

RULINGS PANEL PROCEDURES 2011

SUMMARY OF THE PROCEDURES

Introduction

1. The Rulings Panel Procedures (the “Procedures”) attached to this summary set out the procedures of the Rulings Panel prescribed by the—
 - (a) Electricity Industry Act 2010 (the “Act”);
 - (b) Electricity Industry (Enforcement) Regulations 2010 (“the Regulations”); and
 - (c) Electricity Industry Participation Code 2010 (the "Code").
2. The Procedures also include additional procedures determined by the Rulings Panel under section 53(2) of the Act.
3. The following paragraphs summarise the Procedures, as required by regulation 118 of the Regulations.
4. This summary is to be read subject to the Procedures. If there are any inconsistencies between this summary and the Procedures, the Procedures prevail.

Application of the Procedures

5. The Procedures apply to the following functions of the Rulings Panel:
 - (a) deciding complaints that an industry participant has breached the Code (Part 2 of the Procedures);
 - (b) hearing information disclosure appeals under Part 2 of the Code (Part 3 of the Procedures);
 - (c) deciding complaints relating to disputes under Part 6 of the Code (Part 4 of the Procedures);
 - (d) hearing appeals under Part 8 of the Code, being appeals against system operator decisions in relation to dispensations, equivalence arrangements, or alternative ancillary service arrangements, and disputes regarding system operator under-frequency event determinations (Part 5 of the Procedures);
 - (e) determining disputes arising from negotiation of transmission agreements under Part 12 of the Code (Part 6 of the Procedures);
 - (f) determining disputes relating to prudential requirements and invoices under Part 14 of the Code (Part 7 of the Procedures);
 - (g) determining disputes under subpart 2 of Part 3 of the Regulations, which relates to reconciliation disputes and disputes that relate to ancillary service procurement contracts (Part 8 of the Procedures).

Part 1 of the Procedures – General provisions

Commencement

6. The Procedures come into force on 28 June 2011 (clause 1.2(1)).
7. The Procedures replace the Electricity Rulings Panel Procedures 2009, which are revoked (clause 1.2(2)).

8. However, all proceedings, appeals, disputes, and other matters that were before the Rulings Panel immediately before 1 November 2010 must be dealt with under the Electricity Rulings Panel Procedures 2009 as if they were still in force (clause 1.2(3) and section 142 of the Act).

Application

9. Unless otherwise indicated, Part 1 of the Procedures applies to all functions of the Rulings Panel set out in Parts 2 to 8 of the Procedures (clause 1.3).

Rulings Panel may vary Procedures

10. Subject to the requirements of natural justice, the Rulings Panel may vary the Procedures (other than the parts of the Procedures prescribed by the Act, the Regulations, or the Code) in respect of any particular case or class of cases, and must publicise any such variation (clause 1.5).

Directions and directions conferences

11. The Rulings Panel may give procedural directions in respect of a particular case, but no direction may be inconsistent with the Procedures or the requirements of natural justice (clause 1.6).
12. The Rulings Panel may, at any time, hold a directions conference to determine variations of the Procedures or directions (clause 1.7(1)).
13. A directions conference may address any matters that the Rulings Panel considers appropriate (clause 1.7(2)).

Rulings Panel members

14. Every complaint, appeal, or dispute before the Rulings Panel must be dealt with by a panel of 3 members, one of whom must be the chairperson (clause 1.8 and section 53(1)).

Hearings

15. The Rulings Panel must hold a hearing into a complaint if, by the deadline for submissions, any party requests a hearing into the complaint, or the Rulings Panel considers that a hearing should be held in order to give the Authority or an industry participant the opportunity to be heard. A hearing must be held as soon as practicable (clause 1.9 and regulation 34).
16. If a complaint is not set down for a hearing, the Rulings Panel must consider and decide the matter on the basis of the written submissions and evidence (clause 1.10 and regulation 38(1)).
17. Hearings must be in public unless the Rulings Panel directs otherwise. The Rulings Panel may decide that a hearing should be private only after considering any submissions on such a direction from an industry participant or the Authority (clause 1.11 and regulation 36).
18. At a hearing, every party to the complaint is entitled to be present at the hearing and to be represented, must be given a reasonable opportunity to make representations, and is entitled to call and cross examine witnesses, make a plea in mitigation of penalties, and have any other person present to give evidence (clause 1.12 and regulation 37).

19. The Rulings Panel, in carrying out a resolution of a dispute or considering a complaint, may receive in evidence any statement, document, or information that would not be otherwise admissible. A person must answer questions or give information even if doing so may incriminate that person, but self-incriminating evidence is not admissible as evidence in any criminal or civil proceedings against that person (clause 1.13, section 48(3) of the Act, and regulations 39 and 83).
20. The Rulings Panel may adjourn any hearing or consideration of a matter (clause 1.14).

Powers generally

21. The Rulings Panel may make any determination, order, or direction that it thinks fit, subject to any general provisions of the Regulations relating to appeals and disputes, and any specific provisions in the Regulations or the Code relating to the appeals or disputes (clause 1.15 and section 61 of the Act).

Rulings Panel to keep certain information confidential

22. The Rulings Panel, and members of the Rulings Panel, must keep confidential all information disclosed to the Rulings Panel, unless disclosure is required to enable the Rulings Panel to carry out its obligations or duties, or by law (clause 1.16 and regulation 116).

Prohibition of publication of information

23. The Rulings Panel may, in certain circumstances, prohibit the publication of certain information (clause 1.17 and regulation 117).

Draft decisions

24. The Rulings Panel may prepare a draft decision or determination and give it to such persons as it thinks fit for comment (clause 1.18(1) and (2)).
25. The Rulings Panel may, if it thinks fit, give a copy of any comments it receives on a draft decision or determination to such persons as it thinks fit, and may give those persons an opportunity to provide further comment (clause 1.18(3) and (4)).

Rulings Panel may seek advice

26. In carrying out its functions, the Rulings Panel may seek advice or assistance from any person (clause 1.19 and regulation 41).

Reconsidering matters

27. If the High Court directs the Rulings Panel to reconsider any aspect of a Rulings Panel decision, the Rulings Panel must, in reconsidering the matter, have regard to the Court's reasons for giving the direction and the Court's directions (clause 1.20 and section 68(3)).

Part 2 of the Procedures - Complaints of breach of the Code

28. On receiving a formal complaint under regulations 30 or 31, the Rulings Panel must give written notice to every party to the complaint (clause 2.2(1) and (2) and regulation 33(1)).
29. The parties to a complaint are the industry participant allegedly in breach, the complainant, the Authority, and any other industry participant that was a party to the investigation (clause 2.2(3) and regulation 32).

Pre-consideration statements and material

30. The Rulings Panel must ensure that each of the parties to the complaint has been provided with a notice of the date and time of the hearing, and a copy of all relevant material collected during the investigation (clause 2.3(1) and regulation 35(1)).

Hearings, submissions and evidence

31. Each of the parties to the complaint is entitled to provide written submissions and evidence whether or not there is a hearing, and respond to submissions or evidence provided by other persons (clause 2.5 and regulation 38(2));
32. The procedures set out in paragraphs 15 to 21 of this summary apply to hearings of formal complaints under Part 2 of the Procedures (clause 2.4).
33. The Rulings Panel may request an investigator to obtain further information and, subject to section 48 of the Act, participants must provide any information reasonably requested (clause 2.6 and regulation 40).

Decisions of Rulings Panel

34. The orders that the Rulings Panel may make, and the matters the Rulings Panel must take into account when making orders, are set out in section 54 of the Act and regulation 54 (clause 2.9).
35. The Rulings Panel must use reasonable endeavours to make a final decision within 40 working days after the date on which it receives all written and oral submissions on the matter (clause 2.7 and regulation 43(1)).
36. Any party to a complaint may make written submissions to the Rulings Panel on the subject of any order that the Rulings Panel may make (clause 2.10 and regulation 42(1)).
37. The Rulings Panel must give its final decision, and its decision on any order, in writing and together with reasons, to all parties to the complaint (clauses 2.8 and 2.11 and regulation 43(2)).
38. The Rulings Panel must notify the decision to the Authority as soon as practicable after it has made a final decision (clause 2.8).
39. The Rulings Panel must advise the Authority if there are special circumstances that justify the non-publication of a decision made by the Rulings Panel (clause 2.8(4) and regulation 44(2)).

Rulings Panel may make a termination or suspension order

40. The Rulings Panel may, in certain circumstances, terminate or suspend a participant's rights under the Code by making a termination order or suspension order (sections 58 to 60 of the Act).
41. Before making such an order, or extending, suspending, or modifying a condition of a suspension order, or revoking a termination or suspension order, the Rulings Panel must give notice to the industry participant to which the order relates, or may relate, and publicise the proposed order or change (clause 2.11 and regulation 47).
42. If the Rulings Panel makes a termination order or suspension order, it must give directions to, or make arrangements for, other industry participants to give effect to its order (clause 2.12(1) and (2) and regulation 48(1)).

