

# Recommended REMCo Compliance Panel Procedures

(Under section 338 of the Retail Market Rules)

(Version 2)



**Important Note**

These procedures are recommended by REMCo for use by the Compliance Panel. Since the Compliance Panel is to determine its own procedures, the Compliance Panel may adopt these procedures, modify these procedures; or develop and use its own, entirely different procedures.

These Procedures summarise or restate certain Rules in Chapter 6 (Compliance and Interpretation) of the Retail Market Rules (the “Rules”) to provide context for the Procedures adopted by the Compliance Panel. These Procedures are not, and should not be used as a substitute for Chapter 6 of the Rules. Participants should familiarise themselves with Chapter 6 of the Rules and the compliance Procedures adopted by the REMCo Board “REMCo (Board) Compliance Procedures WA Gas Retail Market”. A copy of this Procedure and the Board’s compliance procedures are available on REMCo’s website [www.remco.net.au](http://www.remco.net.au).

## 1.0 Introduction

### a) REMCo may refer matters to the Compliance Panel

Under Rule 329(1)(a) (ii) or (b) (iii) or Rule 331(2) of the Retail Market Rules (the “Rules”), REMCo may refer a matter that relate to an alleged rule breach or rule interpretation by a *participant* or *REMC*o to the Compliance Panel (the “Panel”) for determination (a “referral”).<sup>1</sup>

### b) Panel to adopt Procedures

Under Rule 338(1) of the Rules the Panel must adopt procedures for conducting:

- **Proceedings** – the process to be followed by the Panel in making determinations in relation to a referral; and
- **Hearings** – that part of Proceedings during which the Panel receives oral submissions from parties in relation to a referral.

In addition, the Rules specify certain matters that must be included in the procedures adopted by the Panel.

The Panel may adopt these procedures, or may decide to alter these procedures or adopt entirely different procedures.

### c) Purpose of Procedures

This document constitutes the procedures that the Panel will follow for Proceedings and Hearings in relation to referrals (the “Procedures”). This document sets out the Procedures as follows:

- **Section 2.0** – Procedures for referrals of apparent Rule breaches; and
- **Section 3.0** – Procedures for referrals of Rule interpretation matters

### d) Conduct of Proceedings and Hearings

The Panel is committed to ensuring that Proceedings and Hearings are conducted expeditiously and fairly, and otherwise subject to the requirements of natural justice.

### da) Participation in Proceedings and Hearings

*Any participant, pipeline operator, prescribed person* or REMCo may be a party to a Proceeding before the Panel (the “Party”).

The Panel has the authority to make determinations on non-compliance matters for *participants* (i.e. *users* and *network operators*) and REMCo.

While the Panel does not have authority to make a determination on matters of non-compliance by *pipeline operators* and *prescribed persons* (this is the role of the Economic Regulation Authority), *pipeline operators* and *prescribed persons* may make

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<sup>1</sup> Rule 332

a referral, provide information to Proceedings or Hearings, and may appeal a REMCo Board decision on apparent Rule breach by a *participant*.

**e) Confidentiality**

A Party to a Proceeding must not use or disclose any confidential information that is disclosed to it by the Panel or another Party in connection with a Proceeding, except for the purpose of the relevant Proceeding or as authorised in accordance with Rule 342

**f) Use of defined terms**

Italicised terms in these Procedures have the meaning given to them in the Rules.

**g) Meetings of Panel**

Meetings of the Panel (other than Hearings) may be held in person, by teleconference, or videoconference.

**h) Notices to parties**

All compliance related notices from the Panel will be sent by or on behalf of the Panel to e-mail contacts nominated by Parties for that purpose. It is the responsibility of *participants*, *pipeline operators* and *prescribed persons* to ensure that their organisation is regularly checking their e-mail.

**i) Notices/submissions to the Panel**

All written communications to the Panel or the Panel chairperson should be e-mailed to [compliance@remco.net.au](mailto:compliance@remco.net.au) (unless this not possible due to the nature of a document or technical constraints). An e-mail address (and fallback facsimile and postal addresses) for formal contact regarding referrals being considered by the Panel will be advised to all participants and identified on the REMCo website.

