Economic Regulation Authority

WEM Procedure

Monitoring Protocol

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VERSION HISTORY

Version	Effective Date	Notes
1	12 September 2006	WEM 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 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 WEM 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).
7	20 November 2024	Changes to support ESM Rule changes, clarifications to breach risk assessment process and minor clarifications and corrections (Procedure Change EEPC_2024_02)
8	2 November 2026	Changes to provide the Economic Regulation Authority with flexibility to focus on compliance matters with the greatest impact, together with other minor improvements (Procedure Change EEPC-2026_02).

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1. PROCEDURE OVERVIEW

1.1 Relationship with the ESM Rules

1.1.1 The Economic Regulation Authority maintains and implements a Monitoring Protocol as a WEM Procedure under Clause 2.15.1 of the Electricity System and Market (ESM) Rules.

1.2 Interpretation

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

(a) Terms defined in the *Electricity Industry Act 2004*, the *Electricity Industry (Electricity and Market) Regulations 2004* (ESM Regulations) and the ESM Rules have the same meanings in this Procedure unless the context requires otherwise.

(b) To the extent that this Procedure is contrary or inconsistent with the ESM Rules, the ESM Rules shall prevail to the extent of the inconsistency.

(c) A reference to the ESM Rules or WEM Procedures includes any associated forms required or contemplated by the ESM Rules or WEM Procedures.

(d) Words expressed in the singular include the plural and vice versa.

1.2.2 The following terms have the following meanings:

(a) 'Clause' means a clause in the ESM Rules.

(b) 'Regulation' means a regulation in the ESM Regulations.

(c) 'Breach' has the same meaning as the terms 'non-compliance' and 'contravention', which are also used in the ESM Regulations and ESM Rules.

(d) The terms 'alleged breach' and 'suspected breach' are both used in the ESM Rules and refer to matters and/or circumstances where the ERA has not yet made a determination that a breach has occurred. For the avoidance of doubt, a reference in this Procedure to an alleged breach also refers, where relevant, to suspected breaches of the ESM Rules.

1.2.3 References to particular ESM Rules within this Monitoring Protocol are current as of 2 November 2026.

1.3 Purpose of this Procedure

1.3.1 This Procedure sets out how the ERA monitors, investigates and enforces Rule Participants' compliance with the ESM Rules and WEM Procedures.[1] The minimum content of this Procedure is prescribed in Clause 2.15.3.

[1] Clause 2.15.2.

1.4 Application of this Procedure

1.4.1 In this Procedure, where obligations are conferred on a Rule Participant, that Rule Participant must comply with the relevant obligations.[2]

1.5 Associated WEM Procedures and guidelines

1.5.1 WEM Procedure: Portfolio Determination

1.5.2 Offer Construction Guideline

1.5.3 Trading Conduct Guideline

1.5.4 The Australian Energy Market Operator's (AEMO) WEM Procedure: Monitoring and Reporting Protocol

1.5.5 AEMO WEM Procedure: Generator Performance Standards (GPS) Compliance Tests and Generator Monitoring Plans.

1.6 How to contact the ERA

1.6.1 The contact details for the ERA's compliance and enforcement team are:

Energy Markets Compliance and Enforcement

Email: market.compliance@erawa.com.au

Post: Level 4, Albert Facey House, 469 Wellington St, PERTH WA 6000

Phone: (08) 6557 7900

Website: www.erawa.com.au

[2] Clause 2.9.8.

1.6.2 The ESM Rules provide that, as part of the ERA's compliance functions, the ERA may require information from, and to 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 ESM 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:

Name of person:

Position title:

Organisation (if agent for Rule Participant):

Rule Participant:

Telephone Number/s:

Email address:

