

4 November 2025

Australian Energy Regulator



Submitted via email: ContractMarketMonitoring@aer.gov.au

Draft Market Monitoring Information Orders

The Australian Financial Markets Association (AFMA) is responding to the Australian Energy Regulator's (AER) consultation on its revised electricity Market Monitoring Information Order.

AFMA is the leading financial markets industry association promoting efficiency, integrity and professionalism in Australia's financial markets, including the capital, credit, derivatives, foreign exchange, energy, carbon, and other specialist markets. Our membership base is comprised of over 130 of Australia's leading financial market participants, including key participants in the NEM.

Key Points

- **The revised order will simplify compliance and reduce implementation costs**
 - **AFMA still considers that the AER arrangements for handling confidential information need to be enhanced before any data is collected**
 - **The AER's limited communications since the original draft order have caused significant uncertainty in the industry**
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AFMA looks forward to continuing to work with the AER as it takes on this market monitoring function and builds out its analytical capability. We encourage you to continue your engagement with the industry as you begin to analyse data and start publishing your findings. In particular, we think the AER should adopt the approach used by the ACCC in its pricing inquiries of consulting with participants before publishing any analysis or statements specific to the participant that were derived from the information they provided.

AFMA welcomes the AER's decision to limit the scope of the initial information order. Limiting the scope of the initial order, reducing the number of qualitative questions and avoiding duplicating data collected by other bodies will simplify implementation for both the AER and market participants and reduce the compliance burden imposed by the new requirements.

1. Communications

While AFMA supports the AER's decision to limit the scope of its data collection we are critical of the AER's limited communications between the earlier draft order and this consultation. Implementing complicated reporting arrangements like the market monitoring framework is resource intensive, requiring regulated businesses to plan to ensure appropriate human and technical resources are available. It is therefore critical for regulators to communicate both the detail of the reporting requirements and a credible implementation timeline to enable regulated firms to plan for implementation and budget to ensure adequate resources are available.

While we want to acknowledge the openness of communication from AER operational staff, high level communications about the implementation process have been lacking during 2025.

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Poor communications have complicated implementation for regulated businesses who have incurred additional costs to stand up project teams for a mid-2025 implementation that did not occur and will now have to prepare for implementation in 2026. AFMA understands that the AER board drove the original ambitious scope and implementation timeline and was also responsible for the decision to delay implementation. AFMA considers that the AER board should publicly review their decision making and communication processes to avoid repeating this muddled process.

AFMA Recommendations

- i. The AER should adopt the ACCC's approach to consulting participants before publishing any analysis or statements.
- ii. The AER board should publicly review their decision making and communication processes to ensure future change projects are competently managed and communicated

2. Information Security

AFMA wants to repeat the concerns we expressed previously about the AER's arrangements for handling confidential information.¹ The information participants will be required to provide to the AER under the market monitoring framework is potentially more commercially sensitive than any information the AER has previously collected from market participants. Our members do not have confidence that the ACCC/ AER have adequate arrangements for securely handling this information. They particularly point to multiple instances of the ACCC improperly disclosing confidential information collected under its pricing inquiries and the inappropriate disclosure of breach reporting data from the AER's breach reporting portal.

While we acknowledge that the AER has made efforts to improve the security of its reporting portal and databases, our members remain concerned that inadequate human controls are in place to manage the risk presented by AER/ACCC staff and contractors, who have had access to this data, accidentally disclosing information or looking to exploit this information in subsequent roles in the private sector. Information security is currently a particular focus of our members as the *Security of Critical Infrastructure Act 2018* has enhanced the expectations for information security in the energy and financial services sectors.

Our members consider that the AER needs to do substantially more to give the market confidence that confidential information will be handled appropriately. AFMA considers that this should include at a minimum:

- Adequate systems for storing and accessing data, including provision for anonymising and encrypting stored information and logging access
- Implementing an information life cycle management framework to ensure that data is appropriately managed
- Human controls to limit access to information to those who need to know and provide safeguards against conflicts of interest
- Appropriate post-engagement contractual provisions for staff and contractors with access to confidential information to protect confidentiality and, where appropriate, restrain former staff and contractors from taking commercial roles where they will be able to exploit any information during the period when the information remains commercially valuable.

