

Internal governance arrangements for providing secretariat support to the Economic Regulation Authority and the Rule Change Panel

Change in the ERA's role

The Energy Markets division of the ERA Secretariat has expanded as the ERA has taken on additional responsibilities. These obligations include providing secretariat support to the Rule Change Panel, compliance and enforcement activities, and undertaking periodic reviews of several key market methods, such as ancillary service requirements and the outage planning process.

Some of these responsibilities require the ERA to propose rule changes that are conducive or incidental to the performance of its functions. For example, as part of a method review, the ERA is obligated to action its recommendations as Rule Change Proposals, and the ERA must formulate a Rule Change Proposal to address a process deficiency. Therefore, an ERA-initiated Rule Change Proposal may influence outcomes in the Wholesale Electricity Market (WEM).

A perceived or actual conflict of interest could exist when the ERA has to conduct its annual review of the effectiveness of the WEM in meeting the market objectives, and make recommendations for improvement to the Minister for Energy. Essentially, the ERA may be assessing the effectiveness of its own Rule Change Proposal.

Provision of support services to the Rule Change Panel

The Rule Change Panel (Panel) was established as an independent body in November 2016. At that time, rule-making functions within the WEM transferred from the Independent Market Operator to the Panel.

The Panel considers proposed amendments to the WEM Rules and the Gas Services Information Rules and decides whether an amendment to the rules would better achieve the objectives of the electricity market and the gas market respectively. Unlike the Independent Market Operator, the Panel can only initiate rule changes that relate to (i) correcting a manifest error or (ii) changes of a minor or procedural nature.¹

The ERA provides support services to the Panel and this support team sits within the Energy Markets division of the ERA. A perceived or actual conflict of interest could exist from having ERA and Panel support teams in close proximity if either team could influence, to its own benefit, the work and deliverables of the other team.

Some members of the Market Advisory Committee (MAC) have questioned how the ERA manages perceived or actual conflicts of interest that may eventuate from the change in the ERA's role, including the provision of support to the Panel. This briefing note identifies the

¹ Clause 2.5.4 of the Market Rules or sub-rule 129(5) of the Gas Services Information Rules.

perceived or potential conflicts of interest raised by industry and sets out the internal arrangements that are in place to manage those conflicts.

Legislative obligations

On 23 November 2016, the *Energy Industry (Rule Change Panel) Regulations 2016*, the *Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No.2) 2016* and *Gas Service Information Amendment Regulations (No.2) 2016* were published in the Western Australian Government Gazette.² These enacted the changes outlined above.

The legislated obligation for the ERA to provide secretariat services to the Panel is provided in regulation 23 of the *Energy Industry (Rule Change Panel) Regulations 2016*:³

Regulation 23

23. Authority to provide administrative support

- (1) There is to be an executive officer of the Rule Change Panel.
- (2) The Authority must –
 - (a) make available the executive officer and any other staff member whose assistance the Rule Change Panel may reasonably require; and
 - (b) make available the services and facilities the Rule Change Panel may reasonably require on the terms agreed to by the Rule Change Panel and the Authority; and
 - (c) provide any other assistance the Rule Change Panel or the members of the Rule Change Panel may reasonably require for the Rule Change Panel to perform its functions.
- (3) It is a function of the Authority to –
 - (a) make available the executive officer, staff members, services and facilities referred to in sub regulation (2); and
 - (b) provide the assistance referred to in sub regulation (2).

The practical arrangements for this are captured in Terms of Agreement signed by the respective Chairs of the ERA and Panel.

There is no legislative requirement to establish internal ring-fencing arrangements to segregate the ERA staff that support the Panel (known as RCP Support) from the wider ERA Secretariat. However, the ERA supports good corporate governance and so has introduced internal arrangements to mitigate any perceived or potential conflicts of interest.

Before addressing such conflicts, the ERA has to understand what they may be. The ERA has identified a range of potential conflicts, after reviewing comments from the MAC and responses to the WEM Report, and through internal discussions. These are listed in Table 1.

