

## **CHAPTER 8**

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## 8. Administrative Functions

### 8.1.1 [Deleted]

### 8.1.2 [Deleted]

### 8.1.3 Purpose

This Chapter describes some of the key processes associated with the administration of the *Rules*, being the following:

- (a) the procedures for resolving certain disputes;
- (b) [Deleted]
- (c) [Deleted]
- (d) [Deleted]
- (e) confidentiality provisions governing *Registered Participants* and *NEMMCO*;
- (f) monitoring and reporting requirements; and
- (g) the structure and responsibilities of the *Reliability Panel*.

## 8.2 Dispute Resolution

### 8.2.1 Application and guiding principles

- (a) This clause 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) *augmentation* of a *network* of a kind referred to in clause 5.6.6(h);
  - (4) the proposed access arrangements or *connection agreements* of an *Intending Participant* or a *Connection Applicant*;
  - (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 clause 8.2 should apply; or
- (8) any other matter that the *Rules* provide may or must be dealt with under this clause 8.2,

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

- (a1) For the purposes of this clause 8.2 only, "*Registered Participant*" is deemed to include not just *Registered Participants* but also *NEMMCO* and *Connection Applicants* 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);
- (2) first occurs in clauses 8.2.3(b), (b)(3), (b)(4) or (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 clause 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 *National Electricity Law*.

- (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 clause 8.2 should to the extent possible:

- (1) be guided by the *market 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 *National Electricity Law* 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) Clause 8.2 does not apply to:
- (1) a decision by *NEMMCO* regarding an exemption under clause 2.2.1(c);
  - (2) a decision by *NEMMCO* under clause 2.2.2 not to approve the classification of a *generating unit* as a *scheduled generating unit*;
  - (3) a decision by *NEMMCO* under clause 2.2.3 not to approve the classification of a *generating unit* as a *non-scheduled generating unit*;
  - (4) a decision by *NEMMCO* under clause 2.9.2(b);
  - (5) a decision by *NEMMCO* to reject a notice from a *Market Customer* under clause 2.10.1(d);
  - (6) a determination by *NEMMCO* under clause 3.3.8 of the *maximum credit limit* for a *Market Participant*;
  - (7) a decision by *NEMMCO* under clause 3.8.3 to refuse an application for aggregation;
  - (8) a decision by *NEMMCO* under clause 3.15.11 to reject a *reallocation request* or a *reallocation termination request*;
  - (9) a decision by *NEMMCO* to issue a notice under clause 4.11.1(d);
  - (10) a decision by *NEMMCO* under clause 7.1.4(b) to refuse to permit a *Market Participant* to participate in the *market* in respect of a *connection point*; or

- (11) a decision by *NEMMCO* whether or not to deregister a *Metering Provider* under clause 7.4.3(a), (aa) or (b), to suspend a *Metering Provider* from a category of registration under clause 7.4.3(aa) or to impose agreed constraints on the continued operation of a *Metering Provider*.

## 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 *NEMMCO* or be associated, directly or indirectly, with a *Registered Participant*, *NEMMCO* 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; and
  - (2) the Stage 2 dispute resolution process set out in clauses 8.2.5 and 8.2.6A to 8.2.6D.
- (d) The *Adviser* must take reasonable steps to keep *Registered Participants* and *NEMMCO* informed, and in any case must report at least quarterly to *Registered Participants* and *NEMMCO*, 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 NEMMCO**

- (a) Each *Registered Participant* and *NEMMCO* must adopt and implement a *DMS*.
- (b) The *DMS* of a *Registered Participant* or *NEMMCO* 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 *NEMMCO* (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 *NEMMCO* (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 *NEMMCO* (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 *NEMMCO* must provide a copy of its *DMS* upon being requested to do so by another *Registered Participant* or the *Adviser*.

## **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 *NEMMCO* (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) *NEMMCO* 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 *NEMMCO* considers may have an interest in the dispute, together with an indication as to whether *NEMMCO* 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 clause 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 *NEMMCO*, 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) The *DRP* must observe the rules of natural justice.
- (f) Subject to clause 8.2.6C(e), the *DRP* is not bound by the rules of evidence and may inform itself in any manner it thinks fit.

