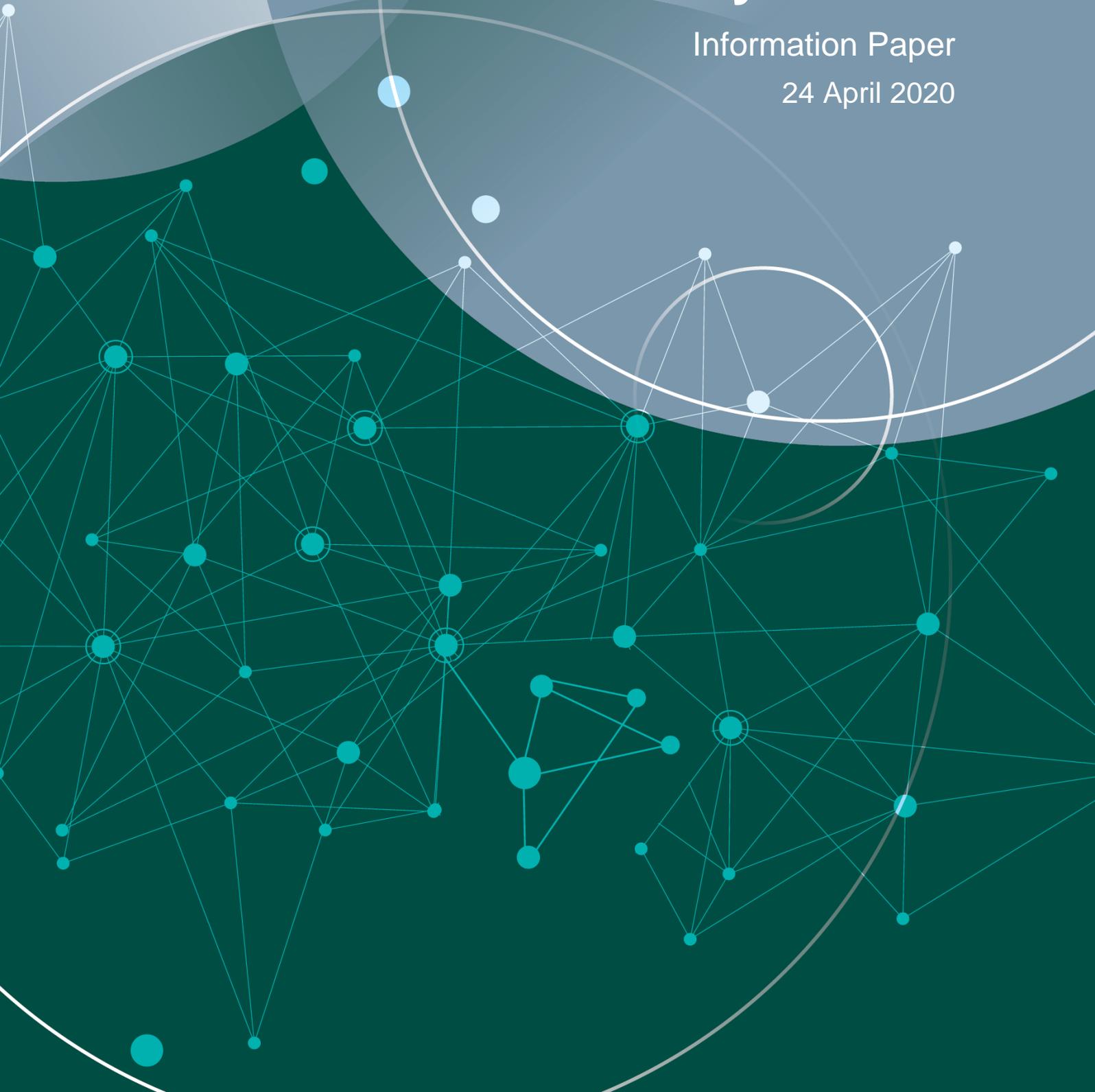




**Energy Transformation
Taskforce**

Monitoring and Compliance Framework in the Wholesale Electricity Market

Information Paper
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Energy Transformation Taskforce

David Malcolm Justice Centre
28 Barrack Street
Perth WA 6000
Locked Bag 11 Cloisters Square WA 6850
Main Switchboard: 08 6551 4600
www.energy.wa.gov.au

Enquiries about this report should be directed to:

Aditi Varma, Assistant Director | Future Market Design and Operations

Telephone: 08 6551 4756
Email: aditi.varma@energy.wa.gov.au

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Email: aditi.varma@energy.wa.gov.au

