

Wholesale Market Monitoring and Reporting Guideline

Draft Guideline for consultation

July 2024

Version 1

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Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601
Tel: 1300 585 165
Email: ContractMarketMonitoring@aer.gov.au

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Shortened forms

Term	Definition
ACCC	Australian Competition and Consumer Commission
ACCC/AER Information Policy	ACCC and AER information policy: collection, use and disclosure of information, available on the AER's website
AER	Australian Energy Regulator
ASIC	Australian Securities and Investments Commission
AEMO	Australian Energy Market Operator
AEMC	Australian Energy Market Commission
Amendment Bill	National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023
ASX	Australian Securities Exchange
CCA	<i>Competition and Consumer Act 2010</i>
Implementing legislation	<p>The Acts and Regulations that apply the National Electricity Law and National Gas Law as a law of each participating state and territory. This includes, relevantly:</p> <ul style="list-style-type: none"> • <i>Electricity (National Scheme) Act 1997</i> (ACT) • <i>National Gas (ACT) Act 2008</i> (ACT) • <i>National Electricity (New South Wales) Act 1997</i> (NSW) • <i>National Gas (New South Wales) Act 2008</i> (NSW) • <i>National Gas (Northern Territory) Act 2008</i> (NT) • <i>Electricity – National Scheme (Queensland) Act 1997</i> (QLD) • <i>National Gas (Queensland) Act 2008</i> (QLD) • <i>National Electricity (Victoria) Act 2005</i> (Vic) • <i>National Gas (Victoria) Act 2008</i> (Vic) • <i>Australian Energy Market Act 2004</i> (Cth)
Information collection instrument	In this Guideline, the term ‘information collection instrument’ means a market monitoring information notice, a market monitoring information order or a general information gathering notice issued under section 28 of the National Electricity Law or section 42 of the National Gas Law
National Electricity Law	National Electricity Law, as laid out in the Schedule to <i>the National Electricity (South Australia) Act 1996</i> (SA), and as applied by the relevant implementing legislation
National Electricity Rules	National Electricity Rules as made under Part 7 of the National Electricity Law and given force of law by section 9 of the National Electricity Law

Term	Definition
National Gas Law	National Gas Law as laid out in the Schedule to the <i>National Gas (South Australia) Act 2008 (SA)</i> , and as applied by the relevant implementing legislation
National Gas Rules	National Gas Rules as made under Chapter 9 of the National Gas Law and given force of law by section 26 of the National Gas Law
National Energy Laws	In this Guideline, the term ‘National Energy Laws’ means collectively the National Electricity Law and National Gas Law
Order	Market Monitoring Information Order
OTC	Over the counter
PPA	Power Purchase Agreement
SRAs	Settlements Residue Auctions
Wholesale Markets	In this Guideline, the term ‘Wholesale Markets’ means collectively the monitored markets defined under section 18A of the National Electricity Law and wholesale gas markets defined under section 30AA of the National Gas Law.

1 Introduction

1.1 Purpose of the Wholesale Market Monitoring and Reporting Guideline

The AER publishes this Wholesale Market Monitoring and Reporting Guideline in accordance with section 18EO of the National Electricity Law and section 30AT of the National Gas Law. It sets out the general approach we will take towards fulfilling our wholesale electricity and gas market monitoring and reporting functions.

Without limiting what may be included, the Guideline must include:¹

- (a) information about the things the AER proposes to consider in assessing
 - (i) competition in markets, and
 - (ii) the effective functioning of markets
- (b) a summary of the compliance obligations of persons who hold information
- (c) the processes the AER proposes to adopt in requesting information, including processes designed to minimise the time and resources participants will devote to responding to a request
- (d) the type of information the AER expects to routinely request and how frequently it will request that information
- (e) the type of information the AER does not expect to request
- (f) classes of relevant agreements the AER does not expect to request
- (g) the formats in which the AER expects information to be submitted
- (h) a general outline of the way the AER will ensure that commercially sensitive information obtained for wholesale market monitoring functions is kept securely
- (i) other matters prescribed by the Regulations or the Rules.

1.2 Application of the Guideline

1.2.1 Application

This Guideline applies to any person or entity (including parent companies and related body corporates) that the AER considers capable of providing the information it requires that is reasonably necessary to its wholesale market monitoring and reporting functions.

