

Exposure Draft - Compliance and Enforcement Provisions

Draft Amending Wholesale Electricity Market (WEM) Rules

Draft Energy Regulations Amendment Regulations 2023

Explanatory Note

This is a combined Exposure Draft of proposed amendments to the WEM Rules and the Energy Regulations Amendment Regulations 2023. The latter includes proposed changes to:

- the *Wholesale Electricity Market Regulations 2004 (WEM Regulations)*;
- the *Gas Services Information Regulations 2012 (GSI Regulation)*; and
- the *Pilbara Networks (Pilbara) Regulations 2021 (Pilbara Regulations)*.

Energy Policy WA (EPWA) released a [Consultation Paper](#) on 18 July 2022 requesting stakeholder feedback on a high level summary of proposed changes to the compliance and enforcement frameworks under the WEM Rules and the WEM, GSI and Pilbara Regulations.

The proposed changes originated from the work of the Energy Transformation Taskforce (Taskforce) and the changes that were implemented by the Taskforce to the monitoring and compliance framework under the WEM Rules, and in particular to the compliance and enforcement functions of the Economic Regulation Authority (ERA).

The relevant WEM Rules are due to commence on the New WEM Commencement Date (scheduled for 1 October 2023), and, without corresponding amendments to the WEM Regulations, many of the clauses will not have practical effect.

EPWA also identified related changes that are necessary to the civil penalty and reviewable decisions frameworks under the WEM, GSI and Pilbara Regulations, as well as some administrative amendments.

Some changes have been made in response to stakeholder feedback on the Consultation Paper, and further information has now been provided where it was requested (for example the impacted party redress and the updated Schedules 1 and 2). Further changes have also been made in response to advice from the Parliamentary Counsel's Office.

An overview of the draft changes to the WEM Rules and the WEM, GSI and Pilbara Regulations is outlined below.

WEM Amending Rules

The proposed amendments to the WEM Rules include:

- Some minor changes to section 2.13 to correct drafting errors;
- The removal of infringement notices and orders as an enforcement action;
- A new obligation on the ERA to publish the initiation and close of compliance investigations in its public register (the party, subject of an alleged breach, will not be identified);
- Amendments to the reviewable decisions lists in section 2.17; and
- Some minor changes to related definitions.

WEM Regulations

The amendments to the WEM Regulations include:

- The Minister's power to make Amending WEM Rules is being extended from 31 March 2023 to 31 October 2025. This is to account for the delay to the New WEM Commencement Day and to allow the Minister to make rules for the implementation of five minute settlement;
- Civil penalty framework:
 - The ERA has been given the ability to issue Category B and C civil penalties in addition to its existing power to issue Category A civil penalties (this puts into effect a previous Taskforce decision);

- The maximum civil penalty amounts for each of the three categories have been simplified and a revised daily amount introduced;
- The Schedule 1 list of civil penalty provisions has been updated and each clause assigned with a category based on the new categorisation (this reflects the substantive changes to the WEM Rules that will commence on the New WEM Commencement Day);
- A new provision allowing the distribution of civil penalty amounts to a person that is not a Rule Participant has been introduced;
- Reviewable decisions framework:
 - The Schedule 2 list of reviewable and procedural decisions has been updated (this reflects the substantive changes to the WEM Rules that will commence on the New WEM Commencement Day); and
 - The process for review by the Electricity Review Board has been amended so that the relevant provisions are outlined in full in the WEM Regulations.

GSI Regulations

The amendments to the GSI Regulations include:

- The process for publishing Amending GSI Rules in the Government Gazette has been amended so that it is aligned with the process under the WEM and the Pilbara Regulations;
- The ERA has been given the ability to issue Category A and B civil penalties, so that its functions are aligned with the WEM Regulations (there are no Category C civil penalties in the GSI Regulations);
- A civil penalty provision has been added to Schedule 1 based on a recent GSI rule change; and
- The maximum amounts for civil penalty categories have been aligned with the changes to the WEM Regulations.

Pilbara Regulations

The amendments to the Pilbara Regulations include:

- The process for review by the Electricity Review Board has been implemented and aligned with the process under the WEM and GSI Regulations (previously the reviewable decisions in the Pilbara Rules had no effect); and
- A new Schedule 1 has been inserted which will replace the lists of reviewable decisions provisions currently located in the Pilbara Rules.

Stakeholders are invited to provide written feedback on the Exposure Draft before 5:00pm, 7 March 2023 (AWST) by submitting comments to energymarkets@dmirs.wa.gov.au.

A session of the Transformation Design and Operation Working Group has been scheduled for 28 February 2023, to facilitate feedback and discussion on the Exposure Draft.

Mark-up Colour guide for Drat Amending WEM Rules:

Text in black	Rules that are in force
Text in blue	Amending Rules that have been made but no commencement date has been specified (it is expected that most of these Amending Rules will be commenced close to or at commencement of the new market)
Text in red - <u>underlined</u> and strikethrough	New amendments proposed to the WEM Rules
Text in blue <u>underlined</u> and red strikethrough	Amendments proposed to the Regulations

2.13 Compliance Monitoring and Enforcement

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Explanatory Note

Clause 2.13.12 is amended to correct a typographical error.

- 2.13.12. AEMO is not required to report to the Economic Regulation Authority an alleged breach by a Rule Participant of:
- (a) section 3.21 if the alleged breach is limited to occurring within a single Trading Interval and the ~~extend extent~~ of the alleged breach is either within the Tolerance Range of the Facility Tolerance Range for that Facility; or

...

Explanatory Note

Clause 2.13.21 is amended to change “may” to “must”, to clarify that the ERA is required to request that AEMO reviews a Tolerance Range or Facility Tolerance Range applicable to a Registered Facility.

Clause 2.13.23 is amended for clarity.

- 2.13.21. Where the Economic Regulation Authority reasonably considers that the Tolerance Range or Facility Tolerance Range applicable to a Registered Facility is inappropriate having regard to the historical operation of the Registered Facility and the Market Participant's compliance with clause 7.10.3, the Economic Regulation Authority ~~may~~ must request AEMO to review the Tolerance Range or Facility Tolerance Range applicable to the Registered Facility.

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Explanatory Note

Clause 2.13.21 is amended as the process in Chapter 3A for self-reporting only covers breaches of Registered Generator Performance Standards or Approved Generator Monitoring Plans (clause 3A.10.1). There are other obligations in Chapter 3A which are not currently being captured in the Chapter 3A self-reporting regime that will be excluded from the general self-reporting regime under the current wording of clause 2.13.26.

- 2.13.26. Where a Market Participant considers that it has ~~breached~~ been non-compliant, or has reasonable cause to suspect it may have ~~breached, a provision of Chapter 3A of these WEM Rules, or a WEM Procedure that is referred to in Chapter 3A~~ been non-compliant with a Registered Generator Performance Standard or the Generator Monitoring Plan approved by AEMO for its Transmission Connected Generating System, the Market Participant must follow the relevant process set out in Chapter 3A.

Explanatory Note

Clause 2.13.27(d) is amended for clarity. If the ERA investigates an alleged breach, and the investigation is not suspended or closed under clause 2.13.33, then the ERA is required to make a determination whether a breach of the WEM Rules or WEM Procedures has occurred on conclusion of the investigation.

Compliance investigation

2.13.27. Subject to section 3A.12, if the Economic Regulation Authority becomes aware of an alleged breach of the WEM Rules or WEM Procedures, then:

- (a) it must record the alleged breach;
- (b) subject to clause 2.13.32, it must investigate the alleged breach in accordance with the risk rating assigned to the type of alleged breach in the WEM Procedure referred to in clause 2.15.1;
- (c) notwithstanding clause 2.13.27(b), subject to clause 2.13.32, it may investigate the alleged breach where the ERA considers this is reasonably required;
- (d) if the ERA investigates an alleged breach, and the investigation is not suspended or closed under clause 2.13.33, then it must determine whether a breach of the WEM Rules or WEM Procedures has occurred on conclusion of the investigation; and
- (e) it must record the results of each investigation.

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Explanatory Note

Clause 2.13.35 is amended to remove the reference to clause 2.13.24, to reduce the administrative burden on the ERA and the risk of disclosing commercially sensitive information. Further, the amendments to clause 2.13.39 include an obligation on the ERA to publish the close of investigation, including any reasons for determining that the breach has not taken place.

2.13.35. Where the Economic Regulation Authority determines a breach has not taken place, the Economic Regulation Authority must notify its decision to the Rule Participant that reported the alleged breach in accordance with clauses ~~2.13.23~~ ~~2.13.24~~.

Explanatory Note

Clause 2.13.36(b) is amended to remove infringement notices as a potential enforcement action of the ERA. Its usefulness as an enforcement action is limited, as a breach would still need to be established for the ERA to issue an infringement notice, and the ERA can achieve the same effect by issuing a civil penalty notice.

Clauses 2.13.36(cA) and 2.13.36(d) are amended to remove "if the WEM Regulations permit" as the requisite amendments to the WEM regulations are now being implemented.

Clause 2.13.36(d) is amended to remove the reference to the making of orders by the ERA. The Parliamentary Counsels Office has advised that the WEM Regulations are not empowered by the EI Act to provide the ERA with the function to make orders.

Enforcement action

2.13.36. Where the Economic Regulation Authority determines that a breach of the WEM Rules or WEM Procedures has taken place in accordance with clause 2.13.27(d), the Economic Regulation Authority may:

- (a) issue a warning to the Rule Participant to rectify the contravention and record the response of the Rule Participant to any warning issued under this clause. The warning must:
 - i. identify the clause or clauses of the WEM Rules or the WEM Procedures that the Economic Regulation Authority believes has been, or are being, contravened;
 - ii. describe the behaviour that comprises the contravention;
 - iii. where the Economic Regulation Authority considers relevant, request an explanation; and
 - iv. where the Economic Regulation Authority considers relevant, request that the contravention be rectified and specify a time (which the Economic Regulation Authority considers reasonable) by which the contravention should be rectified;
- (b) ~~[Blank]if the WEM Regulations permit, issue an infringement notice in accordance with the WEM Regulations;~~
- (c) issue a civil penalty notice where the contravention relates to a Category A, Category B or Category C WEM Rule, in accordance with the WEM Regulations; and
- ~~(cA) if the WEM Regulations permit, issue a civil penalty notice where the contravention relates to a Category B WEM Rule or Category C WEM Rule; and~~
- ~~(d) . subject to clause 2.13.37, if the WEM Regulations permit:;~~
 - ~~i. the making of make an order; or~~
 - ii. the bringing of proceedings before the Electricity Review Board for one or more orders specified in the WEM Regulations as required to be made by the Electricity Review Board.
- (d) apply to the Electricity Review Board for one or more orders by the Electricity Review Board under regulation 33 of the WEM Regulations

2.13.37. ~~Where the Economic Regulation Authority determines that a breach of the WEM Rules or WEM Procedures has taken place in accordance with clause 2.13.27(d), in addition to any of the actions the Economic Regulation Authority may take under clause 2.13.36, the Economic Regulation Authority may bring proceedings before the Electricity Review Board for an order by the Electricity Review Board under regulations 33(1)(e), 33(1)(f) or 33(1)(g) of the WEM Regulations.[Blank]~~

Explanatory Note

Clause 2.13.38 is amended to Blank as the ERA's ability to make orders depended on an amendment to the *WEM Regulations* that was not implemented. The Parliamentary Counsels Office advised that the *Electricity Industry Act 2004* does not empower the *WEM Regulations* to give effect to the proposed function of the ERA to make orders.

Clause 2.13.39 is amended for clarity.

2.13.38. ~~[Blank]The orders, if any, that the Economic Regulation Authority may make for a breach of the WEM Rules are set out in the WEM Regulations.~~

2.13.39. The orders that the Electricity Review Board may make for a breach of the WEM Rules and ~~the procedures for the operation of the matters the~~ Electricity Review Board must have regard to before making an order are set out in the WEM Regulations.

Explanatory Note

Clauses 2.13.42, 2.13.43, 2.13.44 and 2.13.45 are amended to ensure the respective clauses apply when the ERA issues a civil penalty notice in relation to a breach of a Category A, B and C civil penalties. Previously, the clauses only applied when the ERA has issued a Category A civil penalty notice.

Clauses 2.13.42, 2.13.43, 2.13.44 and 2.13.45 are further amended to remove the reference to infringement notices, which are being removed from the WEM Rules as an enforcement action available to the ERA.

2.13.42. Before the Economic Regulation Authority issues a civil penalty notice under clause 2.13.36(c), the Economic Regulation Authority must have regard to all relevant matters, including:

~~(a) — issues an infringement notice under clause 2.13.36(b); [Blank];~~

~~(b) — issues a civil penalty notice under clause 2.13.36(c); or~~

~~(c) — makes an order under clause 2.13.36(d);~~

~~the Economic Regulation Authority must have regard to all relevant matters, including:~~

~~(d)~~(a) the nature and extent of the breach, including whether the breach is ongoing;

~~(e)~~(b) whether the Rule Participant has self-reported or has taken any mitigating actions;

~~(f)~~(c) the nature and extent of any loss or damage suffered as a result of the breach;

~~(g)~~(d) the impact and potential impact of the breach on the market and the power system;

~~(h)~~(e) the circumstances in which the breach took place;

~~(i)~~(f) whether the relevant Rule Participant has previously been found by the Economic Regulation Authority, or the Electricity Review Board in

proceedings under the Electricity Industry Act, to have engaged in any similar conduct; and

~~(j) in the case of an order under clause 2.13.36(d), the consequences of making the order.~~

~~(g) whether the breach has had a negative impact on a person that is not a Rule Participant.~~

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2.13.43. If the Economic Regulation Authority issues ~~an infringement notice under clause 2.13.36(b), or~~ a civil penalty notice under clause 2.13.36(c), it must inform AEMO of the determination and penalty amount to assist with the settlement processes in Chapter 9.

2.13.43A. Where the Economic Regulation Authority has determined under clause 2.13.42(g) that a person other than a Rule Participant has been negatively impacted by a breach, the Economic Regulation Authority may direct AEMO and/or Rule Participants to distribute a specified portion of the penalty amount in a manner that is not consistent with section 9.21.

2.13.44. Where the Economic Regulation Authority decides to issue a civil penalty notice under clause 2.13.36(c), the Rule Participant that receives the civil penalty notice may seek a review of that decision by the Electricity Review Board in accordance with the WEM Regulations.:

~~(a) issues an infringement notice under clause 2.13.36(b); [Blank];~~

~~(b) issues a civil penalty notice under clauses 2.13.36(c) or 2.13.36(cA); or~~

~~(c) makes an order under clause 2.13.36(d);~~

~~the Rule Participant that received the infringement notice, civil penalty notice or order may seek a review of that decision by the Electricity Review Board in accordance with the WEM Regulations.~~

2.13.45. The Economic Regulation Authority must release a report at least once every six months setting out a summary for the preceding six months of:

(a) investigations completed by the Economic Regulation Authority;

(b) breaches or contraventions of the WEM Rules the Economic Regulation Authority concludes have occurred;

(c) warnings issued by the Economic Regulation Authority under clause 2.13.36(a);

(d) proceedings that have been brought before the Electricity Review Board;

(e) findings of the Electricity Review Board on matters referred to them;

(f) orders made by the Electricity Review Board; and

- (g) unless they have been set aside by the Electricity Review Board, civil penalties imposed by the Economic Regulation Authority under clause 2.13.36(c).
 - ~~i. infringement notices issued by the Economic Regulation Authority under clause 2.13.36(b); [Blank]; and~~
 - ~~ii. civil penalties imposed by the Economic Regulation Authority under clause 2.13.36(c); and~~
 - ~~iii. orders made by the Economic Regulation Authority under clause 2.13.36(d).~~

...

Explanatory Note

Clause 2.13.49 is amended to remove the reference to infringement notices and to expand the ERA's obligations with regard to keeping a public register of breaches of the WEM Rules. The ERA must now also publish the commencement of an investigation into breach, before the ERA has determined that there has been a breach.

Clause 2.13.51 is amended to ensure that while the general information regarding the alleged breach must be published, any details that may identify the relevant Market Participant will remain confidential and anonymous.

Public register

2.13.49. The Economic Regulation Authority must keep a public register of:

- (a) breaches of the WEM Rules where the Economic Regulation Authority issued ~~an infringement notice under clause 2.13.36(b) or~~ a civil penalty notice under clause 2.13.36(c), that ~~were~~ was not set aside by the Electricity Review Board; ~~and~~
- (b) any other breaches or contraventions of the WEM Rules the Economic Regulation Authority concludes have occurred where the Economic Regulation Authority reasonably considers that:
 - i. the benefit to the Wholesale Electricity Market in disclosing the breach outweighs any detriment to the Rule Participant that committed the breach; or
 - ii. whether, having regard to the nature and impact of the breach, in the Economic Regulation Authority's reasonable opinion, it would expect a breach to be disclosed on the public register; ~~and~~
- (c) compliance investigations initiated by the Economic Regulation Authority into alleged breaches of these WEM Rules, including:
 - i. a notice of the commencement of an investigation under clause 2.13.27; and

- ii. a notice of the close of an investigation if the Economic Regulation Authority has determined a breach has not taken place, including any reasons for this determination.

2.13.51. Information must not be included in the public register referred to in clause 2.13.49 if:

- (a) the relevant Rule Participant has provided evidence to the Economic Regulation Authority that to do so would contravene a court order or law suppressing or prohibiting the publication of the information; ~~or~~
- (b) the information has been given a class of confidentiality status under Chapter 10 of these WEM Rules other than Public; ~~or~~
- (c) the information identifies a Rule Participant, or commercially sensitive information related of a Rule Participant, that is the subject of an investigation by the Economic Regulation Authority into an alleged breach of these WEM Rules.

Explanatory Note

Clause 2.15.3(a) is amended to delete subclauses 2.15.3(a)(i) and 2.15.3(a)(ii), The reference to infringement notices is also removed.

2.15. Monitoring and Reporting WEM Procedures

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2.15.3. The WEM Procedure specified in clause 2.15.1 must specify:

- (a) the Economic Regulation Authority's monitoring processes for assessing compliance with the WEM Rules and WEM Procedures by Rule Participants, which must include: ~~which must include, where the Economic Regulation Authority is required to investigate under clause 2.13.27(b), or has decided under clause 2.13.27(c) to investigate, an alleged breach by a Rule Participant~~
 - i. a requirement process for notice to be given by the Economic Regulation Authority to that a Rule Participant that identifies the alleged breach to be investigated by the Economic Regulation Authority; and
 - ii. a process through which ~~the a~~ Rule Participant may make submissions to the Economic Regulation Authority to explain ~~the a~~ alleged breach, prior to the Economic Regulation Authority reaching a decision on whether a Rule Participant has breached the WEM Rules or WEM Procedures;
- (b) a process for Rule Participants to report alleged breaches of the WEM Rules or WEM Procedures under clause 2.13.15, 2.13.23 and 2.13.24

including the required information a Rule Participant must provide to the Economic Regulation Authority;

- (c) the form that may be used by Rule Participants to report a breach, or suspected breach, of the WEM Rules or WEM Procedures by the Rule Participant to the Economic Regulation Authority in accordance with clause 2.15.3(b);
- (d) the processes for the Economic Regulation Authority to assign a risk rating to each alleged breach, including the matters the Economic Regulation Authority will take into account, that will determine whether the alleged breach is required to be investigated by the Economic Regulation Authority;
- (e) the processes for investigations of alleged breaches of the WEM Rules or WEM Procedures;
- (f) the processes for suspending or closing investigations of alleged breaches of the WEM Rules or WEM Procedures under clause ~~2.13.36~~ 2.13.33, including the matters the Economic Regulation Authority may take into account in making a decision;
- (g) the processes and timeframes applying to a suspended investigation of an alleged breach of the WEM Rules or WEM Procedures, including the timeframes under which a suspended investigation may be resumed;
- (h) guidelines for the Economic Regulation Authority when issuing warnings about alleged breaches of the WEM Rules or WEM Procedures to Rule Participants under clause 2.13.36(a);
- (i) the process for bringing proceedings before the Electricity Review Board for an order to be made by the Electricity Review Board under the WEM Regulations;
- (j) the processes to be followed by the Economic Regulation Authority, including the matters the Economic Regulation Authority may take into account and the circumstances it may have regard to, when deciding to issue a civil penalty notice under clauses 2.13.36(c):
 - i. ~~issue an infringement notice under clause 2.13.36(b); [Blank];~~
 - ii. ~~issue a civil penalty notice under clauses 2.13.36(c) or 2.13.36(cA);~~
or
 - iii. ~~make an order under clause 2.13.36(d);~~

...

Explanatory Note

Clause 2.15.3(f) is amended to correct a reference error.

...

- (f) the processes for suspending or closing investigations of alleged breaches of the WEM Rules or WEM Procedures under clause ~~2.13.36~~ 2.13.33, including the matters the Economic Regulation Authority may take into account in making a decision;

...

Explanatory Note

The ERA must consider certain factors before it issues either a category A, B or C civil penalty. Clause 2.15.3(j) is amended to clarify that the clause applies to all civil penalty Categories as previously the reference to clause 2.13.36(c) meant it only applied to Category A.

- (j) the processes to be followed by the Economic Regulation Authority, including the matters the Economic Regulation Authority may take into account and the circumstances it may have regard to, when deciding to:
- i. issue an infringement notice under clause 2.13.36(b);
 - ii. issue a civil penalty notice under clause 2.13.36(c); or
 - iii. make an order under clause 2.13.36(d);

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Explanatory Note

Section 2.17 is amended in response to advice from the Parliamentary Counsel's Office, which noted that the *Electricity Industry Act 2004* requires the list of reviewable decisions provisions to be specified in the WEM Regulations, not the WEM Rules.

It is not efficient to maintain two separate lists in instruments with different change management processes. As such, Schedule 2 of the WEM Regulations has been amended to reflect the substantive changes to the WEM Rules due to recent reforms.

Section 2.17 is amended to:

- Delete current clauses 2.17.1, 2.17.2 and 2.17.3 to remove the list of Reviewable Decisions and Procedural decisions;
- insert new clauses 2.17.1, 2.17.2 and 2.17.3 which advise Market Participants on what constitutes a reviewable decision and where the list of reviewable and procedural decisions are listed in the WEM Regulations.

