the NGL (renumbered s. 148E), which imposes obligations on producers in relation to the supply and haulage of natural gas using scheme pipelines, should be retained in the regulatory framework or removed? Please explain your response to this question.	No comment.
11	If you think the obligation (refer to question 10) should be retained in the NGL, do you think:	No comment.

Number	Question	Response
Page 35	<p>a. it should continue to just apply to producers, or do you think the obligation should extend to retailers? Please explain your response to this question.</p> <p>b. it should continue to just apply to scheme pipelines, or do you think the obligation should extend to non-scheme pipelines? Please explain your response to this question.</p>	
12 Page 38	<p>Do you agree with the proposed interconnection requirements, or are there:</p> <ul style="list-style-type: none"> - other requirements that you think should be specified in the NGR? - some requirements listed in section 4.2 that you think should not be specified in the NGR? <p>If you think the proposed interconnection requirements need to be amended, please explain why you think this is required.</p>	No comment.
13 Page 40	Do you agree with the proposal to limit the prohibition on cross-subsidising the development of new capacity to transmission pipelines operating under the contract carriage model? If not, please explain why not.	AGIG agrees.
14 Page 40	Do you agree with the proposal to require the dispute resolution body in a scheme pipeline access dispute and the arbitrator in a non-scheme pipeline access dispute to (where relevant) give effect to the prohibition on cross-subsidising the development of new capacity in their access determinations?	<p>AGIG maintains that the arbitrator should be able to consider the merits of the cross-subsidy on a case by case basis.</p> <p>Pipeline regulation should not impose a one size fits all approach to expansion pricing because there can be multi-user benefits in cross-subsidies. Pipelines (and their foundation shippers) should be able to adopt efficient hybrids that protect the interests of both existing users and connecting parties such that all parties are no worse off from the connection and where benefits are available, they can be shared in a manner that best ensures the pipeline expansion occurs.</p>
15 Page 45	Do you agree with the proposed cost allocation principles in the draft rules? If not, please explain why not.	<p>For proposed cost allocation principle in rule(4)(c)(ii)(B), AGIG considers it should specify that a 'well accepted cost allocation method' includes one that maximises the interests of the widest number of consumers (e.g. Ramsey pricing). AGIG suggests this can be achieved by amending the rule to 'well accepted cost allocation method that maximises economic welfare.'</p> <p>Making this addition is consistent with the pricing principles underpinning efficient pricing designs to support efficient pipeline utilisation that appear elsewhere in the current NGR. For example, rule 94(5) requires that 'tariffs must be adjusted to ensure recovery of expected revenue with minimum distortion to efficient patterns of consumption' (i.e. requiring Ramsey pricing). Where a cost allocation method supports such efficient pricing, it should not be prohibited by the cost allocation</p>