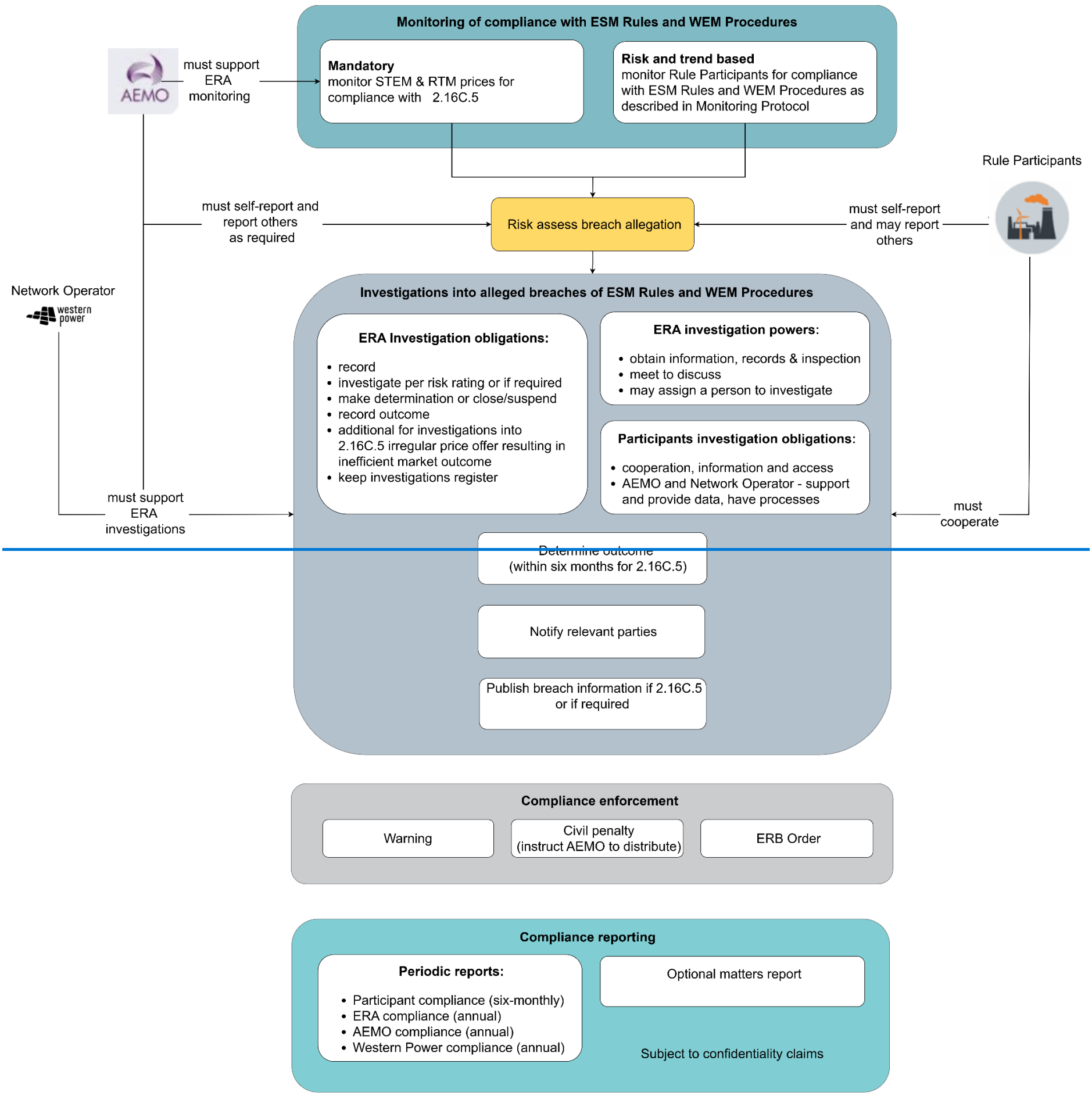
2. COMPLIANCE FRAMEWORK

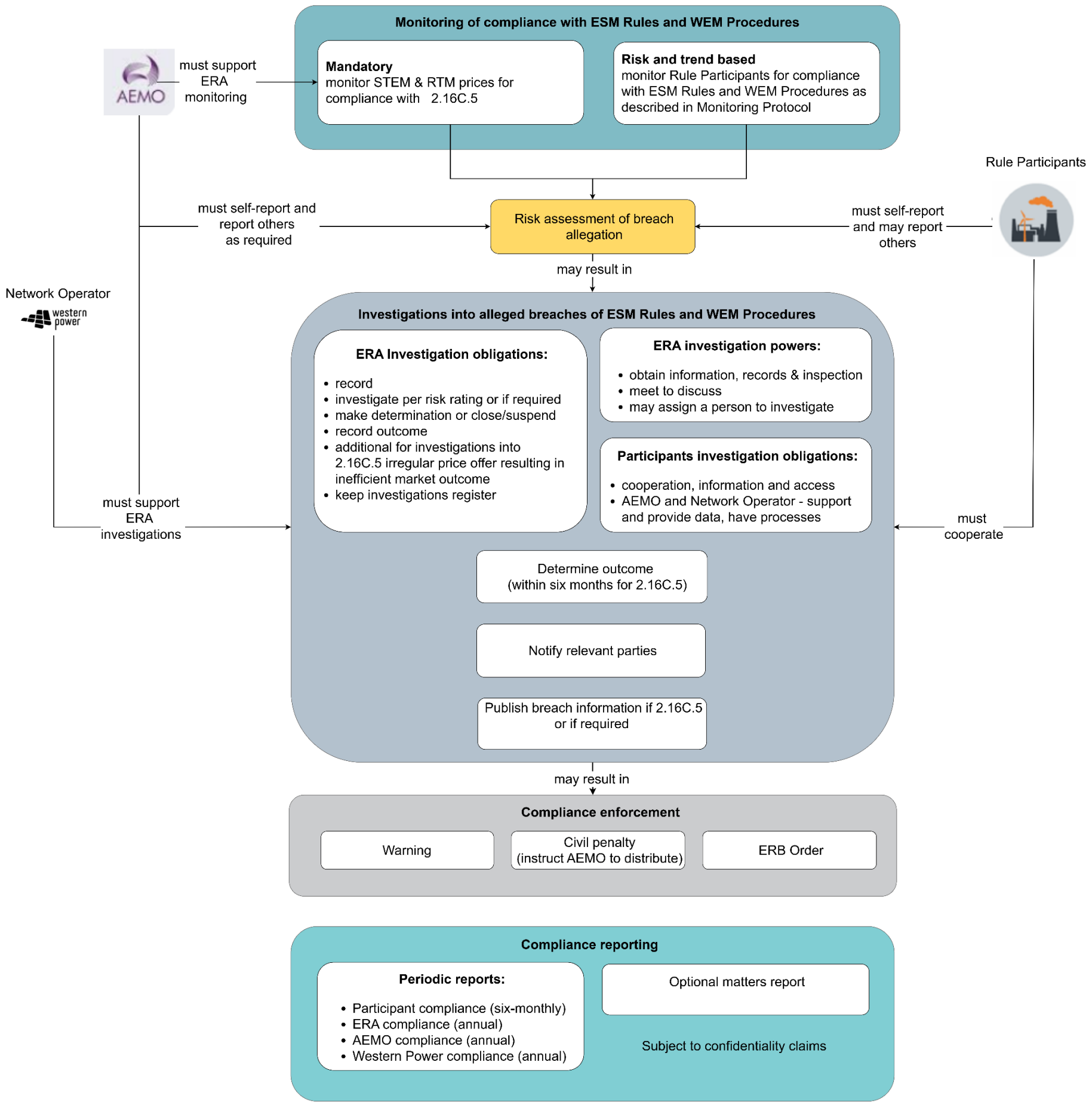
2.1 ERA compliance functions

2.1.1 The ERA has adopted a risk-based approach for its compliance activities that enables it to prioritise its compliance activities and maximise its effectiveness as a regulator. The ERA's compliance approach is published in the Compliance Framework and Strategy.

2.1.2 The ERA's compliance functions consist of monitoring, investigating, enforcing and reporting on compliance with the ESM Rules and WEM Procedures. Figure 1 summarises the ERA compliance functions that are described in this Procedure.

Figure 1: ERA compliance functions – overview





The following sections provide further detail on how the ERA performs these functions and what Rule Participants can expect in their interactions with the ERA.

3. MONITORING COMPLIANCE

3.1 ERA monitoring process

3.1.1 The ERA is responsible for monitoring Rule Participants' behaviour for compliance with the ESM Rules and WEM Procedures. The ERA's monitoring obligations are described in Clauses 2.13.1, 2.13.3, 2.16.2A(aA) and 2.16C.4.

3.1.2 The ERA's approach to monitoring Rule Participants' compliance with the ESM Rules and WEM Procedures is described in the ERA's Compliance Framework and Strategy.

3.1.3 The ERA prioritises ESM compliance monitoring into three categories:

(a) Mandatory: Areas the ESM Rules mandate that the ERA must monitor.

(b) Risk-based: Areas the ERA has identified as requiring monitoring using its risk assessment framework.

(c) Trend-based: Areas the ERA has decided to monitor based on its observations of the market.

3.1.4 The ESM compliance monitoring priorities will be published and updated on the ERA website.

3.1.5 The information collected through monitoring will be used to identify potential breaches of the ESM Rules and WEM Procedures or may inform other compliance actions, like education, rule change proposals, or market effectiveness reviews.

3.2 AEMO's role in monitoring compliance[3]

3.2.1 AEMO has an obligation to support the ERA's compliance, monitoring and investigations including to:[4]

(a) Provide the market data as required in the Market Surveillance Data Catalogue Requirements List.

(b) Monitor compliance with the ESM Rules specified by the ERA and report any alleged breaches of these rules to the ERA.[5]

(c) Report to the ERA alleged breaches that it becomes aware of and which the ERA cannot identify using market data provided to it.

(d) Provide additional information to the ERA when requested in relation to the performance of the ERA's compliance and monitoring functions under the ESM Rules.

3.2.2 Rule Participants should refer to AEMO's Monitoring and Reporting Protocol for further information on AEMO's processes in relation to its monitoring support role, including when AEMO may choose not to report alleged breaches to the ERA.

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3 Clause 2.15.3(l).

4 Clauses 2.13.4, 2.13.8 and 2.16.2A(aA).

5 Subject to Clause 2.13.12.

3.3 Monitoring of Generator Performance Standards and Generator Monitoring Plans

3.3.1 AEMO is responsible for monitoring compliance with the GPS and Generator Monitoring Plans (GMP) as described in AEMO's WEM Procedure: GPS Compliance Tests and Generator Monitoring Plans.

3.3.2 AEMO has an obligation to notify the ERA of certain GPS/GMP non-compliances in accordance with Clauses 3A.11.21, 3A.12.1 and 3A.12.2.

3.3.3 The ERA has information gathering powers, including in relation to GPS and GMP non-compliances.[6]

3.4 Network Operator's role in monitoring compliance[7]

3.4.1 Each Network Operator must cooperate with the ERA by providing any data, information or documents in the Network Operator's possession or control including the Generator Register.[8]

6 Clauses 3A.6.13 and 3A.6.16.

7 Clause 2.15.3(l).

8 Clause 3A.7.7.

4. REPORTING ALLEGED BREACHES[9]

4.1 Rule Participants' self-reporting obligations

4.1.1 Where a Rule Participant (including AEMO and each Network Operator) becomes aware of any incident that may have affected its obligations under the ESM Rules or WEM Procedures, it should assess the incident to determine whether it may have breached the ESM Rules or WEM Procedures. The ERA recognises that not all incidents result in a breach.

