

PROPOSED PROCEDURE CHANGE (PPC)

Summary Section

Issue Number	IN001/20W		
Impacted Jurisdiction(s)	Western Australia (WA)		
Proponent	Catherine Rousch Nina Telford Sarah Silbert	Company	Alinta Kleenheat AGL
Proponent e-mail		Proponent phone #	
Affected Gas Market(s)	Retail	Date proposal sent to AEMO	Tuesday, 17 September 2019
Short Issue Title	Amendment to the requirements for Explicit Informed Consent (EIC) breach reporting and annual EIC auditing by WA Retailers		
Other key contact information	grcf@aemo.com.au		

VERSION #	PRESENTED TO	DATE
1.0	GRCF	15 July 2021



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1. DESCRIPTION OF ISSUE

Background

WA Retailers¹ are currently required to perform a negative assurance audit of Explicit Informed Consent (EIC) annually and provide the report to AEMO. Some Retailers have provided advice to AEMO that it is a significant cost on retailers to organise and undertake these annual audits. A similar obligation does not exist in the east coast jurisdictions.

Clause 350 of the WA Retail Market Procedures (RMP) states that Retailers are required to organise an annual EIC audit and submit the report to AEMO before April of each year. The requirements and record keeping process is described in Appendix 6 of the RMP. This report is not submitted to the Economic Regulation Authority (ERA). The Gas Retail Metering team within AEMO reviews the report and ensures that if there were EIC compliance breaches that these have been reported to AEMO.

This PPC seeks to propose an alternative to the annual EIC audit process to reduce the regulatory administration burden and cost on WA gas Retailers.

Solution Options

In late 2020, AEMO proposed the following solution options:

1. Retailers to continue to arrange their own internal quality assurance (QA) audit but there will no longer be a need to provide an independent negative assurance audit of EIC to AEMO. Retailers need to ensure all compliance breaches are reported to AEMO. This approach would harmonise the WA requirements with East Coast jurisdictions.
2. Retailers to use a self-regulating approach.
3. AEMO to determine audit requirements
4. EIC audit to be undertaken every five years for existing Retailers and new Retailers to organise an EIC audit yearly for first two or three years, and then every five years if audit outcomes are satisfactory.

Outcome of Options Consultation

The solution options mentioned above were discussed at a workshop held in December 2020 and WA Retailers unanimously agreed to proceed with Option 3 (AEMO to determine audit requirements). Subsequently, AEMO consulted the proposed Option 3 with internal and external stakeholders.

At this time, it was identified that Option 4 had not been thoroughly interrogated as a viable solution in the workshop. AEMO subsequently held further discussions during last week of February 2021 with the proponents² of this initiative. At this stage it was agreed to progress with Option 4 (EIC audit to be undertaken every five years if outcomes are satisfactory), with the following requirements requested by proponents:

- The frequency of EIC audits be every five years for any Retailer already registered in WA
- New Retailers would conduct an annual EIC audit initially for three consecutive years
- Breaches of EIC reported by any Retailer already registered in WA will be monitored by AEMO
- Where AEMO deems it appropriate, a Retailer will be notified to undertake an EIC audit.

¹ Retailer is a term not used in the WA Retail Market Procedures (RMP). The equivalent term in the WA RMP is "Users that are not Self-Contacting Users (SCU)"

² Proponents included AGL, Alinta, Origin Energy and Kleenheat



Outcome of Gas Market Issue (GMI version 1) Consultation

Following the workshop in December 2020 AEMO issued amended GMIs for IN001/18W³ and IN001/20W on 12 March 2021. Feedback was received from AGL, Alinta, Kleenheat, Origin Energy and Synergy. There was broad support for the proposal IN001/20W (EIC Audit Review). AGL, Kleenheat and Synergy queried the proposal for quarterly reporting of EIC breaches (IN001/18W) and suggested a preference for annual reporting. Synergy did not support self-reporting of non-EIC breaches. AGL and Alinta also suggested further edits to the RMP clauses.

