

WA GAS RETAIL MARKET COMPLIANCE GUIDELINES (AEMO)

PREPARED BY: AEMO / Markets / Market Management
VERSION: 2.1
EFFECTIVE DATE: 19 February 2019
STATUS: FINAL

Purpose

AEMO has prepared this document to provide information about the compliance aspects of the gas retail market operated by AEMO in Western Australia.

Disclaimer

This document is intended as a guide only. The information in it may be subsequently updated or amended. This document does not constitute legal or business advice, and should not be relied on as a substitute for obtaining detailed advice about the regulatory instruments governing the WA retail gas market, including (without limitation), the:

- *Energy Coordination Act 1994 (WA)*
- *Retail Market Procedures (WA)*
- *WA Retail Gas Market Agreement*

AEMO has made every effort to ensure the quality of the information in this document but cannot guarantee its accuracy or completeness. Accordingly, to the maximum extent permitted by law, AEMO and its officers, employees and consultants involved in the preparation of this document:

- make no representation or warranty, express or implied, as to the currency, accuracy, reliability or completeness of the information in this document; and
- are not liable (whether by reason of negligence or otherwise) for any statements or representations in this document, or any omissions from it, or for any use or reliance on the information in it.

Contents

1.	Introduction	1
1.1.	Referral of Compliance and Interpretation Matters to AEMO	3
1.2.	AEMO Compliance and Interpretation Obligations	3
2.	Handling Apparent Procedure Breaches	5
2.1.	Discovery and Publication of Apparent Procedure Breaches	5
2.1.1	If AEMO Becomes Aware of an Apparent Procedure Breach	5
2.1.2	Notification of Apparent Procedure Breaches	6
2.2.	Allegations of Procedure Breach	6
2.2.1	Complaint to AEMO	6
2.2.2	Content of a Complaint	76
2.2.3	Notification to the Market	7
2.2.4	Notification to the ERA	7
2.2.5	Withdrawal of Complaints	7
2.3.	Investigations and Submissions	87
2.3.1	Investigation Timetable	8
2.3.2	Submissions by Affected Participants, Pipeline Operators or Prescribed Persons	9
2.3.3	Submissions by the Respondent	9
2.3.4	Urgent Matters may be Expedited	109
2.3.5	AEMO may Undertake Investigation	10
2.4.	Materiality Considerations	11
2.5.	AEMO Determinations on Procedure Breaches	12
2.5.1	Determinations on Procedure Breaches by AEMO and Participants	12
2.5.2	Determinations on Procedure Breaches by for Pipeline Operators and Prescribed Persons	1342
2.5.3	Notification of AEMO Determinations	13
2.5.4	Appeal of AEMO Determinations	13
3.	Handling Requests for Procedure Interpretations	14
3.1.	Lodging a Request for a Procedure Interpretation	14
3.1.1	Content of a Request	14
3.1.2	Withdrawal of a Request	14
3.1.3	Investigation Timetable	14
3.2.	Referral of Requests for Procedure Interpretation	15
4.	Handling Requests for a Determination on Swing Service Causation Compensation	16
4.1.	Initiating the Swing Service Causation Compensation Process	16
4.2.	Pre-Determination Guidelines	16
4.2.1	Investigation by AEMO	16
4.2.2	Parties to Negotiate	16

4.2.3	Gathering Information	17
4.2.4	Report	17
4.3.	Determination Guidelines	17
4.3.1	Where the Alleged Compensating Person is a User	17
4.3.2	Where the Alleged Compensating Person is not a User	18
4.3.3	Determinations that May be Made	18
4.3.4	Timing for Making Determinations	18
4.4.	Post-Determination Guidelines	18
Schedule A:	Flowcharts of the Compliance Process for Alleged Procedure Breaches.....	19

1. Introduction

Chapter 6 of the the Retail Market Procedures (WA) (the “Procedures”) deals with Compliance and Interpretation; and places a number of obligations on AEMO. AEMO’s role under Chapter 6 of the Procedures are primarily to:

- create a Compliance Panel and support that panel;¹ and
- make determinations on whether to refer Procedure compliance and interpretation matters to the Compliance Panel.

