

Reliability Compliance Procedures and Guidelines

Retailer Reliability Obligation

Issues Paper and Notice of
Consultation

3 November 2022

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1 Notice of consultation on Guidelines

Section 18Z(1) of the National Electricity Law (Electricity Law) requires the Australian Energy Regulator (AER) to make *Reliability Compliance Procedures and Guidelines*.

These must be made and published in accordance with the Rules Consultation Procedures set out in Part F of Chapter 8 of the National Electricity Rules (Electricity Rules).

This Issues Paper and Notice of Consultation (Issues Paper) gives notice of the commencement of our consultation on the *Reliability Compliance Procedures and Guidelines* for the purposes of clause 8.9.1(b) of the Electricity Rules.

1.1 Invitation for submissions

The AER invites interested stakeholders to make written submissions in response to the specific questions or issues raised in this paper, or any other matter relevant to the development of the *Reliability Compliance Procedures and Guidelines*, by the close of business on **8 December 2022**.

Submissions should be sent electronically to: RRO@aer.gov.au. Please also direct any enquiries about this paper, or about lodging submissions, to this address.

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 otherwise requested. 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 published on the AER website. 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.¹

¹ The ACCC/AER Information Policy can be viewed at <https://www.accc.gov.au/publications/accc-aer-information-policy>.

2 Introduction

On 1 July 2019, the Retailer Reliability Obligation (RRO) came into effect through amendments to the Electricity Law and Rules.² The RRO framework in the Electricity Law and Rules is supported by a suite of AER guidelines, each providing detail on how the various stages of the RRO will operate. We have already published a number of interim guidelines which can be found on our website.³

In addition to the specific roles in administration of the RRO we have been given under the Electricity Law and Rules, we must monitor, investigate and enforce compliance with the RRO provisions.⁴ 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.⁵

Our Compliance and Enforcement Policy⁶ sets out how we approach 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 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.

In addition to our existing compliance and enforcement powers under the Electricity Law, Part 3, Division 1C of the Electricity Law introduced a number of tools we can use to monitor and investigate compliance by regulated entities with the RRO. These include new information gathering powers and provision for compliance audits. They also require regulated entities to establish arrangements to monitor and keep records of their own compliance.

The *Reliability Compliance Procedures and Guidelines* (the Guidelines) will support the operation of the AER's compliance role for the RRO. The Guidelines may include, without limitation, guidance:⁷

- for regulated entities about compliance with the 'reliability obligations',⁸ including:
 - the process and timeframes for notifying liable entities and the Australian Energy Market Operator (AEMO) about our compliance assessments at the conclusion of a reliability gap period;⁹ and
 - the information we will include in the AER Procurer of Last Resort Report (AER PoLR Report) to AEMO at the conclusion of a reliability gap period;¹⁰

² 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.

³ The interim guidelines can be viewed at <https://www.aer.gov.au/retail-markets/retailer-reliability-obligation>.

⁴ Electricity Law, s. 15.

⁵ Electricity Law, s 15, Schedule 1.

⁶ Our Compliance and Enforcement Policy can be viewed at <https://www.aer.gov.au/system/files/AER%20Compliance%20and%20Enforcement%20Policy%20July%202021.pdf>.

⁷ Electricity Law, s. 18ZI(2).

⁸ Electricity Law, s. 2: The reliability obligations are ss. 14P(1) and (3) and 14R(2) of the Electricity Law.

⁹ Electricity Rules, cl. 4A.F.7(c)(1) and (2), 4A.F.7(a), 4A.F.8(a).

¹⁰ Electricity Law, s. 18ZI(2)(c); Electricity Rules, cl. 4A.F.7(a).

- for regulated entities about the policies, systems and procedures that they must establish and observe under section 18ZB of the Electricity Law to monitor their own compliance with the RRO;
- on the information and data liable entities are required to provide to the AER about compliance under section 18ZD of the Electricity Law; 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.

This paper is the first stage in our consultation on the Guidelines.¹¹ It sets out a proposed approach to the first version of the Guidelines, which in accordance with the Rules Consultation Procedures, we seek to release by May/June 2023. The proposed engagement timeline for the development of the Guidelines is set out in Table 1.

Table 1: Indicative timeline for the development of the Reliability Compliance Procedures and Guidelines

| Milestone | [Indicative] Date |
|---|---------------------|
| Issues Paper and Notice of Consultation published | 3 November 2022 |
| Written submissions on the Issues Paper close | 8 December 2022 |
| Draft Guidelines published | February/March 2023 |
| Written submissions on the Draft Guidelines close | April 2023 |
| Final Guidelines published | May/June 2023 |

We are mindful that we are consulting at a time when some elements of the RRO framework are being tested for the first time, and others have yet to be tested at all. Our objective for the initial Guidelines is to maintain sufficient flexibility to allow for both unexpected issues or challenges in the initial applications of the RRO, and potential changes to the framework to which they will apply.

This approach will allow us, AEMO and impacted regulated entities flexibility to work through the operation of the RRO as it is tested, and to refine the Guidelines if necessary in the longer term with the benefit of that experience.¹²

¹¹ Electricity Rules, cl. 8.9.1(b).

¹² Future amendments to the AER's Guidelines will be undertaken in line with the Rules Consultation Procedures.

3 Summary of questions

In the sections below we set out our proposed approach to each of the matters we can include in the Guidelines. Questions we are particularly interested to hear stakeholder views on are listed together in Table 2, and provided as relevant throughout this paper. In responding to these questions, please provide reasoning to support your position. We also invite general feedback on the proposals in this paper and other matters stakeholders would like us to consider in the development of the Draft Guidelines.

