

CHAPTER 8

8. Administrative Functions

Part A Introductory

8.1 Administrative functions

8.1.1 [Deleted]

8.1.2 [Deleted]

8.1.3 Structure of this Chapter

Note

Clause 8.1.3(b)(5) and (7) has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

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

Part B Disputes

Note:

This Part has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*).

Part C Registered Participants' confidentiality obligations

8.6 Confidentiality

8.6.1 Confidentiality

Note

Clause 8.6.1(d) and (e) has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

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

Note

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

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

Note

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

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

Note

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

- (c) Each *Registered Participant* must use all reasonable endeavours:
 - (1) to prevent unauthorised access to *confidential information* which is in the possession or control of that *Registered Participant*; and
 - (2) to ensure that any person to whom it discloses *confidential information* observes the provisions of this rule 8.6 in relation to that information.
- (d) The officers of a *Transmission Network Service Provider* participating in *transmission service* pricing must not be involved in or associated with competitive electricity trading activities of any other *Registered Participant*.

Note

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

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

Note

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

8.6.1A Application

For the purposes of this Part only, "*Registered Participant*" is deemed to include not just *Registered Participants* but also *Metering Providers* and *Metering Data Providers*.

8.6.2 Exceptions

Note

Clause 8.6.2(l) has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

This rule 8.6 does not prevent:

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

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

8.6.3 Conditions

In the case of a disclosure under clauses 8.6.2(b), 8.6.2(b1), 8.6.2(h), prior to making the disclosure the *Registered Participant* that wishes to make the disclosure must inform the proposed recipient of the confidentiality of the information and must take appropriate precautions to ensure that the proposed recipient keeps the information confidential in accordance with the provisions of this rule 8.6 and does not use the information for any purpose other than that permitted under clause 8.6.1.

Note

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

8.6.4 [Deleted]

8.6.5 Indemnity to AER, AEMC and AEMO

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

8.6.6 AEMO information

Note

This clause has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

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

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

8.6.7 Information on Rules Bodies

Note

This clause has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

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

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

Part CA Application of rules to CDR data

8.6A Application of rules to CDR data

Nothing in these *rules* prevents *AEMO* or a *Registered Participant* from disclosing CDR data as required or permitted by the CDR provisions, in accordance with those provisions.

Part D Monitoring and reporting

8.7 Monitoring and Reporting

8.7.1 Monitoring

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

8.7.2 Reporting requirements and monitoring standards for Registered Participants

Note

Clause 8.7.2(a)(2) and (4) and (b)(2) has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

- (a) For the purpose of performing its monitoring functions, the *AER* must establish:
 - (1) reporting requirements which apply to all or particular categories of *Registered Participants* in relation to matters relevant to the *Rules*;
 - (2) reporting requirements for *AEMO* in relation to matters relevant to the *Rules*;
 - (3) procedures and standards generally applicable to *Registered Participants* relating to information and data received by them in relation to matters relevant to the *Rules*;
 - (4) procedures and standards applicable to *AEMO* relating to information and data received by it in relation to matters relevant to the *Rules*; and

- (5) procedures and standards applicable to the *AER* relating to information and data received by the *AER* from *Registered Participants* in relation to matters relevant to the *Rules*.
 - (b) The *AER* must:
 - (1) after consultation with the *AEMC* 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) and (5); and
 - (2) after consultation with the *AEMC* 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 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* must comply with all requirements, procedures and standards established by the *AER* under this rule 8.7 to the extent that they are applicable to it within the time period specified for the requirement, procedure or standard or, if no such time period is specified, within a reasonable time. Each *Registered Participant* must bear its own costs associated with complying with these requirements, procedures and standards.

Note

This paragraph is classified as a tier 2 civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (f) In complying with its obligations or pursuing its rights under the *Rules*, a *Registered Participant* must not recklessly or knowingly provide, or permit any other person to provide on behalf of that *Registered Participant*, misleading or deceptive data or information to any other person (including the *AER*).

Note

This paragraph is classified as a tier 2 civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (g) Any *Registered Participant* 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*. The relevant *Registered Participants* 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*.

8.7.2A Wholesale market monitoring guidelines (Section 18EO of the NEL)

- (a) Before making or amending *wholesale market monitoring guidelines*, the *AER* must consult in accordance with the consultation procedure set out in this clause.

Initial consultation

- (b) The *AER* must publish a consultation paper on its website with:
- (1) an explanatory statement that sets out particulars of the proposed guidelines, the issues involved and options to address them, if applicable;
 - (2) an invitation to make written submissions on the consultation paper; and
 - (3) a due date for written submissions, which must be no earlier than 25 *business days* from the date of the consultation paper.

Consultation on draft guidelines

- (c) No later than 50 *business days* after the due date for submissions under subparagraph (b)(3), the *AER* must publish on its website:
- (1) draft *wholesale market monitoring guidelines*;
 - (2) an explanatory statement setting out the reasons for its approach;
 - (3) subject to confidentiality obligations, submissions received by the due date;
 - (4) summaries of material issues raised in submissions received by the due date and the *AER*'s response to those issues;

- (5) an invitation to make written submissions on the draft guidelines; and
- (6) a due date for written submissions, which must be no earlier than 25 *business days* after the date of the draft guidelines.

Publication of final guidelines

- (d) No later than 50 *business days* after the due date for submissions under subparagraph (c)(6), the *AER* must publish on its website:
 - (1) final *wholesale market monitoring guidelines*;
 - (2) an explanatory statement setting out the reasons for its approach;
 - (3) subject to confidentiality obligations, submissions received by the due date;
 - (4) summaries of material issues raised in submissions received by the due date and the *AER*'s response to those issues; and
 - (5) the date on which the guidelines take effect.

Individual meetings and additional consultation

- (e) At any time in a period in which an *interested party* may make written submissions, an *interested party* may request a meeting with the *AER* to discuss the *wholesale market monitoring guidelines*.
- (f) For the avoidance of doubt, the *AER* may conduct other forms of consultation including publishing issues or discussion papers, establishing and seeking input from working groups or advisory panels, and holding conferences, workshops, meetings or information sessions.

Extension of time

- (g) The *AER* may extend the time limit for publishing draft or final guidelines under paragraphs (c) or (d), by publishing a notice before the expiry of the relevant time limit, if the *AER* considers an extension is necessary because:
 - (1) the consultation involves issues of unusual complexity or difficulty; or
 - (2) there is a material change in circumstances.

Minor or administrative amendments

- (h) The *AER* may make minor or administrative amendments to the *wholesale market monitoring guidelines* without complying with the consultation requirements of this rule.

8.7.2B Market monitoring information order (Section 18EH of the NEL)

- (a) Before making a *MMIO*, the *AER* must consult in accordance with the consultation procedure set out in this clause.
- (b) The *AER* must publish on its website:
 - (1) a draft *MMIO*;
 - (2) an invitation to make written submissions on the draft; and
 - (3) a due date for written submissions, which must be no earlier than 30 *business days* after publication of the draft.

- (c) No later than 80 *business days* after the due date for submissions under subparagraph (b)(3), the *AER* must publish on its website:
 - (1) the final *MMIO*;
 - (2) subject to confidentiality obligations, submissions received by the due date; and
 - (3) a statement of the reasons for the final *MMIO* (including a summary of each material issue raised in submissions received by the due date and the *AER's* response to those issues).

