

Revised Final Rule Change Report:  
ERA access to market information and SRMC  
investigation process (RC\_2018\_05)

Standard Rule Change Process

17 February 2020

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# 1. Rule Change Proposal, Process and Timeline

On 27 September 2018, the Economic Regulation Authority (**ERA**) submitted a Rule Change Proposal titled “ERA access to market information and SRMC investigation process” (RC\_2018\_05). This Rule Change Proposal sought to:

- require AEMO to provide the ERA with data and information for the ERA’s compliance monitoring function under the Market Rules;
- allow the ERA to use information provided by AEMO to the ERA under section 2.16 of the Market Rules for the ERA’s other functions by removing the restrictions in section 2.16 of the Market Rules; and
- not require two separate investigations for the ERA to bring proceedings before the Electricity Review Board to address short run marginal cost (**SRMC**) non-compliance matters.

This Rule Change Proposal was processed using the Standard Rule Change Process described in section 2.7 of the Market Rules. On 9 November 2018, the Rule Change Panel extended the timeframe for the end of the first submission period in accordance with clause 2.5.10. On 17 December 2018 and 25 March 2019, the Rule Change Panel extended the timeframe for publication of the Draft Rule Change Report in accordance with clause 2.5.10.

The Rule Change Panel published its Final Rule Change Report on 28 June 2019.

The Amending Rules from the Final Rule Change Report change clauses 2.13.3A, 2.13.9A, 2.13.9B, 2.16.9G and 2.16.14; which are Protected Provisions under clause 2.8.13. The Amending Rules therefore required Ministerial approval under clause 2.8.3 and the Rule Change Panel submitted the Amending Rules to the Minister for approval on 28 June 2019.

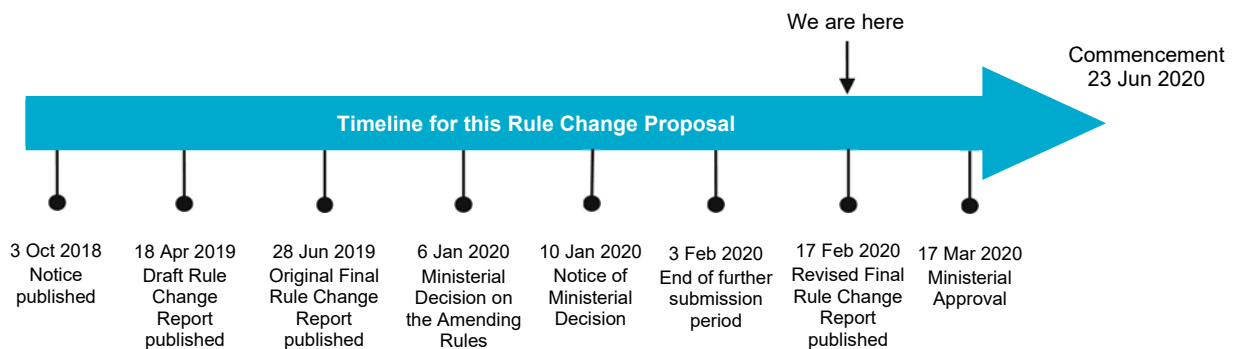
The Minister extended his timeline to consider the Amending Rules six times – on 26 July 2019, 23 August 2019, 9 September 2019, 18 October 2019, 18 November 2019, and 16 December 2019.

The Minister provided his decision regarding the Amending Rules to the Rule Change Panel on 6 January 2020. The Minister decided under clause 2.8.5(c) to send the proposed Amending Rules back to the Rule Change Panel with some proposed further revisions that the Minister considered were required to ensure that the Market Rules, as amended by the Amending Rules, are consistent with the Wholesale Market Objectives. The Minister provided reasons for his decision in accordance with clause 2.8.9.

In accordance with clause 2.8.10, the Rule Change Panel is required to:

- Publish the revised Amending Rules and a call for submissions on the revised Amending Rules within 15 Business Days of publication. The Rule Change Panel published a notice on 10 January 2020 to meet this requirement, and the further consultation period closed on 3 February 2020.
- Provide a revised Final Rule Change Report, including any submissions received on the Minister’s revised Amending Rules to the Minister within 25 Business Days, with clauses 2.8.4 to 2.8.10 applying to the revised Final Rule Change Report. This report is the required revised Final Rule Change Report.

The key dates for progressing this Rule Change Proposal are:



All documents related to this Rule Change Proposal can be found on the Rule Change Panel's website at [https://www.erawa.com.au/rule-change-panel/market-rule-changes/rule-change-rc\\_2018\\_05](https://www.erawa.com.au/rule-change-panel/market-rule-changes/rule-change-rc_2018_05).

## 1.1 Key Terms

Reference in this report is made to the following key terms:

- **Original Final Rule Change Report** – the Final Rule Change Report published by the Rule Change Panel on 28 June 2019;
- **Revised Final Rule Change Report** – this revised Final Rule Change Report published on 17 February 2020;
- **compliance monitoring function** – the ERA's function to monitor compliance with the Market Rules and Market Procedures; and
- **compliance investigation and enforcement function** – the ERA's function to investigate potential non-compliance matters with the Market Rules and Market Procedures and associated enforcement.

## 2. The Rule Change Panel's Decision

The Rule Change Panel's final decision is to accept the Rule Change Proposal in a modified form, as set out in section 10 of this Revised Final Rule Change Report.

The approved Amending Rules in section 10 of this Revised Final Rule Change Report reflect the Amending Rules in section 8 of the Original Final Rule Change Report plus the further changes indicated in Appendix C of this Revised Final Rule Change Report.

### 2.1 Reasons for the Decision

The Rule Change Panel made its final decision on the basis that the Amending Rules, as stated in section 8 of the Original Final Rule Change Report will:

- ensure that the ERA can explicitly require AEMO to provide it with data, information and documents to carry out its compliance monitoring function;
- provide a more efficient avenue for the ERA to access information held by AEMO that the ERA requires for its compliance monitoring function, the absence of which would

require the ERA to use inefficient, administratively cumbersome processes to obtain that same information (inside the Market Rules or external to them);

- continue AEMO's obligations to support the ERA's compliance monitoring function;
- minimise the administrative costs to the market by not requiring the ERA to separately obtain the same information requested under section 2.16 of the Market Rules for the ERA's other functions;
- restore the mechanism to allow the ERA to bring proceedings before the Electricity Review Board pursuant to a clause 2.16.9B investigation; and
- allow the Market Rules to better achieve Wholesale Market Objectives (a) and (d) and will not affect, and thus be consistent with, the remaining Wholesale Market Objectives.

The analysis behind the Rule Change Panel's final decision is provided in section 7 of the Original Final Rule Change Report.

The Rule Change Panel approves further changes to Amending Rules, as provided in Appendix C of this Revised Final Rule Change Report because:

- the compliance process under the Market Rules should be transparent and clause 2.13.3B, as modified by the Rule Change Panel, is expected to improve transparency of the ERA's compliance monitoring process;
- the compliance process under the Market Rules should afford procedural fairness and clause 2.15.4, as modified by the Rule Change Panel, is expected to help ensure procedural fairness of the ERA's compliance investigation and enforcement function; and
- the approved further changes to the Amending Rules are consistent with the Wholesale Market Objectives.

The analysis behind the Rule Change Panel's decision to approve the further changes to the Amending Rules is provided in section 8 of this Revised Final Rule Change Report.

## 2.2 Commencement

Subject to Ministerial approval, the amendments to the Market Rules resulting from this Rule Change Proposal will commence at **8:00 AM on 23 June 2020**.

