



Economic Regulation Authority

Procedure Change Report – Monitoring Protocol WEM Procedure

EEPC_2023_01

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Executive summary

On 21 June 2023 the Economic Regulation Authority published a Procedure Change Proposal for its Monitoring Protocol WEM Procedure (Monitoring Protocol).¹

The Monitoring Protocol is required under clause 2.15.1 of the Wholesale Electricity Market (WEM) Rules. The purpose of the Monitoring Protocol is to state how the ERA will implement its obligations under the WEM Rules to monitor Rule Participants' compliance with the WEM Rules and WEM Procedures (WEM Rule 2.15.2).

The WEM Rules require the ERA to consult on the Procedure Change Proposal (WEM Rule 2.10.7) and prepare a Procedure Change Report following the closing date for submissions (WEM Rule 2.10.10).

The consultation period for the Procedure Change Proposal closed on 18 July 2023 at 4:00PM. The ERA has now prepared this Procedure Change Report containing the information required under clause 2.10.13 of the WEM Rules as set out further below.

All capitalised terms in this document are defined terms under the WEM Rules.

¹ Procedure Change [EEPC_2023_01](#).

1. Reason for the Procedure Change

Clause 2.10.13(b) of the WEM Rules requires this report to set out the reasons for the proposed WEM Procedure amendment.

The ERA is responsible for maintaining the Monitoring Protocol under the WEM Rules.

The WEM is undergoing significant reform through the Government's Energy Transformation Strategy including the introduction of the new wholesale electricity market design that is expected to commence on New WEM Commencement Day. There are also changes to the compliance framework that will operate under the new market design. These changes include:

- Providing the ERA with more flexibility on the matters it can investigate.
- Allowing the ERA to suspend or close an investigation.
- Increased powers to issue civil penalties.
- Obligations for the ERA to investigate alleged breaches using a risk-based approach.
- Obligations to publish breaches and investigations in public registers
- Obligations to report to the Minister annually on each Network Operator's self-reported compliance with the WEM Rules and WEM Procedures.

These changes to the compliance framework have resulted in the need for the Monitoring Protocol to be updated.

Updates to the Monitoring Protocol have been made in accordance with feedback received from Rule Participants.

2. Market Advisory Committee and Working Groups

Clause 2.10.13(d) of the WEM Rules requires this report to provide a summary of the views expressed by the Market Advisory Committee (MAC) and any relevant working group.

Clause 2.10.9(a) of the WEM Rules requires the independent Chair of the Market Advisory Committee to convene a meeting of the MAC if the ERA considers that advice from the MAC is required, or two or more MAC members consider that advice on the Procedure Change Proposal is required.

On 22 June 2023 the ERA notified the MAC by email of the Procedure Change Proposal. In this notification, the ERA confirmed that it did not require advice from the MAC on the proposal. This email advised that in accordance with clause 2.10.9(b) of the WEM Rules, the independent Chair of the MAC must convene a meeting of the MAC to discuss the proposal, if two or more members have informed the independent Chair of the MAC in writing that they considered that further advice on the Procedure Change Proposal was required.

The MAC did not establish any relevant working groups for the Monitoring Protocol Procedure Change Proposal.

3. Submissions Received

Clause 2.10.13(c) of the WEM Rules requires this report to include all submissions received, including a summary of the submissions and the ERA's response to the issues raised in the submissions.

The ERA issued a notice on 21 June 2023 with its Procedure Change Proposal for the Monitoring Protocol WEM Procedure calling for submissions on the proposed changes to the Monitoring Protocol. The submission period closed on 18 July 2023 at 4:00PM.

Submissions (refer to Appendix 1) were received from:

- AGL
- Australian Energy Market Operator (AEMO)
- Alinta
- Synergy
- Western Power

The submissions received were broadly supportive of the proposed changes and the proposed risk-based approach.

Significant amendments to the Monitoring Protocol WEM Procedure made in response to submission feedback were:

- Removal of the requirement for an early advice within 5 Business Days for matters that were likely to have a 'major' or catastrophic' consequence.
- Addition of a paragraph allowing Rule Participants to request extensions to the 20 Business Day self-reporting requirement.
- Further information added around the timing of various notifications to be provided by the ERA.
- Clarification added around the submission process for Rule Participants.

Feedback was also received in relation to the matters listed below:

- Application of a risk-based approach to Rule Participants' self-reporting of suspected breaches.
- Application of a risk-based approach to AEMO's mandatory reporting of other Rule Participant breaches
- Mandatory consideration of the relative inexperience of Rule Participants with new WEM processes for six months after New WEM Commencement Day.

The ERA did not amend the Monitoring Protocol WEM Procedure for these matters as the WEM Rules do not allow for any Rule Participants to report alleged breaches to the ERA based on a risk assessment.

The WEM Rules also do not allow the ERA to consider a Rule Participant's inexperience when determining if a suspected breach should be investigated or whether the facts support a breach determination. The ERA will continue to adopt a pragmatic approach and the relative inexperience of Rule Participants may be considered a relevant circumstance, if appropriate, when the ERA is determining its compliance action(s) once it has made a determination that a breach has occurred.

Drafting changes and ERA responses to the submissions received are listed in detail in Appendices 2 and 3. The ERA also made some minor updates to the Monitoring Protocol WEM Procedure to correct typographical errors, apply consistent terminology or update rule references.

4. WEM Objectives

Paragraph 2.7.2 of the Coordinator's WEM Procedure: Procedure Administration requires the ERA to assess whether the proposed changes are consistent with the WEM Objectives, the WEM Rules, Electricity Industry Act and Regulations.

The ERA considers that the changes to the Monitoring Protocol are consistent with these instruments.

The changes made to the Monitoring Protocol support greater transparency and procedural fairness under the WEM Rules. The ERA's proposed changes reinforce and formalise the ERA's existing practice of providing Rule Participants with the opportunity to provide additional relevant information to the ERA, prior to a determination being made.