¹ <https://afma.com.au/policy/submissions/2025/r68-24-market-monitoring-information-order.pdf?ext=.pdf>

We consider the AER should engage an independent expert to review their arrangements for handling confidential information and publish the results of any reviews. We do not think participants should be required to report data until appropriate arrangements are in place and communicated to stakeholders.

AFMA Recommendations

- iii. The AER should implement appropriate arrangements for handling confidential information.
- iv. The AER should regularly engage an independent expert to review its arrangements for handling confidential information.
- v. The AER should publish the results of the independent expert's reviews.
- vi. Participants should not be required to report data until appropriate arrangements for handling confidential information are in place.

3. Detailed responses

3.1. General

3.1.1. Timing of responses

AFMA wants to note that the AER's actions in inadequately scoping and resourcing the wholesale market monitoring function and its initial decision to pursue an ambitious reporting framework that was not aligned with its implementation capacity, have delayed initial reporting under the framework by approximately 12 months.

AFMA's members require a minimum of 6 months from the publication of the final order to implement reporting systems. We do not think it is appropriate that regulated businesses time for implementation should be curtailed to make up for delays resulting from the AER's poor project management. We therefore think that first reporting should be required no earlier than 6 months after the publication of the final order.

3.1.2. Information sharing

While AFMA appreciates that the reduced scope of the revised order has limited the extent to which it duplicates other bodies information collection, we continue to encourage the AER to explore opportunities to limit the regulatory burden imposed by data collection by relying on data collected by other bodies. In addition to the information held by AEMO, the ASX and the ACCC our members would like to draw the AER's attention to information about the Tasmanian regulated wholesale contracts that is held by the Tasmanian Economic Regulator.

3.2. Data

3.2.1. Historical PPAs

AFMA considers that the narrower scope of data the AER is proposing to collect about existing PPAs will simplify compliance compared to the previous order. But we note that PPAs typically run for multiple years and that the volume of MWhs purchased and the price paid for the energy is likely to change from year to year. We therefore think the AER should clarify that information about PPAs should be provided on an annual basis and, as suggested above, we think the AER should collect data on a financial, rather than calendar year basis.

3.2.2. Derivative contract data

Our detailed comments on the proposed data requests for exchange traded and OTC standard contracts are included in Appendices A and B. Many of our comments repeat feedback we gave on the previous instrument and the appendices note where you have incorporated or not incorporated this feedback.

3.3. Qualitative questions

AFMA welcomes the AER's decision to reduce the volume of qualitative questions and to move to only asking qualitative questions once a year. We consider that this will simplify compliance and reduce compliance costs, but as noted above we encourage the AER to consider asking for responses on a financial year basis.

3.3.1. Exchange traded

AFMA understands that FEX has stopped offering electricity futures products. Given the very small volume of trading that has occurred on their platform we think there is limited value in asking for data about FEX transactions and suggest removing the FEX specific questions.

In the longer term we encourage the AER to explore options to reduce participants' compliance costs by sourcing exchange traded data directly from the exchanges as the New Zealand Electricity Authority does for its Electricity Hedge Disclosure regime.

3.3.2. Corporate structure

While AFMA appreciates the AER's desire to understand the corporate structure of reporting entities we think this section of the order is unnecessarily complex and is likely to create confusion. Much of the confusion comes from the AER's attempts to describe the possible relationships between various entities in a group. We suggest the AER should instead adopt the tested definition of associate in s50AAA of the *Corporations Act 2001* which is widely used to describe related firms within corporate groups.

We also suggest that instead of asking for complicated descriptions of the relationships between the trading entities in the group the AER would be better served by asking firms to provide charts identifying the trading entities in the group and documenting the relationships between them. This approach is widely used in know your customer processes so should be simple for firms to comply with.

We also suggest that the current A.3 questions 5 and 6 are potentially confusing and suggest that they should be removed and that parties reporting entities should just be required to submit a new corporate chart each year.

Members with multiple reporting entities within their corporate group would also like the option to provide a single consolidated report on behalf of the group.

