



Economic Regulation Authority

# WEM Procedure

## Monitoring Protocol

Effective 1 October 2023

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**VERSION HISTORY**

Version	Effective Date	Notes
1	12 September 2006	Market Procedure as at Market Start
2	17 October 2008	The Independent Market Operator made changes to the procedure resulting from PC_2008_10
3	19 September 2016	Amendments made under clause 1.17.1 of the Wholesale Electricity Market Rules (transitional provision) to reflect the transfer of the Independent Market Operator's compliance and enforcement functions to the Economic Regulation Authority.
4	1 July 2017	A full review of this Market Procedure was carried out by the Economic Regulation Authority after transfer of the compliance and enforcement function (Procedure Change EEPC_2017_01).
5	24 July 2020	Review and amendment of Market Procedure following Rule Change RC_2018_05 (Procedure Change EEPC_2020_01).
6	1 October 2023	Review and amendment of WEM Procedure for New Market (Procedure Change EEPC_2023_01).

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## 1. BACKGROUND

The Economic Regulation Authority maintains and implements a Monitoring Protocol as a Wholesale Electricity Market (WEM) Procedure under clause 2.15.1 of the WEM Rules.<sup>1</sup>

### 1.1 Interpretation

1.1.1 In this Monitoring Protocol, unless the contrary intention is expressed:

- (a) Terms used in this procedure have the same meaning as those given in the WEM Rules (made pursuant to the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*).
- (b) To the extent that this procedure is contrary or inconsistent with the WEM Rules, the WEM Rules shall prevail to the extent of the inconsistency.
- (c) A reference to the WEM Rules or WEM Procedures includes any associated forms required or contemplated by the WEM Rules or WEM Procedures.
- (d) Words expressed in the singular include the plural and vice versa.
- (e) The following terms have the following meanings:

**“WEM Regulations”** means the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*;

**“Regulation”** means a regulation in the WEM Regulations.

- (f) The term breach used in this document also refers to the terms non-compliance and contravention which are also used in the WEM Rules and WEM Regulations.
- (g) The terms ‘alleged breach’ or ‘suspected breach’ are used interchangeably in the WEM Rules to refer to matters where the ERA or a Rule Participant forms the view that it has sufficient information to reasonably suspect a breach of the WEM Rules and/or WEM Procedures has occurred, but where the ERA has not yet made a determination that a breach has occurred. For the avoidance of doubt, where the ERA has used the term ‘suspected breach’ in this document it also refers to ‘alleged breaches’ in the WEM rules.

1.1.2 References to particular WEM Rules within this Monitoring Protocol are current as of 1 October 2023.

### 1.2 Purpose

1.2.1 The Monitoring Protocol sets out how the ERA will monitor, investigate and enforce Rule Participants’ behaviour for compliance with the WEM Rules and WEM Procedures.

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<sup>1</sup> The ERA must comply with WEM Procedures applicable to it pursuant to clause 2.9.7B of the WEM Rules.

1.3 Compliance Contact Points

1.3.1 The contact details for the ERA for its compliance and enforcement functions under the WEM Rules are:

Compliance and Enforcement, Energy Markets

Email: [market.compliance@erawa.com.au](mailto:market.compliance@erawa.com.au)

Post: PO Box 8469, PERTH BC WA 6849

Phone: (08) 6557 7900

Website: [www.erawa.com.au](http://www.erawa.com.au)

1.3.2 The WEM Rules provide that as part of its compliance functions, the ERA may require information from and meet with Rule Participants for compliance matters. To assist with these processes, the ERA may from time to time make a written request to Rule Participants to nominate a primary contact person for all the organisation's WEM Rule and WEM Procedure compliance matters. The Rule Participant may be requested to provide the following contact details to the ERA via email to [market.compliance@erawa.com.au](mailto:market.compliance@erawa.com.au):

Name of person:

Position title:

Organisation (if agent for Rule Participant):

Rule Participant:

Telephone Number/s:

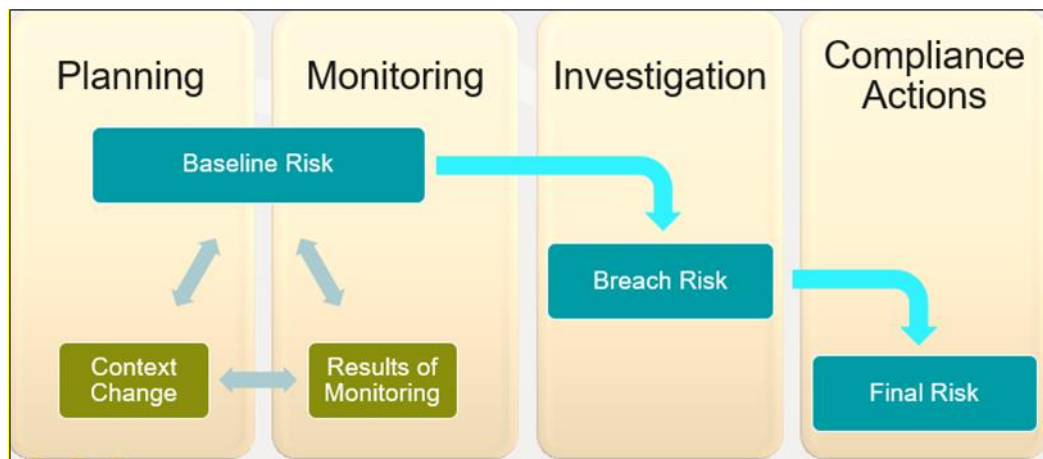
Email address:

**2. COMPLIANCE**

2.1 Compliance Framework

2.1.1 The ERA's compliance approach is published in its [Compliance Framework and Strategy](#) document which is updated from time to time. This document is aimed at encouraging compliance by Rule Participants with the WEM Rules and WEM Procedures with the target of achieving high levels of compliance using a risk-based approach.

2.1.2 The risk-based approach involves assessing the compliance risk associated with an obligation or set of obligations under the WEM Rules and/or WEM Procedures. These assessments will assist the ERA in determining planning and monitoring activities, investigation priorities and compliance actions. (Refer [Figure 1](#)).

**Figure 1: Application of Risk Assessments**

## 2.2 Risk-based Approach

2.2.1 The approach taken by the ERA in this document is to consider risk from the perspective of the WEM.

2.2.2 The ERA's risk-based approach uses the consequence and likelihood tables in [Appendix 1](#) to assign a risk rating to WEM Rule obligations and suspected or ERA determined breaches of WEM rule obligations <sup>2</sup>

2.2.3 When considering the prioritisation of compliance activities, the ERA will generally prioritise higher risk obligations over lower risk obligations. However, there may be exceptions to this as there may be circumstances where lower risk matters may warrant compliance action (for example, repeated low risk non-compliances by the same Rule Participant that may indicate a systemic issue).

2.2.4 The ERA has performed a risk assessment of the obligations in the WEM Rules to rate the compliance risk. This is the baseline risk assessment.

2.2.5 The risk ratings from the baseline risk assessment have been used to determine a list of risk-based monitoring priorities, which can be found on the [ERA's website](#).

2.2.6 From time to time the ERA may reassess a baseline risk assessment if there is a change in the WEM Rules, context, or if there are any other indications that a risk assessment requires reassessment. Any changes to the risk-based monitoring priorities will be updated on the [ERA's website](#) as required.

<sup>2</sup> Baseline risk assessments of the WEM Rules are used for planning and monitoring, breach risk assessments of suspected breaches are used to determine investigation prioritisation and final risk assessments of confirmed breaches are used to inform compliance actions

### 3. MONITORING

#### 3.1 Monitoring Processes

##### 3.1.1 The ERA:

- (a) Monitors Rule Participants' compliance with the WEM Rules and WEM Procedures in accordance with the Monitoring Protocol (clause 2.13.1 of the WEM Rules).
- (b) Has processes and systems in place to enable it to monitor Rule Participants' behaviour in accordance with the Monitoring Protocol (clause 2.13.3 of the WEM Rules).