2.17. Reviewable Decisions

~~2.17.1. Decisions by AEMO, the Economic Regulation Authority, the Coordinator or a Network Operator, as applicable, made under the following clauses are Reviewable Decisions:~~

~~(a) clause 2.3.8;~~

~~(b) clauses 2.5.6(c) and 2.5.9;~~

- (c) — clause 2.6.3A(a);
- (d) — clause 2.7.7A(a);
- (e) — clause 2.10.2A(a);
- (f) — clause 2.10.13;
- (g) — clauses 2.13.36(b), 2.13.36(c) and 2.13.36(d);
- (h) — clause 2.13.49(b);
- (i) — clause 2.28.16;
- (j) — clauses 2.30.4 and 2.30.8;
- (k) — clause 2.31.10;
- (l) — clause 2.32.7E(b);
- (m) — clause 2.34.7;
- (n) — clause 2.34.7A(e);
- (o) — [Blank]
- (p) — clause 2.34.11;
- (q) — clauses 2.37.1 to 2.37.3;
- (r) — clause 4.9.9;
- (s) — clause 4.15.1;
- (sA) — clause 4.20.11;
- (t) — [Blank]
- (u) — clause 4.28.7;
- (v) — [Blank]
- (w) — clause 10.2.1.

2.17.2. — Decisions by AEMO, the Economic Regulation Authority, the Coordinator or a Network Operator, as applicable, made under the following clauses may be subject to a Procedural Review:

- (a) — clauses 2.5.6(c), 2.5.9, 2.6.3A(a) and 2.7.7A(a); and
- (b) — clauses 2.10.2A(a) and 2.10.13.

2.17.3. — In accordance with the WEM Regulations, a Rule Participant may apply to the Electricity Review Board for a review of Reviewable Decisions or a decision made under clauses subject to Procedural Review.

2.17.1. A Rule Participant whose interests are negatively affected by a Reviewable Decision or a decision subject to Procedural Review, may apply to the Electricity Review Board for a review of that decision in accordance with the WEM Regulations.

2.17.2. For the purposes of the WEM Regulations, Reviewable Decisions are those provisions of the WEM Rules and the WEM Regulations listed in the table to Schedule 2 clause 1 of the WEM Regulations.

2.17.3. For the purposes of the WEM Regulations, decisions subject to Procedural Review are those provisions of the WEM Rules and the WEM Regulations listed in the table to Schedule 2 clause 2 of the WEM Regulations.

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Explanatory Note

Clause 9.21.1 is amended to reflect a change to the defined term from Civil Penalty to Civil Penalty Amount.

Financial Penalty Distribution

9.21. Financial Penalty Distribution

9.21.1. For the purpose of Regulation 37(a) of the WEM Regulations, where a Civil Penalty Amount is imposed on a Rule Participant for a breach of these WEM Rules, the amount of that Civil Penalty Amount received by AEMO shall be distributed in accordance with these WEM Rules.

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Glossary

Civil Penalty Amount: Means an amount imposed in respect of a breach of ~~under~~ a provision of the WEM Rules or the WEM Regulations, that has been specified in ~~Regulations or falls within a class specified in~~ Schedule 1 of the WEM Regulations as a civil penalty provision. ~~as provided for under section 124(2)(h) of the Electricity Industry Act.~~

Financial Penalty: Means a Civil Penalty Amount. ~~or Infringement.~~

Reviewable Decision: Decisions made by the Coordinator, AEMO, the Economic Regulation Authority or a Network Operator, that are listed in Schedule 2 of the WEM Regulations, in respect of which an eligible person may apply to the Electricity Review Board in accordance with the WEM Regulations, ~~section 125 of the Electricity Industry Act and the Regulations~~, and ~~does not include any decisions of a class specified for this purpose in the Regulations under section 125 of that Act.~~

Procedural Review: Means a review by the Electricity Review Board of a Procedural Decision, as defined under ~~in accordance with~~ the WEM Regulations.

Energy Regulations Amendment Regulations 2023

Contents

Part 1 — Preliminary		
1.	Citation	2
2.	Commencement	2
Part 2 — <i>Electricity Industry</i> (<i>Wholesale Electricity Market</i>) <i>Regulations 2004</i> amended		
3.	Regulations amended	3
Part 1 — Preliminary		
1.	Citation	3
2.	Purpose	3
3.	Terms used	3
4A.	References to provisions of market rules in Schedules 1 and 2	4
4.	Effect on earlier regulations and rules	6
Part 2 — The market rules		
5.	Market rules	7
6.	Market rules: general provisions	7
7.	Amending market rules	8
8.	Availability of copies of market rules	9
9.	Market procedures	10
10.	Functions of Ministers	10
11.	Functions of Economic Regulation Authority	10
12.	Functions of operator	11
12A.	Functions of electricity corporations	12
12C.	Functions of Coordinator	12

Contents

14.	Market rules as to registration	13
15.	Functions of registered participants	13
16.	Evidence as to registered participants and exemptions	14
17.	Market rules generally	14
17A.	Transitional market rules for transfer of functions to AEMO	16
17B.	Transitional market rules for transfer of functions from IMO to Authority or Rule Change Panel	17
17C.	Transitional market rules for transfer of functions from Rule Change Panel to Coordinator	17
18.	Trade practices authorisation	18
18A.	Excluded matters for purposes of <i>Corporations Act 2001</i> (Commonwealth)	19
	Part 3 — Registration requirement	
19.	Registration required for certain activities	20
20.	Notice of failure to register	21
	Part 4 — Market costs	
21.	Allocation of costs	22
	Part 5 — Enforcement of the market rules	
	Division 1 — Preliminary	
22.	Terms used	24
	Division 2 — Investigation	
23.	Authorised persons	24
24.	Search warrants	24
25.	Announcement before entry	26
26.	Details of warrant to be given to occupier	26
27.	Copies of seized documents	27
28.	Retention and return of seized documents etc.	27
29.	Obstruction of persons authorised to enter	30
	Division 3 — Orders and penalties	
30.	Civil penalty provisions and civil penalties	30
31.	Authority may demand civil penalty for contravention of civil penalty provision	30

32.	Applications for orders from Board for contraventions of provisions of market rules	33
33.	Orders Board may make for contraventions of provisions of market rules	34
34.	Enforcement of orders of Board	36
35.	Contravention of provision of market rules not an offence	36
36.	Conduct contravening more than one civil penalty provision	37
37.	Application of civil penalties received by operator	37
38.	Authority to notify certain persons of decisions not to take action	38
39.	Applications for orders from Board — procedure	38
	Division 4 — Payments under the market rules	
40.	Obligation to make payments under market rules	39
	Part 6 — Review by the Board	
41.	Reviewable decisions and procedural decisions	42
42.	Review by Board — all reviewable decisions	42
43.	Review by Board — procedural decisions	43
44.	Application for review	44
45.	Effect of application for review	45
45A.	Procedure on review: general	45
46.	Conferences	46
47.	Procedure on review: parties	47
	Part 7 — The Board	
48.	Terms used	49
49.	Functions of Board	49
50.	Proceedings before Board	50
	Part 8 — Limitation of liability	
51.	Persons exempt from section 126(3)(a) of Act	52
52.	Maximum civil monetary liability for certain market governance participants	52
53.	Maximum civil monetary liability for officers and employees of market governance participants	53

	Part 9 — Provision of information and advice to Minister	
54.	Provision of information and advice to Minister: operator’s functions	55
	Part 10 — Authority may prosecute offences	
55.	Authority may prosecute offences	56
	Part 11 — Savings and transitional provisions	
56.	Savings and transitional provisions for <i>Energy Regulations Amendment Regulations 2023</i>	57
	Schedule 1 — Civil penalty provisions and amounts	
	Schedule 2 — Reviewable decisions and procedural decisions	
1.	Reviewable decisions	89
2.	Procedural decisions	90
	Part 3 — <i>Electricity Industry (Pilbara Networks) Regulations 2021</i> amended	
4.	Regulations amended	91
	Part 1 — Preliminary	
1.	Citation	91
2.	Commencement	91
3.	Terms used	91
	Part 2 — Relevant matters when performing functions under Part 8A of Act	
4.	Matters to have regard to when performing functions under Part 8A of Act (Act s. 119)	93

Part 3 — The Pilbara networks rules		
Division 1 — General		
5.	Rules	94
6.	Minister to make initial rules	94
7.	Matters to be, or that may be, dealt with by rules (Act s. 120K)	94
8.	Other matters that may be dealt with by rules (Act s. 120N, 120P and 120Q)	95
9.	Rules amending, repealing or replacing rules	97
10.	Gazettal and notification of rules and amending rules made by Minister	98
11.	Tabling of rules and amending rules made by Minister	98
12.	Commencement of rules and amending rules	98
13.	Coordinator to publish rules on website	99
Division 2 — Review of reviewable decisions		
13A.	Term used: reviewable decision	99
13B.	Review by Board: all reviewable decisions	99
13C.	Review by Board: procedural decisions	100
13D.	Application for review	101
13E.	Effect of application for review	101
13F.	Procedure generally	102
Part 4 — Pilbara ISO		
14.	Pilbara ISOCo Limited is Pilbara ISO (Act s. 120W)	104
15.	Reporting and publishing information (Act s. 120X)	104
16.	Rules may provide for matters relating to Pilbara ISO (Act s. 120X)	104
16A.	Competition authorisations (Act s. 120ZF)	104
Part 5 — Costs		
17.	Allocation of costs for functions under rules (Act s. 120N)	107

Part 6 — Engaging in particular activities prohibited unless registered

- | | | |
|-----|---|-----|
| 18. | Activities for which person to be registered under rules (Act s. 120O) | 108 |
| 19. | Persons not to engage in activity unless registered under rules (Act s. 120O) | 108 |

Part 7 — Immunities and civil monetary liabilities under Part 8A Division 9 of Act

Division 1 — Preliminary

- | | | |
|-----|------------|-----|
| 20. | Terms used | 110 |
|-----|------------|-----|

Division 2 — Limitation of immunities

- | | | |
|-----|---|-----|
| 21. | Application of Division | 111 |
| 22. | Immunities limited to civil monetary liabilities not related to personal injury (Act s. 120ZC) | 111 |
| 23. | Immunities limited to civil monetary liabilities not related to paying amounts under rules (Act s. 120ZC) | 111 |
| 24. | Immunities limited to extent set out in contract (Act s. 120ZC) | 112 |

Division 3 — Exemptions from section 120ZD(1)(a) of Act

- | | | |
|-----|---|-----|
| 25. | Participants generally exempt from s. 120ZD(1)(a) of Act | 113 |
| 26. | Participants exempt from s. 120ZD(1)(a) of Act in relation to acts or omissions of delegates, subdelegates or their officers or employees | 113 |

Division 4 — Prescribed maximum amounts of civil monetary liability

- | | | |
|-----|---|-----|
| 27. | Purpose and application of Division | 114 |
| 28. | Terms used | 115 |
| 29. | Maximum civil monetary liability during initial cap period (Act s. 120ZD) | 115 |
| 30. | Maximum civil monetary liability generally (Act s. 120ZD) | 116 |

31.	Maximum civil monetary liability for officers and employees of entities (Act s. 120ZD)	117
Part 8 — Miscellaneous		
32.	Minister may determine treatment of pre-commencement matters in rules and Access Code (Act s. 120D and 120O)	118
33.	Authority to maintain website to publish information	118
34.	Prosecution of offences	118
Part 9 — <i>Electricity Industry (Arbitrator and Board Funding) Regulations 2009</i> amended		
35.	Regulations amended	119
36.	Regulation 3 amended	119
37.	Regulation 6 amended	119
38.	Regulations 7A and 7B inserted	120
	7A. Costs and expenses arising from proceedings relating to Pilbara matters	120
	7B. Charges for hearing and determining proceedings relating to Pilbara matters generally	121
39.	Regulation 8 amended	122
Schedule 1 — Reviewable decisions and procedural decisions		
1.	Reviewable decisions	123
2.	Procedural decisions	123
Part 4 — <i>Gas Services Information Regulations 2012</i> amended		
5.	Regulations amended	124
Part 1 — Preliminary		
1.	Citation	124
2.	Commencement	124
3.	Terms used	124
4A.	Gas market participants	126

	Part 2 — Functions of the operator	
4.	Functions of operator — AEMO	127
	Part 3 — GSI rules	
5.	GSI rules	128
6.	Making GSI rules	128
7.	Amending GSI rules	129
8.	GSI rules generally	130
8A.	Transitional GSI rules for transfer of functions from IMO to ERA or Rule Change Panel	132
8B.	Transitional GSI rules for transfer of functions from Rule Change Panel to Coordinator	133
9.	Availability of copies of GSI rules	134
10.	GSI procedures	135
11.	Administration of GSI rules and GSI procedures	135
11A.	Use of information by Coordinator	136
	Part 4 — Obligations to provide information	
12.	Ongoing requirement to provide information	137
13.	Operator may request information	137
	Part 5 — Enforcement of GSI rules	
	Division 1 — Preliminary	
14.	Terms used	139
	Division 2 — Orders and penalties	
15.	Civil penalty provisions and civil penalties	139
16.	Contravention of civil penalty provision: ERA may demand civil penalty	140
17.	Contraventions of provisions of GSI rules: applications for orders from Board	143
18.	Contraventions of provisions of GSI rules: orders Board may make	144
19.	Enforcement of orders of Board	145
20.	Contravention of provision of GSI rules not an offence	145
21.	Conduct contravening more than one civil penalty provision	145
22.	Application of civil penalties received by operator	146

23.	ERA to notify certain persons of decision not to take action	146
24.	Applications for orders from Board: procedure	147
Part 6 — Review by the Board		
Division 1 — Review by the Board		
25.	Reviewable decisions and procedural decisions	148
26.	Review by Board: all reviewable decisions	148
27.	Review by Board: procedural decisions	149
28.	Application for review	149
29.	Effect of application for review	150
30.	Procedure generally	151
31.	Procedure: conferences	153
32.	Parties to proceedings	154
Division 2 — Arbitrator and Board funding		
33.	Terms used	155
34.	Arbitrator funding: standing charges	155
35.	Costs and expenses of proceedings before Board	156
36.	Recovery of unpaid amounts	157
37.	Matters to be included in Arbitrator’s annual report	157
Part 7 — Protection of information		
38.	Protection of protected information	159
39.	Disclosure with prior written consent	159
40.	Disclosure authorised or required by law	159
41.	Disclosure for purposes of proceedings before court or tribunal	160
42.	Other grounds for disclosure	160
Part 8 — Accountability and review of operations		
48A.	Provision of information and advice to Minister: operator’s functions	161
48.	Review of GBB and GSOO	161
Part 9 — Miscellaneous		
49.	Maximum civil monetary liabilities	163
50.	Continuing offences: daily penalties	163

Contents

51.	Supplementary provision for laying documents before Parliament	164
	Part 10 — Savings and transitional provisions	
52.	Savings and transitional provisions for <i>Energy Regulations Amendment Regulations 2023</i>	165
	Schedule 1 — Civil penalty provisions and amounts	
	Schedule 2 — Reviewable decisions and procedural decisions	
1.	Reviewable decisions	170
2.	Procedural decisions	170

Electricity Industry Act 2004
Gas Services Information Act 2012

Energy Regulations Amendment Regulations 2023

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Energy Regulations Amendment Regulations 2023*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) regulation [x] — on [y] [*a day before 31 March 2023*];
- (c) the rest of the regulations — on 1 October 2023.

Part 2 — *Electricity Industry (Wholesale Electricity Market) Regulations 2004* amended

3. Regulations amended

These regulations amend the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*.

[The following text is the Electricity Industry (Wholesale Electricity Market) Regulations 2004 showing proposed amendments in track changes. A formal amending instrument will be drafted at a later stage.]

Part 1 — Preliminary

1. Citation

These are the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*.

2. Purpose

These regulations are made for the purpose of establishing the market described in section 122 of the Act (the *market*).

3. Terms used

In these regulations, unless the contrary intention appears —
AEMO means the Australian Energy Market Operator Limited (ACN 072 010 327);

amend means replace, in whole or in part, add to or vary, and the doing of any 2 or more of such things simultaneously or by the same instrument;

amending rules means rules that amend the market rules;

Coordinator has the meaning given in the *Energy Coordination Act 1994* section 3(1);

IMO means the Independent Market Operator established under the *Electricity Industry (Independent Market Operator) Regulations 2004* as in force before the repeal of those

r. 4A.

regulations by the *Electricity Industry (Independent Market Operator) Repeal Regulations 2018* regulation 4;

impose requirements means to regulate conduct and impose obligations;

market procedures means procedures to be followed by participants in complying with, or in connection with, the market rules;

market website means the website maintained under regulation 12(3);

operator means the AEMO;

registered participant means a participant described in section 121(2)(a) of the Act;

Rule Change Panel means the Rule Change Panel established under the *Energy Industry (Rule Change Panel) Regulations 2016* regulation 4 before the deletion of that regulation by the *Energy Regulations Amendment Regulations 2021* regulation 27;

specified means specified in the market rules;

SWIS means the South West interconnected system;

under, in relation to the market rules, includes by, in accordance with, pursuant to and by virtue of the market rules.

[Regulation 3 amended: Gazette 16 Aug 2005 p. 3829; 2 Oct 2015 p. 3931; 13 Nov 2015 p. 4633; 23 Nov 2016 p. 5265; 27 Jul 2018 p. 2687; SL 2020/202 r. 4; SL 2021/2 r. 13.]

4A. References to provisions of market rules in Schedules 1 and 2

A reference in Schedule 1 or 2 to a provision of the market rules is a reference to that provision as in force at 8 a.m. on 1 October 2023.

~~4A. — References to provisions of market rules in Schedules 1 and 2~~

~~(1) — In this regulation —~~

~~— *2020 amending rules* means the *Wholesale Electricity Market Amendment (Tranche 1 Amendments) Rules 2020* made under these regulations (notice of which was given in the *Gazette* on 24 November 2020) to the extent that those rules come into operation at 8 am on 1 February 2021.~~

~~(2) — Subject to subregulations (3) to (5), a reference in Schedule 1 or 2 to a provision of the market rules is a reference to that provision as in force on the commencement of the *Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2015* regulation 4.~~

~~(3) — A reference in Schedule 1 or 2 to a provision of the market rules that is amended, or that is inserted into the market rules, by the *2020 amending rules* is a reference to that provision as so amended or inserted.~~

~~(4) — Despite subregulation (3), subregulation (2) applies to a provision of the market rules that is amended by the *2020 amending rules* as follows —~~

~~(a) — for a reference to the provision in Schedule 1 — subregulation (2) applies in relation to —~~

~~(i) — a contravention of the provision that occurs before the *2020 amending rules* come into operation; and~~

~~(ii) — any continuation of that contravention;~~

~~(b) — for a reference to the provision in Schedule 2 — subregulation (2) applies in relation to any decision made under the provision before the *2020 amending rules* come into operation.~~

~~(5) — If, when or after the *2020 amending rules* come into operation, a person contravenes a provision of the market rules that is~~

~~amended by the 2020 amending rules, in determining whether the contravention is a subsequent contravention for the purposes of Schedule 1, any contravention of the provision by the person before the 2020 amending rules come into operation is to be counted.~~

~~[Regulation 4A inserted: Gazette 24 Feb 2015 p. 737; amended: SL 2021/2 r. 10.]~~

4. Effect on earlier regulations and rules

(1) In this regulation —

new rules means Appendix 8 of the *Wholesale Electricity Market Rules*;

top-up and spill rules has the meaning that was given to that term in regulation 4 of the *Electricity Industry (Wholesale Market) Regulations 2004* immediately before the repeal of those regulations.

[(2), (3) deleted]

(4) So far as is consistent with the new rules, all acts, matters and things that are in existence, or in force or operation, under or for the purposes of the top-up and spill rules when they cease to have effect under subregulation (3)(a), as in force immediately before the commencement of the *Electricity Corporations (Consequential Amendments) Regulations 2006* —

- (a) subsist and enure for the purposes of the new rules; and
- (b) continue as if the new rules had been in operation when they originated, or were made or done, and they had originated, or been made or done, under the new rules.

[Regulation 4 amended: Gazette 31 Mar 2006 p. 1320.]

Part 2 — The market rules

5. Market rules

There are to be market rules as described in section 123(1) of the Act (the *market rules*).

6. Market rules: general provisions

- (1) In this regulation —
market rules includes amending rules.
- (2) Subject to regulation 7 market rules are to be made by the Minister.
- (3) Subject to subregulation (3A) market rules commence at a time fixed —
 - (a) by the market rules; or
 - (b) in a manner provided for by the market rules.
- (3A) Market rules made by the Minister cannot commence before the market rules are notified under subregulation (6).
- (4) Different commencement times may be fixed under subregulation (3)(a) for different provisions of market rules.
- (5) Different commencement times may be fixed under subregulation (3)(b) for different provisions of market rules unless those market rules provide otherwise.
- (6) Market rules made by the Minister must be notified in the *Gazette*.
- (7) The notification must include notice of —
 - (a) the making of the market rules; and
 - (b) where the market rules are available under ~~regulation 6(8)~~[regulation 7\(6\)](#) or 8.

~~(8) The Coordinator must make a copy of amending rules made by the Minister available on a website maintained by, or on behalf of, the Coordinator.~~

- (9) Market rules made by the Minister must be laid before each House of Parliament within 10 sitting days of that House next following their notification in the *Gazette*.

[Regulation 6 amended: Gazette 20 Sep 2019 p. 3384-5; SL 2021/2 r. 14.]

7. Amending market rules

(1A) In this regulation —

amending rules means rules that amend the market rules.