## 3. Proposed Amendments

### 3.1 The Rule Change Proposal

The ERA's Rule Change Proposal sought to address three issues that the ERA identified with the Market Rules following the transfer of the compliance function from the Independent Market Operator to the ERA, as indicated in section 1 of this report. Details of the ERA's proposed changes to the Market Rules are provided in the Rule Change Proposal and are summarised in section 3.1 of the Original Final Rule Change Report.

### 3.2 The Rule Change Panel's Initial Assessment of the Proposal

The Rule Change Panel decided to progress this Rule Change Proposal based on its preliminary assessment that the proposal is consistent with the Wholesale Market Objectives.

### 3.3 Further Proposed Changes

The Minister proposed two further changes to the Amending Rules from the Original Final Rule Change Report concerning information disclosure and procedural fairness.

#### 3.3.1 Information Disclosure

The Minister proposed to insert a new clause 2.13.3B regarding information disclosure as specified in Appendix B to this report.

The Minister's reasons for inserting this new clause are:

Industry stakeholders have noted that the proposed Amending Rules will require the [AEMO] to give the [ERA] access to a similar scope of information for compliance monitoring activities, as it would have to provide for market monitoring and effectiveness assessment purposes.

I note that stakeholders are of the view that as the ERA will be required to conduct a process to specifically identify the information required for compliance monitoring, outcomes of the process should be made available to rule participants accordingly.

The ERA should be required to inform participants of the specific information that it believes will assist its compliance monitoring activities as part of the processes and systems the ERA must establish under clause 2.13.3 of the Market Rules.

Although it is acknowledged that this requirement may place additional administrative burdens on both AEMO and the ERA, it has the potential to increase the transparency of the compliance regime and will therefore contribute towards greater process efficiency, consistent with the Market Objectives.

#### 3.3.2 Procedural Fairness

The Minister proposed to overwrite a blank clause 2.15.4 with a clause regarding procedural fairness as specified in Appendix B to this report.

The Minister's reasons for inserting this new clause are:

It is acknowledged that the Rule Change Panel and the ERA consider that the ERA is already required as a matter of Administrative Law to adhere to the principle of procedural fairness when making administrative decisions, including when undertaking its compliance function.

However, stakeholders consider that the proposed Amending Rules could limit procedural fairness for participants, by allowing the ERA to access market participant information in a manner that is not transparent, particularly as the ERA has capacity to approve its own amendments to its Monitoring Protocol (following stakeholder consultation).

Including an express requirement in the Market Rules that the ERA's monitoring processes afford participants procedural fairness when assessing compliance with the Market Rules and Market Procedures, has the potential to improve the efficiency of the market monitoring and compliance regime, thereby furthering the Market Objectives.

## 4. Consultation

### 4.1 The Market Advisory Committee

In preparing its Rule Change Proposal, the ERA consulted with stakeholders at Market Advisory Committee (**MAC**) meetings on 8 November 2017, 13 December 2017, 13 June 2018 and 8 August 2018. Section 4.1 of the Original Final Rule Change Report provides a summary of these MAC discussions.

### 4.2 Submissions Received During the First Submission Period

The first submission period for this Rule Change Proposal was held between 4 October 2018 and 21 November 2018. The Rule Change Panel received submissions from AEMO, Alinta Energy (**Alinta**), Perth Energy and Synergy; and one supplementary submission from Perth Energy. Appendix A of the Draft Rule Change Report provides a summary of these submissions.

### 4.3 The Rule Change Panel's Response to Submissions Received During the First Submission Period

Appendix A of the Draft Rule Change Report presents the Rule Change Panel's response to each of the specific issues raised in the first submission period.

### 4.4 Submissions Received During the Second Submission Period

The second submission period was held between 18 April 2019 and 30 May 2019. The Rule Change Panel received submissions from Alinta and Synergy. Section 4.4 of the Original Final Rule Change Report provides a summary of these submissions.

The Rule Change Panel notes that Alinta commented in its second period submission on the two matters raised by the Minister:

#### Information Disclosure:

- Alinta stated the following:

There is some uncertainty as to how modified clause 2.13.3A will work in practice as Alinta has interpreted the operation of clause 2.13.3A to mean that the ERA will have to undertake a process to identify the data, information and documents it would like to obtain from AEMO to assist in the ERA's monitoring role. Alinta recommends that the Rule Change Panel add a requirement that the Monitoring Protocol should require the ERA to inform Market Participants of the specific information that the ERA believes will assist its compliance monitoring function.

- Appendix A, Issue 3 of the Original Final Rule Change Report provided the Rule Change Panel's response to this issue, as follows:

The Rule Change Panel disagrees with Alinta's proposal to require the ERA to disclose to a Market Participants the specific information that the ERA has requested from AEMO about the Market Participant. In addition to placing additional administrative burdens on both AEMO and the ERA to inform the Market Participant, this would depart from the current Compliance function regime, which does not require such a disclosure.



Alinta's proposal would be a significant departure from the existing compliance process.

The Rule Change Panel views that it would be reasonable for Market Participants to assume that the ERA has access to any information that has been provided to AEMO under the Market Rules.

### **Procedural Fairness:**

- Alinta stated the following:

Administrative efficiency for the ERA could limit procedural fairness for Market Participants as the proposed Amending Rules will allow the ERA to obtain Market Participants' information through AEMO in a manner that is not transparent and could limit procedural fairness for Market Participants.

Alinta considers that the current ERA compliance and monitoring framework affords a Market Participant procedural fairness. However, it notes that the ERA can approve amendments to its own Monitoring Protocol and recommends the Rule Change Panel to add a requirement to section 2.15 of the Market Rules to ensure that processes in the Monitoring Protocol must afford procedural fairness to affected parties.

- Appendix A, Issue 1 of the Original Final Rule Change Report provided the Rule Change Panel's response to this issue, as follows:

The Rule Change Panel does not agree that there is a need to insert the provision suggested by Alinta into the Market Rules.

The ERA is already required as a matter of Administrative Law to adhere to the principle of procedural fairness whenever it makes an administrative decision, including when undertaking its Compliance function.

## **4.5 The Rule Change Panel's Response to Submissions Received During the Second Submission Period**

Appendix A of the Original Final Rule Change Report provides the Rule Change Panel's response to each of the specific issues raised in the second submission period.

## **4.6 Submissions Received During the Further Submission Period**

After receiving the Minister's revised Amending Rules on 6 January 2020, a further submission period was held between 10 January 2020 and 3 February 2020. The Rule Change Panel received submissions during the further submission period from Alinta, AEMO, the ERA and Synergy. These submissions are summarised below and are available on the Rule Change Panel's website.

Although the Rule Change Panel has summarised the submissions in accordance with clause 2.7.7, the Rule Change Panel has reviewed the submissions in their entirety and taken each matter raised by the Rule Participants into account when making its decision on this Rule Change Proposal.

AEMO supported the Rule Change Panel's decision from its Original Final Rule Change Report, acknowledged the need for procedural fairness and the importance of transparency, and indicated that the Minister's proposed changes to the Amending Rules would not provide any additional transparency for AEMO.

Alinta supported the Minister's proposed changes to the Amending Rules on the basis that the changes will improve transparency of the compliance regime and create opportunities for greater efficiency over time.

The ERA supported the intent of the Minister's proposed changes to the Amending Rules to provide greater transparency for its monitoring activities and to ensure procedural fairness for its compliance and enforcement activities. However, the ERA pointed out a lack of clarity in how the proposed changes to the Amending Rules could be interpreted, indicated that it might not be administratively feasible to implement the proposed clause 2.13.3B and might be very costly to implement the proposed clause 2.15.4, and suggested these clauses should be redrafted if they are interpreted in such a way.