5. Amended WEM Procedure

Clause 2.10.13(a) of the WEM Rules requires this report to include the wording of the amended Monitoring Protocol.

The final amended Monitoring Protocol is attached to this report. The clean version, including the changes noted in Appendices 2 and 3 is at Appendix 4 and the marked-up version, showing the changes noted in, is at Appendix 5.

6. Commencement Date

Clause 2.10.13(h) of the WEM Rules requires this report to specify a proposed date and time for the amended Market Procedure to commence.

The amendments to the Monitoring Protocol are in response to the introduction of the new wholesale electricity market design that is expected to commence on New WEM Commencement Day, including changes to the compliance framework that will operate under the new market design. As the ERA and Rule Participants are required to operate under the new requirements on New WEM Commencement Day the ERA intends to commence the amended Monitoring Protocol WEM Procedure at 8:00 am on 01 October 2023.

Appendix 1 Submissions Received

- AGL Submission
- Alinta Energy Submission
- Australian Energy Market Operator (AEMO) Submission
- Synergy Submission
- Western Power Submission

Appendix 2 Summary of Submission Feedback

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
1.2.1	Synergy	It is not clear from the Protocol whether the Electricity Industry (Wholesale Electricity Market) Regulations 2004 are within the Protocol's scope. Synergy assumes it is not.	The WEM Regulations are necessarily in scope as the processes for bringing proceedings before the Electricity Review Board (ERB) and issuing civil penalty notices are governed by the WEM Regulations.
2.1.1	Alinta	<p>Clause 2.1 states that the ERA's compliance approach is published in its Compliance Framework and Strategy document which is updated from time to time.</p> <p>Alinta Energy notes that this document was last updated in November 2018 and there may be inconsistencies with the amended Monitoring Protocol (for example both documents contain a risk assessment criteria in the appendices). Given this potential for overlap, Alinta Energy considers that the ERA's Compliance Framework and Strategy should also be updated prior to 1 Oct 2023.</p>	The ERA is in the process of updating the Compliance Framework and Strategy document which is expected to be published prior to New WEM Commencement Day.
	Synergy	Synergy notes the ERA's Compliance Framework and Strategy for WEM and GSI Rules November 2018 (Framework) requires updating given the proposed substantive changes to the Protocol. Synergy's preference is for the Framework to be updated prior to 1 October 2023 to enable the Framework to be read in conjunction with the Protocol, once effected.	

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
2.2.3	Alinta	<p>Alinta Energy is very supportive of the ERA's proposal to consider risk from the perspective of the WEM.</p> <p>However, when clause 2.2.3 is read with the appendices² Alinta Energy considers that the ERA could unintentionally capture repeated low risk non-compliances as a systemic issue when assessing via absolute number of breaches rather than a percentage of breaches per times the obligation was performed.</p>	<p>The ERA will always consider individual circumstances around each matter. Rather than looking only at the number of non-compliances the ERA would also look at the percentage of non-compliances over a specified period due to the disparity in frequency for WEM Obligations. This is reflected in the use of percentage probabilities in the Likelihood Rating Table.</p>
2.2.4 – 2.2.6	Alinta	<p>Alinta Energy requests that the ERA consider notifying participants of any changes to the risk-based monitoring priorities rather than simply updating its website.</p>	<p>The ERA intends to publish and update all the monitoring areas on its website and, if appropriate, in the Six-Monthly Reports. Paragraph 3.2.1 has been updated and a footnote added advising that updates to all monitoring priorities on ERA's website will be announced via a Notice.</p>
	Synergy	<p>Synergy recommends the ERA publishes its baseline risk assessment of WEM obligations in the Framework (in addition to the monitoring priorities) as this would be a useful reference point for Rule Participants when undertaking their own risk assessments for matters such as establishing and maintaining control registers</p>	<p>The ERA will not be publishing baseline risk assessments due to the large number of individual obligational clauses in the WEM Rules at new Market Commencement. In addition, the ERA's baseline risk assessments are based on a combination of likelihood and consequence in relation to the WEM and are expected to be updated on an ongoing basis. Instead, the tables the ERA will use to perform risk assessments will be published. Depending on the size and control environment for different organisations, a risk assessment for each clause may be substantially different.</p>
3.2.1	AGL	<p>It would be useful if the mandatory areas are listed in an Appendix</p>	<p>Changes to the WEM Procedure must be made in accordance with the WEM Rules and the Coordinator's Procedure</p>

