

# Draft Reliability Compliance Procedures and Guidelines

Retailer Reliability Obligation

March 2023

© Commonwealth of Australia 2023

This work is copyright. In addition to any use permitted under the *Copyright Act 1968* all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website as is the full legal code for the CC BY 3.0 AU licence.

Inquiries about this publication should be addressed to:

Australian Energy Regulator  
GPO Box 3131  
Canberra ACT 2601  
Tel: 1300 585 165

AER reference: 201249/14808933

#### **Amendment record**

<b>Version</b>	<b>Date</b>	<b>Pages</b>
1.0	March 2023	27

# Contents

<b>Glossary</b>	<b>iv</b>
<b>1 Overview</b>	<b>1</b>
1.1 Roles and functions of the AER	1
1.2 Purpose of the guidelines	2
1.3 Definitions and interpretation	3
1.4 Process for revision and version control	3
<b>2 Development and submission of net contract position report</b>	<b>4</b>
2.1 AER expectations for development of bespoke firmness methodologies and factors	4
<b>3 Assessment process for ‘reliability obligations’</b>	<b>6</b>
3.1 Notice to a liable entity of non-compliance	9
3.2 Opportunity to respond to AER assessment	9
3.3 Notification to AEMO for PoLR costs (‘AER PoLR Report’)	11
<b>4 Requirement to establish appropriate policies, systems and procedures</b>	<b>13</b>
<b>5 Requirement to provide data and information</b>	<b>14</b>
5.1 Requirement to provide information following NCP report submission	15
<b>6 Compliance audits</b>	<b>16</b>
6.1 Approach to carrying out compliance audits	17
6.2 Compliance audits by the AER	19
6.3 Compliance audits by a regulated entity	21

## Glossary

Term	Definition
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AER PoLR Report	AER Procurer of Last Resort Report
Compliance TI	Compliance Trading Interval
Draft Guidelines	Draft Reliability Compliance Procedures and Guidelines
Electricity Law	National Electricity Law
Electricity Rules	National Electricity Rules
Guidelines	Reliability Compliance Procedures and Guidelines developed under s. 18ZL(1) of the Electricity Law
MLO	Market Liquidity Obligation
NCP	Net Contract Position
NCP report	Net Contract Position Report
PoLR	Procurer of Last Resort
PoLR TI	Procurer of Last Resort Trading Interval
RERT	Reliability and Emergency Reserve Trader
RRO	Retailer Reliability Obligation
Standard	AS/ISO 37301 – Compliance Management Systems

# 1 Overview

On 1 July 2019, the *Retailer Reliability Obligation* (RRO) came into effect through amendments to the National Electricity Law (Electricity Law) and National Electricity Rules (Electricity Rules).<sup>1</sup> The RRO is supported by a suite of six AER guidelines,<sup>2</sup> which provide detail on how the various stages of the RRO operate and impose obligations on entities involved in the RRO.

Section 18ZI of the Electricity Law requires the *Australian Energy Regulator* (AER) to make *Reliability Compliance Procedures and Guidelines* (Guidelines). The Guidelines are made and published in accordance with the rules and consultation procedures set out in Part F of Chapter 8 of the Electricity Rules.

Section 18ZD of the Electricity Law requires a *regulated entity* to give the AER, in the manner, form and timeframes required by the Guidelines, information and data relating to the *regulated entity's* compliance with the RRO. This is a *tier 2 civil penalty provision*.<sup>3</sup>

This document is the Draft Guidelines.

## 1.1 Roles and functions of the AER

The AER has a range of roles with regards to the RRO which are outlined in Part 2A of the Electricity Law and Chapter 4A of the Electricity Rules.

In addition to our role in the administration of the RRO, we must monitor, investigate and enforce compliance by *regulated entities* with the RRO provisions. We are able to assess compliance and pursue enforcement of any requirements under the RRO, in line with our pre-existing powers under the Electricity Law.

We undertake these activities in the same manner we perform our overarching compliance and enforcement role. Our Compliance and Enforcement Policy<sup>4</sup> sets out our general approach to our roles and functions in monitoring, investigating and enforcing compliance with national energy laws – the Electricity Law and Rules, National Gas Law and Rules and

---

<sup>1</sup> Electricity Law, s. 2: Retailer Reliability Obligation means: (a) Part 2A of the Electricity Law; and (b) the provisions of the Electricity Rules that relate to Part 2A of the Electricity Law. These rules include Chapter 4A of the Electricity Rules.

<sup>2</sup> These guidelines can be viewed at <https://www.aer.gov.au/retail-markets/retailer-reliability-obligation>.

<sup>3</sup> Under s. 85(1) of the Electricity Law, if a corporation contravenes a civil penalty provision, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach. Further, s. 85(2) provides that an officer of a corporation may be subject to proceedings, regardless of whether proceedings have been taken against the corporation itself.

<sup>4</sup> The AER Compliance and Enforcement Policy can be viewed at <https://www.aer.gov.au/publications/corporate-documents/aer-compliance-enforcement-policy>.

