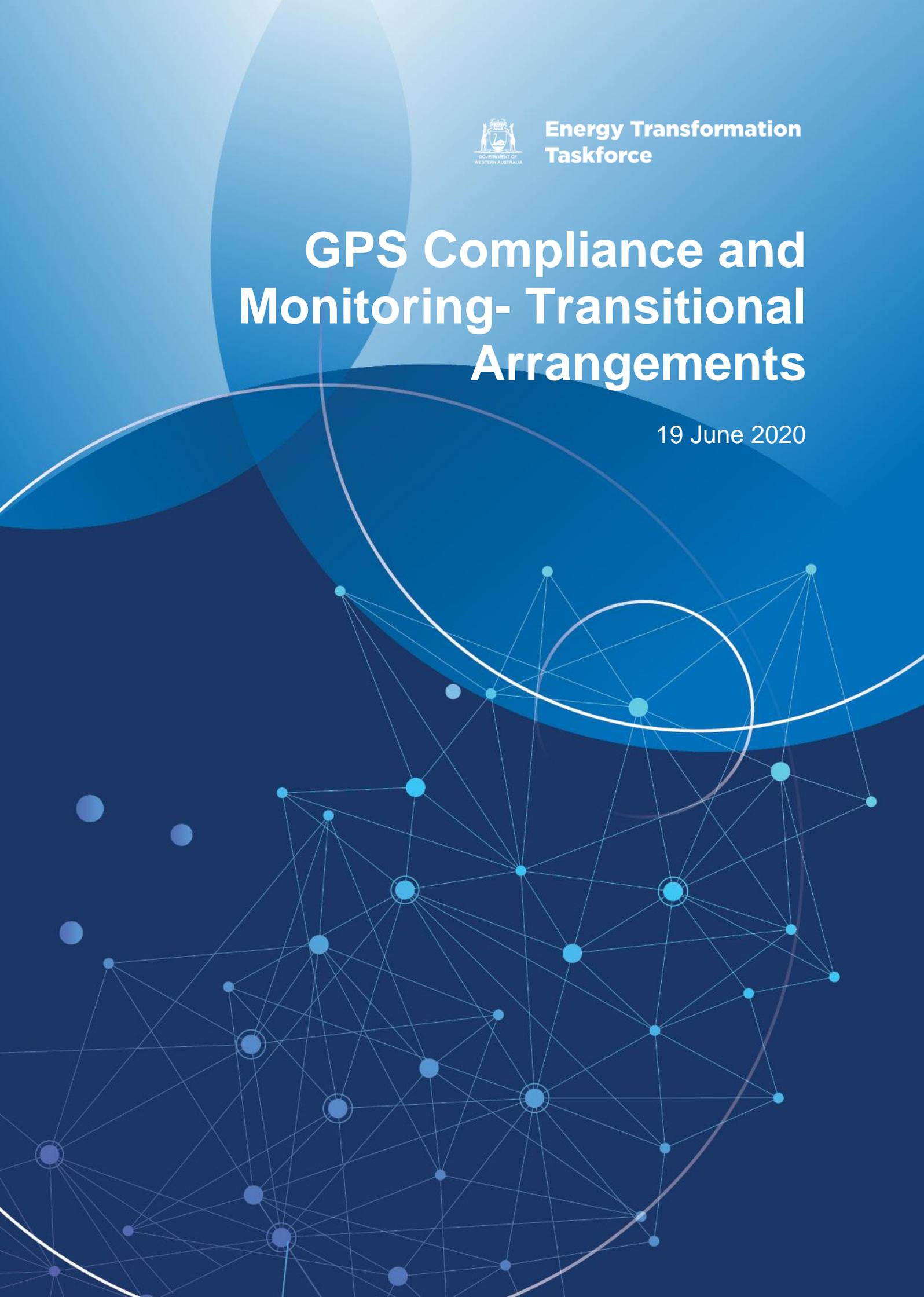




**Energy Transformation
Taskforce**

GPS Compliance and Monitoring- Transitional Arrangements

19 June 2020



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Abbreviations

The following table provides a list of abbreviations and acronyms used throughout this document. Defined terms are identified in this document by capitals.

Term	Definition
AEMO	Australian Energy Market Operator
ERA	Economic Regulation Authority
ERB	Electricity Review Board
ETIU	Energy Transformation Implementation Unit
GPG	Generator Performance Guidelines
Strategy	Energy Transformation Strategy
Taskforce	Energy Transformation Taskforce
TDOWG	Transformation Design and Operation Working Group
WEM	Wholesale Electricity Market
WEM Regulations	Electricity Industry (Wholesale Electricity Market) Regulations 2004

1. Introduction

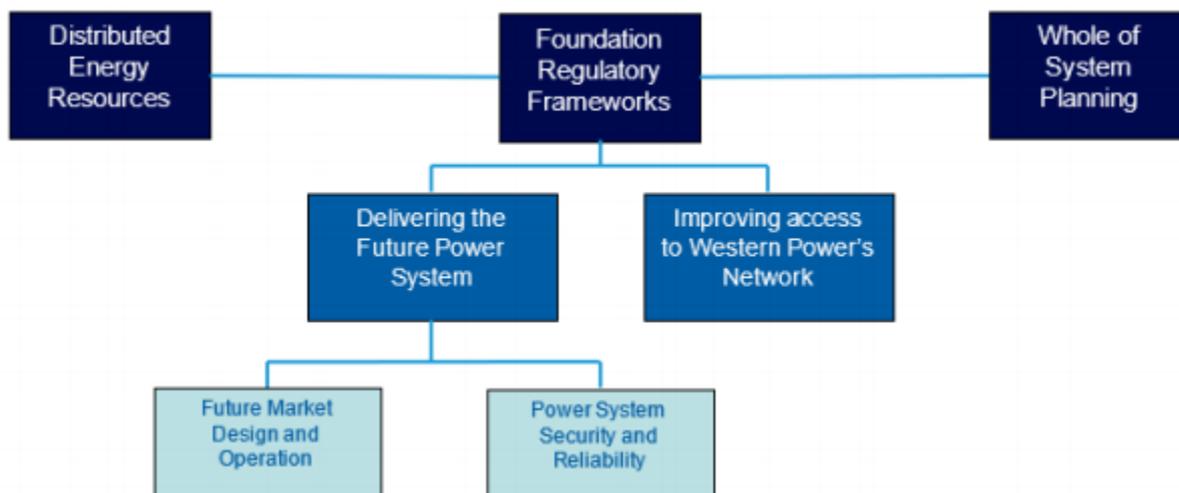
1.1 The Energy Transformation Strategy

On 6 March 2019, the Hon Bill Johnston MLA, Minister for Energy announced the McGowan Government's Energy Transformation Strategy (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 Strategy is being overseen by the Energy Transformation Taskforce (Taskforce), which was established on 20 May 2019. The Taskforce is supported by the Energy Transformation Implementation Unit (ETIU), a dedicated unit within Energy Policy WA.

