

# IMPACT & IMPLEMENTATION REPORT (IIR)

<b>Issue number</b>	IN001/20W		
<b>Impacted jurisdiction(s)</b>	Western Australia		
<b>Proponent</b>	Catherine Rousch Nina Telford Sarah Silbert	<b>Company</b>	Alinta Kleenheat AGL
<b>Affected gas market(s)</b>	Retail	<b>Consultation process (ordinary or expedited)</b>	Ordinary
<b>Industry consultative forum(s) used</b>	GRCF	<b>Date industry consultative forum(s) consultation concluded</b>	Friday, 30 July 2021
<b>Short description of change(s)</b>	Amendment to the requirements for Explicit Informed Consent (EIC) breach reporting and annual EIC auditing by WA Retailers.		
<b>Procedure(s) or documentation impacted</b>	See Section 2		
<b>Summary of the change(s)</b>	Amend clause 325 (Matters referred to AEMO) and associated clauses to include quarterly reporting of EIC breaches and a note related no breach notice requirement for Error Correction Notice (ECN). Amend clause 350 (Audit of explicit informed consent) to change the frequency if EIC audits from annual to once every five years		
<b>IIR prepared by</b>	Nandu Datar	<b>Approved by</b>	Michelle Norris
<b>Date IIR published</b>	10 August 2021	<b>Date consultation concludes</b>	7 September 2021
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## IMPACT & IMPLEMENTATION REPORT

### 1. DESCRIPTION OF ISSUE

#### Background

WA Retailers<sup>1</sup> are currently required to perform a negative assurance audit of EIC annually and provide the report to AEMO. Some Retailers have provided advice to AEMO that it is a significant cost on retailers to organise and undertake these annual audits. A similar obligation does not exist in east coast jurisdictions.

Clause 350 (Audit of explicit informed consent) of the WA Retail Market Procedures (RMP) states that Retailers are required to organise an annual EIC audit and submit the report to AEMO before April of each year. The requirements and record keeping process is described in Appendix 6 of the RMP. This report is not submitted to the Economic Regulation Authority (ERA). The Gas Retail Metering team within AEMO reviews the report and ensures that if there were EIC compliance breaches that these have been reported to AEMO.

This IIR seeks to propose an alternative to the annual EIC audit process to reduce the regulatory administration burden and cost on WA gas retailers. It also proposes to add quarterly reporting of breaches related to EIC by adding new provisions to clause 325 (Matters referred to AEMO).

#### Outcome of Options Consultation

Based on the solution options proposed by AEMO in the Proposed Procedure Change (PPC):

1. Retailers to continue to arrange their own internal quality assurance (QA) audit but there will no longer be a need to provide an independent negative assurance audit of EIC to AEMO. Retailers need to ensure all compliance breaches are reported to AEMO. This approach would harmonise the WA requirements with East Coast jurisdictions.
2. Retailers to use a self-regulating approach.
3. AEMO to determine audit requirements
4. EIC audit to be undertaken every five years for existing Retailers and new Retailers to organise an EIC audit yearly for first two or three years, and then every five years if audit outcomes are satisfactory.

The participants agreed to progress with Option 4 (EIC audit to be undertaken every five years if outcomes are satisfactory), with the following requirements requested by proponents:

- The frequency of EIC audits be every five years for any Retailer already registered in WA.
- New Retailers would conduct an annual EIC audit initially for three consecutive years.
- Breaches of EIC reported by any Retailer already registered in WA will be monitored by AEMO.
- Where AEMO deems it appropriate, a Retailer will be notified to undertake an EIC audit.

To further support the amendments to clause 350, the following clause 325 amendments were circulated to the Gas Retail Consultative Forum (GRCF) in late June 2021:

1. Adding a note so that breach reporting is not required where erroneous transfers are corrected to the satisfaction of all parties by the raising of an error correction notice (ECN).
2. Quarterly reporting of breaches related EIC.

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<sup>1</sup> Retailer is a term not used in the WA Retail Market Procedures (RMP). The equivalent term in the WA RMP is "Users that are not Self-Contacting Users (SCU)"



AEMO received feedback from AGL, Agora Retail, Alinta, Kleenheat, Origin Energy and Synergy. All responses supported these amendments.

In its submission to the ERA for approval of the proposal, AEMO will request that the effective date to be 1 January 2022, in case the approval is granted after 1 January 2022.

## **2. REFERENCE DOCUMENTATION**

### **2.1. Procedure Reference**

Retail Market Procedures (WA) version 8.0

### **2.2. Specification Pack Reference**

NA

## **3. OVERVIEW OF CHANGES**

All changes to the RMPs are described in Attachment B that shows the tracked changes to version 8 of the WA RMPs.