AEMO issued the next version of the GMI (version 2) that included amendments to the clauses as suggested by AGL and Alinta and its responses to queries from participants, in particular, those relating to the requirement for quarterly reporting of EIC breaches. Feedback was received from AGL, Agora Retail, Alinta, Kleenheat, Origin Energy and Synergy.

All participants again supported the proposal IN001/20W without changes. AGL, Alinta, Kleenheat and Origin Energy supported all proposed changes in IN001/18W. Agora Retail queried the quarterly reporting of EIC breaches and suggested a preference for annual reporting. Synergy did not support the self-reporting of non-EIC breaches. AEMO discussed Synergy's feedback with them and it was decided that Synergy would present their perspectives during the GRFC meeting of 17 June 2021. Following Synergy's presentation most other Retailers indicated that they also were withdrawing their support for self-reporting of non-EIC breaches.

Changes carried over from GMI IN001/18W

This current proposal suggests changes to the WA RMP including the following:

1. Self-reporting of all breaches, except EIC breaches, by participants and AEMO.
2. Adding a note so that breach reporting is not required where erroneous transfers are corrected to the satisfaction of all parties by the raising of an error correction notice (ECN).
3. Quarterly reporting of breaches related EIC to support the proposal IN001/20W EIC Process Review.

Following the GRFC June 2021 meeting where elements of the GMI IN001/18W were not supported, AEMO consulted with internal stakeholders to determine the next steps. AEMO's view was that there would be significant benefit to the industry from implementing the proposal IN001/20W to reduce the frequency of EIC audits. The proposed changes for IN001/20W must commence at the beginning of a calendar year which was proposed to be 1 January 2022. AEMO determined that it would be in the best interest of the industry put IN001/18W requirement 1 on hold and merge IN001/18W requirements 2 and 3 with the proposal IN001/20W.

Following notification of the modified approach by AEMO to the GRFC on 25 June 2021, AGL, Agora Retail, Alinta, Kleenheat, Origin Energy and Synergy have confirmed their support.

2. REFERENCE DOCUMENTATION

2.1. Procedure Reference

Retail Market Procedures (WA) version 8.0

³ The IN001/18W initiative proposed several changes to Part 6.3 of the RMPs which already required participant, pipeline operator, prescribed person, or AEMO to notify AEMO if they reasonably believed another participant, pipeline operator, prescribed person, or AEMO has breached the any of the provision within the RMP, they must notify AEMO within 30 business days of the date that they became aware, or ought to have become aware, that the breach occurred. The changes involved self-reporting of non-EIC breaches immediately. EIC breaches were to be reported quarterly.



2.2. Specification Pack Reference

NA

3. OVERVIEW OF CHANGES

All changes to the RMPs are described in Attachment B that shows the tracked changes to version 8 of the WA RMPs.

Amendments to clause 325 of the WA RMPs consist of:

- Addition of a note indicating breach reporting is not required where an incorrect transfer has been rectified to the satisfaction of all parties by raising an ECN (see Clause 325 (1A)).
- Addition of clauses relating to the reporting of EIC breaches quarterly (see Clause 325 (2)).
- Addition of clauses relating to AEMO notifying a participant to provide a breach notice (see Clause 325 (2)).
- Amendments to clauses in Part 6.3 and 6.4 that are impacted by the above changes to clause 325.
- Removing the period within which a participant needs to notify an alleged breach by another participant (see Clause 325(2)).

Amendments to clause 350 of the WA RMPs consist of:

- Addition of subclauses related to the frequency of EIC audits every five years and AEMO notifying a participant to conduct EIC audit where deemed necessary (see Clause 350 (2A)).
- Amending clause 350 (2) to require a new Retailer conduct an EIC audit annually for the first three years following registration in WA gas market.
- Amending the period of providing an Auditor's final report by 31 March in the subsequent year instead of within 3 months (see Clause 350 (3)(b)).