Part 3 of the Procedures - Information disclosure appeals

Right of appeal

43. A participant may, by notice to the Rulings Panel, appeal a refusal by another participant to supply any Code information. The notice must specify the information requested and the reasons for the refusal (clauses 3.1 and 3.2 and clause 2.15 of the Code).
44. The participant must, within 10 working days of being advised of the refusal, give a copy of the notice of appeal to the refusing participant and the Authority (clause 3.2).

Notification of appeal

45. On receiving notice of an appeal, the Rulings Panel must set a date for considering the appeal, decide whether a hearing will be held, and give notice to the participants involved and the Authority ("the parties") (clause 3.3).

Submissions and evidence

46. Each party is entitled to provide submissions and evidence on an appeal, and to respond to submissions or evidence provided by other persons (clauses 3.4 and 3.5).

Hearings

47. Each party is entitled to be heard at a hearing of an appeal (clause 3.6(1)).
48. The procedures set out in paragraphs 15 to 21 of this summary apply to information disclosure appeals (clause 3.6(2)).

Decisions of Rulings Panel

49. The Rulings Panel must decide whether the refusal to supply the Code information was consistent with clauses 2.6 and 2.7 of the Code (clause 3.7(1)).
50. The Rulings Panel must as soon as practicable give its decision, in writing and together with its reasons, to the parties (clause 3.7(2)).

Part 4 of the Procedures – Disputes under Part 6 of the Code

51. A distributed generator and a distributor who are unable to resolve a dispute relating to an allegation that a party has breached the regulated terms that apply under clause 6.6(2) of

the Code, or any other provision of Part 6 of the Code, may complain in writing to the Authority (clause 4.1 and clause 6.8 of the Code, and clause 2(3) of Schedule 6.3 of the Code).

52. Notice of a complaint must be treated as notification of a formal complaint under the Regulations and may be referred to the Rulings Panel (clause 4.2 and clauses 2 and 3 of Schedule 6.3 of the Code).
53. Subject to some exceptions, Part 2 of the Procedures applies to complaints referred to the Rulings Panel in the same way as those provisions apply to an alleged Code breach, with any modifications the Rulings Panel considers necessary or desirable (clause 4.2(3) to (5) and clause 3 of Schedule 6.3 of the Code).
54. The Authority and the Rulings Panel must apply the pricing principles in Schedule 6.4 of the Code if necessary to resolve a dispute (clause 4.3 and clause 4 of Schedule 6.3 of the Code).

Part 5 of the Procedures - Appeals against system operator decisions in relation to dispensations, equivalence arrangements, or alternative ancillary service arrangements, and disputes regarding system operator under-frequency event determinations

Right of appeal

55. A participant may appeal a decision of the system operator in relation to an application for dispensation or equivalence arrangements, or an alternative ancillary service arrangement, on the grounds that the system operator made a material error of fact or failed to take into account all relevant information, or took into account irrelevant information, or the conditions imposed on the dispensation or arrangement are onerous, unnecessary or impose extra costs (clause 5.2, and clauses 8.36(1) and (3), and 8.53(2) and (4) of the Code).
56. An appeal must be made to the Rulings Panel by giving written notice to the Authority specifying the grounds of appeal (clause 5.3, and clauses 8.36(2) and 8.53(3) of the Code).

Notification of appeal

57. The Authority must publish a notice of an appeal, and affected parties may join as parties to the appeal (clause 5.4).
58. On receiving a notice of appeal, the Rulings Panel must set a date for considering it, decide whether a hearing will be held, and give notice to the appellant, the system operator, the Authority, and any participant who has become a party to the appeal (“the parties”) (clause 5.5).

Submissions and evidence

59. Each party is entitled to provide submissions and evidence in relation to the matter being appealed, and to respond to submissions and evidence provided by other persons (clauses 5.6 and 5.7).

Hearings

60. Each party is entitled to be heard at a hearing of an appeal (clause 5.8(1)).

61. The procedures set out in paragraphs 15 to 21 of this summary apply to appeals under Part 5 of the Procedures (clause 5.8(2)).

Decisions of Rulings Panel

62. The Rulings Panel must use reasonable endeavours to make its final decision as soon as practicable after the date that it has received all written and oral submissions on the matter (clause 5.9).
63. The Rulings Panel, in determining any appeal, must approve the decision of the system operator or direct the system operator to reconsider the decision in full or by reference to specified matters (clause 5.10, and clauses 8.36(4) and 8.53(5) of the Code).
64. Pending the outcome of an appeal, the decision of the system operator in relation to the grant of a dispensation or approval of an equivalence arrangement or authorisation of an alternative ancillary service arrangement, as the case may be, remains valid and may be relied upon by the relevant asset owner (clause 5.11, and clauses 8.36(5) and 8.53(6) of the Code).

Disputes regarding system operator under-frequency event determinations

65. The Authority or a participant substantially affected by a system operator under-frequency event determination may dispute the determination by referring the matter to the Rulings Panel (clause 5.13(1) and clause 8.6.2(1) of the Code).
66. A dispute must be commenced by written notice given to the Rulings Panel within 10 business days after its determination is published (clause 5.13(2) and clauses 8.62(2) and (3) of the Code).

Part 6 of the Procedures - Disputes arising from negotiation of a transmission agreement

Disputes may be referred to Rulings Panel

67. If a dispute between Transpower and a designated transmission customer relating to transmission agreements is not resolved within a reasonable time, either party may refer the matter to the Rulings Panel for determination (clause 6.1(1) and clause 12.45 of the Code).
68. However, the Rulings Panel must not determine disputes relating to the interpretation or enforcement of a transmission agreement including a benchmark agreement (clause 6.1(2) and clause 12.47(2) of the Code).
69. A party may refer a dispute to the Rulings Panel by giving a written notice to it and to the other party which specifies the dispute, the party's position in relation to the dispute, and its reasons for that position (clause 6.1(3)).
70. The Authority must publicise the fact of the referral, the parties to the dispute, and the subject matter of the dispute, and affected designated transmission customers may join as parties to the dispute if the Rulings Panel thinks fit (clause 6.2).

Notification by Rulings Panel

71. On receiving notice of a dispute, unless it has decided not to undertake the determination of the dispute, the Rulings Panel must set a date for considering the dispute, decide

whether a hearing will be held, and give notice of those matters to each party to the dispute (clause 6.3 and clause 12.46 of the Code).

Submissions and evidence

72. Each party is entitled to provide submissions and evidence on the dispute, and to respond to submissions or evidence provided by the other parties (clauses 6.4 and 6.5).

Hearings

73. Each party is entitled to be heard at a hearing of the dispute (clause 6.6(1)).
74. The procedures set out in paragraphs 15 to 21 of this summary apply to disputes heard under Part 6 of the Procedures (clause 6.6(2)).

Determinations of Rulings Panel

75. The Rulings Panel may, in its discretion, decide whether or not to undertake the determination of the dispute and, if it decides not to do so, must inform Transpower and the designated transmission customer of that decision (clause 6.7 and clause 12.46(2) of the Code).
76. In determining a dispute, the Rulings Panel must take into account the principles for benchmark agreements in clause 12.30 of the Code, the desirability of consistent treatment of designated transmission customers except if special circumstances justify a departure, and the potential impact of a decision on the contents of other transmission agreements (clause 6.8 and clause 12.47(1) of the Code).
77. The Rulings Panel must give notice to the parties of its determination as soon as reasonably practicable (clause 6.9 and clause 12.47(3) of the Code).

Status of default transmission agreements while Rulings Panel determining dispute

78. Nothing in Part 6 of the Procedures overrides the application of a benchmark agreement as a default transmission agreement under clause 12.10 of the Code pending a determination of the Rulings Panel (clause 6.10 and clause 12.48 of the Code).

Part 7 of the Procedures - Prudential requirement and invoice disputes

Disputes may be referred to Rulings Panel

79. If a participant disputes a decision of the clearing manager in relation to a prudential requirement under clauses 14.2 to 14.28 of the Code, the participant may refer the matter to the Rulings Panel (clauses 7.1 and 7.2(1), and clause 14.29(1) of the Code).
80. The participant must, within 10 business days of being advised of the decision, give a written notice to the Rulings Panel, the Authority, and the clearing manager that specifies the disputed decision and the participant's reasons for disputing it (clause 7.2(2)).
81. If a dispute between a payee or a payer and the clearing manager concerning an invoice issued by the clearing manager is not resolved within 15 business days after the dispute being notified to the clearing manager, the disputing payee or payer or the clearing manager may refer the matter to the Rulings Panel for resolution (clause 7.2(3) and clause 14.64(10) of the Code).

