Part 3 Decision-making under the Law

Division 1 Preliminary

7 Definitions

In this Part:

***decision* maker** means:

(a) the NCC; or

(b) the AER; or

(c) AEMO.

overall time limit means the time within which a *decision* maker is required by the *Law* to make a final *decision* on a proposal.

proponent means a person who makes or submits a proposal.

proposal means:

(a) an application; or

(b) an *access arrangement proposal*; or

(c) a proposal that a *decision* maker itself initiates for making a *decision* of a particular kind under the *Law*.

Division 2 Decision making models

8 Standard consultative procedure

(1) If the *Law* requires a *decision* maker to deal with a proposal in accordance with the *standard consultative procedure*, the *decision* maker must proceed in accordance with this rule.

(2) The *decision* maker must proceed as follows:

(a) the *decision* maker must publish a notice on its website and in a newspaper circulating generally throughout Australia:

(i) describing the proposal and giving the address of a website at which the proposal can be inspected; and

(ii) inviting written submissions on the proposal within 15 business days of the date of the notice; and

(b) the *decision* maker must, after considering relevant submissions made within the time allowed in the notice and other matters the *decision* maker considers relevant, make a draft *decision*; and

(c) if the draft *decision* identifies changes to the proposal that should, in the *decision* maker's opinion, be made, the *decision* maker must:

(i) if it is the proponent – modify its proposal accordingly; or

(ii) if someone else is the proponent – notify the proponent of the *decision* and the reasons for it and give the proponent a reasonable opportunity to modify its proposal in the light of the *decision*;

(d) the *decision* maker must then publish, on its website and in any other way the *decision* maker considers appropriate:

(i) the draft *decision*; and

(ii) any modification of the proposal made in the light of the draft *decision*; and

(iii) a notice inviting written submissions and comments on the draft *decision*, and (if applicable) the modified proposal, within a period (at least 15 business days) stated in the notice;

(e) the *decision* maker must, within 20 business days after the end of the period allowed for making submissions and comments on the draft *decision*, consider all submissions and comments made within the time allowed and make its final *decision*.

(3) A draft or final *decision* must:

(a) be in writing; and

(b) state the terms of the *decision* and the reasons for it.

(4) After making a final *decision*, the *decision* maker must, without delay:

(a) if the *decision* is in the nature of a recommendation – deliver the final *decision* to the authority or person to whom the recommendation is addressed; and

(b) give copies of the final *decision* to the parties to the administrative process in which the *decision* is made; and

(c) publish the final *decision* on the *decision* maker's website; and

(d) make the final *decision* available for inspection during business hours at the *decision* maker's public offices.

(5) Subject to the *Law*, a *decision* made in accordance with this rule takes effect on the date provided for its commencement under the terms of the *decision* or, if no date is so provided, 10 business days after the date of the *decision*.

9 Expedited consultative procedure

(1) If the *Law* requires a *decision* maker to deal with a proposal in accordance with the *expedited consultative procedure*, the *decision* maker must proceed in accordance with this rule.

(2) The *decision* maker must proceed as follows:

(a) the *decision* maker must, after such consultation (if any) as the *decision* maker considers appropriate (and any revision of the proposal that results from that consultation), make a draft *decision*; and

(b) the *decision* maker must give copies of the draft *decision* to the parties to the administrative process in which the *decision* is to be made; and

(c) the *decision* maker must publish, on its website and in any other way the *decision* maker considers appropriate, the draft *decision* together with a notice:

(i) stating why the *decision* is required; and

(ii) giving reasonable details of the context in which the draft *decision* has been made, the issues involved and the possible effects of the *decision*; and

(iii) inviting written submissions and comments on the draft *decision* within 15 business days from the date of the notice;

(d) the *decision* maker must, within 20 business days after the end of the period allowed for making submissions and comments on the draft *decision*, consider all submissions and comments made within the time allowed and make its final *decision*.

(3) A draft or final *decision* must:

(a) be in writing; and

(b) state the terms of the *decision* and the reasons for it.

(4) After making a final *decision*, the *decision* maker must, without delay:

(a) if the *decision* is in the nature of a recommendation – deliver the final *decision* to the authority or person to whom the recommendation is addressed; and

(b) give copies of the final *decision* to the parties to the administrative process in which the *decision* is made; and

(c) publish the final *decision* on the *decision* maker's website; and

(d) make the final *decision* available for inspection during business hours at the *decision* maker's public offices.

