

Wholesale Market Monitoring and Reporting

Draft MMIO-ELEC-2025-02 –
Explanatory Statement

September 2025

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1.0	22 September 2025	14

Request for Submissions

Interested parties are invited to make a written submission to the Australian Energy Regulatory (AER) on the draft Market Monitoring Information Order accompanying this statement.

Submissions should be made via email to [ContractMarketMonitoring@aer.gov.au](mailto:ContractMarketMonitoring@ aer.gov.au), with the subject line 'Draft Order MMIO-ELEC-2025-02' by **close of business, Tuesday 04 November 2025**.

Alternatively, submissions can be mailed to:

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Submissions should be in PDF, Microsoft Word or another text readable document format. Due to timing constraints, 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; and
- 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 Explanatory Statement, or about lodging submissions, should be directed to the [ContractMarketMonitoring@aer.gov.au](mailto:ContractMarketMonitoring@ aer.gov.au).

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Definitions and 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
ASX	Australian Securities Exchange and its nominated clearing house, ASX Clear (Futures)
Class	A specified class of persons defined in section 2 of the Order
Class Member	A person within a Class
FEX	FEX Global Financial Exchange and its nominated clearing house, Chicago Mercantile Exchange Inc
NEL	National Electricity Law, as laid out in the Schedule to the <i>National Electricity (South Australia) Act 1996</i> (SA), as applied by the relevant implementing legislation
NER	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
OTC	Over-the-counter: refers to Contracts traded without going through an Exchange. OTC Contracts can be traded with or without the assistance of a broker
PPA	Power purchase agreement: a long-term financial agreement between an electricity generator and a customer at an agreed price over a fixed term for energy generated from a renewable energy asset, including but not limited to solar power and wind power. This does not include Retail Pass-through Contracts, Contracts pertaining to networks, interconnectors or network capacity or agreements between a Class Member and its Related Body Corporates
Related Body Corporate	Has the meaning given in section 50 of the <i>Corporations Act 2001 (Cth)</i> but only includes such entities that are incorporated in Australia or that carry on business in Australia
Retail Pass-through	The process by which changes in wholesale electricity prices are reflected in retail prices

1. Introduction

The AER is required to regularly and systematically monitor and review the performance, effective competition and efficient functioning of wholesale electricity markets and markets for financial risk management products.¹ At least once every 2 years, the AER must publish a report on these monitoring activities. This report 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.²

In 2024, we published our [Wholesale Market Monitoring and Reporting Guideline](#) which sets out our general approach to our wholesale market monitoring functions, and the collection and reporting of information related to these functions.

Over November-December 2024, we consulted on draft information collection instruments, including an Electricity Order (MMIO-ELEC-2025-01). We received extensive, thoughtful and complex stakeholder feedback on the draft instruments, primarily focussed on burden, collection design and data security. Given the enduring nature of Orders, the comprehensive nature of the feedback, and our ongoing commitment to our information handling arrangements, we decided not to make MMIO-ELEC-2025-01 while we appropriately considered the received feedback.

After thorough consideration of the feedback received, we have now, in accordance with section 18EH of the National Electricity Law (NEL), published for consultation a new draft Order (identified as MMIO-ELEC-2025-02) (Order).

We are committed to undertaking meaningful stakeholder engagement to develop a well designed Order, which appropriately balances burden for recipients against insights that the information will deliver for our monitoring functions. This process helps us make better decisions, provides greater transparency and predictability, and builds trust and confidence in our reporting. Feedback received in respect of the draft Order will shape the final Order which we are aiming to serve in December 2025.

Please note that in addition to receiving submissions, the AER is open to engaging with stakeholders through one-on-one meetings to gather feedback and input.

This Explanatory Statement accompanies the draft Order. It provides:

- Information regarding the consultation process;
- General guidance on our approach to the draft Order, including our approach to minimise burden, compliance, confidentiality, data management and security; and
- A practical overview of the expected operation of our data portal.

¹ NEL, s.18C.

² NEL, s.18C(2).

Information contained in this Explanatory Statement is to support the requirements detailed in the draft Order and should not be read to qualify or replace any requirement stated therewithin.

1.1. Consultation

We are interested in stakeholder feedback on any aspect of the draft Order. However, to assist in responding, we have provided the below questions.

