

Rule Change Notice

Market Participant Fees – Clarification of GST Treatment (RC_2013_08)

This notice is given under clause 2.5.7 of the Market Rules.

Submitter: Kate Ryan, IMO

Date Submitted: 21 May 2013

The Proposal

The IMO collects Market Fees, System Operation Fees and Regulator Fees (collectively known as the Market Participant Fees) from Market Participants to recover its own costs, and costs on behalf of System Management and the Economic Regulation Authority (ERA) respectively for undertaking functions under the Market Rules.

From market start, all three fees have been invoiced to the Market Participants subject to Goods and Services Tax (GST). However, private rulings from the Australian Taxation Office have found that, under the Market Rules and taxation laws as they currently stand:

- The IMO is not entitled to invoice Market Participants directly, in its own name, for the Regulator Fees and the System Operation Fees, as it has done since market start; and
- The Regulator Fees and the Market Fees are exempt from GST. The System Operation Fees may also be exempt from GST following self-assessment under the new GST provisions.

The IMO proposes to amend section 2.25 of the Market Rules to clarify its role as an agent for the collection of these fees and its ability to issue valid invoices to Market Participants directly for services provided by the ERA and System Management.

The IMO also proposes adjustments to definitions of “Regulator Fees” and “System Operation Fees” to clarify that these amounts are paid to the IMO and are therefore included in the calculation of Credit Limits and that the IMO would be able to draw on security for the purposes of making payments to the ERA and System Management in the event of default.

These changes are designed to enable the IMO to continue clearing the market using the IMO’s current systems and processes. It avoids the need for multiple invoices to be issued and cleared (at a direct cost to Market Participants) and removes the risk of additional costs associated with amending or creating new settlement processes for the affected fees (either by the IMO or by either

of the other entities).

Appendix 1 contains the Rule Change Proposal and gives complete information about:

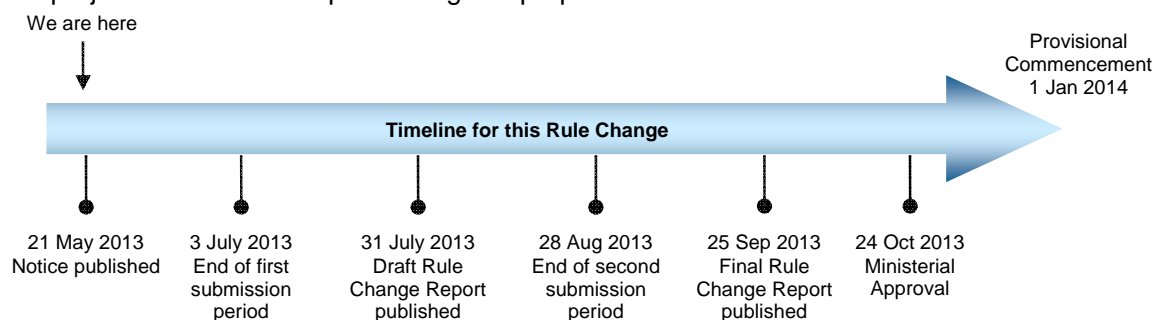
- the proposed amendments to the Market Rules;
- relevant references to clauses of the Market Rules and any proposed specific amendments to those clauses; and
- the submitter's description of how the proposed amendments would allow the Market Rules to better address the Wholesale Market Objectives.

Decision to Progress the Rule Change

The IMO has decided to progress the Rule Change Proposal on the basis that Rule Participants should be given an opportunity to provide submissions as part of the rule change process. This Rule Change Proposal will be progressed under the Standard Rule Change Process.

Timeline

The projected timelines for processing this proposal are:



Call for Submissions

The IMO invites interested stakeholders to make submissions on this Rule Change Proposal. The submission period is 30 Business Days from the Rule Change Notice publication date. Submissions must be delivered to the IMO by **5.00pm on 3 July 2013**.

