

ACIL ALLEN

Procedure Change Process Independent Review

Final Report to the Coordinator of Energy

28 June 2024



About ACIL Allen

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Report to: Coordinator of Energy

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ACIL Allen acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the land and its waters. We pay our respects to Elders, past and present, and to the youth, for the future. We extend this to all Aboriginal and Torres Strait Islander peoples reading this report.



Goomup, by Jarni McGuire

Contents

Glossary	i
Executive Summary	1
1 Introduction	3
1.1 Procedure Change Process	3
1.2 Procedures	4
1.3 This review	4
2 Independent perspectives	6
2.1 Overall finding	6
Role of the MAC in Procedure Change Proposals	6
Introduction of explicit justification for Procedure Change Proposals	7
From Findings to Recommendations	7
3 Reforms to the Procedure Change Process	8
3.1 Procedure Change Process Recommendations	8
3.2 Considering Procedure criteria	12
Other markets and procedures	13
Recommendation on the adoption of criteria for what can be contained in Procedures	14
Appendices	16
A Stakeholder feedback on the Procedure Change Process Review Consultation Paper	A-1

Glossary

Abbreviations	Definitions
AEMO	The Australian Energy Market Operator
Chair	The independent Chair of the Market Advisory Committee
Coordinator	Coordinator of Energy
EI Act	The <i>Electricity Industry Act 2004</i>
EPWA	Energy Policy WA
ERA	Economic Regulation Authority
DER Act	The <i>Electricity Industry Amendment (Distributed Energy Resources) Act 2024</i>
MAC	Market Advisory Committee
SWIS	South West Interconnected System
WEM	Wholesale Electricity Market

Executive Summary

This section provides an overview of the outcomes of the engagement, and a high-level summary of ACIL Allen's recommendations.

ACIL Allen was engaged by Energy Policy WA (EPWA) to deliver an independent assessment of the Procedure Change Process, as prescribed in section 2.10 of the Wholesale Electricity Market (WEM) Rules.

Under clause 2.16.13F of the WEM Rules, the Coordinator of Energy (Coordinator) must ensure that an independent person carries out an audit of the WEM Procedure Change Process no less than every three years.

This Report captures ACIL Allen's assessment of the Procedure Change Process, which has been formed through stakeholder consultation and review of materials relating to the Procedure Change Process, including the relevant WEM Rules. ACIL Allen has also reviewed the governance architecture which sits atop market rules in other established and emerging Australian energy markets, being the NWIS and NEM respectively.

Overarching findings

At a headline level, ACIL Allen found **no evidence that the Procedure Change Process is not working as designed or intended, and that it is working in the interest of the market as a whole**. Stakeholders consistently provided feedback through the survey, stakeholder meetings, and in response to the Consultation Paper, that the current Procedure Change Process as defined in the WEM Rules was fit for purpose.

However, ACIL Allen also found that there is a general lack of engagement in the Procedure Change Process. Most stakeholders who provided support did so with the caveat that they themselves had not had much to do with the process, or that there were others more qualified to speak to it.

With the understanding that any major problems with the process would likely manifest as more than just disengagement, ACIL Allen has not recommended significant changes to the Procedure Change Process. The changes that we have recommended are largely to ensure that information is provided in a consistent and easy to digest manner. This is intended to make the process simpler to engage in, with the intent of increasing involvement by Market Participants.

High-level recommendations

ACIL Allen makes the following recommendations to the Coordinator. **Section 3** provides further discussion of the rationale and merits of each recommendation.

Recommendation 1 – Introduce a standard presentation for Procedure Change Proposal reports

A standard cover sheet would be developed to sit on top of Procedure Change Proposals report. This would provide a summary of the proposal, including what is proposed to be changed, why the change is being made, what the anticipated outcomes are. This would provide stakeholders with a snapshot view of a Procedure Change, prompting further engagement where warranted.

Recommendation 2 – Develop a minor amendment pathway for Procedure Change Proposals

A minor amendment pathway would be developed to enable Procedure Administrators to undertake a fast-tracked Procedure Change Process, where the change does not have a material impact on any Rule Participant.

This would be expected to reduce the administrative burden on Procedure Administrators, reducing burden, without causing adverse market impacts.

Any Rule Participant (or any person, where recommendation 3 is adopted) would be able to trigger the standard Procedure Change Process where they disagreed the change would not have impacts.

Recommendation 3 – Allow any person to initiate a Procedure Change Proposal

The class of entity who can initiate a Procedure Change Proposal should be changed from 'Rule Participant' to 'person'. This would align the Procedure Change Process with the Rule Change Process.

Recommendation 4 – Introduce timeframes for non-Procedure Administrator-led Procedure Change Proposals

A timeframe should be introduced for when a Procedure Change Proposal is initiated by a third-party under clause 2.10.2. of the WEM Rules.

Currently, the WEM Rules place no obligation on Procedure Administrators to act if it supports a third-party Procedure Change Proposal. ACIL Allen recommends that there be an onus on Procedure Administrators to provide a reasonable timeframe for progressing the Procedure Change Proposal, with 'reasonable' to include a requirement to agree a resolution timeframe with the third-party.

Recommendation 5 – Standardise the publishing of Procedures

The publishing requirement that applies to the Australian Energy Market Operator (AEMO) under clause 2.9.2D of the WEM Rules should be extended to all Procedure Administrators. This would standardise the requirements placed on Procedure Administrators.

Procedure Criteria

The scope of works also included an independent review to determine criteria for what should be included in a Procedure versus the WEM Rules (or Guidelines). ACIL Allen has developed the requested criteria. However, we have recommended an alternate approach, involving the development of a 'drafting philosophy' to guide future rule makers on what should go into Procedures versus other instruments. This approach aims to balance the current lack of instrument definition against the risk that introducing criteria could inadvertently change how these instruments operate and necessitate large-scale changes at a time when the WEM is already undergoing significant reform.