1.2.2 Relationship with other regulatory instruments

This Guideline should be read in conjunction with:

- the National Electricity Law and the National Electricity Rules²
- the National Gas Law and the National Gas Rules³

¹ Section 18EO(2) of the National Electricity Law; Section 30AT(2) of the National Gas Law.

² National Electricity Rules Version 211.

³ National Gas Rules Version 80.

- AER Compulsory notice guidelines⁴
- any market monitoring information collection instrument served on a person by the AER, or made by the AER, under section 18EG of the National Electricity Law or section 30AL of the National Gas Law.

To the extent of any inconsistency, the National Gas Law, National Electricity Law, National Gas Rules and National Electricity Rules will take precedence.

1.2.3 Role of the AER

The AER is an independent statutory authority established under Part IIIAAA of the *Competition and Consumer Act 2010* (Cth) (CCA). We monitor [network](#), [wholesale](#) and [retail](#) market performance and compliance with national energy legislation.

The AER is required to regularly and systematically monitor and review the performance, effective competition and efficient functioning of monitored electricity markets and wholesale gas markets,⁵ including the operation and effect of financial risk management products on wholesale gas markets.⁶ We are also required to monitor and report on bilateral trading agreements, including their effect on wholesale gas markets.

‘Wholesale markets’ is used throughout this Guideline to refer to both electricity *monitored markets* and *wholesale gas markets*, as defined in the National Energy Laws.⁷

The AER must prepare and publish a report on the performance of wholesale markets at least once every 2 years (one report for electricity and one report for gas). These reports must cover a period of at least 5 years and contain a discussion and analysis of features of the market that detrimentally impact the efficient functioning of the market, inefficiencies in the market and other matters of a long-term nature relevant to effective competition within the market.⁸

In our monitoring and reporting role, we 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 analyses and insights in a suite of AER publications that collectively report on the performance of wholesale electricity and gas markets.

Our understandings and insights provide timely and transparent information to market participants, policymakers and consumers throughout and beyond the energy transition. Our reporting informs targeted and effective long-term policy and regulatory reform to help ensure the best outcomes for consumers.

⁴ [AER Compulsory notice guidelines](#), Final, Australian Energy Regulator, January 2021.

⁵ Section 18C, National Electricity Law; Section 30AC, National Gas Law.

⁶ Section 30AC, National Gas Law.

⁷ Section 18A, National Electricity Law; Section 30AA, National Gas Law.

⁸ Section 18C(2), National Electricity Law; Section 30AC(2), National Gas Law.

1.3 Processes for guideline revision

The AER may amend or replace any part of this Guideline periodically in accordance with the consultative procedures set out in Chapter 8 of the National Electricity Rules⁹ and Part 17 of the National Gas Rules.¹⁰ A date of issue will identify each version in the amendment record of this Guideline.

The AER is empowered to make minor or administrative amendments to the Guideline without complying with the consultation requirements referenced above.¹¹

1.4 Definitions and interpretations

In this Guideline, unless the contrary intention appears:

- a term in italics has the same meaning defined in the National Electricity Law or National Gas Law
- the singular includes the plural and vice versa
- expressions such as ‘includes’ or ‘for example’, in any form, are not words of limitation
- a reference to any legislation, legislative instrument or other instrument is a reference to that legislation or instrument as is in force from time to time.

⁹ Clause 8.7.2A, National Electricity Rules.

¹⁰ Rule 138C, National Gas Rules.

¹¹ Clause 8.7.2A(h), National Electricity Rules; Rule 138C(8), National Gas Rules.

2 AER approach to assessment and reporting

The National Electricity Law and National Gas Law (together, the National Energy Laws) require the AER, as part of the enhanced wholesale market monitoring and reporting function, to monitor the wholesale markets and report on their performance at least every 2 years. We will identify and analyse whether:

- there is ‘effective competition’ within the relevant wholesale markets, as defined in the National Energy Laws¹²
- there are features of the wholesale markets that may be detrimental to effective competition within the markets
- there are features of the wholesale markets that may be impacting detrimentally on the efficient functioning of the market and the achievement of the National Electricity Objective or National Gas Objective, as applicable.

For gas, we will also monitor and review bilateral trading agreements, including their effect on wholesale gas markets.

This monitoring and reporting role supports the efficient operation of wholesale markets by allowing early detection of issues affecting market performance and providing a means to inform policymakers on market outcomes.