8.7.2C Urgent market monitoring information order (Section 18EH of the NEL)

- (a) Before making a *MMIO* that is specified as urgent under section 18ED of the *NEL*, the *AER* must consult in accordance with the consultation procedure set out in this clause.
- (b) The *AER* must publish on its website:
 - (1) a draft *MMIO*;
 - (2) an explanatory statement setting out the reasons the *AER* believes access to the relevant information is time critical;
 - (3) an invitation to make written submissions on the draft; and
 - (4) a due date for written submissions, which must be no earlier than 5 *business days* after the date of publication.
- (c) Following the conclusion of the *AER's* consideration of all submissions received by the due date under subparagraph (b)(4), the *AER* must publish on its website:
 - (1) the final *MMIO*;
 - (2) subject to confidentiality obligations, submissions received by the due date; and
 - (3) a statement of the reasons for the final *MMIO*.

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

- (a) Before the *AER* makes a *general regulatory information order*, it must publish:
 - (1) the proposed order;
 - (2) an explanatory statement that sets out objectives of the proposed order; and
 - (3) an invitation for written submissions on the proposed order.
- (b) The invitation must allow no less than 30 *business days* for the making of submissions (and the *AER* is not required to consider any submission made after the period has expired).

- (c) The *AER* may *publish* such issues, consultation and discussion papers, and hold such conferences and information sessions, in relation to the proposed order as it considers appropriate.
- (d) Within 80 *business days* of *publishing* the documents referred to in paragraph (a), the *AER* must:
 - (1) consider any submissions made in response to the invitation within the period allowed in the invitation;
 - (2) make a final decision on the order; and
 - (3) *publish* the final decision including:
 - (i) a statement of the reasons for the final decision (including a summary of each material issue raised in the submissions and the *AER's* response to it); and
 - (ii) if the final decision is to make the order (either in the terms in which it was proposed or in modified terms) – the order in its final form.
- (e) The *AER* may extend the time within which it is required to publish its final decision if:
 - (1) the consultation involves questions of unusual complexity or difficulty; or
 - (2) the extension has become necessary because of circumstances beyond the *AER's* control.

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

- (a) Before the *AER* embarks on the preparation of *network service provider performance reports*, the *AER* must consult with:
 - (1) *network service providers*; and
 - (2) bodies representative of the *network service providers* and network service users; and
 - (3) the public generally;in order to determine appropriate priorities and objectives to be addressed through the preparation of *network service provider performance reports*.
- (b) In the course of preparing a *network service provider performance report*, the *AER*:
 - (1) must consult with the *network service provider* or *network service providers* to which the report is to relate; and
 - (2) must consult with the authority responsible for the administration of relevant *jurisdictional electricity legislation* about relevant safety and technical obligations; and
 - (3) may consult with any other persons who have, in the *AER's* opinion, a proper interest in the subject matter of the report; and
 - (4) may consult with the public.

- (b1) In preparing a *network service provider performance report*, the *AER* must have regard to the *Distribution Reliability Measures Guidelines*.
- (c) A *network service provider* to which the report is to relate:
 - (1) must be allowed an opportunity, at least 30 *business days* before publication of the report, to submit information and to make submissions relevant to the subject matter of the proposed report; and
 - (2) must be allowed an opportunity to comment on material of a factual nature to be included in the report.

8.7.5 [Deleted]

8.7.6 Recovery of reporting costs

Note

Clause 8.7.6 has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

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

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

Part E Reliability panel

Note

This part has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

8.8 Reliability Panel

8.8.1 Purpose of Reliability Panel

- (a) The functions of the *Reliability Panel* are to:
 - (1) monitor, review and report on the performance of the *market* in terms of *reliability* of the *power system*;
 - (1A) on the advice of *AEMO*, determine the *system restart standard*;
 - (1B) review and make recommendations on the *reliability standard* and *reliability settings* under clause 3.9.3A;
 - (2) review and, on the advice of *AEMO*, determine the *power system security standards*;
 - (2A) for the purposes of *contingency event* management, develop and *publish* principles and guidelines that determine how *AEMO* should maintain *power system security* while taking into account the costs and benefits to the extent practicable;

- (2B) determine, and modify as necessary, and *publish* the *template for generator compliance programs*;
- (2C) on the advice of *AEMO*, determine which *non-credible contingency events* are to be *protected events* and any conditions applicable to the determination, in accordance with clause 8.8.4;
- (2D) if the *Reliability Panel* considers it necessary or desirable, determine guidelines for *power system frequency risk reviews* conducted by *AEMO* under clause 5.20A.1; requests for *protected event* declaration by *AEMO* under clause 5.20A.4; or the *Reliability Panel's* determination of *protected events* under clause 8.8.4;
- (2E) if the *Reliability Panel* considers it necessary or desirable, identify scenarios *AEMO* must study in preparing the *EAAP* for the purposes of rule 3.7C(k)(1);
- (3) while *AEMO* has power to issue *directions* in connection with maintaining or re-establishing the *power system* in a *reliable operating state*, determine guidelines governing the exercise of that power;
- (4) while *AEMO* has power to enter into contracts for the provision of *reserves*, determine policies and guidelines governing *AEMO's* exercise of that power;
- (5) report to the *AEMC* and *participating jurisdictions* on overall *power system reliability* matters concerning the *power system* and on the matters referred to in clauses 8.8.1(a)(1B), (2), (2C) and (3), and make recommendations on *market* changes or changes to the *Rules* and any other matters which the *Reliability Panel* considers necessary;
- (6) monitor, review and *publish* a report on the *system standards* in terms of whether they appropriately and adequately describe the expected technical performance conditions of the *power system*;
- (7) monitor, review and *publish* a report on the implementation of *automatic access standards* and *minimum access standards* as *performance standards* in terms of whether:
 - (i) their application is causing, or is likely to cause, a material adverse effect on *power system security*; and
 - (ii) the *automatic access standards* and *minimum access standards* should be amended or removed;
- (8) consider requests made in accordance with clause 5.3.3(b2) and, if appropriate, determine whether an existing Australian or international standard, or a part thereof, is to be adopted as a *plant standard* for a particular class of *plant*;
- (9) determine guidelines identifying or providing for the identification of operating incidents and other incidents that are of significance for the purposes of the definition of "Reviewable operating incident" in clause 4.8.15; and
- (10) if the *Reliability Panel* considers it necessary or desirable, consider the most recent *Transition Plan for System Security* and provide

written commentary to *AEMO* on the *Transition Plan for System Security*.

- (b) In performing its functions set out in clause 8.8.1(a)(1) the *Reliability Panel* must not monitor, review or report on the performance of the *market* in terms of *reliability* of *distribution networks*, although it may collate, consider and report information in relation to the *reliability* of *distribution networks* as measured against the relevant standards of each *participating jurisdiction* in so far as the *reliability* of those *networks* impacts on overall *power system reliability*.
- (c) The principles and guidelines *published* under clause 8.8.1(a)(2A):
 - (1) must be developed, and may only be amended, in accordance with the consultation process set out in clause 8.8.3;
 - (2) must include transitional arrangements which take into account the need to allow for the development and testing of an appropriate methodology by *AEMO*; and
 - (3) must take into account the results of any decision to revise *network constraints*.
- (d) A request for declaration of a *protected event*, or revocation of a declaration, may only be made, and must be determined, in accordance with clause 8.8.4.