##### 3.1.2 The Monitoring Protocol must specify:<sup>3</sup>

- (a) The ERA's monitoring processes for assessing compliance with the WEM Rules and WEM Procedures by Rule Participants, which must include:
  - (i) A [process](#) for notice to be given by the ERA to a Rule Participant that identifies the suspected breach to be investigated by the ERA.
  - (ii) A [process](#) through which a Rule Participant may make submissions to the ERA to explain a suspected breach, prior to the ERA making a determination on whether a Rule Participant has breached the WEM Rules or WEM Procedures.
- (b) A [process](#) for Rule Participants to report suspected breaches of the WEM Rules or WEM Procedures under clauses 2.13.15 2.13.23 and 2.13.24 including the required information a Rule Participant must provide to the ERA.<sup>4,5,6</sup>
- (c) The [form](#) that may be used by Rule Participants to report a breach, or suspected breach, of the WEM Rules or WEM Procedures by the Rule Participant to the ERA in accordance with clause 2.15.3(b).
- (d) The [processes](#) for the ERA to assign a risk rating to each suspected breach, including the matters the ERA will take into account, that will determine whether the suspected breach is required to be investigated by the ERA.
- (e) The [processes](#) for investigations of suspected breaches of the WEM Rules or WEM Procedures.
- (f) The [processes](#) for suspending or closing investigations of suspected breaches of the WEM Rules or WEM Procedures under clause 2.13.33 of

<sup>3</sup> Clause 2.15.3 outlines what the Monitoring Protocol WEM Procedure must specify.

<sup>4</sup> Clause 2.13.15 is a general obligation for AEMO to notify the ERA where it becomes aware of a suspected breach of the WEM Rules.

<sup>5</sup> Clause 2.13.23 is a general obligation for Rule Participants to self-report their own breaches of the WEM Rules or WEM Procedures.

<sup>6</sup> Clause 2.13.24 allows Rule Participants to report suspected breaches of the WEM Rules by other Rule Participants.



the WEM Rules, including the matters the ERA may take into account in making a decision.

- (g) The [processes and timeframes](#) applying to a suspended investigation of a suspected breach of the WEM Rules or WEM Procedures, including the timeframes under which a suspended investigation may be resumed.
- (h) [Guidelines](#) for the ERA when issuing warnings to Rule Participants under clause 2.13.36(a).
- (i) The [process](#) for bringing proceedings before the Electricity Review Board (ERB) for an order to be made by the ERB under the WEM Regulations.
- (j) The [processes](#) to be followed by the ERA, including the matters the ERA may take into account and the circumstances it may have regard to, when deciding to issue a civil penalty notice under clause 2.13.36(c) and when determining the Civil Penalty Amount to be imposed.
- (k) The [processes](#) for keeping a public register of breaches under clause 2.13.49 and publishing the public register in accordance with clause 2.13.53.
- (l) The processes it will require the Australian Energy Market Operator ([AEMO](#)) and [Network Operators](#) to implement to assist the ERA in monitoring and assessing Rule Participants' compliance with the WEM Rules and WEM Procedures.
- (m) Any other relevant matters under sections 2.13, 2.14 and 2.15.

## 3.2 Monitoring Priorities

### 3.2.1 The ERA prioritises WEM monitoring into three categories:

- (a) **Mandatory:** Areas the WEM Rules mandate that the ERA must monitor.
- (b) **Risk-based:** Areas the ERA has identified as requiring monitoring from the [risk assessment process](#).
- (c) **Trend-based:** Areas the ERA has decided to prioritise for monitoring based on its observations of the market.<sup>7</sup>

The WEM monitoring priorities will be published and updated on the [ERA's website](#).<sup>8</sup>

### 3.2.2 The ERA will monitor Rule Participants' compliance using various methods, including but not limited to:<sup>9</sup>

- (a) **Market intelligence:** Assessing information received from stakeholders that may identify matters requiring further investigation.

<sup>7</sup> The ERA may also update any trend-based monitoring priorities in the [six monthly reports](#).

<sup>8</sup> Updates to the monitoring priorities will be announced via a published [Notice](#).

<sup>9</sup> The ERA will perform its monitoring functions using the method and information it considers most appropriate to the obligation being monitored.

- (b) Market monitoring: Analysing market related information, data and documents, including that provided by AEMO, through a suite of tools and systems (e.g., bidding and pricing information, dispatch data, outage data etc) which may identify potential areas of non-compliance.
  - (c) Targeted compliance activities: Targeted reviews of Rule Participants may be carried out to assess compliance with specific WEM Rule obligations or groups of obligations, or areas identified as being of particular compliance concern, or where monitoring is required because the WEM Rules provide for special arrangements.
- 3.2.3 Market related data, information and documents (materials) are made available to the ERA by AEMO and each Network Operator to assist the ERA to monitor Rule Participants' behaviour for compliance with the WEM Rules and WEM Procedures (clauses 2.13.4 and 2.13.5 of the WEM Rules).
- 3.2.4 The ERA will publish a list of:
- (a) The types of market related data, information or documents provided by AEMO under clause 2.13.4 of the WEM Rules
  - (b) WEM Rules that AEMO monitors for compliance
- on the ERA website (clause 2.16.2A(b) of the WEM Rules).
- 3.2.5 The ERA may request that AEMO provide additional materials than the types of material periodically provided. Where the ERA requests information from AEMO that is not one of the types periodically provided and the materials relate to a specific Rule Participant (or group of Rule Participants), the ERA will provide a notification to the relevant Rule Participant(s) (clause 2.13.6 of the WEM Rules).<sup>10</sup>
- 3.2.6 The information collected through the methods set out in paragraph 3.2.2 of this document will be assessed to identify potential areas of non-compliance. Where possible non-compliances are identified, these will be risk rated in accordance with section 5 of this document and may be investigated in accordance with clause 2.13.27 of the WEM Rules. If the ERA identifies any market behaviour that has resulted in the market not functioning effectively the ERA must investigate in accordance with clause 2.16.9 of the WEM Rules.
- 3.2.7 Where the ERA determines that it will commence an investigation into a suspected breach identified through its monitoring processes, the ERA will notify the relevant Rule Participant of the suspected breach being investigated by email (clause 2.15.3(a)(i) of the WEM Rules).<sup>11</sup>

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<sup>10</sup> The ERA will notify the Rule Participant (or group of Rule Participants) at the time of the information request or as soon as practicable after the request is made.

<sup>11</sup> The ERA will notify the Rule Participant at the time the decision is made to investigate or as soon as practicable after the decision is made.

### 3.3 AEMO's Role in Monitoring Compliance

#### 3.3.1 Under clause 2.13.7 of the WEM Rules, AEMO must:

- (a) Monitor Rule Participant's behaviour for compliance with the WEM Rules specified in the list of WEM Rules provided by the ERA that AEMO must monitor for compliance.<sup>12</sup>
- (b) Ensure it has processes and systems in place to allow it to monitor Rule Participant's behaviour in accordance with clause 2.13.7(a) and in accordance with the list of WEM Rules provided by the ERA that AEMO must monitor for compliance, including developing systems for monitoring.<sup>13</sup>
- (c) Support the ERA's monitoring of Rule Participants' behaviour, including having processes and systems to provide the ERA with data, information, documents or analysis under clauses 2.13.4, 2.13.7, 2.13.8(a), 2.13.8(b) or 2.13.14 of the WEM Rules, as applicable.
- (d) Subject to clause 2.13.12, record and report to the ERA any suspected breach of the WEM Rules or WEM Procedures resulting from its monitoring under clause 2.13.7(a).

#### 3.3.2 AEMO is required to develop a WEM Procedure (clause 2.15.4 of the WEM Rules) to set out:

- (a) How AEMO will carry out its obligations to monitor Rule Participants' behaviour for compliance under clause 2.13.7.
- (b) How AEMO will monitor dispatch compliance before, during or after a Dispatch Instruction event.
- (c) How AEMO will carry out its obligations to support the ERA under clauses 2.13.4, 2.13.8 and 2.13.9 of the WEM Rules.
- (d) The notification and reporting processes that AEMO will use to notify the ERA under clause 2.13.14, 2.13.8 and 2.13.15 of the WEM Rules.
- (e) The situations where AEMO considers it does not need to notify the ERA of a suspected breach under clause 2.13.14.
- (f) Any other matters relevant to AEMO's obligations in section 2.13.

#### 3.3.3 The ERA may obtain data from Market Participants' Generator Monitoring Plans for Transmission Connected Generating Systems. The data the ERA may obtain is specified in the WEM Procedure AEMO develops and is required to maintain under clause 3A.6.2 of the WEM Rules.<sup>14</sup>

<sup>12</sup> Refer clauses 2.16.2A and 2.16.2AA of the WEM Rules.

<sup>13</sup> Refer clauses 2.16.2A and 2.16.2AA of the WEM Rules

<sup>14</sup> Clause 3A.6.2(a)(iii) requires the AEMO WEM procedure to document "the information and data provision obligations a Market Participant responsible for a Transmission Connected Generating System must comply with when requested by AEMO, the Network Operator or the Economic Regulation Authority, including the form by which that information and data must be provided".