#### **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, but must not use a legal representative as its primary advocate except with the agreement of all other parties.
- (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 *NEMMCO* entitled to such amount may recover the amount in accordance with section 72 of the *National Electricity Law*.
- (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 *National Electricity Law*.

#### **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 clause 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 *National Electricity Law*.

#### **8.2.12 Limitation of Liability**

- (a) To the extent permitted by law, none of:

- (1) the *Adviser*;
- (2) **[Deleted]**
- (3) a person serving as a member of a *DRP*; or
- (4) a person to whom a dispute is referred for mediation or other form of resolution under a provision of clause 8.2,

is liable for any loss, damage or liability suffered or incurred by a *Registered Participant* or any other person as a consequence of any act or omission of those persons which was done in good faith in connection with the dispute.

- (b) Each of the *Adviser*, a person serving as a member of a *DRP* and a person to whom a dispute is referred for mediation or other form of resolution may, before acting in relation to the dispute, require the parties to the dispute (or any one of them) to execute a release and indemnity in relation to any loss, damage or liability that that person would, but for the release or indemnity, suffer or incur as a consequence of any act or omission done in good faith in connection with the dispute.

**8.2.13 [Deleted]**

**8.2.14 [Deleted]**

**8.2A B2B Determination Disputes**

**8.2A.1 Application of clause 8.2**

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

**8.2A.2 How clause 8.2 applies**

For the purposes of its application to a *B2B Determination Dispute*, clause 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) delete "and *Connection Applicants* who are otherwise *Registered Participants*" and substitute "clause 8.2.9(c)" for "clauses 8.2.4(a) or 8.2.9(c)".
- (c) For clause 8.2.1(e)(1) substitute:



“(1) be guided by the *B2B Objective* and the *B2B Principles*.”.

(d) In clause 8.2.1(f):

(i) after “clause 8.12” insert “(as modified by clause 8.2A.2)”; and

(ii) 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 *NEMMCO*.

(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 *Market Customer*, *Local Retailer* or *Distribution Network Service Provider* 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, *NEMMCO* 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:

"*NEMMCO* is a party to an application for review of a *B2B Decision* and may be a party, in accordance with clauses 8.2.6B(b) and 8.6.2(B)(c), 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 *NEMMCO* is a party to a *B2B Determination Dispute*, the *Information Exchange Committee* must give *NEMMCO* 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 *NEMMCO* 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 *NEMMCO* 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 8.2.12(a), after "*Registered Participant*" insert "or the *Information Exchange Committee*".

**8.3 [Deleted]**

**8.4 [Deleted]**

**8.5 [Deleted]**

**8.6 Confidentiality**

**8.6.1 Confidentiality**

- (a) Each *Registered Participant* and *NEMMCO* (each being a "Recipient" for the purposes of this clause 8.6) must use all reasonable endeavours to keep confidential any *confidential information* which comes into the possession or control of that Recipient or of which that Recipient becomes aware.
- (b) A Recipient:

- (1) must not disclose *confidential information* to any person except as permitted by the *Rules*;
  - (2) must only use or reproduce *confidential information* for the purpose for which it was disclosed or another purpose contemplated by the *Rules*; and
  - (3) must not permit unauthorised persons to have access to *confidential information*.
- (c) Each Recipient must use all reasonable endeavours:
  - (1) to prevent unauthorised access to *confidential information* which is in the possession or control of that Recipient; and
  - (2) to ensure that any person to whom it discloses *confidential information* observes the provisions of this clause 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*.
- (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 clause 6.9.2.

### 8.6.2 Exceptions

This clause 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 Recipient who wishes to disclose, use or reproduce the information or any person to whom the Recipient has disclosed the information;
- (b) **(employees and advisers)**: the disclosure of information by a Recipient or the Recipient's *Disclosees* to:
  - (1) an employee or officer of the Recipient or a *related body corporate* of the Recipient; or
  - (2) a legal or other professional adviser, auditor or other consultant (in this clause 8.6.2(b) called "Consultants") of the Recipient,

which require the information for the purposes of the *Rules*, or for the purpose of advising the Recipient or the Recipient's *Disclosee* in relation thereto;