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1. Purpose

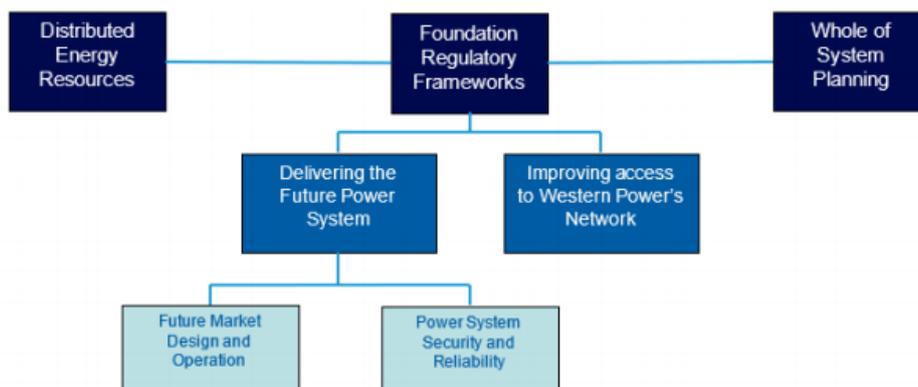
1.1 The Energy Transformation Strategy

This paper forms part of the work to deliver the Energy Transformation Strategy. This is the Western Australian Government's strategy to respond to the energy transformation underway and to plan for the future of our power system. The delivery of the Energy Transformation Strategy is being overseen by the Energy Transformation Taskforce (Taskforce), which was established on 20 May 2019. The Taskforce is being supported by the Energy Transformation Implementation Unit (ETIU), a dedicated unit within Energy Policy WA, a sub-department of the Department of Mines, Industry Regulation, and Safety.

More information on the Energy Transformation Strategy, the Taskforce, and ETIU can be found on the Energy Transformation [website](#).

This paper is prepared as part of the Future Market Design and Operation project within the Foundation Regulatory Frameworks work stream of the Energy Transformation Strategy, as shown in Figure 1, below.

Figure 1 : Energy Transformation Strategy work streams



The Future Market Design and Operation project is undertaking improvements to the design and functioning of the Wholesale Electricity Market (WEM). These include:

- modernising WEM arrangements to implement a security-constrained economic dispatch (SCED) market design that optimises the benefits of the introduction of constrained network access for Western Power's network; and
- implementing a new framework for acquiring and providing Essential System Services (ESS).

1.2 The purpose of this paper

This paper is one of a series covering design elements of the new WEM. These changes are crucial to support the continuing security of the power system and efficient operation of the WEM in an environment of rapidly changing technology and consumer demand.

The purpose of this paper is to set out the monitoring and compliance framework to support the new WEM arrangements outlined in previous Information Papers.¹

¹ All papers are accessible through the Energy Transformation Strategy section of the Energy Policy WA website at www.energy.wa.gov.au

2. Existing monitoring and compliance framework

2.1 Background

The purpose of the monitoring and compliance framework in the WEM is to monitor Rule Participants² compliance with various obligations as defined in the WEM Rules. Non-compliance with the WEM Rules can result in inefficiencies and distortions in the market and risk system security and reliability.

The requirements Rule Participants must follow are listed in the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WEM Regulations), the WEM Rules, and various Market Procedures.

The ERA is required to monitor Rule Participants' compliance with the WEM Rules and Market Procedures and investigate all alleged breaches in accordance with its [Monitoring Protocol](#). The matters investigated usually concern market and power system operation in areas such as dispatch, outages, data provision, bids and offers and market settlement. Non-compliance with rule obligations can have financial implications for Market Participants (for example, recovery of constraint payments, forced outage capacity refund payments and variations from short run marginal cost) and/or may have consequences for the security and reliability of the power system. The Australian Energy Market Operator (AEMO) is required to monitor Market Participants' behaviour for power system operation purposes. It also supports the ERA to monitor Rule Participants' compliance with other WEM Rule obligations.

If a breach has been determined to have occurred, the ERA has a suite of compliance enforcement actions available to help rectify the non-compliant behaviour.

Under Schedule 1 of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WEM Regulations), certain WEM Rule provisions are grouped into three categories: A, B and C for the purposes of application of civil penalty when a breach of the relevant rule provision is confirmed. The relevant civil penalty amounts for each of these categories are summarised in Table 1 below.

Table 1: Summary of civil penalty categories and associated penalty amounts

	Category A	Category B	Category C
Penalty issued by	Economic Regulation Authority	Electricity Review Board	Electricity Review Board
First contravention penalty range	\$5,000 - \$10,000	\$15,000 - \$25,000 (plus \$500 - \$5,000 per additional day*)	\$30,000 - \$100,000 (plus \$5,000 - \$10,000 per additional day*)
Subsequent contravention penalty range	\$10,000 - \$20,000	\$30,000 - \$50,000 (plus \$1,000 - \$10,000 per additional day*)	\$60,000 - \$100,000 (plus \$10,000 - \$20,000 per additional day*)

² Rule Participant is a defined term in the WEM rules. As outlined in the Information Paper: [Registration and Participation Framework in the Wholesale Electricity Market](#), Rule Participant class comprises AEMO, Market Participant and Network Operator.

Examples of breach types	Breaches of dispatch System requirements or market system requirements, breach of the process of determination of loss factors	Breaches of the processes related to facility registration, Reserve Capacity performance monitoring, Medium term PASA	Breaches of the processes related to Commissioning tests, breach of Dispatch Instructions, Commitment requirements, outage scheduling, Balancing submissions, LFAS submissions
*does not apply to all breaches			

Where the breach relates to a Category A WEM Rule provision, the ERA may ³ (ERB) to issue orders, including civil penalties.⁴

Where the ERA has issued a penalty for a breach of the WEM Rules or Market Procedures, the Rule Participant may seek a review of the decision by the ERB.

The WEM Rules also place an obligation on the ERA to monitor the effectiveness of the WEM in meeting the WEM Objectives. AEMO assists the ERA with data and analysis in performing this function. The ERA is required to provide an annual report to the Minister for Energy on the effectiveness of the market, and more frequently where it considers that the market is not effectively meeting its objectives.