This Guideline will set out the general approach we will take toward fulfilling our wholesale market monitoring functions. It includes:

- defining the concepts of effective competition and efficient functioning
- outlining our analytical framework
- highlighting how our biennial reporting obligations fit into our broader reporting suite.

Our intention is that the approach outlined in this Guideline is enduring. However, we may modify it from time to time as required by factors such as developments in wholesale markets.

We will also supplement this enduring approach, where appropriate, by publishing and consulting on separate focus papers. These focus papers may be used as a mechanism for engaging with stakeholders on specific target areas and assessment methods for particular biennial reports. This approach will allow us to be responsive to changing market conditions, develop our analysis over time, and respond to government and industry priorities while maintaining transparency around our priorities and methods and appropriately engaging with stakeholders.

¹² Section 18B, National Electricity Law; Section 30AB, National Gas Law.

2.1 Defining effective competition in and the efficient functioning of markets

The National Energy Laws require that the AER monitor the markets to assess whether there is effective competition and if the market is functioning efficiently. The following section sets out our considerations of effective competition and the efficient functioning of the wholesale markets.

2.1.1 Effective competition

We will identify and analyse whether there is effective competition in:

- for electricity – a particular *monitored market*¹³
- for gas – a particular *wholesale gas market*¹⁴

The National Energy Laws 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 a particular market.¹⁵ 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 (for electricity) or wholesale gas market participant (for gas) 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 (for electricity) or wholesale gas market participant (for gas) 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 that we consider relevant.

We may draw on economic theory and competition law commentary when determining which other matters may be relevant to our assessments of effective competition. While this material is not binding on us, it may provide useful insights.

2.1.2 Efficient functioning

An aspect of examining the efficient functioning of the markets is to determine if outcomes reflect markets that are functioning effectively.¹⁶ To examine whether the wholesale markets

¹³ Section 18A, National Electricity Law.

¹⁴ Section 30AA, National Gas Law.

¹⁵ Section 18B, National Electricity Law; Section 30AB, National Gas Law.

¹⁶ The National Electricity Law and the National Gas Law also contemplate that we will assess the effective functioning of markets (Section 18EO(2)(a)(ii), National Electricity Law; Section 30AT(2)(a)(ii), National Gas Law).

are functioning efficiently, or at least effectively, we will analyse and discuss inefficiencies in the market, their causes and whether they are likely to be detrimental to the efficient functioning of the market in the long term. While the National Energy Laws do not provide an explicit definition of efficiency, 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. Consumer surplus is the difference between the value consumers place on a good or service and the price they actually pay. Producer surplus is the difference between the price producers receive and their marginal costs of production.¹⁷

Economic efficiency has 3 dimensions:¹⁸

- *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.

2.2 Analytical framework

We will use the structure-conduct-performance framework as the primary basis for analysing *monitored markets* and *wholesale gas markets* (Table 1). We have used this framework since 2018 for our assessment of wholesale electricity markets and it has been widely used by market regulators and monitoring agencies to analyse markets across a range of industries.

¹⁷ Pindyck, R.S. and D.L. Rubinfeld (2001), *Microeconomics, Fifth Edition (International Edition)*, Pearson Education Inc (New Jersey), pp. 123, 269.

¹⁸ For example, see *The National Competition Policy: Report by the Independent Committee of Inquiry* (F. Hilmer, M. Rayner and G. Taperell), 1993, AGPS, Canberra, p. 4.

Table 1 Structure-conduct-performance components

Component	High-level explanation of component	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.	Features of market structure can be intrinsic to the market or result from participant behaviour. We will assess structural features such as: <ul style="list-style-type: none"> • market concentration • barriers to entry, participation and exit • the extent of vertical integration.
Conduct	Refers to firms' behaviour in the market, including production, buying and selling decisions.	We will examine the relationship between participant behaviour and market outcomes, and seek to understand the incentives driving that behaviour.
Performance	Refers to market outcomes, usually by reference to concepts of efficiency.	We will examine the efficiency of the market separately to the competitiveness of the market. A competitive market may still have inefficient outcomes.

In undertaking our analysis, we will have regard to the interactions between these concepts, rather than considering each in isolation. Our assessment will draw on a broad range of measures. No single measure will lead us to conclude that the market is effectively competitive or efficiently functioning.

Wholesale energy markets depend fundamentally on contracting outside of those markets. The additional visibility of contract information will enable a more robust, in-depth and holistic understanding of wholesale markets.

