



Australian Energy Market Commission

FINAL RULE DETERMINATION

National Electricity Amendment (Reliability
Panel governance arrangements) Rule 2018

Rule Proponent

Reliability Panel

7 June 2018

**RULE
CHANGE**

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About the AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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Summary

The Australian Energy Market Commission (AEMC) has made a rule that clarifies and updates several clauses of the National Electricity Rules (NER) relating to the Reliability Panel's (Panel) governance arrangements. The final rule clarifies and updates provisions relating to:

- Panel composition, and appointments and removal of members
- consultation procedures
- timing and publication of specific reports and reviews.

The rule has been made in response to a rule change request submitted by the Panel on 22 December 2017. The expedited rule change process was used for this rule change. The AEMC determined that it should make the rule as proposed, with amendments.

The final rule commences on 1 July 2018.

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1 Reliability Panel's rule change request

1.1 The rule change request

On 22 December 2017, the Reliability Panel (Panel) submitted a rule change request to the Australian Energy Market Commission (AEMC) seeking to amend particular clauses of the National Electricity Rules (NER) relating to the Panel's governance arrangements.

Overall, the request looked to:¹

- clarify some existing clauses
- update some clauses to align with the Panel's existing practices
- address some matters related to the current governance of the Panel.

The rule change request proposed amendments to:

- clause 3.9.3A – Reliability standard and settings review
- clause 3.13.3(u) – Reports on the accuracy of demand forecasts
- rule 8.8 – Reliability Panel (governance arrangements)
- rule 8.9 – Rules consultation procedures.

1.2 Background

The Reliability Panel was established by the AEMC as required by the National Electricity Law (NEL).² The functions and powers of the Panel are:

- to monitor, review and report on, in accordance with the NER, the safety, security and reliability of the national electricity system
- at the request of the AEMC, to provide advice in relation to the safety, security and reliability of the national electricity system
- any other functions or powers conferred on it under the NEL and the NER.³

The NER set out the membership requirements of the Panel and additional details on the Panel's functions and responsibilities.⁴

The Chair of the Panel initiated internal work to identify whether the current governance structure for the Panel was appropriate given the pace of change in the energy market. The review assessed governance arrangements in the context of the existing scope of Panel roles and responsibilities. The review was completed in July

¹ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 5. See: <https://www.aemc.gov.au/rule-changes/reliability-panel-governance-arrangements>.

² Section 38(1) of the NEL. The Reliability Panel was initially established in 1997 by the National Electricity Code Administrator. The NEL provides that the AEMC must establish the Panel. With the establishment of the AEMC in 2005, the Panel formed part of the AEMC's institutional arrangements.

³ NEL section 38(2).

⁴ See in particular NER rule 8.8.

2017, with the Panel agreeing to submit a rule change request to the AEMC on several governance matters.

The AEMC has considered the Panel's governance arrangements previously. In August 2013, the AEMC made a more preferable rule on the Reliability Panel Public Meetings rule change request, providing the Panel with greater flexibility in how it conducts its public meetings.⁵

In March 2015, the AEMC made a more preferable rule on the Governance Arrangements and Implementation of the Reliability Standard and Settings rule change request. This sought to amend the governance arrangements for the reliability standard and settings.⁶ The final rule required the Panel to develop the Reliability Standard and Settings Guidelines in accordance with the Rules Consultation Procedures.⁷

1.3 Rationale for the rule change request

The Panel's rule change request outlines a number of issues that may be grouped as follows:

- Panel composition, appointments and removal of members
- consultation procedures
- timing and publication of specific reports and reviews.

This section sets out:

- issues raised in the rule change request that the Panel is seeking to address
- solutions proposed in the rule change request.

1.3.1 Panel composition, appointments and removal of members

Acting Chair

NER clause 8.8.2(a)(1) provides that the Chair of the Panel must be an AEMC Commissioner and be appointed by the AEMC. Currently, the NER do not provide for the nomination of an Acting Chair. If the standing Chair required extended leave, then the efficient operation of the Panel could be compromised (unless another Chair was appointed by the AEMC). At the extreme, it could mean the Panel could not make a decision if Panel members' views were equally divided on a matter as the Chairperson holds the casting vote.

Currently, to take extended leave the standing Chair would need to be removed by the AEMC. Following this, the AEMC would have to appoint another Commissioner temporarily (other than the AEMC Chair) as the Panel Chair. After the original Chair's leave ends, the Commission would need to officially remove the temporary Chair and

⁵ *National Electricity Amendment (Reliability Panel Public Meetings) Rule 2013*. See: <https://www.aemc.gov.au/rule-changes/reliability-panel-public-meetings>.