Next steps

This report concludes Stage 1 of the Procedure Change Process review and delivers an independent assessment of the Procedure Change Process, including recommendations for potential improvements.

Stage 2, to be completed by EPWA between July and September 2024, will involve evaluating the outcomes of Stage 1, deciding which recommendations to adopt, and publishing the Coordinator's response to ACIL Allen's report. EPWA will then develop and consult on design proposals for revised Procedure Change Process arrangements. If necessary, Stage 3 will involve amending the WEM Rules and the MAC Constitution to implement Stage 2 outcomes.

ACIL Allen looks forward to reviewing the Coordinator's response to this report's recommendations.

1 Introduction

This section of the report provides background information on the Procedure Change Process and the context of ACIL Allen's independent review.

1.1 Procedure Change Process

The Procedure Change Process is prescribed in section 2.10 of the WEM Rules, which outlines the steps Procedure Administrators must take when undertaking procedure development, amendment or replacement.

Under this section, a Procedure Change Process is initiated by a Procedure Administrator publishing a Procedure Change Proposal on its website, along with a call for submissions. Per clause 2.10.7. of the WEM Rules, the due date for submissions must be 20 Business Days from the date that the call of submissions is published. Procedure Administrators can extend these timeframes under clause 2.10.17.

There is no standard approach to preparing a Procedure Change Proposal, with each Procedure Administrator having its own approach. Some are short and specific, while others are broad-ranging with underpinning evidence and modelling and canvassing a variety of options.¹ This individual approach is permitted under the WEM Rules so long as the Procedure Change Proposal includes:

- a) a proposed WEM Procedure or an amendment to or replacement for a WEM Procedure, indicating the proposed amended words, or a proposed WEM Procedure; and
- b) the reason for the proposed WEM Procedure or an amendment to or replacement for a WEM Procedure or proposed WEM Procedure.

Per clause 2.10.10., following the closing date for submissions, Procedure Administrators are required to prepare a Procedure Change Report on the Procedure Change Proposal. The content of the Procedure Change Report is outlined in clause 2.10.13. Under the WEM Rules, there is no timing given as to how soon after the closure of submissions the Procedure Change Report must be published.

The WEM Procedure: Procedure Administration (WPPA), made in accordance with clause 2.9.5. of the WEM Rules by the Coordinator, outlines the process by which all WEM Procedures are to be developed, amended and replaced.

Paragraph 2.5.1. of the WPPA states that: "once it has published a Procedure Change Proposal under step 2.3 [of the WPPA], the Responsible Procedure Administrator must notify all members of the MAC and advise them whether it considers that the MAC should be convened in relation to the Procedure Change Proposal, giving reasons why. This notification must be made by email, within one Business Day of publishing the Procedure Change Proposal."

There is no standard approach to preparing a Procedure Change Proposal Report.

Procedure Change Process: initiation by a third-party

Rule Participants (as defined in the WEM Rules) are also able to notify the relevant Procedure Administrator where they consider an amendment to, or replacement of, a WEM Procedure would be appropriate (clause 2.10.2 of the WEM Rules).

Where a Rule Participant proposes a procedure change, the relevant Procedure Administrator has 20 Business Days to determine whether the suggest amendment to, or replacement of, a WEM procedure is

¹ One current example is the Benchmark Reserve Capacity Prices Procedure administered by the ERA. While this is a significant change prompted by the WEM Rules, the Procedure Change Proposal report is 34 pages in length with seven appendices of 35 pages total (including an Excel model) and 16 consultation questions.

appropriate, and it must publish details of whether it will be progressed on their website and reasons for that decision (clause 2.10.2A of the WEM Rules).

A Procedure Administrator is not bound by any instrument to act on an affirmative decision made during its review of a Procedure Change Request, only to indicate its level of support and whether it will be progressed in the future.

1.2 Procedures

WEM Procedures have been integral to the WEM governance framework since its inception in 2006. The WEM Rules authorize Procedure Administrators (the Coordinator, AEMO, the ERA, and Network Operators) to create Procedures on specific matters, delegating authority for how the WEM Rule is realised to the relevant body. These Procedures outline the steps and actions needed to achieve specific goals and fulfil the requirements of the relevant Rule.

In accordance with clause 2.9.3(a)(iii), all Procedures made must be consistent with the WEM Rules. Clauses 1.5.2(d) and 1.5.3. specify that the Procedures are subservient to the WEM Rules, and in the event of any conflict, the Rules prevail.

Currently, the only guidance as to what can be in a Procedure is contained within the WEM Rules which empower the making of a Procedure for a specific purpose. No definition of Procedures exists in the Rules or overarching legislation, and there is no policy guidance to constrain the matters that can be managed in a Procedure.

Box 1.1 Example of a WEM Rule empowering the creation of a Procedure

2.13.19. AEMO must document in a WEM Procedure:

- a) the process for determining, consulting on, and reviewing the Tolerance Range and any Facility Tolerance Ranges under clauses 2.13.16, 2.13.17 and 2.13.21; and
- b) matters, events or circumstances that may trigger a review of the Tolerance Range or a Facility Tolerance Range.

Source: Clause 2.13.19, WEM Rules

The WEM is currently undergoing significant reform, with subsequent development or amendment of multiple Procedures as required by the WEM Rules. This has resulted in a flurry of Procedure Changes, with AEMO alone undertaking 59 processes since 2022. This has involved the use of both the standard Procedure Change Process (reviewed here) and the transitional process (where certain matters are not required to be developed in accordance with the Procedure Change Process).

