
REMCo (Board) Compliance Procedures

Western Australian Gas Retail Market

Version 4, effective 16 April 2010

1.0 Introduction

Need for Procedures

The Retail Market Rules provide for REMCo to determine:

- under Rule 329, matters relating to apparent Rule breaches and requests for interpretations of the Rules; and
- under Rule 300A, whether a person must pay swing service causation compensation if that person acted in a manner that contributed materially to the causation of swing service.

REMCo is committed to making determinations expeditiously and in a fair and reasonable matter.

The purpose of these procedures is to give guidance to participants, pipeline operators or prescribed persons on how REMCo will deal with:

- apparent Rule breaches;
- requests for Rules interpretations; and
- requests for a determination under Rule 300A.

Accordingly, this paper sets these matters out as follows:

- Section 2.0: Handling of apparent Rule breaches.
- Section 3.0: Handling of requests for Rules interpretations.
- Section 4.0: Handling of requests for Rule 300A determinations.

2.0 Handling of Apparent Rule Breaches

REMC^o will handle Rule breaches through a 5-stage process, which allows apparent breaches to be filtered depending on their materiality. In summary, the stages are as follows:

1. publication of apparent Rule breaches;
2. allegations of material breach;
3. investigations;
4. materiality decision; and
5. Compliance Panel consideration.

The process is based on the following principles:

- **Transparency:** The market will be made aware of all apparent breaches by REMC^o or market participants, pipeline operator or prescribed person.
- **Fairness and accountability:** Ensuring that participants and REMC^o are accountable to each other for any material adverse impacts arising from Rule breaches, and that participants, pipeline operators or prescribed persons alleged to have materially breached the Rules have an opportunity to be heard.
- **Efficiency:** Ensuring that REMC^o's compliance resources are focused on material breaches and that the costs to the market of REMC^o's compliance process is minimised.
- **Impartiality:** Allegations of material breaches are handled in an impartial manner by REMC^o and, if appropriate, by the independent Compliance Panel.
- **Reliability:** Decisions will be made based on relevant considerations and robust evidence.

Each stage is described in detail below. The compliance process as a whole is summarised in the flowchart in Schedule A.

2.1 Market Notified of Apparent Rule Breaches

If REMC^o becomes aware of an alleged Rule breach (other than through the lodgement of a formal notice under Rule 325 by a participant, pipeline operator or prescribed person), then:

- (a) the REMC^o CEO (or his delegate) will make an initial assessment of whether the alleged Rule breach is of a minor or procedural nature or unlikely to be considered material by any of the participants, pipeline operator or prescribed person. If so, then REMC^o will advise the participant, pipeline operator or prescribed person alleged to have breached the Rules that REMC^o will take no further action.
- (b) If the REMC^o CEO (or his delegate) has determined that the alleged Rule breach was not of a minor or procedural nature, then REMC^o will publish a notice to the market (compliance contacts for participant, pipeline operator or prescribed person and the Economic Regulation Authority ["ERA"]) setting out any apparent breaches of the Rules by REMC^o or a participant, pipeline operator or prescribed person within 5 business days after the apparent breaches come to the attention of REMC^o management.

For all alleged Rule breaches (formal notice or otherwise) REMCo must include in the notice the following details regarding the apparent breach:

- a description of the apparent breach;
- the Rules apparently breached;
- the date, and if known the time, that the apparent breach occurred;
- any other information regarding the apparent breach known to management;
- the identity of any affected participants, pipeline operators or prescribed persons; and
- the closing date by which any material breach allegations must be raised.

REMC^o may, prior to publishing the apparent breach notice, undertake limited enquiries with any relevant parties to help ensure that the nature and the substance of the issue are reasonably understood and explained.

Each month REMCo will produce a summary report of the apparent breaches for the month.

Apart from publication of the apparent breach notice, REMCo will take no further action in relation to an apparent Rule breach unless a participant, pipeline operator or prescribed person makes a complaint (as defined in 2.2 below).

This approach aims to ensure transparency through the reporting of all apparent breaches, while recognising that the majority of apparent breaches are likely to be immaterial. It also provides uniform treatment of apparent breaches, whether by a participant, pipeline operator, prescribed person or by REMCo.

2.2 Allegation of Breach

The aim of this stage in the compliance process is to ensure fairness between participants, pipeline operators or prescribed persons by providing an avenue for an affected participant, pipeline operator or prescribed person to trigger further scrutiny of an apparent breach that it believes has had an impact. It also ensures that participant, pipeline operator or prescribed person and REMCo resources are not unnecessarily expended on minor breaches, such as IT outages that have no material adverse impact on any party.

Participants, Pipeline Operator or Prescribed Person may Make a Complaint to REMCo

A participant, pipeline operator or prescribed person who believes an apparent breach of the Rules was material may lodge a notice (a “complaint”) with REMCo under Rule 325(1) if it reasonably believes that another participant, pipeline operator or prescribed person or REMCo has materially breached the Rules. A Rule 325 notice can be lodged at any time, either in response to the publication of an apparent Rule breach by REMCo (see 2.1 above) or otherwise.

A participant, pipeline operator or prescribed person must lodge a complaint no later than 30 business days after REMCo has published notification of the apparent breach to which the allegation relates.

If REMCo does not receive a complaint in relation to an apparent Rule breach notice, REMCo will resolve not to take any further action in relation to the matter. REMCo will notify all users, network operators and interested parties that no complaints were received and that no further action will be taken.

A person lodging a complaint with REMCo is referred to as the “complainant” in these procedures.

What should be Included in a Complaint

If a complainant wishes to lodge a complaint in relation to an apparent Rule breach, it must make the complaint in writing (Rules 325(1)). The complaint must include as a minimum:

- the complainant's GBO identification;
- the GBO identification of the participant, pipeline operator or prescribed person that is alleged to have breached the Rules;
- the identity of any other person that is involved with or affected by the alleged breach of the Rules ("affected participants, pipeline operator or prescribed person") where known; and
- the details of the alleged breach of the Rules, including:
 - a description of the alleged breach;
 - the Rules alleged to have been breached;
 - the time that the breach occurred;
 - a description of the impact that the alleged breach had on the complainant, the market and other participants, pipeline operators or prescribed persons in the market, addressing the points to be considered by the Board in determining the materiality of an alleged Rule breach (refer to Schedule D); and
 - any other information regarding the breach known to the complainant.