Amendments to clause 325 of the WA RMPs consist of:

- Addition of a note indicating breach reporting is not required where an incorrect transfer has been rectified to the satisfaction of all parties by raising an ECN (see Clause 325 (1A)).
- Addition of clauses relating to the reporting of EIC breaches quarterly (see Clause 325 (2)).
- Addition of clauses relating to AEMO notifying a participant to provide a breach notice (see Clause 325 (2)).
- Amendments to clauses in Part 6.3 and 6.4 that are impacted by the above changes to clause 325.
- Removing the period within which a participant needs to notify an alleged breach by another participant (see Clause 325(2)).

Amendments to clause 350 of the WA RMPs consist of:

- Addition of subclauses related to the frequency of EIC audits every five years and AEMO notifying a participant to conduct EIC audit where deemed necessary (see Clause 350 (2A)).
- Amending clause 350 (2) to require a new Retailer conduct an EIC audit annually for the first three years following registration in WA gas market.
- Amending the period of providing an Auditor's final report by 31 March in the subsequent year instead of within three months (see Clause 350 (3)(b)).

## **4. LIKELY IMPLEMENTATION EFFECTS AND REQUIREMENTS**

Impact on Retailers

It is anticipated that all Retailers will need to make minor amendments to their business processes to:

- Report any breaches of EIC each quarter.
- Organise an EIC audit every five years commencing 1 January 2027 (assuming this proposal is implemented by 1 January 2022). The Retailers will be required to organise an EIC audit for the calendar year 2021 as per the existing requirement.



- Organise an EIC audit as, and when notified by AEMO.

Impact on AEMO

AEMO will monitor the breaches reported each quarter by the Retailers and where issues are identified, require a Retailer to organise an EIC audit for a specific period.

## 5. OVERALL COST AND BENEFITS

These changes, however, are expected to require some additional monitoring for AEMO and where required, investigate the EIC breaches. AEMO will also need to keep track of EIC audits conducted by Retailers (to ensure that these are completed at least once every five years).

The proposed changes are expected to deliver the following benefits:

- Changing the frequency of EIC audit to once in five years is expected save approximately \$30,000 to \$40,000 per year per Retailer or around \$180,000 to \$240,000 per year from an overall industry perspective. However, the cost of an audit once in each five year period is anticipated to be higher than for a single year.
- Reduction in the tasks each Retailer is required to perform to support the audit including the following:
  - Appointing an auditor and associated procurement activities.
  - Preparatory works needed to make information available to auditors and readiness for an audit.
  - Allocating staff members for the performance of the audit.
  - Review and close-of the audit report with internal compliance stakeholders.
- An increased focus on reliable record management through the five-year audit period. It also places additional onus and accountability on Retailers for self-regulated compliance.
- Reallocating internal employees' time spent in facilitating and managing the EIC audit in the years when an audit is not required.
- Clarifies the self-reporting requirement which has been a point of confusion for market participants over previous years. This change sets out that a Retailer must self-report and creates consistency across the market, whereas previously some Retailers were reporting alleged breaches, and some were not.
- Implementing a set time frame for reporting alleged EIC related breaches provides structure to participants to follow.
- Improvements in market operations and confidence in the transactions that occur between participants.

This change in audit requirements acknowledges the gas retail market has matured with an appropriate level of oversight to ensure compliance with the EIC obligations under the WA RMP's. It also aligns with audit requirements in east coast jurisdictions.

Given the benefits and the likely implementation requirements (e.g. Retailers will need to make minor amendments to their business processes), AEMO's initial assessment is that from an overall industry perspective, the benefits significantly outweigh the costs.



## 6. MAGNITUDE OF THE CHANGES

AEMO has deemed this change to be non-substantial as it involves minor business process changes (a reduction in effort and obligations) for Retailers and AEMO.

## 7. AEMO'S PRELIMINARY ASSESSMENT OF THE PROPOSAL'S COMPLIANCE WITH CLAUSE 378 OF THE RMP:

As part of the first-round consultation (PPC), AEMO put forward the following assessment regarding compliance with clause 378 of the RMP:

<p>Ensure that the retail gas market operates and is governed in a manner that is,</p> <ul style="list-style-type: none"> <li>(i) open and competitive;</li> <li>(ii) efficient; and</li> <li>(iii) fair to participants and their customers</li> </ul>	<p>AEMO's view is that the proposed change will continue to promote competition, is not unreasonably costly to implement (it is an overall cost saving) and doesn't disadvantage participants or their customers.</p>
<p>Ensure compliance with all applicable laws</p>	<p>AEMO's view is that the proposed changes are consistent with the applicable laws, and participants were given an opportunity during the PPC consultation to inform AEMO if they believe the proposed change is in conflict with any applicable laws.</p>
<p>Ensure effective consultation occurs and gives stakeholder's opportunities to provide feedback of the proposed changes</p>	<p>AEMO's view is that the PPC consultation and the subsequent IIR consultation, in addition to the pre-consultation GMIs and discussions at the GRCF, have and will provide adequate opportunities for participants to provide feedback on the proposed changes.</p>

No participant put forward any opposing views in relation to AEMO assessment during the first-round consultation therefore AEMO maintains its original assessment described in the previous points as noted above.