The Compliance Panel makes all decisions under Chapter 6, except that it may delegate authority to AEMO make determinations on whether a Procedure breach is material.²

AEMO is committed to making determinations expeditiously and in a fair and reasonable manner. The WA Gas Retail Market Compliance Guidelines (AEMO) – this document – is set out as follows:

- Section 2 – Handling apparent Procedure breaches.
- Section 3 – Handling requests for Procedure interpretations.
- Section 4 – Handling requests determination on Swing Service Causation Compensation.³

1.1. Referral of Compliance and Interpretation Matters to AEMO

The following parties may send a notice to AEMO to refer an alleged Procedure breach or to request a Procedures interpretation:⁴

- any Participant – a Participant is defined as a:
 - User; or
 - Network Operator;
- any Pipeline Operator;
- any Prescribed Person – a Prescribed Person is defined as a:
 - Self-Contracting User;
 - Shipper; or
 - Swing service provider .

1.2. AEMO Compliance and Interpretation Obligations

AEMO must create a Compliance Panel and provide reasonable administrative assistance to the panel.⁵

¹ The Compliance Panel has established the “WA Gas Retail Market Compliance Panel Guidelines” to set out its governance and administrative arrangements, as required by clause 338 of the Procedures. The WA Gas Retail Market Compliance Panel Guidelines are available on the AEMO website (www.aemo.com.au), and should be read in conjunction with the WA Gas Retail Market Compliance Guidelines (AEMO).

² Clause 343(3) of the Procedures.

³ Clause 300A of the Procedures.

⁴ Clause 325 of the Procedures.

⁵ Clauses 309, 310, and 318 of the Procedures. The Compliance Panel is to be comprised of:

- a chairperson with a legal background;
- a member with financial expertise; and
- a member with technical and gas industry expertise.

AEMO must notify Participants, Pipeline Operators, Prescribed Persons and the Economic Regulation Authority (“ERA”) if it:

- receives a notice alleging a Procedure breach;⁶
- receives a notice seeking a Procedure interpretation;⁷ or
- makes a determination on an alleged Procedure breach.⁸

AEMO may seek information from any Participant, Pipeline Operator or Prescribed Person to investigate a compliance matter, and those parties must provide the requested information.⁹

If AEMO has authority to make determinations on materiality, AEMO will make determinations on the materiality alleged Procedures breaches. If AEMO does not have authority to determine materiality, AEMO will refer the matter to the Compliance Panel.¹⁰

AEMO must refer all requests for a Procedure interpretation to the Compliance Panel.¹¹

AEMO must refer to the Compliance Panel any appeal from a Participant of an AEMO determination on whether to refer a matter to the Compliance Panel.¹²

AEMO must establish and maintain Register of Compliance Panel Determinations for the duration of the Procedures. This register is to include, for each referral accepted by the Compliance Panel:

- the determination made by the Compliance Panel; and
- the Compliance Panel's reasons for making the determination.

AEMO may permit a Participant, Pipeline Operator, Prescriber Person or interested party to access the Compliance Panel register of determinations and may recover reasonable costs incurred in doing so.¹³

In addition to its roles under Chapter 6 of the Procedures, AEMO has an obligation to make determinations on whether a person must pay Swing Service Causation Compensation.

⁶ Clause 327(c) of the Procedures.

⁷ Clause 327(d) of the Procedures.

⁸ Clause 330 of the Procedures.

⁹ Clause 328A of the Procedures.

¹⁰ See sections 2.5.1 and 2.5.2 of these guidelines.

¹¹ Clause 329(1)(d) of the Procedures.

¹² Clause 331 of the Procedures.

¹³ Clause 347 of the Procedures.

2. Handling Apparent Procedure Breaches

AEMO will handle Procedure breaches through the following 5-stage process, which allows apparent breaches to be filtered depending on their materiality:

- (1) discovery and publication of apparent Procedure breaches;
- (2) allegations of Procedure breach;
- (3) investigations and submissions;
- (4) materiality considerations; and
- (5) AEMO determinations.

The process to handle apparent Procedure breaches is based on the following principles:

- **Transparency:** The market will be made aware of all apparent breaches by AEMO, Participants, Pipeline Operators, and Prescribed Persons.
- **Fairness and accountability:** Ensuring that Participants and AEMO are accountable for any material impacts arising from Procedure breaches; and that Participants, Pipeline Operators or Prescribed Persons alleged to have materially breached the Procedures have an opportunity to be heard.
- **Efficiency:** Ensuring that AEMO's compliance resources are focused on material breaches to minimise costs for AEMO's compliance process.
- **Impartiality:** Allegations of material breaches are handled in an impartial manner by the Compliance Panel.
- **Reliability:** Decisions will be made based on consistent process and robust evidence.

Flowcharts of the compliance process for alleged Procedure breaches are provided in Schedule A.

