

## Part 15C                      Dispute resolution

### Division 1                      Preliminary

#### 135F                      Definitions

In this Part:

**Adviser** means the dispute resolution adviser appointed under rule 135G.

**eligible person** means any of the following:

- (a) AEMO;
- (b) a Registered participant;
- (c) a person classified by some other provision of these rules or the Procedures as a person to whom the dispute resolution provisions of this Part apply.

**excluded dispute** means:

- (a) an access dispute; or
- (b) a dispute about the content, preparation or publication of a budget; or
- (c) a dispute that is classified as an excluded dispute under another provision of these rules.

**party** to a relevant dispute means an eligible person whose interests are involved in or directly affected by the relevant dispute.

**relevant dispute** or **rule dispute** means:

- (a) a dispute (other than an excluded dispute) between eligible persons about:
  - (i) the application or interpretation of these rules or the Procedures; or
  - (ii) a liability or alleged liability under these rules or the Procedures; or
  - (iii) a matter that is, by agreement between the parties to the dispute, to be resolved under this Part; or
- (b) a matter that is under some other provision of these rules or the Procedures to be determined under this Part.

**Stage 1 dispute resolution process** means a dispute resolution process under rule 135H.

**Stage 2 dispute resolution process** means a dispute resolution process under rules 135HB to 135HI.

### **135FA General principles**

- (1) Dispute resolution processes under this Part should, as far as practicable, be guided by the national gas objective.
- (2) In any dispute resolution process under this Part:
  - (a) account must be taken of the skills and knowledge required for resolution of the relevant dispute; and
  - (b) the rules of natural justice are to be observed.
- (3) In addition, any Stage 1 dispute resolution process and any mediation process that may be used as part of a Stage 2 dispute resolution process should, as far as practicable:
  - (a) be simple, quick and inexpensive; and
  - (b) preserve or enhance the relationship between the parties to the relevant dispute; and
  - (c) place emphasis on conflict avoidance; and
  - (d) encourage resolution of relevant disputes without legal representation or undue legal formality.

### **135FB Resolution of relevant dispute not to extend to imposition of sanctions**

- (1) This Part is directed at resolving relevant disputes and not at imposing sanctions for breach of these rules or the Procedures.
- (2) An action for breach of these rules or the Procedures may only be taken by the AER under the *NGL*.

### **135FC Legal professional privilege**

A person cannot be required under this Part to disclose:

- (a) information that is the subject of legal professional privilege; or
- (b) documents that would disclose information subject to legal professional privilege.

### **135FD Dispute management contacts**

- (1) Each Registered participant and AEMO must nominate a person to be the first point of contact for relevant disputes (the **dispute management contact**).

- (2) If a person (other than a Registered participant or AEMO) becomes a party to a relevant dispute, that person must nominate a dispute management contact within 2 business days of becoming a party to the relevant dispute.
- (3) A nomination of a dispute management contact under subrule (1) or (2) is made by giving the Adviser written notice of the name and *contact details* of the dispute management contact.
- (4) The person for whom the dispute management contact is nominated must promptly notify the Adviser of:
  - (a) any change of dispute management contact; and
  - (b) any changes to *contact details* for the dispute management contact.
- (5) The Adviser must publish the names and *contact details* of all current dispute management contacts as notified to the Adviser.
- (6) If the name and *contact details* of a dispute management contact for a party to a relevant dispute are published under subrule (5), any notice or other document to be *served* on the party is to be *served* on the dispute management contact.

## **Division 2            Adviser and dispute resolution panel pool**

### **135G        Appointment of dispute resolution adviser**

- (1) There is to be a dispute resolution adviser.
- (2) The Adviser:
  - (a) must have detailed knowledge and experience of non-litigious dispute resolution processes (**alternative dispute resolution processes**); and
  - (b) must be able to decide the most appropriate alternative dispute resolution processes for a particular relevant dispute; and
  - (c) must have a good understanding of the natural gas industry or the capacity to acquire a good understanding of the natural gas industry quickly; and
  - (d) must not have any material direct or indirect interest or association that compromises, or is likely to compromise, the impartiality of the Adviser in relation to relevant disputes.
- (3) The Adviser will be appointed on terms and conditions determined by the AER.