3.3.4 Rule Participants should refer to [AEMO's Monitoring and Reporting Protocol](#) for further information on AEMO's processes in relation to its support role.

#### 3.4 Network Operator's Role in Monitoring Compliance

3.4.1 Each Network Operator must cooperate with the ERA by providing any data, information or document in the Network Operator's possession or control that the ERA would be entitled to receive under the Market Information chapter of the WEM Rules and where the ERA believes it may assist the ERA to monitor the Network Operator's compliance with the provisions of the WEM Rules and WEM Procedures (clause 2.13.5 of the WEM Rules).

3.4.2 The ERA may obtain data from the Generator Register that a Network Operator must make available to the ERA under clause 3A.7.7(c) of the WEM Rules.<sup>15</sup>

### 4. BREACHES

#### 4.1 When to Self-Report a Suspected Breach to the ERA

4.1.1 When a Rule Participant becomes aware of an incident it should assess the incident to determine if it has breached the WEM Rules or a WEM Procedure. The ERA recognises that not all incidents are the result of a breach of a WEM Rule or a WEM Procedure by a Rule Participant.

4.1.2 If, during an incident assessment, a Rule Participant determines that it has breached, or has reasonable cause to suspect it has breached the WEM Rules or a WEM Procedure, that Rule Participant must self-report the suspected breach to the ERA, unless the suspected breach is a non-compliance of a Registered Generator Performance Standard or a Generator Monitoring Plan approved by AEMO (clause 2.13.23 of the WEM Rules).

4.1.3 Where a Market Participant considers that it has been non-compliant or has reasonable cause to suspect it has been non-compliant with a Registered Generator Performance Standard or a Generator Monitoring Plan approved by AEMO, it must follow the process set out in Chapter 3A of the WEM Rules (clause 2.13.26 of the WEM Rules).

4.1.4 All other suspected breaches must be reported to the ERA in accordance with the timeframes in section 4.2 and follow the process set out in section 4.3.

4.1.5 A Rule Participant, other than AEMO, may notify the ERA at any time if it suspects that another Rule Participant is in breach of the WEM Rules or WEM Procedures and must provide reasonable information in support of that suspected breach (clause 2.13.24 of the WEM Rules). Any notifications of suspected breaches by another Rule Participant must include the information set out in paragraph 4.3.2 of this document.

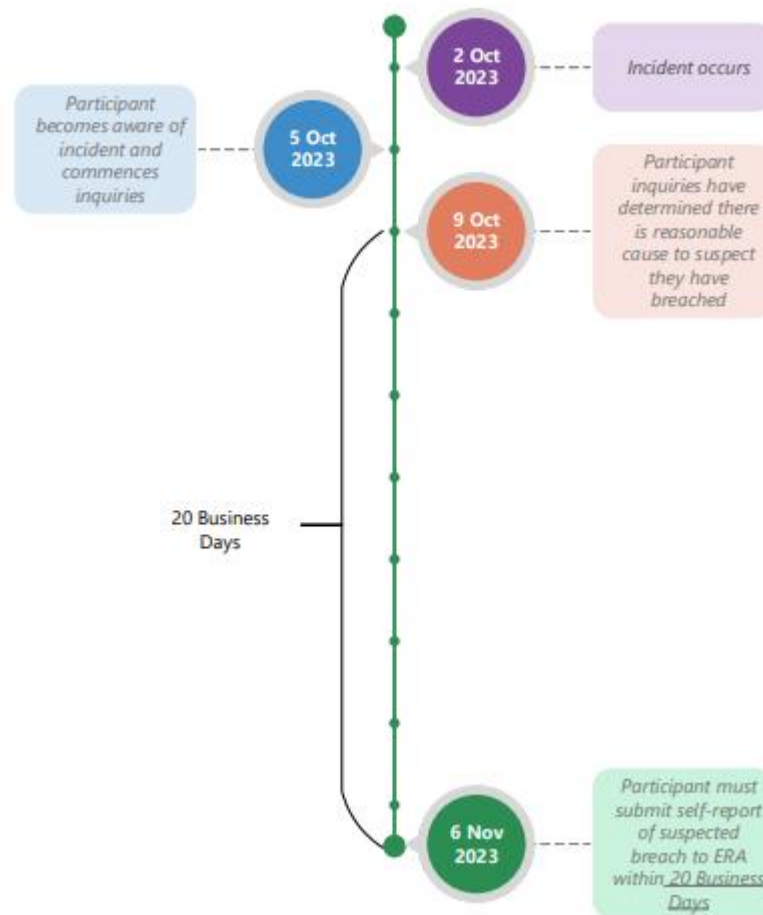
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<sup>15</sup> The ERA has not required Network Operators to implement any specific processes to assist the ERA in monitoring and assessing Rule Participants' compliance with the WEM Rules and WEM Procedures.

## 4.2 Timeframe for Self-Reporting Suspected Breaches to the ERA

- 4.2.1 Rule Participants must submit a self-report to the ERA in accordance with section 4.3 of this document within 20 Business Days of determining that there is reasonable cause to suspect an incident is a breach of the WEM Rules, unless an extension has been requested in accordance with paragraph 4.2.2 of this document (refer [Figure 2](#)).

**Figure 2: Self-Reporting Timeline Example**



- 4.2.2 If a Rule Participant is unable to submit a formal self-reported breach notification within 20 Business Days, it should contact the ERA as soon as possible to request an extension. The ERA will reasonably consider extensions to these timeframes where sufficient justification has been made by the Rule Participant. Amendments to standard time frames will be considered on a case-by-case basis.

## 4.3 Processes for Reporting Suspected Breaches to the ERA

- 4.3.1 The process for reporting suspected breaches to the ERA are set out in this document (clause 2.15.3(b) of the WEM Rules).

- 4.3.2 A notification of a suspected breach must be in writing and contain:<sup>16,17</sup>
- (a) The name of the Rule Participant and contact details for the person responsible for the notification.<sup>18</sup>
  - (b) The name of the Rule Participant who is alleged to have breached the WEM Rules or WEM Procedures.
  - (c) The specific clauses in the WEM Rules or which WEM Procedures are alleged to have been breached.
  - (d) The dates and times on which the suspected breach occurred.<sup>19</sup>
  - (e) A description of the suspected breach with any supporting information for the allegation.

If available, the notification should also include:

- (f) If the breach is by the notifying Rule Participant, details explaining:
  - The root cause of the breach
  - Any mitigating circumstances
  - Any proposed remedies
  - Actions planned or implemented to prevent recurrence.
- (g) Details of any known impact to the market or Rule Participants.
- (h) Any other information considered relevant.

Otherwise items (f) to (g) may be submitted to the ERA after the initial breach notification in accordance with paragraph 4.3.7 of this document.

- 4.3.3 Notifications of individual suspected breach matters can be reported to the ERA using the form available on the [ERA's website](#). Alternatively, suspected breaches can be reported by email to:

Email: [market.compliance@erawa.com.au](mailto:market.compliance@erawa.com.au)

If email is not possible, then the notification may be sent via registered post to:

Post: PO Box 8469, PERTH BC WA 6849.

- 4.3.4 Rule Participants may also provide notifications of suspected breach matters in the batch report template available on the [ERA's website](#) by email to [market.compliance@erawa.com.au](mailto:market.compliance@erawa.com.au) providing:

<sup>16</sup> Clause 2.13.23 requires a Rule Participant to notify the ERA of a suspected breach in writing.

<sup>17</sup> Clause 2.13.25 requires a notification of a suspected breach to include the information specified in this document.

<sup>18</sup> Unless otherwise advised, the ERA will consider this person as the primary contact and will direct any correspondence in relation to the matter to this person.

<sup>19</sup> Times are only required if they are applicable to the suspected breach.