Table 2: Questions for feedback and consultation

| |
|---|
| <p>Question 1: Do stakeholders agree with the proposed content and timing of the AER’s notice to a regulated entity under clause 4A.F.7(c)(1) of the Electricity Rules? If not, please specify what content and/or timing you consider would be appropriate.</p> |
| <p>Question 2: Do stakeholders agree with the proposed content and timing of a liable entity’s response to a notice from the AER under clause 4A.F.7(c)(2) of the Electricity Rules? If not, please specify what content and/or timing you consider would be appropriate.</p> |
| <p>Question 3: Do stakeholders agree with the proposed additional content and timeframe for submission of an AER PoLR Report to AEMO? If not, please specify what additional content and/or timing you consider would be appropriate.</p> |
| <p>Question 4: Do stakeholders agree that <i>AS/ISO 37301 – Compliance Management Systems</i> provides an appropriate benchmark for the establishment and observation by regulated entities of internal policies, systems and procedures to efficiently and effectively monitor their own compliance with the RRO? If not, please specify the benchmark you consider would be appropriate.</p> |
| <p>Question 5: Do stakeholders agree with the AER’s proposal not to introduce binding reporting requirements on regulated entities at this time, and to rely instead on existing sources of information and individual requests for information and data? If not, please specify the binding reporting requirements you consider the AER should introduce.</p> |
| <p>Question 6: Do stakeholders agree with the AER’s proposed criteria for the experience and independence of compliance auditors? If not, please specify the additional or alternative criteria you consider would be appropriate.</p> |
| <p>Question 7: Do stakeholders agree with the AER’s proposed requirements for liable entity cooperation during the audit process? If not, please specify the additional or alternative requirements you consider the AER should include.</p> |
| <p>Question 8: Do stakeholders agree with the AER’s proposed process for audits carried out by or on behalf of the AER, including the process for cost recovery from regulated entities? If not, please specify which aspects of the proposed audit process you consider should be changed.</p> |
| <p>Question 9: Do stakeholders agree with the AER’s proposed process for audits carried out by or on behalf of regulated entities? If not, please specify which aspects of the proposed audit process you consider should be changed.</p> |

4 Assessment process for ‘reliability obligations’

4.1 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 made. A key component of the RRO framework is the ‘reliability obligations’.

The ‘reliability obligations’ are those applying to regulated entities under the following sections of the Electricity Law:¹³

- **Section 14P - Obligation to report net contract position (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.¹⁴

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

- **Section 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.

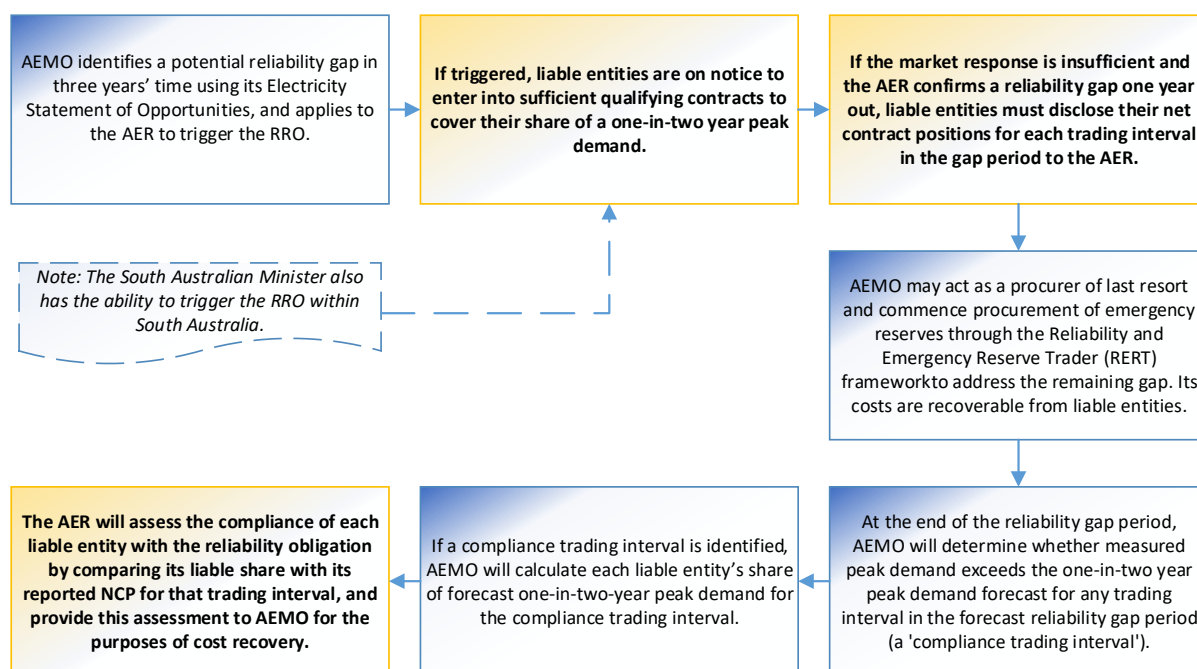
These provisions inform our assessment of compliance following a reliability gap period, and AEMO’s recovery of its costs as a procurer of last resort (PoLR) under the Reliability and Emergency Reserve Trader (RERT) framework. They are also civil penalty provisions and failure to comply with them may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

The reliability obligations are highlighted in Figure 1.

¹³ Electricity Law, s. 2 - Definitions: ‘Reliability obligations’.

¹⁴ See also Electricity Rules, cl. 4A.E.6.

Figure 1 - The reliability obligations



At the end of each reliability gap period, AEMO will determine whether measured peak demand exceeds the one-in-two year peak demand forecast¹⁵ for any trading interval in the forecast reliability gap period (a 'compliance trading interval').¹⁶

If a compliance trading interval is identified, AEMO will calculate each liable entity's share of forecast one-in-two-year peak demand for the compliance trading interval, and provide this information to us.¹⁷

We must then assess whether any liable entity's NCP¹⁸ is less than its liable share for any compliance trading interval. Where this is the case, the Electricity Rules require us to give written notice to a liable entity of our assessment and provide the liable entity an opportunity to respond to the notice.¹⁹ In section 4.3 below, we outline the proposed content and timing of such a response from a liable entity.