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## 2.0 Procedures for Referrals of Apparent Rule Breaches

### 2.1 Pre-Hearing Procedures

#### a) Introduction

The aim of these pre-Hearing Procedures is to ensure that:

- any *participant* responding to allegations that they have breached the Rules (the “respondent”) is aware of the allegations made against them, and has an opportunity to respond to these allegations and to any reports completed by an investigator acting on behalf of the Panel;
- any Party to a Proceeding may lodge a written submission with the Panel in relation to the referral and is entitled to receive a copy of each written submission the Panel receives, subject to confidentiality of information contained in the written submissions; and
- if the Panel determines that it is necessary to conduct a Hearing, each Party is given notice of the Hearing and may attend and make oral submissions to the Panel.

#### b) Panel determines whether to accept or reject referral

Within 20 business days of receiving notice of a referral under Rule 329(1)(a) or 331(2) of the Rules, the Panel will meet and either:

- accept the referral; or
- decline to accept the referral on one of the grounds under Rule 334.

#### c) Panel reject referral

If the Panel declines to accept a referral then:

- the Panel will notify REMCo of the rejection and the reasons for the rejection; and
- REMCo will promptly notify the referring party, the respondents and any other Parties (as defined in the REMCo (Board) Compliance Procedures).

#### d) Panel commences Proceedings

If the Panel accepts a referral then under Rule 336, then the Panel will commence the Proceeding by giving notice to all parties and REMCo specifying:

- (i) the subject matter of the referral; and
- (ii) if a Hearing is not to be held in relation to the matter, the date by which a Party must lodge written submissions with the Panel; and
- (iii) if a Hearing is to be held in relation to the matter:
  - A. the timetable for the Proceeding – the timetable will be based on the timeframe set out in Schedule A to these Procedures and will include:
    - the date for lodging submissions;
    - the venue and date for the Hearing; and
    - the date by which a Party must notify the Panel that it wishes to make an oral submission at the Hearing;

- B. the date by which a Party must seek leave of the Panel chairperson if it wishes to call witnesses at the Hearing;
- C. that each Party and REMCo may attend the Hearing and make oral submissions to the Panel;
- D. that each Party may be legally represented at the Hearing, provided that each party must bear its own costs (unless the Panel makes a costs order in its favour under section 2.3(a) of these Procedures);
- E. that each Party is entitled with the prior leave of the Panel chairperson (see section 2.1(l) of these Procedures) to:
  - call witnesses;
  - ask questions of witnesses called; and
  - ask questions of witnesses called by other parties.

**e) Withdrawal of referral to the Panel**

If a Party who has lodged a referral withdraws the referral at any time by notice to the Panel under Rule 335(1), then the Panel will cease all actions, inquiries and Proceedings in relation to the referral.<sup>2</sup>

The Panel may require the Party to reimburse the Panel for the reasonable costs incurred by the Panel and REMCo in connection with the referral.<sup>3</sup>

**f) Parties to notify Panel if it wishes to be a party to the Proceeding**

Within 5 business days of receiving notice of the commencement of Proceedings from the Panel (or such later date as the Panel may specify in the timetable for the Proceeding published on commencement of the Proceedings) a Party may notify the Panel that it wishes to make submissions in relation to the referral.<sup>4</sup>

The Panel may invite any Party to become a party to the Proceeding in the circumstances described in Rule 337(3) of the Rules.

The following persons will be a party to a Proceeding:

- the party that makes the referral;
- any party that notifies the Panel that it wishes to make a submission during the Proceeding; and
- any party that accepts an invitation from the Panel to make a submission during the Proceeding within 5 business days of receiving that invitation.

**g) Investigation report**

Under section 2.4(c) of the REMCo (Board) Compliance Procedures (available at [www.remco.net.au](http://www.remco.net.au)), if the Board resolves that an alleged Rule breach should be

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<sup>2</sup> Rule 335(2)

<sup>3</sup> Rule 335(3)

<sup>4</sup> Rule 337(1)(b)

referred to the Panel, then REMCo will investigate the alleged Rule breach and prepare an investigation report for the Panel.

