



NEM Dispute Management System

DMS under NER Chapter 8

18 April 2013

SA Power Networks

www.sapowernetworks.com.au

NEM Dispute Management System

Scope of DMS

This Dispute Management System (DMS), documents the process and procedure to be followed in resolving disputes between SA Power Networks and other market participants in the National Electricity Market (NEM) in relation to matters arising from the National Electricity Rules (NER). It is cognisant of the time periods prescribed in the Rules.

The overriding purpose of SA Power Networks' DMS is to effectively and efficiently resolve disputes in a fair manner to the satisfaction of all parties.

The DMS contact

The primary DMS contact within SA Power Networks is:

Name: Mr Damien Harby
Position: General Counsel
Email: damien.harby@sapowernetworks.com.au
Phone: (08) 8404 5881
Fax: (03) 8404 5820
Mobile: 0457 833 716

The alternate DMS contact within SA Power Networks is:

Name: Mr Grant Cox
Position: Manager Regulatory Affairs
Email: grant.cox@sapowernetworks.com.au
Phone: (08) 8404 5012
Fax: (08) 8404 4145
Mobile: 0403 582 024

Both Damien Harby and Grant Cox have regular contact with the Chief Executive Officer and the SA Power Networks Executive Management Group. They have a thorough understanding of the National Electricity Rules and of the DMS.

Initiating the DMS process

External parties with an issue requiring resolution should firstly attempt to discuss the issue with their regular contact at SA Power Networks. Should the issue remain unresolved, external and internal parties are encouraged to formally contact the SA Power Networks DMS contact, by way of sending a DMS Referral Notice (Form 1). For a template of this Form, please see Appendix 1.

When you contact our DMS contact, please consider whether:

- You have firstly discussed the issue with your regular commercial contact at SA Power Networks.
- You require any information to assist in the resolution of the dispute.

NEM Dispute Management System

- You consider other participants are affected.
- There are barriers to forming a resolution.

Parties are also able to request that the existence of the dispute is kept confidential. If this is the case, please ensure you discuss this request for confidentiality with the SA Power Networks DMS contact prior to the DMS meeting.

Request for information

If you require access to information relevant to your dispute, you will need to complete the 'Request for Information' section of the DMS Referral Notice (Form 1). Where the information requested is sensitive in nature, you may be required to sign a confidentiality agreement.

Once the DMS contact receives a request for further information, they will respond within 5 business days. The DMS contact will acknowledge receipt of this request, inform you if there are any issues that may arise in providing the specified information and discuss when the information is likely to be produced.

Preparation for DMS meeting

All parties to the dispute are required to meet within 5 business days of the DMS contact receiving the DMS Referral Notice. This will be arranged by the DMS contact. This meeting may take place in person, via video-conference, telephone or other like method of real time communication, and will be used to discuss the issue and determine by agreement further conduct of the dispute. Whilst arranging this meeting, the DMS contact will discuss with each party, the representatives they believe should be involved from SA Power Networks, the instigator of the dispute and any other relevant parties.

The DMS meeting facilitates the opportunity to decide on the best way to resolve the issue. Despite the likelihood that the issue may be contentious amongst parties involved, the role of the DMS contact is to ensure that this meeting is constructive and assists in the achievement of a positive outcome.

To this end, it is recommended that the following actions are taken into consideration.

Exchange of issues papers

The DMS contact should coordinate the exchange of a brief issues paper to be circulated to each attendee, prior to the meeting. This paper will outline:

- Agenda items
- Issues(s) in dispute
- Background of discussions to date
- Suggestions/solutions for going forward
- Whether the existence of the dispute is to be kept confidential

NEM Dispute Management System

Facilitation of DMS meeting

Either the SA Power Networks DMS contact can chair the meeting, or they can recommend the meeting be chaired by a neutral party. The decision for a neutral party to chair the meeting may occur where:

- The relationship between parties is strained, or is likely to become strained.
- There are numerous parties involved.
- The issues are particularly complex or unclear.

In this instance, all parties to the dispute must agree to the selection of the chair from the Adviser's preferred list. All costs of engaging a neutral facilitator to chair the DMS meeting will be shared equally amongst the parties.