2.2 The need for change

The existing monitoring and compliance framework was established in the context of an unconstrained network access framework. The new Market will be based on constrained network access. The existing monitoring and compliance mechanisms in the WEM have a number of deficiencies and in the new market will be burdensome and no longer fit for purpose. Problems with the existing monitoring and compliance framework include:

- the requirement for the ERA to investigate every identified non-compliance matter, which has resulted in material delays to investigations and weakened the responsiveness of the framework;
- ambiguity in some rule obligations has led to conflicting views on whether non-compliance has occurred;
- enforcement action for the rectification of non-compliance is not graduated or proportionate to the materiality of the circumstance or instance of non-compliance; and
- there is limited transparency in the framework, which reduces the certainty and predictability of compliance action outcomes.

³ ERB reviews decisions of the ERA or the Minister for Energy in relation to regulated electricity networks covered by the *Electricity Industry Act 2004*, determines whether orders should be made against a participant for a contravention of WEM Rules or Gas Services Information Rules, and considers reviewable decisions.

⁴ Orders the ERB may issue include a civil penalty, order for conduct to cease, order for a contravention to cease, order for a contravention to be remedied, implementation of a compliance program, participant to be suspended, disconnected or registration to be cancelled.

The adoption of a new market design and the emergence of new technologies requires a consequential review of the monitoring and compliance framework to ensure it meets future needs. In particular:

- the new security constrained economic dispatch framework will fundamentally change the nature of scheduling and dispatch, which requires a review of dispatch compliance obligations;
- the new ESS framework will replace the current Ancillary Services framework, requiring a review of related compliance obligations; and
- emerging technologies seeking to participate in the WEM require a review of the monitoring and compliance framework to ensure it will cater to their specific characteristics.

3. Monitoring and compliance in the new WEM

The WEM Objectives and following principles have guided the design of the revised monitoring and compliance framework.

- The framework should be efficient and future-ready;
- Obligations should be easy to interpret, using unambiguous and transparent language; and
- Compliance frameworks should:
 - ensure decisions are consistent, repeatable and predictable;
 - ensure a risk-based and proportionate approach to enforcing compliance;
 - ensure procedural fairness and natural justice;
 - be responsive, where possible, with minimal time between the occurrence of non-compliance and action to address non-compliance; and
 - be graduated, where possible, with a range of options to address non-compliance.

3.1 Compliance roles and responsibilities in the new WEM

AEMO and the ERA have monitoring functions in the WEM. The ERA also has compliance functions.

The ERA must monitor Rule Participants for compliance with the WEM Rules and Market Procedures and must investigate all alleged breaches. For WEM Rule provisions that are classified as Category A the ERA must decide whether a breach has occurred or not, and where the alleged breach relates to a WEM Rule provision classified as Category B or C, the ERA may bring proceedings before the ERB. The ERA is also responsible for monitoring the bidding behaviour of Market Participants and monitoring the effectiveness of the market in meeting the WEM Objectives.

AEMO is required to assist the ERA in monitoring the compliance of Market Participants and monitoring the effectiveness of the market. If at any point the AEMO becomes aware of an alleged breach, it is required to report it to the ERA. In addition, under the functions of System Management, AEMO must monitor Rule Participants for compliance with specific provisions listed in clause 2.13.9 of the WEM Rules and the Power System Operation Procedures. This includes real-time dispatch compliance such as monitoring a Market Participant's compliance with the most recently issued dispatch instruction, operating instruction or dispatch order, monitoring a Rule Participant's submission of outages, and compliance with approved commissioning test plans.

The ERA will continue to be the organisation primarily responsible for monitoring and compliance. However, the new market arrangements to be implemented on 1 October 2022 will require some changes to AEMO's monitoring role. In a SCED environment with more sophisticated and automated dispatch systems, it is expected AEMO will no longer need to manually monitor several aspects of dispatch compliance (for example a Market Participant's confirmation of receipt of dispatch instructions). Automation will enable AEMO to redirect its resources to assist the ERA with further investigation and the provision of additional targeted information on non-compliance events. This will enable the ERA to direct its investigation effort to higher-risk and material breaches that require prompt investigation and compliance action.

Once the ERA determines a Rule Participant to be in breach of a WEM Rule, the ERA has several compliance responses available, depending on the severity of the breach. For matters where the breach has little to no consequence, the ERA can decide to take no further action or issue advice to

educate the participant. Where there is reasonable likelihood of repeat breaches, the ERA may institute a compliance program agreed between the participant and the ERA (sometimes also including AEMO). For matters of material consequence, the ERA may issue a warning or consider civil penalties. These compliance response options will be retained in the new market, including the discretion for the ERA to choose an appropriate compliance response based on its assessment of the severity of the breach.

In the current framework the ERA can issue civil penalties for breaches of Category A WEM Rule provisions. These are in relation to determining loss factors, maintaining communication systems, and responding to certain dispatch system requirements. The ERA is not able to issue civil penalties for alleged breaches of Category B and Category C WEM Rule provisions; however, it may refer these to the ERB. The ERB may choose to issue a civil penalty or execute an order. As such, in addition to the ERA, the ERB is also involved in the compliance and enforcement of the WEM Rules, as well as appeals and consideration of reviewable decisions. The existence of another organisation that also enforces compliance creates duplication and inefficiency. Further, the inability of the ERA to issue Category B and C civil penalties and certain types of order has the potential to lead to inefficient enforcement action and increases costs, as involvement with the ERB is costly and time consuming.