2.3 Reporting

We produce and publish a suite of reports on the performance of wholesale electricity and gas markets.¹⁹

- **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 reporting.
- **Longer-term reviews of the market** – builds 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

¹⁹ Our existing wholesale market reporting products include: the Wholesale markets quarterly; the Wholesale electricity market performance biennial report; the State of the energy market annual report; prices above \$5,000/MWh reports; significant price variation reports; special reports produced on an ad hoc basis and quarterly market statistics.

from high prices as the result of uncompetitive behaviour or inefficient market design. This includes reports on the performance of the wholesale electricity and gas markets²⁰ that the AER is obligated to publish at least biennially.

- **Investigation of complex issues and behaviour of concern** – involves deeper or more intensive consideration of issues identified through regular monitoring or reporting. Reporting on these issues may be undertaken through our existing reports or in separate, targeted reports.

We also have a series of other performance reporting obligations across wholesale, network and retail market segments, and our annual State of the energy market report provides an overview of the electricity and gas supply chain. We will draw on these as required to assist our analysis of wholesale market performance.

²⁰ Section 18C(2), National Electricity Law; Section 30AC(2) National Gas Law.

3 Our approach to information collection

Accurate, effective and meaningful assessments of the performance of wholesale markets requires the regular collection of information from participants.

3.1 Our obligations

3.1.1 Market monitoring information notices and market monitoring information orders

In making and serving market monitoring information notices and market monitoring information orders for our wholesale market monitoring and reporting functions, the AER is required by the National Energy Laws²¹ to:

- be satisfied that the information or agreement is required to carry out a wholesale market monitoring function
- consider the costs that are likely to be incurred by a person responding to the notice or order
- consider whether the information
 - is publicly available
 - can be obtained by the AER in another way.

3.1.2 General information gathering notices

Before serving a general information gathering notice for a wholesale market monitoring and reporting function,²² the AER must:

- be satisfied that the information is reasonably required to carry out a wholesale market monitoring function
- consider whether the information
 - is publicly available
 - can be obtained by the AER in another way.

3.2 Our approach

3.2.1 Impact of information gathering

We will apply 4 core principles 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 National Energy Laws.

²¹ Sections 18EB(2) and 18EG(2), National Electricity Law; Sections 30AG and 30AL(2), National Gas Law.

²² Issued under section 28 of the National Electricity Law or under section 42 of the National Gas Law.

2. We will maximise benefit for the market and ultimately consumers by being clear about the intended relevance of information we collect.
3. We will seek to limit participant burden by making information collection instruments that are appropriate, proportionate, and efficiently issued.
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).

There will be a considered process of review by the AER before a decision is taken to issue an information collection instrument.²³

Where possible, we will take steps to minimise the compliance and cost burden on a recipient. This includes targeting information collection instruments appropriately, taking into account factors including urgency, volume of information, nature of information/documents and when the recipient was last subject to an information collection instrument. This also includes ensuring that the collection approach is clear and easy to navigate.

3.2.2 Information sought

In identifying areas on which we will seek information, we will be guided 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 Electricity and Gas Objectives.²⁴

These focus areas will develop and evolve over time in line with market dynamics, trends, behaviour and/or outcomes that require analysis.

Collection will be shaped by:

- insights derived from information previously obtained by the AER (whether voluntarily provided, compelled or publicly available)
- 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.

3.3 Efficient information collection

Before seeking information from participants, we will consider the availability and suitability of publicly available information, information we have previously collected via our other regulatory functions and information available from other regulatory agencies.

3.3.1 Information collection and coordination among agencies

We aim to streamline information collection and limit burden where possible. To that end, where we identify an overlap between information collected by other relevant agencies and

²³ In this Guideline the term 'information collection instrument' means a market monitoring information notice, a market monitoring information order, or a general information gathering notice issued under section 28 of the National Electricity Law or section 42 of the National Gas Law.

²⁴ Section 7, National Electricity Law; Section 23, National Gas Law.

information relevant to our market monitoring and reporting functions, we will consider the feasibility of the options below (including for external reporting):

- obtaining relevant information from other agencies or bodies for the purposes of our market monitoring and reporting functions
- seeking the consent of relevant market participants for the agency collecting information to provide it to the AER and for the AER to use and disclose the information (including in its reports) where relevant legislation authorises it to do so
- harmonising our information collection instruments with those made by other agencies or bodies – this could include alignment of timing and form (including definitions, templates, frequency and time periods) or requesting identical information to that previously supplied to another agency.