4. LIKELY IMPLEMENTATION REQUIREMENTS AND EFFECTS

Impact on Retailers

It is anticipated that all Retailers will need to make minor amendments to their business processes to:

- Report any breaches of EIC each quarter.
- Organise an EIC audit every five years commencing 1 January 2027 (assuming this proposal is implemented by 1 January 2022). The Retailers will be required to organise an EIC audit for the calendar year 2021 as per the existing requirement.
- Organise an EIC audit as, and when notified by AEMO.

Impact on AEMO

AEMO will monitor the breaches reported each quarter by the Retailers and where issues are identified, require a Retailer to organise an EIC audit for a specific period.

5. IMPACT OF ISSUE NOT PROCEEDING

Not making the changes will mean that:

- Retailers with streamlined and robust business processes will continue to incur the cost of undertaking an annual EIC audit which is understood to be generally in the range of \$30,000 to \$40,000 per year per Retailer or around \$180,000 to \$240,000 per year from an overall industry perspective.



- Retailers will continue to incur cost and effort of reporting on erroneous transfer breaches to AEMO even though they are rectified to the satisfaction of all parties.

6. OVERALL COSTS, BENEFITS AND MAGNITUDE OF THE CHANGES

AEMO has deemed this change to be non-substantial as it involves minor business process changes (a reduction in effort and obligations) for Retailers and AEMO.

These changes however, are expected to require some additional monitoring for AEMO and where required, investigate the EIC breaches. AEMO will also need to keep track of EIC Audits conducted by Retailers (to ensure that these are completed at least once every five years).

The proposed changes are expected to deliver the following benefits:

- Changing the frequency of EIC audit to once in five years is expected save approximately \$30,000 to \$40,000 per year per Retailer or around \$180,000 to \$240,000 per year from an overall industry perspective. However, the cost of an audit once in each five year period is anticipated to be higher than for a single year.
- Reduction in the tasks each Retailer is required to perform to support the audit including the following:
 - Appointing an auditor and associated procurement activities.
 - Preparatory works needed to make information available to auditors and readiness for an audit.
 - Allocating staff members for the performance of the audit.
 - Review and close-of the audit report with internal compliance stakeholders.
- An increased focus on reliable record management through the five-year audit period. It also places additional onus and accountability on Retailers for self-regulated compliance.
- Reallocating internal employees' time spent in facilitating and managing the EIC audit in the years when an audit is not required.
- Clarifies the self-reporting requirement which has been a point of confusion for market participants over previous years. This change sets out that a Retailer must self-report and creates consistency across the market, whereas previously some Retailers were reporting alleged breaches, and some were not.
- Implementing a set time frame for reporting alleged EIC related breaches provides structure to participants to follow.
- Improvements in market operations and confidence in the transactions that occur between participants.

This change in audit requirements acknowledges the gas retail market has matured with an appropriate level of oversight to ensure compliance with the EIC obligations under the WA RMP's. It also aligns with audit requirements in east coast jurisdictions.

Given the benefits and the likely implementation requirements (e.g. Retailers will need to make minor amendments to their business processes), AEMO's initial assessment is that from an overall industry perspective, the benefits significantly outweigh the costs.

If any Retailer opposes AEMO's initial assessment, please include this feedback in response template in Attachment A.



7. AEMO'S PRELIMINARY ASSESSMENT OF THE PROPOSAL'S COMPLIANCE WITH CLAUSE 378 OF THE RMP

Regarding the changes in WA, AEMO's preliminary assessment of the proposal's compliance with clause 378 of the RMP (WA) is:

<p>Ensure that the retail gas market operates and is governed in a manner that is,</p> <ul style="list-style-type: none"> (i) open and competitive; (ii) efficient; and (iii) fair to participants and their customers 	<p>AEMO's view is that the proposed change will continue to promote competition, is not unreasonably costly to implement (it is an overall cost saving) and doesn't disadvantage participants or their customers.</p>
<p>Ensure compliance with all applicable laws</p>	<p>AEMO's view is that the proposed changes are consistent with the applicable laws, and participants will be given an opportunity during this PPC consultation to inform AEMO if they believe the proposed change is in conflict with any applicable laws.</p>
<p>Ensure effective consultation occurs and gives stakeholder's opportunities to provide feedback of the proposed changes</p>	<p>AEMO's view is that this PPC consultation and the subsequent IIR consultation, in addition to the pre-consultation GMIs and discussions at the GRCF, have and will provide adequate opportunities for participants to provide feedback on the proposed changes.</p>

8. SUPPORTING DOCUMENTATION

Please see Attachment B for the proposed RMP WA changes.