2.1. Discovery and Publication of Apparent Procedure Breaches

2.1.1 If AEMO Becomes Aware of an Apparent Procedure Breach

If AEMO becomes aware of an alleged Procedure breach other than through the lodgement of a formal notice, then it will make an assessment of whether the alleged breach is material, having regard to the matters listed in section 2.4.

- If AEMO has authority to determine materiality and determines that the alleged Procedure breach is not material, then it will notify Participants, Pipeline Operators and Prescribed Persons:
 - of the alleged breach; and
 - that AEMO will take no further action in regard to the alleged breach unless it receives formal notification from a Participant, Pipeline Operator, or Prescribed Person.
- If AEMO has authority to determine materiality and determines that the alleged Procedure breach is material; then it must notify Participants, Pipeline Operators and Prescribed Persons; setting out any apparent Procedure breach within 5 business days after AEMO makes its determination.

- If AEMO does not have authority to determine materiality AEMO will refer the matter to the Compliance Panel.

2.1.2 Notification of Apparent Procedure Breaches

~~2.1.2~~

Formatted

AEMO must notify Participants, Pipeline Operators and Prescribed Persons of all alleged Procedure breaches when it becomes aware of a breach. AEMO must include the following details in the Notice of Apparent Procedure Breach:

- a description of the apparent breach;
- the Procedures apparently breached;
- the date, and if known the time, that the apparent breach occurred;
- any other known information regarding the apparent breach;
- the identity of any affected Participants, Pipeline Operators or Prescribed Persons; and
- the closing date by which any material breach allegations must be raised.

AEMO may, prior to publishing the Notice of Apparent Procedure Breach, undertake limited enquiries with any relevant parties to help ensure that the nature and substance of the issue are reasonably understood and explained.

Each month AEMO will produce a summary report of the apparent Procedure breaches for the month and provided it to the Compliance Panel.

2.1.2.1. AEMO's reporting of a breach whereby the Swing Service tolerance band has been exceeded

On a weekly basis, AEMO monitors the daily amounts of Swing Service and should the Swing Service Tolerance Band for the period exceeded the threshold for a gas day, AEMO will undertake an investigation to determine what were the contributing factors that may have resulted in the threshold being exceeded.

Formatted: Font: (Default) Arial, English (Australia)

Formatted: Justified, Indent: Left: 1.9 cm, Space After: 0 pt, No bullets or numbering

If AEMO investigation reveals that a participant Swing Service delivery quality for the gas day exceed the above mentioned daily threshold, AEMO will invoke the process described in 2.1.2. Otherwise AEMO will include a summary of the investigation in the "AEMO Monthly Market Outcome Report".

Formatted: Font: (Default) Arial, English (Australia)

Formatted: Indent: Left: 1.9 cm

2.2. Allegations of Procedure Breach

This stage in the compliance process aims to ensure fairness between Participants, Pipeline Operators and Prescribed Persons by:

- providing an avenue for an affected party to trigger further scrutiny of a material apparent Procedure breach; and
- ensuring that the resources of affected parties and AEMO are not unnecessarily expended on non-material Procedure breaches, such as short delays to publication of market reports, or IT outages that have no material impact on any party.

2.2.1 Complaint to AEMO

AEMO or a Participant, Pipeline Operator or Prescribed Person who believes an apparent Procedure breach was material may lodge a notice (a “complaint”) with AEMO if it reasonably believes that another Participant, Pipeline Operator, Prescribed Person, or AEMO has materially breached the Procedures.¹⁴ A complaint can be lodged at any time, either in response to the publication of a Notice of Apparent Procedure Breach by AEMO (see section 2.1) or otherwise. A person lodging a complaint with AEMO is referred to as the “complainant” in these guidelines.

2.2.2 Content of a Complaint

A complainant must lodge a complaint in writing.¹⁵ The complaint must include as a minimum:

- the complainant’s GBO identification;
- the GBO identification of the Participant, Pipeline Operator or Prescribed Person that is alleged to have breached the Procedures;
- the identity of any other person that is involved with or affected by the alleged Procedure breach; and
- the details of the alleged Procedure breach, including:
 - a description of the alleged breach;
 - the Procedures alleged to have been breached;
 - the time that the breach occurred;
 - a description of the impact that the alleged breach had on the complainant, the market and other Participants, Pipeline Operators or Prescribed Persons; addressing the matters listed in section 2.4; and
 - any other information regarding the breach known to the complainant.