The Strategy is being delivered under three work streams. The introduction of a compliance and monitoring program for generator performance standards is part of the Power System Security and Reliability project within the Foundation Regulatory Frameworks work stream, as shown in Figure 1 below.

Figure 1: The Energy Transformation Strategy program structure



1.2 Scope

This information paper sets-out the decisions of the Taskforce regarding the:

- transitional arrangements for implementing a revised compliance and monitoring framework for generators who are either connected to Western Powers network, or have a finalised network access offer, as at February 2021 (to be referred to as 'existing generators' in this paper); and
- framework for civil penalties that will apply to all generators.

The Taskforce decisions within this paper will be implemented throughout 2020-2021 in accordance with the high-level schedule provided in section 6.

1.2.1 Transitional arrangements for existing generators

This information paper sets out how the Taskforce decisions relevant to generator self-monitoring plans and a register of generator performance standards outlined in Taskforce information papers

[Generator Performance Standards](#) and [Generator Performance Standards - Regulatory Framework, Monitoring and Rectification](#) are to apply to existing generators.

The performance standards and associated compliance and monitoring frameworks set out in the abovementioned papers will only apply to Market Participants with generation facilities connected to Western Power's transmission network. Generators connecting to the distribution network, as well as those that do not intend to participate in the Wholesale Electricity Market (WEM), will continue to refer to Western Power's Technical Rules for applicable generator performance standards and monitoring and compliance programs.

The framework will not apply to existing generators until they have a full set of standards populated in the register and a self-monitoring plan approved by the Australian Energy Market Operator (AEMO). This paper discusses the timing and processes associated with achieving these outcomes.

1.2.2 Civil penalty framework

The revised civil penalty framework for non-compliance with the generator performance standards framework will apply to all generators. It will apply immediately to generators who finalise a network access offer and connect to Western Power's network after February 2020. It will apply to existing generators once their performance standards are populated in the register and an AEMO approved self-monitoring plan.

1.3 Related work

This section provides an overview of work either currently or previously undertaken by the Taskforce, Western Power, and AEMO of relevance to the Taskforce decisions outlined in this paper.

1.3.1 Power System Security and Reliability Regulatory Framework

As part of the Strategy, the performance standards for generators connected to the transmission network and registered to participate in the market are being relocated to the WEM Rules, as set out in the Taskforce Information Paper [Power System Security and Reliability Regulatory Framework](#).

The generator performance standards, as well as the framework for the connection of generating units, register, and the compliance and monitoring programs, will be finalised by the end of 2020 under a new Chapter 3A and Appendix 12 of the WEM Rules. These changes will have a commencement date of 1 February 2020 for new generator connections.

1.3.2 Monitoring and compliance in the WEM

As part of the Strategy, the Taskforce is reviewing the broader compliance and monitoring framework that applies under the WEM Rules. This will ensure that the options available within the WEM Rules to support compliance under new market arrangements planned under the Strategy are fit for purpose, with proportionate penalties available to compliance bodies. Stakeholders were consulted on these Taskforce design decisions in March 2020 through the Transformation Design and Operation Working Group (TDOWG). An Information Paper outlining these design decisions was published by the Taskforce in April 2020.

All work being undertaken by the Taskforce related to generator compliance and monitoring is consistent with the overarching framework developed for Monitoring and Compliance in the WEM.

1.3.3 Technical Rules Review

Western Power is currently undertaking a review of its Technical Rules. While this project is not part of the Strategy, the Technical Rules Review will reflect necessary amendments resulting from decisions made under the Strategy. Please contact Western Power at technical.rules.review@westernpower.com.au for further information.

1.4 Consultation

The revised framework set out in this document has been developed by the Taskforce in close consultation with AEMO, Western Power and industry stakeholders. ETIU invited all TDOWG Market Participants with transmission connected generation facilities to engage in one-on-one consultation to inform the design of the framework. Four generators accepted this invitation. The TDOWG was also consulted on 9 June 2020, with industry raising concerns regarding:

- incentives for Western Power and AEMO to act reasonably in negotiations;
- the cost of determining compliance for new standards that are being introduced (see Table 1); and
- the recovery of costs associated with the dispute resolution process.

The Taskforce has adopted measures to encourage all parties to act reasonably in negotiations, including principles to guide negotiations, obligations on all parties to share information, and scope for costs to be allocated to parties not acting reasonably through the arbitration process.

While the Taskforce recognises some costs will be inevitable, the transitional measures for existing generators are designed to minimise generator costs in populating the register of performance standards and adoption of self-monitoring plans. This includes measures to encourage the use of contracted or reference standards to populate the register before requiring testing, obligations on AEMO to accept existing monitoring plans made under the Technical Rules, and principles to guide fair negotiations. Industry will continue to be consulted throughout the WEM Rule drafting process to ensure these principles are reflected in the implementation of the revised framework.

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2. Register of Generator Performance Standards

Under the new framework endorsed by the Taskforce, a register of performance standards will be established for all transmission-connected Market Participants with a generating system. For each transmission-connected generating unit, the register will include the:

- status of connection;
- market registration information;
- the individual performance standards (detailed in Table 1);
- generator's computer model; and
- AEMO approved generator monitoring plan.

The register will be maintained by Western Power, but also available to AEMO and the Economic Regulation Authority (ERA). This will assist all parties to undertake their functions effectively and enable generators to be held accountable to their specific performance standards.

2.1 Standards to be included in the register

The standards that will be included in the WEM Rules under a new Appendix 12 relate to the [Generator Performance Guideline](#) (GPG) published by AEMO and Western Power in December 2018.

These standards broadly reflect those that are currently outlined under section 3.3.3 of Western Power's Technical Rules, as well as the Technical Code that preceded the Technical Rules, and as such are largely standards that existing generators are already required to comply with. However, the changing nature of the load profile and generation mix in the South West Interconnected System means that an understanding of, and compliance with, several new standards has become more important in order to ensure power system security and reliability is maintained. The standards that will be included in the register, and their relationship to the current generator performance standards in Western Power's Technical Rules, are summarised in Table 1.

Table 1: Generator Performance Standards to be included within the WEM Rules

Proposed standard	New/revised/unchanged
Reactive power capability	Revised
Voltage and reactive power control	Revised
Active power control	Revised
System strength	New
Inertia and frequency control	Revised
Disturbance ride-through (frequency)	Revised
Disturbance ride-through (voltage)	Revised
Disturbance ride-through (multiple contingencies)	New
Disturbance ride-through (partial load rejection)	Revised
Disturbance ride-through (quality of supply)	New
Generator protection systems	Unchanged
Quality of electricity generated	Revised, with new elements
Impact on network transfer capability	Revised
Model provision	Revised

While there is no intention to require existing generators to improve performance above the standards that were agreed at the time of connection, there may be a need to determine a generator's performance in relation to standards that may not have existed at the time that the generator connected.