Options available at DMS meeting

At the DMS meeting, all parties will consider whether other Registered Participants should be party to the dispute and therefore issued with a DMS Referral Notice.

The aim of the DMS meeting is to discuss the process to be used to resolve the dispute. To avoid additional costs and delays, SA Power Networks will seek to form a consensus on this process during the DMS meeting. Options include:

Mediation

Mediation involves a designated, neutral mediator setting up a process to enhance effective and efficient communication, thereby assisting parties to resolve the dispute(s) themselves.

Non-binding neutral expert evaluation

This process involves the engagement of a neutral expert to take submissions from each party to the dispute and advise what is likely to occur, should the dispute be decided in an appropriate forum (the DRP, a court or other body). This enables all parties to assess their commercial risk and to commercially resolve the matter.

Binding expert decision

All parties can agree to be bound by the opinion of a designated neutral expert, on suitable terms. If selecting this method, it is required that all parties discuss and reach a consensus on:

- The form of the binding agreement
- How the process will run
- Grounds of appeal (if any)

The SA Power Networks DMS contact can facilitate the process of reaching a consensus on the above points. Alternatively, the Adviser can be referred to formally, using the Adviser Referral Notice (Form 2). For a template of this Form, please see Appendix 2.

NEM Dispute Management System

Engaging an external, neutral mediator or expert

In any instance where an external neutral mediator or expert is engaged to assist in the resolution of the dispute, the SA Power Networks DMS contact will ensure that the Adviser's preferred list is referred to.

Additionally, all costs associated with the engagement of a mediator or expert, will be divided evenly among all parties to the dispute.

All parties to the dispute may also be required to sign any release or indemnity sought by the mediator or expert.

Referral to the AER Adviser

In the event where the issue(s) cannot be resolved by this DMS process, disputes covered by Clause 8.2 of the Code can be referred to the Adviser, by any party. This is achieved by completing the Adviser Referral Notice (Form 2), in consultation with the Adviser. Upon receipt of this Form, the Adviser can contact either Damien Harby or Grant Cox for further information.

Time periods under Chapter 8 of the Rules

This DMS process will ensure that SA Power Networks meets the stringent timelines for disputes, as specified in Chapter 8 of the NER.

Please refer to Appendix 3 for the DMS flowchart, outlining these timelines.

NEM Dispute Management System

Appendix 1: DMS Referral Notice (Form 1)

Details of Initiating Participant:

Organisation: _____

DMS contact name: _____

Phone: _____

Email: _____

Mobile: _____

Category of eligible person: _____

Nature of the dispute:

Tick as appropriate, the type of Rule dispute between registered participants, as set out in Rule 8.2.1(a):

- The application or interpretation of the Rules.
- The failure of any registered participants to reach agreement on a matter where the Rules require agreement or require the registered participants to negotiate in good faith with a view to reaching agreement.
- The proposed access arrangements or connection agreements of an intending participant or a connection applicant.
- The payment of moneys under or concerning any obligation under the Rules.
- Any other matter relating to or arising out of the Rules to which a contract between two or more registered participants provides that the dispute resolution procedures under the Rules are to apply.
- Any other matter relating to or arising out of the Rules in respect of which two or more registered participants have agreed in writing that this Rule 8.2 should apply.
- Any other matter that the Rules provide must be dealt with under this Rule 8.2. Please specify:

NEM Dispute Management System

Circumstances giving rise to the dispute: *(please attach relevant correspondence, copy of any agreement etc.)*

Date of dispute decision or disputed conduct:

Period fixed by the Rules for this dispute: *(time and clause number)*

Do you wish to keep the fact of this dispute confidential? Yes / No

Please note this indicates your preference and does not guarantee confidentiality unless agreed to by the other participants to this dispute.

Participants to whom this Notice will be sent:

	Party 1	Party 2
Organisation		
DMS contact name		
State		
Phone		
Email		
Mobile		

If more Parties are involved in the dispute, please attach their details to this Form.

NEM Dispute Management System

Availability for DMS Meeting:

Within 5 business days of receiving this Notice, each participant served must meet with the DMS contacts of any other participants served with this Notice to discuss and agree on the further conduct of this matter.