The IMO prefers to receive submissions by email (using the submission form available on the Market Web Site: <http://www.imowa.com.au/rule-changes>) to: market.development@imowa.com.au

Submissions may also be sent to the IMO by fax or post, addressed to:

Independent Market Operator

Attn: Group Manager, Development and Capacity
PO Box 7096
Cloisters Square, PERTH, WA 6850
Fax: (08) 9254 4399





INDEPENDENT
MARKET
OPERATOR

Wholesale Electricity Market Rule Change Proposal

Rule Change Proposal ID: RC_2013_08
Date received: 21 May 2013

Change requested by:

Name:	Kate Ryan
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Email:	kate.ryan@imowa.com.au
Organisation:	Independent Market Operator
Address:	Level 17, 197 St Georges Terrace, Perth 6000
Date submitted:	21 May 2013
Urgency:	High
Change Proposal title:	Market Participant Fees – Clarification of GST Treatment
Market Rule(s) affected:	Proposes new clauses 2.25.1A and 2.25.1B, amends clauses 2.25.4, 9.1.2, 9.16.3, 9.16.3A, 9.19.1 and Glossary

Introduction

Market Rule 2.5.1 of the Wholesale Electricity Market Rules provides that any person (including the IMO) may make a Rule Change Proposal by completing a Rule Change Proposal Form that must be submitted to the Independent Market Operator.

This Change Proposal can be posted, faxed or emailed to:

Independent Market Operator

Attn: Group Manager, Development and Capacity
PO Box 7096
Cloisters Square, Perth, WA 6850
Fax: (08) 9254 4339
Email: market.development@imowa.com.au

The Independent Market Operator will assess the proposal and, within 5 Business Days of receiving this Rule Change Proposal form, will notify you whether the Rule Change Proposal will be further progressed.



In order for the proposal to be progressed, all fields below must be completed and the change proposal must explain how it will enable the Market Rules to better contribute to the achievement of the wholesale electricity market objectives.

The objectives of the market are:

- (a) to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system;
- (b) to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors;
- (c) to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies such as those that make use of renewable resources or that reduce overall greenhouse gas emissions;
- (d) to minimise the long-term cost of electricity supplied to customers from the South West interconnected system; and
- (e) to encourage the taking of measures to manage the amount of electricity used and when it is used.

Details of the Proposed Rule Change

1. Describe the concern with the existing Market Rules that is to be addressed by the proposed Market Rule change:

Background

From market start, the IMO has been collecting Market Fees, System Operation Fees and Regulator Fees (collectively known as Market Participant Fees) from Market Participants to recover its own costs, and costs on behalf of System Management and the Economic Regulation Authority (ERA) respectively.

The Regulator Fees compensate the ERA for the costs of providing the services it is required to perform in undertaking its functions under the Market Rules and, similarly, the System Operation Fees compensates System Management for the costs of providing the services it is required to perform in undertaking its functions under the Market Rules.

All three fees have been invoiced to the Market Participants subject to Goods and Services Tax (GST). The IMO has then passed the fees collected on behalf of ERA and System Management to each entity as received (including GST) and has issued the entities with Recipient Created Tax Invoices which itemised the GST amounts.

In November 2009, the ERA informed the IMO that it had not been passing on the GST it had been receiving from the IMO to the Australian Taxation Office (ATO), but had been keeping it (as revenue). This resulted in disagreement between the IMO and the ERA as to the GST classification of the Regulator Fee.

On 21 December 2011, the ERA forwarded to the IMO a copy of a private ruling it had received from the ATO (dated 7 October 2011) in respect of the GST classification of the

Regulator Fee, the effect of which was that the Regulator Fee GST should be treated as exempt from GST.

Conscious of the impacts this ATO ruling would have on WEM Settlement Systems, IMO business processes and Market Participant systems and processes, the IMO lodged its own application for a private ruling.

In September 2012, the ATO issued its private ruling in response to the IMO's submission. The ATO's key findings were that:

- from 1 July 2012, the Market Fees component of the Market Participant Fees does not constitute a taxable supply under the *A New Tax System (Goods and Services Tax) Regulations 1999*; and
- the IMO receives the Regulator Fees and System Operation Fees as a collection agent for the ERA and System Management respectively – the ERA and System Management make supplies directly to the Market Participants.

The ruling also confirmed that the Regulator Fee passed onto the ERA should have been exempt from GST from the commencement of the market. The ruling did not conclude that the System Operation Fee was also exempt from GST but indicated that System Management should undertake a self-assessment of the GST treatment of this fee in accordance with the new legislation.