2.2 Application of the register to existing generators

For new generators, the register will be populated during the connections process, as set out in the Taskforce Information paper [Generator Performance Standards - Regulatory Framework, Monitoring and Rectification](#). However a different process will apply for existing generators, of which there are two categories.

Generators that connected after 2007

For generators connected under Western Power's Technical Rules (hereon referred-to as 'Technical Rules generators'), the standards are publicly known. Any exemptions or deviations from the reference standards in the Technical Rules applying to these generators are published on the ERA's [website](#). As such, the register can be populated with the standards published in the Technical Rules and exemptions, if applicable. However, there are some circumstances where the register may not easily be populated, such as where:

- the specific alternative standards are not well defined in the published exemptions register; and
- new standards apply (these are standards that did not exist at the time of connection, and as such there will be no contracted or reference standards to rely on).

Generators that connected before 2007

Generators connecting before 2007 did so under the Technical Code or earlier planning standards that existed prior to the disaggregation of Western Power. During this time, there was no requirement

for exemptions to reference standards to be published. Of those generators connecting prior to 2007 there are two groups:

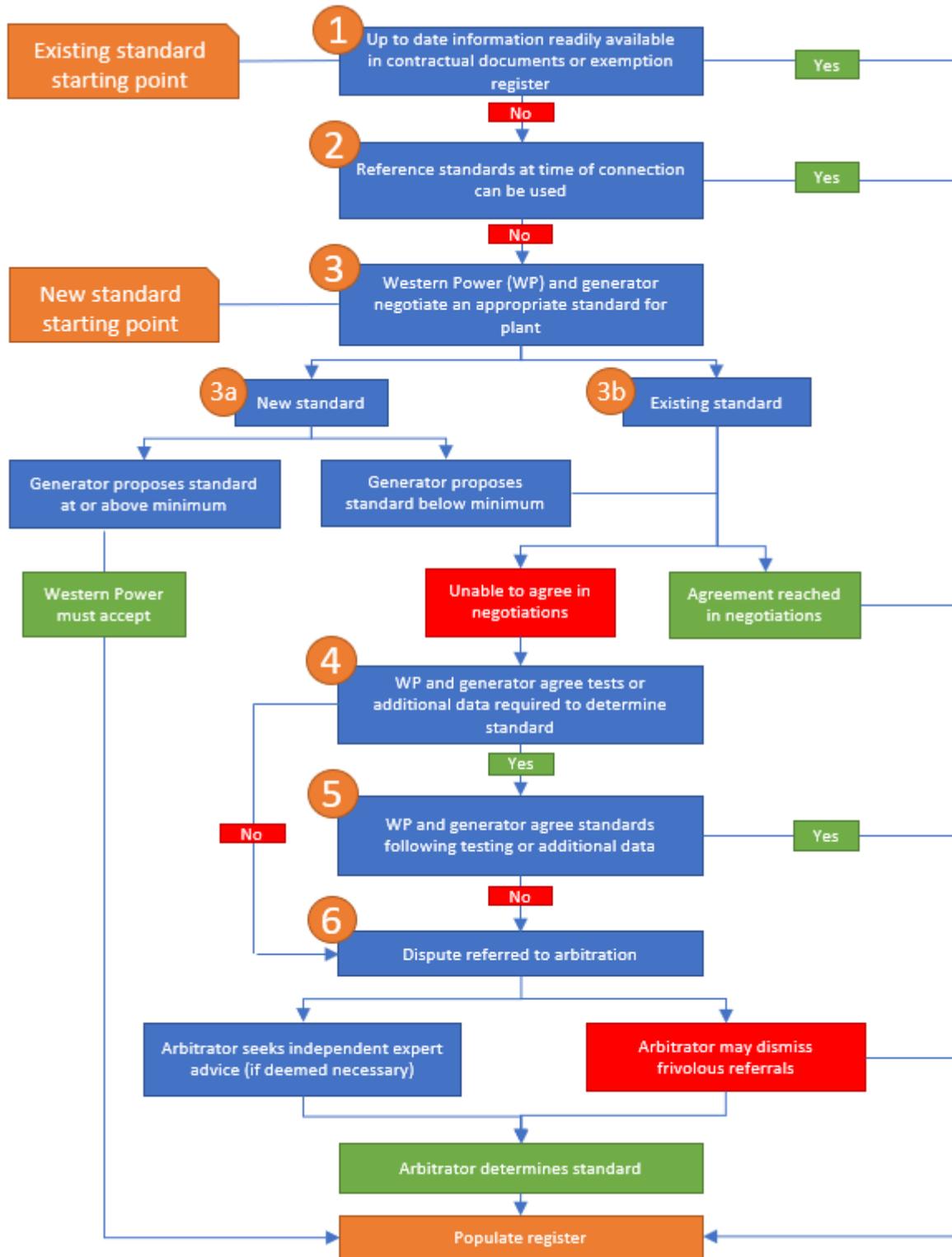
- Generators that connected between 1997 and 2007 under the Technical Code managed by Western Power. For these generators, the reference standards at the time of connection are known and connection contracts are relatively more likely to contain information about the performance standards at the time of connection when compared to those connecting prior to 1997.
- Generators that connected prior to 1997 under internal planning standards within the former State Energy Commission of Western Australia. Reference performance standards from this time are not available, and there are likely to be relatively fewer records about the required performance standards for these generators when compared with those connecting after 1997.

2.3 Process for populating the register

While the framework will commence for new generators from 1 February 2021, it will take some time to populate the register for existing generators. Western Power will need to consult with each individual generator to determine its relevant standards. For Technical Rules generators, this process will be reasonably straightforward due to the clear reference standards and publication of exemptions. For older generators, where information about the reference standards at the time of connection (or any information about exemptions from these) is not readily available, this process may require some negotiation with Western Power.

Figure 2 illustrates the process for populating the register for Market Participants with existing transmission connected generating units.

Figure 2: Process for populating the register



Generators will engage with Western Power throughout this process. Western Power will have an obligation to consult with AEMO on any negotiated standard and will not be permitted to approve a negotiated standard unless AEMO also approves it.¹

¹ This process will operate in the similar way as when new generators connect to the network, as outlined in [Information Paper: Generator Performance Standards – Regulatory Framework, Monitoring and Rectification](#) (see section 3.2).

Each numbered step in the process outlined in Figure 2 is explained further below.

1. Contractual or published information for existing standards

Where information about a generator's contracted performance standard is available, this will be used to populate the register. This information may be sourced from the register of exemptions from the Technical Rules published by the ERA, or from contracts (or other documentation) between a generator and Western Power at the time of connection or generator modification.

Both the generator and Western Power will have the obligation to find and share relevant information for the purposes of filling out the register.

If documentation is available, and both parties agree that the information is up-to-date² and complete for the purposes of filling out the register, these standards will be used by Western Power to populate the register.

If documentation is not available, or insufficient for the purposes of filling out the register then parties will proceed to step 2.