Number	Question	Response
		principles. To do so would be counter to the revenue and pricing principles in section 24 of the NGL.
16 Page 45	Are the proposed cost allocation principles likely to conflict in any way with the principles applying to scheme pipelines in Part 9 of the NGR? If so, please explain in what way they conflict and how the conflicts could be resolved.	No comment.
17 Page 47	<p>Do you agree with the proposal to require service providers to publish the following non-price terms and conditions alongside the individual prices paid by shippers:</p> <ul style="list-style-type: none"> (i) the date the trade was entered into and the service term; (ii) the type of service provided and the service priority (e.g. firm, as available or interruptible); (iii) the receipt and delivery points at or between which the service is provided and in the case of a forward haul or backhaul service, the direction of the service; (iv) the contracted quantities, expressed as a maximum daily quantity (in GJ/day) and maximum hourly quantity (in GJ/hour); (v) the price escalation mechanism; (vi) whether or not the transaction is on the same or substantially the same terms as the pipeline's standard terms for that service; and (vii) the imbalance and overrun allowance associated with the service? <p>If you do not agree with this proposal because you think there are:</p> <ul style="list-style-type: none"> a other non-price terms and conditions or information that should also be reported (e.g. other non- liability caps, gas specification, higher heating value requirements etc), please identify what those other non-price terms and conditions are and why you think they should be reported; and/or b some non-price terms and conditions listed in (i)-(vii) that should not be reported, please identify what those non-price terms and conditions are and why you think they should not be reported. 	<p>AGIG considers that the following drafting refinements should be made to better reflect the nature of service being provided:</p> <ul style="list-style-type: none"> (i) the date the trade <u>service</u> was entered into and the service term;.... (vi) whether or not the transaction <u>service</u> is on the same or substantially the same terms as the pipeline's standard terms for that service; and <p>AGIG considers the proposal to require service providers to publish non-price terms and conditions is more appropriate for transmission pipeline services. For distribution pipelines, AGIG notes that the proposed publication of non-price terms and conditions is only relevant to non-scheme distribution pipelines. For scheme distribution pipelines, users obtain the reference service as published in the access arrangement and therefore there is no need for the non-price terms and conditions for scheme pipelines to be subject to Part 10. With regards to providing receipt and delivery points under (iii) for non-scheme distribution pipelines, AGIG's non-scheme distribution pipeline service contracts with shippers,. Therefore, AGIG suggests following drafting refinement:</p> <ul style="list-style-type: none"> (iii) <u>in the case of transmission pipeline services</u>, the receipt and delivery points at or between which the service is provided and in the case of a forward haul or backhaul service, the direction of the service. <u>For distribution pipeline services</u>, the gatestations associated with the <u>service</u>; <p>AGIG notes under the current rules 45(1)(c) and 48(1)(d)(ii) of the NGR, the regulator has the power to require this information for scheme pipelines with regards to limited and full access arrangements respectively. Rule 48(1)(d)(ii) is proposed to remain which may result in unnecessary regulatory burden through two sets of obligations to provide the same information.</p> <p>In the consultation paper (table 6.1) it is noted that the standing terms rules in rule 554 are to be amended to enable service providers of scheme pipelines to cross-reference an access arrangement if the information can be found in that document. The same principle should apply to any non-price terms and conditions, although AGIG notes that neither the replacement rule 101C for rule 554, or the other proposed amendments, appear to do this. AGIG considers that the ability to cross</p>

Number	Question	Response
		<p>reference an access arrangement if the information can be found in that document is best included in rule 101A(3) as follows:</p> <p>(c) <u>where the information is also required to be provided by the service provider in an Access Arrangement, by providing a publicly available link on its website to the part of the Access Arrangement where the information is to be located;</u></p> <p>Lastly, AGIG also considers that to the extent that any annual information request made by the regulator is published by a service provider under new Part 10, the service provider can comply by providing a publicly available link on its website to where the information is to be located. AGIG suggests that the following amendment be included in Division 4 of the NGR 9, rule 48 Requirements for full access arrangement, as new rule 48(3):</p> <p>To the extent that any information in this rule 48 is covered under Part 10, the service provider can comply by providing a publicly available link on its website to where the information is to be located.</p>
<p>18 Page 52</p>	<p>In relation to past capital contributions, do you:</p> <p>(a) Agree with the proposal to extend the requirement to consider past capital contributions to non-scheme pipelines? If not, please explain why not.</p> <p>(b) Think the requirement to consider past capital contributions should only apply to contributions of capital by the user to fund installations or the construction of new facilities, or should it also apply to contributions to the original construction of the pipeline? Please explain your response.</p> <p>(c) Think the extent to which a party has fully recouped past capital contributions should be taken into account by the relevant adjudicator when making an access determination?</p>	<p>No comment.</p>
<p>19 Page 52</p>	<p>Do you agree with the proposal to extend the safety of operation provisions to non-scheme pipelines? If not, please explain why not.</p>	<p>AGIG agrees.</p>
<p>20 Page 56</p>	<p>Do you agree with the proposed definition of a small shipper? If not, please explain why you think this threshold is not appropriate and set out the alternative definition you think should be employed.</p>	<p>While AGIG supports the proposed capacity threshold for small shippers, we note that this threshold applied in isolation of other relevant factors would be insufficient to achieve the policy intent.</p> <p>The consultation paper states (at page 55) that <i>'it is intended to refer to shippers that are large enough to self-contract with service providers, but are 'small' relative to other shippers that transport larger volumes of gas and have a greater degree of bargaining power when negotiating with pipelines'</i>.</p>