1.3 This review

ACIL Allen was engaged by EPWA to undertake Stage 1 of a three-stage review process of the Procedure Change Process, as contained in section 2.10 of the WEM Rules. Under clause 2.16.13F of the WEM Rules, the Coordinator must ensure that an independent person carries out an audit of the WEM Procedure Change Process no less than every three years.

This review involved significant stakeholder consultation, including a survey, one-on-one stakeholder consultation and a public Consultation Paper. The first two stages of consultation were carried out with MAC members and recent MAC applicants, while the consultation process was open to all interested parties.

Stakeholder feedback was provided through:

- 11 responses to the Procedure Change Process Survey
- 12 one-on-one interviews with MAC members
- 4 written submissions in response to the Procedure Change Process Consultation Paper.

ACIL Allen would like to thank all stakeholders for their engagement through this process.

This report fulfills the requirements of Stage 1 of the review in providing an assessment of the Procedure Change Process and a series of recommendations for the Coordinator's consideration. Stage 2 and Stage 3 will be undertaken by EPWA, involving:

- Stage 2: preparing a report, either accepting ACIL Allen's recommendations, or justifying why the recommendations have not been accepted. The Stage 1 and Stage 2 reports will be published in concert.
- Stage 3: developing draft amending Rules to realise the outcomes of Stage 2, if required.

2 Independent perspectives

This section of the paper provides a summary of ACIL Allen's independent review, informed by stakeholder engagement and consideration of the current situation and circumstances of the WEM.

2.1 Overall finding

At a headline level, ACIL Allen found no evidence that the Procedure Change Process is not working as designed or intended, and that it is working in the interest of the market as a whole. Stakeholders consistently provided feedback through the survey, stakeholder meetings, and in response to the Consultation Paper, that the current Procedure Change Process as defined in the WEM Rules was fit for purpose.

However, ACIL Allen also found that there is a general lack of engagement in the Procedure Change Process. Most stakeholders who provided support did so with the caveat that they themselves had not had much to do with the process, or that there were others more qualified to speak to it.

With the understanding that any major problems with the process would likely manifest as more than just disengagement, ACIL Allen has not recommended significant changes to the Procedure Change Process. The changes that we have recommended are largely to ensure that information is provided in a consistent and easy to digest manner. This is intended to make the process simpler to engage in, with the intent of increasing involvement by Market Participants.

In producing these recommendations, ACIL Allen made three observations:

- The Procedure Change Process is working as designed and intended, and in the interests of the market as a whole. Therefore, no fundamental changes are required.
- The current Procedure Change Process does not have any formal oversight of Procedure Administrators (noting the AEMO Procedure Change Working Group has been established to provide some oversight). This results in less oversight than is typical in a regulatory framework, however, provides a level of flexibility and adaptability which would be constrained with greater formal oversight.
- ACIL Allen does not consider that there is a need to develop criteria into the decision-making process for Procedure Change Proposals.

Stakeholders agreed with these observations, particularly in considering that the Procedure Change Process is currently functioning appropriately.

The considerations in the Consultation Paper, which are not otherwise contained in the recommendations, are outlined below to provide an overview of the general perspectives presented by ACIL Allen and agreed with by stakeholders.

Role of the MAC in Procedure Change Proposals

The MAC is responsible for considering and providing advice on Procedure Change Proposals under the WEM Rules where requested to do so by the Procedure Administrators or if considered necessary by the Coordinator, the independent Chair, or two or more members of the MAC.

This permits a level of flexibility and speed in the review and action of Procedure Change Proposals, as it allows Procedure Administrators to propose their own Procedure Changes, and respond to the Procedure Change Proposals of others, without strict adherence to the structures of the MAC.

Stakeholders have noted the current process can result in Procedure Administrators effectively ‘running their own show’. Prima facie, this goes against regulatory design principles, where independent oversight and approvals pathways are typically used. However, this view must be balanced against the fact the matters which can be addressed in procedures are dictated by, and subservient to, the WEM Rules, the Electricity Sector Regulations, and broader Government legislation / policy. The relationship to Government policy is more indirect, however, under clause 2.9.3 of the WEM Rules Procedures must align with the WEM Objectives (and soon the State Electricity Objective), which in turn reflect the intended outcomes of the WEM, which are a function of Government policy.

There is a clear trade-off at play: enhancing the role of the MAC in the Procedure Change Process would by its nature result in a more structured consideration of proposals. However, binding the Process to the meeting schedule and machinations of the MAC would reduce the flexibility and adaptability of the Procedures, and the Procedure Change Process, compared to the current approach.

Two proposals were considered. These are:

- **All Procedure Changes to be approved by the MAC:** The MAC would need to approve procedure changes, either formally or by exception. This would introduce (or re-introduce) formal oversight over the Procedure Change Process and mandate there to be input from a party besides the Procedure Administrator.
- **Enable escalation of Procedure Change Proposals to the MAC:** Introduce a mechanism as per the Pilbara Networks Rules (PNR) (Rule A2.10.6A of Appendix 2 of the PNR) whereby the Coordinator may direct that a Procedure Change be managed under the Rule Change Process.

Based on current evidence, ACIL Allen has not recommended either option.

Introduction of explicit justification for Procedure Change Proposals

During stakeholder engagement, it was proposed by some stakeholders that a checklist for Procedure Changes was a potential reform to improve the oversight and governance of the Procedure Change Process. This was because, in the view of some stakeholders, Procedure Administrators were in a position of being able to make any changes they deem fit without necessarily facing the scrutiny of those impacted by changes to procedures.