² Alinta's footnote - Referring to the control environment and the quantum of historical breaches.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		<p>(a) Mandatory: Areas the WEM Rules mandate that the ERA must monitor as described in Appendix ??.</p> <p>the sentence should refer to Appendix 1 for the risk assessment approach:</p> <p>(b) Risk-based: Areas the ERA has identified as requiring monitoring from the risk assessment processes described in Appendix 1</p>	<p>Administration WEM Procedure, which includes a public consultation process.</p> <p>This makes the inclusion of the ERA's monitoring obligations and priorities unsuitable for inclusion. Instead, the ERA intends to publish and update all the monitoring areas on its website and, if appropriate, in the Six-Monthly Reports. Paragraph 3.2.1 has been updated and a footnote added advising that updates to all monitoring priorities on ERA's website will be announced via a Notice.</p>
	Synergy	The Protocol should require the ERA to publish on its website matters (a)-(c) at the time of the Protocol takes effect and whenever the ERA's WEM monitoring priorities change as this will assist Rule Participants to align their individual compliance priorities with the ERA's focus. (Synergy recommends the Framework would be a suitable document for publishing this.)	
3.2.2	Synergy	The Protocol states the ERA will monitor Rule Participants' compliance performance using various methods including targeted reviews. However, the Monitoring Protocol provides no detail or guidance on how the ERA will undertake a targeted review. Consistent with Market Rule 2.15.3(a) the Protocol should specify the process in which the ERA will undertake or require a targeted review.	It is not possible to specify all the processes the ERA will undertake on performing a targeted review as it will vary depending on the type of obligation or behaviour being monitored. A footnote has been added to clarify that the ERA will perform its monitoring functions using the method and information it considers most appropriate to the obligation being monitored.
3.2.5	AGL	<p>The clause is not clear on when the ERA will notify relevant participants of additional data sought – ie before the request, at the same time as the request, after the request. Suggest modify the clause by including:</p> <p>the ERA is will provide notification to the relevant Rule Participant(s) at the time of making the request to AEMO (clause 2.13.6 of the WEM Rules).</p>	Paragraph 3.2.5 has been amended and footnote added to provide more information on the ERA notification.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
	Synergy	Sub-section 3.2.5 should be drafted to include a requirement that the ERA notify a Rule Participant in a timely manner prior to the ERA requesting and obtaining information from AEMO in relation to a Rule Participant.	
3.2.7	Synergy	WEM Rule 2.15.3 (a)(i) requires the Protocol must specify a process for notice to be given by the ERA to a Rule Participant that identifies the alleged breach to be investigated by the ERA. Protocol sub-section 3.2.7 is inconsistent with the WEM Rule requirement as it provides for Rule Participant notification after the ERA has commenced its investigation. Sub-section 3.2.7 should also be drafted to provide for Rule Participant notification by the ERA in a timely manner prior to an investigation commencing.	Paragraph 3.2.7 has been amended and footnote added to provide more information on the ERA notification.
3.2.7, 4.6.1, 5.2.8(b)(iii) and 5.2.8(b)(v)	Alinta	<p>Clause 2.15.3(a) of the WEM rules requires that the ERA's procedure include:</p> <ol style="list-style-type: none"> i. a process for notice to be given by the Economic Regulation Authority to a Rule Participant that identifies the alleged breach to be investigated by the Economic Regulation Authority; and ii. a process through which a Rule Participant may make submissions to the Economic Regulation Authority to explain an alleged breach, prior to the Economic Regulation Authority reaching a decision on whether a Rule Participant has breached the WEM Rules or WEM Procedures; <p>Step 3.2.7 states that if the ERA has identified and commenced an investigation, it will notify the relevant participant of a breach being investigated.</p> <p>Step 4.6.1 states that where a breach has been alleged, a Rule Participant may make submissions to the ERA to explain an alleged breach.</p>	<p>Paragraph 2.1.9 of the current WEM Procedure states that: <i>... a Rule Participant may make a submission ... prior to the ERA reaching a decision on whether the Rule Participant has breached the Market Rules.</i></p> <p>Paragraph 5.2.8(b) has been amended to make it clearer that:</p> <ul style="list-style-type: none"> • Rule Participants will be given notice of <u>preliminary</u> findings including any reasons or rationale. • Rule Participants will be requested to make a submission in response to <u>preliminary</u> findings. • The ERA will consider any submission responses to <u>preliminary findings before making a determination</u> on whether a matter is a breach.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		<p>Step 5.2.8(b)(v) states that if the ERA's preliminary findings are that the Rule Participant has breached the WEM Rules, the Rule Participant alleged to be in breach will be given notice of the ERA's preliminary findings...and will be requested to make a submission in response to these preliminary findings.</p> <p>Alinta Energy considers that:</p> <ul style="list-style-type: none"> • there is merit in reinstating the drafting in previous step 2.1.9 which allows for a participant to provide information to the ERA to explain or provide context for the alleged breach as this may allow for alleged breaches to be resolved prior to embarking on potentially lengthy investigation processes; and • There does not appear to be any step in inform a participant of an alleged breach, so step 4.6.1 may not be able to be utilised. • 5.2.8(b)(iii) Allows the ERA to gather info about a participants breach from other rule participants as part of the investigation but will only ask the rule participant for a submission after its investigation which does not support procedural fairness. 	
3.3.2(e)	Alinta	We recommend that like ERA's monitoring, AEMO's monitoring and reporting should also be risk-based.	AEMO's monitoring obligations are specified in the WEM Rules which do not allow for risk-based reporting.
3.3 and 3.4	Synergy	WEM Rules sub-clause 2.15.3(l) requires that the ERA's WEM Procedure must specify: "The processes it will require the Australian Energy Market Operator (AEMO) and Network Operators to implement to assist the ERA in monitoring and assessing Rule Participants' compliance with the WEM Rules and WEM Procedures." The proposed Protocol does not include a process as per the WEM requirement but reiterates the various applicable WEM Rule requirements. Synergy recommends the matter be addressed in the Protocol.	<p>Paragraph 3.3.4 has a link to AEMO's Monitoring and Reporting Protocol which sets out AEMO's processes to support the Economic Regulation Authority (ERA) in monitoring Rule Participants' behaviour for compliance with the WEM Rules and WEM Procedures.</p> <p>The ERA has not required Network Operators to implement any processes to assist in monitoring and assessing Rule Participants' compliance.</p>