9. PROPOSED TIMELINES

Subject to all necessary approvals, AEMO proposes the following timeframe:

- Issue PPC on 15 July 2021.
- PPC feedback due 30 July 2021.
- Issue IIR on 10 August 2021.
- IIR feedback due 7 September 2021
- Economic Regulation Authority (ERA) submission targeted for 27 September 2021 with ERA decision expected by middle of December 2021.

AEMO will work with ERA on the process to set an effective date for these changes to be early January 2022.



ATTACHMENT A – PPC RESPONSE TEMPLATE

The PPC response template has been attached separately to this document.

Anyone wishing to make a submission to this PPC consultation are to use this response template.

Submissions close Friday 30 July 2021 and should be emailed to grcf@aemo.com.au.



ATTACHMENT B – RMP WA DOCUMENTATION CHANGES (SEE SECTION 3)

Blue underline means addition ~~red-strikeout~~ means delete Strategy and Markets

2. Definitions

“referral” means a matter referred to the *compliance panel* under clause 329(1)(a)~~(ii)~~ or clause 329(1)(b)~~(iii)~~ or clause 331(2).

Part 6.3 – Matters referred to AEMO

{Note: The purpose of this Part 6.3 which imposes a requirement that matters be referred to AEMO before being referred to the *compliance panel* or the *Economic Regulation Authority*, is:

- (a) to provide a speedy mechanism to resolve minor matters without activating the *compliance panel* or requiring an investigation by the *Economic Regulation Authority*; and
- (b) to impose a filter which discourages the referral of vexatious or frivolous *claims* to the *compliance panel* or the *Economic Regulation Authority*.)

325. Matters referred to AEMO

(1) If a *participant, pipeline operator, prescribed person, or AEMO*:

- (a) reasonably believes that another *participant, pipeline operator, prescribed person, or AEMO* has breached the *procedures*; or
- (b) requires an interpretation of the proper meaning of a procedure,

then the *participant, pipeline operator, prescribed person, or AEMO* may at any time give AEMO a notice ~~specifying~~ in accordance with this Part.

(1A) If a *participant, pipeline operator, prescribed person, or AEMO* reasonably believes that they have breached clause 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A or 349 of the *procedures*, then the *participant, pipeline operator, prescribed person, or AEMO* must give AEMO a notice in accordance with this Part

{Note: If an incorrect transfer request has been corrected to the satisfaction of all affected parties as a result of acceptance of an *error correction notice*, a notice of breach is not required to be given in accordance with this Part}

(1B) A notice given pursuant to clause 325(1) or 325(1A) must specify

- ~~(e)~~(a) the *GBO identification* of the person referring the matter to AEMO; and
- ~~(d)~~(b) the identity of any person of which it is aware, that is involved with or affected by the referred matter; and
- ~~(e)~~(c) if the matter relates to an alleged breach of the *procedures* by a *participant, pipeline operator or prescribed person*:



- (i) the *GBO identification* of the *participant pipeline operator* or *prescribed person* that is alleged to have breached the *procedures*; and
 - (ii) the identity of any other person that is involved with or affected by the alleged breach of the *procedures*; and
 - (iii) the details of the alleged breach of the *procedures*; ~~or~~ and
 - (iv) if applicable, the details of remedial or corrective action implemented or that will be implemented to ensure the breach does not reoccur; or
- ~~(f)~~ (d) if the matter relates to an alleged breach of the *procedures* by AEMO:
- (i) the details of the alleged breach of the *procedures* by AEMO; and
 - (ii) the identity of any other person that is involved with or affected by the alleged breach of the *procedures*; or
- ~~(g)~~ (e) if the matter relates to an interpretation of the *procedures*:
- (i) the procedure that requires interpretation and the reason why; and
 - (ii) the circumstances in which the interpretation is required.
- (2) ~~Every notice of an alleged breach of the procedures under 325(1A) must be given within 30 business days of the date that the participant, pipeline operator or prescribed person alleging the procedure breach became aware, or ought to have become aware, that the breach occurred~~ subject to clause 325(2C), within 5 business days after the end of each Quarter, in respect of all breaches of clause 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A or 349 of the procedures in that Quarter.

