

Compliance Framework and Strategy

Wholesale Electricity Market Rules
Gas Services Information Rules

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Economic Regulation Authority

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1. Introduction

The Economic Regulation Authority is the independent economic regulator for Western Australia. It regulates electricity, gas, water and rail industries as well as conducting economic inquiries referred to it from government.

The ERA's functions include monitoring, investigating and enforcing compliance under the Wholesale Electricity Market Rules and the Gas Services Information (GSI) Rules.

2. Purpose and scope

The purpose of this compliance strategy is to describe how the ERA undertakes its compliance and enforcement activities under the Market Rules and GSI Rules.

The ERA has other compliance functions which are not within the scope of this document (for example, electricity, gas and water industry licensee compliance). Further information on these functions can be found on the [ERA website](#).

The ERA will periodically review this document to update the priorities referred to in section 6 and make any other necessary revisions.

3. Compliance approach

The ERA's compliance approach is set out in paragraph 1.4.1 of its public Monitoring Protocol Market Procedure¹. It states:

The ERA's approach is aimed at encouraging compliance by Rule Participants with the Market Rules and Market Procedures with the target of achieving high levels of compliance. Under this approach the ERA will seek to:

- (a) assist Rule Participants to understand their obligations, noting that the responsibility for meeting compliance obligations rests with the individual participant;*
- (b) identify potential breaches, investigate these and identify any subsequent education or other prevention or enforcement actions required;*
- (c) ensure the investigation process is conducted in an efficient and professional manner, including applying procedural fairness and ensuring investigation decisions are informed by the relevant facts;*
- (d) ensure that its compliance responses to breaches are proportionate to the circumstances of the non-compliant behaviour;*
- (e) apply a risk based approach to its compliance activities, including its monitoring processes, investigation processes and enforcement actions.*

¹ <https://www.erawa.com.au/electricity/wholesale-electricity-market/market-procedures>

4. Compliance activities

4.1 Detection and deterrent activities

The ERA detects and deters non-compliance with the Market Rules and GSI Rules, with a focus on encouraging high levels of compliance. These compliance activities, although described separately below, are inter-related processes.

4.1.1 Monitoring

Both the Market Rules (clauses 2.13.2 and 2.13.3) and GSI Rules (rules 165(1) and 165(2)) require the ERA to monitor participants' compliance.

The ERA's monitoring activities are intended to identify potential non-compliance matters that may require further investigation before determining whether or not a breach has occurred.

It is through these activities that the ERA will first become aware of potential non-compliance. Participants' awareness of the ERA's monitoring activities also serves as an important deterrent mechanism.

It is appropriate that monitoring activities are designed such that:

- there is early detection of non-compliance
- the activities focus on high-risk issues and also appropriately deal with low level non-compliances
- they are unbiased and capture all participants
- there is a range of sources that feeds these activities
- the activities are carried out with minimal regulatory burden on participants.

The ERA's monitoring activities are set out in paragraph 2.4.2 of the public Monitoring Protocol Market Procedure as follows:

- *Market Intelligence: Analysis of information received from stakeholders that may identify matters requiring further investigation;*
- *Market Monitoring: Analysis of market data 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;*
- *Targeted compliance activities: Targeted reviews of Rule Participants may be carried out to assess compliance with specific Market Rule obligations or groups of obligations, or areas identified as being of particular compliance concern or where monitoring is required because the Market Rules provide for special arrangements;*
- *Reporting: AEMO (including in its capacity as System Management) has obligations to notify the ERA, subject to certain exceptions, if it becomes aware of an alleged breach of the Market Rules or Market Procedures. Additionally Rule Participants and other stakeholders may report alleged non-compliant behaviour, including voluntary reports of the Rule Participant's own non-compliant behaviour.*

While the Monitoring Protocol Market Procedure is developed under the Market Rules, the above processes are equally applicable to monitoring activities for the GSI Rules.

4.1.2 Investigations

Where the ERA becomes aware of an alleged breach it is required under the Market Rules (clause 2.13.10) or GSI Rules (rule 168(2)) to investigate the matter.

The matters investigated usually concern market operations processes in areas such as dispatch, outages, data provision and settlements. The more serious issues could have financial implications (for example, recovery of constraint payments, forced outage capacity refund payments and short run marginal cost matters) and/or may have consequences for the security and reliability of the power system.

The ERA will generally become aware of an alleged breach through the monitoring processes referred to in section 4.1.1. This includes breach reporting arrangements in place with the Australian Energy Market Operator (AEMO).