However, ACIL Allen’s perspective is this is not a necessary change. The current Procedure Change Process requires Procedure Administrators to justify their decision-making and is open to scrutiny through both the AEMO Procedure Change Working Group process, consideration by the MAC, and other mechanisms within the WEM Rules. In addition, the breadth of WEM Procedure content, style and subject matter is such that any checklist would need to be general in nature, which may reduce the effectiveness of the feedback mechanisms built into the process (i.e. this may result in proposals simply “ticking the box” rather than the current approach of consultation, feedback and refinement).

From Findings to Recommendations

The changes recommended in the next section of the report focus on areas where ACIL Allen believes that improvements can be made to processes to address some of the minor issues raised by stakeholders and noticed by ACIL Allen.

3 Reforms to the Procedure Change Process

This section of the report provides ACIL Allen's recommendations on changes to improve the Procedure Change Process.

3.1 Procedure Change Process Recommendations

Recommendation 1 Introduce a standard presentation for Procedure Change Proposal reports

A standardised covering sheet should be developed, which would sit on top of Procedure Change Proposal reports. It would require a summary of the proposal, across:

- what is proposed to be changed
- why the proposed change is being made
- what the anticipated outcomes and impacts are, and how these better achieve the WEM Objectives (soon to be the SEO).

Currently, the form and function of a Procedure Change Proposal report prepared by Procedure Administrators differ depending on a variety of factors. As a result, it is not always immediately clear to a Rule Participant or other party:

- what is proposed to be changed
- why the proposed change is being made
- what the outcomes or impacts are, and the relationship of these impacts to the WEM Objectives.

While some level of flexibility and adaptability in form and function of a Procedure Change Proposal report is inevitable, the lack of a standardised presentation of critical information for market participants to be aware of when considering a Procedure Change Proposal may contribute to disengagement.

Creation of a standardised presentation of these items may also provide an efficient means by which Procedure Change Proposals can be summarised for the MAC, and for other interested parties. This would apply to all Procedure Administrators.

Two stakeholders supported this proposal, one was neutral, and one stated that the proposed change would not address the issues in the Consultation Paper.

On the basis that non-Procedure Administrators mostly found this to be a helpful suggestion, ACIL Allen considers this to be an appropriate recommendation.

Recommendation 2 Develop a minor amendment pathway for Procedure Change Proposals

A minor amendment pathway should be developed for Procedure Changes that do not have an impact on Rule Participants, which would streamline the process and reduce administrative burden for these minor matters.

The range of matters dealt with by the Procedure Change Process is vast, ranging from modifications to the constraints imposed on an equation through to the complete redevelopment and redrafting of a procedure document. There are two examples of this extreme in recent AEMO Procedure Change Proposals, being:

- Minor: AEPC_2023_03. This saw AEMO undertake a Procedure Change Proposal process to modify the market commitment notification algorithm for an error found in the underlying code, which was leading to the issuance of incorrect information on the availability of Essential System Services.
- Major: AEPC_2023_01. This saw AEMO completely redraft a new procedure for supplementary capacity under the WEM Rules, following the completion of the 2022-23 supplementary capacity review.

Stakeholder feedback of the survey generally supported the retention of the current Procedure Change Process, including there being no need or support for a process which may exempt certain kinds of Procedure Change Proposals from the standard Procedure Change Process. Notwithstanding, it is evident the combination of simple and complex matters which must be interrogated through a singular Procedure Change Process may give rise to inefficient outcomes. Or alternatively, given general stakeholder support for the status quo, this would support a notion that the Procedure Change Process as currently defined is adequate for **complex** procedure change matters.

All stakeholders agreed with the proposal to introduce a minor amendment pathway in written submissions on the Procedure Change Process. AEMO suggested that, rather than specifying what would be considered 'minor', that an outcomes-based approach should be taken (where 'minor' means anything that does not substantively affect outcomes for any Rule Participant). ACIL Allen agrees with this suggestion.

As such, the Minor Amendments pathway should:

- be constrained to only allow changes to address 'minor' matters that do not have a material impact on any Rule Participant (for example, correcting typographical errors)
- utilise the 'cover sheet' template discussed in Recommendation 1 to communicate changes and expected outcomes
- provide for a 5-10 Business Day response period for Rule Participants (or any person, where Recommendation 3 is adopted) to disagree that the Procedure Change is 'minor', which would trigger the full Procedure Change Process.

Such a change would improve market engagement in the Procedure Change Process, while simultaneously reducing the administrative burden on Procedure Administrators. This is balanced against the risk that the Minor Amendments pathway could be misused by Procedure Administrators, noting this would likely be a breach of other aspects of the WEM Rules and so would be unlikely to take place.

We also note that there is a low bar to trigger the full Procedure Change Process. Given the high level of trust placed in Procedure Administrators by the market (as indicated through stakeholder consultation), ACIL Allen consider that this is unlikely to be abused by Rule Participants.

ACIL Allen has not recommended an exemption process, on the basis that the Minor Amendment pathway would be suitably quick for any matters that would be included under an exemption framework.

Recommendation 3 Allow any person to initiate a Procedure Change Proposal

The WEM Rules should be amended to expand the class of entity which can initiate a Procedure Change Proposal from "Rule Participant" to "person".

Currently, Procedure Change Proposals can only be initiated by a Procedure Administrator or a Rule Participant, as defined in the WEM Rules. This differs from a Rule Change Proposals, which can be initiated by a person (not defined in the WEM Rules but taken to mean 'any individual').

The basis for this distinction is unclear and creates an asymmetry whereby a member of the MAC who is not a Rule Participant (for example, the Small Use Customer representative) cannot initiate a Procedure Change Proposal unless they register as a Rule Participant.

In ACIL Allen's view, it is likely that this restriction is an oversight rather than a deliberate design feature, and it should be changed to align the Procedure Change Process with the Rule Change Process. This recommendation was supported by all stakeholders that commented on the Procedure Change Process Consultation Paper.