- (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 Recipient or its *related bodies corporate*; or
  - (2) any stock exchange having jurisdiction over a Recipient or its *related bodies corporate*;
- (d1) **(ombudsman scheme)**: the disclosure, use or reproduction of information, but not end-use consumer information, if required by an Ombudsman acting under a duly constituted industry dispute resolution ombudsman scheme of which a *Registered Participant* is a participant, for the purpose of carrying out a function of that scheme in respect of a complaint made by a customer of the *Registered Participant* against a *Registered Participant* under that scheme;
- (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 Recipient to the extent reasonably required in connection with the Recipient's financing arrangements, investment in that Recipient or a disposal of that Recipient'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 Recipient, 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;
- (l) **(profile)**: the publication of a *profile*; or
- (m) **(modelling)**: the disclosure, use or reproduction of data held by *NEMMCO* or a *Network Service Provider* for the purpose of modelling the operation of the *power system*, to the extent reasonably necessary to enable a *Network User* to develop an *application to connect*.

### 8.6.3 Conditions

In the case of a disclosure under clauses 8.6.2(b), 8.6.2(d1) or 8.6.2(h), prior to making the disclosure the Recipient who 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 clause 8.6 and does not use the information for any purpose other than that permitted under clause 8.6.1.

### 8.6.4 [Deleted]

### 8.6.5 Indemnity to AER, AEMC and NEMMCO

Each *Registered Participant* must indemnify the *AER*, the *AEMC* and *NEMMCO* against any claim, action, damage, loss, liability, expense or outgoing which the *AER*, the *AEMC* or *NEMMCO* 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 clause 8.6.

### 8.6.6 NEMMCO information

*NEMMCO* 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 *NEMMCO*, 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

*NEMMCO* 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*.

## 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 *NEMMCO* 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 clause 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 *NEMMCO*; and
  - (4) are publicised or information relating thereto is available to any person, subject to any requirements as a result of the confidentiality obligations in clause 8.6.

### 8.7.2 Reporting requirements and monitoring standards for Registered Participants and NEMMCO

- (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 *NEMMCO* 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 *NEMMCO* 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 *NEMMCO* in relation to matters relevant to the *Rules*.
- (b) The *AER* must:
  - (1) after consultation with the *AEMC*, *NEMMCO* 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*, *NEMMCO* 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 *NEMMCO* 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 *NEMMCO* must comply with all requirements, procedures and standards established by the AER under this clause 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 *NEMMCO* must bear its own costs associated with complying with these requirements, procedures and standards.
- (f) In complying with its obligations or pursuing its rights under the *Rules*, neither a *Registered Participant* nor *NEMMCO* must recklessly or knowingly provide, or permit any other person to provide on behalf of that *Registered Participant* or *NEMMCO* (as the case may be), misleading or deceptive data or information to any other person (including the AER).
- (g) Any *Registered Participant* or *NEMMCO* 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 *NEMMCO* (as the case may be). The relevant *Registered Participants* and (to the extent relevant) *NEMMCO* 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 *NEMMCO* (as the case may be).

**8.7.3 [Deleted]**

**8.7.4 [Deleted]**

**8.7.5 [Deleted]**

**8.7.6 Recovery of reporting costs**

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

- (a) any *Registered Participant*, any court, the *ACCC* or a *Jurisdictional Regulator*, unless the context otherwise requires, *NEMMCO* 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 clause 2.12;
- (b) any other person, *NEMMCO* may charge that person a fee which is appropriate to cover the costs of providing that service.

**8.8 Reliability Panel**

**8.8.1 Purpose of the 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*;
  - (2) review and, on the advice of *NEMMCO*, determine the *power system security and reliability standards*;
  - (2a) for the purposes of clause 4.2.6(b), develop and *publish* principles and guidelines that determine how *NEMMCO* should maintain *power system security* while taking into account the costs and benefits to the extent practicable;
  - (3) while *NEMMCO* 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 *NEMMCO* has power to enter into contracts for the provision of *reserves*, determine policies and guidelines governing *NEMMCO'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)(2) 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; and
  - (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*.
  - (9) **[Deleted]**
- (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 *NEMMCO*; and
  - (3) must take into account the results of any decision to revise *network constraints*.
- (d) **[Deleted]**
- (e) **[Deleted]**