Synergy supported the Minister's proposed changes to the Amending Rules on the basis that they will improve the efficiency of the market monitoring process.

Alinta and Synergy both also proposed some further changes to clarify the Minister's proposed changes to the Amending Rules.

#### **4.7 The Rule Change Panel's Response to Submissions Received During the Further Submission Period**

The Rule Change Panel's response to submissions received during the further submission period is provided in Appendix A to this report.

#### **4.8 Public Forums and Workshops**

No public forums or workshops were held for this Rule Change Proposal.

### **5. The Rule Change Panel's Draft Assessment**

Section 6 of the Draft Rule Change Report provides the Rule Change Panel's draft assessment of the proposal against clauses 2.4.2 and 2.4.3.

### **6. The Rule Change Panel's Proposed Decision as set out in the Draft Rule Change Report**

Section 7 of the Draft Rule Change Report sets out the Rule Change Panel's proposed decision to accept the Rule Change Proposal in a modified form. Section 6.1 of the Draft Rule Change Report provides the reasons for the Rule Change Panel's proposed decision.

### **7. The Rule Change Panel's Final Assessment as set out in the Original Final Rule Change Report**

Section 8 of the Original Final Rule Change Report sets out the Rule Change Panel's final decision to accept the Rule Change Proposal in a modified form. Section 7 of the Original Final Rule Change Report provides the reasons for the Rule Change Panel's final decision.

## 8. The Rule Change Panel's Final Assessment in this Revised Final Rule Change Report

The Rule Change Panel's assessment of the Rule Change Proposal has not changed from its assessment in section 7 of the Original Final Rule Change Report except for the information disclosure and procedural fairness issues. The Rule Change Panel's assessment of the further proposed changes to the Amending Rules to address the information disclosure and procedural fairness issues is as follows.

### 8.1 Assessment Criteria

In preparing its Revised Final Rule Change Report, the Rule Change Panel must assess the Rule Change Proposal in light of clauses 2.4.2 and 2.4.3 of the Market Rules.

Clause 2.4.2 of the Market Rules states that the Rule Change Panel "*must not make Amending Rules unless it is satisfied that the Market Rules, as proposed to be amended or replaced, are consistent with the Wholesale Market Objectives*". Additionally, clause 2.4.3 states that, when deciding whether to make Amending Rules, the Rule Change Panel must have regard to:

- any applicable statement of policy principles the Minister has issued to the Rule Change Panel under clause 2.5.2;
- the practicality and cost of implementing the proposal;
- the views expressed in submissions and by the MAC; and
- any technical studies that the Rule Change Panel considers necessary to assist in assessing the Rule Change Proposal.

In making its revised final decision, the Rule Change Panel has had regard to each of the matters set out in clauses 2.4.2 and 2.4.3 as follows:

- section 8.3 of this report provides the Rule Change Panel's assessment of the proposed changes to the Amending Rules against the Wholesale Market Objectives;
- the Rule Change Panel notes that there has not been any applicable statement of policy principles from the Minister in respect of this Rule Change Proposal;
- section 8.5 of this report provides the Rule Change Panel's assessment of the practicality and cost of implementing the proposed changes to the Amending Rules;
- section 4.6 of this report presents a summary of the further submissions received regarding the proposed changes to the Amending Rules; and section 4.7, section 8.2 and Appendix A of this report provides the Rule Change Panel's assessment of the issues raised in these submissions; and
- the Rule Change Panel does not believe a technical study in respect of this Rule Change Proposal is required and therefore has not commissioned one.

### 8.2 Assessment of the Further Proposed Changes

The Rule Change Panel has considered the Minister's further proposed amendments to the Amending Rules, as set out in Appendix B of this report, and the further period submissions (see Appendix A of this report). The Rule Change Panel has determined that the Amending Rules should be further amended but the amendments proposed by the Minister

(Appendix B) require modification to clarify the interpretation and operation of the amended clauses and to ensure consistency with the Market Rules.

The Rule Change Panel is of the view that the ERA requires full access to all market information to undertake both its 'compliance monitoring' and 'compliance investigation and enforcement' functions. Restricting the independent regulator's access to information would be contrary to the Wholesale Market Objectives.

### 8.2.1 Information Disclosure

The Rule Change Panel notes that there is disagreement amongst Rule Participants and the ERA regarding the intent and interpretation of proposed clause 2.13.3B.

AEMO, Alinta and Synergy interpret proposed clause 2.13.3B to mean that the ERA will be required to report to Rule Participants on all specific information that the ERA requests from AEMO for compliance monitoring purposes (i.e. each piece of data or information). Synergy also proposed to impose further requirements on the ERA to:

- disclose to a Rule Participant the information requested from AEMO about the Rule Participant at the same time that the request is made of AEMO; and
- advise the Rule Participant what compliance function the requested information will be used for.

Alinta and Synergy support proposed clause 2.13.3B based on this interpretation because it would improve transparency and efficiency of the market.

AEMO has indicated that it would receive notifications under proposed clause 2.13.3B from time to time but would already be aware of the matters in these notices, so the notices are not likely to add any transparency for AEMO.

AEMO took the view that the ERA should have the powers it needs to execute its compliance functions under the Market Rules and there should not be any unnecessary barriers to the efficient execution of these powers that may undermine the ERA's ability to ensure that participants are complying with the Market Rules.

Conversely, the ERA interprets proposed clause 2.13.3B to impose only high-level general reporting requirements.

The ERA notes that the wording of proposed clause 2.13.3B requires the ERA to undertake 'one or more' of the actions, 'as applicable'; and notes that the Minister's stated reasons for clause 2.13.3B indicate that the clause may place additional administrative burden on the ERA. The ERA suggests that this wording indicates that clause 2.13.3B will impose additional duties on the ERA but that the duties are not intended to be overly administratively burdensome.

The ERA indicated that AEMO provides the ERA with thousands of data sets for compliance monitoring purposes and that it would not be administratively feasible or efficient for the ERA to individually list each piece of information or data it may use for compliance monitoring purposes. The ERA also indicated that it is moving towards close to real-time compliance monitoring as part of its daily functions and that it would not be practical or efficient to continually inform Rule Participants of these ongoing compliance monitoring programs.

Therefore, the ERA interprets clause 2.13.3B to require the ERA to notify Market Participants of the types of monitoring that will be undertaken (e.g. a published list of categories of behaviours that the ERA may monitor) and that this clause is not intended to require the ERA

to provide individual notification to Market Participants each time the ERA monitors for potential non-compliance.

The ERA supports the proposed clause 2.13.3B on the basis of its interpretation of the clause, which is consistent with its current approach to compliance monitoring. The ERA asked for clause 2.13.3B to be redrafted if the drafting is inconsistent with its interpretation.

The Rule Change Panel is of the view that clause 2.13.3B, as presented in Appendix B of this report, would be interpreted as indicated by AEMO, Alinta and Synergy but agrees with the ERA that it would not be administratively feasible or efficient for the ERA to implement a rule with this interpretation. Therefore, the Rule Change Panel is of the view that proposed clause 2.13.3B, as presented in Appendix B of this report, is not consistent with Wholesale Electricity Market Objective (a).<sup>1</sup>

The Rule Change Panel agrees that the compliance process under the Market Rules should be transparent but notes the ambiguity of the proposed clause 2.13.3B. Therefore, the Rule Change Panel has modified the proposed clause 2.13.3B, as presented Appendix C of this report. The Rule Change Panel believes that the drafting for clause 2.13.3B in Appendix C will achieve the intent to provide increased transparency to Rule Participants regarding the disclosure of information about Rule Participants by AEMO to the ERA, but in an administratively feasible way for the ERA to implement.