Under both the Market Rules and GSI Rules, AEMO is required to support the ERA with its compliance monitoring functions. AEMO and the ERA have an established process for this, including the provision of reports from AEMO and regular compliance meetings with AEMO.

The ERA's investigation powers are specified in the Market Rules, GSI Rules, the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* and the *Gas Services Information Regulations 2012*. Further details are referenced in section 4.2 of the Monitoring Protocol. The ERA also has powers available under the *Economic Regulation Authority Act 2003* to issue notices requiring the provision of information.

Section 4 of the ERA's public Monitoring Protocol Market Procedure sets out the details of the investigation process. While the Monitoring Protocol Market Procedure is developed under the Market Rules, the investigation process is equally applicable to the GSI Rules.

The key principles guiding the investigations process are:

- **Compliance:** Investigations are carried out pursuant to the relevant powers and requirements in the Market Rules, GSI Rules, Regulations and the Act, including respecting the confidentiality provisions within these instruments.
- **Fairness:** The investigation process is conducted in a professional manner, including applying procedural fairness and ensuring investigation decisions are informed by the relevant facts.
- **Consistency:** Investigation processes are consistently applied and result in outcomes that are consistent and proportionate to the circumstances of the non-compliant behaviour.
- **Timeliness:** Investigations are conducted in an efficient manner, ensuring matters are dealt with in a timely manner appropriate to the circumstances of the alleged non-compliance.
- **Transparency:** The investigation decision-making process is subject to rigorous governance and the potential compliance outcomes are transparent to participants so that they have a reasonable degree of certainty about the consequences of non-compliance.

4.1.3 Compliance advice and stakeholder liaison

The ERA provides information to participants to assist them fulfil their compliance obligations and prevent non-compliance. This includes meeting with participants as part of monitoring and investigation activities, publishing guidelines, and holding forums. Compliance information is also available on the ERA website.

The ERA welcomes participant-initiated discussions and enquiries on compliance matters.

4.1.4 Enforcement

The ERA has statutory compliance responses available to it (for example, warnings and the commencement of proceedings before the Electricity Review Board for civil penalties and other orders), and also administrative responses, such as providing education advice and seeking voluntary compliance programs.

The ERA's strategy is to ensure that enforcement outcomes are fair, consistent and proportionate to the circumstances of the non-compliant behaviour. The table in Appendix 1 provides guidance on the types of enforcement outcomes².

4.2 Risk-based approach

There is a limit to the ERA's resources and it must prioritise its compliance activities. The ERA must also ensure its responses to alleged breaches are consistent and fair. To achieve this the ERA uses a risk assessment process. The criteria documented in Appendix 2 provides guidance on the matters that the ERA will consider as part of the risk assessment process when prioritising its compliance activities and investigating alleged breaches.

5. Priorities

The ERA will determine and review compliance priorities from time to time. This process must be flexible to respond to emerging trends and issues, changes in rules and regulations and issues that require timely compliance attention.

The factors that will be considered when setting compliance priorities include trends and history from the results of investigations and compliance activities, the regulatory environment and stakeholder concerns and feedback.

5.1 Progress on 2017/18 Priorities

The ERA actioned all of its 2017/18 compliance priorities. Progress reports on each of the actions is set out in Table 1 below.

² Compliance enforcement outcomes are assessed on a case by case basis and enforcement outcomes different to those listed in Appendix 1 may be deemed appropriate from time to time.