### 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 *NEMMCO*; 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*; and
    - (E) a person representing the interests of end use customers for electricity.
- (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 *reliability* of electricity *supply* under the *market* arrangements;
  - (2) may include *Registered Participants* or their *representatives* or *participating jurisdictions*;
  - (3) must be independent of *NEMMCO*; and
  - (4) must, except in the case of the person representing *Transmission Network Service Providers* appointed under clause 8.8.2(a)(3)(C), 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 *NEMMCO*, ceases to be independent of *NEMMCO*; or
- (6) a person on the *Reliability Panel*, other than the person representing *Transmission Network Service Providers* appointed under clause 8.8.2(a)(3)(C), 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*; 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 insolvent or under administration;
- (2) 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;
- (3) the person resigns or dies;
- (4) the *AEMC* is required to remove the person under clause 8.8.2(c) or 8.8.2(c1)(2); or
- (5) the person fails to discharge the obligations of that office imposed by the *Rules*.

- (d1) The person referred to in clause 8.8.2(a)(3)(E) must be appointed and removed by the *AEMC* after consultation with such bodies representing the interests of end use customers for electricity and other persons as the *AEMC* considers appropriate 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.

### 8.8.3 Reliability review process

- (a) As soon as practicable, the *Reliability Panel* must determine:
  - (1) the *power system security and reliability standards*;
  - (2) the guidelines referred to in clause 8.8.1(a)(3); and
  - (3) the policies and guidelines referred to in clause 8.8.1(a)(4),in accordance with this clause 8.8.3.
- (b) At least once each calendar 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 *power system security and reliability standards*, the guidelines referred to in clause 8.8.1(a)(3) and the policies and guidelines referred to in clause 8.8.1(a)(4) in accordance with this clause 8.8.3.
- (c) The *AEMC* must advise the *Reliability Panel* of the terms of reference for any determination or review by the *Reliability Panel*. The *AEMC* may advise the *Reliability Panel* of standing terms of reference in relation to the annual reviews described in clause 8.8.3(b) from time to time.
- (d) The *Reliability Panel* must give notice to all *Registered Participants* of a determination or review. The notice must give particulars of the terms of reference for the determination or review (as the case may be), the deadline for the receipt of any submissions to the *Reliability Panel* and the date and place for the meeting referred to in clause 8.8.3(f). The notice must be given at least 8 weeks prior to the meeting or such other time specified by the *AEMC* in any request for a review.

- (e) The deadline for receipt of submissions must not be earlier than 4 weeks prior to the meeting or such other time specified by the *AEMC* in any request for a review.
- (f) The *Reliability Panel* must hold a meeting open to all *Registered Participants*.
- (g) The meeting referred to in clause 8.8.3(f) must be held in the capital city of one of the *participating jurisdictions*. Selection of the relevant capital city in a particular case will be determined by the *Reliability Panel* on a rotating basis.
- (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 *NEMMCO* 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 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* no later than 6 weeks after the meeting referred to in clause 8.8.3(f) or such other deadline for reporting specified by the *AEMC* in any request for a review.
- (k) The *AEMC* must, within 10 days of receiving the written report of the *Reliability Panel*, make the report publicly available, subject to the confidentiality provisions of clause 8.6.
- (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*.
- (m) **[Deleted]**