- (1) The market rules may provide for matters relating to the initiation, development, making, approval, publication and commencement of amending rules.
- (2) Market rules under subregulation (1) may be made so as to apply to —
- (a) amending rules of a specified kind; or
 - (b) amending rules other than rules of a specified kind,
- and have effect despite regulation 6(2).
- (3) Despite anything in this regulation or the market rules —
- (a) rules replacing the market rules in whole are to be made by the Minister and regulation 6(6) applies to them; and
 - [(b) deleted]*
 - (c) rules must be approved by the Minister before they are made if they —
 - (i) amend, repeal or replace market rules to confer functions or impose requirements on the Coordinator; or

-
- (ii) amend, repeal or replace market rules that confer functions or impose requirements on the Coordinator; or
- (iii) amend, repeal or replace market rules dealing with the matters referred to in regulation 12C(1A).
- (4) Despite anything in this regulation or the market rules, the Minister may make amending rules during the period beginning on the day on which the *Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No. 3) 2015* regulation 5 comes into operation and ending on 1 July 2018.
- (5) Despite anything in this regulation or the market rules, the Minister may make amending rules during the period beginning on the day on which the *Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2019* regulation 5 comes into operation and ending on ~~31 March 2023~~ [31 October 2025](#).
- (6) The Coordinator must make a copy of amending rules made by the Minister available on a website maintained by, or on behalf of, the Coordinator.

[Regulation 7 amended: Gazette 13 Nov 2015 p. 4633-4; 23 Nov 2016 p. 5266; 30 Jun 2017 p. 3561; 20 Sep 2019 p. 3385; SL 2020/202 r. 5; SL 2021/2 r. 4; SL 2021/2 r. 15.]

8. Availability of copies of market rules

The Coordinator must make a copy of the market rules, as in force for the time being, available on a website maintained by, or on behalf of, the Coordinator.

[Regulation 8 inserted: SL 2021/2 r. 16.]

9. Market procedures

- (1) The market rules may provide for matters relating to the initiation, development, formulation, approval, publication and commencement of —
 - (a) market procedures; and
 - (b) amendments of market procedures.
- (2) Until market rules referred to in subregulation (1) are in operation, the Minister may develop, formulate and publish on an internet website selected by the Minister —
 - (a) market procedures; and
 - (b) amendments of market procedures.
- (3) Market procedures referred to in subregulation (2) —
 - (a) have effect from the time specified in them; and
 - (b) continue to have effect after market rules referred to in subregulation (1) are in operation as if they had been published under those market rules.

10. Functions of Ministers

The market rules may confer functions on the Minister and the Minister administering the *Electricity Corporations Act 2005*.

[Regulation 10 amended: Gazette 31 Mar 2006 p. 1322.]

11. Functions of Economic Regulation Authority

- (1) The market rules may confer functions and impose requirements on the Authority.
- (2) The Authority is responsible for the development, in accordance with the market rules, of amendments of and replacements for the market procedures, to the extent to which the procedures relate to its functions.

- (3) The Authority is to maintain an internet website for the purpose of publishing and releasing information to participants that relates to its functions under the market rules.

[Regulation 11 inserted: Gazette 24 Jun 2016 p. 2297.]

12. Functions of operator

- (1) The market rules may confer functions and impose requirements on the operator.
- (2A) The operator is responsible for the development, in accordance with the market rules, of amendments of and replacements for the market procedures, to the extent to which the procedures relate to its functions.

[(2) deleted]

- (3) The operator is to maintain an internet website for the purpose of publishing and releasing information to participants.
- (4) The market rules may make provision for financial, accounting and governance matters in relation to the performance by the operator of functions under the market rules.
- (5) The market rules are to confer on the operator the function of ensuring that the SWIS is operated in a secure and reliable manner.
- (6) The market rules may authorise the Authority to give directions to, or impose requirements on, the operator as to the performance of the operator's function conferred in accordance with subregulation (5) and the operator must comply with directions so given or requirements so imposed.

[Regulation 12 amended: Gazette 13 Nov 2015 p. 4634 and 4637; 23 Nov 2016 p. 5266; 27 Jul 2018 p. 2688; SL 2021/2 r. 17.]

r. 12A

12A. Functions of electricity corporations

The market rules may confer functions and impose requirements on the Electricity Generation and Retail Corporation and the Electricity Networks Corporation.

[Regulation 12A inserted: Gazette 31 Mar 2006 p. 1321; amended: Gazette 27 Dec 2013 p. 6475.]

[12B. Deleted: SL 2021/2 r. 18.]

12C. Functions of Coordinator

- (1) The market rules may confer functions and impose requirements on the Coordinator.
- (1A) The market rules may make provision for governance matters, including financial management, relating to the performance of the functions of the Coordinator under these regulations and the market rules.
- (2) The Coordinator is responsible for the development, in accordance with the market rules, of amendments of and replacements for the market procedures, to the extent to which the procedures relate to the Coordinator's functions.
- (3) The Coordinator is responsible for the development, in accordance with the market rules, of amendments of and replacements for the market rules.
- (4) The Coordinator may, directly or indirectly, record, disclose or make use of any information obtained in the course of duty (whether under these regulations, the market rules or any other written law or rules) if the recording, disclosing or making use of the information is for the purpose of —
 - (a) performing functions under these regulations or the market rules; or
 - (b) complying with provisions of these regulations or the market rules that impose requirements.

- (5) The market rules may impose restrictions or conditions on the Coordinator's authority to record, disclose or make use of information under subregulation (4).

[Regulation 12C inserted: SL 2020/202 r. 6; amended: SL 2021/2 r. 7 and 19.]

[13. Deleted: SL 2021/2 r. 20.]

14. Market rules as to registration

The market rules may provide for the registration by the operator of persons engaged, or intending to be engaged, in any of the following activities —

- (a) owning, controlling or operating a generation system that has a rated capacity greater than the specified capacity and supplies electricity to, or is electrically connected to, a transmission system or distribution system of the kind mentioned in paragraph (b);
- (b) owning, controlling or operating a transmission system or distribution system that forms part of, or is electrically connected to, the SWIS;
- (c) selling or purchasing electricity or another service to or from the operator;
- (d) selling electricity to customers in respect of facilities electrically connected to a transmission system or distribution system of the kind mentioned in paragraph (b);
- (e) administering or operating a wholesale market for the dispatch of electricity generating units or loads.

[Regulation 14 amended: Gazette 13 Nov 2015 p. 4637.]

15. Functions of registered participants

- (1) The market rules may confer functions and impose requirements on registered participants generally, or on registered participants of a specified class or on a specified registered participant.

- (2) The market rules may authorise the operator and the Authority to give directions to, or impose requirements on, registered participants generally, or on registered participants of a specified class or on a specified registered participant, and a registered participant must comply with directions so given or requirements so imposed.

[Regulation 15 amended: Gazette 13 Nov 2015 p. 4634; 27 Jul 2018 p. 2688; SL 2021/2 r. 21.]

16. Evidence as to registered participants and exemptions

- (1) A certificate signed by the chief executive officer, an officer or a director of the operator certifying that a person is a registered participant in relation to an activity is evidence that the person is a registered participant in relation to that activity.
- (2) A certificate signed by the chief executive officer, an officer or a director of the operator certifying that a person has been granted an exemption under the market rules from the requirement to be registered in accordance with the market rules in relation to an activity is evidence that the person has been so exempted.
- (3) A certificate under subregulation (1) or (2), that was signed before the time at which the *Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No. 3) 2015* regulation 9 comes into operation and that has effect immediately before that time, has effect after that time, according to its terms, as if signed by the chief executive officer of the operator.

[Regulation 16 amended: Gazette 13 Nov 2015 p. 4635 and 4637.]

17. Market rules generally

Without limiting anything else in this Part market rules may provide for —

- (a) the establishment, functions and governance of advisory committees; and
- (b) procedures, application fees and other matters relating to registration under the market rules and the suspension or cessation of registration; and
- (c) matters relating to participation in the market; and
- (d) fees to be paid by registered participants and the payment of those fees; and
- (e) the resolution of disputes between participants; and
- (f) the monitoring and investigation of compliance with, and the enforcement of, market rules and market procedures; and
- (g) matters relating to the security and reliability of the SWIS and ancillary services; and
- (h) matters relating to the trading of electricity and balancing of electricity supply and demand; and
- (i) matters relating to the procurement, purchase, funding and sustaining of adequate electricity generation capacity and other resources and services on the SWIS; and
- (j) matters relating to the market generally including the dispatch of electricity generating units and other facilities, pricing and price limits, settlements, metering and the recording, retention, provision, release and confidentiality of market information; and
- (k) any other matters that are necessary or convenient to be dealt with for the purpose set out in section 122(1) of the Act and to achieve the objectives set out in section 122(2) of the Act; and
- (l) the suspension of requirements imposed under the market rules or market procedures; and
- (m) the delegation of powers or duties conferred or imposed by the market rules other than the power to —

r. 17A

- (i) make rules amending the market rules;
 - (ii) formulate market procedures or amendments of market procedures;
- and
- (n) transitional matters.

17A. Transitional market rules for transfer of functions to AEMO

- (1) Without limiting regulation 17(n), the market rules may provide for transitional matters arising in connection with the transfer of a function from a person (the *person*) to the AEMO including, without limitation, by providing for —
 - (a) a thing done or omitted to be done by, to or in relation to the person before the transfer to be taken after the transfer to have been done or omitted by, to or in relation to the AEMO; and
 - (b) a right or obligation of the person before the transfer to be taken after the transfer to be a right or obligation of the AEMO; and
 - (c) a reference to the person in an instrument or document made or given for the purposes of these regulations or the market rules to be taken after the transfer to be a reference to the AEMO.
- (2) A reference in this regulation to the transfer of a function from a person (the *person*) to the AEMO is a reference to a function —
 - (a) being conferred on the AEMO under these regulations or the market rules; and
 - (b) ceasing to be a function of the person under these regulations or the market rules.

[Regulation 17A inserted: Gazette 25 Nov 2015 p. 4741-2.]

17B. Transitional market rules for transfer of functions from IMO to Authority or Rule Change Panel

- (1) Without limiting regulation 17(n), the market rules may provide for transitional matters arising in connection with the transfer of a function from the IMO to the Authority or Rule Change Panel including, without limitation, by providing for —
- (a) a thing done or omitted to be done by, to or in relation to the IMO before the transfer to be taken after the transfer to have been done or omitted by, to or in relation to the Authority or Rule Change Panel; and
 - (b) a right or obligation of the IMO before the transfer to be taken after the transfer to be a right or obligation of the Authority or Rule Change Panel; and
 - (c) a reference to the IMO in an instrument or document made or given for the purposes of these regulations or the market rules to be taken after the transfer to be a reference to the Authority or Rule Change Panel.
- (2) A reference in this regulation to the transfer of a function from the IMO to the Authority or Rule Change Panel is a reference to a function —
- (a) being conferred on the Authority or Rule Change Panel (whichever is relevant) under these regulations or the market rules; and
 - (b) ceasing to be a function of the IMO under these regulations or the market rules.

[Regulation 17B inserted: Gazette 24 Jun 2016 p. 2297-8; amended: Gazette 23 Nov 2016 p. 5267-8.]

17C. Transitional market rules for transfer of functions from Rule Change Panel to Coordinator

- (1) In this regulation —
- function*** means a function under these regulations or the market rules;

Rule Change Panel function means a function of the Rule Change Panel before 1 July 2021.

- (2) Without limiting regulation 17(n), the market rules may provide for transitional matters arising in connection with the transfer to the Coordinator of a Rule Change Panel function.
- (3) The provision that may be made under subregulation (2) includes, without limitation, the following —
 - (a) provision for a thing done or omitted to be done by, to or in relation to the Rule Change Panel before a transfer to be taken after the transfer to have been done or omitted by, to or in relation to the Coordinator;
 - (b) provision for a right or obligation of the Rule Change Panel before a transfer to be taken after the transfer to be a right or obligation of the Coordinator;
 - (c) provision for a reference to the Rule Change Panel in an instrument or document made or given before a transfer for the purposes of these regulations or the market rules to be taken after the transfer to be a reference to the Coordinator.
- (4) For the purposes of this regulation, a Rule Change Panel function is transferred to the Coordinator if —
 - (a) the Rule Change Panel function becomes a function of the Coordinator (with or without modifications); or
 - (b) a function that is substantially the same as, or that is similar to, or that otherwise replaces, the Rule Change Panel function is otherwise conferred on the Coordinator.

[Regulation 17C inserted: SL 2021/2 r. 8.]

18. Trade practices authorisation

- (1) In this regulation —

arrangement has the meaning given to that term in section 127(1) of the Act.

- (2) For the purposes of the *Trade Practices Act 1974*¹ of the Commonwealth and the Competition Code, any arrangement, act, matter or thing made, entered into, engaged in, imposed, carried out, given effect to or done in accordance with market rules is specifically authorised.

18A. Excluded matters for purposes of *Corporations Act 2001* (Commonwealth)

- (1) In this regulation —
short term trading, balancing and reserve capacity means —
- (a) those parts of the market that are operated under the market rules; and
 - (b) those facilities (as referred to in the *Corporations Act 2001* (Commonwealth) section 763A(1)) provided for under the market rules,

for the purpose of day ahead trading of electricity with the operator, balancing electricity supply and consumption in the SWIS or ensuring the long term electricity supply capacity of the SWIS.

- (2) Short term trading, balancing and reserve capacity are declared to be excluded matters for the purposes of the *Corporations Act 2001* (Commonwealth) section 5F in relation to Chapter 7 of that Act.

[Regulation 18A inserted: Gazette 12 Feb 2008 p. 337-8;
amended: Gazette 13 Nov 2015 p. 4637.]

Part 3 — Registration requirement

19. Registration required for certain activities

- (1) On or after the appointed day a person must not engage in an activity mentioned in regulation 14(a), (b), (c) or (d) unless the person is —

- (a) a registered participant in relation to that activity; or
- (b) the subject of a derogation under the market rules, or otherwise exempt under the market rules, from the requirement to be registered in accordance with the market rules in relation to that activity.

Penalty: \$100 000 and \$10 000 for each day after the day of service on the person by the Authority of notice of the contravention of this subregulation.

- (2) On or after the appointed day a person, other than the operator, must not engage in the activity mentioned in regulation 14(e) unless the person is —

- (a) a registered participant in relation to that activity; or
- (b) the subject of a derogation under the market rules, or otherwise exempt under the market rules, from the requirement to be registered in accordance with the market rules in relation to that activity.

Penalty: \$100 000 and \$10 000 for each day after the day of service on the person by the Authority of notice of the contravention of this subregulation.

- (3) In subregulation (1) or (2) —

appointed day means the day fixed by the Minister by order published in the *Gazette*.

- (4) Different days may be fixed under subregulation (3) in respect of different activities.

[Regulation 19 amended: Gazette 13 Nov 2015 p. 4635; 24 Jun 2016 p. 2303; 27 Jul 2018 p. 2688; SL 2021/2 r. 22.]

20. Notice of failure to register

A notice under regulation 19 given by the Authority to a person engaged in an activity in contravention of that regulation must —

- (a) be in writing; and
- (b) state the name and address of the person to whom the notice is directed; and
- (c) specify the particular provision of regulation 19 that the person is alleged to have contravened; and
- (d) provide details of the contravention; and
- (e) state that criminal proceedings may be instituted against the person and that the person, if convicted of the offence, would be liable to a maximum penalty of \$100 000 and \$10 000 for each day that the contravention continues after the day on which the notice is served on the person.

[Regulation 20 amended: Gazette 24 Jun 2016 p. 2303.]

Part 4 — Market costs

21. Allocation of costs

- (1) A participant described in section 121(2)(b) or (c) of the Act (other than the Minister, the Minister administering the *Electricity Corporations Act 2005*, the Authority or the Coordinator) must —
- (a) implement accounting arrangements to identify costs of the participant in performing functions under these regulations, the *Australian Energy Market Operator (Functions) Regulations 2015* or the market rules; and
 - (b) submit costs so identified for approval in accordance with the market rules.

[(1A) *deleted*]

- (2) The operator must allocate between registered participants in accordance with the market rules —
- (a) costs identified and approved under subregulation (1); and
 - (b) costs identified by the Minister or the Authority as costs of the Minister or Authority in performing functions under these regulations, the market rules or the *Energy Industry (Rule Change Panel) Regulations 2016*; and
- [(c) *deleted*]
- (d) costs identified by the Coordinator as costs incurred in the performance of the functions of the Coordinator under these regulations or the market rules.

- (2A) Costs identified under subregulation (1) or (2) must not relate to functions under the *Gas Services Information Act 2012*.

- (3) Costs allocated under subregulation (2) are to be recovered by way of fees to be paid by registered participants under the market rules.

[Regulation 21 amended: Gazette 31 Mar 2006 p. 1322; 2 Oct 2015 p. 3931; 13 Nov 2015 p. 4635 and 4637; 24 Jun 2016 p. 2298; 23 Nov 2016 p. 5268-9; 27 Jul 2018 p. 2688; SL 2020/202 r. 7; SL 2021/2 r. 23.]

Part 5 — Enforcement of the market rules

[Heading inserted: Gazette 16 Aug 2005 p. 3830.]

Division 1 — Preliminary

[Heading inserted: Gazette 16 Aug 2005 p. 3830.]

22. Terms used

In this Part —

authorised person means a person authorised under regulation 23;

civil penalty means a penalty demanded by the Authority under regulation 31(1) or imposed by the Board under regulation 33(1);

civil penalty provision has the meaning given to that term in regulation 30(1).

*[Regulation 22 inserted: Gazette 16 Aug 2005 p. 3830;
amended: Gazette 24 Jun 2016 p. 2303.]*

Division 2 — Investigation

[Heading inserted: Gazette 16 Aug 2005 p. 3830.]

23. Authorised persons

The Authority may, in writing, authorise an officer or employee of the Authority to be an authorised person for the purposes of this Division.

*[Regulation 23 inserted: Gazette 16 Aug 2005 p. 3830;
amended: Gazette 24 Jun 2016 p. 2303.]*

24. Search warrants

- (1) An authorised person may apply to a magistrate for the issue of a search warrant in relation to a particular place if the person believes on reasonable grounds that —

- (a) there is or has been or will be a contravention of a provision of these regulations or the market rules; and
 - (b) there is or may be a thing or things of a particular kind connected with the contravention on or in that place.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of an authorised person that there are reasonable grounds for suspecting that there is, or may be within the next 7 days, a thing or things of a particular kind connected with a contravention of a provision of these regulations or the market rules on or in a place, the magistrate may issue a search warrant authorising a person named in the warrant —
- (a) to enter the place specified in the warrant, with such assistance and by the use of such force as is necessary and reasonable;
 - (b) to search the place or any part of the place;
 - (c) to search for and seize a thing named or described in the warrant and which the person believes on reasonable grounds to be connected with the contravention;
 - (d) to inspect, examine or photograph anything in the place;
 - (e) to take extracts from, and make copies of, any documents in the place;
 - (f) to take into the place such equipment and materials as the person requires for exercising the powers.
- (3) A search warrant issued under this regulation must specify —
- (a) the purpose for which the search is required and the nature of the suspected contravention of the provision of these regulations or the market rules; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

(d) the day on which the warrant ceases to have effect, which must not be later than 7 days after the day on which the warrant is issued.

(4) In this regulation, a reference to a contravention includes a reference to a possible contravention.

[Regulation 24 inserted: Gazette 16 Aug 2005 p. 3831-2.]

25. Announcement before entry

(1) On executing a search warrant, the person executing the warrant must announce that he or she is authorised by the warrant to enter the place and, if the person has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.

(2) A person need not comply with subregulation (1) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure the safety of any person or to ensure that the effective execution of the search warrant is not frustrated.

[Regulation 25 inserted: Gazette 16 Aug 2005 p. 3832.]

26. Details of warrant to be given to occupier

(1) If the occupier, or another person who apparently represents the occupier, is present at the place when a search warrant is being executed, the person executing the warrant must —

- (a) identify himself or herself to that person; and
- (b) give the person a copy of the warrant.

(2) If the occupier, or another person who apparently represents the occupier, is present at the place when a search warrant is being executed, the person executing the warrant is not entitled to exercise any powers under that warrant in relation to the place unless the person complies with subregulation (1).

- (3) In the absence of the occupier, or another person who apparently represents the occupier, the person executing the warrant must leave a copy of it at the place.

[Regulation 26 inserted: Gazette 16 Aug 2005 p. 3833.]

27. Copies of seized documents

- (1) If a person executing a warrant retains possession of a document seized from a person in accordance with the warrant, the person must give that other person, within 21 days after the day on which the document is seized, a copy of the document certified as correct by the person executing the warrant.
- (2) A copy of a document certified under subregulation (1) is to be received in all relevant courts and all tribunals to be evidence of equal validity to the original.

[Regulation 27 inserted: Gazette 16 Aug 2005 p. 3833.]

28. Retention and return of seized documents etc.

- (1) If a document or other thing seized in accordance with a warrant has not been returned to the person from whom it was seized within 3 months after the day on which it was seized, the person executing the warrant must take reasonable steps to return it unless —
- (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
- (b) a magistrate makes an order under subregulation (4) extending the period during which the document or thing may be retained.
- (2) An authorised person may apply to a magistrate —
- (a) within 3 months after the day on which a document or other thing is seized in accordance with a warrant; or

- (b) if an extension has already been granted under subregulation (4), before the end of the period of the extension,

for an extension of the period for which the document or thing may be retained but so that the total period of retention does not exceed 12 months.

- (3) An application must be made before proceedings for the purpose for which the document or thing was retained have been commenced.
- (4) A magistrate may order such an extension if he or she is satisfied that —
 - (a) it is in the interests of justice; and
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the document or other thing is necessary —
 - (i) for the purposes of an investigation into whether a contravention of a provision of these regulations or the market rules has occurred; or
 - (ii) to enable evidence of a contravention of a provision of these regulations or the market rules to be obtained for the purposes of a proceeding under these regulations.
- (5) If proceedings are commenced for the purposes for which the document or thing was retained at any time before the expiry of the period specified in an order under subregulation (4), the document or thing may be retained until those proceedings (including any appeal) have been completed despite those proceedings being completed after the period specified in the order.
- (6) At least 7 days prior to the day of the hearing of an application under subregulation (4) by a magistrate, notice of the

application must be sent to the owner of the document or thing described in the application.

[Regulation 28 inserted: Gazette 16 Aug 2005 p. 3833-5.]

29. Obstruction of persons authorised to enter

A person must not, without reasonable excuse, obstruct or hinder a person in the exercise of a power under a search warrant under this Division.

Penalty: \$10 000.

[Regulation 29 inserted: Gazette 16 Aug 2005 p. 3835.]

Division 3 — Orders and penalties

[Heading inserted: Gazette 16 Aug 2005 p. 3835.]