## 8. CONSULTATION FORUM OUTCOMES

On 15 July 2021 AEMO published a PPC and participants were invited to provide feedback on AEMO's assessment of the proposal. Submission closed on 30 July 2021. AEMO received responses from AGL, Alinta Energy, Kleenheat, Origin Energy and Synergy. All participants expressed their support that the changes described in the PPC should proceed. Synergy's feedback also included minor editorial corrections. Origin Energy's feedback also queried the timeframe for submitting quarterly EIC breach report within five days after end of a quarter. This feedback and AEMO's response thereto are provided in Attachment C.

## 9. ACCC AUTHORISATION REVIEW

The Australian Competition and Consumer Commission (ACCC) granted Authorisations to REMCo to operate Chapter 5 (Allocation, Reconciliation and Swing) and Chapter 6 (Compliance and Interpretation) of the RMPs and associated ancillary deeds. The ACCC approved variations to the Authorisations to enable REMCo to transfer administration to AEMO.



Authorisation is a process where the ACCC may grant protection from legal action for anti-competitive conduct that might otherwise breach the Competition and Consumer Act 2010 (the CCA) where there is an offsetting public benefit from the conduct.

Changes to the RMP Chapters and ancillary deeds covered by the Authorisations must be assessed to determine whether the change impacts the Authorisation.

If AEMO determines that these RMP changes to Chapter 6 impact the Authorisation, these changes, if made, will not be effective unless and until approved by the ACCC.

## **10. SUPPORTING DOCUMENTATION**

Please see Attachment B for the proposed RMP WA changes.



## IMPACT & IMPLEMENTATION REPORT – RECOMMENDATION(S)

### 11. SHOULD THE PROPOSED PROCEDURES BE MADE)?

AEMO recommends the changes proposed in Attachment B. This includes the editorial changes put forward during the first-round consultation. These additional changes are described in Attachment C.

### 12. PROPOSED TIMELINES

Subject to all necessary approvals, AEMO proposes the following timeframe:

- Issue IIR on 10 August 2021.
- IIR feedback due 7 September 2021.
- Economic Regulation Authority (ERA) submission targeted for 27 September 2021 with ERA decision expected by middle of December 2021.

AEMO will work with ERA on the process to set an effective date for these changes to be 1 January 2022.



## **ATTACHMENT A – IIR RESPONSE TEMPLATE**

The IIR response template has been attached separately to this document.

Anyone wishing to make a submission to this IIR consultation are to use this response template.

Submissions close Tuesday 7 September 2021 and should be emailed to [grcf@aemo.com.au](mailto:grcf@aemo.com.au).



## ATTACHMENT B – RMP WA DOCUMENTATION CHANGES (SEE SECTION 3)

Blue underline means addition ~~red-strikeout~~ means delete

Gray highlight are changes related to the PPC feedback

### 2. Definitions

“referral” means a matter referred to the *compliance panel* under clause 329(1)(a)~~(ii)~~ or clause 329(1)(b)~~(iii)~~ or clause 329(1)(d) or clause 331(2).

### Part 6.3 – Matters referred to AEMO

{Note: The purpose of this Part 6.3 which imposes a requirement that matters be referred to AEMO before being referred to the *compliance panel* or the *Economic Regulation Authority*, is:

- (a) to provide a speedy mechanism to resolve minor matters without activating the *compliance panel* or requiring an investigation by the *Economic Regulation Authority*; and
- (b) to impose a filter which discourages the referral of vexatious or frivolous *claims* to the *compliance panel* or the *Economic Regulation Authority*;}

#### 325. Matters referred to AEMO

(1) If a *participant, pipeline operator, prescribed person, or AEMO*:

- (a) reasonably believes that another *participant, pipeline operator, prescribed person, or AEMO* has breached the *procedures*; or
- (b) requires an interpretation of the proper meaning of a procedure,

then the *participant, pipeline operator, prescribed person, or AEMO* may at any time give AEMO a notice ~~specifying~~ in accordance with this Part.