4.1.2 If, during an incident assessment, a Rule Participant determines that it has breached, or has reasonable cause to suspect it may have breached, an ESM Rule or a WEM Procedure, that Rule Participant must self-report the self-determined breach or suspected breach to the ERA unless it has been notified the breach or suspected breach is already under investigation.[10]

4.1.3 A Market~~Rule~~ Participant does not have to self-report a breach to the ERA if the alleged breach is in respect to non-compliance or suspected non-compliance with a Registered GPS, GMP or a Rectification Plan for its Transmission Connected Generating System. These types of suspected non-compliance must be reported to AEMO under the self-reporting regime defined in Chapter 3A.10 of the ESM Rules and in accordance with AEMO's WEM Procedure: GPS Compliance Tests and Generator Monitoring Plans. All other suspected breaches of Chapter 3A clauses must be self-reported to the ERA including suspected related breaches of any other ESM Rule~~s~~ or WEM Procedures caused by non-compliance or suspected non-compliance with a Registered GPS, GMP or a Rectification Plan.

4.2 How to self-report breaches

4.2.1 Rule Participants (including AEMO and each Network Operator) must submit a self-report to the ERA as soon as reasonably practicable after determining that they have breached or suspect that they may have breached an ESM Rule or a WEM Procedure.

4.2.2 Rule Participants can lodge self-reports on the ERA website, which is the ERA's preferred method, or by email to market.compliance@erawa.com.au.

4.2.3 A self-report notification of an alleged breach must be in writing and contain, at a minimum:[11]

(a) The contact details of the person responsible for the notification.[12]

(b) The name of the Rule Participant who is alleged to have breached the ESM Rules or WEM Procedures.

(c) The specific clauses in the ESM Rules or which WEM Procedures are alleged to have been breached.

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9 In accordance with Clause 2.15.3(b).

10 Clause 2.13.23

11 Clause 2.13.25 requires a notification of an alleged breach to include the information specified in this Procedure.

12 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.

(d) The dates and times on which the alleged breach occurred.[13]

(e) A description of the alleged breach with any supporting information for the allegation.

4.2.4 If available, the self-report notification should also include:

(a) The root cause of the alleged or suspected breach.

(b) Any mitigating circumstances.

(c) Any proposed remedies.

(d) Actions planned or implemented to prevent recurrence.

(e) Details of any known impact to the market or Rule Participants.

(f) Any other information considered relevant.

4.2.5 When a Rule Participant becomes aware of any new or updated information relating to the alleged or suspected breach or information described in section 4.2.4, the Rule Participant should provide that information to the ERA as soon as reasonably practicable after that information becomes known.

4.2.6 If a Rule Participant provides information to the ERA with a self-report notification that it considers to be confidential, it may make a submission to the ERA in accordance with Clause 10.2.7. The ERA must consider but is not bound by any such submission made by the Rule Participant.[14]

4.3 How to report breaches by other Rule Participants

4.3.1 A Rule Participant, other than AEMO (referred to in this Monitoring Protocol as the 'Reporting Party', may inform the ERA at any time if it considers that another Rule Participant may have breached the ESM Rules or WEM Procedures (including Chapter 3A Clauses) and must provide reasonable information in support of the allegation.[15]

4.3.2 These notifications may be made using any of the ERA compliance contact details provided in section 1.6.1 or using the form on the ERA website.[16]

4.3.3 The ERA may disclose the identity of the Reporting Party to the Rule Participant alleged to be in breach. In exercising this discretion, the ERA will take into consideration any requests for anonymity from the Reporting Party.

4.3.4 Confidential or personal information included in any notification to the ERA should be clearly marked.

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13 Times are only required if they are applicable to the alleged breach.

14 Clause 10.2.8

15 Clause 2.13.24. AEMO has specific reporting obligations described in section 3.2 of this Procedure.

16 Clause 2.15.3(c).

5. ASSESSING RISK AND DETERMINING WHETHER TO INVESTIGATE[17]

5.1 Overview

5.1.1 The ERA applies a risk-based approach to identify and assess compliance risks and decide on appropriate measures to control these risks. This means that the ERA will prioritise matters that pose more risk to the effective functioning of the WEM and energy system security and reliability over lower risk matters.

5.1.2 The ERA:

(a) Has assigned a baseline risk rating to obligations under the ESM Rules and WEM Procedures.

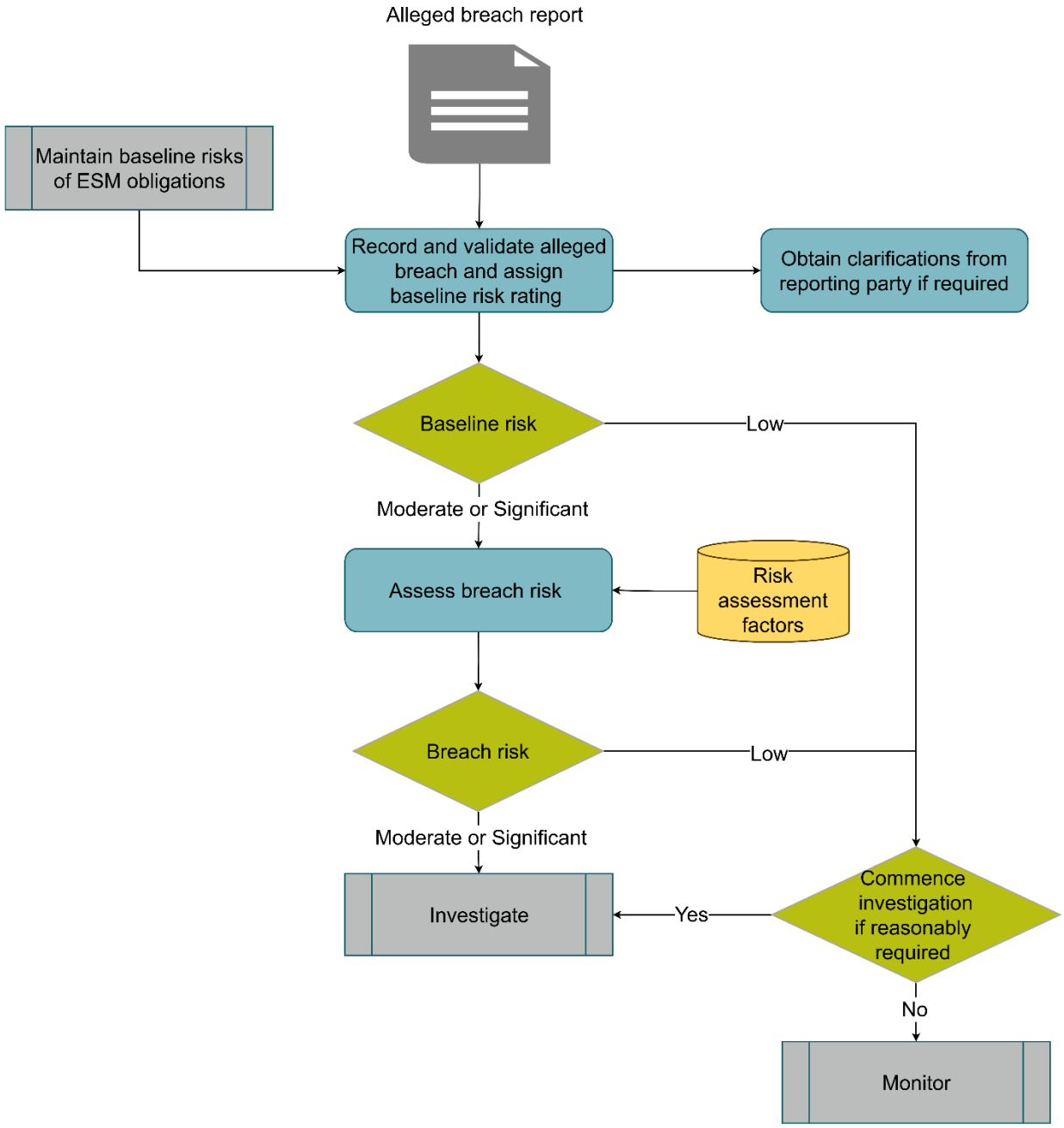
(b) Will assess the breach risk arising from the circumstances of an alleged breach (by identifying the baseline risk rating for the obligation alleged to have been breached and considering the breach risk factors, on a case-by-case basis).