Implications of the Ruling

The ruling has several implications for the IMO and Market Participants:

- the IMO is not entitled to invoice Market Participants directly, in its own name, for the Regulator Fees and the System Operation Fees, as it has done since market start;
- the IMO was not entitled to claim GST credits for any period in relation to payments to the ERA for the amount referred to as the Regulator Fees and must recover and pay the ATO the value of these credits to account for the ATO's shortfall from October 2008 (in line with ATO recovery time frames);
- the Regulator Fees and the Market Fees are exempt from GST. The System Operation Fees may also be exempt from GST following self-assessment under the new GST provisions;
- the IMO's market settlement systems which were designed to add GST to all payments including the Regulator Fee, Market Fee, and the System Operation Fee (pending self-assessment) need to be adjusted to reflect the ruling;
- the IMO's invoicing and clearing procedures need to be reviewed to reflect the ruling;
- Market Participants will no longer be charged GST or be able to claim input credits for the relevant fees going forward;
- the Credit Limits for Market Participants will marginally reduce over time and the procedures and calculation may require review; and
- Market Participants' systems which interface directly with the IMO's systems may require adjustments.

Current status

GST is still being applied to all transactions under the Market Rules between the IMO and the Market Participants, and between the IMO and System Management. However, from June 2012, no GST has been passed on by the IMO to the ERA, the IMO ceased claiming any input tax credits on the Regulator Fees it pays to the ERA and the IMO has continued to remit all amounts of GST collected from the Market Participants in respect of the Regulator Fee to the ATO.

The IMO is working with the ATO to develop the necessary changes to give effect to the ruling. The following reflects discussions to date:

- The ATO has indicated that it has no intention of unwinding transactions historically between the IMO and the Market Participants and (if applicable) between the IMO and System Management which may have been incorrectly treated.
- The IMO will recover the incorrectly claimed GST credits dating back to market commencement in respect to payments to the ERA in the first year of its next Revenue Period (2013/14). This cost was included as a one off item in the IMO's Allowable Revenue Submission approved by the ERA on 2 April 2013. The total cost to be recovered is \$543,480 which includes \$43,929 of interest.
- The recovery of the \$543,480 does not represent a second cost to the market since the incorrectly paid GST was treated by the ERA as revenue and was passed back to Market Participants in the form of reduced Regulator Fees in each subsequent financial year (consistent with the requirement of clause 2.24.5A of the Market Rules).
- The ATO agreed that the IMO will not be subject to any penalty or further interest charge on the above amount.
- Since June 2012, the IMO has ceased claiming any input tax credits on the Regulator Fees it pays to the ERA. However, the IMO continues to remit all amounts of GST collected from the Market Participants in respect of the Regulator Fees to the ATO.
- Consistent with the indication not to unwind any historical transactions, the ATO has also indicated that it does not intend to unwind any transactions relating to the Regulator Fees that Market Participants continue to pay to the IMO and the associated input tax credits being claimed until the IMO makes necessary adjustments to the invoicing and settlement systems.

The IMO, in order to give effect to the findings of the ATO in the ruling, must change the GST treatment of the Market Participant Fees charged to Market Participants and the way these fees are invoiced.

The IMO is working with the ATO to establish a timeframe within which these changes will be implemented. Given the proposed amendments to the Market Rules, necessary amendments to Market Procedures and systems changes involved, the IMO has suggested that a 1 January 2014 start date would be feasible. This time frame is also designed to enable adequate time for the full implications on Market Participants to be assessed and any consequential system changes to be effected. This matter is currently the subject of dialogue between the IMO and the ATO.

Specific issues with the Market Rules

While the ATO found that the IMO collected the Regulator Fees and System Operation Fees

as a collection agent for the ERA and System Management, the ATO did not go as far as to recognise an agency agreement, either express or implied, between any of the parties. As a result, the IMO is not entitled to issue tax invoices to the Market Participants in respect of these fees.

Under the ATO's interpretation, the IMO would need to invoice Market Participants separately (and expressly on behalf of the ERA and System Management) for each of these fees, or the ERA and System Management would need to invoice Market Participants directly.

The prudential security held by the IMO with respect to each of these fees is also affected by the Ruling. As the Regulator Fee and the System Operation Fee do not represent amounts 'owed to the IMO', these amounts may not be covered by the Credit Limit provisions in the current Market Rules, as they are intended to be.

Proposed Amendments

1. Formalising the IMO's role as agent for the collection of fees

The IMO proposes to clarify its role as an agent for the collection of these fees and its ability to issue valid invoices to Market Participants directly for services provided by the ERA and System Management.