(1A) If a *participant, pipeline operator, prescribed person, or AEMO* reasonably believes that they have breached clause 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A or 349 of the *procedures*, then the *participant, pipeline operator, prescribed person, or AEMO* must give AEMO a notice in accordance with this Part

{Note: If an incorrect transfer request has been corrected to the satisfaction of all affected parties as a result of acceptance of an *error correction notice*, a *notice of breach* is not required to be given in accordance with this Part}

(1B) A notice given pursuant to clause 325(1) or 325(1A) must specify

~~(e)~~(a) the *GBO identification* of the person referring the matter to AEMO; and

~~(e)~~(b) the identity of any person of which it is aware, that is involved with or affected by the referred matter; and

~~(e)~~(c) if the matter relates to an alleged breach of the *procedures* by a *participant, pipeline operator or prescribed person*:



- (i) the *GBO identification* of the *participant pipeline operator* or *prescribed person* that is alleged to have breached the *procedures*; and
  - (ii) the identity of any other person that is involved with or affected by the alleged breach of the *procedures*; and
  - (iii) the details of the alleged breach of the *procedures*; ~~or~~ and
  - (iv) if applicable, the details of remedial or corrective action implemented or that will be implemented to ensure the breach does not reoccur; or
- ~~(f)~~ (d) if the matter relates to an alleged breach of the *procedures* by AEMO:
- (i) the details of the alleged breach of the *procedures* by AEMO; and
  - (ii) the identity of any other person that is involved with or affected by the alleged breach of the *procedures*; or
- ~~(g)~~ (e) if the matter relates to an interpretation of the *procedures*:
- (i) the procedure that requires interpretation and the reason why; and
  - (ii) the circumstances in which the interpretation is required.
- (2) ~~Every notice of an alleged breach of the procedures under 325(1A) must be given within 30 business days of the date that the participant, pipeline operator or prescribed person alleging the procedure breach became aware, or ought to have become aware, that the breach occurred~~ subject to clause 325(2C), within 5 business days after the end of each Quarter, in respect of all breaches of clause 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A or 349 of the procedures in that Quarter.

Quarter means each period of three calendar months ending on March 31, June 30, September 30, or December 31.

2A If AEMO, acting reasonably, considers that potential breaches notified under clause 325(2) indicate potential issues with compliance with clauses 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A or 349, AEMO may issue a notice to a participant requiring that participant to provide a notice under 325(2) for potential breaches of clause 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A or 349 within 30 business days of the date that the participant became aware, or ought to have become aware, that the breach occurred, instead of after each Quarter.

(2B) In determining whether to issue a notice under clause 325(2A), AEMO must consider the matters referred to in clause 350(2C).

{Note: For the avoidance of doubt, AEMO may issue a notice under clause 325(2A) even if AEMO has not issued a notice under clause 350(2B).}

(2C) If AEMO issues a notice to a participant under clause 325(2A), for such period as reasonably determined by AEMO, that participant must give a notice under



325(1A) for any potential breach that relate to clause 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A or 349 within 30 business days of the date that the participant became aware, or ought to have become aware, that the breach occurred.

- (3) A *notice* requesting an interpretation of a procedure may be given at any time.

### 325A. Suspending the process

- (1) If a person gives a *notice* under clause 325(3) (“**interpretation notice**”) which involves interpretation of a *procedure* that is, or becomes, the subject of a *notice* of alleged breach under clause 325(21A) (“**breach notice**”), then time does not run in respect of any deadline under this Chapter that relates to the breach *notice* for a period (“**suspension period**”) determined in accordance with clause 325A(2).
- (2) The suspension period starts on the giving of the interpretation *notice* and ends at the time at which the *compliance panel’s* decision takes effect under clause 341(5)(b).

{Note: For example, if a breach *notice* has not been given, the 30 day period under clause 325(2) is suspended while the interpretation *notice* is being dealt with – i.e. for the duration of the suspension period.}

- (3) Clause 325A(1) does not apply in respect of a deadline that had already expired when the interpretation *notice* was given.

### 326. Withdrawal of referral

- (1) A *participant, pipeline operator, or prescribed person* that refers a matter to AEMO may at any time prior to AEMO making a decision under clause 329 withdraw the referral by *notice* to AEMO.
- (2) AEMO may require the *participant, pipeline operator, or prescribed person* to reimburse AEMO for the reasonable costs incurred by AEMO in connection with a referral to AEMO, up to the time it is withdrawn.

### 327. AEMO to give *notice* to participants

If AEMO:

- (a) receives a *notice* under clause 325(1) or 325(1A); or

(a1) reasonably believes that a participant, pipeline operator, prescribed person, or AEMO has breached the procedures; or

- (b) requires an interpretation of the proper meaning of a procedure.