(c) Will determine whether the alleged breach should be investigated, and if so, the priority of that investigation.

5.1.3 Figure 2 provides an overview of the ERA's breach risk assessment process. Descriptions of each step is provided further in this section.

[17] Clause 2.15.3(d).

Figure 2: Breach risk assessment process



5.2 Establish baseline risk of non-compliance with ESM Rule obligations

5.2.1 The ERA has performed a risk assessment of all Clauses or groups of Clauses that refer to relevant obligations in the ESM Rules to establish the maximum potential impact that a breach of an obligation may have on any of these consequence categories:

(a) Electricity system security and reliability.

(b) Effective functioning of the market.

(c) Unfair financial gain or loss.

5.2.2 Each relevant Clause has been assessed as having a low, moderate or significant **baseline risk** rating based on the maximum potential impact of an obligation's breach.

5.2.3 The ERA has assigned a **low** baseline risk rating to obligations which, if breached, are unlikely to result in direct consequences to the system, market or Market Participants. Examples of such obligations are reporting, publishing and administrative obligations or those which have robust controls consistently preventing the breaches from occurring or breach impacts from escalating.

5.2.4 The ERA has assigned a **moderate** baseline risk rating to obligations which, if breached, may disrupt operations of the power system or the market, impact market prices or cause material financial consequences to Market Participants in extreme cases (however these extreme breach consequences are normally mitigated through the market and system processes).

5.2.5 The ERA has assigned a **significant** baseline risk rating to obligations which, if breached, may cause a 'Not Reliable' or 'Emergency' operating system state or disrupt the market including by resulting in an inability to perform market processes, market suspension, or significant financial impact on the market prices or a wide range of Market Participants.

5.2.6 The ERA may reassess the baseline risk rating if there is a change in the ESM Rules, context, existing controls moderating the impact of non-compliance or if there are any other indications that a reassessment is required.

5.2.7 The baseline risk rating informs compliance planning and monitoring activities and assists in the ~~initial~~ assessment ~~screening and triage~~ of breach allegations received by the ERA.

5.3 Recording and assigning baseline risk rating to breach allegations

5.3.1 Where the ERA becomes aware of an alleged breach of the ESM Rules or WEM Procedures, including through reports of alleged breaches by Rule Participants (e.g., a Reporting Party) or through its monitoring processes, the ERA will record the alleged breach.[18]

5.3.2 The ERA will assess~~validate~~ the alleged breach ~~report~~ to ~~and~~ assign the baseline risk to each alleged breach as soon as possible, subject to the ERA's compliance priorities and resource availability.

~~5.3.2~~5.3.3 The ERA may contact the reporting party at this stage to obtain clarification or additional information.

5.4 Assessing breach ~~risk~~ allegations to determine if investigation is required

5.4.1 The ERA will assess each breach based on its individual circumstances in a manner that the ERA considers to be most appropriate and consistent with the ESM Rules obligations.

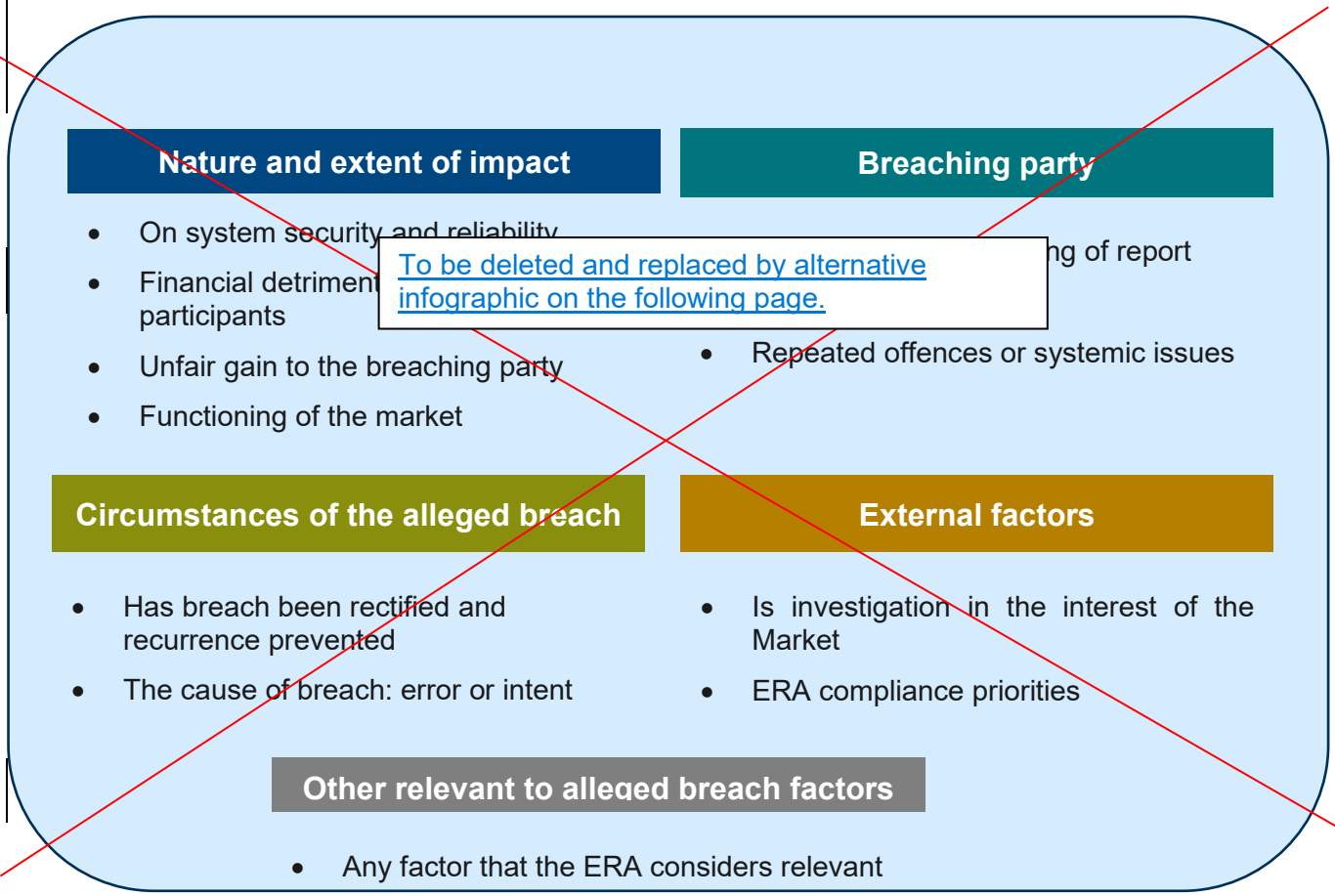
5.4.2 The ERA will not generally investigate reported breach allegations which are assessed as having a **low baseline risk** rating. Instead, the ERA will consider these matters in its monitoring, compliance and education activities. Where these

[18] Clause 2.13.27(a)

activities identify underlying issues, including ongoing or frequent low risk non-compliances by a Rule Participant, the ERA may commence an investigation. The Rule Participant's compliance history and diligent self-reporting will be taken into consideration where relevant when considering the appropriate course of action. When the ERA decides to close low risk matters, it will notify the relevant Rule Participant.