Number	Question	Response
		<p>AGIG considers the capacity threshold should have qualitative factors also applied to ensure that it does not inadvertently capture large retailers and gas producers on a given pipeline simply due to the small scale of either the pipeline or that parties' gas use on that pipeline. For example, AGIG has identified some of its scheme and non-scheme pipelines where the capacity threshold would mean a big three retailer could qualify as a small shipper. We understand this is inconsistent with the policy intent and recommend adding qualitative exclusions to the definition available to the dispute resolution body in considering whether a party to a dispute constitutes a small shipper . See the proposed drafting changes in Part 2 below for a potential drafting change to address this issue.</p>
<p>21 Page 56</p>	<p>Do you agree with the proposal to accord small shippers that are using either a scheme or non-scheme pipeline the option to elect to have a dispute mediated by a regulator appointed mediator? If not, please explain why you think the extension of this option to scheme pipelines should not occur.</p>	<p>AGIG does not support the extension of this option to scheme pipelines.</p> <p>We believe it is important to maintain a differentiation between the forms of regulation, and importantly the arbitration/dispute-settlement available to each. Stronger regulation of pipelines provides a different level of intervention and customer protection.</p> <p>Preserving a regulatory-oriented arbitration mechanism when there are reference services available on the pipeline is important to support the meaningful application and shipper participation in that form of regulation. For stronger regulation, maintaining the relevant regulator as the arbiter will encourage shippers to properly engage in the access arrangement review process and the regulator's consideration thereof. Allowing a smaller shipper to opt for mediation rather than the status quo of the dispute resolution body having the power to require parties to mediate introduces a risk of forum shopping by small shippers on scheme pipelines.</p>
<p>22 Page 58</p>	<p>Do you agree with the proposed approach to each of the transitional arrangements set out in Table 9.1? If not, please explain why not.</p>	<p>AGIG agrees with the proposed transitional arrangements.</p>
<p>23 Page 58</p>	<p>Are there any other transitional arrangements that you think need to be provided for in the NGL or NGR? If so, please explain what they are and why they are required.</p>	<p>No comment.</p>
<p>24 Page 58</p>	<p>Do you agree with the proposal to treat expansions that do not currently form part of a scheme pipelines that is subject to full regulation as part of the scheme pipeline from the commencement of the new package and to be rolled into the access arrangement at the next access arrangement review? If not, please explain why not.</p>	<p>No comment.</p>
<p>25 Page 58</p>	<p>Are you aware of any transitional arrangements that would need to be provided for to account for similar examples under the regulatory framework?</p>	<p>No comment.</p>

Number	Question	Response
26 Page 68	Do you agree with the proposal to remove the scheme pipeline grandfathering arrangement for contracts that were in force prior to 30 March 1995? If not, please explain why not.	No comment.
27 Page 77	<p>Do you agree with the proposal to require the following non-price terms and conditions to be published by Part 18A facility service providers alongside the individual price information?</p> <ul style="list-style-type: none"> - the facility by means of which the service is provided; - the date the contract was entered into or varied and the service term (start and end dates); - the type of service provided (for example, a storage service, compression service) and the priority given to the pipeline service (such as firm, as available or interruptible); - the contracted quantity, which for: <ul style="list-style-type: none"> – a compression service facility should be the maximum daily quantity (in GJ/day); – a storage facility should be: <ul style="list-style-type: none"> • the storage capacity the subject of the transaction (in GJ); and • where relevant, the injection and withdrawal capacity, expressed as a maximum daily quantity or MDQ (in GJ/day); - whether the service is provided on the same or substantially the same non-price terms as those set out in the standing terms published by the service provider; - the price paid for the service as specified in the contract (if these prices are not expressed on a \$/GJ/day or \$/GJ basis, service providers will also be required to publish the price converted to such a basis together with an explanation as to how the conversion was made); - the price structure applicable to the service (for example, whether it is a fixed price or a variable price or a combination of the two); and - any price escalation mechanism applicable to the price paid for the service. <p>If you do not agree with this proposal because you think there are:</p>	<p>AGIG does not support the required disclosures for Storage facilities. Storage facilities generally operate in a competitive environment where storage services are offered by multiple parties including multiple storage facilities as well as pipelines themselves. Storage facilities that operate in competitive markets where customers can seek alternative providers should not be subject to these disclosure requirements. This is particularly the case for storage facilities operated in Western Australia.</p>