⁶ *National Electricity Amendment (Governance Arrangements and Implementation of the Reliability Standard and Settings) Rule 2015*. See: <https://www.aemc.gov.au/rule-changes/governance-of-the-reliability-standard-and-setting>.

⁷ *Ibid.*

re-appoint the original Chair. These procedures are arguably unnecessarily complicated.

In the rule change request, the Panel proposes to amend the NER to allow the Chair of the AEMC to appoint a Commissioner (other than the AEMC Chair) as an Acting Chair of the Panel for a specific period of time.⁸

Discretionary Panel members

NER clause 8.8.2(a) establishes that the Panel is composed of seven to ten members. It is to comprise an AEMC Commissioner to act as Chair, the CEO (or a delegate) of the Australian Energy Market Operator (AEMO), and at least five but not more than eight persons appointed by the AEMC. Five of the AEMC-appointed representatives must include a person each representing a particular registered participant category under the NER, specifically:

- generators
- market customers
- transmission networks
- distribution networks.

The AEMC may choose to appoint up to three more Panel members, referred to here as discretionary members.

Currently, the NER do not outline the general purpose of allowing for discretionary members. The NER also do not provide how such members are to be appointed and removed by the AEMC.

In the rule change request, the Panel seeks to amend the NER to:

- outline the purpose of discretionary members on the Panel
- specify that discretionary members are to be appointed and removed with appropriate consultation, as with the person representing the interests of end-user customers.⁹

Security and safety

Clause 8.8.2(c)(1) of the NER requires the AEMC to appoint persons to the Panel to broadly represent direct interests in reliability. Security and safety of electricity supply are not mentioned in this clause, even though security and safety are among the Panel's functions under the NEL.¹⁰

The Panel proposes the NER to be amended in order to have the provisions on the Panel representation be consistent with the Panel's functions under the NEL. Specifically, the

⁸ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 5.

⁹ *Ibid*, p. 6.

¹⁰ NEL, s.38(2).

Panel seeks for the appointments to have regard to persons with security and safety interests, in addition to reliability interests.¹¹

Note that while general safety in the national electricity market (NEM) is an important consideration under NEL, the Panel limits its consideration of “safety” to maintaining power system security.¹² The Panel considers that the power system is safe when it is maintained and is operating in a secure condition.

The regulation of electrical safety and emergency response matters falls within the remit of jurisdictional departments or jurisdictional safety regulators in each state and territory. State and Territory legislation governs the safe supply of electricity by network service providers and the broader safety requirements associated with electricity use in households and businesses.

Independence of distribution network service providers

The NER provide that the persons appointed by the AEMC as Panel members must be independent of AEMO (the system operator).¹³ If a person on the Panel ceases to be independent of AEMO, the AEMC must remove that person from the Panel (subject to the exemptions).¹⁴ Currently, the exemption for independence from AEMO applies only to the transmission network service providers (TNSPs) and to the AEMO representative.¹⁵

In the rule change request, the Panel noted that increasingly often distribution network service providers (DNSPs) have to coordinate with the system operator in order to operate a safe, secure and reliable system as TNSPs do.¹⁶ The Panel considers that this should be reflected in the NER.

Therefore, in its rule change request, the Panel proposes to amend the NER to extend the exemption for independence from system operators to the Panel member representing DNSPs.¹⁷

The majority opinion for registered participant appointments

Currently, the AEMC may only appoint a person representing a class of Registered Participant, if that person is agreed to by at least “one third in number of the relevant class of

¹¹ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 7.

¹² Reliability Panel, *2017 Annual Market Performance Review*, final report, 20 March 2018, Sydney. See: <https://www.aemc.gov.au/sites/default/files/2018-03/Final%20report.pdf>. Power system security is defined in the NER as the safe scheduling, operation and control of the power system in accordance with the power system security principles. These principles include maintaining the power system in a secure operating state and returning the power system to a secure operating state following a contingency event or a significant change in power system conditions, including a major supply disruption. See NER Chapter 10.

¹³ Clause 8.8.2(c)(3) of the NER.

¹⁴ Clauses 8.8.2(c)(5) and (6) of the NER.

¹⁵ Clauses 8.8.2(c)(4), (5) and (6) of the NER.

¹⁶ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 7.

¹⁷ *Ibid.*

Registered Participants".¹⁸ The NER do not give the AEMC guidance on how it should regard nominees from the same class of Registered Participants who have at least the minimum one third of votes.