If, having considered the liable entity's response to the notice, we find that the liable entity's NCP is less than its share for a compliance trading interval (the difference being the 'uncontracted MW position'), we must provide an AER PoLR Report to AEMO.²⁰ We must also publish on our website a list of the non-compliant liable entities ('PoLR liable entities') in

¹⁵ 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.

¹⁶ Electricity Rules, cl. 4A.F.2, 4A.F.4.

¹⁷ Electricity Rules, cl. 4A.F.3, 4A.F.5.

¹⁸ Electricity Rules, cl. 4A.F.7(b).

¹⁹ Electricity Rules, cl. 4A.F.7(c)(1) and (2).

²⁰ Electricity Rules, cl. 4A.F.8(a).

that report within five business days of providing the report to AEMO.²¹ 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 trading interval identified in the AER PoLR report for the reliability gap period.²² We provide further details in section 4.4 below.

Our Interim Contracts and Firmness Guidelines²³ include detailed guidance on the two key elements of our assessment of compliance with the reliability obligations:

- Section 9 sets out the required form and content of the NCP report that must be submitted by liable entities to the AER under sections 14P(1) and (3) of the Electricity Law.
- Sections 11 and 12 set out the form and content in which AEMO will submit to the AER its initial notification of compliance trading intervals, and the AEMO compliance report setting out each liable entity's liable share of the one-in-two year peak demand forecast for each compliance trading interval.

Together, the NCP for a compliance trading interval in a liable entity's NCP report and AEMO's calculation of that liable entity's liable share for the compliance trading interval are the key inputs to our assessment of compliance with section 14R(2) of the Electricity Law, and the resultant AER PoLR report to AEMO.

The Electricity Law allows the AER to provide further guidance on compliance with the reliability obligations as part of this Guideline.²⁴ The Electricity Rules contemplate three particular areas of guidance, each relating to the process for our assessment and reporting of compliance. These are to establish:

- How we will give notice to a liable entity where our assessment is that its NCP for a compliance trading interval is less than its liable share.²⁵
- How we will give the liable entity an opportunity to respond to that notice before we provide our AER PoLR Report to AEMO.²⁶
- The process and timeframe for submission of our AER PoLR Report to AEMO.²⁷ The Guidelines can also set out information we propose to include in the AER PoLR Report.²⁸

Figure 2 outlines where these steps sit within our assessment of compliance with the reliability obligations. Further information regarding the civil penalty regime for breaching sections 14P(1) and 14P(3) of the NEL is also provided at the end of this subsection.

²¹ Electricity Rules, cl. 4A.F.8(c).

²² Electricity Law, s. 14T(1) and (3); Electricity Rules, cl. 3.15.9A(b).

²³ Our Interim Contracts and Firmness Guidelines can be viewed at <https://www.aer.gov.au/retail-markets/guidelines-reviews/retailer-reliability-obligation-interim-contracts-and-firmness-guideline>.

²⁴ Electricity Law, s. 18Zl(2)(a)(i).

²⁵ Electricity Rules, cl. 4A.F.7(c)(1).

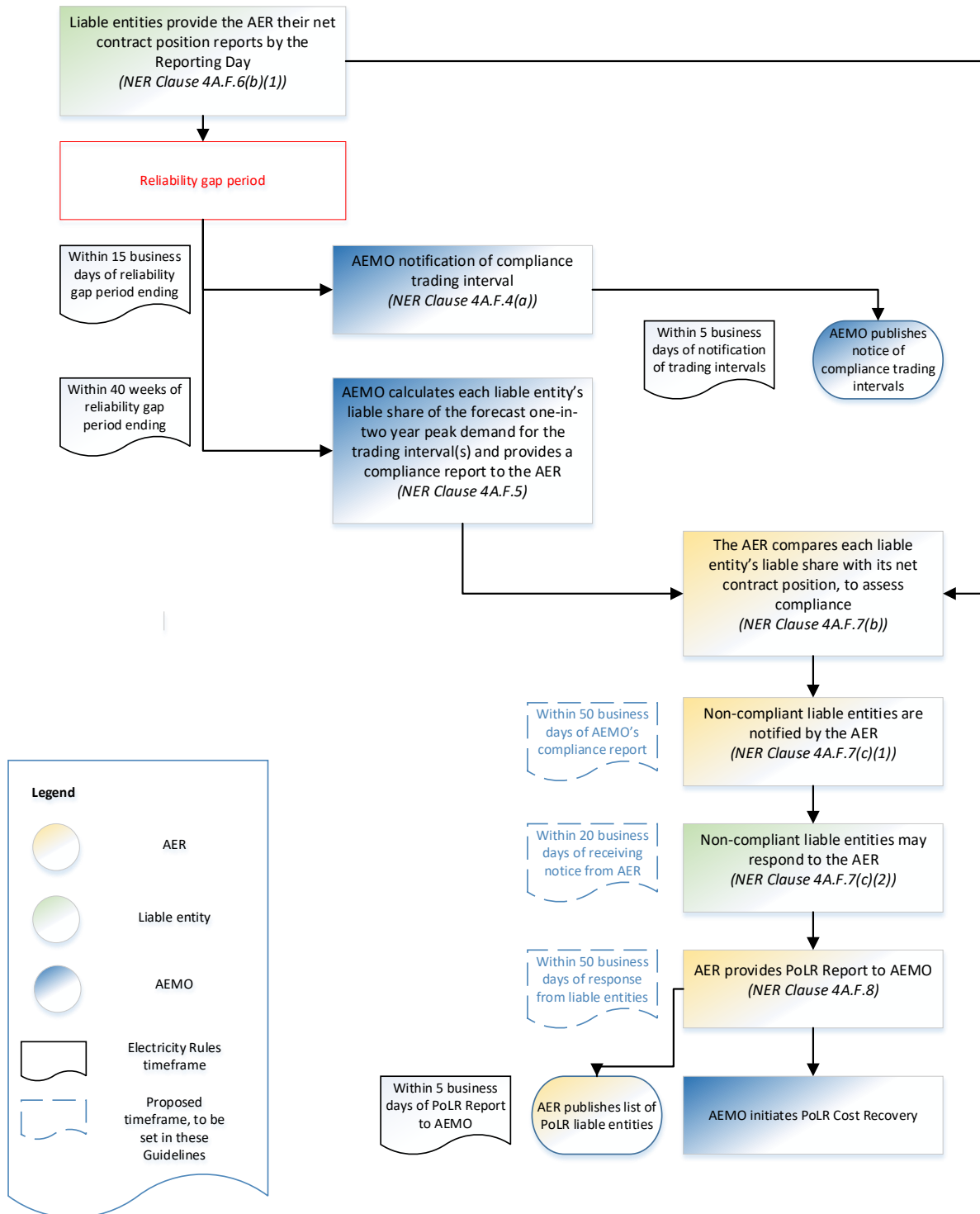
²⁶ Electricity Rules, cl. 4A.F.7(c)(2).