AEMO must before making a decision under clause 329(1) give a *notice* to each *participant, pipeline operator, or and prescribed person or AEMO*-affected specifying:



- (c) if the matter relates to an alleged breach of the *procedures* by a *participant*, *pipeline operator*, *prescribed person* or *AEMO*:
- (i) the *GBO identification* of the *participant*, *pipeline operator*, *prescribed person* or *AEMO* that is alleged to have breached the *procedures*; and
  - (ii) the identity of each person that is involved with or affected by the alleged breach of the *procedures*; and
  - (iii) the details of the alleged breach of the *procedures*; ~~or~~ and
  - (iv) the details of remedial or corrective action implemented or to be implemented that ensures the breach does not reoccur; or
- (d) if the matter relates to an interpretation of the *procedures*:
- (i) the procedure that requires interpretation and the reason why; and
  - (ii) the circumstances in which, the interpretation is required.

### **328. There is no clause 328**

#### **328A. AEMO may investigate alleged breaches**

- (1) Before making a determination under clause 329 in relation to an alleged breach ~~referred to~~ notified by *AEMO* under clause ~~325~~ 327, *AEMO* may request from any *participant*, *pipeline operator* or *prescribed person* information about the circumstances of the alleged breach.
- (2) *AEMO* may specify a time for responding to a request under clause 328A(1), which must be at least 5 full *business days* from the time of the request.
- (3) A *participant*, *pipeline operator* or *prescribed person* who receives a request from *AEMO* under clause 328A(1) must, as soon as practicable and in any event within any time specified under clause 328A(2), provide *AEMO* with information in reasonable detail about the relevant circumstances.
- (4) *AEMO* must not make a determination until the time period in clause 328A(2) has elapsed, but after that may make a determination whether or not a *participant*, *pipeline operator*, or *prescribed person* provides information in accordance with clause 328A(1).
- (5) *AEMO* may at any time extend the specified time for responding to a request under clause 328A(2)

#### **329. Determinations which may be made**

- (1) After considering an alleged breach of the *procedures* or procedure interpretation *AEMO*:



- (a) must, if the matter relates to an alleged breach of the *procedures* by a *participant* or *AEMO*, and *AEMO* has not been delegated authority to make a determination on materiality under clause 343(3), refer the matter to the *compliance panel* and provide the *compliance panel* with *AEMO*'s view on whether the breach was material.
- (b) may if the matter relates to an alleged breach of the *procedures* by a *participant* or *AEMO*, and *AEMO* has been delegated authority to make a determination on materiality under clause 343:
  - (i) if *AEMO* determines that the matter was not material, either resolve not to take any further action in relation to the matter, or refer the matter to the *compliance panel*; or
  - (ii) if *AEMO* determines that the matter was material, refer the matter to the *compliance panel*.
- (c) may, if the matter relates to an alleged breach of the *procedures* by a *pipeline operator* or *prescribed person*, then
  - (i) if *AEMO* determines that the matter was not material, resolve not to take any further action in relation to the matter, or refer the matter to the *approving body*; or
  - (ii) if *AEMO* determines that the matter was material, refer the matter to the *approving body*.
    - {Note: In determining whether an alleged breach of the *procedures* by a *participant*, *pipeline operator*, *prescribed person*, or *AEMO* is material *AEMO* will have regard to the following:
      - (i) Whether the alleged breach had a material impact on the operation of the Market.
      - (ii) Whether the alleged breach has resulted in any costs being borne by *AEMO* (and therefore the Market as a whole).
      - (iii) Whether or not the alleged breach of the *procedures* appears to have arisen as a result of problems with the design/operation of the *procedures*, and that the *participant*, *pipeline operator*, or *prescribed person* was still acting in a manner consistent with the guiding principles of *AEMO*.
      - (iv) Whether the alleged procedure breach was an isolated event, or indicates a systemic problem with compliance.
      - (v) Whether the alleged procedure breach appears to have been made intentionally or maliciously.
      - (vi) Whether remedial action was taken by the *participant*, *pipeline operator*, or *prescribed person* following discovery of the breach.
      - (vii) Whether the alleged procedure breach has a potential anti-competitive effect.
      - (viii) Any other matters considered relevant by *AEMO*.}
- (d) must, if the matter relates to an alleged interpretation of the *procedures*, refer the matter to the *compliance panel* with *AEMO*'s preliminary view on the interpretation.



