

## **CHAPTER 8**



## 8. Administrative Functions

### Part A Introductory

#### 8.1 Administrative functions

##### 8.1.1 [Deleted]

##### 8.1.2 [Deleted]

##### 8.1.3 Structure of this Chapter

- (a) This Chapter describes some of the key processes and obligations associated with the administration of the *Rules* and deals also with *augmentations*.
- (b) It is divided into Parts as follows:
  - (1) this Part is introductory;
  - (2) Part B deals with dispute resolution;
  - (3) Part C deals with the obligations of *Registered Participants* to maintain confidentiality;
  - (4) Part D deals with monitoring and reporting;
  - (5) Part E deals with the structure and responsibilities of the *Reliability Panel*;
  - (6) Part F sets out the *Rules consultation procedures*;
  - (7) Part G deals with funding for the Consumer Advocacy Panel;
  - (8) Part H deals with *augmentations*.
- (c) [Deleted]
- (d) [Deleted]
- (e) [Deleted]
- (f) [Deleted]
- (g) [Deleted]

### Part B Disputes

#### 8.2 Dispute Resolution

##### 8.2.1 Application and guiding principles

- (a) This rule 8.2 applies to any dispute which may arise between two or more *Registered Participants* about:
  - (1) the application or interpretation of the *Rules*;
  - (2) the failure of any *Registered Participants* to reach agreement on a matter where the *Rules* require agreement or require the *Registered Participants* to negotiate in good faith with a view to reaching agreement;

(3) **[Deleted]**

- (4) the proposed access arrangements or *connection agreements* of an *Intending Participant* or a *Connection Applicant*, for *connection* and access to a *distribution network* or *declared transmission system*;
- (5) the payment of moneys under or concerning any obligation under the *Rules*;
- (6) any other matter relating to or arising out of the *Rules* to which a contract between two or more *Registered Participants* provides that the dispute resolution procedures under the *Rules* are to apply;
- (7) any other matter relating to or arising out of the *Rules* in respect of which two or more *Registered Participants* have agreed in writing that this rule 8.2 should apply; or
- (8) any other matter that the *Rules* provide may or must be dealt with under this rule 8.2,

but does not apply to those disputes described in clause 8.2.1(h).

- (a1) For the purposes of this rule 8.2 only, "**Registered Participant**" is deemed to include not just *Registered Participants* but also *AEMO*, *Connection Applicants*, *Metering Providers*, *Metering Data Providers*, *Embedded Network Managers* and *NMAS providers* (including *NSCAS preferred tenderers*) who are not otherwise *Registered Participants*, except that this will not be the case where the term "*Registered Participant*":

- (1) is used in clauses 8.2.2(b)(4), 8.2.2(d), 8.2.3(a), 8.2.3(b)(5) and 8.2.5(e); or
- (2) first occurs in clauses 8.2.3(b), 8.2.3(b)(3), 8.2.3(b)(4) or 8.2.3(c); or
- (3) last occurs in clauses 8.2.4(a) or 8.2.9(c).

(b) **[Deleted]**

(c) **[Deleted]**

- (d) The dispute resolution regime in this rule 8.2 provides procedures to resolve disputes between parties, not sanctions for breach of the *Rules*. The dispute resolution processes may indicate that a breach of the *Rules* has occurred and the resolution or determination of the dispute may take account of the damage thereby caused to a party. Any action for breach of the *Rules* may only be taken by the *AER* acting in accordance with the *NEL*.

- (e) It is intended that the dispute resolution regime set out in or implemented in compliance with the *Rules* and described in detail in this rule 8.2 should to the extent possible:

- (1) be guided by the *national electricity objective*;
- (2) be simple, quick and inexpensive;
- (3) preserve or enhance the relationship between the parties to the dispute;
- (4) take account of the skills and knowledge that are required for the relevant procedure;
- (5) observe the rules of natural justice;

- (6) place emphasis on conflict avoidance; and
- (7) encourage resolution of disputes without formal legal representation or reliance on legal procedures.
- (f) Except as provided in the *NEL* and clause 8.2.1(g), where any dispute of a kind set out in clause 8.2.1(a) arises, the parties concerned must comply with the procedures set out in clauses 8.2.4 to 8.2.10 and 8.2.12 and, where the dispute is referred to a *DRP*, a determination of the *DRP* is final and binding on the parties.
- (g) Notwithstanding clause 8.2.1(f), a party may seek an urgent interlocutory injunction from a court of competent jurisdiction.
- (h) Rule 8.2 does not apply to:
  - (1) a decision by *AEMO* regarding an exemption under clause 2.2.1(c);
  - (2) a decision by *AEMO* under clause 2.2.2 not to approve the classification of a *generating unit* as a *scheduled generating unit*;
  - (3) a decision by *AEMO* under clause 2.2.3 not to approve the classification of a *generating unit* as a *non-scheduled generating unit*;
  - (3A) a decision by *AEMO* under clause 2.5.1A(d) not to approve the classification of a *dedicated connection asset* as a *small dedicated connection asset* or *large dedicated connection asset*;
  - (4) a decision by *AEMO* under clause 2.9.2(c);
  - (5) a decision by *AEMO* to reject a notice from a *Market Customer* under clause 2.10.1(d);
  - (5A) a decision by *AEMO* with regard to the preparation or publication of a budget;
  - (5B) the formulation by *AEMO* of its revenue methodology or an amendment to its revenue methodology;
  - (5C) a decision by *AEMO* to reject a notice from a *Market Small Generation Aggregator* under clause 2.10.1(d1);
  - (6) a determination by *AEMO* under clause 3.3.8 of the minimum amount of *credit support* a *Market Participant* must provide to *AEMO* for the relevant time period, as determined by *AEMO* in accordance with clause 3.3.8 ;
  - (7) a decision by *AEMO* under clause 3.8.3 to refuse an application for aggregation;
  - (8) a decision by *AEMO* under clause 3.15.11 to reject a *reallocation request*;
  - (9) a decision by *AEMO* to issue a notice under clause 4.11.1(d);
  - (10) a decision by *AEMO* under clause 7.2.1(b) to refuse to permit a *Market Participant* to participate in the *market* in respect of a *connection point*;
  - (11) a decision by *AEMO* whether or not to deregister a *Metering Provider*, *Metering Data Provider* or *Embedded Network Manager* under clause

- 7.4.4(d) or to suspend a *Metering Provider*, *Metering Data Provider* or *Embedded Network Manager* from a category of registration under clause 7.4.4(d) or to impose agreed constraints on the continued operation of a *Metering Provider*, *Metering Data Provider* or *Embedded Network Manager*;
- (12) a dispute concerning the price of a *SRAS* agreement or a tender conducted by *AEMO* for the acquisition of *SRASs* under clause 3.11.9;
  - (13) a dispute of a kind referred to in rule 5.16B or 5.17.5;
  - (14) a *transmission services access dispute* and *large DCA services access dispute* to which rule 5.5 applies;
  - (14A) a decision by a *Co-ordinating Network Service Provider* with regard to the provision of an estimate of the *modified load export charge* payable to each *Transmission Network Service Provider* as referred to in clause 6A.29A.2.
  - (15) a *distribution services access dispute* to which Part L of Chapter 6 applies;
  - (16) a decision by *AEMO* under clause 2.2.7 not to approve the classification of a *semi-scheduled generating unit*; or
  - (17) a decision by *AEMO* regarding an exemption under clause 2.4A.1(b); or
  - (18) a decision by *AEMO* regarding an exemption under clause 7.8.4(a).

## 8.2.2 The Dispute Resolution Adviser

- (a) The *AER* must appoint a person or persons from time to time to perform the functions of the Dispute Resolution Adviser (the *Adviser*), on such terms and conditions as the *AER* may determine.
- (b) The *Adviser* must:
  - (1) have a detailed understanding and experience of dispute resolution practice and procedures which do not involve litigation (**alternative dispute resolution**);
  - (2) have the capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances;
  - (3) have an understanding of the electricity industry or the capacity to quickly acquire such an understanding; and
  - (4) not be a *Registered Participant* or *AEMO* or be associated, directly or indirectly, with a *Registered Participant*, *AEMO* or the *AER*.
- (c) The primary function of the *Adviser* is to attend to any matters necessary to ensure the effective operation of:
  - (1) the Stage 1 dispute resolution process set out in clause 8.2.4;
  - (2) the Stage 2 dispute resolution process set out in clauses 8.2.5 and 8.2.6A to 8.2.6D; and
  - (3) the *Independent Engineer* process set out in rule 5.4.

- (d) The *Adviser* must take reasonable steps to keep *Registered Participants* and *AEMO* informed, and in any case must report at least quarterly to *Registered Participants* and *AEMO*, about the operation of the dispute resolution processes established under the *Rules*.
- (e) The *Adviser* must establish and maintain a pool of persons from which members of a *dispute resolution panel (DRP)* may be selected in accordance with clause 8.2.6A.
- (f) In selecting persons for the pool, the *Adviser* must have regard to:
  - (1) the need for members of a *DRP* to have an appropriate range of skills; and
  - (2) the need for persons in the pool to be drawn from all *participating jurisdictions*.
- (g) The *Adviser* must review the composition of the pool at least every two years.
- (h) The *Adviser* may issue guidance notes relating to:
  - (1) the form and content of a *dispute management system (DMS)*; and
  - (2) the use and conduct of mediation in the Stage 1 dispute resolution process.

### 8.2.3 Dispute management systems of Registered Participants and AEMO

- (a) Each *Registered Participant* and *AEMO* must adopt and implement a *DMS*.
- (b) The *DMS* of a *Registered Participant* or *AEMO* must:
  - (1) be consistent with guidance notes of the *Adviser* relating to the form and content of a *DMS*;
  - (2) nominate a *DMS Contact* to be the first point of contact for the notification of disputes;
  - (3) provide that the *Registered Participant* or *AEMO* (as the case may be) must respond to a request for information (being information that is relevant to any of the matters set out in clause 8.2.1(a)) from another *Registered Participant* within 5 *business days* of receiving the request;
  - (4) set out the procedures of the *Registered Participant* or *AEMO* (as the case may be) for responding to requests for information from other *Registered Participants*; and
  - (5) set out any requirements and procedures necessary to ensure that the *Registered Participant* or *AEMO* (as the case may be) is able to comply with the requirements and time limits set out in clause 8.2.4.
- (c) A *Registered Participant* or *AEMO* must provide a copy of its *DMS* upon being requested to do so by another *Registered Participant* or the *Adviser*.