Notification by Rulings Panel

82. On receiving notice of a dispute, the Rulings Panel must set a date for considering the dispute, decide whether a hearing will be held, and give notice to the participant, the Authority, and the clearing manager (“the parties”) (clause 7.3).

Submissions and evidence

83. Each party is entitled to provide submissions and evidence on a dispute, and to respond to submissions or evidence provided by other persons (clauses 7.4 and 7.5).

Hearings

84. Each party is entitled to be heard at a hearing of a dispute (clause 7.6(1)).
85. The procedures set out in paragraphs 15 to 21 of this summary apply to all disputes under Part 7 of the Procedures (clause 7.6(2)).

Decisions of Rulings Panel

86. In respect of disputes regarding prudential requirements, the Rulings Panel must, after hearing from the participant and the clearing manager, make a decision on the dispute in accordance with clauses 14.2 to 14.28 of the Code (clause 7.8 and clause 14.29(2) of the Code).
87. The Rulings Panel may make a determination on an invoice dispute as it thinks fit, and must give notice of its determination to the parties (clause 7.9 and clauses 14.64(11) and (12) of the Code).

Part 8 of the Procedures - Reconciliation and ancillary services disputes

Parties may apply to Rulings Panel to resolve dispute

88. The parties to a dispute in relation to the submission of information provided for the purposes of reconciliation under the Code, or in relation to a contract for the procurement of ancillary services, may, by agreement, apply to the Rulings Panel to determine the dispute for them. The Rulings Panel may, in its discretion, decide whether or not to undertake the determination of the dispute (clauses 8.1 and 8.2, and regulation 80).

Process

89. The parties to the dispute must agree to the form of dispute resolution or, in the absence of agreement, the Rulings Panel must determine the form of dispute resolution (clause 8.3 and regulation 81).
90. The Rulings Panel must notify the parties when the dispute resolution will take place (clause 8.4 and regulation 82).
91. The Rulings Panel may do whatever is necessary to enable the resolution of any matter before it (clause 8.5 and regulation 83(3)).
92. The Rulings Panel may meet separately or jointly, or both, with the parties, and may require parties to exchange submissions, documents, and information (clause 8.6 and regulation 84).

93. The Rulings Panel must complete the dispute resolution process as soon as practicable (clause 8.7 and regulation 86).

Orders and appeals

94. The Rulings Panel may make any order in respect of a dispute that it considers is just and reasonable in the circumstances (clause 8.8 and regulation 87(1)).
95. Each party to a dispute is responsible for its own costs and legal expenses. The parties must share equally all other costs and expenses unless an allocation is made by the Rulings Panel (clause 8.10 and regulation 90).
96. The Rulings Panel must report to the Authority if the Rulings Panel finds, during the course of any dispute resolution process, that there has been a breach of the Act, the Regulations, or the Code (clause 8.9 and regulation 88).
97. If the Rulings Panel finds, or the parties agree, during the course of any dispute resolution process, that money is due and payable under the Code, that finding or agreement creates an obligation to pay the amount agreed or determined. (clause 8.10 and regulation 89).

RULINGS PANEL PROCEDURES 2011

Pursuant to the Electricity Industry Act 2010, the Electricity Industry (Enforcement) Regulations 2010, and a resolution of the Rulings Panel, the procedures for matters before the Rulings Panel are set out below ("Procedures").

NOTE: These Procedures include procedural provisions prescribed by the Electricity Industry Act 2010, the Electricity Industry (Enforcement) Regulations 2010 and the Electricity Industry Participation Code 2010. These prescribed provisions are indicated by a reference underneath the provision that notes the relevant provision of the Act, Regulations, or Code.

If any of the prescribed provisions are changed in the future, the Rulings Panel will similarly change these Procedures.

If there is no note under a provision of these Procedures, the provision has been prescribed by the Rulings Panel under section 53(2) of the Act.

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1. Part 1

General Provisions

1.1 Title

These Procedures are the Rulings Panel Procedures 2011.

1.2 Commencement

- (1) These Procedures come into force on [insert date].
- (2) These Procedures replace the Electricity Rulings Panel Procedures 2009, which are revoked.
- (3) All proceedings, appeals, disputes or other matters before the Rulings Panel immediately before 1 November 2010 must be dealt with under the Electricity Rulings Panel Procedures 2009, as if they were still in force.

Note: See section 142 of the Act

1.3 Application of this Part

Unless otherwise indicated, this Part applies to the performance of the Rulings Panel's functions set out in Parts 2 to 8 of these Procedures.

1.4 Interpretation

- (1) In these Procedures, unless the context otherwise requires,—
 - Act* means the Electricity Industry Act 2010
 - Authority* means the Electricity Authority established under section 12 of the Act
 - Code* means the Electricity Industry Participation Code 2010
 - Regulations* means the Electricity Industry (Enforcement) Regulations 2010, and *regulation* means one of those regulations, unless otherwise stated
- (2) A term that—
 - (a) is defined in the Code and used, but not defined, in these Procedures has the same meaning as in the Code:
 - (b) is defined in the Regulations and used in these Procedures, but not defined in these Procedures or the Code, has the same meaning as in the Regulations:
 - (c) is defined in the Act and used in these Procedures, but not defined in these Procedures or the Code or the Regulations, has the same meaning as in the Act:
 - (d) is defined in the Interpretation Act 1999 and used in these Procedures, but not defined in these Procedures or the Code or the Regulations or the Act, has the same meaning as in the Interpretation Act 1999.
- (3) If there is a conflict between these Procedures and the Act, the Regulations, or the Code (as the case may be), the Act, Regulations, or the Code (as the case may be) prevails.

Application of Procedures in particular cases

1.5 Rulings Panel may vary these Procedures

- (1) Subject to subclause (3) and the requirements of natural justice, the Rulings Panel may vary these Procedures (including by adding new procedural requirements) in respect of any particular case or class of cases.
- (2) The Rulings Panel must publicise any variation of these Procedures under subclause (1) and the reasons for the variation.
- (3) The Rulings Panel may not vary any provision of these Procedures that is a restatement of part of the Act, the Regulations, or the Code.

Directions and directions conferences

1.6 Procedural directions

- (1) The Rulings Panel may, at any time, give directions to the parties to a particular case as to the procedures to be followed in respect of the case.
- (2) A direction given under subclause (1) must not be inconsistent with these Procedures (or these Procedures as varied in accordance with clause 1.5 in respect of that case), or with the requirements of natural justice.
- (3) The Rulings Panel may vary a direction.
- (4) Subclauses (1) and (2) apply to a variation as if the variation was a direction.

1.7 Directions conferences

- (1) Subject to subclause (5), the Rulings Panel may, at any time, hold a directions conference of the parties to a particular case and such other persons as it thinks fit to determine variations of these Procedures to be made under clause 1.5 or directions to be given under clause 1.6.
- (2) A directions conference may address any matters that the Rulings Panel considers appropriate, including but not limited to the following (if applicable):
 - (a) the date, place, and time of the hearing;
 - (b) whether a statement of issues of fact and law is required;
 - (c) whether there is any reason to rebut the presumption of a public hearing;
 - (d) whether any confidentiality issues arise;
 - (e) whether the subject matter of the hearing is such that an urgent hearing is justified;
 - (f) the number of witnesses;
 - (g) the mode of giving evidence, including whether written submissions and evidence are to be provided in advance and, if so, a timetable for that, and whether such evidence is to be on oath, by way of brief or by affidavit;
 - (h) the mode of recording evidence and representations;
 - (i) whether further information is required from the investigator;
 - (j) engagement of industry experts by the Panel;
 - (k) whether documents additional to those included in the investigator's report are required, and, if so, who is to be responsible for the preparation of the documents; and

- (1) any other matters that the Panel deems relevant.
- (3) The Rulings Panel must advise all parties and any other persons it thinks fit of the date, time, and location of a directions conference.
- (4) A directions conference may be held by meeting or by video or telephone conference, and the procedures for the conference will be determined by the Rulings Panel.
- (5) The Rulings Panel may not hold a directions conference in respect of a dispute to which Part 8 of these Procedures applies.

Hearings

1.8 Rulings Panel members

Every complaint, appeal, or dispute before the Rulings Panel must be dealt with by a panel of 3 members, one of whom must be the chairperson (except when the deputy chairperson acts on his or her behalf).

Note: See section 53(1)

1.9 Decision on whether hearing to be held

- (1) The Rulings Panel must hold a hearing into a complaint if, by the deadline for submissions—
 - (a) any party requests, in writing, a hearing into the complaint; or
 - (b) the Rulings Panel considers that a hearing should be held in order to give the Authority or an industry participant the opportunity to be heard.