- 1) Whether the framing of the draft qualitative questions is clear, appropriate and answerable. If not, please provide detail on your preferred framing.
- 2) The burden the Order is likely to impose. This could include whether:
 - a) the required information is readily available, and in the required format.
 - b) any system changes would be required to efficiently provide the information required by the Order.
- 3) Any estimated costs of complying with the Order and where they are attributed (for example, system changes).
- 4) Any suggestions on further approaches to minimise participant burden and/or costs while maintaining the integrity of the information required.
- 5) Whether the proposed response due dates (both initial and ongoing) provide reasonable timeframes for setting up new reporting systems to meet the requirements and resourcing for ongoing reporting. If not, please provide details of your preferred timing and basis for the preferred timing.
- 6) Our approach to the AER Portal and data management, and any considerations relevant to the external user experience, including the burden or cost of using the portal as shown in Appendix A.

We anticipate progressing the consultation and finalisation of MMIO-ELEC-2025-02 along the indicative timeline at Table 1.

Table 1: Indicative timeline for MMIO-ELEC-2025-02

Milestone	Date
AER publication of draft Order	22 September 2025
Submissions on the draft Order due	04 November 2025
AER publication of final Order	December 2025
Initial submission of information due under the Order	March 2026

2. Approach to minimising burden and responses to feedback

In designing the draft Order, we have undertaken a preliminary assessment of the costs likely to be incurred by Class Members, and have considered whether the information can be obtained another way.³ We have also had regard to feedback received during consultation on previous draft information collection instruments in November-December 2024. This section outlines some of the approaches we have taken in developing the draft Order to minimise burden.

2.1. Frequency of reporting

In determining the frequency of information submission, we have weighed up our monitoring and reporting purposes against the burden of more frequent reporting. We consider that periodic reporting at the frequencies set out below appropriately balances burden against ensuring that we have the level of market visibility that we require in order to perform our functions:⁴

- **One-off** collection of information relating to Power Purchase Agreements (PPAs). While we anticipate collecting information relating to PPAs more routinely in the future, we recognise from consultation in 2024 that these bespoke agreements are challenging to collect in a low burden manner as they are not easily captured by a template. While we continue to consider a method to collect this information which balances the AER's need to obtain the information to perform our functions against the burden on Classes, we propose collecting quantitative historical information on a one-off basis.
- **Quarterly** collection of certain information, including quantitative trade data on exchange trades and standard OTC products. The quarterly timeframe aligns with the typical trading timeframe of many standard products and the current AER reporting and analysis cycles and will allow the AER to stay reasonably abreast of market issues as they emerge. We have also considered stakeholder feedback from 2024 regarding timing of regular reporting in proposing submission dates, see section 2.2.
- **Annual** collection of information relating to access to contracts and corporate structure. As most of these questions relate to matters of a longer-term nature, we intend to collect the information annually. As with quarterly reporting, we have considered stakeholder feedback received in 2024 regarding timing of responses, see section 2.2.

2.2. Submission dates

Stakeholders have advised in previous consultation that the end of calendar year and financial year are high demand periods. In response to this, for annual information collection, the draft Order proposes submission at the beginning of February each year.

³ NEL, s.18EG(2).

⁴ Note that the periodic frequencies set out above do not include the one-off collection of historical information under Data categories Quarterly 01 and 02 required under section 4 of the Order.

For quarterly information collection, we propose allowing one month from the end of the relevant quarter to submit.

Notwithstanding the above, the one-off submission of historical information is proposed for March 2026. We are proposing this date to allow for the ingestion and analysis of information for our monitoring activities and for its inclusion in our biennial wholesale electricity market performance report. While we recognise that the end of each quarter is a busy period for Classes, we anticipate that the burden is offset by the non-ongoing nature of this submission and the 6-month foreshadowing period we are providing through this consultation.

2.3. Historical information

In accordance with section 18EF(2) of the NEL, the AER may collect information and agreements which were in effect on or after 8 May 2019. However, we understand from engagement with stakeholders on our draft Guidelines in 2023, and draft instruments in 2024 that there can be significant burden in setting up new reporting systems to meet AER requirements, which would be compounded by requesting a large historical dataset. In recognition of this, we have adopted three methods to minimise the burden of historical information collection in the draft Order:

- limiting the time horizon of historical collection to five years, only seeking contracts which were in effect on or after 01 January 2021;
- providing 6 months foreshadowing of this expected requirement; and
- providing a minimum of 3 months from the date the Order is published to the submission date for providing historical information.

