

# Enhanced Wholesale Market Monitoring and Reporting Guideline

Issues paper for stakeholder  
feedback

March 2024

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## Request for submissions

Interested parties are invited to make written submissions to the Australian Energy Regulator (AER) about this paper via email to [ContractMarketMonitoring@aer.gov.au](mailto:ContractMarketMonitoring@aer.gov.au) with the subject line ‘Enhancements to wholesale market monitoring and reporting guideline – issues paper submission’ by close of business, 30 April 2024 (extended from initial submission date of 23 April 2024).

Alternatively, submissions can be mailed to:

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Submissions should be in PDF, Microsoft Word or another text readable document format. Late submissions may not be considered.

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless marked confidential.

Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be placed on the AER’s website. For further information on the AER’s use and disclosure of information provided to it, see the [ACCC/AER Information Policy](#), June 2014.

Enquiries about this paper, or about lodging submissions, should be directed to the AER at [ContractMarketMonitoring@aer.gov.au](mailto:ContractMarketMonitoring@aer.gov.au) with the subject line ‘Wholesale market monitoring and reporting guideline – issues paper enquiry’.

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# Glossary

Term	Definition
ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Amendment Bill	National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023
ASIC	Australian Securities and Investments Commission
DMO	Default market offer
ASX	Australian Securities Exchange
CCA	<i>Competition and Consumer Act 2010</i>
FEX	Financial and Energy Exchange
IRSR	Inter-regional Settlements Residue
LNG	Liquefied natural gas
MMIN	Market Monitoring Information Notice
MMIO	Market Monitoring Information Order
NEL	National Electricity Law
NEM	National Energy Market
NGL	National Gas Law
NGR	National Gas Rules
OTC	Over the counter
PPA	Power Purchase Agreements
SRAAs	Settlements Residue Auctions

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## Executive summary

The AER's wholesale market monitoring and reporting functions have been expanded to include wholesale gas markets and electricity and gas contract markets. Access to contracts and related information will provide visibility of the underlying drivers influencing how and why market participants behave the way they do, whether the outcomes in wholesale markets reflect effective competition in those markets and whether wholesale markets are operating efficiently. Given the close interconnection between wholesale and retail markets, it will also provide valuable insight for understanding retail markets. Our improved market understanding and insights will be used to expand and enhance our existing suite of reports, providing timely and transparent information to market participants, policy makers and consumers throughout and beyond the energy transition.

This issues paper is the first step in developing guidelines that will outline the scope of our wholesale market monitoring functions and the collection and reporting of information related to these functions.

Our approach to wholesale market monitoring and reporting is to conduct routine monitoring and screening of market dynamics, which we build on in our deeper assessments of market structure, conduct and performance. We then publish our analysis and insights in a suite of AER publications that collectively report on the performance of wholesale electricity and gas markets.

We expect we will need to regularly collect information from participants to inform our assessments of wholesale markets as part of our expanded wholesale monitoring and reporting functions. In our approach to information collection, we are committed to only collecting information that can provide meaningful insights into the performance of wholesale energy markets. To this end, we will base information collection on what materials we need to better understand our identified areas of focus. Our focus areas will be underpinned by the AER's purpose (to make energy consumers better off now and in the future), our strategic plan, our legislative functions, and the national energy objectives.

We have developed 4 principles to guide how we intend to collect information to perform our enhanced functions:

1. We will collect information that is reasonably required for the purpose of performing our wholesale market monitoring functions under the energy laws.
2. We will maximise benefit for the market and ultimately consumers by being clear about the specific use of information we collect.
3. We will seek to limit participant burden.
4. We will, where reasonably practicable and appropriate to do so, rely on public information and/or information collected by other agencies (including in our public reporting).

We are proposing to take a targeted incremental approach to collecting information to perform our expanded powers and we intend to prioritise collecting information that will inform key areas of focus. We anticipate that the scope of our information collections will expand and evolve over time in line with market dynamics, trends, behaviour and/or outcomes that require analysis.

The AER has several legislative mechanisms that we can use to collect information related to our wholesale monitoring and reporting functions, including 2 new information gathering methods – market monitoring information orders (MMIOs) and market monitoring information notices (MMINs).<sup>1</sup> We will consider which mechanism is most appropriate for different specific uses in accordance with legislative obligations and our guiding principles.

We are engaging with ASIC and the ACCC to explore how we could use existing information sharing frameworks to streamline information collection and reduce duplicative information requests. However, we also need to consider the legal and procedural fairness issues associated with sharing what can be highly sensitive data. In cases where suitable information sharing arrangements are not feasible, we will endeavour to harmonise requests with those made by other agencies. We will treat information collected for the purpose of market monitoring and reporting responsibly and in accordance with the law, including the *Privacy Act 1988*, *Competition and Consumer Act 2010* (CCA), *National Electricity Law* (NEL) and *National Gas Law* (NGL), our information policy<sup>2</sup> and confidentiality guideline.<sup>3</sup>

We will work with participants to collect information in a format, frequency and level of granularity that adds value, enables accurate interpretation and minimises burden on participants.

## Consultation

We are interested in stakeholder views on:

- our approach to wholesale market monitoring and reporting, including our proposed key areas and questions for assessment and specific metrics that would be valuable for addressing the proposed key areas
- what should be routinely collected and what types and classes of information should not be collected
- our proposed targeted incremental approach and our initial areas of focus, as well as views on any alternative areas that we should consider
- whether there are any agencies in addition to ASIC and ACCC that we should consider exploring information sharing arrangements with and how to further facilitate information sharing
- the format, frequency and granularity of information collection as well as considerations of historical collection
- the operationalisation of the AER’s disclosure and procedural fairness policies and frameworks.

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<sup>1</sup> *Statutes Amendment (National Energy Laws) (Wholesale Market Monitoring) Bill 2023* (SA), Division 1A subdivision 3 section 18EO and Division 1AA subdivision 3 section 30AL.

<sup>2</sup> *Competition and Consumer Act 2010*, Division 4 subdivision D, 44AAF; *National Electricity (South Australia) Act 1996* (SA), Division 6, sections 28W to 28ZB; *National Gas (South Australia) Act 2008* (SA), Division 1 sections 324 to 329; [ACCC/AER Information Policy](#), June 2014.

<sup>3</sup> AER, [Better Regulation: Confidentiality Guideline](#), August 2017.

# 1 Introduction

## 1.1 Enhanced understanding of wholesale energy market

Wholesale gas and electricity markets are where generators, distributors and retailers buy and sell energy based on supply and demand. These markets play a fundamental role in how energy is supplied to eastern and southern Australia, and ultimately, the price consumers pay for those services. The performance of wholesale markets, and subsequent market outcomes, is heavily influenced by the level of competition within, and the efficient functioning of, those markets.

One of our key functions as energy regulator is to monitor and report on the performance of wholesale markets. Monitoring market performance is an important element in building knowledge and trust in Australia's energy system. Effective monitoring of market performance is increasingly important as our energy systems undergo rapid and unprecedented transformation through the energy transition.

We deliver our function by reporting on the performance of wholesale markets via a range of public reports that provide timely information underpinned by expert and transparent analysis. Our regular reporting exists to provide confidence in our energy systems, and supports efficient and well-informed decision-making by market participants and policy makers. It helps efficient functioning of markets so that they deliver outcomes in the long-term interests of consumers.

To date, we have relied primarily on public information to assess the performance of wholesale markets. This information provides us with an understanding of market participants' conduct within, and outcomes of, wholesale markets. However, publicly available information provides very limited visibility of market participants' contracting behaviour.

Wholesale energy markets depend fundamentally on contracting outside of those markets. As a result, market participants' contract-related information is important in assessing the performance of energy markets. For example, in electricity, all energy is bought and sold at the spot price through a gross pool model. Market participants purchase financial contracts to hedge the risk of volatile prices in the wholesale electricity market. Every megawatt hour of electricity is traded multiple times in the secondary markets and the cumulative value of this trade is worth many multiples of the settled spot market price. For gas, participants can only sell gas into a wholesale gas market if they have gas at that location, so participating in the market may depend on contracting gas pipeline capacity. In addition, approximately 80% of trade in the commodity itself occurs through bilateral contracts rather than in transparent facilitated markets.

Without contract information we cannot see the underlying drivers influencing how and why market participants behave the way they do, whether the outcomes in wholesale markets reflect effective competition in those markets and whether wholesale markets are functioning efficiently.



Through collecting and monitoring contract-related information we will build a more holistic, well-formed view of wholesale markets. This will significantly improve our capability to evaluate performance, competition and efficiency in wholesale markets. Given the close interconnection between wholesale and retail markets, a deeper analysis of the wholesale markets will also provide valuable insight for understanding retail markets and the prices ultimately paid by consumers. Our improved market understanding and insights will be used to expand and enhance our existing suite of reports, providing timely and transparent information to market participants, policy makers and consumers throughout and beyond the energy transition. Our reporting will inform targeted and effective long-term policy and regulatory reform to ensure the best outcomes for consumers.

## 1.2 Wholesale Market Monitoring and Reporting Guidelines

We are required to publish guidelines that will outline the scope of our wholesale market monitoring functions, and the collection and reporting of information related to these functions.

The Guidelines must include:<sup>4</sup>

- information about the things the AER proposes to consider in assessing competition in, and effective functioning of, markets
- compliance obligations of market participants
- processes for requesting information, including processes designed to minimise burden on participants
- the type of information the AER expects to routinely request
- frequency of information collection
- the type of information and classes of agreements the AER does not expect to request
- the format of submitted information
- how the AER will protect commercially sensitive information.

Our intention is that the Guidelines will be enduring, but that we may modify them from time to time if required. To ensure an appropriate level of adaptability and flexibility, we are proposing that some elements in the Guidelines will adopt a high-level approach with further detail and operationalisation provided as part of the development of MMIOs, MMINs and other compulsory notices and information requests. This will also enable us to test specific scope and practicality of information requests with market participants as we consult with them on the development of MMIOs and MMINs.

## 1.3 Scope of this issues paper

This issues paper focuses on several key areas:

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<sup>4</sup> *Statutes Amendment (National Energy Laws) (Wholesale Market Monitoring) Bill 2023 (SA)*, Division 1A subdivision 4 section 18EO.

- **Our approach to wholesale market monitoring and reporting (section 3).** This includes obtaining relevant information that contributes to the analysis and assessment of effective competition and efficient functioning of wholesale markets and disseminating our insights through a range of publications. This also includes an explanation of how our enhanced powers will facilitate a greater understanding of and insights into wholesale markets.
- **Our approach to information collection (section 4.1).** This includes proposed guiding principles and consideration of a targeted incremental approach to information collection. This also includes an overview of how we intend to operationalise the legislative requirement to consider whether information is available elsewhere before seeking to collect it from participants.
- **Information collection framework (section 4.2).** This includes information collection format, frequency, level of granularity and historical information collection. This also includes our treatment of information on confidentiality, disclosure and procedural fairness in accordance with legal requirements.

