



Competent Authorities Panel Rules

May 2018

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National Transport Commission

Rules outline

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Introduction

These Competent Authorities Panel Rules (the Rules) establish the Competent Authorities Panel (the Panel) and set out how the Panel is to operate. Each Competent Authority of each participating jurisdiction is a member of the Panel and is entitled to appoint a representative to participate and vote on its behalf in relation to decisions of the Panel.

The Panel has a number of functions including:

- aiming for national consistency in dangerous goods transport regulation by making decisions on national effect of exemptions, determinations and approvals issued under the dangerous goods legislation, and other matters referred to it by participating jurisdictions and industry, and
- providing advice to the Australian delegation to the UN Sub-Committee of Experts on the Transport of Dangerous Goods and nominating a technical expert to support the delegation, if required.

When making decisions on the operation of the Australian Code for the Transport of Dangerous Goods by Road and Rail (the Code) and the dangerous goods legislation the Panel must have regard to inter-modal liaison and jurisdictional harmonisation.

The Panel has a pivotal role in ensuring that the integrity and effectiveness of the national scheme for the transport of dangerous goods is maintained. It operates as a forum for important decisions allowing nationally consistent application of the model legislation and optimising mutual recognition arrangements across jurisdiction borders.

The Rules are as amended and approved by the Transport and Infrastructure Council on [xx May 2018]

1 Preliminary Matters

1.1 Establishment of the Panel

The Competent Authorities Panel was established by the Competent Authorities Panel Rules made by the National Transport Commission on 13 June 2008 and approved by the Australian Transport Council. The Rules are amended by the Transport and Infrastructure Council from time to time. The Panel is to operate in accordance with these Rules.

1.2 Definitions

1. In these Rules:

business day means a day other than a Saturday, a Sunday or a day appointed as a public holiday under the public holidays legislation of the jurisdiction in which the main office of the Secretariat is located

Chairperson means the person appointed as the Chairperson of the Panel under rule 3.3

dangerous goods legislation means any legislation of a jurisdiction that regulates the transport of dangerous goods on land and that corresponds, or that substantially corresponds, to the model legislation

decision includes a determination, exemption or approval made in accordance with the dangerous goods legislation

model legislation means the *Model Act on the Transport of Dangerous Goods by Road or Rail* and the Model Subordinate Law on the Transport of Dangerous Goods by Road or Rail, as approved by the Transport and Infrastructure Council.¹

NTC means the National Transport Commission

observer means:

- a) a permanent observer appointed under rule 3.2(1) or
- b) a person or body invited by the Panel to be an observer under rule 3.2(3)

Panel means the Competent Authorities Panel

Secretariat means the Commonwealth Department of Infrastructure and Regional Development, or its successor

writing includes all methods of representing or reproducing words, figures or symbols in a visible form, and expressions referring to writing are to be construed accordingly.

2. If a term used in these Rules is defined in the model legislation, for the purposes of these Rules the term has that defined meaning, unless the contrary intention appears.
3. A power to decide a determination, exemption or approval made in accordance with the dangerous goods legislation includes refusal to determine, exempt or approve.
4. A reference in these Rules to a vote cast is a reference to a valid vote only.

¹ The model legislation (as amended from time to time) is published by the Parliamentary Counsel's Committee http://www.pcc.gov.au/uniform_legislation_official_versions.html

2 Functions of the Panel

2.1 Functions of the Panel

1. The functions of the Panel are:

- a) to assess determination, approval and exemption applications and matters referred to it for decision by a Competent Authority, as provided under any dangerous goods legislation;
- b) to facilitate national liaison to ensure a consistent application of the Code and dangerous goods legislation;
- c) to facilitate national liaison with Competent Authorities for Class 1, Division 6.2 and Class 7 goods and sea and air regulators to ensure consistency and minimise conflict with parallel legislative frameworks covering these other dangerous goods;
- d) to provide advice to the Australian Delegation to the UN Sub-Committee of Experts on the Transport of Dangerous Goods, and when necessary, to nominate the departmental nominee to support the Delegation;
- e) to facilitate the establishment of common training and licensing systems across participating jurisdictions; and
- f) to do anything else it is authorised to do under any dangerous goods legislation or these Rules.