Following the commencement of the Proceeding, the Panel may appoint a person (the “investigator”) to further investigate of the alleged breach of the Rules and revise the investigation report. The Panel may appoint REMCo as its investigator for this purpose.

An investigator appointed by the Panel must prepare an investigation report in relation to the relevant alleged Rule breach within the timeframe for the Proceeding published by the Panel under section 2.1(d).

The Panel will provide a copy of the final investigation report to each Party.

## **h) Contents of investigation report**

The investigation report will specify the details of the investigation, including:

- the Rule allegedly breached;
- the person who allegedly committed the breach;
- the date and time the breach allegedly occurred;
- the impact of the alleged Rule breach on the Market, *participants*, *pipeline operators*, *prescribed persons*, and REMCo; and the severity of the impact;
- any additional information which the investigator considers relevant to the decision of the Panel as to how the matter may be dealt with by the Panel;
- the investigator’s assessment of the likelihood of the alleged breach recurring;
- details of any similar situations previously dealt with by the Panel;
- copies of all evidentiary statements and materials in support of the allegation; and
- a copy of all correspondence with the investigator relating to the breach.

## **i) Panel may appoint persons to assist it with Proceeding**

To assist it in fulfilling its functions, the Panel may:

- appoint a person to act as agent of the Panel in carrying out investigations or other functions;<sup>5</sup> or
- employ or otherwise seek advice or assistance from an external investigator, auditor, accountant, lawyer or other expert, or such other person as the Panel thinks fit.<sup>6</sup>

A person appointed by the Panel may effectively act as counsel assisting the Panel.

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<sup>5</sup> Rule 324(1)(d)(i)

<sup>6</sup> Rule 324(1)(d)(ii)

**j) Written submissions**

Each Party to the Proceedings may lodge a written submission with the Panel in relation to the referral.<sup>7</sup> The written submission must be lodged within ten business days of receiving a copy of the investigation report.

The respondent's response should include a statement as to whether the respondent accepts the allegations made against it. If the respondent accepts the allegations, its evidentiary materials and submissions should only be pleas in mitigation. If the respondent disputes the allegations, it should present all evidentiary statements and other relevant materials to refute these allegations and unless the respondent has been granted leave to give oral evidence and make written submissions.

A Party may apply to the Panel under Rule 342 to have confidential information in a submission withheld from another party. If a party makes such an application, then the provisions of Rule 342 will apply.

**k) Each Party to be provided with copy of written submissions**

Subject to Rule 342 (in relation to confidential information in submissions), the Panel will provide a copy of all submissions provided by Parties to the Proceeding to each other Party.<sup>8</sup>

**l) Request to call witnesses at Hearing**

If a Party or the investigator wishes to call witnesses at a Hearing, including for the purpose of putting questions to a witness called by another Party, leave to do so must be sought from the chairperson of the Panel prior to the Hearing. Any applications for leave to call witnesses must be in writing, and must be submitted to the chairperson no later than 10 business days prior to the Hearing taking place, or such later time as may be agreed by the chairperson. Leave will only be granted if the chairperson is satisfied that the evidence proposed to be given is unable to be properly or conveniently given by written statement.

**m) Pre-Hearing timetable**

To provide the Parties, the Panel and investigator sufficient time to consider information relating to an alleged Rule breach, the Panel has created a timetable within which it will proceed. This timetable is set out in Schedule A to these Procedures.

**n) Documents to be provided to parties pre-Hearing**

In addition to the information provided with the formal notice of Hearing, Parties will, as far as practicable, be provided with a copy of any other documents or material that is to be considered at the Hearing and that is received by, or prepared by or on behalf of the Panel prior to the Hearing.

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<sup>7</sup> Rule 338(1)(a)

<sup>8</sup> Rule 338(1)(b)

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## 2.2 Hearing Procedures

### a) Introduction

The Panel is not required to hold a Hearing in relation to a referral (see section 2.1(d) of this document).

If the Panel determines that a Hearing is necessary then these Hearing Procedures will apply.

### b) Private

Hearings are to be in private unless the Panel directs otherwise.