8.8.2 Constitution of the Reliability Panel

- (a) The *Reliability Panel* must consist of:
 - (1) a commissioner of the *AEMC* appointed by the *AEMC* to act as chairperson for a period of up to three years;
 - (2) the chief executive officer or a delegate of *AEMO*; and
 - (3) at least 5 but not more than 8 other persons appointed by the *AEMC* for a period of up to three years, such persons to include:
 - (A) a person representing *Generators*;
 - (B) a person representing *Market Customers*;
 - (C) a person representing *Transmission Network Service Providers*;
 - (D) a person representing *Distribution Network Service Providers*;
 - (E) a person representing the interests of end use customers for electricity; and
 - (F) at the *AEMC*'s discretion, up to 3 other persons representing interests not otherwise represented, in order to achieve the broad representation described in clause 8.8.2(c)(1).
- (b) Subject to clause 8.8.2(d) any person who has previously served on the *Reliability Panel* is eligible for reappointment to the *Reliability Panel* in accordance with this clause 8.8.2.
- (c) In making appointments to the *Reliability Panel* under clause 8.8.2(a)(3), the *AEMC* must, to the extent reasonably practicable and subject to clause 8.8.2(c1), give effect to the intention that the persons so appointed:

- (1) should be broadly representative, both geographically and by reference to *Registered Participants* and *participating jurisdictions*, of those persons with direct interests in the *reliability* and safety of electricity *supply* under the *market* arrangements and in *power system security*;
- (2) may include *Registered Participants* or their *representatives* or *participating jurisdictions*;
- (3) must be independent of *AEMO*; and
- (4) must, except in the case of the persons representing *Network Service Providers* appointed under clauses 8.8.2(a)(3)(C) and (D), be independent of all *System Operators*,

and if at any time:

- (5) a person on the *Reliability Panel*, other than the chief executive officer or a delegate of *AEMO*, ceases to be independent of *AEMO*; or
- (6) a person on the *Reliability Panel*, other than the persons representing *Network Service Providers* appointed under clauses 8.8.2(a)(3)(C) and (D), ceases to be independent of any *System Operator*,

the *AEMC* must remove that person from the *Reliability Panel*.

- (c1) The persons referred to in clauses 8.8.2(a)(3)(A), (B), (C) and (D) must be appointed and removed by the *AEMC* after consultation with the class of *Registered Participants* the person is to represent, and the *AEMC* must:
 - (1) appoint a person agreed to by at least one third in number of the relevant class of *Registered Participants*, having regard to the preference expressed by the majority of the *Registered Participants* in the relevant class who responded in writing to the consultation by the *AEMC*; and
 - (2) commence consultation on the removal of such a person if requested to do so by a member of the relevant class of *Registered Participants*, and must remove that person if so agreed by at least one third in number of the relevant class of *Registered Participants*.
- (d) The *AEMC* may remove any member of the *Reliability Panel*, including the chairperson, at any time during his or her term in the following circumstances:
 - (1) the person becomes of unsound mind or his or her estate is liable to be dealt with in any way under a law relating to mental health; or
 - (2) the person fails to discharge the obligations of that office imposed by the *Rules*.
- (d1) The persons referred to in clauses 8.8.2(a)(3)(E) and (F) must be appointed and removed by the *AEMC* after such consultation as the *AEMC* considers appropriate with the classes of interests those persons represent and, subject to such consultation, may be removed at any time for any reason.
- (e) A person may resign from the *Reliability Panel* by giving notice in writing to that effect to the *AEMC*.

- (f) The *Reliability Panel* must meet and regulate its meetings and conduct its business in accordance with the *Rules*.
- (g) A decision of the *Reliability Panel* on any matter may be made by a majority of the members comprising the *Reliability Panel*. Where the members of the *Reliability Panel* are equally divided on any matter, the chairperson has a casting vote.
- (h) The *AEMC* may appoint a commissioner of the *AEMC* (other than the chairperson of the *AEMC* or the chairperson of the *Reliability Panel*) as the acting chairperson of the *Reliability Panel* on a standing basis. If the chairperson of the *Reliability Panel* is unable to perform the obligations of that office for an extended period of time (including any period in which a scheduled meeting of the *Reliability Panel* is held), the chairperson must notify the acting chairperson. The acting chairperson has the powers and functions of the chairperson of the *Reliability Panel* for such periods of time.

8.8.3 Reliability Panel review process

- (a) As soon as practicable, the *Reliability Panel* must determine:
 - (1) the *power system security standards*;
 - (2) the guidelines referred to in clause 8.8.1(a)(3);
 - (3) the policies and guidelines referred to in clause 8.8.1(a)(4);
 - (4) the guidelines referred to in clause 8.8.1(a)(9);
 - (5) the *system restart standard*; and
 - (6) the *template for generator compliance programs*,in accordance with this clause 8.8.3.
- (aa) The *system restart standard* must:
 - (1) be reviewed and determined by the *Reliability Panel* in accordance with the *SRAS Objective*;
 - (2) identify the maximum amount of time within which *SRASs* are required to restore *supply* in an *electrical sub-network* to a specified level, under the assumption that *supply* (other than that provided under a *SRASs* agreement acquired by *AEMO* for that *electrical sub-network*) is not available from any neighbouring *electrical sub-network*;
 - (3) include the aggregate required reliability of *SRASs* for each *electrical sub-network*;
 - (4) apply equally across all *regions*, unless the *Reliability Panel* varies the *system restart standard* between *electrical sub-networks* to the extent necessary:
 - (A) to reflect any technical system limitations or requirements; or
 - (B) to reflect any specific economic circumstances in an *electrical sub-network*, including but not limited to the existence of one or more *sensitive loads*;

- (5) specify that a *SRAS* can only be acquired by *AEMO* under a *SRASs* agreement for one *electrical sub-network* at any one time;
 - (6) include guidelines to be followed by *AEMO* in determining *electrical sub-networks*, including the determination of the appropriate number of *electrical sub-networks* and the characteristics required within an *electrical sub-network* (such as the amount of *generation* or *load*, or electrical distance between *generation centres*, within an *electrical sub-network*); and
 - (7) include guidelines specifying the diversity and strategic locations required of *SRASs*.
- (b) At least once each *financial year* and at such other times as the *AEMC* may request, the *Reliability Panel* must conduct a review of the performance of the *market* in terms of *reliability* of the *power system*, the *reliability standard*, the *power system security standards*, the *system restart standard*, the guidelines referred to in clause 8.8.1(a)(3), the policies and guidelines referred to in clause 8.8.1(a)(4) and the guidelines referred to in clause 8.8.1(a)(9). The *Reliability Panel* must conclude each annual review under this clause by the end of the *financial year* following the *financial year* to which the review relates.
- (ba) At least every 5 years from the date the *template for generator compliance programs* is determined pursuant to clause 8.8.3(a) and at such other times as the *AEMC* may request, the *Reliability Panel* must conduct a review of the *template for generator compliance programs* in accordance with this clause 8.8.3. Following such a review, the *Reliability Panel* may amend the *template for generator compliance programs* in accordance with its report to the *AEMC* submitted under clause 8.8.3(j).
- (c) Subject to paragraph (c1), the *AEMC* must advise the *Reliability Panel* of the terms of reference for any determination or review by the *Reliability Panel*.
- (c1) The *AEMC*:
- (1) may advise the *Reliability Panel* of standing terms of reference in relation to the reviews described in clauses 8.8.3(b) and 8.8.3(ba) from time to time; and
 - (2) may, but is not required to, advise the *Reliability Panel* of terms of reference in relation to the review described in clause 8.8.1(a)(1B).
- (c2) The *Reliability Panel* must follow the consultation process in paragraphs (d) to (l) when carrying out its functions, unless otherwise specified in this paragraph or elsewhere in the *Rules*. The *Reliability Panel* is not required to follow the process in paragraphs (d) to (l) for the purposes of its functions under clauses 8.8.1(a)(1B), 8.8.1(a)(2C), 8.8.1(a)(2E), 8.8.1(a)(8) or 8.8.3(b).
- (d) The *Reliability Panel* must give notice to all *Registered Participants* of the commencement of a determination or review by requesting the *AEMC* to publish the notice pursuant to paragraph (k). The notice must give particulars of the terms of reference for the determination or review (as the

case may be) and the deadline for the receipt of any submissions to the *Reliability Panel*.