2.4. Approach for standard contracts

We understand from stakeholders that it is relatively easy to provide quantitative data on exchange trades and standard OTC products⁵ as they are standardised and easily definable. In response to feedback received during consultation in 2024, we have provided definitions for each data field in the submission templates to further enhance the clarity of these requirements.

However, we continue to explore the possibility of obtaining information on exchange trades directly from the ASX, FEX and/or clearing parties, including counterparty information. If practical, this may enable us to reduce the quantity and scope of information requested from energy market participants in respect of exchange trades in the future.

2.5. Qualitative questions

We understand from consultation with stakeholders in 2024 that responding to qualitative questions can be burdensome.

Where possible, we have used survey-style questions for qualitative collections, seeking yes/no responses or the selection of responses from a provided list. We anticipate that

⁵ OTC contracts that have contract terms that embody the essential characteristics, but are not necessarily exactly the same as standard base, cap, peak and options contracts traded on an Exchange (as defined in the draft Order).

responding to these questions will present a lower burden than open-ended questions. We are interested in stakeholder feedback on the draft questions and feedback on how they could be tailored to further increase clarity.

2.6. Assurance requirements

Under the NEL, the AER can require a Class Member to attest to the quality and completeness of its response to an Order by way of a statutory declaration.⁶ We understand from previous engagement with stakeholders in 2023 and 2024 that statutory declarations can present additional burden for recipients.

We consider it essential to ensure that an officer of a Class Member has turned their mind to ensuring that a response to the Order is accurate and comprehensive. However, we understand that all assurance requirements carry a degree of burden. To balance the need for appropriate attestation of accuracy against participant burden, the draft Order provides the following options for an Authorised Officer of a Class Member to attest to the quality and completeness:

- submit a proforma for certification (see section 7 and Appendix B of the draft Order);
- include a statement in a submission's covering letter attesting to the completeness and quality of the submission (see section 7 of the draft Order); or
- use an alternate method agreed by the AER.

3. Compliance framework

Section 18EL(1) of the NEL requires a person who is a member of a class of persons specified in an Order to comply with that Order.

This section of the NEL is a Tier 1 civil penalty provision.⁷ Tier 1 civil penalty provisions carry the most severe penalties for non-compliance, reflecting the importance of the obligations to the regulatory framework.

We have a range of options available to address non-compliance with an Order, including administrative resolutions, guidance notes/compliance bulletins, infringement notices and court action. Our [Compliance & Enforcement Policy](#) informs our approach to non-compliance and sets out the principles we apply when taking a risk-based approach to our compliance and enforcement work. The AER Compliance and Enforcement Policy should be read in conjunction with the Compliance and Enforcement Priorities published on the AER's website.

Our approach aims to both encourage strong compliance levels across the industry and to address and deter non-compliance. It broadly involves:

- gathering and assessing compliance information;
- considering public interest and broader trends in the sector; and
- assessing the likelihood of non-compliance and the potential for harm.

⁶ NEL, s.18EM.

⁷ Schedule 1 to the *National Electricity (South Australia) Regulations 1996* (SA) provides that section 18EK is a Tier 1 civil penalty provision.

Our risk-based approach to assessing non-compliance is informed by several factors which include, but are not limited to:

- the environment in which we operate;
- concerns emerging from, or identified through, our monitoring of compliance and performance under relevant energy laws and from our investigative activities;
- the nature of the obligation/s, including the potential harm or detriment that can result from non-compliance and the likelihood (and likely extent) of non-compliance; and
- the party or parties subject to the obligation/s in question, their compliance culture and history of compliance.

This allows us to ensure that our compliance and enforcement work is focused on the issues of greatest importance to both the protection of consumers and the effective operation of the markets which we regulate.

Our general approach for new obligations is to adopt a facilitative education approach, working with participants to help them understand their obligations to ensure they can effectively implement robust systems and processes to achieve compliance. We will engage constructively with Class Members to address any unforeseen challenges which arise while these obligations are new.

If a Class Member is unable to comply with its obligations before the relevant date outlined in the draft Order, they may seek an extension of time through the appropriate channels outlined in section 11 of the draft Order. Class Members can also request an exemption from compliance with parts or the whole of the Order as outlined in section 10 of the draft Order. The AER will consider exemption applications on a case-by-case basis.

4. Confidentiality and Reporting

We are conscious that the information to be collected under this draft Order is commercially sensitive and confidential in nature and there is a need to apply appropriate information handling arrangements to address various potential sources of risk.