- (a) The timeframe for self-reporting in paragraph 4.2.4 is met.
  - (b) There are a minimum of five matters in the batch report to the ERA. For less than five matters, the process in paragraph 4.3.3 is to be followed.
- 4.3.5 Confidential or personal information included in any notification to the ERA should be clearly marked so the ERA can ensure it is appropriately protected.
- 4.3.6 On receiving a written notification under paragraph 4.3.3 or 4.3.4, the ERA will record the details of the suspected breach (clause 2.13.27(a) of the WEM Rules).
- 4.3.7 A Rule Participant may, at any time after making a notification of a suspected breach under paragraph 4.3.3 or 4.3.4, provide updated information to the ERA in relation to the suspected breach in writing to [market.compliance@erawa.com.au](mailto:market.compliance@erawa.com.au) (clause 2.13.23 of the WEM Rules).
- 4.3.8 When investigating the suspected breach in accordance with the processes set out in section 5 of this document, the ERA will consider whether it is appropriate to disclose to the Rule Participant alleged to have committed the breach the identity of the Rule Participant reporting the suspected breach. In exercising this discretion the ERA will take into consideration any request for anonymity from the party alleging the breach.
- 4.4 Reporting Process for Chapter 3A Breaches - Requirements for Transmission Connected Generating Systems
- 4.4.1 Suspected non-compliances with:
- (a) An applicable Registered Generator Performance Standard
  - (b) An applicable approved Generator Monitoring Plan
- or
- (c) An approved Rectification Plan.
- must be reported to AEMO in accordance with [AEMO's WEM Procedure: Generator Monitoring Plans](#).<sup>20</sup>
- 4.5 Prioritising Suspected Breach Reports
- 4.5.1 If the ERA becomes aware of a suspected breach of the WEM Rules or the WEM Procedures it must investigate the suspected breach in accordance with the risk rating assigned to the type of suspected breach in accordance with this procedure (clause 2.13.27(b) of the WEM Rules).
- 4.5.2 When the ERA becomes aware of a suspected breach, it will apply the risk-based approach described in section 2.1 to assign a risk rating to the suspected breach.

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<sup>20</sup> Clause 2.13.26 requires Market Participants to report suspected non-compliances with Registered Generator Performance Standards or approved Generator Monitoring Plans in accordance with the process set out in Chapter 3A.

The assigned risk rating will determine whether the suspected breach should be investigated, and if so the priority of that investigation.<sup>21</sup>

4.5.3 There are certain suspected breaches that the ERA must investigate per the WEM Rules:

- (a) Suspected breaches that are alleged to have occurred prior to 1 October 2023.<sup>22</sup>
- (b) Any Rule Participant market behaviour that the ERA considers has resulted in the market not functioning effectively (clauses 2.13.2 and 2.16.9 of the WEM Rules).
- (c) Any notification by a Rule Participant or AEMO of behaviour that the Rule Participant considers reduces the effectiveness of the market (clause 2.16.8 of the WEM Rules).
- (d) Any potential breaches of clause 2.16A.1 and, where those breaches have resulted in an Irregular Price Offer, whether an inefficient market outcome has resulted (clause 2.16C.6 and 2.16C.7 of the WEM Rules).<sup>23</sup>
- (e) The ERA has been notified of a suspected breach of a Registered Generator Performance Standard or an approved Generator Monitoring Plan that AEMO considers threatens Power System Security or Power System Reliability under clause 3A.12.2 (clause 3A.12.3(a) of the WEM Rules).
- (f) Repeated failure to comply with a Registered Generator Performance Standard (Clause 3A.12.3(b) of the WEM Rules).
- (g) Repeated failure to comply with an approved Generator Monitoring Plan (Clause 3A.12.3(c) of the WEM Rules).

4.5.4 The following process will be applied by the ERA when assigning the risk rating to a suspected breach of a WEM Rule:<sup>24</sup>

- (a) Consider the baseline risk score of the WEM Rule obligation or, in the case of a suspected breach of a WEM Procedure, the baseline risk score of the associated WEM Rule obligation, if any.<sup>25,26,27</sup>
- (b) Review information provided in the report to the ERA determine if any change to the risk score is required (for example, are the severity of the

<sup>21</sup> The ERA can become aware of a suspected breach through its monitoring processes or Rule Participants' reporting.

<sup>22</sup> Prior to the commencement of the new market, clause 2.13.10(b) of the WEM Rules required the ERA to investigate all suspected breaches it became aware of.

<sup>23</sup> Clause 2.16A.1 requires Market Participants to offer prices in each of its STEM Submissions and Real-Time Market Submissions that reflect only the costs that a Market Participant without market power would offer.

<sup>24</sup> Breach risk

<sup>25</sup> Each new market WEM Rule obligation is assigned an initial baseline risk rating using the risk tables in [Appendix 1](#).

<sup>26</sup> Breaches alleged to have occurred prior to new market start may not have a baseline risk score, in which case the risk rating will be based only on the information in the suspected breach report.

<sup>27</sup> If there is no associated WEM Rule obligation for a breach of a WEM Procedure, the ERA will assign a risk based only on the information in the suspected breach report.



consequences higher or lower, based on the provided information) and then assign a risk rating to the suspected breach accordingly.

- (c) Record the breach risk rating.
- (d) The breach risk rating will determine whether the suspected breach will be investigated and the priority of the investigation (refer [Table 1](#)).

**Table 1: Investigation and Prioritisation**

Breach Risk Rating	Will the suspected breach report be investigated?	Investigation priority
Low	No <sup>28</sup>	Not applicable
Moderate	Maybe <sup>29</sup>	Low
Significant	Yes	Medium
Extreme	Yes	High

4.5.5 For any suspected breaches referred to in paragraph 4.5.3 whilst the ERA will assign a risk rating in accordance with paragraph 4.5.4, the risk rating will only be used to prioritise the investigation.

## 5. INVESTIGATIONS

### 5.1 Investigation Powers

5.1.1 Rule Participants (including AEMO and each Network Operator) must cooperate with an investigation of a suspected breach of the WEM Rules or WEM Procedures (clause 2.13.30 of the WEM Rules), including:

- (a) Providing the ERA with any information requested in a timely manner.
- (b) Allowing reasonable access to equipment for the purpose of an inspection.

5.1.2 As part of an investigation the ERA (under clause 2.13.28 of the WEM Rules) may:

- (a) require information and records from Rule Participants
- (b) conduct an inspection of a Rule Participant's equipment.

5.1.3 The ERA may request outcomes, reporting data and supporting evidence from Market Participants in respect of a Market Participant's Generator Monitoring Plan which is approved by AEMO, if the ERA reasonably considers this information will assist the ERA in meeting its functions and obligations under the WEM Rules (clause 3A.6.13 of the WEM Rules).

<sup>28</sup> Generally the ERA will not investigate breach allegations with a Low risk rating, however clause 2.13.27(c) allows the ERA to investigate where it considers this is reasonably required. For example, repeated multiple Low risk breaches may indicate a systemic issue which warrants investigation.

<sup>29</sup> For breach allegations with a Moderate risk rating the ERA will investigate based on the risk score.

- 5.1.4 Information requested by the ERA from Market Participants under clause 3A.6.13 of the WEM Rules, should be provided to the ERA within five Business Days, or if agreed with the ERA, by an extended date (clause 3A.6.16 of the WEM Rules).
- 5.1.5 At any time during an investigation the ERA may meet with the Rule Participant on one or more occasions to discuss the suspected breach and actions to rectify it (clause 2.13.29 of the WEM Rules).
- 5.1.6 Where the ERA requires information, records or access to equipment or seeks a meeting it will confirm the request in writing by email to the person nominated as the compliance contact for the Rule Participant as provided under paragraph 1.3.2 of this document, or any other appropriate officer from the Rule Participant's organisation that the ERA considers appropriate. The request from the ERA will indicate a date which the ERA considers timely, by which the information and records should be provided.
- 5.1.7 Rule Participants may request in writing for the ERA to extend the date to comply with the information requests from the ERA referred to this document. The ERA must consider the individual circumstances of the request and advise the Rule Participant of whether the extension has been granted, and if so details of the extension, and if not, the reasons for not granting the extension.
- 5.1.8 In the event that a Rule Participant does not cooperate with an ERA investigation, the ERA may appoint a person to investigate the matter and to provide a report or other documentation as required. The Rule Participant under investigation is liable for the costs, unless the ERA otherwise determines, and must assist the person undertaking the investigation (clause 2.13.32 of the WEM Rules).
- 5.1.9 Where the ERA decides that, in the course of its investigation, it needs to execute a search warrant, it must follow the requirements set out in Part 5, Division 2 of the WEM Regulations. These relate to:
- (a) Authorisation of an officer or employee of the ERA, in accordance with Regulation 23.
  - (b) Application for search warrants, in accordance with Regulation 24.
  - (c) Announcements before entry, in accordance with Regulation 25.
  - (d) Giving a copy of the warrant to the occupier, in accordance with Regulation 26.
  - (e) Provision of copies of seized documents, in accordance with Regulation 27.
  - (f) Retention and return of seized documents, in accordance with Regulation 28.
- 5.2 Investigation Process
- 5.2.1 The ERA will generally become aware of a suspected breach of the WEM Rules and/or WEM Procedures through the monitoring or reporting processes set out in sections 3 and 4 of this document, respectively.