Note: See regulation 34(1)

- (2) If a hearing is to be held, the Rulings Panel must set a date and time for the hearing that is as soon as practicable, and determine where the hearing will be held.

Note: See regulation 34(2)

- (3) This clause does not apply in respect of a dispute to which Part 8 of these Procedures applies.

1.10 Decisions without hearings

If a complaint is not set down for a hearing, the Rulings Panel must consider and decide the matter on the basis of the written submissions and evidence that it has received by the deadline for submissions.

Note: See regulation 38(1)

1.11 Hearing to be in public unless Rulings Panel otherwise directs

- (1) Hearings must be in public, unless the Rulings Panel directs otherwise.

Note: See regulation 36(1)

- (2) If the Rulings Panel considers that a hearing should be private it must notify all industry participants and the Authority of its decision and the grounds for that decision.

Note: See regulation 36(2)

- (3) If an industry participant or the Authority disagrees with the Rulings Panel's decision, it may make a written submission to the Rulings Panel setting out the reasons for its disagreement, within 5 working days after receiving the notification referred to in subclause (2).

Note: See regulation 36(3)

- (4) The Rulings Panel must consider the submission and then notify all industry participants and the Authority of its decision and the grounds for that decision.

Note: See regulation 36(4)

- (5) This clause does not apply in respect of a dispute to which Part 8 of these Procedures applies.

1.12 Rights of parties and Authority at hearings

- (1) At a hearing into a formal complaint, every party to the complaint—
 - (a) is entitled to be present at the hearing; and
 - (b) is entitled to be represented; and
 - (c) must be given a reasonable opportunity to make written and oral representations; and
 - (d) is entitled to call witnesses and to cross-examine any witness called against it; and
 - (e) is entitled to make a plea to the Rulings Panel in mitigation of penalties; and
 - (f) is entitled to have any other person present to give evidence.

Note: See regulation 37

- (2) Subclause (1) applies in respect of any person who is entitled to be heard at any hearing or any resolution of a dispute of the Rulings Panel under Parts 2 to 7 of these Procedures, except to the extent that the Rulings Panel directs otherwise.
- (3) Subclause (1) does not apply in respect of a dispute to which Part 8 applies.
- (4) Any party to a dispute under Part 8 may be represented before the Rulings Panel by legal counsel if it wishes.

Note: See regulation 85

1.13 Admissible evidence

- (1) Subject to subclause (3), the Rulings Panel may, in carrying out a resolution of a dispute under Part 8 of these Procedures, receive in evidence any statement, document, or information that would not be otherwise admissible as evidence that may, in its opinion, assist it to deal effectively with the matter.

Note: See regulation 83

- (2) Subject to subclause (3), when considering a complaint to which subclause (1) does not apply, whether at a hearing or otherwise, the Rulings Panel may receive in evidence any statement, document, or information that would not be otherwise admissible as evidence that may, in its opinion, assist it to deal effectively with the complaint.

Note: See regulation 39

- (3) An industry participant, or an officer or employee of the industry participant, is not excused from answering a question or giving any information or document on the ground that to do so may incriminate or tend to incriminate the industry participant or the officer or employee. However, a self-incriminating statement or document made or given by an officer or employee, or an industry participant that is an individual, is not admissible as evidence in any criminal or civil proceedings against that person.

Note: See section 48(3) of the Act

1.14 Rulings Panel may adjourn hearing or consideration of a matter

- (1) The Rulings Panel may, at any time, adjourn the hearing of a matter or, if there is no hearing, the consideration of the matter by the Rulings Panel.
- (2) The Rulings Panel must give notice of an adjournment under subclause (1) to all persons entitled to be heard at the hearing as it thinks fit.

1.15 Powers of Rulings Panel generally

- (1) The Rulings Panel may determine appeals against decisions made under the Code, and resolve disputes between industry participants that relate to the Code, that are of a kind that are identified in the Regulations or the Code.

Note: See section 50(4) of the Act

- (2) If the regulations or the Code prescribe practices and procedures in relation to any kind of such appeal or dispute, the Rulings Panel must apply those practices and procedures when dealing with the appeal or dispute.

Note: See section 50(5) of the Act

- (3) The Rulings Panel has all the powers necessary to perform its functions in accordance with this Act, the regulations, and the Code.

Note: See section 53(3) of the Act

- (4) The Rulings Panel may make any determination, order, or direction that it thinks fit, subject to any general provisions of the Regulations relating to appeals and disputes, and any specific provisions in the regulations or the Code relating to the appeal or dispute.

Note: See section 61 of the Act

Miscellaneous

1.16 Rulings Panel to keep information confidential

- (1) The Rulings Panel must keep confidential all information provided or disclosed to it under the Regulations or the Code except to the extent that disclosure—
 - (a) is required to enable the Rulings Panel to carry out its obligations and duties under the Regulations or the Code; or
 - (b) is otherwise compelled by a law other than the Regulations or the Code.

Note: See regulation 116(1)

- (2) A member of the Rulings Panel who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of or act on that information, except—

- (a) for the purposes of the Rulings Panel; or
- (b) as required or permitted by law; or
- (c) in complying with regulations 102 and 103, which relate to the disclosure of member interests.

Note: See regulation 116(2)

1.17 Rulings Panel may prohibit publication of information

- (1) The Rulings Panel may prohibit the publication or communication of any information or document—
 - (a) that is, or is intended to be, supplied or given or tendered to, or obtained by, the Rulings Panel under the Regulations or the Code; or
 - (b) in connection with any notification, investigation, report, or procedure under Parts 2 or 3 of the Regulations.

Note: See regulation 117(1)

- (2) The Rulings Panel may make the prohibition only after it has had regard to the following factors:
 - (a) whether the information or document is confidential, commercially sensitive, or otherwise unsuited to publication or communication; and
 - (b) whether the publication or communication is required to enable the Rulings Panel to carry out its obligations under the Regulations or the Code; and
 - (c) whether the publication or communication is compelled by a law other than the Regulations or the Code; and
 - (d) the rules of natural justice.

Note: See regulation 117(2)

- (3) The Rulings Panel may make the prohibition—
 - (a) on the application of any participant or the Authority or on its own application; but
 - (b) only after notifying each industry participant that the Rulings Panel considers would be affected by the publication, communication, or prohibition; and
 - (c) only after having regard to any views that the industry participant may make known to the Rulings Panel within the time specified by the Panel.

Note: See regulation 117(3)

1.18 Draft decision by Rulings Panel

- (1) In any proceedings before it, the Rulings Panel may, if it thinks fit, prepare a draft decision, determination, order, penalty, or award, and give a copy of that draft to such persons as it thinks fit.
- (2) Any person to whom a copy of a draft decision, determination, order, penalty, or award is given under subclause (1) may comment in writing on the draft to the Rulings Panel within a period specified by the Rulings Panel for this purpose.
- (3) The Rulings Panel may give a copy of any comments it receives on the draft decision, determination, order, penalty, or award to such persons as it thinks fit.

- (4) The Rulings Panel may, if it thinks fit, give the persons to whom a copy of the comments is given under subclause (3) an opportunity to provide further comment on the draft decision. Further comments must be made within a period specified by the Rulings Panel for this purpose.

1.19 Rulings Panel may seek advice

In carrying out its functions, the Rulings Panel may employ or otherwise seek advice or assistance from any external auditor, technical expert, or other person that the Rulings Panel sees fit.

Note: See regulation 41

1.20 Reconsideration of matters referred by the High Court

If the High Court directs the Rulings Panel to consider any aspect of a Rulings Panel decision, the Rulings Panel must, in reconsidering the matter, have regard to the Court's reasons for giving the direction and the Court's directions.

Note: See section 68(3) of the Act

2. Part 2

Complaints of breach of the Code

2.1 Application of this Part

This Part applies to formal complaints of breaches of the Code laid under regulation 30 or 31.

2.2 Notification of complaint

- (1) On receiving a formal complaint, the Rulings Panel must give written notice of it to every party to the complaint.

Note: See regulation 33(1)

- (2) The notice must include —
 - (a) the text of the formal complaint; and
 - (b) a statement that any party may make written submissions to the Rulings Panel before the deadline for submissions, which must be at least 20 working days after the date of the notice; and
 - (c) a statement that any party may request a hearing to consider the complaint, by notice in writing to the Rulings Panel received before the deadline for submissions; and
 - (d) a statement that, if a hearing is not held, the complaint will be considered on the papers as soon as practicable after the deadline for submissions; and
 - (e) a statement that if the Rulings Panel extends the deadline for submissions, it will notify all parties of the new deadline.

