

Part 16 Confidential information

136 Interpretation

In this Part:

confidential information means information:

- (a) provided to a Registered participant or to AEMO under or in connection with these rules or the Procedures or derived from information so provided; and
- (b) classified by or under these rules or the Procedures, or by AEMO, the AER or the AEMC, as confidential information.

distribution pipeline includes a pipeline that would, if classified, be likely to be classified as a distribution pipeline.

gas supply information means information obtained by a service provider (but not from a public source) about a person's:

- (a) use or prospective use of pipeline services; or
- (b) acquisition or consumption, or prospective acquisition or consumption, of natural gas.

improper – disclosure or use of relevant confidential information is improper if the information is disclosed or used contrary to this Part.

recognised stock exchange means:

- (a) a stock exchange that is a member of the World Federation of Exchanges; or
- (b) an approved stock exchange within the meaning of section 470 of the *Income Tax Assessment Act 1936* (Cth).

relevant confidential information means:

- (a) information given to a service provider in confidence by a user or prospective user or information about a user or prospective user that the user or prospective user has asked the service provider to keep confidential; or
- (b) gas supply information.

137 Maintenance of confidentiality

- (1) *A scheme pipeline service provider* must not:
 - (a) disclose relevant confidential information; or
 - (b) use relevant confidential information for a purpose other than the purpose for which the information was given to the service provider.
- (2) *A scheme pipeline service provider* must take all practicable steps to protect relevant confidential information in the service provider's possession against improper disclosure or use.
- (3) This rule does not, however, prevent:

- (a) disclosure or use of relevant confidential information with the consent of the person to whom the information relates; or
- (b) disclosure or use of information that is in the public domain; or
- (c) disclosure or use of relevant confidential information:
 - (i) as required or authorised by or under the *NGL*, the *NERL*, or related rules or procedures; or

Note

This would include (for example) the disclosures required under a RoLR scheme under Part 6 of the *NERL*.

- (ii) as required or authorised by or under the *law* of a participating jurisdiction; or
- (iii) in order to comply with an order of a court or tribunal; or
- (iv) as required by the listing rules of a recognised stock exchange.

- (4) A duty imposed by this rule is a *non-delegable duty*.

Note

This rule is classified as a tier 1 civil penalty provision under the National Gas (South Australia) Regulations. (See clause 6 and Schedule 3 of the National Gas (South Australia) Regulations.)

Note:

This rule is classified as a conduct provision under the National Gas (South Australia) Regulations. See clause 7 and Schedule 4 of the National Gas (South Australia) Regulations.

138 Obligation to disclose gas supply information in certain circumstances

- (1) A service provider must, at the request of a person to whom gas supply information relates (the **relevant person**), or a person who makes the request with the consent of the relevant person, disclose gas supply information relating to the relevant person.
- (2) A service provider may charge a reasonable fee for providing the requested information.

Note

This rule is classified as a tier 2 civil penalty provision under the National Gas (South Australia) Regulations. (See clause 6 and Schedule 3 of the National Gas (South Australia) Regulations.)

Note:

This rule is classified as a conduct provision under the National Gas (South Australia) Regulations. See clause 7 and Schedule 4 of the National Gas (South Australia) Regulations.

138A General confidentiality obligation of Registered participant

- (1) A Registered participant must keep confidential any confidential information that comes into the participant's possession or control in the course of the participant's business.
- (2) A Registered participant:

- (a) must not disclose confidential information except as permitted by these rules or the Procedures; and
- (b) must only use or reproduce confidential information for the purpose for which it was disclosed or another purpose contemplated by these rules or the Procedures; and
- (c) must not permit unauthorised persons to have access to confidential information.

Note

This subrule is classified as a tier 1 civil penalty provision under the National Gas (South Australia) Regulations. (See clause 6 and Schedule 3 of the National Gas (South Australia) Regulations.)