Further, the Rule Change Panel agrees with AEMO and the ERA that the ERA's website is the appropriate place to locate the list of information disclosed from AEMO to the ERA.

## 8.2.2 Procedural Fairness

Section 2.13 of the Market Rules specifies the ERA's Market Rule compliance monitoring and enforcement functions and section 2.15 specifies its monitoring and reporting requirements.

Further, clauses 2.15.1 and 2.15.2 require the ERA to maintain and implement a Monitoring Protocol in a Market Procedure that details how the ERA implements its compliance-related functions specified in the Market Rules.<sup>2</sup> Clause 2.15.3 of the Market Rules specifies the required content for the Monitoring Protocol, including how the ERA will monitor and assess Rule Participants' compliance with the Market Rules. The ERA has also developed and published a Compliance Framework and Strategy to provide context for the ERA's compliance function.<sup>3</sup>

In considering the issue of procedural fairness, it is important to distinguish between the ERA's 'compliance monitoring' and 'compliance investigation and enforcement' functions:

- The compliance monitoring function:  
Clauses 2.2A.1(a), 2.13.2 and 2.13.3 require the ERA to monitor Rule Participants' behaviour to identify potential breaches of the Market Rules and Market Procedures that may require further investigation before determining whether a breach has occurred.

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<sup>1</sup> Wholesale Market Objective (a) is:

To promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system.

<sup>2</sup> The Monitoring Protocol is available at <https://www.erawa.com.au/cproot/17925/2/FINAL%20Monitoring%20Protocol%20clean%20version.pdf>.

<sup>3</sup> The ERA's Compliance Framework and Strategy is available at <https://www.erawa.com.au/cproot/19763/2/Compliance%20Strategy%20and%20Framework%20for%20WEM%20and%20GSI%20Rules.PDF>.

- The compliance investigation and enforcement function:

Clause 2.13.10 requires the ERA to investigate an alleged breach of the Market Rules or Market Procedures by a Rule Participant once it becomes aware of an alleged breach. This requirement applies irrespective of how the ERA becomes aware of the alleged breach – whether via the ERA’s compliance monitoring function or via reporting by AEMO or another Rule Participant.

The Monitoring Protocol deals with both the ERA’s compliance monitoring function and its compliance investigation and enforcement function. As indicated in section 4.1 of the Monitoring Protocol, the ERA’s compliance investigation and enforcement function involves:

(a) An assessment phase with the following steps:

- the ERA will record details of the matters alleged to be in breach in its compliance monitoring register; and
- the ERA will determine the priority of the investigation by carrying out an initial compliance risk assessment (assessing the potential consequence of the alleged breach<sup>4</sup> and/or likelihood of re-occurrence to form a view on whether the matter should be investigated as a priority over other alleged breach matters).

(b) An investigation phase with the following steps:

- the ERA will notify the Rule Participant alleged to be in breach and seek information. (the timing of this notification will depend on whether such notification could prejudice the investigation);
- the ERA will gather evidence from relevant parties (e.g. documentary evidence, oral evidence, etc) to establish the facts of the matters alleged to be in breach;
- the evidence gathered will be recorded and stored appropriately;
- the Rule Participant alleged to be in breach will be informed of the ERA’s preliminary findings, once formed, and will be given the opportunity to respond to these preliminary findings;
- during the course of the investigation the ERA may meet with the Rule Participant alleged to be in breach (this may occur at any stage during the investigation process);
- any further information provided by the Rule Participant alleged to be in breach will be taken into consideration when finalising the investigation; and
- the investigation findings will be documented in an internal investigation report.

(c) An outcome phase with the following steps:

- on conclusion of an investigation, the ERA will notify the parties of the outcome of the investigation, including whether a breach has occurred and the compliance response that the ERA considers appropriate;
- where the ERA’s compliance response 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;

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<sup>4</sup> The term ‘alleged breach’ is defined in section 4.1.2 of the Monitoring Protocol to refer to matters where the ERA forms the view that it has sufficient information to reasonably suspect a breach of the Market Rules and/or Market Procedures has occurred and the matter can therefore be escalated for investigation.

- where applicable, the ERA will commence enforcement actions; and
- the ERA will record the outcomes of its investigations in its compliance monitoring register.

The ERA indicated in its further submission that it interprets the proposed new clause 2.15.4 to simply formalise its current practices as specified in section 4.1 of the Monitoring Protocol and it supports the proposed clause 2.15.4 based on this interpretation. The ERA requested that the Rule Change Panel redraft this clause if its interpretation is incorrect.

The ERA also provided the following example in its further submission of how it implements its compliance monitoring function and its investigation and enforcement function with respect to section 7.10 of the Market Rules:<sup>5</sup>

AEMO provides Market Participants with notices under clause 7.10.5(c) if it considers that the Market Participant has not complied with clause 7.10.1 and the ERA uses these notices to monitor Market Participants' compliance with Dispatch Instructions. That is, a notice under clause 7.10.5(c) makes the ERA aware that potential non-compliant behaviour of the Market Rules may have occurred. The ERA is not required to investigate at this point because there is not yet an alleged breach. The ERA indicated that AEMO issued about 42,000 warnings to Market Participants under clause 7.10.5(c) in 2018/19 but, after initial assessment, the ERA identified alleged breaches in only about 100 instances. The ERA's interpretation of proposed new clause 2.15.4 in this example is that it would follow its existing processes and would notify Market Participants about the 100 alleged breaches, and afford the relevant Market Participants an opportunity to make submissions on the matters, not that it would need to notify Market Participants about the 42,000 potential non-compliance matters identified during the compliance monitoring stage.

The Rule Change Panel considers that the drafting of proposed clause 2.15.4, as indicated in Appendix B of this report, could be interpreted to refer to 'monitoring' processes and, therefore, require the ERA to notify Rule Participants of potential non-compliance with the Market Rules as soon as it becomes aware of an issue (i.e. before the ERA has done any examination of the matter and determined that there is an 'alleged breach') and to give Market Participants an opportunity to make submissions at that point in time. The Rule Change Panel is of the view that the costs for the ERA to implement clause 2.15.4 on this basis would be inappropriate and inconsistent with Wholesale Market Objective (a),<sup>1</sup> and would create an unnecessary administrative burden for all Market Participants.

The Rule Change Panel notes that, when undertaking its compliance and enforcement function, the ERA is required to afford procedural fairness to Rule Participants as a matter of Administrative Law, as discussed in the Original Final Rule Change Report. The ERA affords procedural fairness by appropriately implementing the compliance investigation and enforcement functions in accordance with the Market Rules and Market Procedures, including the Monitoring Protocol.

The Rule Change Panel notes that the ERA must (and does) afford procedural fairness to Rule Participants; and there is no reason to expect that the ERA will stop affording procedural fairness as a result of this Rule Change Proposal (i.e. it is not clear why the ERA would breach its Administrative Law requirements because this Rule Change Proposal will give it more efficient access to information and data from AEMO).

However, the Rule Change Panel also notes that Administrative Law is not codified, and that it is the role of the Market Rules to indicate how the Wholesale Electricity Market is to be

<sup>5</sup> Section 7.10 deals with compliance with Dispatch Instructions and Operating Instructions.

governed and for the Market Procedures to specify operational details on how the Market Rules are implemented. This supports elevating the notification and consultation requirements from the Monitoring Protocol to the Market Rules.