Under the new monitoring and compliance framework, the ERA will be responsible for issuing Category B and C civil penalties. The ERA will also be able issue certain orders, such as an order for conduct to cease, a contravention to cease, a contravention to be remedied, or an order for the implementation of a compliance program. Where the ERA wishes to pursue suspension, disconnection, deregistration or similar high-severity remedies, the ERA will be required to bring proceedings before the ERB. The addition of more compliance responses to the ERA's suite will add more weight to the ERA's existing compliance function, enable it to respond to breaches in a timely manner, and provide it a broader suite of compliance responses to enable it to apply to breaches in a more proportionate manner.

The ERB will remain responsible as the body that adjudicates on any appeals against the ERA's compliance responses and consider reviewable decisions. It will retain the ability to execute the full suite of orders as outlined in the WEM Regulations (i.e., including orders that suspend or disconnect a participant or give cause for a participant's registration in the WEM to be cancelled).

The Taskforce has determined that:

- AEMO will retain its existing role of monitoring real-time dispatch compliance with an additional requirement to assist the ERA's compliance investigations with targeted information and analysis as needed.
- The ERA will remain the organisation responsible for compliance and enforcement in the WEM, with additional ability to issue civil penalties for Category A, B, and C WEM Rules, as well as executing certain orders to Rule Participants.
- The ERB will remain responsible for consideration of reviewable decisions, adjudicating on appeals, and executing orders as outlined in the WEM Regulations (noting that no changes are proposed relating to the Gas Services Information Rules).

3.2 Reporting of non-compliance events

Under the existing framework, a Rule Participant may report a suspected breach by another Rule Participant or by itself to AEMO or the ERA. Where AEMO is informed of an alleged breach by a Rule Participant, it is required to notify the ERA.

3.2.1 Self-reporting

Rule Participants can voluntarily self-report non-compliance to the ERA. Several Rule Participants already exercise this option as it is an effective, efficient and timely way to inform the ERA of non-compliance and/or inform AEMO of any consequential risks to power system operations.⁵

Under the current arrangements, Rule Participants may self-report non-compliance to the ERA, and must self-report to System Management when the non-compliance is expected to impact power system security and reliability. Under the new WEM arrangements, a Rule Participant must self-report a suspected breach to the ERA and/or to the AEMO for specific breaches.⁶ The Rule Participant must self-report the breach as soon as it becomes aware and confirms a breach has occurred. This is to place the responsibility of reporting a suspected breach on the party that is best placed to detect and provide information about the breach. The ERA may issue a civil penalty if a Rule Participant becomes aware of an existing or potential breach and does not report it to the ERA (or AEMO for breach of Generator Performance Standards).

The ERA will be required to publish a self-reporting template that Rule Participants may (but are not required to) use to assist them self-report. At a minimum, the following type of information will be required to be reported:

- Contact details of person responsible for notification.
- Specific clauses in the WEM Rules and/or Market Procedure(s) alleged to have been breached.
- Date and time of commencement of alleged breach.
- Relevant details of the non-compliance, reason(s) the breach may have occurred, any mitigating circumstances, and details of any investigations performed.
- Details of proposed remedies with timeframes, and any remedial actions taken.
- Details of any known impact on the market and other participants.

An example of a self-reporting template is provided in Appendix 1.

Notification of a breach must be sent to the ERA, or AEMO (or both) depending on the nature of the breach and whether it will have an impact on power system security and reliability.⁷ A suspension of investigation action and compliance response from the ERA may occur (where the non-compliance matter is not subject to an exclusion), such that the ERA may decide not to investigate the alleged breach or issue a compliance response if self-rectification is completed in a timeframe determined in consultation with AEMO and/or ERA. This will incentivise Rule Participants to self-report and not

⁵ This includes the ability of the ERA to inform AEMO of breaches that may affect the security or reliability of the power system.

⁶ Rule Participants must submit their self-report to the AEMO for matters relating to Generator Performance Standards. For further detail refer to the Generator Performance Standards: Regulatory Framework, Monitoring and Rectification information paper

⁷ Generators will be required to report non-compliance or suspected non-compliance with generator performance standards or monitoring plans to AEMO immediately after detecting the non-compliance. For further detail refer to the Taskforce Information Paper: [Generator Performance Standards](#).

withhold important information about suspected breaches. Exclusions to a suspension of ERA investigation action may include material or serious breaches, breaches that cannot be rectified, and repeated instance of non-compliance. Details around self-reporting timeframes, notification, and exclusions will be outlined in the monitoring protocol developed by the ERA.

AEMO will not be required to notify the ERA of an alleged breach, if AEMO detects through its real-time monitoring that an alleged breach has occurred, and the suspect breach has been self-reported by the Rule participant. This will remove duplication of breach notifications. However, AEMO will still be required to provide additional information to ERA on self-reported breaches, if requested.

The Taskforce has determined that:

- Rule Participants will be required to self-report all non-compliance as soon as practicable.
- The ERA may suspend action (investigation and compliance response) for eligible self-reported breaches.
- Where a Rule Participant has not self-reported a breach it has become aware of, and the breach is detected by AEMO or the ERA, a civil penalty may be applied.