The amendments seek to formalise the IMO's 'agency' role in the Market Rules by introducing new clauses that specify that the IMO is the agent with respect to all fees payable to the IMO for services provided by the ERA and System Management under the Market Rules.

Formalising the relationship in this way removes any ambiguity and allows the IMO to issue invoices for all the fees and settlement amounts in its own name. This will allow the IMO to continue making settlement calculations and issuing invoices to Market Participants in the same manner as it does currently (albeit without GST on the fees, where applicable).

Invoices for Non-STEM settlements can continue to be bundled. These invoices currently include the three market fees as well as up to nine other settlement amounts. Market Participants would also be able to continue making payments or taking receipt of payments in the same manner as they currently do.

The only adjustment would be that Market Participants will receive invoices which include several items that do not attract GST (the Market Fees, Regulator Fees, and, following self-assessment, possibly also the System Operation Fees).

This solution is designed to enable the IMO to continue clearing the market using the IMO's current systems and processes. It avoids the need for multiple invoices to be issued and cleared (at a direct cost to Market Participants) and removes the risk of additional costs associated with amending or creating new settlement processes for the affected fees (either by the IMO or by either of the other entities).

The solution avoids any ambiguity as to the settlement responsibilities for amounts payable under the Market Rules by ensuring that the IMO is the only agent that may issue invoices with respect to amounts payable to the IMO. This avoids any potential costs associated with additional settlement systems and processes being established by other agencies with respect to the settlement of the market. The changes also avoid the need for prudential security to be held with respect to amounts settled by the IMO by other agencies.

2. Clarifying the relevant fees are covered by the prudential arrangements

The IMO proposes adjustments to definitions of “Regulator Fees” and “System Operation Fees” to clarify that these amounts are paid to the IMO and are therefore included in the calculation of Credit Limits and that the IMO would be able to draw on security for the purposes of making payments to the ERA and System Management in the event of default.

3. Other amendments

The IMO has also taken the opportunity to address a number of minor typographical issues and cross referencing errors in several affected clauses. This includes specifying each of the Market Participant Fees in clause 9.19.1 for the Adjustment Process so that clause 9.19.1 is consistent with clause 9.16.3. This issue was raised by Verve Energy in its submission to RC_2012_25: Constrained On/Off Compensation removal where a Facility is non-compliant with Dispatch Instructions, which also proposed amendments to sections 9.16 and 9.19.

2. Explain the reason for the degree of urgency:

The proposed changes are considered high priority as they are required to ensure the correct GST treatment of the Market Participant Fees.

As outlined above, the IMO is working with the ATO to determine a timeframe within which these changes will be implemented. The IMO proposes that the commencement date for the changes be 1 January 2014.

The IMO is proposing this Rule Change be considered under the Standard Rule Change Process as the amendments do not satisfy the requirements for a Fast Track Rule Change Process.

The proposed 1 January 2014 commencement date allows for adequate consultation on the changes including time for Market Participants to properly consider any system changes that may be required to ensure that validations tools and verification processes align with the changed GST treatment.

The finalisation of the process would also occur with allowance of sufficient time for the IMO to progress any related changes to Market Procedures and to update and undertake adequate testing of its own systems prior to the commencement of the change.

3. Provide any proposed specific changes to particular Rules: *(for clarity, please use the current wording of the Rules and place a ~~strikethrough~~ where words are deleted and underline words added)*

2.25.1A. The IMO is an agent for the collection of System Operation Fees and Regulator Fees payable by Market Participants to the IMO.

2.25.1B. System Management and the Economic Regulation Authority must, if requested by the IMO, do all things reasonably necessary (including entering into any agreements) to enable the IMO to give effect to clause 2.25.1A.

2.25.4. The relevant proportionality factor for the IMO, System Management or the Economic ~~Regulatory~~ Regulation Authority for a Financial Year is:

- (a) the estimate of the total amount to be earned from Market Fees, System Operation Fees or Regulator Fees (as applicable) in respect of its services published for the relevant year under clause 2.24.3; divided by
- (b) the estimate of the total amount to be earned from Market Fees, System Operation Fees and Regulator Fees in respect of all services published for the relevant year under clause 2.24.3.