Following receipt of a notice under Rule 325(1), REMCo management will publish a notice as specified in Rule 327 to the participant, pipeline operator or prescribed person that is alleged to have materially breached the Rules (the "respondent") and any other parties that REMCo believes may have been affected by the alleged breach:

- Notifying them of the allegation; and
- Requesting submissions on whether they believe:
 - The circumstances contained in the allegation amount to a breach of the Rules; and
 - If they believe there has been a breach of the Rules, whether they believe that breach was material with reference to the points to be considered by the Board in determining the materiality of an alleged Rule breach (refer to Schedule D below).

ERA will be Notified of the Allegation

When REMCo receives a notice under Rule 325(1), it will notify the ERA.

Withdrawal of Complaint

If a participant, pipeline operator or prescribed person withdraws a complaint under Rule 326(1), then under Rule 326(2) the REMCo Board will determine whether REMCo will seek a reimbursement of REMCo's reasonable costs related to the withdrawn complaint and will notify the participant, pipeline operator or prescribed person. Before making its determination, the Board will consider any submissions made to REMCo by the withdrawing party.

2.3 Investigation and submissions

Introduction

The aim of the investigation stage is to ensure that sufficient evidence is before the REMCo Board to allow it to make an informed decision on whether the alleged breach took place, and if so, whether it was material.

This stage of the process is designed to ensure that all persons responding to allegations that they have breached the Rules (“respondents”) are aware, prior to the meeting at which their matter is considered, of the allegations made against them, and have the opportunity to respond to these allegations. Therefore, as far as practicable, respondents will be given the opportunity to view all the evidence that will be considered at the meeting, and to make submissions on this evidence.

Investigation Timetable

To provide the respondent and REMCo sufficient time to consider information relating to an alleged Rule breach, a timetable for the process has been developed. This timetable is summarised in Schedule B to these Procedures.

If REMCo exercises its discretion under Rule 328A(5) to extend the period for responding to a request for information relating to an alleged Rule breach, then REMCo must notify all participants of the revised deadline and the reason for the extension.

Submission by Affected Participants, Pipeline Operator or Prescribed Person

Participants, pipeline operators or prescribed persons that REMCo believes may have been affected by an alleged breach will be invited to make a written submission to REMCo within 10 business days of the affected participants, pipeline operators or prescribed persons receiving a notice advising of the complaint.

An affected participant’s, pipeline operator’s or prescribed person’s written submission may indicate whether or not the affected participant, pipeline operator or prescribed person believes that the respondent has breached a Rule as alleged in the complaint, and if applicable, must include a description of the impact that the alleged breach had on them and should:

- present the affected participant’s, pipeline operator’s or prescribed person’s view as to the impact the alleged breach had on the market and other participants, pipeline operators or prescribed persons in the market (this should address the matters considered by the Board in determining the materiality of an alleged breach set out in Schedule D);
- present any facts or other material evidence that it considers may substantiate the occurrence of the alleged Rule breach; and
- present the affected participant’s, pipeline operator’s or prescribed person’s view on what determination should be made under Rule 329.

Any submissions received by REMCo must be provided to the respondent, subject to removal of any confidential information.

Submission by Respondent

The respondent will be asked to make a written submission to REMCo. The respondent’s submission must be provided to REMCo no later than 15 business days after REMCo has provided copies of submissions made by affected parties.

A respondent’s written submission may indicate whether or not the respondent believes that it has breached a Rule, as alleged in the complaint, and should:

- present the respondent’s view as to the impact the alleged Rule breach had on the market and participants, pipeline operator or prescribed person in the market (this should address the matters considered by the Board in determining the materiality of an alleged breach noted in Schedule D);

- present the respondent's view on what determination should be made under Rule 329;
- if the respondent wishes to claim the benefit of Rule 7(1), state that it wishes to do so, and include the reasons why the respondent believes it is entitled to claim the benefit of Rule 7(1) and the details of its compliance with Rule 7(2); and
- include a statement as to whether or not the respondent wishes to make an oral presentation in support of its written submission, and if an oral presentation is to be made, who will make that presentation on behalf of the respondent.

If REMCo is the respondent, its written submission will be prepared by REMCo management and must state whether or not it admits to the Rule breach referred to in the complaint.

Respondents may choose to provide a copy of their submission to the ERA. REMCo will provide a copy of the respondent's submission to the complainant.

Urgent Matters may be Expedited

REMCo may, at its discretion, expedite the timeframes set out in this document considering an alleged breach if:

- requested by a participant, pipeline operator or prescribed person; and
- in the opinion of REMCo, the alleged breach:
 - either has a material:
 - impact on the efficient operation of the market; or
 - financial impact on a participant, pipeline operator or prescribed person or participants, pipeline operators or prescribed persons; and
 - cannot be resolved through existing market mechanisms.

If a matter is expedited, REMCo will determine the timeframes for the matter to be considered. These timeframes will include a requirement for written submissions to be submitted by the complainant, the respondent and any affected participants, pipeline operators or prescribed persons.

REMCo may Undertake Investigation

In addition to information contained in participants', pipeline operators' or prescribed persons' submissions, REMCo may gather such information that it considers relevant to assisting the Board in determining whether the alleged breach has been proven, and if so, whether it is material.

REMCo management will prepare a report setting out the findings of any such investigations to the Board.

Board to Consider Complaints at Next Scheduled Meeting

An alleged breach will be considered by the REMCo Board at the next scheduled Board meeting if:

- submissions were made by affected parties indicating that the alleged breach had a material impact on them or the operation of the market;
- the period for submissions by the respondent has expired more than 7 business days prior to that meeting; or
- submissions are received from respondents more than 7 business days prior to that meeting.

Otherwise, a complaint will be held over for consideration at the next scheduled Board meeting.

Documents to be Provided to Parties Pre-Meeting

REMC^o is to provide the respondent with copies of the information provided by the complainant and any affected participant, pipeline operator or prescribed person, and as far as practicable, any other documents or material (excluding any material which might be commercially sensitive and confidential to the participant, pipeline operator or prescribed person) that is to be considered at the Board meeting relating to the issue and that is received by, or prepared by or on behalf of, the Board prior to the meeting.

2.4 REMCo Board determination

REMC^o will Make Determination

The REMCo Board will exercise the powers under Rule 329.