2. Reference information for existing standards

Where contractual documentation does not exist, is not readily available, or is insufficient for the purposes of filling out the register, reference standards from the time of connection (if available) should be used as a basis for populating the register.

If a generator does not consider it is able to comply with the reference standards, it will have an obligation to demonstrate why this is the case; for example, where the capability of the generator does not enable a particular standard to be met, or where compliance will require excessive costs. In such cases, the generator will be required to provide technical information to support the claim, endorsed by a suitably qualified engineer listed on the National Engineering Register, and propose a suitable alternative standard.

If agreement can be reached on an alternative proposed standard, the register will be populated with that information. If agreement cannot be reached, the parties will proceed to step 3.

3. Negotiation on existing standards and/or new standards

a. New standards

Generators will be required to advise their capability for the three new performance standards contained in Table 1.

If a generator advises it can comply with a standard at or above the minimum contained in the new Appendix 12 of the WEM Rules, Western Power will be obliged to accept that standard and populate the register with that information. However, if a generator is unable to comply with the minimum standard, it will be required to provide justification (similar to that required for a deviation from reference standards in step 2) as to why this is the case, for the consideration of Western Power.

Western Power will not be obliged to accept a standard below the minimum if it considers that the generator can meet the minimum standard without incurring any significant costs. Western Power will be required to provide justification if it holds a different view to the generator about

² There are limited circumstances where information from contractual documents may not be considered up-to-date. One example of when this might occur is if a generator has carried-out approved modifications since the time of connection that have altered its ability to comply with the contracted performance standard. However, an inability to comply with a contracted standard due to age or condition of the plant would not be considered an acceptable reason.

the capability of their plant. This could include advice from technical experts as to why the generator should be able to comply, or data from previous testing that demonstrates compliance.

If a generator proposes a standard below the minimum, and this is accepted, this may necessitate certain restrictions in the way the generator is dispatched in real-time to mitigate the risk posed by that performance standard.³ Western Power will be required to consult with AEMO as to the potential impacts of accepting a standard below the minimum and communicate this to the generator. However, this information will not be required to be included in the register.

b. Existing standards

Where justification is provided for deviating from the reference standards, or a reference standard does not exist, Western Power and the generator will undertake negotiations to determine the applicable performance levels for the existing standard.

During negotiations, both parties will be required to act in good faith. Western Power will have an obligation to consult with AEMO on any negotiated standard and will not be permitted to approve a negotiated standard unless AEMO also approves it.⁴ Where AEMO does not accept a negotiated standard on the basis of advice from a generator about the capability of its plant, AEMO will also be required to provide technical advice to justify its view.

In negotiations, the intent is for Western Power (in consultation with AEMO) and the generator to agree the standard that a generator can comply with, without incurring significant costs. There is no intention to negotiate a higher standard of compliance than can currently be achieved. Further consultation will take place during WEM Rule drafting to ensure this principle is reflected in the framework as implemented.

If a performance standard can be agreed in negotiations, the register will be populated with this information. If agreement cannot be reached, the parties will proceed to step 4.

4. Agreement to additional tests or data

If parties are unable to reach agreement on a standard (or standards) they may agree on further testing or collection of data required to demonstrate the generator's performance or capability. This could include accessing information from AEMO or Western Power databases, carrying-out centralised monitoring, or more invasive testing conducted onsite by the generator. Testing, if agreed, will be conducted by the generator at its cost. If both parties cannot agree on additional testing or data required, they may proceed straight to dispute resolution as per step 6, below.

5. Agreement to standards post-testing or data collection

Following testing, generators and Western Power will have the opportunity to agree on the standards applying to the generator, based on the outcomes of that testing or the data collected. If agreement is reached, that information is used to populate the register. If either party does not agree that the performance demonstrated by that testing or through that data is not appropriate, they will be required to provide technical justification for this and may proceed to dispute resolution.

6. Independent dispute resolution

If parties are unable to agree on a suitable standard after completing the steps outlined above, the dispute resolution process will commence. Either party will be able to refer the dispute into

³ if a generator cannot meet minimum ride through requirements in certain power system conditions, then it may be curtailed to avoid inadvertent tripping when those conditions arise.

⁴ This process will operate in the similar way to when new generators connect to the network, as outlined in the Taskforce [Information Paper: Generator Performance Standards – Regulatory Framework, Monitoring and Rectification](#).

the dispute resolution process. If neither party does so, but no extension is agreed, then the process will automatically proceed to dispute resolution (see section 2.4 for more detail).

The dispute resolution process will also apply to resolving disputes about self-monitoring plans and is outlined in detail in section 4.

The Taskforce has determined that:

- A process for populating the register with standards for existing generators will be established in the WEM Rules. This process will require generators and Western Power to locate and share contractual information on the relevant performance standards and provide a framework for negotiation of applicable standards if this information is not available.

2.4 Timing

The new compliance and monitoring framework for generator performance standards is expected to be finalised in the WEM Rules late 2020, and will commence on 1 February 2021 for generators that finalise a network access offer from that date.

An existing generator will not be subject to the framework until it has a full set of generator performance standards populated in the register and a monitoring plan approved by AEMO. It will be given until February 2022 to complete the steps above to finalise this. If this process is not completed by February 2022, the matter will automatically proceed to dispute resolution, unless an extension is agreed to by both Western Power and the generator.⁵

The Taskforce has determined that:

- The performance standards for existing generators will need to be populated in the register by 1 February 2022, unless an extension to this timeframe is agreed between Western Power and a generator.
- If this timeframe is not met and an extension is not agreed, the standards will be determined by an independent arbitrator.

⁵ For example, if generators require experts of specialists to be on site for testing, or time to schedule in outages to carry out testing, extensions to this timeframe may be necessary.

3. Self-monitoring plans

Under the new generator performance standards compliance and monitoring framework endorsed by the Taskforce, all facilities with generating units that are connected to the transmission network and registered in the market must have a self-monitoring plan approved by AEMO. The self-monitoring plan will outline how the standards in the register, as listed in Table 1 above, are to be monitored over time.

AEMO will be required to publish a template self-monitoring plan as part of a Market Procedure under the WEM Rules. The content of this template will not be drafted until later in 2020; however, it is likely that it will be based on the [Template for Generator Compliance Programs](#) published by the Reliability Panel in the National Electricity Market. Modifications specific to the WEM will be considered, and these may be guided by the content of Western Power's [Generator Compliance Monitoring Program Requirements](#).