The Panel seeks to insert an additional provision in the appointment clause. This will require the AEMC to have regard to the preference expressed by the majority of the Registered Participants in the relevant class who voted on the nominees.¹⁹

The Panel considers that discretion provided to the AEMC by this proposed additional provision is beneficial. In the rule change request, the Panel states that there may be factors that the AEMC may be aware of and/or want to consider, such as the overall skills mix of the Panel, succession planning, diversity or member availability.

According to the Panel, these circumstances warrant retaining some flexibility for the AEMC in choosing between candidates.²⁰

Removal of a Panel member

Clause 8.8.2(d) of the NER currently sets out several circumstances in which the AEMC may remove any member of the Panel. In the rule change request, the Panel considered that some of these circumstances duplicate other provisions of the NER, and other circumstances do not appear to be relevant.²¹ Specifically, the Panel proposes to remove clauses 8.8.2(d)(1), (3) and (4) for the following reasons:²²

- Currently, Panel members may be removed if they become insolvent or under administration.²³ In the rule change request, the Panel notes that being under administration is a concept that applies to corporations, not people. While a Panel member may, as a person, become insolvent, it is not clear that this is necessarily a reason why they would no longer be able to perform their duties on the Panel (and if they do become unable to perform their duties, they may be removed under clause 8.8.2(d)(5)).²⁴
- Clause 8.8.2(d)(3) provides that a Panel member may be removed if he or she resigns. In the rule change request, the Panel notes that a separate provision (clause 8.8.2(e)) allows a Panel member to resign from the Panel by giving a written notice. The Panel recognises that clause 8.8.2(d)(3) was possibly intended to refer to a Panel member resigning from their employer. For example, resigning

¹⁸ Clause 8.8.2(c1)(1) of the NER.

¹⁹ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 7.

²⁰ Ibid.

²¹ Ibid.

²² Reliability Panel, *Reliability Panel governance arrangements*, attachment to the rule change request, 22 December 2017, p. 5.

²³ Clause 8.8.2(d)(1) of the NER.

²⁴ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 7.

from employment with a generator, where that person was appointed to the Panel to represent generators (under cl. 8.8.2(a)(3)(A)).²⁵

- The Panel considers in its rule change request that once a person resigns from their employer, it does not necessarily follow that they cease to be able to represent the relevant category of the energy sector. In addition, clause 8.8.2(c1)(2) requires the AEMC to remove a representative member if requested by a member of the relevant class and at least one third of the relevant class of Registered Participants agree. This could cover the situation where a person no longer represents the relevant sector.²⁶
- Clause 8.8.2(d)(3) also provides that a Panel member may be removed if he or she dies. The Panel argues that this provision is redundant, because on dying, a Panel member ceases to be a person. With no existence or legal agency, they are automatically no longer on the Panel.²⁷ Furthermore, the Panel states that even if this was not the case, the general provision allowing removal for failing to discharge the Panel member's obligations would cover this situation.²⁸
- Clause 8.8.2(d)(4) provides that a Panel member may be removed if the AEMC is required to remove the person under other provisions. In its rule change request, the Panel argues that this clause should be removed, as the other provisions²⁹ suffice.³⁰

1.3.2 Consultation procedures

The Reliability Panel applies two different consultation processes for its determinations and reviews: the Panel review process and Rules Consultation Procedures. The NER require the Panel to use the Panel review process for some Panel activities, and the Rules Consultation Procedures for other Panel activities.³¹

- The Panel review process has one round of public consultation and one report, with a mandatory public meeting.³²
- The Rules Consultation Procedures have two rounds of public consultation and an optional public meeting, with a draft report and a final report.³³

²⁵ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 7.

²⁶ Ibid, p.7-8.

²⁷ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 8.

²⁸ Ibid.

²⁹ Specifically, NER clauses 8.8.2(c) and 8.8.2(c1)(2).

³⁰ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 8.

³¹ Ibid, p. 10.

³² NER clauses 8.8.3(d) to (l).

³³ NER rule 8.9.

The Panel seeks to address the following four issues with the current consultation procedures through the rule change request.

Consultation round for the Annual Market Performance Review

For the Annual Market Performance Review, the Panel review process is applied. As described above, this procedure requires holding one round of consultation. The Panel argues that as this review is a factual, data-driven report of the state of the market, no consultation is required.³⁴ This is consistent with the approach of the energy market bodies who typically do not consult on their annual, factual reports.³⁵

Review of the established Reliability Standard and Settings Review Guidelines

Both the initial determination of and any amendments to the established Reliability Standard and Settings Review Guidelines follow the Rules Consultation Procedures. In the rule change request, the Panel proposes that the shorter Panel consultation process should apply for any review of the established Reliability Standard and Settings Review Guidelines. This would be similar to the approach taken for updating guidelines on AEMO's exercise of power to issue directions and exercise of power to enter into contracts for reserves.³⁶ The Panel believes this will promote timely decision-making and provision of information to the market. Also these arrangements, according to the Panel, will reduce unnecessary and duplicative calls on stakeholders' limited resources.³⁷