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
4.1.2	Alinta	We recommend that a materiality threshold is applied to the self reporting requirement.	Rule Participant's self-reporting obligations are specified in the WEM Rules which do not allow for risk-based reporting.
4.1.4	AEMO	As drafted, paragraph 4.1.4 could be read to extend to any non-compliance that is not required to be self-reported by a Rule Participant under paragraphs 4.1.2 and 4.1.3.	Amended 'reporting breaches' to 'self-reporting suspected breaches' in sections 4.1 and 4.2 to make it clear these sections are not intended to refer to suspected breaches by Rule Participants that are reported by AEMO or another Rule Participant.
4.2	AEMO	If a specified timeframe is to be incorporated into the Procedure, AEMO's preference would be that the timeframe for self-reporting commence at the conclusion of AEMO's internal investigation rather than the time at which AEMO is made aware of potential non-compliance.	The ERA considers the 20 Business Day requirement to commence when a Rule Participant's inquiries have determined there is reasonable cause to suspect a breach. What internal processes are required by individual Rule Participants to form this determination are a matter for individual Rule Participants. Figure 2 wording has been amended to make this clearer.
4.2.1, 4.2.2 and Figure 2	AEMO	Paragraph 4.2.2 introduces a requirement for Rule Participants to submit an early advice under certain circumstances. Given that the early advice is not considered a formal notification under clause 2.13.23, AEMO queries whether the Procedure heads of power under clause 2.13.3 can extend to requirements for early advice. Should an early advice provision be included in the Procedure, the Procedure should specify what information is required in the early advice notification, and suitable phone contact details should be provided in section 4.3, given that the early advice may be provided via telephone.	The ERA has removed the requirement for an early advice within 5 Business Days and has amended Section 4.2 and Figure 2 accordingly.
	Alinta	We recommend that 4.2.2 be subject to best endeavours. We also note that 4.2.2 requires amendment to reflect Figure 2. Figure requires that early advice is required 5 business days after determining the potential breach as major or catastrophic. Whereas 4.2.2 requires early advice within 5 days of becoming aware of the breach.	

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
	Synergy	<p>Synergy recommends sub-section 4.2.2 should clarify that “likely” should be determined in accordance with the Likelihood Rating Table in Appendix 1. In addition, sub-section 4.2.2 should delineate between a major/catastrophic event that has occurred and an event “likely” to occur. Including specifying different time frames for each scenario. Synergy recommends the timeframes for early advice should be;</p> <ul style="list-style-type: none"> • 5 business days for an event that had occurred with major/catastrophic consequences; and • 10 business days for an event “likely” to have major/catastrophic consequences. Where “likely” is to be determined in accordance with the Likelihood Rating Table in Appendix 1 of the procedure. 	
	Western Power	<p>Western Power is of the view that the drafting under paragraph 4.2.1 is not aligned with the drafting under paragraph 4.2.2 and the self-reporting timeline example under Figure 2. The drafting of paragraph 4.2.1 suggests that the Rule Participant becoming aware of an incident and the Rule Participant becoming reasonably certain that a breach has occurred is the same milestone. However, the drafting under paragraph 4.2.2 and example in Figure 2 suggests that the Rule Participant would first form an awareness of the incident and then later determine there is a reasonable cause to suspect the incident is a breach. Western Power suggests that paragraph 4.2.1 be amended to reflect the intention under paragraph 4.2.2 and Figure 2 of the WEM Procedure.</p>	
4.2.4	AEMO	<p>Paragraph 4.2.4 of the draft Procedure indicates that the self-reporting timeframe of 20 Business Days will apply unless an extension is requested under paragraph 4.2.5. However, as drafted, there is no clause in the Procedure related to extending the self reporting timeframe. If the ERA proceeds with the 20 Business Day timeframe proposed in paragraph 4.2.4, AEMO</p>	<p>The paragraph pertaining to extension requests was inadvertently omitted from the version published for consultation. This has now been reinstated in amended paragraph 4.2.2.</p>

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		requests that the ERA consult on the paragraph to give effect to the extension, which AEMO considers should also include the circumstances under which an extension may be requested and the matters that the ERA should consider in granting such a request.	
	Alinta	There appears to be a drafting error. 4.2.4, Allows for an extension to be requested under 4.2.5. However, 4.2.5 is unrelated to the process for requesting an extension.	
	Synergy	Reference to “paragraph 4.2.5” in paragraph 4.2.4 is incorrect.	
	Western Power	Western Power notes that the cross reference to paragraph 4.2.5 in this paragraph does not appear to be in relation to an extension request that a Rule Participant can request to the ERA but is a reference to a Rule Participant notifying the ERA of a breach by another Rule Participant.	
4.3.3	Synergy	The form of notification that a Rule Participant is required to advise the ERA of an alleged breach should be specified in the Protocol in addition to the existing website link.	The ERA intends to publish the online breach reporting form at the link provided.
4.3.4	Alinta	We recommend that longer than 20 business days is permitted for batch reporting under 4.3.4. We suggest that these batches be permitted quarterly, noting that such reports will be used for non-urgent, less material matters that tend to accumulate with time and that more material matters would not be suitable for batch reports, making their reporting frequency less important.	The 20 Business Days (approximately one month) commences once a Rule Participant’s inquiries have determined there is reasonable cause to suspect a breach. The ERA considers that this timeframe allows for self-reports that are timely enough to allow the ERA to respond to possible emerging issues but do not impose an undue reporting burden on Rule Participants.
4.3.8	Synergy	Sub-section 4.3.8 provides the ERA with discretion in providing anonymity to a party alleging a breach. In exercising this discretion Synergy considers that the ERA must consult with the party alleging the breach before disclosing to the Rule Participant the identity of the party reporting the breach to avoid any unintended consequences of disclosure.	It is the ERA’s intention to include a mechanism for Rule Participants to request anonymity when reporting a suspected breach in accordance paragraph 4.1.5.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
4.5.3	Alinta	We recommend that the protocol should not require ERA to investigate all rules it became aware of once 2.13.10(b) is repealed. We suggest that clauses b, d and c should be subject to the risk framework. We do not see any reason they should circumvent the assessment process applied to all other breaches. This could undermine the risk-based approach and create needless complexity.	The ERA is obliged to investigate all matters in accordance with the WEM Rules that were in effect at the time the breach occurred. Only suspected breaches that occur after new WEM Rules come into effect can be investigated in accordance with an assigned risk rating.
4.5.5	Synergy	The ERA should have an obligation to notify a Rule Participant of an investigation risk rating within a timely manner of the ERA assigning a risk rating	The ERA considers assigned risk ratings to be an internal matter.
4.6.1	Synergy	The ERA should have an obligation under this sub-section to have due regard to a Rule Participant's submission, if provided.	Paragraph 5.2.8(b) has been amended to make it clearer that: <ul style="list-style-type: none"> • Rule Participants will be given notice of <u>preliminary</u> findings including any reasons or rationale. • Rule Participants will be requested to make a submission in response to <u>preliminary</u> findings. • The ERA will consider any submission responses to <u>preliminary findings before making a determination on whether a matter is a breach.</u>
4.6.2	Synergy	Synergy recommends there should be a requirement for the ERA to provide an automated response acknowledging receipt of the email to the Rule Participant so that the Rule Participant can confirm or follow-up proper receipt of its submission or make other arrangements in the event of an internet communications outage.	It is the ERA's intention to implement an automated acknowledgement of receipt for the online breach reporting form.
5.1.2	Synergy	There should be a reasonableness test applied to any ERA request for information under this sub-section in terms of the extent of a request. Synergy's experience in responding to the ERA's information requests is that they can be extensive in coverage, broad in nature and have requested timeframes that	Paragraph 5.1.2 references Clause 2.13.28 of the WEM Rules which states: <i>If reasonably required, as part of an investigation into alleged breaches of the WEM Rules or WEM Procedures, the Economic Regulation Authority may ...</i>