#### Note

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

#### **8.2.4 Stage 1 - dispute resolution through Registered Participants' DMS**

- (a) A *Registered Participant* may activate the dispute resolution mechanisms in this clause by serving a *DMS referral notice* on the *DMS Contact* of one or more other *Registered Participants* or *AEMO* (as the case may be).
- (b) Except where the *Rules* provides for another time period to apply, and subject to clause 8.2.4(k), a *DMS referral notice* must be served no later than 60 *business days* after the date on which the making of a disputed decision or the occurrence of disputed conduct could reasonably have become known to a *Registered Participant* affected by it.
- (c) A *DMS referral notice*:
  - (1) must be in a form approved and *published* by the *Adviser*;
  - (2) must contain a statement setting out the circumstances giving rise to the dispute; and
  - (3) may request the person on whom it is to be served to provide information that is relevant to any of the matters set out in clause 8.2.1(a).
- (d) Within 5 *business days* of service of a *DMS referral notice*, representatives of:
  - (1) the *Registered Participant* that served the notice; and
  - (2) every person on whom the notice was served,must meet to determine, by agreement, the further conduct of the dispute.
- (e) A meeting of *Registered Participants'* representatives:
  - (1) may be conducted in person, by telephone, video-conference or like method of real time communication;
  - (2) may agree that the dispute should be conducted by any consensual means, including by direct discussions between *Registered Participants* or by mediation; and
  - (3) must consider whether any other *Registered Participant* should be served with a *DMS referral notice*.
- (f) Subject to clause 8.2.4(g), a meeting of *Registered Participants'* representatives may agree to keep confidential:
  - (1) the fact that a dispute exists between them; and
  - (2) any information exchanged between them for the purposes of attempting to resolve the dispute.
- (g) *AEMO* must immediately notify the *Adviser* if:
  - (1) it serves a *DMS referral notice* on the *DMS Contact* of another *Registered Participant*, or
  - (2) it is served with a *DMS referral notice* by another *Registered Participant*.

The notification to the *Adviser* must include a list setting out each *Registered Participant* that *AEMO* considers may have an interest in the



dispute, together with an indication as to whether *AEMO* has served a *DMS referral notice* in relation to the dispute on that *Registered Participant*, or has otherwise made the *Registered Participant* aware of the dispute.

- (h) If *Registered Participants'* representatives, meeting in accordance with clauses 8.2.4(d) and (e), all agree that a *Registered Participant* that was not previously a party to the dispute should be served with a *DMS referral notice*, any one or more of them may serve a *DMS referral notice* on that other *Registered Participant*. Where a *Registered Participant* is served with such a notice, that *Registered Participant* must meet with the other parties to the dispute to determine the further conduct of the dispute in accordance with clauses 8.2.4(d), (e) and (f).

- (i) If:

- (1) a *Registered Participant* on whom a *DMS referral notice* is served does not agree to become a party to the dispute; or
- (2) the dispute is not resolved within 20 *business days* (or such lesser period as is agreed by all the parties) after the day on which a *DMS referral notice* was last served on a *Registered Participant*,

any *Registered Participant* that has served a *DMS referral notice* in relation to the dispute or that has agreed to become a party to the dispute may, no later than 60 *business days* after the day on which a *DMS referral notice* was last served on a *Registered Participant*, refer the matter to the *Adviser* in accordance with clause 8.2.5.

- (j) If the dispute has not been referred to the *Adviser* within 60 *business days* after the day on which a *DMS referral notice* was last served on a *Registered Participant*, any obligations or requirements arising under this clause 8.2.4 in relation to that dispute cease to have effect.

- (k) Despite clauses 8.2.4(b) and 8.2.4(i) and any other provision of the *Rules* that specifies a time limit for the raising of a dispute, where:

- (1) a *DMS referral notice* has not been served within the period specified in clause 8.2.4(b);
- (2) a dispute has not been referred to the *Adviser* within the time specified in clause 8.2.4(i); or
- (3) any other dispute to which rule 8.2 applies has not been raised within the time limit specified in the *Rules* for the raising of such a dispute,

the dispute may be referred to the *Adviser*, and a *DRP* may determine the dispute if, in the opinion of the *DRP*, any prejudice suffered by any *Registered Participant* as a result of the dispute being referred outside the specified period would not, having regard to the circumstances giving rise to the failure to refer the dispute within the specified period, be unreasonable.

## 8.2.5 Stage 2 - dispute resolution process

- (a) A dispute may be referred to the *Adviser* by serving on the *Adviser* an *Adviser referral notice* in accordance with this clause 8.2.5. An *Adviser referral notice* must:

- (1) be in a form approved and published by the *Adviser*;

- (2) contain the names of all the parties to the dispute; and
  - (3) if the *Registered Participant* serving the *Adviser referral notice* does not agree to the *Adviser* attempting to resolve the dispute in accordance with clause 8.2.5(c)(1) and requires the *Adviser* to refer the dispute to a *DRP* for determination, must contain a statement to that effect.
- (b) Where a dispute is referred to the *Adviser*, the *Adviser* must immediately notify each *Registered Participant* that is party to the dispute of that fact. Each *Registered Participant* must, within 5 *business days* of being so notified, provide to the *Adviser* a statement setting out:
  - (1) a brief history of the dispute and the circumstances giving rise to it; and
  - (2) a statement of its issues in relation to the dispute.
- (c) The *Adviser* must, within 10 *business days* of being served with the *Adviser referral notice*, either:
  - (1) if the parties so agree, attempt to resolve the dispute by any means the *Adviser*, having regard to the principles set out in clause 8.2.1(e), considers appropriate; or
  - (2) if the parties do not agree to the *Adviser* attempting to resolve the dispute in accordance with clause 8.2.5(c)(1), refer the dispute to a *DRP* for determination in accordance with clauses 8.2.6A to 8.2.6D.
- (d) If the *Adviser*, having attempted to resolve the dispute in accordance with clause 8.2.5(c)(1), considers that such attempt is unlikely to result in resolution of the dispute within a reasonable time, the *Adviser* may, at any time, refer the dispute to a *DRP* for determination in accordance with clauses 8.2.6A to 8.2.6D.
- (e) Where the *Adviser* refers a dispute to a *DRP*, the *Adviser* must promptly *publish* to all *Registered Participants*, as well as promptly notify *AEMO*, the *AER* and the *AEMC* of, the fact that the referral has been made.

#### **8.2.6A Establishment of Dispute Resolution Panel**

- (a) Where the *Adviser* decides to refer a dispute for resolution by a *DRP*, the *Adviser* must establish the *DRP* to determine the dispute.
- (b) **[Deleted]**
- (c) The *Adviser* must consult with the parties to the Stage 1 dispute resolution process on the composition of the *DRP*. For the avoidance of doubt, the requirement to consult on the composition of the *DRP* does not apply with respect to a party that is later joined as, or that later opts to become, a party to the dispute.
- (d) Despite the requirement to consult set out in clause 8.2.6A(c), a decision of the *Adviser* as to the composition of the *DRP* is final and binding upon all parties to the dispute.

- (e) A *DRP* must comprise three members or, if the parties agree that the circumstances and nature of the dispute warrant a panel comprised of one or two members, the number so agreed.
- (f) The *Adviser* may appoint as a member of the *DRP* any person who is a member of the pool established under clause 8.2.2(e) and who in the reasonable opinion of the *Adviser* is either:
  - (1) expert in the field to which the dispute relates; or
  - (2) experienced or trained in dispute resolution techniques.
- (g) A person, whether a member of the pool established under clause 8.2.2(e) or not, is not eligible for appointment to a *DRP* if that person has any interest which may conflict with, or which may be seen to conflict with, the impartial resolution of the dispute. Where a person becomes aware of such a conflict after the *DRP* commences the determination of a dispute, the person must advise the parties to that effect.
- (h) Where:
  - (1) a *Registered Participant* who is a party to the dispute believes that a person appointed to a *DRP* has an interest which may conflict with the impartial resolution of the dispute; or
  - (2) a person appointed to a *DRP* discloses the existence of such an interest:

the person must not continue as a member of the *DRP*, except with the written consent of all parties to the dispute.
- (i) The *Adviser* may, if in his or her reasonable opinion no member of the pool established under clause 8.2.2(e) is:
  - (1) eligible for appointment to a *DRP*; or
  - (2) sufficiently skilled and experienced to resolve the dispute,

appoint to the *DRP* another person whom he or she considers to be eligible and sufficiently skilled and experienced, but who is not a member of the pool. A person so appointed is deemed to be a member of the pool on and from his or her appointment to the *DRP*.
- (j) Any person who has previously been a member of a *DRP* is eligible for appointment to another *DRP*.
- (k) The *Adviser* must nominate one of the *DRP* members to be the chairperson.

## **8.2.6B Parties to *DRP* Proceedings**

- (a) The following persons are parties to the dispute before a *DRP*:
  - (1) the parties to the Stage 1 dispute resolution process referred by the *Adviser* to the *DRP*;
  - (2) any other *Registered Participant* that the *DRP* directs to become a party to the dispute in accordance with clause 8.2.6B(b); and
  - (3) any other *Registered Participant* that has opted to become a party to the dispute in accordance with clause 8.2.6B(c).

- (b) If the *DRP* considers that a *Registered Participant* should become a party to the dispute, it may direct the *Registered Participant* to become a party by giving that *Registered Participant's DMS Contact* written notice setting out:
  - (1) the names of the other parties to the dispute;
  - (2) a brief history of the dispute and the circumstances giving rise to it;
  - (3) the results of any previous dispute resolution processes undertaken pursuant to the *Rules* in respect of the dispute; and
  - (4) the grounds on which the *DRP* considers the *Registered Participant* should be made a party to the dispute.
- (c) Any *Registered Participant* that has an interest in a dispute may opt to become a party to the dispute by giving notice to the *DRP* that it wishes to do so. When a *Registered Participant* opts to become a party to the dispute in accordance with this clause 8.2.6B(c), the *DRP* must give that *Registered Participant's DMS Contact* written notice setting out:
  - (1) the names of the other parties to the dispute;
  - (2) a brief history of the dispute and the circumstances giving rise to it; and
  - (3) the results of any previous dispute resolution processes undertaken pursuant to the *Rules* in respect of the dispute.

#### **8.2.6C Proceedings of the *DRP***

- (a) The *DRP* may give to the parties such directions as it considers necessary for the proper conduct of the proceedings, including, without limitation, a direction:
  - (1) that the proceedings be conducted at a specified venue or venues (including the premises of a party) at a specified time or times;
  - (2) requiring the parties to prepare and exchange written submissions;
  - (3) requiring the parties to exchange documents; and
  - (4) limiting or prohibiting the cross examination of witnesses.
- (b) The *DRP* may direct the parties that the proceedings, or part of the proceedings, are to be conducted solely on the basis of documentary evidence and written submissions.
- (c) The *DRP* may give to the parties such directions relating to the use and disclosure of information obtained from other parties to the dispute (including a direction to keep information confidential) as it considers necessary in the circumstances.
- (d) At any time before it determines a dispute, the *DRP* may, with the consent of all parties, refer the dispute for mediation.
- (e) A *DRP*:
  - (1) must determine the real questions in controversy between the parties; and
  - (2) is not bound by the parties' formulation of those questions.

- (f) A *DRP*:
  - (1) is not bound by the rules of evidence and may inform itself in any way it thinks fit; but
  - (2) must observe the rules of natural justice.