9.1.2. With respect to the treatment of GST:

- (a) all prices, fees and other charges under these Market Rules (other than under this clause 9.1.2) are exclusive of GST;
- (b) in this clause 9.1.2, **“adjustment notes”**, **“consideration”**, **“GST”**, **“GST group”**, **“input tax credit”**, **“member”**, **“recipient”**, **“recipient created tax invoice”**, **“representative member”**, **“supplier”**, **“supply”**, **“tax invoice”**, **and “taxable supply”** and **“valid tax invoice”** each have the meaning given to the relevant term in the GST Act ~~legislation under which GST is imposed~~;
- (c) where a Rule Participant makes a taxable supply to another Rule Participant or person under these Market Rules, the other Rule Participant or person must also pay the first Rule Participant making the supply an additional amount equal to the GST payable in respect of that supply;
- (d) the IMO must include in Settlement Statements and Invoices issued under these Market Rules the additional amounts contemplated by paragraph (c);
- (e) Rule Participants must, if requested by the IMO, do everything necessary (including the entering into of recipient created tax invoice agreements) to enable the IMO to issue valid tax invoices, recipient created tax invoices and adjustment notes in respect of all taxable supplies made by or to the IMO under these Market Rules;
- (f) however, if the additional amount paid or payable to the IMO or a Rule Participant or another person under this clause 9.1.2 in respect of a taxable supply differs from the actual amount of GST payable by the Rule Participant under the GST Act ~~relevant legislation~~ in respect of the relevant supply, then adjustments must be made under clause 9.2419 so as to ensure the additional amount paid under this clause in respect of the supply is equal to the actual amount of GST payable under the GST Act ~~relevant legislation~~ in respect of the supply;
- (g) if the IMO determines that:
 - i. a party is entitled to payment of any costs or expenses by way of reimbursement or indemnity; or
 - ii. a price, fee or other charge payable under these Market Rules (other than Market Fees, System Operation Fees and Regulator Fees) is calculated with reference to a cost or expense incurred by a party,

then the payment or cost or expense (as the case may be) must exclude any part of the cost or expense which is attributable to GST for which the party (or a representative member of any GST group of which the party is a member) is entitled to an input tax credit.

9.16.3. The IMO must undertake a process for adjusting settlements (“**Adjustment Process**”) in accordance with clause 9.19. The purpose of the process is to review the ~~Relevant Settlement Statements~~ which were issued in the nine months prior to the commencement of the Adjustment Process (“**Relevant Settlement Statements**”) to facilitate corrections, as applicable, resulting from:

- (a) Notices of Disagreement;
- (b) the resolution of Disputes,;
- (c) revised metering data provided by Metering Data Agents;
- (d) any revised Market Fee rate, System Operation Fee rate or Regulator Fee rate (as applicable); ~~and~~
- (e) any determinations made in accordance with clauses 6.16A.1(b)(i), 6.16A.2(b)(i), 6.16B.1(b)(i) or 6.16B.2(b)(i); and
- (f) any adjustment required for GST purposes under clause 9.1.2.

Adjustments may only be made to Relevant Settlement Statements. Adjustments may not be made to Settlement Statements outside of an Adjustment Process.

9.16.3A A Relevant Settlement Statement is:

- (a) Any STEM Settlement Statement or Non-STEM Settlement Statement that requires correction as the result of the resolution of a dispute raised under clause 2.19, ~~or~~ where the IMO has indicated under clause 9.20.7 that it will revise information in response to a Notice of Disagreement, or where an adjustment is required in accordance with clause 9.1.2; and
- (b) Any Non-STEM Settlement Statement for which the Invoicing Date occurred in the month that is three, six or nine months prior to the start of the Adjustment Process, and for which the IMO has received revised metering data from a Metering Data Agent or any determinations in accordance with clauses 6.16A.1(b)(i), 6.16A.2(b)(i), 6.16B.1(b)(i) or 6.16B.2(b)(i).