Public meeting

Generally, all Panel determinations and reviews, other than those which are specified to use the Rules Consultation Procedures, are performed under the Panel review process.³⁸ The Panel considers that the value of a mandatory public meeting for the Panel review process is unclear (clause 8.8.3(f)). Consequently, the rule change request proposes that a public meeting must be held only if a stakeholder requests one, but is optional otherwise, noting that the public meeting is optional under the Rules Consultation Procedures, which are longer procedures.³⁹ For example, the existing Panel review process was applied to the 2017 Annual Market Performance Review. However, stakeholders demonstrated no interest in attending a public meeting, and the meeting was not held.

³⁴ Ibid, p.9.

³⁵ The examples of annual, factual reports with no consultation include: AEMC's *Retail Competition Review*, AEMC's *Residential Electricity Price Trends Review*, AEMO's *Annual Report*, AER's *State of the Energy Market Report*, AER's *Annual Benchmarking Report*.

³⁶ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 9.

³⁷ Ibid, p.8.

³⁸ Rules Consultation Procedures apply to the Reliability Standard and Settings Review, development and amendment of reliability standard and settings guidelines, determinations regarding plant standards and determinations on which non-credible contingency events are to be protected events and any conditions applicable.

³⁹ Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 8.

The lack of interest from stakeholders to participate in a public meeting could be partly explained by the fact that the Annual Market Performance Review is the factual report on the state of the market, with stakeholders likely focussing their resources on policy matters. Therefore, the Panel considers that the requirement of a mandatory public meeting is not appropriate for the Panel review process. It proposes to make a meeting mandatory if a stakeholder requests one, but otherwise optional.⁴⁰

Publication of the Panel's notices and reports

In the rule change request the Panel also covered the matter of notices and reports publication. Currently, under the Rules Consultation Procedures AEMO is required to publish the Panel's notices and reports related to the issues under consultation. The Panel argues that given the AEMC established the Reliability Panel and the AEMC employees provide secretariat services for the Panel, it is appropriate for only the AEMC to publish the Panel's notices and reports.⁴¹

Current practice is that the Panel's reports are published on the AEMC website. Requiring them to be published by both the AEMC and AEMO arguably is inefficient.

1.3.3 Timing and publication of specific reports and reviews

Timing of Annual Market Performance Review

The NER (clause 8.8.3(b)) require the Panel to conduct the Annual Market Performance Review at least once each calendar year and at such other times as the AEMC may request.

The rule change request proposes that the Panel conduct the Annual Market Performance Review in respect of each financial year, and publish the review before the end of the following financial year.⁴²

In its rule change request, the Panel argues that the data used as a key input into this review is only available on a financial year basis.⁴³ In addition, the terms of reference for the Annual Market Performance Review specifically require the Panel to report historical unserved energy on a financial year basis.⁴⁴ Therefore, for the past several years the review has covered a financial year period.

Most other NEM publications are based on a financial year. By providing in the NER that the Annual Market Performance Review is to be prepared on a financial year basis,

40 Ibid.

41 Ibid.

42 Ibid, p.11.

43 For example, AEMO's *Electricity Forecasting Insights Report* (previously the *National Electricity Forecasting Report*) is one of the inputs into the Annual Market Performance Review. It is published in June each year. It presents electricity consumption, maximum and minimum demand forecasts on a financial year basis. Further, the underlying data that informs AEMO's reports is audited by AEMO pre-publication. Given the timeframes involved, there is generally limited opportunity for the Panel to receive verified data ahead of AEMO's documents being published.

44 *AEMC Terms of Reference to the Reliability Panel, Annual Market Performance Review*, 8 August 2017. See: <https://www.aemc.gov.au/markets-reviews-advice/annual-market-performance-review-2017>.

rather than a calendar year, could be beneficial for stakeholders. It will make it easier for them to navigate and compare information.

Publication of AEMO's demand forecast reports

The NER require AEMO to provide a report to the Panel on the accuracy of AEMO's demand forecasts by 1 November each year. The NER also require the Panel to publish these reports.⁴⁵

In its rule change request, the Panel argues that it is unclear why the Panel should be required to publish AEMO's reports. The Panel states that it does not have a role in the accuracy of AEMO's forecasts, as the Panel does not have sufficient information to assess such matters. Further, the Panel notes that in practice AEMO also publishes the reports on its own website.