The feasibility of obtaining relevant information from other agencies or bodies may be limited by information security classifications, confidentiality or the need for restrictions to be imposed on the receiving agency around the use of the information due to relevant legal requirements. However, it may be possible to overcome limitations on the AER's ability to obtain and use information from other agencies (and by extension the need to separately seek such information) if market participants are prepared to consent to the provision of information to the AER and to its use and disclosure as outlined above.

We will endeavour to continue working with relevant parties to identify opportunities to harmonise or avoid duplicative information collection instruments.

4 Obligation to submit information related to wholesale markets to the AER

The AER uses a variety of means to obtain information, including through cooperation and voluntary provision. There are circumstances where we consider it appropriate to obtain information, documents and evidence through the use of our compulsory information gathering powers.

We can compel persons to provide information to us using several information collection instruments:

- market monitoring information orders (orders),²⁵ which apply to specified classes of persons
- market monitoring information notices (notices),²⁶ which are served on named persons
- general information gathering powers (issued under section 28 of the National Electricity Law and section 42 of the National Gas Law),²⁷ which are served on named persons.

An issued information collection instrument will set out:

- the information to be provided to the AER
- the reasons the AER requires the information
- the person on whom the information gathering notice is served on or the class of persons to whom the information gathering order applies
- the period for which the information collection instrument applies
- the frequency, manner and form for submitting the required information
- any other relevant details.

We will develop orders and notices specifying regular information reporting obligations on participants. This will establish clear and predictable reporting requirements for participants. Section 4.8 outlines the compliance requirements.

4.1 Consultation

Before issuing new market monitoring information orders or market monitoring information notices, we will consult in accordance with our legislative obligations:²⁸

- market monitoring information orders – minimum of 30 business days for the public to make a written submission²⁹

²⁵ Section 18EG, National Electricity Law; Section 30AL, National Gas Law.

²⁶ Section 18EG, National Electricity Law; Section 30AL, National Gas Law.

²⁷ Section 28, National Electricity Law; Section 42, National Gas Law.

²⁸ Sections 18EH and 18EJ, National Electricity Law; Sections 30AM and 30AO, National Gas Law.

²⁹ Clause 8.7.2B of the National Electricity Rules; Rule 138D, National Gas Rules.

- if the order is issued as urgent, the period for the public to make a written submission must be a minimum of 5 business days³⁰
- market monitoring information notices – minimum of 20 business days for the named persons to make a written submission³¹
 - if the notice is issued as urgent, the period for the named persons to make a written submission must be a minimum of 5 business days but not more than 10 business days.

In addition, where appropriate and practicable, we will endeavour to consult with named persons before issuing a notice under our general information gathering powers.

4.2 Classes of persons

Market monitoring information orders apply to specified classes of persons. Classes of persons refers to a group of natural persons or legal entities that possess a similar quality. The relevant qualities will be defined in each order and may include but are not limited to characteristics such as categories of registered participants specified in the National Energy Laws and Rules, location and/or size. As an example, an order could be issued to a class of persons defined as ‘demand response service providers’, ‘semi-scheduled generators operating in [region]’, or ‘generators with a registered capacity of [volume]’.

4.3 Information requirements

In accordance with our core principles referenced in section 3.2.1, we will seek information and/or agreements reasonably required for the purpose of performing our wholesale market monitoring and reporting functions under the National Energy Laws.

We are empowered to collect a broad range of information relevant to the assessment of wholesale markets.

For electricity, this includes:

- electricity contracts
- financial risk management products.

For gas, this includes:

- bilateral trading agreements
- financial risk management products
- gas contracts.

Routine information collections will be aimed at obtaining specific metrics that provide valuable insights into our focus areas of inquiry. Further detail is provided in the appendices:

- Appendix A – sets out the types of information we expect to routinely request

³⁰ Clause 8.7.2C, National Electricity Rules; Rule 138E, National Gas Rules.

³¹ Section 18EJ, National Electricity Law; Section 30AO, National Gas Law.

- Appendix B – sets out the types and classes of information we do not expect to request.

These lists may change as we develop our understanding of these markets and as the wholesale markets evolve. Further, while we do not expect to seek the information set out in Appendix B, we are not precluded from collecting the information if circumstances require it.

4.4 Frequency of reporting

Submission dates, frequency of submission and duration of obligation to submit will be specified in each information collection instrument.