#### **8.2.6D Decisions of the *DRP***

- (a) A decision of a *DRP* on any matter may be made by a majority of the members comprising the *DRP*. Where a *DRP* comprising two members is unable to reach a unanimous decision, the decision of the chairperson will be the decision of the *DRP*.
- (b) Subject to clause 8.2.6D(c), a *DRP* must determine a dispute as quickly as possible, and in any case must do so:
  - (1) in the case of disputes involving two parties, within 30 *business days* after the dispute is referred to the *DRP*; and
  - (2) in the case of disputes involving more than two parties, within 70 *business days* after the dispute is referred to the *DRP*.
- (c) A *DRP* may extend either of the periods specified in clause 8.2.6D(b) for determination of a dispute if:
  - (1) all parties to the dispute agree in writing;
  - (2) the *AER* agrees in writing; or
  - (3) the dispute is referred to mediation under clause 8.2.6C(d).
- (d) A determination of the *DRP* may, without limitation of the *DRP*'s power, require a party to do any or all of the following in such manner and within such time or times as is specified in the determination:
  - (1) take specified action;
  - (2) refrain from taking specified action; or
  - (3) pay a monetary amount to another party.
- (e) Each party to a dispute that is required by a determination of the *DRP* to take specified action, to refrain from taking specified action or to pay a monetary amount must:
  - (1) do so within such period after being notified of the determination as is specified in the determination; and
  - (2) report to the *Adviser* as soon as practicable after doing so.

#### **8.2.6 [Deleted]**

#### **8.2.7 Legal representation**

- (a) In any meeting, negotiation or mediation forming part of the Stage 1 dispute resolution process, a party is entitled to be legally represented.
- (b) A *DRP* may give any direction it considers appropriate in relation to the role the parties' legal representatives may take in the proceedings.

### 8.2.8 Cost of dispute resolution

- (a) The costs of any dispute resolution processes (other than legal costs of one or more parties), including the costs incurred by the *Adviser* in performing functions of the *Adviser* under clauses 8.2.5, 8.2.6A, 8.2.6B, 8.2.6C or 8.2.6D and the costs of the *DRP* and its members, are to be borne equally by the parties to the dispute unless:
  - (1) clause 8.2.8(b) applies; or
  - (2) otherwise agreed between the parties.
- (b) Costs of the dispute resolution processes (including legal costs of one or more parties) may be allocated by the *DRP* for payment by one or more parties as part of any determination. Subject to clause 8.2.8(c), in deciding to allocate costs against one or more parties to a dispute, the *DRP* may have regard to any relevant matters, including (but not limited to) whether the conduct of that party or those parties unreasonably prolonged or escalated the dispute or otherwise increased the costs of the *DRP* proceedings.
- (c) A party that disagrees with another party about the number of persons comprising a *DRP* is not to be taken, by reason only of that disagreement, to have unreasonably prolonged or escalated a dispute or otherwise increased the costs of the *DRP* proceedings.

### 8.2.9 Effect of resolution

- (a) Where the parties to a dispute reach agreement (whether or not the matter is before a *DRP*), the parties may execute a written agreement recording that a party has or parties have agreed:
  - (1) to take certain action;
  - (2) not to take certain action; or
  - (3) to make a monetary payment.
- (b) An agreement that is recorded in accordance with clause 8.2.9(a) and a determination of the *DRP* are binding on the parties to the dispute.
- (c) A requirement that a *Registered Participant* pay moneys, imposed on the *Registered Participant* under:
  - (1) a determination of the *DRP*; or
  - (2) an agreement that is recorded in accordance with clause 8.2.9(a),is an obligation under the *Rules* to pay such amounts. A *Registered Participant* or *AEMO* entitled to such amount may recover the amount in accordance with section 72 of the *NEL*.

#### Note

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (d) A *Registered Participant* must comply with a requirement or determination of the *DRP* and any agreement that is recorded in accordance with clause 8.2.9(a). Failure to do so is a breach of the *Rules* in respect of which the *AER* may take action in accordance with the *NEL*.

### **8.2.10 Recording and publication**

- (a) Where a *DRP* makes a determination, a copy of the determination must be forwarded to the *Adviser*.
- (b) The *DRP* must provide a copy of its determination (save to the extent that it contains confidential information), to the *AER* for publication.
- (c) The *AER* must, in accordance with the *Rules consultation procedures*, develop and issue guidelines relating to the confidentiality of information obtained, used or disclosed for the purposes of resolving a dispute to which rule 8.2 applies.

### **8.2.11 Appeals on questions of law**

A party to a dispute may appeal on a question of law against a decision or determination of a *DRP* in accordance with section 71 of the *NEL*.

### **8.2.12 [Deleted]**

## **8.2A B2B Determination Disputes**

### **8.2A.1 Application of rule 8.2**

Rule 8.2 applies to *B2B Determination Disputes* but with the modifications set out in clause 8.2A.2.

### **8.2A.2 How rule 8.2 applies**

For the purposes of its application to a *B2B Determination Dispute*, rule 8.2 is modified as follows:

- (a) For clause 8.2.1(a) substitute:  
"(a) This clause 8.2 applies to a *B2B Determination Dispute*."
- (b) In clause 8.2.1(a1):
  - (1) delete "*Connection Applicants*"; and
  - (2) omit "*Embedded Network Managers and NMAS providers (including NSCAS preferred tenderers)*" and substitute "*Third Party B2B Participants and B2B Change Parties*".
- (c) For clause 8.2.1(e)(1) substitute:  
"(1) be guided by the *national electricity objective* and the *B2B Principles*;"
- (d) In clause 8.2.1(f):
  - (1) omit "set out in clauses 8.2.4 to 8.2.10 and 8.2.12" and substitute "set out in clauses 8.2.5 to 8.2.10 and 8.2.12 (in each case, as those clauses are amended by clause 8.2A.2)"; and
  - (2) insert a new sentence at the end of the clause as follows:  
"The subject matter of a *B2B Determination Dispute* which has been determined by the *DRP* cannot be the subject of further review."

- (e) For the avoidance of doubt, clause 8.2.3 does not apply to the *Information Exchange Committee*.
- (f) The contact for the *Information Exchange Committee* in relation to disputes will be the *DMS Contact* for *AEMO*.
- (g) Clause 8.2.4 does not apply.
- (h) Clauses 8.2.5(a), (b), (c) and (d) do not apply.
- (i) Insert new clauses 8.2.5(d1) to (d4) as follows:
  - "(d1) A *B2B Party* or *B2B Change Party* adversely affected by an *Information Exchange Committee Recommendation* or a *B2B Decision* may apply to the *Adviser* for review of that *Information Exchange Committee Recommendation* or that *B2B Decision*. The application must be made within 10 *business days* of publication of the *Information Exchange Committee Recommendation* or the *B2B Decision*, state grounds for the review and give full particulars of where the applicant believes the *Information Exchange Committee Recommendation* or *B2B Decision* is in error.
  - (d2) Where an application for review of an *Information Exchange Committee Recommendation* is made, *AEMO* must not take any further action in relation to that *Information Exchange Committee Recommendation* until the *DRP* has made its decision in relation to the dispute.
  - (d3) An application for review of a *B2B Decision* stays the *B2B Decision*.
  - (d4) On receiving the application the *Adviser* must refer the dispute to a *DRP* for determination in accordance with clauses 8.2.6A to 8.2.6D."
- (j) In clause 8.2.6A(a), for "decides to refer" substitute "refers".
- (k) In clause 8.2.6A(c), for "the parties to the Stage 1 dispute resolution process" substitute "the parties to the dispute".
- (l) In clause 8.2.6A(h)(1) before "a *Registered Participant*" insert "the *Information Exchange Committee* or".
- (m) For clause 8.2.6B(a)(1) substitute:
  - "(1) the *Registered Participant* making application for a review of the *Information Exchange Committee Recommendation* or the *B2B Decision*, a *Registered Participant* affected by the *Information Exchange Committee Recommendation* or the *B2B Decision* the subject of the application for review and the *Information Exchange Committee* or, if the *Information Exchange Committee* is unable to act as a party, any other *Registered Participant* wishing to support the position of the *Information Exchange Committee*;"
- (n) At the end of clause 8.2.6B(a) insert:
  - "*AEMO* is a party to an application for review of a *B2B Decision* and may be a party, in accordance with clause 8.2.6B(b), to an application for review of an *Information Exchange Committee Recommendation*. In addition:



- (1) where the *Information Exchange Committee* is unable to act as a party to a *B2B Determination Dispute*, and another *Registered Participant* is a party to support the position of the *Information Exchange Committee*, the *Information Exchange Committee* must give to that party all assistance including access to both documents and *Members*. A *Registered Participant* of which a *Member* is an employee must ensure that *Member* is available to provide such assistance; and
  - (2) where *AEMO* is a party to a *B2B Determination Dispute*, the *Information Exchange Committee* must give *AEMO* all assistance including access to both documents and *Members*. A *Registered Participant* of which a *Member* is an employee must ensure that *Member* is available to provide such assistance."
- (o) Clause 8.2.6C(d) does not apply.
- (p) Insert a new clause 8.2.6C(g) as follows:
  - "(g) In considering a *B2B Determination Dispute*, the *DRP* must conduct a full reconsideration of the *Information Exchange Committee Recommendation* or *B2B Decision* and:
    - (1) can rely on any material available and is not confined to only considering material that was before the *Information Exchange Committee* in relation to an *Information Exchange Committee Recommendation* or *AEMO* in relation to a *B2B Decision*; and
    - (2) may exercise all powers and discretions that are conferred on the *Information Exchange Committee* in relation to an *Information Exchange Committee Recommendation* or *AEMO* in relation to a *B2B Decision*."
- (q) Insert a new clause 8.2.6D(da) as follows:
  - "(da) The *DRP* must make a decision in writing:
    - (1) affirming the *Information Exchange Committee Recommendation* or the *B2B Decision*;
    - (2) varying the *Information Exchange Committee Recommendation* or the *B2B Decision*; or
    - (3) setting aside the *Information Exchange Committee Recommendation* or the *B2B Decision* and substituting its own decision."
- (r) Clause 8.2.7(a) does not apply.
- (s) In clause 8.2.8(a) after "8.2.6D" insert "(as modified by clause 8.2A.2)".
- (t) Clauses 8.2.9(a), (b) and (c)(2) do not apply.
- (u) In clause 8.2.9(d) after "*Registered Participant*" insert "and the *Information Exchange Committee*", and delete "and any agreement that is recorded in accordance with clause 8.2.9(a)".
- (v) In clause 8.2.8(a), insert "(in each case, as modified by clause 8.2A.2)" after "8.6.2D".

### 8.3 Power to make Electricity Procedures

- (a) *AEMO* may make *Electricity Procedures*.
- (b) *Electricity Procedures* may govern:
  - (1) the operation of the *NEM*; or
  - (2) the sale and *supply* of electricity to *retail customers*.
- (c) *Electricity Procedures* may amend or revoke procedures formerly made under this Part or *AEMO's* general administrative powers to regulate electricity *markets*.