Note: See regulations 33(2)

- (3) The parties to a complaint considered by the Rulings Panel are—
 - (a) the industry participant allegedly in breach; and

- (b) the complainant, being the industry participant that originally reported the breach; and
- (c) the Authority; and
- (d) any other industry participant that was a party to the investigation (as determined by regulation 18).

Note: See regulation 32

- (4) Regulation 17, which provides that affected parties may join as parties to an investigation, does not apply to complaints that relate to disputes under Part 6 of the Code referred to the Rulings Panel in accordance with Part 4 of these Procedures.

Note: See clause 3(2) of Schedule 6.3 of the Code

- (5) On receiving a formal complaint, the Rulings Panel must decide whether a hearing will be held in relation to the complaint, whether the hearing is to be in public, in accordance with clauses 1.9 and 1.1.

Note: See regulations 34 and 36

- (6) The Rulings Panel may, at any time, alter any decision made by it under subclause (1) or (2), and this clause applies to the altered decision to the same extent as if the altered decision were the original decision.

2.3 Notice of hearing and provision of materials

- (1) If a complaint is set down for a hearing, the Rulings Panel must give or send all parties to the complaint—
 - (a) a notice of the date and time when, and the place where, the hearing will be held; and
 - (b) a copy of all relevant material collected or prepared during the course of the investigation.

Note: See regulation 35(1)

- (2) The Rulings Panel must comply with subclause (1)—
 - (a) not less than 10 working days before the hearing; or
 - (b) if the Rulings Panel, in its discretion, decides that an urgent hearing is desirable, as soon as practicable.

Note: See regulation 35(2)

- (3) If a complaint is not set down for a hearing, subclauses (1) and (2) apply as if references in subclause (2) to a hearing were references to the date on which the Rulings Panel considers the complaint.

2.4 Hearings

- (1) Every party to the complaint is entitled to be present at the hearing of the complaint.

Note: See regulation 37(a)

- (2) Clauses 1.8 to 1.15 of these Procedures apply to hearings of formal complaints.

2.5 Submissions and evidence

- (1) Every party to the complaint is entitled to provide written submissions and evidence on the complaint, whether or not the complaint has been set down for a hearing.

Note: See regulation 38(2)

- (2) Any person who provides written submissions and evidence under subclause (1) must give copies of those submissions and evidence to each of the other parties to the complaint and the Rulings Panel by the date specified by the Rulings Panel, which must be no later than 5 working days before the date of the hearing (or, if there is no hearing, the date on which the Rulings Panel will consider the formal complaint).
- (3) Any party to the complaint may respond to a submission or evidence provided under subclause (1) by giving written notice of its response to each of the other parties to the complaint and the Rulings Panel by the date specified by the Rulings Panel, which must be no later than 2 working days before the date of the hearing (or, if there is no hearing, the date on which the Rulings Panel will consider the complaint).

2.6 Rulings Panel may request further information

- (1) The Rulings Panel may request an investigator to obtain any further information that the Rulings Panel requests if the Rulings Panel considers that, in relation to any matter before it, the Rulings Panel does not have sufficient information for it to determine what remedial order to make under section 54 of the Act.

Note: See regulation 40(1)

- (2) The Rulings Panel may make the request of its own initiative or following an application by any party to the complaint.

Note: See regulation 40(2)

- (3) Industry participants must provide any information reasonably requested by the Rulings Panel or the investigator under this clause, subject to subclause (4).

Note: See regulation 40(3) and (4)

- (4) An industry participant, or an officer or employee of the industry participant, is not excused from answering a question or giving any information or document on the ground that to do so may incriminate or tend to incriminate the industry participant or the officer or employee. However, a self-incriminating statement or document made or given by an officer or employee, or an industry participant that is an individual, is not admissible as evidence in any criminal or civil proceedings against that person.

Note: See section 48 of the Act

2.7 Timing of decision

The Rulings Panel must use reasonable endeavours to make its decision on a complaint under its consideration within 40 working days after the date on which it receives all written and oral submissions on the matter.

Note: See regulation 43(1)

2.8 Rulings Panel decisions

- (1) The Rulings Panel must give its decision, in writing and together with the reasons for the decision, to the parties to the complaint.

Note: See regulation 43(2)

- (2) The Rulings Panel must notify the decision to the Authority as soon as practicable after it has made a final decision.
- (3) The Authority must publicise the terms of every decision made by the Rulings Panel under this Part, together with the reasons for the Panel's decision, within 10 working days of receiving the decision from the Rulings Panel.

Note: See regulation 44(1)

- (4) However, the Authority must not publicise any part, or all, of any particular decision if the Rulings Panel advises the Authority that there are special circumstances that justify the non-publication.

Note: See regulation 44(2)

2.9 Orders

- (1) The Rulings Panel may make any order specified in section 54(1) of the Act in relation to a complaint or matter referred to it under clause 2.2.

Note: See section 54 of the Act

- (2) If the Rulings Panel is considering requiring an industry participant to pay a pecuniary penalty under section 54(1)(d) of the Act, the Rulings Panel must consider the seriousness of the breach of the Code, having regard to the following:

- (a) the severity of the breach:
- (b) the impact of the breach on other industry participants:
- (c) the extent to which the breach was inadvertent, negligent, deliberate or otherwise:
- (d) the circumstances in which the breach occurred:
- (e) any previous breach of the Code by the industry participant:
- (f) whether the industry participant disclosed the matter to the Authority:
- (g) the length of time the breach remained unresolved:
- (h) the participant's actions on learning of the breach:
- (i) any benefit that the participant obtained or expected to obtain as a result of the breach:
- (j) any other matters that the Rulings Panel thinks fit.

Note: See section 56 of the Act

- (3) In making any decision under subclause (1), the Rulings Panel must take into account its own previous decisions in respect of any similar situations previously dealt with by the Authority or any predecessor of the Authority.

Note: See section 54(2) of the Act

- (4) The Rulings Panel may not require a grid owner to pay a civil pecuniary penalty for a breach of an obligation that relates to metering standards, or to the provision of metering information.

Note: See regulation 51

- (5) Regulations 51 to 75 which relate to limits on liability, apply only to decisions of the Rulings Panel made under section 54 of the Act.

Note: See regulation 50

2.10 Rulings Panel may make a termination or suspension order

- (1) The Rulings Panel may make a suspension order or a termination order against an industry participant if—
 - (a) the industry participant has failed to comply with an order of the Rulings Panel, and the failure has seriously prejudiced the operational or financial security of the wholesale market or transmission system for electricity; or
 - (b) the Authority has suspended trading in a generator or purchaser under section 49 of the Act and applies to the Rulings Panel for a termination order.

Note: See section 58 of the Act

- (2) A suspension order suspends all or specified rights under the Code of the industry participant against whom it is made, subject to any conditions set out in the order, and for the period specified in the order.

Note: See section 59(1) of the Act

- (3) A termination order terminates all or specified rights under the Code of the industry participant against whom it is made.

Note: See section 59(2) of the Act

- (4) An industry participant commits an offence, and is liable on summary conviction to a fine not exceeding \$20,000, if it fails to comply with—
 - (a) a suspension order or a termination order; or
 - (b) any direction or arrangement made by the Rulings Panel under the regulations in relation to a suspension order or a termination order.

Note: See section 60 of the Act

- (5) The Rulings Panel may, on review, exercise the Authority's powers to suspend a generator's or purchaser's rights to make bids or offers under the Code under section 49(3) of the Act, and exercise the Authority's powers to order that any rights suspended be reinstated under section 49(5)(a).

Note: See section 49(5)(c) of the Act

2.11 Process requirements for termination and suspension orders

- (1) Before the Rulings Panel makes a termination order or a suspension order, or extends, suspends, or modifies a condition of a suspension order; or revokes a termination order or a suspension order, the Rulings Panel must—
 - (a) give notice to the industry participant to which the order relates, or may relate, in accordance with subclause (2); and
 - (b) publicise the proposed order or change in accordance with subclause (3).

Note: See regulation 47(1) to (3)

- (2) A notice given under subclause (1)(a) to the industry participant must—
 - (a) state the reasons for making the order or change; and

- (b) state that the order or change will be made unless, by the date specified in the notice, the industry participant satisfies the Rulings Panel by notice in writing that the order or change should not be made.

Note: See regulation 47(4)

- (3) A notice that is publicised under subclause (1)(b) must specify—
 - (a) the name of the industry participant to which the order relates or may relate;
 - (b) the reasons for the order or change; and
 - (c) the date by which any submission must be delivered to the Rulings Panel, which must be not less than 20 working days after the date of the notice.

Note: See regulation 47(5) and (6)

- (4) However, the time limit specified in subclause (3)(c) does not apply if the Rulings Panel, in its discretion, decides that a suspension order may need to be made urgently.