2.2.3 Notification to the Market

Following receipt of a complaint, AEMO will publish a Notice of Apparent Procedure Breach to the Participant, Pipeline Operator or Prescribed Person that is alleged to have materially breached the Procedures (the “respondent”) and any other parties that AEMO believes may have been affected by the alleged breach.¹⁶ The Notice of Apparent Procedure Breach will:

- notify the respondent and other affected parties of the allegation; and
- request submissions on whether respondent and other affected parties believe:
 - the circumstances contained in the notice amount to a Procedure breach; and
 - whether they believe that the apparent breach was material, addressing the matters listed in section 2.4.

2.2.4 Notification to the ERA

AEMO will notify the ERA if it receives a complaint regarding a Pipeline Operator or Prescribed Person.

2.2.5 Withdrawal of Complaints

If a complainant withdraws a complaint, then AEMO will:

¹⁴ Clause 325(1) of the Procedures.

¹⁵ Clause 325(1) of the Procedures.

¹⁶ Clause 327 of the Procedures.

- notify all Participants, Pipeline Operators and Prescribed Persons; and
- determine whether it will seek a reimbursement of AEMO's reasonable costs related to the withdrawn complaint, considering any submissions made to AEMO by the complainant.¹⁷

2.3. Investigations and Submissions

The aim of the investigation stage is to ensure that AEMO has sufficient information to allow it to make an informed decision on whether the alleged breach took place, and if so, for AEMO or the Compliance Panel (as applicable) to determine whether it was material.

This stage of the process is designed to ensure that all persons responding to allegations that they have breached the Procedures ("respondents") are aware of the allegations made against them, and have a reasonable opportunity to respond to these allegations. Therefore, respondents will be given the opportunity to view all the evidence that will be considered (subject to confidentiality), and to make submissions on this evidence.

2.3.1 Investigation Timetable

The following investigation timetable has been designed to give the respondent and AEMO sufficient time to consider information relating to an alleged Procedure breach.

Time	Action
Start <ul style="list-style-type: none"> • AEMO receives a complaint from a Participant, Pipeline Operator or Prescribed Person. 	<ul style="list-style-type: none"> • AEMO is to forward the complaint to the respondent. • AEMO is to send a Notice of Apparent Procedure Breach to any affected Participants, Pipeline Operators, and Prescribed Persons (and to the ERA if the breach was by a Pipeline Operator or Prescribed Person).
+5 Business Days <ul style="list-style-type: none"> • 5 business day after affected Participants, Pipeline Operators or Prescribed Persons receive the Notice of Apparent Procedure Breach. 	<ul style="list-style-type: none"> • Affected Participants, Pipeline Operators or Prescribed Persons are to provide written submissions to AEMO (if they choose to do so). • AEMO is to forward any submissions from affected Participants, Pipeline Operators or Prescribed Persons to the respondent.
+10 Business Days <ul style="list-style-type: none"> • 10 business days after the respondent receives from AEMO copies of affected parties' submissions. 	<ul style="list-style-type: none"> • Respondents are to send a written submission to AEMO (if they choose to do so). • AEMO is to provide a copy of any submissions to the complainant.

¹⁷ Clause 326 of the Procedures.

Time	Action
AEMO Discretion <ul style="list-style-type: none"> The Procedures do not specify timing for AEMO to make determinations. 	AEMO is to make a determination to: <ul style="list-style-type: none"> dismiss non-material Procedure breaches (if AEMO has authority to make a determination on materiality); or refer the Procedure breach to the Compliance Panel (or to the ERA if the breach was by a Pipeline Operator or Prescribed Person).
Quarterly <ul style="list-style-type: none"> On a quarterly basis. 	<ul style="list-style-type: none"> AEMO is to publish the AEMO Gas Retail Market Compliance Quarterly Report on the AEMO website.

If AEMO exercises its discretion to extend the period for responding to a request for information relating to an alleged Procedure breach, then it must notify all affected Participants, Pipeline Operator and Prescribed Persons of the revised deadline and the reason for the extension.¹⁸

2.3.2 Submissions by Affected Participants, Pipeline Operators or Prescribed Persons

AEMO will invite Participants, Pipeline Operators or Prescribed Persons that it believes may have been affected by an alleged breach to make a written submission to AEMO within five business days of receiving a Notice of Apparent Procedure Breach.