30. Civil penalty provisions and civil penalties

- (1) The provisions of the market rules specified in Schedule 1 are ***civil penalty provisions*** for the purposes of these regulations.
- (2) The category of a civil penalty provision is the category specified for the provision in Schedule 1.

Note:

Categories B and C are specified in Schedule 1 for the purposes of the market rules.

~~(3) The maximum civil penalty amount (which may include a daily amount) that may be demanded from or imposed upon a person who contravenes a civil penalty provision is prescribed in Schedule 1.~~

[Regulation 30 inserted: Gazette 16 Aug 2005 p. 3835-6; amended: Gazette 5 Jun 2012 p. 2353.]

31. Authority may demand civil penalty for contravention of ~~category A~~ civil penalty provision

- (1) If the Authority considers that a participant has contravened a ~~category A~~ civil penalty provision, the Authority may, by notice given to the participant, demand that the participant pay to the operator a civil penalty of an amount that does not exceed the

maximum civil penalty amount prescribed for the contravention in Schedule 1.

(1A) In addition, if the Authority considers that a participant has contravened a civil penalty provision, the Authority may, by notice given to the participant, demand that the participant pay to the operator a civil penalty of a daily amount that does not exceed the maximum daily amount prescribed for the contravention in Schedule 1 if the Authority considers it is appropriate considering the following —

(a) the circumstances of the contravention;

(b) the annual turnover of the participant;

(c) the benefit gained from the contravention by the participant.

(2) ~~An amount specified as a daily amount in Schedule 1 in respect of a contravention of a civil penalty provision applies, as part of the prescription of the maximum civil penalty amount for the contravention.~~ The daily penalty referred to in subregulation (1A) applies for each day or part of a day that the contravention continues after —

(a) if a day or time by which the contravention was to be rectified is specified in a warning notice given to the participant — the day by which the contravention was to be rectified; or

(b) in any other case — the day on which the participant is given a warning notice.

(3) For the purposes of subregulation (2) —

(a) if the contravention consists of a failure to do something required to be done, the contravention is to be regarded as continuing until the act is done, despite the fact that any period within which, or time before which, the act is required to be done has expired or passed; and

(b) the warning notice is the notice required to be given by the Authority to the participant under the market rules

warning the participant that the Authority believes that the participant has contravened the provision.

- (4) ~~The demand~~ A demand under subregulation (1) or (1A) must be made within 6 years after the day on which the participant is considered by the Authority to have contravened the provision.
- (5) ~~The notice~~ A notice under subregulation (1) or (1A) must —
- (a) be in writing; and
 - (b) state the name and address of the participant; and
 - (c) state that the notice is given under regulation 31 of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*; and
 - (d) specify the ~~category A~~ civil penalty provision that the Authority considers the participant has contravened; and
 - (e) provide details of the contravention, including the act or omission that the Authority considers constitutes the contravention; and
 - (f) specify the amount of the civil penalty; and
 - (g) inform the participant that the participant may apply to the Board for review of the Authority's decision to demand the penalty; and
 - (h) contain a statement to the effect that if the participant does not, within 28 days after the day on which the participant receives the notice —
 - (i) pay to the operator the amount demanded; or
 - (ii) apply to the Board for review of the Authority's decision to demand the penalty,the Authority may apply to the Board for an order for the payment of the penalty.
- (6) If a participant does not, within 28 days after the day on which the participant received the notice —

- (a) pay to the Authority the penalty demanded in the notice;
or
- (b) apply to the Board for review, under Part 6, of the Authority's decision to demand the penalty,

the Authority may, within a further 28 days, apply to the Board for an order for the payment of the penalty demanded in the notice.

- (7) The Board may make an order that the participant pay the civil penalty demanded of the participant if —
 - (a) the Authority made the demand in accordance with this regulation; and
 - (b) the participant has not paid the civil penalty to the operator; and
 - (c) the participant has not applied to the Board for review of the Authority's decision to demand the amount.
- (8) The Authority may not demand that a participant pay the operator a civil penalty in respect of the contravention of a civil penalty provision and the Board may not make an order that the participant pay the civil penalty demanded of the participant if the Board has made an order under regulation 33 that the participant pay a civil penalty in respect of the contravention.

[Regulation 31 inserted: Gazette 16 Aug 2005 p. 3836-9; amended: Gazette 5 Jun 2012 p. 2353; 24 Jun 2016 p. 2298-300.]

32. Applications for orders from Board for contraventions of provisions of market rules

- (1) If the Authority considers that a participant has contravened a provision of the market rules, the Authority may apply to the Board for one or more orders under regulation 33.

- (2) The application must be made within 6 years after the day on which the participant is considered by the Authority to have contravened the provision.

[(3), (4) deleted]

- (5) No other person may apply for an order under regulation 33.

*[Regulation 32 inserted: Gazette 16 Aug 2005 p. 3839;
amended: Gazette 13 Nov 2015 p. 4635; 24 Jun 2016 p. 2300.]*

33. Orders Board may make for contraventions of provisions of market rules

- (1) If the Board determines that a participant has contravened a provision of the market rules, the Board may make one or more of the following orders —

- (a) if the provision is a civil penalty provision — an order that the participant pay to the operator a civil penalty of an amount [under regulation 31\(1\) or \(1A\)](#) that does not exceed the [relevant](#) maximum civil penalty amount prescribed for the contravention in Schedule 1;

[DD: Note my change to refer to “relevant” to avoid any confusion.]

- (b) an order that the participant cease, within a specified period, the act or omission constituting the contravention;
- (c) an order that the participant take such action, or adopt such practice, as the Board requires for remedying the contravention or preventing a recurrence of the contravention;
- (d) an order that the participant implement a specified program for compliance with the market rules;
- (e) if the participant is a registered participant — an order suspending the participant’s registration for a specified period or suspending any other specified right of the participant under the market rules for a specified period;

- (f) if the participant is a registered participant — an order that the participant’s generating system or transmission or distribution system, or other facilities or loads, be disconnected;
 - (g) if the participant is a registered participant — an order that the participant’s registration be cancelled.
- (2) ~~An amount specified as a daily amount in Schedule 1 in respect of a contravention of a civil penalty provision applies, as part of the prescription of the maximum civil penalty amount for the contravention.~~ A civil penalty of a daily amount referred to in regulation 31(1A) applies for each day or part of a day that the contravention continues after —
- (a) if a day or time by which the contravention was to be rectified is specified in a warning notice given to the participant — the day by which the contravention was to be rectified; or
 - (b) in any other case — the day on which the participant is given a warning notice.
- (3) For the purposes of subregulation (2) —
- (a) if the contravention consists of a failure to do something required to be done, the contravention is to be regarded as continuing until the act is done, despite the fact that any period within which, or time before which, the act is required to be done has expired or passed; and
 - (b) the warning notice is the notice required to be given by the Authority to the participant under the market rules warning the participant that the Authority believes that the participant has contravened the provision.
- (4) Before making an order, the Board must have regard to all relevant matters, including —
- (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and

- (c) the circumstances in which the contravention took place; and
 - (d) whether the participant has previously been found by the Board in proceedings under the Act to have engaged in any similar conduct; and
 - (e) the consequences of making the order.
- (5) The Board may not order that the operator or the Authority pay a civil penalty.
- (6) The Board may not make an order under this regulation that a participant pay a civil penalty in respect of the contravention of a civil penalty provision if the Authority has demanded that the participant pay to the operator a civil penalty in respect of the contravention.

[Regulation 33 inserted: Gazette 16 Aug 2005 p. 3839-42; amended: Gazette 5 Jun 2012 p. 2354; 13 Nov 2015 p. 4635; 24 Jun 2016 p. 2300.]

34. Enforcement of orders of Board

- (1) The Authority may enforce an order of the Board made under regulation 31(7) or 33(1) by lodging with the Supreme Court a certified copy of it, and an affidavit stating to what extent it has not been complied with.
- (2) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.

[Regulation 34 inserted: Gazette 16 Aug 2005 p. 3842; amended by 24 Jun 2016 p. 2303.]

35. Contravention of provision of market rules not an offence

A contravention of a provision of the market rules is not an offence.

[Regulation 35 inserted: Gazette 16 Aug 2005 p. 3842.]

36. Conduct contravening more than one civil penalty provision

- (1) If the conduct of a participant constitutes a contravention of 2 or more civil penalty provisions, action may be taken under this Part against the participant in relation to the contravention of any one or more of those provisions.
- (2) However, the participant is not liable to more than one civil penalty in respect of the same conduct.

[Regulation 36 inserted: Gazette 16 Aug 2005 p. 3842.]

37. Application of civil penalties received by operator

A civil penalty received by the operator in respect of the contravention of a civil penalty provision must be —

- (a) if the market rules provide for the distribution of civil penalties received by the operator in respect of the contravention amongst participants of a particular class — distributed in accordance with the market rules; or

(ba) if the market rules provide for the distribution of civil penalties received by the operator in respect of the contravention amongst persons negatively impacted by the contravention (regardless of whether the persons are participants or not) — distributed in accordance with the market rules; or

- (b) if the market rules do not provide for ~~such a distribution~~ — a distribution as referred to in paragraph (a) or (ba) — credited to the Consolidated Account ².

[Regulation 37 inserted: Gazette 16 Aug 2005 p. 3842-3; amended: Gazette 24 Jun 2016 p. 2300.]

38. Authority to notify certain persons of decisions not to take action

- (1) If the operator is given information by a person in relation to a contravention or possible contravention of a provision of the market rules by a participant —
 - (a) the operator must give the information to the Authority; and
 - (b) if authorised by the person to do so, the operator must give the person’s contact details to the Authority.
- (2) Subregulation (3) applies if the Authority is given information in relation to a contravention or possible contravention of a provision of the market rules by a participant —
 - (a) by a person (otherwise than anonymously); or
 - (b) by the operator under subregulation (1)(a), together with the contact details referred to in subregulation (1)(b).
- (3) If the Authority —
 - (a) decides not to investigate the contravention or possible contravention; or
 - (b) following an investigation, decides not to demand a civil penalty under regulation 31 or seek an order from the Board under regulation 33,

the Authority must, in writing, notify the person who gave the information to the Authority or to the operator (whichever is relevant) of the decision.

[Regulation 38 inserted: Gazette 24 Jun 2016 p. 2301.]

39. Applications for orders from Board — procedure

- (1) An application by the Authority to the Board for an order under regulation 31(7) or 33(1) must —
 - (a) be in writing; and
 - (b) state that the applicant is the Authority; and

- (c) specify the provision of the regulations under which the Authority is making the application; and
- (d) provide details of the contravention of the market rules that the Authority considers has occurred, including the name and address of the participant alleged to have contravened the market rules; and
- (e) specify the nature of the order sought.

[(2) deleted]

*[Regulation 39 inserted: Gazette 16 Aug 2005 p. 3843-4;
amended: Gazette 13 Nov 2015 p. 4635; 24 Jun 2016 p. 2301.]*

Division 4 — Payments under the market rules

[Heading inserted: Gazette 16 Aug 2005 p. 3844.]

40. Obligation to make payments under market rules

(1AA) In this regulation —

person required to pay means, as the case requires —

- (a) a registered participant required to pay an amount, as referred to in subregulation (1)(a)(i) or (2)(a)(i); or
- (b) the operator required to pay an amount, as referred to in subregulation (1)(a)(ii) or (2)(a)(ii).

(1) If, under the market rules —

- (a) either —
 - (i) a registered participant is required to pay an amount to another registered participant or to the operator; or
 - (ii) the operator is required to pay an amount to a registered participant;

and

- (b) the market rules specify the day by which the amount must be paid; and

- (c) the person required to pay has not paid the amount within 28 days after the day referred to in paragraph (b),

the person required to pay commits an offence.

Penalty: \$50 000 and \$10 000 for each day, after the 28th day, on which the amount is not paid.

- (2) If, under the market rules —

- (a) either —

- (i) a registered participant is required to pay an amount to another registered participant or to the operator; or
- (ii) the operator is required to pay an amount to a registered participant;

and

- (b) the market rules do not specify the day by which the amount must be paid; and
- (c) the person required to pay has been given a notice to pay which specifies the day by which the amount must be paid; and
- (d) the person required to pay has not paid the amount within 28 days after the day referred to in paragraph (c),

the person required to pay commits an offence.

Penalty: \$50 000 and \$10 000 for each day, after the 28th day, on which the amount is not paid.

- (3) Subregulations (1) and (2) apply despite a registered participant or the operator disputing, under the market rules, the amount to be paid unless —
- (a) the market rules provide that the amount need not be paid if the amount is disputed under the market rules; or
 - (b) the parties to the dispute agree otherwise.

*[Regulation 40 inserted: Gazette 16 Aug 2005 p. 3844-5;
amended: Gazette 13 Nov 2015 p. 4636; 24 Jun 2016 p. 2302.]*

Part 6 — Review by the Board

[Heading inserted: Gazette 16 Aug 2005 p. 3845.]

41. Reviewable decisions and procedural decisions

(1) In this Part —

procedural decision means a reviewable decision made under a provision listed in the Table to Schedule 2 clause 2;

reviewable decision means a decision that is reviewable under section 125(1) of the Act.

(2) Decisions made under provisions of the regulations or the market rules not listed in the Table to Schedule 2 clause 1 are specified for the purposes of section 125(1) of the Act.

[Regulation 41 inserted: Gazette 16 Aug 2005 p. 3845-6.]

42. Review by Board — all reviewable decisions

(1) A person whose interests are adversely affected by a reviewable decision may apply to the Board for a review of the decision.

(2) The Board may make an order affirming, setting aside or varying (immediately or as from a specified future date) the decision and, for the purposes of the review, may exercise the same powers with respect to the subject matter of the decision as may be exercised with respect to that subject matter by the person who made the decision.

(2A) The Board may refuse to review a reviewable decision if it considers that the application for review is trivial or vexatious.

(2B) A determination by the Board on the review of a reviewable decision has the same effect as if it were made by the person who made the decision.

~~(2) The provisions of Schedule 1 section 38(3), (4), (5), (8), (9), (11) and (12) of the Gas Pipelines Access (Western Australia) Act 1998³ as in force immediately before that Schedule was~~

~~deleted by the *National Gas Access (WA) Act 2009* section 51 apply to the application and to the review of the decision, with the following modifications —~~

~~(a) a reference to the relevant appeals body is to be read as a reference to the Board;~~

~~(b) a reference to the relevant Regulator is to be read as a reference to the operator;~~

~~(c) in relation to the review of a procedural decision — modifications resulting from regulation 43.~~

(3) If the Board decides that a person's interests are not adversely affected by a reviewable decision, the Board must give the person written reasons for its decision.

(4) This regulation is subject to regulation 43.

[Regulation 42 inserted: Gazette 16 Aug 2005 p. 3846; amended: Gazette 31 Dec 2009 p. 5375; 13 Nov 2015 p. 4636; 27 Jul 2018 p. 2688.]

43. Review by Board — procedural decisions

- (1) In reviewing a procedural decision, the Board is to consider only the question of whether the decision maker followed the procedures required under the regulations or the market rules to be followed in connection with the making of the decision.
- (2) In reviewing a procedural decision, the Board is to be constituted by a legal practitioner only.
- (3) In reviewing a procedural decision, the Board must —
 - (a) if it finds that the decision maker followed the procedure — affirm the decision; or
 - (b) if it finds that the decision maker did not follow the procedure — set the decision aside and remit the matter to the decision maker to be decided in accordance with the procedure and any recommendations of the Board.

[Regulation 43 inserted: Gazette 16 Aug 2005 p. 3846-7.]

44. Application for review

- (1) An application for review of a reviewable decision must be made within —
 - (a) if notice of the making of the decision is required by the regulations or the market rules to be given to a person affected by the decision — 28 days after the day on which the notice is given; or
 - (b) in any other case — 28 days after the day on which notice of the making of the decision has been published in accordance with subregulation (2).
- (2) For the purposes of subregulation (1)(b), notice of a decision has been published if the notice is published on the market website.
- (3) An application for review of a reviewable decision must —
 - (a) be in writing; and
 - (b) state the name and address of the applicant; and
 - (c) provide details of the decision, including who made the decision and under which regulation or market rule the decision was made or purportedly made; and
 - (d) state how the applicant is adversely affected by the decision.
- (4) The Board may extend the time within which an application for review of a reviewable decision may be made, and may do so even though the time has elapsed.
- (5) The Board must give written notice of an application for review of a reviewable decision to the person who made the decision.

[Regulation 44 inserted: Gazette 16 Aug 2005 p. 3847-8.]

45. Effect of application for review

- (1) The making of an application for review of a reviewable decision does not affect the operation of the decision or prevent the taking of action to implement it unless the Board, on application by a party to the proceeding, makes an order under subregulation (2).
- (2) The Board may make an order staying or otherwise affecting the operation or implementation of the whole or a part of the decision if the Board thinks that it is appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the application, after taking into account the interests of any persons who may be affected by the review.
- (3) An order under this regulation —
 - (a) may be varied or revoked; and
 - (b) is subject to the conditions specified in the order; and
 - (c) has effect until the earlier of —
 - (i) the end of the period of operation specified in the order (if any); or
 - (ii) the time at which the decision of the Board on the application comes into operation.

[Regulation 45 inserted: Gazette 16 Aug 2005 p. 3848-9.]

45A. Procedure on review: general

- (1) This regulation applies to proceedings before the Board for a review of a reviewable decision.
- (2) The Board must make its determination on the review within 120 days after receiving the application for review.
- (3) The Board may extend, or further extend, the period referred to in subregulation (2) by a period of 30 days if it considers that the matter cannot be dealt with properly without the extension.

either because of its complexity or because of other special circumstances.

(4) If the Board extends the period, it must, before the end of the period, notify the applicant of the extension and the reasons for it.

(5) The Board may require the operator or the Authority to give information and other assistance, and to make reports, as specified by the Board for the purposes of the proceedings.

(6) On the application of a party to the proceedings, the Board may conduct the proceedings in the absence of the public.

46. Conferences

(1) If an application is made to the Board for review of a reviewable decision, the Board may direct that a conference of the parties to the proceeding be held, presided over by a member of the Board.

(2) If —

(a) a conference is held; and

(b) at or after the conference, agreement is reached between the parties as to the terms of a decision of the Board in the proceeding that would be acceptable to the parties; and

(c) the terms of the agreement are written down, signed by the parties and given to the Board; and

(d) the Board is satisfied that —

(i) a decision in those terms would be within the powers of the Board; and

(ii) that it would be appropriate to make a decision in those terms,

the Board may, without holding a hearing, make a decision in accordance with those terms.

- (3) At the hearing of a proceeding before the Board, unless the parties otherwise agree, evidence must not be given, and statements must not be made, about anything that happened at a conference held under subregulation (1) in relation to the proceeding.
- (4) If, in relation to the hearing of a proceeding before the Board —
- (a) a party to the proceeding who was present at a conference objects to the member of the Board who presided over the conference participating in the proceeding; and
 - (b) that party notifies the Board of that objection before or at the start of the hearing,

the member is not entitled to be a member of the Board constituted for the purposes of the proceeding.

[Regulation 46 inserted: Gazette 16 Aug 2005 p. 3849-50.]

47. Procedure on review: parties

- (1) If a party to a proceeding before the Board has had reasonable notice of the proceeding and fails, without reasonable excuse, either to appear at a conference or at the hearing of the proceeding, the Board may —
- (a) if the only other party to the proceeding is the person who made the reviewable decision, dismiss the application concerned; or
 - (b) in any other case, direct that the person who failed to appear ceases to be a party to the proceeding.
- (2) If an application has been made by a person for review of a reviewable decision, any other person whose interests are adversely affected by the decision may apply to the Board to be made a party to the proceeding and the Board may, by order, make the person a party to the proceeding.
- (3) An application under subregulation (2) must —

r. 47

- (a) be in writing; and
- (b) state the name and address of the applicant; and
- (c) provide details of the proceeding to which the applicant is applying to be made a party; and
- (d) provide details of how the applicant's interests are adversely affected by the decision.

[Regulation 47 inserted: Gazette 16 Aug 2005 p. 3850-1.]

Part 7 — The Board

[Heading inserted: Gazette 16 Aug 2005 p. 3851.]

48. Terms used

In this Part —

procedural decision has the meaning given to that term in regulation 41;

reviewable decision has the meaning given to that term in regulation 41.

[Regulation 48 inserted: Gazette 16 Aug 2005 p. 3851.]

49. Functions of Board

(1) In this regulation —

Board function means —

- (a) the making of an order by the Board under regulation 31(7) or 33; or
- (b) the review of a reviewable decision by the Board under regulation 42 or 43.

(2) The provisions of the *Energy Arbitration and Review Act 1998* Part 6 Division 2 (except section 50) apply to and in relation to the Board's functions.

(3) The provisions referred to in subregulation (2) apply with the following modifications —

- (a) the *Energy Arbitration and Review Act 1998* sections 57(1) and 59(4) apply subject to the market rules;
- (b) the *Energy Arbitration and Review Act 1998* section 58 does not apply to the extent to which it is inconsistent with regulation 50(1);
- (c) in relation to the review of a procedural decision — modifications resulting from regulation 43.

- (4) The provisions of the *Gas Pipelines Access (Western Australia) Act 1998*³ Schedule 1 section 38(7) and (10) as in force immediately before that Schedule was deleted by the *National Gas Access (WA) Act 2009* section 51 apply to and in relation to the Board's functions.
- (5) The provisions referred to in subregulation (4) apply with the following modifications —
 - (a) a reference to the relevant appeals body is to be read as a reference to the Board;
 - (b) in relation to the review of a procedural decision — modifications resulting from regulation 43.

[Regulation 49 inserted: Gazette 31 Dec 2009 p. 5376-7.]

50. Proceedings before Board

- (1) In proceedings before the Board —
 - (a) it is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person; and
 - (b) it is a reasonable excuse for a person to fail to produce a document if producing the document might tend to incriminate the person.
- (2) A witness summoned to appear at a hearing of the Board is entitled to be paid such allowances and expenses as the Board determines.
- (3) If the Board is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the Board may, by order —
 - (a) give directions prohibiting or restricting the publication of evidence given before the Board (whether in public or private) or of matters contained in documents filed with, or received in evidence by, the Board; or

- (b) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Board or of matters contained in documents filed with, or received in evidence by, the Board.
- (4) In considering whether publication, or disclosure to a party, of evidence, or of a matter contained in a document or received in evidence, should be prohibited or restricted, the Board is to take as the basis of its consideration the principle that evidence given before the Board and the contents of documents lodged with the Board or received in evidence by the Board should be made available to all parties, but must pay due regard to any reasons given to the Board why publication or disclosure of the evidence or matter should be prohibited or restricted.