## 1.4 Consultation process

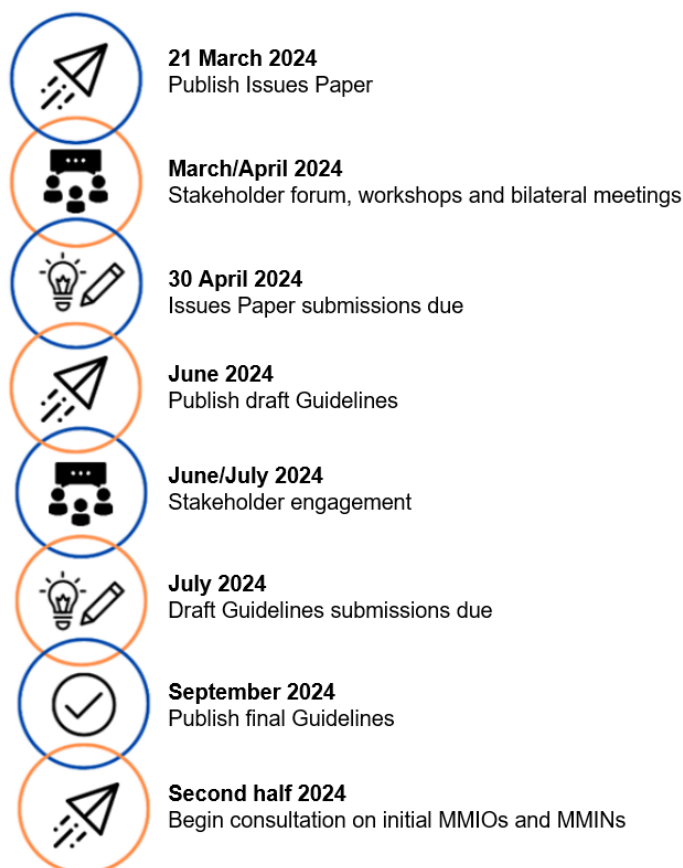
We are required to publish the Guidelines within 6 months of the *National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023* (Amendment Bill) commencing, which we expect will be enacted soon.<sup>5</sup>

We are committed to undertaking meaningful stakeholder engagement to develop Guidelines that will maximise the benefit of our enhanced functions while minimising increased burden on participants. The development of the new Guidelines will involve several phases of engagement. Indicative timing for stakeholder engagement and publication of the Guidelines is outlined in Figure 1.

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<sup>5</sup> *Statutes Amendment (National Energy Laws) (Wholesale Market Monitoring) Bill 2023* (SA), Division 1A subdivision 4 section 18EO(4).

**Figure 1 Proposed timeline for the Guidelines**



Invitation to submit responses to this issues paper is the first step of our engagement process. To assist stakeholder responses, consultation questions are included throughout the paper and a summary of questions is available at Appendix A. We will also engage stakeholders through a public forum on 9 April 2024, workshops and other engagement as required to gather comprehensive feedback and input.

The feedback on this issues paper will shape draft Guidelines, on which we will seek further input, before publishing the final Guidelines in September 2024.

Once the Guidelines are published, we will begin consultation on information orders and notices.

Subject to delays with the passing of the Amendment Bill, we anticipate beginning consultation on initial information requests in the second half of the 2024 calendar year.

## 2 Role of wholesale markets

### 2.1 Electricity

The National Electricity Market (NEM), centrally coordinated by the Australian Energy Market Operator (AEMO), facilitates the exchange of electricity between generators and retailers. Retailers then on-sell the electricity to businesses and households.

The NEM covers South Australia (SA), Tasmania, Victoria, New South Wales (NSW), the Australian Capital Territory (ACT) and Queensland. Energy is generated and used in each region and transferred between regions across interconnectors.

The NEM operates as a gross pool market where all electricity generated and consumed is pooled together into a single marketplace. Generators offer their electricity output into the market and retailers purchase electricity from the pool to meet the demands of their customers. A 'spot' price is set every 5 minutes<sup>6</sup>, which can be highly volatile, depending on supply and demand. This price is what generators receive for their generation and the price that retailers pay for the electricity they use during that period.

Retailers and generators manage financial risk, created by exposure to spot price volatility, by entering into electricity hedging contracts. These contracts help reduce uncertainty by providing price and volume stability, thus enabling:

- security of return for generation assets that operate over extended time frames
- management of risk by retailers resulting in increased competition and lower retail prices for consumers
- supply signals for new entrants (both generators and retailers), which can drive investment decisions and help secure financing. This is increasingly important for Australia's energy transition.

The spot market and contract markets are distinct and independent, but the gross pool design of the NEM means that they are inextricably linked in terms of market outcomes and behaviour. For example:

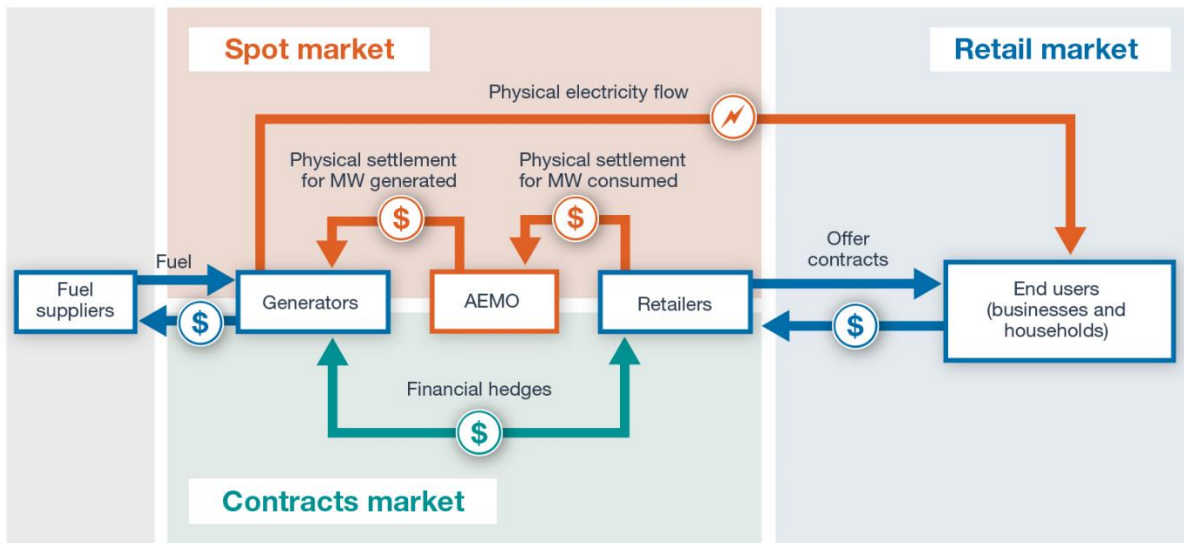
- contract prices and volumes are influenced by outcomes in the spot market because they incorporate ongoing volatility events
- the degree to which generators are hedged affects how they offer capacity and their bidding behaviour in the spot markets
- a deficiency in contract products may act as a barrier to entry for generators and retailers who may wish to participate in the wholesale spot markets.

Figure 2 illustrates the relationship between the cash settled electricity contracts market and physical trading of electricity in the NEM.

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<sup>6</sup> The National Electricity Rules set a maximum and minimum spot price, currently \$16,600k/MWh and -\$1k/MWh respectively.

**Figure 2 Relationship between the electricity contracts market and physical trading of electricity in the NEM**



## 2.2 Gas

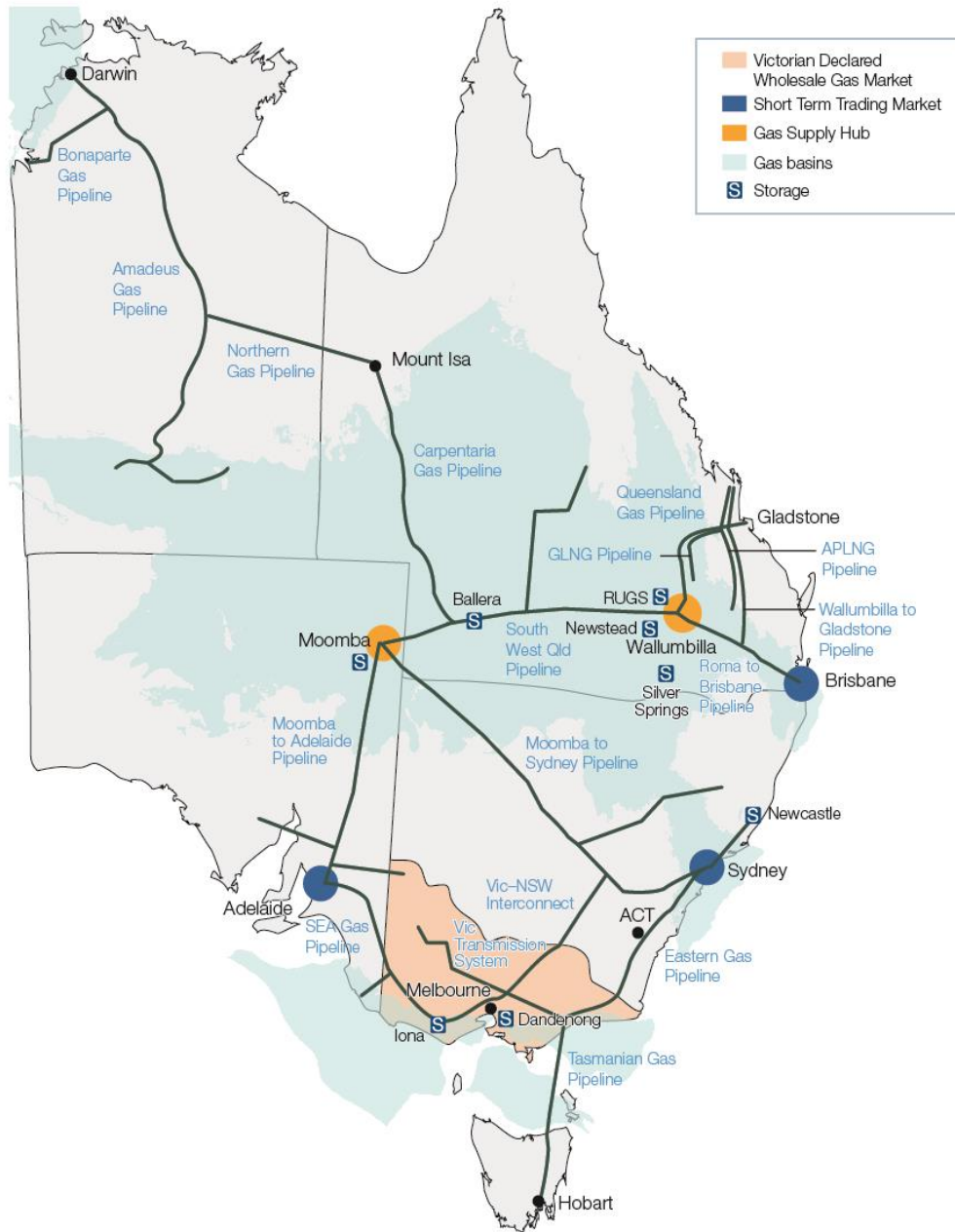
On the east coast of Australia, gas is primarily produced in the Surat-Bowen basin in Queensland. There are smaller basins in SA, NSW, off coastal Victoria and in the Northern Territory. Gas pipelines transport gas from production facilities to liquified natural gas (LNG) facilities for export and to large industrial customers and major population centres for domestic use.