#### **8.8.4 [Deleted]**

## 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 *National Electricity Law*.
- (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, *NEMMCO*, all *Registered Participants* and *interested parties*, (“Consulted Persons”) giving particulars of the matter under consultation.
- (c) Except where the *consulting party* is the *AEMC*, the *AER* or the *Advocacy Panel*, the *consulting party* must provide a copy of the notice referred to in clause 8.9(b) to *NEMMCO*. Within 3 *business days* of receipt of the notice *NEMMCO* must publish the notice on its website. Where the *AEMC* or the *Advocacy Panel* is the *consulting party*, the *AEMC* must publish the notice referred to in clause 8.9(b) on its website. Where the *AER* is the *consulting party*, the *AER* must publish the notice referred to in clause 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 clause 8.9(b) is given).
- (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 clause 8.9(f) and the *consulting party*’s consideration of a matter under consultation, the *consulting party* must publish a draft report, 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 the provisions of clause 8.6, 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, the AER or the Advocacy Panel, the *consulting party* must provide a copy of the draft report referred to in clause 8.9(g) to NEMMCO. Within 3 *business days* of receipt of the draft report NEMMCO must publish the draft report on its website. Where the AEMC or the Advocacy Panel is the *consulting party*, the AEMC must publish the draft report referred to in clause 8.9(g) on its website. Where the AER is the *consulting party*, the AER must publish the draft report referred to in clause 8.9(g) on its website.
- (i) To be valid, a submission invited in a notice referred to in clause 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 clause 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, 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 clause 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 the provisions of clause 8.6, 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*, the *AER* or the *Advocacy Panel*, the *consulting party* must provide a copy of the final report referred to in clause 8.9(k) to *NEMMCO*. Within 3 *business days* of receipt of the final report *NEMMCO* must publish the final report on its website. Where the *AEMC* or the *Advocacy Panel* is the *consulting party*, the *AEMC* must publish the final report referred to in clause 8.9(k) on its website. Where the *AER* is the *consulting party*, the *AER* must publish the final report referred to in clause 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 clause 8.9(m), substantial compliance by a *consulting party* with the procedures set out in this clause is sufficient.

## **8.10 Advocacy Panel**

### **8.10.1 Establishment of the Advocacy Panel**

- (a) The *AEMC* must establish an *Advocacy Panel*. The *Advocacy Panel* must:
  - (1) determine the annual funding requirements for end-user advocacy;
  - (2) develop and publish criteria for the allocation of funding for end-user advocacy;
  - (3) develop and publish guidelines for applications for funding for end-user advocacy;
  - (4) allocate funding to individual projects; and
  - (5) ensure appropriate auditing arrangements.

### **8.10.2 Constitution of the Advocacy Panel**

- (a) The *Advocacy Panel* must consist of:

- (1) a person appointed by the *AEMC*, following consultation with representatives of end-users and industry sectors, to act as the chairperson for a period of three years. Such chairperson will have a casting vote in all decisions of the *Advocacy Panel*;
  - (2) two representatives of end-users appointed by the chairperson in accordance with clause 8.10.2(f); and
  - (3) a representative of *Market Participants* and a representative of *Market Generators* appointed by the chairperson in accordance with the guidelines prepared pursuant to clause 8.10.2(e).
- (b) In appointing a chairperson to the *Advocacy Panel* under clause 8.10.2(a)(1), the *AEMC* must, to the extent reasonably practicable, ensure that the person so appointed is independent of the *AEMC*, *NEMMCO* and all *Registered Participants* and, if at any time the chairperson of the *Advocacy Panel* ceases to be independent of the *AEMC*, *NEMMCO* and all *Registered Participants*, the *AEMC* must remove that person from the *Advocacy Panel*.
- (c) Subject to clause 8.10.2(d) any person who has previously served as chairperson of the *Advocacy Panel* is eligible for reappointment to the *Advocacy Panel* in accordance with this clause 8.10.2.
- (d) The *AEMC* may remove the chairperson of the *Advocacy Panel* at any time during his or her term in the following circumstances:
- (1) the person becomes insolvent or under administration;
  - (2) 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;
  - (3) the person resigns or dies;
  - (4) the person ceases to be independent of the *AEMC*, *NEMMCO* and all *Registered Participants*; or
  - (5) the person fails to discharge the obligations of that office imposed by the *Rules* or the terms and conditions developed pursuant to clause 8.10.2(e).
- (e) The chairperson of the *Advocacy Panel* must develop and publish guidelines and terms and conditions for the appointment of representatives to the *Advocacy Panel*, in accordance with the *Rules consultation procedures*. The guidelines must be developed having regard to the need to ensure that representatives selected are capable of reflecting the viewpoints and concerns of the constituencies they represent and to the need for the chairperson to consult with relevant consumer organisations and industry bodies.

- (f) In appointing the two representatives of end-users under clause 8.10.2(a)(2), the chairperson must appoint one representative of domestic end-users and one representative of business end-users and must, to the extent reasonably practicable, have regard to the guidelines prepared in accordance with clause 8.10.2(e).
- (g) A person may resign from the *Advocacy Panel* by giving notice in writing to that effect to the chairperson of the *Advocacy Panel* and the *AEMC*.
- (h) The *Advocacy Panel* must meet and regulate its meetings and conduct its business in accordance with the *Rules*.