### 8.4 [Deleted]

### 8.5 [Deleted]

## Part C Registered Participants' confidentiality obligations

### 8.6 Confidentiality

#### 8.6.1 Confidentiality

- (a) Each *Registered Participant* must use all reasonable endeavours to keep confidential any *confidential information* that comes into the possession or control of the *Registered Participant* or of which the *Registered Participant* becomes aware.
- (b) A *Registered Participant*:
  - (1) must not disclose *confidential information* to any person except as permitted by the *Rules*;

**Note**

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (2) must only use or reproduce *confidential information* for the purpose for which it was disclosed or another purpose contemplated by the *Rules*; and

**Note**

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (3) must not permit unauthorised persons to have access to *confidential information*.

**Note**

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (c) Each *Registered Participant* must use all reasonable endeavours:
  - (1) to prevent unauthorised access to *confidential information* which is in the possession or control of that *Registered Participant*; and

- (2) to ensure that any person to whom it discloses *confidential information* observes the provisions of this rule 8.6 in relation to that information.
- (d) The officers of a *Transmission Network Service Provider* participating in *transmission service* pricing must not be involved in or associated with competitive electricity trading activities of any other *Registered Participant*.

**Note**

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (e) A *Transmission Network Service Provider* participating in *transmission service* pricing must provide to any *Transmission Network Service Provider* or *Registered Participant* which supplies information for *transmission service* pricing an undertaking that the *Transmission Network Service Provider* to which that information was supplied will comply with the confidentiality requirements set out in 6.9.2A.

**Note**

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

### 8.6.1A Application

For the purposes of this Part C only, "*Registered Participant*" is deemed to include not just *Registered Participants* but also *Metering Providers*, *Metering Data Providers*, *Embedded Network Managers*, *Third Party B2B Participants* and *project developers*.

### 8.6.2 Exceptions

This rule 8.6 does not prevent:

- (a) **(public domain)**: the disclosure, use or reproduction of information if the relevant information is at the time generally and publicly available other than as a result of breach of confidence by the *Registered Participant* who wishes to disclose, use or reproduce the information or any person to whom the *Registered Participant* has disclosed the information;
- (b) **(employees and advisers)**: the disclosure of information by a *Registered Participant* or the *Registered Participant's Disclosees* to:
  - (1) an employee or officer of the *Registered Participant* or a *related body corporate* of the *Registered Participant*; or
  - (2) a legal or other professional adviser, auditor or other consultant (in this clause 8.6.2(b) called **Consultants**) of the *Registered Participant*, which require the information for the purposes of the *Rules*, or for the purpose of advising the *Registered Participant* or the *Registered Participant's Disclosee* in relation thereto;
- (b1) **(service providers)**: the disclosure of *NMI Standing Data* or the provision of means to gain electronic access to that data by a *Customer* or the *Customer's Disclosees* to a person who requires the *NMI Standing Data* for

the purposes of providing services in connection with the *Customer's* sale of electricity to end users.

- (c) **(consent)**: the disclosure, use or reproduction of information with the consent of the person or persons who provided the relevant information under the *Rules*;
- (d) **(law)**: the disclosure, use or reproduction of information to the extent required by law or by a lawful requirement of:
  - (1) any government or governmental body, authority or agency having jurisdiction over a *Registered Participant* or its *related bodies corporate*; or
  - (2) any stock exchange having jurisdiction over a *Registered Participant* or its *related bodies corporate*;
- (d1) **[Deleted]**
- (e) **(disputes)**: the disclosure, use or reproduction of information if required in connection with legal proceedings, arbitration, expert determination or other dispute resolution mechanism relating to the *Rules*, or for the purpose of advising a person in relation thereto;
- (f) **(trivial)**: the disclosure, use or reproduction of information which is trivial in nature;
- (g) **(safety)**: the disclosure of information if required to protect the safety of personnel or equipment;
- (h) **(potential investment)**: the disclosure, use or reproduction of information by or on behalf of a *Registered Participant* to the extent reasonably required in connection with the *Registered Participant's* financing arrangements, investment in that *Registered Participant* or a disposal of that *Registered Participant's* assets;
- (i) **(regulator)**: the disclosure of information to the *AER*, the *AEMC* or the *ACCC* or any other regulatory authority having jurisdiction over a *Registered Participant*, pursuant to the *Rules* or otherwise;
- (j) **(reports)**: the disclosure, use or reproduction of information of an historical nature in connection with the preparation and giving of reports under the *Rules*;
- (k) **(aggregate sum)**: the disclosure, use or reproduction of information as an unidentifiable component of an aggregate sum; and
- (l) **(profile)**: the publication of a profile.
- (m) **[Deleted]**
- (n) **[Deleted]**
- (o) **[Deleted]**

### 8.6.3 Conditions

In the case of a disclosure under clauses 8.6.2(b), 8.6.2(b1), 8.6.2(h), prior to making the disclosure the *Registered Participant* that wishes to make the disclosure must inform the proposed recipient of the confidentiality of the

information and must take appropriate precautions to ensure that the proposed recipient keeps the information confidential in accordance with the provisions of this rule 8.6 and does not use the information for any purpose other than that permitted under clause 8.6.1.

**Note**

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

**8.6.4 [Deleted]**

**8.6.5 Indemnity to AER, AEMC and AEMO**

Each *Registered Participant* must indemnify the *AER*, the *AEMC* and *AEMO* against any claim, action, damage, loss, liability, expense or outgoing which the *AER*, the *AEMC* or *AEMO* pays, suffers, incurs or is liable for in respect of any breach by that *Registered Participant* or any officer, agent or employee of that *Registered Participant* of this rule 8.6.

**8.6.6 AEMO information**

*AEMO* must develop and, to the extent practicable, implement a policy:

- (a) to protect information which it acquires pursuant to its various functions from use or access which is contrary to the provisions of the *Rules*;
- (b) to disseminate such information in accordance with its rights, powers and obligations in a manner which promotes the orderly operation of any *market*; and
- (c) to ensure that *AEMO*, in undertaking any trading activity except the procurement of *ancillary services*, does not make use of such information unless the information is also available to other *Registered Participants*.

**8.6.7 Information on Rules Bodies**

*AEMO* must, in consultation with the *AEMC*, develop and implement policies concerning:

- (a) the protection of information which *Rules bodies* acquire pursuant to their various functions from use or access by *Registered Participants* or *Rules bodies* which is contrary to the provisions of the *Rules*; and
- (b) the dissemination of such information where appropriate to *Registered Participants*.

**Part D Monitoring and reporting**

**8.7 Monitoring and Reporting**

**8.7.1 Monitoring**

- (a) [Deleted]
- (b) The *AER* must, for the purpose of performing its monitoring functions:

- (1) determine whether *Registered Participants* and *AEMO* are complying with the *Rules*;
  - (2) assess whether the dispute resolution and *Rules* enforcement mechanisms are working effectively in the manner intended; and
  - (3) **[Deleted]**
  - (4) collect, analyse and disseminate information relevant and sufficient to enable it to comply with its reporting and other obligations and powers under the *Rules*.
- (c) The *AER* must ensure that, to the extent practicable in light of the matters set out in clause 8.7.1(b), the monitoring processes which it implements under this rule 8.7:
- (1) are consistent over time;
  - (2) do not discriminate unnecessarily between *Registered Participants*;
  - (3) are cost effective to both the *AER*, all *Registered Participants* and *AEMO*; and
  - (4) subject to confidentiality obligations, are publicised or available to the public.

#### **8.7.2 Reporting requirements and monitoring standards for Registered Participants and AEMO**

- (a) For the purpose of performing its monitoring functions, the *AER* must establish:
- (1) reporting requirements which apply to all or particular categories of *Registered Participants* in relation to matters relevant to the *Rules*;
  - (2) reporting requirements for *AEMO* in relation to matters relevant to the *Rules*;
  - (3) procedures and standards generally applicable to *Registered Participants* relating to information and data received by them in relation to matters relevant to the *Rules*;
  - (4) procedures and standards applicable to *AEMO* relating to information and data received by it in relation to matters relevant to the *Rules*; and
  - (5) procedures and standards applicable to the *AER* relating to information and data received by the *AER* from *Registered Participants* or *AEMO* in relation to matters relevant to the *Rules*.
- (b) The *AER* must:
- (1) after consultation with the *AEMC*, *AEMO* and *Registered Participants* in accordance with the *Rules consultation procedures*, establish the requirements and standards and procedures referred to in clause 8.7.2(a)(1), (3), (4) and (5); and
  - (2) after consultation with the *AEMC*, *AEMO* and such *Registered Participants* as the *AER* considers appropriate, establish the requirements referred to in clause 8.7.2(a)(2).

In formulating such requirements or procedures and standards, the *AER* must take into consideration the matters set out in clause 8.7.1(c).

- (c) Subject to clause 8.7.2(d), the *AER* must notify to *AEMO* and all *Registered Participants* particulars of the requirements and procedures and standards which it establishes under this clause 8.7.2.
- (d) For the purpose of performing its monitoring functions, the *AER* may establish additional or more onerous requirements or procedures and standards which do not apply to all or a particular category of *Registered Participants*. In formulating such requirements or procedures and standards, the *AER* must take into consideration the matters set out in clause 8.7.1(c) and is not required to consult in accordance with the *Rules consultation procedures* but must consult with the relevant *Registered Participants*. In such a case, and if the *AER* considers it appropriate to do so, the *AER* may choose to notify only those *Registered Participants* to whom these additional or more onerous requirements or procedures and standards apply.
- (e) Each *Registered Participant* and *AEMO* must comply with all requirements, procedures and standards established by the *AER* under this rule 8.7 to the extent that they are applicable to it within the time period specified for the requirement, procedure or standard or, if no such time period is specified, within a reasonable time. Each *Registered Participant* and *AEMO* must bear its own costs associated with complying with these requirements, procedures and standards.

**Note**

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (f) In complying with its obligations or pursuing its rights under the *Rules*, neither a *Registered Participant* nor *AEMO* must recklessly or knowingly provide, or permit any other person to provide on behalf of that *Registered Participant* or *AEMO* (as the case may be), misleading or deceptive data or information to any other person (including the *AER*).

**Note**

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (g) Any *Registered Participant* or *AEMO* may ask the *AER* to impose additional or more onerous requirements, procedures or standards under clause 8.7.2(d) on a *Registered Participant* in order to monitor or assess compliance with the *Rules* by that *Registered Participant*. When such a request is made, the *AER* may but is not required to impose the additional or more onerous requirements, procedures or standards.

If the *AER* decides to impose additional or more onerous requirements, procedures or standards on a *Registered Participant*, the *AER* may determine the allocation of costs of any additional compliance monitoring undertaken between the relevant *Registered Participants* and/or *AEMO* (as the case may be). The relevant *Registered Participants* and (to the extent relevant) *AEMO* must pay such costs as allocated. In the absence of such

allocation, the *Registered Participant* which is subject to the additional or more onerous requirements, procedures or standards must bear its own costs of compliance.

- (h) The *AER* must develop and implement guidelines in accordance with the *Rules consultation procedures* governing the exercise of the powers conferred on it by clause 8.7.2(g) which guidelines must set out the matters to which the *AER* must have regard prior to deciding the allocation of costs of any additional or more onerous requirements, procedures or standards imposed pursuant to clause 8.7.2(g) between the relevant *Registered Participants* and/or *AEMO* (as the case may be).