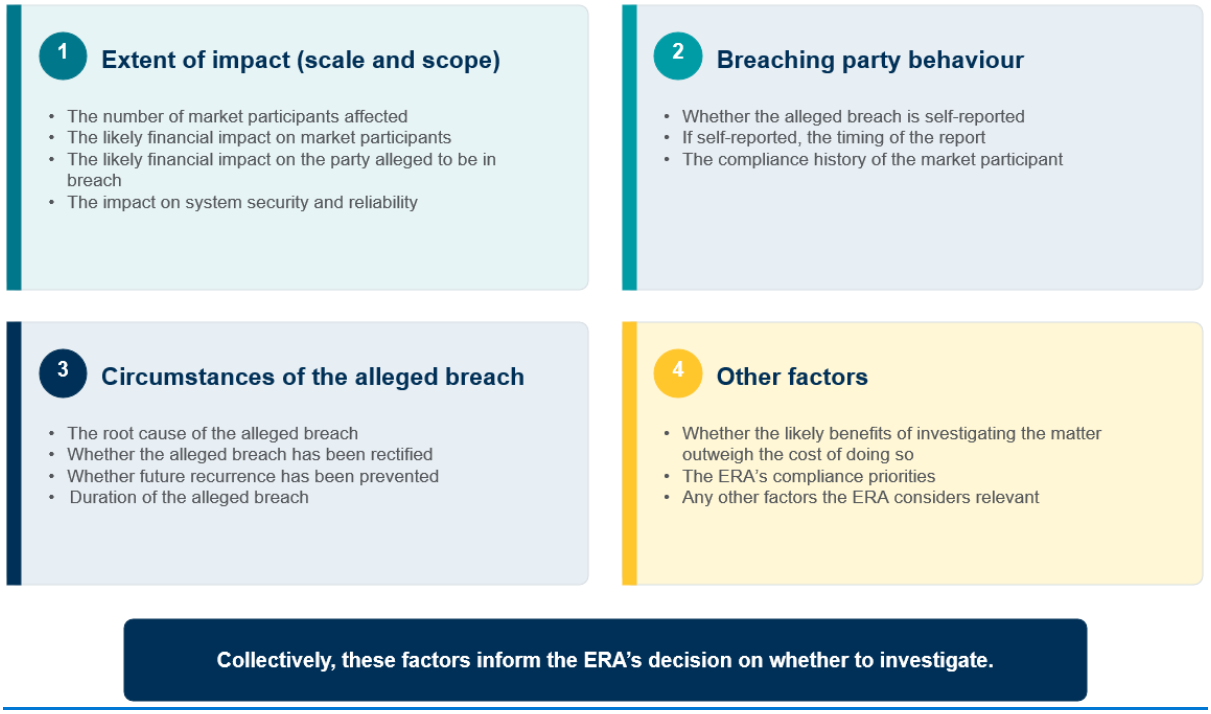
5.4.3 Alleged breaches with a baseline risk rating of **moderate** or **significant** are further assessed based on their individual circumstances to decide whether to commence an investigation and the priority of that investigation.[19] The key breach risk factors that the ERA may consider in this decision are presented in Figure 3.

Figure 3: Key factors considered when assessing an alleged breach



The ERA considers a range of factors when determining ~~ciding~~ whether to commence an investigation. Examples of these factors are set out in more detail below. This list is not exhaustive, and not all factors may be relevant to every incident.

[19] When more than one clause is alleged to have been breached, the ERA will use the clause with the highest baseline risk rating to set the baseline risk.



5.4.4 The ERA will usually not investigate the matter if the alleged breach incident meets all of the following conditions:

(a) The breach has been remediated.

(b) Measures have been taken to prevent recurrence.

(c) The estimated impact is low.

(d) There are no indications of exacerbating circumstances or unresolved issues.

5.4.5 If remediation measures are still pending, the ERA may suspend the risk assessment until these measures have been implemented. Alternatively, the ERA may monitor the remediation actions of the Rule Participant.

5.4.6 Notwithstanding the breach risk rating assigned to an alleged breach, the ERA may decide to investigate an alleged breach (including in relation to obligations with a low baseline risk rating) where the ERA considers that this is reasonably required.[20] Examples of such instances may include, but are not limited to:

(a) Breaches of obligations assigned a low-risk rating which are prevalent across numerous Rule Participants.

(b) Breaches where previously introduced prevention or control measures are not effective.

(c) The effectiveness of AEMO operations is affected.

[20] Clause 2.13.27(c).

(d) There are indications of low awareness of a particular obligation amongst the Rule Participants.

(e) Indications of systemic or process issues.

5.4.7 During the breach risk assessment the ERA may contact the Reporting Party or the Rule Participant that is alleged to be in breach, to clarify the details of the relevant incident or request additional information to assist in the breach risk assessment. These clarification requests do not constitute a decision by the ERA to commence an investigation.

5.5 Notify the relevant parties

5.5.1 After the ERA has completed its breach risk assessment:

(a) If the ERA decides to **not investigate** it will notify the person who reported the breach whether it was self-reported or reported by another person as soon as practicable after making the decision.[21]

(b) If the ERA decides **to investigate**, it will notify the Rule Participant alleged to be in breach~~. This notification will be made~~ as soon as practicable after the ERA commences its investigation. ~~The timing of this notification may be delayed if the ERA considers that it may prejudice the outcome of the investigation.~~

5.5.2 The timing of the investigation will depend on the risk factors arising from the breach risk, resourcing and compliance priorities.

5.6 GPS/GMP immunity

5.6.1 Not all non-compliances with the GPS or GMP result in a breach of the ESM Rules.

5.6.2 A Market Participant will not be in breach of the ESM Rules in respect of a GPS or GMP non-compliance where a Rectification Plan is being developed or approved by AEMO and adhered to by the Market Participant as per Clause 3A.12.1 unless:

(a) AEMO considers the alleged non-compliance, or suspected non-compliance threatens Power System Security or Power System Reliability.

or

(b) The Market Participant has repeatedly failed to comply with the same Registered Generator Performance Standard or another applicable Registered Generator Performance Standard.

or

(c) The Market Participant has repeatedly failed to comply with the Generator Monitoring Plan approved by AEMO for the Transmission Connected Generating System.

[21] Regulation 38.

5.6.3 If immunity under Clause 3A.12.1 applies, the GPS or GMP non-compliance is not an alleged breach of the ESM Rules. In this case the ERA will record the reported non-compliance but will not risk assess or investigate it. It will be used in assessing immunity of the future non-compliances relating to the same Market Participant.

5.6.4 In all other cases, the ERA will apply its standard alleged breach assessment process to GPS or GMP non-compliances.

6. COMPLIANCE INVESTIGATIONS[22]

6.1 Rule Participants' obligations while under investigation

6.1.1 Rule Participants (including AEMO and each Network Operator) must cooperate with an investigation of an alleged breach of the ESM Rules or WEM Procedures, 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.[23]

6.1.2 Rule Participants (including AEMO and each Network Operator) must not engage in conduct that is false or misleading when engaging with the ERA investigations.[24]

6.2 ERA investigation process

6.2.1 The process for a typical ERA compliance investigation is described in this section. However, each investigation will be carried out in a manner appropriate to the circumstances of the matters alleged to be in breach and consistent with the ESM Rule requirements.