(5) Subject to the *Law*, a *decision* made in accordance with this rule takes effect on the date provided for its commencement under the terms of the *decision* or, if no date is so provided, 10 business days after the date of the *decision*.

9A Extended consultative procedure

(1) This rule applies wherever any person (the **consulting party**) is required by these rules to comply with the *extended consultative procedure*.

(2) The consulting party must:

(a) give a notice to all persons with whom consultation is required:

(i) giving particulars of the matter under consultation; and

(ii) inviting written submissions on the matter under consultation; and

(iii) fixing a date (to be not less than 25 business days after the notice is given) as the closing date for submissions;

(b) publish the notice.

(3) Unless otherwise specified in these rules, consultation is required with:

(a) all Registered participants; and

(b) all persons registered as Intending participants; and

(c) any other persons who appear to the consulting party to have a proper interest in the matter; and

(d) if the consulting party is not AEMO-AEMO.

(4) A written submission:

(a) must be received by the consulting party on or before the closing date for submissions (and if not so received will not be regarded as a valid submission for the purposes of this rule); and

(b) may state whether the person making the submission considers that a meeting about the matter under consultation is necessary or desirable and, if so, the reasons why such a meeting is necessary or desirable.

(5) The consulting party must within 20 business days from the closing date for submissions consider all valid submissions and if, after considering the submissions, the consulting party concludes that it is necessary or desirable to

hold a meeting or meetings, the consulting party must endeavour to hold the meeting or meetings within a further 25 business days.

(6) When the consulting party has completed its consideration of the matter under consultation (and any meetings to be held under subrule (5) have been held), the consulting party:

(a) must publish a draft report setting out:

(i) the conclusions and any determinations proposed by the consulting party; and

(ii) the reasons for the consulting party's conclusions; and

(iii) the procedure followed by the consulting party in its consideration of the matter; and

(iv) a summary of each issue that the consulting party considers material contained in a valid written submission or raised in the course of a meeting and the consulting party's response to that issue; and

(v) in a notice at the front of the draft report – an invitation to the persons from whom submissions were sought to make written submissions to the consulting party on the draft report before a closing date (at least 10 business days after publication of the draft report) stated in the invitation; and

(b) must make the draft report available to the persons from whom submissions were sought; and

(c) subject to the consulting party's obligations of confidentiality, must, at the request of a person from whom a submission was sought, make available material submitted to the consulting party.

(7) The consulting party must consider all valid submissions on the draft report within 30 business days after the closing date for submissions and, at the conclusion of its consideration, the consulting party:

(a) must publish a final report setting out:

(i) the conclusions and determinations of the consulting party; and

(ii) the reasons for the consulting party's conclusions; and

(iii) the procedure followed by the consulting party in its consideration of the matter; and

(iv) a summary of each issue raised in a valid submission that the consulting party considers material and the consulting party's response to that issue; and

(b) must make the final report available to the persons from whom submissions were sought.

(8) A notice, draft report or final report to be published under this rule must be published as follows:

(a) if the consulting party is the AEMC, the AER or AEMO – the consulting party must publish the notice or report on its website;

(b) in any other case – the consulting party must give AEMO a copy of the notice or report and AEMO must, within 3 business days of receipt of the notice or report, publish it on its website.

(9) The consulting party must not make a *decision* or determination to which the *extended consultative procedure* applies until the consulting party has completed all the procedures set out in this rule (but substantial compliance is sufficient).

9B Rate of return consultative procedure

(1) If the Law requires a *decision* maker to comply with the *rate of return consultative procedure* in making, amending, replacing or reviewing the *rate of return guidelines*, the *decision* maker must proceed in accordance with this rule.

(2) The *decision* maker must proceed as follows:

(a) the *decision* maker must publish a notice on its website and in a newspaper circulating generally throughout Australia:

(i) describing the proposed *rate of return guidelines*, amendments or review, and giving the address of a website on which the details of such guidelines, amendments or review, and the reasons for them, are published; and

(ii) inviting written submissions on the proposed *rate of return guidelines*, amendments or review within no less than 30 *business days* of the date of the notice;

(b) the *decision* maker may publish such issues, consultation and discussion papers, and hold such conferences and information sessions in relation to the proposed *rate of return guidelines*, amendments or review as it considers appropriate; and

(c) the *decision* maker must, within 80 *business days* of the date of the notice referred to in subrule (2)(a) and after considering relevant submissions made within the time allowed in the notice and other matters the *decision* maker considers relevant, make its final *decision*.