Please indicate when you are available to attend the DMS Meeting:

Week commencing:	Mon	Tues	Wed	Thurs	Fri
	AM / PM	AM / PM	AM / PM	AM / PM	AM / PM
	AM / PM	AM / PM	AM / PM	AM / PM	AM / PM

Request for Facilitator:

- Adviser
- Other

If "Other", please provide:

Name: _____

Availability: _____

Cost: _____

Proposal for payment: _____

Request for Information:

Please list any information that you require in relation to the Dispute:

Material requested	Relevance and reason sought

NEM Dispute Management System

Suggested Agenda for DMS meeting:

Process for moving forward to resolution:

- Direct discussions (what level in the organisation)
- Mediation
- Other

Other parties to be served with Form 1:

- Name/details of DMS contact
- Other issues raised
- Wording of letter to be sent to them
- What level of information to send?
- Confidentiality requested/agreed
- Is the fact that the dispute exists, confidential?
- Documents/information exchanged

Appendix 2: Adviser Referral Notice (Form 2) - attached

Form 2:

Please note: The Adviser may forward a copy of this referral to a dispute resolution panel should one be constituted in accordance with the Rules. The Adviser may also include the Notice or a summary in her quarterly report to the market. It will also be placed on the dispute resolution portion of the AER website for precedent purposes.

Send to:

Shirli Kirschner
National Electricity Market
Resolution Adviser
M | 0411 380 380
F | 61 2 9380 5687
E | shirli@resolveadvisors.com.au

Adviser Referral Notice Clause 8.2.5 (a) - Referral - Form 2

From organisation:

DMS contact name:

Phone:

Mobile:

Email:

Date:

1. This is a referral under Clause 8.2.5(a) of the Rules.

Type of referral (check the applicable box):

- Application of interpretation of the Rules.
- The failure of any Registered participants to agree to reach agreement on a matter where the rules require agreement or requires the registered participants to negotiate in good faith with a view to reaching agreement.
- The proposed access arrangements or connection agreements of a participant or a connection applicant.
- The payment of moneys under or concerning any obligation under the Rules.
- Any other matter relating to, or arising out of, the Rules to which a contract between two or more registered participants have agreed in writing that this clause 8.2 should apply.
- Any other matter relating to or arising out of the Rules to which two or more registered participants have agreed in writing that this clause 8.2 should apply.
- Any other matter that the Rules provide may or must be dealt with under Rule 8.2 (specify) (e.g. Scheduling errors).

2. 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

3. Date of disputed decision or the occurrence of disputed conduct or when it became known (see 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 rule 3.8 or that a dispatch interval contains a manifestly incorrect input (3.8.24(2),(3)).

4. Date of last service of a DMS referral Notice (please attach a copy of the notice): (not required for compensation claims).

5. 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:

6. Names of other parties which the applicant considers parties to the dispute (attach pages for multi-party dispute):

Note: at this time I expect there have been a number of DMS meetings. Considering the identity of who should be a party to this dispute is important. Being a party give 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/effected please indicate below, or by cover email. We can then have a dialogue 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 Effected – for each provide:

Organisation:

DMS contact name:

Email:

Mobile:

7. Process Election:

We agree/do not agree (strike out whichever does not apply) to the Adviser attempting to resolve the dispute by any means she considers appropriate (see clause 8.2.5(c) (1) of the Rules).

For claims from the participant compensation fund the scope of the adviser process under this election is restricted as the determination of an error under 3.8.24 or the award of compensation must be made by a DRP.

Note re Adviser process:

The Rules provide fairly tight time frames for the establishment of the DRP as an alternative to the Adviser process. Agreeing to me resolving the dispute can take a number of forms. It may be agreement 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, 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 me an unfettered discretion. In other disputes this has been dealt with by referring it, with my agreement and that of the parties, for a specified time period with agreed steps.

Continued overleaf.

Generally once referred I will contact the other parties to the dispute and then meet by phone or in person to agree next steps.

In the event that my process cannot resolve the dispute what occurs next is a referral to the DRP. Prior to the referral I have a meeting 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.*

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.

8. Consultation on a DRP:

Names of persons we would like you to consider in constituting any dispute resolution panel. 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.