3.3 Investigations

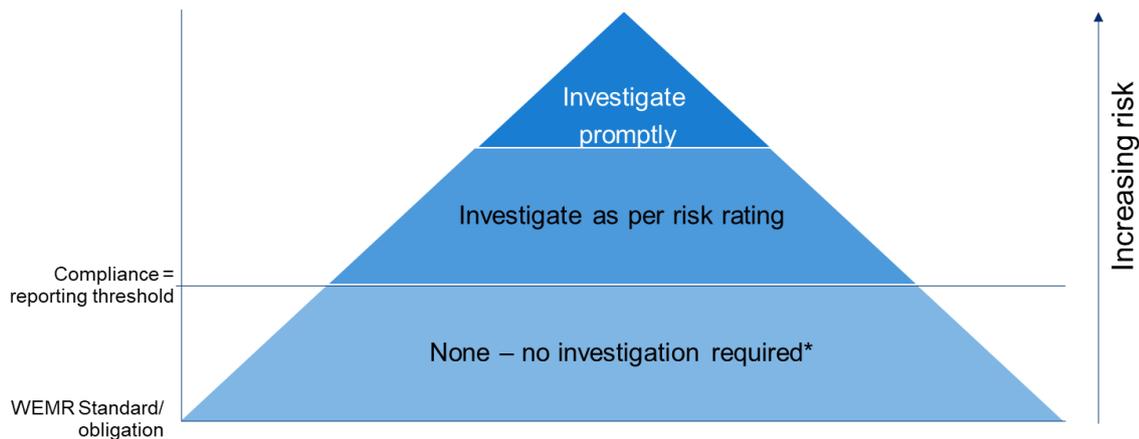
The ERA's powers of investigation are prescribed in the WEM Rules and the WEM Regulations. AEMO must notify the ERA of any alleged breach it becomes aware of and the ERA must investigate any alleged breach.

The ERA prioritises alleged breaches based on the magnitude of consequential impact and the likelihood of occurrence. This ensures high priority breaches are investigated in a timely manner. There is currently a backlog of approximately 235 predominantly low priority breaches which have not yet been investigated. This is due to the current onerous requirement for all alleged breaches to be investigated, the high number of alleged breaches reported, and the limited resources within the ERA.

Most breaches are relatively minor and do not have a material impact on WEM outcomes and objectives. Stakeholders, including the ERA and Rule Participants, consider there is a discrepancy between the rules applied for tolerance ranges for reporting a suspected breach and those for taking compliance actions. Where performance within the tolerance range is not required to be reported, it is still considered a non-compliance event and must be investigated by the ERA. This has increased the number of alleged breaches that require investigation.

The new monitoring and compliance framework will adopt a proportionate approach to investigations based on risk, materiality and frequency of the breach. Performance within tolerance ranges, where applicable, will not be considered a non-compliance event, will not be reported to the ERA, and not require investigation (Figure 3.1). This is expected to substantially decrease the number of investigations the ERA must undertake.

Figure 3.1: Non-compliance events will be investigated in a more timely matter with increasing risk.



Under the new framework, if the ERA receives or self-detects an alleged breach it must be recorded in a non-compliance log and applied a risk rating. Based on the risk rating, the alleged breach would either:

- be elevated immediately to the investigations log and be investigated promptly; or
- stay on the non-compliance log until a repeat non-compliance occurs within a reasonable timeframe resulting in the matter being re-prioritised to a higher risk rating or moved to the investigations log.

The ERA will determine the risk rating based on materiality, frequency of breaches, duration and whether there is systemic non-compliance. Suspected breaches that are self-reported and rectified will likely be considered minor and not require investigation, provided an exclusion does not apply. This approach will ensure that critical matters are addressed in a timely manner, and the investigation effort is proportionate to the materiality or severity of the breach.

The ERA will be required to consult on and publish the risk matrix and guidelines to ensure transparency and consistency of its compliance actions.

The ERA is currently required to investigate minor breaches of the WEM Rules by AEMO that have been identified through market audits, even if AEMO has self-reported and remedied the situation. This is both duplicative and inefficient. The new framework will enable the ERA to apply its discretion, in accordance with the developed risk rating, as to whether to investigate a breach that has been remedied.

The Taskforce has determined that:

- Reporting and compliance tolerance ranges should be aligned such that facilities operating within their tolerance range are not considered to be non-compliant with the relevant rules.
- The ERA will have discretion to investigate a suspected breach in accordance with a published risk matrix and guidelines that it will be required to develop and consult on.

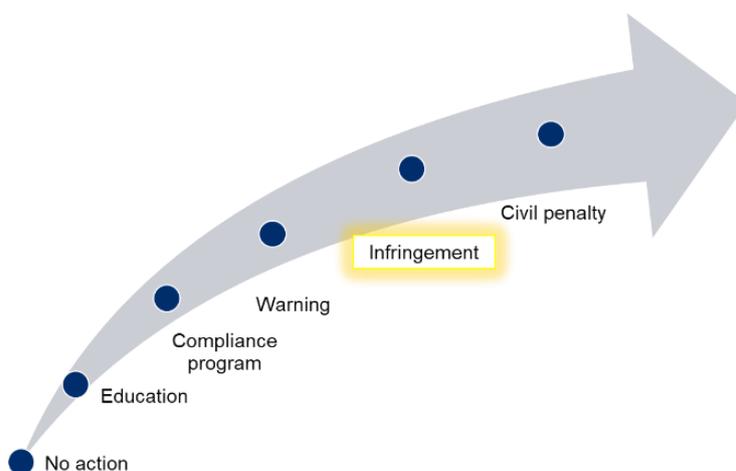
3.4 Compliance responses

The current framework includes several compliance responses if the ERA determines a breach has occurred. These range from taking no action to education, implementing a compliance program, issuing a warning for all types of breaches, and issuing civil penalties for Category A breaches.⁸ The ERA has the discretion to use any of the responses. Its Compliance Protocol outlines the appropriate response depending on the severity of a breach.