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		may not take into account the organisational impost of providing the information.	The ERA also has functions under the WEM Rules other than compliance and monitoring, which may have legislative deadlines. The ERA may request information from Rule Participants necessary for performance of these functions.
5.1.3, 5.1.4 and 5.1.6	Alinta	We note that different timeframes are applied to these requirements. 5.1.3, requires information within five business days, 5.1.4 requires information “in a timely manner” and the 5.1.6 requires responses in “a reasonable timeframe”. We recommend that these timeframes are harmonised and all permitted extensions per 5.1.7.	The five Business Days specified is only in relation to information requests made under clause 3A.6.13. Clause 3A.6.16 of the WEM Rules specifies that Market Participants must provide information requested under clause 3A.6.13 within five Business Days.
	Synergy	The proposed 5 business day requirement to provide requested information should be deleted and replaced with “in a timely manner” consistent with WEM Rule 2.13.30 and Protocol subsection 5.1.4(a) respectively. Further sub-paragraph 5.1.7 should apply to sub-paragraph 5.1.3. Also refer subsection 5.1.2 comment.	Amendments have been made to use similar terminology and to make it clearer that Rule Participants may make a written request for an extension to comply with <u>any</u> ERA information request referred to in the Monitoring Protocol WEM Procedure.
5.1.8	Synergy	Synergy considers in the interest of the investigation process an appointed person should be independent and suggests additional drafting be included in sub-section 5.1.8 to ensure that the appointed person is not conflicted in relation to the matter being investigated. Synergy considers this is necessary in the interest of regulatory certainty and procedural fairness.	We note that the ERA may choose to appoint a person only in the event that a Rule Participant does not cooperate with an investigation, and that the cost of the appointment would be borne by the Rule Participant unless otherwise determined by the ERA. Should the ERA choose to appoint a person to investigate it will apply a pragmatic approach that ensures a fair and balanced outcome, including the consideration of any independence issues that may arise.
5.2.7	AGL	Participant Notification The procedure goes from prioritisation (4.5.5) straight to Participant Submissions (4.6).	Paragraph 5.2.7(a)(iii) added about notification and section 4.6 removed as submissions are covered in paragraph 5.2.7(b)(v)