Recommendation 4 Introduce timeframes for non-Procedure Administrator-led Procedure Change Proposals

A timeframe should be introduced for when a Procedure Change Proposal is initiated by a third party under clause 2.10.2. of the WEM Rules.

Procedure Change Proposals can be initiated by non-Procedure Administrators who are Rule Participants under clause 2.10.2. of the WEM Rules. Clause 2.10.2A species that, within 20 business days of receiving notification under clause 2.10.2A., the relevant Procedure Administrator must determine whether it supports or does not support the suggested Procedure Change Proposal. The Procedure Administrator must also publish details stating what it intends to do about the Procedure Change Proposal.

However, the WEM Rules place no obligation on the Procedure Administrator to act upon its findings, only to state that a change will be made in the future. This is due to the application of WEM Rule 2.10.2A(b), which states (emphasis added):

- b) **publish details of whether a Procedure Change Proposal will be progressed** with respect to the suggested amendment to or replacement of a WEM Procedure and the reasons for that decision on AEMO's, the Economic Regulation Authority's, the Coordinator's or the Network Operator's website, as applicable.

As a result, subsequent obligations on Procedure Administrators to progress through the Procedure Change Process do not automatically apply.

While ACIL Allen has been unable to find instances of where a Procedure Administrator has not progressed a proposal it has supported, some stakeholders have raised concerns that the current WEM Rules provide no incentive structure or capacity to influence the timing of this process for the third-party.

The lack of such an instrument or mechanism limits the effectiveness of this provision of the WEM Rules, as a Procedure Administrator may decide for any reason to not progress a proposal even if it is in the interests of the market to do so.

ACIL Allen initially suggested the introduction of a 'time limit'. However, on balance, we consider that the introduction of a time limit may cause Procedure Administrators to reject suggestions where there are resourcing constraints or other priorities, particularly given that some Procedure Changes may require highly technical skills and advice to draft.

Instead, there should be an onus on the Procedure Administrator to provide a reasonable timeframe for progressing the Procedure Change Proposal, with 'reasonable' to include a requirement to engage with the third-party initiator to agree on a resolution timeframe. There may almost be cause to set a time limit on the upper bounds of reasonable (for example, six months), however further consultation during the drafting process will assist in clarifying the positives and negatives of this.

Recommendation 5 Standardise the publishing of Procedures

The publishing requirements imposed on AEMO under clause 2.9.2D of the WEM Rules should be extended to all Procedure Administrators.

Under clause 2.9.2D of the WEM Rules, AEMO must develop and maintain a list of all Procedures that AEMO is required to develop and maintain, including a brief description of the Procedure and its head of

power. Other Procedure Administrators are only required to publish their Procedures on their respective websites.

Stakeholders considered that all Procedure Administrators should have the same requirements as AEMO, with support for this shown at each stage of the consultation process. ACIL Allen agrees with this view, as introducing this requirement for all Procedure Administrators would improve the visibility of instruments governing the market.

Not recommended All Procedure changes to be approved by the MAC

The MAC would need to approve Procedure Changes, either formally or by exception.

Not recommended Enable escalation of Procedure Change Proposals to the MAC

A mechanism (similar to rule A2.10.6A of the Pilbara Networks Rules) would be introduced to enable the Coordinator to direct a Procedure Change be managed under the Rule Change Process.

In the Consultation Paper, ACIL Allen noted that the MAC has delegated the responsibility of oversight and feedback on AEMO's Procedures to an AEMO-led Working Group. This permits a level of flexibility and speed in the review and action of Procedure Change Proposals, as it allows Procedure Administrators to propose their own Procedure Changes and respond to Procedure Change Proposals without strict adherence to the structures of the MAC.

It should have been stated that the MAC has never had the authority to approve or disapprove of Procedure Change Proposals – and that Procedure Administrators have always had the power to administer procedures independently under the parameters set by the Rules and with regard to the WEM Objectives.

Providing a mechanism/s for greater MAC involvement in the Procedures was considered as a way to introduce independent oversight of this process. ACIL Allen noted in the Consultation Paper that it was unlikely either of these proposals would be recommended on the basis that the flexibility afforded by the current process is valued. This assessment was supported by stakeholder feedback.

In addition, the WPPA requires that Procedure Administrators notify the MAC of a Procedure Change and advise whether the MAC should be convened. At this stage, where the MAC had concerns, it could be convened under clause 2.10.9 by the independent Chair, the Coordinator, AEMO, the ERA, a Network Operator (in relation to a Network Operator-initiated Procedure Change Proposal), or two or more members of the MAC. This would appear to be appropriate.

In addition, under the Standard Rule Change Process, two rounds of stakeholder consultation are required prior to the introduction of a Rule (which is the only mechanism by which new Procedures can be introduced). In this consultation, stakeholders have the ability to raise concerns where they believe matters are inappropriately delegated to Procedures.

Not recommended Uplift Procedure Change Proposals in the MAC agenda

A standing agenda item would be added to the MAC agenda to make Procedure Changes a standalone item in the agenda, rather than a sub-item as part of the Working Group updates.

ACIL Allen considered this recommendation on the basis that limited discussion occurs at the MAC in relation to Procedure Change Proposals. 'Uplifting' this sub-item to a standalone agenda item was suggested to elevate the perceived importance of Procedure Changes and elicit further discussion.

No stakeholders supported this suggestion, with most being neutral on its adoption.

In addition, elevating the agenda item does not guarantee greater discussion. The lack of discussion appears to be more a function of the trust the MAC places in Procedure Administrators and the Procedure Change Process.

3.2 Considering Procedure criteria

Under the scope of works, ACIL Allen was asked to ‘provide clear and appropriate criteria for when a matter should be addressed in the WEM Rules, or the WEM Procedures’.