Wholesale gas markets, centrally coordinated by AEMO, are dispersed throughout the east coast and primarily located in large production or population centres. AEMO operates the following wholesale gas markets on the east coast:

- The Declared Wholesale Gas Market manages gas flows across the Victorian Transmission System.
- The Short Term Trading Market is a market for gas with hubs in Sydney, Brisbane and Adelaide that allows gas trading on a day-ahead basis.
- Gas supply hubs at Wallumbilla in Queensland and Moomba in SA are a voluntary platform for gas trading.
- The Day-Ahead Auction allows for unutilised contracted pipeline and compression capacity for the next day to be auctioned.

Figure 3 illustrates these wholesale gas markets and the major pipelines and storage on the east coast.

Figure 3 East coast wholesale gas markets



In contrast to electricity, only around 10–20% of gas is traded in the wholesale gas markets. All other gas trade is struck under confidential bilateral contracts separate to these markets. While most gas is traded bilaterally, market participants use wholesale gas markets to purchase or sell gas without entering long-term agreements, manage contract imbalances, manage daily imbalances, speculate on and arbitrage current and future gas prices.

Wholesale gas market participants' behaviour is influenced by their ability to secure bilateral contracts as well as transportation, storage and compression contract agreements. They may also manage contract and wholesale market risk through the use of financial risk management products.

## **2.3 Interactions between wholesale and retail markets**

Electricity and gas retailers are exposed to wholesale energy prices for all energy consumed by their customers. Wholesale energy prices can be volatile because they respond in real-time to unpredictable real-world events. This exposes retailers to high levels of risk that they typically manage by entering contracts, via the associated contract markets, often with the electricity and gas suppliers and producers.

The prices retailers charge customers vary based on several factors related to their input costs. Retail costs are impacted by both wholesale hedging and spot market costs, dependant on the level of hedging undertaken by individual retailers. Retailers purchase energy contracts in advance to cover their expected customer usage over extended timeframes. Thus, that the impact of wholesale and contract price changes can take many years to flow through to consumer's bills.

Given the close interconnection between wholesale and retail markets, a deeper analysis of the wholesale markets incorporating contract markets will provide valuable insight for understanding both wholesale and retail markets. Comprehending the dynamics of the contract market and the implications of contract prices on consumers is crucial for informing the AER's regulatory functions and enhancing its understanding of both wholesale and retail markets.

### 3 Our approach to wholesale market monitoring and reporting

Under our existing wholesale market monitoring functions, we are required to regularly and systematically monitor and review the performance of wholesale electricity markets, particularly in the context of effective competition and efficient functioning of these markets. The Amendment Bill introduces similar requirements for wholesale gas markets. It also enables us to collect contract information to facilitate enhanced electricity and gas market monitoring.

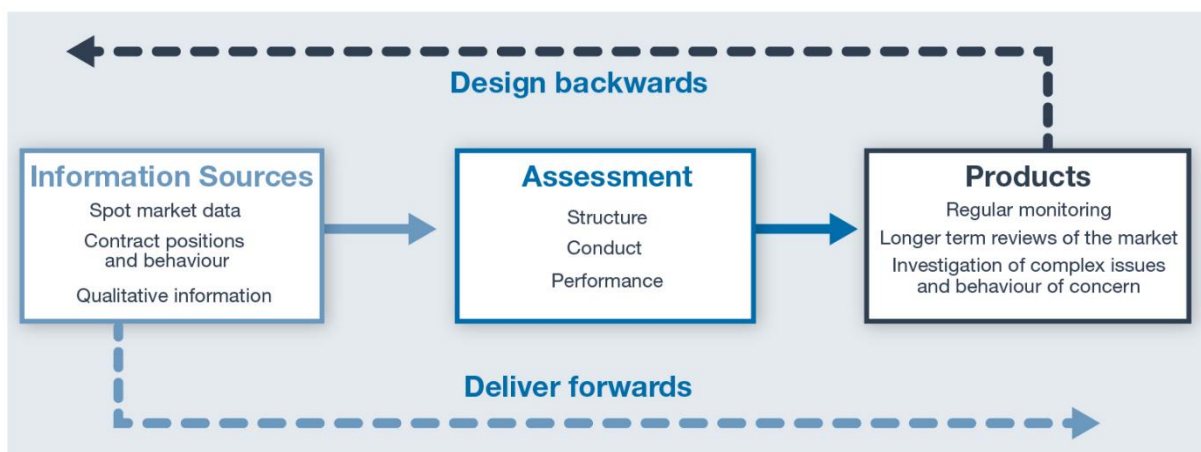
In monitoring and reviewing wholesale markets, we conduct routine monitoring and screening of market dynamics and build on this in our deeper assessments of market structure, conduct and performance. We then publish our analysis and insights in a suite of AER publications that report on the performance of wholesale electricity and gas markets.

When planning the implementation of this approach we use a backwards design approach. Our starting point is to consider the desired reporting outputs, such as what we are seeking to explore in our products, what specific questions we are trying to answer and what service we are looking to provide the market. We then consider what we need to assess market performance, including what analysis we need to conduct and what metrics will be relevant in ongoing monitoring. Lastly, we identify the specific information required to conduct our assessment.

This design approach ensures that our information collection process is targeted and transparent and facilitates our role in monitoring the performance of wholesale markets.

Figure 4 illustrates this process and how it works in design and delivery. Each of the 3 components are explored in this section and outline the integration of contracts and related information.

**Figure 4 Our approach to wholesale market monitoring and reporting**





## 3.1 Products

We produce a suite of reports on the performance of wholesale electricity and gas markets.<sup>7</sup> In addition, the Amendment Bill requires us to create a new biennial report on the performance of the wholesale gas market.

Our enhanced powers will enable us to develop a clear and current understanding of contract markets which, in conjunction with our existing analysis, will provide a more complete holistic view of the wholesale markets.

To fulfil these purposes, the additional contract-related information will be incorporated into our existing analysis and reporting products, which encompasses:

- **Regular monitoring** – focuses on identifying and tracking shorter term trends, outcomes and emerging issues to provide timely advice. Some examples of the products in which we use this analysis include our wholesale quarterly reports and price event reports.
- **Longer term reviews of the market** – build on regular monitoring to comprehensively assess the competition and efficient functioning of wholesale markets. Our longer term products play a role in identifying potential harms in the market and protecting consumers from high prices as the result of uncompetitive behaviour or inefficient market design. The *Wholesale electricity market performance report*, the gas equivalent that will be required by the Amendment Bill and our annual *State of the energy market* report are examples of these.
- **Investigation of complex issues and behaviour of concern** – involves deeper or more intensive consideration of issues identified through regular monitoring or reporting.

## 3.2 Assessing effective competition and efficient functioning of markets

The Amendment Bill requires us to include in the Guidelines information about the things that we propose to consider in assessing competition in and effective functioning of markets.

The following subsections outline the concepts of effective competition and efficient functioning and our analytic framework, which has been in place for electricity since 2018 and which we now envisage extending to gas.

### 3.2.1 Effective competition

The NEL and the NGL<sup>8</sup> provide a definition of effective competition, which includes a list of factors we must consider when identifying and analysing whether there is effective competition in the wholesale market.

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<sup>7</sup> Our existing reporting products include: the Wholesale markets quarterly; the Wholesale electricity market performance biennial report; the State of the energy market annual report; \$5,000 report; significant price variation reports; special reports produced on an ad hoc basis and quarterly market statistics.

<sup>8</sup> The Amendment Bill includes definition of effective competition for wholesale gas markets in the NGL that mirror those included in the NEL.

These include whether:

- there are active competitors in the market and whether those competitors hold a reasonably sustainable position in the market, or there is merely the threat of competition in the market
- prices are determined on a long-term basis by underlying costs rather than the existence of market power, even though a particular competitor may hold a substantial degree of market power from time to time
- barriers to entry into the market are sufficiently low so that a substantial degree of market power may only be held by a particular competitor on a temporary basis
- there is independent rivalry in all dimensions of the price, product or service offered in the market
- there are any other matters we consider relevant.

### 3.2.2 Efficient functioning of the market

Neither the NEL nor the Amendment Bill provide an explicit definition of efficiency; however, it is a well understood concept in economic literature. Economic efficiency is concerned with maximising overall welfare (or the sum of consumer and producer surplus) in a market given the available resources.

As set out in our *Wholesale electricity market performance monitoring – Statement of approach*, economic efficiency has 3 dimensions:<sup>9</sup>

- allocative efficiency – resources are allocated to their highest valued uses
- productive efficiency – the value of resources used are minimised for a given level of outputs
- dynamic efficiency – resources are allocated efficiently over time.

A range of factors, such as participant conduct, market design and other external features, can create inefficiencies in each of these categories.

### 3.2.3 Analytical framework

Since 2018, we have assessed the effective competition and efficient functioning of wholesale electricity markets using the structure-conduct-performance framework. This framework is also outlined in our existing statement of approach and is based on concepts that are widely accepted internationally and across a range of industries.

Under this framework we have regard to the interactions between these 3 concepts.

We consider that the structure-conduct-performance framework remains fit for purpose for analysis of wholesale electricity markets because the enhanced monitoring powers introduced under the Amendment Bill do not change the underlying monitoring and reporting requirements. We also anticipate that the structure-conduct-performance framework will be

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<sup>9</sup> AER, [Wholesale electricity market performance monitoring: Statement of approach](#), March 2018.

appropriate for assessing effective competition and the efficient functioning of wholesale gas markets.

The concepts of effective competition, efficiency and our analytical framework included in the Guidelines will be enduring. To supplement this we intend to prepare, and consult on, a focus document preceding each wholesale electricity or gas performance report. This document will identify our focus areas for the report and the methods we will use to assess effective competition and efficient functioning of the market. This will allow us to adapt to changing market conditions, develop our analysis over time and respond to government and industry priorities.

The additional visibility of contract information will enable a more robust and in-depth understanding of wholesale electricity and gas markets. Table 1 outlines the 3 components of the structure-conduct-performance framework and illustrates how contract information will enhance our assessment of competition and the efficient functioning of wholesale markets. Over time, we will develop specific metrics and tools to inform our analysis of contracts information within this framework.