National Energy Retail Law and Rules, and their associated Regulations and Guidelines and how this contributes to the purpose, vision and objectives set out in our Strategic Plan.<sup>5</sup>

The AER's Compliance and Enforcement Priorities, published annually, help guide our enforcement work and proactive compliance efforts, and also signal areas where we consider that behavioural change in the market is required.<sup>6</sup>

## 1.2 Purpose of the guidelines

The purpose of the Guidelines is to support *regulated entities*' compliance with the RRO by providing guidance:

- for *regulated entities* about compliance with the '*reliability obligations*',<sup>7</sup> including but not limited to:
  - the process and timeframes for notifying *liable entities* and the *Australian Energy Market Operator* (AEMO) about the AER's compliance assessments at the conclusion of a *reliability gap period*;<sup>8</sup> and
  - the information the AER will include in the AER Procurer of Last Resort Report (*AER PoLR Report*) to AEMO at the conclusion of a *reliability gap period*;<sup>9</sup>
- about the policies, systems and procedures that *regulated entities* must establish and observe under section 18ZB of the Electricity Law to monitor their own compliance with the RRO;<sup>10</sup>
- on the information and data *regulated entities* must provide to the AER under section 18ZD of the Electricity Law;<sup>11</sup> and
- on carrying out *compliance audits* under sections 18ZE and 18ZF of the Electricity Law, including the costs payable by *regulated entities* for an audit carried out by or on behalf of the AER.<sup>12</sup>

The Guidelines refer to the general requirements under the Electricity Law and Rules and do not constitute legal advice. Where a *liable entity* is unsure about specific aspects of the legislation and how they apply to certain situations, it should obtain its own legal advice. In

---

<sup>5</sup> The AER Strategic Plan can be viewed at [https://www.aer.gov.au/system/files/AER-Strategic-Plan\\_2020-2025.pdf](https://www.aer.gov.au/system/files/AER-Strategic-Plan_2020-2025.pdf).

<sup>6</sup> The AER's Compliance and Enforcement Priorities can be viewed at <https://www.aer.gov.au/about-us/our-role/compliance-enforcement>.

<sup>7</sup> Electricity Law, s. 2: The *reliability obligations* are ss. 14P(1) and (3) and 14R(2) of the Electricity Law.

<sup>8</sup> Electricity Rules, cl. 4A.F.7(c)(1) and (2), 4A.F.7(a), and 4A.F.8(a).

<sup>9</sup> Electricity Law, s. 18ZI(2)(c); Electricity Rules, cl. 4A.F.7(a) and 4A.F.8(a).

<sup>10</sup> Electricity Law, s. 18ZI(2)(ii).

<sup>11</sup> Electricity Law, s. 18ZI(2)(a)(iii).

<sup>12</sup> Electricity Law, s. 18ZI(2)(b).

the event of any inconsistency between the Electricity Law/Electricity Rules and the Guidelines, the legislation will prevail.

### **1.3 Definitions and interpretation**

In these Guidelines, words and phrases that are presented in italics have the meaning given to them in the Electricity Law or Rules. A failure to italicise a term defined in the Electricity Law or Rules does not affect its meaning.

### **1.4 Process for revision and version control**

The AER may, from time to time, amend these Guidelines in accordance with the *Rules consultation procedures*.<sup>13</sup> However, the AER need not follow the *Rules consultation procedures* when making minor or administrative amendments.

---

<sup>13</sup> Electricity Rules Chapter 8, Part F.

## 2 Development and submission of net contract position report

All *liable entities* must submit an *NCP report* to the AER by the *reporting day* for each *forecast reliability gap period*.<sup>14</sup> The *NCP report* demonstrates a *liable entity's net contract position* (NCP) for the *forecast reliability gap period*, as it was on the *contract position day*. The *NCP report* is required to include the specific information set out in clause 4A.E.6(b) of the Electricity Rules.

This information and the manner in which it must be submitted are outlined in section 9 of the AER's Interim Contracts and Firmness Guidelines.

A *liable entity* must develop any *bespoke firmness methodology* in accordance with the guidance provided in sections 3 and 5 of the AER's Interim Contracts and Firmness Guidelines, and have those methodologies and resulting firmness factors approved by an *Independent Auditor* before including them in the *NCP report*.

Section 2.1 below discusses the AER's expectations for the development and approval process for *bespoke firmness methodologies* and factors prior to *NCP report* submission.<sup>15</sup>

Following submission of its *NCP report*, the AER will assess the *liable entity's* compliance with the *reliability obligations* with reference to the information provided in the report, and any other relevant information in the circumstances.

In assessing the validity of a *liable entity's NCP report*, the AER may seek further information from the *liable entity* as set out in section 5.1.

### 2.1 AER expectations for development of bespoke firmness methodologies and factors

While a *liable entity* may seek external assistance in developing *bespoke firmness methodologies* and factors, this should not involve the *Independent Auditor* who will approve them as it would compromise the independence of the *Independent Auditor*. Once submitted

---

<sup>14</sup> A *new entrant* for a *region* is a person who meets the requirements of cl. 4A.D.3 of the Electricity Rules. In accordance with Electricity Rules cl. 4A.C.10, if the AER makes a *T-1 reliability instrument* it must set a *new entrant contract position day* and a *new entrant reporting day*. For a *new entrant*, the *reporting day* means the day stated in the relevant *T-1 reliability instrument*.

<sup>15</sup> This type of guidance is permitted by section 18ZI(2)(a)(iii) of the NEL, which provides that, without limitation, the Guidelines may provide guidance for regulated entities about compliance with the *reliability obligations*. Section 3 of the Guidelines provides further details of the assessment process for the *reliability obligations*.



to the *Independent Auditor* for approval, it is open to the *Independent Auditor* to make necessary corrections to those factors and methodologies before approving them.<sup>16</sup>

The AER expects *Independent Auditors* to maintain sufficient records to verify and substantiate any completed assessments and approvals of any *bespoke firmness methodologies* or factors relied upon by a *liable entity* in an *NCP Report*, and provide those records to the AER on request.<sup>17</sup>

---

<sup>16</sup> Section 3 of the AER's Auditors Panel Handbook sets out the ongoing responsibilities of *Auditors Panel* members. The Auditors Panel Handbook can be viewed at <https://www.aer.gov.au/system/files/Auditors%20Panel%20Handbook%20-%20Version%20%20-%20April%202021.pdf>.

