

Stage 2 - Adviser referral notice

To activate Stage 2 of DMS serve this notice on the Adviser. *[Clause 8.2.5]*

Send To:

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Stage 2 - Adviser referral notice *[Clause 8.2.5 (a)]*

Note: *Annotations to this document are in and italics for ease of distinguishing the commentary.*

Please note: *The Adviser may provide a copy of this Stage 2 - Adviser referral notice to a dispute resolution panel (DRP) should one be constituted in accordance with the NER. The Adviser may also include a copy of the Stage 2 - Adviser referral notice (or a summary) in her quarterly report to the market and on the dispute resolution portion of the AER website for precedent purposes.*

1 Details of Registered Participant(s) referring the matter to the Adviser

Organisation: _____

DMS contact name: _____

Phone: _____

Email: _____

Mobile: _____

Date: _____

2 This is a referral under Clause 8.2.5 (a) of the NER

Type of referral (*circle as appropriate*)

- (1) *The application or interpretation of the NER;*
- (2) *The failure of any Registered Participants to reach agreement on a matter where the NER require agreement or require the Registered Participants to negotiate in good faith with a view to reaching agreement;*
- (4) *The proposed access arrangements or connection agreements of an Intending Participant or a Connection Applicant;*
- (5) *The payment of moneys under or concerning any obligation under the NER;*
- (6) *Any other matter relating to or arising out of the NER to which a contract between two or more Registered Participants provides that the dispute resolution procedures under the NER are to apply;*
- (7) *Any other matter relating to or arising out of the NER in respect of which two or more Registered Participants have agreed in writing that this rule 8.2 should apply; or*
- (8) *Any other matter that the NER provide may or must be dealt with under this clause 8.2: (specify)*

 [Clause 8.2.1(a)]

or

- Request for compensation from the participant compensation fund.

3 Outline of dispute/compensation claim:

A brief history of the dispute/compensation claim and the circumstances giving rise to it:

_____ (Please continue on a separate sheet of paper if necessary.)

Correspondence attached: Yes / No

4 Date of disputed decision or the occurrence of disputed conduct or when it became known: [clause 8.2.4(b)]

(For compensation claims please provide the date of the incident and whether AEMO has declared that it failed to follow the central dispatch processes set out in clause 3.8 or that a dispatch interval contains a manifestly incorrect input [clause 3.8.24(2),(3)].)

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5 Date of last service of a DMS referral Notice (please attach a copy of the notice):

(not required for compensation claims)

6 A statement of your organisation's issues in relation to the dispute:

(The heads of damages and the relevant trading intervals for compensation claims.)

_____ *(Please continue on a separate sheet of paper if necessary.)*

Name and firm of external legal adviser if applicable:

7 Names of other parties which the applicant considers parties to the dispute:

(Attach pages for multi-party dispute.)

Note: *By this time the Adviser expects there will have been a number of DMS meetings. Considering the identity of who should be a party to this dispute is important. Being a party gives a participant the right to access information and to participate in the process. It is also necessary to consider who will be bound by any determination. In general terms if you need a participant to be bound by the determination they will need to be a party. This may affect your view of who should be a party. If there is a difference of view between the participants about who is a party/affected please indicate below, or by cover email. We can then have a discussion about this matter as a preliminary issue before progressing further. For compensation claims please outline if you think there are any other participants who have an interest in the matter.*

Other parties affected – for each provide:

Organisation: _____

DMS contact name: _____

Phone: _____

Email: _____

Mobile: _____

8 Process Election:

We agree/do not agree (*strike out whichever does not apply*) to

**8.1 the Adviser attempting to resolve the dispute by any means she considers appropriate
[see clause 8.2.5(c)(1)];**

**8.2 the Adviser case managing the dispute using a non binding approach before establishing a
DRP.**

Note: For claims from the participant compensation fund the scope of the Adviser process under this election is restricted as the determination of a scheduling error under clause 3.8.24 or the award of compensation must be made by a dispute resolution panel, DRP. See [Guidelines and application for compensation for a scheduling error](#).

Note re Adviser process: The NER provide fairly tight time frames for the establishment of the DRP as an alternative to the Adviser process. Agreeing to the Adviser resolving the dispute can take a number of forms. It may be agreement to for the Adviser to resolve it generally, appoint a mediator or some other process. A number of disputes have been resolved this way.

It may also be more limited including meeting to agree to a time frame and a process for bringing the dispute into a sharper focus. This can include having the parties exchange issues statements and clarify the exact scope of the dispute.

The DRP process provides for the selection of 1-3 panel members and there are a range of skills. Having a process to clarify the dispute is useful to ensure that the DRP, when selected, has the right skill mix and that a timeframe is properly estimated allowing the consultants on the DRP to ensure that they are available to meet the commitment. It ensures a tighter process which, in turn, impacts on costs.

Often parties are uncomfortable to tick the box and give the Adviser an unfettered discretion. In other disputes this has been dealt with by referring it to a DRP, with the agreement of the Adviser and that of the parties, for a specified time period with agreed steps.

Generally once referred the Adviser will contact the other parties to the dispute and then meet by

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phone or in person to agree next steps.

In the event that the Adviser process cannot resolve the dispute, what occurs next is a referral to the DRP. Prior to the referral the Adviser will meet with the parties to discuss:

- *the constitution of the DRP; and*
- *the exchange of information prior to submitting the matter to a DRP.*

In the usual course the information exchange will include:

- *Confirmation of all the parties to the dispute.*
- *The Applicant providing a full statement of issues, facts and contentions in dispute.
(Around 5 days.)*
- *The Respondent(s) providing a reply statement of issues, facts and contentions in dispute.
(Around 7-10 days.)*
- *The parties, if possible, agreeing on a list of documents.
(At the same time.)*
- *The parties providing an estimate of the number and type of witnesses.
(At the same time.)*

This allows for an estimate of hearing dates and when the hearing is likely to occur. This is useful in choosing a DRP. The information can then be submitted to a DRP.

9 Consultation on a DRP:

Names of persons the Registered Participant(s) would like the Adviser to consider in constituting any DRP. Please provide contact details if they are not on the pool as published on the net. Numbers of members and the types of skills they have would be a useful guide.

9.1 Names of persons for a DRP

(Additional columns for multiple members.)

Name:			
Technical expertise:			
Contact details:			
Referee (if possible):			

9.2 Number of persons for a DRP and expertise required

Number of members: _____

Expertise required: _____

9.3 Adviser checklist

Date received: _____

Clause 8.2 applies: Yes / No *(delete as applicable)*

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Notification sent to parties: _____

Notes on resolution options sent: _____

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10 Document Control Details

Please direct comments and questions to the Adviser, Shirli Kirschner, by email:

shirli@resolveadvisors.com.au

History of Amendments:

- Designed June 2011
- Reviewed and amended October 2013

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