

**EMAIL TO:** DMS & DMC CONTACTS

**FROM:** Shirli Kirschner

**DATE:** 10 December

**SUBJECT:** Update

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The end of the year is nearly here. I thought it would be useful to send you an outline of what I have achieved this year.

We have not had any disputes in the market. I used the opportunity to finalise a number of projects which were on the drawing board.

In June this year, I sent out an email asking for representatives to sit on a Steering Committee. We met in Melbourne and created the Wholesale Energy Market Dispute Resolution Advisory Group (WEMDAGs). This has been extremely useful in assisting to set priorities and monitor performance.

The items on the agenda for this year included:

1. A system for updating DMS/DMC contacts.
2. Updating the website and the electricity forms and user notes.
3. Updating the pool from which the DRP is drawn
4. A review of the Appeals Provisions from the NGR and NER.
5. Assisting with the consultation on embedded generation.

I have dealt with each in turn below.

## 1. Updating DMC/DMS Contacts

For some time now the updating of DMC and DMS contacts has been done manually on the website by the AER and on spreadsheets by me. While this is an acceptable solution, it requires administrative time which could be spent better elsewhere. Being published on the website, I have also been asked by participant to delete direct contact numbers as these were beginning to be used by the general public. This has made it necessary for DMC/S contacts to call me for numbers.

I have now designed and invested in a Contacts Database which will be placed on a password controlled section of the Resolve website (with a link). This will allow:

- Participants to enter the DMC/DMS contacts directly and update them using a password,
- Access mobile phone numbers and emails of other DMS contacts (with the password),
- The Adviser to email contacts directly from the site.

In addition, I have raised with AEMO the possibility of sending out a form with the registration pack to inform participants to register a DMS/DMC contact. Once the automated data base is available this should be an easy next step to streamline and encourage registration.

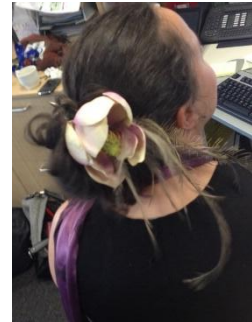
The functionality is in an advanced stage of development. I expect to be writing to you early in the New Year with a working version.

## 2. Website and electricity forms

The AER updated its website some time ago and the Dispute Resolutions Provisions were moved and are now under "About Us". The dispute resolution portion of the site had legacy items dating back to its time with NECA. It needed a serious overhaul.

I worked with Trinas who is responsible for the AER website to try and make the interface more user friendly. A link appears below (together with photos of Trinas triumphant in completing the task).

<http://www.aer.gov.au/about-us/dispute-resolution>



Those of you who have designed websites will recognise that the simplicity of output is achieved by effort and hours of input. I would like to acknowledge Trinas for the enormous effort and pride that she took in updating our site. I would also like to acknowledge my executive officer, Robbie Emmett, for his assistance in updating all of the electricity forms.



I would be most grateful (and feel really good to know that people have read it) if you would send me your thoughts on the new site.

### 3. Pool Members

I have reappointed a number of the pool members for a further term. We have also had two retirements from the pool:

- **AC (Tony) Fitzgerald**

Tony has sat on a number of our dispute panels in both electricity and gas and been available to consult generally. I would like to acknowledge his enormous contribution and thank him for his diligence, good humour, willing ear and professionalism in working with the panel since its inception.



- **Sibylle Krieger**

Sibylle has not had the opportunity of sitting on any of our panels, although she has been nominated. As a senior member of the legal profession and a former partner of Clayton Utz, it was a privilege to have someone of Sibylle's calibre on the panel. Sibylle has now been appointed to the AEMO Board. I am sure that she will continue to contribute to the industry in a meaningful and constructive way.

I will be looking to expand the pool in the New Year. I have collected a list of names to interview. If you have any ideas for people who might be good pool members, especially people with expertise in the industry, who may not be conflicted, please send me their details.

#### **4. Review of the Appeals Provisions from the NGR and NER**

There are sections in both the NER and the NGR which make provisions for appeals on questions of law from a determination of a DRP. The question of where the appeal is heard and its scope is one that is important to the operation of the dispute provisions. The current Appeal Provisions refer to the Commercial Arbitration Act. The Commercial Arbitration Act in Victoria has been substantially amended resulting in the sub-clauses having changed in substance and in form. This provides an opportunity to review the Appeals provisions more generally. This item will be considered in next year's project timetable.

#### **5. Assisting consultation on Integration of Embedded Generators into the Market**

The AEMC was consulting on a Dispute Resolution Provision for disputes with the interconnection of embedded generators. Below (scroll down) are the submissions that I made in respect to this issue. I also attended the AEMC Rule Change process and found it interesting to hear about the issues currently being considered by market participants in that space. Please feel free to call me about them.

I have an enormous sense of satisfaction from updating all of the administration.

I wish everyone a healthy, safe and restful festive season and all the best for the New Year. I will be around and available over the Christmas and New year break in case there are any issues at that time.

Kind regards,  
Shirli Kirschner  
Wholesale Energy Market Dispute Resolution Advisor.