3 Membership of the Panel

3.1 Membership of the Panel

1. Each Competent Authority is a member of the Panel.
2. Subrule 3.1(1) applies even if there is more than one Competent Authority in a jurisdiction.
3. Each member of the Panel is entitled to appoint a person (a panel member representative) to represent it at Panel meetings and to vote on its behalf when any matter is put to a vote of the Panel.

3.2 Observer status on the Panel

1. The following are permanent observers of the Panel:
 - a) any person who, or body that:
 - is in a jurisdiction that does not have dangerous goods legislation in force, and
 - has responsibilities for administering any law that relates to the transport of dangerous goods, and
 - is invited by the Panel to be a permanent observer.
 - b) any person nominated by the Transport and Infrastructure Senior Officers Committee
 - c) any person nominated by the Transport and Infrastructure Council and
 - d) the National Transport Commission.

Note: As at [date] May 2018 the permanent observers were:

- Australian Fire and Emergency Services Authorities Council
- Civil Aviation Safety Authority
- Australian Maritime Safety Authority
- National Transport Commission
- Safe Work Australia
- Commonwealth Department of Infrastructure and Regional Development
- Department of Natural Resources and Mines (Queensland).

A list of all CAP members and permanent observers can be found in the CAP guidelines for applicants on the Department of Industry Regional Development website.

2. A permanent observer of the Panel is entitled to have a representative attend all Panel meetings and is to be notified of all Panel meetings.
3. The Panel may invite one or more other observers to attend particular Panel meetings.
4. Representatives of observers may participate in the deliberations of the Panel, but may not cast a vote in relation to any decision of the Panel.
5. Observers must notify the Chairperson in writing of who will represent them at a Panel meeting at least 24 hours before the meeting is to start.

3.3 Appointment of the Chairperson

1. The Panel member representatives may appoint a panel member representative to be Chairperson.
2. If the office of Chairperson appointed under Rule 3.3(1) becomes vacant, or the person holding that office is unable or unwilling to fulfil the duties of office, or the Chairperson is a person appointed under Rule 3.3(4), the Panel member representatives may appoint a new Chairperson.
3. The term of office for a Chairperson appointed under Rule 3.3(1) or Rule 3.3(2) is 2 years.
4. If no Chairperson is appointed under Rule 3.3(1) or Rule 3.3(2) the Chairperson is, for the period (or part thereof) specified in column A, to be a Panel member representative from the jurisdiction specified in column B (below):

| A – period (or part thereof) | B - Jurisdiction |
|-------------------------------------|-------------------------|
| 1 June 2017 - 31 May 2019 | New South Wales |
| 1 June 2019 - 31 May 2021 | Queensland |
| 1 June 2021 - 31 May 2023 | South Australia |
| 1 June 2023 - 31 May 2025 | Western Australia |
| 1 June 2025 - 31 May 2027 | Victoria |
| 1 June 2027 - 31 May 2029 | New South Wales |
| 1 June 2029 - 31 May 2031 | Queensland |

5. Despite Rule 3.3(3), the Panel member representatives may terminate the appointment of a Chairperson appointed under Rule 3.3(1) or 3.3(2).
6. The appointment of a Chairperson under Rule 3.3(2) terminates the appointment of a Chairperson under Rule 3.3(4).

3.4 Appointment of Panel member representatives

1. A person becomes a Panel member representative of a Competent Authority on receipt by the Chairperson of advice in writing from the Competent Authority that the person has been appointed as the Authority's representative on the Panel.
2. A Competent Authority may appoint a person as the Authority's representative on the Panel for a specified period.
3. A Competent Authority may appoint as the Authority's representative on the Panel the holder of a specified office.
4. If a Competent Authority makes an appointment under Rule 3.4(3):
 - a) the holder of the office specified by the Competent Authority becomes the Authority's representative on the Panel on receipt by the Chairperson of advice in writing of the appointment and
 - b) while the appointment remains in force, all subsequent holders of that office become the Authority's representative on the Panel on attaining that office

(regardless of whether or not the person is acting in the office or has been appointed to the office) and

- c) if the name of the office changes, the appointment is to be read as if it referred to the office by the new name, unless there is no express link between the names in the legislation or administrative orders of the jurisdiction in which the office is located and
 - d) if more than one person holds the office, the Competent Authority must specify which of those office holders is to be the Authority's representative on the Panel.
5. In appointing a person to be the Authority's representative on the Panel, the Competent Authority must have regard to the potential for a conflict of interest to arise of the sort referred to Rule 4.9.