Number	Question	Response
	<p>a) other non-price terms and conditions or information that should also be reported, please identify what those other non-price terms and conditions are and why you think they should be reported; and/or</p> <p>b) some non-price terms and conditions that should not be reported, please identify what those non-price terms and conditions are and why you think they should not be reported.</p>	
28 Page 77	Do you agree with the proposal to align the requirements for the standing terms with those that will apply to pipeline service providers? If not, please explain why not.	As above, these requirements should not apply to storage facilities operating in competitive markets for storage services.

2. Feedback on proposed changes

Section	Agreed measure	Feedback on proposed changes to the NGL / NGR / Regulations
Sections 109 and 161 of the NGL and rules 29 and 113Z of the NGR	Amendments to give effect to the new greenfields incentive – giving effect to competitive outcomes	<p>The consultation paper (Page 5) says on the amended greenfields provisions: ‘<i>This incentive will provide the pipeline with an exemption from the stronger form of regulation and give effect to any competitive outcome to develop the pipeline for up to 15-years.</i>’ However, the draft amendments to the NGL and NGR do not appropriately implement this decision by giving effect to competitive outcomes for the development of the pipeline. Two issues need to be addressed in the drafting to give effect to the stated intention:</p> <p>1. Test for greenfields incentive determinations</p> <p>The proposed tests for a greenfields incentive determination do not appear to require or allow the regulator to consider whether the competitive processes for the development of the pipeline is evidence of a constraint on the service provider’s market power. This factor is not included in form of regulation factors in s16 of the NGL, the greenfields incentive determination provisions in ss100-108 of the NGL or the principles and factors the regulator is to apply when making relevant determinations under s109 of the NGL. This leads to a lack of clarity and a risk a service provider could fail the test for a greenfields incentive determination even where there was a highly competitive tender process for the pipeline.</p> <p>s109(3)(b)(ii) of the NGL requires the AER to have regard to the extent to which the form of regulation factors pose an effective constraint on the exercise of market power when making a greenfield determination. It may be this provision was intended to give effect to this aspect of the policy, but it is not clear that it does so.</p> <p>AGIG recommends that s109(3) of the NGL is amended to also require the AER to have regard to the extent to which any competitive process undertaken for the development of the pipeline will, or is likely to, pose an effective constraint on the exercise of market power.</p> <p>2. Arbitrator to give effect to the prices and non-price terms established through the competitive process</p> <p>The consultation paper states (page 26) that the NGR will be amended to ‘<i>revise the non-scheme pipeline access dispute provisions in the new Part 12 to require the arbitrator to give effect to the prices and non-price</i></p>