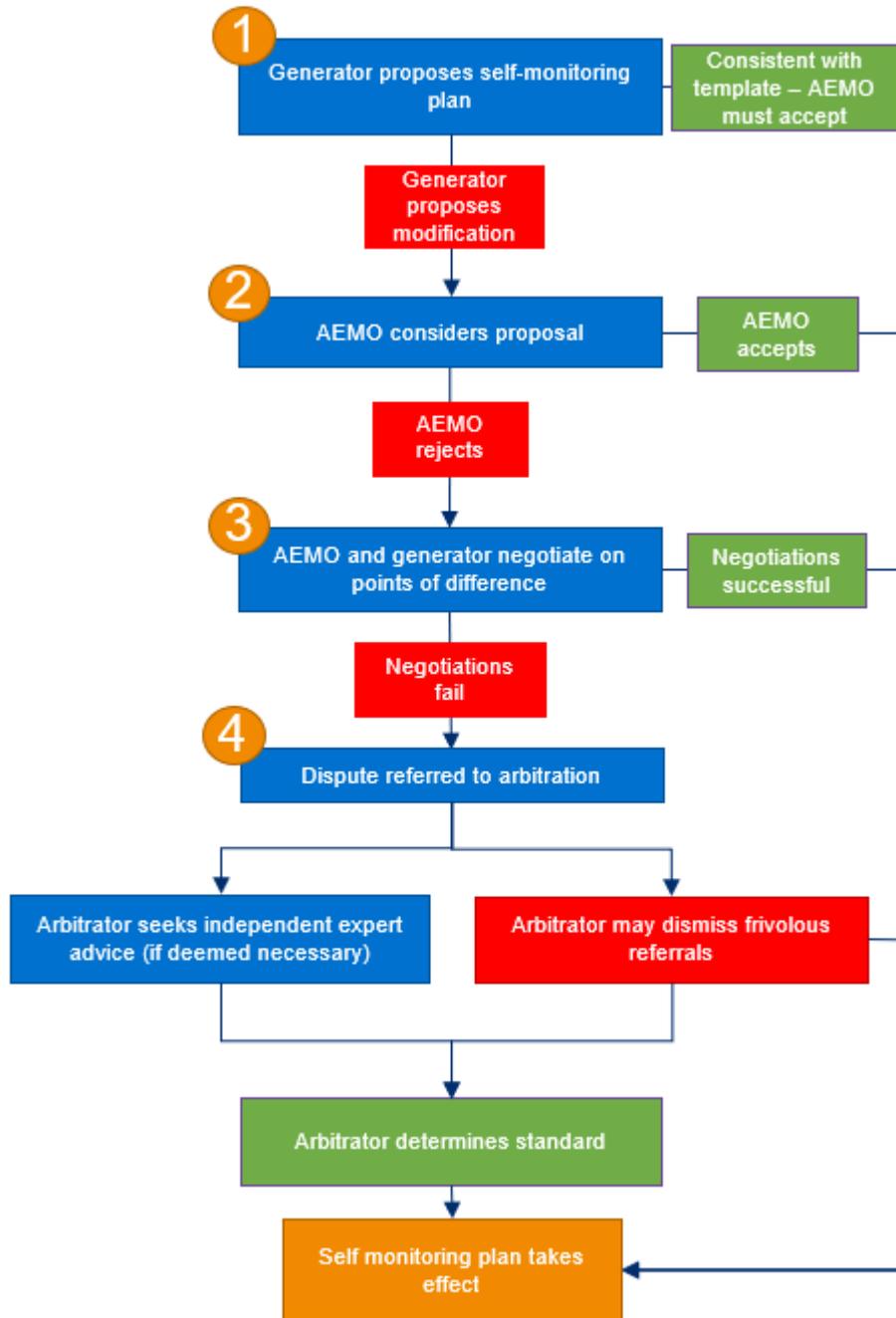
Generators that connect following the commencement of the new framework will be required to have a self-monitoring plan that is consistent with the template plan published by AEMO. However, the Taskforce recognises that some existing generators may not be capable of complying with the template, or compliance may impose unjustifiable costs. The process outlined below allows a generator to propose modifications from the template for its individual self-monitoring plan and establishes a framework for AEMO's assessment of such proposals. The process also allows for dispute resolution where agreement cannot be reached between a generator and AEMO.

3.1 Process for approval of a self-monitoring plan

The new Chapter 3A will set out how the revised compliance and monitoring framework will be established, with a commencement date of 1 February 2021. However, as with the register, it will take some time to each generator to develop its individual self-monitoring plan and for the approval of AEMO.

Figure 3 illustrates the process for finalising self-monitoring plans for existing transmission connected Market Participants with generating units.

Figure 3: Process for approval of a self-monitoring plan



Generators will engage with AEMO throughout this process. AEMO will be permitted to consult with Western Power on any proposed variations from the self-monitoring template, but will not be required to seek approval from Western Power before accepting a self-monitoring plan.

Each numbered step in the process outlined in Figure 3 is explained further below.

1. Generator proposes individual self-monitoring plan

If a generator proposes a self-monitoring plan that is consistent with the template, AEMO must accept this proposal.

Where an existing generator considers that it is unable to meet the requirements as set-out in the template for demonstrating compliance with a particular standard, or is unable to do so without incurring significant costs, it will be able to propose an alternative method of testing, or

a proposal to use other data to verify performance. If making such a proposal, the generator will be required to provide supporting evidence to justify its request.

Supporting evidence may include:

- written advice from a suitably-qualified, independent engineer on the National Engineer's Register;
- information from manufacturers or industry experts about the capability of the plant to carry out the testing set out in the template self-monitoring plan;
- evidence of the cost of complying with the testing set out in the template self-monitoring plan; or
- a copy of an approved Western Power self-monitoring plan.

More generally, a generator will be required to provide justification for its proposed alternative which allows AEMO to consider the factors outlined in step 2 below.

2. AEMO considers a proposal for modification

There are two categories of generators that AEMO will be required to consider proposed modifications from in slightly different ways: generators that do not currently have a self-monitoring plan, and generators that have an existing self-monitoring plan agreed with Western Power under the requirements of the Technical Rules.

a) Generators without a self-monitoring plan:

When assessing a proposal for a modification, AEMO will be required to consider:

- the technical or physical ability of the generator to comply with the tests in the template;
- consistency of alternative testing methods proposed with Electricity Industry Best Practice;
- age of generator, in particular the cost of imposing the standard testing method relative to the benefits gained over the expected remaining life of the generator;
- risk that an individual generator poses to power system security and reliability (considering size, location and technology type of generator);
- efficacy of an alternative proposed testing method (incorporating cost, risk and accuracy of alternative proposed testing method);
- advice from manufacturers and industry experts;
- specific factors associated with the technology of the plant, including whether its performance is likely to drift or degrade over a particular timeframe;⁶ and
- whether the testing method or data source proposed by the generator as a modification to the template was used to establish the compliance standard as part of the process to populate the register.

b) Generators with a self-monitoring plan:

AEMO will be obliged to accept existing monitoring plans agreed under the Technical Rules, unless it can demonstrate that the method of testing proposed creates an unacceptable risk to power system security and reliability. AEMO and the generator may also agree to vary from the existing self-monitoring plan.

⁶ The intent of including this is not to allow performance to drift or degrade over time, but rather to ensure appropriately rigorous testing is being carried out where this is a possibility.