Meeting Procedures

a) Introduction

As noted in Section 1.0 of these procedures, REMCo is committed to ensuring that its consideration of compliance related matters is conducted expeditiously and in such a manner as to be fair and reasonable to all parties concerned.

b) Board members Absented

Board members who are employees or Directors of a market participant, pipeline operator or prescribed person directly involved in an alleged breach of the Rules (either as complainants or respondents) are absented from the meeting for the duration of the agenda item dealing with the alleged breach.

ba) Board Quorum Matters

1. As per section 13.3 of the REMCo Constitution, a quorum of the Board is half the number of Directors elected to the Board (rounded up).
2. If, after absenting all necessary Directors from the Board in considering a compliance matter, the Board is not able to form a quorum due to the operation of clause 2.4b), REMCo must notify the complainant and any affected participant of this in writing. Within 14 days of receipt of written notice from REMCo that a quorum could not be formed, the complainant or any interested participant may request that the referral of the matter be dealt with by the Chair of the Board pursuant to Clause 11.3(h) of the Constitution. Upon receipt of such request, the Chair of the Board will either:
 - (a) refer the compliance matter directly to the Compliance Panel; or
 - (b) refer the compliance matter to a sub-committee of the Board.
3. Under Rule 4, REMCo may confer any of the powers and functions conferred on it by the Rules to one or more sub-committees consisting of any number of either or both of Directors and other persons, as REMCo thinks fit.
4. The Chair of the Board appointed pursuant to Clause 11.3(h) of the Constitution will determine the composition of any sub-committee appointed to address a compliance matter referred to it under 2(b). The sub-committee may be comprised of any combination of:

- (a) Directors;
- (b) Industry Experts; or
- (c) any other person that the Chair of the Board determines is appropriate to be a member of the sub-committee.

A member of the Compliance Panel cannot be appointed to such a sub-committee, as this would prevent the Compliance Panel from being able to form a quorum should an appeal of the sub-committee's decision be requested.

- 5. Any sub-committee formed under item 4 above must have at least 3 members.
- 6. No person will be appointed to the sub-committee if that person would have been required to absent themselves from a Board meeting in relation to the compliance matter to be considered by the sub-committee had that person been a Director of the Board.
- 7. If an industry expert:
 - (a) is an employee of REMCo or its agent, that employee is not eligible to undertake the investigation into the compliance matter; and
 - (b) is an employee of a market participant, that market participant must not be directly involved in the compliance matter, either as a complainant or respondent.
- 8. The sub-committee will have all the powers of the Board with respect to that compliance matter.
- 9. A complainant or respondent may appeal any decision of the sub-committee to the Compliance Panel.

c) Opportunity to Make Oral Presentations

The respondent, the complainant, and any affected party may make an oral presentation and address questions at the Board meeting at which the complaint is considered. If a party wishes to make an oral presentation, it must give REMCo at least 7 business days notice in writing, and advise who will represent the party at the meeting in the notice.

Oral presentations should focus on clarifying the written submissions only. Oral Presentations will not be allowed to introduce new mitigating factors, additional evidence, or to amend the complaint.

A person who is a Board member may be nominated to make an oral presentation on behalf of an affected party, complainant or respondent, but will only attend the meeting for the oral presentation as a representative of the affected party, complainant or respondent.

Unless otherwise approved by the Board, oral presentations will be limited to 5 minutes and made by officers of the parties involved, with not more than two in attendance at the meeting.

The Board will hear oral presentations after REMCo management has made a presentation of the facts of the alleged breach to the Board. The complainant will make their oral presentation and answer questions before the affected parties. The respondent will make their oral presentation and answer questions last.

The representatives of the affected parties, complainant and respondent shall not be in attendance in the Board meeting at the same time.

d) **REMC^o to Consider Determination under Rule 300A**

In addition to making a determination that a matter is material and is to be referred to the Compliance Panel, if it appears that a person has acted in a manner that contributed materially to the causation of swing service for any gate points for a sub-network on any gas day and REMCo has received a request from a user to make a determination under Rule 300A, REMCo may make a determination under Rule 300A.

The process that will be followed in that case is set out in Section 4.

Making a Determination if REMCo is the Respondent

In considering complaints against REMCo the Board is necessarily in a position of potential conflict of interest. For this reason, if REMCo is a respondent to a complaint then:

- if REMCo admits to the Rule breach referred to in the complaint, and having regard to the matters referred to in Schedule D, the Board considers that the impact of the breach on either the market or the affected participants, pipeline operators or prescribed persons was not material, the Board will resolve not to take any further action in relation to the matter and management will notify the ERA and market participants, pipeline operators or prescribed persons of the Board's determination; or
- the Board will refer the matter to the Compliance Panel under Rule 329(1).

Making a Determination if a Participant, pipeline operator or prescribed person is the Respondent

If a participant, pipeline operator or prescribed person is the respondent to a complaint the Board will follow the following process before making a determination:

a) **Determine Materiality of the Breach**

Having regard to the matters set out in Schedule D, the Board will consider whether the alleged Rule breach is material or immaterial.

If the Board determines at the first meeting at which it considers a complaint, based on the written and oral submissions, that it does not have sufficient information to determine whether the alleged Rule breach has occurred or the materiality of the alleged breach, then the Board will seek further information from the complainant, the respondent and/or affected parties.

If the Board determines at the second meeting at which it considers a complaint, based on the written and oral submissions, that it still does not have sufficient information to determine whether the alleged Rule breach has occurred or the materiality of the alleged breach, then it will resolve that the matter was not material and that no further action shall be taken.

If the Board determines that an alleged Rule breach is not material, it will resolve that the matter was not material and that no further action shall be taken.

If the Board determines that an apparent Rule breach is material then the Board will refer the matter to the Compliance Panel.

It is important to note that the Board does not have power under the Rules to make orders (e.g. imposition of financial penalties) following a determination under Rule 329(1). Only the Compliance Panel has the power to impose such penalties.

b) Board to Consider Referral to Rule Change Committee

In addition to making a determination under Rule 329 in the manner specified above, the Board will consider whether the matter referred raises a Rule design issue that should be referred to the Rule Change Committee.

c) Notification of Determinations

All decisions made by the Board will be set out in writing, and will include the reasons for the decision and will be given within 5 business days after the Board has made its determination.