The Rule Change Panel agrees that the compliance process under the Market Rules must afford procedural fairness, and notes that the intent of proposed clause 2.15.4 is to ensure the procedural fairness of the ERA's compliance investigation and enforcement function.

Therefore, the Rule Change Panel approves revisions to the Amending Rules as presented in Appendix C of this report. The drafting for clause 2.15.4 in Appendix C will achieve the intent to assure procedural fairness in the ERA's compliance investigation and enforcement function but will remove the risk that the clause may be interpreted more broadly than would be practical.

### **8.3 Assessment against the Wholesale Market Objectives**

The Rule Change Panel's assessment of the Rule Change Proposal against the Wholesale Market Objectives has not changed from its assessment in section 7.4 of the Original Final Rule Change Report.

Neither AEMO nor Alinta provided an assessment of proposed clauses 2.13.1B and 2.15.4 against the Wholesale Market Objectives.

The ERA considers that the proposed two new clauses are consistent with, and support the Wholesale Market Objectives, but will not materially facilitate better achievement of the objectives relative to current practice.

Synergy indicated that it considers that inclusion of the revisions in relation to information disclosure and procedural fairness will improve the efficiency of the market monitoring process and should be adopted. Synergy also indicated that it considers that implementation of the proposed amendments to clause 2.13.3B and 2.15.4 has the potential to further improve transparency, thereby better facilitating the achievement of the Wholesale Market Objectives.

Subsequent to the close of the further submission period, the Rule Change Panel asked Alinta and Synergy to provide examples of how the proposed changes to the Amending Rules will improve market efficiency, but neither were able to provide any examples.

The Rule Change Panel is of the view that the approved further changes to the Amending Rules specified in Appendix C of this report are consistent with the Wholesale Market Objectives.

### **8.4 Protected Provisions, Reviewable Decisions and Civil Penalties**

The Rule Change Proposal proposes changes to clauses 2.13.3A, 2.13.9A, 2.13.9B, 2.15.4, 2.16.9G and 2.16.14 of the Market Rules and adding a new clause 2.13.3B, which are Protected Provisions under clause 2.8.13. Thus, as required by clause 2.8.3, the Amending Rules in this Revised Final Rule Change Report will require Ministerial approval.

This Rule Change Proposal does not amend any Reviewable Decisions or civil penalty provisions, nor does the Rule Change Panel consider that any of the proposed amendments to the clauses in the Market Rules should be made into Reviewable Decisions or civil penalty provisions.



## 8.5 Practicality and Cost of Implementation

### 8.5.1 Cost

As stated in its first submission, AEMO indicated that if there is a significant increase to the scale of the ERA's requests for information or the ERA requires changes to the format or delivery method, this will result in additional demands on AEMO's operational personnel, and potentially increase costs for these services. AEMO indicated in its first submission that it considers this to be a low risk under the current market design.

As indicated in section 6.6.1 of the Draft Rule Change Report, the risk raised by AEMO is an existing risk, and the Rule Change Proposal will not change the level of access to information that AEMO must make available to the ERA. Thus, this Rule Change Proposal will not directly increase costs for AEMO.

The ERA indicated that proposed clauses 2.13.3B and 2.15.4, as specified in Appendix B of this report, would require it to materially change its practices by providing notification to Market Participants for each potential non-compliant behaviour if the clauses were interpreted to require the ERA to notify Market Participants at this stage of the compliance investigation and enforcement function, as outlined in section 8.2.2 of this report. The ERA estimates that it would cost the ERA between \$101,000 and \$127,000 each year for additional staff to implement these changes. This estimate is based upon extrapolating the ERA's resourcing requirements for its current procedural fairness activities across the expected monitoring activities. The ERA noted that Rule Participants would also face increased costs to respond to the significant increase in notices.

The ERA did not indicate any costs to implement the proposed clauses 2.13.3B and 2.15.4 if they are implemented as the ERA has interpreted them.

Neither Alinta nor Synergy indicated any cost implications from proposed clauses 2.13.3B and 2.15.4.

### 8.5.2 Practicality

The ERA indicated in its further submission that it does not expect the proposed clauses 2.13.3B and 2.15.4 to materially affect its day-to-day activities and does not expect that the inclusion of these two clauses to significantly increase its costs. However, the ERA also indicated that its assessment is based on its interpretation of these proposed clauses and that the ERA would face a significant reduction in process efficiency and significant cost increases if its interpretations are incorrect.

Further, the ERA indicated that it would take up to three months to implement the administrative and process changes for the Minister's proposed clauses.

AEMO stated in its first submission that it is not required to undertake any specific actions to implement this Rule Change Proposal. AEMO indicated in its further submission that the Minister's proposed revisions do not change this and AEMO would not require any additional time to implement the proposed changes.

Synergy indicated in its further submission that the proposed changes have no foreseeable impacts to its IT and business systems. Nevertheless, Synergy indicated that it would require one month to educate staff on the implications of the Rule Change Proposal (that any information produced or exchanged under the Market Rule and/or Market Procedures can be used by the ERA for any of its functions).

## 9. Revisions to the Amending Rules from the Original Final Rule Change Report

The Rule Change Panel's revisions to the Minister's proposed changes to the Amending Rules are presented in Appendix C to this report.

## 10. Amending Rules

The Rule Change Panel has decided to implement the following Amending Rules (~~deleted text~~, added text):

- 2.13.3A. AEMO must co-operate with the Economic Regulation Authority and facilitate any processes and systems put in place by the Economic Regulation Authority under clause 2.13.3, including by providing any market related data, information and document produced or exchanged in accordance with the Market Rules or Market Procedures in AEMO's possession or control (including in AEMO's role as System Management) that the Economic Regulation Authority has reason to believe may assist the Economic Regulation Authority to monitor Rule Participants' behaviour for compliance with the provisions of the Market Rules and Market Procedures.
- 2.13.3B. The Economic Regulation Authority must disclose the market related data, information or documents provided by AEMO to the Economic Regulation Authority as part of the systems and processes the Economic Regulation Authority must have in place in accordance with clause 2.13.3A as follows:
- (a) where AEMO periodically provides market related data, information or documents as part of the systems and processes in place under clause 2.13.3A, publishing the types of market related data, information or documents provided on the Economic Regulation Authority's website in as much detail as the Economic Regulation Authority considers is reasonably practicable;
- (b) where the Economic Regulation Authority requests AEMO to provide the Economic Regulation Authority with market related data, information or documents in accordance with clause 2.13.3A and the market related data, information or documents:
- i. is not one of the types disclosed under clause 2.13.3B(a); and
- ii. relate to a specific Rule Participant (or group of Rule Participants), then the Economic Regulation Authority must notify that Rule Participant (or group of Rule Participants).
- ...
- 2.13.9A. AEMO must support the Economic Regulation Authority's function of monitoring Rule Participants' behaviour for compliance with the provisions of the Market Rules ~~(other than a provision of the Market Rules referred to in clause 2.13.9)~~ and the Market Procedures.

2.13.9B. AEMO must ensure it has processes and systems in place to allow it to support the Economic Regulation Authority's monitoring of Rule Participants' behaviour, including processes and systems to provide the Economic Regulation Authority with data, information and documents under clause 2.13.3A.

...

2.15.4. ~~[Blank]~~The monitoring processes referred to in clause 2.15.3(a) that are to be specified in the Market Procedure specified in clause 2.15.1 must include, where the Economic Regulation Authority has identified an alleged breach by a Rule Participant:

(a) a requirement for notice to be given by the Economic Regulation Authority to that Rule Participant that identifies the alleged breach; and

(b) a process through which the Rule Participant may make submissions to the Economic Regulation Authority to explain the alleged breach, prior to the Economic Regulation Authority reaching a decision on whether a Rule Participant has breached the Market Rules.

