

# WEMDRA and AER – Policy for sharing of information for consultation about jurisdictional issues

## For the information of market participants

### **1. Purpose**

The person/entity appointed as the Wholesale Energy Market Dispute Resolution Adviser (WEMDRA) is an independent consultant and usually shares information from disputing parties with the Australian Energy Regulator (AER) and the market only on a de-identified basis as part of general reporting. There are occasions where the sharing of information is required for the AER and WEMDRA to fulfil their respective roles in assisting participants to resolve disputes. This policy provides guidance on the protocol for information sharing where it is necessary and beneficial to the efficient delivery of dispute resolution functions by the WEMDRA and AER.

- 1.1. The purpose of this policy is to document a process for consultation between the AER and the WEMDRA in relation to their respective roles. This may include jurisdictional issues under the National Gas Law and Rules (NGL and NGR) or the National Electricity Law and Rules (NEL and NER), such as in relation to the dispute resolution processes set out in Chapters 5 and 8 of the NER.

### **2. Background and goals of this policy**

- 2.1. The NEL and NER and the NGL and NGR have processes that are designed to assist market participants in resolving issues that arise that can impact the operation of the market. These processes include resolution of disputes, access to information, assistance with technical advice, interpretation of the laws and rules, and compensation for scheduling errors through the participant compensation fund.
- 2.2. As the market has evolved, additional processes have been added to assist with the resolution of issues. Most of the processes have an independent mechanism available for managing and resolving the dispute.
- 2.3. Generally:

2.3.1. the WEMDRA manages matters raised under rule 8.2 of the NER and Part 15C of the NGR.

2.3.2. the AER appoints independent arbitrators for electricity transmission disputes under Chapter 5 (or, in Victoria, old Chapter 6A) of the NER, and conducts arbitrations itself for electricity distribution disputes under Chapter 6 of the NER. For gas, the AER conducts scheme pipeline access arbitrations, and appoints arbitrators for non-scheme pipeline access arbitrations, under Chapter 5 of the NGL.

2.4. In some cases, there can be a difference of view between participants about the appropriate mechanism for resolving a particular issue that has arisen between them. For example, one party may consider that an electricity transmission dispute falls within the scope of Chapter 5 of the NER, while another party considers that the dispute falls within the scope of Chapter 8 of the NER.

2.5. The AER and the WEMDRA fulfil their responsibilities independently. However, where uncertainty exists, it is important that the participants be able to identify the appropriate dispute resolution pathway in a timely and effective way. Engagement with and between the WEMDRA and the AER can assist in achieving this outcome.

2.6. Where the appropriate mechanism for resolving a potential dispute is not clear, the AER and the WEMDRA may share information pertinent to the question of jurisdiction and their respective roles and functions. The AER and the WEMDRA will receive or obtain information from parties to a potential dispute about that dispute, including about:

- i. the participants involved;
- ii. the nature, subject matter and factual basis of the dispute (where relevant to the question of jurisdiction);
- iii. the parties' respective views on jurisdiction (to the extent known to the party who is providing the information); and
- iv. relevant timing considerations for each of the competing jurisdictions,

on the basis that they can provide that information to each other.

2.7. The AER or the WEMDRA (as the case requires) will notify the party who has provided the information of its intention to share the information. The sharing of information will not take place for a further 2 business days to enable that party with the opportunity to object if they have a reservation about the sharing of the information. Where an objection is received, the information will not be shared until such time as the issue is resolved.

2.8. Any information shared between the WEMDRA and AER for the purpose of identifying appropriate dispute resolution pathways will be shared in confidence.

2.9. The WEMDRA and the AER will then each provide further guidance to the parties to a potential dispute about the possible pathways for resolving the dispute to the extent they consider that doing so is appropriate in the circumstances.

### **Information Policy**

This policy should be read in conjunction with the ACCC/AER Information policy as amended or replaced from time to time. The Information policy can be found here: [ACCC/AER Information Policy | Australian Energy Regulator \(AER\)](#)

### **Confidentiality Guidelines**

[Confidentiality guidelines for dispute resolution under clause 8.2 of the National Electricity Rules | Australian Energy Regulator \(AER\)](#)