If the Board makes a determination it will give notice of the determination and the reasons for the determination to all participants, pipeline operators or prescribed persons provided with copies of the initial complaint, and to the ERA. The Board will not include any confidential information in the notice of the decision and reasons for the decision and may censor documents it publishes to participants, pipeline operators or prescribed persons.

d) Appeal Rights

If the Board determines (for whatever reason) not to refer a complaint to the Compliance Panel, then any participant, pipeline operator or prescribed person may appeal the Board's determination to the Compliance Panel by giving notice to REMCo. An appeal must be made within 40 business days after notification of a determination by REMCo (Rule 331(1)).

A notice of appeal should be in writing and include the grounds of the appeal, the decision and orders sought, and such other information as the participant, pipeline operator or prescribed person appealing reasonably considers will assist the Compliance Panel.

If REMCo receives notice of an appeal from a participant, pipeline operator or prescribed person, then it will refer the matter to the Compliance Panel within 5 business days (Rule 331(2)).

2.5 Compliance Panel

Board Referral – Investigation Period

If the Board resolves that an alleged Rule breach should be referred to the Compliance Panel then REMCo (**investigator**) will as soon as practicable fully investigate the alleged Rule breach and prepare an investigation report to provide the Compliance Panel with background information on the alleged breach.

If REMCo is the party alleged to have been in breach then REMCo will prepare the investigation report but will make a written request to the complainant asking it to provide detailed support for its complaint and will include this material in the investigation report. In most circumstances this should provide sufficient information to inform the Compliance Panel of the matter prior to it undertaking its own investigation. In circumstances where REMCo is the party alleged to have been in breach, REMCo or the Compliance Panel may choose to commission a report from an independent investigator.

Once the investigation report has been prepared, REMCo will formally refer the matter to the Compliance Panel in accordance with Rule 333.

The investigation report will be included as part of the referral documents, and will be provided to the Compliance Panel, the complainant, the respondent that were provided with a copy of the initial complaint at the time that the referral is made, and the ERA.

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 nature of the alleged breach;
- a description of the impact the alleged breach had on the market and other participants, pipeline operators or prescribed persons;
- any additional information which the investigator considers relevant to the decision of the Compliance Panel as to how the matter may be dealt with by the Compliance Panel;
- the investigator's assessment of the likelihood of the alleged breach recurring;
- details of any similar situations previously dealt with by the Compliance Panel; and
- a copy of all correspondence with the investigator relating to the breach.

2.6 Notices

a) Notices to Participants, Pipeline Operators or Prescribed Persons

All notices under these procedures will be sent by REMCo to e-mail contacts nominated by participants, pipeline operators or prescribed persons for that purpose. It is the responsibility of participants, pipeline operators or prescribed persons to ensure that if the contact person in their organisation is not checking their e-mail regularly (e.g. they are away from the office) that another person within their organisation performs this role.

b) Notices to REMCo

All written communications with REMCo under these procedures should be made by e-mail (unless 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 compliance, Rule interpretation and dispute resolution will be advised to all participants, pipeline operators or prescribed persons and will be identified on the REMCo website.

REMCo's email address for compliance related matters is compliance@remco.net.au.

c) Notices to Regulators

REMCo will provide a copy of documentation received or issued by REMCo in relation to alleged breaches of the Rules to the ERA.

3.0 Requests for Rule interpretation

3.1 Lodging a request for Rule interpretation with REMCo

a) Informal Resolution of Rule Interpretation Issues

The Rules provide a formal process for the resolution of Rule interpretation issues. However, it is envisaged that prior to commencing this process, participants, pipeline operators or prescribed persons will use reasonable efforts to resolve Rule interpretation issues with REMCo, and that a participant, pipeline operator or prescribed person will only lodge a formal request for Rule interpretation under section 3.1(b) if a matter is not resolved to its satisfaction.

b) Parties may Lodge Requests

A participant, pipeline operator or prescribed person or REMCo may make a request for Rule interpretation (“requesting party”). A participant, pipeline operator or prescribed person must lodge such a request with REMCo.

If REMCo believes that a participant, pipeline operator or prescribed person is in breach of the Rules, it may lodge a complaint in accordance with section 2.0 above, notwithstanding that a participant, pipeline operator or prescribed person has lodged a request for Rule interpretation in relation to the same matter.

c) What Should be Included in a Request

A request for a Rule interpretation must be in writing and include as a minimum:

- the GBOID of the person referring the matter to REMCo;
- the identity of any person, of which requesting party is aware, that is involved with or affected by the referred matter;
- the Rule for which interpretation is required;
- the reason for the request (e.g. a perceived ambiguity in a Rule); and
- the circumstances in which the interpretation is required.

The request should also include the requesting party’s view as to the materiality of the likely impacts on the market and participants, pipeline operators or prescribed persons associated with the Rule interpretation issue.

d) Withdrawal of Request

The requesting party may at any time withdraw a request for Rule interpretation by sending a written notice to REMCo (Rule 326(1)). REMCo will advise any participant, pipeline operators or prescribed persons that has been involved in this interpretation process of the withdrawal

REMC^o may require a requesting party that withdraws a request for a Rule interpretation to reimburse REMCo for the reasonable costs incurred by REMCo in connection with the referral up to the time it is withdrawn (Rule 326(2)). The Board will determine whether REMCo will seek a reimbursement of costs related to a withdrawn request and will notify the relevant party. Before making its determination the Board will consider any submissions made to the Board by the withdrawing party.

3.2 Pre-Meeting Procedures

a) Introduction

The aim of these pre-meeting procedures is to ensure that all participants, pipeline operators and prescribed persons have the opportunity to make submissions on any request for a Rule interpretation received prior to the Board giving consideration to that request.

b) Pre-Meeting Timetable

To provide participants, pipeline operators and prescribed persons and the Board sufficient time to consider information relating to a request for Rule interpretation, the Board has created a timetable against which it will proceed. This timetable is set out in Schedule C to these Procedures.

c) Request Sent to Market Participants, Pipeline Operators or Prescribed Persons

When REMCo receives a request for Rule interpretation, it will forward this request onto all participants.

d) Submissions by Participants, Pipeline Operators or Prescribed Persons

Participants, pipeline operators or prescribed persons will be invited to make written submissions to the Board within 14 days of participants, pipeline operator or prescribed person receiving the request. These submissions should present the participants', pipeline operators' or prescribed persons' view on what determination the Board should make under Rule 329.

e) Board to Consider Requests at Next Scheduled Meeting

The Board typically meets on a monthly basis. Papers for Board meetings, including requests for Rule interpretations and submissions received in respect of those requests, are submitted to the Board 5 business days prior to its meeting. This lead time gives the Board adequate time to consider the papers in advance of its meeting.