²⁷ Electricity Rules, cl. 4A.F.8(a).

²⁸ Electricity Law, s. 18Zl(2)(c); Electricity Rules, cl. 4A.F.8(a)(4).

We then set out our proposed approach (including timeframes), for each of these steps, for the remainder of section 4 of this paper. This includes further details of how we propose to ensure the assessment process is rigorous and transparent, and affords procedural fairness to liable entities and AEMO.

Figure 2 - AER compliance assessment for the reliability obligation



Civil Penalty Regime

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

Sections 14P(1) and 14P(3) of the Electricity Law are tier 2 civil penalty provisions. Section 2AB(1)(b) of the Electricity Law (which relates to civil penalty amounts for tier two civil penalty breaches), provides that if the breach is by a natural person, the civil penalty is an amount not exceeding \$287 000,²⁹ 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

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 (which relates to civil penalty amounts for breaches of a reliability obligation civil penalty provision), 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.

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. 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.

4.2 Notice to liable entities of non-compliance

We propose the Guidelines state that the notice of our assessment provided to a liable entity that its NCP for a trading interval 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 trading interval;
- the liable entity’s liable share in each compliance trading interval, 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);³⁰

²⁹ In accordance with Electricity Law section 37A, 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 this Issues Paper are accurate as of the date of publication of this Issues Paper.

³⁰ For further information on adjustments, please refer to the sections 3, 4 and 5 of the AER’s Interim Contracts and Firmness Guidelines (published August 2019).

- our calculation of the number of megawatts (MW) by which the liable entity's liable share for one or more compliance trading intervals exceeds its NCP for the compliance trading interval (the uncontracted MW position);³¹
- the basis for our calculation of that difference, and the information we have 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 0 and 0 below).

Items (3) and (4) are the content pertaining to the liable entity that will have been provided to us in AEMO's compliance report which sets out the calculation of liable share against which we will measure compliance.³² The Electricity Rules provide for AEMO to submit this information to us, but not to liable entities. We consider that for the relevant liable entity to provide an informed response to our calculation of the uncontracted MW position and resultant assessment of its compliance, it must have visibility of these key inputs.

Items (5) and (6) relate to our assessment. They provide visibility of how we have arrived at our conclusion that the liable entity's NCP for a trading interval is less than the liable entity's share of the one-in-two year peak demand forecast for the trading interval. As part of that explanation, we will identify the elements of the liable entity's NCP report that we have relied on in our calculation and any additional sources of information we have had regard to.

We propose the Guidelines record that we will provide written notification to each affected liable entity no later than 50 business days after we have received AEMO's compliance report.³³ This period of time will:

- allow us to accommodate a potentially large number of concurrent assessments;
- allow us to ask questions (if necessary) of AEMO in respect of its calculations of liable share, and/or of liable entities in respect of their NCP reports; and
- as contemplated in our Interim Contracts and Firmness Guidelines, allow for the potential use of compliance audits to determine whether the actual NCP of a liable entity for a trading interval is consistent with that set out in its NCP report.³⁴

This would provide a reasonable period of time for our assessment. We note that the smaller the number of assessments to be completed, and the less complex the interpretation and application of liable entities' NCP reports proves to be (e.g. reports requiring no clarifying questions), the shorter the actual time taken is likely to be.

Question 1 - Do stakeholders agree with the proposed content and timing of the AER's notice to a regulated entity under clause 4A.F.7(c)(1) of the Electricity Rules? If not, please specify what content and/or timing you consider would be appropriate.

³¹ Electricity Rules, cl. 4A.F.8(a)(3).

³² Electricity Rules, cl. 4A.F.5; AER Interim Contracts and Firmness Guidelines - August 2019, p. 66.

³³ Electricity Rules, cl. 4A.F.7(c)(1).

³⁴ AER Interim Contracts and Firmness Guidelines - August 2019, pp. 7-8.

4.3 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 their NCP.³⁵ We propose the Guidelines require that any responses from liable entities to a notice of assessment are submitted in writing. It will then be open to the AER to discuss the response further with the liable entity if needed.

If the liable entity does not accept our assessment for a compliance trading interval and wishes to respond, we propose that it must:

- clearly identify the error(s) the liable entity considers we have made in our calculation for the compliance trading interval;
- provide its own calculation of the number of MW by which the liable entity's liable share differs from its NCP for that compliance trading interval;
- clearly set out the basis for its alternative calculation and the information it has relied on to make that calculation, including whether the regulated entity has previously made that information available to us in its NCP report or whether it forms part of an approved adjustment to its NCP report (and if not, why not);³⁶ and
- clearly identify any information in relation to which the liable entity wishes to claim confidentiality.