Note: See regulation 47(7)

2.12 Rulings Panel to make directions or arrangements

If the Rulings Panel makes a termination order or suspension order under clause 2.10, it must give directions to, or make arrangements for, other industry participants (either generally or specifically) to give effect to its order.

Note: See regulation 48(1)

2.13 Submissions on orders

- (1) Any party to a complaint may make written submissions to the Rulings Panel on the subject of any order that the Rulings Panel may make in relation to that matter.

Note: See regulation 42(1)

- (2) A submission under subclause (1) must be made before any deadline for those submissions that is set by the Rulings Panel.

Note: See regulation 42(2)

- (3) The Rulings Panel may, if it thinks fit, hold a hearing in relation to any order, and any person who has made a submission on that order under subclause (1) must be given a reasonable opportunity to make oral representations at that hearing.

2.14 Decision of Rulings Panel on orders

The Rulings Panel must as soon as practicable give its decision on any order, in writing, to the parties to the complaint.

2.15 Orders generally

Every remedial, suspension, and termination order made by the Rulings Panel must be in writing, is subject to subpart 4 of Part 2 of the Act and the Regulations, and may be amended or revoked at any time by the Rulings Panel.

Note: See section 62 of the Act

3. Part 3

Information disclosure appeals

3.1 Application of this Part

This Part applies to refusals by participants to supply Code information under Part 2 of the Code.

3.2 Right of appeal

- (1) A requesting participant who is notified under clause 2.14 of the Code that another participant refuses to supply any Code information may appeal that refusal by notice of appeal to the Rulings Panel.

Note: See clause 2.15 of the Code

- (2) The notice under subclause (1) must specify the Code information requested and the reasons given by the refusing participant for refusing to supply the information (if any).
- (3) The requesting participant must, within 10 working days of being advised of the refusal, give a copy of the notice under subclause (1) to the refusing participant and the Authority.

3.3 Notification by Rulings Panel

- (1) On receiving a notice under clause 3.2, the Rulings Panel must—
 - (a) set a date for considering the appeal; and
 - (b) decide whether a hearing will be held in relation to the appeal, whether to make the hearing private, in accordance with clauses 1.9 and 1.11; and
 - (c) give to the requesting participant, the refusing participant, and the Authority at least 20 business days written notice of the place, date, and time at which the Rulings Panel will consider the appeal and, if a hearing is to be held, the place, date, and time of the hearing.
- (2) The Rulings Panel may at any time alter any decision made by it under subclause (1), and this clause applies to the altered decision to the same extent as if the altered decision were the original decision.

3.4 Submissions and evidence

- (1) Each of the persons referred to in clause 3.3(1)(c) is entitled to provide written submissions and evidence on the refusal.
- (2) Any person who provides written submissions and evidence under subclause (1) must give copies of those submissions and evidence to each of the other persons referred to in clause 3.3(1)(c) and the Rulings Panel no later than 5 working days before the date of the hearing (or, if there is no hearing, the date on which the Rulings Panel will consider the appeal).

3.5 Responses to submissions

Any person referred to in clause 3.3(1)(c) may respond to a submission or evidence provided under clause 3.4 by giving written notice of its response to each of the other persons referred to in clause 3.3(1)(c) and the Rulings Panel no later than 2 working days before the date of the hearing (or, if there is no hearing, the date on which the Rulings Panel will consider the appeal).

3.6 Hearings

- (1) Each of the persons referred to in clause 3.3(1)(c) is entitled to be heard at a hearing of an appeal.
- (2) Clauses 1.8 to 1.15 of these Procedures apply to information disclosure appeals under this Part.

3.7 Rulings Panel decisions

- (1) The Rulings Panel must decide whether the refusal by the participant to supply the Code information was consistent with clauses 2.6 and 2.7 of the Code.
- (2) The Rulings Panel must as soon as practicable give its decision, in writing and together with the reasons for the decision, to the persons referred to in clause 3.3(1)(c).

4. Part 4

Disputes under Part 6 of the Code

4.1 Application of this Part

- (1) Subject to subclauses (2) and (3), this Part applies to:
 - (a) disputes between a distributed generator and a distributor arising from an allegation that a party has breached any of the regulated terms that apply under clause 6.6(2) of the Code;
 - (b) any other dispute between a distributor and a distributed generator about an alleged breach of any of the provisions of Part 6 of the Code.

Note: See clause 6.8(1) of the Code

- (2) To avoid doubt, disputes between a distributed generator and a distributor described in subclause (1) are disputes about—
 - (a) the conditions specified by the distributor under clause 18 of Schedule 6.1 of the Code; and
 - (b) whether a party is attempting to negotiate in good faith under clauses 6 or 21 of Schedule 6.1 of the Code.

Note: See clause 1(2) of Schedule 6.3 of the Code

- (3) This Part does not apply to disputes between a distributed generator and a distributor—
 - (a) arising from an allegation that a party has breached any of the terms of a connection contract outside the regulated terms; or
 - (b) arising from an allegation that a party has breached any of the extra terms referred to in clause 6.7(1) of the Code; or
 - (c) that the distributed generator and the distributor have agreed should be determined by any other agreed method (for example, under any dispute resolution scheme under section 95 of the Act).

Note: See clause 6.8(2) of the Code

4.2 Complaint of disputes to be treated as complaints under Part 2 of these Procedures

- (1) If the parties to a dispute are unable to resolve the dispute, either party may complain in writing to the Authority.

Note: See clause 2(3) of Schedule 6.3 of the Code

- (2) A complaint made under subclause (1) must be treated as if it were notification given under the Regulations, and may be referred to the Rulings Panel as a formal complaint under regulation 30 or 31 as set out in Part 2 of these Procedures.

Note: See clause 3(1) of Schedule 6.3 of the Code

- (3) Subject to clauses 2.2(4) and 2.9(5), Part 2 of these Procedures applies to disputes to which this Part applies that are the subject of a complaint, in the same way as those provisions apply to a notification of an alleged breach of the Code, and as if references to a participant in those provisions were references to a party under Part 6 of the Code.

Note: See clause 3(3)(a) and (b) of Schedule 6.3 of the Code

- (4) The Rulings Panel may make any further modifications to the procedures in Part 2 that are necessary or desirable for the purpose of applying those procedures to the complaint.

Note: See clause 3(3)(c) of Schedule 6.3 of the Code

4.3 Application of pricing principles to disputes

- (1) The Authority and the Rulings Panel must apply the pricing principles set out in Schedule 6.4 of the Code to determine any connection charges payable.

Note: See clause 4(1) of Schedule 6.3 of the Code

- (2) Subclause (1) applies if—
 - (a) there is a dispute under Part 6 of the Code; and
 - (b) in the opinion of the Authority or the Rulings Panel it is necessary or desirable to apply subclause (1) in order to resolve the dispute.

Note: See clause 4(2) of Schedule 6.3 of the Code

4.4 Orders the Rulings Panel can make

If a complaint is referred to it, the Rulings Panel may make any order, or take any action, that it is able to make or take in accordance with section 54 of the Act.

Note: See clause 5 of Schedule 6.3 of the Code

5. Part 5

Appeals against system operator decisions in relation to dispensations, equivalence arrangements, or alternative ancillary service arrangements, and disputes regarding system operator under-frequency event determinations

5.1 Application of this Part

- (1) Clauses 5.2 to 5.12 of this Part apply to decisions of the system operator in relation to:

- (a) an application for dispensation or equivalence arrangements:
 - (b) an alternative ancillary service arrangement.
- (2) Clause 5.13 of this Part applies to disputes regarding system operator under-frequency event determinations.

5.2 **Right of appeal**

- (1) A participant may appeal a decision to which clause 5.1(a) applies on the grounds that—
- (a) the system operator made an error of fact or failed to take into account all relevant information or took into account irrelevant information and such error, failure or irrelevancy was material to the decision; or
 - (b) the conditions imposed on the dispensation or equivalence arrangement are unjustifiably onerous, unnecessary or impose extra costs if appropriate alternatives exist.

Note: See clause 8.36(1) and (3) of the Code

- (2) An applicant may appeal any decision to which clause 5.1(b) applies.

Note: See clause 8.53(1) of the Code

- (3) A participant may appeal any decision to which clause 5.1(b) applies on the grounds that—
- (a) the system operator made an error of fact or failed to take properly into account all relevant information or took into account irrelevant information and such error, failure or irrelevancy was material to the decision; or
 - (b) the conditions imposed on the alternative ancillary service arrangement are onerous, unnecessary or impose extra costs if appropriate alternatives exist.