A request for Rule interpretation will be considered at the next scheduled Board meeting if:

- the period for submissions by participants, pipeline operators or prescribed persons has expired more than 7 business days prior to that meeting; or
- submissions are received from all participants, pipeline operators or prescribed persons more than 7 business days prior to that meeting.

Otherwise, a request for Rule interpretation will be held over to the following Board meeting.

3.3 Meeting Procedures

a) Introduction

As noted in Section 1.0, the Board is committed to ensuring that its consideration of compliance related matters is conducted expeditiously and in a manner that is fair and reasonable to all parties concerned.

b) Determinations that may be made by the Board

At the meeting of the Board at which a request for Rule interpretation is considered, the Board may:

- reject the request;
- make a determination on the request; or
- refer the matter to the Compliance Panel.

c) Rejection of a Request

The Board will reject a request for Rule interpretation under Rule 329(1)(a) if it believes:

- the request is frivolous or vexatious; or
- it does not have sufficient information to understand the question of interpretation that is in issue.

d) Making a Determination if REMCo is the Requesting Party

In considering Rule interpretation requests made by REMCo, the Board is necessarily in a position of potential conflict of interest. For this reason, if REMCo makes the request then the Board will refer the matter to the Compliance Panel under Rule 329(1)(c).

It is noted that REMCo is only likely to make a Rule interpretation request under Rule 327 in circumstances where it wishes the Compliance Panel to make a determination to resolve a Rule interpretation issue that it has not been able to resolve by other means (e.g. through consultation with participants, pipeline operator or prescribed person).

e) Making a Determination if a Participant, Pipeline Operator or Prescribed Person is the Respondent

If a participant, pipeline operator or prescribed person is the requesting party and the Board has not rejected the request, then the Board will follow a 2-step process to make a determination:

Step 1: Determine Materiality of the Impact of the Rule Interpretation Issue on Participants, Pipeline Operator or Prescribed Person and the Market

The Board will consider whether the Rule interpretation issue is material or immaterial. In determining the materiality, the Board will have regard to the following matters:

- whether the interpretation of the Rule may have a material impact on the operation of the market or on participants, pipeline operator or prescribed person;
- whether the interpretation of the Rule may result in any costs being borne by REMCo (and therefore the market as a whole); and
- any other matters considered relevant by the Board.

Step 2: Determine whether to refer the matter to the Compliance Panel

If the Board determines at the first meeting at which it considers a request for Rule interpretation, based on the written submissions, that it does not have

sufficient information to determine the materiality of the Rule interpretation, the Board will seek further information from the requesting party and participants, pipeline operator or prescribed person.

If the Board determines at the second meeting at which it considers a request for Rule interpretation, based on the written submissions, that it still does not have sufficient information to determine the materiality of the Rule interpretation, the Board shall consider that the Rule interpretation is not material.

f) Rule Interpretation Issues that are Immaterial

If the Board determines that a Rule interpretation issue is immaterial, then the Board will make a determination under Rule 329(1)(b) as to the proper meaning of the Rule in question.

g) Rules Interpretation Issues that are Material

If the Board determines that a Rule interpretation issue is material, then the Board may either make a determination under:

- Rule 329(1)(b) as to the proper meaning of the Rule in question; or
- Rule 329(1)(c) to refer the matter to the Compliance Panel.

h) Board to Consider Referral to Rule Change Committee

In addition to making a determination under Rule 329 in the manner specified above, the Board will consider whether the matter raises a Rule design issue that should be referred to the Rule Change Committee.

3.4 Post-meeting procedures

a) Decisions to be Published

All decisions made by the Board will be set out in writing, including the reasons for the decision, and will be given within 5 business days after the Board has made its determination.

If the Board makes a determination to reject a request for Rule interpretation under Rule 329(1)(a), then it will give notice of the determination and the reasons for the determination only to the requesting party.

If the Board makes a determination other to reject a request for a Rule interpretation under Rule 329(1)(a), then it will give notice of the determination and the reasons for the determination to all participants, pipeline operators or prescribed persons (Rule 330(2)). The Board will not include any confidential information in the notice of the decision or the reasons for the decision, and may censor documents it publishes to participants, pipeline operators or prescribed persons (Rule 330(3)).

b) Appeal Rights

If the Board determines (for whatever reason) not to refer a Rule interpretation request to the Compliance Panel, then any participant, pipeline operator or prescribed person may appeal the Board's determination to the Compliance Panel by giving notice to REMCo. An appeal must be made within 40 business days after notification of a determination by REMCo (Rule 331(1)).

A notice of appeal should be in writing and include the grounds of the appeal, the interpretation which the party appealing considers to be correct (including reasoning), and such other information as the appealing participant, pipeline operator or prescribed person reasonably considers will assist the Compliance Panel.

If REMCo receives notice of an appeal from a participant, pipeline operator or prescribed person then it will refer the matter to the Compliance Panel within 5 business days (Rule 331(2)).

4.0 Determination of Swing Service Causation Compensation (Rule 300A)

4.1 Introduction

Rule 300A applies to a person (the “compensating person”) if REMCo determines that the person must make a “swing service causation compensation payment” calculated under Rule 300A to each of the users (excluding the compensating person if the compensating person is a user) in a sub-network on historical gas day *i*.

The REMCo Board will exercise this authority through a Sub-Committee formed for consideration of each swing service causation compensation situation.

4.2 How the Determination Process is Initiated

The process that is set out in Rule 300A is initiated if a user in a sub-network complains, in respect of a historical gas day on that sub-network, about a person acting in a manner that contributed materially to the causation of swing service for the gate points for the sub-network, and the CEO of REMCo does not believe that this is a frivolous or vexatious complaint by the user.

Such complaint by a user must, where possible, specify the identity of the person that the user considers to be the Compensating Person.

In such circumstances the CEO of REMCo is to advise the Chairman of the Board that REMCo is required to make a determination under Rule 300A.