**Table 1 Structure-conduct-performance components**

Component	High level explanation of component	Examples of how contract-related information would enhance our assessment
Structure	Refers to the market structure and includes the number and size of buyers and sellers, the nature of the products and the height of barriers to entry.	Contract information will allow us to understand levels and drivers of liquidity in: <ul style="list-style-type: none"> <li>• electricity contract markets</li> <li>• wholesale gas markets relative to bilateral contract markets.</li> </ul> This will assist us in identifying barriers to participants entering or expanding their presence in the market, and impediments to competition, particularly as we transition to more renewable generation.
Conduct	Refers to firms' behaviour in the market, including production, buying and selling decisions.	Contract information will allow us to better understand the motivations behind bidding behaviour.
Performance	Refers to market outcomes, usually by reference to concepts of efficiency.	Contract information will provide a more robust understanding of the underlying cost of wholesale electricity generation, gas bilateral agreements and gas transportation contracts, which would enable stronger analysis of prices in wholesale markets. This would lead to efficiencies.

### Consultation questions on our assessment framework

- 1) What factors should we consider in integrating contract market data into the structure-conduct-performance framework and our evaluation of wholesale electricity and gas market performance?

## 3.3 Information sources

### 3.3.1 Scope of information sources

To date, we have primarily used publicly available information to understand how the structure, conduct and performance of the market and market participants are contributing to competition and efficiency in the wholesale electricity and gas markets. This information provides us with an understanding of market participants' conduct within, and outcomes of wholesale markets. However, public information provides very limited visibility of market participants' contracting behaviour.

We have identified 4 initial areas of particular interest, informed by our observations and analysis of the market from existing monitoring, where we consider that understanding contract market behaviour is crucial :

- market liquidity
- access to markets and barriers to entry and participation
- incentives for offer behaviour
- risk positions.

Routine information collection will be aimed at obtaining specific metrics that provide valuable insights into these focal areas. As examples:

- Metrics related to market liquidity for gas could include the volume of trades, number of active participants and concentration of trades in wholesale gas markets and the bilateral contract market. These metrics would provide valuable insights into
  - the changing role of wholesale gas markets in the context of the east coast gas market
  - how participants are using different markets
  - if participant behaviour is changing over time.
- Metrics related to access to markets and barriers to entry for electricity participants could include the net contract positions of participants and qualitative information on participants' experiences in the electricity hedging market. These metrics would provide valuable insights into
  - the extent and ability of retailers to manage their risk against volatile prices
  - the extent of generators' ability to exercise market power in the spot market
  - whether there are structural impediments to the efficient operation of wholesale electricity markets
  - the nature of risk management products
  - whether smaller participants face barriers to accessing contracts and hedging products.

We are required to include in the Guidelines:

- a list of the information that we are likely to collect routinely<sup>10</sup>
- the types and classes of information we do not expect to request<sup>11</sup>
- a minimum contract quantity of gas for bilateral trading agreements made between a retailer and an end user, below which we will not collect.<sup>12</sup>

We are proposing to take a reasonably broad approach for the Guidelines to ensure that our monitoring can adapt and respond to market and environmental changes. We envisage that information requests issued in accordance with this Guideline would be targeted and would not be sweeping requests for contract information. Further detail on our proposed implementation approach to collection of contract information is outlined in section 4.

Appendix C outlines individual contract types that we are empowered to collect and how we consider enhanced visibility of each could contribute to our wholesale market monitoring powers and our goal of increasing transparency and accountability within wholesale energy markets. We do not anticipate collecting this full suite of information routinely – routine information collection will be aimed at obtaining specific metrics that provide valuable insights into focal areas.

We are interested in stakeholder views to inform our consideration of the types and classes of information we could include in the Guidelines as information we do not expect to collect. However, while we will identify types and classes of information that we do not expect to request, this list will be subject to change as we develop our understanding of contract markets and the wholesale electricity and gas markets evolve.

An example of information we do not expect to collect is information that can be obtained by other means (as outlined in section 4.1.3). Another example is that for gas we do not expect to collect bilateral trading agreements made between a retailer and end user under a quantity prescribed in the Guidelines.

### **Consultation questions on our approach to wholesale market monitoring and reporting**

2) What are your views on our proposed key areas for assessment:

- market liquidity
- access to markets and barriers to entry and participation
- incentives for offer behaviour
- risk positions

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<sup>10</sup> *Statutes Amendment (National Energy Laws) (Wholesale Market Monitoring) Bill 2023 (SA)*, Division 1A subdivision 4, 18EO (2) (d), Division 1AA subdivision 4, 30AT (2) (d).

<sup>11</sup> *Statutes Amendment (National Energy Laws) (Wholesale Market Monitoring) Bill 2023 (SA)*, Division 1A subdivision 4, 18EO (2) (e,f), Division 1AA subdivision 4, 30AT (2) (e,f).

<sup>12</sup> *Statutes Amendment (National Energy Laws) (Wholesale Market Monitoring) Bill 2023 (SA)*, Division 1AA subdivision 1, 30AA.

Are there additional areas or types of information we should consider? If so, please advise.

- 3) What are your views on specific metrics that would be valuable for addressing the proposed key areas?
- 4) The Guidelines must include a list of the information that we are likely to collect routinely. What do you consider should be collected routinely, and why?
- 5) The Guidelines must include the types and classes of information that we do not expect to request. What do you consider should be on that list, and why?
- 6) The Guidelines must include a minimum threshold, below which we will not collect information, for contracted quantity of gas for bilateral trading agreements made between a retailer and an end user. What would be a reasonable minimum contract volume, and why?

### 3.3.2 Information gathering tools

In addition to drawing on publicly available data, we are empowered to use several information gathering instruments for the purposes of wholesale market monitoring and reporting.

The Amendment Bill introduces 2 new information gathering instruments to request market monitoring related information from participants – market monitoring information orders (MMIOs) and market monitoring information notices (MMINs). General information gathering powers contained in section 28 of the NEL and section 42 of the NGL will continue to have effect and we anticipate using them, along with MMIOs and MMINs, to collect information for monitoring and reporting.

- MMIOs can be used to gather information from a class of persons. We may use this tool for routine collections that seek to develop holistic understandings and insights about the markets.
- MMINs can be used to gather information from named persons. We may use this tool to follow more targeted lines of enquiry that require more precise information to address specific questions.
- General information gathering powers can be used to require any named person to provide information, produce documents or give evidence that we require for performing or exercising a function or power conferred on us. We may use this tool to seek more detailed and targeted information.

These new information gathering instruments enable us to establish clear and predictable reporting requirements for participants.

We anticipate needing to use a combination of the three instruments for the collection of routine and ad hoc information from participants to inform our understanding of the effective competition and efficient functioning of wholesale electricity and gas markets. Prior to issuing, we will determine which instrument is the most appropriate for the information being sought.

A summary of the 3 information gathering tools is included at Appendix B. This includes an outline of who is in scope, consultation requirements and high-level consideration of potential benefits and impacts on recipients.

Sections 18EK and 18EL of the NEL and sections 30AP and 30AQ of the NGL will require a member of a class of persons to comply with a MMIO made by the AER and persons named to comply with a MMIN made by the AER. Failure to comply may attract civil penalties. The AER's general approach with new obligations is to work with participants to assist them to understand their obligations so participants can put in place robust systems and processes to achieve compliance. Our approach to non-compliance is informed by our Compliance and Enforcement Policy, which sets out the principles we apply when taking a risk-based approach to our compliance and enforcement work.

## 4 Wholesale market information collection

### 4.1 Our approach

#### 4.1.1 Guiding principles for information collection

Information collection enabled under the Amendment Bill is deliberately broad to ensure we have access to sufficient information to effectively perform our functions. However, we are committed to approaching information collection in a thoughtful and practical manner, basing collection on intended use for our wholesale market monitoring functions.

The Amendment Bill introduces new information collection transparency and accountability measures, which require us to:

- be satisfied that requested information is reasonably necessary for performing our functions
- consider whether the information is available from other sources before requesting information from participants.

We have built on the intent of these measures by developing 4 core principles to create a strong foundation of discipline around the collection of information for our wholesale market monitoring powers:

1. We will collect information that is reasonably required for the purpose of performing our wholesale market monitoring functions under the energy laws.
2. We will maximise benefit for the market and ultimately consumers by being clear about the specific use of information we collect.
3. We will seek to limit participant burden.
4. We will, where reasonably practicable and appropriate to do so, rely on public information and/or information collected by other agencies (including in our public reporting).

#### 4.1.2 Targeted incremental approach

We propose taking a targeted incremental approach to collecting information to perform our expanded functions and we intend to prioritise collecting information that will inform key areas of focus. Our focus areas will be underpinned by the AER's purpose (to make energy consumers better off now and in the future), our strategic plan, our legislative functions, and the national energy objectives.

We have identified 4 initial areas of particular interest, informed by our observations and analysis of the market from existing monitoring:

- market liquidity
- access to markets and barriers to entry and participation
- incentives for offer behaviour
- risk positions.



We anticipate that the areas of focus (and therefore the scope of our information collection) will develop and expand over time in line with the intent of the powers. Future collections will be shaped by:

- insights derived from initial data collections
- identification of additional information needed to deliver on initial focus areas
- significant longer term focus areas as the energy transition progresses
- emerging focus areas as the market and policy environment evolves
- ceasing collection of information that no longer has a clear and specific use and/or does not provide reasonable value.

For example, if we were to seek to understand incentives underlying generator conduct in the wholesale electricity market, we could begin by routinely collecting participants' net contract position. This would provide preliminary insights into bidding behaviour and could help us determine additional targeted lines of inquiry, such as seeking more detailed collections in particular regions, from particular participants or for particular segments of the market.

If we were to seek to identify barriers to participation in wholesale gas markets, we could begin by routinely collecting bilateral trade agreement related information. Over time, we could look to expand our lines of inquiry to additional sections of the market, such as gas storage.

We consider a targeted incremental approach will be beneficial for 3 main reasons. First, it would facilitate the development of processes, systems and specialist knowledge to effectively collect and analyse the requested data. Second, it would minimise participant burden because information requests will be smaller and more targeted than if the AER sought to capture everything from the outset. Third, it would allow time for us to improve information collection methods and address any challenges that emerge while requests are smaller and more manageable.

### **Consultation questions on our targeted incremental approach**

- 7) What are your views on our proposal to take a targeted incremental approach to information collection for our enhanced wholesale market monitoring and reporting functions?