- (e) The deadline for receipt of submissions must not be earlier than 4 weeks following publication of the notice required under paragraph (d) or such other time specified by the *AEMC* in any request for a review.
- (f) The *Reliability Panel* may hold a meeting open to the public for any determination or review by the *Reliability Panel*, and must hold such a meeting if an interested party requests one in writing. The *Reliability Panel* must give reasonable notice of any such meeting.
- (g) The meeting referred to in paragraph (f):
 - (1) may be conducted in person, by telephone, video conference or other method of communication selected by the *Reliability Panel*; and
 - (2) if conducted in person, must be held in the capital city of one of the *participating jurisdictions* as selected by the *Reliability Panel*.
- (h) The *Reliability Panel* may obtain such technical advice or assistance from time to time as it thinks appropriate including, without limitation, advice or assistance from *AEMO* and any *Registered Participant*.
- (i) In undertaking any review and preparing any report and recommendations, the *Reliability Panel* must take into consideration the policy statements, directions or guidelines published by the *AEMC* from time to time.
- (j) Following the conclusion of the meeting (if any) conducted pursuant to paragraph (f) and consideration by the *Reliability Panel* of any submissions or comments made to it, the *Reliability Panel* must submit a written report to the *AEMC* on the review setting out its recommendations or determinations, its reasons for those recommendations or determinations and the procedure followed by the *Reliability Panel* in undertaking the review or determination. The report must be submitted to the *AEMC* by the deadline for reporting specified by the *AEMC* in any request for a review.
- (k) The *AEMC* must, within 10 *days* of receiving from the *Reliability Panel* a notice, report or other document pursuant to this clause 8.8.3, publish that document on the *AEMC* website (with the exclusion of material that cannot be disclosed consistently with the *AEMC*'s obligations of confidentiality).
- (l) The recommendations of the *Reliability Panel* may include (without limitation) recommended changes to the *Rules* in relation to matters concerning *reliability* of the *power system*.

8.8.4 Determination of protected events

- (a) A request for declaration of a *non-credible contingency event* as a *protected event* or for the revocation of such a declaration may only be submitted by *AEMO*. The request must be in accordance with clause 5.20A.4 or clause 5.20A.5 as applicable.
- (b) The *Reliability Panel* must comply with the *Rules consultation procedures* in relation to the determination of each request under paragraph (a).
- (c) In determining the request, the *Reliability Panel* must have regard to the information provided by *AEMO* in the request and may request further

information or obtain such technical advice or assistance from time to time as it thinks appropriate including, without limitation, information, advice or assistance from *AEMO* and any *Registered Participant*.

- (d) In determining the request, the *Reliability Panel* may undertake its own assessment of the costs and benefits of managing the *non-credible contingency event* as a *protected event*, including:
 - (1) costs to operate the *power system* in a *secure operating state* if the event is declared;
 - (2) costs associated with any proposal for a new or modified *emergency frequency control scheme* or other *network* investment in connection with managing the event;
 - (3) the benefits of mitigating the consequences of the event occurring by managing it as a *protected event*.
- (e) In making a determination that declares a *non-credible contingency event* to be a *protected event* or revokes that declaration, the *Reliability Panel* must have regard to the *national electricity objective*.
- (f) When the *Reliability Panel* makes a determination under this clause, then subject to the provisions in the *Rules* applicable to *protected events*, the *Reliability Panel* may at the same time determine any other matters that the *Reliability Panel* considers necessary or appropriate in relation to the *protected event*, which may include:
 - (1) provision for the declaration of the *protected event* or the revocation of a declaration to come into effect at a future time, which may be a specified date or may be determined by reference to matters specified in the determination, such as the commissioning of a new or modified *emergency frequency control scheme* or the satisfaction of other conditions specified in the determination;
 - (2) matters relating to the availability and operation of an *emergency frequency control scheme*;
 - (3) matters relating to *AEMO's* operation of the *power system* for that *protected event*; and
 - (4) changes to the principles and guidelines published under clause 8.8.1(a)(2A) to apply in respect of the *protected event* for the purposes of clause 4.2.6(b).
- (g) When the *Reliability Panel* makes a determination under this clause that provides for the availability and operation of a new or modified *emergency frequency control scheme* in connection with a *protected event*, the *Reliability Panel* must at the same time determine the *protected event EFCS standard* applicable to the scheme.
- (h) The final report of the *Reliability Panel* under the *Rules consultation procedures* must include:
 - (1) if the *Reliability Panel* has determined to make a declaration, the terms of the declaration, any conditions applicable to it and any other matters determined under paragraph (f) or (g);

- (2) the rationale for the determination, including the costs and benefits that the *Reliability Panel* had regard to and the rationale for any *protected event EFCS standard* determined by the *Reliability Panel*; and
 - (3) where applicable, any other options considered and the corresponding expected *power system security* outcomes and costs and benefits.
- (i) The *Reliability Panel* must maintain and publish a list of all *protected events* (including events that will be *protected events* when the relevant declaration comes into effect) and each *protected event EFCS standard*.

Part F Rules consultation procedures

8.9 Rules Consultation Procedures

8.9.1 General provisions relating to the Rules consultation procedures

Definitions

- (a) In this rule 8.9:

Non-material Proposal means a Proposal that, if implemented, will be unlikely to have a significant effect on the *NEM* or on the activities of the *Registered Participants* to which the Proposal relates.

procedure change request has the meaning set out in clause 8.9.3(b).

Proposal means a proposed new Relevant Determination or a proposed amendment to an existing Relevant Determination.

Relevant Determination means a determination, recommendation, document or specified action to which this rule 8.9 applies.

When the standard, expedited and minor rules consultation procedures apply

- (b) This rule 8.9 applies 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*.
- (c) The *consulting party* must comply with the *standard rules consultation procedure* in relation to a Proposal unless paragraph (d) or paragraph (e) applies.
- (d) If the *consulting party* considers the Proposal is a Non-material Proposal but is not an amendment of the kind described in paragraph (e), the *consulting party* must comply with:
 - (1) the *expedited rules consultation procedure*; or
 - (2) the *standard rules consultation procedure*,at its discretion, subject to clause 8.9.3(g).

- (e) If the *consulting party* considers the Proposal is an amendment of a minor or administrative nature, the *consulting party* must comply with the *minor rules consultation procedure*.

Consulting party to publish submissions and other materials

- (f) For each stage of consultation under the *expedited rules consultation procedure* or the *standard rules consultation procedure*, the *consulting party* must publish (subject to its confidentiality obligations):
 - (1) submissions received by the relevant due date; and
 - (2) as part of the reports required under this rule 8.9, summaries of the material issues raised in:
 - (i) the submissions referred to in sub-paragraph (1); and
 - (ii) any additional consultation the *consulting party* conducted under paragraphs (k) and (l),and the *consulting party's* responses to those material issues.

Where documents are to be published

- (g) In this rule 8.9, a requirement for a *consulting party* to publish a document requires the *consulting party* to publish the document on its website, subject to paragraphs (h) to (j).
- (h) If the *consulting party* is a *Transmission Network Service Provider* consulting under rule 5.18, a requirement under this rule 8.9 to publish a document is met when the *Transmission Network Service Provider* has published the document on its website and given a copy of the document to *AEMO*. *AEMO* must publish the document on its website within 3 *business days* of receiving it.
- (i) If the *consulting party* is the *Reliability Panel*, a requirement under this rule 8.9 to publish a document is met by publication of that document on the *AEMC's* website.
- (j) If the *consulting party* is the *Information Exchange Committee*, a requirement under this rule 8.9 to publish a document is met by publication of that document on *AEMO's* website. *AEMO* must publish the document on its website within 3 *business days* of receiving it.