An affected Participant, Pipeline Operator or Prescribed Person may indicate in its written submission whether it believes that the respondent has breached the Procedures, and if so, must indicate the impact that the alleged breach had on them. Each submission should indicate:

- the party's view of the impact that the alleged Procedure breach had on the market, Participants, Pipeline Operators or Prescribed Persons (this should address the matters set out in section 2.4);
- any facts or evidence that the party considers may substantiate the occurrence of the alleged Procedure breach; and
- the party's view on what determination AEMO should make.

AEMO will provide any submissions it receives to the respondent, subject to removal of any confidential information.

2.3.3 Submissions by the Respondent

The respondent will be asked to make a written submission to AEMO. The respondent's submission must be provided to AEMO no later than 15 business days after AEMO has provided copies of submissions made by affected Participants, Pipeline Operators or Prescribed Persons.

A respondent's written submission may indicate whether or not it believes that it has breached the Procedures, and should indicate its view on:

¹⁸ Clause 328A(5) of the Procedures.

- the impact that the alleged Procedure breach had on the market, Participants, Pipeline Operators or Prescribed Persons (this should address the matters set out in section 2.4); and
- what determination AEMO should make.

The Procedures indicate that AEMO, Participants, Pipeline Operators and Prescribed Persons are excused from carrying out any of their obligations under the Procedures if they are prevented from doing so by any event or circumstance not within their reasonable control, acting as a reasonable and prudent person.¹⁹ If the respondent wishes to claim the benefit of this allowance, it must state that it wishes to do so in its written submission, and must include the reasons why it believes it is entitled to claim the benefit of this allowance.

AEMO will provide a copy of the respondent's submission to the complainant. AEMO will provide a copy of the respondent's submission to the ERA if the respondent is a Pipeline Operator or Prescribed Person.

2.3.4 Urgent Matters may by Expedited

AEMO may, at its discretion, expedite the timeframe set out in this document for considering an alleged breach if:

- requested by a Participant, Pipeline Operator or Prescribed Person; and
- in the opinion of AEMO, the alleged breach:
 - either has a material:
 - impact on the efficient operation of the market; or
 - financial impact on a Participant(s), Pipeline Operator(s) and/or Prescribed Person(s); and
 - cannot be resolved through existing market mechanisms.

AEMO will determine the revised timeframes for the matter to be considered if a matter is expedited. The revised timeframes will include a requirement for written submissions to be submitted by the complainant, the respondent and any affected Participants, Pipeline Operators or Prescribed Persons.

2.3.5 AEMO may Undertake Investigation

In addition to information contained in Participants', Pipeline Operators' or Prescribed Persons' submissions; AEMO may gather such information that it considers relevant to assisting the Compliance Panel in determining whether the alleged breach has been proven, and if so, whether it is material.

If an alleged Procedure breach is referred to the Compliance Panel, then AEMO will, as soon as practicable, fully investigate the alleged Procedure breach and prepare an investigation report to provide the Compliance Panel with background information on the alleged breach.

If AEMO is the party alleged to have been in breach, then AEMO will prepare the investigation report, but will make a written request to the complainant asking it to provide detailed support for its complaint, and will include this material in the investigation report. In most circumstances this should provide sufficient information to inform the Compliance Panel of the matter prior to it undertaking its own investigation. If AEMO is the party alleged to have been

¹⁹ Clause 7 of the Procedures.

in breach, AEMO or the Compliance Panel may choose to commission a report from an independent investigator.

AEMO will provide copies of the investigation report to the Compliance Panel, the complainant, and the respondent.

The investigation report will specify the details of the investigation including:

- the Procedure allegedly breached;
- the person who allegedly committed the breach;
- the date and time the breach allegedly occurred;
- the nature of the alleged breach;
- a description of the impact the alleged breach had on the market, Participants, Pipeline Operators, and Prescribed Persons (addressing the matters listed in section 2.4);
- any additional information which the investigator considers relevant to the decision of the Compliance Panel;
- the investigator's assessment of the likelihood of the alleged breach recurring;
- details of any similar situations previously dealt with by the Compliance Panel; and
- a copy of all correspondence with the investigator relating to the breach.

2.4. Materiality Considerations

AEMO will have regard to the following matters in determining whether an alleged Procedure breach is material:²⁰

- (1) Whether the alleged Procedure breach had a material impact on the operation of the market and Participants.
- (2) Whether the alleged Procedure breach has resulted in any costs being borne by AEMO (and therefore the market as a whole).
- (3) Whether the alleged Procedure breach 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 acting in a manner consistent with the guiding principles of the Procedures.
- (4) Whether the alleged Procedure breach is an isolated event or indicates a systemic problem with compliance.
- (5) Whether the alleged Procedure breach appears to have been made intentionally or maliciously.
- (6) Whether remedial action was taken by the Participant, Pipeline Operator or Prescribed Person following discovery of the breach.
- (7) Whether the alleged Procedure breach has a potential anti-competitive effect.