### **4.1.3 Efficient information collection**

The Amendment Bill introduces measures to enhance transparency and accountability. One of these measures requires us to consider whether information can be obtained in another way before we request information from participants.<sup>13</sup>

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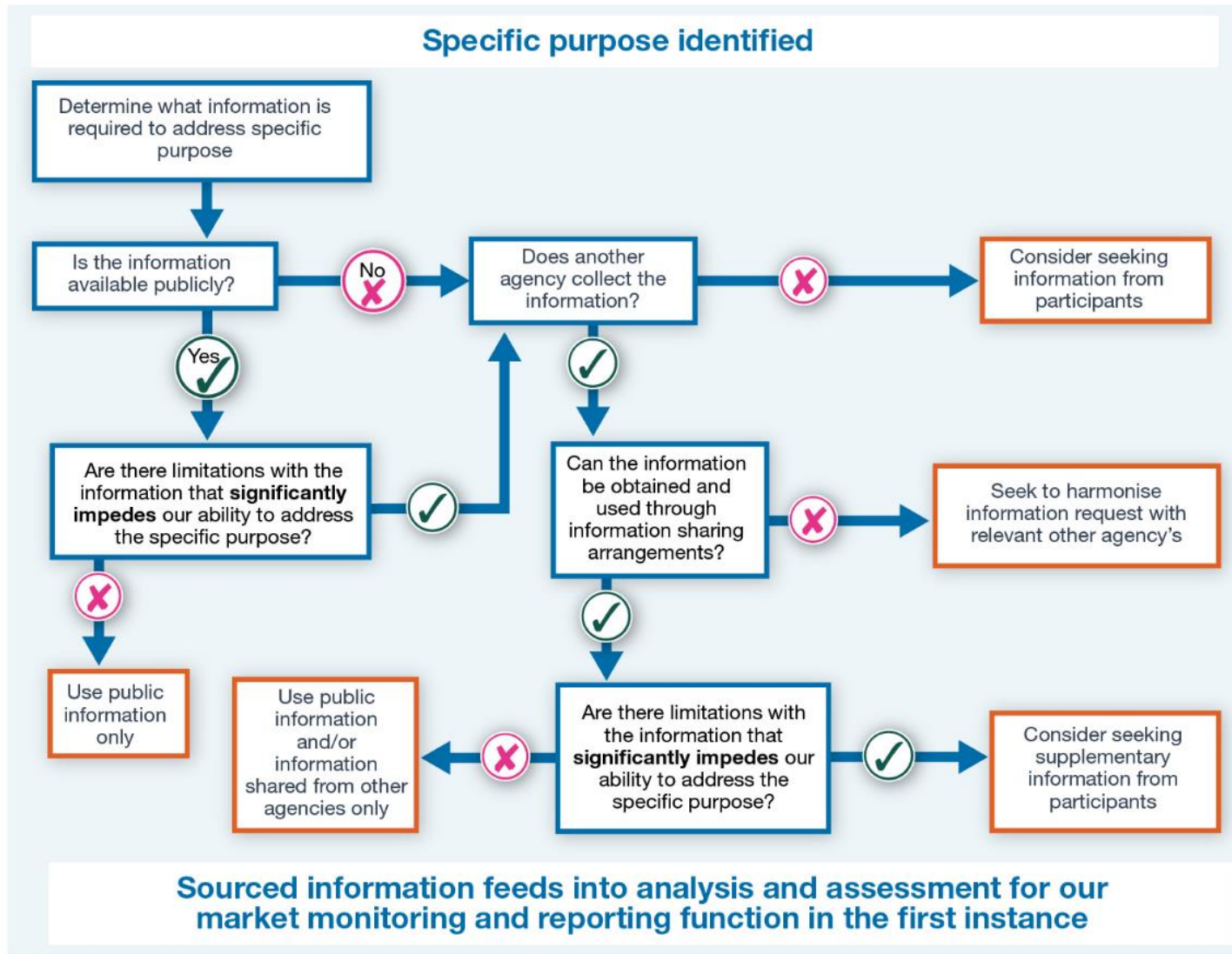
<sup>13</sup> *Statutes Amendment (National Energy Laws) (Wholesale Market Monitoring) Bill 2023 (SA)*, Division 1A subdivision 2 section 18EB, subdivision 3 section 18EG(2), Division 1AA, subdivision 2 section 30AG(b), subdivision 3 section 30AL(2)(c).

In accordance with this legislative obligation and our guiding principles, in the first instance we will consider using publicly available information alongside information we have previously collected via our other regulatory functions. Where publicly available information isn't sufficient for our purposes, we will seek to obtain information from other regulatory agencies. We will request information from participants if:

- we are satisfied that requested information is reasonably necessary for performing our functions
- we have considered whether the information is available from other sources
- we are not able to use or disclose information from other sources due to legal restrictions, timeliness or other reasons that make the information unsuitable for our purposes.

Our proposed decision flow for determining the method of obtaining required information for market monitoring and reporting is set out in Figure 5.

Figure 5 Our decision flow for sourcing information



## Public information

At times, publicly available information may contain gaps or limitations.

In instances such as these, we would take a practical approach in determining whether the available information would be sufficient to address our needs, or whether other information would be required.

## Previously collected information

We will seek to make appropriate use of information that we have previously obtained via our existing regulatory functions when undertaking our wholesale market monitoring function. However, existing information was collected for other purposes, and there may be gaps or other limitations that render that information inadequate for wholesale market monitoring and reporting purposes.

## Information sharing and coordination among agencies

We have identified overlap between information relevant to our enhanced market monitoring and reporting functions, and information collected by other regulatory agencies, particularly ASIC and the ACCC. The below subsections outline our initial scoping of information overlap.

We are exploring options for efficient information collection for areas of overlap among agencies – information sharing, consent framework and coordination of information requests.

- We have frameworks in place to share information with ASIC and the ACCC<sup>14</sup>
  - to date, information shared under these frameworks has primarily been for internal use. Sharing information for external reporting purposes may present additional legal and procedural fairness barriers. We are engaging with ASIC and the ACCC to explore how these existing frameworks can be applied to facilitate information sharing in the context of our enhanced market monitoring and reporting functions.
- Where information sharing between regulatory agencies is not feasible (including for external reporting), we could:
  - seek to harmonise requests with those made by other agencies, where suitable information sharing arrangements are not feasible. For example, we may work to align the timing and form of our information requests with the ACCC or ASIC. This approach aims to minimise the additional effort required by participants to collate and provide information while still ensuring that participants' information is afforded appropriate protections under the law.
  - explore development of a consent framework, by which participants provide consent for the agency collecting information to share that information with other specified regulatory agencies and for the receiving agency to include that information in its reports.

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<sup>14</sup> ASIC and the AER have a Memorandum of Understanding, which sets out a framework for cooperation and exchange of confidential information between the agencies in accordance with the relevant statutory provisions. See AER and ASIC, [Memorandum of Understanding between the Australian Securities and Investments Commission and the Australian Energy Regulator](#), 2021.

The *Competition and Consumer Act 2010* (Cth) (CCA) provides for information sharing between the ACCC and AER in Division 4 subdivision D, section 44AAF and section 157A.

### **Consultation questions on information sharing and coordination among agencies**

- 8) We are engaging with ASIC and the ACCC regarding sharing information. Are you aware of any other agencies or organisations that collect information that may meet the needs of our wholesale market monitoring and reporting function? If so, please advise.
- 9) If information sharing between regulatory agencies is not feasible (including for external reporting), would you want us to:
  - explore a consent framework for information received from other regulatory agencies? If so, please advise what key components would need to be considered.
  - seek to harmonise our information requests with those made by other regulatory agencies?
- 10) Are there any other methods of facilitating information sharing or coordination that we could explore? If so, please advise.

### **Relevant ASIC information collection**

ASIC oversees the licensing and regulatory obligations of market operators and ASIC regulated market participants engaged in trading energy and commodity derivatives on financial markets and over-the-counter (OTC).

In performing its duties, ASIC may collect the below derivative transaction information, which could be used by us for wholesale monitoring and reporting:

- electricity: exchange-traded financial risk management products
- gas: OTC risk management products, exchange-traded financial risk management products
- Environment risk management products: exchange traded financial products and OTC (including weather derivatives)
- Other energy derivatives: OTC derivatives over coal prices or international energy prices.

OTC derivative transaction information that is collected under the ASIC Derivative Transaction Rules (Reporting) 2022<sup>15</sup> excludes electricity derivatives and generally excludes energy contracts that are for physical delivery (as distinct from cash-settled contracts). Entities that report information under these rules are those who are licensed or otherwise authorised by ASIC to deal in derivatives in this jurisdiction.

### **Relevant ACCC information collection**

#### *Electricity*

In 2022 and 2023, the ACCC collected electricity contract information as part of the National Electricity Inquiry. This included the collection of exchange-traded financial risk management products, OTC risk management products and qualitative information related to market

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<sup>15</sup> ASIC, [Regulatory Guide 251 Derivative Transaction Reporting](#), February 2023.

participants' experiences in the electricity hedging market. This information is particularly relevant to our monitoring and reporting functions.

The ACCC's electricity inquiry is scheduled to end in 2025. As such, we do not anticipate significant overlap in the future collection of electricity market monitoring information by us and the ACCC. However, this information could provide some historical context on wholesale electricity markets and our use of it could reduce our need to collect historical information from participants.<sup>16</sup>

### Gas

The ACCC collects information on bilateral gas contracts, LNG supply agreements and underlying contract information from gas producers and retailers operating in the east coast gas market to support 2 of its functions:

- its inquiry into the supply of and demand for wholesale gas in Australia (Gas Inquiry), which commenced in 2017 and is scheduled to run through to 2030
- its function to investigate and enforce compliance with the Gas Market Code, which commenced on 11 July 2023.

This information is particularly relevant to our market monitoring and reporting functions for gas. The Gas Inquiry is scheduled to run until 2030, so we anticipate an ongoing overlap of information required by us and the ACCC and the AER.

### Use of information for other purposes

The Amendment Bill removes existing limitations on the use of confidential information, initially collected for wholesale market monitoring, for other AER functions. Using information initially collected for market monitoring for other purposes, where appropriate, will help minimise the need for duplicate information requests from other areas of the AER.

## 4.2 Framework

### 4.2.1 Information collection elements – format, frequency and granularity

We aim to work collaboratively with participants to collect information in a format, frequency and level of granularity that adds value and minimises inaccuracies.

We acknowledge that the diversity of participants may pose challenges to effectively standardising our information collection approach. We are considering applying a combination of methods to account for relevant factors such as the nature of information (for example, contract type) and participant characteristics (for example, size, type and operating region). As examples:

- Smaller participants may face an increased burden from information collection, so it may be appropriate to tailor collection frequency to participant size. This could involve quarterly collection from larger participants and annual from smaller participants.

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<sup>16</sup> Our approach to collection of historical information is further discussed in section 4.2.2.

- We may collect information about different contract types at different frequencies. For example, base load futures have relatively short time horizons and a participants' position can change quickly, so more frequent collection would likely be most beneficial. In contrast, Power Purchasing Agreements (PPAs) generally span a longer period and could potentially be collected less frequently.

### **Consultation questions on other information collection elements – format, frequency and granularity**

11) How can we enable efficient information collection that optimally balances value and burden? Including for the:

- format of information collection
- frequency of information collection
- granularity of information collected.

Please provide your response specific to different contract types and/or participant characteristics, where relevant.