The purpose of these criteria would be to ensure that the scope of the Procedures did not go beyond their original intent – which was for Procedures to contain only administrative or procedural matters. This interpretation has been challenged by stakeholders, who have suggested that the Procedures have always contained a range of matters, as prescribed by the relevant Rules.

In ACIL Allen’s view, administrative matters can be commonly understood as relatively minor (in the context of a document like the WEM Rules), providing for matters such as communication protocols or data entry and record keeping. Procedural matters are much broader in scope and can be understood as providing the steps or methods used to accomplish a task and achieve a goal. This definition of procedural is helpful when considering the current function of the Procedures, where they can provide the methodology to achieve goals specified under the Rules. This provides scope for the inclusion of matters under the Procedures that may have a material impact on market participants, including cost, time, or behaviour impacts.

The original WEM Rules are silent on the intent of the Procedures, however from inception they appear to have provided for some of the administrative and procedural matters in the WEM Rules to be delegated to an appropriate authority – without the requirement for these delegated matters to be considered ‘minor’.

Given the lack of available material containing insight into the original intent of Rules versus Procedures, the need to develop criteria on what can be addressed in the Procedures becomes a question regarding the overall design of the governance framework for the WEM – i.e. what is the point of having Rules and Procedures (and Guidelines)?

The WEM operates under a governance hierarchy. In a general sense, each level of this hierarchy is less flexible than the one below it:

- changes to legislation requires a Bill to be developed, scrutinised and passed by both the Legislative Assembly and Legislative Council of the Parliament, and are gazetted by the Crown;
- changes to Regulations requires consideration of the Legislative Council only, and are gazetted by the Crown;
- changes to the WEM Rules (typically) requires the change to pass through the Rule Change Process, involving two rounds of public consultation, scrutiny and debate. Changes must be gazetted by the Minister for Energy (a delegated authority of the Crown);
- changes to WEM Procedures require the Procedure Change Process, which involves one round of public consultation, scrutiny and debate. Changes are not gazetted, and are actioned by a Procedure Administrator (a delegated authority of the Minister for Energy) at the conclusion of the Procedure Change Process;
- changes to WEM guidelines by the relevant Guideline Administrator can be enacted at any time.

This process is by design, as each cascading level of governance is intended to deal with issues of higher significance to the delivery of Government policy and is therefore harder to change in response to cyclical issues (or issues of the day). The burden of proof for change is also higher as the instruments progress, with legislation requiring the highest burden of proof.

It follows that as the governance hierarchy progresses from top to bottom, the matters dealt with by each instrument should transition from “why”, to “who” and “what”, and finally to “how”.

This cascade provides a clue as to the rationale for the existence of Rules, Procedures and Guidelines, with:

- Rules addressing issues that require certainty to ensure consistency of certain matters within the WEM, such as guiding principles, roles and responsibilities of various agencies, and matters that affect investment certainty
- Procedures providing for Procedure Administrators to create and implement specific processes or methodologies for carrying out functions under the WEM Rules
- Guidelines providing instructions or advice on handling minor matters.

Other markets and procedures

To help inform an independent perspective on the merit of procedure criteria, ACIL Allen reviewed the approach to procedures and overall market governance in two markets: the NEM and the emerging electricity market in the North West Interconnected System.

Australian Energy Market Commission – Drafting Philosophy

ACIL Allen's understanding of the rationale for Rules, Procedures and Guidelines is aligned with the Australian Energy Market Commission (AEMC) Drafting Philosophy. The AEMC is an independent statutory body which makes and amends the National Electricity Rules (NER), which govern the operation of the National Electricity Market, as well as the National Energy Retail Rules and the National Gas Rules.

In 2020, the AEMC released its Rule Drafting Philosophy, which includes consideration of how policy-makers should determine the appropriate instrument to use when drafting the NER. The AEMC consider the development of procedures may be appropriate where:

- detail is best left to be developed by another entity (in consultation with industry)
- detail is best contained in a separate document that contains prescriptive requirements
- a technical manual is required
- matters which require frequent adaptation to changes in such things as technology and communication.

The AEMC considers that procedures are suited to provide technical requirements, particularly where the requirements are developed or settled by experts or advisers in a particular field, and where the relevant NER would be incorporating technical material that has been, or is to be, developed by another entity.

ACIL Allen considers the first point to be the most salient for Western Australia, in that the content matter of Procedures appears to mostly concern matters that are best determined by a non-Rule Making Entity (with the exception of Procedures made by the Coordinator which are primarily administrative).

Unlike the WEM Rules, the NER provides for all Procedures to be made according to the 'Rule Consultation Process', under which there are various levels of consultation. This means that certain NEM Procedures are subject to, effectively, the Rule Change Process, in recognition of their importance to market operation. As explored in the recommendations, ACIL Allen considered a process by which Procedures could be required to go through the Rule Change Process, but ultimately dismissed this on the basis that the Rule Change Process is currently functioning well.

Pilbara Networks Rules – Procedure Criteria

In progressing with the understanding that the Procedures empower other entities to develop processes for matters under their remit or control (in deference to the Rules), ACIL Allen also considered the Pilbara Networks Rules framework for the content of Procedures, under Rule 75(2), where Procedures may contain (but are not limited to, per Rule 75(3)):

- a) processes, standards, methodologies, classifications, guidelines; and
- b) obligations of persons under the Procedure; and
- c) approval and exemption requirements; and
- d) requirements for the provision, use, retention, deletion and disclosure of information; and
- e) requirements for consultation or communication; and
- f) timing of any actions or other obligations or requirements; and
- g) information on interaction with any other Procedures.