²⁰ Items 1-7 and 12 in section 2.4 reflect the note under clause 329 of the Procedures.

- (8) For the first 12 months after a Procedure change, the fact that the amended Procedures are a new governing regime for the Participants, Pipeline Operators or Prescribed Persons.²¹
- (9) For the first 6 months after a person becomes a Participant, Pipeline Operator or Prescribed Person the fact that the Procedures are a new governing regime for the new Participant, Pipeline Operator or Prescribed Person.²²
- (10) Whether the alleged Procedure breach may be a material breach of a Participant's, Pipeline Operator's or Prescribed Person's licence under the *Energy Coordination Act 1994*.
- (11) Whether the alleged Procedure breach was caused by or contributed to by the conduct of AEMO or another Participant, Pipeline Operator or Prescribed Person.
- (12) Any other matters considered relevant by AEMO.

If AEMO determines, based on the written and oral submissions, that it does not have sufficient information to determine whether the alleged Procedure breach has occurred or the materiality of the alleged breach, then it will seek further information from the complainant, the respondent and/or affected parties.

2.5. AEMO Determinations on Procedure Breaches

AEMO will make determinations on the materiality of alleged Procedure breaches by AEMO and market participants if it has been delegated authority to do so by the Compliance Panel. If the matter relates to an alleged breach of the Procedures by a pipeline operator, or prescribed person, AEMO will make a determination on materiality.

2.5.1 Determinations on Procedure Breaches by AEMO and Participants

If AEMO has not been delegated authority to make determinations on materiality, AEMO must refer any alleged Procedure breach by AEMO or a Participant to the Compliance Panel.²³

If AEMO has been delegated authority to make determinations on materiality, then:

- If AEMO determines that an alleged Procedure breach by AEMO or a Participant is not material, then AEMO is to determine to either:
 - take no further action; or
 - refer the matter to the Compliance Panel.²⁴
- If AEMO determines that an alleged Procedure breach by AEMO or a Participant is material, then AEMO must refer the matter to the Compliance Panel.²⁵

AEMO will take no further action in relation to an apparent Procedure breach unless AEMO, a Participant, Pipeline Operator or Prescribed Person makes a complaint (see section 2.2.1 above).

²¹ Clause 329(3)(a) of the Procedures.

²² Clause 329(3)(b) of the Procedures.

²³ Clause 329(1)(a) of the Procedures.

²⁴ Clause 329(1)(b)(i) of the Procedures.

²⁵ Clause 329(1)(b)(ii) of the Procedures.

This approach aims to ensure transparency through the reporting of all apparent breaches and provides uniform treatment of apparent breaches, whether by AEMO or a Participant.

2.5.2 Determinations on Procedure Breaches by for Pipeline Operators and Prescribed Persons

If AEMO determines that an alleged Procedure breach by a Pipeline Operator or Prescribed Person is not material, then AEMO is to determine to either:

- take no further action; or
- refer the matter to the ERA.²⁶

If AEMO determines that an alleged Procedure breach by a Pipeline Operator or Prescribed Person is material, then AEMO must refer the matter to the ERA.²⁷

AEMO will take no further action in relation to an apparent Procedure breach unless AEMO, a Participant, Pipeline Operator or Prescribed Person makes a complaint (see section 2.2.1).

This approach aims to ensure transparency through the reporting of all apparent breaches and provides uniform treatment of apparent breaches, whether by a Pipeline Operator or Prescribed Person.

2.5.3 Notification of AEMO Determinations

All AEMO determinations will be set out in writing, and will include the reasons for the decision.

AEMO will give notice of its determination within 5 business days to all Participants, Pipeline Operators or Prescribed Persons that were provided with copies of the initial complaint, excluding any confidential information. AEMO will give notice of its determination to the ERA if the alleged Procedure breach was by a Pipeline Operator or Prescribed Person.

2.5.4 Appeal of AEMO Determinations

If AEMO has authority to determine materiality and determines not to refer a complaint to the Compliance Panel, then any Participant, Pipeline Operator or Prescribed Person may appeal AEMO's determination to the Compliance Panel by giving notice to AEMO. An appeal must be made within 40 business days after notification of a determination by AEMO.²⁸

A notice of appeal should be in writing and include:

- the grounds of the appeal;
- the decision and orders sought; and
- such other information as the Participant, Pipeline Operator or Prescribed Person appealing reasonably considers will assist the Compliance Panel.