### **Format for collecting the information**

The Amendment Bill requires the Guidelines to include the format in which we expect information to be submitted. However, while meeting this requirement, we intend to keep this aspect of the Guidelines sufficiently high level to keep pace with technological developments that may change preferred programs and platforms. We anticipate that more prescriptive detail (developed with stakeholder feedback) will be included in our individual information requests (where appropriate).

Notwithstanding the above, we intend to collect quantitative and qualitative information in a standardised manner (where possible), using methods that will meet confidentiality requirements and facilitate aggregation.

Receiving standardised information will be crucial to us conducting strong analysis and extract accurate insights. By working with stakeholders, we aim to develop a collection format that is clear, easy to navigate, reduces inaccuracies and optimally balances value and minimisation of burden for participants. We are considering the best ways to achieve this with minimal need for significant system adjustments by participants.

In consultation with participants, we propose to:

- develop information requests with restricted response options (where appropriate) to assist with consistency – we anticipate this would be valuable for fields such as contract category and contract type or shape
- develop clear definitions and interpretation guidance for key contract terminology to minimise confusion and misinterpretation
- clearly specify conventions that should be followed – for example, what positive and negative values signify to further minimise misinterpretation.

We will use stakeholder feedback to develop draft information request templates, which will be included in consultations on initial draft MMIOs/MMINs.

## Frequency of information collection

A range of different frequency options are available, including quarterly, half-yearly, annually or ad hoc. A combination of these frequencies will likely be used across different relevant factors, including nature of information (for example, contract type) and participant characteristics (for example, size, type and operating region).

Table 2 presents some of the high-level considerations related to each of the different collection frequency options.

**Table 2 Frequency of information collection options**

Details	Regular collection frequency		Irregular collection frequency
	Quarterly or half-yearly	Annually	Ad hoc
<b>Benefits for delivering our function</b>	<p>Would enable prompt identification of trends that may influence the performance, competition or efficiency of wholesale energy markets.</p> <p>Would enable relevant insights to be included within our suite of regular reporting products.<sup>17</sup></p> <p>Would provide flexibility to undertake urgent analysis in response to emerging issues without the need to issue urgent information requests.</p>	<p>Would enable relevant insights to be included within our annual and biennial reporting products.</p>	<p>Would enable us to tailor information requests to explore topical areas as they arise.</p> <p>Would be used in conjunction with regular collections, allowing for investigation of emerging topics.</p>
<b>Potential challenges for delivering our function</b>	<p>Additional value from higher frequency collection may be low in situations where there is typically slower change in that segment of the contract market.</p>	<p>Less frequent collections may reduce our ability to proactively identify rapidly emerging challenges in the wholesale electricity and gas markets.</p>	<p>Ad hoc MMIOs/MMINs would require a consultation period. This may limit our ability to provide urgent analysis in response to emerging issues or situations. However, urgent notices could be issued if required.</p>
<b>Potential benefits for participants</b>	<p>May enable participants' processes to be streamlined given:</p> <ul style="list-style-type: none"> <li>requests will be standardised and predictable</li> </ul>	<p>Less frequent requests may reduce participant burden.</p> <p>Some process streamlining may be possible because:</p>	<p>Less frequent requests may minimise participant burden.</p>

<sup>17</sup> These reports include: our suite of annual and biennial reports, quarterly wholesale markets reports and ad hoc special reports.



Details	Regular collection frequency		Irregular collection frequency
	Quarterly or half-yearly	Annually	Ad hoc
	<ul style="list-style-type: none"> <li>requests could be harmonised with those from other agencies.</li> </ul> <p>Information collection/supply issues could be addressed through incremental improvements rather than supplementary follow-up requests.</p>	<ul style="list-style-type: none"> <li>requests will be standardised to an extent</li> <li>timing will be predictable</li> <li>requests could be harmonised with those from other agencies.</li> </ul>	
<b>Potential challenges for participants</b>	<p>May require routine allocation of resources to respond to information requests.</p> <p>Quarterly collection may be accompanied with ad hoc collections.</p>	<p>May require routine allocation of resources to respond to information requests.</p> <p>Annual collection may be accompanied with ad hoc or urgent collections.</p>	<p>May create uncertainty for industry.</p> <p>Ad hoc collections may accompany regular information requests.</p> <p>Responses to information requests will likely need to be bespoke, limiting participants' ability to streamline processes.</p> <p>Ad hoc MMIOs/MMINs would also require ad hoc stakeholder engagement.</p>

### Level of granularity of information

There are various levels of detail or precision of information (information granularity), ranging from detailed to aggregated.

Table 3 presents some of the high-level considerations related to the options of collecting information with a high level of granularity and low level of granularity. These are two ends of a spectrum for illustrative purposes and a range of granularity options sit between them (for example, net contract positions broken down by region and contract type).

We have previously collected specific contract information to inform default market offer (DMO) determinations. For collection of data under the DMO we used a granular approach for the DMO 5 and DMO 6 periods. We targeted contract types across the DMO regions to support the wholesale component of the DMO price.

**Table 3 Granularity of information**

Category	High level of granularity (Detailed information)	Low level of granularity (Aggregated information)
<b>Granularity level description</b>	Information broken down to its finest, most detailed parts.	Information that has been summarised into a smaller number of pieces.

<b>Contracts related example</b>	Information on individual contracts.	Participants' net contract position.
<b>Value</b>	Provides richer insights and understanding of the performance of wholesale markets.  May reduce the likelihood of ad hoc information requests because the information would be more easily adaptable for different uses.	Provides broad understanding of participants' positions.
<b>Potential uses suited to different granularity levels</b>	Detailed information would be useful for targeted lines of inquiry – for example, it could be used to better understand liquidity and barriers to entry.	Aggregated information would be useful for broad lines of inquiry – for example, it could be used to understand participant offer behaviour and risk positions as well as economic withholding.
<b>Potential challenges for participants</b>	Providing standardised information may present challenges depending on how participants' systems are designed and their information stored.	Collected information would be less easily adaptable to multiple uses, so more collections may be sought.

### Consultation questions on granularity of information

12) What are your views on the granular approach taken for DMO 5 and 6 information collection?

#### 4.2.2 Historical collection

The Amendment Bill enables us to collect information on all relevant agreements that were in effect within the 5 years before commencement of the legislation.

Historical information plays an important role in providing context and improving understanding of current and future market outcomes and performance. Specifically, the collection of historical information will assist in identifying trends and patterns, evaluating performance, managing risk and analysing competition and efficiency.

We are exploring how to approach historical contracts collection to optimally balance the tensions between the value of enhanced analysis and the difficulty for participants of supplying this data. This includes considering initial requests for historical information as well as later subsequent collections of historical information as our analyses of contract information matures.

We are conscious that requesting 5 years of contract information could represent a significant burden on participants. However, drawing on only 1 to 2 years of historical contract information in analyses poses limitations due to the turbulence in energy markets

over recent years, which may mean the historical information does not provide an accurate idea of what is normal. More historical years would provide insights into the market during more typical conditions and provide a more accurate basis for analysis and resultant recommendations.

Historical information collection, as with all information collection, will be aimed at obtaining specific metrics that provide valuable insights into focal areas. Table 4 presents some possible options that could help to minimise the burden of providing historical information. The approach will be tailored to the specific purposes for which the historical information is required and could involve adoption of one or a mixture of the possible options. For example, we could request 5 years of contract information from the largest participants and 2 years of contract information from other participants. Or we could request all contract types for a particular region for the previous 5 years and subsets of contracts for other regions for a 2-year period.

**Table 4 Historical information collection**

Factor	Full historical information scenario	Options
<b>Number of years</b>	Five years	Select fewer years to collect information for.  For example, we could limit the request to only 2 years. This could be either the previous 2 years (2022 and 2023) or, given the recent turbulence, it could be 2 earlier years such as 2020 and 2021.
<b>Participants</b>	All participants	Select certain subsets of participants based on factors such as size or type.  For example, we could request information from the largest participants by generation capacity.
<b>Relevant region or market</b>	All regions	Select certain regions or markets based on highest need.  For example, we could request electricity contracts from only SA. <sup>18</sup>

<sup>18</sup> SA is of particular interest because the penetration of renewable generation is higher than the other regions and SA has seen liquidity of ASX contracts fall in recent years while the other regions were increasing.

Factor	Full historical information scenario	Options
<b>Contract types</b>	All contract types	Select certain subsets of contract types based on highest need.  For example, we could limit the request to Australian Securities Exchange (ASX) trades and PPAs.
<b>Response time frame</b>	-	Providing a longer time frame for the information to be supplied.

### Consultation questions on collection of historical information

- 13) What historical information do you consider would be most valuable for understanding the contract market and providing perspective for current and future market performance?
- 14) With consideration for (but not limited to) the methods raised in section 4.2, how could we minimise participant burden associated with historical information collection?

### 4.2.3 Treatment of information

We will treat information collected for the purpose of market monitoring and reporting responsibly and in accordance with the law, including the *Privacy Act 1988*, CCA, NEL and NGL, and our information policy<sup>19</sup> and confidentiality guideline.<sup>20</sup>

Information collected under MMIOs/MMINs is automatically deemed to have been given to the AER in confidence. Information collected under section 28 of the NEL and section 42 of the NGL is subject to the same restrictions on authorised use and disclosure.<sup>21</sup>

Information obtained from other regulatory agencies might be provided to the AER on a confidential basis, and our use and disclosure of that information may be subject to conditions imposed by the other agency.

The subsections below relate to how we will treat information collected under MMIOs and MMINs.

### Consultation questions on the treatment of information

- 15) What factors should we assess when considering an anticipated disclosure?

<sup>19</sup> *Competition and Consumer Act 2010*, (CCA) Division 4 subdivision D, 44AAF; *National Electricity (South Australia) Act 1996* (SA), Division 6, sections 28W to 28ZB; *National Gas (South Australia) Act 2008* (SA), Division 1 sections 324 to 329; [ACCC/AER Information Policy](#), June 2014.

<sup>20</sup> AER, [Better Regulation: Confidentiality Guideline](#), August 2017.

<sup>21</sup> CCA, section 44AAF(1)(b)

16) Do the confidentiality, disclosure and procedural fairness measures pose any risks to participants? If so, what are they?

### **Confidentiality**

Information provided to us under MMIOs and MMINs will automatically be deemed to have been given to the AER in confidence. As such, we will be required to take all reasonable measures to protect the information from unauthorised use or disclosure pursuant to section 44AAF of the CCA. This requirement also applies to information obtained by us under our general information gathering powers.