- 5.2.2 Where the ERA forms the view that a matter identified through its monitoring processes is not a suspected breach, then the investigation processes set out in this document do not apply.
- 5.2.3 Prior to making the assessment referred to in paragraph 5.2.2 of this document, the ERA may undertake detailed analysis, including examining data and other information available, and/or seeking further information from Rule Participants. This analysis may also include monitoring of specific or general behaviours by Rule Participants.
- 5.2.4 Where the ERA forms the view that a matter identified through its monitoring processes is a suspected breach of the WEM Rules or WEM Procedures, the ERA will apply the risk-based approach described in section 2.1 to assign a risk rating to the suspected breach. The assigned risk rating will determine whether the suspected breach should be investigated, and if so the priority of that investigation (clause 2.13.27(b) of the WEM Rules).<sup>30</sup>
- 5.2.5 The ERA must investigate a Market Participant's suspected breach of a Generator Monitoring Plan approved by AEMO, or a Registered Generator Performance Standard, if it receives a notification from AEMO under clause 3A.12.2 (clause 3A.12.3 of the WEM Rules)
- 5.2.6 The processes for investigating suspected breaches are required to be set out in this document (clause 2.15.3(e) of the WEM Rules).
- 5.2.7 The general investigation process will usually involve the following phases and steps:
- (a) Assessment phase: On becoming aware of a suspected breach the ERA will:
    - (i) Record the suspected breach (use 2.13.27(a) of the WEM Rules).
    - (ii) Assign a risk rating to the suspected breach to determine if investigation is required and prioritise the suspected breach for investigation in accordance with section 4.5 (clause 2.13.27(b) of the WEM Rules).
  - (b) Investigation phase: If the ERA determines that an investigation is required based on the risk assessment and prioritisation process:
    - (i) The ERA will notify the Rule Participant alleged to be in breach. (Note, the timing of this notification will depend on whether such notification could prejudice the investigation).
    - (ii) The ERA must record the investigation on a public register provided that any information identifying Rule Participants is redacted or otherwise anonymised (clause 2.13.49A(a) of the WEM Rules).
    - (iii) The ERA may request further information as specified in section 5.1 (clause 2.13.28 of the WEM Rules).

<sup>30</sup> Clause 3A.12.2 requires AEMO to notify the ERA if an alleged or suspected non-compliance with a Registered Generator Performance Standard or Approved Generator Monitoring Plan threatens power system security or reliability.

- (iv) To establish the facts of the suspected breach, the ERA may gather evidence from relevant parties such as:<sup>31</sup>
  - AEMO
  - The Network Operator
  - Other Rule Participants.
- (v) The evidence gathered will be recorded and stored in accordance with the State Records Act 2000 (WA).
- (vi) If the ERA's preliminary findings are that the Rule Participant has breached the WEM Rules or a WEM Procedure, the Rule Participant alleged to be in breach will be given notice of the ERA's preliminary findings including the reasons or rationale for these findings and will be requested to make a submission in response to these preliminary findings (clause 2.15.3(a)(ii) of the WEM Rules).<sup>32</sup>

Submissions must be in writing and should be made via email to:

Email: [market.compliance@erawa.com.au](mailto:market.compliance@erawa.com.au)

If email is not possible, then the notification may be sent via registered post to:

Post: PO Box 8469, PERTH BC WA 6849.

- (vii) When requesting a submission response to preliminary findings the ERA will work with the Rule Participant to determine a timeframe appropriate to the matter being considered. The ERA will reasonably consider extensions to these timeframes where sufficient justification has been made by the Rule Participant. Amendments to standard time frames will be considered on a case-by-case basis and assessed by exception.
- (viii) The ERA may meet with the Rule Participant alleged to be in breach at any stage during the investigation process (clause 2.13.29 of the WEM Rules).
- (ix) Any further information provided by the Rule Participant alleged to be in breach will be taken into consideration when finalising the investigation.
- (x) At any stage during the investigation, the ERA may suspend or close the investigation in accordance with section 5.4 of this document.
- (xi) The investigation findings will be documented in an internal investigation report.

(c) Outcome phase: On conclusion of the investigation phase:

<sup>31</sup> Clause 2.13.30 of the WEM Rules requires Rule Participants to cooperate with an investigation into a suspected breach.

<sup>32</sup> Depending on the complexity of the matter there may be iterative preliminary findings based on submissions received by the ERA.

- (i) The ERA must determine whether a breach of the WEM Rules or WEM Procedures has occurred (clause 2.13.27(d) of the WEM Rules).
- (ii) The ERA will notify the parties of the outcome of the investigation, including whether the ERA has determined that a breach has occurred and the compliance action(s) that the ERA considers appropriate in accordance with section 5.3 of this document.<sup>33</sup>
- (iii) Where the ERA determines that a breach has occurred, the final risk of the matter will be assessed based on all known information to help determine:
  - Materiality level of the breach.
  - Appropriate investigation outcome.
  - Civil penalty amount, if applicable.
  - If a breach should be recorded on the public register under clause 2.13.49(b) if the WEM Rules.
- (iv) Where the ERA determines that a breach has not occurred, it must record the closed investigation and the reasons for the determination on a public register (clause 2.13.49A(b) of the WEM Rules
- (v) Where the ERA determines that a breach has not occurred and the breach was self-reported, the ERA must also notify the Rule Participant who self-reported the suspected breach (clause 2.13.35 of the WEM Rules).<sup>34</sup>
- (vi) Where the ERA's compliance action recommends the implementation of any actions by the Rule Participant alleged to be in breach, the ERA may follow up on the progress of implementation of these actions.
- (vii) Where applicable, the ERA will commence enforcement actions; in accordance with section 6 of this document.
- (viii) The ERA will record the outcomes of its investigations (clause 2.13.27(e) of the WEM Rules).

5.2.8 Each investigation will be carried out in a manner appropriate to the circumstances of the matters alleged to be in breach and consistent with WEM Rule requirements.

5.2.9 At any time during an investigation, the ERA may suspend or close the investigation in accordance with section 5.4 of this document.

### 5.3 Investigation Outcomes

<sup>33</sup> The ERA will notify the parties as soon as practicable after the appropriate internal processes have been followed.

<sup>34</sup> The ERA will notify the Rule Participant as soon as practicable after the appropriate internal processes have been followed.

- 5.3.1 If an investigation is not suspended or closed, at the conclusion of an investigation the ERA must determine whether a breach of the WEM Rules or WEM Procedures has occurred (clause 2.13.27(d) of the WEM Rules).
- 5.3.2 Where the ERA determines that a breach has occurred, the ERA will consider the appropriate compliance action(s) in response to the breach. The ERA has statutory compliance actions available to it under the WEM Rules and the WEM Regulations (e.g., warnings, civil penalties and/ or commencement of proceedings before the ERB), and also administrative responses, such as providing education advice and seeking a voluntary compliance program (refer [Figure 3](#)).

**Figure 3: Compliance Actions**



- 5.3.3 Figure 3 shows the compliance actions available to the ERA and how the ERA may apply them based on assessed risk. This information should be read in conjunction with step 5.2.8(c)(iii) above. Each matter investigated must be considered on a case-by-case basis having regard to the individual circumstances applicable to that matter.
- 5.3.4 The processes to be followed and the matters the ERA may take into account when deciding to issue a civil penalty notice are set out in this document (clause 2.15.3(j) of the WEM Rules).
- 5.3.5 In determining the appropriate compliance action(s) referred to in paragraph 5.3.2, the ERA will reassess the risk as per step 5.2.8(c)(iii).
- 5.3.6 At the conclusion of its investigation, the ERA will notify the Rule Participant alleged to be in breach of the outcome of the investigation. The notification will be in writing and include the following information:<sup>35</sup>

<sup>35</sup> The ERA will notify Rule Participants as soon as practicable after the appropriate internal processes have been followed.

- (a) The clauses of the WEM Rules or WEM Procedures alleged to be in breach.
- (b) A summary of the facts of the matters investigated.
- (c) The ERA's determination of whether a breach has occurred or not.
- (d) In the case where a breach has been determined, the reasons for the determination.
- (e) The compliance action(s) that the ERA considers appropriate.

5.3.7 If the ERA suspends or closes an investigation, it must notify the Rule Participant alleged to be in breach that the investigation is suspended or closed (clause 2.13.34 of the WEM Rules).<sup>36</sup>

5.3.8 In circumstances where the ERA determines a breach has occurred and it commences proceedings before the ERB, notification of these proceedings to the Rule Participant alleged to be in breach will occur as part of the process for these proceedings. In these circumstances the ERA has discretion not to provide the notification referred to in paragraph 5.3.6.