- (2) AEMO must make its determination under this clause 329 expeditiously in a fair and reasonable manner.
- (3) AEMO must:
  - (a) for the first 12 months after the date that a change to the *procedures* comes into force, have regard to the fact that the *procedures* affected by the change are a new governing regime for *participants, pipeline operator, or prescribed person*;
  - (b) for the first 6 months after a *person* becomes a *participant, pipeline operator or prescribed person*, have regard to the fact that the *procedures* are a new governing regime for the new *participant, pipeline operator, or prescribed person*; and
  - (c) if there is an *in-progress procedure change* that affects the procedure that is alleged to have been breached, consider whether the conduct that is the subject of the alleged procedure breach would not have been a breach if the *in-progress procedure change* had been in effect at the time the breach was alleged to have occurred, and have regard to this in making its decision under clause 329(1).

### 330. Notification of determinations

- (1) Within 5 *business days* after a determination under ~~clause 329(1)(a)(i) or~~ clause 329(1)(b)(i) that the matter was not material, AEMO must give *notice* of the determination and reasons for the determination to the *participant, pipeline operator, or prescribed person* that referred the matter under clause 325.
- (2) Within 5 *business days* after a determination under clause 329(1)(b)(ii) ~~or clause 329(1)(b)(iii)~~, AEMO must, subject to clause 330(3), give *notice* of the determination and reasons for the determination to all *participants, pipeline operators, and prescribed persons*.
- (3) AEMO must not include any *confidential information* in the *notice* of the determination and reasons for the determination under clause 330(2) and may censor documents it publishes to *participants, pipeline operators, and prescribed persons*.

### 331. Appeal to the *compliance panel*

- (1) Within 40 *business days* after notification of a determination by AEMO under clause 139(3)(b) or clause 329(1)(b) ~~(i)~~ (ii), a *participant, pipeline operator, or prescribed person* may appeal AEMO's determination to the *compliance panel* by giving *notice* to AEMO.

{Note: The *compliance panel* may make an order that the *participant* must pay the *compliance panel's costs* under clause 343(1)(d) or other parties' *costs* under clause 343(1)(e) as part of any determination made by the *compliance panel*.}

{While *pipeline operators* and *prescribed persons* are not subject to decisions by AEMO, they may still appeal an AEMO decision to the *compliance panel* on matter of non-compliance by a participant.}



- (2) Within 5 *business days* after notification under clause 331(1), AEMO must refer the matter to the *compliance panel*.

#### Part 6.4 – Referral of matters to *compliance panel*

##### 332. Referral of matters to *compliance panel*

A matter may only be referred to the *compliance panel* by:

- (a) AEMO under clause 329(1)(a)(~~iii~~), or clause 329(1)(b)(~~iii~~), ~~clause 329(1)(b)(ii)~~ or clause 329(1)(d); or
- (b) [AEMO under clause 331\(2\)](#) by way of appeal by a *participant*, *pipeline operator*, or *prescribed person* under clause 139(5) or clause 331(1).

##### 333. Requirements for referral

A *referral* must be in writing and must specify at least the following information:

- (a) the identity of the person lodging the *referral* with the *compliance panel*; and
- (b) such information as AEMO has regarding the matter, including any preliminary view formed by AEMO; and
- (c) if the *referral* is [under clause 332\(b\) by way of](#) an appeal under clause 139(5) or clause 331 – the grounds of appeal; and
- (d) ~~if the *referral* is under clause 332(b)~~, the decision sought; and
- (e) ~~if the *referral* is under clause 332(b)~~, the orders sought.

##### 334. Compliance panel may reject appeal

If in the *compliance panel's* reasonable opinion:

- (a) a *referral* lodged [under 331\(2\) for an appeal](#) under clause 139(5) or clause 331 does not satisfy the requirements set out in clause 333 (as applicable); or
- (b) the grounds of appeal are not sufficient having regard to the nature of the decision the appeal is in relation to and the reasons given for that decision,

then the *compliance panel* may decline to accept the *referral* within 20 business days of receipt of the *referral*.

{Note: If *participant* wishes to re-lodge the appeal, it may do so by lodging a further ~~referral~~[notice](#) within the time frame indicated in clause 331(1).}

##### 335. Withdrawal of referral to *compliance panel*



(1) *AEMO or a participant, pipeline operator or prescribed person that has lodged a referral may withdraw the referral at any time by notice to the compliance panel.*

(2) Upon receipt of withdrawal of the *referral*, the *compliance panel* must cease all actions, inquiries and proceedings in relation to the withdrawn *referral*.

(3) The *compliance panel* may require *AEMO* or the *participant, pipeline operator or prescribed person* to reimburse the *compliance panel* for the reasonable costs incurred by the *compliance panel* and *AEMO* in connection with a *referral* to the *compliance panel*, up to the time it is withdrawn.