### **Disclosure**

The CCA, the NEL and the NGL recognise that, in some circumstances, disclosure of information is both appropriate and desirable. They set out circumstances where disclosure is permitted, including, but not limited to:

- disclosure to a department or other approved body or office holder
- disclosure by a person for the purposes of performing the functions as an AER member
- if the information has been de-identified
- if the information has been aggregated so that it does not reveal any confidential aspects
- if the AER believes the disclosure of the information would not cause detriment to the person or, if the disclosure of the information would cause detriment to a person, the public benefit in disclosing it outweighs that detriment. Our process for considering public benefit and detriment is outlined in the AER's Confidentiality Guideline.<sup>22</sup>

### **Procedural fairness**

Before disclosure, we must accord procedural fairness to the information provider. This would likely involve notifying the information provider that we intend to disclose the information, explaining the form and extent of the proposed disclosure and providing them with the opportunity to respond and considering any responses.

If the information is to be disclosed under section 28ZB of the NEL or section 329 of the NGL, we will follow the procedure outlined in the NEL and NGL and provide the relevant notices to the information provider. In accordance with this process, we will consider any representations and issue further notices as required. This process is outlined in our Confidentiality Guideline, section 28ZB of the NEL and section 329 of the NGL.

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<sup>22</sup> AER, [Better Regulation: Confidentiality Guideline](#), August 2017.

# Appendix

## Appendix A: Summary of consultation questions

Number	Question	Relevant section
Section 3: Our approach to wholesale market monitoring and reporting		
1	What factors should we consider in integrating contract market data into the structure-conduct-performance framework and our evaluation of wholesale electricity and gas market performance?	3.2
2	<p>What are your views on our proposed key areas for assessment:</p> <ul style="list-style-type: none"> <li>• market liquidity</li> <li>• access to markets and barriers to entry and participation</li> <li>• incentives for offer behaviour</li> <li>• risk positions</li> </ul> <p>Are there additional areas or types of information we should consider? If so, please advise.</p>	3.3
3	What are your views on specific metrics that would be valuable for addressing the proposed key areas?	3.3
4	The Guidelines must include a list of the information that we are likely to collect routinely. What do you consider should be collected routinely, and why?	3.3
5	The Guidelines must include the types and classes of information that we do not expect to request. What do you consider should be on that list, and why?	3.3
6	The Guidelines must include a minimum threshold, below which we will not collect information, for contracted quantity of gas for bilateral trading agreements made between a retailer and an end user. What would be a reasonable minimum contract volume, and why?	3.3
Section 4: Wholesale market information collection		
7	What are your views on our proposal to take a targeted incremental approach to information collection for our enhanced wholesale market monitoring and reporting functions?	4.1
8	We are engaging with ASIC and the ACCC regarding sharing information. Are you aware of any other agencies or organisations that collect information that may meet the needs of our wholesale market monitoring and reporting function? If so, please advise.	4.1
9	If information sharing between regulatory agencies is not feasible, would you want us to:	4.1

Number	Question	Relevant section
	<ul style="list-style-type: none"> <li>• explore a consent framework? If so, please advise what key components would need to be considered.</li> <li>• seek to harmonise our information requests with those made by other regulatory agencies?</li> </ul>	
10	Are there any other methods of facilitating information sharing or coordination that we could explore? If so, please advise.	4.1
11	<p>How can we enable efficient information collection that optimally balances value and burden? Including for the:</p> <ul style="list-style-type: none"> <li>• format of information collection</li> <li>• frequency of information collection</li> <li>• granularity of information collected.</li> </ul> <p>Please provide your response specific to different contract types and/or participant characteristics, where relevant.</p>	4.2
12	What are your views on the granular approach undertaken for DMO 5 and 6?	4.2
13	What historical information do you consider would be most valuable for understanding the contract market and providing perspective for current and future market performance?	4.2
14	With consideration for (but not limited to) the methods raised in section 4.2, how could we minimise participant burden associated with historical information collection?	4.2
15	What factors should we assess when considering an anticipated disclosure?	4.2
16	Do the confidentiality, disclosure and procedural fairness measures pose any risks to participants? If so, what are they?	4.2

## Appendix B: Information collection instruments

Characteristics	MMIOs	MMINs	General information gathering powers
<b>Information gathering instrument</b>	Can be used to gather information from a class of persons.	Can be used to gather information from named persons.	Can be used to gather information from named persons.
<b>Who is in scope</b>	The Amendment Bill permits us to issue MMIOs and MMINs to any person, provided that the collection of information is reasonably necessary for the performance of our functions under that division.		We can require any person <sup>23</sup> to provide information, produce a document or give evidence that we require for the performance or exercise of a function or power conferred on us.
<b>Consultation requirements</b>	Minimum of 30 business days public consultation on new proposed MMIOs.	Minimum of 20 business days for the named persons to make a submission on a draft notice.	No consultation requirements.
<b>Urgent notices</b>	MMIOs/MMINs can be specified as urgent if we reasonably believe that access to the relevant information is time critical.		–
<b>Potential benefits</b>	May offer us more comprehensive and accurate datasets, facilitating in-depth analysis and a deeper understanding of the markets.	May provide us with more precise information, allowing more effective alignment with targeted purposes.	Allows us to seek more detailed and targeted information.
<b>Collections not suited to each instrument</b>	Not suited to tailored examination of specific participants.	Less suited to broad collections across a class of participants.	Not suited to routine monitoring or historical collection.

<sup>23</sup> Person is defined to mean 'a body politic or body corporate as well as an individual' per Section 10 of Schedule 2 to the *National Electricity (South Australia) Act 1996* (SA) and section 10 of Schedule 2 to the *National Gas (South Australia) Act 2008* (SA).



Characteristics	MMIOs	MMINs	General information gathering powers
<p><b>Impact on recipients</b></p>	<p>Consultation on new MMIOs may be less frequent, reducing the impact on participants.</p> <p>Being longer standing, they would likely provide greater certainty for participants on the information we are requesting.</p> <p>There may be more of an impact on participants in the early stages of issuing MMIOs as they establish processes to provide information.</p> <p>Impact may be disproportionate across participants as requests will not be tailored.</p>	<p>Would likely require the supply of more detailed information that has the potential to increase burden for individual market participants.</p> <p>May be issued to a targeted subset of named persons, which may reduce overall industry burden.</p>	<p>Reduced impact on participants.</p>

## **Appendix C: Contract categories the AER is empowered to collect**

### **Electricity**

#### **Exchange-traded financial risk management products (ASX/FEX)**

Exchange-traded financial risk management products currently include futures, caps and options, but other new products may emerge in the future.

To date, we have relied on publicly available trade information published by the ASX to feed into our existing market analysis, including liquidity analysis. While useful, the public trade information is limited by the anonymity of the information, with neither party to the trade listed. As such, we have no visibility of who is offering contracts and at what prices, making it impossible to assess resultant impacts on participant behaviour and competitive outcomes.

Access to party names alongside the trade information would improve our understanding of the overall hedging positions of electricity market participants, enable us to monitor and analyse changes to trading behaviour, and inform barrier to entry analysis by allowing us to identify whether smaller market participants are accessing contracts via the exchanges.

#### **Futures**

Electricity futures are an agreement to exchange the difference between a fixed price (strike price) and the variable spot price over an agreed period.

Futures are used to manage uncertainty for both generators and retailers, and for speculation by electricity spot market participants and non-market participants. They can provide insight into expected future wholesale electricity prices, contracting positions of participants, liquidity and barriers to entry.

#### **Caps**

A cap contract involves the sale of a fixed volume of electricity during a fixed period for a fixed price, with the cap payout made only when the spot price exceeds a specified strike price. The current strike price is \$300/MWh on the ASX/FEX and \$500/MWh on the FEX.

Cap contracts are purchased by retailers to place a ceiling on the variable spot price in the future. These contracts are desirable for sale by flexible-start generators that can respond quickly but do not have the ability to run for extended periods.

Due to unprecedented spot prices, there were sustained periods in Q2 and Q3 2022 where the spot price exceeded the ASX's strike price. Changes in market conditions such as this may lead to cap sellers being less likely to sell contracts or shifting to the OTC market to sell contracts at a higher strike price. Monitoring these contracts would provide insight into liquidity, the ability of retailers to manage their risk against volatile prices and identify potential shifts to the OTC market.

#### **Options**

An exchange-traded options contract is an agreement to facilitate a potential transaction at a pre-determined strike price prior to, or on, a pre-determined expiration date. Like futures,

options are used to manage uncertainty for both generators and retailers, and for speculation.

Two types of electricity options can currently be purchased on ASX/FEX – base load strip options (also referred to as swaptions) and average-rate options (also referred to as Asian options). While these options cover different time periods, rights and obligations, they both create security for generators and retailers against the risk of fluctuating wholesale prices.

Monitoring these contracts would provide insight into how market participants are using options as a part of their hedging strategy and how the use of options is changing over time in response to the increase in renewable generation, as well as allow us to identify participants at risk in volatile markets.

### **Over the counter**

OTC markets involve contracts between 2 parties outside of the exchange (often assisted by a broker) with directly negotiated terms.

OTC electricity derivatives are not disclosed publicly and have been omitted from current reporting and collection of contracting information to agencies. Consequently, there is a significant lack of transparency within the OTC markets, which limits the ability of agencies to monitor financial stability and liquidity, and to detect and prevent market misconduct. Collecting OTC contract information would enable enhanced understanding of overall hedging positions and of any shifts in the market that would enhance our ability to provide strong evidence-based analysis to inform debate about the future of energy and support the energy transition while protecting the long-term interests of consumers.

### **Swaps**

An electricity swap is an agreement between 2 parties to exchange the difference between a fixed price (strike price) and the variable spot price for specified trading intervals over an agreed time period.

Swaps traded OTC can have either a fixed, defined volume (for example, flat swaps, peak swaps, super-peak swaps and off-peak swaps) or variable volume (for example, solar shape swaps, generation-following swaps and load-following swaps).

Swaps are used to manage uncertainty for both generators and retailers, and for speculation. They can provide insight into expected future wholesale electricity prices, contracting position of participants, liquidity and barriers to entry.

### **Caps and floors**

Electricity cap and floor contracts set an upper and a lower limit, respectively, to the wholesale spot prices.

Caps can be used by retailers to protect themselves against high wholesale spot prices. Floors can be used by generators to insure themselves against low wholesale spot prices. Both can be purchased with any strike price for agreed trading intervals.

We anticipate that caps may be increasingly offered in the OTC market at higher strike prices than are currently offered on exchanges, reflecting changing spot market conditions. Monitoring OTC caps and floors will provide valuable information about the willingness of

generators to offer these contracts, changes to the contract terms of these contracts including strike prices and their effectiveness as a risk management tool for participants.

### **Options**

An OTC options contract is an agreement to facilitate a potential transaction at a pre-determined strike price prior to, or on, a pre-determined expiration date. Options are used to manage uncertainty for both generators and retailers, and for speculation.

We expect most options contracts currently traded OTC are swaptions and average-rate options, with similar or identical terms to those traded via the ASX/FEX. However, collection of OTC options would provide insights into pricing, volumes and how participants choose to hedge. We also recognise that new contract types may emerge as the NEM transitions towards a future with significant and rapid uptake of both grid-based and distributed renewable energy resources.