4.3 Pre-Meeting Procedures

a) Introduction

The aim of the pre-meeting procedures is to ensure that:

- the Board meets the standard required of it by the Rules – that in making any determination under Rule 300A, the Board’s opinion is formed as a reasonable and prudent person;
- the Board adheres to the processes that are set out in Rule 300A; and
- the participants, pipeline operators or prescribed persons are encouraged to negotiate a commercial settlement of the matter if this is possible prior to the Board making a determination.

b) Investigation by REMCo

Once the CEO has determined that a complaint from a user requesting a Rule 300A determination is not frivolous or vexatious, REMCo will investigate the swing service results published by the GRMS in relation to the sub-network and the period that the complaint by the user relates to. The aim of this investigation shall be to determine whether there is any evidence that a person did materially contribute to the causation of swing service in the period and any other relevant facts.

This investigation is to be completed as soon as reasonably possible and the results of the investigation are to be made available to:

- the alleged compensating person, if known;¹
- the user who submitted the complaint; other users; swing service providers'
- network operators;
- the Board; and
- any other person as directed by the Board.

c) Parties to Negotiate

Following receipt of the information provided under 5.3(b), the user who submitted the complaint and the alleged compensating person will be encouraged to negotiate a commercial settlement of the complaint.

d) Board will Appoint a Sub-Committee

If the Chairman of the Board receives advice from the CEO of REMCo that REMCo is required to make a Rule 300A determination and the Board considers that the investigation conducted by REMCo under 5.3(b) of this procedure provides grounds to reasonably believe that a person did materially contribute to the causation of swing service in the period, the Chairman will appoint a Sub-Committee comprised of Board members to investigate and determine the matter, and to report the outcome to the Board.

da) Board Quorum Matters

1. As per section 13.3 of the REMCo Constitution, a quorum of the Board is half the number of Directors elected to the Board (rounded up).
2. If, after absenting all necessary Directors from the Board in considering a Rule 300A determination, the Board is not able to form a Sub-Committee that comprises a quorum of the Board, then REMCo must notify the complainant and any affected participant of this in writing. Within 14 days of receipt of written notice from REMCo that a quorum could not be formed, the complainant or any interested participant may request that the referral of the matter be dealt with by the Chair of the Board, pursuant to Clause 11.3(h) of the Constitution.

Upon receipt of such request, the Chair of the Board will refer the Rule 300A matter to a sub-committee of the Board formed under Rule 4.

3. Under Rule 4, REMCo may confer any of the powers and functions conferred on it by the Rules to one or more sub-committees consisting of any number of either or both of Directors and other persons, as REMCo thinks fit.
4. The Chair of the Board appointed pursuant to Clause 11.3(h) of the Constitution will determine the composition of any sub-committee appointed to address a Rule 300A matter referred to it under 2(d). The sub-committee may be comprised of any combination of:
 - (a) Directors;

¹ The identity of the alleged compensating person may be indicated by the user who submits the initial complaint requesting REMCo to make a Rule 300A determination, or determined by REMCo management during the investigation conducted in 5.3(b) of this procedure.

- (b) Industry Experts; or
- (c) any other person that the Chair of the Board determines is appropriate to be a member of the sub-committee.

A member of the Compliance Panel cannot be appointed to such a sub-committee, as this would prevent the Compliance Panel from being able to form a quorum should an appeal of the sub-committee's decision be requested.

- 5. Any sub-committee formed under item 4 above must have at least 3 members.
- 6. No person will be appointed to the sub-committee if that person would have been required to absent themselves from a Board meeting in relation to the Rule 300A matter to be considered by the sub-committee, had that person been a Director of the Board.
- 7. If an industry expert:
 - (a) is an employee of REMCo or its agent, that employee is not eligible to undertake the investigation into the Rule 300A matter; and
 - (b) is an employee of a market participant, that market participant must not be directly involved in the Rule 300A matter, either as a complainant or respondent.
- 8. The sub-committee will have all the powers of the Board with respect to that Rule 300A matter.
- 9. A complainant or respondent may appeal any decision of the sub-committee to the Compliance Panel.

e) Gathering Information

The Sub-Committee will ask the alleged compensating person for information about the circumstances related to the complaint by the user.

The Sub-Committee may also ask other persons for information about the circumstances related to the complaint by the user.

When asking for this information, the Sub-Committee must provide at least ten full business days for the person to respond to REMCo, as measured from the latter of the time that the Sub-Committee makes its request, or the time that REMCo has published the investigation of the swing service results to the person.

f) Responding to Requests for Information

Every response to a request for information by the Sub-Committee should include:

- a detailed response to the request;
- an opinion as to whether it or any other person may have contributed materially to the causation of swing service on the day in question;
- any facts or other material information that it considers may support its claim; and
- a view on what determination the Sub-Committee should make in the circumstances.

g) Management Will Prepare a Report to the Sub-Committee

Once the time for responding to all requests for information has passed, REMCo management will report the information that has been received to the Sub-Committee. Such reports must:

- contain a description of the circumstances that lead to the swing service;
- contain a list of the information sought by the Sub-Committee;
- contain a summary of the responses received, and attach the full text of all responses; and
- note if any person failed to respond to a request for information.

4.4 Meeting Procedures

a) Introduction

Rule 300A(2) requires that when the Board forms its opinion as a reasonable and prudent person. In addition, as noted in Section 1.0, the Board is committed to ensuring that its determinations are made fairly and expeditiously. To this end, the Board considers that it is appropriate for the Sub-Committee to complete the process of making a determination under Rule 300A before reporting any further information to the full Board.

b) Where the Alleged Compensating Person is a User

Where the alleged compensating person is a user, the Sub-Committee may take into account the following information on historical gas day i:

- whether the alleged compensating person procured the injection and repayment of an amount of gas into the sub-network equal to the alleged compensating person's good faith estimate of its likely user's estimated total withdrawals, as required by Rule 178;
- whether there was a material difference between the alleged compensating person's user's pipeline nomination amount and user's deemed withdrawals for a gate point for;
- whether the alleged compensating person complied with Rules 181 or 182;
- whether REMCo calculated a corrected recalculated ratio under Rule 176(4)(c) after the alleged compensating person provided a revised user's pipeline nomination amount to REMCo, and the pipeline operator notified REMCo that it could not accommodate the corrected recalculated ratio, contributing the swing service on the historical gas day i; and
- any notification to REMCo:
 - from a user, shipper, swing service provider or network operator for the sub-network that the alleged compensating person may have acted in a manner which contributed materially to the causation of swing service; and
 - by a pipeline operator under Rule 254 or 255.