<sup>17</sup> Auditors Panel Handbook, section 3.

### 3 Assessment process for ‘reliability obligations’

The RRO places contracting and reporting obligations on *liable entities* in a given region when a *reliability gap* has been identified and a *reliability instrument* issued. A key component of the RRO framework is the ‘*reliability obligations*’.

#### Reliability obligations

The ‘*reliability obligations*’ are those applying to *regulated entities* under subsections 14P(1) and (3) and subsection 14R(2) of the Electricity Law:<sup>18</sup>

- **Section 14P – Obligation to report NCP**

(1) The *liable entity* must give the AER a report about the *liable entity’s* [NCP] for the stated *trading intervals* during the *reliability gap period* as at the *contract position day*—

- (a) that complies with subsection (2); and
- (b) on or before the *reporting day* stated in the *T-1 reliability instrument*.

(2) The report must—

- (a) include the information required under the Electricity Rules; and
- (b) be prepared and given in the manner and form required by the Electricity Rules.<sup>19</sup>

(3) The *liable entity* must not provide information in a report the *liable entity* knows is false or misleading in a material particular.

- **Subsection 14R(2) – Obligation to have contracted sufficiently for *one-in-two year peak demand forecast***

The *liable entity* must comply with the obligation that the *liable entity’s* [NCP] for a *trading interval* is not less than the *liable entity’s* share of the *one-in-two year peak demand forecast* for the *trading interval* determined in accordance with the [Electricity] Rules.

These provisions inform the AER’s assessment of compliance following a *reliability gap period*, and AEMO’s recovery of its costs as a procurer of last resort (PoLR) under the *Reliability and Emergency Reserve Trader* (RERT) framework. They are also *civil penalty provisions*, and failure to comply with them may attract financial penalties should the AER decide to take enforcement action.

---

<sup>18</sup> Electricity Law, s. 2 – Definitions: ‘*Reliability obligations*’.

<sup>19</sup> See also Electricity Rules, cl. 4A.E.6.

## Assessment process framework in the Electricity Law and Rules

The Electricity Law and Rules set out the following broad framework informing the assessment process for the *reliability obligations* once the AER makes a *T-1 reliability instrument* for a particular region:

- A *liable entity* must hold a sufficient NCP for the relevant *reliability gap period* by the *contract position day*, and submit an *NCP report* to the AER by the *reporting day*. At the end of each *reliability gap period*, AEMO will determine whether measured peak demand exceeds the *one-in-two year peak demand forecast*<sup>20</sup> for any *trading interval* in the *forecast reliability gap period* (a '*Compliance TI*').<sup>21</sup>
- If a *Compliance TI* is identified, AEMO will calculate each *liable entity's* share of *forecast one-in-two-year peak demand* for the *Compliance TI*, and provide this to the AER.<sup>22</sup>
- The AER must then assess whether any *liable entity's* NCP<sup>23</sup> is less than its *liable share* for any *Compliance TI*. Where this is the case, the Electricity Rules require the AER to give written notice to the *liable entity* of the AER's assessment and provide the *liable entity* an opportunity to respond to the notice.<sup>24</sup>
- If, having considered the *liable entity's* response, the AER finds that a *liable entity's* NCP is less than the *liable entity's* share for a *Compliance TI*, the AER must provide an *AER PoLR Report* to AEMO.<sup>25</sup>

These Guidelines set out further details of the process for the AER's assessment and reporting of compliance with the *reliability obligations*, including:

- How the AER will give notice to a *liable entity* where its assessment is that the *liable entity's* NCP for a trading interval is less than its *liable share*: see section 3.1.<sup>26</sup>
- How the AER will give the *liable entity* an opportunity to respond to that notice before it provides the *AER PoLR Report* to AEMO: see section 3.2.<sup>27</sup>

---

<sup>20</sup> In accordance with Electricity Rules clause 4A.A.3, AEMO must specify the *forecast one-in-two year peak demand* in the *reliability forecast*. AEMO reports the 50% Probability of Exceedance operational maximum demand forecast on an 'as generated' basis for this purpose. The forecast is reported in the annual Electricity Statement of Opportunities, with the 2022 report available at [https://aemo.com.au/-/media/files/electricity/nem/planning\\_and\\_forecasting/nem\\_esoo/2022/2022-electricity-statement-of-opportunities.pdf?la=en](https://aemo.com.au/-/media/files/electricity/nem/planning_and_forecasting/nem_esoo/2022/2022-electricity-statement-of-opportunities.pdf?la=en).

<sup>21</sup> Electricity Rules, cl. 4A.F.2 and 4A.F.4.

<sup>22</sup> Electricity Rules, cl. 4A.F.3 and 4A.F.5.

<sup>23</sup> Electricity Rules, cl. 4A.F.7(b).

<sup>24</sup> Electricity Rules, cl. 4A.F.7(c)(1).

<sup>25</sup> Electricity Rules, cl. 4A.F.8(a).

<sup>26</sup> Electricity Rules, cl. 4A.F.7(c)(1).

<sup>27</sup> Electricity Rules, cl. 4A.F.7(c)(2).

- The process and timeframe for submission of the *AER PoLR Report* to AEMO,<sup>28</sup> and the information the AER will include in the *AER PoLR Report*: see section 3.3.<sup>29</sup>

### **Civil penalty regime for the reliability obligations**

#### *Civil penalty provisions for a breach of section 14P(1) or 14P(3) of the Electricity Law*

- The NCP reporting obligations set out in sections 14P(1) and 14P(3) of the Electricity Law are *tier 2 civil penalty provisions*.
- Section 2AB(1)(b) of the Electricity Law<sup>30</sup> provides that if the breach is by a natural person, the civil penalty is an amount not exceeding \$287 000<sup>31</sup> plus an amount not exceeding \$14 400 for every day during which the breach continues. If the breach is by a body corporate, the civil penalty is an amount not exceeding \$1 435 000, plus an amount not exceeding \$71 800 for every day during which the breach continues.