Section	Agreed measure	Feedback on proposed changes to the NGL / NGR / Regulations
		<p><i>terms and conditions established through a competitive process</i>'. However, the NGR amendments do not appear to give effect to this agreed policy for following reasons, which results in a material risk that an access seeker could seek terms that are inconsistent with the outcomes and terms of the competitive tender process on which the pipeline was constructed:</p> <ul style="list-style-type: none"> • The policy stated in the consultation paper is that the NGR should <i>'require the arbitrator to give effect to'</i> the competitive tender terms and conditions. The drafting does not do so and only requires the arbitrator to <i>'take into account'</i> the pricing principle discussed below (s161 of the NGL and rule 113Z of the NGR). <i>'Take into account'</i> is a much lower standard than <i>'give effect to'</i> and leaves considerable scope for the arbitrator to depart from the outcomes of the competitive process. • The policy stated in the consultation paper is that the arbitrator should be required to give effect to <i>'the prices and non-price terms and conditions established through a competitive process'</i>. The drafting only applies to the price for access and any price escalation mechanism – see the pricing principle in rule 113Z(4)(c) and the note below rule 29(2). • Rules 26, 27(2) and 29(2) require the greenfields determination to include information about the competitive tender process including the price and non-price terms. However, that information does not then have the status the consultation paper states it should have. Rule 29(2) requires the AER's greenfields determination to specify the price and non-price terms for pipelines developed under a competitive tender. However, it does not require those terms to match the competitive tender terms. The note under rule 29(2) also confirms that only the price and price escalation mechanism specified by the AER have any status and are to be applied by an arbitrator in the event of arbitration. <p>AGIG proposes that these provisions should be amended to reflect the stated policy position by:</p> <ul style="list-style-type: none"> • Amending s161 of the NGL or rule 113Z of the NGR (or inserting a new provision) to provide that an access determination for a greenfields incentive pipeline must be consistent with the price and non-price terms and conditions established through any competitive tender process for the pipeline. If rule 29(2) is amended as proposed below, this amendment could be implemented by requiring that the access determination must be consistent with the terms specified by the AER under rule 29(2). • Amending rule 29(2) to clarify that the terms specified by the AER must be consistent with the terms resulting from the competitive process. • Amending the note below rule 29(2) for consistency with the above changes.
Rule 101(e) of the NGL	Amendments to give effect to the new greenfields incentive – term of a greenfields determination	<p>The current greenfield incentive provisions in the NGL result in the pipeline receiving a no coverage determination for 15 years. The consultation paper states that the new greenfields incentive determinations will be for a period of 'up to 15 years'. The new s101(e) of the NGL provides that the AER will 'specify the period of not more than 15 years' for which the determination applies.</p> <p>It is not clear from the consultation paper why this change to the period of a greenfields determination has been made. It is also very unclear in the proposed legal drafting how the AER will determine the appropriate</p>

Section	Agreed measure	Feedback on proposed changes to the NGL / NGR / Regulations
		<p>period. The NGL and NGR do not contain any guidance on how the AER will determine the period for the determination or the circumstances in which it may be appropriate for it to be less than 15 years. This will create uncertainty and a material risk that these determinations may be for a significantly shorter period, which could deter efficient investment.</p> <p>AGIG proposes that rule 101 should be amended to specify that the period for a greenfields incentive determination must be 15 years unless the AER determines that a shorter period is appropriate based on criteria set out in the NGR.</p>
Rule 16(4)	Reducing the information asymmetries the relevant regulator may face when applying the form of regulation test	<p>The consultation paper states that the power in rule 16(4) to draw an adverse inference <i>'would operate in a similar manner to the adverse inference provision in rule 568(4)(b) in Part 23 of the NGR'</i> (footnote 15 of the consultation paper). However, rule 568 only applies if there has been an <i>'inordinate and inexcusable failure'</i> to provide information. Rule 16(4) does not currently include a similar qualification. AGIG proposes that equivalent wording should be added to rule 16(4) so that it is consistent with rule 568 and the policy intent stated in the consultation paper.</p> <p>The policy intention in the consultation paper and Decision RIS appears to be that the AER's power to require the service provider to provide information under rule 16(2) would only apply where the AER requires that information for the purposes of a scheme pipeline determination process. The fact that this rule is contained in Division 1 of Part 4, which relates to scheme pipeline determinations, is consistent with that intention. However, the current drafting of rule 16(2) does not impose any explicit limitations on the circumstances in which the AER can require the service provider to provide information under that rule (and in turn does not explicitly limit the circumstances in which rule 16(4) can be applied). Some of the information covered by that rule could be onerous for the service provider to obtain and provide and it should not be a general information gathering power the AER can use for any purpose unrelated to a pipeline determination process. AGIG proposes that rule 16(2) is amended so that this power only applies in the circumstances referred to in rule 16(1).</p>
Section 2 of the NGL	Definition of small shipper	<p>The consultation paper states (at page 55) that <i>'it is intended to refer to shippers that are large enough to self-contract with service providers, but are 'small' relative to other shippers that transport larger volumes of gas and have a greater degree of bargaining power when negotiating with pipelines'</i>.</p> <p>As discussed above, AGIG considers that the current definition of small shipper in s2 of the NGL could include large parties including major gas retailers, which is inconsistent with this intention. AGIG proposes that the small shipper definition is amended to exclude any person who is registered as a retailer under rule 135AB, and include qualitative criteria for consideration by the dispute resolution body to consider in determining whether a party warrants consideration as a small shipper. These could include the size of the organisation and its role in wider gas markets.</p>