Routine collections will be a combination of quarterly, half-yearly and annual reporting frequencies tailored to the different information types requested. For example, information on segments of the markets that typically change slowly would be collected less frequently.

As outlined in section 3.3.1 of this Guideline, where appropriate and practical, we will aim to harmonise our information collection instruments with those made by other agencies. This will include alignment of content, timing and frequency of reporting.

In addition to routine collections, we may also issue one-off information collection instruments. One-off information collection instruments may be issued:

- to follow targeted lines of inquiry as part of our biennial wholesale market monitoring reports for electricity and gas
- to explore a topical matter in response to an emerging situation or issue arising
- to analyse market events
- to inform our reporting products – for example, significant price reporting
- to investigate specific topics.

We will endeavour to provide stakeholders with as much notice as practical ahead of revising routine collections or issuing one-off information collection instruments.

4.5 Manner and form in which information and data must be submitted

Persons and entities must prepare all required information to the following quality standard:

- in an electronic format
- where appropriate, enables digital data exchange using secure mechanisms (automated and/or manual)
- if submitted as a standalone file, is not password protected or encrypted, and allows for precedents and dependants to be traced where applicable
- for information provided as a written response, is fully searchable, in text readable format and is capable of text selection and a 'copy and paste' function being applied to it (all document files must be provided using application software (for example, Microsoft Word, Excel or PDF) specified by the AER)

- for information required in the information order or notice, is provided in a manner and form specified by the AER.

4.5.1 Certification of quality and completeness

Participants may be required to attest to the quality and completeness of the information provided. For market monitoring information notices and market monitoring information orders we can require the recipient provide a statutory declaration to verify that the recipient's response to the notice or order is accurate and comprehensive.³²

For general information gathering notices, the AER may seek this certification through various means including signed declarations.

The requisite certification, where relevant, (including who may attest the information) will be specified in each information collection instrument.

4.6 Process for submission

To allow for information exchange to occur as our technical solutions evolve, this guideline is 'technology neutral'. Required information will be collected using a digital service medium determined by the AER and specified in the relevant information collection instrument.

In accordance with section 3.3.1, we will look to harmonise information collection instruments with those made by other agencies, where appropriate. In those instances, we may require that information be submitted in a form and template that aligns with information collection instruments from other agencies.

The submission method may evolve with best practice.

4.6.1 Process for resubmission

If a person wishes to amend or is required to resubmit information provided under an information collection instrument, we expect them to notify the AER of the proposed resubmission, and:

- identify the information or documents to be resubmitted
- provide the reason for the resubmission
- advise whether or not the resubmitted information or documents results in a material change in its response to the information collection instrument.

Subject to AER approval, resubmitted information or documents must be submitted via the same method as the initial submission by the approved date specified by the AER.

If a person resubmits information or documents, they must provide certification in the same way that certification was required for the original submission.

³² Sections 18EM, 28(2)(a) and 28(9a), National Electricity Law; Sections 30AR, 42(2)(a) and 42(9a), National Gas Law.

4.7 Process for requesting a submission extension

Submission deadlines will be specified within the relevant information collection instrument. A person may contact us in writing to request an extension. The request should specify the length of the sought extension and the reason for the request. We retain full discretion of whether to grant an extension and to set a revised date for report submission.

The process described in section 4.6.1 also applies where a person requests an extension on a revised report submission date approved by the AER.

4.8 Compliance framework

Our approach to non-compliance is informed by our Compliance and Enforcement Policy³³, which sets out the principles we apply when taking a risk-based approach to our compliance and enforcement work.

The *Criminal Code Act 1995* (Cth) makes it a serious offence to give information to the AER knowing it to be false or misleading or omitting any matter or thing without which the information is misleading. If found guilty of such an offence, a penalty may be imposed under the *Crimes Act 1914* (Cth).

4.8.1 Market monitoring information notices

Persons who are named and served with a market monitoring information notice must comply with the market monitoring information notice.³⁴ The National Electricity (South Australia) Regulations and National Gas (South Australia) Regulations prescribe compliance with a market monitoring information notice to be Tier 1 Civil penalty provisions.³⁵

4.8.2 Market monitoring information orders

Persons who are a member of a class of persons specified in a market monitoring information order must comply with the order.³⁶ The National Electricity (South Australia) Regulations and National Gas (South Australia) Regulations prescribe these provisions to be Tier 1 Civil penalty provisions.