...

2.16.9G. ~~[Blank]~~Where the Economic Regulation Authority determines pursuant to the investigation under clause 2.16.9B that:

(a) prices offered in the Portfolio Supply Curve, the subject of the investigation, did not reflect the Market Generator's reasonable expectation of the short run marginal cost of generating the relevant electricity;

(b) prices offered in a Balancing Submission, the subject of the investigation, exceeded the Market Generator's reasonable expectation of the short run marginal cost of generating the relevant electricity; or

(c) prices offered in the LFAS Submission, the subject of the investigation, exceeded the Market Generator's reasonable expectation of the incremental change in short run marginal cost incurred by the LFAS Facility in providing the relevant LFAS.

and that the behaviour related to market power, the Economic Regulation Authority may bring proceedings before the Electricity Review Board.

...

2.16.14. The Economic Regulation Authority ~~must~~may use any information collected under this ~~clause~~section 2.16, including information provided to it by AEMO, ~~only~~ for the purpose of carrying out any of its functions under the Market Rules ~~this clause 2.16~~. The Economic Regulation Authority must treat information collected under this section 2.16 as confidential and must not publish any of that information other than in accordance with this ~~clause~~section 2.16 or where required in the performance of the Economic Regulation Authority's functions under the Market Rules. AEMO must use information provided to it by the Economic Regulation Authority under clause 2.16.6(c) only for the purpose of carrying out its functions

under this [clausesection](#) 2.16. AEMO must treat information provided to it by the Economic Regulation Authority under clause 2.16.6(c) as confidential and must not publish any of that information other than in accordance with this [clausesection](#) 2.16.

## Appendix A. Responses to Submissions Received in the Further Submission Period

Issue	Submitter	Comment/Issue Raised	Rule Change Panel's Response
1	AEMO	AEMO supports the [ERA's] original Rule Change Proposal, as approved by the Rule Change Panel, on the basis that the primary reason for the rule change was to address an inefficiency with the ERA's access to market information for the purposes of compliance monitoring.	The Rule Change Panel notes AEMO's support for original Rule Change Proposal, as approved in the Original Final Rule Change Report.
2	AEMO	Ensuring that participants comply with the Market Rules is central to the operation of the Wholesale Electricity Market. In these circumstances, AEMO considers that it is appropriate for the ERA to have the powers it needs to execute its compliance functions under the Market Rules. There should not be any unnecessary barriers to the efficient execution of these powers as this may undermine the ERA's ability to ensure that participants are complying with the Market Rules. Inefficiencies also have the potential to increase compliance costs for participants.	Section 8.2.1 of this report provides a discussion of information disclosure and the purpose of the proposed clause 2.13.3B.
3	AEMO	AEMO acknowledges the need for procedural fairness in the compliance regime and the importance of transparency. AEMO respects that the Minister's revisions seek to address participants' concerns in these areas.  AEMO recommends that these potentially conflicting holistic factors be considered when assessing the latest proposed revisions.	The Rule Change Panel acknowledges the need for transparency and procedural fairness in the ERA's compliance processes. This matter is discussed in sections 8.2.1 and 8.2.2 of this report.
4	AEMO	AEMO suggests a minor revision to proposed new clause 2.13.3B. Proposed new clause 2.13.3B(a) requires the ERA to publish on the Market Web Site details of specific	The Rule Change Panel agrees that the ERA should be required to publish the specified information in

Issue	Submitter	Comment/Issue Raised	Rule Change Panel's Response
		<p>market related data, information or documents that are to be periodically provided by AEMO to the ERA for compliance monitoring.</p> <p>AEMO recommends that the details specified in clause 2.13.3B(a) be published on the ERA's website instead of the Market Web Site. AEMO recommends this because the ERA already maintains market compliance information on its website. There are also other Market Rules that require the ERA to publish compliance-related information on its website (e.g. ERA compliance reports required by clause 2.13.26 are published on the ERA website). If AEMO's recommendation is implemented, it would also remove an administrative publishing requirement on AEMO that adds no material benefit to the market.</p>	<p>clause 2.13.3B on the ERA's website rather than on the Market Web Site.</p>
5	AEMO	<p>Proposed new clauses 2.13.3B(b) and 2.13.3B(c) require the ERA to inform affected Rule Participants where AEMO has provided the ERA with specific market-related data, information or documents concerning that Rule Participant. Proposed new clause 2.15.4(a) will result in a further requirement for the ERA to inform a Rule Participant where the ERA's monitoring has identified potential non-compliance by that Rule Participant.</p> <p>AEMO will be a recipient of notifications under these new clauses from time to time. AEMO would usually be aware of the matters covered by these new clauses through the existing processes in place with the ERA (e.g. compliance reporting processes and regular AEMO/ERA meetings). In these circumstances, the notifications required by these</p>	<p>The Rule Change Panel agrees that the additional compliance reporting requirements on the ERA are unlikely to provide any additional transparency for AEMO. However, this does not necessarily mean that the changes will not improve transparency for other Rule Participants.</p>

Issue	Submitter	Comment/Issue Raised	Rule Change Panel's Response
		clauses are not likely to add any additional transparency to the ERA's monitoring of AEMO's compliance.	
6	AEMO	Proposed new clause 2.15.4(b) requires the ERA to introduce a process that allows participants, at their discretion, to provide an explanation of potential non-compliant behaviour at the compliance monitoring stage. To the extent that AEMO considers it necessary to provide these explanations, it could result in additional effort for AEMO from time to time that is not currently necessary.	The Rule Change Panel agrees with AEMO's concerns and has amended the proposed new clause 2.15.4(b), as presented in Appendix B of this report. The Rule Change Panel has approved changes to the Market Rules to address concerns with procedural fairness, as indicated in Appendix C of this report.
7	Alinta	Alinta considers that the Minister for Energy's additions to the Amending Rules will improve the proposal's achievement of the Wholesale Market Objectives. Both the requirement for the ERA to notify Market Participants when it obtains their information under 2.13.3A, and the requirement for procedural fairness will improve the transparency of the compliance regime, creating opportunities for greater efficiency, over time.	This matter is discussed in section 8.2 of this report.
8	Alinta	Alinta suggests one administrative change to the Amending Rules. That is, for proposed clause 2.13.3B to reference 2.13.3, rather than 2.13.3A. As currently drafted, 2.13.3B references the compliance monitoring "systems and processes" that the ERA "must have in place in accordance with 2.13.3A." However, clause 2.13.3A does not contain this obligation – clause 2.13.3 does. Clause 2.13.3 requires the ERA to have "processes and systems in place to allow it to monitor Rule Participants' behaviour for compliance," whereas clause 2.13.3A obliges AEMO to facilitate these	<p>The Rule Change Panel has amended the proposed new clause 2.15.4(b) as presented in Appendix B of this report and has approved changes to the Market Rules to address concerns with procedural fairness, as indicated in Appendix C of this report.</p> <p>The Rule Change Panel disagrees with Alinta's proposed administrative change because the obligation on AEMO to exchange information with the ERA is in clause 2.13.3A and it is this information that Market Participants want transparency on.</p>