Quarter means each period of three calendar months ending on March 31, June 30, September 30, or December 31.

2A If AEMO, acting reasonably, considers that potential breaches notified under clause 325(2) indicate potential issues with compliance with clauses 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A or 349, AEMO may issue a notice to a participant requiring that participant to provide a notice under 325(2) for potential breaches of clause 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A or 349 within 30 business days of the date that the participant became aware, or ought to have become aware, that the breach occurred, instead of after each Quarter.

(2B) In determining whether to issue a notice under clause 325(2A), AEMO must consider the matters referred to in clause 350(2C).

{Note: For the avoidance of doubt, AEMO may issue a notice under clause 325(2A) even if AEMO has not issued a notice under clause 350(2B).}

(2C) If AEMO issues a notice to a participant under clause 325(2A), for such period as reasonably determined by AEMO, that participant must give a notice under



325(1A) for any potential breach that relate to clause 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A or 349 within 30 business days of the date that the participant became aware, or ought to have become aware, that the breach occurred.

- (3) A *notice* requesting an interpretation of a procedure may be given at any time.

325A. Suspending the process

- (1) If a person gives a *notice* under clause 325(3) (“**interpretation notice**”) which involves interpretation of a *procedure* that is, or becomes, the subject of a *notice* of alleged breach under clause 325(2) (“**breach notice**”), then time does not run in respect of any deadline under this Chapter that relates to the breach *notice* for a period (“**suspension period**”) determined in accordance with clause 325A(2).
- (2) The suspension period starts on the giving of the interpretation *notice* and ends at the time at which the *compliance panel’s* decision takes effect under clause 341(5)(b).

{Note: For example, if a breach *notice* has not been given, the 30 day period under clause 325(2) is suspended while the interpretation *notice* is being dealt with – i.e. for the duration of the suspension period.}

- (3) Clause 325A(1) does not apply in respect of a deadline that had already expired when the interpretation *notice* was given.

326. Withdrawal of referral

- (1) A *participant, pipeline operator, or prescribed person* that refers a matter to AEMO may at any time prior to AEMO making a decision under clause 329 withdraw the referral by *notice* to AEMO.
- (2) AEMO may require the *participant, pipeline operator, or prescribed person* to reimburse AEMO for the reasonable costs incurred by AEMO in connection with a referral to AEMO, up to the time it is withdrawn.

327. AEMO to give *notice* to participants

If AEMO:

- (a) receives a *notice* under clause 325(1) or 325(1A); or

(a1) reasonably believes that a participant, pipeline operator, prescribed person, or AEMO has breached the procedures; or

- (b) requires an interpretation of the proper meaning of a procedure.

AEMO must before making a decision under clause 329(1) give a *notice* to each *participant, pipeline operator, or and prescribed person or AEMO* affected specifying:

- (c) if the matter relates to an alleged breach of the *procedures* by a *participant, pipeline operator, prescribed person or AEMO*:



- (i) the *GBO identification* of the *participant, pipeline operator, prescribed person* or *AEMO* that is alleged to have breached the *procedures*; and
- (ii) the identity of each person that is involved with or affected by the alleged breach of the *procedures*; and
- (iii) the details of the alleged breach of the *procedures*; ~~or~~ and
- (iv) the details of remedial or corrective action implemented or to be implemented that ensures the breach does not reoccur; or
- (d) if the matter relates to an interpretation of the *procedures*:
 - (i) the procedure that requires interpretation and the reason why; and
 - (ii) the circumstances in which, the interpretation is required.