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		<p>There is no process identified to clarify how the ERA will notify the relevant Participants, in what time frame they will be notified and what information concerning the alleged breach they will be provided, such as when the investigation may commence.</p> <p>Suggest a section describing the notification to participants.</p>	
5.2.8(b)(i)	Synergy	Synergy recommends sub-section 5.2.8 (b)(i), where the ERA is required to record the investigation on a public register on an anonymised basis, is drafted to ensure that the information is recorded in such a way that the identity of the Rule Participant is not identified.	Wording amended to use the terminology in clause 2.13.49A(a) of the WEM Rules.
5.2.8(b)(iv)	Synergy	Synergy recommends that the provision should be redrafted to clarify the standard for evidence recording, storage and disposal. Synergy recommends the following amendments below:“(iv) The evidence gathered will be recorded and stored and disposed appropriately in order to ensure no unauthorised use or disclosure;	A reference to the State Records Act 2000 (WA) has been added.
5.2.8 (c) (ii), (iv) and (v)	Synergy	In the interest of regulatory certainty Synergy recommends that the ERA specifies a minimum timeframe or require the ERA to respond “in a timely manner” when both recording the outcome of the investigation and notifying the Rule Participant of the outcome.	Footnotes have been added to provide more information on the ERA notification.
5.2.9	Synergy	WEM Rule 2.15.3(e) requires the ERA must specify in the Protocol the processes for investigations of alleged breaches of the WEM Rules or WEM Procedures whereas sub-section 5.2.9 purports that the ERA can exercise its discretion to determine the most appropriate method to investigate any alleged breach.	Paragraph 5.2.9 has been removed.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		Synergy considers the ERA is required to investigate an alleged breach consistent with the WEM Rules requirements and the Monitoring Protocol.	
5.2.10	Synergy	Synergy recommends sub-section 5.2.10 be amended as outlined below: "5.2.10 For matters of a minor nature and/or that need to be dealt with expediently, a less formal approach may be used to investigate the matter (e.g. telephone enquiries) and potentially resolve the issues. For particularly complex and major matters, a formal detailed investigation approach may be applicable."	Paragraph 5.2.10 has been removed.
5.2.11	Synergy	Please refer Synergy's comment on sub-section 5.2.9.	Amended to include the words "and consistent with WEM Rule requirements".
5.3.5, 5.3.6, 5.3.8, 5.4.4(a), 5.5.4	Synergy	A reasonable timeframe for notification when an investigation is concluded, suspended, or closed should be included in subsections 5.3.5, 5.3.6, 5.3.8 and 5.4.4(a). Open investigations create cost and an administrative burden for Rule Participants. A reasonable timeframe is consistent with sub-sections 1.2.1(a) and (d) of the WEM Objectives and provides important procedural clarity for all Rule Participants and the ERA in relation to the investigation process.	Footnotes have been added to provide more information on the ERA notification.
5.4.3	Alinta	We suggest that the ERA also be permitted to close (and not only suspend) an investigation where the breach was technical and immaterial, such that no rectification is possible, or required.	Where the risk rating of an investigation falls below the investigation threshold (implying that the matter is immaterial), the ERA has elected to suspend and reassess the matter to ensure that no further non-compliant behaviour is identified which could warrant the investigation being reopened.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
6.2.4(e) Footnote 31	Synergy	Synergy suggests the relative inexperience of Rule Participants' in dealing with the new arrangements should be made a mandatory consideration during the first 6 months after the New WEM Commencement Day.	The WEM Rules do not allow the ERA to consider a Rule Participant's inexperience when determining if a suspected breach should be investigated or whether it is found to be a breach. The ERA must investigate in accordance with an assigned risk rating and whether a matter is a breach will be determined based on the evidence available. The ERA will always consider the relevant circumstances applicable to each confirmed breach when determining the appropriate compliance response to that breach. If a Rule Participant's relative inexperience with new processes is found to be a contributing factor, the ERA would consider it a relevant circumstance in determining the appropriate compliance response to the breach.
6.1.12	Alinta	We suggest adding guidance clarifying where ERA would apply a civil penalty to a non-rule participant.	The ERA will always consider individual circumstances around each matter and would make a determination on a case-by-case basis in accordance with WEM Rule requirements.
7.1.1	Synergy	The ERA should also publish summary details where it has conducted an investigation and concluded a Rule Participant was not in breach of the WEM Rules.	The ERA already publishes the number of investigation where a no breach determination was made in the 6 monthly report on a voluntary basis. Clause 2.13.49A(b) of the WEM Rules requires the ERA to do this in the public register (Paragraph 8.2.1(b)).
8.1.5	Synergy	The ERA's notification to an affected Rule Participant of a breach or contravention to be recorded in the public register should be provided prior to the Rule Participant to the contravention being made public.	The notification in paragraph 8.1.5 is a notification of intention to publish and includes a provision for Rule Participants to specify any information to be excluded from the public register under clause 2.13.51 of the WEM Rules.
8.2.1	Synergy	A provision similar to sub-section 8.1.5 should apply to sub-section 8.2.1.	Refer amended paragraphs 5.2.7(a)(iii) and 5.2.7(b)(i) about notification.
Risk Rating Tables	Alinta	We question whether likelihood should factor into the risk rating of breaches that are immaterial and per our commentary above. We note that immaterial breaches might receive high ratings only because they are likely to recur, even where absolutely avoiding these breaches are near-impossible. As above, we recommend	The ERA will always consider individual circumstances around each matter. Rather than looking only at the number of non-compliances the ERA would also look at the percentage of non-compliances over a specified period due to the disparity in

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		that that likelihood, at least for immaterial breaches, should be assessed in proportion to the time that a participant complies with the relevant clause.	frequency for WEM Obligations. This is reflected in the use of percentage probabilities in the Likelihood Rating Table. Matters with a consequence rating of Insignificant can only receive a risk assessment of Low in the ERA's Risk Framework.
	Western Power	<p>Consequence Rating Table in the WEM Procedure: Functioning of the Market: Western Power notes that the description under the Functioning of the Market column is subjective and open to different interpretations, particularly whether a breach results in disruption to participants and their processes and whether a breach results in market delay. Western Power is of the view that this may lead to inconsistent application of the Consequence Rating Table between Rule Participants. Further clarity on the scenarios that would be considered as a disruption would be beneficial. Additionally, further clarity on the events that would result in a minor ranking, where there is a disruption of some sort but there are no market delays or disruptions, would be beneficial.</p> <p>System Security and Reliability: Western Power is of the view that, under the System Security and Reliability column, the proposed events for a moderate (no load shedding) and major ranking (up to 15% of load shedding) may result in a rating that is not reflective of the practical consequences of the breach. For example, a breach which results in no load shedding may be categorised to have a moderate consequence but if the same breach resulted in 100kW of load shedding it would result in a major consequence. Western Power suggests that the gating of the load shedding values could be improved to eliminate insignificant amount of load shedding from skewing the consequence ranking.</p> <p>Western Power suggests that for the major ranking, the load shedding amount should be any load shedding above 10MW but</p>	<p>The ERA does not expect Rule Participants to apply the ERA's risk framework in determining a Rule Participants' own risk assessments.</p> <p>The purpose of publishing the tables the ERA is using to perform risk assessments is for transparency as the circumstances for each organisation's determination of its own risks will be different.</p> <p>Each Rule Participant is to undertake their own risk assessment and be responsible for its own decisions.</p>

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		<p>up to 15% and for the moderate ranking, the load shedding amount be up to 10MW.</p> <p>Financial (Direct and Indirect) Consequence: Western Power notes that it would have very limited information to provide an accurate estimate on the financial consequences that the breach would have for other participants and the market financial impact of the breach.</p> <p>Western Power notes that the financial consequence column only contemplates the financial gain that the participant would have incurred because of the breach and not any losses that it may have incurred. Western Power is of the view that overall consideration should be given for both gains and losses that the offending participant have incurred.</p> <p>Similar to the above comment, Western Power is of the view that the gating of the dollar values set out for the Financial Consequence (Minor) could be improved to eliminate insignificant financial consequence amounts. For example, the offending participant gain could be set to \$50k to ≤\$250k.</p>	
New	Synergy	<p>Synergy recommends a new sub-section, outlined below, is added to the Protocol to ensure the operation of the procedure is consistent with WEM Rules clause 2.9.3: “The ERA and Rule Participants must have regard to the WEM Objectives when performing an obligation under this Procedure, whether or not the provision under which they are performing refers expressly to the WEM Objectives.”</p>	<p>The ERA understands that Energy Policy WA is proposing a State Electricity Objective (SEO) to replace the separate objectives across multiple legal instruments governing the electricity industry in Western Australia, including the WEM Objectives. The ERA will consider whether it is appropriate to reference the SEO once it has been finalised.</p>