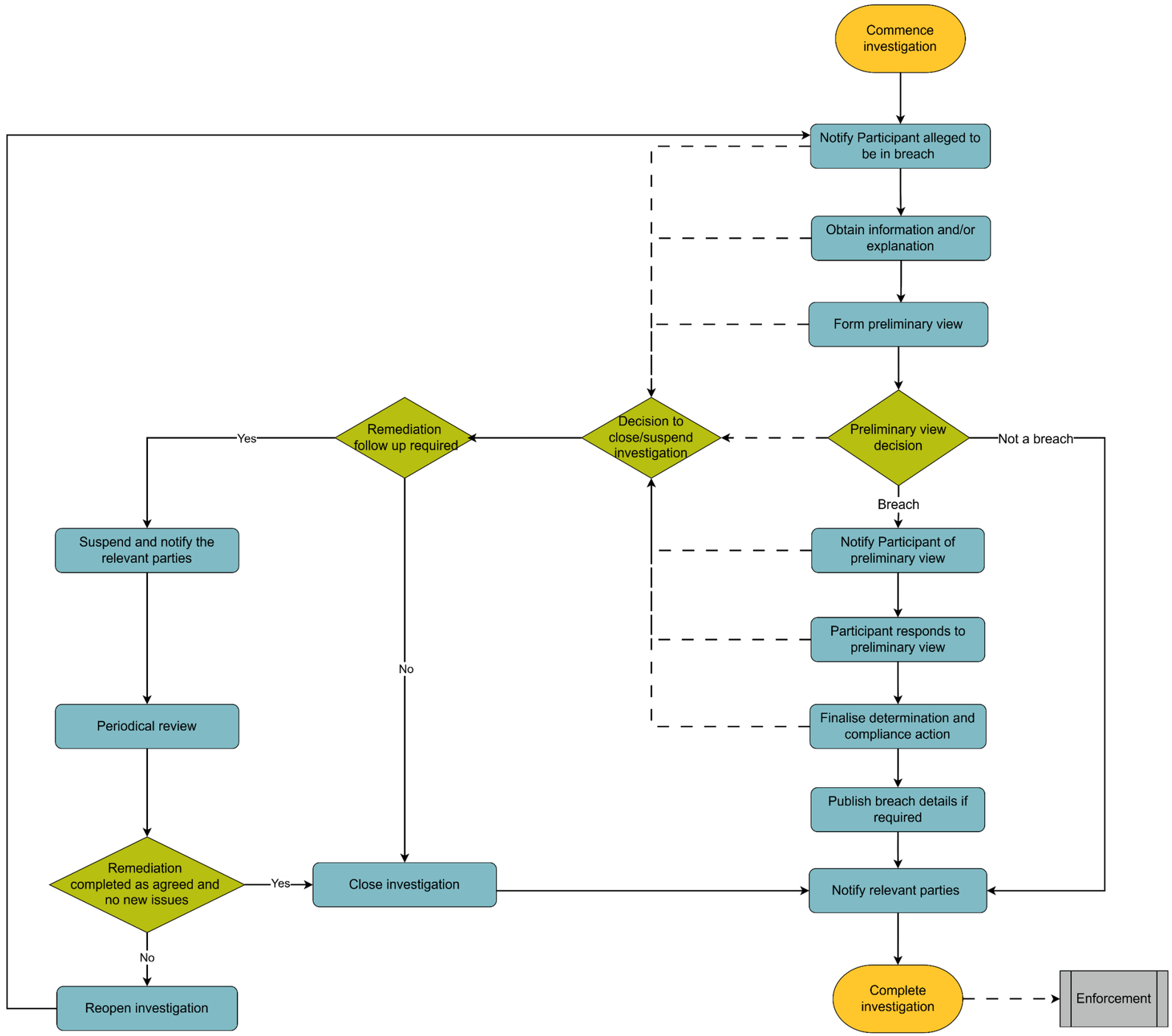
6.2.2 Figure 5 provides an overview of the investigation process.

22 Clause 2.15.3(e).

23 Clause 2.13.30(b).

24 Clause 2.13.31.

Figure 5 Investigation process steps



6.3 Commencement of investigation

6.3.1 Following the ERA's decision to open an investigation based on the breach risk rating or if reasonably required in accordance with Clause 2.13.27(d) the ERA will commence an investigation in accordance with the priority assigned to that investigation (based on the risk factors arising from the alleged breach, resourcing and compliance priorities) and will notify the Rule Participant alleged to be in breach.[25]

6.3.2 This notification will be in writing and addressed to the Rule Participant's contact registered on AEMO's Market Data website or any other officer from the Rule Participant's organisation that the ERA considers appropriate, such as any person nominated as the ESM compliance contact for the Rule Participant.

6.3.3 The investigation notification will contain:[26]

(a) A description of the incident which caused the alleged breach.

(b) Date(s) and time(s) of the alleged breach(es).

(c) The Clauses and/or WEM Procedure sections alleged to be breached.

(d) If appropriate, the Reporting Party's name.

6.3.4 The ERA will record the commencement of the investigation in the public register of investigations on its website as soon as practicable. This record will not contain any information that may identify the investigated Rule Participant.

6.4 Information gathering and establishing the facts of the alleged breach

6.4.1 The ERA will gather information to establish the facts of the alleged breach.

6.4.2 The ERA may request information or meet with the investigated Rule Participant, AEMO, or Network Operator to discuss the investigated matter.

6.4.3 To obtain the information required for the investigation, the ERA may use its information gathering powers in the ESM Rules.[27]

6.4.4 The ERA may appoint another person to investigate the matter if the investigated Rule Participant does not cooperate with the ERA investigation. In this case, the Rule Participant has an obligation to cooperate with the appointed person and is liable for the investigation costs.[28]

6.4.5 The information and data obtained during the investigation process will be recorded and stored in accordance with the *State Records Act 2000*.

[25] See section 5.5~~5.6~~5 of this Procedure.

[26] Clause 2.15.3(a)(i).

[27] Non-compliance with the obligations to cooperate with the ERA's investigations described in Clause 2.13.30 may result in a civil penalty as per Regulation 31 and Schedule 1 of the ESM Regulations.

[28] Clause 2.13.32.

6.5 Information requests

6.5.1 Where the ERA requires information, records, access to equipment, or seeks a meeting, it will contact the investigated Rule Participant's contact registered on AEMO's Market Data website or any other officer from the Rule Participant's organisation that the ERA considers appropriate, such as any person nominated as the ESM compliance contact for the Rule Participant. The request from the ERA will generally indicate a date by which the response should be provided. If the request is made under specific information gathering powers, this will be clearly stated.

6.5.2 Rule Participants may request an extension of the date to comply with an information request in writing from the ERA. The ERA must consider the individual circumstances of the request and advise the Rule Participant whether the extension has been granted, and, if so, details of the extension, and if not, the reasons for not granting the extension.

6.6 Preliminary view

6.6.1 When the ERA forms a preliminary view on whether a breach of an ESM Rule or a WEM Procedure has occurred, it will notify the Rule Participant of its findings including the rationale for these findings. This notification may occur at the same time as a notification of investigation and/or a request for information or explanation.[29]

6.6.2 The ERA will invite the Rule Participant to make a submission to explain an alleged breach in response to the preliminary findings and to provide additional evidence if the Rule Participant disagrees with the findings.[30]

6.6.3 The ERA will allow reasonable time for the Rule Participant to respond. The Rule Participant may request an extension to the response time. The ERA will consider extensions where sufficient justification has been made by the Rule Participant.

6.6.4 The ERA will take into consideration any information provided by the Rule Participant in its submission in response to the preliminary findings when making its final determination.

6.7 Conclusion of investigation

6.7.1 At any stage during an investigation, prior to the ERA finally determining if the ESM Rules or WEM Procedures have been breached, the ERA may suspend or close the investigation as detailed in section 6.8 of this Procedure.

6.7.2 If the investigation is not closed or suspended, the ERA will determine whether a breach of the ESM Rules or WEM Procedures has occurred.

6.7.3 After the ERA has made its final determination, it will notify the investigated Rule Participant of the outcome (unless the ERA has decided to commence proceedings before the ERB, in which case notification will usually occur as part

[29] See paragraphs 1.1~~6.3~~ and 6.5.1.