5.3.9 The ERA may also notify the Rule Participant who reported the breach of the investigation outcome, if the breach was not self-reported, if the ERA considers this to be appropriate and permitted under the confidentiality provisions of the WEM Rules.

#### 5.4 Suspending or Early Closure of an Investigation

5.4.1 The processes and timeframes for suspending or closing investigations under clause 2.13.33 of the WEM Rules are set out in this document (clause 2.15.3(f) and (g) of the WEM Rules).

5.4.2 Where a suspected breach was self-reported to the ERA under clause 2.13.23 and the ERA is reasonably satisfied that:

- (a) If the breach can be rectified, the Rule Participant:
  - (i) Has rectified the suspected breach.
  - or
  - (ii) Undertakes to rectify the suspected breach by taking actions agreed to by the ERA.
- (b) Where required by the ERA, the Rule Participant agrees to take actions agreed to by ERA intended to prevent a recurrence of the suspected breach.

the ERA may suspend or close an investigation of a suspected breach (clause 2.13.33(a) of the WEM Rules).

<sup>36</sup> The ERA will notify the Rule Participant as soon as practicable after the decision to suspend or close is made.

5.4.3 The ERA may also:<sup>37</sup>

- (a) Suspend an investigation if:
- During investigation, the risk rating of the suspected breach falls below the investigation threshold.
  - or
  - The Rule Participant agrees to undertake actions to mitigate or prevent recurrence but has not yet completed those actions.
- (b) Close an investigation if:
- The Rule Participant alleged to have breached the WEM Rules is no longer a legal entity.
  - or
  - An investigation has been suspended for 6 months or more.

5.4.4 Where the ERA suspends or closes an investigation, the ERA will:

- (a) Notify the relevant Rule Participant of the suspension or closure by email (clause 2.13.34 of the WEM Rules).<sup>38</sup>
- (b) Record the suspension or closure of the investigation, including the reasons for suspending or closing the investigation in a public register (clause 2.13.49A(c) of the WEM Rules).

5.5 Suspending and Resuming Investigations

5.5.1 If a suspected breach meets the requirements outlined in section 5.4, the ERA may suspend an investigation into the suspected breach.

5.5.2 If the ERA suspends an investigation, it will reassess the suspended investigation every six months to determine if the investigation should be:

- (a) Closed
- (b) Reopened
- or
- (c) Suspended again for reassessment.

5.5.3 A suspended investigation may be closed where:

- (a) Rule Participants have completed any outstanding actions agreed to with the ERA.

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<sup>37</sup> Clause 2.13.33(b) of the WEM Rules specifies that the ERA may suspend or close an investigation in any other circumstances specified in the WEM Procedure.

<sup>38</sup> The ERA will notify the Rule Participant as soon as practicable after the decision to suspend or close is made.



(b) New information is received that results in a decrease in the risk rating of the suspected breach.

or

(c) No further alleged non-compliant behaviour has been identified.

5.5.4 A suspended investigation may be reopened where:

(a) Participants have failed to complete outstanding actions by timeframes agreed to with the ERA.

(b) New information is received that results in an increase in the risk rating of the suspected breach.

or

(c) The ERA identifies that the suspected breach forms part of a pattern of non-compliant behaviour.

5.5.5 An investigation may be suspended again for reassessment where:

(a) Participants still have outstanding actions agreed to with the ERA.

or

(b) There has not been sufficient time for the ERA to assess if the suspected breach forms part of a pattern of non-compliant behaviour.

5.5.6 If the ERA reopens or closes a suspended investigation, it will notify the relevant Rule Participant in accordance with paragraph 5.4.4.

5.6 Closing an Investigation Early

5.6.1 If a suspected breach meets the requirements outlined in section 5.4, the ERA may close the investigation in the circumstances outlined in paragraph 5.4.3.

5.6.2 If the ERA closes an investigation early, it will notify the relevant Rule Participant in accordance with paragraph 5.4.4.

## 6. ENFORCEMENT

6.1 Warnings

6.1.1 This document must set out guidelines for the ERA when issuing warnings (clause 2.15.3(h) of the WEM Rules).

6.1.2 Where the ERA determines that a breach of the WEM Rules has taken place, it may issue a warning to the Rule Participant (clause 2.13.36(a) of the WEM Rules).

6.1.3 Where the ERA considers that a warning is appropriate the warning must:

(a) Identify the specific clause or clauses of the WEM Rules or WEM Procedures that are believed to have been or are being breached.

- (b) Describe the behaviour considered to be non-compliant.
  - (c) Request an explanation where the ERA considers it relevant.
  - (d) Request rectification of the contravention, where relevant, including a timeframe that the ERA considers to be reasonable to accomplish the request.
- 6.1.4 The ERA may provide the warning by email or post to the person nominated as the primary contact for the Rule Participant under paragraph 1.3.2 or alternatively to any other appropriate officer of the Rule Participant as the ERA considers appropriate.
- 6.1.5 The ERA will specify in the warning the timeframe within which the Rule Participant is required to provide the explanation referred to in paragraph 6.1.3(c). The Rule Participant is required to provide the explanation within the specified timeframe. The explanation is required to be in writing and may be provided to the ERA by email or post using the contact details provided in paragraph 1.3.1.
- 6.1.6 The Rule Participant may request the ERA to extend the timeframe to provide the explanation referred to in paragraph 6.1.3(c) in writing. The ERA will follow the process set out in paragraph 5.1.7 in assessing a request for an extension of time.
- 6.1.7 On receipt of a response to a warning from the Rule Participant, the ERA will record the response of the Rule Participant.
- 6.2 Civil Penalties
- 6.2.1 This document must set out the processes to be followed including the matters the ERA may take into account and the circumstances it may have regard to, when issuing a civil penalty notice (clause 2.15.3(j)(ii) of the WEM Rules).
- 6.2.2 Regulation 30 of the WEM Regulations deems certain WEM Rules as “civil penalty provisions”. In Schedule 1 to the WEM Regulations, these provisions have been allocated a category (A, B or C) and maximum penalty amounts payable for a breach. The Regulations are available on the State Law Publisher website at: <https://www.legislation.wa.gov.au>.<sup>39</sup>
- 6.2.3 If as a result of an investigation, the ERA determines that a breach of a “civil penalty provision” has occurred, it may issue a penalty notice in accordance with the WEM Regulations (clause 2.13.36(c) of the WEM Rules).<sup>40</sup>
- 6.2.4 In determining whether a civil penalty notice will be issued, Clause 2.13.42 of the WEM Rules requires the ERA to have regard to all relevant matters including:<sup>41</sup>
- (a) The nature and extent of the breach and whether it is ongoing.
  - (b) Whether the Rule Participant has self-reported or has taken any mitigating actions.

<sup>39</sup> The civil penalty amounts applicable to a breach are determined by the WEM Regulations that were in force at the date the breach occurred.

<sup>40</sup> Regulation 31 of the WEM Regulations.

<sup>41</sup> Clause 2.13.42 requires the ERA to consider the relevant matters before issuing a civil penalty.

- (c) The nature and extent of any loss or damage suffered because of the breach.
- (d) The impact and potential impact of the breach on the market and the power system.
- (e) The circumstances in which the breach took place.<sup>42</sup>
- (f) The previous compliance history of the Rule Participant.
- (g) Whether a daily amount should be imposed considering:
  - (i) The financial impact of the total civil penalty, if a daily amount were to be imposed.
  - (ii) Any benefit gained by the Rule Participant as a result of the breach.

6.2.5 If the ERA considers that a civil penalty is appropriate it will seek to impose a civil penalty that:

- (a) Ensures that the offending Rule Participant does not benefit financially from the contravention.
- (b) Reflects the seriousness of the breach.
- (c) Deters future misconduct by the offending Rule Participant and other Participants.

6.2.6 When the ERA is determining the total amount of the civil penalty, it will consider the factors listed in clause 2.13.42 of the WEM Rules (refer paragraph 6.2.4 above) and will also consider:

- (a) The seriousness of the breach after considering both the consequence and likelihood of the final risk rating.
- (b) Whether a daily amount (where applicable) is appropriate.<sup>43</sup>
- (c) Any detriment to non-offending Rule Participants and offending Rule Participant gains, if any.
- (d) Whether the penalty is sufficient to deter future non-compliances.
- (e) The financial impact of the total penalty on the offending Rule Participant.
- (f) Maximum limits prescribed in the Act and Regulations.<sup>44</sup>

6.2.7 The penalty notice referred to in paragraph 6.2.3 must:

- (a) Be in writing.