For breaches of Category B and C rules, the ERA can refer the suspected breach to the ERB for formal orders and civil penalties to be applied. As mentioned in Section 3.1, under the new framework the ERA will be allowed to issue civil penalties and a subset of orders for Category B and C breaches. The ERA will be able to impose the existing compliance responses as well as issue infringements as a new compliance response, as outlined in Figure 3.2.

Under the new monitoring and compliance framework, the ERA will be provided with the ability to issue infringements to Rule Participants for breaches that do not warrant a civil penalty response. An infringement can be a fixed dollar value or a proportion of the associated civil penalty. Matters that may be issued with an infringement may include breaches considered to be minor, a first-time offence, or where a participant pleads guilty to a breach prior to investigations commencing. Further guidance on how the ERA determines whether an infringement and/or a civil penalty is to be applied will be provided in the compliance protocol.

Figure 3.2: Graduated compliance response actions available to the ERA (highlighted text depicts new addition).



The Taskforce has determined that:

- In addition to the existing compliance responses available to the ERA, it will be able to issue infringement notices and specific orders.
- The ERA will be required to publish its decision-making process for issuing infringements, orders and civil penalties in the compliance protocol.

⁸ Only warnings and civil penalties are provided for in the WEM Rules. Other compliance responses are outlined in the ERA's Monitoring Protocol.

3.4.1 Civil penalties

The maximum allowable civil penalty is specified in section 124(2)(i) of the *Electricity Industry Act 2004* amounting to \$100,000 and a daily penalty amount not exceeding \$20,000. The maximum civil penalty amounts for a breach of a WEM Rule are prescribed in Schedule 1 of the WEM Regulations. There are three Categories of penalties A, B, and C, with the penalties increasing in severity in alphabetical order.

Since its inclusion into the WEM Regulations, civil penalty amounts have not increased in line with the Consumer Price Index (CPI).⁹ The National Electricity Market (NEM) is considering indexing the civil penalty amounts to CPI.¹⁰ However, the Taskforce does not consider indexing the civil penalty amounts to CPI in the WEM can be justified given the relatively stable value of energy market transactions over the past five years. This matter could be re-considered at a later date after the new WEM arrangements commence, if a change is noticed in the value transacted in the energy market.

The substantial changes to the WEM Rules, including implementation of SCED, warrant a review of the categorisation of WEM Rules for the application of civil penalties. New rules related to generator performance standards will also need to be appropriately categorised.

The Taskforce has determined to:

- Review Schedule 1 of the WEM Regulations to ensure appropriate categorisation of new WEM Rules for the application of civil penalties.
- Retain the existing amounts for civil penalties as outlined in the WEM Regulations.

Distribution of collected civil penalty monies

Currently, when a breach has occurred and a civil penalty has been paid by a Rule Participant, the money is distributed to all Market Participants or Market Customers in proportion to their market fees calculated over the previous full 12 months.¹¹ This approach results in the liable participant is also a recipient of some of the civil penalty. This creates several problems, including an effective reduction in the value of the penalty (and commensurate reduction in deterrence), and disproportionately benefits larger Market Participants when liable. This is an anomaly and will be rectified in the new WEM such that the Market Participant that pays a civil penalty will not be eligible to receive any of that payment.

The Taskforce has determined to:

- Exclude the liable participant from the distribution of collected civil penalty monies.

⁹ The exception, penalties relating to clauses 2.27.6, 2.27.12 and 2.27.14 (all related to determination of Loss Factors) and 2.37.8(a) (related to Market Participant's Credit Limit) of the WEM Rules were amended on 24 February 2015.

¹⁰ Refer to Appendix 2

¹¹ Under WEM Regulations s.37 civil penalties are distributed to Consolidated Account unless the WEM Rules provide for the distribution of civil penalties received in respect of the contravention amongst participants of a particular class — distributed in accordance with the WEM Rules. For example: distributed among Market Customers (WEM rule 6.6.3A), and Market Participants (WEM Rules 7A.2.19, 7B.2.17).

3.4.2 Public breaches register

Currently, under Chapter 10 of the WEM Rules all matters relating to monitoring and compliance of the WEM Rules are confidential, except where information can be de-identified or reported in aggregate (for example the total number of breaches relating to outage requirements). The threat of being identified publicly as a non-compliant participant has been known to act as a deterrent in other jurisdictions such as the NEM and in the United Kingdom.

The principle of maximising transparency where possible has been adopted in the design of the new WEM. As such, publication of material breaches that have been confirmed by the ERA is encouraged. The ERA will be provided the discretion to publish information about breaches based on its consideration of balancing the need to set an example for serious breaches vis-à-vis the efficacy of the public register.

The Taskforce has determined to:

- Allow the ERA discretion to publish information about a breach once it has been confirmed on a public register maintained on its website.

3.5 Dispute resolution

Under the *Energy Arbitration and Review Act 1998* and WEM Regulations, the ERB is responsible for appeals and the review of reviewable decisions in the WEM.