[Regulation 50 inserted: Gazette 16 Aug 2005 p. 3852-3.]

Part 8 — Limitation of liability

[Heading inserted: Gazette 16 Aug 2005 p. 3853.]

51. Persons exempt from section 126(3)(a) of Act

For the purposes of section 126(4) of the Act, the following persons are specified —

- (a) the Authority;
- (b) the IMO;
- (c) the Minister to whom the administration of the *Electricity Industry Act 2004* is committed;
- (d) the Minister to whom the administration of the *Electricity Corporations Act 2005* is committed;
- (e) the Rule Change Panel;
- (f) the Board;
- (g) the Coordinator.

[Regulation 51 inserted: Gazette 16 Aug 2005 p. 3853; amended: Gazette 31 Mar 2006 p. 1322; 13 Nov 2015 p. 4636; 24 Jun 2016 p. 2302; 23 Nov 2016 p. 5269; SL 2020/202 r. 8.]

52. Maximum civil monetary liability for certain market governance participants

- (1) This regulation applies to a person who is a market governance participant but who is not exempt from section 126(3)(a) of the Act under regulation 51.
- (2) For the purposes of section 126(3)(b) of the Act, the maximum amount of the person's liability to pay a civil monetary penalty to another person in respect of an act or omission (the *relevant act or omission*) is the lesser of —

[DD: In my view the above subregulation is correctly drafted in accordance with s. 126(3)(b) of the Act. The term "civil monetary liability" in that section is not a defined or otherwise fixed term - it is simply a reference to a liability for the monetary amount of a civil penalty. There is no need for

the exact phrase “civil monetary liability” to be used and the drafter of this subregulation appears to have deliberately crafted it with a view to ensuring precision when referencing the relevant penalty (which constitutes the “civil monetary liability”).

- (a) \$100 000; or
 - (b) the amount (if any) by which \$10 000 000 exceeds the person’s total liability (whether paid or payable) for civil monetary penalties arising from acts or omissions occurring in the 12 months immediately preceding the day after the day on which the relevant act or omission occurred.
- (3A) For the period of 12 months commencing at the time at which the *Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No. 3) 2015* regulation 18 comes into operation, subregulation (2) has effect in relation to the operator (including in relation to its system management function) as if —
- (a) in paragraph (a), \$10 000 were substituted for \$100 000; and
 - (b) in paragraph (b), \$100 000 were substituted for \$10 000 000.
- (3) The person’s total liability for civil monetary penalties referred to in subregulation (2) is to be determined as at the time at which the person’s liability to a civil monetary penalty in respect of the relevant act or omission is to be determined.
- [Regulation 52 inserted: Gazette 16 Aug 2005 p. 3853-4; amended: Gazette 13 Nov 2015 p. 4636.]*

53. Maximum civil monetary liability for officers and employees of market governance participants

For the purposes of section 126(3)(b) of the Act, the maximum amount of liability of an officer or employee of a market governance participant to pay a civil monetary penalty to another person in respect of an act or omission is \$1.

[Regulation 53 inserted: Gazette 16 Aug 2005 p. 3854.]

Part 9 — Provision of information and advice to Minister

[Heading inserted: Gazette 13 Nov 2015 p. 4636.]

54. Provision of information and advice to Minister: operator's functions

- (1) In this regulation —
protected information means information —
 - (a) given to the operator in confidence; or
 - (b) given to the operator, in connection with the performance of its functions that, in the opinion of the operator, would adversely affect the commercial interest of the person who gave the information if it were publicly disclosed.
- (2) The Minister may request the operator to —
 - (a) provide information about the performance of its functions under these regulations or the market rules; or
 - (b) provide advice, including advice in the nature of feasibility studies and consultancy services.
- (3) The operator must comply with a request.
- (4) Protected information provided in response to a request under subregulation (2) must be identified as such by the operator at the time of providing the information.
- (5) The costs of the operator in complying with a request under subregulation (2)(a) are not recoverable by way of fees to be paid by registered participants under the market rules.

[Regulation 54 inserted: Gazette 13 Nov 2015 p. 4636-7.]

Part 10 — Authority may prosecute offences

[Heading inserted: Gazette 24 Jun 2016 p. 2303.]

55. Authority may prosecute offences

A prosecution for an offence against these regulations may be commenced by the Authority or a person authorised by the Authority to do so.

[Regulation 55 inserted: Gazette 24 Jun 2016 p. 2303.]

Part 11 — Savings and transitional provisions

56. Savings and transitional provisions for Energy Regulations Amendment Regulations 2023

(1) In this regulation —

former regulations 4A, 30 and 31 means regulations 4A, 30 and 31 as in force immediately before 8 a.m. on 1 October 2023;

former Schedule 1 means Schedule 1 as in force immediately before 8 a.m. on 1 October 2023;

former Schedule 2 means Schedule 2 as in force immediately before 8 a.m. on 1 October 2023;

new Schedule 1 means Schedule 1 as inserted by the *Energy Regulations Amendment Regulations 2023* regulation [x] *[DD: this will be the first regulation that comes into operation on 1 October 2023]* comes into operation;

new Schedule 2 means Schedule 2 as inserted by the *Energy Regulations Amendment Regulations 2023* regulation [x] *[DD: this will be the first regulation that comes into operation on 1 October 2023]* comes into operation.

(2) New Schedule 1 does not apply in relation to contraventions, and continuations of contraventions, of the market rules that occur before 8 a.m. on 1 October 2023.

(3) Former Schedule 1 continues to apply in relation to contraventions, and continuations of contraventions, of the market rules that occur before 8 a.m. on 1 October 2023.

[DD: The reference to “New” was a typographical error by me - it should have read “Former”. Note the correction above.]

(4) If, at or after 8 a.m. on 1 October 2023, a person contravenes a provision of the market rules (the *new provision*), in determining whether the contravention of the new provision is a subsequent contravention for the purposes of new Schedule 1,

any contravention of a provision of the market rules (the *former provision*) by the person before 8 a.m. on 1 October 2023 is to be counted if —

(a) the new provision is the same as the former provision; or

(b) the substance of the new provision is the same, or substantially the same, as the substance of the former provision.

(5) New Schedule 2 does not apply in relation to decisions made under the market rules before 8 a.m. on 1 October 2023.

(6) Former Schedule 2 continues to apply in relation to decisions made under the market rules before 8 a.m. on 1 October 2023.

(7) Former regulations 4A, 30 and 31 continue to apply for the purposes of the continuing application of former Schedule 1 under subregulation (3) and former Schedule 2 under subregulation (6).

Schedule 1 — Civil penalty provisions and amounts

[r. 4A, 30, 31 and 33]

[Heading inserted: Gazette 5 Jun 2012 p. 2354; amended: Gazette 24 Feb 2015 p. 738.]

Provision	Category	Maximum civil penalty amounts
el. 1.41.2	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 2.13.13	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
el. 2.13.13A	C	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 2.13.14(a)	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
el. 2.13.25	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
el. 2.16.6(b)	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
el. 2.27.6	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 2.27.12	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 2.27.14	A	first contravention: \$10 000 subsequent contraventions: \$20 000

Provision	Category	Maximum civil penalty amounts
el. 2.29.6	C	first contravention: \$40 000 plus a daily amount of \$5 000 subsequent contraventions: \$80 000 plus a daily amount of \$15 000
el. 2.29.7	C	first contravention: \$40 000 plus a daily amount of \$5 000 subsequent contraventions: \$80 000 plus a daily amount of \$15 000
el. 2.29.8	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
el. 2.30C.4	B	first contravention: \$15 000 subsequent contraventions: \$30 000
el. 2.31.9	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 2.32.4(a)	C	first contravention: \$45 000 plus a daily amount of \$10 000 subsequent contraventions: \$90 000 plus a daily amount of \$15 000
el. 2.34.2	B	first contravention: \$15 000 subsequent contraventions: \$30 000
el. 2.34.3	B	first contravention: \$15 000 subsequent contraventions: \$30 000
el. 2.34.6	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
el. 2.35.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 2.35.2	A	first contravention: \$10 000 subsequent contraventions: \$20 000

Provision	Category	Maximum civil penalty amounts
el. 2.35.3	A	first contravention: \$5 000 subsequent contraventions: \$10 000
el. 2.36.3	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 2.36.4	C	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 2.37.8(a)	B	first contravention: \$15 000 subsequent contraventions: \$30 000
el. 2.38.1	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
el. 2.38.2	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 2.38.3	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 2.41.2	B	first contravention: \$25 000 subsequent contraventions: \$50 000
el. 2.42.4	C	first contravention: \$40 000 plus a daily amount of \$5 000 subsequent contraventions: \$80 000 plus a daily amount of \$15 000
el. 2.44.4	C	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 3A.1.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 3A.5.7	A	first contravention: \$10 000 subsequent contraventions: \$20 000

Provision	Category	Maximum civil penalty amounts
el. 3A.6.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 3A.8.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 3A.8.5(a)	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 3A.10.1(a)	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 3A.13.3	A	first contravention: \$10 000 subsequent contraventions: \$20 000
el. 3.4.6	C	first contravention: \$45 000 subsequent contraventions: \$90 000
el. 3.4.8	C	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 3.5.8	C	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 3.5.10	C	first contravention: \$45 000 subsequent contraventions: \$90 000
el. 3.6.5	C	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 3.6.6B	C	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 3.8.2(e)	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 3.11.7A	C	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 3.16.4	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000

Provision	Category	Maximum civil penalty amounts
el. 3.16.7	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 3.16.8A	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 3.17.5	C	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
el. 3.17.6	C	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 3.18.7	C	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 3.18.8	C	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 3.18.9	C	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 3.18.13(d)(i)	C	first contravention: \$40 000 plus a daily amount of \$5 000 subsequent contraventions: \$80 000 plus a daily amount of \$15 000
el. 3.19.1	C	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 3.19.8	C	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 3.20.2	C	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 3.21.4	C	first contravention: \$40 000 subsequent contraventions: \$80 000

Provision	Category	Maximum civil penalty amounts
el. 3.21A.2	C	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 3.21A.6	C	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 3.21A.12	C	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 3.21A.13(a)	C	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 3.21B.1	C	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 3.21B.2	C	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 4.5.4	C	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
el. 4.10.2	C	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 4.13.3	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 4.13.4	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 4.22.5(b)	B	first contravention: \$25 000 subsequent contraventions: \$50 000
el. 4.27.5	B	first contravention: \$20 000 plus a daily amount of \$5 000 subsequent contraventions: \$40 000 plus a daily amount of \$5 000

Provision	Category	Maximum civil penalty amounts
el. 6.5.1A	B	first contravention: \$20 000 subsequent contraventions: \$40 000
el. 6.6.3	E	first contravention: \$100 000 subsequent contraventions: \$100 000
el. 6.7.3	E	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 6.7.4	E	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 6.19.9	B	first contravention: \$25 000 subsequent contraventions: \$50 000
el. 7.5.5	E	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 7.6A.2(g)	E	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 7.6A.3(e)	E	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 7.6A.5(e)	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
el. 7.6A.6	B	first contravention: \$25 000 subsequent contraventions: \$50 000
el. 7.7.6(b)(i)	E	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 7.7.6A	E	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 7.9.1	E	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 7.9.3	E	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 7.9.5	E	first contravention: \$45 000 subsequent contraventions: \$90 000

Provision	Category	Maximum civil penalty amounts
el. 7.9.7	€	first contravention: \$45 000 subsequent contraventions: \$90 000
el. 7.9.9	€	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 7.9.10	€	first contravention: \$45 000 subsequent contraventions: \$90 000
el. 7.9.12(a)	€	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 7.10.1	€	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 7.10.3	€	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 7.10.3A	€	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 7.10.6	€	first contravention: \$35 000 subsequent contraventions: \$70 000
el. 7.10.6A(a)	€	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 7.11.7	€	first contravention: \$40 000 subsequent contraventions: \$80 000
el. 7.11.9	€	first contravention: \$30 000 subsequent contraventions: \$60 000
el. 7A.2.8	€	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 7A.2.9	€	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 7A.2.13	€	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 7A.2.17	€	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 7B.2.10	€	first contravention: \$50 000 subsequent contraventions: \$100 000

Provision	Category	Maximum civil penalty amounts
el. 7B.2.11	C	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 7B.2.15	C	first contravention: \$50 000 subsequent contraventions: \$100 000
el. 8.1.3	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 8.3.1	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 8.3.3	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 8.3.5	B	first contravention: \$25 000 subsequent contraventions: \$50 000
el. 8.4.1	B	first contravention: \$25 000 subsequent contraventions: \$50 000
el. 8.5.2	B	first contravention: \$20 000 subsequent contraventions: \$40 000
el. 8.8	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 9.1.2(e)	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 9.3.2	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000

Provision	Category	Maximum civil penalty amounts
el. 9.22.5	B	first contravention: \$20 000 plus a daily amount of \$5 000 subsequent contraventions: \$40 000 plus a daily amount of \$5 000
el. 9.23.3	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
el. 9.24.7	C	first contravention: \$40 000 plus a daily amount of \$5 000 subsequent contraventions: \$80 000 plus a daily amount of \$10 000
el. 10.1.2	B	first contravention: \$25 000 subsequent contraventions: \$50 000
el. 10.2.4	B	first contravention: \$25 000 subsequent contraventions: \$50 000

[Schedule 1 inserted: Gazette 5 Jun 2012 p. 2354-60; amended: Gazette 24 Feb 2015 p. 738; SL 2021/2 r. 11.]

Schedule 1 — Civil penalty provisions and amounts

[r. 4A, 30, 31 and 33]

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
<u>cl. A12.5.2.3</u> <i>[DD: Note the insertion of this item as instructed. The numbering is not something known to legislation (particularly in this State) so I have no idea where it is intended to go. I have taken a guess that it goes before cl. 1. Please advise if this is incorrect.]</i>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 1.49.1</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
<u>cl. 1.49.2</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
<u>cl. 1.49.4</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
<u>cl. 1.49.5</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 2.13.5 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>A</u>	<u>first contravention: \$10 000 plus a daily amount of \$5 000</u> <u>subsequent contraventions: \$20 000 plus a daily amount of \$5 000</u>
cl. 2.13.23	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 2.13.30	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 2.13.31	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 2.13.32(a)	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 2.13.41	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 2.16.6(b)	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 2.16A.2 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
<u>cl. 2.16C.3</u> <i>[DD: Note the insertion of this item as instructed.]</i>	<u>A</u>	<u>first contravention: \$10 000 plus a daily amount of \$5 000</u> <u>subsequent contraventions: \$20 000 plus a daily amount of \$5 000</u>
<u>cl. 2.16C.5</u> <i>[DD: Note the insertion of this item as instructed.]</i>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
<u>cl. 2.26C.2T</u> <i>[DD: Note the insertion of this item as instructed.]</i>	<u>A</u>	<u>first contravention: \$10 000 plus a daily amount of \$5 000</u> <u>subsequent contraventions: \$20 000 plus a daily amount of \$5 000</u>
<u>cl. 2.27.6</u>	<u>A</u>	<u>first contravention: \$10 000 plus a daily amount of \$5 000</u> <u>subsequent contraventions: \$20 000 plus a daily amount of \$5 000</u>
<u>cl. 2.27.12</u>	<u>A</u>	<u>first contravention: \$10 000 plus a daily amount of \$5 000</u> <u>subsequent contraventions: \$20 000 plus a daily amount of \$5 000</u>
<u>cl. 2.27.14</u>	<u>A</u>	<u>first contravention: \$10 000 plus a daily amount of \$5 000</u> <u>subsequent contraventions: \$20 000 plus a daily amount of \$5 000</u>
<u>cl. 2.27A.1</u> <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 2.29.3	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.29.4A	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.29.6	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.31.9	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.32.4(a)	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 2.32.9	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.34.2	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.34.2A	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 2.34.3	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.34.12B	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.34.13	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.34A.8	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.35.1	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 2.35.2	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 2.35.3	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 2.36.3	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 2.36.4	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 2.37.8(a)	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.38.1	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.38.2	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.38.3	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.41.2	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.42.4	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 2.44.4	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
<u>cl. 3.4.6(a)</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
<u>cl. 3.4.8</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
<u>cl. 3.5.8</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
<u>cl. 3.5.10</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
<u>cl. 3.6.5</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
<u>cl. 3.6.6</u> <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 3.6.9</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
<u>cl. 3.7.13</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 3.7.14	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.7.23	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.7.24	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.8.2(c)	<u>B</u>	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 3.11B.8(a)	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.15A.21	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.15A.38	<u>B</u>	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 3.15A.39	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 3.16.3	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.16.5	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.17.8	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.18B.6	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.18B.7	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.18D.7	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.18D.8	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.18E.14	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 3.18E.16	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.20.2	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.20.3	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.20.4	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.21.2(a)	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.21A.1	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 3.21A.12	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 3.21A.20	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 3.21A.24	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3.21A.25	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.1.1	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.4.1	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.5.3	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.5.7	A	first contravention: \$10 000 plus a daily amount of \$5 000 subsequent contraventions: \$20 000 plus a daily amount of \$5 000
cl. 3A.6.1	B	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 3A.8.1	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 3A.8.5(a)	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.9.6	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.10.1(a)	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.10.2	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.11.9	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.11.10	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.11.15	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.11.18	C	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 3A.13.3	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 3A.14.1	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 4.5.4	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 4.13.3	<u>B</u>	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 4.13.4	<u>B</u>	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 4.26.1	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 4.26.1J	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 4.27.5	<u>B</u>	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 4.4A.1	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 4.5B.1 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000
cl. 4.12.1 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 6.6.3	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 6.7.3	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 6.7.4	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 7.4.2(c)	<u>C</u>	first contravention: \$100 000 plus a daily amount of \$20 000 subsequent contraventions: \$100 000 plus a daily amount of \$20 000
cl. 7.4.2B <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	first contravention: \$50 000 plus a daily amount of \$10 000 subsequent contraventions: \$75 000 plus a daily amount of \$10 000

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 7.4.4 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 7.4.6	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.4.8 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>A</u>	<u>first contravention: \$10 000 plus a daily amount of \$5 000</u> <u>subsequent contraventions: \$20 000 plus a daily amount of \$5 000</u>
cl. 7.4.26	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.4.27	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.4.29	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.4.55 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>A</u>	<u>first contravention: \$10 000 plus a daily amount of \$5 000</u> <u>subsequent contraventions: \$20 000 plus a daily amount of \$5 000</u>

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 7.4A.1 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 7.4A.5 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 7.4A.6 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 7.4A.7 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 7.4A.8 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 7.6.13 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.6.20 <i>[DD: Note the change to this item as instructed.]</i>	<u>A</u>	<u>first contravention: \$10 000 plus a daily amount of \$5 000</u> <u>subsequent contraventions: \$20 000 plus a daily amount of \$5 000</u>

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 7.6.31 <i>[DD: Note the insertion of this item as instructed.]</i>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 7.9.1	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.9.6	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.9.8	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.9.9	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.9.10	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.10.1 <i>[DD: Note category was already C. Please advise if any other changes are required.]</i>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
cl. 7.10.1A <i>[DD: Note the insertion of this item as instructed.]</i>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.10.3	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.10.7	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.10.8	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 7.11.7	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>
cl. 8.1.3	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 8.3.1	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
cl. 8.3.3	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
<u>cl. 8.3.5</u>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 8.4.1</u>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 8.5.2</u>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 8.8.1</u>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 9.1.3(e)</u>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 9.3.2</u>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 9.18.5</u>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 9.18.6</u>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>

<u>Provision</u>	<u>Category</u>	<u>Maximum civil penalty amounts</u>
<u>cl. 9.19.3</u>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 9.20.2B</u> <i><u>[DD: Note the insertion of this item as instructed.]</u></i>	<u>A</u>	<u>first contravention: \$10 000 plus a daily amount of \$5 000</u> <u>subsequent contraventions: \$20 000 plus a daily amount of \$5 000</u>
<u>cl. 10.1.2</u>	<u>B</u>	<u>first contravention: \$50 000 plus a daily amount of \$10 000</u> <u>subsequent contraventions: \$75 000 plus a daily amount of \$10 000</u>
<u>cl. 10.2.4</u>	<u>C</u>	<u>first contravention: \$100 000 plus a daily amount of \$20 000</u> <u>subsequent contraventions: \$100 000 plus a daily amount of \$20 000</u>

Schedule 2 — Reviewable decisions and procedural decisions

[r. 4A and 41]

[Heading inserted: Gazette 16 Aug 2005 p. 3861; amended: Gazette 24 Feb 2015 p. 738.]

1. Reviewable decisions

For the purposes of regulation 41(2), the following provisions are listed: r. indicates a provision of these regulations and cl. indicates a provision of the market rules.