### **135GA      Disclosure of interest**

The Adviser must disclose to the AER any material direct or indirect interest or association that compromises, or would be reasonably seen to compromise, the impartiality of the Adviser in relation to relevant disputes.

### **135GB Adviser's functions**

- (1) The Adviser is responsible for ensuring the effective operation of the provisions of this Part for dispute resolution.
- (2) The Adviser must report to the AER at least once in each quarter about dispute resolution under this Part.
- (3) The AER must publish the report on its website.

### **135GC Pool for constitution of dispute resolution panels**

- (1) The Adviser must establish and maintain a pool of persons from which the members of a dispute resolution panel may be selected under rule 135HD.
- (2) In selecting persons to constitute the pool, the Adviser must have regard to:
  - (a) the need for members of a dispute resolution panel to have an appropriate range of skills; and
  - (b) the need to ensure that the membership of the pool is properly representative (as far as practicable) of all participating jurisdictions.
- (3) The Adviser must review the composition of the pool at least once in every successive period of 2 years.

### **135GD Guidance notes**

- (1) The Adviser may issue guidance notes relating to the conduct of any part of the Stage 1 or Stage 2 dispute resolution processes.
- (2) Guidance notes are intended to promote the efficient use of resources and processes but are not binding.

## **Division 3 Dispute resolution processes**

### **135H Stage 1 dispute resolution process**

- (1) A party to a relevant dispute may initiate the dispute resolution process by *serving* a notice (a **Stage 1 notice**) on one or more parties to the relevant dispute and giving a copy of the notice to the Adviser.
- (2) A Stage 1 notice must be *served*:
  - (a) within a period fixed by these rules for the relevant dispute; or
  - (b) if no such period is fixed by these rules – within 90 business days after the relevant dispute arises.

- (3) For the purposes of subrule (2)(b), a dispute is taken to arise when the circumstances giving rise to the dispute first come to the knowledge, or ought reasonably have come to the knowledge, of the party that initiates the dispute resolution process.
- (4) A Stage 1 notice:
  - (a) must be in the form approved and published, from time to time, by the Adviser; and
  - (b) must contain the names of each eligible person that the party *serving* the Stage 1 notice believes to be a party to the relevant dispute and a statement setting out the circumstances giving rise to the relevant dispute.
- (5) Within 15 business days after service of a Stage 1 notice, representatives of the parties that *served* or were *served* with the Stage 1 notice must meet to determine, by agreement, the course of the dispute resolution process.
- (6) The meeting is to be held on a without prejudice basis and:
  - (a) may, if the parties agree, be arranged and chaired by the Adviser; and
  - (b) may be conducted in person, by telephone, video conference or a similar method of communication; and
  - (c) may agree that the dispute resolution process should proceed by direct discussions between parties, by mediation or in any other way; and
  - (d) must consider whether there are other parties to the relevant dispute who should be *served* with a Stage 1 notice;
  - (e) may agree, subject to subrule (7), to keep confidential:
    - (i) the fact that the relevant dispute exists; and
    - (ii) any information exchanged between them for the purposes of attempting to resolve the relevant dispute.
- (7) If AEMO is *served* with a Stage 1 notice:
  - (a) AEMO must immediately notify the parties and the Adviser of any other persons that AEMO considers may have an interest in the relevant dispute; and
  - (b) if all parties agree, AEMO must notify those other persons of the relevant dispute.
- (8) If:
  - (a) a party to the relevant dispute on whom a Stage 1 notice is *served* does not agree to participate in the proceedings for resolution of the relevant dispute; or

- (b) the relevant dispute is not resolved within 45 business days of service of a Stage 1 notice (or a lesser period agreed by all parties); or
- (c) the disputing parties have not agreed to the giving of notification under subrule (7)(b) within 10 business days after AEMO gives its notice under subrule (7)(a),

a party may, no later than 60 business days after service of a Stage 1 notice, refer the matter to the Adviser by *serving* a Stage 2 notice.