Therefore, the Panel proposes to amend the NER to make it clear that AEMO, not the Panel, will periodically publish information on the accuracy of its demand forecasts on its own website.⁴⁶ The Panel argues that the proposed rules, if made, would promote transparency and clarity for market participants in relation to the Panel processes.

1.4 The rule making process

On 26 April 2018, the AEMC published a notice under section 95 of the National Electricity Law advising of the rule change request and inviting written submissions on it. A consultation paper identifying specific issues for consultation was also published. Submissions closed on 24 May 2018.

The AEMC received one submission, which is available on the AEMC website and is discussed in this paper.⁴⁷

The AEMC considered that the rule change request was a request for a non-controversial rule as defined in section 87 of the NEL. Accordingly, the AEMC commenced an expedited rule change process, subject to any written requests not to do so. The closing date for receipt of written requests was 10 May 2018. No objections were received to carrying this rule change under an expedited process. Accordingly, the rule change request was considered under an expedited process.⁴⁸

45 Clause 3.13.3(v).

46 Reliability Panel, *Reliability Panel governance arrangements*, rule change request, 22 December 2017, p. 11.

47 <https://www.aemc.gov.au/rule-changes/reliability-panel-governance-arrangements>

48 Section 96 of the NEL.

2 Final Rule Determination

This chapter outlines:

- the rule making test for changes to the NER
- the assessment framework for considering the rule change request, and
- the AEMC's consideration of the final rule against the national electricity objective.

2.1 The AEMC's final determination

In accordance with section 102 of the NEL, the AEMC has made the final rule determination in relation to the *Reliability Panel Governance Arrangements* rule change request. In accordance with section 103 of the NEL, the AEMC has determined to make, with amendments, the rule proposed by the rule proponent.

The AEMC's reasons for making the rule and the minor amendments made to the proposed rule are described further in this chapter.

The final rule relates to parts of the NER that apply in the Northern Territory, specifically rule 8.9. The AEMC has considered whether a uniform or differential rule should apply to the Northern Territory.⁴⁹ The final rule determination is to make a uniform rule because the final rule is not affected by the differences between the local electricity systems in the Northern Territory, nor by the differences between those systems and the interconnected national electricity system. The AEMC considers that the final rule will be able to operate in the Northern Territory without special arrangements. Therefore a differential rule is not likely to better contribute to the achievement of the national electricity objective (NEO) than a uniform rule.

Further information on the legal requirements for making this final rule determination is set out in Appendix A.

The final rule made by the AEMC is attached to and published with this final rule determination.

2.2 Rule making test

2.2.1 Achieving the national electricity objective

Under the NEL the AEMC may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the NEO.⁵⁰ This is the decision making framework that the AEMC must apply.

The NEO is:⁵¹

⁴⁹ See Appendix B for the definitions of a uniform rule and a differential rule and the AEMC's ability to make a differential rule.

⁵⁰ Section 88 of the NEL.

⁵¹ Section 7 of the NEL.

“to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.”

2.2.2 Applying the NEO in the Northern Territory

Under the Northern Territory legislation adopting the NEL, the AEMC must regard the reference in the NEO to the “national electricity system” as a reference to whichever of the following the AEMC considers appropriate in the circumstances having regard to the nature, scope or operation of the proposed rule:⁵²

- “(a) the national electricity system;
- (b) one or more, or all, of the local electricity systems;⁵³
- (c) all the electricity systems referred to above.”

For this rule change request, the AEMC has determined that the reference to the national electricity system in the NEO is to the national electricity system and all of the local electricity systems.

2.3 Assessment framework

In assessing the proposed rule, the AEMC considered that the relevant aspect of the NEO is the promotion of the efficient operation of electricity services for the long term interests of consumers with respect to the security and reliability of the national electricity system and the local electricity systems. To determine whether the proposed rule promotes the NEO, the AEMC considered the following principles:

- **Effective execution of responsibilities:** the potential of the proposed rule to allow the Panel to operate more effectively in discharging its responsibilities, therefore, contributing to the more efficient operation of the power system.
- **Transparency:** whether the proposed rule will promote transparency by providing clear, easy to understand governance arrangements of the Panel.
- **Appropriate and timely consultation processes:** whether the proposed rule will appropriately align consultation processes to the issues at hand and allow information to be provided to market participants in a more efficient and timely manner.

⁵² Section 14A of Schedule 1 to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (referred to here as the NT Act), inserting section 88(2a) into the NEL as it applies in the Northern Territory.

⁵³ These are specified Northern Territory systems, defined in schedule 2 of the NT Act.

- **Clear roles and responsibilities:** the potential of the proposed rule to provide clarity around roles and responsibilities regarding the publication of key reports thus providing easier access for market participants.

