

Australian Energy Market Commission

Working group protocol (*Indistinct events* TWG)

Context and purpose

The AEMC is establishing a working group with energy industry members to discuss issues and amendments to the NER related to the *Enhancing operational resilience in relation to indistinct events* rule change request.

The Working Group is committed to complying with all applicable laws, including the *Competition and Consumer Act 2010 (CCA)*, during these discussions. Breach of the CCA can lead to serious penalties for members and for individuals involved in any breach (including large financial penalties and potentially also imprisonment for key individuals involved).

This Protocol governs the way in which Working Group discussions will proceed, and the Working Group agrees to adhere to this protocol in order to ensure compliance with the CCA.

Key principles

The purpose of this Working Group is solely to discuss issues and amendments to the NER related to the *Enhancing operational resilience in relation to indistinct events* rule change request..

Each member **must make an independent and unilateral decision** about their commercial positions and approach in relation to the matters under discussion in the Working Group.

This Working Group **must not discuss, or reach or give effect to any agreement or understanding*** which relates to:

- **pricing** for the products and/or services that any member supplies or will supply, or the terms on which those products and/or services will be supplied (including discounts, rebates, price methodologies etc.).
- **targeting (or not targeting) customers** of a particular kind, or in particular areas.
- **tender processes** and whether (or how) they will participate
- any decision by members:
 - about the purchase or supply of any products or services that other members also buy or sell
 - to not engage with persons or the terms upon which they will engage with such persons (i.e. boycotting); or
 - to deny any persons access to any products, services or inputs they require.
- **sharing competitively sensitive information** such as non-publicly available pricing or strategic information including details of customers, suppliers (or the terms on which they do business), volumes, future capacity etc
- **breaching confidentiality obligations** that each member owes to third parties.

* An “understanding” does not have to be formal; a “nod and a wink” is enough if one party commits to act in a particular way.

Communication & meeting guidelines

Members must ensure that **all communications** (including emails and verbal discussions) adhere to the Key Principles.

All meeting between Working Group members should be conducted in accordance with the following rules:

- Agree and circulate an agenda in advance of each meeting. The content of each agenda should not include anything that could contravene the Key Principles set out in this Protocol, and try to avoid “any other business” agenda items.
- Ensure all members understand ahead of the meeting that any competitively sensitive matters must be subject to legal review before any commitment/agreement can be given.
- The below ‘competition health warning’ is read and minuted at any meetings or conference calls:
 - Attendees at this meeting must not enter into any discussion, activity or conduct that may infringe, on their part or on the part of other members, any applicable competition laws. For example, members must not discuss, communicate or exchange any commercially sensitive information, including information relating to prices, marketing and advertising strategy, costs and revenues, terms and conditions with third parties, terms of supply or access.*
 - For any new attendees – please note that participating in these discussions is subject to you having read and understood the Protocol including the Key Principles. If you have not yet done so, please do so now.*
- Accurate minutes are kept of all meetings, including details of attendees.
- If something comes up during a meeting that could risk contravening any Competition Laws, attendees should:
 - Object immediately, and ask for the discussion to be stopped.
 - Ensure the minutes record that the discussion was objected to and stopped.
 - Raise concerns about anything that occurred in the meeting with their respective legal counsel immediately afterwards.
- Any decision about whether, and on what terms, to engage with customers and suppliers is an independent and unilateral decision of each member.