Note: See clause 8.53(2) and (4) of the Code

5.3 **Notice of appeal**

- (1) An appeal under clause 5.2 must be made to the Rulings Panel by giving written notice to the Authority specifying the grounds of appeal.
- (2) Each notice must be given within 10 business days after publication of the relevant decision in the system operator register under clause 8 of schedule 8.1 or clause 4 of schedule 8.2, as the case may be.

Note: See clauses 8.36(2) and 8.53(3) of the Code

5.4 **Appeal must be publicised and affected parties may join as parties to appeal**

- (1) As soon as practicable after receiving a notice under clause 5.3, the Authority must send a copy of the notice to the Rulings Panel and the system operator and publicise the appeal.
- (2) Within 10 business days after the Authority publicises the appeal under subclause (1), a participant may become a party to the appeal by notifying the Rulings Panel in writing that it considers that it is affected by the subject of the appeal and wishes to become a party to the appeal.

5.5 **Notification by Rulings Panel**

- (1) On receiving a notice of appeal under clause 5.3, the Rulings Panel must–
 - (a) set a date for considering the appeal; and
 - (b) decide whether a hearing will be held and whether to make that hearing private, in accordance with clauses 1.8 and 1.10; and
 - (c) give to the appellant, the system operator, a participant that has become a party to the appeal under clause 3.4, and the Authority at least 20 business days written notice of the place, date, and time at which the Rulings Panel will consider the appeal, and whether a hearing will be held.
- (2) The Rulings Panel may, at any time, alter any decision made by it under subclause (1), and this clause applies to the altered decision to the same extent as if the altered decision were the original decision.

5.6 Submissions and evidence

- (1) Each of the persons referred to in clause 5.5(1)(c) is entitled to provide written submissions and evidence on an appeal.
- (2) Any person who provides written submissions and evidence under subclause (1) must give copies of those submissions and evidence to each of the other persons referred to in clause 5.5(1)(c) and the Rulings Panel no later than 5 business days before the date of the hearing (or, if there is no hearing, the date on which the Rulings Panel will consider the appeal).

5.7 Responses to submissions

Any person referred to in clause 5.5(1)(c) may respond to a submission or evidence provided under clause 5.6 by giving written notice of its response to each of the other persons referred to in clause 5.5(1)(c) and the Rulings Panel no later than 2 business days before the date of the hearing (or, if there is no hearing, the date on which the Rulings Panel will consider the appeal).

5.8 Hearings

- (1) Each of the persons referred to in clause 5.5(1)(c) is entitled to be heard at a hearing of an appeal.
- (2) Clauses 1.8 to 1.15 of these Procedures apply to appeal hearings under this Part.

5.9 Timing of decision

The Rulings Panel must use reasonable endeavours to make its final decision on an appeal as soon as practicable after the date that it has received all written and oral submissions on the matter.

5.10 Rulings Panel decisions

The Rulings Panel, in determining an appeal, must approve the decision of the system operator or direct the system operator to reconsider the decision in full or by reference to specified matters.

Note: See clauses 8.36(4) and 8.53(5) of the Code

5.11 Status of decisions pending an appeal

Pending the outcome of an appeal, the decision of the system operator in relation to the grant of a dispensation or approval of an equivalence arrangement or authorisation of an alternative ancillary service arrangement, as the case may be, remains valid and may be relied upon by the relevant asset owner.

Note: See clauses 8.36(5) and 8.53(6) of the Code

5.12 No precedent

Equivalence arrangements and dispensations are specific to asset owners, and no approval of an equivalence arrangement or granting of a dispensation creates a precedent for the approval of other equivalence arrangements or dispensations.

Note: See clause 8.37(2) of the Code

5.13 Disputes regarding system operator determinations

- (1) The Authority or a participant who is substantially affected by a system operator determination as to whether an under-frequency event has been caused by a generator or grid owner may dispute the determination by referring the matter to the Rulings Panel.

Note: See clause 8.6.2(1) of the Code

- (2) A dispute is commenced by giving written notice to the Rulings Panel specifying the grounds of the dispute, which must be given within 10 business days after the determination is published.

Note: See clauses 8.62(2) and (3) of the Code

- (3) If a dispute is referred to the Rulings Panel, the system operator must provide the Rulings Panel with all information considered by the system operator in making the determination.

Note: See clauses 8.62(6) of the Code

- (4) The Rulings Panel may confirm or amend the determination, substitute its own determination, or refer the decision back to the system operator with directions as to the particular matters that require reconsideration or amendment.

Note: See clause 8.63(1) of the Code

- (5) The Rulings Panel must give a copy of its decision to the system operator as soon as reasonably practicable.

Note: See clause 8.63(3) of the Code

6. Part 6

Disputes arising from the negotiation of transmission agreements

6.1 Disputes may be referred to Rulings Panel

- (1) Except as provided in subclause (2), if a dispute between Transpower and a designated transmission customer concerning any of the following is not resolved within a reasonable time, either party may refer the matter to the Rulings Panel for determination:

- (a) the customer specific terms of a transmission agreement being negotiated between those parties:
- (b) a requested variation of any of the terms of a default transmission agreement (other than a variation under clause 12.12 of the Code) that applies between Transpower and the designated transmission customer in accordance with clauses 12.10 to 12.13 of the Code (including a requested variation from the services described in the default transmission agreement):
- (c) the schedules proposed by Transpower under clause 12.10(b)(v) to (viii) of the Code for a default transmission agreement:
- (d) any revision to Schedule 4 or Schedule 5 of a default transmission agreement proposed by Transpower under clause 12.12 of the Code:
- (e) the schedules proposed by Transpower under clause 12.13(1)(b)(v) to (viii) of the Code on the expiry or termination of a transmission agreement.

Note: See clause 12.45 of the Code

- (2) The Rulings Panel must not determine disputes relating to the interpretation or enforcement of a transmission agreement including a benchmark agreement.

Note: See clause 12.47(2) of the Code

- (3) A party may refer a dispute to the Rulings Panel under subclause (1) by giving a written notice to the Rulings Panel and the other party which specifies the dispute, the party's position in relation to the dispute, and its reasons for that position.

6.2 Dispute must be publicised and designated transmission customers may join as parties to a dispute

- (1) As soon as practicable after receiving a notice under clause 6.1(3), the Rulings Panel must request the Authority to publicise the dispute, unless the Rulings Panel has decided under clause 6.7 not to undertake the determination of the dispute.
- (2) Within 10 business days after the Authority publicises the dispute under subclause (1), any designated transmission customer may notify the Rulings Panel in writing that it considers that it is affected by the subject of the dispute and wishes to become a party to the dispute. The Rulings Panel may, if it thinks fit, permit the designated transmission customer to become a party to the dispute.

6.3 Notification by Rulings Panel

- (1) On receiving a notice under clause 6.1(3), the Rulings Panel must, unless it has decided under clause 6.7 not to undertake the determination of the dispute—
 - (a) set a date for considering the dispute; and
 - (b) decide whether a hearing will be held in relation to the dispute and whether to make that hearing private, in accordance with clauses 1.8 and 1.10; and
 - (c) give to each party to the dispute, including any designated transmission customer that has become a party to the dispute under clause 4.2, and the Authority at least 20 business days written notice of the place, date, and time at which the Rulings Panel will consider the dispute and, if a hearing is to be held, the place, date, and time of the hearing.

- (2) The Rulings Panel may at any time alter any decision made by it under subclause (1), and this clause applies to the altered decision to the same extent as if the altered decision were the original decision.

6.4 Submissions and evidence

- (1) Each of the persons referred to in clause 6.3(1)(c) is entitled to provide written submissions and evidence on the dispute.
- (2) Any person who provides written submissions and evidence under subclause (1) must give copies of those submissions and evidence to each of the other persons referred to in clause 6.3(1)(c) and the Rulings Panel no later than 5 business days before the date of the hearing (or, if there is no hearing, the date on which the Rulings Panel will consider the dispute).

6.5 Responses to submissions and evidence

Any person referred to in clause 6.3(1)(c) may respond to a submission or evidence provided under clause 6.4 by giving written notice of its response to each of the other persons referred to in clause 6.3(1)(c) and the Rulings Panel no later than 2 business days before the date of the hearing (or, if there is no hearing, the date on which the Rulings Panel will consider the dispute).

6.6 Hearings

- (1) Each of the persons referred to in clause 6.3(1)(c) is entitled to be heard at a hearing of the dispute.
- (2) Clauses 1.8 to 1.15 of these Procedures apply to dispute hearings under this Part.

6.7 Rulings Panel has discretion to determine dispute

- (1) The Rulings Panel may, in its discretion, decide whether or not to undertake the determination of a dispute referred to it under clause 6.1.

Note: See clause 12.46(1) of the Code

- (2) If the Rulings Panel decides not to undertake the determination of a dispute, the Rulings Panel must inform Transpower or the designated transmission customer—
 - (a) that the Rulings Panel intends to do no more in relation to the matter; and
 - (b) of the reasons for that intention.