3.5 Appointment of alternates

1. A Competent Authority, or a Competent Authority's Panel member representative, may appoint another person from the Authority to take the Authority's representative's place at a meeting of the Panel.

Example: A Panel member representative might appoint an alternate to vote on a matter in respect of which the Panel member representative has a conflict of interest.

2. To make such an appointment, the Authority or representative must give the Chairperson notice in writing of the appointment at least 24 hours before the meeting is to start.
3. If a person is acting as an alternate at a meeting of the Panel, a reference in these Rules to a Panel member representative (except in Rule 3.4(1)) is to be read as including a reference to the person acting as an alternate.
4. In appointing a person to be an alternate, the Authority or representative must have regard to the potential for a conflict of interest to arise of the sort referred to in Rule 4.9.

3.6 Cessation of appointment as a Panel member representative

1. A person ceases to be a Panel member representative:
 - a) if the person's appointment as such expires or otherwise ceases under the terms of the appointment or
 - b) if the Competent Authority that the person represents gives the Chairperson either:
 - i. notice in writing that the person's appointment as the Authority's representative on the Panel has been revoked or
 - ii. advice in writing that another person has been appointed by the Competent Authority to be the Authority's representative on the Panel (unless the appointment is made under Rule 3.5) or
 - c) in the case of a person who is a Panel member representative because she or he holds a specified office in the Authority that she or he represents, if she or he ceases to hold that office or
 - d) if she or he is no longer in the employ of the Competent Authority
2. If the Competent Authority who made an appointment to the Panel changes, the change does not of itself affect the appointment.

3.7 Obligations on member representatives and observers

In participating in the deliberations of the Panel:

- a) a Panel member representative, or an observer representative, who is a public servant of a jurisdiction must conduct herself or himself in accordance with any requirements that apply to her or him as a public servant in that jurisdiction and
- b) in any other case a Panel member representative or an observer representative must conduct herself or himself in accordance with the Australian Public Service Code of Conduct made under section 13 of the Public Service Act 1999 of the Commonwealth and the Australian Public Service Values set out in section 10(1) of that Act (and any associated directions made under section 11 of that Act) as if she or he was a Commonwealth public servant, to the extent that those provisions are applicable to her or him.

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4 Meetings and Decisions of the Panel

4.1 How meetings are to be convened

1. Meetings of the Panel are to be convened by the Chairperson.
2. A meeting is to be convened by giving all Panel member representatives written notice of the date and time at which, and the place where, the meeting is to be held at least 30 calendar days before the date the meeting is to be held.
3. The 30 day notice period does not apply if all of the Panel member representatives agree to waive that period.
4. The 30 day notice period also does not apply to meetings that are a continuation of an adjourned meeting.
5. The Chairperson must ensure, to the maximum extent that is practicable, that a copy of each document to be discussed at a meeting of, or relevant to a matter to be put up for decision by, the Panel accompanies the notice of the meeting, or of the matter that is to be decided (unless the Panel decides to the contrary in any particular case).

4.2 Form of meetings

Meetings may be held by whatever means are agreed by the Panel member representatives, including by video conferencing or telephone.

4.3 Control of meetings

1. Meetings are to be chaired by the Chairperson.
2. If the Chairperson is not present at a meeting, the Panel member representatives must elect one of their numbers who is present to be acting Chairperson to chair the meeting.
3. If the Panel disagrees with a ruling of the Chairperson, the Panel may overturn her or his decision by approving a motion of dissent.