Name:

Technical expertise:

Contact details:

Referee (if possible):

Adviser checklist:

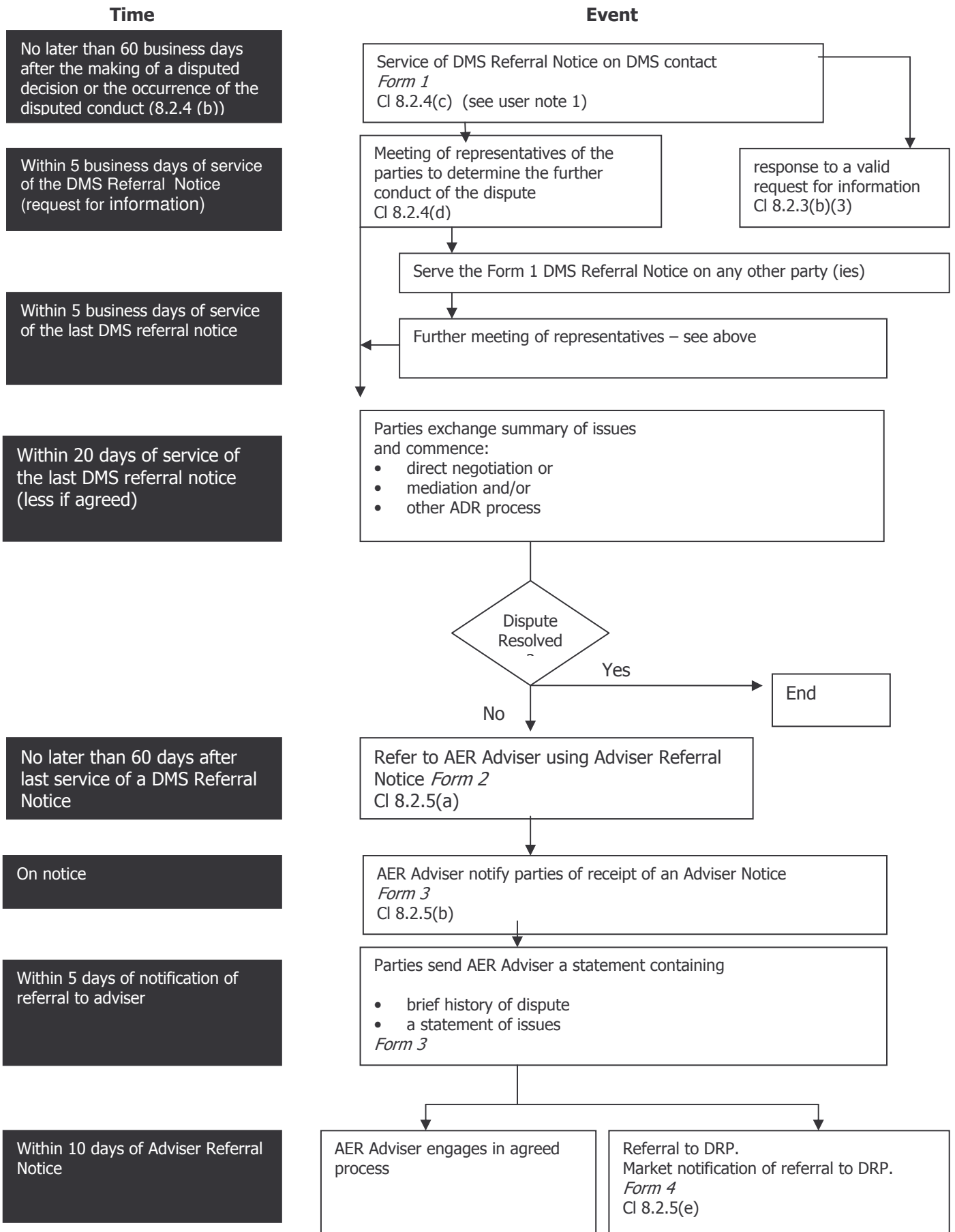
Date received:

Clause 8.2 applies: Yes/No

Notification sent to parties:

Notes on resolution options sent:

Appendix 3: DMS Flowchart - attached



User notes:

1. NEMMCO must notify the AER Adviser if it serves or is served a DMS Referral Notice *Form 1B*
2. Days are business days.