#### *Civil penalty provisions for a breach of section 14R(2) of the Electricity Law*

- The requirement that a *liable entity's* NCP is not less than its liable share under section 14R(2) of the Electricity Law is classified as a '*reliability obligation civil penalty provision*' which means it is subject to a different civil penalty regime.
- Section 2AB(1)(d) of the Electricity Law<sup>32</sup> provides that if the breach is by a natural person, the penalty is an amount not exceeding \$1 435 000. If the breach is a body corporate the penalty is either an amount not exceeding \$1 435 000 for a breach that relates to a *reliability gap period* or, an amount that applies under paragraph 2AB(c)(ii) of the Electricity Law (i.e., a tier 1 civil penalty) for a breach that relates to a second or subsequent *reliability gap period*.
- While the AER can institute proceedings in relation to multiple breaches in the same *reliability gap period*, a person is only liable for one civil penalty for each *reliability gap period*.<sup>33</sup>

---

<sup>28</sup> Electricity Rules, cl. 4A.F.8(a).

<sup>29</sup> Electricity Law, s. 18ZI(2)(c); Electricity Rules, cl. 4A.F.8(a)(4).

<sup>30</sup> Section 2AB(1)(b) of the Electricity Law relates to civil penalty amounts for tier two civil penalty breaches.

<sup>31</sup> In accordance with s. 37A of the Electricity Law, penalty values are adjusted every three years to reflect movements in the consumer price index. The penalty values for breaches of the *civil penalty provisions* stated in the Guidelines are accurate as of the date of publication of the Guidelines. The first adjustment is due to occur on 1 July 2023.

<sup>32</sup> Section 2AB(1)(d) of the Electricity Law relates to civil penalty amounts for breaches of a *reliability obligation civil penalty provision*.

<sup>33</sup> Section 67A in the Schedule of the Electricity Law deals with conduct that constitutes multiple breaches of a '*reliability obligation civil penalty provision*' (i.e., section 14R(2), as defined in section 2AA(1a) of the Electricity Law) in the same *reliability gap period*.

### 3.1 Notice to a liable entity of non-compliance

The AER's notice of assessment to a *liable entity* that its NCP for a *Compliance TI* is less than its *liable share* will set out:

- the *liable entity's* details (registered name, ABN, participant ID (if applicable));
- the *reliability instrument* to which the notice relates;
- the date and time of each *trading interval* identified in AEMO's compliance report as a *Compliance TI*;
- the *liable entity's liable share* in each *Compliance TI*, as identified in AEMO's compliance report (including any adjustment that has been made to the *liable share*—for example, a demand response contract that has been added back—in that report);<sup>34</sup>
- the AER's calculation of the number of megawatts by which the *liable entity's liable share* for a *Compliance TI* exceeds its NCP for that *Compliance TI* (the *uncontracted MW position*);<sup>35</sup>
- the basis for the AER's calculation of that difference, and the information the AER has relied on to make that calculation; and
- the date by which any response to the notice must be received in order to be taken into account in the *AER PoLR Report* to AEMO (see sections 3.2 and 3.3 below).

The AER will provide written notification to each affected *liable entity* as soon as practicable and no later than 50 business days after the AER receives AEMO's compliance report.<sup>36</sup> However, a notice of assessment under this section remains valid should it be provided to a liable entity more than 50 business days after the AER receives AEMO's compliance report.

### 3.2 Opportunity to respond to AER assessment

The AER must provide the *liable entity* an opportunity to respond to the AER's notice of assessment of its NCP.<sup>37</sup>

A *liable entity's* response to a notice of non-compliance from the AER must be submitted in writing to [RRO@aer.gov.au](mailto:RRO@aer.gov.au).

---

<sup>34</sup> For further information on adjustments, please refer to sections 3, 4 and 5 of the AER's Interim Contracts and Firmness Guidelines (published August 2019) <https://www.aer.gov.au/retail-markets/guidelines-reviews/retailer-reliability-obligation-interim-contracts-and-firmness-guideline>.

<sup>35</sup> Electricity Rules, cl. 4A.F.8(a)(3).

<sup>36</sup> Electricity Rules, cl. 4A.F.5 and 4A.F.7(c)(1).

<sup>37</sup> Electricity Rules, cl 4A.F.7(c)(2).

If the *liable entity* does not accept the AER's assessment for a *Compliance TI*, it must, in its written response:

- clearly identify the error(s) it considers the AER has made in its calculation;
- provide its own calculation of the number of megawatts by which its *liable share* for the *Compliance TI* differs from its NCP;
- include a quantitative breakdown of the variation between its calculation and the AER's calculation. That is, a breakdown of the calculations into their relevant components specifying the quantitative variation for each component;
- clearly set out the basis for its alternative calculation and the information relied upon, including whether the *liable entity* has previously made that information available to the AER in its *NCP report* or whether it forms part of an approved adjustment to its *NCP report* (and if not, why not);<sup>38</sup> and
- clearly identify any information over which it wishes to claim confidentiality.

The *liable entity* may also set out in its response any other matters it considers relevant in the circumstances.

In order to be considered in the *AER PoLR Report* to AEMO, responses must be submitted no later than 20 business days after the notice was issued.

A *liable entity* may request an extension of time to submit its response to the notice of assessment should extenuating circumstances exist. The AER will consider all the relevant circumstances when deciding whether to grant an extension request, including any implications the extension would have on the compliance assessment timeframes set out in these Guidelines.