² [Government Gazette No 207 Special](#)

³ Refer to regulation 23 of the [Energy Industry \(Rule Change Panel\) Regulations 2016](#)

Table 1: Potential conflicts of interest

Potential conflicts	ERA comment
The ERA must objectively assess the effectiveness of the WEM, whilst at the same time is able to influence outcomes in the WEM through its own Rule Change Proposals.	Without action a potential conflict could exist. The ERA has clearly identified the limited set of circumstances in which it is appropriate for the ERA to initiate a Rule Change Proposal. These circumstances seek to minimise the ERA's influence over outcomes in the WEM. Once the ERA proposes a rule change, it is bound by the rule change process. This is addressed in the <i>Internal governance</i> section.
The ERA Secretariat is involved, via RCP Support, in developing Rule Change Proposals and also, via compliance and enforcement, in monitoring participants' compliance with the WEM Rules.	No actual conflict exists if the intent of this comment is that the ERA Secretariat may influence the development of a Rule Change Proposal to seek some benefit for itself. For example, if the ERA Secretariat was to influence a rule change that may result in greater compliance and enforcement activity, which is then picked up by another in-house team. The functions of the ERA are outlined in the WEM Rules. There is no benefit or detriment for the ERA derived from trying to influence or conduct more or less activity across its various functions. There are also internal arrangements in place as outlined in the <i>Internal governance</i> section.
The ERA could utilise RCP Staff to develop its own rule change proposals.	No actual conflict exists. The ERA has to undertake all its regulatory functions. There is no overall benefit in allocating more resources to one section if this risks meeting legislative obligations in another section. Support provided to the Panel is subject to Terms of Agreement. If the Panel has concerns around the services provided, such as the level of resourcing, there are processes it can follow to address these concerns. Refer to the <i>Legislative obligations</i> and <i>Resourcing</i> sections.
RCP Support could be influenced by the ERA Secretariat to assign a higher priority to ERA-initiated Rule Change Proposals.	No actual conflict exists. Under the Panel's 'Framework for Rule Change Proposal Prioritisation' when RCP Support recommends an urgency rating for a Rule Change Proposal to the Panel, they must also provide the Panel with the views of MAC members on the urgency rating. RCP Support would need to justify to the Panel any discrepancies between its recommendations and those of the MAC. Refer to the <i>Internal governance</i> section.

Current status

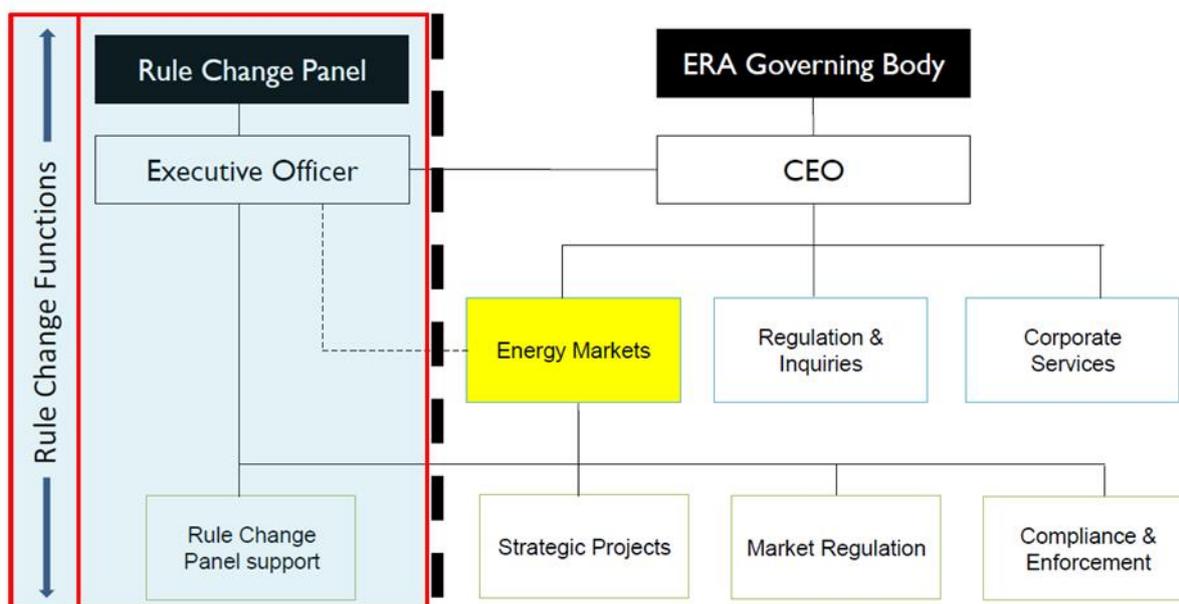
The ERA is committed to open and transparent regulation as outlined in its online Transparency Statement.⁴ This document provides further information on internal governance arrangements.

Organisational structure

The ERA and Panel functional reporting structure is shown in Figure 1 below.