(4) Where a *participant* withdraws a *referral*, the *compliance panel* may, if requested to by any other *participant, pipeline operator or prescribed person* that has been a party to the *compliance panel proceedings*, require the *participant, pipeline operator or prescribed person* to reimburse any other *participant, pipeline operator or prescribed person* that has been a party to the *compliance panel proceedings* for the reasonable costs incurred by the other *participant, pipeline operator or prescribed person* in connection with the *referral* to the *compliance panel*, up to the time it is withdrawn.

### 336. Proceedings

Within 20 business days after receiving *notice* of a *referral* under clause 329(1)(a), 329(1)(b)(~~i~~), 329(1)(d) or 331(1)(~~i~~), the *compliance panel* must meet and commence the proceeding by giving *notice* to all *participants, pipeline operator or prescribed person* and *AEMO* specifying:

(a) the subject matter of the *referral*; and

(b) the timetable for the *proceeding*, including the date for lodgement of submissions and the date of the *hearing* (if applicable), in accordance with the procedures determined under clause 338.



## Part 7.2 – Audit

### 350. Audit of explicit informed consent

(1) There is no Clause 350(1)

(1A) This clause 350 does not apply to users who are self-contracting users.

(2) ~~For~~After each of the 3 full calendar years immediately after the date on which a user is registered with AEMO as a Scheme Participant, a user must appoint an auditor, having regard to clause 353, to undertake a *negative assurance audit* of the user's compliance during the preceding calendar year with clauses 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A and 349, provided that the first negative assurance audit must be for the user's compliance during the period from the date on which the user is registered with AEMO as a Scheme Participant until the end of the first full calendar year after registration.

(2A) Subject to Clause 350(2) and 350(2B), after every 5 successive calendar years starting from 1 January 2022, a user must appoint an auditor, having regard to clause 353, to undertake a negative assurance audit of the user's compliance during the immediately preceding calendar year with clauses 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A and 349.

(2B) If AEMO reasonably considers that any breach or breaches of explicit informed consent requirements by a user under these Procedures requires an audit of the user at more regular intervals than required under Clause 350(2A), AEMO may at any time issue a notice to a user requiring, subject to such conditions as AEMO deems reasonably appropriate, the user to appoint an auditor to undertake a negative assurance audit of the user's explicit informed consent compliance at the times and for the period as determined by AEMO provided that the date by which the user must provide the auditor's report to AEMO is at least 3 months from the date of the notice.

(2C) If AEMO issues a notice to a user under Clause 350(2B), a user must appoint an auditor, having regard to clause 353, to undertake a negative assurance audit of the user's compliance with clauses 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A and 349 at the times and for the period as determined by AEMO and notwithstanding clause 350(3)(b), the user must provide the auditor's final report of its findings to AEMO by the date set out in that notice, which date must not be less than 3 months from the date AEMO issues the notice.

{Note: In determining whether a user must appoint an auditor to undertake an audit at more regular intervals than required under Clause 350(2A), AEMO will have regard to the following:

(i) the number of alleged breaches of explicit informed consent requirements;

(ii) trends in the number of alleged breaches of explicit informed consent requirements;



(iii) whether the breach(es) were material (as determined by AEMO under clause 329);

(iv) the impact of alleged breaches of explicit informed consent requirements on other participants; and

(v) any other matters considered relevant by AEMO.}

(3) The *user* must:

- (a) ensure that the *negative assurance audit* is conducted under this Part 7.2; and
- (b) provide the *auditor's* final report of its findings to AEMO ~~within 3 months~~ by 31 March after the end of the year to which the *negative assurance audit* relates.



## ATTACHMENT C – GENERAL FEEDBACK GIVEN TO PPC

### Section 1 - General Comments on the Proposed Procedure Change

Topic	Ref #	Company	Response	AEMO Response (AEMO only)
<p>Sections 1 to 9 of the PPC sets out details of the proposal.</p> <p>Does your organisation support AEMO’s assessment of the proposal?</p> <p>If no, please specify areas in which your organisation disputes AEMO’s assessment (include PPC section reference number) of the proposal and include information that supports your organisation’s rationale for not supporting AEMO’s assessment.</p>	1	AGL	AGL refers to its previous engagement with AEMO on this matter and supports the proposed changes as set out in sections 1 to 9 of the PCC. Specifically, we support the quarterly self-reporting of EIC breaches to AEMO to enable the change in frequency of EIC Audits to every 5 years by existing retailers in the market.	AEMO notes AGL’s support
	2	Alinta Energy	<p>Yes, Alinta Energy supports the proposal detailed in the PPC, which seeks to amend the Procedures to:</p> <ul style="list-style-type: none"> <li>Require users to self-report breaches concerning EIC on a quarterly basis; and</li> <li>Increase the EIC audit period from 1 year to 5 years for users that have been operating in the gas retail market for more than 3 years, unless otherwise notified by AEMO.</li> </ul> <p>These amendments will ensure a standardized reporting of breaches by users, whilst providing significant audit cost savings.</p>	AEMO notes Alinta Energy’s support.
	3	Kleenheat	Yes	AEMO notes Kleenheat’s support.