For further information regarding the use and disclosure of information provided to the AER, see the ACCC/AER Information Policy as updated or replaced from time to time.<sup>39</sup> We note that the Electricity Rules require the AER to provide certain information to AEMO in the *AER PoLR report* as outlined in section 3.3 below, notwithstanding any confidentiality claims made in relation to this information.

---

<sup>38</sup> Sections 14P(1) and (3) of the Electricity Law, which require submission of a compliant *NCP report* that does not knowingly include information that is false or misleading in a material particular, are *civil penalty provisions*.

<sup>39</sup> The ACCC/AER Information Policy can be viewed at <https://www.accc.gov.au/publications/accc-aer-information-policy>.

### 3.3 Notification to AEMO for PoLR costs ('AER PoLR Report')

The Electricity Rules require the *AER PoLR Report* to include the following:

- the identity of the *liable entity* (*PoLR liable entity*);<sup>40</sup>
- each *gap trading interval* for which the *liable entity* is a *PoLR liable entity* (a '*PoLR TI*');<sup>41</sup> and
- the *uncontracted MW position* for the *PoLR liable entity* for each *PoLR TI* (the number of megawatts by which the *liable entity's* *liable share* for a *PoLR TI* exceeds its NCP for that *PoLR TI*).<sup>42</sup>

The AER will include the following additional information in the *AER PoLR Report*.<sup>43</sup>

- where, in responding to a notice from the AER that its NCP is less than its *liable share* for a *Compliance TI*, the *liable entity* has disputed AEMO's calculation of its *liable share*:
  - the error(s) raised by the *liable entity*;
  - an explanation of how we have taken that into account;
  - if the *liable share* we have based our calculation on differs from AEMO's, an explanation of how it differs; and
  - a comparison of the calculation of the *uncontracted MW position* based on AEMO's initial report of *liable share* and the calculation of the *uncontracted MW position* provided by the AER for the purposes of the *AER PoLR Report*; and
- any other information the AER considers relevant to include in the circumstances, including issues the *liable entity* has raised with the AER's calculations in the notice of assessment.

The AER will provide the *AER PoLR Report* to AEMO as soon as practicable and no later than 50 business days after the final day that any non-compliant *liable entity* may respond to the AER's notice of non-compliance. However, an *AER PoLR report* remains valid should it be provided to AEMO more than 50 business days after the final day to respond.

The AER must publish a list of non-compliant entities (*PoLR liable entities*) on our website within five business days of providing the *AER PoLR Report* to AEMO.<sup>44</sup>

---

<sup>40</sup> Electricity Rules, cl. 4A.F.8(a)(1).

<sup>41</sup> Electricity Rules, cl. 4A.F.8(a)(2).

<sup>42</sup> Electricity Rules, cl. 4A.F.8(a)(3).

<sup>43</sup> Electricity Rules, cl. 4A.F.8(a)(4).

<sup>44</sup> Electricity Rules, cl. 4A.F.8(c).

Once AEMO receives the *AER PoLR Report*, it may recover from *PoLR liable entities* the costs of contracting reserves under the RERT framework in relation to each *Compliance TI* identified in the *AER PoLR Report* for the *reliability gap period*.<sup>45</sup> The Electricity Rules set out a detailed process for AEMO to follow in calculating these costs, under which AEMO is required to use the *uncontracted MW position* as notified in the *AER PoLR Report*.<sup>46</sup>

---

<sup>45</sup> Electricity Law, s. 14T(1) and (3); Electricity Rules, cl. 3.15.9A(b).

<sup>46</sup> Electricity Rules, cl. 3.15.9A.



## 4 Requirement to establish appropriate policies, systems and procedures

Each *regulated entity* must establish and observe policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the RRO.<sup>47</sup>

In order to meet this obligation in accordance with these Guidelines,<sup>48</sup> the policies, systems and procedures must be established and observed in a manner and form consistent with *ISO 37301 – Compliance Management Systems*, as updated or replaced from time to time.

The key topics covered by the Standard are:

- understanding the scope and context of the compliance management system;
- examining the crucial role played by the organisation's leadership;
- understanding the origin of compliance obligations;
- using compliance as a risk mitigation tool;
- how to establish compliance objectives;
- the use of training to raise awareness and embed a strong culture of compliance;
- how to develop effective communication and supporting documentation;
- achieving organisational ownership of the compliance management system through the creation of management-led controls;
- how best to monitor the effectiveness of the compliance framework; and
- actions that are necessary to ensure continual improvement of the compliance program.

---

<sup>47</sup> Electricity Law, s. 18ZB(1).

<sup>48</sup> Electricity Law, ss. 18ZB(2) and 18ZI(2)(a)(ii).

## 5 Requirement to provide data and information

The Electricity Law allows the AER to use these Guidelines to require *regulated entities* to provide information and data relating to their compliance with the RRO, and to specify the manner, form and timeframes for the provision of that information and data in the Guidelines.<sup>49</sup>

Consistent with the ACCC/AER Information Policy as updated or replaced from time to time, we will endeavour where practical to draw upon existing information sources to monitor compliance with the RRO. By using information and data we already collect for multiple purposes, we can minimise duplication of effort, and therefore the burden placed on those from whom information is requested.<sup>50</sup>

The Electricity Law and Rules impose a number of requirements on *regulated entities* to provide, or make available to us, information and data relating to their obligations under the RRO. Also, various RRO Guidelines include obligations to provide information and data, which can be used for the purpose of compliance monitoring and assessment.

The AER is also able to obtain information from external sources that will assist in our compliance monitoring. Further, the AER can make voluntary requests of *regulated entities* and has the power to serve notices requiring a person to provide information or produce a document that the AER requires for the performance or exercise of a function or power conferred on it under the Electricity Law or Rules.