⁴ ERA website, [Transparency Statement](#)

Figure 1: ERA and Panel functional reporting lines



This diagram shows the separate reporting lines through to the two decision-making bodies, as well as the demarcation of roles and responsibilities for staff in RCP Support and the wider ERA Secretariat.

The Executive Officer and RCP Support report directly to the Panel on all Panel matters. The organisational structure and reporting lines minimise the risk of the ERA Secretariat, as the employer, being able to influence the Executive Officer and RCP Support in the work they do for the Panel.⁵

This does not and should not prevent the Executive Officer and RCP Support from consulting with the ERA Secretariat where necessary on rule change matters, as they may do with any other market participants.

Resourcing

The requirement to provide secretariat support to the Panel is provided in the legislation and managed through Terms of Agreement between the Panel and the ERA. In practice, the level of resourcing depends on several factors including the:

- number of Rule Change Proposals to be enacted
- prioritisation of those proposals by the Panel
- ability of the Australian Energy Market Operator to:
 - provide feedback on Rule Change Proposals
 - implement the rule changes once they have been accepted by the Panel.

The ERA Secretariat manages its internal resources efficiently. This may mean diverting staff from one section to another to address short-term workload pressures. Therefore, someone

⁵ For example, the ERA will not direct or instruct the Executive Officer or RCP Support on any Rule Change Proposal being considered by the Panel.

from another section in the ERA Secretariat may be temporarily assigned to assist RCP Support. However, restrictions do exist. For example, ERA Secretariat staff responsible for developing an ERA-initiated Rule Change Proposal will not be involved in making a recommendation to the Panel on the proposal.

If the Panel decides it has insufficient resources to progress rule changes to an acceptable timeframe then it will seek additional resources from the ERA. These can be provided internally or by using consultants or contract staff.

Internal governance

Corporate arrangements

The ERA is required to provide the Executive Officer and other staff, services and facilities to the Panel. To mitigate against potential conflicts of interest or perceptions of bias, the following arrangements apply in day-to-day operations.

The ERA's Governing Body is separate from the Panel and has no involvement in decisions made by the Panel.

Segregation arrangements apply to the corporate administrative arrangements for both organisations. This includes separate financial cost centres and different email addresses. The Panel has a separate section on the ERA's website and a separate approval process for web publications.

The main document management system at the ERA, TRIM, has separate sections for storing ERA and Panel documents. The ERA's Governing Body cannot access any Panel files and the Panel members cannot access any ERA files. The Secretariat and RCP Support have full access to TRIM but there are extensive security and audit features and every action on TRIM is recorded.

Similar arrangements apply to internal electronic filing and the board management meeting platform, Convene. The members of the Panel and the ERA can only see meetings or meeting papers for their own organisation.

ERA-initiated Rule Change Proposals

Following changes to its regulatory functions, the ERA prepared a statement on initiating Rule Change Proposals.⁶ This states that the ERA's functions do not extend to initiating a Rule Change Proposal to develop the market or set policy.

Should the ERA intend to propose a rule change within this defined scope, it must comply with the process outlined in the WEM Rules.⁷ This requires the ERA to consult with the MAC before it develops a Rule Change Proposal or provides material support to another party to develop a Rule Change Proposal. This ensures that the market is aware of any rule change related activity by the ERA well before any proposals are lodged with the Panel. Should a perceived or actual conflict of interest be identified for an ERA-initiated Rule Change Proposal, this can be addressed on a case-by-case basis as part of the rule change process.

⁶ [ERA initiated Rule Change Proposal](#)

⁷ Market Rule 2.5.1B

When recommending how urgent a Rule Change Proposal should be to the Panel, RCP Support uses the Panel's Framework for Rule Change Proposal Prioritisation and Scheduling. This requires RCP Support to also provide the Panel with the views of MAC members on the urgency rating. Any discrepancy between the urgency ratings of RCP Support and the MAC would need to be explained to the Panel. The ERA cannot influence the urgency rating assigned to its own Rule Change Proposals.

The ERA has the option to comment on Rule Change Proposals, like any other market participant. The Panel treats and publishes an ERA submission in the same way as any other submission.

Conclusion

The internal process arrangements, the independence of the ERA and the Panel and the transparency of the rule change process are sufficient to mitigate any perceived or actual conflict of interest that may arise from the change in the ERA's role and from the ERA Secretariat and RCP Support existing within the same organisation.

If any significant concerns remain then MAC members should:

- explain their concerns in writing to the ERA Chief Executive Officer
- identify any events or outcomes that they believe may have resulted from a conflict of interest.

Last updated: 25 September 2018