²⁶ Clause 329(1)(c)(i) of the Procedures.

²⁷ Clause 329(1)(c)(ii) of the Procedures.

²⁸ Clause 331 of the Procedures.

3. Handling Requests for Procedure Interpretations

The Procedures provide a formal process for the resolution of Procedure interpretation issues. However, it is envisaged that prior to commencing this process, Participants, Pipeline Operators or Prescribed Persons will use reasonable efforts to resolve Procedure interpretation issues with AEMO; and that a Participant, Pipeline Operator or Prescribed Person will only lodge a formal request for a Procedure interpretation if a matter is not resolved to its satisfaction.

3.1. Lodging a Request for a Procedure Interpretation

3.1.1 Content of a Request

A request for a Procedure interpretation must be in writing and include as a minimum:

- the GBO identification of the person referring the matter to AEMO;
- the GBO identification of any person, of which requesting party is aware, that is involved with or affected by the referred matter;
- the clause for which interpretation is required;
- the reason for the request (e.g. a perceived ambiguity in the clause); and
- the circumstances in which the interpretation is required.²⁹

The request should also include the requesting party's view as to the materiality of the likely impacts on the market, Participants, Pipeline Operators or Prescribed Persons associated with the Procedure interpretation issue.

3.1.2 Withdrawal of a Request

The requesting party may at any time withdraw a request for Procedure interpretation by sending a written notice to AEMO.³⁰ AEMO will advise any Participant, Pipeline Operators or Prescribed Persons that has been involved in this interpretation process of the withdrawal.

AEMO may require a requesting party that withdraws a request for a Procedure interpretation to reimburse AEMO for the reasonable costs incurred by AEMO in connection with the referral up to the time it is withdrawn.³¹ AEMO will determine whether to seek a reimbursement and will notify the relevant party, and will consider any submissions made to by the withdrawing party before making its determination.

3.1.3 Investigation Timetable

The following investigation timetable has been designed to give AEMO sufficient time to consider information relating to request for a Procedure interpretation.

²⁹ Clause 325 of the Procedures.

³⁰ Clause 326(1) of the Procedures.

³¹ Clause 326(2) of the Procedures.

Time	Action
Start <ul style="list-style-type: none"> AEMO receives a request for a Procedure interpretation. 	<ul style="list-style-type: none"> AEMO is to forward the request to, and seek submissions from all Participants, Pipeline Operators or Prescribed Persons.
+10 Business Days <ul style="list-style-type: none"> 10 business days after Participants, Pipeline Operators or Prescribed Persons receive request for clause interpretation. 	<ul style="list-style-type: none"> Participants, Pipeline Operators or Prescribed Persons are to provide AEMO with written submissions (if they choose to do so).
AEMO Discretion <ul style="list-style-type: none"> The Procedures do not specify timing for AEMO to refer requests to the Compliance Panel. 	<ul style="list-style-type: none"> AEMO to form a preliminary view on the Procedure interpretation and refer the request to the Compliance Panel.

3.2. Referral of Requests for Procedure Interpretation

AEMO must refer any requests for a Procedure interpretation to the Compliance Panel along with AEMO's preliminary view on the interpretation.³²

³² Clause 329(1)(d) of the Procedures.

4. Handling Requests for a Determination on Swing Service Causation Compensation

Clause 300A of the Procedures allows AEMO to make a determination that a person (the “Compensating Person”) must make a “Swing Service Causation Compensation Payment” to each of the other Users in a sub-network on historic gas day.

4.1. Initiating the Swing Service Causation Compensation Process

A User can initiate the clause 300A process by lodging a complaint with AEMO for a historic gas day that a person acted in a way that contributed materially to the causation of Swing Service for a sub-network.

The User must, where possible, specify in the complaint the identity of the person that it considers to be the Compensating Person.

4.2. Pre-Determination Guidelines

The aim of the pre-determination guidelines is to ensure that:

- AEMO meets the standard required by the Procedures – that in making a determination under clause 300A, its opinion is formed as a reasonable and prudent person;
- AEMO adheres to the processes set out in clause 300A; and
- the Participants, Pipeline Operators or Prescribed Persons are encouraged to negotiate a commercial settlement of the matter prior to AEMO making a determination.