In addition to the information already required to be provided under the Electricity Law, Electricity Rules and other RRO Guidelines, these Guidelines introduce an additional requirement on *liable entities* to provide certain information in relation to *NCP reports* upon request from the AER as outlined in section 5.1 below. This additional requirement only applies in relation to the information listed in section 5.1.

Failure to comply with requirements under the Electricity Law, Electricity Rules and RRO Guidelines may attract *civil penalties*. Furthermore, 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.

---

<sup>49</sup> Electricity Law, ss. 18ZD and 18ZL(2)(a)(iii).

<sup>50</sup> Competition and Consumer Act s. 44AAF(6).

## 5.1 Requirement to provide information following NCP report submission

In assessing the validity of a *liable entity's NCP report* or its compliance with the *reliability obligations*, the AER may seek some or all of the following information from the *liable entity*:

- information demonstrating that contracts reported in the *NCP report* were actually held by the *liable entity* on the *contract position day*;
- how the firmness factor was determined for particular *standard qualifying contracts*;
- the process for the development and approval of *bespoke firmness methodologies* and factors in relation to *non-standard qualifying contracts*, including:
  - whether (and, if so, how) the *Independent Auditor* was involved in the initial development of those methodologies and factors; and
  - any revisions or suggested revisions to these methodologies made by the *Independent Auditor*, and the reasons given by the *Independent Auditor* as to why these revisions were made.

A *liable entity* must provide this information in writing no later than 15 business days after the day the AER requests it.

A *liable entity* may request an extension of time to submit its response to the information request should extenuating circumstances exist. The AER will consider all the relevant circumstances when deciding whether to grant an extension request, including any implications the extension would have on the compliance assessment timeframes set out in these Guidelines.

A *regulated entity's* failure to provide information and data to the AER relating to its compliance with the RRO in the manner, form and timeframes required by these Guidelines is a breach of the Electricity Law, and may attract *civil penalties*.<sup>51</sup>

---

<sup>51</sup> Electricity Law, s. 18ZF(1) and (3); Electricity Rules, cl. 4A.G.24(b).

## 6 Compliance audits

The AER may carry out (or require a *regulated entity* to carry out) an audit of a *regulated entity's* activities relating to its compliance with the RRO.<sup>52</sup> A compliance audit must be carried out in accordance with these Guidelines.<sup>53</sup>

These audits have broad application, and can be used to test compliance by any *regulated entity* with any obligation under Part 2A of the Electricity Law and the related provisions under the Electricity Rules, including requirements to comply with other RRO Guidelines.

As set out in our Interim Contracts and Firmness Guidelines, *compliance audits* could be used to verify.<sup>54</sup>

- whether contracts reported in the *NCP report* were actually held by the *liable entity* on the *contract position day*;
- how the firmness factor was determined for *standard qualifying contracts*, and whether the *default firmness methodology* has been applied correctly; and
- how the *NCP report* was adjusted for the impact of *non-qualifying contracts* where we consider an adjustment may not have been appropriately applied.

The Electricity Rules also contemplate the use of *compliance audits* to monitor *MLO Generators'* compliance with a *liquidity obligation*.<sup>55</sup>

The AER can use any information or data obtained or provided by a *regulated entity* in the course of an audit for the purposes of any of its functions and powers under the Electricity Law, including but not limited to the RRO.<sup>56</sup>

---

<sup>52</sup> Electricity Law, ss. 18ZE and 18ZF. These *compliance audits* are separate to the framework for independent audits under clause 4A.E.5 for *liable entities* using *bespoke firmness methodologies* to calculate their NCPs, as detailed in the Interim Contracts and Firmness Guidelines.

<sup>53</sup> Failure to comply with these Guidelines in carrying out a *compliance audit* is a breach of the Electricity Law, and may attract *civil penalties* (Electricity Law, s. 18ZF(1) and (3); Electricity Rules cl 4A.G.24(b)). If a corporation contravenes these obligations, each officer of the corporation is to be taken to have contravened this obligation if the officer knowingly authorised or permitted the contravention or breach (Electricity Law, s 85(1)). An officer of a corporation may be subject to proceedings, regardless of whether proceedings have been taken against the corporation itself (Electricity Law, s. 85(2)).

<sup>54</sup> AER Interim Contracts and Firmness Guidelines, August 2019, pp. 7-8. <https://www.aer.gov.au/retail-markets/guidelines-reviews/retailer-reliability-obligation-interim-contracts-and-firmness-guideline>.

<sup>55</sup> Electricity Rules. cl. 4A.G.24(b).

<sup>56</sup> Electricity Law, s. 18ZH.

## 6.1 Approach to carrying out compliance audits

There are two approaches to *compliance audits* available to the AER under the Electricity Law, and we will determine the appropriate approach depending on the particular circumstances:

- The AER can carry out a *compliance audit* of a *regulated entity's* activities to assess the *regulated entity's* compliance with the RRO, and may do so by arranging for a contractor or another person to carry out the *compliance audit* on the AER's behalf. The AER's costs of carrying out an audit under this approach are recoverable from the *regulated entity*, in an amount determined under these Guidelines.<sup>57</sup>
- Alternatively, the AER can require a *regulated entity* to carry out a *compliance audit* of specified aspects of the *regulated entity's* activities relating to its compliance with the RRO, and to give the AER the results of that audit within a period specified by the AER. The *regulated entity* can do this by arranging for a contractor or other person to carry out the audit on its behalf, but it remains responsible for the carrying out of the audit.<sup>58</sup>

Sections 6.1.1 to 6.1.3 below set out the approach that will apply under these Guidelines to all *compliance audits*.