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

We propose that responses are required to be submitted to the AER no later than 20 business days after the notice was issued. We consider this period of time is sufficient to allow regulated entities to ask questions of:

- the AER in regard to our calculation or any other aspects of the notice or assessment process; and
- AEMO in respect of its calculation of liable share,

prior to submitting the response, while not delaying the AER's notification to AEMO for PoLR costs.

Liable entities would be able to request an extension of time to submit their response to the AER's notice of assessment should extenuating circumstances exist. The AER would consider all the relevant circumstances when deciding whether to grant an extension request.

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. We note that the Electricity Rules require the AER to provide certain information to AEMO in the AER PoLR report as outlined in section 4.4 below, notwithstanding any confidentiality claims made in relation to this information.

³⁵ Electricity Rules, cl 4A.F.7(c)(2).

³⁶ 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 tier 2 civil penalty provisions.

Question 2 - Do stakeholders agree with the proposed content and timing of a liable entity's response to a notice from the AER under clause 4A.F.7(c)(2) of the Electricity Rules? If not, please specify what content and/or timing you consider would be appropriate.

4.4 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);³⁷
- each compliance trading interval for which the liable entity is a PoLR liable entity (PoLR trading interval);³⁸ and
- the uncontracted MW position for the PoLR liable entity for each PoLR trading interval (the number of MW by which the liable entity's liable share for a PoLR trading interval exceeds its NCP for that PoLR trading interval).³⁹

The Electricity Rules also allow us to use this Guideline to set out additional information that we will include in an AER PoLR Report.⁴⁰ We propose the following additional information:

- where, in responding to a notice from the AER that its NCP is less than its liable share for a compliance trading interval, 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.

We propose to provide the AER PoLR Report to AEMO no later than 50 business days after the final day that non-compliant liable entities may respond to the AER's non-compliance notifications (and therefore no later than 70 business days after issuing non-compliance notifications to non-compliant liable entities). This period of time is sufficient to allow us to:

- accommodate a potentially large number of concurrent responses (as above); and

³⁷ Electricity Rules, cl. 4A.F.8(a)(1).

³⁸ Electricity Rules, cl. 4A.F.8(a)(2).

³⁹ Electricity Rules, cl. 4A.F.8(a)(3).

⁴⁰ Electricity Rules, cl. 4A.F.8(a)(4).

- ask questions of liable entities about their responses and, in the event that responses relate to AEMO's calculation of liable share, to put those issues to AEMO and consider our response for the AER PoLR Report.

We consider the proposed time would still allow AEMO's timely cost recovery of PoLR costs. We also note that the smaller the number of responses required, and the less complex the issues raised, the shorter the actual time taken is likely to be.

We 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.⁴¹ We are not required to, and do not propose to, publish the AER PoLR Report, noting that this may contain confidential information.

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 trading interval identified in the AER PoLR report for the reliability gap period.⁴² 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.⁴³

Question 3 - Do stakeholders agree with the proposed additional content and timeframe for submission of an AER PoLR Report to AEMO? If not, please specify what additional content and/or timing you consider would be appropriate.

⁴¹ Electricity Rules, cl. 4A.F.8(c).

⁴² Electricity Law, s. 14T(1) and (3); Electricity Rules, cl. 3.15.9A(b).

⁴³ Electricity Rules, cl. 3.15.9A.

5 Requirement to establish appropriate policies, systems and procedures

Each regulated entity must establish policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the RRO.⁴⁴

The Electricity Law allows the AER to provide guidance to regulated entities about these policies, systems and procedures.⁴⁵ These entities must establish and observe these policies, systems and procedures in accordance with the Guidelines.⁴⁶

We propose to nominate the relevant Australian Standard as a benchmark to establishing the policies, systems and procedures to monitor compliance with the RRO. This is consistent with our approach to the equivalent obligation on regulated entities under section 273(1) of the National Energy Retail Law (Retail Law).

The nominated standard under the equivalent guidelines for the National Energy Retail Law, being the AER (Retail Law) Compliance Procedures and Guidelines (Retail Guidelines), is ISO 19600.⁴⁷ The Retail Guidelines were last published in 2019, and ISO 19600 has since been replaced by ISO 37301.⁴⁸

We propose to nominate ISO 37301 ('the Standard') as the relevant up to date standard for the purposes of the Guidelines. The Standard specifies requirements and provides guidance for establishing, developing, implementing, evaluating, maintaining and improving an effective compliance management system within an organisation. 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.

⁴⁴ Electricity Law, s. 18ZB(1).

⁴⁵ Electricity Law, s. 18Z(2)(a)(ii).

⁴⁶ Electricity Law, s. 18ZB(2).

⁴⁷ The Retail Guidelines can be viewed at

https://www.aer.gov.au/system/files/AER%20compliance%20procedures%20and%20guidelines%20-%20Version%206%20-%20Final%20-%20September%202018_1.pdf.

⁴⁸ The AER intends to commence consultation to update the Retail Guidelines in 2023.

We consider the benefits of nominating ISO 37301 as the relevant standard are as follows:

- The Standard is not energy-specific. Both the requirements and the guidance in the Standard are intended to be adaptable, and implementation can differ depending on the size and level of maturity of an organisation's compliance management system and on the context, nature and complexity of the organisation's activities and objectives. We consider this adaptability is particularly useful in setting the benchmark that must apply to both energy businesses and opt-in customers, whose primary business activities may differ substantially from those of other regulated entities.
- Many regulated entities for the purposes of the RRO are authorised retailers. As regulated entities under the Retail Law, they have therefore already established and are observing compliance processes, systems and procedures based on the ISO 19600 (which is similar to the new standard ISO 37301). By adopting similar benchmarks under both Guidelines, the risk that the Guidelines would require divergent approaches within a regulated entity is reduced.