### c) Venue

The Panel chairperson will determine the venue for a Panel Hearing. A Hearing will be held in Western Australia.<sup>9</sup>

### d) Attendance at Hearings

Each Party has the right to attend and make oral submissions to the Panel at the Hearing.

Parties wishing to make oral submissions must notify the Panel by the date specified in the pre-Hearing timetable for the Proceeding published by the Panel under section 2.1(d) above.

### e) Recordings of Hearings

Hearings will be recorded verbatim.

### f) Rules of evidence

In conducting the Hearing, the Panel is not bound by the Rules of evidence and any law relating to the admissibility of evidence before a court of law, subject to the Rules relating to self-incrimination and legal professional privilege.<sup>10</sup>

### g) Order of evidence

At the Hearing, evidence will be given in the following order:

- first by the investigator, who will introduce the allegation and present the evidence in support, including any oral evidence permitted to be given to establish the allegation;
- then by each Party (other than the respondent), who will present its evidence in support, including any oral evidence if permitted; and
- then by the respondent who will present its evidence in support, including any oral evidence if permitted.

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<sup>9</sup> Rule 339

<sup>10</sup> Rule 340

If the respondent gives oral evidence, then the investigator has a right to give evidence in reply.

**h) Order of submissions**

Following the presentation of evidence (as outlined in section 2.2(f) above), the investigator will present its submissions, followed by the respondent presenting its submissions. The investigator would have a right of reply.

**i) Questions**

All Parties and witnesses (if any) are open to questions from the Panel and persons assisting the Panel.

If oral evidence is given, each Party may ask questions of any other Party including their witnesses.

**j) Costs**

The Panel has the power to make a costs order in relation to the Proceedings (including its own costs)<sup>11</sup> and will generally make a costs order against a Party if that party is found to have breached the Rules. Generally, this order will be in relation to the Panel's own costs and the costs of any investigator or expert appointed by the Panel.

**k) Decision making by the Panel**

Once the Panel has heard all the submissions from the Parties, the Hearing will come to an end. The Panel will then retire alone to make its decision. All decisions will be based solely on the material that was before the Panel at the time of the Hearing.

The Panel will attempt to deal with arguments on determinations at the Hearing, including pleas of mitigation. However, there may be occasions where a separate Hearing may have to be held to address what determinations the Panel will make in relation to a matter.

## 2.3 Determinations by the Panel

**a) Determinations that may be made by the Panel**

Under Rule 343, the Panel has power to make the following determinations:

- impose a financial penalty on a *participant* or REMCo of up to \$50,000 for each breach of the Rules;
- order a *participant* of REMCo to take action, or cease action, to ensure compliance with the Rules;
- impose a financial penalty of up to \$50,000 for any failure to comply with an earlier order of the Panel;

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<sup>11</sup> Rule 343(1)(d) and (e)

- make orders as to the payment by a Party of the Panel's costs, including the cost of any experts appointed in relation to the Proceedings;
- make orders as to the payment of costs of a Party that attends the Panel Hearing; or
- adjourn the consideration of any matter before the Panel to allow a Party to make further submissions or to allow further consideration of by the Panel; or
- recommend changes to the Rules.

The Panel may make interim orders under Rule 343(2).

## **b) Matters to be taken into account by the Panel**

The Panel must make its determination according to law and must:

- take into consideration each written and oral submission received from the Parties;
- for the first 12 months after the date that a change to the Rules comes into force, have regard to the fact that the Rules affected by the change are a new governing regime for *participants* and REMCO; and
- for the first six months after a person becomes a *participant*, have regard to the fact that the Rules are a new governing regime for the new *participant*.<sup>12</sup>

## **c) Timeframes for making determinations**

Within 30 business days of the close of submissions or the completion of a Hearing (if a Hearing was held), the Panel must:

- make a decision in writing setting out its determination and reasons; and
- subject to Rule 342 (relating to confidentiality), provide a copy of its determination and reasons to all Parties.<sup>13</sup>

## **d) Timeframes for making determinations**

Within 5 business days after making a determination, the Panel may correct the determination if the determination contains:

- a clerical mistake;
- an accidental slip or omission;
- a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the determination; or
- a defect of form.<sup>14</sup>

## **e) Determinations final and binding**

Decisions of the Panel are final and binding on the participant concerned.<sup>15</sup>

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<sup>12</sup> Rule 341(1)

<sup>13</sup> Rule 341(2)

<sup>14</sup> Rule 344

There is no right of appeal from Panel determinations.