<sup>42</sup> For example, in the first six months after New WEM Commencement Day, the ERA may consider the relative inexperience of the Rule Participants with new processes as a relevant circumstance.

<sup>43</sup> WEM Regulations 31(1A) and 31(2).

<sup>44</sup> Maximum limits are determined by reference to the Act and Regulations that were in force when the breach was determined to have occurred.

- (b) State the name and address of the participant.
- (c) State that the notice is given under Regulation 31 of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*.
- (d) Specify the civil penalty provisions considered to have been contravened.
- (e) Provide details of the contravention, including the act or omission that the ERA considers constitutes the contravention.
- (f) Specify the amount of the civil penalty.
- (g) Inform the participant that they may apply to the ERB for review of the ERA's decision to demand the civil penalty.
- (h) Contain a statement informing the participant that within 28 days after the day on which the participant receives the notice that if:
  - (i) Payment is not made.
 or
  - (ii) An application has not been made to the ERB for review of the ERA's decision to impose the penalty
 the ERA may apply to the ERB for an order for the payment of the penalty (Regulation 31(6)).<sup>45</sup>

6.2.8 A Rule Participant issued with a civil penalty notice may seek review by the ERB of the ERA's decision to issue the notice in accordance with the WEM Regulations (clause 2.13.44 of the WEM Rules).

6.2.9 Where the ERA has made an application to the ERB in the circumstances referred to in paragraph 6.2.7(h), the ERB may make an order that the Participant pay the civil penalty if the:

- (a) ERA made the demand in accordance with the WEM Regulations.
- (b) Participant has not paid the civil penalty.
- (c) Participant has not applied to the ERB for review of the ERA's decision to demand the amount.

6.2.10 In accordance with Regulation 37, any penalty payments received by AEMO must be distributed in accordance with the WEM Rules. If the WEM Rules do not provide for distribution of civil penalty amounts, the penalty payments will be credited to the Consolidated Account.

6.2.11 The ERA can direct AEMO and/or Rule Participants to distribute a specified portion of a civil penalty amount to an identified person, other than a Rule Participant, that has suffered a material loss as a result of a breach (clause 2.13.43A of the WEM Rules).

<sup>45</sup> The WEM Regulations use the terms 'contravention' instead of breach and 'participant' instead of Rule Participant.

- 6.2.12 The ERA will notify AEMO of the determination and penalty amount if it issues a civil penalty notice (clause 2.13.43A of the WEM Rules).<sup>46</sup>
- 6.2.13 The ERA will enter civil penalty notices that were not set aside by the ERB in a public register in accordance with section 8 of this document (clause 2.13.49 of the WEM Rules).
- 6.3 Electricity Review Board Proceedings
- 6.3.1 This document sets out the processes to be followed by the ERA when bringing proceedings before the ERB for one or more orders specified in the WEM Regulations as required to be made by the ERB (clause 2.15.3(i) of the WEM Rules).
- 6.3.2 Where the ERA determines that a breach of the WEM Rules has taken place, it may apply to the ERB for one or more orders by the ERB under Regulation 33 (clause 2.13.36(d) of the WEM Rules and Regulation 32(1)).
- 6.3.3 The application referred to in paragraph 6.3.2 must:<sup>47</sup>
- (a) Be in writing.
  - (b) State the applicant is the ERA.
  - (c) Specify the provision of the WEM Regulations under which the ERA is making the application.
  - (d) Provide the details of the contravention of the WEM Rules that the ERA considers has occurred, including the name and address of the participant alleged to have contravened the WEM Rules.
  - (e) Specify the nature of the order sought.
- 6.3.4 The ERA may apply for, and the ERB may make, one or more of the following orders under Regulation 33(1):
- (a) Where the provision is a civil penalty provision, an order that the participant pay to AEMO an amount that does not exceed the maximum civil penalty prescribed in Schedule 1 of the WEM Regulations.
  - (b) An order that the participant cease within a specified timeframe, the act or omission constituting the contravention.
  - (c) An order that the participant take action or adopt such practice as the ERA requires to remedy the contravention or prevent the recurrence of the contravention.
  - (d) An order that the participant implement a specified program for compliance with the WEM Rules.

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<sup>46</sup> To assist with the settlement processes in the WEM Rules.

<sup>47</sup> WEM Regulation 39.

- (e) An order suspending the participant's registration or any other specified right under the WEM Rules for a specified period.
- (f) An order that the participant's Facility or Facilities be disconnected.
- (g) An order that the participant's registration be cancelled.

6.3.5 The processes governing proceedings brought before the ERB for matters under WEM Regulation 33 are set out in Part 7 of the WEM Regulations and Part 6 Division 2 of the *Energy Arbitration and Review Act 1998*.

6.3.6 The ERA may enforce an order of the ERB through the Supreme Court (Regulation 34).

## **7. RECORDING AND REPORTING**

### **7.1 Six Monthly Reports**

7.1.1 The ERA will publish a report at least once every six months (clause 2.13.45 of the WEM Rules) which, for the preceding six months, provides a summary of:

- (a) Investigations completed by the ERA.
- (b) Breaches of the WEM Rules or WEM Procedures the ERA determines have occurred.
- (c) Warnings issued by the ERA under clause 2.13.36(a).
- (d) Proceedings brought before the ERB.
- (e) Findings of the ERB.
- (f) Orders made by the ERB.
- (g) Civil penalty notices issued by the ERA under clause 2.13.36(c) unless the ERA's decision has been set aside by the ERB.

7.1.2 The ERA may release a report on any one or more matters where the ERA has taken one or more actions under clause 2.13.36 or that have been referred to the ERB, including the findings of the ERA and/or the ERB, as applicable, and any sanctions imposed by the ERA or the ERB (clause 2.13.47 of the WEM Rules).

7.1.3 The ERA may release a report referred to in paragraph 7.1.2 where significant incidents arise warranting the release of a report prior to the next scheduled six monthly report referred to in paragraph 7.1.1.

7.1.4 Claims of confidentiality of information, in relation to information that may be published in the reports referred to in paragraphs 7.1.1 and 7.1.2, are to be considered by the ERA in accordance with Chapter 10 of the WEM Rules relating to information confidentiality (clause 2.13.52 of the WEM Rules).

- 7.2 Report to Minister - AEMO's Compliance
- 7.2.1 The ERA provides a report to the Minister on AEMO's compliance with the WEM Rules and WEM Procedures annually following the process outlined in clauses 2.14.5B to 2.14.5D of the WEM Rules. The report will contain:
- (a) Results of any audits performed.
  - (b) Results of any investigations into AEMO's compliance undertaken by the ERA.
- 7.3 Report to Minister – Network Operator's Compliance
- 7.3.1 The ERA provides a report to the Minister on each Network Operator's self-reported compliance with the WEM Rules and WEM Procedures annually following the process outlined in clauses 2.14.6 to 2.14.9 of the WEM Rules. The report must contain the results of any investigations undertaken into each Network Operator's compliance undertaken by the ERA.
- 7.4 Report to Minister - ERA's Compliance
- 7.4.1 The ERA provides a report to the Minister annually on its compliance with the WEM Rules and WEM Procedures (clause 2.14.5A of the WEM Rules). The ERA will use appropriate processes to prepare this report, which may include the use of independent auditors together with information gathered from internal compliance activities, as well as any information it receives from external parties concerning the ERA's compliance.
- 8. PUBLIC REGISTERS**
- 8.1 Public Register of Breaches
- 8.1.1 This document sets out the processes that the ERA will follow for keeping a public register of breaches and publishing the public register (clause 2.15.3(k) of the WEM Rules).
- 8.1.2 The ERA will enter civil penalty notices issued by the ERA that were not set aside by the ERB in a public register of breaches (clause 2.13.49(a) of the WEM Rules).
- 8.1.3 The ERA may enter into the public register any other breaches of the WEM Rules where the ERA reasonably considers that:
- (a) The benefit to the WEM in disclosing the breach outweighs any detriment to the Rule Participant that committed the breach.
- or
- (b) Having regard to the nature and impact of the breach, the ERA would expect the breach to be disclosed on the public register.
- 8.1.4 The ERA will determine whether to record a breach or contravention of the WEM Rules in the public register of breaches in accordance with the final risk rating following the process in step 5.2.7(c)(iii).