Question 4 - Do stakeholders agree that *AS/ISO 37301 – Compliance Management Systems* provides an appropriate benchmark for the establishment and observation by regulated entities of internal policies, systems and procedures to efficiently and effectively monitor their own compliance with the RRO? If not, please specify the benchmark you consider would be appropriate.

6 Requirement to provide data and information

The Electricity Law allows us to use these Guidelines to require regulated entities to provide us with 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.⁴⁹

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.⁵⁰

The Electricity Law and Rules already 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. This information and data can be used to monitor and assess compliance with the RRO. For example:

- NCP reports as mentioned in section 4 of this Issues Paper, and any application for adjustment to an NCP;⁵¹
- notice from AEMO of any compliance trading intervals within a reliability gap period,⁵² and of each liable entity's liable share for a compliance trading interval;⁵³
- information from Market Generators on their scheduled generating units, generator capacity, trading right holders and their trading rights;⁵⁴ and
- information relating to a Market Liability Obligation (MLO) Generator's compliance with a liquidity obligation, including information held by the trading right holder, MLO nominee or agent.⁵⁵

Our interim RRO Guidelines include obligations to provide information and data in the manner, form and timeframes that best suit the obligations addressed by those guidelines. This information and data can also be used for the purpose of compliance monitoring and assessment. For example:

- The Interim Contracts and Firmness Guidelines set out the form and content of NCP reports from liable entities. Together with AEMO's compliance reports under clause 4A.F.5 of the Electricity Rules, these provide information and data demonstrating 'a liable entity's [NCP] for the forecast reliability gap period, as it was on the contract position day'. This information and data will inform our assessment of compliance with the reliability obligation.

⁴⁹ Electricity Law, ss. 18ZD, 18ZI(2)(a)(iii).

⁵⁰ Competition and Consumer Act s. 44AAF(6).

⁵¹ Electricity Rules, cl. 4A.E.7.

⁵² Electricity Rules, cl. 4A.F.4(a).

⁵³ Electricity Rules, cl. 4A.F.5.

⁵⁴ Electricity Rules, cl. 4A.G.13.

⁵⁵ Electricity Rules, cl. 4A.G.24(b).

- The Opt-in Guideline⁵⁶ sets out the information and data required from an eligible customer who has elected to opt in to reliability obligations under the RRO.⁵⁷ That information will be sufficient to create and maintain the opt-in register for each reliability instrument. The opt-in register will identify all opt-in customers, the connection points for which they have opted in to liability and for each connection point, the portion of total load for which they have opted in for liability. Information pertaining to an opt-in customer's compliance with their obligations as a liable entity is, as noted above, set out in the requirements for NCP reports under the Interim Contracts and Firmness Guidelines.

We are also able to obtain information from external sources that will assist in our compliance monitoring. For example, one of the criteria for approval of an MLO exchange⁵⁸ is that the operator of the relevant trading facility can provide relevant trading data to the AER when requested, for the purposes of monitoring compliance with the MLO.⁵⁹ Our Interim MLO Guidelines note our approach of seeking trading information in a streamlined format directly from any approved MLO exchange to monitor compliance with the MLO. We will initially rely on data from the exchange to make our own assessment and form a view of obligated parties' compliance with the liquidity obligation.⁶⁰

At this stage we have not identified a clear need to introduce additional obligations to provide information and data over and above the existing requirements of the Electricity Law and Rules and suite of RRO Guidelines.

Much of the RRO framework is still being tested, and if we do need additional information and data to monitor and assess compliance we have other tools we can use to obtain it. The Electricity Law requires regulated entities to keep records of their activities that will allow them to provide accurate information and data relating to their compliance with obligations under the RRO, and that enable the AER to assess whether liable entities have complied with their obligations.⁶¹ We can make voluntary requests of regulated entities when monitoring and assessing compliance in other contexts.⁶²

Further, if we have reason to believe that a person is capable of providing information or producing a document that we require for the performance or exercise of a function or power conferred on it under the Electricity Law or Rules, including but not limited to the RRO, we have the power to serve a notice requiring that person to do so.⁶³ We also have the power to

⁵⁶ The Opt-in Guideline can be viewed at https://www.aer.gov.au/system/files/AER%20-%20Opt-in%20Guideline%20-%20June%202020_0.pdf.

⁵⁷ A person may apply to the AER for approval to register as a prescribed opt-in customer: see Electricity Rules cl. 4A.D.5. That person is not a prescribed opt-in customer unless the AER approves the relevant application. As of the date of publication of this Issues Paper, the AER has not received any such applications. For more information on eligibility requirements for opt-in customers see sections 4 and 5 and Figure 1 of the Opt-in Guideline.

⁵⁸ An MLO exchange is a trading facility that is approved by the AER under clause 4A.G.23 of the Electricity Rules in order to facilitate the trading of MLO products (see Electricity Rules, cl 4A.G.23(a)).

⁵⁹ Electricity Rules. cl. 4A.G.23(7).

⁶⁰ Electricity Rules, cl. 4A.G.24(b).

⁶¹ Electricity Law, s. 18ZC.

⁶² AER Compliance and Enforcement Policy July 2021, p. 6.

⁶³ Electricity Law, s. 28(2)(a) and (b).

serve a notice requiring a person to appear before the AER to provide certain information or evidence, orally or in writing.⁶⁴

For example, where existing information sources suggest a potential breach of the RRO provisions, our Interim MLO Guidelines⁶⁵ note that we may seek performance data or information directly from MLO generators in addition to the data provided by an MLO exchange to test this.⁶⁶

While the nature of any additional information and data we may need remains unclear, and has the potential to differ from one regulated entity to another, we consider reliance on the above tools is preferable in at least the short to medium term to creating common, binding obligations under these Guidelines.

If our experience with the first applications of the RRO makes it apparent that such requests are common to many regulated entities, and/or are likely to be repeated on a regular basis, we can use the Rules Consultation Procedures to amend the Guidelines and set up a framework for the provision of information and data that will allow us (and regulated entities) to manage this efficiently.