In practice, these criteria are so broad as to capture all the current Procedures currently made under the WEM Rules. Adopting these or similar criteria would likely provide similar guidance to a 'drafting philosophy' approach, whereby policy makers are provided guidance as to the appropriate instruments for various matters, without removing drafter discretion.

Recommendation on the adoption of criteria for what can be contained in Procedures

Recommendation 6 A 'drafting philosophy' should be developed to guide WEM Rule drafting

A drafting philosophy would be developed and adopted to guide the drafting of the WEM Rules and provide guidance as to the appropriate instrument for matters.

Based on the understanding that:

- the content of Procedures is constrained by the relevant WEM Rule, and any Procedures made which contradict or go beyond the WEM Rules are already invalid
- the concept of Procedures was developed to ensure that the most relevant body/authority could determine the processes through which the Rules would be realised
- the Procedure Change Process is working as intended to facilitate stakeholder consultation and independent review of the Procedures and any changes
- under the standard Rule Change Process, two rounds of public consultation allow stakeholders to provide feedback on whether or not matters should be delegated to Procedure, or contained within the Rules

ACIL Allen cautions against the adoption of strict criteria, and instead supports maintaining the current discretionary approach.

To provide policy makers with relevant guidance to ensure that this approach operates on a more or less consistent bases, we would recommend the development and adoption of a 'drafting philosophy' to guide future Rule drafters when deciding the appropriate instrument for certain matters, with consideration to be given to factors such as:

- the level of impact of a matter on Rule Participants
- the level of obligation likely to be placed on Rule Participants (with Guidelines to place no obligations on Rule Participants)
- the level of discretion that would be ceded to a Procedure Administrator or Guideline maker on a matter, and if this is appropriate when considering factors such as the likely impact of the Procedure on Rule Participants, the technical expertise of the Procedure, the need for certainty to enable investment (noting that the Procedures and Guidelines will always be subservient to the Rules)
- the level of stakeholder consultation that is reasonable to change an instrument – likely to be a function of its 'significance' (i.e. Rule Change Process, Procedure Change Process, no process)

- how much certainty stakeholders require on the consistency or operation of a particular matter in terms of investment
- the likelihood that changes will be required to an instrument.

ACIL Allen understands that EPWA has drafted a Terms of Reference to establish a Working Group under the MAC to review each Procedure in light of criteria developed as part of this Review. A drafting philosophy approach would still enable retroactive examination of the Procedures as part of such a review but would provide greater flexibility in determining whether a Procedure is appropriate or should be instead contained within the WEM Rules (or a Guideline), and the timing for any necessary changes.

Criteria recommended in the Consultation Paper

In recognition that EPWA has clearly requested the development of set criteria, we note that ACIL Allen's approach in the Consultation Paper was supported by the majority of respondents. In light of this, noting the broader perspectives provided in the previous section and the recommendation to develop a drafting philosophy, the Procedure Criteria recommended in the Consultation Paper are presented below.

Procedure Criteria recommended in the Consultation Paper

1. WEM Procedures should facilitate implementation within the market framework. A WEM Procedure should not place obligations on a Rule Participant to take action which is outside of the scope of the WEM Rule it is addressing, which would imply the material should be a WEM Rule instead.
2. WEM Procedures should provide clarity on Rule implementation to ensure compliance and consistency. Actions required or determined by a WEM Procedure should always be subservient to the WEM Rules, and should not contradict, overlap with, or circumvent the actions required or determined by WEM Rule.
3. WEM Procedures should be primarily "administrative" in nature, in that it provides scope for the entity assigned to make use of information provided to it to make clearly documented decisions. Other material or direction should be part of the WEM Rules.
4. WEM Procedures should be used where minor matters involving instructions or other aspects of the governance or decision-making imposed are changed regularly. This is to ensure that market governance remains adaptable, while maintaining the stability of the WEM Rules.
5. WEM Procedures should not have a material impact on WEM operation, beyond what is necessary for efficient and effective market administration. 'Material' impacts could include introducing changes to market behaviour, having a cost or price impact, and impacts to reliability and security.

ACIL Allen believes there is a risk that adopting criteria such as those above could result in a significant program of work in review and deliberations regarding the applicability of criteria to Procedures administered by EPWA, AEMO, the ERA, Network Operators. There may also be a need to engage the MAC, diverting already limited resources from other matters – including the ongoing reform process.

Given that stakeholders have not expressed concerns about the content of Procedures, or the operation of the Procedure Change Process, ACIL Allen is not convinced that the benefits of adopting strict criteria would outweigh the costs.

Where there are concerns regarding market outcomes associated with the current context of Procedures, participants can make use of existing heads of power in the Rules to request changes to Procedures or Rules. Recommendations made elsewhere in this report – including allowing anyone to suggest a Procedure Change and including a timeframe for third-party Procedure Changes – will help strengthen these pathways.

Given this, ACIL Allen prefers an approach involving the development and adoption of a drafting philosophy. This would guide policy makers and enable retroactive review of Procedures, Rules and Guidelines against the philosophy without constraining drafting flexibility for Rule makers.

Appendices

A Stakeholder feedback on the Procedure Change Process Review Consultation Paper

This section provides stakeholder feedback on the Procedure Change Process Review Consultation Paper. Four submissions were received.