A person who is a member of a class of persons specified in a market monitoring information order may contact the AER in writing to request an exemption from compliance with the order. A request for exemption should be received before the submission deadline and should clearly state the reason for seeking an exemption.

We retain full discretion of whether to grant an exemption. If an exemption is granted it may be in whole or part, and conditionally or unconditionally.

³³ [AER Compliance and Enforcement Policy](#), Australian Energy Regulator, July 2021.

³⁴ Section 18EK, National Electricity Law; Section 30AP National Gas Law.

³⁵ Schedule 1 to the National Electricity (South Australia) Regulations; Schedule 3 to the National Gas (South Australia) Regulations having been [indexed by the AER](#) under section 37A of Schedule 2 of the National Electricity Law and section 47A of Schedule 2 of the National Gas Law.

³⁶ Section 18EL, National Electricity Law; Section 30 AQ National Gas Law.

4.8.3 General information gathering notices

A person on whom a general information gathering notice is served must comply with the notice unless they have a reasonable excuse.³⁷ These provisions are offence provisions and provide for penalties in the event of non-compliance.

³⁷ Section 28(3)-(4), National Electricity Law; Section 42(3)-(4), National Gas Law.

5 Confidentiality, use and disclosure of information

5.1 Disclosure

The AER's obligations regarding confidentiality and disclosure of information provided to it by regulated entities are governed by the National Energy Laws, the CCA and other applicable Commonwealth legislation such as the *Privacy Act 1988* (Cth). For further information, see the ACCC/AER Information Policy, which may be amended periodically.³⁸

Information collected under market monitoring information orders and market monitoring information notices is taken to have been given to the AER in confidence.³⁹ The AER will take all reasonable measures to protect the information that is given to it in confidence, or obtained by compulsion, 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 (section 28 of the National Electricity Law and section 42 of the National Gas Law).⁴⁰

The National Energy Laws and CCA set out circumstances where disclosure of confidential information is permitted by the AER, including, but not limited to:

- disclosure required or permitted by a law of the Commonwealth, a state or territory
- disclosure to a department or other body or officeholder established or appointed under a law of the Commonwealth
- 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. Further detail about our process for considering public benefit and detriment is set out in section 4.1 of the AER's Confidentiality Guideline.⁴¹

Information obtained from other regulatory agencies or relevant bodies 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 or body.

5.2 Secondary use

Where appropriate, we may use information initially collected for our wholesale market monitoring and reporting functions for other purposes connected with the performance or

³⁸ [ACCC/AER Information Policy](#), Australian Competition and Consumer Commission/Australian Energy Regulator, June 2014.

³⁹ Section 18D, National Electricity Law; Section 30AD, National Gas Law.

⁴⁰ AER, [Better Regulation: Confidentiality Guideline](#), Australian Energy Regulator, August 2017.

⁴¹ AER, [Better Regulation: Confidentiality Guideline](#), Australian Energy Regulator, August 2017.

exercise of a function or power of the AER under the Electricity, Gas and Retail Laws and Rules. However, we may not issue market monitoring information notices or market monitoring information orders for the purpose of:

- a) investigating a breach or possible breach of the Laws, the Regulations or the Rules, or
- b) commencing or conducting proceedings for a breach or possible breach of the Laws, the Regulations or the Rules, or
- c) commencing or conducting an appeal from a decision in proceedings for a breach or possible breach of the Laws, the Regulations or the Rules, or
- d) responding to an application for review of a decision of the AER under Part 6 Division 3A of the National Electricity Law or Chapter 8 Part 5 of the National Gas Law.⁴²

Information (including confidential information) may be provided by the AER to the Australian Competition and Consumer Commission (ACCC), and other government agencies, under section 44AAF of the CCA. Pursuant to the ACCC/AER Information Policy, if the AER has obtained information in the course of one matter that is relevant to another matter, the AER will, in general, share that information in the context of the other matter subject to any specific legal requirement to the contrary.

5.3 Internal handling

AER data is stored in approved agency information management systems and appropriately classified in alignment with the Protective Security Policy Framework and the *Privacy Act 1988* (Cth). Inadvertent disclosures are managed in accordance with established agency processes.