4.4 Voting

1. Each Panel member representative (including the Chairperson or acting Chairperson) is entitled to exercise a deliberative vote on any matter that is to be decided by the Panel.
2. The value of a vote of a Panel member representative for a jurisdiction is determined by the formula:
$$1 / [\text{No. of Competent Authorities in the applicable jurisdiction}]$$
3. If a matter is put to a vote of the Panel, the matter is approved if:
 - a) the combined value (as those values are determined under Rule 4.4(2)) of the votes cast on the matter is 5 or more and
 - b) the combined value of the votes cast approving the matter is more than half of the combined value of the votes cast.

4.5 Voting at meetings

1. A Panel member representative may cast a vote at a meeting of the Panel:
 - a) if the Panel member representative is present at the meeting – in person or
 - b) by lodging a vote in accordance with Rule 4.5(2).
2. If a Panel member representative does not attend a meeting and does not appoint an alternate under Rule 3.5 to attend the meeting, the Panel must accept a vote if it has been lodged in writing by a Panel member with the Chairperson at least 24 hours before the meeting.
3. In this Rule 4.5, a Panel member is considered to be present at a meeting if she or he participates in the meeting by a means of real time, bidirectional communication with all other members participating and to vote in the same way as those who are present in person at the meeting.

4.6 Voting without meetings

1. The Panel may vote on a matter without convening a meeting (for instance, by circulating emails) if:
 - a) the Chairperson decides that a recommendation of a Competent Authority should be voted upon without convening a meeting; or
 - b) the Panel otherwise agrees.
2. If Rule 4.6.1 applies:
 - a) the Chairperson or their delegate must notify each Panel member representative in writing of the recommendation and the deadline for the receipt of votes; and
 - b) the Chairperson or their delegate must allow at least 10 business days for Panel member representatives to cast a vote, unless otherwise determined by the Panel and
 - c) to be valid, a vote must be lodged in writing with the Chairperson or their delegate by the deadline specified in the Chairperson's or their delegate's notice.

4.7 Records of decisions

3. The Chairperson must ensure that minutes are made recording the decisions of each meeting of the Panel, and records are made of any decisions of the Panel that are not made at a meeting.
4. The Chairperson must ensure that a copy of the minutes of each meeting of the Panel is distributed to each Panel member representative and each permanent observer as soon as is practicable after the meeting.
5. The Chairperson must ensure that a copy of the minutes recording any decision of the Panel that is not made at a meeting are distributed to each Panel member representative and each permanent observer as soon as is practicable after the decision is made.
6. In any event, a copy of the minutes required by Rule 4.7(2) or 4.7(3) must be made available to each Panel member representative and each permanent observer within 30 calendar days after the meeting or decision, as the case may be.

4.8 Proceedings to be confidential

1. Other than matters required to be recorded under Rule 4.9 or authorised, permitted or required to be disclosed by these Rules or by law, Panel member representatives and observers are to treat the proceedings of the Panel and information derived from their participation in the proceedings of the Panel as confidential.
2. This Rule does not apply to the extent the Panel member representative or observer uses or discloses information derived from their participation in the proceedings of the Panel for the purposes of exercising their functions under these Rules or the Dangerous Goods Legislation.

Note Panel members and observers must keep confidential any commercially sensitive information provided as part of an application referred to the Panel. These Rules are not intended to abrogate any intellectual property rights that may reside in any application made to the Panel.

4.9 Disclosure of interests of members and observers

1. A Panel member representative or observer who has a direct or an indirect pecuniary interest in any matter being considered, or about to be considered, by the Panel must disclose the nature of that interest at a meeting of the Panel as soon as possible after becoming aware of the relevant facts.

Example If a Panel member representative operates a self-managed superannuation fund, the member has an indirect pecuniary interest in any assets held in the name of the fund.