**f) Effective date of determination**

A determination of the Panel takes effect as and from the date of the determination.<sup>16</sup>

**g) Register of determinations**

REMC<sup>o</sup> must ensure that a register of Panel determinations is maintained for the duration of the Rules. The register will include in respect of each referral accepted by the Panel:

- the determinations made by the Panel under Rule 343; and
- the Panel's reasons for making the determination.

Upon receipt of a Panel determination, REMC<sup>o</sup> must update the register of Panel determinations.

REMC<sup>o</sup> may permit a Party to access the register of Panel determinations and may recover reasonable costs incurred in doing so.<sup>17</sup>

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<sup>15</sup> Rule 341(5)(a).

<sup>16</sup> Rule 341(5)

<sup>17</sup> Rule 347

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## 3.0 Procedures for Referrals for Rule Interpretation Matters

### 3.1 Pre-Hearing Procedures

#### a) Introduction

The aim of these pre-Hearing Procedures is to ensure that:

- any *participant* responding to an interpretation for a proper meaning of a Rule (the “respondent”) is aware that the Panel has been requested to undertake and interpretation of the proper meaning of the Rule, and has an opportunity to respond to the Rule interpretation and to any reports completed by an investigator acting on behalf of the Panel;
- any Party to a Proceeding may lodge a written submission with the Panel in relation to the referral and is entitled to receive a copy of each written submission the Panel receives, subject to confidentiality of information contained in the written submissions; and
- if the Panel determines that it is necessary to conduct a Hearing, each Party is given notice of the Hearing and may attend and make oral submissions to the Panel.

#### b) Panel determines whether to accept or reject referral

Within 20 business days of receiving notice of a referral under Rule 329(1)(b) or 331(2) of the Rules, the Panel will meet and either:

- accept the referral; or
- decline to accept the referral on one of the grounds under Rule 334.

#### c) Panel reject referral

If the Panel declines to accept a referral then:

- the Panel will notify REMCo of the rejection and the reasons for the rejection; and
- REMCo will promptly notify the referring party, the respondents and any other Parties (as defined in the REMCo (Board) Compliance Procedures).

#### d) Panel commences Proceedings

If the Panel accepts a referral then under Rule 336, then the Panel will commence the Proceeding by giving notice to all parties and REMCo specifying:

- (i) the subject matter of the referral; and
- (ii) if a Hearing is not to be held in relation to the matter, the date by which a Party must lodge written submissions with the Panel; and
- (iii) if a Hearing is to be held in relation to the matter:
  - A. the timetable for the Proceeding – the timetable will be based on the timeframe for alleged Rule breaches set out in Schedule A to these Procedures and will include:
    - the date for lodging submissions;
    - the venue and date for the Hearing; and

- the date by which a Party must notify the Panel that it wishes to make an oral submission at the Hearing;
  - B. the date by which a Party must seek leave of the Panel chairperson if it wishes to call witnesses at the Hearing;
  - C. that each Party and REMCo may attend the Hearing and make oral submissions to the Panel;
  - D. that each Party may be legally represented at the Hearing, provided that each party must bear its own costs (unless the Panel makes a costs order in its favour under section 3.3(a) of these Procedures);
  - E. that each Party is entitled with the prior leave of the Panel chairperson (see section 3.1(l) of these Procedures) to:
    - call witnesses;
    - ask questions of witnesses called; and
    - ask questions of witnesses called by other parties.
- e) Withdrawal of referral to the Panel**

If a Party who has lodged a referral withdraws the referral at any time by notice to the Panel under Rule 335(1), then the Panel will cease all actions, inquiries and Proceedings in relation to the referral.<sup>18</sup>

The Panel may require the Party to reimburse the Panel for the reasonable costs incurred by the Panel and REMCo in connection with the referral.<sup>19</sup>

**f) Parties to notify Panel if it wishes to be a party to the Proceeding**

Within 5 business days of receiving notice of the commencement of Proceedings from the Panel (or such later date as the Panel may specify in the timetable for the Proceeding published on commencement of the Proceedings) a Party may notify the Panel that it wishes to make submissions in relation to the referral.<sup>20</sup>

The Panel may invite any Party to become a party to the Proceeding in the circumstances described in Rule 337(3) of the Rules.