Question 5 - Do stakeholders agree with the AER's proposal not to introduce binding reporting requirements on regulated entities at this time, and to rely instead on existing sources of information and individual requests for information and data? If not, please specify the binding reporting requirements you consider the AER should introduce.

⁶⁴ Electricity Law, s. 28(2)(c).

⁶⁵ Our Interim MLO Guidelines can be viewed at <https://www.aer.gov.au/system/files/AER%20-%20Interim%20Market%20Liquidity%20Obligation%20Guidelines%20-%20August%202019.pdf>.

⁶⁶ AER, Interim MLO Guidelines, p. 28.

7 Compliance audits

The RRO compliance regime under the Electricity Law allows us to 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.⁶⁷

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. For example:

- Our Interim Contracts and Firmness Guidelines suggest that audits could be used to test:⁶⁸
 - 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 contemplate use of compliance audits to monitor MLO Generators' compliance with a liquidity obligation.⁶⁹

We 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 our functions and powers under the Electricity Law, including but not limited to the RRO.⁷⁰

7.1 Approach to carrying out compliance audits

The Electricity Law allows us to use the Guidelines to provide guidance to regulated entities about the carrying out of compliance audits.⁷¹ A compliance audit must be carried out in accordance with the Guidelines.⁷²

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

- We 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 our behalf. The costs incurred

⁶⁷ Electricity Law, ss. 18ZE, 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.

⁶⁸ AER Interim Contracts and Firmness Guidelines, August 2019, pp. 7-8.

⁶⁹ Electricity Rules. cl. 4A.G.24(b).

⁷⁰ Electricity Law, s. 18ZH.

⁷¹ Electricity Law, s. 18ZI(2)(b).

⁷² Electricity Law, s. 18ZG.

under this approach are recoverable from the regulated entity, in an amount determined under the Guidelines.⁷³

- Alternatively, we can require a regulated entity to carry out a compliance audit of specified aspects of its activities relating to its compliance with the RRO, and to give us 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 they remain responsible for the carrying out of the audit.⁷⁴

In this section we set out the general approach we propose will apply under the Guidelines to all compliance audits, drawing upon elements from the equivalent approach set out in the Retail Guidelines. Sections 0 and 7.3 go on to set out particular processes that we propose will apply under the two approaches to compliance audits outlined above.

7.1.1 Notice that an audit is required

If we decide that a compliance audit is to be carried out, we propose to notify the regulated entity in writing to advise:

- whether we will be responsible for carrying out the compliance audit, or whether we will require 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. These will be similar to the equivalent approach set out in the Retail Guidelines, and will set out the scope, approach, coverage, required output and timeline for the audit.

7.1.2 Experience and independence of auditors

A compliance audit should 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.

We propose the Guidelines require that the person or contractor carrying out the compliance audit meet the following criteria adapted from the compliance audit procedure in the Retail Guidelines:

- is independent of the regulated entity and all of its related parties and is 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;
- has professional competence to apply established audit standards and techniques to carry out the compliance audit to a high standard;
- has a system of quality controls to ensure audit reports are of a professional standard;

⁷³ Electricity Law, s. 18ZE.

⁷⁴ Electricity Law, s. 18ZF.

- has relevant expertise including experience in national energy laws, rules and regulations; and
- is 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.

Question 6 - Do stakeholders agree with the AER's proposed criteria for the experience and independence of compliance auditors? If not, please specify the additional or alternative criteria you consider would be appropriate.

7.1.3 Liable entity cooperation during the audit

We propose the Guidelines set clear expectations for a regulated entity's cooperation during the audit process. This follows the approach taken in the Retail Guidelines.

For an audit to provide a reliable measure of compliance, we propose the Guidelines require a regulated entity to 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.

For most audits, we expect the data, information and documents required by the auditor will include at least:

- 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; and
- 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.

The additional requirements for each audit are likely to differ from case to case. For example:

- The audits contemplated under our Interim Contracts and Firmness Guidelines (noted at the start of this section) suggest that an auditor may require access to information:⁷⁵
 - that demonstrates that contracts reported in an NCP report were actually held by the liable entity on reporting 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-qualifying contracts.

⁷⁵ AER Interim Contracts and Firmness Guidelines, August 2019, pp. 6-7.

- The Electricity Rules contemplate that an audit of an MLO Generator's compliance with a liquidity obligation would require access to information held by an MLO Generator's trading right holder, or by its MLO nominee or an agent acting on the instructions of that MLO nominee. For the purposes of a compliance audit, the Rules require an MLO Generator to ensure that it, or the AER, has access to any information related to its compliance with the liquidity obligation.⁷⁶

While it is not possible or practical to pre-determine the needs of all potential audits in these Guidelines, we 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.

Question 7 - Do stakeholders agree with the AER's proposed requirements for liable entity cooperation during the audit process? If not, please specify the additional or alternative requirements you consider the AER should include.

7.2 Compliance audits by the AER

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

Where an audit is carried out by or on behalf of the AER, we propose the regulated entity will be responsible for coordinating its engagement throughout the audit, and for supporting and facilitating cooperation with the audit in accordance with section 7.1.3 above.

Where we have engaged a contractor or other person to conduct an audit on our behalf, AER staff may accompany them on any site visits, interviews or other engagements with the regulated entity. Any information or data provided by a regulated entity to a contractor or person we engage to carry out an audit on our behalf will also be available to us.⁷⁷

7.2.1 Opportunity to respond to audit findings

The Terms of Reference for a compliance audit carried out by us or on our behalf will include appropriate opportunities for the regulated entity to respond to the audit findings.

We propose the Terms of Reference will include:

- An opportunity to review and respond to any draft findings prior to completion of the audit report.
- 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.

⁷⁶ Electricity Rules, cl. 4A.G.24(b) states that this access must be provided 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.