Table 1: Progress report on 2017/18 Priorities

Area	Context	Action	Progress report
Market issues	The ERA is well-placed to identify issues with the rules.	<ul style="list-style-type: none"> Establish internal framework for ERA initiated rule change proposals. 	<ul style="list-style-type: none"> The ERA finalised its position on proposing rule changes. This was published in a statement on the ERA's involvement in the Rule Change Process. The statement sets out the scope of rule changes that the ERA may propose.
Market Rule and GSI Rule breach investigations	The ERA is responsible for investigating Market Rule and GSI Rule breaches.	<ul style="list-style-type: none"> Maintain quality and timeliness of investigations. Identify opportunities for, and implement efficiencies to, manage investigation backlog. 	<ul style="list-style-type: none"> The ERA implemented investigation checklists to improve its quality assurance processes. The rate of completion of investigations has also improved averaging nine per month in 2017/18, compared to four per month in 2016/17. The ERA has streamlined its internal approval processes for investigations through the use of delegations, and improved reporting for minor matters.
Market participant compliance with Dispatch Instructions, Forced Outages and Balancing Submissions	These processes are central to the operation of the market and the power system. Non-compliance with these processes can have material consequences.	<ul style="list-style-type: none"> Develop and implement monitoring tools. Conduct targeted investigations focusing on compliance with Forced Outages and Balancing Submission rule requirements. 	<ul style="list-style-type: none"> During the year the ERA established its monitoring priorities for a number of areas of the Market Rules. Work is now underway to develop in-house tools to proactively monitor these areas of the rules (refer to section 5.2). The ERA completed three targeted investigations of participants during 2017/18 examining non-compliance with Forced Outages and Balancing Submission requirements. Two formal warnings under the Market Rules were issued to separate participants as a result of these investigations.
GSI Rules compliance with data provision obligations	Data provision is central to the GSI platform.	<ul style="list-style-type: none"> Develop targeted review initiatives based on results of data monitoring and reported breaches (e.g. common themes are late data provision and accuracy of submissions). 	<ul style="list-style-type: none"> The ERA completed targeted investigations of two separate GSI participants resulting in determinations of 20 breaches of the GSI Rules.
Stakeholder engagement/relationships	Stakeholder liaison activities are a key tool to encourage high levels of compliance and seek	<ul style="list-style-type: none"> Implement strategies to maintain and build on existing stakeholder relationships. 	<ul style="list-style-type: none"> The ERA continued to meet with participants to discuss compliance issues, including encouraging self-reporting of non-compliance. Only six self-reports from participants other

Area	Context	Action	Progress report
	early resolution to non-compliance issues.		than AEMO were received during 2017/18, a slight increase from five in 2016/17.
Transparency of investigation outcomes	Providing information to the market on compliance outcomes serves as a deterrent and a non-compliance prevention measure.	<ul style="list-style-type: none"> Explore opportunities to improve reporting of investigation outcomes and non-compliance issues to the market (noting the existing confidentiality restrictions in the rules). 	<ul style="list-style-type: none"> The ERA improved the content of its compliance reports. The compliance reports are released six-monthly and now provide data on the number of breach reports received, matters investigated and outcomes of these investigations.

5.2 Current priorities

From 2018/19 onwards the ERA has determined the following priorities. These actions will continue as priorities until this document is next updated.

Table 2: Current priorities

Priority area	Context	Action
Rule changes	The ERA is responsible for compliance functions under the GSI and Market Rules. It is therefore well placed to identify process and procedure deficiencies with these areas of the rules.	<ul style="list-style-type: none"> Submit Rule Change Proposal to address market information access and short run marginal cost investigation process problems. Investigate other compliance process and procedural amendments to the Market Rules (for example, processes for the publication of breach determinations under the Market Rules).
Market Rule and GSI Rule breach investigations	The ERA is responsible for investigating Market Rule and GSI Rule breaches.	<ul style="list-style-type: none"> Continue to identify and implement ways to reduce the backlog of investigations including: <ul style="list-style-type: none"> Implementing batch investigation processes (for example, investigating multiple breach allegations concerning a single participant in a batch). Explore other options to improve the efficiency of the investigation process (for example, through the use of information technology solutions).
Participant compliance with Dispatch Instructions, Forced Outages and Balancing Submissions	These processes are central to the operation of the market and the power system. Non-compliance with these processes can have material consequences.	<ul style="list-style-type: none"> Develop and implement monitoring tools to proactively validate compliance. Focus will initially be on the following areas: <ul style="list-style-type: none"> Requirements to submit Balancing Submissions (focusing on timing and accuracy of submissions). Requirements to log outages. Conduct targeted investigations focusing on systemic non-compliance with Dispatch Instruction, Outage and Balancing Submission rule requirements.

Priority area	Context	Action
GSI Rules compliance with data provision obligations	Data provision is central to the GSI platform.	<ul style="list-style-type: none"> Engage with GSI participants through relevant forums to educate and improve knowledge of GSI Rule compliance obligations.
Stakeholder information and education	Providing compliance information and education to stakeholders will assist participants comply with rule obligations and also serves as a deterrent and a non-compliance prevention measure.	<ul style="list-style-type: none"> Providing education to targeted participants to reduce the number of non-compliances. Providing organisation specific compliance information to participants to assist them assess their levels of compliance. Develop guidelines to assist participants comply with rule obligations (for example, guidelines on the timing of updates to Balancing Submissions).