Table

r. 31(1)	el. 2.3.8	el. 2.5.6(e)
el. 2.5.9	el. 2.6.3A(a)	el. 2.7.7A(a)
el. 2.10.2A(a)	el. 2.10.13	el. 2.10.14
el. 2.13.28	el. 2.28.16	el. 2.30.4
el. 2.30.8	el. 2.31.10	el. 2.32.7E(b)
el. 2.34.7	el. 2.34.7A(b)(ii)	el. 2.34.7C(e)
el. 2.34.11	el. 2.37.1	el. 2.37.2
el. 2.37.3	el. 4.9.9	el. 4.15.1
el. 4.20.11	el. 4.27.7	el. 4.28.7
el. 7A.1.11	el. 10.2.1	

Table

<u>r. 31(1)</u>	<u>cl. 2.3.8</u>	<u>cl. 2.5.6(c)</u>
<u>cl. 2.5.9</u>	<u>cl. 2.6.3A(a)</u>	<u>cl. 2.7.7A(a)</u>
<u>cl. 2.13.16</u>	<u>cl. 2.13.17</u>	<u>cl. 2.13.27(d)</u>
<u>cl. 2.13.36(b)</u>	<u>cl. 2.13.36(c)</u>	<u>cl. 2.13.36(d)</u>
<u>cl. 2.13.49(b)</u>	<u>cl. 2.16C.1</u>	<u>cl. 2.16C.2</u>
<u>cl. 2.16C.7</u>	<u>cl. 2.16D.4</u>	<u>cl. 2.28.9B</u>
<u>cl. 2.28.16</u>	<u>cl. 2.29.5D</u>	<u>cl. 2.30.4</u>
<u>cl. 2.30.8</u>	<u>cl. 2.30B.8C</u>	<u>cl. 2.31.10</u>
<u>cl. 2.32.7E(b)</u>	<u>cl. 2.34.7</u>	<u>cl. 2.34.11</u>
<u>cl. 2.37.1</u>	<u>cl. 2.37.2</u>	<u>cl. 2.37.3</u>
<u>cl. 2.41</u>	<u>cl. 3A.3.3</u>	<u>cl. 3A.6.6</u>
<u>cl. 4.9.9</u>	<u>cl. 4.12.5</u>	<u>cl. 4.13.10B</u>

[cl. 4.20.11](#)

[cl. 4.28.7](#)

[cl. 10.2.1](#)

[cl. 30B.7](#)

[cl. 34A.4](#)

[cl. 318H.5](#)

[DD: Note following queries:

1. You refer to “cl. 34A.4”. Is this meant to be “cl. 3.4A.4”?

2. You refer to “cl. 318H.5”. Is this meant to be “cl. 3.18H.5” or “cl. 31.8H.5”? Do the clause numbers go as high as 318?

3. You have instructed me to insert “cl. 10.2.1” and yet instructed me to delete it later. On balance, I have left it in. Is this correct?]

[Clause 1 inserted: Gazette 16 Aug 2005 p. 3861-2; amended: Gazette 29 Dec 2006 p. 5883; 25 Nov 2011 p. 4871; 14 Feb 2012 p. 667-8; 5 Jun 2012 p. 2360; 10 May 2013 p. 1935.]

2. Procedural decisions

For the purposes of the definition of *procedural decision* in regulation 41, the following provisions of the market rules are listed.

Table

~~el. 2.5.6(e)~~

~~el. 2.5.9~~

~~el. 2.6.3A(a)~~

~~el. 2.7.7A(a)~~

~~el. 2.10.2A(a)~~

~~el. 2.10.13~~

~~el. 2.10.14~~

Table

[cl. 2.5.6\(c\)](#)

[cl. 2.5.9](#)

[cl. 2.6.3A\(a\)](#)

[cl. 2.7.7A\(a\)](#)

[cl. 2.10.2A\(a\)](#)

[cl. 2.10.13](#)

[cl. 2.13.27\(d\)](#)

[cl. 2.16C.1](#)

[cl. 2.16C.2](#)

[cl. 2.16D.4](#)

[cl. 2.28.9B](#)

[cl. 4.12.5](#)

[cl. 4.13.10B](#)

[cl. 34A.4](#)

[DD: You refer to “cl. 34A.4”. Is this meant to be “cl. 3.4A.4”?

[Clause 2 inserted: Gazette 16 Aug 2005 p. 3862; amended: Gazette 10 May 2013 p. 1936.]

Part 3 — *Electricity Industry (Pilbara Networks) Regulations 2021* amended

4. Regulations amended

These regulations amend the *Electricity Industry (Pilbara Networks) Regulations 2021*.

[The following text is the Electricity Industry (Pilbara Networks) Regulations 2021 showing proposed amendments in track changes. A formal amending instrument will be drafted at a later stage.]

Part 1 — Preliminary

1. Citation

These regulations are the *Electricity Industry (Pilbara Networks) Regulations 2021*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

3. Terms used

In these regulations —

amend, in relation to the Pilbara networks rules, means replace, in whole or in part, add to or vary the rules, and the doing of any 2 or more of such things simultaneously or by the same rules;

amending rules means rules that amend the Pilbara networks rules;

Coordinator means the Coordinator of Energy referred to in the *Energy Coordination Act 1994* section 4;

high-voltage connection means a point of connection —

- (a) at which electricity is transferred, or to be transferred, to or from a Pilbara network; and
- (b) that is a point of connection to —
 - (i) a part of a distribution system used, or to be used, in relation to the transportation of electricity at nominal voltages of 11 kV or more; or
 - (ii) a transmission system;

impose requirements means to regulate conduct and impose obligations;

North West Interconnected System Network means —

- (a) a Pilbara network that supplies electricity to customers in Karratha or Port Hedland; or
- (b) a Pilbara network that is interconnected with a Pilbara network referred to in paragraph (a), including a network that is indirectly interconnected with a network referred to in paragraph (a) through a separate network.

**Part 2 — Relevant matters when performing functions
under Part 8A of Act**

**4. Matters to have regard to when performing functions under
Part 8A of Act (Act s. 119)**

For the purposes of section 119(3) of the Act, the following are the matters a person or body that performs a function under Part 8A of the Act is to have regard to in determining whether the performance of the function meets the Pilbara electricity objective —

- (a) the contribution of the Pilbara resources industry to the State's economy;
- (b) the nature and scale of investment in the Pilbara resources industry;
- (c) the importance to the Pilbara resources industry of a secure and reliable electricity supply;
- (d) the nature of electricity supply in the Pilbara region, including whether or not regulatory approaches used outside the Pilbara region are appropriate for the region, Pilbara network users and Pilbara networks;
- (e) any other matter the person or body considers relevant.

Part 3 — The Pilbara networks rules

Division 1 — General

5. Rules

There are to be Pilbara networks rules.

6. Minister to make initial rules

The Minister must make the initial Pilbara networks rules.

7. Matters to be, or that may be, dealt with by rules (Act s. 120K)

- (1) The Pilbara networks rules are to deal with the operation, management, security and reliability of any interconnected Pilbara system.
- (2) For the purposes of section 120K(2) of the Act, the Pilbara networks rules may provide for, and in relation to, the operation, management, security and reliability of covered Pilbara networks that are not part of an interconnected Pilbara system.
- (3) For the purposes of section 120K(3) of the Act, the Pilbara networks rules may provide for, and in relation to, the following matters in relation to Pilbara networks that are not covered Pilbara networks or part of an interconnected Pilbara system —
 - (a) the functions of the Pilbara ISO under section 120W(4)(d) of the Act;
 - (b) the obligations of Pilbara network service providers to provide information to, and assist, the Pilbara ISO in the performance of the functions referred to in paragraph (a).

8. Other matters that may be dealt with by rules (Act s. 120N, 120P and 120Q)

For the purposes of, and without limiting, regulation 7, the Pilbara networks rules may —

- (a) confer rights or functions or impose requirements on any of the following —
 - (i) the Authority;
 - (ii) the Minister;
 - (iii) the Pilbara ISO;
 - (iv) any other Pilbara networks participant;
 - (v) a person holding an office under a written law;
 - (vi) a body established under a written law;
 - (vii) any other person;and
- (b) provide for governance matters, including financial management, relating to the performance of the functions of the Coordinator under these regulations and the Pilbara networks rules; and
- (c) provide for the resolution of disputes between Pilbara networks participants; and
- (d) authorise the Pilbara ISO to make instruments establishing protocols and procedures and any other instruments related to the performance of its functions; and
- (e) provide for —
 - (i) the effect of instruments made under rules made under paragraph (d); and
 - (ii) the process of making, amending, repealing or replacing an instrument made under rules made under paragraph (d);and

- (f) provide for metering of electricity in covered Pilbara networks and interconnected Pilbara networks, including by providing for —
 - (i) the provision, operation and maintenance of metering equipment; and
 - (ii) ownership of and access to metering data;and
- (g) provide for the regulation of the disclosure and use of confidential or commercially sensitive information; and
- (h) provide for the matters set out in section 120P(a) to (c) of the Act; and
- (i) include, or provide for the making, formulation and approval of, technical rules for the purposes of Part 8A of the Act, including technical rules for the purposes of all or any of the following —
 - (i) access to services of covered Pilbara networks;
 - (ii) network and system operations, power system reliability and stability and system security for covered Pilbara networks and interconnected Pilbara networks;and
- (j) provide for, and in relation to, the provision of information to the Pilbara ISO in relation to the matters stated in regulation 7; and
- (k) provide for the regulation of matters —
 - (i) of a savings, transitional or supplementary nature; or
 - (ii) that are otherwise necessary or convenient for the purposes of Part 8A Division 3 of the Act.

9. Rules amending, repealing or replacing rules

- (1) The Minister may make amending rules that replace the whole of the Pilbara networks rules.
- (2) Subject to regulations 10, 11 and 12, the Pilbara networks rules may provide for matters relating to the initiation, development, making, approval, publication and commencement of amending rules, other than amending rules that replace the whole of the Pilbara networks rules.
- (3) The Pilbara networks rules under subregulation (2) may be made so as to apply to —
 - (a) amending rules of a specified kind; or
 - (b) amending rules other than rules of a specified kind.
- (4) Without limiting subregulation (2), the Pilbara networks rules may provide that the Minister or the Coordinator may make amending rules.
- (5) However, despite anything in this regulation or the Pilbara networks rules, rules must be approved by the Minister before they are made if they amend or repeal rules —
 - (a) to confer functions or impose requirements on the Coordinator; or
 - (b) that confer functions or impose requirements on the Coordinator; or
 - (c) that deal with the matters referred to in regulation 8(b).
- (6) Despite anything in this regulation or the Pilbara networks rules, the Minister may make amending rules during the period —
 - (a) beginning on the day on which this subregulation comes into operation; and
 - (b) ending on the 2nd anniversary of that day.

10. Gazettal and notification of rules and amending rules made by Minister

- (1) The initial Pilbara networks rules and any amending rules made by the Minister must be —
 - (a) notified in the *Gazette*; and
 - (b) published on a website maintained by the Coordinator.
- (2) The notification must include notice of —
 - (a) the making of the rules; and
 - (b) where the rules are published (including details of the website on which the rules are published).

11. Tabling of rules and amending rules made by Minister

The initial Pilbara networks rules and amending rules made by the Minister must be laid before each House of Parliament within 10 sitting days of that House next following their notification in the *Gazette*.

12. Commencement of rules and amending rules

- (1) Subject to subregulation (2), the initial Pilbara networks rules and any amending rules commence at a time fixed —
 - (a) by the initial Pilbara networks rules or amending rules; or
 - (b) in a manner provided for by the Pilbara networks rules.
- (2) The initial Pilbara networks rules and any amending rules made by the Minister cannot commence before the rules are notified under regulation 10.
- (3) Different commencement times may be fixed under subregulation (1)(a) for different provisions of the initial Pilbara networks rules or amending rules.
- (4) Different commencement times may be fixed under subregulation (1)(b) for different provisions of the initial Pilbara

networks rules or amending rules unless those rules provide otherwise.

13. Coordinator to publish rules on website

The Coordinator must make a copy of the Pilbara networks rules as in force from time to time available on a website maintained by the Coordinator.

Division 2 — Review of reviewable decisions

13A. Term used: reviewable decision

(1) In this Part —

procedural decision means a reviewable decision made under a provision listed in the Table to Schedule 1 clause 2;

reviewable decision means a decision that is reviewable under section 120Z(1) of the Act.

(2) Decisions made under provisions of the Pilbara networks rules listed in the Table to Schedule 1 clause 1 are specified for the purposes of section 120Z(1) of the Act.

[DD: Your instructions do not indicate that you intend to list any of the provisions of the regulations as reviewable decisions. Instead your instructions refer to both "rules" and "clauses". I am not sure what this means (what accounts for the 2 different numbering systems?). See my suggestions and comments in relation to Schedule 1.]

13B. Review by Board: all reviewable decisions

(1) A person whose interests are adversely affected by a reviewable decision may apply to the Board for a review of the decision.

(2) The Board may make an order affirming, setting aside or varying (immediately or as from a specified future date) the decision and, for the purposes of the review, may exercise the same powers with respect to the subject matter of the decision

as may be exercised with respect to that subject matter by the person who made the decision.

(3) The Board may refuse to review a reviewable decision if it considers that the application for review is trivial or vexatious.

(4) A determination by the Board on the review of a reviewable decision has the same effect as if it were made by the person who made the decision.

(5) If the Board decides that a person's interests are not adversely affected by a reviewable decision, the Board must give the person written reasons for its decision.

(6) This regulation is subject to regulation 13C.

13C. Review by Board: procedural decisions

(1) In reviewing a procedural decision, the Board is to consider only the question of whether the decision maker followed the procedure required to be followed under these regulations or the Pilbara networks rules in connection with the making of the decision.

(2) In reviewing a procedural decision, the Board is to be constituted by a legal practitioner only.

(3) In reviewing a procedural decision, the Board must —

(a) if it finds that the decision maker followed the procedure — affirm the decision; or

(b) if it finds that the decision maker did not follow the procedure — set the decision aside and remit the matter to the decision maker.

(4) If the Board remits a matter to the decision maker under subregulation (3)(b), the Board may make recommendations as to how the decision maker should go about making the decision.

13D. Application for review

(1) An application for review of a reviewable decision must be made within —

(a) if notice of the making of the decision is required by these regulations or the Pilbara networks rules to be given to a person affected by the decision — 28 days after the day on which the notice is given; or

(b) in any other case — 28 days after the day on which notice of the making of the decision is published in accordance with subregulation (2).

(2) For the purposes of subregulation (1)(b), notice of a decision is published if the notice is published on the market website.

(3) An application for review of a reviewable decision must —

(a) be in writing; and

(b) state the name and address of the applicant; and

(c) provide details of the decision, including who made the decision and under which regulation or market rule the decision was made or purportedly made; and

(d) state how the applicant is adversely affected by the decision.

(4) The Board may extend the time within which an application for review of a reviewable decision may be made, by 14 days, and may do so even though the time has elapsed.

(5) The Board must give written notice of an application for review of a reviewable decision to the person who made the decision.

13E. Effect of application for review

(1) The making of an application for review of a reviewable decision does not affect the operation of the decision or prevent the taking of action to implement it unless the Board, on application by a party to the proceedings, makes an order under subregulation (2).

(2) The Board may make an order staying or otherwise affecting the operation or implementation of the whole or a part of the decision if the Board thinks that it is appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the application, after taking into account the interests of any persons who may be affected by the review.

(3) An order under this regulation —

(a) may be varied or revoked; and

(b) is subject to the conditions specified in the order; and

(c) has effect until the earlier of —

(i) the end of the period of operation specified in the order (if any); or

(ii) the time at which the decision of the Board on the application comes into operation.

13F. Procedure generally

(1) This regulation applies to proceedings before the Board for a review of a reviewable decision.

(2) The Board must make its determination on the review within 120 days after receiving the application for review.

(3) The Board may extend, or further extend, the period referred to in subregulation (2) by a period of 30 days if it considers that the matter cannot be dealt with properly without the extension, either because of its complexity or because of other special circumstances.

(4) If the Board extends the period, it must, before the end of the period, notify the applicant of the extension and the reasons for it.

(5) The Board may require the operator or the ERA to give information and other assistance, and to make reports, as specified by the Board for the purposes of the proceedings.

(6) In the proceedings —

(a) it is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person; and

(b) it is a reasonable excuse for a person to fail to produce a document if producing the document might tend to incriminate the person.

(7) On the application of a party to the proceedings, the Board may conduct the proceedings in the absence of the public.

(8) If the Board is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, relating to the proceedings, the Board may, by order —

(a) give directions prohibiting or restricting the publication of evidence given before the Board (whether in public or private) or of matters contained in documents filed with, or received in evidence by, the Board; or

(b) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceedings, of evidence given before the Board or of matters contained in documents filed with, or received in evidence by, the Board.

(9) In considering whether to make an order under subregulation (8) the Board is to take as the basis of its consideration the principle that the evidence and the matters contained in the documents should be made available to all parties, but must pay due regard to any reasons given to the Board as to why publication or disclosure of the evidence or matter should be prohibited or restricted.

(10) A witness summoned to appear at a hearing of the Board is entitled to be paid such allowances and expenses as the Board determines.

Part 4 — Pilbara ISO

14. Pilbara ISOC Co Limited is Pilbara ISO (Act s. 120W)

For the purposes of section 120W(2) of the Act, Pilbara ISOC Co Limited ACN 650 785 783 is the Pilbara ISO.

15. Reporting and publishing information (Act s. 120X)

- (1) For the purposes of section 120X(g)(i) of the Act, the Pilbara ISO must report in writing to the Minister or Authority in relation to Pilbara networks that are not covered Pilbara networks or part of an interconnected Pilbara system —
 - (a) if the Coordinator requests that the Pilbara ISO report to them; and
 - (b) at other times if the Pilbara ISO considers it appropriate to do so.
- (2) For the purposes of section 120X(g)(ii) of the Act, the Pilbara ISO must prepare and publish information in relation to Pilbara networks that are not covered Pilbara networks or part of an interconnected Pilbara system in accordance with the Pilbara networks rules.

16. Rules may provide for matters relating to Pilbara ISO (Act s. 120X)

For the purposes of section 120X of the Act, the Pilbara networks rules may provide for the matters set out in section 120X(a) to (g) of the Act.

16A. Competition authorisations (Act s. 120ZF)

- (1) In this regulation —

arrangement has the meaning given in section 120ZF(1) of the Act;

authorised person means —

- (a) the Pilbara ISO; or
- (b) a director or member of the Pilbara ISO; or
- (c) a delegate of the Pilbara ISO;

commencement day means the day on which the *Electricity Industry (Pilbara Networks) Amendment Regulations 2022* regulation 4 comes into operation;

done includes made, entered into, engaged in, imposed, carried out and given effect to;

registered controller has the meaning given in rule 8(1) of the Pilbara networks rules as in force on commencement day;

registered NSP has the meaning given in rule 8(1) of the Pilbara networks rules as in force on commencement day.

- (2) This regulation applies to an arrangement, act, matter or thing (a **relevant event**) that is done within the period of 2 years beginning on commencement day.
- (3) For the purposes of the *Competition and Consumer Act 2010* (Commonwealth) and the Competition Code, a relevant event is authorised if it is done by —
 - (a) an authorised person in the performance of, or otherwise in relation to, a function that the Pilbara ISO has —
 - (i) under the Pilbara Networks Access Code or Pilbara networks rules; or
 - (ii) under protocols, procedures or other instruments relating to the performance of the Pilbara ISO's functions made as authorised by the Pilbara networks rules under regulation 8(d); or
 - (iii) otherwise under the Act in relation to the Pilbara Networks Access Code or Pilbara networks rules;

or

r. 16A

- (b) a person, including a registered controller or registered NSP, in the performance of, or otherwise in relation to, a function that the person has —
 - (i) under the Pilbara Networks Access Code or Pilbara networks rules; or
 - (ii) under protocols, procedures or other instruments relating to the performance of the Pilbara ISO's functions made as authorised by the Pilbara networks rules under regulation 8(d); or
 - (iii) otherwise under the Act in relation to the Pilbara Networks Access Code or Pilbara networks rules.
- (4) However, this regulation does not authorise a relevant event done by a person to the extent that the event, when done by the person, is conduct specified in an authorisation that is in force under the *Competition and Consumer Act 2010* (Commonwealth) Part VII Division 1.

[Regulation 16A inserted: SL 2022/183 r. 4.]

Part 5 — Costs

17. Allocation of costs for functions under rules (Act s. 120N)

- (1) In this regulation —
empowered person means any of the following persons who has functions under the Pilbara networks rules —
 - (a) the Authority;
 - (b) the Coordinator;
 - (c) the Pilbara ISO.
- (2) An empowered person must —
 - (a) implement accounting arrangements to identify the empowered person's costs in performing the functions conferred on the empowered person under the Pilbara networks rules; and
 - (b) submit costs so identified for approval in accordance with the Pilbara networks rules.
- (3) The Pilbara ISO must allocate between Pilbara networks participants in accordance with the Pilbara networks rules costs identified under subregulation (2)(a) and approved in accordance with the Pilbara networks rules.
- (4) Costs allocated under subregulation (3) are to be recovered by way of fees to be paid by Pilbara networks participants in accordance with the Pilbara networks rules.

Part 6 — Engaging in particular activities prohibited unless registered

18. Activities for which person to be registered under rules (Act s. 120O)

(1) In this regulation —

large consumer works means any wires, apparatus, equipment, plant or buildings that are —

- (a) used, or to be used, for, or in connection with, or to control, the consumption of electricity; and
- (b) connected to a high-voltage connection.

(2) For the purposes of section 120O(1) of the Act, the following are specified activities —

- (a) operating a North West Interconnected System Network;
- (b) operating generating works that are connected to a North West Interconnected System Network;
- (c) operating storage works that are connected to a North West Interconnected System Network;
- (d) operating large consumer works that are connected to a North West Interconnected System Network.

19. Persons not to engage in activity unless registered under rules (Act s. 120O)

On and after 1 October 2021, a person must not engage in an activity specified in regulation 18(2) unless the person is —

- (a) registered in relation to the activity in accordance with the Pilbara networks rules; or
- (b) the subject of a derogation under the Pilbara networks rules, or otherwise exempt under the Pilbara networks rules, from the requirement to be registered in relation to

the activity in accordance with the Pilbara networks rules.

Penalty: a fine of \$1 000.

Part 7 — Immunities and civil monetary liabilities under Part 8A Division 9 of Act

Division 1 — Preliminary

20. Terms used

In this Part —

high-voltage contract means a contract for —

- (a) the transfer of electricity to or from a Pilbara network at a high-voltage connection; or
- (b) services in the Pilbara region that are provided by means of, or that relate to, a high-voltage connection;

immunity means an immunity granted under section 120ZB of the Act;

personal injury includes —

- (a) death; and
- (b) pre-natal injury; and
- (c) impairment of a person's physical or mental condition; and
- (d) disease;

related body corporate has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

sophisticated party means an entity that —

- (a) is a party to, or has ever been a party to, a high-voltage contract; or
- (b) is a related body corporate of a body corporate that is a party to, or has ever been a party to, a high-voltage contract;

system management function means a function conferred under the Pilbara networks rules of ensuring that a North West Interconnected System Network is operated in a secure and reliable manner.

Division 2 — Limitation of immunities

21. Application of Division

This Division applies to an entity that is granted an immunity other than —

- (a) the Pilbara ISO; or
- (b) an officer or employee of an entity.