The following persons will be a party to a Proceeding:

- the party that makes the referral;
- any party that notifies the Panel that it wishes to make a submission during the Proceeding; and
- any party that accepts an invitation from the Panel to make a submission during the Proceeding within 5 business days of receiving that invitation.

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<sup>18</sup> Rule 335(2)

<sup>19</sup> Rule 335(3)

<sup>20</sup> Rule 337(1)(b)

**g) Investigation report**

Under section 2.4(c) of the REMCo (Board) Compliance Procedures (available at [www.remco.net.au](http://www.remco.net.au)), if the Board resolves that a Rule interpretation should be referred to the Panel, then REMCo will investigate the Rule interpretation and prepare an investigation report for the Panel.

Following the commencement of the Proceeding, the Panel may appoint a person (the “investigator”) to further investigate of the Rule interpretation, and revise the investigation report. The Panel may appoint REMCo as its investigator for this purpose.

An investigator appointed by the Panel must prepare an investigation report in relation to the relevant Rule interpretation within the timeframe for the Proceeding published by the Panel under section 3.1(d).

The Panel will provide a copy of the final investigation report to each Party.

**h) Contents of investigation report**

The investigation report will specify the details of the investigation, including:

- the Rule requiring the interpretation;
- the person who is seeking the Rule interpretation;
- any additional information which the investigator considers relevant to the decision of the Panel as to how the matter may be dealt with by the Panel;
- details of any similar situations previously dealt with by the Panel;
- copies of all evidentiary statements and materials in support of the Rule interpretation; and
- a copy of all correspondence with the investigator relating to the Rule interpretation.

**i) Panel may appoint persons to assist it with Proceeding**

To assist it in fulfilling its functions, the Panel may:

- appoint a person to act as agent of the Panel in carrying out investigations or other functions;<sup>21</sup> or
- employ or otherwise seek advice or assistance from an external investigator, auditor, accountant, lawyer or other expert, or such other person as the Panel thinks fit.<sup>22</sup>

A person appointed by the Panel may effectively act as counsel assisting the Panel.

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<sup>21</sup> Rule 324(1)(d)(i)

<sup>22</sup> Rule 324(1)(d)(ii)

**j) Written submissions**

Each Party to the Proceedings may lodge a written submission with the Panel in relation to the referral.<sup>23</sup> The written submission must be lodged within ten business days of receiving a copy of the investigation report.

The respondent's response should include a statement as to whether the respondent accepts the Rule interpretation. If the respondent disputes the interpretation, it should present all evidentiary statements and other relevant materials to support an alternate Rule interpretation.

A Party may apply to the Panel under Rule 342 to have confidential information in a submission withheld from another party. If a party makes such an application, then the provisions of Rule 342 will apply.

**k) Each Party to be provided with copy of written submissions**

Subject to Rule 342 (in relation to confidential information in submissions), the Panel will provide a copy of all submissions provided by Parties to the Proceeding to each other Party.<sup>24</sup>

**l) Request to call witnesses at Hearing**

If a Party or the investigator wishes to call witnesses at a Hearing, including for the purpose of putting questions to a witness called by another Party, leave to do so must be sought from the chairperson of the Panel prior to the Hearing. Any applications for leave to call witnesses must be in writing, and must be submitted to the chairperson no later than 10 business days prior to the Hearing taking place, or such later time as may be agreed by the chairperson. Leave will only be granted if the chairperson is satisfied that the evidence proposed to be given is unable to be properly or conveniently given by written statement.