### 8.7.3 Consultation required for making general regulatory information order (Section 28H of the NEL)

- (a) Before the *AER* makes a *general regulatory information order*, it must publish:
  - (1) the proposed order;
  - (2) an explanatory statement that sets out objectives of the proposed order; and
  - (3) an invitation for written submissions on the proposed order.
- (b) The invitation must allow no less than 30 *business days* for the making of submissions (and the *AER* is not required to consider any submission made after the period has expired).
- (c) The *AER* may *publish* such issues, consultation and discussion papers, and hold such conferences and information sessions, in relation to the proposed order as it considers appropriate.
- (d) Within 80 *business days* of *publishing* the documents referred to in paragraph (a), the *AER* must:
  - (1) consider any submissions made in response to the invitation within the period allowed in the invitation;
  - (2) make a final decision on the order; and
  - (3) *publish* the final decision including:
    - (i) a statement of the reasons for the final decision (including a summary of each material issue raised in the submissions and the *AER's* response to it); and
    - (ii) if the final decision is to make the order (either in the terms in which it was proposed or in modified terms) – the order in its final form.
- (e) The *AER* may extend the time within which it is required to publish its final decision if:
  - (1) the consultation involves questions of unusual complexity or difficulty; or
  - (2) the extension has become necessary because of circumstances beyond the *AER's* control.



#### **8.7.4 Preparation of network service provider performance report (Section 28V of the NEL)**

- (a) Before the *AER* embarks on the preparation of *network service provider performance reports*, the *AER* must consult with:
  - (1) *network service providers*; and
  - (2) bodies representative of the *network service providers* and network service users; and
  - (3) the public generally;in order to determine appropriate priorities and objectives to be addressed through the preparation of *network service provider performance reports*.
- (b) In the course of preparing a *network service provider performance report*, the *AER*:
  - (1) must consult with the *network service provider* or *network service providers* to which the report is to relate; and
  - (2) must consult with the authority responsible for the administration of relevant *jurisdictional electricity legislation* about relevant safety and technical obligations; and
  - (3) may consult with any other persons who have, in the *AER's* opinion, a proper interest in the subject matter of the report; and
  - (4) may consult with the public.
- (b1) In preparing a *network service provider performance report*, the *AER* must have regard to the *Distribution Reliability Measures Guidelines*.
- (c) A *network service provider* to which the report is to relate:
  - (1) must be allowed an opportunity, at least 30 *business days* before publication of the report, to submit information and to make submissions relevant to the subject matter of the proposed report; and
  - (2) must be allowed an opportunity to comment on material of a factual nature to be included in the report.

#### **8.7.5 [Deleted]**

#### **8.7.6 Recovery of reporting costs**

Where, under the *Rules*, *AEMO* is entitled or required to publish or give information, notices or reports to:

- (a) any *Registered Participant*, any court, the *ACCC* or the *AER*, unless the context otherwise requires, *AEMO* must not charge those persons a separate fee for providing them with a copy of the information or report and the costs in providing that service must be recovered through the *Participant fees* described in rule 2.12;
- (b) any other person, *AEMO* may charge that person a fee which is appropriate to cover the costs of providing that service.

## Part E Reliability panel

### 8.8 Reliability Panel

#### 8.8.1 Purpose of Reliability Panel

- (a) The functions of the *Reliability Panel* are to:
- (1) monitor, review and report on the performance of the *market* in terms of *reliability* of the *power system*;
    - (1a) on the advice of *AEMO*, determine the *system restart standard*;
    - (1b) review and make recommendations on the *reliability standard* and *reliability settings* under clause 3.9.3A;
  - (2) review and, on the advice of *AEMO*, determine the *power system security standards*;
  - (2a) for the purposes of clause 4.2.6(b), develop and *publish* principles and guidelines that determine how *AEMO* should maintain *power system security* while taking into account the costs and benefits to the extent practicable;
  - (2b) determine, and modify as necessary, and *publish* the *template for generator compliance programs*;
  - (2c) on the advice of *AEMO*, determine which *non-credible contingency events* are to be *protected events* and any conditions applicable to the determination, in accordance with clause 8.8.4;
  - (2d) if the *Reliability Panel* considers it necessary or desirable, determine guidelines for *power system frequency reviews* conducted by *AEMO* under clause 5.20A.1; requests for *protected event* declaration by *AEMO* under clause 5.20A.4; or the *Reliability Panel's* determination of *protected events* under clause 8.8.4;
  - (2e) if the *Reliability Panel* considers it necessary or desirable, identify scenarios *AEMO* must study in preparing the *EAAP* for the purposes of clause 3.7C(k)(1);
  - (3) while *AEMO* has power to issue *directions* in connection with maintaining or re-establishing the *power system* in a *reliable operating state*, determine guidelines governing the exercise of that power;
  - (4) while *AEMO* has power to enter into contracts for the provision of *reserves*, determine policies and guidelines governing *AEMO's* exercise of that power;
  - (5) report to the *AEMC* and *participating jurisdictions* on overall *power system reliability* matters concerning the *power system* and on the matters referred to in clauses 8.8.1(a)(1b), (2), (2c) and (3), and make recommendations on *market* changes or changes to the *Rules* and any other matters which the *Reliability Panel* considers necessary;

- (6) monitor, review and *publish* a report on the *system standards* in terms of whether they appropriately and adequately describe the expected technical performance conditions of the *power system*;
  - (7) monitor, review and *publish* a report on the implementation of *automatic access standards* and *minimum access standards* as *performance standards* in terms of whether:
    - (i) their application is causing, or is likely to cause, a material adverse effect on *power system security*; and
    - (ii) the *automatic access standards* and *minimum access standards* should be amended or removed;
  - (8) consider requests made in accordance with clause 5.3.3(b2) and, if appropriate, determine whether an existing Australian or international standard, or a part thereof, is to be adopted as a *plant standard* for a particular class of *plant*; and
  - (9) determine guidelines identifying or providing for the identification of operating incidents and other incidents that are of significance for the purposes of the definition of "Reviewable operating incident" in clause 4.8.15.
- (b) In performing its functions set out in clause 8.8.1(a)(1) the *Reliability Panel* must not monitor, review or report on the performance of the *market* in terms of *reliability* of *distribution networks*, although it may collate, consider and report information in relation to the *reliability* of *distribution networks* as measured against the relevant standards of each *participating jurisdiction* in so far as the *reliability* of those *networks* impacts on overall *power system reliability*.
- (c) The principles and guidelines *published* under clause 8.8.1(a)(2a):
- (1) must be developed, and may only be amended, in accordance with the consultation process set out in clause 8.8.3;
  - (2) must include transitional arrangements which take into account the need to allow for the development and testing of an appropriate methodology by *AEMO*; and
  - (3) must take into account the results of any decision to revise *network constraints*.
- (d) A request for declaration of a *protected event*, or revocation of a declaration, may only be made, and must be determined, in accordance with clause 8.8.4.

## 8.8.2 Constitution of the Reliability Panel

- (a) The *Reliability Panel* must consist of:
- (1) a commissioner of the *AEMC* appointed by the *AEMC* to act as chairperson for a period of up to three years;
  - (2) the chief executive officer or a delegate of *AEMO*; and
  - (3) at least 5 but not more than 8 other persons appointed by the *AEMC* for a period of up to three years, such persons to include:

- (A) a person representing *Generators*;
  - (B) a person representing *Market Customers*;
  - (C) a person representing *Transmission Network Service Providers*;
  - (D) a person representing *Distribution Network Service Providers*;
  - (E) a person representing the interests of end use customers for electricity; and
  - (F) at the *AEMC*'s discretion, up to 3 other persons representing interests not otherwise represented, in order to achieve the broad representation described in clause 8.8.2(c)(1).
- (b) Subject to clause 8.8.2(d) any person who has previously served on the *Reliability Panel* is eligible for reappointment to the *Reliability Panel* in accordance with this clause 8.8.2.
- (c) In making appointments to the *Reliability Panel* under clause 8.8.2(a)(3), the *AEMC* must, to the extent reasonably practicable and subject to clause 8.8.2(c1), give effect to the intention that the persons so appointed:
  - (1) should be broadly representative, both geographically and by reference to *Registered Participants* and *participating jurisdictions*, of those persons with direct interests in the *reliability* and safety of electricity *supply* under the *market* arrangements and in *power system security*;
  - (2) may include *Registered Participants* or their *representatives* or *participating jurisdictions*;
  - (3) must be independent of *AEMO*; and
  - (4) must, except in the case of the persons representing *Network Service Providers* appointed under clauses 8.8.2(a)(3)(C) and (D), be independent of all *System Operators*,and if at any time:
  - (5) a person on the *Reliability Panel*, other than the chief executive officer or a delegate of *AEMO*, ceases to be independent of *AEMO*; or
  - (6) a person on the *Reliability Panel*, other than the persons representing *Network Service Providers* appointed under clauses 8.8.2(a)(3)(C) and (D), ceases to be independent of any *System Operator*,the *AEMC* must remove that person from the *Reliability Panel*.
- (c1) The persons referred to in clauses 8.8.2(a)(3)(A), (B), (C) and (D) must be appointed and removed by the *AEMC* after consultation with the class of *Registered Participants* the person is to represent, and the *AEMC* must:
  - (1) appoint a person agreed to by at least one third in number of the relevant class of *Registered Participants*, having regard to the preference expressed by the majority of the *Registered Participants* in the relevant class who responded in writing to the consultation by the *AEMC*; and

- (2) commence consultation on the removal of such a person if requested to do so by a member of the relevant class of *Registered Participants*, and must remove that person if so agreed by at least one third in number of the relevant class of *Registered Participants*.
- (d) The *AEMC* may remove any member of the *Reliability Panel*, including the chairperson, at any time during his or her term in the following circumstances:
  - (1) the person becomes of unsound mind or his or her estate is liable to be dealt with in any way under a law relating to mental health; or
  - (2) the person fails to discharge the obligations of that office imposed by the *Rules*.
- (d1) The persons referred to in clauses 8.8.2(a)(3)(E) and (F) must be appointed and removed by the *AEMC* after such consultation as the *AEMC* considers appropriate with the classes of interests those persons represent and, subject to such consultation, may be removed at any time for any reason.
- (e) A person may resign from the *Reliability Panel* by giving notice in writing to that effect to the *AEMC*.
- (f) The *Reliability Panel* must meet and regulate its meetings and conduct its business in accordance with the *Rules*.
- (g) A decision of the *Reliability Panel* on any matter may be made by a majority of the members comprising the *Reliability Panel*. Where the members of the *Reliability Panel* are equally divided on any matter, the chairperson has a casting vote.
- (h) The *AEMC* may appoint a commissioner of the *AEMC* (other than the chairperson of the *AEMC* or the chairperson of the *Reliability Panel*) as the acting chairperson of the *Reliability Panel* on a standing basis. If the chairperson of the *Reliability Panel* is unable to perform the obligations of that office for an extended period of time (including any period in which a scheduled meeting of the *Reliability Panel* is held), the chairperson must notify the acting chairperson. The acting chairperson has the powers and functions of the chairperson of the *Reliability Panel* for such periods of time.