All information and/or agreements received in response to an Order are automatically deemed to have been given to the AER in confidence.⁸ The AER is required to take all reasonable measures to protect from unauthorised use or disclosure of information given to it in confidence or that is obtained by compulsion in the exercise of the AER's powers, pursuant to section 44AAF of the *Competition and Consumer Act 2010* (CCA).

Protections under section 44AAF of the CCA would also apply to information provided by a recipient to the AER on a voluntary basis (for example, where the information provided extends beyond that requested in the Order), as long as the party providing the information makes it clear, when doing so, that the information is provided in confidence.

The CCA, the NEL, the [ACCC/AER Information Policy](#), and the [AER's Enhanced Wholesale Market Monitoring Guideline](#) 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 by a person for the purposes of performing the functions as an AER member;
- if the information has been de-identified or aggregated so that it does not reveal any confidential aspects; and

⁸ NEL, s.18D.

- 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](#). If the disclosure of information is authorised as the detriment does not outweigh public benefit, the AER will afford procedural fairness to the information provider/s.

5. Data security and submission method

5.1. Data security and management

The ACCC/AER's security policies are required to be consistent with the Protective Security Policy Framework (PSPF) and Information Security Manual (ISM). In handling the collected information, we will implement a range of established data protection measures designed to control access, secure information, and monitor its use.

We also confirm that all employees are subject to various legislative obligations that prohibit the disclosure of information and impose penalties for non-compliance.⁹

5.2. Submission method

The Order requires the submission of information specified in Appendix A of the Order via the AER Portal. However, section 5.2 of the Order provides that the AER may direct Class Members, in writing, to provide the required information via OurShare. We anticipate that all submissions under the Order will be submitted via the AER Portal. However, this clause provides redundancy and an alternate submission method that the AER could seek to use in the event of delays to the AER Portal.

If the AER directs Class Members to provide a submission via OurShare, we will, as early as practicable, provide a link to OurShare and specify for which applicable reporting period and submission date the requirement applies. Class Members will not be required to provide a duplicate submission via the AER Portal.

AER Portal

We are continuing to develop the AER Portal. We note stakeholder interest in the AER Portal and we intend to provide further information regarding the AER Portal, including an opportunity for Class Members to test and familiarise themselves with it, later in 2025.

Prior to their first submission, Class Members will be asked to provide the AER, via email to ContractMarketMonitoring@aer.gov.au, details for a maximum of two people per Class Member which will be used to create AER Portal User accounts. The below details will be required:

- Name (first name and surname)
- Job title

⁹ For further information, see *Public Service Regulations 1999* regulation 2.1 and *Australian Public Service Code of Conduct* section 4.4.3.

- Email address
- Phone number

AER Portal User accounts may be updated as required by contacting the AER at ContractMarketMonitoring@aer.gov.au.

OurShare

OurShare is an established secure file transfer system used by the AER to receive files, including those containing confidential and commercially sensitive information. It has been independently certified by an approved assessor under the Information Security Registered Assessors Program (IRAP).

Appendix A: Summary of requirements for MMIO-ELEC-2025-02

The below table provides a broad summary of information proposed to be collected by the AER using MMIO-ELEC-2025-02 subject to this consultation. It is provided for reference only and does not substitute or replace the contents of the relevant Order. Persons should refer to the Order for details on how to provide the information, and the required format.

Table 1: Draft MMIO-ELEC-2025-02

Information to be provided	Class/es	Submission date
One-off		
Data Category Quarterly 01 - Historical exchange-traded contracts	Retailers Generators IRPs* Trading Companies	[Date – at least 3 months from the date of publishing the final Order]
Data Category Quarterly 02 - Historical OTC contracts		
Data Category One-off 01 - Historical PPAs		
Quarterly		
Data Category Quarterly 01 - Exchange-traded contracts	Retailers Generators IRPs* Trading Companies	Initial submission: 01 May 2026
Data Category Quarterly 02 - OTC contracts		Routine submissions each year of the Order: 01 February 01 May 01 August 01 November
Annual		
Data Category Annual 01 - Qualitative questions regarding access to contracts	Retailers Generators IRPs* Trading Companies	Initial submissions: [Date – at least 3 months from the date of publishing the final Order] Routine submissions each year of the Order:
Data Category Annual 02 - Qualitative questions regarding access to contracts		01 February
Data Category Annual 03 - Corporate structure		Retailers Generators IRPs*

* Integrated Resource Providers