328. There is no clause 328

328A. AEMO may investigate alleged breaches

- (1) Before making a determination under clause 329 in relation to an alleged breach ~~referred to~~ notified by *AEMO* under clause ~~325~~ 327, *AEMO* may request from any *participant, pipeline operator* or *prescribed person* information about the circumstances of the alleged breach.
- (2) *AEMO* may specify a time for responding to a request under clause 328A(1), which must be at least 5 full *business days* from the time of the request.
- (3) A *participant, pipeline operator* or *prescribed person* who receives a request from *AEMO* under clause 328A(1) must, as soon as practicable and in any event within any time specified under clause 328A(2), provide *AEMO* with information in reasonable detail about the relevant circumstances.
- (4) *AEMO* must not make a determination until the time period in clause 328A(2) has elapsed, but after that may make a determination whether or not a *participant, pipeline operator, or prescribed person* provides information in accordance with clause 328A(1).
- (5) *AEMO* may at any time extend the specified time for responding to a request under clause 328A(2)

329. Determinations which may be made

- (1) After considering an alleged breach of the *procedures* or procedure interpretation *AEMO*:
 - (a) must, if the matter relates to an alleged breach of the *procedures* by a *participant* or *AEMO*, and *AEMO* has not been delegated authority to make a determination on materiality under clause 343(3), refer the matter to the



compliance panel and provide the *compliance panel* with AEMO's view on whether the breach was material.

- (b) may if the matter relates to an alleged breach of the *procedures* by a *participant* or *AEMO*, and *AEMO* has been delegated authority to make a determination on materiality under clause 343:
 - (i) if *AEMO* determines that the matter was not material, either resolve not to take any further action in relation to the matter, or refer the matter to the *compliance panel*; or
 - (ii) if *AEMO* determines that the matter was material, refer the matter to the *compliance panel*.
- (c) may, if the matter relates to an alleged breach of the *procedures* by a *pipeline operator* or *prescribed person*, then
 - (i) if *AEMO* determines that the matter was not material, resolve not to take any further action in relation to the matter, or refer the matter to the *approving body*; or
 - (ii) if *AEMO* determines that the matter was material, refer the matter to the *approving body*.

{Note: In determining whether an alleged breach of the *procedures* by a *participant*, *pipeline operator*, *prescribed person*, or *AEMO* is material *AEMO* will have regard to the following:

- (i) Whether the alleged breach had a material impact on the operation of the Market.
 - (ii) Whether the alleged breach has resulted in any costs being borne by *AEMO* (and therefore the Market as a whole).
 - (iii) Whether or not the alleged breach of the *procedures* appears to have arisen as a result of problems with the design/operation of the *procedures*, and that the *participant*, *pipeline operator*, or *prescribed person* was still acting in a manner consistent with the guiding principles of *AEMO*.
 - (iv) Whether the alleged procedure breach was an isolated event, or indicates a systemic problem with compliance.
 - (v) Whether the alleged procedure breach appears to have been made intentionally or maliciously.
 - (vi) Whether remedial action was taken by the *participant*, *pipeline operator*, or *prescribed person* following discovery of the breach.
 - (vii) Whether the alleged procedure breach has a potential anti-competitive effect.
 - (viii) Any other matters considered relevant by *AEMO*.)
- (d) must, if the matter relates to an alleged interpretation of the *procedures*, refer the matter to the *compliance panel* with *AEMO*'s preliminary view on the interpretation.

(2) *AEMO* must make its determination under this clause 329 expeditiously in a fair and reasonable manner.

(3) *AEMO* must:



- (a) for the first 12 months after the date that a change to the *procedures* comes into force, have regard to the fact that the *procedures* affected by the change are a new governing regime for *participants, pipeline operator, or prescribed person*;
- (b) for the first 6 months after a *person* becomes a *participant, pipeline operator or prescribed person*, have regard to the fact that the *procedures* are a new governing regime for the new *participant, pipeline operator, or prescribed person*; and
- (c) if there is an *in-progress procedure change* that affects the procedure that is alleged to have been breached, consider whether the conduct that is the subject of the alleged procedure breach would not have been a breach if the *in-progress procedure change* had been in effect at the time the breach was alleged to have occurred, and have regard to this in making its decision under clause 329(1).