[30] Clause 2.15.3(a)(ii).

of those proceedings).[31] The notification will be in writing and include the following information:

(a) The Clause(s) of the ESM Rules or WEM Procedures that were 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) If a breach has been determined, the reasons for the determination.

(e) The enforcement action(s) that the ERA considers appropriate.[32]

6.7.4 Where the Reporting Party was not the party alleged to have breached the ESM Rules or WEM Procedure, the ERA may notify that party of the investigation outcome, if it considers this to be appropriate and permitted under the ESM Rules and ESM Regulations.

6.7.5 The ERA must notify the Reporting Party if the ERA:[33]

(a) Decides not to investigate the alleged breach or suspend or close an investigation.

(b) Determines that a breach has not taken place.

or

(c) Decides not to demand a civil penalty or seek an order from the Electricity Review Board (ERB) in relation to the alleged breach.

6.7.6 The ERA will record ~~any~~ breach determinations in the public register as described in section 7 of this Procedure.

6.7.7 Where applicable, the ERA will commence enforcement actions as described in section 8 of this Procedure. This includes warnings, civil penalty notices, and/or commencement of proceedings before the ERB.

6.8 Suspension and early closure of an investigation[34]

6.8.1 The ERA may suspend or close investigations before reaching a conclusion whether a breach of the ESM Rules or WEM Procedures has occurred if any of the following applies:

(a) The alleged breach was self-reported and the Rule Participant has rectified it and prevented (or undertakes to prevent) its recurrence where prevention is possible.[35]

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31 The ERA will notify the Rule Participant as soon as practicable after the appropriate internal processes have been followed.

32 The Notification of the enforcement action may be issued at a date later than the notification of the investigation outcome.

33 Clause 2.13.35 and Regulation 38(3).

34 Clause 2.15.3(f).

35 Clause 2.13.33(a).

(b) The breach was reported by another person, and it has been rectified and its recurrence prevented (or prevention action is being undertaken) where prevention is possible.

(c) Continuing the investigation is ~~imprudent and~~ not to the benefit of the market.

(d) The Rule Participant alleged to have breached the ESM Rules or WEM Procedures is no longer a legal entity.

(e) The investigation is unlikely to result in a compliance action even if the breach is determined.

6.8.2 When determining whether to suspend or close an investigation for any of the reasons in ~~7~~6.8.1, the ERA will normally **suspend** the investigation if remediation or prevention actions are pending or in progress, until it is satisfied that the investigated matter has been resolved. In all other cases the ERA will **close** an investigation.

6.8.3 The ERA will review suspended investigations at least every six months and may:[36]

(a) **Resume** a suspended investigation if any of the following applies:

(i) The Rule Participant failed to complete the outstanding actions by timeframes agreed with the ERA.

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

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

or

(b) **Close** a suspended investigation if any of the following applies:

(i) The Rule Participant has completed any outstanding actions agreed with the ERA.

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

(iii) The investigation has been suspended for at least six months and no further alleged non-compliant behaviour has been identified.

6.8.4 The ERA will notify the investigated Rule Participant of its decision to close, suspend or resume an investigation and the reasons for its decision. [37]

[36] Clause 2.15.3(g).

[37] Clause 2.13.34.

6.9 ERA obligations when investigating alleged breaches of Clause 2.16C.5

6.9.1 Clause 2.16C.5 states that a Market Participant must not make an Irregular Price Offer that results in an inefficient market outcome.

6.9.2 In addition to its general obligations, when investigating these breaches, the ERA must have regard to its WEM Procedure - Portfolio Determination and to the Offer Construction Guideline.[38]

6.9.3 The ERA must follow the process defined in the ESM Rules when investigating alleged breaches of Clause 2.16C.5:

(a) First, the ERA must identify if the price offered by a Market Participant constituted an Irregular Price Offer.[39]

(b) If the ERA determined that the price offer was an Irregular Price Offer, it must determine if this offer resulted in an inefficient market outcome.[40] In determining this, the ERA must consider:[41]

(i) Any changes to a Short-Term Energy Market (STEM) Clearing Price, Reference Trading Price or Energy Uplift Payments that are likely to have occurred as a result of the Irregular Price Offer; or

(ii) Any changes to the quantities of energy scheduled in respect of Market Participants in the STEM Auction, or the dispatch of Facilities in the Real-Time Market, that are likely to have occurred as a result of the Irregular Price Offer; and

(iii) May consider any other matters it considers relevant.

(c) If the ERA determined that the price offer resulted in an inefficient market outcome, it must determine that a breach of Clause 2.16C.5 has taken place.

6.9.4 The ERA must finalise its determination within six months from commencing the investigation subject to any ESM Rules which suspend the timeframe.[42]

6.9.5 The ERA must publish the details of all breaches of Clause 2.16C.5 on its website and include the name of the breaching Market Participant and the relevant Irregular Price Offers. Clause 2.16C.10(a) requires that the ERA notifies the Market Participant at least two Business Days prior to publishing the breach details. The ERA will generally wait until the end of the 28-day review period following notification to the relevant Participant of the investigation outcome before publishing the breach details.[43]

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38 Clause 2.13.27 (general obligations) and Clauses 2.16.C.6, 2.16D.12, 2.16D.15 (specific market investigation obligations). The WEM Procedure - Portfolio Determination and Offer Construction Guideline are available on the ERA's website.

39 Clause 2.16C.6.

40 Clause 2.16C.7.

41 Clause 2.16C.9.

42 Clauses 2.16C.8 and 2.16C.8A.

43 This publication may be included in the Public Register of Breaches as described in Section 7 or made separately.

7. PUBLIC REGISTERS[44]

7.1 ERA obligation to keep public registers

7.1.1 The ERA has an obligation to keep, on its website, public registers of its:[45]

(a) Compliance investigations.

(b) Breach determinations:

(i) That resulted in a civil penalty notice that was not set aside by the ERB.

or

(ii) Where the disclosure will benefit the market or the ERA expects to be disclosed.

7.2 Public register of investigations

7.2.1 Records of investigations that are yet to be finalised will be anonymised as required by Clause 2.13.49(a).

7.2.2 Records of investigations closed, suspended or where no breach was determined may identify the relevant Rule Participant if the ERA considers it appropriate and allowed under the ERA's confidentiality obligations.

7.2.3 The public register of investigations will be updated as required.

7.3 Public register of breaches

7.3.1 The public register of breaches will include:

(a) Determinations of breaches, including determinations that are subject to review by the ERB. If the ERB subsequently varies or sets aside the determination, the public register of breaches will be updated to reflect the ERB's decision.

(b) The information prescribed in Clause 2.13.50. Some confidential information may be excluded from publication in accordance with Clause 2.13.51.

7.3.2 The ERA will notify the relevant Rule Participant in advance of the ERA's intention to include the information in the public register of breaches. The notification will include:

(a) A copy of the information to be published.

(b) The intended date of publication (which will be typically after the 28-day review period following notification to the relevant Participant of the investigation outcome).

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44 Clause 2.15.3(k).

45 Clauses 2.13.49 and 2.13.49A.

(c) A statement that if the Rule Participant wishes that particular information not be published, they:

(i) Must provide evidence, if they wish to rely on the Clause 2.13.51(a)

(ii) May provide a submission on whether any information provided falls within a confidentiality category other than "Public", for the purposes of Clause 10 of the ESM Rules, if they wish to rely on Clause 2.13.51(b).

7.3.3 The ERA will generally allow the Market Participant at least fourteen days to review the proposed publication and make a submission in relation to confidentiality claims. The provision of evidence or a submission on confidentiality must occur prior to any deadline specified in the notification.

7.4 Confidentiality of information

7.4.1 The ERA will review all claims for, or submissions on, confidentiality of information proposed to be published in any public register, in accordance with Clauses 10.2, 10.4 and 10.5 of the ESM Rules and amend the information to be published if these claims or submissions are accepted. Following this review, the ERA will publish the non-confidential information in the public register on its website.