⁷⁷ Electricity Law, s. 18ZH.

We propose that the Guidelines allow a minimum period of 10 business days for each of these responses. As a benchmark for comparison, this is consistent with the period allowed by the Retail Guidelines for comments on draft audit findings provided by the AER.

7.2.2 Cost recovery

The costs incurred by the AER in carrying out a compliance audit can be recovered from the regulated entity that is subject to the audit.⁷⁸ Costs recovered from the regulated entity will be no more than the costs that we incur.

Given the wide reach of the audit provisions, the requirements of a compliance audit may vary from case to case, and from one regulated entity to another. As would be the case if a regulated entity were to engage its own auditor, there is also a range of contractors or other persons who we may engage to carry out an audit on our behalf. In that context, we do not consider it practical or reasonable to use the Guidelines to determine a fixed amount for the cost of carrying out a compliance audit.

Instead, we propose that the Guidelines adopt the same approach as the Retail Guidelines, relying on the obligations that govern our procurement activities as a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* and Commonwealth Procurement Rules, as shown below in Table 3.⁷⁹ These obligations will govern our assessment of value for money in procurement of services relating to compliance audits. We consider they provide the appropriate level of discipline over our engagement of a contractor or other person to carry out an audit, and an appropriate level of comfort to a regulated entity that our choice has been a prudent and efficient one.

Table 3: Engagement of contractors or other persons to carry out a compliance audit

If we choose to engage an external contractor or other person to carry out a compliance audit, we will be required to procure the services of the auditor in accordance with the *Public Governance, Performance and Accountability Act 2013* (Cth) and the Commonwealth Procurement Rules. 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;

⁷⁸ Electricity Law, s. 18ZE(4).

⁷⁹ The Commonwealth Procurement Rules can be viewed at <https://www.finance.gov.au/sites/default/files/2022-06/CPRs%20-%201%20July%202022.pdf>.

- 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).

We have panels of suppliers in place that have been pre-selected through these procurement processes to provide goods or services at agreed rates and conditions. We may choose to draw on these panel arrangements when engaging a contractor or other person to carry out a compliance audit on our behalf.

Prior to commencing an audit, we propose to inform the relevant regulated entity of the anticipated costs that we expect to recover from the regulated entity upon completion of the audit, based on the outcomes of our procurement of the relevant services and the cost of the engagement.

At the conclusion of the audit, we would then determine the reasonable costs to be paid by the regulated entity for the carrying out of the compliance audit, having regard to the following factors:

- 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.

We will provide the regulated entity with an invoice that identifies the amount payable, and provides details of how payment is to be made. We propose that payment by the regulated entity be required within 30 days of the invoice.

We propose to provide, with that invoice:

- a copy of the invoice issued to us 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.

Question 8 - Do stakeholders agree with the AER's proposed process for audits carried out by or on behalf of the AER, including the process for cost recovery from regulated entities? If not, please specify which aspects of the proposed audit process you consider should be changed.

7.3 Compliance audits by regulated entities

Section 18ZF allows the AER to require a regulated entity to carry out its own compliance audit. The obligations to carry out such a compliance audit, and to provide the results of that

audit in the period we specify, are tier 1 civil penalty provisions.⁸⁰ The regulated entity may arrange for a contractor or another person to carry out the audit on its behalf, but will remain responsible for ensuring the audit is carried out in the manner required by us, and that the results are provided to us on time.⁸¹

7.3.1 Audit proposal

Upon the AER notifying a regulated entity that it is required to carry out a compliance audit, we propose that the regulated entity be required to respond with a proposal in a similar manner as the Audit Proposal under the Retail Guidelines:

- advising whether the compliance audit will be carried out by the regulated entity itself or by a contractor or other person on the regulated entity's behalf;
- demonstrating how the person carrying out the audit satisfies the criteria proposed in section 7.1.2 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 carrying out the compliance audit has access to all relevant data, information and documents to undertake the compliance audit, and to ensure that the results of the audit will be provided in the period specified in the Terms of Reference.

If the regulated entity intends to engage a contractor or another person to carry out the audit on its behalf, the proposal should clearly identify, and be prepared with the input of, that contractor or other person.

We propose that the Guidelines allow a period of 20 business days for submission of an audit proposal. As a benchmark for comparison, this is the same period allowed by the Retail Guidelines for submission of an audit proposal.

This process has the benefit of giving us and the regulated entity comfort, before the audit commences, that the approach taken to carrying out the audit will be in accordance with the Electricity Law and the Guidelines.⁸²

However, we propose the Guidelines make clear that we 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, for example where we consider the nominated auditor will not be able to satisfy the criteria proposed in section 7.1.2. In such cases, we may require submission of a revised proposal, or may elect to carry out the audit ourselves (or engage a person or contractor to do so on our behalf).

⁸⁰ Electricity Law, ss. 18ZF(1), (3).

⁸¹ Electricity Law, s. 18ZF(2).

⁸² Electricity Law, ss. 18ZF(1), 18ZG.

7.3.2 Results of the compliance audit

A regulated entity must provide the results of a compliance audit required by us within a period we specify.⁸³ We propose to set this timeframe out in the Terms of Reference for the audit, rather than pre-determining a timeframe in the Guidelines. This will allow us to set an appropriate timeframe for each audit, with regard to its scope and complexity, and any other relevant factors.

We propose that the Guidelines require the results of the audit to 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
 - a documented implementation plan setting out how, and in what timeframes, the regulated entity proposes to address each finding, with reference to any recommendations for improvements and/or corrective actions made by the auditor (or, alternatively, an explanation of why the regulated entity considers an audit finding does not need to be addressed).

Question 9 - Do stakeholders agree with the AER's proposed process for audits carried out by or on behalf of regulated entities? If not, please specify which aspects of the proposed audit process you consider should be changed.

⁸³ Electricity Law, s. 18ZF(3).