### **Inter-regional Settlement Residue Auction units**

Settlements Residue Auctions (SRAs) give eligible registered participants access to inter-regional settlements residue (IRSR) by enabling them to bid for entitlements to a proportion of the total IRSR.

IRSR arises from the transfer of electricity through regulated interconnectors. Regulated interconnectors exist between all adjacent regions the NEM, except for Victoria and Tasmania. IRSR results from price differences between regions associated with power flows between regions. It is positive when electricity flows from a lower priced region to a higher priced region and negative when electricity flows from a higher priced region to a lower priced region (counter-price flow).<sup>24</sup>

Due to the many variables affecting IRSR, bidding is financially speculative and carries risks. Retailers and generators may participate in SRAs to hedge a portfolio that includes load, generation or contracts in adjacent regions.

Collecting SRAs would assist in understanding generator behaviour and hedging position and would provide greater insight into how interconnectors are relied on to hedge between regions.

### **Power Purchase Agreements**

PPAs are contracts between a generator and purchaser for the sale and supply of energy. Recently, they are most often used for renewable energy.

Renewable PPAs are a growing segment of the contract market. By 2030, renewable generation is expected to account for the majority of generation in the NEM. Collection of PPA contracts would provide insight into participants' contract positions, their bidding behaviour, changing costs of renewable generation, the evolving use of PPA contracts and the uptake of renewables.

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<sup>24</sup> AEMO, [Guide to the Settlements Residue Auction](#), version 4.

## **Weather derivatives**

Weather derivatives are financial products that are designed to manage the risk associated with weather-related events that affect electricity generation or consumption. Weather variables can include temperature, precipitation, wind, heating degree days and cooling degree days. Weather derivatives allow market participants to manage price and volume risk correlated with variations in weather.

The type and volume of weather derivatives may increase with the energy transition. If this is the case, they may become increasingly important risk management tools. Monitoring weather derivatives would give us insight into evolving contracts and generators' positions.

## **Fuel supply contracts**

Fuel cost is a significant component of generators' operating costs. Accordingly, the cost and availability of fuel supply is a significant factor influencing the price of electricity offers into the market.

Following the recent expiry of some long-term fuel agreements, replacement fuel contracts are being negotiated on shorter term bases. Fuel costs and uncertainty around costs have recently increased for both gas and coal, nationally and internationally. In discussion with us, generators have mentioned that they are less able to sell contracts off the back of their generation assets as far into the future as they once did.

Collecting information about generators' fuel supply would help us better understand fuel costs, generators' exposure to fluctuating fuel prices and potential constraints on supply that have implications for the overall wholesale market and safety of the NEM.

Access to fuel supply agreements would improve the AER's understanding of the underlying costs of electricity generation and their impact on bidding behaviour. Given the importance of dispatchable generation, it is important to understand how much bidding behaviour is related to costs compared with other factors. It would also allow us to better understand and anticipate how fuel supply interruptions will impact individual generators as well as the broader operation of the NEM.

## **Gas**

### **Bilateral trading agreements**

The majority of gas in Australia is traded through bilateral contracts. These agreements can be tailored to meet the needs of buyers and sellers with varied pricing structures and supply terms and conditions. In recent years, the industry has shifted towards shorter term contracts (1 to 2 years), away from long-term gas contracts that traditionally locked in prices and other terms and conditions for several years.<sup>25</sup>

While most gas is traded bilaterally, market participants use wholesale gas markets to purchase or sell gas without entering long-term agreements, manage contract imbalances, manage daily imbalances, speculate on and arbitrage current and future gas prices. Therefore, market participants' behaviour is influenced by their access to bilateral agreements. Collecting bilateral gas agreements will allow us to determine the net positions

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<sup>25</sup> ACCC, [Gas Inquiry 2017-2020, interim report](#), Australian Competition and Consumer Commission, July 2018, August 2018, pp. 24, 49.

of trading market participants. It will inform understanding of participants' ability and incentives to trade in wholesale gas markets and whether aspects of bilateral trade impact the level of competition and efficiency within wholesale gas markets.

Further, bilateral contract information will enhance our understanding of competition for bilateral contracts, improve visibility over how price volatility and supply disruptions are allocated between buyers and sellers, provide insight into how gas contracts influence the availability and cost of fuel for electricity generation, and assess the changing nature of gas supply and demand through the transition.

Since March 2023, participants have been required to supply details of their short-term bilateral gas transactions for publication on the AEMO Bulletin Board. We may be able to use this publicly available information to capture contracts of one year or less, but may need to collect transactions with a term length longer than 12 months from other sources.

As noted in section 0, the ACCC collects information on bilateral gas contracts to fulfill its gas-related functions. We are engaging with the ACCC to explore how existing information sharing frameworks can be leveraged to meet our requirements for wholesale market monitoring and reporting. The legislation specifies that, for bilateral trading agreements made between a retailer and an end user, we are required to prescribe in the Guidelines a minimum contract quantity of gas, below which we will not collect bilateral contracts. We are seeking input from stakeholders around what would be an appropriate quantity that would exclude contracts between retailers and mass market customers while meeting our legislative requirements and policy intent to monitor the wholesale market.

## **Physical gas contracts**

### **Gas transportation contracts**

Australia's gas pipeline infrastructure (transmission and distribution pipelines) transports gas from upstream producers to residential, commercial and industrial customers. Pipeline operators provide several services, the most common being haulage (transporting or shipping gas). Haulage may be offered on a firm (guaranteed) or interruptible (only if spare capacity is available) basis. Some customers seek backhaul, which is reverse direction transport or for gas to be stored (parked) in a pipeline. As the gas market evolves, more innovative services are being offered, including loans (loaning gas to a third party), redirection and in-pipe trades.

Collecting gas transportation contracts will allow us to identify how market participants' contracted pipeline capacity influences market concentration and supply conditions in various wholesale gas markets and the related impact on market prices. It will also provide insights and understanding into the capacity utilisation of existing infrastructure, any barriers to gaining pipeline capacity and risk management strategies used by market participants.

Following recent reform to the NGL and National Gas Rules (NGR), gas pipeline operators are required to publish prescribed transparency information.<sup>26</sup> This information includes actual prices payable for pipeline contracts, which we will be able to use for our wholesale market monitoring function. However, there are some gaps in information (for example,

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<sup>26</sup> National Gas Rules – Part 10: Prescribed transparency information

counterparties and specific non-price terms) that we may need to additionally collect. These additional information points are important in assessing which market participants have contracted capacity on which pipelines and on what terms.

### **Gas storage contracts**

Market participants can contract to store surplus gas in facilities for use during higher demand periods, providing supply flexibility and quick delivery capability to meet peak demand requirements. Generally, surplus gas is produced in summer and stored for use during higher demand winter periods.

In recent years, Victoria has become increasingly reliant on gas storage inventory from the Iona underground storage facility to manage demand over the winter period.<sup>27</sup> The Iona underground storage facility has third-party access and large gas customers have secured their own storage capacity to manage supply risks and seasonal demand.

Collecting gas storage contracts will allow us to identify how market participants' contracted storage position influences market concentration and supply conditions in various wholesale gas markets and the related impact on market prices. It will also allow us to understand the role of storage in market participants' risk management strategies, the capacity utilisation of storage and how that affects wholesale gas markets, and insight into gas market security.

Following recent reform to the NGL and NGR, gas storage facility operators are required to publish standing terms and prices payable for contracts, including actual prices payable.<sup>28</sup> We will be able to use this information for the purpose of our wholesale market monitoring function. However, there are some gaps in information (for example, counterparties and specific non-price terms) that we may need to additionally collect. These additional information points are important in assessing which market participants have contracted storage capacity and on what terms.

### **Gas compression contracts**

Gas compression is a process by which compressor stations increase the pressure of natural gas to facilitate its transportation through pipelines. Gas compression services can be bundled with pipeline services but may also operate as standalone facilities. Gas compression contracts outline the terms and conditions related to this process.

Collecting gas compression contracts would allow us to understand how compression infrastructure is used by market participants and if they face barriers to operating efficiently in wholesale gas markets.

Following recent reform to the NGL and NGR, gas compression facility operators are required to publish standing terms and prices payable for contracts, including actual prices payable.<sup>29</sup> We will be able to use this information for our wholesale market monitoring

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<sup>27</sup> Other storage facilities, such as the Dandenong LNG storage facility, also play an important role in managing supply risks at peak times.

<sup>28</sup> National Gas Rules – Part 18A: Compression and storage terms and prices

<sup>29</sup> National Gas Rules – Part 18A: Compression and storage terms and prices

function. However, there are some gaps in information (for example, counterparties and specific non-price terms) that we may need to additionally collect.

### **Financial risk management products**

Market participants manage portfolio risk by trading financial risk management products in 3 main ways:

- trading listed products on the ASX
- trading listed products on international exchanges
- trading OTC products.

Market participants can manage wholesale gas market price risk by purchasing ASX gas futures contracts. Currently, the ASX offers 2 products linked to the Declared Wholesale Gas Market – a quarterly and an annual futures product. The ASX intends to offer an additional product in Q2 2024, which is a deliverable Wallumbilla natural gas future product.<sup>30</sup>

Currently we rely on publicly available trade information published by the ASX to feed into existing market analysis. Although this is useful, the public trade information is limited by the anonymity of the information with neither party to the trade listed. As such, we have no visibility of who is offering contracts and at what prices, making it impossible to assess resultant impacts on participant behaviour and competitive outcomes.

Market participants may also use financial risk management products to manage exposure to commodity linked contract price risk. The price structure of bilateral agreements may be linked to commodity prices (such as the price of Brent, Japanese Korea Marker or the Declared Wholesale Gas Market), which exposes the buyer and seller to price risk. Therefore, market participants may trade listed products linked to these commodities.

Market participants may also trade OTC financial products to manage price and volume risk. In its 2020 Biennial review into liquidity in wholesale and gas pipeline trading markets, the Australian Energy Market Commission (AEMC) reported that stakeholders used a range of financial derivative products including swaps, caps and options across the Declared Wholesale Gas Market and Short Term Trading Market.<sup>31</sup>

Financial risk management products are used to manage uncertainty for market participants and for speculation. Collecting these contracts would be important to understand market participants' net position, financial product liquidity, barriers to entry in accessing financial products and expected future gas prices.

### **Export supply agreements**

LNG is sold and transported from Australia's LNG production facilities to international buyers or importers. Governing terms, conditions and obligations are outlined in LNG export supply agreements.

Collecting LNG export supply agreements will allow us to assess LNG exporters' contracted positions and the implications they have on current and future wholesale gas market

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<sup>30</sup> Australian Stock Exchange, [ASX to launch deliverable Wallumbilla Natural Gas Future](#), 20 October 2023.

<sup>31</sup> AEMC, [2020 Biennial Review into Liquidity in Wholesale and Gas Pipeline Trading Markets](#), July 2020.



outcomes. It will allow us to assess the opportunity cost of selling gas to the international market and understand how LNG exporters engage with domestic markets.