4.2.1 Investigation by AEMO

Once AEMO has determined that a complaint requesting a clause 300A determination is not frivolous or vexatious, it will investigate the Swing Service results calculated by the gas retail market systems (“GRMS”) for the sub-network, for the period identified in the complaint. The aim of the investigation is to determine whether there is any evidence that a person materially contributed to the causation of Swing Service in the period, and any other relevant facts.

This investigation is to be completed as soon as reasonably possible and the results of the investigation are to be made available to:

- the alleged Compensating Person, if known;³³
- the User who submitted the complaint;
- other Users;
- Swing Service Providers;
- Network Operators; and
- any other person determined by AEMO.

³³ The identity of the alleged Compensating Person may be indicated by the complainant in its initial complaint, or may be determined by AEMO during the investigation.

4.2.2 Parties to Negotiate

Following receipt of information from the investigation, the User who submitted the complaint and the alleged Compensating Person will be encouraged to negotiate a commercial settlement of the complaint.

4.2.3 Gathering Information

AEMO will ask the alleged Compensating Person and other affected persons for information about the circumstances related to the complaint.

AEMO must provide at least 10 full business days for responses to requests for information, as measured from the latter of the time that AEMO makes its request, or that AEMO published the Swing Service results to the Compensating Person. Every response to a request from AEMO for information should include:

- a detailed response to the request;
- an opinion as to whether it or any other person may have contributed materially to the causation of Swing Service for the period and sub-network in question;
- any facts or other material information that it considers may support its claim; and
- a view on what determination AEMO should make in the circumstances.

4.2.4 Report

Once AEMO has received the requested information, it will prepare a report that:

- contains a description of the circumstances that lead to the Swing Service;
- contains a list of the information sought by AEMO;
- contains a summary of the responses received and attaches the full text of all responses; and
- notes if any person failed to respond to the information request.

4.3. Determination Guidelines

4.3.1 Where the Alleged Compensating Person is a User

If the alleged Compensating Person is a User, AEMO may take into account the following information for the historic gas day for the sub-network in question:

- whether the alleged Compensating Person procured the injection and repayment of an amount of gas into the sub-network equal to the its good faith estimate of its likely User's Estimated Total Withdrawals ("UETW"), as required by clause 178;
- whether there was a material difference between the alleged Compensating Person's User's Pipeline Nomination Amount ("UPNA") and its User's Deemed Withdrawals ("UDW") for the sub-network;
- whether the alleged Compensating Person complied with clauses 181 and 182 of the Procedures;
- whether AEMO calculated a corrected ratio under clause 176(4)(c) after the alleged Compensating Person provided its revised UPNA to AEMO, and the Pipeline Operator

notified AEMO that it could not accommodate the corrected ratio, thereby contributing Swing Service on the historic gas day in question; and

- any notification to AEMO from:
 - a User, Shipper, Swing Service Provider or Network Operator for the sub-network that the alleged Compensating Person may have acted in a manner that contributed materially to the causation of Swing Service; and
 - a Pipeline Operator under clause 254 or 255 of the Procedures.

In making its determination AEMO may also take into account any other information that is relevant to the circumstances.

4.3.2 Where the Alleged Compensating Person is not a User

Where the alleged Compensating Person is not a User, AEMO may take into account any notification to AEMO from a User, Shipper, Swing Service Provider or Network Operator for the sub-network that the alleged Compensating Person may have acted in a manner which contributed materially to the causation of Swing Service on the historic gas day in question.

4.3.3 Determinations that May be Made

In making its determination, AEMO may take into account any information that is relevant to the circumstances.

AEMO will determine whether the alleged Compensating Person acted in a manner that contributed materially to the causation of Swing Service for the sub-network on historic gas day in question. If AEMO determines that a Compensating Person must make a Swing Service Causation Compensation payment, the amount of the payment must be determined in accordance with clause 300A(9).

4.3.4 Timing for Making Determinations

AEMO must not make a determination until after the time for responding to all requests for information has passed; but may make a determination once this period has passed, even if some persons have provided the requested information.

AEMO will make every clause 300A determination as soon as reasonably practicable after the time for responding to requests for information has passed.

4.4. Post-Determination Guidelines

Once AEMO has made a clause 300A determination it must notify:

- the Compensating Person of the facts of the determination and the amount of Swing Service Causation Compensation Payment for each User, if any; and
- each recipient User of its amount of Swing Service Causation Compensation Payment and the identity of the Compensating Person.

Schedule A: Flowcharts of the Compliance Process for Alleged Procedure Breaches