### 8.8.3 Reliability Panel review process

- (a) As soon as practicable, the *Reliability Panel* must determine:
  - (1) the *power system security standards*;
  - (2) the guidelines referred to in clause 8.8.1(a)(3);
  - (3) the policies and guidelines referred to in clause 8.8.1(a)(4);
  - (4) the guidelines referred to in clause 8.8.1(a)(9);
  - (5) the *system restart standard*; and
  - (6) the *template for generator compliance programs*,in accordance with this clause 8.8.3.
- (aa) The *system restart standard* must:

- (1) be reviewed and determined by the *Reliability Panel* in accordance with the *SRAS Objective*;
  - (2) identify the maximum amount of time within which *SRASs* are required to restore *supply* in an *electrical sub-network* to a specified level, under the assumption that *supply* (other than that provided under a *SRASs* agreement acquired by *AEMO* for that *electrical sub-network*) is not available from any neighbouring *electrical sub-network*;
  - (3) include the aggregate required reliability of *SRASs* for each *electrical sub-network*;
  - (4) apply equally across all *regions*, unless the *Reliability Panel* varies the *system restart standard* between *electrical sub-networks* to the extent necessary:
    - (A) to reflect any technical system limitations or requirements; or
    - (B) to reflect any specific economic circumstances in an *electrical sub-network*, including but not limited to the existence of one or more *sensitive loads*;
  - (5) specify that a *SRAS* can only be acquired by *AEMO* under a *SRASs* agreement for one *electrical sub-network* at any one time;
  - (6) include guidelines to be followed by *AEMO* in determining *electrical sub-networks*, including the determination of the appropriate number of *electrical sub-networks* and the characteristics required within an *electrical sub-network* (such as the amount of *generation* or *load*, or electrical distance between *generation centres*, within an *electrical sub-network*); and
  - (7) include guidelines specifying the diversity and strategic locations required of *SRASs*.
- (b) At least once each *financial year* and at such other times as the *AEMC* may request, the *Reliability Panel* must conduct a review of the performance of the *market* in terms of *reliability* of the *power system*, the *reliability standard*, the *power system security standards*, the *system restart standard*, the guidelines referred to in clause 8.8.1(a)(3), the policies and guidelines referred to in clause 8.8.1(a)(4) and the guidelines referred to in clause 8.8.1(a)(9). The *Reliability Panel* must conclude each annual review under this clause by the end of the *financial year* following the *financial year* to which the review relates.
- (ba) At least every 5 years from the date the *template for generator compliance programs* is determined pursuant to clause 8.8.3(a) and at such other times as the *AEMC* may request, the *Reliability Panel* must conduct a review of the *template for generator compliance programs* in accordance with this clause 8.8.3. Following such a review, the *Reliability Panel* may amend the *template for generator compliance programs* in accordance with its report to the *AEMC* submitted under clause 8.8.3(j).

- (c) Subject to paragraph (c1), the *AEMC* must advise the *Reliability Panel* of the terms of reference for any determination or review by the *Reliability Panel*.
- (c1) The *AEMC*:
  - (1) may advise the *Reliability Panel* of standing terms of reference in relation to the reviews described in clauses 8.8.3(b) and 8.8.3(ba) from time to time; and
  - (2) may, but is not required to, advise the *Reliability Panel* of terms of reference in relation to the review described in clause 8.8.1(a)(1b).
- (c2) The *Reliability Panel* must follow the consultation process in paragraphs (d) to (l) when carrying out its functions, unless otherwise specified in this paragraph or elsewhere in the *Rules*. The *Reliability Panel* is not required to follow the process in paragraphs (d) to (l) for the purposes of its functions under clauses 8.8.1(a)(1b), 8.8.1(a)(2c), 8.8.1(a)(2e), 8.8.1(a)(8) or 8.8.3(b).
- (d) The *Reliability Panel* must give notice to all *Registered Participants* of the commencement of a determination or review by requesting the *AEMC* to publish the notice pursuant to paragraph (k). The notice must give particulars of the terms of reference for the determination or review (as the case may be) and the deadline for the receipt of any submissions to the *Reliability Panel*.
- (e) The deadline for receipt of submissions must not be earlier than 4 weeks following publication of the notice required under paragraph (d) or such other time specified by the *AEMC* in any request for a review.
- (f) The *Reliability Panel* may hold a meeting open to the public for any determination or review by the *Reliability Panel*, and must hold such a meeting if an interested party requests one in writing. The *Reliability Panel* must give reasonable notice of any such meeting.
- (g) The meeting referred to in paragraph (f):
  - (1) may be conducted in person, by telephone, video conference or other method of communication selected by the *Reliability Panel*; and
  - (2) if conducted in person, must be held in the capital city of one of the *participating jurisdictions* as selected by the *Reliability Panel*.
- (h) The *Reliability Panel* may obtain such technical advice or assistance from time to time as it thinks appropriate including, without limitation, advice or assistance from *AEMO* and any *Registered Participant*.
- (i) In undertaking any review and preparing any report and recommendations, the *Reliability Panel* must take into consideration the policy statements, directions or guidelines published by the *AEMC* from time to time.
- (j) Following the conclusion of the meeting (if any) conducted pursuant to paragraph (f) and consideration by the *Reliability Panel* of any submissions or comments made to it, the *Reliability Panel* must submit a written report to the *AEMC* on the review setting out its recommendations or determinations, its reasons for those recommendations or determinations and the procedure followed by the *Reliability Panel* in undertaking the

review or determination. The report must be submitted to the *AEMC* by the deadline for reporting specified by the *AEMC* in any request for a review.

- (k) The *AEMC* must, within 10 *days* of receiving from the *Reliability Panel* a notice, report or other document pursuant to this clause 8.8.3, publish that document on the *AEMC* website (with the exclusion of material that cannot be disclosed consistently with the *AEMC*'s obligations of confidentiality).
- (l) The recommendations of the *Reliability Panel* may include (without limitation) recommended changes to the *Rules* in relation to matters concerning *reliability* of the *power system*.

#### 8.8.4 Determination of protected events

- (a) A request for declaration of a *non-credible contingency event* as a *protected event* or for the revocation of such a declaration may only be submitted by *AEMO*. The request must be in accordance with clause 5.20A.4 or clause 5.20A.5 as applicable.
- (b) The *Reliability Panel* must comply with the *Rules consultation procedures* in relation to the determination of each request under paragraph (a).
- (c) In determining the request, the *Reliability Panel* must have regard to the information provided by *AEMO* in the request and may request further information or obtain such technical advice or assistance from time to time as it thinks appropriate including, without limitation, information, advice or assistance from *AEMO* and any *Registered Participant*.
- (d) In determining the request, the *Reliability Panel* may undertake its own assessment of the costs and benefits of managing the *non-credible contingency event* as a *protected event*, including:
  - (1) costs to operate the *power system* in a *secure operating state* if the event is declared;
  - (2) costs associated with any proposal for a new or modified *emergency frequency control scheme* or other *network* investment in connection with managing the event;
  - (3) the benefits of mitigating the consequences of the event occurring by managing it as a *protected event*.
- (e) In making a determination that declares a *non-credible contingency event* to be a *protected event* or revokes that declaration, the *Reliability Panel* must have regard to the *national electricity objective*.
- (f) When the *Reliability Panel* makes a determination under this clause, then subject to the provisions in the *Rules* applicable to *protected events*, the *Reliability Panel* may at the same time determine any other matters that the *Reliability Panel* considers necessary or appropriate in relation to the *protected event*, which may include:
  - (1) provision for the declaration of the *protected event* or the revocation of a declaration to come into effect at a future time, which may be a specified date or may be determined by reference to matters specified in the determination, such as the commissioning of a new or modified



- emergency frequency control scheme* or the satisfaction of other conditions specified in the determination;
- (2) matters relating to the availability and operation of an *emergency frequency control scheme*;
- (3) matters relating to *AEMO's* operation of the *power system* for that *protected event*; and
- (4) changes to the principles and guidelines published under clause 8.8.1(a)(2a) to apply in respect of the *protected event* for the purposes of clause 4.2.6(b).
- (g) When the *Reliability Panel* makes a determination under this clause that provides for the availability and operation of a new or modified *emergency frequency control scheme* in connection with a *protected event*, the *Reliability Panel* must at the same time determine the *protected event EFCS standard* applicable to the scheme.
- (h) The final report of the *Reliability Panel* under the *Rules consultation procedures* must include:
  - (1) if the *Reliability Panel* has determined to make a declaration, the terms of the declaration, any conditions applicable to it and any other matters determined under paragraph (f) or (g);
  - (2) the rationale for the determination, including the costs and benefits that the *Reliability Panel* had regard to and the rationale for any *protected event EFCS standard* determined by the *Reliability Panel*; and
  - (3) where applicable, any other options considered and the corresponding expected *power system security* outcomes and costs and benefits.
- (i) The *Reliability Panel* must maintain and publish a list of all *protected events* (including events that will be *protected events* when the relevant declaration comes into effect) and each *protected event EFCS standard*.

## Part F Rules consultation procedures

### 8.9 Rules Consultation Procedures

- (a) These provisions apply wherever in the *Rules* any person (the *consulting party*) is required to comply with the *Rules consultation procedures*. For the avoidance of doubt, the *Rules consultation procedures* are separate from, and do not apply to, the process for changing the *Rules* under Part 7 of the *NEL*.
- (b) The *consulting party* must give a notice to all persons nominated (including *Intending Participants* in the class of persons nominated) by the relevant provision as those with whom consultation is required or, if no persons are specifically nominated, *AEMO*, all *Registered Participants* and interested parties, (**Consulted Persons**) giving particulars of the matter under consultation, by publishing the notice in accordance with rule 8.9(c).
- (c) Except where the *consulting party* is the *AEMC* or the *AER*, the *consulting party* must provide a copy of the notice referred to in rule 8.9(b) to *AEMO*,

or to the *AEMC* where the *consulting party* is the *Reliability Panel*. Within 3 *business days* of receiving the notice *AEMO* must *publish* the notice on its website. Where the *AEMC* or the *Reliability Panel* is the *consulting party*, the *AEMC* must *publish* the notice referred to in rule 8.9(b) on its website. Where the *AER* is the *consulting party*, the *AER* must *publish* the notice referred to in rule 8.9(b) on its website.

- (d) The notice must invite interested Consulted Persons to make written submissions to the *consulting party* concerning the matter.
- (e) A written submission may state whether a Consulted Person considers that a meeting is necessary or desirable in connection with the matter under consultation and, if so, the reasons why such a meeting is necessary or desirable. To be valid, a submission must be received not later than the date specified in the notice (not to be less than 25 *business days* after the notice referred to in rule 8.9(b) is published).
- (f) The *consulting party* must consider all valid submissions within a period of not more than a further 20 *business days*. If the *consulting party*, after having considered all valid submissions, concludes that it is desirable or necessary to hold any meetings, the *consulting party* must use its best endeavours to hold such meetings with Consulted Persons who have requested meetings within a further 25 *business days*.
- (g) Following the conclusion of any meetings held in accordance with rule 8.9(f) and the *consulting party's* consideration of a matter under consultation, the *consulting party* must publish a draft report in accordance with rule 8.9(h), available to all Consulted Persons, setting out:
  - (1) the conclusions and any determinations of the *consulting party*;
  - (2) its reasons for those conclusions;
  - (3) the procedure followed by the *consulting party* in considering the matter;
  - (4) summaries of each issue, that the *consulting party* reasonably considers to be material, contained in valid written submissions received from Consulted Persons or in meetings, and the *consulting party's* response to each such issue; and
  - (5) in a notice at the front of the draft report, an invitation to Consulted Persons to make written submissions to the *consulting party* on the draft report,

and, subject to its confidentiality obligations, the *consulting party* must make available to all Consulted Persons, on request, copies of any material submitted to the *consulting party*.