Note: See clause 12.46(2) of the Code

6.8 Determinations by Rulings Panel

In determining a dispute referred to it under clause 6.1, the Rulings Panel must take into account—

- (a) the principles for benchmark agreements in clause 12.30 of the Code; and
- (b) the desirability of consistent treatment of designated transmission customers except where special circumstances justify a departure; and
- (c) the potential impact of a decision on the contents of other transmission agreements or existing agreements as described in clauses 12.49 to 12.51 of the Code.

Note: See clause 12.47(1) of the Code

6.9 Rulings Panel to give written notice of determinations

- (1) The Rulings Panel must give notice to the parties of its determination, as soon as reasonably practicable.

Note: See clause 12.47(3) of the Code

- (2) The Rulings Panel must give notice of its determination to any designated transmission customer that has become a party to the dispute under clause 6.2, as soon as reasonably practicable.

6.10 Status of default transmission agreement while Rulings Panel determining dispute

Nothing in this Part overrides the application of a benchmark agreement as a default transmission agreement under clause 12.10 of the Code, pending a determination of the Rulings Panel.

Note: See clause 12.48 of the Code

7. Part 7

Prudential requirements and invoice disputes

7.1 Application of this Part

This Part applies to decisions of the clearing manager made under clauses 14.2 to 14.28 of the Code, and invoice disputes between payers or payees and the clearing manager under clause 14.64 of the Code.

7.2 Disputes referred to Rulings Panel

- (1) If a participant disputes a decision of the clearing manager made under clauses 14.2 to 14.28 of the Code, it may refer the matter to the Rulings Panel.

Note: See clause 14.29(1) of the Code

- (2) The participant must, within 10 business days of being advised of the clearing manager's decision, give a written notice to the Rulings Panel, the Authority, and the clearing manager that specifies the disputed decision and the participant's reasons for disputing it.
- (3) If a dispute between a payee or a payer and the clearing manager concerning an invoice issued under clauses 14.36 to 14.54 of the Code that does not relate to the submission of information provided for the purpose of reconciliation under the Code (which must be dealt with in accordance with Part 7 of these Procedures) is not resolved within 15 business days after the date on which the dispute was notified to the clearing manager, the disputing payee or payer or the clearing manager may refer the matter to the Rulings Panel for resolution.

Note: See clause 14.64(10) of the Code

7.3 Notification by Rulings Panel

- (1) On receiving a notice under clause 7.2(2), the Rulings Panel must—
 - (a) set a date for considering the dispute; and
 - (b) decide whether a hearing will be held in relation to the dispute and whether to make that hearing private, in accordance with clauses 1.8 and 1.10; and
 - (c) give to the participant, the Authority, and the clearing manager at least 20 business days written notice of the place, date, and time at which the Rulings Panel will consider the dispute and, if a hearing is to be held, the place, date, and time of the hearing.
- (2) The Rulings Panel may, at any time, alter any decision made by it under subclause (1), and this clause applies to the altered decision to the same extent as if the altered decision were the original decision.

7.4 Submissions and evidence

- (1) Each of the persons referred to in clause 7.3(1)(c) is entitled to provide written submissions and evidence on the dispute.
- (2) Any person who provides written submissions and evidence under subclause (1) must give copies of those submissions and evidence to each of the other persons referred to in clause 7.3(1)(c) and the Rulings Panel no later than 5 business days before the date of the hearing (or, if there is no hearing, the date on which the Rulings Panel will consider the dispute).

7.5 Responses to submissions and evidence

Any person referred to in clause 7.3(1)(c) may respond to a submission or evidence provided under clause 7.4 by giving written notice of its response to each of the other persons referred to in clause 7.3(1)(c) and the Rulings Panel no later than 2 business days before the date of the hearing (or, if there is no hearing, the date on which the Rulings Panel will consider the dispute).

7.6 Hearings

- (1) Each of the persons referred to in clause 7.3(1)(c) may be heard at a hearing of a dispute.
- (2) Clauses 1.8 to 1.15 of these Procedures apply to dispute hearings under this Part.

7.7 Rulings Panel to make decision on disputes regarding prudential requirements

- (1) If a dispute is referred to it under clause 7.2(1), the Rulings Panel must, after hearing from the participant that disputed the clearing manager's decision and from the clearing manager, make a decision in accordance with clauses 14.2 to 14.28 of the Code.

Note: See clause 14.29(2) of the Code

- (2) The Rulings Panel must make a decision under subclause (1) as soon as practicable.

7.8 Invoice dispute decisions

- (1) The Rulings Panel may make such determinations on a dispute referred to it under clause 7.2(3) as it thinks fit, and must give written notice of its determination to the parties to the dispute and affected participants.

Note: See clause 14.64(11) and (12)

- (2) The Rulings Panel must use reasonable endeavours to make a final determination on an invoice dispute as soon as practicable.

8. Part 8

Reconciliation and ancillary services disputes

8.1 Application of this Part

This Part applies to:

- (a) a dispute in relation to the submission of information provided for the purposes of reconciliation under Part 15 of the Code:
- (b) a dispute in relation to a contract for the procurement of ancillary services (but not an appeal against a system operator decision in respect of an ancillary service).

Note: See regulation 78 and clause 15.29 of the Code

8.2 Parties may apply to Rulings Panel to resolve dispute

- (1) The parties to a dispute to which this Part applies may, by agreement, apply to the Rulings Panel to determine a dispute for them.

Note: See regulation 80(1)

- (2) The application must be in writing, setting out the nature of the dispute, and be signed by all the parties to the dispute.

Note: See regulation 80(2)

- (3) The Rulings Panel may, in its discretion, decide whether or not to undertake the determination of the dispute.

Note: See regulation 80(3)

- (4) The Rulings Panel must give written notice to the parties of the decision as soon as practicable.

Note: See regulation 80(4)

8.3 Selection of process

- (1) The parties to the dispute must agree to the form of dispute resolution to be utilised or, in the absence of agreement, the Rulings Panel must determine the form of dispute resolution.

Note: See regulation 81

8.4 Rulings Panel must notify when dispute resolution will take place

The Rulings Panel must notify the parties to the dispute of the dates, times, and places at which the dispute resolution process will take place, having regard to the urgency of the matter and the form of dispute resolution process selected under clause 8.3.

Note: See regulation 82

8.5 Rulings Panel may do what is necessary to resolve dispute

The Rulings Panel may do whatever is reasonably necessary and permitted by law to enable the fair, effective, and expeditious resolution of any matter before it.

Note: See regulation 83(3)

8.6 Meetings and documents

- (1) The Rulings Panel may meet separately or jointly, or both, with the parties to any dispute.

Note: See regulation 84(1)

- (2) The Rulings Panel may require parties to exchange submissions, documents, and information.

Note: See regulation 84(2)

8.7 Completion of process

The Rulings Panel must complete the dispute resolution process that it selects as soon as practicable.

Note: See regulation 86

8.8 Orders and appeals

- (1) The Rulings Panel may make any order in respect of a dispute that it considers is just and reasonable in the circumstances, including—
 - (a) an order that 1 or more parties to the dispute take any action, including the payment of money to any other party, or refrain from taking any action that the Rulings Panel prescribes; and
 - (b) assessing damages against any party and awarding compensation to be paid to any party; and
 - (c) making any other determination it thinks fit.

Note: See regulation 87(1)

- (2) An order made under subclause (1) may be appealed to the High Court under section 67 of the Act.

Note: See regulation 87(2)

8.9 Breaches to be referred to Authority

The Rulings Panel must report to the Authority if the Rulings Panel finds, during the course of any dispute resolution process, that there has been a breach of the Act or the Code.

Note: See regulation 88

8.10 Money payable under the Code

- (1) If the Rulings Panel finds, or the parties agree, during the course of any dispute resolution process, that money is due and payable under the Code, that finding or agreement creates an obligation to pay the amount agreed or determined.

Note: See regulation 89(1)

- (2) That amount is a debt due by the industry participant and is recoverable as such in court.

Note: See regulation 89(2)

8.11 **Costs**

- (1) Each party to a dispute is responsible for its own costs and legal expenses.

Note: See regulation 90(1)

- (2) The parties must share equally all other costs and expenses associated with the dispute resolution process, including the costs of the Rulings Panel, unless an allocation is made under subclause (3).

Note: See regulation 90(2)

- (3) The Rulings Panel may allocate the costs referred to in subclause (2) for payment by 1 or more parties as the Rulings Panel determines is just and reasonable.

Note: See regulation 90(3)

- (4) Before making an allocation of costs under subclause (3) the Rulings Panel may request written or oral submissions on the matter from such persons as it thinks fit.