Individual meetings and additional consultation

- (k) At any time in a period in which an interested party may make written submissions in a consultation process under this rule 8.9, an interested party may request a meeting with the *consulting party* if it wishes to discuss complex, sensitive or confidential matters relating to the Proposal. The *consulting party* must:
 - (1) hold the meeting within a reasonable period of time after the request;
 - (2) conduct another form of consultation as described in paragraph (l), if the *consulting party* reasonably considers that form of consultation is more appropriate in the circumstances; or

- (3) respond to the interested party giving reasons why it is not reasonably practicable to hold a meeting or other form of consultation.
- (l) For the avoidance of doubt, in addition to the required consultation procedures below and any meetings held under subparagraph (k)(1), at any stage the *consulting party* may conduct other forms of consultation including publishing issues or discussion papers, establishing and seeking input from working groups or advisory panels, and holding conferences, workshops, meetings or information sessions.

8.9.2 Standard rules consultation procedure

Initial consultation

- (a) Where this rule 8.9.2 applies, the *consulting party* must publish a consultation paper with:
 - (1) an explanatory statement that sets out particulars of the Proposal, the issues involved and options to address them, if applicable;
 - (2) the provision of the *Rules* under which the *consulting party* is making the Proposal;
 - (3) an invitation to make written submissions to the *consulting party* on the consultation paper; and
 - (4) a due date for written submissions, which must be no earlier than 20 *business days* from the date of the consultation paper.

Consultation on draft document

- (b) No later than 50 *business days* after the due date for submissions under subparagraph (a)(4), the *consulting party* must publish a draft report with:
 - (1) a draft of the Proposal, which is (where the Proposal is for changes to an existing Relevant Determination) marked up with the proposed amendments;
 - (2) reasons for its approach to the Proposal;
 - (3) the material required under clause 8.9.1(f)(2);
 - (4) the proposed date on which the new or amended Relevant Determination would take effect; and
 - (5) an invitation to make written submissions to the *consulting party* on the draft report, and a due date for submissions, which must be no earlier than 20 *business days* after the date of the draft report.

Publication of final document

- (c) No later than 50 *business days* after the due date for submissions under subparagraph (b)(5), the *consulting party* must publish a final report with:
 - (1) the new or amended Relevant Determination, including (where the Proposal was for changes to an existing Relevant Determination) a version marked up with the final amendments;
 - (2) the material required under clause 8.9.1(f)(2);

- (3) the reasons for its decision to make the new or amended Relevant Determination; and
- (4) the date on which the new or amended Relevant Determination takes effect.

Extension of time

- (d) The *consulting party* may extend the time limit for publishing a draft or final report under paragraphs (b) or (c), by publishing a notice before the expiry of the relevant time limit, if the *consulting party* considers an extension is necessary because:
 - (1) the Proposal involves issues of sufficient complexity or difficulty; or
 - (2) there is a material change in circumstances.
- (e) The notice under paragraph (d) must specify the new date for publication of the draft or final report (as applicable), the reasons for the extension of time, and any further consultation the *consulting party* proposes to undertake in accordance with clause 8.9.1(l).

8.9.3 Expedited rules consultation procedure

Consultation on draft document

- (a) If this clause 8.9.3 applies, the *consulting party* must publish a draft report with:
 - (1) a draft of the Proposal, which is (where the Proposal is for changes to an existing Relevant Determination) marked up with the proposed amendments;
 - (2) an explanatory statement that sets out the provision of the *Rules* under which the *consulting party* is making the Proposal, the *consulting party's* reasons for considering the Proposal is a Non-material Proposal, and the *consulting party's* reasons for the Proposal;
 - (3) information on the process to submit a procedure change request under paragraph (b), and the due date for submitting a request;
 - (4) the proposed date on which the new or amended Relevant Determination would take effect; and
 - (5) an invitation to make written submissions to the *consulting party* on the draft report, and a due date for submissions, which must be no earlier than 20 *business days* after the date of the draft report.

Switching to standard rules consultation procedure

- (b) If any person considers the Proposal is not a Non-material Proposal, the person may request the *consulting party* to use the *standard rules consultation procedure* instead of the *expedited rules consultation procedure*. A request under this paragraph (**procedure change request**) must:
 - (1) be in writing;

- (2) contain reasons why the person considers the Proposal is not a Non-material Proposal, and may contain other reasons why the person considers the *consulting party* should use the *standard rules consultation procedure*; and
- (3) be sent to the *consulting party* within 10 *business days* of the date the *consulting party* publishes the draft report under paragraph (a).
- (c) If a *consulting party* receives a procedure change request, it must, as soon as practicable, publish the procedure change request and notice of the *consulting party's* decision in accordance with paragraph (d), (e) or (f), with reasons for that decision.
- (d) If, after considering the reasons given in a procedure change request, the *consulting party* still considers the Proposal is a Non-material Proposal, the *consulting party* may continue to consult using the *expedited rules consultation procedure*.
- (e) If, after considering the reasons given in a procedure change request, the *consulting party* no longer considers the Proposal is a Non-material Proposal, the *consulting party* must apply the *standard rules consultation procedure*.
- (f) Whether or not it has received a procedure change request, or considers the Proposal is a Non-material Proposal, the *consulting party* may, by publishing a notice at any time within the period specified in paragraph (h), choose to apply the *standard rules consultation procedure* instead of the *expedited rules consultation procedure*.
- (g) If paragraph (e) or (f) apply, the *consulting party* is taken to have complied with the requirements of clause 8.9.2(a) by publishing the draft report under paragraph (a) of this clause 8.9.3 and, thereafter, must comply with the *standard rules consultation procedure* and relevant timeframes.

Publication of final document under expedited rules consultation procedure

- (h) Subject to paragraph (g), no later than 50 *business days* after the date of publication of the draft report under paragraph (a), the *consulting party* must publish a final report with:
 - (1) the new or amended Relevant Determination, including (where the Proposal was for changes to an existing Relevant Determination) a version marked up with the final amendments;
 - (2) the material required under clause 8.9.1(f)(2);
 - (3) the reasons for its decision to make the new or amended Relevant Determination; and
 - (4) the date on which the new or amended Relevant Determination takes effect.

8.9.4 Minor rules consultation procedure

- (a) If this clause 8.9.4 applies, the *consulting party* must publish:

- (1) the Proposal, marked up with the proposed amendments to the Relevant Determination;
 - (2) the reasons for making the proposed amendments and why the *consulting party* considers the amendments to be minor or administrative in nature; and
 - (3) an invitation for comments on the proposed amendments within 10 *business days* of publication of the Proposal.
- (b) As soon as reasonably practicable after the due date for comments under subparagraph (a)(3), the *consulting party* must publish:
- (1) the amended Relevant Determination, including a version marked up with the final amendments;
 - (2) any comments given to the *consulting party* under subparagraph (a)(3); and
 - (3) a notice, stating the reasons for making the final amendments and the date on which the amended Relevant Determination takes effect.

Part G Consumer advocacy funding

Note

This part has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

8.10 Consumer advocacy funding obligation

(a0) In this rule:

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

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

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

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

Part H Augmentations

Note:

This Part has no effect in this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*).

8.11 Augmentations

8.11.1 Application

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

8.11.2 Object

The objects of this rule are:

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

8.11.3 Definitions

In this Part:

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

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

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

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

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

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

relevant limit means \$10 million.

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

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

8.11.4 Planning criteria

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

8.11.5 Construction of augmentation that is not a contestable augmentation

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

Note:

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

- (c) An incumbent *declared transmission system operator* that is required by, or agrees with, a *Connection Applicant* to construct an *augmentation* that is not a *contestable augmentation*, must negotiate with the *Connection Applicant*

in good faith with a view to reaching agreement on the terms of an appropriate amendment to their *connection agreement*.

