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## **AMENDING THE AUSTRALIAN ENERGY REGULATOR WHOLESALE MARKET MONITORING AND REPORTING FRAMEWORK**

Alinta Energy appreciates the opportunity to provide feedback on the draft amendments to AER's monitoring framework that would expand the AER's monitoring functions to cover electricity contract and gas markets and permit the AER to use information gained for monitoring purposes to be used for its other functions, including to investigate potential breaches of the energy laws and rules.

### **Relevant points from our previous submission**

In our previous submission we raised concerns with the potential breadth of the proposed information gathering and monitoring powers and the consequential risk of unnecessary compliance costs and confidentiality breaches.

We also questioned the efficacy of the proposed powers and sought practical examples of how the data would be used to support the AER's monitoring objectives, better achieve the NGO and NEO, and inform further changes that improve competition.

In the table below we recognise and support the proposed amendments that partially address our concerns about compliance costs and confidentiality risks. We also recommend a further improvement for consideration.

However, we also note that the need for practical examples demonstrating the reforms' potential benefits remains outstanding. We therefore maintain that the practical value of the reforms should be further articulated before they are progressed. We consider that this would help focus the scope of the powers and the proposed guidelines to ensure that they are fit for purpose and avoid duplication of other mechanisms. We suggest this would also reduce industry's uncertainty and concerns about the potential breadth and implications of the information requirements.

<b>Issue</b>	<b>Measure</b>	<b>NEL</b>	<b>NGL</b>	<b>Alinta Energy position</b>
Appropriate use of powers & Minimise compliance costs	Before obtaining information, the AER must be satisfied the information is reasonably required for it to carry out its WMM functions.	18E(a)	30AE(a)	We support this measure. We recommend a further amendment that the AER be required to consider whether it has structured its information request to appropriately balance compliance costs with its monitoring objectives. For example, this could involve AER limiting their requests to the key terms of standardised (or 'OTC') contracts and avoid (where appropriate) requests requiring bespoke contract information. <sup>1</sup> Requests capturing bespoke contracts generally requires substantial explanations and additional legal reviews. This is labour-intensive for both the AER and participants and may be unnecessary: we suggest that the benefits of this additional information towards AER's objectives may be negligible noting that this subset of contracts is unlikely to materially influence AER's assessment.
Minimise compliance costs	Before obtaining information, the AER must consider whether the information is publicly available or can be obtained another way.	18E(b)	30AE(b)	Support
Minimise compliance costs	The AER must set out processes it will adopt to minimise the time and resources market participants will devote to respond to a request for information in its guidelines.	18EA(2)(c)	30AF(2)(c)	Support.
Confidentiality	In its guidelines	18EA(2)(h)	30AF(2)(h)	Support.

<sup>1</sup> We note that standardised, OTC product appeared to be the focus of ACCC's recommendation in its 2018 report referenced by the consultation paper.

	<p>the AER must provide a general outline of the way the AER will ensure that commercially sensitive information obtained for the wholesale market monitoring function is kept securely.</p>			
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**Use of monitoring information for other functions**

We oppose the proposal to allow monitoring information to be used for enforcement functions.

This amendment would make it difficult for participants to understand where their sensitive information is transmitted, the purposes for which it is being used and the risk of its confidentiality being breached.

It may also undermine procedural fairness where it enables the AER to use information it already holds to progress an investigation, instead of being required to request the information from the participant and in doing so, notify them of the purpose for which it was being used. In this case, the participant could be denied an opportunity for an early right of reply and to provide further input.

To avoid this, if the proposal to allow AER to use its monitoring information for other functions is retained, we recommend that AER be required to notify the relevant participant where it using its information for a different function and inform them of the purpose for which it is being used.

Thank you for your consideration of our submission. If you would like to discuss this further, please contact me at [oscar.carlberg@alintaenergy.com.au](mailto:oscar.carlberg@alintaenergy.com.au).

Yours sincerely



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