**ANNEXURE Information from AEMC re dispute resolution and embedded generators.**

**From:** Karyn Martinez [mailto:Karyn.Martinez@aemc.gov.au]

**Sent:** Friday, 15 November 2013 1:24 PM

**Cc:** Meredith Mayes; James Eastcott

**Subject:** Workshop outcomes and information about dispute resolution advisor

Good Morning

The AEMC would like to thank you for your attendance at the workshops on connecting embedded generators. This email is to let you know that the materials from these workshops have now been placed on our website and may be found at:

<http://www.aemc.gov.au/Electricity/Rule-changes/Open/connecting-embedded-generators.html>.

At the workshop, the Wholesale Energy Market Dispute Resolution Advisor, Shirli Kirschner gave a presentation about the Chapter 8 dispute resolution process and how her process fits into it. She informed participants that she would provide some links to the relevant processes. Below is a summary supplied by Shirli with the links.

In addition, stakeholders have requested to see a draft of the final rule prior to it being finalized. The final rule is being prepared in conjunction with the final rule determination. The Commission has not decided whether it will conduct additional consultation on the final rule prior to the 19 December 2013.

With best regards

**Karyn Martinez** Project Officer

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Attachment from the Adviser.

I thought that I would summarise some of the key messages from the presentation and response to the questions.

1. Chapter 8 of the National Electricity Rules (NER) sets out a dispute resolution framework for disputes covered by the section between registered participants as defined.
2. The dispute resolution process is run by an independent wholesale energy market dispute resolution adviser selected by the AER through a tender process (The 'WEMDRA'). The WEMDRA has skills and expertise in alternative dispute resolution. She also manages a pool of experts who are available to resolve disputes when they arise.
3. The dispute process is designed to resolve issues arising between participants (as defined) in an effective and flexible way (see overview: <http://www.aer.gov.au/node/14741>). It includes two stages. Stage 1 focuses on negotiation and non-binding processes. Assistance from the WEMDRA or a skilled specialist can be made available to assist with the negotiations, and/or to provide a view based on expertise (engineering, legal, economic) to assist in the resolve of issues without binding the parties. This is given effect by each participant having a dispute management system providing guidance on the process to be adopted (see <http://www.aer.gov.au/node/14743> for DMS guide and <http://www.aer.gov.au/node/14744> for Model DMS).
4. Stage 2 focuses on providing binding determinations for either an issue in dispute or a more broadly defined dispute. It is accessed by sending the WEMDRA a dispute notice escalating the issue within the time frames specified. (See <http://www.aer.gov.au/node/14752> for a stage 2 dispute notice.)
5. It would be possible for embedded generators to use the Chapter 8 dispute process. I understand that the issues may include disputes over the provision of information and also timing for connection, technical issues and other incidental issues like the need and time involved in preparing reports, payment etc. These are matters which could be dealt with by Chapter 8 of the NER.
6. Consideration needs to be given to ensuring that there is clear jurisdiction for both the applicant and respondent to be covered by the provisions of clause 8.2.1 of the NER. When there is a dispute, parties will often argue whether provisions apply. This can result in delay and additional expense. For this reason it is important that any referral is direct and specific. In this regard see 8 below. If it is felt the current provisions are not sufficient I would be happy to review and discuss any drafting that you propose, if that is helpful and appropriate. I would also be able to prepare a specialist user note for these types of matters in the same way as there is a specialist user note for scheduling errors (see: Guidelines and application for compensation for a scheduling error: <http://www.aer.gov.au/node/14742>).
7. The question arose as to whether the provisions could be used for a determination on whether a particular rule or requirement has been breached. The dispute provisions are

designed to resolve issues that have arisen between participants. This may include the use or understanding of a rule as it applies in a given situation. In this respect it can provide the expert evaluation that is the subject of the proposal that was the subject of consultation. Chapter 8 is not designed to deal with breaches of the NER per se. That is a matter for the AER to pursue.

8. There was some concern expressed that the 'dispute process had not worked for connection applicants in the past'. There have been no issues of this kind referred to Chapter 8. There is some scope for these matters to be brought under Clause 8.2.1 (a) (4) "the proposed access arrangements or *connection agreements* of an *Intending Participant* or a *Connection Applicant*". I am not sure whether this language is broad or specific enough to cover the range of disputes. 8.2.1(h) carves out;

"(13) a dispute of a kind referred to in clause 5.16.5 or 5.17.5;

"(14) a *transmission services access dispute* to which Part K of Chapter 6A applies;

"(15) a *distribution services access dispute* to which Part L of Chapter 6 applies;"

It may be matters referred under one of these provisions is being referenced when participants talk about referring connection disputes. As this is dealt with by the AER not the WEMDRA I have no knowledge of any disputes referred to the AER. It may be useful to understand more about the concerns to ensure they are addressed when shaping a process for the future.

Please do not hesitate to contact me if you require any further information.

Kind regards

Shirli Kirschner  
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Resolving disputes. Preserving Relationships

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web site: <http://www.aer.gov.au/about-us/dispute-resolution>