Appendix 3 Summary of Minor Drafting Submission Feedback

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
1.1.1	Alinta	For consistency with other drafting, amend as follows: “Regulation” means a regulation in the Market —WEM Regulations.	Changed ‘Market Regulations’ to ‘WEM Regulations’
	Synergy	For regulatory clarity, Synergy recommends the Protocol include a definition of: <ul style="list-style-type: none"> alleged breach breach contravention incident and suspected breach. The following illustrates why there is a need for this: <ul style="list-style-type: none"> under sub-section 4.3.4, the current wording suggests batch reporting is limited to alleged breaches and not self-reported breaches or suspected breaches under sub-section 5.5.1 the current wording suggests investigation suspension is limited to alleged breaches and not self reported breaches or suspected breaches. As the above terms are used throughout the Protocol it would be beneficial to Rule Participants if definitions can be included in the Protocol so that the different concepts are clear in intent and that different provisions relating to different concepts can be easily identified.	Added paragraph: paragraph 1.1.1(f) and (g).
1.3.1	AGL	Include reference to ERA website for completeness and process references.	Added website link and phone number.
	Alinta	Clause 1.3.1 removes the phone number from the ERA compliance contact points whereas:	

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		<ul style="list-style-type: none"> clause 4.2.3 allows a participant to give early advice to the ERA in writing or by phone; and clause 5.2.10 allows for matters of a minor nature to be dealt with via telephone enquiries. <p>To facilitate the operation of clauses 4.2.3 and 5.2.10, Alinta Energy suggests reinstating a phone number into clause 1.3.1.</p> <p>This aligns with the approach taken in clause 1.3.2, whereby the ERA may request rule participants to provide contact details, including phone numbers, to the ERA.</p>	
3.1.1 and 3.1.2	AGL	These clauses define the monitoring procedure but are not actually procedural statements. They are simply processes the procedure must cover and could be included as an appendix or removed.	The ERA considers these to be useful background information.
3.1.2	Synergy	It would be useful for each of the Protocol requirements listed in sub-section 2.15.3 of the WEM Rules to be cross referenced to the relevant sections within the Monitoring Protocol (in tabular form) in addition to including links. This would assist document use where hard copies of the Protocol are used. The following illustrates this suggestion (underline added for emphasis): “(c) The form that may be used by Rule Participants to report a breach, or suspected breach, of the WEM Rules or WEM Procedures by the Rule Participant to the ERA in accordance with sub-section 2.15.3(b). Refer sub-section 4.3.2 of this document.”	The ERA will explore options for implementing this in future versions of the Monitoring Protocol WEM Procedure.
3.2.6	Synergy	Synergy suggests this paragraph be moved to Protocol section 5.	The ERA considers this paragraph is more appropriate in Section 3 as it relates to monitoring processes.
3.2.7	AGL	Grammar- identified used twice	Removed 'identified and'.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		Where the ERA has identified and commenced an investigation identified through its monitoring processes,	
3.3.1	AGL	<p>3.3.1(a) Obligation covered by paragraph (b)</p> <p>(a) Monitor Rule Participant's behaviour for compliance with the WEM Rules specified in the list of WEM Rules provided by the ERA that AEMO must monitor for compliance</p> <p>3.3.1(b) Grammar</p> <p>Under clause 2.13.7.....</p> <p>(b) Ensure it has processes and systems in place to allow it to monitor Rule Participant's behaviour in accordance with clause 2.13.7(a) and in accordance with the list of WEM Rules provided by the ERA that AEMO must monitor for compliance, including developing systems for monitoring.</p> <p>3.3.1(c) AGL considers this paragraph the more general / higher level obligation (from the ERA procedure perspective) and so should be the first sub-paragraph:</p> <p>(ae) Support the ERA's monitoring of Rule Participants' behaviour, including having processes and systems to provide the ERA with data, information, documents or analysis under clauses 2.13.4, 2.13.7, 2.13.8(a), 2.13.8(b) or 2.13.14 of the WEM Rules, as applicable.</p>	Paragraph 3.3.1 follows the structure of clause 2.13.7 of the WEM Rules and provides context.
4.3	Synergy	The heading should be amended to; "Processes for Reporting Breaches, Alleged Breaches or Suspected Breaches"	Clarification of the terms 'breach', 'alleged breach and 'suspected breach' have been added in Paragraph 1.1.1, therefore no amendment to heading is required.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
4.3.3	AGL	<p>Rewording</p> <p>Notifications of an individual alleged breach matters can be reported to the ERA individually by matter using the form available on the ERA's website. Alternatively, alleged breaches can be reported by email to:- using the methods proscribed in paragraph 1.3.1</p>	<p>Paragraph 1.3.1 is a general contact point for compliance. The process for submitting individual breaches is online.</p> <p>Minor wording amendments made.</p>
4.3.4 and 4.3.7	Synergy	Reference to “breach” should be included in addition to “alleged breaches”. Also refer section 1.1 comment.	Clarification of the terms ‘breach’, ‘alleged breach and ‘suspected breach’ have been added in Paragraph 1.1.1.
4.3.5	Alinta	<p>We recommend the following amendment:</p> <p>Confidential, personal information, or types of restricted information included in any notification to the ERA should be clearly marked so the ERA can ensure it is appropriately protected. Other laws and regulations including FIRB requirements, can restrict how information is handled. This amendment supports the expectation that these other requirements can be highlighted and fulfilled.</p>	It is the ERA’s intention to include a mechanism for Rule Participants to mark any information in a breach report notification that Rule Participant would like to be protected.
	Synergy	Synergy recommends sub-section 4.3.5 is drafted to state clearly that the marked information provided is protected from “unauthorised use or disclosure.”	
4.3.7	AGL	<p>Amendment</p> <p>A Rule Participant may, at any time after making a notification of an alleged breach under paragraph 4.3.3 or 4.3.4, provide updated information to the ERA in relation to the alleged breach</p>	The wording reflects the terminology used in Clause 2.13.23 of the WEM Rules.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		by e-mail in writing to market.compliance@erawa.com.au (clause 2.13.23 of the WEM Rules).	
4.3.8	AGL	Amendment Alleged breaches may also be reported in the batch report template available on the ERA website or by e-mail to market.compliance@erawa.com.au , providing:	We consider it useful to keep the email link here
	Synergy	Reference to “Section 7” should be “Section 5”.	Amended.
4.4.1	Synergy	This sub-section should be deleted on the basis of regulatory duplication given the matter is covered under AEMO’s WEM Procedure: Generator Monitoring Plans established under Chapter 3A of the WEM Rules.	The ERA considers this should be retained for completeness.
4.5.4	Synergy	This sub-section should specify who it applies to i.e: the ERA.	Amended.
4.5.4 and 4.5.5	Synergy	Synergy notes both sub-sections apply to an alleged breach but not a breach (e.g. Rule Participant self-identified breach.) Synergy queries how the ERA will assess the investigation priority for a breach (opposed to an alleged breach) and recommends the matter be specified in the Protocol. Also refer section 1.1 comment.	Clarification of the terms ‘breach’, ‘alleged breach’ and ‘suspected breach’ have been added in Paragraph 1.1.1.
4.6.2	AGL	Amend to remove specific contact details per proposal above.	The ERA considers it useful to keep the email link here and offer an alternative option by post.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
		<p>Submissions referred to in paragraph 4.5.1 of this document must be in writing by e-mail and should be made via email to:</p> <p>Email: market.compliance@erawa.com.au</p> <p>If email is not possible, then the notification may be sent via registered post to:</p> <p>Post: PO Box 8469, PERTH BC WA 6849.</p>	
5.1.4	AGL	Suggest that this should be the first clause in section 5.1 as its sets the obligations on all participants.	Moved to Paragraph 5.1.1.
5.1.6, 6.1.4 and 6.1.5	Alinta	We recommend removing facsimile on the basis that it is now an outdated mode of communication that is unlikely to be used in many (if any) organisations. We suggest that that email be preferred for communications under this clause.	Removed.
5.2.2	Synergy	Reference to “section 4” should be “section 5”.	This paragraph has been removed and clarification of the terms ‘breach’, ‘alleged breach and ‘suspected breach’ have been moved to Paragraph 1.1.1
5.2.8(b)(ix) and 5.2.12	Alinta	There appears to be an inconsistency between these two sections.(5.2.8(b)(ix) At any stage during the investigation, the ERA may suspend or close the investigation in accordance with section 6 of this document.5.2.12 At any time during an investigation, the ERA may suspend or close the investigation in accordance with section 5.5 of this document. We suggest that these two sections should reference 5.4 instead.	Amended