**m) Pre-Hearing timetable**

To provide the Parties, the Panel and investigator sufficient time to consider information relating to rule interpretation, the Panel has created a timetable within which it will proceed. This timetable is set out in Schedule A to these Procedures.

**n) Documents to be provided to parties pre-Hearing**

In addition to the information provided with the formal notice of Hearing, Parties will, as far as practicable, be provided with a copy of any other documents or material that is to be considered at the Hearing and that is received by, or prepared by or on behalf of the Panel prior to the Hearing.

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<sup>23</sup> Rule 338(1)(a)

<sup>24</sup> Rule 338(1)(b)

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## 3.2 Hearing Procedures

### a) Introduction

The Panel is not required to hold a Hearing in relation to a referral (see section 3.1(d) of this document).

If the Panel determines that a Hearing is necessary then these Hearing Procedures will apply.

### b) Private

Hearings are to be in private unless the Panel directs otherwise.

### c) Venue

The Panel chairperson will determine the venue for a Panel Hearing. A Hearing will be held in Western Australia.<sup>25</sup>

### d) Attendance at Hearings

Each Party has the right to attend and make oral submissions to the Panel at the Hearing.

Parties wishing to make oral submissions must notify the Panel by the date specified in the pre-Hearing timetable for the Proceeding published by the Panel under section 3.1(d) above.

### e) Recordings of Hearings

Hearings will be recorded verbatim.

### f) Rules of evidence

In conducting the Hearing, the Panel is not bound by the Rules of evidence and any law relating to the admissibility of evidence before a court of law, subject to the Rules relating to self-incrimination and legal professional privilege.<sup>26</sup>

### g) Order of evidence

At the Hearing, evidence will be given in the following order:

- first by the investigator, who will introduce the allegation and present the evidence in support, including any oral evidence permitted to be given to establish the allegation;
- then by each Party (other than the respondent), who will present its evidence in support, including any oral evidence if permitted; and
- then by the respondent who will present its evidence in support, including any oral evidence if permitted.

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<sup>25</sup> Rule 339

<sup>26</sup> Rule 340

If the respondent gives oral evidence, then the investigator has a right to give evidence in reply.

**h) Order of submissions**

Following the presentation of evidence (as outlined in section 3.2(f) above), the investigator will present its submissions, followed by the respondent presenting its submissions. The investigator would have a right of reply.

**i) Questions**

All Parties and witnesses (if any) are open to questions from the Panel and persons assisting the Panel.

If oral evidence is given, each Party may ask questions of any other Party including their witnesses.

**j) Costs**

The Panel has the power to make a costs order in relation to the Proceedings (including its own costs)<sup>27</sup> and will generally make a costs order against a Party if that party who raised the Rule interpretation. Generally, this order will be in relation to the Panel's own costs and the costs of any investigator or expert appointed by the Panel.

**k) Decision making by the Panel**

Once the Panel has heard all the submissions from the Parties, the Hearing will come to an end. The Panel will then retire alone to make its decision. All decisions will be based solely on the material that was before the Panel at the time of the Hearing.

### **3.3 Determinations by the Panel**

**a) Determinations that may be made by the Panel**

Under Rule 343, the Panel has power to make the following determinations:

- order a *participant* of REMCo to take action, or cease action, to ensure compliance with the Rules;
- make orders as to the payment by a Party of the Panel's costs, including the cost of any experts appointed in relation to the Proceedings;
- make orders as to the payment of costs of a Party that attends the Panel Hearing; or
- adjourn the consideration of any matter before the Panel to allow a Party to make further submissions or to allow further consideration of by the Panel; or
- recommend changes to the Rules.

The Panel may make interim orders under Rule 343(2).