330. Notification of determinations

- (1) Within 5 *business days* after a determination under ~~clause 329(1)(a)(i) or~~ clause 329(1)(b)(i) that the matter was not material, AEMO must give *notice* of the determination and reasons for the determination to the *participant, pipeline operator, or prescribed person* that referred the matter under clause 325.
- (2) Within 5 *business days* after a determination under clause 329(1)(b)(ii) ~~or clause 329(1)(b)(iii)~~, AEMO must, subject to clause 330(3), give *notice* of the determination and reasons for the determination to all *participants, pipeline operators, and prescribed persons*.
- (3) AEMO must not include any *confidential information* in the *notice* of the determination and reasons for the determination under clause 330(2) and may censor documents it publishes to *participants, pipeline operators, and prescribed persons*.

331. Appeal to the *compliance panel*

- (1) Within 40 *business days* after notification of a determination by AEMO under clause **Error! Reference source not found.** or clause 329(1)(b) ~~(i)~~ (ii), a *participant, pipeline operator, or prescribed person* may appeal AEMO's determination to the *compliance panel* by giving *notice* to AEMO.

{Note: The *compliance panel* may make an order that the *participant* must pay the *compliance panel's costs* under clause **Error! Reference source not found.** or other parties' *costs* under clause **Error! Reference source not found.** as part of any determination made by the *compliance panel*.}

{While *pipeline operators* and *prescribed persons* are not subject to decisions by AEMO, they may still appeal an AEMO decision to the *compliance panel* on matter of non-compliance by a *participant*.}

- (2) Within 5 *business days* after notification under clause 331(1), AEMO must refer the matter to the *compliance panel*.



Part 6.4 – Referral of matters to *compliance panel*

332. Referral of matters to *compliance panel*

A matter may only be referred to the *compliance panel* by:

- (a) AEMO under clause 329(1)(a)(~~iii~~), or clause 329(1)(b)(~~iii~~), ~~clause 329(1)(b)(ii)~~ or clause 329(1)(d); or
- (b) [AEMO under clause 331\(2\)](#) by way of appeal by a *participant*, *pipeline operator*, or *prescribed person* under clause 139(5) or clause 331(1).

333. Requirements for referral

A *referral* must be in writing and must specify at least the following information:

- (a) the identity of the person lodging the *referral* with the *compliance panel*; and
- (b) such information as AEMO has regarding the matter, including any preliminary view formed by AEMO; and
- (c) if the *referral* is [under clause 332\(b\) by way of](#) an appeal under clause 139(5) or clause 331 – the grounds of appeal; and
- (d) ~~if the referral is under clause 332(b)~~, the decision sought; and
- (e) ~~if the referral is under clause 332(b)~~, the orders sought.

334. Compliance panel may reject appeal

If in the *compliance panel's* reasonable opinion:

- (a) a *referral* lodged [under 331\(2\) for an appeal](#) under clause 139(5) or clause 331 does not satisfy the requirements set out in clause 333 (as applicable); or
- (b) the grounds of appeal are not sufficient having regard to the nature of the decision the appeal is in relation to and the reasons given for that decision,

then the *compliance panel* may decline to accept the *referral* within 20 business days of receipt of the *referral*.

{Note: If *participant* wishes to re-lodge the appeal, it may do so by lodging a further [referral notice](#) within the time frame indicated in clause 331(1).}

335. Withdrawal of referral to *compliance panel*

- (1) AEMO or a *participant*, *pipeline operator* or *prescribed person* that has lodged a *referral* may withdraw the *referral* at any time by *notice* to the *compliance panel*.



(2) Upon receipt of withdrawal of the *referral*, the *compliance panel* must cease all actions, inquiries and proceedings in relation to the withdrawn *referral*.