22. Immunities limited to civil monetary liabilities not related to personal injury (Act s. 120ZC)

(1) This regulation applies to an entity to which this Division applies other than the following —

- (a) the Authority;
- (b) the Board;
- (c) the Coordinator;
- (d) the Minister;
- (e) the Minister to whom the administration of the *Electricity Corporations Act 2005* is committed.

(2) For the purposes of section 120ZC(b) of the Act, an immunity granted to the entity is limited to civil monetary liabilities that are not a liability to an individual, or to the estate of a deceased individual, arising from personal injury to that individual.

23. Immunities limited to civil monetary liabilities not related to paying amounts under rules (Act s. 120ZC)

(1) In this regulation —

payment obligation means an obligation that —

- (a) is an obligation of an entity (the ***payer***) to which this Division applies to pay an amount to another entity; and
- (b) arises under a note given to the payer under the Pilbara networks rules by the Pilbara ISO or a delegate of the Pilbara ISO; and

(c) is enforceable as a debt;

under includes by, in accordance with, pursuant to and by virtue of.

- (2) For the purposes of section 120ZC(b) of the Act but subject to regulation 24, an immunity granted to an entity to which this Division applies is limited to civil monetary liabilities that are not a liability to pay an amount that is —
- (a) an amount that is the subject of a payment obligation of the entity; or
 - (b) any other amount the entity is obliged to pay to another entity in accordance with —
 - (i) the Pilbara networks rules; or
 - (ii) a contract or instrument made under the Pilbara networks rules;
- or
- (c) an amount that arises from the recovery of an amount referred to in paragraph (a) or (b), including interest and any costs of recovering the amount.

24. Immunities limited to extent set out in contract (Act s. 120ZC)

- (1) This regulation applies to an entity (the *relevant entity*) that —
- (a) is an entity to which this Division applies; and
 - (b) is a party to a contract (the *relevant contract*) all the parties to which are sophisticated parties; and
 - (c) agrees in the relevant contract that an immunity granted to the relevant entity is limited to the extent set out in the relevant contract.
- (2) For the purposes of section 120ZC(b) of the Act, the immunity granted to the relevant entity is, as between the parties to the relevant contract, limited to the extent set out in the relevant contract.

- (3) For the purposes of subregulation (2) —
- (a) the relevant contract cannot, as between the parties, affect —
 - (i) the operation of the immunity granted to the relevant entity in relation to an act or omission done or made in the performance, or purported performance, of a system management function conferred on the entity; or
 - (ii) the operation of regulation 22;
- but
- (b) without limiting subregulation (2), the relevant contract may, as between the parties, affect the operation of regulation 23.

Division 3 — Exemptions from section 120ZD(1)(a) of Act

25. Participants generally exempt from s. 120ZD(1)(a) of Act

For the purposes of section 120ZD(2) of the Act, the following participants are exempt from the operation of section 120ZD(1)(a) of the Act —

- (a) the Authority;
- (b) the Board;
- (c) the Coordinator;
- (d) the Minister;
- (e) the Minister to whom the administration of the *Electricity Corporations Act 2005* is committed.

26. Participants exempt from s. 120ZD(1)(a) of Act in relation to acts or omissions of delegates, subdelegates or their officers or employees

- (1) This regulation applies if —
- (a) a participant delegates the performance of a function; and

Energy Regulations Amendment Regulations 2023

Part 7 Immunities and civil monetary liabilities under Part 8A Division 9 of Act

Division 4 Prescribed maximum amounts of civil monetary liability

r. 27

- (b) the delegate is not an officer or employee of the participant.
- (2) For the purposes of section 120ZD(2) of the Act, the participant is exempt from the operation of section 120ZD(1)(a) of the Act in relation to a civil monetary liability for an act or omission of any of the following in the performance, or purported performance, of the function —
 - (a) the participant’s delegate;
 - (b) a delegate of the participant’s delegate;
 - (c) an officer or employee of a person mentioned in paragraph (a) or (b).
- (3) Subregulation (2) does not affect the operation of section 120ZD(1)(a) of the Act in relation to a civil monetary liability for the participant’s own act or omission.

Division 4 — Prescribed maximum amounts of civil monetary liability

27. Purpose and application of Division

- (1) For the purposes of section 120ZD(1)(b) of the Act, this Division prescribes the maximum amounts for civil monetary liabilities for acts or omissions to which an immunity does not apply under section 120ZD(1)(a) of the Act.
- (2) This Division does not apply to —
 - (a) a civil monetary liability of a participant exempted from the operation of section 120ZD(1)(a) of the Act by regulation 25; or
 - (b) a civil monetary liability of an entity —
 - (i) in relation to which an immunity granted to the entity does not apply under Division 2; or

- (ii) in relation to which the entity is exempt from the operation of section 120ZD(1)(a) of the Act by regulation 26.

28. Terms used

In this Division —

act or omission means an act or omission to which an immunity does not apply under section 120ZD(1)(a) of the Act;

initial cap period means the period of 6 months beginning on the day after the expiration of the period of —

- (a) in a case where it is the immunity granted under section 120ZB(3) of the Act that does not apply under section 120ZD(1)(a) of the Act — 2 months from the day on which the initial Pilbara networks rules are notified under regulation 10; and
- (b) otherwise — 12 months from the day on which the initial Pilbara networks rules are notified under regulation 10.

29. Maximum civil monetary liability during initial cap period (Act s. 120ZD)

- (1) This regulation applies in relation to an act or omission done or made during the initial cap period.
- (2) References in this regulation to a civil monetary liability do not include a civil monetary liability —
 - (a) to an individual, or to the estate of a deceased individual, arising from personal injury to that individual; or
 - (b) that arises between related bodies corporate; or
 - (c) incurred by an officer or employee of an entity.
- (3) The maximum amount of civil monetary liability of an entity (the ***relevant entity***) to another entity for an act or omission (the ***relevant act or omission***) is \$10 000.

Energy Regulations Amendment Regulations 2023

Part 7 Immunities and civil monetary liabilities under Part 8A Division 9 of Act

Division 4 Prescribed maximum amounts of civil monetary liability

r. 30

- (4) However —
 - (a) the total amount of civil monetary liabilities of the relevant entity and its related bodies corporate (if any) for all acts or omissions done or made during the initial cap period is capped at \$100 000 (the *cap*); and
 - (b) accordingly, if and to the extent necessary, the maximum amount of civil monetary liability of the relevant entity for the relevant act or omission is reduced from \$10 000 so that the cap is not exceeded.

30. Maximum civil monetary liability generally (Act s. 120ZD)

- (1) This regulation does not apply in relation to an act or omission done or made during the initial cap period.
- (2) References in this regulation to a civil monetary liability do not include a civil monetary liability —
 - (a) to an individual, or to the estate of a deceased individual, arising from personal injury to that individual; or
 - (b) that arises between related bodies corporate; or
 - (c) incurred by an officer or employee of an entity.
- (3) The maximum amount of civil monetary liability of an entity (the *relevant entity*) to another entity for an act or omission (the *relevant act or omission*) is \$100 000.
- (4) However —
 - (a) the total amount of civil monetary liabilities of the relevant entity and its related bodies corporate (if any) for all acts or omissions done or made during the period of 12 months ending on the day on which the relevant act or omission is done or made is capped at \$10 000 000 (the *cap*); and
 - (b) accordingly, if and to the extent necessary, the maximum amount of civil monetary liability of the

relevant entity for the relevant act or omission is
reduced from \$100 000 so that the cap is not exceeded.

**31. Maximum civil monetary liability for officers and employees
of entities (Act s. 120ZD)**

The maximum amount of civil monetary liability of an officer
or employee of an entity to another entity for an act or omission
is \$1.

Note for this regulation:

See section 120ZE of the Act in relation to the liability of an officer of
an entity (other than an entity that is an individual) to that entity.

Part 8 — Miscellaneous

32. Minister may determine treatment of pre-commencement matters in rules and Access Code (Act s. 120D and 120O)

For the purposes of sections 120D(5) and 120O(5) of the Act, the Minister may determine by order published in the *Gazette* how any matter or thing in progress —

- (a) immediately before the commencement of the Pilbara Networks Access Code is to be treated, after that commencement, for the purposes of the provisions of the Pilbara Networks Access Code; or
- (b) immediately before the commencement of the Pilbara networks rules is to be treated, after that commencement, for the purposes of the provisions of the Pilbara networks rules.

33. Authority to maintain website to publish information

The Authority must maintain a website for the purposes of publishing and releasing information to Pilbara networks participants that relates to its functions under these regulations or the Pilbara networks rules.

34. Prosecution of offences

- (1) In this regulation —
Pilbara offence means an offence against these regulations or Part 8A of the Act.
- (2) It is a function of the Authority to —
 - (a) commence a prosecution for a Pilbara offence; and
 - (b) authorise a person to commence a prosecution for a Pilbara offence.
- (3) A person authorised under subregulation (2)(b) may commence a prosecution for a Pilbara offence.

Part 9 — *Electricity Industry (Arbitrator and Board Funding) Regulations 2009* amended

35. Regulations amended

This Part amends the *Electricity Industry (Arbitrator and Board Funding) Regulations 2009*.

36. Regulation 3 amended

- (1) In regulation 3(1) insert in alphabetical order:

Pilbara matter means a matter arising under the Act in relation to a Pilbara network;

- (2) In regulation 3(1) in the definition of ***core function costs***:

- (a) in paragraph (b) delete “regulation 6;” and insert:

regulation 6; and

- (b) after paragraph (b) insert:

- (c) are not incurred in relation to hearing and determining a Pilbara matter;

37. Regulation 6 amended

Before regulation 6(1) insert:

- (1A) This regulation does not apply in relation to a part of a proceeding that relates to hearing and determining a Pilbara matter.

38. Regulations 7A and 7B inserted

After regulation 7 insert:

7A. Costs and expenses arising from proceedings relating to Pilbara matters

- (1) The Board may fix an amount that represents the cost and expenses of hearing and determining a Pilbara matter in a proceeding before it.
- (2) Without limiting subregulation (1), the cost and expenses referred to in that subregulation include —
 - (a) the costs of constituting the Board for the purposes of hearing and determining the Pilbara matter in the course of the proceedings, including the payment of any remuneration and allowances payable under the *Energy Arbitration and Review Act 1998* section 55 to the members of the Board; and
 - (b) any cost and expenses attributable to the provision of services, facilities and support under the *Energy Arbitration and Review Act 1998* section 56(1) for the purposes of hearing and determining the Pilbara matter in the course of the proceedings.
- (3) If the Board fixes an amount under subregulation (1), the Board may —
 - (a) determine which of the parties to the proceedings relating to the Pilbara matter is liable for payment of the whole or any part of the amount; and
 - (b) fix the manner in which, and time within which, payment must be made.

- (4) A party that is determined to be liable for a payment under subregulation (3) must make the payment to the arbitrator in the manner and within the time fixed by the Board.
- (5) If the party does not make the payment in full within the time within which the payment must be made, interest on the outstanding amount is payable to the arbitrator at the prescribed rate calculated daily.
- (6) The arbitrator may recover any unpaid amount or interest owed under this regulation in a court of competent jurisdiction as a debt due to the arbitrator.

7B. Charges for hearing and determining proceedings relating to Pilbara matters generally

- (1) In this regulation —
Regional Power Corporation means the corporation established by the *Electricity Corporations Act 2005* section 4(1)(d).
- (2) The arbitrator may fix an amount that represents the Board's cost and expenses in relation to the hearing and determination of Pilbara matters in all proceedings before it during a quarter, other than any cost and expenses fixed and to be paid by a party under regulation 7A.
- (3) If the arbitrator fixes an amount under subregulation (2), the arbitrator may issue the Regional Power Corporation a notice specifying —
 - (a) the amount; and
 - (b) the day on which the notice is issued; and
 - (c) that the Corporation must pay to the arbitrator the amount specified in the notice within

r. 39

30 days after the day specified under paragraph (b).

- (4) If the Regional Power Corporation is issued a notice under subregulation (3), the Corporation must pay the amount specified in the notice to the arbitrator within 30 days after the day specified under subregulation (3)(b).
- (5) If the Regional Power Corporation does not pay the amount in full within the period specified under subregulation (4), interest on the outstanding amount is payable to the arbitrator at the prescribed rate calculated daily.
- (6) The arbitrator may recover any unpaid amount or interest owed under this regulation in a court of competent jurisdiction as a debt due to the arbitrator.

39. Regulation 8 amended

In regulation 8:

- (a) in paragraph (b) delete “regulation 6.” and insert:

regulation 6; and
- (b) after paragraph (b) insert:
 - (c) the total amounts fixed under regulation 7A(1);
and
 - (d) the total amounts fixed under regulation 7B(2).

Schedule 1 — Reviewable decisions and procedural decisions

[r. 13A]

1. Reviewable decisions

For the purposes of regulation 13A(2), the following provisions are listed: r. a rule in the Pilbara networks rules and cl. indicates a clause in the Pilbara networks rules[*Appendix...?*].

Table

r. 57(4)	r. 64(7)	r. 93(1)(f)
r. 146(1)	r. 152(3)	r. 160(4)
r. 153(1)	r. 197(7)(d)	r. 202
r. 231	r. 256(1)(a)	r. 274c(4)
r. 274k(4)	r. 316(1)(d)	cl. a.3.11
cl. a2.5.6(c)	cl. a2.5.9	cl. a2.5.9a
cl. a2.5.9d	cl. a2.6.3a(a)	cl. a2.7.7a(a)
cl. a2.10.2a(a)	cl. a2.10.13(aa)	

2. Procedural decisions

For the purposes of the definition of *procedural decision* in regulation 13A, the following provisions of the Pilbara network rules are listed.

Table

r. 256(1)(a)	cl. a2.5.6(c)
cl. a2.5.9	cl. a2.5.9a
cl. a2.5.9d	cl. a2.6.3a(a)
cl. a2.7.7a(a)	cl. a2.10.2a(a)
cl. a2.10.13(aa)	

[Note my comments to r. 13A. You refer to the Pilbara network rules having “two lists of reviewable decisions”. Does this account for the different nomenclature (“rule” vs. “clause”)? Are the “clauses” in some form of Appendix etc? Your instructions please.]

Part 4 — Gas Services Information Regulations 2012 amended

5. Regulations amended

These regulations amend the *Gas Services Information Regulations 2012*.

[The following text is the Gas Services Information Regulations 2012 showing proposed amendments in track changes. A formal amending instrument will be drafted at a later stage.]

Part 1 — Preliminary

[Heading inserted: Gazette 14 Jun 2013 p. 2228.]

1. Citation

These regulations are the *Gas Services Information Regulations 2012*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Gas Services Information Act 2012* section 7 comes into operation.

3. Terms used

- (1) In these regulations, unless the contrary intention appears —
AEMO means the Australian Energy Market Operator Limited (ACN 072 010 327);
amend means replace, in whole or in part, add to or vary, and the doing of any 2 or more of such things simultaneously or by the same instrument;

Arbitrator means the Western Australian Energy Disputes Arbitrator appointed under the *Energy Arbitration and Review Act 1998* section 62 and includes a person acting under section 71 of that Act;

Coordinator means the Coordinator of Energy referred to in the *Energy Coordination Act 1994* section 4;

ERA means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003* section 4;

GSI procedures means procedures, made under the GSI rules, to be followed by gas market participants and by the operator, in complying with, or in connection with, the GSI rules;

GSI rules means the rules referred to in regulation 5;

GSI website means a website maintained for the purposes of regulation 11(2);

IMO means the Independent Market Operator established by the *Electricity Industry (Independent Market Operator) Regulations 2004* regulation 4 as in force before the repeal of those regulations by the *Electricity Industry (Independent Market Operator) Repeal Regulations 2018* regulation 4;

registered, in relation to a gas market participant, means registered under the GSI rules;

Rule Change Panel means the Rule Change Panel established under the *Energy Industry (Rule Change Panel) Regulations 2016* regulation 4 before the deletion of that regulation by the *Energy Regulations Amendment Regulations 2021* regulation 27;

specified, in relation to an instrument or document made under or referred to in these regulations, means specified in that instrument or document;

warning notice means a notice, given under the GSI rules, warning a gas market participant that the ERA believes that the participant has contravened a provision of the GSI rules.

r. 4A

- (2) Unless the contrary intention appears, a reference to the performance of the functions of the operator, the IMO or the ERA is a reference to the performance of its functions under the Act.

[Regulation 3 inserted: Gazette 14 Jun 2013 p. 2228-9; amended: Gazette 2 Oct 2015 p. 3932; 13 Nov 2015 p. 4638, 4641 and 4641-2; 24 Jun 2016 p. 2304 and 2308; 23 Nov 2016 p. 5271; 27 Jul 2018 p. 2688; SL 2021/2 r. 36.]

4A. Gas market participants

For the purposes of the definition of *user*, paragraph (c), in section 3(1) of the Act, end users who acquire at least 1 terajoule of natural gas per year are prescribed.

[Regulation 4A inserted: Gazette 14 Jun 2013 p. 2229.]

Part 2 — Functions of the operator

[Heading inserted: Gazette 14 Jun 2013 p. 2229.]

4. Functions of operator — AEMO

- (1) It is a function of the AEMO —
 - (a) to establish and operate the GBB; and
 - (b) to prepare and publish the GSOO.
- (2) Without limiting subregulation (1), the AEMO has the following functions —
 - (a) to collect, collate and manage information for the GBB and the GSOO;
 - (b) to derive from the information referred to in paragraph (a) information for inclusion on the GBB or in the GSOO;
 - (c) to include information on the GBB of the kinds that may or must be included on the GBB under the Act or any other written law;
 - (d) to prepare and publish the GSOO periodically.

*[Regulation 4 amended: Gazette 14 Jun 2013 p. 2229;
28 Jun 2013 p. 2933; 13 Nov 2015 p. 4638-9.]*

Part 3 — GSI rules

[Heading inserted: Gazette 14 Jun 2013 p. 2230.]

5. GSI rules

There are to be rules relating to the form, content and operation of the GBB and to the form and content of the GSOO (the *GSI rules*).

[Regulation 5 inserted: Gazette 14 Jun 2013 p. 2230.]

6. Making GSI rules

- (1) In this regulation —
GSI rules includes rules that amend the GSI rules.
- (2) Subject to regulation 7, GSI rules are to be made by the Minister.
- (3) GSI rules commence at a time fixed —
 - (a) by the GSI rules; or
 - (b) in a manner provided for by the GSI rules.
- (4) Different commencement times may be fixed under —
 - (a) subregulation (3)(a) for different provisions of GSI rules; or
 - (b) subregulation (3)(b) for different provisions of GSI rules unless those GSI rules provide otherwise.

~~(5) GSI rules made by the Minister are to be published in the *Gazette* and are to be laid before each House of Parliament within 10 sitting days of that House next following their publication in the *Gazette*.~~

(5) GSI rules made by the Minister must be notified in the *Gazette*.

(6) The notification must include notice of —

- (a) the making of the GSI rules; and

(b) where the GSI rules are available under regulation 7(7) or 9.

(7) GSI rules made by the Minister must be laid before each House of Parliament within 10 sitting days of that House next following their notification in the Gazette.

[Regulation 6 inserted: Gazette 14 Jun 2013 p. 2230.]

7. Amending GSI rules

- (1) In this regulation —
amending rules means rules that amend the GSI rules.
- (2) The GSI rules may provide for matters relating to the initiation, development, making, approval, publication and commencement of amending rules.
- (3) The GSI rules under subregulation (2) may be made so as to apply to —
 - (a) amending rules of a specified kind; or
 - (b) amending rules other than rules of a specified kind,and have effect despite regulation 6(2).
- (4) Despite anything in this regulation or the GSI rules —
 - (a) rules replacing the GSI rules in whole are to be made by the Minister and regulation 6(5) applies to them; and
 - [(b) *deleted*]
 - (c) rules must be approved by the Minister before they are made if they —
 - (i) amend, repeal or replace GSI rules to confer functions on the Coordinator; or
 - (ii) amend, repeal or replace GSI rules that confer functions on the Coordinator; or

- (iii) amend, repeal or replace GSI rules dealing with the matters referred to in regulation 8(2)(c) in relation to the Coordinator.
- (5) Despite anything in this regulation or the GSI rules, the Minister may make amending rules during the period beginning on the day on which the *Gas Services Information Amendment Regulations (No. 3) 2015* regulation 6 comes into operation and ending on 1 July 2018.
- (6) Despite anything in this regulation or the GSI rules, the Minister may make amending rules during the period beginning on the day on which the *Energy Regulations Amendment Regulations 2021* regulation 29 comes into operation and ending on 31 March 2023.
- (7) [The Coordinator must make a copy of amending rules made by the Minister available on a website maintained by, or on behalf of, the Coordinator.](#)

[Regulation 7 inserted: Gazette 14 Jun 2013 p. 2230-1; amended: Gazette 13 Nov 2015 p. 4639; 23 Nov 2016 p. 5272; 30 Jun 2017 p. 3562; SL 2021/2 r. 29; SL 2021/2 r. 37.]

8. GSI rules generally

- (1) The GSI rules may confer functions, relating to the functions referred to in section 7(2)(a) of the Act, on the operator, the Minister, the Coordinator and the ERA.
- (2) Without limiting anything else in these regulations, the GSI rules may provide for the following —
 - (a) the registration of gas market participants for the purposes of the GSI rules;
 - (b) procedures, fees and other matters relating to registration of gas market participants;
 - (c) governance matters, including financial management, relating to the performance of the functions of the

-
- operator or the Coordinator under these regulations and the GSI rules;
- (d) fees and charges to be paid by registered gas market participants for —
- (i) the performance of the functions of the operator, the Coordinator or the ERA under these regulations and the GSI rules; and
 - (ii) the performance of the functions of the AEMO under the *Australian Energy Market Operator (Functions) Regulations 2015* to the extent to which they are functions under the Act; and
 - (iii) the performance of the functions of the ERA under the *Energy Industry (Rule Change Panel) Regulations 2016* to the extent to which they are functions under the Act;
- (e) the resolution of disputes between gas market participants and the operator;
- (f) the limiting of access to parts of the GBB;
- (g) the Coordinator (including in his or her capacity as a hazard management agency) to direct the operator as to the performance of the functions of the operator in circumstances specified in the rules, being circumstances in the nature of an emergency, a disruption to the supply of natural gas or a threat to the safety, reliability or security of a pipeline or the supply of natural gas;
- (h) a failure to comply with specified requests for information made during or in relation to circumstances specified under paragraph (g) is neither an offence nor a contravention of the GSI rules;
- (i) the monitoring and investigation of compliance with these regulations, the GSI rules and GSI procedures;

r. 8A

- (j) the giving of notices warning a gas market participant that the ERA believes that the participant has contravened a provision of the GSI rules;
 - (k) the suspension of requirements imposed under the GSI rules or GSI procedures;
 - (l) the use or disclosure of protected information by the operator or the ERA;
 - (m) the delegation of powers or duties conferred or imposed by the GSI rules other than the power to —
 - (i) make rules amending the GSI rules;
 - (ii) formulate GSI procedures or amendments of GSI procedures;
 - (n) the establishment, functions and governance of advisory committees;
 - (o) transitional matters;
 - (p) any other matters that are necessary or convenient to be dealt with.
- (3) For the purposes of section 8(1) of the Act, the matters referred to in subregulation (2)(a), (c), (d), (e), (i) and (j) are prescribed.