9.19.1. When undertaking an Adjustment Process the IMO must:

- (a) recalculate the amounts included in the Relevant Settlement Statements in accordance with this Chapter but taking into account any:
 - i. revised metering data which has been provided by Metering Data Agents;
 - ii. actions arising from a Notice of Disagreement;
 - iii. the resolution of any Dispute; ~~and~~

- iv. determinations made in accordance with clauses 6.16A.1(b)(i), 6.16A.2(b)(i), 6.16B.1(b)(i) or 6.16B.2(b)(i); ~~and~~
 - v. revised Market Fee rate, System Operation Fee rate or Regulator Fee rate; and
 - vi. any adjustment required for GST purposes under clause 9.1.2; and
- (b) provide adjusted STEM Settlement Statements and adjusted Non-STEM Settlement Statements to Rule Participants in accordance with the timeline specified under clause 9.16.4 in respect of the relevant Adjustment Process.

Glossary

GST: means Goods and Services Tax and has the meaning given in the GST Act.

GST Act: means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Market Fees: The fees payable by Market Participants to the IMO determined by the IMO in accordance with clause 2.24, and calculated for each Market Participant in accordance with clause 9.13.1.

Regulator Fees: The fees determined by the IMO in accordance with clause 2.24, and payable by Market Participants to the IMO for the services provided by the Economic Regulation Authority in undertaking its Wholesale Electricity Market related functions and other functions under these Market Rules.

System Operation Fees: The fees determined by the IMO in accordance with clause 2.24, and payable by Market Participants to the IMO for the services provided by System Management in accordance with these Market Rules.

4. Describe how the proposed Market Rule change would allow the Market Rules to better address the Wholesale Market Objectives:

The proposed amendments seek to formalise agency arrangements between the IMO and both the ERA and System Management (for the purpose of the collection of certain fees) in a way that allows for the continued use of existing market processes.

The change will minimise the long-term cost of electricity supplied to customers because it avoids a changes which would necessitate more substantial costs to be the market (e.g. the need for the ERA and System Management to develop their own invoicing arrangements). Therefore, the IMO considers that the amendments contribute to the Wholesale Electricity Market Objective (d): “to minimise the long-term cost of electricity supplied to customers from the South West interconnected system”.

The amendments are also consistent with the remaining Wholesale Electricity Market Objectives.

5. Provide any identifiable costs and benefits of the change:

Benefits

The proposed changes will:

- ensure that the IMO is compliant with the ATO's GST treatment of the Market Fees;
- formalise the relationship between the agencies thereby bringing the Market Rules and current processes into line with relevant tax legislation; and
- allow all existing settlement systems and invoicing processes to continue to be used in the current manner, albeit with GST removed from the relevant fees, thereby avoiding the cost of any significant changes being borne by the market.

Costs

There will be some costs associated with making and testing necessary changes to the settlement systems so that GST is no longer added to the relevant fees for settlement and prudential purposes from the commencement date.

The IMO has received preliminary advice on the changes with regards to the WEM settlement systems to remove the GST from selected fees. The necessary adjustments are likely to involve only relatively simple configuration changes to the systems. The changes will need to be confirmed and properly tested but are not expected to have a significant cost and can be accommodated within the IMO's current operational budget.

The IMO will also be exposed to more internal resources being allocated to settlement and GST administration during the period where the IMO is managing initial settlement runs with GST excluded for Market Participant Fees and wash up settlement runs with GST included on these fees. These additional resource allocations can be accommodated by internal re-prioritisation and should not impose any additional costs to the market.

The IMO understands that some Market Participants will have reconciliation and validation systems that will need to be amended to reflect the GST Ruling. To allow time for these changes, the IMO proposes 1 January 2014 as the commencement date.

The changes to the invoicing within the IMO are likely to be minimal, however, the IMO is continuing discussions with the ATO to ensure invoices are valid and that the changes give effect to the ATO's private ruling.

Other implementation issues

Market Participants would also need to be aware that for the first year after the implementation date, they will continue to receive some wash up invoices where GST is still being charged (and is eligible to be claimed) on the Market Participant Fees. This is a product of the Settlement Adjustment process used in the market.

The IMO understands that Market Participants' reconciliation and verification systems as well as invoice processes and procedures may need to be reviewed with regards to the changed GST treatment.

In relation to the Regulator Fees collected on behalf of the ERA and the Market Fees, which should not have attracted GST since market start and 1 July 2012 respectively, the IMO will continue to treat the amount as though it attracted GST (as it does now) and remit all amounts of GST collected from Market Participants to the ATO up to the proposed implementation date. This is to ensure that Market Participants can treat all three fees as

attracting GST up until the single commencement date rather than processing these payments differently from one another for a period of time.