We are committed to effectively managing data and information (sensitive and non-sensitive) across its life cycle. We follow the requirements of external governing frameworks and agency policies and processes to ensure that our data and information is:

- classified according to its sensitivity
- kept in a secure environment
- protected from unauthorised access, loss, damage or degradation
- used only for appropriate and authorised activities
- released to appropriate audiences under appropriate non-disclosure/on-provision rules
- subject to procedures that prevent and manage inadvertent disclosure of information.

We secure data and information by:

- assessing it as early as possible (at the time of receipt or creation, where possible)
- applying an information security classification and delimiting marker (if applicable)
- storing it in an approved agency system with appropriate access controls.

⁴² Section 18EG(3), National Electricity Law; Section 30AL(3), National Gas Law.

Appendix A – Types of information the AER expects to routinely collect

We will use routine information collection to gather information that will provide valuable insights into the AER's focus areas.

Our focus areas will evolve over time in line with market dynamics, trends, behaviour and/or outcomes. However, they will remain 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 Electricity and Gas Objectives.⁴³

This section includes explanation of why we may seek to collect certain information. This information is provided for guidance only and does not limit in any way the AER's objectives, functions or powers.

To effectively monitor wholesale markets, we expect to routinely collect contracts and related information across the below categories:

- commonly used products that are major drivers of behaviour in the market
- products that are less commonly used but drive behaviour, are critical to managing risk at peak times or other moments of system stress, or inform investment decisions
- products that may have a material impact on costs or access to fuel supply.

For electricity, this includes:

- standard derivatives (both exchange-traded and over-the-counter) because these are the major driver of behaviour, are commonly held and comprise most of the volumes contracted – this category includes products such as base futures, options and caps
- non-standard over-the-counter contracts (such as solar shape or super peaking products), power purchase agreements, weather derivatives and inter-regional settlement residue products, because access to and pricing of these contracts are key determinants of behaviour and investment decisions for generators
- fuel contract information because it provides insight into market behaviour and outcomes.

For gas, this includes:

- bilateral contracts because these comprise most of the volumes contracted on the east coast gas market and are a major driver of behaviour – this category includes products such as master sales agreements, firm, as available, and options contracts
- gas transportation agreements, including gas pipeline storage and location swaps
- gas storage agreements, including time swaps, and LNG exporter foundational and shorter-term agreements, including outcomes of price reviews

⁴³ Section 7, National Electricity Law; Section 23, National Gas Law.

- products relating to refining or processing, including compression and blending, of covered gas
- financial risk management products (both exchange-traded and over-the-counter), including products that relate directly to domestic wholesale gas markets, as well as products that relate to international commodity markets that may be used to hedge bilateral contract positions
- emission-related contracts.

For both electricity and gas, we will routinely collect qualitative information relating to the above products to ascertain participants' risk appetite, risk management strategies, trading strategies and investment consideration in the context of the energy transition.

Where relevant, we will collect information to inform analysis of whether there are features of the market that may be impacting detrimentally on the achievement of the National Electricity and Gas Objectives,⁴⁴ including emissions-related information.

In some cases, we anticipate collecting targeted information within the above categories to input into key metrics, which will allow us to monitor and report on factors affecting market outcomes including:

- the changing role of wholesale gas markets in the context of the east coast gas market
- the extent and ability of participants to manage their risk against volatile market conditions
- how participant behaviour changes over time
- the changing nature and composition of contract markets, particularly as the energy transition progresses
- barriers to entry and participation, including access to contracts and hedging products
- structural impediments to the efficient operation of wholesale markets
- whether wholesale market prices are determined by costs, or other factors
- generators' exposure to fuel costs and availability
- the extent of participants' ability to exercise market power in wholesale markets.

⁴⁴ Section 7, National Electricity Law; Section 23, National Gas Law.

Appendix B – Types and classes of information the AER does not expect to request

We do not expect to request information where we do not anticipate that the value-add of incorporating the information into our analysis will outweigh the burden of collection.

We include below the types and classes of information that we do not expect to request.

For electricity, we do not expect to collect:

- contracts relating to transmission or distribution
- contracts less than 1 MW in total volume.

For gas, we do not expect to collect:

- contracts already submitted to the Gas Bulletin Board
- bilateral trading agreements made between a retailer and an end user below 1 Terajoule in volume per day.

In addition, we do not expect to collect for electricity or gas:

- contracts that have not been executed
- correspondence on the negotiation of contracts
- information collected by another agency, where we are able to obtain and use that information (including for external reporting)
- information captured by the AER through the exercise of other powers, where collection under those powers allows for external reporting.