### **135HA Effect of time limits for Stage 1**

- (1) If a Stage 2 notice has not been *served* within 60 business days of service of the Stage 1 notice in respect of a relevant dispute, any obligations or requirements arising under rule 135H in relation to the relevant dispute, other than obligations of confidentiality, cease to have effect.
- (2) If:
  - (a) a Stage 1 notice has not been *served* within the time limit applicable under rule 135H(2); or
  - (b) a Stage 2 notice has not been *served* within 60 business days of service of the Stage 1 notice,a Stage 2 notice may be *served* on the Adviser.
- (3) If a Stage 2 notice is *served* under subrule (2), the Adviser will refer the relevant dispute to a dispute resolution panel but the panel may only determine the relevant dispute if, in the opinion of the panel, no party would suffer undue prejudice as a result of the relevant dispute being referred outside the specified period.

### **135HB Stage 2 dispute resolution processes**

- (1) A Stage 2 notice must:
  - (a) be in the form approved and published, from time to time, by the Adviser; and
  - (b) contain the names of all parties to the relevant dispute; and
  - (c) if the party *serving* the Stage 2 notice does not agree to the Adviser attempting to resolve the relevant dispute and requires the Adviser to refer the relevant dispute to a dispute resolution panel for determination, contain a statement to that effect.
- (2) Where a relevant dispute is referred to the Adviser, the Adviser must immediately notify each party identified in the Stage 2 notice of that fact. Each party must within 15 business days of being so notified, provide to the Adviser a statement setting out:

- (a) a brief history of the relevant dispute and the circumstances giving rise to it; and
  - (b) a statement of the issues involved in the relevant dispute.
- (3) The Adviser must, within 30 business days of being *served* with a Stage 2 notice:
  - (a) if the parties agree – attempt to resolve the relevant dispute by any means the Adviser, having regard to the principles set out in rule 135FA(2) and (3), considers appropriate; or
  - (b) refer the relevant dispute to a dispute resolution panel for determination.
- (4) If the Adviser attempts to resolve the relevant dispute under subrule (3)(a), the Adviser may, if of the opinion that the attempt is unlikely to prove successful, abandon the attempt and refer the relevant dispute to a dispute resolution panel for determination.
- (5) If the Adviser refers a relevant dispute to a dispute resolution panel, the Adviser must promptly:
  - (a) publish notice of the referral to all Registered participants; and
  - (b) give notice of the referral to AEMO, the AER and the AEMC.

### **135HC Disclosure of information by direction**

- (1) If:
  - (a) a party to a relevant dispute requests, in writing, information in the possession of another party for the purpose of:
    - (i) preparing a Stage 1 notice; or
    - (ii) participating in a Stage 1 dispute resolution process; or
    - (iii) preparing the statement required under rule 135HB(2); and
  - (b) the other party either refuses to provide the information or fails to provide the information within 15 business days of the request,

the Adviser must, on application by the party requesting the information, appoint a member of the dispute resolution panel pool to give directions about the disclosure of information.
- (2) The member of the pool appointed to exercise functions under this rule must be a former judge of a State or Territory Supreme Court, the Federal Court or the High Court or some other appropriately qualified legal practitioner.
- (3) A member of the pool so appointed may give one or more of the following directions to a party to the relevant dispute:

- (a) a direction that the party provide to the member of the pool all information in its possession that is relevant to the relevant dispute;
  - (b) a direction that the party provide to another party such information as the member of the pool considers to be necessary for a purpose referred to in subrule (1);
  - (c) a direction to a party to which information may be provided relating to the use and disclosure of the information by that party (including a direction to keep information confidential);
  - (d) a direction that a party enter into a confidentiality agreement, and any other person to whom the information may be disclosed by that party enter into a confidentiality agreement, before the information is provided;
  - (e) a direction specifying the time within which, the means by which and the form in which the information is to be provided;
  - (f) a direction specifying the terms and conditions of a confidentiality agreement that a party or other person is to enter into.
- (4) A direction under subrule (3) is binding on the party to which it is given and the party must comply with it.
- (5) A person appointed to give directions under this rule:
- (a) is not bound by the rules of evidence but must observe the rules of natural justice; and
  - (b) is subject to the same requirements as to actual or apparent conflict of interest as a member of a dispute resolution panel.