2.4 Reasons for making final rule

Having regard to the issues raised in the rule change request and the submission to the consultation paper, the AEMC is satisfied that the final rule will, or is likely to contribute to the achievement of the NEO. The reasons for this, taking into account the stakeholder submission, are outlined below.

2.4.1 Effective execution of responsibilities

The connection between governance and the efficient functioning of the NEM is important and is often mentioned in relevant industry reviews.⁵⁴ The Panel is a critical body in the NEM's governance framework. Its effective execution of responsibilities is essential for the efficient operation of the NEM. The AEMC considers that the proposals in the rule change request will allow the Panel to operate more effectively in discharging its responsibilities. This is particularly the case in allowing for the appointment of an Acting Chair and requiring composition to include representation of security and safety, as well as reliability, interests.

The AEMC agrees with the Panel's argument that the efficient operation of the Panel could be compromised if the standing Chair required extended leave unexpectedly. This could even mean the Panel could not make a decision if Panel members' views were equally divided on a matter as the Chairperson holds the casting vote. For this reason the AEMC decided to address this issue and adopt the Panel's approach regarding an Acting Chair, with an amendment.

The AEMC is of the view that the rule will provide a more practical outcome if it allows for an appointment of an Acting Chair on a standing, rather than temporary, basis. The standing Acting Chair will not be involved in the regular work of the Panel and will act as Chair only when the incumbent Chair is unable to perform the obligations of the role for an extended period of time.

This provision will allow the Chair of the Panel to retain the role during periods of leave, rather than having to be removed and then re-appointed. Further, unlike the Panel's proposed solution, these arrangements will avoid the need for the AEMC to make a formal appointment of the Acting Chair every time following a notification of the absence of the Chair. This will even further simplify the process and reduce the administrative burden of appointing Commissioners for the Acting Chair role.

⁵⁴ For instance, *Independent Review into the Future Security of the National Electricity market: Blueprint for the Future* (The Commonwealth of Australia, June 2017, Canberra) and *Review of Governance arrangements for Australian Energy Markets Final Report* (The Commonwealth of Australia, 2015, Canberra).

The AEMC considers that the proposed rule will improve the operations of the Panel. In turn this should contribute to the effective operation of electricity services for the long term interests of consumers.

2.4.2 Transparency

Submission

Energy Networks Australia's submission to the consultation paper was supportive of the overall intention of the rule change proposal. In its submission Energy Networks Australia supports:

- the proposed exemption for independence from system operators for DNSPs, as is currently the case for TNSPs. According to Energy Networks Australia, this seems beneficial and demonstrates some foresight, given the increasing need for distribution networks to better coordinate and collaborate with the system operator, and TNSPs.
- the suggested approaches to provide greater clarity, remove ambiguity, and remove redundant aspects of the NER in relation to aspects of the Panel's governance arrangements.

Energy Networks Australia also suggested that:

- the AEMC's potential flexibility in appointing a Panel member is important, but should be "limited to certain factors that mitigate against potential challenges."⁵⁵
- it is worth retaining the timeframe for the publication of AEMO's reports on the accuracy of the demand forecasts. Specifically, it proposes half-yearly reports for medium to long term forecasting, and within four months of completion of the forecast period.⁵⁶

AEMC's reasons

The AEMC considers the proposed rule changes make the existing governance arrangements easier to understand, and thereby more transparent. The AEMC agreed with the Panel's assessment that through the proposed rule greater transparency will be achieved by:

- clarifying the ability of the Panel to appoint discretionary members. The rule will clearly acknowledge the purpose of the discretionary members on the Panel and specify that they are to be appointed and removed with appropriate consultation, as with the person representing the interests of end-use customers.

The AEMC made an amendment to the rule specifying that discretionary Panel members and members representing the interests of end-use customers must be appointed and removed by the AEMC after such consultation as the AEMC

⁵⁵ Energy Networks Australia, Submission to the *Reliability Panel governance arrangements* rule change, 25 May 2018, p. 4. See: <https://www.aemc.gov.au/rule-changes/reliability-panel-governance-arrangements>

⁵⁶ Energy Networks Australia, Submission to the *Reliability Panel governance arrangements* rule change, 25 May 2018, p. 5. See: <https://www.aemc.gov.au/rule-changes/reliability-panel-governance-arrangements>

considers appropriate with the *classes of interests* those persons represent, rather than *interests*. This change was made to clarify that the AEMC must consult on the decision to appoint or remove a Panel member with stakeholders that have the same interests as the person being appointed or removed.