Sections 6.2 and 6.3 below set out additional requirements that apply under the two approaches to *compliance audits* outlined above.

### 6.1.1 Notice that an audit is required

If the AER decides that a *compliance audit* is to be carried out, it will issue a written notice to the *regulated entity* in writing to advise:

- whether the AER will be responsible for carrying out the *compliance audit*, or whether the AER requires the *regulated entity* to carry out the audit;
- the activities, or specified aspects of the activities, of the *regulated entity* relating to its compliance with the RRO that are to be audited; and
- the Terms of Reference for the *compliance audit*, which will set out the scope, approach, coverage, required output and timeline for the audit.

The AER will allow the *regulated entity* at least 10 business days to provide submissions on the Terms of Reference. The AER may amend the Terms of Reference having regard to any matters raised in the *regulated entity's* submissions, and will notify the *regulated entity* in writing of any amendments made.

---

<sup>57</sup> Electricity Law, s. 18ZE.

<sup>58</sup> Electricity Law, s. 18ZF.

### 6.1.2 Experience and independence of auditors

A *compliance audit* must provide an impartial and comprehensive assessment of the activities, or specified aspects of the activities, of the *regulated entity* relating to its compliance with the RRO.

The person or contractor carrying out the *compliance audit* must:

- be independent of the *regulated entity* and all of its related parties, and be able to act without bias and without any actual or potential conflicts of personal or professional interest from other work undertaken, or planned to be undertaken, by that person or contractor;
- have professional competence to apply established audit standards and techniques to carry out the *compliance audit* to a high standard;
- have a system of quality controls to ensure audit reports are of a professional standard;
- have relevant expertise including experience in national energy laws, rules and regulations; and
- be able to comply with the specifications in the Terms of Reference for the *compliance audit* in question, including the capacity to deliver the results of the audit in accordance with the specified timeframes.

### 6.1.3 Regulated entity cooperation during the audit

When notified by the AER of a *compliance audit*, the *regulated entity* must take all reasonable steps to ensure that:

- the person or contractor carrying out the *compliance audit* has access to all relevant data, information and documents to undertake the *compliance audit*; and
- this access is provided in a way that allows the timelines specified for the *compliance audit* to be met.

Data, information and documents required by the auditor may include, without limitation:

- the policies, systems and procedures established and observed by the *regulated entity* to monitor its compliance with the RRO under section 18ZB of the Electricity Law;
- records kept by the *regulated entity* to demonstrate its compliance under section 18ZC of the Electricity Law, including, if applicable, information *MLO generators* must provide in accordance with clause 4A.G.24(b) of the Electricity Rules;<sup>59</sup>

---

<sup>59</sup> Clause 4A.G.24(b) of the Electricity Rules provides that for the purposes of a *MLO generator's* obligations under sections 18ZC, 18ZD and any *compliance audit* conducted under sections 18ZE or 18ZF of the Electricity Law, a *MLO generator* must ensure that it, or the AER, has access to any information relating to that *MLO generator's* compliance with a *liquidity obligation*, regardless of whether that information is held by a *trading right holder*, *MLO nominee* or an agent acting on the instructions of that *MLO nominee*.

- the opportunity to meet with and/or ask questions of any officers, employees, representatives or agents of the *regulated entity* responsible for the relevant activities; and
- as contemplated in our Interim Contracts and Firmness Guidelines (noted at the start of this section), information:<sup>60</sup>
  - that demonstrates that contracts reported in an *NCP report* were actually held by the *liable entity* on the *contract position day*. This may include providing *qualifying contracts*;
  - on how the firmness factor in an *NCP report* was determined for *standard qualifying contracts*; and
  - on how an *NCP report* was adjusted for the impact of *non-standard qualifying contracts*. This includes, but is not limited to, information about the process for the development and approval of *bespoke firmness methodologies* and factors.

While it is not possible or practical to pre-determine the needs of all potential audits in these Guidelines, the AER will take into account the nature, complexity and volume of information and data that is likely to be necessary for a *compliance audit* in determining the timeframe for that audit.

## 6.2 Compliance audits by the AER

Section 18ZE of the Electricity Law allows the AER to carry out a *compliance audit*, or to engage a contractor or other person to carry out an audit on the AER's behalf.

Where an audit is carried out by or on behalf of the AER, the *regulated entity* is responsible for coordinating its engagement throughout the audit, and for supporting and facilitating cooperation with the audit in accordance with section 6.1.3 above.

Where the AER has engaged a contractor or other person to conduct an audit on its behalf, AER staff may accompany them on any site visits, interviews or other engagements with the *regulated entity*. Any information and data provided by a *regulated entity* to a contractor or person engaged by the AER to carry out an audit on its behalf will also be available to the AER.<sup>61</sup>

### 6.2.1 Opportunity to respond to audit findings

The Terms of Reference for a *compliance audit* carried out by or on behalf of the AER will include opportunities for the *regulated entity* to respond to the audit findings, including:

---

<sup>60</sup> AER Interim Contracts and Firmness Guidelines, August 2019, pp. 6-7. <https://www.aer.gov.au/retail-markets/guidelines-reviews/retailer-reliability-obligation-interim-contracts-and-firmness-guideline>.

<sup>61</sup> Electricity Law, s. 18ZH.

- an opportunity to review and respond to any draft findings prior to completion of the audit report; and
- a requirement for management to provide comments in response to each finding in the final audit report, including a documented implementation plan setting out how, and in what timeframes, the *regulated entity* proposes to address those findings with reference to any recommendations for improvements and/or corrective actions made by the auditor.

The AER will allow the *regulated entity* a minimum period of 10 business days for each of these responses.