In making its determination the Sub-Committee may also take into account any other information that is relevant to the circumstances.

c) Where the Alleged Compensating Person is not a User

Where the alleged compensating person is not a user, the Sub-Committee may take into account any notification to REMCo from a user, shipper, swing service provider or network operator for the sub-network that the alleged compensating person may have acted in a manner which contributed materially to the causation of swing service on the historical day i.

In making its determination the Board may also take into account any other information that is relevant to the circumstances.

d) Determinations that May be Made

At a meeting to consider the report prepared by REMCo management and to determine whether a person acted in a manner that contributed materially to the causation of swing service for the gate points for the sub-network on historical gas day i, the Sub-Committee will consider the report prepared by management and may make a determination under Rule 300A(1).

If the Sub-Committee determines that a compensating person must make a swing service causation compensation payment, the amount of the payment must be determined in accordance with Rule 300A(9).

e) Time for Making Determinations

The Sub-Committee must not make a determination until after the time for responding to all requests for information has passed, but once this period has passed, the Sub-Committee may make its determination despite the fact that some person may not have provided the requested information.

The Sub-Committee will make every determination under Rule 300A as soon as reasonably practicable after the time for responding to requests for information has passed.

The Sub-Committee will report its determination to the full Board at the next meeting of the Board.

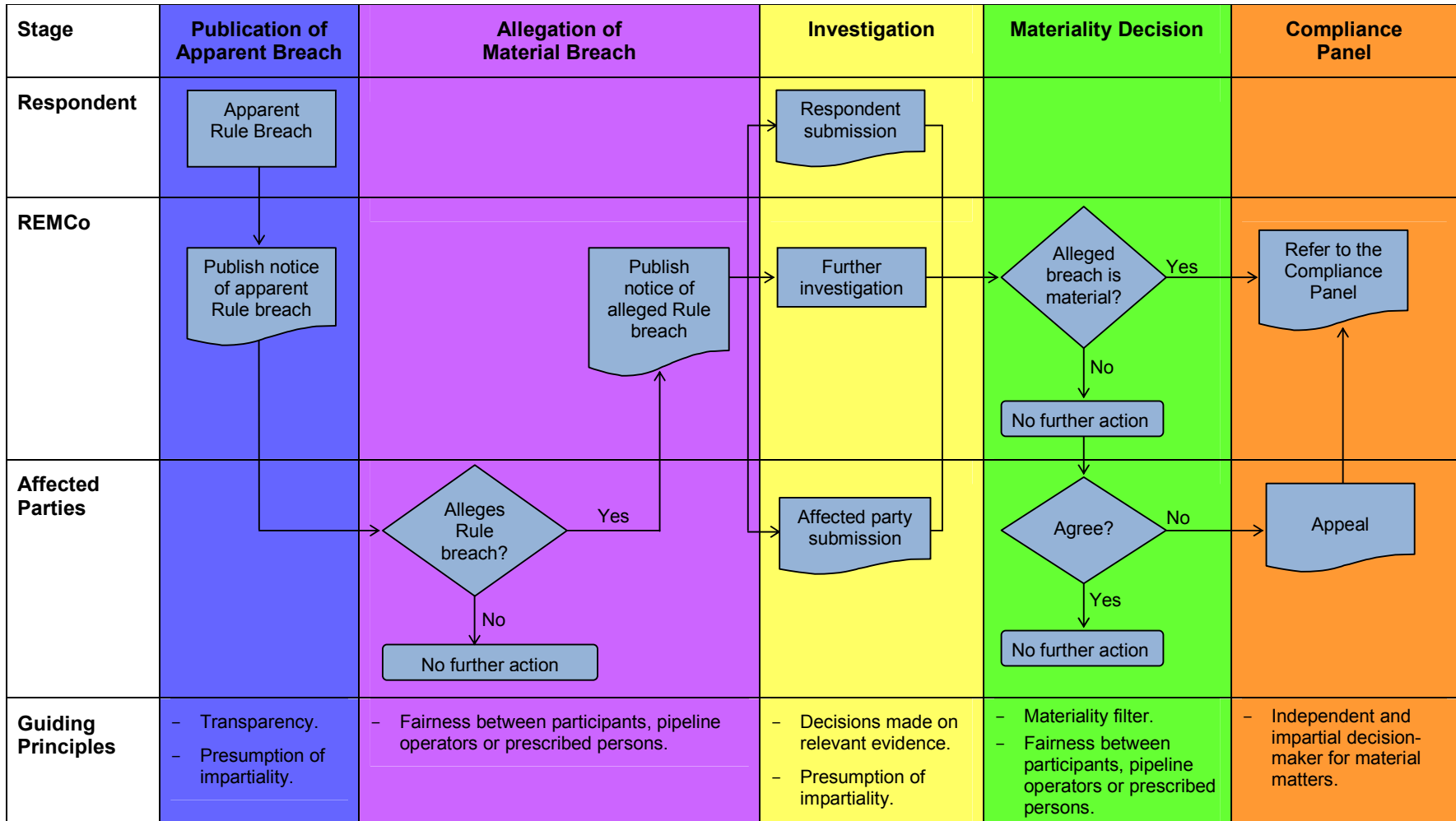
4.5 Post-Meeting Procedures

a) Notification of Determinations

Once it has made a determination about any person under Rule 300A the Board must notify:

- the compensating person of the fact of the determination and the amount of swing service causation compensation payment for each user; and
- each recipient user of its amount of swing service causation compensation payment and the identity of the compensating person.