(3) The final *decision* must:

(a) be in writing; and

(b) state the terms of the *decision* and the reasons for it; and

(c) include a summary of each issue raised in submissions, that the *decision* maker reasonably considers to be material, together with the *decision* maker's response to each such issue.

(4) The *decision* maker may extend the time within which it is required to make its final *decision* if:

(a) the consultation involves issues of unusual complexity or difficulty; or

(b) the extension of time has become necessary because of circumstances beyond the *decision* maker's control.

(5) After making a final decision, the *decision* maker must, without delay:

(a) publish the final *decision* on the *decision* maker's website; and

(b) make the final *decision* available for inspection during business hours at the *decision* maker's public offices.

Division 3 Summary rejection of certain proposals

10 General power to reject non-compliant or frivolous proposals

(1) A *decision* maker may, despite any other provision of these rules, reject a proposal on the ground that:

(a) the proposal has not been made in accordance with the *Law*; or

(b) relevant information or materials have not been provided as required by the *Law*; or

(c) the proposal is frivolous or vexatious.

(2) A *decision* to reject a proposal under this rule must be made within 10 business days after receipt of the proposal by the *decision* maker.

(3) A *decision* to reject a proposal under this rule must:

(a) be made in writing; and

(b) set out the reasons for the *decision*; and

(c) be given to the proponent without delay.

Division 4 Time limits

11 Calculation of time

(1) If the *Law* fixes a time limit within which a *decision* maker must make a *decision* on a proposal, then for the purpose of calculating elapsed time, any of the following periods is, if the decision-maker so decides, to be disregarded:

(a) any period allowed the proponent for correction or revision of the proposal;

(b) any period taken by the proponent or any other person to provide information, relevant to the *decision* maker's *decision* on the proposal, in response to a notice or requirement issued or made by the *decision* maker under the *Law*;

(c) any period allowed for public submissions on the proposal or on a draft *decision* on the proposal;

(d) any period allowed for submissions on a proposal by the AER to disclose confidential information, any period then taken by the AER to consider the submissions and decide whether to disclose the information, and any period occupied by a review of the *decision*;

(e) the period between commencement and conclusion of court proceedings to determine questions arising from the proposal or the *decision* maker's handling of the proposal.

(2) The decision-maker must:

(a) give notice of a *decision* under this rule to the proponent; and

(b) publish notice of the *decision* on its website.

12 Power to extend time limits

(1) Subject to limitations fixed by the *Law*, a *decision* maker may extend the time within which:

(a) a proponent is required by the *Law* to take a particular step in a *decision* making process; or

(b) the *decision* maker is required by the *Law* to make a *decision* on a proposal.

(2) The *decision* maker cannot, however, extend an overall time limit unless:

(a) the proposal involves questions of unusual complexity or difficulty; or

(b) the extension of time has become necessary because of circumstances beyond the *decision* maker's control.

(3) If a *decision* maker extends an overall time limit, the *decision* maker must:

(a) give notice of the extension to the proponent (unless the *decision* maker is itself the proponent); and

(b) publish notice of the extension on its website and in a newspaper circulating generally throughout Australia.

(4) The notice must:

(a) specify the extent of the extension; and

(b) give reasons for the extension.

13 Absolute time limit for full access arrangement proposal

(1) Despite the other provisions of this Division, there is an absolute overall time limit of 13 months between the date on which a proponent submits a *full access arrangement proposal* for the AER's approval and the date the AER makes a final *decision* on the proposal.

(2) The absolute overall time limit:

(a) is unaffected by a *decision* that a particular period, or particular periods, of elapsed time are to be disregarded; and

(b) cannot be extended.

14 Decisions made out of time

(1) If a *decision* maker fails to make a *decision* within an overall time limit (whether absolute or not), the *decision* maker must report on its failure to the MCE.

Note:

Non-compliance with a time limit does not invalidate the *decision* maker's *decision*: See section 332 of the *NGL*.

(2) The report must:

(a) state the extent the *decision* was (or will be) out of time; and

(b) describe the *decision* maker's handling of the proposal; and

(c) give reasons for the *decision* maker's failure to make the *decision* within the relevant time limit.

(3) A report under this rule must be published on the *decision* maker's website as soon as practicable after it is given to the MCE.