However, if existing monitoring plans do not cater for self-monitoring of new standards, then the generator will be required to make a proposal to AEMO about monitoring these standards, which will be considered in line with the factors set-out in 2(a) above.

In relation to 2a and 2b above, AEMO will be required to consider the proposal and advise the generator of its decision. AEMO will be required to provide justification for a decision to reject a proposed modification. This justification will need to be related to the factors it is required to consider, as outlined above.

The intent during negotiations is for AEMO and a generator to agree on a method of testing or otherwise demonstrating compliance that the generator can comply with without incurring significant costs. AEMO will be required to consider how data that is held by, or accessible to, AEMO or Western Power could be used as a method of demonstrating compliance where a generator is unable to carry out the testing specified in the template. Further consultation will take place during WEM Rule drafting to ensure this principle is reflected in the framework as implemented.

In advising a generator of a decision to reject a modification, AEMO may either advise a generator that it requires the generator to self-monitor its performance in accordance with the template, or may propose an alternative self-monitoring method that it will accept.

3. Generator considers response

The generator will be given an opportunity to review AEMO's response and decide whether to accept the decision or proposal put forward by AEMO. If it does not accept, it may proceed to dispute resolution.

4. Dispute resolution

If parties are unable to agree on a self-monitoring plan after completing the steps outlined above, the dispute resolution process will commence. This process will also apply to resolving disputes about content of the register for existing generators and further detail is provided in section 4.

The Taskforce has determined that:

- A process for the approval of individual self-monitoring plans for existing generators will be implemented in the WEM Rules. This process will allow existing generators to request modifications from the template self-monitoring plan published by AEMO and set out the factors AEMO must consider when assessing a proposed modification.

3.2 Timing

Generators will be required to submit their proposed self-monitoring plan to AEMO for its approval by 1 August 2021, 6 months from the commencement date of the new framework, unless an extension to this timeframe is agreed between AEMO and a generator.

Where a generator proposes modification from the template for its individual plan, AEMO will be required to respond in a timely manner. Twelve months will be allowed for AEMO and the generator to agree a final self-monitoring plan once the initial proposal is made, unless an extension is agreed. That is, in most cases a self-monitoring plan should be agreed and in place by 1 August 2022.

If a generator does not make a proposal regarding the content of its self-monitoring plan within 6 months, and does not seek and have an extension approved, then the generator will be deemed to be in breach of the WEM Rules and this breach would be referred to the ERA for investigation. Where

deadlines are not met for negotiation, or an extension of time has not been agreed between both parties, the dispute resolution process outlined in section 4 will apply.

Once the self-monitoring plan has been approved by AEMO, or determined by the arbitrator, the generator will be required to comply with the plan and be subject to the framework governing this as set out in Taskforce Information Paper [Generator Performance Standards – Regulatory Framework, Monitoring and Rectification](#).

The WEM Rules will allow for AEMO to approve individual self-monitoring plans to commence at an agreed date other than the date at which the self-monitoring plan is approved, either in part or fully, to allow time for generator to operationalise their plan.

The Taskforce has determined that:

- Individual self-monitoring plans must be submitted by generators by 1 August 2021 and approved by AEMO by 1 August 2022, unless an extension to this timeframe is agreed between AEMO and a generator.
- If a generator does not submit their proposed plan by 1 August 2021, and is not granted an extension, they will be deemed to be in breach of the WEM Rules.
- If a generator has submitted a proposed self-monitoring plan but agreement is not reached by 1 August 2022, and an extension is not agreed, the content of the self-monitoring plan will be determined by an independent arbitrator.

3.3 Ongoing modifications to self-monitoring plans

AEMO will have the ability to update the template self-monitoring plan on an ongoing basis and will be permitted to apply these changes retrospectively. Where changes are made to apply retrospectively, all generators affected⁷ will be required to resubmit a self-monitoring plan for approval by AEMO. Each generator will only be expected to amend their self-monitoring plan to the extent required to comply with the updated requirements – for clarity, a generator will not be expected to renegotiate approved modifications to their self-monitoring plan if they do not relate to the updated requirement.

If required to resubmit a self-monitoring plan to comply with an updated requirement in the template, a generator will be able to propose a modification from the updated requirement if it is unable to comply with it. AEMO will be required to assess any proposal made by the generator and advise the generator of its decision. In making this decision, AEMO will be required to consider any previous modifications to the self-monitoring plan approved for that individual generator and will be required to allow a generator to retain a modification unless it poses an unacceptable risk to power system security and reliability. AEMO will be required to provide technical justification if it does not approve the proposed modification.

If the generator does not consider this a reasonable request, the parties may negotiate. If they cannot reach agreement, dispute resolution will be available under section 2.18-2.20 of the WEM Rules.

⁷ Noting that some changes may only affect a subset of generators.

The Taskforce has determined that:

- The WEM Rules will establish a framework for the ongoing assessment of modifications to self-monitoring plans as the template self-monitoring plan is updated by AEMO.
- This framework will allow generators to retain existing approved modifications when the template is updated unless it poses an unacceptable risk to power system security and reliability.

4. Dispute resolution

There are two existing dispute resolution processes under the WEM Rules. The Taskforce considers that each has shortcomings when used to resolve disputes associated with determining performance standards or setting individual self-monitoring plans for existing generators, as summarised in Table 2 below.

Table 2: Existing dispute resolution processes and shortcomings

	Process	Shortcomings
Reviewable decisions (clause 2.17)	<p>The Reviewable Decision process under clause 2.17 of the WEM Rules applies to certain areas in the WEM Rules where AEMO has some discretion in decisions that have a significant effect on Rule Participants.</p> <p>If Rule Participants wish to have those decisions specified under clause 2.17 reviewed, they may apply to the Electricity Review Board (ERB) for a review.</p>	<p>The Electricity Review Board process is akin to court proceedings, and as such can be time consuming and costly for parties involved. While this type of process is warranted in many circumstances, the resolution of generator performance standards, and the methods for monitoring these standards, is a highly technical matter that is better suited to a form of arbitration or resolution involving technical experts.</p> <p>Additionally, the scale of the task to populate the register and agree self-monitoring plans for existing generators means there could be multiple disputes, requiring resolution through the ERB, which may take many years.</p>
Disputes (clauses 2.18-2.20)	<p>The dispute process described in clauses 2.18-2.20 of the WEM Rules set-out a flexible process for resolving a dispute between a Rule Participant and AEMO. This process allows for negotiation between the parties, followed by a requirement for the dispute participants to give consideration to agreeing a suitably qualified independent body to assist in resolving the dispute via mediation, conciliation, arbitration or alternative methods.</p> <p>If the parties are unable to resolve the dispute or agree on a dispute resolution body, then the dispute can be referred to a court of competent jurisdiction.</p>	<p>The disputes resolution process provides considerable flexibility to parties, which is appropriate as the WEM Rules themselves cover a broad range of matters and an ability for parties to choose a dispute resolution body that is suited to resolving their particular dispute allows better outcomes than prescribing a single body.</p> <p>However, the requirement for parties to agree a dispute resolution body means delays can be experienced in the process, and where parties are unable to agree they are required to use a court, which suffers from the same shortcomings as noted above in relation to the process under clause 2.17.</p> <p>Additionally, the first step of the existing dispute resolution process will not be necessary in the case applying the generator performance standards to existing generators, as negotiation is already embedded in the process.</p>

On the basis of the shortcomings identified in Table 2, the Taskforce considers it appropriate to introduce a bespoke dispute resolution process as part of the process of populating the register and negotiating individual self-monitoring plans for existing generators.