Appendix 1 Investigation Outcomes³

Determination	Compliance Response	Circumstances where the Compliance Response may be applicable
No breach found	No further action	For matters where the investigation has concluded that there is insufficient evidence to support a breach determination.
No breach found	Education advice	For matters where the investigation has concluded that there is insufficient evidence to support a breach determination but as part of the investigation the ERA identified opportunities for improvements to processes and/or controls, or other matters where there is a need to provide education and guidance to assist the participant.
Breach found	No further action	For matters where the breach had little to no consequence, actions were taken to rectify the breach in a timely manner and actions have been implemented to reduce the risk of recurrence of the breach.
Breach found	Education advice	For matters where the breach had little to no consequence but there is a need to provide education and guidance to assist the participant meet its obligations and prevent future breaches. Follow up action may be necessary to ensure the guidance provided is followed through by the participant.
Breach found	Compliance program	<p>For matters where there is a reasonable likelihood of future breaches and actions are required to be implemented by the participant to prevent this.</p> <p>The compliance program will seek to document the agreed actions and associated timelines.</p> <p>In some cases the compliance program will form part of other enforcement action, such as the issue of a warning or orders from Electricity Review Board proceedings. In other cases, the compliance program will represent a voluntary program agreed between the participant and the ERA.</p>
Breach found	Warning	For matters where there are material consequences and/or there is a reasonable likelihood of future breaches, and the non-compliant behaviour warrants a formal reprimand.
Breach found	Civil penalties	<p>For matters where there are material consequences and/or there is a reasonable likelihood of future breaches, and the non-compliant behaviour warrants a monetary penalty.</p> <p>The Market Regulations prescribe different categories of civil penalties:</p> <ul style="list-style-type: none"> • Category A civil penalties - The ERA may issue a notice demanding payment of the penalty; • Category B and C civil penalties – The ERA may bring proceedings before the Electricity Review Board (refer below).
Breach found	Electricity Review Board proceedings	<p>For matters where there are material consequences and/or there is a reasonable likelihood of future breaches, and the non-compliant behaviour warrants formal orders from the Electricity Review Board.</p> <p>The Market Regulations provide that if the ERA considers that a participant has contravened a provision of the Market Rules it may apply to the Electricity Review Board for one or more orders as set out in Regulation 33 (refer to paragraph 5.3.3 of the Monitoring Protocol).</p>

³ Refer to Table 1 in the ERA's Monitoring Protocol at <https://www.erawa.com.au/electricity/wholesale-electricity-market/market-procedures>

Appendix 2 Risk Assessment Criteria

Risk Classification	Classification Criteria
Extreme	<ul style="list-style-type: none"> - Consequences of non-compliance with the Market Rule obligation/s may include: <ul style="list-style-type: none"> o Endanger the safety and health of a person o Damage to plant and equipment o Disruption or loss of supply to customers o Significant consequences to the operation of the market, including settlements and/or the operation of the dispatch process o Significant financial consequences o Endangers Power System Security or Power System Reliability o Breach of a Civil Penalty provision - Likelihood of non-compliance with the Market Rule obligation/s is almost certain (e.g. lack of compliance processes, non-existent or inadequate controls, historical extreme compliance issues)
Major	<ul style="list-style-type: none"> - Consequences of non-compliance with the Market Rule obligation/s may include: <ul style="list-style-type: none"> o Endanger the safety and health of a person o Damage to plant and equipment o Disruption or loss of supply to customers o Material consequence to the operation of the market, including settlements and/or the operation of the dispatch process o Material financial consequences o Endangers Power System Security or Power System Reliability o Breach of a Civil Penalty provision - Likelihood of non-compliance with the Market Rule obligation/s is likely (e.g. insufficient compliance processes, inadequate controls, historical major non-compliance issues)
Moderate	<ul style="list-style-type: none"> - Consequences of non-compliance with the Market Rule obligation/s may include: <ul style="list-style-type: none"> o Some consequence to the operation of the market, including settlements and/or the operation of the dispatch process o Some financial consequence o Breach of a Civil Penalty Provision o No disruption or loss of supply to customers o No material threat to Power System Security or Power System Reliability o No consequence to customers o No damage to plant and equipment o No endangerment to the safety and health of persons - Likelihood of non-compliance with the Market Rule obligation/s is possible (e.g. existing compliance processes, existing controls, reasonable compliance history)
Minor	<ul style="list-style-type: none"> - Consequences of non-compliance with the Market Rule obligation/s may include: <ul style="list-style-type: none"> o Minimal consequence to market operations and processes o No financial consequences o No consequences to customers o No damage to plant and equipment o No endangerment to the safety and health of persons o No threat to Power System Security or Power System Reliability - Likelihood of non-compliance with the Market Rule obligation/s is rare to unlikely (e.g. well established compliance processes, well established controls, reasonable compliance history)