AFMA Recommendations

- vii. Reporting should commence no earlier than 6 months after the instruments are finalised
- viii. The AER should continue to explore opportunities to rely on information collected by other regulatory bodies.
- ix. The AER should clarify that PPA data should be provided on an annual basis

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| x. | The AER should not collect data about FEX transactions |
| xi. | The process for collecting data about corporate structures should be simplified |
| xii. | Corporate groups with multiple reporting entities should be able to provide a single consolidated report on behalf of the group |

4. Other

4.1. Definitions

4.1.1. “Contract”

We consider that the definition of contract is unclear and unhelpful. The term is used inconsistently and circularly throughout the order, it is used in the definition of “futures” but in other contexts is clearly intended to refer to futures plus other contracts. AFMA thinks the drafting should be streamlined to avoid circular definitions and we suggest that the term “contract” should only be used as an umbrella term describing “Futures,” “OTC Standard Contracts” and “PPAs.” We therefore suggest that the definition of “contract” should be revised as follows:

Contract	Means a:
	a) Futures;
	b) OTC Standard Contracts; or
	c) PPAs

We also suggest the AER should provide guidance about how bundled energy and environmental products should be treated and suggest that products like weather derivatives and outage insurance derivatives, that are used in the sector as risk mitigants, should not be included in the definition of Contract.

4.1.2. “FEX”

As discussed above, we understand that FEX has ceased offering electricity futures products and we therefore consider that it is not necessary to refer to them in the information instrument.

4.1.3. “Peak”

AFMA notes that the traditional 7am-10pm peak swap is rarely traded and we understand that ASX is in the process of retiring it, so we consider it is no longer a standard contract. We therefore think it is unnecessary for it to be listed as an “OTC Standard Contract” as it is unlikely that there will be a significant volume of traditional OTC peak contracts during the reporting period.

4.1.4. “Trading Company”

AFMA’s understands from your consultation paper that you do not currently intend to capture purely financial market participants under this order. We therefore assume that the definition of “Trading Company” is intended to deal with corporate groups where the trading activity may not happen from the same legal entity as the market participant. We caution that the current definition may be slightly too broad and could unintentionally capture financial market participants who engage in agency trading for market participants. We therefore suggest that this definition should be limited to related companies of the market participant.

4.2. Proforma report (Appendix B)

AFMA appreciates the AER's move to electronic data collection through its portal but in this context, we want to point out that requiring participants to complete a written attestation that requires a signature and presumably will be submitted as a scanned pdf is inefficient. We therefore encourage the AER to build the attestation into the portal so it can be completed electronically as part of the submission process, this functionality could still provide for executive sign off by allowing the party submitting the data to type in the name and job title of the person making the attestation.

AFMA Recommendations

- xiii. The definition of "Contract" should be amended
- xiv. The definition of "FEX" should be removed
- xv. The definition of "Peak" should be removed and the definition of "OTC Standard Contracts" should be updated to reflect this
- xvi. The definition of "Trading Company" should be limited to related companies of market participants
- xvii. The AER should use electronic rather than paper based attestations

AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. Please contact me at lgamble@afma.com.au or 02 9776 7994.

Yours sincerely,



Lindsay Gamble

Head of Energy and Carbon

Appendix A – Exchange Traded Transactions

AFMA has the following comments on the proposed data templates for exchange traded products:

No	Description	AFMA comment on previous draft instrument	Comment/ Recommendation
NA	> 1MW reporting threshold	The standard parcel size for an exchange traded electricity product is 1MW. We suggest the reporting threshold should be set at ≥ 1 MW rather than the current >1MW.	AFMA notes that this change has been implemented.
1c	Name of Class Member	Using free text names can create confusion, we suggest the AER should consider if participants should use recognised identifiers such as Legal Entity Identifiers or ABNs.	We note this field has been replaced by the new ABN field. For consistency purposes we suggest this field should be titled “ABN of Class Member,” see comments on OTC Standard Contracts field 2e
1e and f	Contract Name and Contract Code	NA	AFMA considers that it is unnecessary to report both the Contract Name and the Contract Code as the Contract Name is a component of the Contract Code. We also note that in the current template the Contract Code is free text. To avoid confusion we suggest it should be restricted to the published list of ASX codes.
1i	Strike Price	Strike price typically refers to the agreed price at which an option can be exercised. This term should therefore only be used for caps and options. For swaps we suggest inserting a new “fixed price” field representing the purchase price of the swap.	AFMA notes the addition of the new fields 1j and 1k in response to our comment.
1k	Fixed Price (MW)	N/A	Fixed price should be expressed as \$/MWh rather than MW.