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
5.2.8(c)(iii)	Alinta	We suggest that a non-mandatory breach is defined, noting that this clause contains the only reference in the protocol	Amended.
	Western Power	Paragraph 5.2.8(c)(iii) of the WEM Procedure: Western Power notes that the terms Final Risk or Final Risk Rating are not currently defined under the WEM Procedure or WEM Rules.	These are terms used by the ERA to describe how it intends to apply its risk-based approach but are not a WEM Rule requirement. Refer also to Figure 1.
5.3.2	AGL	Include reference to Fig 3 under the WEM Rules and the WEM Regulations as shown in Figure 3 (e.g. warnings, C penalties and/ or commencement of....	Reference link added.
Figure 3	AGL	This figure could be utilised effectively in an introductory section earlier in the procedure.	Figure 3 and paragraph 5.3.9 have been moved to paragraph 5.3.3.
5.5.5	Synergy	A provision similar to sub-section 5.5.4 should be included in sub-section 5.5.5.	Paragraph 5.5.5 notification amended and moved to paragraph 5.5.6 to cover both sections..
6.2.4 footnote 30	Synergy	Noting that the clause 2.13.42 of the WEM Rules, referred to in this section, does not refer to the concept of the ERA “issuing an infringement notice” nor to the ERA “making an order”, the references to these concepts should be removed from this footnote.	Amended.

Section	Participant	Feedback (as directly quoted in submission)	ERA Response
6.2.5	Synergy	This section refers to the undefined concepts of “financial penalty” and “redress order”. Synergy suggests replacing these concepts with the WEM Rules defined concept “Civil Penalty Amount”.	Amended.
6.2.6	Synergy	The discretion to impose a civil penalty daily amount is already dealt with in sub-section 6.2.4(g) (in determining whether to issue a civil penalty) and sub-section 6.2.7(b) (in the context of the total amount of the financial penalty). Consequently, Synergy suggests sub-section 6.2.6 is redundant and should be deleted.	Paragraph 6.2.6 removed.
7.1.1	Synergy	Synergy suggests "release" should be changed to "publish".	Amended.
7.1.2	Synergy	There is a typo (“WEM”) in the last line of the sub-section.	Amended.

Appendix 4 Amended Monitoring Protocol (clean)

[Amended Monitoring Protocol \(clean\)](#)

Appendix 5 Amended Monitoring Protocol (marked up)

[Amended Monitoring Protocol \(marked up\)](#)