Issue	Submitter	Comment/Issue Raised	Rule Change Panel's Response
		<p>processes. Alinta's suggested change to the Amending Rules is provide in mark-up below.<sup>6</sup></p>	
9	ERA	<p>It is the ERA's understanding that the intention of the two clauses inserted by the Minister for Energy is to provide a greater degree of transparency of the ERA's monitoring activities, and to ensure that the ERA follows the principle of procedural fairness when undertaking its compliance and enforcement activities.</p> <p>The ERA supports the inclusion of clauses 2.13.3B and 2.15.4 to support greater transparency and procedural fairness under the Market Rules for the reasons outlined below.</p> <p>The inclusion of these two clauses formalises the ERA's current approach to identifying monitoring priorities and providing procedural fairness to Rule Participants as outlined in the ERA's Compliance Framework and Strategy.</p>	<p>The Rule Change Panel notes the ERA's concerns that the proposed drafting of clauses 2.13.3B and 2.15.4, as presented in Appendix B of this report, do not reflect the intent of these clauses. The Rule Change Panel has approved drafting for the revised Amending Rules as presented in section 10 of this report.</p>
10	ERA	<p>Clause 2.13.3B was added by the Minister to the Rule Change Proposal to increase the transparency of the ERA's compliance regime. The ERA supports its inclusion in a practical and workable way consistent with the reasons outlined by the Minister, specifically, to "contribute towards greater process efficiency."</p> <p>The ERA takes a risk-based approach to its compliance monitoring practices. Compliance resources are prioritised to the sections of the Market Rules where non-compliance</p>	<p>Section 8.2.1 of this report provides a discussion of information disclosure and the purpose of the proposed clause 2.13.3B.</p>

<sup>6</sup> The marked-up changes proposed by Alinta were that the references to clause 2.13.3A in clauses 2.13.3B(a) and 3.13.3B(b) should be changed to references to 2.13.3.



Issue	Submitter	Comment/Issue Raised	Rule Change Panel's Response
		<p>could lead to serious consequences or where there is a high likelihood of non-compliant behaviour.</p> <p>Including clause 2.13.3B in the Market Rules reinforces the ERA's current risk-based approach to monitoring.</p> <p>Clause 2.13.3B contains three subclauses, each outlining different publishing or notification requirements. The wording of clause 2.13.3B requires the ERA to undertake "one or more" of the actions outlined in the three subclauses, "as applicable". The report states that clause 2.13.3B "may" place additional administrative burden on the ERA. The use of this terminology indicates that while there may be additional duties required by the ERA, the clause is not intended to be overly administratively burdensome.</p> <p>The ERA relies on data provided by the Australian Energy Market Operator (AEMO) for its monitoring. AEMO holds thousands of data sets that may be required for monitoring purposes. It would not be administratively feasible or efficient for the ERA to individually list each of the pieces of information or data it may use for monitoring purposes.</p> <p>The ERA interprets this clause to require the ERA to provide details of specific sections of the Market Rules that the ERA intends to monitor, and examples of the types of data that it may require to undertake this monitoring. Due to the complex and interconnected nature of the power system, the ERA understands that any published list would not limit its monitoring functions but would serve as a general guide to Rule Participants.</p> <p>As it refines its monitoring functions the ERA is moving towards close to real time monitoring for ongoing compliance</p>	

Issue	Submitter	Comment/Issue Raised	Rule Change Panel's Response
		<p>with the rules. This monitoring would be undertaken daily as part of the ERA's functions. It would not be practical or efficient to continually inform Rule Participants of these ongoing compliance monitoring programs. In line with the stated reasons for the inclusion of this clause, the ERA interprets the clause to require the ERA to provide notification to Market Participants of the types of monitoring that will be undertaken; for example, a published list of categories of behaviours that the ERA may monitor. The ERA does not consider that this clause is intended to require the ERA to provide individual notification to Market Participants each time the ERA monitors for potential non-compliance.</p> <p>Should the Rule Change Panel consider that the intention of the drafting of clause 2.13.3B requires the ERA to specifically list each of the data sets it may require for its monitoring program or provide specific and ongoing notification to Rule Participants of each data set accessed, then the ERA considers that this would substantially reduce process efficiency.</p> <p>If the Rule Change Panel considers that the inclusion of clause 2.13.3B materially affects the ERA's day to day operations (for instance, requiring the ERA to publish specific details of information required, or providing ongoing notification as data is accessed), then the ERA asks that the Rule Change Panel re-draft the clause to clarify the ERA's obligations.</p>	
11	ERA	The term "Market Web Site" is defined in the Market Rules as any website operated by AEMO. The ERA considers that the	The Rule Change Panel agrees that the ERA should be required to publish the information specified in

Issue	Submitter	Comment/Issue Raised	Rule Change Panel's Response
		ERA's website would be the appropriate location for any such list to be published.	clause 2.13.3B on the ERA's website rather than on the Market Web Site.
12	ERA	<p>Clause 2.15.4 provides a guarantee that Rule Participants are afforded the opportunity to be made aware of a potential non-compliance, and the opportunity to explain the relevant behaviour.</p> <p>The Minister's report states that this clause is to "afford participants procedural fairness when assessing compliance with the Market Rules and Market Procedures, [and] to improve the efficiency of the market monitoring and compliance regime."</p> <p>The inclusion of clause 2.15.4 reinforces the ERA's current practice of providing a Rule Participant with opportunity to explain its behaviour and provide any relevant information or mitigating evidence to the ERA prior to a compliance determination being made.</p> <p>The ERA undertakes compliance monitoring for many clauses under the Market Rules. To demonstrate the ERA's understanding of the practical implementation of clause 2.15.4, this submission outlines the ERA's approach to monitoring clause 7.10.1 of the Market Rules, as an example, which requires participants to comply with Dispatch Instructions.</p> <p>The ERA regularly undertakes monitoring for non-compliance with Dispatch Instructions. Under clause 7.10.5(c) of the Market Rules, AEMO is required to warn Market Participants when it considers that the Market Participant is not compliant with its most recently issued Dispatch Instruction pursuant to</p>	Section 8.2.2 of this report provides a discussion of procedural fairness and the purpose of the proposed clause 2.15.4.

Issue	Submitter	Comment/Issue Raised	Rule Change Panel's Response
		<p>clause 7.10.1. The ERA uses information provided by AEMO for its monitoring and investigation activities.</p> <p>During 2018/19, AEMO issued Market Participants with approximately 42,000 warnings under clause 7.10.5(c). When the ERA is made aware of an alleged breach of the Market Rules, it is required to investigate that alleged breach. When investigating these notifications provided by AEMO under clause 7.10.5(c), the ERA identified approximately 100 Trading Intervals that were non-compliant. This is a typical outcome for compliance monitoring.</p> <p>The Minister's report states that the inclusion of clause 2.15.4 will improve the efficiency of market monitoring by providing procedural fairness to a Rule Participant. Given that stated reason, the ERA has interpreted this clause to maintain its current practice of notifying Rule Participants of potential non-compliance once it has undertaken reasonable initial analysis. This interpretation of the inclusion of clause 2.15.4 would not result in a change of behaviour by the ERA or a cost of undertaking its monitoring actions.</p> <p>If the intention of the clause is not as the ERA understands, and is for the ERA to be required to notify a Rule Participant for every instance of possibly non-compliant behaviour (for example, the 42,000 warnings issued under clause 7.10.5(c) in 2018/19), then this would make the ERA's monitoring role administratively impossible and would not further the Wholesale Market Objectives.</p> <p>Should the RCP consider the intention of clause 2.15.4 is to require the ERA to provide notification to Rule Participants where any indication of non-complaint behaviour has been</p>	