### 8.10.3 Functions of the Advocacy Panel

- (a) The *Advocacy Panel* must determine the provisional funding requirements for end-user advocacy in accordance with the *Rules consultation procedures*.
- (b) Not later than 31 March each year the *Advocacy Panel* must prepare and publish an annual report which:
  - (1) includes details of its funding determination pursuant to clause 8.10.3(a);
  - (2) summarises the submissions received from *interested parties* regarding the funding requirements for end-user advocacy and the *Advocacy Panel's* response to each such submission;
  - (3) details expenditure in the current *financial year* and the individual projects to which funding was allocated for the current *financial year*; and
  - (4) details the extent to which the allocation of funding in the current *financial year* satisfies the principles in clause 8.10.3(d).
- (c) The *AEMC* must provide to the *Advocacy Panel* in respect of each *financial year* the funds for which provision is made in the *Advocacy Panel's* annual report for that year.
- (c1) *NEMMCO* must pay to the *AEMC* such amounts as are necessary to enable the *AEMC* to comply with clause 8.10.3(c) in respect of the *Advocacy Panel's* funding requirements for the *financial year* ending on 30 June 2006.
- (d) The *Advocacy Panel* must develop and publish funding criteria for use by the *Advocacy Panel* in allocating funding based on applications for funding for end-user advocacy, in accordance with the *Rules consultation*

*procedures*. The funding criteria should, to the extent practicable, be consistent with the following principles:

- (1) there should be diversity in the allocation of funding with respect to the number of end-users represented, the nature of the interests represented and the issues which are the subject of the application for funding;
- (2) a project proposed in an application for funding should:
  - (i) relate to the development, design or policy behind the national electricity market or the *Rules*;
  - (ii) relate directly to:
    - (A) the responsibilities of the *AEMC* or *NEMMCO* under the *National Electricity Law* and the *Rules*; or
    - (B) the monitoring, investigation or enforcement responsibilities of the *AER*, or functions of the *AER* relating to the exemption from registration of *Network Service Providers*, under the *National Electricity Law* and the *Rules*; or
  - (iii) have implications for the national electricity market as a whole;
- (3) the applicant for funding must represent the interests of a reasonable number of end-users;
- (4) the applicant for funding must fund a share of the project costs from a source other than funding provided by the *Advocacy Panel*. In considering the contribution made by an applicant the *Advocacy Panel* may consider non-financial contributions, for example staff time, in lieu of a direct pecuniary contribution. An applicant may seek to waive the requirement to fund a share of the project costs but the *Advocacy Panel* has discretion as to whether or not to grant the waiver;
- (5) the applicant for funding must provide a project plan, outlining the purpose of the project, the project category, budget estimates and the amount of funding sought from the *Advocacy Panel*;
- (6) the successful applicant for funding must maintain and make available to the *Advocacy Panel* appropriate records, accounts and reports on the expenditure of funding provided by the *Advocacy Panel* on the project; and

- (7) the successful applicant for funding must within 2 months of the completion of the project or as soon as reasonably practicable after receipt of a written request for a report from the *Advocacy Panel* publish a report setting out:
  - (i) the purpose of the project;
  - (ii) the issues considered and outcomes of the project; and
  - (iii) the costs and expenses of the project.
- (e) The *Advocacy Panel* must develop and publish guidelines for applications to the *Advocacy Panel* for funding for end-user advocacy, in accordance with the *Rules consultation procedures*.
- (f) The *Advocacy Panel* must determine applications for funding on a quarterly basis, having regard to the criteria prepared in accordance with clause 8.10.3(d). The individual projects to which funding is to be allocated and disbursed in the next quarter of the *financial year* must be determined prior to the commencement of that quarter.
- (g) The *Advocacy Panel* must ensure, to the extent reasonably practicable, that the financial records and accounts of the *Advocacy Panel*, and the financial records and accounts and expenditure reports prepared and maintained by a successful applicant for funding, are audited by an independent auditor appointed by the *Advocacy Panel* and approved by the *AEMC*.

#### **8.10.4 Funding of Advocacy Panel**

The obligation of the *AEMC* to fund the expenditure requirements of the *Advocacy Panel* under clause 8.10.3(c) ceases on 30 June 2006.