- (d) However, if the incumbent *declared transmission system operator* applies for revocation and substitution of its *revenue determination* on the basis of an *augmentation* direction, or a requirement by or agreement with a *Connection Applicant* to construct an *augmentation* that is not a *contestable augmentation*, negotiations are not required on a matter to which the application relates.

8.11.6 Contestable augmentations

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

8.11.7 Construction and operation of contestable augmentation

- (a) For the purpose of procuring the construction and operation of a *contestable augmentation*, *AEMO* must:
 - (1) publish a generally applicable tender and evaluation process that accords with best practice as currently understood and may include, but need not be limited to:
 - (i) typical timetables for the tender and evaluation process; and
 - (ii) details of typical evaluation criteria; and
 - (iii) indications of the way in which different matters are to be or might be weighted for evaluation purposes; and
 - (iv) provision for declaration and management of conflicts of interest; and
 - (v) provision for the debriefing of unsuccessful tenderers; and
 - (2) *publish* a register of persons who have from time to time expressed interest in being *contestable* providers and keep the register up to date to reflect the developing market.
- (b) For each *contestable augmentation*, *AEMO* must:

- (1) call for expressions of interest from persons who may be interested in constructing and operating the proposed *contestable augmentation*; and
- (2) prepare, in consultation with the incumbent *declared transmission system operator*, a timetable allowing *AEMO* and the incumbent *declared transmission system operator* a reasonable time to comply with their respective obligations and allowing a reasonable construction period having regard to the nature and extent of the *augmentation*; and
- (3) prepare, in consultation with the incumbent *declared transmission system operator*, a detailed tender specification setting out the scope of the work involved in the *augmentation*, including details of the technical interface required for the *augmentation*; and
- (4) prepare and issue an invitation to tender setting out details of the *contestable augmentation* and the tender and evaluation process - details that must (without limitation):
 - (i) provide as much certainty as is reasonably practicable to tenderers regarding the terms and conditions subject to which they are invited to tender for the work involved in the *contestable augmentation*; and
 - (ii) identify the relevant land (if any) that is available for or in connection with the *contestable augmentation*, including (to the extent reasonably practicable) details of current usage and, if available, a geotechnical and environmental report on the land; and
 - (iii) specify (to the extent reasonably practicable) the services to be provided under the *network agreement*;
- (5) make available to potential *contestable* providers a copy of any proposed *augmentation connection agreement* or *network agreement*.
- (c) The incumbent *declared transmission system operator* must:
 - (1) provide, within a reasonable period specified by *AEMO*, information and assistance reasonably required by *AEMO* for the preparation of the tender documents such as information about the technical interface and information required for the preparation of the tender specification; and
 - (2) negotiate in good faith with a potential *contestable* provider about changes to the proposed *augmentation connection agreement* that are sought or suggested by that potential *contestable* provider.
- (d) The incumbent *declared transmission system operator* may tender for work involved in a *contestable augmentation*.
- (e) *AEMO* must evaluate, assess and negotiate responses to the invitation to tender in accordance with the published tender and evaluation process.
- (f) After completing the tender and evaluation process, *AEMO* must notify all persons who submitted tenders of the successful tender.

- (g) *AEMO* may only proceed with a *contestable augmentation* on the basis of a tender accepted after evaluation and assessment in accordance with the published tender and evaluation process.
- (h) The successful tenderer:
 - (1) must enter into an agreement with *AEMO*, based on the successful tender, for the construction of the *augmentation*; and
 - (2) must (unless the incumbent *declared transmission system operator* is itself the successful tenderer) enter into an *augmentation connection agreement* with the incumbent *declared transmission system operator*.
- (i) This clause does not apply to a *funded augmentation* unless *AEMO* and the *Connection Applicant* agree to the conduct of a tender process.

8.11.8 Funded augmentations that are not subject to the tender process

- (a) This clause applies to a *contestable augmentation* that is a *funded augmentation* except in the case where *AEMO* and the *Connection Applicant* agree to the conduct of a tender process in accordance with clause 8.11.7.
- (b) For each *contestable augmentation* to which this clause applies, *AEMO* must:
 - (1) prepare, in consultation with the incumbent *declared transmission system operator* and the *Connection Applicant*, a timetable allowing *AEMO* and the incumbent *declared transmission system operator* a reasonable time to comply with their respective obligations and allowing a reasonable construction period having regard to the nature and extent of the *augmentation*; and
 - (2) prepare, in consultation with the incumbent *declared transmission system operator* and the *Connection Applicant*, a detailed specification setting out the scope of the work involved in the *augmentation*, including details of the technical interface required for the *augmentation*; and
 - (3) make available to the incumbent *declared transmission system operator* and the *Connection Applicant* a copy of any proposed *augmentation connection agreement*.
- (c) The incumbent *declared transmission system operator* must:
 - (1) provide, within a reasonable period specified by *AEMO*, information and assistance reasonably required by *AEMO* for the preparation of an agreement for the construction of proposed *contestable augmentation*; and
 - (2) negotiate in good faith with the *Connection Applicant* about any changes to the proposed *augmentation connection agreement* that are sought or suggested by the *Connection Applicant*; and
 - (3) enter into an *augmentation connection agreement* with the *Connection Applicant*.

- (d) The *Connection Applicant* must enter into an agreement with *AEMO* for the construction of the *augmentation*.

8.11.9 Contractual requirements and principles

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

8.11.10 Annual planning review

AEMO must in its annual planning review indicate:

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

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

S8.11.1 Risk allocation

- (a) This clause sets out the risk allocation principles.
- (b) **Site/Construction Risk**

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

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

- (c) **Statutory approval risk**

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

This risk is allocated to the *contestable* provider.

(d) **Native title risk**

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

This risk is allocated to the *contestable* provider.

(e) **Output specification risk**

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

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

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

This risk is allocated to the *contestable* provider.

(g) **Operating risk**

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

This risk is allocated to the *contestable* provider.

(h) **Network and interface risk**

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

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

(i) **Industrial relations risk**

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

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

S8.11.2 Minimum requirements for agreements relating to contestable augmentation

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

S8.11.3 Matters to be dealt with in relevant agreements

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

Part I Values of customer reliability

8.12 Development of methodology and publication of values of customer reliability

- (a) For the purposes of this rule 8.12:
jurisdictional regulator means:
 - (1) the Independent Pricing and Regulatory Tribunal of New South Wales established by section 5(1) of the *Independent Pricing and Regulatory Tribunal Act 1992* of New South Wales;
 - (2) the Essential Services Commission established by section 7(1) of the *Essential Services Commission Act 2001* of Victoria;
 - (3) the Queensland Competition Authority established by section 7 of the *Queensland Competition Authority Act 1997* of Queensland;

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

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

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

- (b) The *AER* must, in accordance with the *Rules consultation procedures*:
 - (1) develop a methodology to be used by the *AER* to calculate values of customer reliability (**VCR methodology**); and
 - (2) review and update the VCR methodology in accordance with paragraph (f).
- (c) Notwithstanding paragraph (b), the *AER* may make minor and administrative amendments to the VCR methodology without complying with the *Rules consultation procedures*.
- (d) The VCR methodology must:
 - (1) include a mechanism for directly engaging with:
 - (i) *retail customers*; and
 - (ii) *Customers* (other than *retailers*),which may include the use of surveys;
 - (2) include a mechanism for adjusting the values of customer reliability on an annual basis; and
 - (3) be *published* promptly after it has been developed under paragraph (b).
- (e) The *AER* must ensure that the VCR methodology developed under paragraph (b), and any values of customer reliability calculated in accordance with that methodology, are consistent with the VCR objective.
- (f) The *AER* must, prior to each date on which the values of customer reliability are updated under subparagraph (g)(2):
 - (1) review the VCR methodology; and
 - (2) following such review, *publish* either:
 - (i) an updated VCR methodology; or