Table A.1 Feedback on the Procedure Change Process Consultation Paper

Proposal	Submitter	Feedback	ACIL Allen comments
Proposal 1: Introducing a standard presentation of Procedure Change Proposals	AEMO	Neutral. In accordance with clause 2.10.6 of the Rules, Procedure Change Proposals must include the proposed amendments and the reason for the amendments. Each party currently uses their own templates. If these different approaches create challenges for Rule Participants, AEMO would support a standard cover sheet.	Noted.
	Small-use customers	Supportive.	Noted.
	Synergy	Not supportive. While improvements could be made to the presentation of Procedure Change Proposals, requiring a cover sheet does not address the issues as presented in the Consultation Paper.	Noted.
	Western Power	Not supportive. Western Power considers this may result in a higher administrative cost. The quality of the report should be assessed on the matters and evidence contained in the report.	Noted. ACIL Allen does not consider the cover sheet would be a replacement for any matters otherwise covered in a Report.
Proposal 2: Development of a Minor Amendments pathway for Procedure Change Proposals	AEMO	Supportive. An expediated process or an exemption with notification would be an appropriate way to manage minor Procedure Changes. A definition of 'minor' should speak to outcomes, with the exemption process used for changes that do not substantively affect outcomes for Rule Participants.	Noted. ACIL Allen has implemented this suggestion in its recommendations.

	Small-use customers	Supportive.	Noted.
	Synergy	Supportive. If the scope of what constitutes a ‘minor amendment’ is explicitly defined and limited (for example, typographical errors).	Noted. ACIL Allen has implemented an approach that speaks to outcomes to avoid ‘minor’ being subject to interpretation – however it may be appropriate to also define certain examples that may be ‘minor’, e.g typographical errors.
	Western Power	Supportive. A minor amendments pathway should be introduced in the WEM.	Noted.
Proposal 3: Uplift Procedure Change Proposals in the MAC agenda	AEMO	Neutral. AEMO has no objection to the inclusion of an agenda item on Procedure Changes. This should be expanded to include Procedures from other Procedure Administrators.	Noted.
	Small-use customers	Neutral. While not objecting to the proposal, more would need to be done to uplift MAC consideration of Procedure Changes. The MAC’s level of consideration is determined by the significance of the Procedure Change.	Noted. ACIL Allen agrees with this perspective.
	Synergy	Neutral. It is unclear whether this proposal would lead to a material difference in the discussion generated at MAC.	Noted. ACIL Allen agrees with this perspective.
	Western Power	No comment.	-
Proposal 4: Changing who can initiate Procedure Change Proposals	AEMO	Supportive.	Noted.
	Small-use customers	Supportive.	Noted.
	Synergy	Supportive. This would remove the asymmetry between the Procedure Change Process and the Rule Change Process and empower customers.	Noted.

	Western Power	<p>Not supportive.</p> <p>Opening up this opportunity beyond impacted parties (Rule Participants) may become an administrative burden for Procedure Administrators.</p>	Noted.
Proposal 5: Timeframes introduced	AEMO	<p>Not supportive.</p> <p>AEMO does not support the imposition of a time limit on actioning a Procedure change.</p> <p>Procedures are currently prioritised based on the impact of the Procedure on AEMO's functions and Rule Participants.</p> <p>An alternative approach may be to expand clause 2.10.2A of the WEM Rules to require the Procedure Administrator to advise an estimated timeframe for progressing the Procedure Change Proposal.</p>	Noted.
	Small-use customers	<p>Supportive.</p> <p>What is a 'reasonable' time frame is likely to vary depending on the significance and magnitude of the proposed change and the resources available to make the change.</p> <p>Rather than a fixed time being specified, the Rules could allow the time limit to be agreed by the parties involved, once the procedure change has been affirmed.</p>	<p>Noted.</p> <p>This approach has been adopted in the recommendations.</p>
	Synergy	<p>Supportive.</p> <p>The WEM Rules should require Procedure Administrators to act on findings in relation to change proposals initiated by others.</p> <p>It may be unnecessary, however, to introduce a time limit.</p>	Noted.
	Western Power	<p>Not supportive.</p> <p>This is unnecessary as Procedure Administrators are likely to respond as soon as reasonably practicable to maintain relationships.</p> <p>Compliance with an imposed administrative time-limit may result in a lesser quality consideration.</p>	<p>Noted.</p> <p>Given that stakeholders have raised this as a problem, ACIL Allen has suggested an approach that balances the imposition of a timeframe with enabling flexibility for Procedure Administrators to ensure appropriate levels of consideration.</p>
Proposal 6: Standardised publishing of Procedures	AEMO	<p>Supportive.</p> <p>There may be benefit in expanding the obligation under clause 2.9.2E in relation to maintaining this list.</p>	Noted.

	Small-use customers	No comment.	-
	Synergy	Supportive. This would ensure consistency and provide visibility of changes to all market participants.	Noted.
Criteria for Procedure Content	AEMO	Not supportive. Criteria 1 and 2 are sufficiently captured under existing clauses of the WEM Rules. Criteria 3 would have serious impacts on the majority of AEMO's Procedures, delegating substantial quantities of content to the Rules. Criteria 4 agrees that content subject to frequent changes should be delegated to a Procedure, but disagrees that this should be minor. Procedures currently go beyond governance matters, with the recognition that the best party to manage content is generally the Procedure Administrator with the relevant functions per the Rules. Criteria 5 is not supported as it would remove AEMO's ability to amend content to respond to matters of urgency, with additional risks and cost impacts to AEMO and other Rule Participants.	Noted. ACIL Allen agrees with AEMO's concerns regarding the criteria in terms of requiring content to move to the Rules. This is discussed further in the Final Report.
	Small-use customers	Somewhat supportive. Noted that the criteria seem reasonable but deferred to others.	Noted.
	Synergy	Supportive.	Noted.
	Western Power	Supportive. Western Power generally agrees with the Criteria.	Noted.
Additional recommendations	AEMO	Guidelines that place obligations of Rule Participants should be elevated to Procedures, allowing for Rule Participants to initiate or engage with the Procedure Change Process on matters affecting them.	Noted. ACIL Allen agrees with this statement.

Source: ACIL Allen

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