(3) The *compliance panel* may require *AEMO* or the *participant*, *pipeline operator* or *prescribed person* to reimburse the *compliance panel* for the reasonable costs incurred by the *compliance panel* and *AEMO* in connection with a *referral* to the *compliance panel*, up to the time it is withdrawn.

(4) Where a *participant* withdraws a *referral*, the *compliance panel* may, if requested to by any other *participant*, *pipeline operator* or *prescribed person* that has been a party to the *compliance panel proceedings*, require the *participant*, *pipeline operator* or *prescribed person* to reimburse any other *participant*, *pipeline operator* or *prescribed person* that has been a party to the *compliance panel proceedings* for the reasonable costs incurred by the other *participant*, *pipeline operator* or *prescribed person* in connection with the *referral* to the *compliance panel*, up to the time it is withdrawn.

336. Proceedings

Within 20 business days after receiving *notice* of a *referral* under clause 329(1)(a), 329(1)(b)(~~h~~), 329(1)(d) or 331(1)(~~i~~), the *compliance panel* must meet and commence the proceeding by giving *notice* to all *participants*, *pipeline operator* or *prescribed person* and *AEMO* specifying:

(a) the subject matter of the *referral*; and

(b) the timetable for the *proceeding*, including the date for lodgement of submissions and the date of the *hearing* (if applicable), in accordance with the procedures determined under clause 338.



Part 7.2 – Audit

350. Audit of explicit informed consent

(1) There is no Clause 350(1)

(1A) This clause 350 does not apply to users who are self-contracting users.

(2) ~~For~~After each of the 3 full calendar years immediately after the date on which a user is registered with AEMO as a Scheme Participant, a user must appoint an auditor, having regard to clause 353, to undertake a *negative assurance audit* of the user's compliance during the preceding calendar year with clauses 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A and 349, provided that the first negative assurance audit must be for the user's compliance during the period from the date on which the user is registered with AEMO as a Scheme Participant until the end of the first full calendar year after registration.

(2A) Subject to Clause 350(2) and 350(2B), after every 5 successive calendar years, a user must appoint an auditor, having regard to clause 353, to undertake a negative assurance audit of the user's compliance during the immediately preceding calendar year with clauses 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A and 349.

(2B) If AEMO reasonably considers that any breach or breaches of explicit informed consent requirements by a user under these Procedures requires an audit of the user at more regular intervals than required under Clause 350(2A), AEMO may at any time issue a notice to a user requiring, subject to such conditions as AEMO deems reasonably appropriate, the user to appoint an auditor to undertake a negative assurance audit of the user's explicit informed consent compliance at the times and for the period as determined by AEMO provided that the date by which the user must provide the auditor's report to AEMO is at least 3 months from the date of the notice.

(2C) If AEMO issues a notice to a user under Clause 350(2B), a user must appoint an auditor, having regard to clause 353, to undertake a negative assurance audit of the user's compliance with clauses 55A, 72(1), 72(4), 74A(4), 79(1), 79(4), 166A and 349 at the times and for the period as determined by AEMO and notwithstanding clause 350(3)(b), the user must provide the auditor's final report of its findings to AEMO by the date set out in that notice, which date must not be less than 3 months from the date AEMO issues the notice.

{Note: In determining whether a user must appoint an auditor to undertake an audit at more regular intervals than required under Clause 350(2A), AEMO will have regard to the following:

(i) the number of alleged breaches of explicit informed consent requirements;

(ii) trends in the number of alleged breaches of explicit informed consent requirements;

(iii) whether the breach(es) were material (as determined by AEMO under clause 329);



(iv) the impact of alleged breaches of explicit informed consent requirements on other participants; and

(v) any other matters considered relevant by AEMO.}

- (3) The *user* must:
- (a) ensure that the *negative assurance audit* is conducted under this Part 7.2; and
 - (b) provide the *auditor's* final report of its findings to AEMO ~~within 3 months~~ by 31 March after the end of the year to which the *negative assurance audit* relates.