- (ii) a notice stating that the existing VCR methodology was not varied as a result of the review.
- (g) The *AER* must:
 - (1) *publish* the first values of customer reliability, calculated in accordance with the VCR methodology, on or before 31 December 2019;
 - (2) update the values of customer reliability at least once every five years, with the updated values to be *published* promptly thereafter; and
 - (3) maintain on its website the values of customer reliability as updated from time to time.
- (h) For the purpose of complying with the *Rules consultation procedures* under paragraph (b), the *AER* must consult with:
 - (1) the *Reliability Panel*;
 - (2) *AEMO*;
 - (3) each jurisdictional regulator;
 - (4) *Registered Participants*; and
 - (5) such other persons who, in the *AER*'s reasonable opinion, have, or have identified themselves to the *AER* as having, an interest in the VCR methodology and values of customer reliability.

Part J Customer export curtailment values

8.13 Development of methodology and publication of values

- (a) For the purposes of this rule 8.13:
 - CECV methodology** has the meaning given in clause 8.13(b).
 - CECV objective** is that the CECV methodology and customer export curtailment values should be fit for purpose for any current or potential uses of customer export curtailment values that the *AER* considers to be relevant.
 - customer export** means *supply* to a *distribution network* of electricity generated by a *micro resource operator* or *non-registered DER provider*.
 - customer export curtailment** means reducing, tripping or otherwise limiting customer export.
 - jurisdictional regulator** has the meaning in clause 8.12(a).
- (b) The *AER* must, in accordance with the *Rules consultation procedures*:
 - (1) develop a methodology (**CECV methodology**) to be used by the *AER* to calculate customer export curtailment values each year; and
 - (2) review and where applicable update the CECV methodology in accordance with paragraph (f).
- (c) Notwithstanding paragraph (b), the *AER* may make minor and administrative amendments to the CECV methodology without complying with the *Rules consultation procedures*.

- (d) The *AER* must *publish* and maintain on its website:
 - (1) the CECV methodology promptly after it has been developed or updated; and
 - (2) each year, the customer export curtailment values determined in accordance with the CECV methodology.
- (e) The *AER* must ensure that the CECV methodology developed under paragraph (b), and any customer export curtailment values calculated in accordance with that methodology, are consistent with the CECV objective.
- (f) The *AER* must, at least once every five years, review the CECV methodology and following such review, *publish* either:
 - (1) an updated CECV methodology; or
 - (2) a notice stating that the existing CECV methodology was not varied as a result of the review.
- (g) For the purpose of complying with the *Rules consultation procedures* under paragraph (b), the *AER* must consult with:
 - (1) *AEMO*;
 - (2) each jurisdictional regulator;
 - (3) *Registered Participants*; and
 - (4) such other persons who, in the *AER*'s reasonable opinion, have, or have identified themselves to the *AER* as having, an interest in the CECV methodology and customer export curtailment values.

Part K Trial waivers, trial Rules and trial projects

8.14 Purpose

- (a) The purpose of this Part K is to make provision for:
 - (1) the granting of *trial waivers* by the *AER* to enable *trial projects* to be carried out;
 - (2) the information that is required to be provided to the *AEMC* in a request for the making of a *trial Rule*; and
 - (3) oversight and monitoring by the *AER* of *trial projects* that are carried out under *trial waivers* or *trial Rules*.
- (b) For the purposes of this Part K:
 - (1) **explicit informed consent** to participating in a *trial project* is given by a *retail customer* to a person carrying out, or involved in the carrying out, of a *trial project* where:
 - (i) the person, or another person acting on behalf of that person, has clearly, fully and adequately disclosed all matters relevant to the consent of the *retail customer*, including each specific purpose or use of the consent; and
 - (ii) the *retail customer* gives consent to participating in the *trial project*:

- (A) in writing signed by that customer;
 - (B) by electronic communication generated by that customer;
or
 - (C) verbally, so long as the verbal consent is recorded in such a way that it can be verified and made the subject of a record under subparagraph (2).
- (2) whenever a person is required to obtain the explicit informed consent of a *retail customer* under this Part or under the *Trial Projects Guidelines*, the person must:
 - (i) create a record of each explicit informed consent in such format and including such information as will enable:
 - (A) the *AER* to verify the person's compliance with the relevant requirements under this Part or under the *Trial Projects Guidelines* relating to explicit informed consent; and
 - (B) the person to answer enquiries from a *retail customer* relating to the customer's explicit informed consent;
 - (ii) retain that record for at least the duration of the *trial waiver* or *trial Rule* (as applicable); and
 - (iii) on request by a *retail customer* and at no charge, provide the customer with access to a copy of the record of any explicit informed consent given by that customer.
- (3) it is established that the required explicit informed consent is not obtained if:
 - (i) the *retail customer* raises the issue with the trial applicant either by asserting that the consent was not obtained or by requesting production of a record of the consent; and
 - (ii) the issue is so raised within 12 months after the date of commencement of the *trial project*; and
 - (iii) the trial applicant either admits that the consent was not obtained or does not produce a satisfactory record of the informed consent as soon as practicable, but in any event within 10 *business days*, after the issue is so raised.
- (4) references to *retail customer* include a customer of an exempt seller (as defined under the *NERL*).

8.15 The Trial Projects Guidelines

- (a) The *AER* must make and *publish Trial Projects Guidelines* that specify:
 - (1) the approach the *AER* proposes to follow in considering and granting *trial waivers*, including:
 - (i) the timeline within which the *AER* will determine applications for *trial waivers*;

- (ii) the *AER's* proposed approach to assessing whether the applicant has satisfied the *information requirements* and the *eligibility requirements*;
 - (iii) consumer protection measures that the *AER* may require as a condition of granting a *trial waiver*; and
 - (iv) reporting obligations required by the *AER* as a condition of granting a *trial waiver*, which may include a requirement for the applicant to publicly report on *trial project* outcomes;
- (2) the approach that the *AER* proposes to follow in overseeing the conduct and outcomes of *trial projects*;
- (3) each of the other matters required or permitted under this Part to be specified in the *Trial Projects Guidelines*;
- (4) any matters required or permitted under the *NERR* or the *NGR* to be specified in the *Trial Projects Guidelines*; and
- (5) any other matter that the *AER* considers appropriate in relation to the grant of *trial waivers* and the monitoring of *trial projects* conducted under *trial waivers* or *trial Rules*.
- (b) The *AER*:
 - (1) must develop and make the *Trial Projects Guidelines*; and
 - (2) may amend the *Trial Projects Guidelines* from time to time, in accordance with the *Rules consultation procedures*.
- (c) The *AER* may make minor or administrative amendments to the *Trial Projects Guidelines* under paragraph (b)(2) without complying with the *Rules consultation procedures*.

8.16 Trial waivers

8.16.1 Application for a trial waiver

- (a) An application for the grant of a *trial waiver* must be made to the *AER* in the form (if any) prescribed in the *Trial Projects Guidelines*.
- (b) An application must contain the following information (the **information requirements**):
 - (1) details of the particular provisions of the *NEL* and/or provisions of the *Rules* in respect of which the person seeks a *trial waiver*;
 - (2) identification of the *trial project confidential information*; and
 - (3) any other information specified in the *Trial Projects Guidelines*.
- (c) After receiving an application for the grant of a *trial waiver*, the *AER* may, by notice in writing, request the applicant to provide, by a specified date, such further information as the *AER* may require in connection with the proposed *trial project* and the requested *trial waiver*.
- (d) For the purposes of Part 3 Division 6 of the *NEL*, information provided by an applicant to the *AER* in, or in connection with, an application for a *trial waiver* that is not identified as *trial project confidential information* is not

information given to the *AER* in confidence. Disclosure of such information by the *AER* is authorised use and disclosure for the purposes of section 44AAF(2) of the *Competition and Consumer Act 2010* (Cth).