- (h) Except where the *consulting party* is the *AEMC* or the *AER*, the *consulting party* must provide a copy of the draft report referred to in rule 8.9(g) to *AEMO*, or to the *AEMC* where the *consulting party* is the *Reliability Panel*. Within 3 *business days* of receiving the draft report *AEMO* must *publish* the draft report on its website. Where the *AEMC* or the *Reliability Panel* is the *consulting party*, the *AEMC* must *publish* the draft report referred to in rule

8.9(g) on its website. Where the *AER* is the *consulting party*, the *AER* must *publish* the draft report referred to in rule 8.9(g) on its website.

- (i) To be valid, a submission invited in a notice referred to in rule 8.9(g)(5) must be received not later than the date specified in the notice (not to be less than 10 *business days* after the publication of the draft report pursuant to rule 8.9(h) or such longer period as is reasonably determined by the *consulting party* having regard to the complexity of the matters and issues under consideration).
- (j) The *consulting party* must consider all valid submissions within a period of not more than a further 30 *business days*.
- (k) Following the conclusion of the *consulting party's* consideration of all valid submissions the *consulting party* must publish a final report in accordance with rule 8.9(l), available to all Consulted Persons, setting out:
  - (1) the conclusions and any determinations of the *consulting party* on the matter under consultation;
  - (2) its reasons for those conclusions;
  - (3) the procedure followed by the *consulting party* in considering the matter;
  - (4) summaries required pursuant to rule 8.9(g)(4); and
  - (5) summaries of each issue, that the *consulting party* reasonably considers to be material, contained in valid written submissions received from Consulted Persons on the draft report and the *consulting party's* response to each such submission,

and, subject to its confidentiality obligations, the *consulting party* must make available to all Consulted Persons, on request, copies of any material submitted to the *consulting party*.

- (l) Except where the *consulting party* is the *AEMC* or the *AER*, the *consulting party* must provide a copy of the final report referred to in rule 8.9(k) to *AEMO*, or to the *AEMC* where the *consulting party* is the *Reliability Panel*. Within 3 *business days* of receiving the final report *AEMO* must *publish* the final report on its website. Where the *AEMC* or the *Reliability Panel* is the *consulting party*, the *AEMC* must *publish* the final report referred to in rule 8.9(k) on its website. Where the *AER* is the *consulting party*, the *AER* must *publish* the final report referred to in rule 8.9(k) on its website.
- (m) The *consulting party* must not make the decision or determination in relation to which the *Rules consultation procedures* apply until the *consulting party* has completed all the procedures set out in this clause.
- (n) Notwithstanding rule 8.9(m), substantial compliance by a *consulting party* with the procedures set out in this clause is sufficient.

## **Part G Consumer advocacy funding**

### **8.10 Consumer advocacy funding obligation**

- (a0) In this rule:

**consumer advocacy funding obligation** means ECA's total projected expenses for a financial year, in so far as those expenses are allocated to electricity in its final Annual Budget for that financial year, and including but not limited to:

- (1) all operational and administrative costs relating to the performance of ECA's activities relevant to consumers of electricity; and
- (2) grant funding for any current or proposed grants relevant to consumers of electricity.

**final Annual Budget** means ECA's final Annual Budget for a financial year, as issued by ECA in accordance with its constitution to *AEMO*.

- (a) *AEMO* must pay to ECA the amount of its consumer advocacy funding obligation for each financial year.
- (b) *AEMO* may recover the costs of meeting its consumer advocacy funding obligation from *Participant fees* and may allocate the costs to *Market Customers*;
- (c) The amount to be paid by *AEMO* to ECA under paragraph (a) is to be made available under a scheme agreed between *AEMO* and ECA or, in default of an agreement, on a quarterly basis;

## Part H Augmentations

### 8.11 Augmentations

#### 8.11.1 Application

This Part applies only to, and in relation to, the *declared transmission system* of an *adoptive jurisdiction* in which *AEMO* is authorised to exercise its *declared network functions*.

#### 8.11.2 Object

The objects of this rule are:

- (1) to establish the distinction between *contestable augmentations* and *augmentations* that are not contestable; and
- (2) to regulate the process for calling, receiving and evaluating tenders for the construction and operation of a *contestable augmentation*; and
- (3) to facilitate the construction and operation of *augmentations*; and
- (4) to provide guidance on risk allocation and other commercial principles to be reflected in *network agreements* and *augmentation connection agreements*; and
- (5) to make provision for certain matters with respect to *AEMO's* planning of the *declared shared network*.

#### 8.11.3 Definitions

In this Part:

***augmentation connection agreement*** has the meaning given in the *NEL*.

**augmentation direction** means a direction given by *AEMO* to an incumbent *declared transmission system operator* to construct an *augmentation* of a *declared shared network* that is not a *contestable augmentation*.

**contestable augmentation** means an *augmentation* classified as a *contestable augmentation* under clause 8.11.6.

**contestable provider** means a person responsible for the construction or operation of a *contestable augmentation*.

**incumbent declared transmission system operator** means the *declared transmission system operator* that owns or operates the part of the *transmission system* to which the *augmentation* will connect.

**potential contestable provider** means a person who responds positively to a call for expressions of interest in constructing and operating a *contestable augmentation* under clause 8.11.7(b).

**relevant limit** means \$10 million.

**separable augmentation** means an *augmentation* that satisfies both the following criteria:

- (a) the *augmentation* will result in a distinct and definable service to be provided by the *contestable provider* to *AEMO*;
- (b) the *augmentation* will not have a material adverse effect on the incumbent *declared transmission system operator's* ability to provide services to *AEMO* under any relevant *network agreement*.

#### 8.11.4 Planning criteria

- (a) *AEMO* must *publish* the planning criteria that it proposes to use in performing its *declared network functions*.
- (b) The planning criteria:
  - (1) must outline the principles on which *AEMO* will carry out a cost benefit analysis of a proposed *augmentation* under section 50F of the *NEL*; and
  - (2) must describe how *AEMO* proposes to apply a probabilistic approach in determining the benefit of a proposed *augmentation*; and
  - (3) must describe the kind of circumstances in which a probabilistic approach will be regarded as inappropriate; and
  - (4) may deal with any other aspect of planning inherent in, or related to, *AEMO's declared network functions*.

#### 8.11.5 Construction of augmentation that is not a contestable augmentation

- (a) An incumbent *declared transmission system operator* must, at *AEMO's* written request, provide *AEMO* with information and assistance that *AEMO* reasonably requires to decide:
  - (1) whether to give an *augmentation direction*; and
  - (2) if so, the terms of the direction.

- (b) If *AEMO* gives an *augmentation* direction, *AEMO* and the incumbent *declared transmission system operator* must negotiate in good faith with a view to reaching agreement on the terms of an appropriate amendment to the operator's *network agreement* covering:
  - (1) the operation of the *augmentation*; and
  - (2) the use of the *augmentation* to provide *shared network capability services*; and
  - (3) the basis on which *AEMO* will pay for *shared network capability services* provided by means of the *augmentation*.

**Note:**

If there is a dispute about the proposed amendment, the *AER* may resolve the dispute and determine the terms of the amendment under section 50H and 50J of the *NEL*.

- (c) An incumbent *declared transmission system operator* that is required by, or agrees with, a *Connection Applicant* to construct an *augmentation* that is not a *contestable augmentation*, must negotiate with the *Connection Applicant* in good faith with a view to reaching agreement on the terms of an appropriate amendment to their *connection agreement*.
- (d) However, if the incumbent *declared transmission system operator* applies for revocation and substitution of its *revenue determination* on the basis of an *augmentation* direction, or a requirement by or agreement with a *Connection Applicant* to construct an *augmentation* that is not a *contestable augmentation*, negotiations are not required on a matter to which the application relates.

#### **8.11.6 Contestable augmentations**

- (a) Subject to paragraph (b), an *augmentation* of a *declared shared network* is a *contestable augmentation* if:
  - (1) the capital cost of the *augmentation* is reasonably expected to exceed the relevant limit; and
  - (2) the *augmentation* is a separable *augmentation*.
- (b) An *augmentation* of a *declared shared network* is not a *contestable augmentation* if:
  - (1) *AEMO* classifies the *augmentation* as non-contestable because the delay in implementation that would necessarily result from treating the *augmentation* as a *contestable augmentation* would unduly prejudice *power system security*; or
  - (2) *AEMO* classifies the *augmentation* as non-contestable because it does not consider it economical or practicable to treat the *augmentation* as a *contestable augmentation*.

#### **8.11.7 Construction and operation of contestable augmentation**

- (a) For the purpose of procuring the construction and operation of a *contestable augmentation*, *AEMO* must:

- (1) publish a generally applicable tender and evaluation process that accords with best practice as currently understood and may include, but need not be limited to:
    - (i) typical timetables for the tender and evaluation process; and
    - (ii) details of typical evaluation criteria; and
    - (iii) indications of the way in which different matters are to be or might be weighted for evaluation purposes; and
    - (iv) provision for declaration and management of conflicts of interest; and
    - (v) provision for the debriefing of unsuccessful tenderers; and
  - (2) *publish* a register of persons who have from time to time expressed interest in being *contestable* providers and keep the register up to date to reflect the developing market.
- (b) For each *contestable augmentation*, *AEMO* must:
- (1) call for expressions of interest from persons who may be interested in constructing and operating the proposed *contestable augmentation*; and
  - (2) prepare, in consultation with the incumbent *declared transmission system operator*, a timetable allowing *AEMO* and the incumbent *declared transmission system operator* a reasonable time to comply with their respective obligations and allowing a reasonable construction period having regard to the nature and extent of the *augmentation*; and
  - (3) prepare, in consultation with the incumbent *declared transmission system operator*, a detailed tender specification setting out the scope of the work involved in the *augmentation*, including details of the technical interface required for the *augmentation*; and
  - (4) prepare and issue an invitation to tender setting out details of the *contestable augmentation* and the tender and evaluation process - details that must (without limitation):
    - (i) provide as much certainty as is reasonably practicable to tenderers regarding the terms and conditions subject to which they are invited to tender for the work involved in the *contestable augmentation*; and
    - (ii) identify the relevant land (if any) that is available for or in connection with the *contestable augmentation*, including (to the extent reasonably practicable) details of current usage and, if available, a geotechnical and environmental report on the land; and
    - (iii) specify (to the extent reasonably practicable) the services to be provided under the *network agreement*;
  - (5) make available to potential *contestable* providers a copy of any proposed *augmentation connection agreement* or *network agreement*.