	4	Origin Energy	<p>Origin accepts the details of the proposal.</p> <p>Origin has previously provided feedback associated with s.325 (2); that reporting 5 business days after each quarter would be difficult, particularly if a breach were to occur towards the end of the quarter.</p> <p>We acknowledge that robust EIC controls leads to less breaches, however reporting timeframes are still applicable, if inadvertently a breach was to occur at the later part of the quarter.</p> <p>For the record, Origin reiterates the above point for the purpose of this PPC.</p>	<p>AEMO notes Origin Energy's support.</p> <p>As noted in AEMO's feedback during the GMI consultation, AEMO considers that when a breach occurs, a participant will investigate the breach promptly and take steps necessary to mitigate its recurrence. This information should be ready to collate and report at the end of each quarter. This type of approach is desirable and therefore it is AEMO view that the 5 business days is a prudent timing provision and is unlikely to be problematic.</p> <p>As noted in AEMO response 3.6 (see paragraph 5), having robust EIC controls leads to less breaches therefore concerns about reporting timing provision clearly become less of a concern.</p> <p>The proposed timeframe will enable AEMO to collate all types of breaches reported from all participants during the quarter and publish a quarterly Compliance Report in a timely manner.</p>
	5	Synergy	<p>Synergy supports the proposed procedure change.</p> <p>Synergy has discovered some drafting errors in the proposal and has suggested corrections in section 2 below.</p>	<p>AEMO notes Synergy's support.</p> <p>AEMO notes 'Reference source not found' anomaly. AEMO will ensure that clause references will be included in the RMP extract described in attachment B.</p>

Section 2 - Feedback on the documentation changes.

Retail Market Procedures – Western Australia (See Attachment B)					
Ref #	Comp	Part # Section #	Issue / Comment	Proposed text <del>Red-strikeout</del> means delete and <u>blue underline</u> means insert	AEMO Response (AEMO only)
6	AGL		No comment by AGL on documentation changes		
7	Synergy	Part 2 – Definitions: "referral"	<b>Suggested correction</b> Subclauses 329(1)(a), 329(1)(b) and 329(1)(d) require AEMO to refer a matter to the compliance panel. Synergy considers the definition for 'referral' should also include reference to subclause 329(1)(d).	<b>"referral"</b> means a matter referred to the compliance panel under clause 329(1)(a) or clause 329(1)(b) <u>or clause 329(1)(d)</u> or clause 331(2).	AEMO agrees with Synergy's feedback and has amended the definition of "referral".
8	Synergy	331(1)	<b>Suggested correction</b> Clause 331(1) is required to reference several subclauses within the provision. However, instead of listing the relevant subclause's the drafting states; "Error! Reference source not found".	<b>331. Appeal to the compliance panel</b>  (1) Within 40 business days after notification of a determination by AEMO under clause <del>Error! Reference source not found</del> <u>139(3)(b)</u> , or clause 329(1)(b)(i)(ii), a participant, pipeline operator, or prescribed person may appeal AEMO's determination to the compliance panel by giving notice to AEMO.  {Note: The compliance panel may make an order that the participant must pay the compliance panel's costs under clause <del>Error! Reference source not found</del> <u>343(1)(d)</u> or other parties' costs under clause <del>Error! Reference source not found</del> <u>clause 343(1)(e)</u> , as part of any determination made by the compliance panel.}	See Ref #5.

Retail Market Procedures – Western Australia (See Attachment B)					
Ref #	Comp	Part # Section #	Issue / Comment	Proposed text <del>Red-strikeout</del> means delete and <u>blue underline</u> means insert	AEMO Response (AEMO only)
				{While pipeline operators and prescribed persons are not subject to decisions by AEMO, they may still appeal an AEMO decision to the compliance panel on matter of non-compliance by a participant.}	
9	AEMO	Various clauses	Resolve the issue “Error! Reference source not found” in other clauses like the one noted by Synergy above.		See Ref #5.
10	AEMO	350(2A)	AEMO has further clarified the new subclause 350(2A) that the 5 year period for EIC audit commences from 1 January 2022.	Added the text <u>starting from 1 January 2022</u>	