### 6.2.2 Cost recovery

The AER's costs of carrying out a *compliance audit* can be recovered from the *regulated entity* subject to the audit.<sup>62</sup> Costs recovered from the *regulated entity* will be no more than the costs incurred by the AER.

The AER's procurement of the services of any external contractor to perform a *compliance audit* on its behalf will be consistent with the obligations that govern its procurement activities as a non-corporate Commonwealth entity under the *Public Governance Performance and Accountability Act 2013* and the Commonwealth Procurement Rules.<sup>63</sup> The Commonwealth Procurement Rules make value for money the core procurement principle, and require that we:

- encourage competitive and non-discriminatory processes;
- use resources in an efficient, effective, economical and ethical manner;
- made decisions in an accountable and transparent manner;
- consider the risks of the procurement;
- conduct a process commensurate with the scale and scope of the procurement;
- compare relevant financial and non-financial costs and benefits of alternative solutions throughout the procurement to inform our value for money assessment, including:
  - the quality of the goods and services;
  - fitness for purpose of the proposal;
  - a potential supplier's experience and performance history; and
  - flexibility (including innovation and adaptability over the lifecycle of the procurement).

Prior to commencing an audit, the AER will inform the relevant *regulated entity* of the cost that it expects to recover from the *regulated entity* upon completion of the audit, based on the

---

<sup>62</sup> Electricity Law, ss. 18ZF(1) and (3).

<sup>63</sup> The Commonwealth Procurement Rules can be viewed at <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>.



outcomes of the AER's procurement of the relevant services and the cost of the engagement.

At the conclusion of the audit, the AER will determine the reasonable costs to be paid by the *regulated entity* for the carrying out of the *compliance audit*, having regard to:

- whether the work done was within the scope of the Terms of Reference;
- the complexity or difficulty of the issues to be addressed;
- the place or circumstances in which the audit was carried out; and
- the timetable within which the *compliance audit* was to be carried out.

The AER will provide the *regulated entity* with an invoice that identifies the amount payable, and provides details of how payment is to be made. The invoice will be accompanied by:

- a copy of the invoice issued to the AER by the auditor in relation to the cost of carrying out the *compliance audit*, or
- if less than the full cost of the audit is to be recovered from the *regulated entity*, the components of that invoice that will be payable by the *regulated entity*.

The *regulated entity* is required to pay the invoice no later than 30 days after the AER issues the invoice.

## 6.3 Compliance audits by a regulated entity

Section 18ZF allows the AER to require a *regulated entity* to carry out its own *compliance audit*. The *regulated entity* may arrange for a contractor or another person to carry out the audit on its behalf, but the *regulated entity* will remain responsible for ensuring the audit is carried out in the manner required by the AER, and that the results are provided to the AER on time.<sup>64</sup>

The obligations for a *regulated entity* to carry out a *compliance audit* required by the AER, and to provide the results of that audit in the period specified by the AER, are *civil penalty provisions*.<sup>65</sup>

### 6.3.1 Audit proposal

Once notified by the AER that it is required to carry out a *compliance audit*, the *regulated entity* must respond with a proposal:

- advising whether the *compliance audit* will be carried out by the *regulated entity* or by an external contractor or other person on the *regulated entity's* behalf;

---

<sup>64</sup> Electricity Law, s. 18ZF(2).

<sup>65</sup> Electricity Law, s. 18ZF(2).

- demonstrating how the person or contractor carrying out the audit satisfies the criteria set out in section 6.1.2 above;
- setting out its proposed approach to satisfying the Terms of Reference determined by the AER for the *compliance audit*; and
- setting out the steps the *regulated entity* will take to ensure that:
  - the person or contractor carrying out the *compliance audit* has access to all relevant data, information and documents to undertake the *compliance audit*; and
  - the results of the audit will be provided in the period specified in the Terms of Reference.

If the *regulated entity* proposes to arrange for an external contractor or other person to carry out the audit on its behalf, the proposal must clearly identify, and be prepared with the input of, that contractor or other person.

The *regulated entity* must submit its proposal to the AER in writing, no later than 20 business days after the AER finalises the Terms of Reference under section 6.1.1 of these Guidelines.

The AER may reject an audit proposal if it is not satisfied that the *compliance audit* can be carried out in accordance with the Terms of Reference, including, without limitation, where it considers the nominated auditor will not be able to satisfy the experience and independence criteria set out in section 6.1.2 of these Guidelines. This may be particularly relevant where the *liable entity* proposes to carry out the *compliance audit* on its own behalf.

If the AER rejects an audit proposal, the AER may, at its discretion:

- require the *regulated entity* to submit a revised audit proposal; or
- elect to carry out the audit itself (or to engage a person or contractor to do so on the AER's behalf) under section 18ZE of the Electricity Law.

### **6.3.2 Results of the compliance audit**

A *regulated entity* must provide the results of a *compliance audit* required by the AER within the period specified by the AER.<sup>66</sup>

This period will be specified in the Terms of Reference for the audit, and determined by the AER with regard to the scope and expected complexity of the audit, and any other relevant factors.

---

<sup>66</sup> Electricity Law, s. 18ZF(3).

The results of the audit must be:

- provided in a written report from the person carrying out the audit (whether the *regulated entity* or a person or contractor engaged by them), and in sufficient detail to demonstrate how the requirements of the Terms of Reference have been met; and
- accompanied by:
  - management comments from the *regulated entity* in response to each finding of the audit; and
  - if requested by the AER, a documented implementation plan with reference to any recommendations for improvements and/or corrective actions made by the auditor setting out how, and in what timeframes, the *regulated entity* proposes to address each finding including how it will keep the AER informed of progress and completion of any proposed actions. If the *regulated entity* considers any or all of the audit findings do not need to be addressed, it should provide an explanation of why this is the case.