**Note:**

These requirements are set out in rule 135HD(9) and (10).

## **135HD Establishment of dispute resolution panel**

- (1) If the Adviser refers a relevant dispute for resolution by a dispute resolution panel, the Adviser must establish the dispute resolution panel to determine the relevant dispute.
- (2) A dispute resolution panel consists of 3 members or a lesser number of members agreed by the parties.
- (3) A person is eligible for appointment to a panel if, in the Adviser's opinion, the person is:
  - (a) expert in the field to which the relevant dispute relates; or
  - (b) experienced or trained in dispute resolution techniques.



- (4) A member of the panel is to be drawn from the pool unless, in the Adviser's opinion, no suitable person is available from the pool (and, on the appointment of a person from outside the pool as a member of a panel, the person becomes a member of the pool).
- (5) The Adviser will appoint one member of a dispute resolution panel as the Chair of the panel.
- (6) The Adviser must consult with the parties on the composition of the dispute resolution panel (but the obligation to consult does not apply to a person who is later joined as a party).
- (7) A *decision* by the Adviser on the composition of the dispute resolution panel is final and binding on all parties to the relevant dispute.
- (8) If:
  - (a) a party, by written notice to the AER, objects to the Adviser exercising functions under this rule on the ground that the Adviser has an interest that may compromise, or would reasonably be seen to compromise, the Adviser's impartiality in relation to the relevant dispute; and
  - (b) the AER is satisfied that the Adviser has such an interest,a person must be appointed to act in the position of the Adviser under this rule with the written agreement of all parties or, if they have not agreed on such an appointment within 5 business days of the date of the objection, by the AER at the request of any party.
- (9) If:
  - (a) a party, by written notice to the AER, objects to a person's participation in proceedings under this Part as a member of a dispute resolution panel on the ground that the person has an interest that compromises, or would reasonably be seen to compromise, the person's impartiality in relation to the relevant dispute; and
  - (b) the AER is satisfied that the person has such an interest,the person is not eligible to be appointed, and must not remain, as a member of the dispute resolution panel.
- (10) A person who is about to be appointed as a member of a dispute resolution panel must disclose any such interest to the Adviser before appointment and, if the interest arises or the person becomes aware of it after appointment, the person must disclose the interest to the Adviser and the parties to the relevant dispute. The parties may, by written agreement, waive their right to require the person to withdraw from the proceedings.

- (11) A member of the pool who is a member, or former member, of a dispute resolution panel is eligible for appointment as a member of another dispute resolution panel.

### **135HE Parties to proceedings before the panel**

- (1) The dispute resolution panel may resolve any question about who are the parties to the relevant dispute and:
  - (a) may permit or order a person to join, or be joined, as party to the proceedings before the panel; or
  - (b) may permit the withdrawal or order the exclusion of a person as party to the proceedings before the panel.
- (2) If a person is joined as a party after proceedings have commenced, the panel must give the party a written notice setting out:
  - (a) the names of the other parties to the relevant dispute; and
  - (b) a brief history of the relevant dispute and the circumstances giving rise to it; and
  - (c) the results of any earlier dispute resolution processes undertaken in relation to the relevant dispute under these rules; and
  - (d) if the person has been involuntarily joined as a party to the proceedings by order of the panel – a statement of the grounds on which the panel has made the order.

### **135HF Dispute resolution panel to have regard to substance over form**

- (1) A dispute resolution panel:
  - (a) must determine the real questions in controversy between the parties; and
  - (b) is not bound by the parties' formulation of those questions.
- (2) A dispute resolution panel:
  - (a) is not bound by the rules of evidence and may inform itself in any way it thinks fit; but
  - (b) must observe the rules of natural justice.