- 8.1.5 If the ERA determines that a breach or contravention is to be recorded on the public register, the ERA will notify the relevant Rule Participant in writing of the ERA's intention to include the information on the public register of breaches. The notification will:
- (a) Include a copy of the information to be included in the public register as specified in paragraph 8.1.6.
  - (b) Specify the intended date of publication.
  - (c) Inform the Rule Participant that if they wish for any information specified in paragraph 8.1.6 not to be published, they must provide the evidence specified in paragraph 8.1.7 prior to the intended date of publication.
- 8.1.6 The public register of breaches must include the following information (clause 2.13.50 of the WEM Rules):
- (a) The name of the Rule Participant that committed the breach.
  - (b) Each provision of the WEM Rules or WEM Procedure that was breached.
  - (c) All relevant information relating to the time the breach occurred and duration of the breach, including impacted Trading Days and Dispatch Intervals.
  - (d) A summary of the actions taken by the Rule Participant to remedy the breach or prevent recurrence of the breach.
  - (e) Any action(s) taken by the ERA resulting from the breach.
- 8.1.7 Information must not be included in the public register of breaches (clause 2.13.51 of the WEM Rules) if the:
- (a) Relevant Rule Participant provides evidence to the ERA that publication would contravene a court order or law.
  - (b) Information has been given a class of confidentiality status other than Public under Chapter 10 of the WEM Rules.
- 8.1.8 The public register of breaches must be published on the ERA website (clause 2.13.53 of the WEM Rules) and will be updated as required.
- 8.2 Public Register of Investigations
- 8.2.1 The ERA keeps a public register of investigations (clause 2.13.49A of the WEM Rules):
- (a) Commenced by the ERA into suspected breaches of the WEM Rules, provided that any information identifying participants is redacted or otherwise anonymised.
  - (b) Closed by the ERA where it was determined that no breach had occurred, including any reasons for the determination.
  - (c) Suspended or closed by the ERA under clause 2.13.33, including its reasons for closing or suspending the investigation.



- 8.2.2 The public register of investigations will be published on the ERA website and will be updated as required.

## Appendix 1 Risk Framework and Tables

### *Risk Framework*

**Consequence rating table** – The consequence of the risk is the effect or outcome to the WEM of a risk eventuating. Categories are areas that would influence the ability of the WEM to function. Consequences are rated on a scale of 1 to 5, with 1 being insignificant and 5 being catastrophic. For each consequence category, criteria are defined for each level specified.

**Likelihood rating table** – Likelihood describes how likely it is that a risk will eventuate with the defined consequences. This is measured on a scale of 1 to 5, with 1 being rare and 5 being almost certain, based on the frequency of the obligation occurring.

**Risk matrix tables** – Used to assign a risk rating from the risk score.

Risks are scored by multiplying the consequence and likelihood ratings to obtain a risk score. The risk score is used to assign a risk rating as per the risk matrix table.

## Consequence Rating Table

Level	Rank	Health and Safety	Damage to P&E	System Security/Reliability	Functioning of the Market	Financial (Direct and Indirect)
1	Insignificant	First aid	No measurable damage to plant and equipment No plant outage	Secure/Reliable Operating State maintained Technical non-compliance only No load shedding System is within Normal Operating Frequency Band (49.8 to 50.2 Hz)	No impact to market operations Technical non-compliance only	No direct or indirect financial impact to participants or market consequences
2	Minor	Medical treatment only	Damage to plant and equipment resulting in a plant outage $\leq 1$ day	Secure/Reliable Operating State maintained No load shedding System is not within Normal Operating Frequency Band (49.8 to 50.2Hz) but within Normal Operating Frequency Excursion Band (49.7 to 50.3 Hz)	Disruptions to market operations but: <ul style="list-style-type: none"> <li>no market delays experienced</li> <li>no disruptions to participants and their processes</li> <li>does not lead to non-compliances for other participants</li> </ul>	Estimated financial consequences: Offending participant gain $\leq$ \$250k Other participant loss $\leq$ \$250k Market financial impact $\leq$ \$1m
3	Moderate	Injury requiring $\leq 5$ days hospitalisation Ongoing medical treatment	Damage to plant and equipment resulting in a plant outage $> 1$ day - $\leq 3$ days Facility fully restored within a week	Escalation to Satisfactory/Reliable Operating State No load shedding System is not within Normal Operating Frequency Excursion Band (49.7 to 50.3 Hz) but within Credible Contingency Event or Island Separation Frequency Band (48.75 to 51 Hz)	Disruptions to market operations including: <ul style="list-style-type: none"> <li>market delay experienced</li> <li>disruption to participants and their processes</li> <li>possible non-compliances (low to moderate) by other participants</li> </ul>	Estimated financial consequences: Offending participant gain $> 250k$ to $\leq 1m$ Other participant loss $> 250k$ to $\leq 1m$ Market financial impact $> 1m$ to $\leq 4m$
4	Major	Serious injury requiring $> 5$ days hospitalisation Localised impact on public safety	Damage to plant and equipment resulting in a plant outage $> 3$ days - $\leq 5$ days Facility fully restored within month	Escalation to Satisfactory/Not Reliable Operating State Load Shedding occurs (up to 15%) System is not within Normal Operating Frequency Excursion Band (49.7 to 50.3 Hz) but within Credible Contingency or Island Separation Frequency Band (48.75 to 51 Hz)	Disruptions to market operations including: <ul style="list-style-type: none"> <li>causing required market processes to not be performed</li> <li>participants to be unable to perform their processes</li> <li>possible non-compliances (significant) by other participants</li> </ul>	Estimated financial consequences: Offending participant gain $> 1m$ to $\leq 5m$ Other participant loss $> 1m$ to $\leq 5m$ Market financial impact $> 4m$ to $\leq 20m$
5	Catastrophic	Single fatality Permanent injury Widespread threat to public safety	Damage to plant and equipment resulting in a plant outage $> 5$ days Facility cannot be fully restored	Escalation to Emergency Operating State Load Shedding occurs ( $> 15\%$ ) System is not within Credible Contingency or Island Separation Frequency Band (48.75 to 51 Hz) or black start required.	Disruptions to market operations including: <ul style="list-style-type: none"> <li>market suspension</li> <li>participants to be unable to perform their processes</li> <li>possible non-compliances (extreme) by other participants</li> </ul>	Estimated financial consequences: Offending participant gain $> 5m$ Other participant loss $> 5m$ Market financial impact $> 20m$

## Likelihood Rating Table

Likelihood	Rating	Description	Control Environment
1	Rare	Breach may occur in exceptional circumstances (<10% probability)	<ul style="list-style-type: none"> <li>No history of breaches.</li> <li>Compliance mechanisms are in place and operating effectively.</li> <li>Controls are strong with no control gaps. The strength of the control environment means that, if a breach eventuates, it is highly likely a result of external circumstances beyond the control of a Participant.</li> </ul>
2	Unlikely	Breach is unlikely to occur in most circumstances (10-30% probability)	<ul style="list-style-type: none"> <li>One or two historical breaches</li> <li>Compliance mechanisms are mostly in place and operating reasonably effectively.</li> <li>Controls are strong with few control gaps. The strength of the control environment means that, if a breach eventuates, it is likely a result of external factors not known to the Participant.</li> </ul>
3	Possible	Breach may occur, but not expected in most circumstances (30-50% probability)	<ul style="list-style-type: none"> <li>Few historical breaches.</li> <li>Compliance mechanisms are mostly in place but need further improvement</li> <li>There are some controls that need improvement, however, if there is no improvement there is no guarantee that a breach will eventuate.</li> </ul>
4	Likely	Breach can be expected to occur in most circumstances (50-90% probability)	<ul style="list-style-type: none"> <li>Multiple historical breaches.</li> <li>Compliance mechanisms are not all in place and not further improvement.</li> <li>The majority of the controls are weak. Without control improvement it is more likely than not that a breach will eventuate.</li> </ul>
5	Almost Certain	Breach will occur in most circumstances (>90% probability)	<ul style="list-style-type: none"> <li>Several historical breaches.</li> <li>Compliance mechanisms are not in place and need significant improvement.</li> <li>All of the controls are extremely weak and/or non-existent. Without control improvement there is almost no doubt that a breach will eventuate.</li> </ul>

### Risk Matrix Tables

			Consequence				
			1	2	3	4	5
			Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood	5	Almost Certain	5	10	15	20	25
	4	Likely	4	8	12	16	20
	3	Possible	3	6	9	12	15
	2	Unlikely	2	4	6	8	10
	1	Rare	1	2	3	4	5

Risk Assessment				
Assessment	Low	Moderate	Significant	Extreme
Score	1 - 5	6 - 9	10 - 14	15 - 25