2. A Panel member representative or observer who holds an office or possesses property as a result of which, directly or indirectly, duties or interests may be created in conflict with his or her duties as a Panel member representative or observer, must disclose that fact at a meeting of the Panel as soon as possible after becoming aware of the potential conflict.
3. The person chairing a meeting at which a disclosure under this rule is made must ensure that the disclosure is recorded in the minutes of the meeting, and that the minutes also record full details of who voted on any matter in respect of which the disclosure was made.
4. A Panel member representative or observer who is required to make a disclosure under Rule 4.9(1) or Rule 4.9(2) must not take any part in any discussion of, or vote on, any application or other matter to which the pecuniary interest or potential conflict relates (and regardless of whether or not she or he has made the required disclosure at any relevant time) unless the Chairperson or the Panel decides otherwise.
5. If a Panel member representative votes on a matter in contravention of Rule 4.9(4), the vote of the Panel member representative is not a valid vote.
6. A Panel member representative or observer is not to be regarded as having a pecuniary interest:
 - a) in a matter relating to the supply of goods or services to or by her or him if the goods or services are, or are to be, available to members of the public on the same terms and conditions; or
 - b) in a contract or arrangement only because that contract or arrangement may benefit a company or other body in which she or he has a beneficial interest that does not exceed 1% of the total nominal value of beneficial interests in that company or body; or
 - c) in any assets held by any superannuation fund if the member does not have any control of the fund or of the investments that the fund makes.

4.10 Meeting procedure

The Panel may determine its own procedures with respect to any matters that are not dealt with in these Rules.

4.11 Matters referred to the Panel

The Panel must consider all matters referred to it for decision by a Competent Authority under the dangerous goods legislation.

4.12 Procedure for referral of matters to the Panel

1. To refer a matter to the Panel, a Competent Authority must notify the Chairperson in writing of the matter, and must provide full details of the matter upon which the Panel's decision is sought.
2. In notifying the Chairperson under Rule 4.12(1), the Competent Authority must:
 - a) provide the Panel with any relevant expert opinion or advice commissioned by or provided by the applicant to the Competent Authority and
 - b) provide the Panel with any relevant information about the applicant concerned known to the Competent Authority and
 - c) make an initial assessment of the matter and
 - d) make a recommendation to the Panel on the matter.
3. On receipt of a referral in writing, the Chairperson may request the Competent Authority referring the matter to do one or more of the following:
 - a) provide more information for the Panel's consideration
 - b) seek further information directly from the applicant concerned
 - c) seek or commission further expert opinion or advice on the matter.
4. If satisfied that the subject of the referral does not relate to a matter on which the Panel may make a decision under the dangerous goods legislation, the Chairperson may reject the referral.
5. Once satisfied that sufficient information on the matter referred is available for the Panel to consider the matter, the Chairperson must either:
 - a) put the matter up for consideration at the next scheduled meeting of the Panel at which it can be put under these Rules or
 - b) take steps to hold a vote without a meeting on the referral under Rule 4.6.
6. Notwithstanding Rule 4.12(3) and despite Rule 4.12(5) the Panel must make a decision in relation to the matter referred no later than 12 months after receipt of the referral under Rule 4.12(1).

Note This means the Panel must make a decision in relation to a matter based on the information it has available to it, even though additional information sought under Rule 4.12(3) has not been provided.

4.13 Matters the Panel must have regard to

1. In making a decision, the Panel must have primary regard to the requirements of the dangerous goods legislation.
2. In making a decision, the Panel must in addition (where relevant) have regard to:
 - a) the need to ensure the safe transport of dangerous goods, including the safety of dangerous goods vehicle drivers, other road users, the public, public property and the built and natural environment

- b) potential administrative or enforcement difficulties, particularly with respect to maintaining national uniformity of road and rail transport laws
- c) the need to ensure emergency response arrangements are not compromised
- d) the practical effect if the determination, approval or exemption is issued, and how it would be implemented; whether any advice given, if implemented, would be readily enforceable
- e) relevant international dangerous goods transport standards such as United Nations Model Regulations
- f) any other matter the panel considers relevant.

Note: Section 64 of the Model Act on the Transport of Dangerous Goods by Road or Rail provides that an exemption may only be given if the (Panel) is satisfied that granting the exemption:

- would not be likely to create a risk of death or injury to a person, or harm to the environment or to property, greater than that which would be the case if the person or class of persons were required to comply, and
- would not cause unnecessary administrative or enforcement difficulties, particularly with respect to maintaining national uniformity of road and rail transport laws.

4.14 Panel may seek further information

The Panel may request the Chairperson to seek further information on any matter referred to it before making a decision on the matter.