- clarifying the mechanisms for removal of a Panel member. The rule will streamline the circumstances under which a Panel member may be removed by taking out the circumstances that duplicate other provisions of the NER and those circumstances that are not relevant.
- resetting the timing of the Annual Market Performance Review. The rule will make the timing of this review clearer to market participants, as well as making it easier for participants to navigate and compare information.
- requiring AEMO to publish its reports on the accuracy of demand forecasts only on its own website. The rule will make clear that the Panel does not have a role in the accuracy of AEMO's forecasts. This is appropriate since the Panel does not have sufficient information to assess such matters.

In its submission to the consultation paper, Energy Networks Australia suggested that the AEMC's potential flexibility in appointing a Panel member is important, but should be "limited to certain factors that mitigate against potential challenges".⁵⁷ The AEMC recognises the importance of governing criteria in making appointments to the Panel. Some of these are set out in the NER. Specifically, persons appointed to the Panel 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.⁵⁸ Furthermore, criteria that the AEMC may want to consider include, but are not limited to:

- overall skills mix of the Panel
- succession planning
- diversity
- member availability.

As the range of factors that the AEMC may be aware of and/or want to consider is wide and could vary over time, the AEMC does not see the need to specify these additional factors in the Rules directly.

The AEMC agrees with Energy Networks Australia that clearly specifying in the Rules the publication frequency of AEMO's reports on the accuracy of demand forecasts will promote transparency. The AEMC also sees a value in providing AEMO with some flexibility to adjust the timing and frequency of publications. For this reason the AEMC has made the rule with the amendment requiring AEMO to publish information on the accuracy of the demand forecasts no less than annually.

⁵⁷ Energy Networks Australia, Submission to the *Reliability Panel governance arrangements* rule change, 25 May 2018, p. 4. See: <https://www.aemc.gov.au/rule-changes/reliability-panel-governance-arrangements>

⁵⁸ Clause 8.8.2(c)(1) as in force from 1 July 2018.

2.4.3 Appropriate and timely consultation processes

Appropriate and timely consultation processes have been a feature of recent discussions of governance in the NEM. The need for energy market bodies to respond in a coordinated and timely way to evolving changes that occur in the NEM has been highlighted in several recent reports.⁵⁹

Energy Networks Australia supported in its submission changing a number of existing Panel's consultation processes and procedures to avoid duplication and current inefficiencies. Examples from Energy Networks Australia include amending the Panel's obligation to publish the AEMO's demand forecast reports as per clause 3.13.3(v) and removing AEMO's publication of the Panel's notices of consultation when it is also published on the AEMC's website.⁶⁰

The AEMC considers that changes proposed by the Panel to the consultation procedures are fit-for-purpose. They are likely to aid timeliness of the Panel's work by aligning the consultation process to the task at hand, and bring information quickly to market participants.

The AEMC is of the view that changes to consultation procedures are suitable for both the Panel's current role and future roles that could potentially be assigned to the Panel.

2.4.4 Clear roles and responsibilities

The AEMC considers the proposed rules will promote clarity of roles and responsibilities in the energy market. The efficient operation of the NEM is supported by the market bodies whose roles and responsibilities are clearly defined and understood by the parties required to execute them and other market participants. Inconsistency between the organisation that prepares a report and the organisation that publishes it may:

- create confusion about the role of each organisation with respect to the report in question
- involve additional administrative burden for both parties involved.

The proposed rule assigns clear responsibilities regarding the publication of certain reports. This provides market participants with easier access to the reports and reduces administrative burden for market bodies.

During the consultation process AEMO's representatives supported the clarification of roles and responsibilities in regards to the matters in question.

Improvements to the clarity of the Rules Consultation Procedures will also be beneficial in the Northern Territory as those procedures are used for various purposes in the version of the NER applying in that jurisdiction.

⁵⁹ The Commonwealth of Australia, *Independent Review into the Future Security of the National Electricity market: Blueprint for the Future*, June 2017, Canberra, p. 157. The Commonwealth of Australia *Review of Governance arrangements for Australian Energy Markets Final Report*, 2015, Canberra, p. 8.

⁶⁰ Energy Networks Australia, Submission to the *Reliability Panel governance arrangements* rule change, 25 May 2018, p. 1. See: <https://www.aemc.gov.au/rule-changes/reliability-panel-governance-arrangements>

2.5 Final rule

For the above reasons, the AEMC considers that Panel's proposed rule will contribute to the achievement of the NEO, and has determined to make a final rule, with amendments.

The final rule is largely the same as the proposed rule. The amendments to the proposed rule are:

- providing in clause 8.8.2(h) that:
"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."