Schedule A – Compliance Process for Alleged Breaches



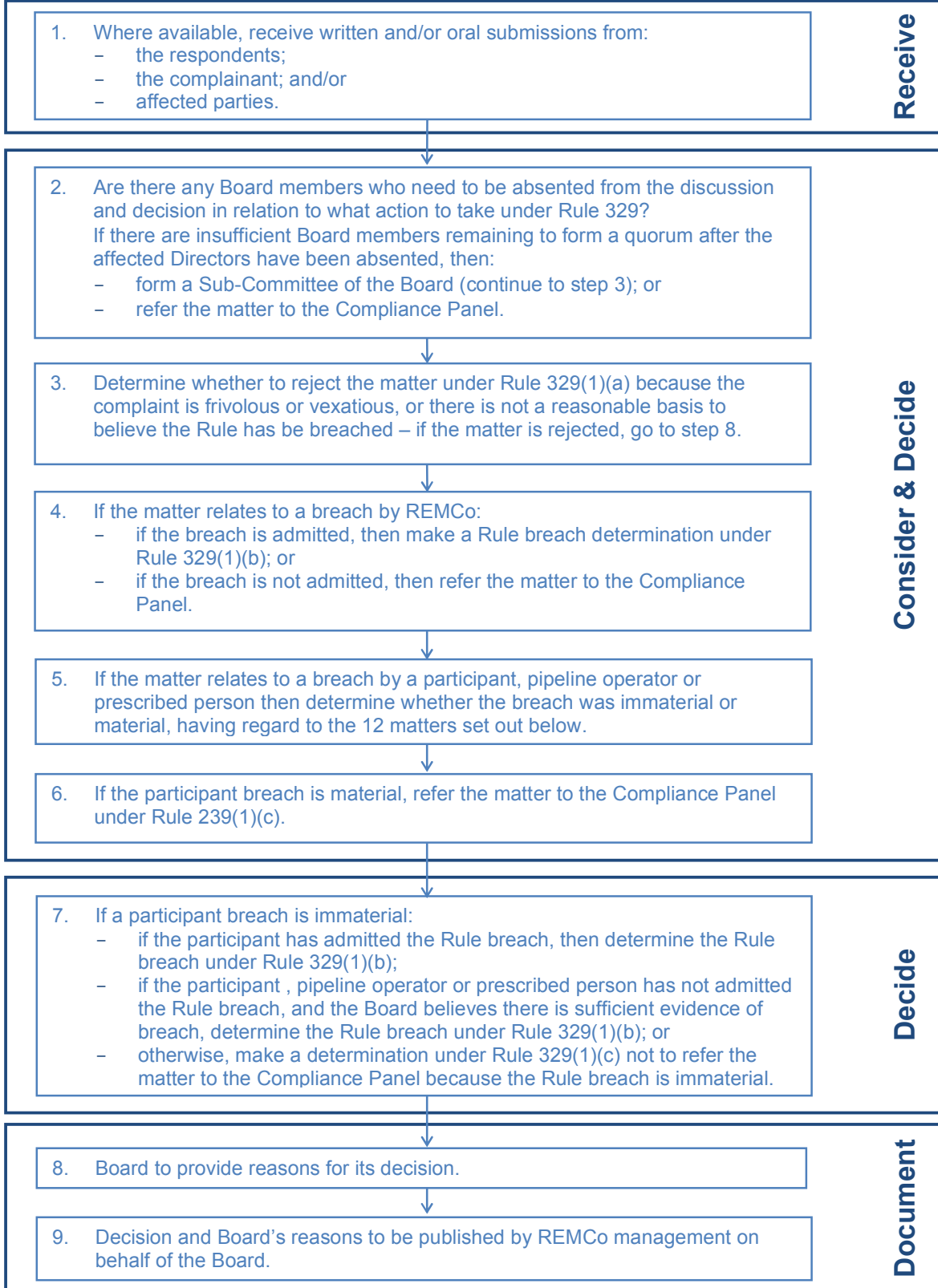
Schedule B – Alleged Breach Timetable

Time	Action
Start	<ul style="list-style-type: none"> • REMCo receives a complaint from a participant, pipeline operators or prescribed persons. • REMCo is to forward the complaint to the respondent, and a notice to any affected participants and the ERA.
5 business day after affected participants, pipeline operators or prescribed persons receive notice	<ul style="list-style-type: none"> • Affected participants are to provide written submissions to REMCo, if any. • REMCo is to forward any submissions from affected participants to the respondent.
10 business days after respondent receives affected party submissions from REMCo	<ul style="list-style-type: none"> • Any respondents are to send a written submissions to REMCo, should they choose to make a submission. • REMCo is to provide a copy of any submissions to the complainant.
7 business days prior to the next scheduled Board meeting	<ul style="list-style-type: none"> • Complaints and written submissions of respondents (if any) are provided to the Board. • Written intention to make oral presentation is to be provided to the Board.

Schedule C – Pre-meeting Timetable – Requests for Rule interpretation

Time	Action
Start	<ul style="list-style-type: none">• REMCo receives a request for a Rule interpretation.• REMCo is to forward the request to all participants, pipeline operators or prescribed persons, seeking submissions.
10 business days after participants, pipeline operators or prescribed persons receive request for Rule interpretation	<ul style="list-style-type: none">• Participants are to provide REMCo with written submissions, should participants, pipeline operators or prescribed persons choose to make submissions.
7 business days prior to the next scheduled Board meeting	<ul style="list-style-type: none">• The request for Rule interpretation and any written submissions from participants are to be provided to the Board.

Schedule D – REMCo Breach of Rules Compliance Procedure Checklist



Matters to be considered by the Board in determining the materiality of breaches

The Board will have regard to the following matters in determining whether an alleged Rule breach is material:

1. Whether the alleged Rule breach had a material impact on the operation of the market.
2. Whether the alleged Rule breach has resulted in any costs being borne by REMCo (and therefore the market as a whole).
3. Whether the alleged Rule breach appears to have arisen as a result of problems with the design/operation of the Rules, and that the participant, pipeline operator or prescribed person was still acting in a manner consistent with the guiding principles of REMCo.
4. Whether the alleged Rule breach by a participant, pipeline operator or prescribed person was caused by or contributed to by the conduct of REMCo or another market participant, pipeline operator or prescribed person.
5. Whether the alleged Rule breach is an isolated event, or indicates a systemic problem with compliance.
6. Whether the alleged Rule breach appears to have been made intentionally or maliciously.
7. Whether remedial action was taken by the participant, pipeline operator or prescribed person following discovery of the breach.
8. Whether the alleged Rule breach has a potential anti-competitive effect.
9. Whether the alleged Rule breach may be a material breach of a participant's, pipeline operator's or prescribed person's licence under the *Energy Coordination Act 1994*.
10. Any other matters considered relevant by REMCo.
11. For the first 12 months after a Rule change, the fact that the amended Rules are a new governing regime for the participants, pipeline operators or prescribed persons (Rule 329(3)(a)).
12. For the first 6 months after a person becomes a participant, pipeline operator or prescribed person the fact that the Rules are a new governing regime for the new participant, pipeline operator or prescribed person (Rule 329(3)(b)).