Under the WEM Rules, the ERB can review an ERA decision relating to a Category A civil penalty. The new monitoring and compliance framework extends this power to breaches of Category B and C civil penalties and the issuance of orders, as the ERA will have the ability to issue these compliance responses.

The ERB's review of an ERA decision can be a costly and time-consuming process, factors which may create a disincentive for Rule Participants to seek review of a decision. Stakeholders have sought a more graduated approach to disputes resolution, such that a step such as mediation or arbitration exists before the ERB is approached. Both arbitration and mediation were considered by the Taskforce. Although both options have some merit, they are likely to be just as costly and time-consuming as the ERB. Further, the risk of unintended consequences (such as frivolous or vexatious disputes) has the potential to undermine the monitoring and compliance framework as a whole. On balance, the ERB being retained as the entity that reviews ERA decisions is the preferred option.

In addition to approaching the ERB to review a decision, Rule Participants also have the ability to bring a dispute to the Supreme Court under Order 56 of the Supreme Court Rules. Although the Supreme Court has discretion whether to hear an application, it does not restrict the Rule Participant from submitting an application. The Supreme Court is most likely to hear applications that claim misapplication of the WEM Rules (for example, misinterpretation of a term). The ability to submit a dispute to the Supreme Court will remain as there are no alternatives that would provide a suitable dispute process.

The Taskforce has determined to:

- Retain the ERB's role in reviewing decisions against a penalty notice by the ERA, and extend its powers to include reviews of additional functions accorded to the ERA.

3.6 Transition

The new WEM arrangements are scheduled to commence on 1 October 2022. Rule Participants, including AEMO, will require time to adjust to new requirements, refine processes and procedures and calibrate equipment to ensure compliance with WEM Rule obligations.

An amnesty period is required beginning from market start (or a short time before to cover pre-market activities) to enable participants to adjust and become familiar to the new WEM requirements without the threat of compliance action. A similar amnesty period was put in place for the introduction of the Balancing Market in 2012 (although this was not codified in the WEM Rules). The timeframe for the amnesty period will be determined in consultation with AEMO and the ERA, and will be based on experience from the market testing and trialling phase.

The amnesty period will still require the AEMO and ERA to monitor and record alleged breaches, and Rule Participants to self-report breaches, however, compliance responses will not be issued. Market Participants will still be required to bid in good faith, and the ERA may choose to investigate behaviour it suspects is contrary to the WEM Rules.

The Taskforce has determined to:

- Implement an amnesty period for Rule Participants to enable a smooth transition to the new market arrangements. Details of the amnesty period to be determined in consultation with AEMO and the ERA.

4. Monitoring the effectiveness of the market

As discussed in Section 3.1, the ERA is responsible for monitoring the effectiveness of the market in meeting the WEM Objectives and must investigate any market behaviour if it considers is due to the market not functioning efficiently. AEMO is required to prepare a Market Surveillance Data Catalogue to assist the ERA in monitoring the effectiveness of the market. The ERA must provide a report to the Minister for Energy at least annually. The WEM Rules require the ERA to review the effectiveness of:

- the market rule change process and procedure change process;
- the compliance monitoring and enforcement measures in the WEM Rules and regulations;
- of AEMO (including its capacity as System Management) in carrying out its functions under the regulations, the WEM Rules and market procedures; and
- System Management in carrying out its functions under the Regulations, the WEM Rules and Market Procedures.

Under the *Electricity Industry Act 2004*, the ERA is also required to review the operation of the market and to the extent which the WEM Objectives are being achieved. This review is to be conducted once every three years.

Both these reviews contain similar and duplicative matters. Stakeholders, including the ERA, consider the requirement to have an annual review unnecessary and inefficient. In the new WEM, the ERA will continue to be responsible for monitoring the effectiveness of the market however, the timing of reviews will be aligned so that only one review is undertaken at least every three years, fulfilling both the requirements of the Act and the WEM Rules. The ERA will be provided the discretion to conduct out-of-sequence reviews on any aspect of the market.

The Taskforce has determined to:

- Align the market effectiveness reviews outlined in the WEM Rules with the requirement in the Electricity Industry Act such that they are required once every three years.
- Provide the ERA the discretion to conduct out-of-sequence reviews on any aspects of the market.

5. Summary comparison of current and new monitoring and compliance framework

Summary of the existing monitoring and compliance framework in comparison to the new framework. (Bold text indicates the heads of power)

	Current framework	New framework	Change
Reporting	<p>WEM Rules: AEMO must notify ERA of alleged breach.</p> <p>Rule participant may notify ERA or AEMO of a suspected breach.</p>	<p>WEM Rules: AEMO must notify ERA of alleged breach.</p> <p>Rule participant must notify ERA and/or AEMO of a suspected breach – Self-monitoring.</p>	Amended
Investigations	<p>WEM Rules: ERA must investigate all alleged breaches.</p>	<p>WEM Rules: ERA must investigate all alleged breaches in the investigations log – determined through a risk rating.</p> <p>Performance within tolerance ranges, where applicable, will not be considered a non-compliance event.</p>	Amended
Compliance responses			
Education	<p>ERA Monitoring protocol: ERA may institute.</p>	<p>ERA Monitoring protocol: ERA may institute.</p>	Same
Compliance program	<p>ERA Monitoring protocol: Voluntary program with ERA.</p>	<p>ERA Monitoring protocol: Voluntary program with ERA.</p>	Same
Warning	<p>WEM Rules: ERA may issue a warning in respect to all Breach categories.</p>	<p>WEM Rules: ERA may issue a warning in respect to all Breach categories.</p>	Same
Infringement	N/A	<p>WEM Rules: ERA may issue infringements on all breach categories.</p>	New
Civil penalty	<p>WEM Rules: ERA may issue civil penalty for Category A breaches.</p> <p>WEM Rules: ERB may issue civil penalty for Category B and C breaches.</p>	<p>WEM Rules: ERA may issue infringements on all breach categories.</p> <p>ERB may uphold the ERA's decision on civil penalties (or take another action) if proceedings are brought to it.</p>	Amended