The Panel's proposed provision was:

*"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 AEMC as soon as practicable. After being so notified the AEMC must appoint another commissioner of the AEMC (other than the chairperson of the AEMC) as an acting chairperson of the Reliability Panel for the relevant period. The acting chairperson has the same powers and functions as the chairperson."*⁶¹

This change was made to achieve a more practical outcome by further simplifying the process of appointing an Acting Chair. This is explained above.

- specifying in clause 3.13.3(u) that AEMO must prepare and publish on its website information on the accuracy of the demand forecasts *no less than annually*, rather than *periodically*.
- specifying in clause 8.8.2(d1) that discretionary Panel members and members representing the interests of end-use customers for electricity must be appointed and removed by the AEMC after such consultation as the AEMC considers appropriate with the *classes of interests* those persons represent, rather than *interests*.

⁶¹ Reliability Panel, *Reliability Panel governance arrangements*, attachment to the rule change request, 22 December 2017, p. 6.

Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
COAG	Council of Australian Governments
DNSP	Distribution network service provider
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NT Act	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (Northern Territory)</i>
Panel	Reliability Panel
TNSP	Transmission network service provider

A Legal requirements under the NEL

This appendix sets out the relevant legal requirements under the NEL for the AEMC to make this final rule determination.

A.1 Final rule determination

In accordance with section 102 of the NEL the AEMC has made this final rule determination in relation to the rule proposed by the Reliability Panel. In accordance with section 103 of the NEL, the AEMC has determined to make, with amendments, the rule proposed by the rule proponent.

The AEMC's reasons for making this final rule determination are set out in section 2.4. A copy of the final rule is attached to and published with this final rule determination.

A.2 Power to make the rule

The AEMC is satisfied that the final rule falls within the subject matter about which the AEMC may make rules. The final rule falls within section 34 of the NEL as it relates to:

- the operation of the national electricity system for the purposes of the safety, security and reliability of that system (clause (1)(a)(ii))
- the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system (clause (1)(a)(iii)). Under the NT Act this is modified to include reference to the local electricity systems.⁶²

A.3 AEMC's considerations

In assessing the rule change request, the AEMC considered:

- its powers under the NEL to make the rule
- the rule change request
- the submission received during consultation, and
- the AEMC's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NEO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁶³

The AEMC may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of

⁶² Section 9B(1) of schedule 1 of the NT Act.

⁶³ Under section 33 of the NEL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for Energy. On 1 July 2011 the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the COAG Energy Council.

AEMO's declared network functions.⁶⁴ The final rule is compatible with AEMO's declared network functions because it does not affect the performance of those functions.

A.4 Civil penalties

The final rule does not amend any clauses that are currently classified as civil penalty provisions under the NER. The AEMC does not propose to recommend to the COAG Energy Council that any of the amendments made by the final rule be classified as civil penalty provisions.

A.5 Conduct provisions

The final rule does not amend any clauses that are currently classified as conduct provisions under the NEL or the NER. The AEMC does not propose to recommend to the COAG Energy Council that any of the amendments made by the final rule be classified as conduct provisions.

A.6 The Northern Territory

The NER, as amended from time to time, apply in the Northern Territory, subject to derogations set out in regulations made under the Northern Territory legislation adopting the NEL (the NT Act).⁶⁵ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.⁶⁶

As the AEMC has determined to make a final rule which relates to the parts of the NER that apply in the Northern Territory, the AEMC has assessed whether to make a uniform or differential rule under the NT Act. The AEMC's determination and the reasons for it are set out in chapter 2.

Under the NT Act, the AEMC may make a differential rule if, having regard to any relevant MCE statement of policy principles, a differential rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.⁶⁷

A **differential rule** is a rule that:

- (a) varies in its terms as between:
 - (i) the national electricity system; and
 - (ii) one or more, or all, of the local electricity systems; or
- (b) does not have effect with respect to one or more of those systems,

but is not a jurisdictional derogation, participant derogation, or rule that has effect with respect to an adoptive jurisdiction for the purpose of section 91(8) of the NEL.

⁶⁴ Section 91(8) of the NEL.

⁶⁵ The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations.

⁶⁶ For the version of the NER that applies in the Northern Territory, refer to: www.aemc.gov.au/regulation/energy-rules/northern-territory-electricity-market-rules/current.

⁶⁷ Section 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

A **uniform rule** is a rule that does not vary in its terms between the national electricity system and the local electricity systems, and has effect with respect to all of those systems.⁶⁸

⁶⁸ Section 14 of Schedule 1 to the NT Act, inserting the definitions of “differential Rule” and “uniform Rule” into section 87 of the NEL as it applies in the Northern Territory.