### **135HG Proceedings of the dispute resolution panel**

- (1) The dispute resolution panel may give the parties such directions as it considers necessary for the proper conduct of the proceedings.
- (2) The directions may (for example) include one or more of the following:

- (a) a direction as to the place where the proceedings are to be conducted (which may include premises of a party);
  - (b) a direction requiring the parties to prepare and exchange written submissions or other documents;
  - (c) a direction limiting or prohibiting the cross-examination of witnesses;
  - (d) a direction that the proceedings or part of the proceedings be conducted solely on the basis of documentary evidence or written submissions;
  - (e) a direction that the party provide the panel with all information in its possession that is relevant to the relevant dispute;
  - (f) a direction that the party provide information relevant to the relevant dispute to another party;
  - (g) a direction to a party to which information is to be provided relating to the use and disclosure of the information by that party (including a direction to keep information confidential);
  - (h) a direction that a party enter into a confidentiality agreement, and any other person to whom the information may be disclosed by that party enter into a confidentiality agreement, before the information is provided;
  - (i) a direction specifying the time within which, the means by which and the form in which the information is to be provided;
  - (j) a direction specifying the terms and conditions of a confidentiality agreement that a party or other person is to enter into.
- (3) A direction under this rule is binding on each party to which it is given and the party must comply with it.
- (4) The panel may, with the consent of all parties, refer a relevant dispute for mediation.

### **135HH Decisions of the dispute resolution panel**

- (1) A *decision* agreed by a majority of the members of a dispute resolution panel is a *decision* of the panel and, if the panel consists of 2 members who are unable to reach a unanimous *decision*, the Chair's *decision* is the *decision* of the panel.
- (2) A dispute resolution panel must decide a relevant dispute as quickly as possible and, in any case, within any maximum time limit fixed for the relevant dispute by these rules.
- (3) However, the panel may extend a maximum time limit if:
  - (a) all parties agree in writing; or

- (b) the panel recommends the extension to the Adviser (after taking into account possible prejudice to the parties) and the Adviser agrees in writing to the extension; or
- (c) the panel refers the relevant dispute for mediation.

### **135HI Determination of relevant disputes**

- (1) The dispute resolution panel may make a determination:
  - (a) requiring a party to the relevant dispute to do all or any of the following:
    - (i) to take specified action;
    - (ii) to cease or refrain from taking specified action;
    - (iii) to pay a monetary amount to another party to the relevant dispute; and
  - (b) granting any other form of relief that may be appropriate in the circumstances; and
  - (c) fixing the time for compliance with the determination.
- (2) A determination of a dispute resolution panel is binding on all parties to the relevant dispute.
- (3) As soon as practicable after complying with the determination of a dispute resolution panel, the person required to comply must report to the Adviser.
- (4) Non-compliance with the determination is a breach of these rules in respect of which the AER may take action in accordance with the *NGL*.

## **Division 4 Miscellaneous**

### **135J Legal representation**

- (1) A person is entitled to be represented by a lawyer in proceedings under this Part.
- (2) A dispute resolution panel may give any direction it considers appropriate about the role of the parties' legal representatives in the proceedings.

### **135JA Costs of Adviser, dispute resolution panel etc**

- (1) The costs of Stage 1 and Stage 2 dispute resolution processes including the costs of the Adviser, a member of the pool, or a dispute resolution panel in relation to a relevant dispute are to be borne by the parties to the relevant dispute.
- (2) Subject to a determination by the dispute resolution panel, the costs are to be borne:

- (a) as agreed by the parties; or
  - (b) if there is no agreement – equally.
- (3) The dispute resolution panel may, on application by an interested party, alter the allocation of costs under subrule (2) if satisfied that a party unreasonably prolonged the relevant dispute or that there is some other good reason to alter the allocation of costs under that subrule.

### **135JB Settlement by agreement**

- (1) The parties to proceedings for the resolution of a relevant dispute may settle the proceedings by a written agreement between them.
- (2) An agreement under this rule is binding on the parties.

**Note:**

A monetary amount to which a party is entitled under the agreement is recoverable under section 91H of the *NGL*.

- (3) Non-compliance with an agreement for the settlement of a relevant dispute is a breach of these rules in respect of which the AER may take action in accordance with the *NGL*.

### **135JC Publication of determinations**

- (1) A dispute resolution panel must, on making a determination, provide the AER with a copy of the determination from which confidential information has been excluded.
- (2) The AER must publish the determination in the form in which it was provided under subrule (1).