Issue	Submitter	Comment/Issue Raised	Rule Change Panel's Response
		identified, the ERA requests the RCP amend the drafting of this clause to clearly reflect this view, and to consider the resourcing implications.	
13	ERA	The ERA expects it may take up to three months to implement the administrative and process changes for the new rules.	The Rule Change Panel has selected a provisional commencement date that will give the ERA three months to implement the Amending Rules from the indicative date for Ministerial approval of the Amending Rules.
14	Synergy	<p>Synergy is supportive of new clause 2.13.3B regarding information disclosure and welcomes the transparency the change affords to impacted Rule Participants. However, Synergy considers that amendments be made to provide clarity in terms of timing and context.</p> <p>Proposed clause 2.13.3B, as it stands, does not specify at what point the Economic Regulation Authority (ERA) is required to inform Rule Participants of receiving market related data, information or documents provided by AEMO. Unless the Rule Participant is informed in a timely manner, intended transparency benefits may be diminished.</p> <p>Further, there is no obligation for the ERA to outline what aspect of monitoring the information has been requested for. Provision of the underlying context may provide impacted Rule Participants with greater clarity with regards to how the ERA believes that the data, information and documents requested from AEMO will assist with the monitoring of Rule Participant's behaviour.</p>	<p>Section 8.2.1 of this report provides a discussion of information disclosure and the purpose of proposed clause 2.13.3B.</p> <p>The Rule Change Panel rejects the additional amendments requested by Synergy because they are contrary to the intent of the new information disclosure requirements and would likely add substantial costs and unnecessary administrative complexity for the ERA that would not better achieve the Wholesale Market Objectives.</p>

Issue	Submitter	Comment/Issue Raised	Rule Change Panel's Response
		<p>Therefore, Synergy recommends that the Rule Change Panel adopts the Minister's revisions and amend proposed clause 2.13.3B so that:</p> <ul style="list-style-type: none"> <li>a) the ERA administers the requirement for information disclosure at the same time as their request to AEMO for information; and</li> <li>b) the ERA provides clarity as to what compliance function the information requested will be used for.</li> </ul>	
15	Synergy	<p>Synergy is also supportive of proposed clause 2.15.4 which includes an express requirement for the ERA's monitoring processes to adhere to procedural fairness when assessing compliance with the Market Rules and Market Procedures. To optimise the ERA's monitoring processes under the principle of procedural fairness, Synergy wishes to recommend that:</p> <ul style="list-style-type: none"> <li>a) where non-compliance relates to SRMC, Rule Participants are able to make submissions to the ERA prior to the ERA bringing proceedings before the Energy Review Board (ERB).</li> </ul>	<p>Section 8.2.2 of this report provides a discussion of procedural fairness and the purpose of the proposed clause 2.15.4.</p> <p>The Rule Change Panel is of the view that Synergy's proposed amendment is not necessary because clause 2.16.9B of the Market Rules already requires that, where the ERA considers that there is an alleged breach of the SRMC provisions in the Market Rules, the ERA must request an explanation from that Market Participant. Synergy agreed with this assessment when further clarification was sought subsequent to Synergy making its further submission.</p>
16	Synergy	<p>Synergy will require up to one month to educate staff on the implications of the Rule Change Proposal. Specifically, that any information produced or exchanged under the Market Rules and/or Market Procedures under section 2.16 of the Wholesale Electricity Market Rules (WEM Rules) can be used by the ERA for any of its functions (clause 2.16.14 of the WEM Rules).</p>	<p>The Rule Change Panel has set a provisional commencement date that is three months after the indicative date for Ministerial Approval of the Amending Rules. This should be sufficient time to accommodate Synergy's staff training requirements.</p>

## Appendix B. Minister's Proposed Amendments to the Proposed Amending Rules

The Minister proposed some amendments to the Amending Rules from the Original Final Rule Change Report. These changes are as follows (~~deleted text~~, added text):

2.13.3B. The Economic Regulation Authority must inform Rule Participants of specific market related data, information or documents provided by AEMO to the Economic Regulation Authority as part of the systems and processes the Economic Regulation Authority must have in place in accordance with clause 2.13.3A and the Economic Regulation Authority may perform this obligation by doing one or more of the following as applicable:

- (a) publishing on the Market Web Site details of market related data, information or documents to be periodically provided by AEMO as part of the systems and processes in place under clause 2.13.3A;
- (b) where market related data, information or documents provided by AEMO as part of the systems and processes in place under clause 2.13.3A relates to a specific Rule Participant, informing that Rule Participant;
- (c) where market related data, information or documents provided by AEMO as part of the systems and processes in place under clause 2.13.3A relates to a group of Rule Participants (more than one) informing those Rule Participants.

...

2.15.4. ~~{Blank}~~The monitoring processes referred to in clause 2.15.3(a) that are to be specified in the Market Procedure specified in clause 2.15.1 must include:

- (a) where monitoring by the Economic Regulation Authority has identified potential non-compliance by a Rule Participant, a requirement for notice to be given by the Economic Regulation Authority to that Rule Participant that identifies the potential non-compliant behaviour; and
- (b) a process through which the Rule Participant may make submissions to the Economic Regulation Authority seeking to explain the relevant behaviour.

## Appendix C. Further Amendments to the Minister's Proposed Amending Rules

The Rule Change Panel has made amendments to the Minister's proposed Amending Rules. These changes are as follows (~~deleted text~~, added text):

2.13.3B. The Economic Regulation Authority must ~~inform Rule Participants of~~ specify ~~disclose the~~ market related data, information or documents provided by AEMO to the Economic Regulation Authority as part of the systems and processes the Economic Regulation Authority must have in place in accordance with clause 2.13.3A ~~and the Economic Regulation Authority may perform this obligation by doing one or more of the following as applicable~~ as follows:

- (a) where AEMO periodically provides market related data, information or documents as part of the systems and processes in place under clause 2.13.3A, publishing the types of market related data, information or documents provided on the Economic Regulation Authority's website in as much detail as the Economic Regulation Authority considers is reasonably practicable ~~publishing on the Market Web Site details of market related data, information or documents to be periodically provided by AEMO as part of the systems and processes in place under clause 2.13.3A;~~
- (b) ~~where market related data, information or documents provided by AEMO as part of the systems and processes in place under clause 2.13.3A relates to a specific Rule Participant, informing that Rule Participant;~~
- (c) ~~where market related data, information or documents provided by AEMO as part of the systems and processes in place under clause 2.13.3A relates to a group of Rule Participants (more than one) informing those Rule Participants,~~ where the Economic Regulation Authority requests AEMO to provide the Economic Regulation Authority with market related data, information or documents in accordance with clause 2.13.3A and the market related data, information or documents:
  - i. is not one of the types disclosed under clause 2.13.3B(a); and
  - ii. relate to a specific Rule Participant (or group of Rule Participants), then the Economic Regulation Authority must notify that Rule Participant (or group of Rule Participants).

...

2.15.4. The monitoring processes referred to in clause 2.15.3(a) that are to be specified in the Market Procedure specified in clause 2.15.1 must include, where the Economic Regulation Authority has identified an alleged breach by a Rule Participant:

- (a) ~~where monitoring by the Economic Regulation Authority has identified potential non-compliance by a Rule Participant,~~ a requirement for notice to be given by the Economic Regulation Authority to that Rule Participant that identifies the alleged breach ~~potential non-compliant behaviour~~; and
- (b) a process through which the Rule Participant may make submissions to the Economic Regulation Authority ~~seeking~~ to explain the relevant behaviour ~~alleged breach~~, prior to the Economic Regulation Authority



reaching a decision on whether a Rule Participant has breached the Market Rules.