- (c) The incumbent *declared transmission system operator* must:
  - (1) provide, within a reasonable period specified by *AEMO*, information and assistance reasonably required by *AEMO* for the preparation of the tender documents such as information about the technical interface and information required for the preparation of the tender specification; and
  - (2) negotiate in good faith with a potential *contestable* provider about changes to the proposed *augmentation connection agreement* that are sought or suggested by that potential *contestable* provider.
- (d) The incumbent *declared transmission system operator* may tender for work involved in a *contestable augmentation*.
- (e) *AEMO* must evaluate, assess and negotiate responses to the invitation to tender in accordance with the published tender and evaluation process.
- (f) After completing the tender and evaluation process, *AEMO* must notify all persons who submitted tenders of the successful tender.
- (g) *AEMO* may only proceed with a *contestable augmentation* on the basis of a tender accepted after evaluation and assessment in accordance with the published tender and evaluation process.
- (h) The successful tenderer:
  - (1) must enter into an agreement with *AEMO*, based on the successful tender, for the construction of the *augmentation*; and
  - (2) must (unless the incumbent *declared transmission system operator* is itself the successful tenderer) enter into an *augmentation connection agreement* with the incumbent *declared transmission system operator*.
- (i) This clause does not apply to a *funded augmentation* unless *AEMO* and the *Connection Applicant* agree to the conduct of a tender process.

#### **8.11.8 Funded augmentations that are not subject to the tender process**

- (a) This clause applies to a *contestable augmentation* that is a *funded augmentation* except in the case where *AEMO* and the *Connection Applicant* agree to the conduct of a tender process in accordance with clause 8.11.7.
- (b) For each *contestable augmentation* to which this clause applies, *AEMO* must:
  - (1) prepare, in consultation with the incumbent *declared transmission system operator* and the *Connection Applicant*, a timetable allowing *AEMO* and the incumbent *declared transmission system operator* a reasonable time to comply with their respective obligations and allowing a reasonable construction period having regard to the nature and extent of the *augmentation*; and
  - (2) prepare, in consultation with the incumbent *declared transmission system operator* and the *Connection Applicant*, a detailed specification setting out the scope of the work involved in the *augmentation*,



- including details of the technical interface required for the *augmentation*; and
- (3) make available to the incumbent *declared transmission system operator* and the *Connection Applicant* a copy of any proposed *augmentation connection agreement*.
- (c) The incumbent *declared transmission system operator* must:
- (1) provide, within a reasonable period specified by *AEMO*, information and assistance reasonably required by *AEMO* for the preparation of an agreement for the construction of proposed *contestable augmentation*; and
  - (2) negotiate in good faith with the *Connection Applicant* about any changes to the proposed *augmentation connection agreement* that are sought or suggested by the *Connection Applicant*; and
  - (3) enter into an *augmentation connection agreement* with the *Connection Applicant*.
- (d) The *Connection Applicant* must enter into an agreement with *AEMO* for the construction of the *augmentation*.

#### **8.11.9 Contractual requirements and principles**

- (a) A *network agreement* or an *augmentation connection agreement* related to a *contestable augmentation* should be consistent with the requirements and principles set out in Schedule 8.11 to this Chapter.
- (b) If a person submits a tender for a *contestable augmentation* proposing a *network agreement* or an *augmentation connection agreement* that is not consistent with the requirements and principles set out in Schedule 8.11 to this Chapter, the person must, in responding to the invitation to tender, include a statement drawing *AEMO's* attention to the inconsistency and explaining the reasons for it.
- (c) Despite the provisions of this clause and Schedule 8.11:
  - (1) *AEMO* and the other party or parties to a *network agreement* may agree terms and conditions of an amendment that differ from the requirements and principles set out in Schedule 8.11; and
  - (2) the parties to an *augmentation connection agreement* may, with *AEMO's* consent, agree terms and conditions that differ from the requirements and principles set out in Schedule 8.11.

#### **8.11.10 Annual planning review**

*AEMO* must in its annual planning review indicate:

- (a) which *augmentations* commenced in the previous year are *contestable augmentations*; and
- (b) which *augmentations* planned to commence in the present or future years are likely to be *contestable augmentations*.

## **Schedule 8.11 Principles to be reflected in agreements relating to contestable augmentations**

### **S8.11.1 Risk allocation**

- (a) This clause sets out the risk allocation principles.

(b) **Site/Construction Risk**

Site/construction risk is the risk that unanticipated difficulties or liabilities associated with the site or the construction work will adversely affect the *contestable* provider's ability to deliver network services at the price agreed with *AEMO*. This risk comprises (for example) the risk of contamination of the land and the risk that unforeseen difficulties (such as difficulties in sourcing necessary materials) will impede the construction of the *augmentation*.

Site/construction risk is allocated to the *contestable* provider.

(c) **Statutory approval risk**

This is the risk that a necessary planning, environmental, building or other approval will be refused or granted on conditions adversely affecting the costs of constructing or operating the *contestable augmentation*.

This risk is allocated to the *contestable* provider.

(d) **Native title risk**

This is the risk that actual or potential native title claims will adversely affect the cost of the *augmentation*.

This risk is allocated to the *contestable* provider.

(e) **Output specification risk**

This is the risk that inadequacies in the output specification will cause or contribute to design inadequacies. This risk is allocated to *AEMO* to the extent the inadequacies in the output specification are attributable to *AEMO*. To the extent the inadequacies are attributable to incorrect information provided by the incumbent *declared transmission system operator*, the risk is allocated to the operator.

(f) **Design, construction and commissioning risk**

This is the risk that an unanticipated increase in the costs of the *augmentation* will have a significant adverse impact on the viability or profitability of the *contestable augmentation*.

This risk is allocated to the *contestable* provider.

(g) **Operating risk**

This is the risk that the *contestable* provider will fail, for a reason other than force majeure or inadequate financial resources, to deliver the electricity network services purchased by *AEMO*. It includes (for example) the risk of systems failure.

This risk is allocated to the *contestable* provider.

(h) **Network and interface risk**

This is the risk that the interface between the *augmentation* and the *declared transmission system* will not be constructed or operated in accordance with the tender specification or to a satisfactory standard with the result that the safety, reliability or security of the supply of electricity or the national electricity system (or both) will be adversely affected.

This risk is allocated to the party whose system affects the other in an adverse way. If, however, the adverse result is directly caused by the provision of incorrect information, the risk is allocated to the party that provided the incorrect information.

(i) **Industrial relations risk**

This is the risk that industrial action will adversely affect the construction of the *augmentation* or the delivery of electricity network services by means of the *augmentation*.

This risk is allocated to the *contestable* provider. If, however, industrial action directed at the incumbent *declared transmission system operator* causes the adverse effect, the risk is allocated to the operator.

**S8.11.2 Minimum requirements for agreements relating to contestable augmentation**

- (a) An *augmentation connection agreement* must specify:
  - (1) the technical and other details of *connection* (including the *connection point*); and
  - (2) the *performance standards* that apply to the *contestable* provider.
- (b) There should be no material difference between *performance standards* that apply to the *incumbent declared transmission system operator* and those that apply to the *contestable* provider.

**S8.11.3 Matters to be dealt with in relevant agreements**

- (a0) In this clause:
  - relevant agreement** means:
    - (a) a *network agreement*; or
    - (b) an *augmentation connection agreement*.
  - (a) A relevant agreement should (in addition to the other requirements of the *National Electricity Law* and these *Rules*) contain provisions with respect to:
    - (1) the risks set out in clause S8.11.1; and
    - (2) force majeure events; and
    - (3) project financing risks; and
    - (4) liabilities and indemnities; and
    - (5) any relevant *regulatory obligation or requirement*.

## Part I Values of customer reliability

### 8.12 Development of methodology and publication of values of customer reliability

(a) For the purposes of this rule 8.12:

**jurisdictional regulator** means:

- (1) the Independent Pricing and Regulatory Tribunal of New South Wales established by section 5(1) of the *Independent Pricing and Regulatory Tribunal Act 1992* of New South Wales;
- (2) the Essential Services Commission established by section 7(1) of the *Essential Services Commission Act 2001* of Victoria;
- (3) the Queensland Competition Authority established by section 7 of the *Queensland Competition Authority Act 1997* of Queensland;
- (4) the Essential Services Commission established by section 4(1) of the *Essential Services Commission Act 2002* of South Australia;
- (5) the Independent Competition and Regulatory Commission for the Australian Capital Territory established by section 5(1) of the *Independent Competition and Regulatory Commission Act 1997* of the Australian Capital Territory;
- (6) the Utilities Commission of the Northern Territory established by section 5(1) of the *Utilities Commission Act* of the Northern Territory;
- (7) the Regulator established by section 5 of the *Electricity Supply Industry Act 1995* of Tasmania; and
- (8) any successors and assigns of a body referred to in paragraphs (1) to (6).

**VCR methodology** has the meaning given in clause 8.12(b).

**VCR objective** is that the VCR methodology and values of customer reliability should be fit for purpose for any current or potential uses of values of customer reliability that the *AER* considers to be relevant.

(b) The *AER* must, in accordance with the *Rules consultation procedures*:

- (1) develop a methodology to be used by the *AER* to calculate values of customer reliability (**VCR methodology**); and
- (2) review and update the VCR methodology in accordance with paragraph (f).

(c) Notwithstanding paragraph (b), the *AER* may make minor and administrative amendments to the VCR methodology without complying with the *Rules consultation procedures*.

(d) The VCR methodology must:

- (1) include a mechanism for directly engaging with:
  - (i) *retail customers*; and
  - (ii) *Customers* (other than *retailers*),

- which may include the use of surveys;
- (2) include a mechanism for adjusting the values of customer reliability on an annual basis; and
- (3) be *published* promptly after it has been developed under paragraph (b).
- (e) The *AER* must ensure that the VCR methodology developed under paragraph (b), and any values of customer reliability calculated in accordance with that methodology, are consistent with the VCR objective.
- (f) The *AER* must, prior to each date on which the values of customer reliability are updated under subparagraph (g)(2):
  - (1) review the VCR methodology; and
  - (2) following such review, *publish* either:
    - (i) an updated VCR methodology; or
    - (ii) a notice stating that the existing VCR methodology was not varied as a result of the review.
- (g) The *AER* must:
  - (1) *publish* the first values of customer reliability, calculated in accordance with the VCR methodology, on or before 31 December 2019;
  - (2) update the values of customer reliability at least once every five years, with the updated values to be *published* promptly thereafter; and
  - (3) maintain on its website the values of customer reliability as updated from time to time.
- (h) For the purpose of complying with the *Rules consultation procedures* under paragraph (b), the *AER* must consult with:
  - (1) the *Reliability Panel*;
  - (2) *AEMO*;
  - (3) each jurisdictional regulator;
  - (4) *Registered Participants*; and
  - (5) such other persons who, in the *AER*'s reasonable opinion, have, or have identified themselves to the *AER* as having, an interest in the VCR methodology and values of customer reliability.