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1m and 1n	Delivery Start Date and Delivery End Date	Exchange traded products are traded for fixed delivery periods, usually known as the “contract period” and expressed in months or quarters. We suggest replacing both of these fields with a “contract period.”	We repeated our previous comment that these fields should be replaced by “contract period.”
1o	Is the Contract the result of an option exercise?	Our understanding is that parties do not typically record information about if a swap resulted from exercising an option so it may be difficult to answer this question. It may be more useful to include a field for option transactions to record if the option was exercised. As discussed in section 3.1 of our previous submission, this may present a separate operational challenge as the exercise of an option will only become known during the lifecycle of the transaction and the AER will have to have appropriate arrangements in place to manage lifecycle reporting.	We repeat our previous comment regarding the availability of information to answer this question.
1p	Was this contract a put or a call? (For Options only)	NA	As with 1o, we consider that 1p will be difficult for participants to respond to as they this data is not typically recorded by market participants.
1q and 1r	Exchange for physical	Exchanges allow participants to close positions by exchanging the futures position for an equivalent physical position (known as, Exchange for Physical (EFP)). As discussed in section 3.1 of our previous submission, EFPs are not relevant at the time a futures position is entered into but may become so during their lifecycle if the position is closed out with an EFP. We are unsure that the current fields are appropriate for reporting lifecycle events.	We repeat our previous comment regarding the difficulty of responding to this question.

Appendix B – OTC Standard Contracts

AFMA has the following comments on the proposed data templates for OTC Standard Products:

No	Description	Previous AFMA Comment	AER change since first draft order
NA	> 1MW reporting threshold	The standard minimum parcel size for OTC product is 1MW. We suggest the reporting threshold should be set at $\geq$ 1MW rather than the current >1MW.	AFMA notes that this change has been implemented.
2c	Name of Class Member	See comment on 1c for exchange traded products.	We note this field has been replaced by the new ABN field. For consistency purposes we suggest this field should be titled “ABN of Class Member,” see comments on OTC Standard Contracts field 2e
2d	Contract Name	We anticipate the intention is that parties should name contracts in the same way that the equivalent products are named by the relevant exchange. We suggest the template should include controls to enforce this naming conventions, rather than using free text.	AFMA notes that this change has been implemented. ASX contract names include the tenor of the contract (e.g. Base load monthly futures) but the definition of “OTC Standard Contracts” requires the reporting of contracts for non-standard tenors. We therefore suggest that for validation purposes the AER should develop a separate list of standardised contract names, based on ASX’s contracts, that does not include the tenor (e.g. “base load” instead of “base load monthly futures”).
2e	Name of Counterparty	See comment on 1c for exchange traded products	As suggested for the previous “Name of Class Member” field, using free text names can create confusion. We suggest the AER should consider replacing this field with “ABN of Counterparty” or possibly “Legal Entity Identifier of

			Counterparty” if you consider that counterparties may be foreign entities without ABNs.
2h	Strike Price	See comment on 1h for exchange traded products	AFMA notes the addition of the new fields 2i and 2j in response to our comment.
2j	Fixed Price (MW)	N/A	Fixed price should be expressed as \$/MWh rather than MW.
2l and 2m	Delivery Start Date and Delivery End Date	While OTC products can be traded for any period standard products typically have standardised delivery periods, known as the “contract period” and expressed in months or quarters. We suggest replacing both of these fields with a “contract period.”	We repeated our previous comment that these fields should be replaced by “contract period.”
2n	Is the Contract the result of an option exercise?	See comment on 1m for exchange traded products	We repeat our previous comment regarding the availability of information to answer this question.
2o	Was this contract a put or a call? (For Options only)	NA	AFMA is confused by this field. For OTC options we think there should be a new field asking if the option is a put or a call as it is important to identify which type of option the contract is. This field could possibly be after 2d. Note a similar field is not required for exchanged traded options as this information is contained in the Contract Code which is reported under 1f. As with 2n, we consider that 2o will be difficult for participants to respond to as they this data is not typically recorded by market participants.
2p and 2q	Exchange for physical	Determining if OTC transactions were entered into for the purpose of an EFP can be challenging as there is not necessarily a one to one relationship between the OTC transaction and the EFP and, as with	We repeat our previous comment regarding the difficulty of responding to this question.

		exchange traded products, the purpose of the transaction may change during its lifecycle. We suggest that it would be simpler for the AER to collect data on if exchange traded positions are closed using EFP (see comments on 1o and 1p) rather than collecting data about OTC transactions that relate to an EFP.	
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