8. ENFORCEMENT

8.1 Enforcement actions

8.1.1 Following a determination by the ERA that a Rule Participant has breached the ESM Rules or WEM Procedures, the ERA has the following enforcement actions available to it: warnings, civil penalties and/or commencement of proceedings before the ERB.[46]

8.1.2 The aims of the ERA's enforcement actions are to:

(a) Stop non-compliance as quickly as possible and prevent future recurrence of the non-compliant behaviour.

(b) Deter future non-compliance.

(c) Encourage the Rule Participants to develop and maintain appropriate compliance systems.

8.1.3 The ERA will consider a range of factors when deciding on an appropriate enforcement action including, but not limited to:

(a) The nature and seriousness of the breach.

(b) The intent and reasons behind the breach.

(c) The likelihood of non-compliance continuing or re-occurring including the previous compliance history of the Rule Participant and internal systems in place to prevent breaches.

(d) Conduct of the breaching Rule Participant after the breach including any actions proposed by the Rule Participant to mitigate the breach and prevent any future breaches.

(e) Expected benefit to the market from taking enforcement action including timeliness and costs.

(f) Whether the enforcement action is expected to deter misconduct and improve behaviour.

8.2 Warnings[47]

8.2.1 A warning will be titled as such in the communication and will:

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

(b) Describe the behaviour considered to be non-compliant.

(c) Where relevant, request an explanation.

46 Clause 2.13.36.

47 Clause 2.15.3(h).

(d) Where relevant, request rectification of the contravention and set a reasonable timeframe for the rectification.[48]

8.2.2 The ERA will also specify in the warning that the Rule Participant may provide a response to the warning and specify a due date for such a response.

8.2.3 The ERA may provide the warning by email or post to the person nominated as the primary contact for the Rule Participant on AEMO's Market Data website or to any other officer of the Rule Participant as the ERA considers appropriate, such as any person nominated as the ESM compliance contact for the Rule Participant.

8.2.4 The Rule Participant may request the ERA to extend the due date for an explanation, rectification and/or response. The ERA will consider the individual circumstances of the request and advise the Rule Participant whether the extension has been granted, and if so, details of the extension, and if not, the reasons for not granting the extension.

8.2.5 On receipt of a response to a warning from the Rule Participant (including the Rule Participant's explanation or confirmation of rectification, if this was requested by the ERA), the ERA will record the response of the Rule Participant.

8.3 Civil penalties[49]

8.3.1 Regulation 30 deems certain ESM Rules as civil penalty provisions. In Schedule 1 to the ESM Regulations, these provisions are allocated a category (A, B or C) and maximum penalty amount.

8.3.2 If the ERA determines that a breach of a civil penalty provision has occurred, it may issue a penalty notice.[50]

8.3.3 When deciding if a civil penalty should be issued and the amount of the penalty, the ERA will consider all relevant matters, including:

(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.

(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.

(f) The previous compliance history of the Rule Participant.

(g) Whether a daily amount should be imposed, including a consideration of:

48 Clause 2.13.36(a).

49 Clause 2.15.3(j).

50 Clause 2.13.36(c).

(i) The financial impact of the total civil penalty, if a daily amount were to be imposed and any benefit gained by the Rule Participant as a result of the breach.

(ii) Any detriment to non-offending Rule Participants and offending Rule Participant gains, if any.

(h) Whether the penalty is sufficient to deter future non-compliances.

(i) The financial impact of the total penalty on the offending Rule Participant.

(j) The maximum limits prescribed in the *Electricity Industry Act 2004* and ESM Regulations.[51]

8.4 Civil penalty notice

8.4.1 A penalty notice will be issued in writing, titled as a 'Notice under Regulation 31 of the *Electricity Industry (Electricity System and Market) Regulations 2004*'. It will contain the information prescribed by Regulation 31 and the civil penalty payment instructions.

8.4.2 The penalty notice will be issued no later than six years after the day on which the Rule Participant is considered to have contravened the provision. [52]

8.5 Rule Participant actions following civil penalty notice

8.5.1 Within 28 days after receiving the civil penalty notice, the Rule Participant must:

(a) Pay the full amount of civil penalty in accordance with the payment instructions included in the notice.

or

(b) Apply to the ERB for a review of the ERA's decision.[53]

8.5.2 If the Rule Participant fails to pay the penalty or apply to the ERB within 28 days, the ERA may apply to the ERB for a payment order within a further 28 days.

8.5.3 Civil penalty amounts will be distributed in accordance with the ESM Rules.[54]

8.6 Electricity Review Board proceedings[55]

8.6.1 The ERA may decide to make an application to the ERB in accordance with Part 5 of the ESM Regulations and Part 6 Division 2 of the *Energy Arbitration and Review Act 1998.*

8.6.2 The ERA will include, in its application, information listed in Regulation 31(6).

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51 Maximum limits are determined by reference to the Act and Regulations that were in force at the time of the breach.

52 Regulation 31(4).

53 Clause 2.13.44.

54 Clauses 2.13.43 and 2.13.43A.

55 Clause 2.15.3(i).

8.6.3 The ERA may apply to the ERB for the following types of orders:[56]

(a) A civil penalty order (up to the maximum civil penalty amount prescribed in Schedule 1 of the ESM Regulations).

(b) To cease the act or omission constituting a breach by the required time.

(c) To take action or adopt such practice as the ERA requires to remedy or prevent the recurrence of the breach.

(d) To implement a compliance program.

(e) To suspend the Rule Participant's registration or any other specified right under the ESM Rules for a specified period.

(f) To disconnect a Facility or Facilities.

(g) To cancel the Rule Participant's registration in the WEM~~ESM~~.

8.6.4 Where an order is made by the ERB, the ERA may enforce that order through the Supreme Court of Western Australia.[57]

[56] Regulation 33(1).

[57] Regulation 34.

9. REPORTING

9.1 6-monthly compliance activities reports

9.1.1 The ERA will publish a report at least once every 6 months which, with respect to the preceding 6 months, provides a summary of:[58]

(a) Investigations completed by the ERA.

(b) Breaches of the ESM 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 (unless the ERA's decision has been set aside by the ERB or ordered by the ERB, including: the Rule Participant liable for the civil penalty, the amount of the civil penalty and an explanation of the ERA's civil penalty distribution determination (including reasons).

9.1.2 The ERA may release additional reports on matters where an enforcement action has been taken or which have been referred to the ERB, the findings on those matters, and any sanctions imposed by the ERA and ERB (as applicable).

9.1.3 The ERA must make these reports available on its website and distribute them to all Rule Participants and interested parties.

9.1.4 When publishing these reports, the ERA will consider any confidentiality provisions in accordance with Chapter 10 of the ESM Rules, including any claims of confidentiality of information.

9.2 Report to Minister – AEMO's compliance

9.2.1 The ERA provides a report to the Minister on AEMO's compliance with the ESM Rules and WEM Procedures annually following the process outlined in Clauses 2.14.5B to 2.14.5D. The report contains:

(a) Reports published in accordance with Clause 2.14.5.

(b) Results of any investigations into AEMO's compliance undertaken by the ERA.

9.3 Report to Minister – Network Operator's compliance

9.3.1 The ERA provides a report to the Minister on each Network Operator's self-reported compliance with the ESM Rules and WEM Procedures annually following the process outlined in Clauses 2.14.6 to 2.14.9. The report must contain the

[58] Clause 2.13.45.

results of any investigations undertaken into each Network Operator's compliance undertaken by the ERA.

9.4 Report to Minister – the ERA's compliance

9.4.1 The ERA provides a report to the Minister annually on the ERA's compliance with the ESM Rules and WEM Procedures.[59] 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.

[59] Clause 2.14.5A.