		Civil penalty amounts to remain unchanged.	
Orders	<p>WEM Regulations:</p> <p>ERB may issue:</p> <ul style="list-style-type: none"> • civil penalty; • order for conduct to cease; • order for a contravention to cease; • order for a contravention to be remedied; • implementation of a compliance program; and • participant to be suspended, disconnected or registration to be cancelled. 	<p>WEM Regulations:</p> <p>ERA may issue:</p> <ul style="list-style-type: none"> • civil penalty; • order for conduct to cease; • order for a contravention to cease; • order for a contravention to be remedied; and • implementation of a compliance program. <p>WEM Regulations:</p> <p>ERB may issue:</p> <ul style="list-style-type: none"> • civil penalty; • order for conduct to cease; • order for a contravention to cease; • order for a contravention to be remedied; • implementation of a compliance program; and • participant to be suspended, disconnected or registration to be cancelled. 	Amended
Suspend action	N/A	<p>WEM Rules:</p> <p>ERA may suspend investigations and compliance response if a participant self-reports and self rectifies the suspected breach.</p>	New
Public breaches register	N/A	<p>WEM Rules:</p> <p>ERA may publish information about a breach once it has been confirmed on a public register maintained on its website.</p>	New
Disputes resolution	<p>WEM Rules:</p> <p>ERB can review an ERA decision relating to a Category A civil penalty</p>	<p>WEM Rules:</p> <p>ERB can review an ERA decision relating to all civil penalty categories and orders issued.</p>	Amended
Monitoring the effectiveness of the market	<p>Electricity Industry Act 2004:</p> <p>ERA must review the operation of the market and to the extent which the WEM Objectives are being achieved - once every</p>	<p>Electricity Industry Act 2004:</p> <p>ERA must review the operation of the market and to the extent which the WEM Objectives are</p>	Amended

three years.

WEM Rules:

ERA must monitor the effectiveness of the market in meeting the WEM Objectives and must investigate any market behaviour if it considers is due to the market not functioning efficiently - Annually.

being achieved - once every three years.

WEM Rules:

ERA monitor the effectiveness of the market in meeting the WEM Objectives – this will be combined and aligned with the EI Act requirement.

ERA to have the discretion to conduct out-of-sequence reviews on any aspects of the market.

Appendix 1

Example of a Self-Reporting Template

Participant information	
Date submitted:	
Rule Participant details: [Include details of WEM Participant ID, if applicable include details of power station and generating unit]	
Contact Person: Name: Title/Position: Telephone: E-mail:	
Details of non-compliance	
Specific clauses in the Market Rules and/or Market Procedure alleged to have breached [Include details of relevant clause for which non-compliance has been identified. Also include expected performance of facility and what degree of variation is expected from the registered standard/performance.]	
Date and times on which the alleged breach occurred [Include date and time when non-compliance commenced, even if uncovered at later time or non-compliance no longer exists]	
Description of the reasons why Rule Participant considers a breach may have occurred, including any mitigating circumstances	
Breach in relation to WEM Rules Chapter 3A?	
Details of Rule Participant's investigation into the issue	
Details of proposed remedies/rectification plan with timeframes for completion, and any remedial actions already taken	
Details of any known impact on the market and other Participants	
Any other relevant information	

Appendix 2

The Energy Council of the Council of Australian Governments (COAG) held a meeting on 20 March 2020 to make a final decision on the endorsement of legislation to proceed to the South Australian Parliament that will enhance the Australian Energy Regulator (AER)'s enforcement powers and the civil penalty regime for all the national energy laws, applying to gas, electricity and energy retail, among other things¹².

The Bill, the *Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Bill 2020*, with accompanying regulations, has been consulted on publicly. The key changes will be to:

- Adopt a three-tiered civil penalty regime:
 - Tier 1: Up to \$10 million, or 10% of turnover or three times the benefit gained for certain breaches (primarily rebidding breaches);
 - Tier 2: Up to \$1.435 million;
 - Tier 3: Up to \$170,000.
- Increasing civil and offence penalty levels and indexing them in line with CPI; and
- Enhancing the AER's information gathering powers and allow it to compel the giving of oral evidence.
- Expanding the orders the AER can seek from a court, including non-pecuniary orders (such as community service orders), and an order requiring compliance with a compulsory notice.

Currently there is only a single tier of civil penalty with a maximum of \$100,000.

If passed, these changes will apply to the application of the National Gas Law in Western Australia that is administered by the Authority under the *National Gas Access (WA) Act 2009*.

This experience in the National Electricity Market illustrates the desire in a comparable jurisdiction to increase penalties, provide multiple tiers of penalties and to index penalties. It also illustrates the desire to enhance the regulator's information gathering powers.

¹² Outcomes of the meeting have not yet been published. Refer to <http://www.coagenergycouncil.gov.au> for more information.