8.16.2 Initial consideration of a proposed trial waiver

- (a) Subject to paragraph (b), after receiving an application for the grant of a *trial waiver*, the *AER* may terminate its consideration of the application at any time if:
 - (1) the *AER* considers that the application does not comply with the *information requirements*;
 - (2) the applicant does not respond to a request for further information under clause 8.16.1(c) by the specified date, or the *AER* considers that the applicant has not provided a sufficient response to such a request;
 - (3) the *AER* considers that the proposed *trial project* can be carried out satisfactorily without a *trial waiver*; or
 - (4) the *AER* otherwise considers that the application is misconceived or lacking in substance.
- (b) If, having regard to the matters set out in paragraph (a), the *AER* considers that it should terminate its consideration of an application, the *AER*:
 - (1) must notify the applicant in writing that it has, and the reasons why it has, formed that view, and invite the applicant to make submissions or to provide further information within 5 *business days*; and
 - (2) must take account of any submissions or information so provided by the applicant before deciding to terminate its consideration of the application.

8.16.3 Consultation regarding a proposed trial waiver

- (a) Subject to paragraph (c), the *AER* must carry out public consultation in relation to a proposed *trial waiver*, unless it is satisfied that the proposed *trial waiver* and *trial project*:
 - (1) is unlikely to have an impact on other *Registered Participants*; and
 - (2) is unlikely to have a direct impact on *retail customers* other than those who provide explicit informed consent to participate in the *trial project*.
- (b) The *AER* must consult *AEMO* in relation to any potential impact of a proposed *trial waiver* and *trial project* on *AEMO's* operation of the *power system* and the *market*.
- (c) The *Trial Projects Guidelines* must specify the procedures by which the *AER* will carry out public consultation in relation to a proposed *trial waiver*.

8.16.4 Eligibility requirements

- (a) In considering whether to grant a *trial waiver*, the *AER* must have regard to:

- (1) whether the carrying out and monitoring of the *trial project* is likely to contribute to the development of regulatory and industry experience;
 - (2) whether the *trial project* may have an adverse effect on the safety, reliability or security of supply of electricity and the measures that the applicant will take to avoid or mitigate such risks;
 - (3) whether the extent and nature of the *trial project confidential information* claimed by the applicant may impair:
 - (i) the *AER's* ability to provide appropriate public transparency in relation to the conduct and outcomes of *trial projects*; or
 - (ii) the appropriate development of regulatory and industry experience arising from the *trial project*; and
 - (4) any other matter required by the *NEL*.
- (b) In considering whether to grant a *trial waiver*, the *AER* may have regard to any other matter it considers relevant, including (but not limited to) any relevant consideration that may be specified in the *Trial Projects Guidelines*.

Note:

Section 18ZL(2) of the *NEL* requires the *AER* to have regard to the innovative trial principles (as defined in the *NEL*) and any matter required by the *Rules* before making a determination on whether to grant a *trial waiver*.

8.16.5 Extension or variation of a trial waiver

- (a) The *AER*, having regard to the matters set out in clauses 8.16.4(a) and (b), may extend a *trial waiver* for a further specified period.

Note:

Under section 18ZQ(2) of the *NEL*, the *AER* must have regard to the innovative trial principles (as defined in the *NEL*) before granting an extension of a *trial waiver*. Under section 18ZQ(1) of the *NEL*, an extension of a *trial waiver* cannot exceed the period prescribed by the National Electricity (South Australia) Regulations.

- (b) The *Trial Projects Guidelines* may provide for any additional mandatory requirements and any relevant considerations for the extension of a *trial waiver*.
- (c) The *AER* may:
- (1) prior to the scheduled expiry of a *trial waiver*, impose such further conditions, or modify the existing conditions, of the *trial waiver* with the agreement of the applicant; or
 - (2) if it extends a *trial waiver*, impose such further conditions, or modify or retain the existing conditions of the *trial waiver*, as it considers appropriate.

8.16.6 Evidence of a trial waiver

- (a) A certificate signed by a person (or persons) authorised by the *AER* certifying that a person named in the certificate has been granted a *trial waiver*, and setting out:
- (1) the extent and duration of the *trial waiver*; and

- (2) any conditions subject to which the *trial waiver* was granted, is evidence of the *trial waiver*.
- (b) The *AER* must establish, maintain and *publish* a register of all certificates issued under paragraph (a).

8.17 Request for a trial rule

- (a) For the purposes of section 92(1)(a) of the *NEL*, a request for the making of a *trial Rule* must contain the following information:
 - (1) the name and address of the person making the request;
 - (2) a detailed outline of the proposed *trial project*;
 - (3) an explanation of how the proposed *trial project* will or is likely to lead to the achievement of the *national electricity objective*;
 - (4) an explanation of the expected benefits and costs of the *trial project* for consumers and other *market participants* and the innovation that it may lead to;
 - (5) a description of the proposed *trial Rule*;
 - (6) a summary of the person's previous engagement with the *AER*, *AEMO* or any *Jurisdictional Regulator* in relation to the *trial project*;
 - (7) an explanation of why the *trial Rule* is needed in order to conduct the *trial project*;
 - (8) an explanation of how consumer protections will be maintained under the *trial Rule*, including whether and how the explicit informed consent of *retail customers* participating in the *trial project* will be obtained;
 - (9) the applicant's approach to consumer engagement and dispute management;
 - (10) an explanation of how risks to the safety, reliability and security of the supply of electricity will be avoided or mitigated;
 - (11) an explanation of whether the *trial project* may have an adverse effect on *AEMO's* operation of the *power system* and the *market*, and if so, how such adverse effects will be avoided or mitigated;
 - (12) evidence that the person has the operational and financial ability to carry out the *trial project*;
 - (13) identification of the *trial project confidential information*;
 - (14) an explanation of how the *trial Rule* is likely to contribute to the development of regulatory and industry experience; and
 - (15) an outline of the trial closure process, and how participating *retail customers* will revert to their pre-existing supply arrangements after closure of the *trial project*.
- (b) For the purposes of section 24 of the *Australian Energy Market Commission Establishment Act 2004* (SA) (as applied by section 31 of the *NEL*), information provided by an applicant to the *AEMC* in, or in connection

with, a request for the making of a *trial Rule* that is not identified as *trial project confidential information* is not information given to the *AEMC* in confidence.

8.18 Monitoring of trial projects

8.18.1 Application

This Rule applies in relation to *trial projects* conducted under *trial waivers* and *trial Rules*.

8.18.2 Early termination and opting out of trial projects

- (a) The *Trial Projects Guidelines* must provide for processes by which and grounds upon which:
 - (1) a *retail customer* participating in a *trial project* may opt out of a *trial project*;
 - (2) the *AER* may:
 - (i) terminate a *trial waiver* before its scheduled expiry; or
 - (ii) recommend to the *AEMC* that the *AEMC* revoke a *trial Rule* before its scheduled expiry,including provision for the *AER* to do so either on its own motion, or upon application by the trial applicant, a *retail customer* or *Registered Participant* affected by the *trial project*, or *AEMO*; and
 - (3) a person to whom a *trial waiver* is granted must allow a *retail customer* to opt out of a *trial project*.