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<sup>27</sup> Rule 343(1)(d) and (e)

**b) Matters to be taken into account by the Panel**

The Panel must make its determination according to law and must:

- take into consideration each written and oral submission received from the Parties;
- for the first 12 months after the date that a change to the Rules comes into force, have regard to the fact that the Rules affected by the change are a new governing regime for *participants* and REMCo; and
- for the first six months after a person becomes a *participant*, have regard to the fact that the Rules are a new governing regime for the new *participant*.<sup>28</sup>

**c) Timeframes for making determinations**

Within 30 business days of the close of submissions or the completion of a Hearing (if a Hearing was held), the Panel must:

- make a decision in writing setting out its determination and reasons; and
- subject to Rule 342 (relating to confidentiality), provide a copy of its determination and reasons to all Parties.<sup>29</sup>

**d) Timeframes for making determinations**

Within 5 business days after making a determination, the Panel may correct the determination if the determination contains:

- a clerical mistake;
- an accidental slip or omission;
- a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the determination; or
- a defect of form.<sup>30</sup>

**e) Determinations final and binding**

Decisions of the Panel are final and binding on the participant concerned.<sup>31</sup>

There is no right of appeal from Panel determinations.

**f) Effective date of determination**

A determination of the Panel takes effect as and from the date of the determination.<sup>32</sup>

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<sup>28</sup> Rule 341(1)

<sup>29</sup> Rule 341(2)

<sup>30</sup> Rule 344

<sup>31</sup> Rule 341(5)(a).

<sup>32</sup> Rule 341(5)

**g) Register of determinations**

REMC<sup>o</sup> must ensure that a register of Panel determinations is maintained for the duration of the Rules. The register will include in respect of each referral accepted by the Panel:

- the determinations made by the Panel under Rule 343; and
- the Panel's reasons for making the determination.

Upon receipt of a Panel determination, REMC<sup>o</sup> must update the register of Panel determinations.

REMC<sup>o</sup> may permit a Party to access the register of Panel determinations and may recover reasonable costs incurred in doing so.<sup>33</sup>

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<sup>33</sup> Rule 347

## Schedule A

Schedule A – Pre-Hearing Timetable: Alleged Rule Breaches and Rule Interpretations		
Step	Time	Action
		The Panel receives referral from REMCo
1	<p>Within 20 business days of the date the referral is received by Panel.</p> <ul style="list-style-type: none"> <li>Rule 336 requires the Panel to reject or accept the referral (i.e. commence Proceedings) within 20 business days of receipt of the referral.</li> </ul>	<p>The Panel meets and determines:</p> <ul style="list-style-type: none"> <li>whether to decline the referral on the grounds specified in Rule 334; or</li> <li>whether to accept the referral and commence Proceedings by notice to all Parties; and</li> <li>if it accepts the referral, whether a Hearing will be held in relation to the referral.</li> </ul> <p>The Panel notifies Parties in accordance with the Procedures.</p>
2	As soon as practicable after Panel commences Proceedings	<p>The Panel may direct an investigator to revise the investigation report.</p> <p>The Panel may invite Parties to become a party to the Proceedings.</p>
3	Within 5 business days of commencement of Proceedings	Parties may notify the Panel if it wishes to make submissions in relation to the referral.
4	Within 5 business days of receiving invitation to become a party	If a Party is invited by the Panel to become a party to the Proceedings, it must notify the Panel if it accepts the invitation.
5	Within 6 business days of commencement of Proceedings	If the Panel determines that the investigation report prepared on instruction from the Board is sufficient, the Panel provides copies to all Parties.
6	Within timeframe determined by the Panel	The investigator provides final investigation report to the Panel.
7	As soon as practicable after Panel accepts investigation report as final	The Panel provides copy of the final investigation report to each Party.
8	Within 10 business days of Parties receiving investigation report under steps (5) or (7)	<p>The Parties provide written submissions to the Panel.</p> <ul style="list-style-type: none"> <li>if the respondent accepts the allegations against them, it should make pleas in mitigation;</li> <li>if the respondent disputes the charges, evidence to refute them should be included.</li> </ul> <p>Submissions should be made to the e-mail or postal address indicated on the REMCo website.</p>
9	Within 2 business days after the closing date for written submissions	The Panel provides copy of each written submission to each Party.
10	No later than 10 business days prior to the Hearing date	Deadline for Parties to notify the Panel that it wishes to make oral submissions and to seek leave from the Panel chairperson to call witnesses at the Hearing.
11	No earlier than 10 business days after the date of notice of Hearing.	Hearing held.