4.1 Dispute resolution process

To ensure the register is back-filled and monitoring plans are adopted in a timely and fit-for-purpose manner, an arbitration process will be established under the WEM Rules to resolve disputes. An arbitrator, or panel of arbitrators, will have the power to make a binding decision on a standard or

the content of the self-monitoring plan (Noting that decisions made under the WEM Rules can still be challenged through the judicial system).

Establishing a dedicated arbitrator will also mitigate the risk that parties will be unable to agree on an arbitrator and therefore resort to resolving the dispute through the judicial system.

The arbitrator will be able to dismiss disputes that are considered frivolous or vexatious, or where one party has not put forward sufficient justification for its position, or has not engaged in the negotiation process in good faith. In the case that a dispute is dismissed, the arbitrator will be able to refer the dispute back to negotiation, or make a ruling made against the party that had not provided sufficient justification or engaged in good faith. This

If the arbitrator determines that a dispute is genuine, they will have the ability to make a determination based on the evidence submitted, or to seek further advice to aid its decision making. A panel of independent experts will be established that the arbitrator can select from. This panel will include experts that can provide advice on different types of generation technologies, as well as experts in commercial, engineering and legal areas. In making its decision, the arbitrator would consider the technical advice put forward by the parties, the conduct of all parties in negotiations and any external advice received.

The arbitrator and list of experts will be established in consultation with AEMO, Western Power and industry participants.

The Taskforce has determined that:

- A bespoke dispute resolution process will be established under the WEM Rules to resolve disputes about individual performance standards and the content of self-monitoring plans for existing generators.

4.2 Tenure

This dispute resolution process will only exist for the time required to populate the register and agree self-monitoring plans for existing generators. It will not be retained to resolve ongoing disputes about further modifications to self-monitoring plans or any other generator performance standards related matters. Any ongoing disputes will be resolved using the existing dispute resolution mechanisms in the WEM Rules. The Taskforce considers that this bespoke process needs to exist until at least February 2023 (6 months after self-monitoring plans should be finalised), but with the option to extend its tenure if necessary.

The Taskforce has determined that:

- The bespoke independent dispute resolution process will only be established for as long as is required to hear disputes about the transitional arrangements for applying the generator performance standards compliance and monitoring framework for existing generators.

4.3 Cost recovery

4.3.1 Standing costs

There will be some standing costs involved in establishing the arbitrator and managing any disputes that arise through this process. Further work is required to finalise the design for this dispute

resolution process, and consultation on recovery of standing costs will be undertaken as a part of this process.

4.3.2 Dispute specific costs

The framework will provide that the arbitrators dispute specific costs (including the cost of procuring technical advice) will be shared between the parties unless the arbitrator considers that there is a compelling reason to assign costs otherwise. In making this decision, the arbitrator will be required to consider the following factors:

- the final decision;
- the conduct of the parties before the arbitrator (where one party has engaged in frivolous or vexatious conduct then it should have costs awarded against it);
- any settlement or positions from the parties prior the hearing (for example, if one person has offered to settle prior to the dispute and the end result is very close to that offer); and
- any public interest considerations or wider ramifications (for example, if Western Power or AEMO can apply the decision across many generators it may be reasonable they should bear more of the cost).

Parties will bear their own costs (e.g. legal costs) unless the arbitrator considers one parties costs should be assigned to another (taking into account the factors listed above).

The Taskforce has determined that:

- The arbitrator's costs will be shared equally between the parties unless the arbitrator considers there is a compelling reason to assign costs otherwise.
- Parties will bear their own legal costs unless the arbitrator considers there is a compelling reason to assign one parties costs to another.

5. Civil penalty framework

The civil penalty framework will apply to all generators on an ongoing basis. It will apply as at February 2020 to generators that finalise a network access offer and connect to Western Power's network after this date, and to existing generators once they have a set of standards populated in the register and a self-monitoring plan approved by AEMO.

The purpose of a civil penalty is to promote the public interest by providing incentives for WEM Rule participants, including generators, to ensure they are compliant with the WEM Rules. Compliance with generator performance standards is in the public interest as, at a minimum, non-compliance increases overall market costs and in extreme cases can pose risks to power system security and reliability. Notwithstanding, the imposition of civil penalty provisions is considered a last-resort option.

While the remainder of this section will detail the civil penalty provision framework, readers are advised that the Taskforce has agreed to measures to address early non-compliance through rectification plans, the detail of which is outlined in the Taskforce Information Paper [Generator Performance Standards – Regulatory Framework, Monitoring and Rectification](#).

5.1 Scope of civil penalties

Civil penalties will be associated with the requirements for generators to:

- comply with the relevant performance standards after being granted final approval to operate;
- address any non-compliance with performance standards whilst operating under an interim approval to generate;
- comply with the requirement associated with any trigger events documented in the register;
- only dispatch electricity into the market for the purposes of a commissioning test prior to being issued an interim approval to generate or approval to generate notification;
- for existing generators to submit a self-monitoring plan to AEMO within the required timeframes;
- for all generators to submit a revised self-monitoring plan where required following a modification to the template;
- comply with an approved self-monitoring plan;
- report to AEMO any non-compliance with the relevant performance standards; and
- notify Western Power prior to undertaking a generator modification.

5.2 Process for issuing civil penalties

There is an existing civil penalty framework under the *Electricity Industry Act 2004*, the Electricity Industry (Wholesale Electricity Market) Regulations 2004 (WEM Regulations) and the WEM Rules. This framework allows for certain WEM Rules to attract a civil penalty of not more than \$100,000 if contravened and allows for an additional penalty of up to \$20,000 for each day that the contravention continues. Under 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. While the ERA is not able to issue civil penalties for alleged breaches of Category B and Category C WEM Rule provisions, it may refer these to the ERB.

The Taskforce has decided that under the new monitoring and compliance framework (see section 1.3.2), the ERA will be responsible for issuing Category B and C civil penalties.⁸ The ERA will still be required to bring proceedings before the ERB where it wishes to pursue suspension, disconnection, deregistration or similar high-severity remedies.

Associating a civil penalty provision with a WEM Rule does not mean a civil penalty will automatically be issued. The ERA is first required to conduct an investigation and, if it determines a Rule Participant to be in breach of a rule, it has several compliance responses available, depending on the severity of the action. For matters where the breach has little or 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.