4.15 Appearance of other people before the Panel

1. A person, including an applicant, may be invited to appear before the Panel if, in the opinion of the Chairperson, the appearance will be likely to assist the Panel, or if the Panel has asked that the person appear before it. This invitation can be extended for a single topic up to the duration of the Panel meeting.
2. In appearing before the Panel, a person must comply with any restrictions imposed on the appearance by the Panel, and must adhere to any guidelines issued by the Panel in relation to the appearance.

4.16 Reasons must be given for advice by the Panel

1. In order to ensure that the Panel operates as openly, effectively and efficiently as possible, a Panel member representative must give reasons to the Panel to justify each of her or his votes or abstentions.
2. The Chairperson must ensure that any statement of reasons given in relation to a vote or abstention is recorded in the records of the decisions of the Panel.

Note Under the dangerous goods legislation a Competent Authority may choose not to accept a decision of the Panel, but only if it records in writing the reasons for doing so.

5 Other Matters

5.1 Panel Secretariat

1. There is a Panel Secretariat.
2. The Panel Secretariat is to:
 - a) facilitate the operation of the Panel by providing administrative support to the Chairperson and
 - b) maintain a public register of the Panel's decisions and the formal approvals released to industry and
 - c) publish and maintain a register of all jurisdictions' dangerous goods transport legislation; and
 - d) facilitate liaison with the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods and
 - e) do anything else it is required to do under these Rules.
3. If these Rules require or otherwise provide for a thing to be given to, or to be lodged with, the Chairperson, it is sufficient for the purposes of these Rules if the thing is given to the person responsible for the operation of the Secretariat.

5.2 Certain Panel decisions must be published

1. The Panel must provide each applicant with the Panel's decision in relation to their application, including the reasons for the decision.
2. The Panel Secretariat must, on behalf of the Panel, publish the Panel's decisions or any part of any of the Panel's decisions that impact the public, unless the decision or part of the decision is or contains commercially sensitive information.

5.3 Managing records and information

1. The Chairperson must manage the records that are necessary to support the Panel in accordance with any legislation relating to records management that is applicable in the jurisdiction in which the main office of the Secretariat is located.

Note This obligation includes archiving and access under freedom of information legislation. Generally, all information relevant to the reasons for the decision of the Panel should be retained. In addition, records of decisions must be maintained in accordance with Rule 4.7.
2. Records relating to advice given and decisions of the Panel must be made available by the Chairperson to Panel member representatives on request.
3. In managing any records that contain confidential or commercially sensitive information, the Chairperson must ensure that the records are only accessible to those authorised in accordance with applicable privacy law to have access to the information.
4. In this Rule records includes any information obtained by the Panel relating to its functions.

5.4 Complaints procedure

1. Any complaints concerning the application process should be referred to the Chairperson of the Panel for consideration.

Note The Panel is only capable of receiving complaints relating to its processes and practices, not the substance of decisions as such. The dangerous goods legislation sets out a review process for such complaints. Reference should also be made to the judicial and administrative review processes of each participating jurisdiction.

2. The Panel may specify a procedure for how the Chairperson should handle complaints.

5.5 Succession provision

The Panel is the successor in law to the Competent Authorities Panel that operated for the purposes of the laws supporting ADG 6.

5.6 Amendment of these Rules

These Rules may only be amended with the approval of the Transport and Infrastructure Council, or by a body delegated by that Council to exercise that approval power.

5.7 Delegation to TISOC

The Transport and Infrastructure Council delegates to the Transport and Infrastructure Senior Officers Committee the power to approve changes to the following Rules:

- 3.3 Appointment of the Chairperson
- 3.5 Appointment of alternatives
- 3.7 Obligations on member representatives and observers
- Section 4, except 4.4 voting and 4.13 matters the Panel must have regard to
- Section 5, except 5.6 Amendment of these Rules.

5.8 Reporting to Council

1. The Panel must submit a summary of the Panel's annual activities to the Transport and Infrastructure Council at least once per calendar year.

Note: This summary should include information relating to the Panel's compliance with Rule 4.12(6).