- (3) A Registered participant must use all reasonable endeavours to prevent unauthorised access to confidential information in its possession or control.
- (4) A service provider for a distribution pipeline must not disclose to a user that is a *related body corporate* of the service provider confidential information about a user that is not a *related body corporate* of the service provider.

Note

This subrule is classified as a tier 1 civil penalty provision under the National Gas (South Australia) Regulations. (See clause 6 and Schedule 3 of the National Gas (South Australia) Regulations.)

- (5) This rule does not prevent:
 - (a) the use or disclosure of information that has entered the public domain; or
 - (b) the disclosure, subject to subrule (4), of information for the purposes of these rules or the Procedures or for obtaining advice about the application of these rules or the Procedures to officers, employees, auditors or professional advisers of the Registered participant or a *related body corporate*; or
 - (c) the use or disclosure of confidential information with the consent of the person to whom the duty of confidentiality is owed; or
 - (d) the use or disclosure of information as required by law or a lawful requirement imposed by a government agency, stock exchange or other authority or body; or
 - (e) the use or disclosure of information for the purposes of legal proceedings (including dispute resolution processes under these rules, arbitration proceedings, proceedings for an expert determination of a disputed question, or proceedings by way of mediation or some other alternative dispute resolution mechanism); or
 - (f) the use or disclosure of information to protect the safety of any person or property; or
 - (g) the use or disclosure of information reasonably required in connection with the Registered participant's financing arrangements, investment in the Registered participant, or a disposal of the Registered participant's assets; or

- (h) the disclosure of information to AEMO, the AER, the AEMC or the ACCC or another regulatory body having jurisdiction over the Registered participant; or
- (ha) the use or disclosure of confidential information as required or authorised by or under the *NGL*, the *NERL*, or related rules or procedures; or

Note

This would include (for example) the disclosures required under a RoLR scheme (as defined in Part 6 of the *NERL*).

- (i) the use or disclosure of information of a historical nature for the preparation of a report under these rules or the Procedures; or
 - (j) the use or disclosure of information in an aggregated or other form in which its confidential aspects cannot be identified; or
 - (k) the use or disclosure of trivial information; or
 - (l) the use or disclosure by a Registered participant of information derived from information provided to AEMO by or on behalf of the Registered participant.
- (6) A Registered participant that proposes to disclose information under subrule (5)(b), (d) or (h) must inform the person to whom disclosure is proposed of the confidentiality of the information.
 - (7) A Registered participant is liable to indemnify the AEMC, the AER and AEMO against loss or damage sustained as a result of a breach of this rule by the Registered participant or an officer, employee or agent of the Registered participant.
 - (8) When confidential information is disclosed either in accordance with or in breach of this rule, the duty of confidentiality imposed by this rule extends to the person to whom the information is disclosed.
 - (9) The obligations of a Registered participant with regard to confidential information extend to an Intending participant.

138AB Information policies

AEMO must, in consultation with the AEMC, develop and implement policies:

- (a) to protect from unauthorised use or disclosure information acquired under these rules; and
- (b) to provide for dissemination of such information, where appropriate, among Registered participants.

138AC Discovery address data

- (1) This rule applies only in relation to information relevant to the NSW/ACT regulated retail gas market.
- (2) A network operator incurs no civil liability to a person that relies to its detriment on discovery address data that is incorrect, incomplete or out-of-date.

- (3) A network operator is, by force of this subrule, entitled to be indemnified by a user against a liability incurred by the network operator that arises from a user's use of information in a DPI full listing for a purpose not authorised or permitted by the Procedures.
- (4) For this rule, **network operator**, **discovery address data**, and **DPI full listing** have the meanings assigned by the Procedures governing the administration and operation of the NSW/ACT regulated retail gas market.

Note:

This rule is classified as a conduct provision under the National Gas (South Australia) Regulations. See clause 7 and Schedule 4 of the National Gas (South Australia) Regulations.