As set out in the Taskforce Information Paper [Monitoring and Compliance Framework in the Wholesale Electricity Market](#), 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. 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 monitoring protocol published by the ERA. The addition of infringement notices will enable the ERA to respond to breaches in a more timely and proportionate manner.

5.3 Quantum and allocation of civil penalties

Non-compliance with generator performance standards can cause serious impacts for the market and electricity customers. The implications of non-compliance with generator performance standards can include an increased need for operational reserve to be procured by AEMO at an increased cost to the market, increased levels of investment required by Western Power and increased risk of large-scale load shedding or system outages with a potentially large economic impact.

This was demonstrated most dramatically by the September 2016 'Black System' event in South Australia, in which some 850,000 customers lost electricity, following five system faults occurring within a period of 88 seconds.⁹ This incident has been estimated as costing the South Australian economy between \$380 and \$450 million.¹⁰

To reflect the potentially severe consequences of non-compliance with generator performance standards, non-compliance will be classified as a Category C civil penalty with a maximum penalty of \$100,000 for a first or subsequent contravention and plus a daily amount of \$20,000 for ongoing non-compliance.

The proceeds of any civil penalties issued will be distributed back to Market Participants (excluding the liable participant) in proportion to their Market Fees calculated over the previous full 12 months.¹¹

⁸ See [Information Paper: Compliance and Monitoring in the Wholesale Electricity Market](#) for more information.

⁹ AEMO, Black System South Australia 28 September 2016 – Final Report, March 2017

¹⁰ Parliament of South Australia (2017) *Report of the Select Committee on the State-wide Electricity Blackout and Subsequent Power Outages* p.40

¹¹ This aligns with the current allocation for civil penalties in the WEM Rules, as set out in Clauses 6.6.3A, 7A.2.19 and 7B.2.17

The Taskforce has determined that:

- On an ongoing basis, civil penalties associated with the generator performance standards framework under the WEM Rules will be classified as a Category C civil penalties with a maximum penalty of \$100,000 for a first or subsequent contravention and plus a daily amount of \$20,000 for ongoing non-compliance.

5.3.1 Transitional arrangements

The Taskforce has endorsed transitional arrangements for the civil penalties that will apply to non-compliance with the generator performance standard framework on two grounds:

1. consistency with the current framework until the new WEM commences in October 2022; and
2. to allow for a transition period with lesser penalties for the first 18 months of the new framework applying.

The changes to the WEM Regulations that allow the ERA to issue Category C civil penalties will not become effective until the start of the new WEM in October 2022. Until that date, the ERA will continue to only have the ability to issue Category A civil penalties, which are currently limited to \$20,000 for a first contravention.¹²

The Taskforce considers that to ensure non-compliances with generator performance standards is not unnecessarily referred to the ERB, non-compliance with generator performance standards (and associated requirements) will be established as Category A civil penalty provisions until the new WEM arrangements commence. To maintain consistency with the broader civil penalty framework, non-compliance with generator performance standards will only attract a penalty of \$10,000 for the first contravention (and \$20,000 for a second contravention) and maintain consistency with the civil penalty framework until the new WEM commences.

The Taskforce has determined that:

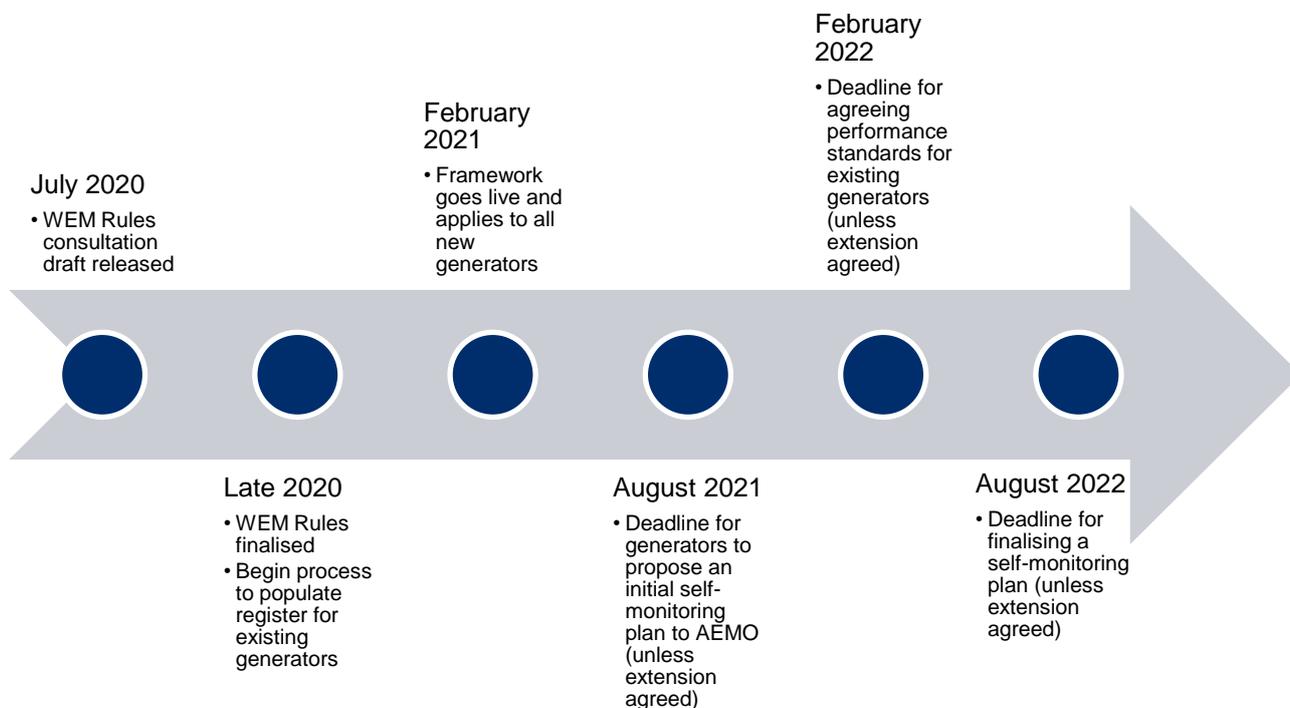
- Until new WEM arrangements commence in October 2022, civil penalties associated with the generator performance standards framework under the WEM Rules will be classified as a Category A civil penalties with a maximum penalty of \$10,000 for a first or contravention and \$20,000 for a subsequent contravention.

¹² Category A civil penalties are not limited to \$20,000 by any legal requirements in the regulatory framework, but rather by convention.

6. Next steps

The compliance and monitoring framework for generator performance standards will be progressed as shown in Figure 4 below.

Figure 4: Process to implement the generator performance standards compliance and monitoring framework



For further information on the compliance and monitoring framework, or if you would like to meet with ETIU to discuss any compliance and monitoring related matters, please contact energytransformation@energy.wa.gov.au.