[Regulation 8 inserted: Gazette 14 Jun 2013 p. 2231-2; amended: Gazette 2 Oct 2015 p. 3932; 13 Nov 2015 p. 4639, 4641 and 4641-2; 24 Jun 2016 p. 2304; 23 Nov 2016 p. 5272-3; 27 Jul 2018 p. 2689; SL 2021/2 r. 30.]

8A. Transitional GSI rules for transfer of functions from IMO to ERA or Rule Change Panel

- (1) Without limiting regulation 8(2)(o), the GSI rules may provide for transitional matters arising in connection with the transfer of a function from the IMO to the ERA or Rule Change Panel including, without limitation, by providing for —
- (a) a thing done or omitted to be done by, to or in relation to the IMO before the transfer to be taken after the transfer

- to have been done or omitted by, to or in relation to the ERA or Rule Change Panel; and
- (b) a right or obligation of the IMO before the transfer to be taken after the transfer to be a right or obligation of the ERA or Rule Change Panel; and
 - (c) a reference to the IMO in an instrument or document made or given for the purposes of these regulations or the GSI rules to be taken after the transfer to be a reference to the ERA or Rule Change Panel.
- (2) A reference in this regulation to the transfer of a function from the IMO to the ERA or Rule Change Panel is a reference to a function —
- (a) being conferred on the ERA or Rule Change Panel (whichever is relevant) under these regulations or the GSI rules; and
 - (b) ceasing to be a function of the IMO under these regulations or the GSI rules.

[Regulation 8A inserted: Gazette 24 Jun 2016 p. 2304-5; amended: Gazette 23 Nov 2016 p. 5273-4.]

8B. Transitional GSI rules for transfer of functions from Rule Change Panel to Coordinator

- (1) In this regulation —
- function*** means a function under these regulations or the GSI rules;
- Rule Change Panel function*** means a function of the Rule Change Panel before 1 July 2021.
- (2) Without limiting regulation 8(2)(o), the GSI rules may provide for transitional matters arising in connection with the transfer to the Coordinator of a Rule Change Panel function.
- (3) The provision that may be made under subregulation (2) includes, without limitation, the following —

- (a) provision for a thing done or omitted to be done by, to or in relation to the Rule Change Panel before a transfer to be taken after the transfer to have been done or omitted by, to or in relation to the Coordinator;
 - (b) provision for a right or obligation of the Rule Change Panel before a transfer to be taken after the transfer to be a right or obligation of the Coordinator;
 - (c) provision for a reference to the Rule Change Panel in an instrument or document made or given before a transfer for the purposes of these regulations or the GSI rules to be taken after the transfer to be a reference to the Coordinator.
- (4) For the purposes of this regulation, a Rule Change Panel function is transferred to the Coordinator if —
- (a) the Rule Change Panel function becomes a function of the Coordinator (with or without modifications); or
 - (b) a function that is substantially the same as, or that is similar to, or that otherwise replaces, the Rule Change Panel function is otherwise conferred on the Coordinator.

[Regulation 8B inserted: SL 2021/2 r. 31; amended: SL 2021/2 r. 38.]

9. Availability of copies of GSI rules

The Coordinator must —

- (a) make a copy of the GSI rules, as in force for the time being, available on a website maintained by, or on behalf of, the Coordinator; and
- (b) if the GSI rules adopt a text of a published document, either as that text exists at a particular time or as it may from time to time be amended — make that text available on that website or specify on that website a place where the text may be obtained.

[Regulation 9 inserted: SL 2021/2 r. 39.]

10. GSI procedures

- (1) The GSI rules may provide for matters relating to the initiation, development, formulation, approval, publication and commencement of —
 - (a) GSI procedures; and
 - (b) amendments of GSI procedures.
- (2) Until GSI rules referred to in subregulation (1) are in operation, the operator may develop, formulate and publish on the GSI website —
 - (a) GSI procedures; and
 - (b) amendments of GSI procedures.
- (3) GSI procedures referred to in subregulation (2) —
 - (a) have effect from the time specified in them; and
 - (b) continue to have effect after GSI rules referred to in subregulation (1) are in operation as if they had been published under those GSI rules.

[Regulation 10 inserted: Gazette 14 Jun 2013 p. 2232-3.]

11. Administration of GSI rules and GSI procedures

- (1) The operator is responsible for the development, in accordance with the GSI rules, of amendments of and replacements for the GSI procedures, to the extent to which the procedures relate to its functions.
- (2) The operator is to maintain a website (the **GSI website**) for the purpose of —
 - (a) publishing the GSOO; and
 - (b) publishing or releasing information to gas market participants that is not published or released via the GBB.

r. 11A

[(3) deleted]

- (4) The ERA is responsible for the development, in accordance with the GSI rules, of amendments of and replacements for the GSI procedures, to the extent to which the procedures relate to its functions.

[(5) deleted]

- (6) The Coordinator is responsible for the development, in accordance with the GSI rules, of amendments of and replacements for the GSI procedures, to the extent to which the procedures relate to the Coordinator's functions.

- (7) The Coordinator is responsible for the development, in accordance with the GSI rules, of amendments of and replacements for the GSI rules.

[Regulation 11 inserted: Gazette 14 Jun 2013 p. 2233; amended: Gazette 13 Nov 2015 p. 4639; 24 Jun 2016 p. 2305; 23 Nov 2016 p. 5275; 27 Jul 2018 p. 2689; SL 2021/2 r. 33; SL 2021/2 r. 40.]

11A. Use of information by Coordinator

- (1) The Coordinator may, directly or indirectly, record, disclose or make use of any information obtained in the course of duty (whether under these regulations, the GSI rules or any other written law or rules) if the recording, disclosing or making use of the information is for the purpose of performing functions under these regulations or the GSI rules.
- (2) The GSI rules may impose restrictions or conditions on the Coordinator's authority to record, disclose or make use of information under subregulation (1).

[Regulation 11A inserted: SL 2021/2 r. 34.]

Part 4 — Obligations to provide information

[Heading inserted: Gazette 28 Jun 2013 p. 2934.]

12. Ongoing requirement to provide information

- (1) A gas market participant of a particular class must give to the operator or the ERA the information specified in the GSI rules in relation to that class of gas market participant.

Penalty: a fine of \$20 000 and a daily penalty of \$2 000.

- (2) The operator or the ERA may, in accordance with the GSI rules, exempt a gas market participant from the requirement in subregulation (1) in relation to some or all of the information the participant would otherwise be required to give.

[Regulation 12 inserted: Gazette 28 Jun 2013 p. 2934; amended: Gazette 13 Nov 2015 p. 4641; 24 Jun 2016 p. 2305; 27 Jul 2018 p. 2689.]

13. Operator may request information

- (1) The operator may, for the purposes of the performance of its function, request a gas market participant to give specified information to the operator.

[(2A) deleted]

- (2B) The ERA may, for the purposes of the performance of its function, request a gas market participant to give specified information to the ERA.

- (2) The request must —
 - (a) be in writing; and
 - (b) specify the information; and
 - (c) specify the occasion or occasions on which, or the frequency at which, the information is to be given; and
 - (d) specify the time within which the information must be given.

- (3) A person given a request must comply with it.
Penalty: a fine of \$20 000 and a daily penalty of \$2 000.
- (4) Subregulation (5) has effect in relation to a request, in effect immediately before the time at which the *Gas Services Information Amendment Regulations (No. 3) 2015* regulation 9(2) comes into operation (**commencement time**), that was made by the IMO for the purposes of the performance of a function under these regulations or the GSI rules that, at commencement time, becomes a function of the AEMO.
- (5) The request becomes, at commencement time, a request made by the AEMO (as the operator) and has effect after commencement time according to its terms.

[Regulation 13 inserted: Gazette 28 Jun 2013 p. 2934-5; amended: Gazette 13 Nov 2015 p. 4639-40; 24 Jun 2016 p. 2305; 27 Jul 2018 p. 2689.]

Part 5 — Enforcement of GSI rules

[Heading inserted: Gazette 28 Jun 2013 p. 2935.]

Division 1 — Preliminary

[Heading inserted: Gazette 28 Jun 2013 p. 2935.]

14. Terms used

In this Part —

civil penalty means a penalty demanded by the ERA under regulation 16(1) or imposed by the Board under regulation 18(1);

civil penalty provision has the meaning given in regulation 15(1).

[Regulation 14 inserted: Gazette 28 Jun 2013 p. 2935;
amended: Gazette 13 Nov 2015 p. 4641-2; 24 Jun 2016
p. 2308.]

Division 2 — Orders and penalties

[Heading inserted: Gazette 28 Jun 2013 p. 2935.]

15. Civil penalty provisions and civil penalties

- (1) The provisions of the GSI rules specified in Schedule 1 are ***civil penalty provisions*** for the purposes of these regulations.
- (2) The category of a civil penalty provision is the category specified for the provision in Schedule 1.

~~(3) The maximum civil penalty amount (which may include a daily amount) that may be demanded from or imposed upon a gas market participant who contravenes a civil penalty provision is prescribed in Schedule 1.~~

~~(4) An amount specified as a daily amount in Schedule 1 in respect of a contravention of a civil penalty provision applies, as part of~~

~~the prescription of the maximum civil penalty amount for the contravention, for each day or part of a day that the contravention continues after —~~

~~— (a) — if a day or time by which the contravention was to be rectified is specified in a warning notice given to the gas market participant — the day by which the contravention was to be rectified; or~~

~~— (b) — in any other case — the day on which the gas market participant is given a warning notice.~~

~~— (5) — For the purposes of subregulation (4), if the contravention consists of a failure to do something required to be done, the contravention is to be regarded as continuing until the act is done, despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.~~

[Regulation 15 inserted: Gazette 28 Jun 2013 p. 2935-6.]

16. Contravention of ~~category A~~ civil penalty provision: ERA may demand civil penalty

(1) If the ERA considers that a gas market participant has contravened a ~~category A~~ civil penalty provision, the ERA may, by notice given to the participant, demand that the participant pay to the operator a civil penalty of an amount that does not exceed the lesser of —

(a) the maximum civil penalty amount prescribed for the contravention in Schedule 1; and

(b) \$20 000.

(1A) In addition, if the ERA considers that a gas market participant has contravened a civil penalty provision, the ERA may, by notice given to the participant, demand that the participant pay to the operator a civil penalty of a daily amount that does not exceed the maximum daily amount prescribed for the

contravention in Schedule 1 if the ERA considers it is appropriate considering the following —

- (a) the circumstances of the contravention;
- (b) the annual turnover of the participant;
- (c) the benefit gained from the contravention by the participant.

(1B) The daily penalty referred to in subregulation (1A) applies for each day or part of a day that the contravention continues after —

- (a) if a day or time by which the contravention was to be rectified is specified in a warning notice given to the gas market participant — the day by which the contravention was to be rectified; or
- (b) in any other case — the day on which the gas market participant is given a warning notice.

(1C) For the purposes of subregulation (1B), if the contravention consists of a failure to do something required to be done, the contravention is to be regarded as continuing until the act is done, despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

- (2) The ERA cannot demand that the participant pay ~~the civil penalty~~ a civil penalty under subregulation (1) or (1A) unless the ERA has already given the participant a warning notice.
- (3) The demand must be made within 6 years after the day on which the participant is considered by the ERA to have contravened the provision.
- (4) The notice must —
 - (a) be in writing; and
 - (b) state the name and address of the participant; and

- (c) state that the notice is given under the *Gas Services Information Regulations 2012* regulation 16; and
- (d) specify the ~~category A~~ civil penalty provision that the ERA considers the participant has contravened; and
- (e) provide details of the contravention, including the act or omission that the ERA considers constitutes the contravention; and
- (f) specify the amount of the civil penalty; and
- (g) inform the participant that the participant may apply to the Board for review of the ERA's decision to demand the penalty; and
- (h) contain a statement to the effect that if the participant does not, within 28 days after the day on which the participant receives the notice —
 - (i) pay to the operator the amount demanded; or
 - (ii) apply to the Board for review of the ERA's decision to demand the penalty,

the ERA may apply to the Board for an order for the payment of the penalty.

- (5) If the participant does not, within 28 days after the day on which the participant received the notice —
 - (a) pay to the operator the penalty demanded in the notice; or
 - (b) apply to the Board for review of the ERA's decision to demand the penalty,

the ERA may, within a further 28 days, apply to the Board for an order for the payment of the penalty demanded in the notice.

- (6) The Board may make an order that the participant pay the civil penalty demanded of the participant if —
 - (a) the ERA made the demand in accordance with this regulation; and

- (b) the participant has not paid the civil penalty to the operator; and
 - (c) the participant has not applied to the Board for review of the ERA's decision to demand the amount.
- (7) If the Board has made an order under regulation 18 that a gas market participant pay a civil penalty in respect of a contravention of a civil penalty provision —
- (a) the ERA may not demand that the participant pay the operator a civil penalty in respect of the contravention; and
 - (b) the Board may not make an order that the participant pay the civil penalty demanded of the participant.
- (8) The ERA cannot make a demand under subregulation (1) in relation to a contravention that occurs before 1 November 2013.
- [Regulation 16 inserted: Gazette 28 Jun 2013 p. 2936-8; amended: Gazette 13 Nov 2015 p. 4641-2; 24 Jun 2016 p. 2305-7 and 2308.]*

17. Contraventions of provisions of GSI rules: applications for orders from Board

- (1) If the ERA considers that a gas market participant has contravened a provision of the GSI rules, the ERA may apply to the Board for one or more orders under regulation 18.
- (2) The application must be made within 6 years after the day on which the participant is considered by the ERA to have contravened the provision.
- (3) No other person may apply for an order under regulation 18.
- (4) The ERA cannot make an application for an order under regulation 18 in relation to a contravention that occurs before 1 November 2013.

*[Regulation 17 inserted: Gazette 28 Jun 2013 p. 2938-9;
amended: Gazette 13 Nov 2015 p. 4641-2; 24 Jun 2016
p. 2308.]*

18. Contraventions of provisions of GSI rules: orders Board may make

- (1) If the Board determines that a gas market participant has contravened a provision of the GSI rules, the Board may make one or more of the following orders —
 - (a) if the provision is a civil penalty provision — an order that the participant pay to the operator a civil penalty of an amount [under regulation 16\(1\) or \(1A\)](#) that does not exceed the [relevant](#) maximum civil penalty amount prescribed for the contravention in Schedule 1;

[\[DD: Note the change for consistency for r. 33 of the WEM Regs.\]](#)
 - (b) an order that the participant cease, within a specified period, the act or omission constituting the contravention;
 - (c) an order that the participant take the action, or adopt the practice, that the Board requires for remedying the contravention or preventing a recurrence of the contravention;
 - (d) an order that the participant implement a specified programme for compliance with the GSI rules.
- (2) Before making an order, the Board must have regard to all relevant matters, including the following —
 - (a) the nature and extent of the contravention;
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention;
 - (c) the circumstances in which the contravention took place;
 - (d) whether the participant has previously been found by the Board in proceedings under the Act to have engaged in any similar conduct;

(e) the consequences of making the order.

- (3) If the ERA has demanded that a gas market participant pay to the operator a civil penalty in respect of the contravention of a civil penalty provision, the Board may not make an order under this regulation that the participant pay a civil penalty in respect of the contravention.

[Regulation 18 inserted: Gazette 28 Jun 2013 p. 2939-40; amended: Gazette 13 Nov 2015 p. 4641-2; 24 Jun 2016 p. 2307.]

19. Enforcement of orders of Board

- (1) The ERA may enforce an order of the Board made under regulation 16(6) or 18(1) by lodging with the Supreme Court a certified copy of it, and an affidavit stating to what extent it has not been complied with.
- (2) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.

[Regulation 19 inserted: Gazette 28 Jun 2013 p. 2940; amended: Gazette 13 Nov 2015 p. 4641-2; 24 Jun 2016 p. 2308-9.]

20. Contravention of provision of GSI rules not an offence

A contravention of a provision of the GSI rules is not an offence.

[Regulation 20 inserted: Gazette 28 Jun 2013 p. 2940.]

21. Conduct contravening more than one civil penalty provision

- (1) If the conduct of a gas market participant constitutes a contravention of 2 or more civil penalty provisions, action may be taken under this Part against the participant in relation to the contravention of any one or more of those provisions.

- (2) However, the participant is not liable for more than one civil penalty in respect of the same conduct.

[Regulation 21 inserted: Gazette 28 Jun 2013 p. 2940-1.]

22. Application of civil penalties received by operator

A civil penalty received by the operator must be credited to the Consolidated Account.

[Regulation 22 inserted: Gazette 28 Jun 2013 p. 2941; amended: Gazette 13 Nov 2015 p. 4641-2; 24 Jun 2016 p. 2307.]

23. ERA to notify certain persons of decision not to take action

- (1) If the operator is given information by a person in relation to a contravention or possible contravention of a provision of the GSI rules by a gas market participant —
- (a) the operator must give the information to the ERA; and
 - (b) if authorised by the person to do so, the operator must give the person's contact details to the ERA.
- (2) Subregulation (3) applies if the ERA is given information in relation to a contravention or possible contravention of a provision of the GSI rules by a gas market participant —
- (a) by a person (otherwise than anonymously); or
 - (b) by the operator under subregulation (1)(a), together with the contact details referred to in subregulation (1)(b).
- (3) If the ERA —
- (a) decides not to investigate the contravention or possible contravention; or
 - (b) following an investigation, decides not to demand a civil penalty under regulation 16 or seek an order from the Board under regulation 18,

the ERA must, in writing, notify the person who gave the information to the ERA or to the operator (whichever is relevant) of the decision.

[Regulation 23 inserted: Gazette 24 Jun 2016 p. 2308.]

24. Applications for orders from Board: procedure

An application by the ERA to the Board for an order under regulation 16(6) or 18(1) must —

- (a) be in writing; and
- (b) state that the applicant is the ERA; and
- (c) specify the provision of these regulations under which the ERA is seeking the order; and
- (d) provide details of the contravention of the GSI rules that the ERA considers has occurred, including the name and address of the gas market participant alleged to have contravened the GSI rules; and
- (e) specify the nature of the order sought.

[Regulation 24 inserted: Gazette 28 Jun 2013 p. 2941-2; amended: Gazette 13 Nov 2015 p. 4641-2; 24 Jun 2016 p. 2308-9.]

Part 6 — Review by the Board

[Heading inserted: Gazette 28 Jun 2013 p. 2942.]

Division 1 — Review by the Board

[Heading inserted: Gazette 28 Jun 2013 p. 2942.]

25. Reviewable decisions and procedural decisions

- (1) In this Part —

procedural decision means a reviewable decision made under a provision listed in the Table to Schedule 2 clause 2;

reviewable decision means a decision that is reviewable under section 12(1) of the Act.

- (2) For the purposes of section 12(1) of the Act, the decisions made under provisions of these regulations or the GSI rules not listed in the Table to Schedule 2 clause 1 are specified.

[Regulation 25 inserted: Gazette 28 Jun 2013 p. 2942.]

26. Review by Board: all reviewable decisions

- (1) A person whose interests are adversely affected by a reviewable decision may apply to the Board for a review of the decision.
- (2) The Board may make an order affirming, setting aside or varying (immediately or as from a specified future date) the decision and, for the purposes of the review, may exercise the same powers with respect to the subject matter of the decision as may be exercised with respect to that subject matter by the person who made the decision.
- (3) The Board may refuse to review a reviewable decision if it considers that the application for review is trivial or vexatious.
- (4) A determination by the Board on the review of a reviewable decision has the same effect as if it were made by the person who made the decision.

(5) If the Board decides that a person's interests are not adversely affected by a reviewable decision, the Board must give the person written reasons for its decision.

(6) This regulation is subject to regulation 27.

[Regulation 26 inserted: Gazette 28 Jun 2013 p. 2942-3.]

27. Review by Board: procedural decisions

(1) In reviewing a procedural decision, the Board is to consider only the question of whether the decision maker followed the procedure required to be followed under these regulations, the GSI rules or the GSI procedures in connection with the making of the decision.

(2) In reviewing a procedural decision, the Board is to be constituted by a legal practitioner only.

(3) In reviewing a procedural decision, the Board must —

(a) if it finds that the decision maker followed the procedure — affirm the decision; or

(b) if it finds that the decision maker did not follow the procedure — set the decision aside and remit the matter to the decision maker.

(4) If the Board remits a matter to the decision maker under subregulation (3)(b), the Board may make recommendations as to how the decision maker should go about making the decision.

[Regulation 27 inserted: Gazette 28 Jun 2013 p. 2943-4.]

28. Application for review

(1) An application for review of a reviewable decision must be made within —

(a) if notice of the making of the decision is required by these regulations or the GSI rules to be given to a person affected by the decision — 28 days after the day on which the notice is given; or

- (b) in any other case — 28 days after the day on which notice of the making of the decision is published in accordance with subregulation (2).
- (2) For the purposes of subregulation (1)(b), notice of a decision is published if the notice is published on the GSI website.
- (3) An application for review of a reviewable decision must —
 - (a) be in writing; and
 - (b) state the name and address of the applicant; and
 - (c) provide details of the decision, including who made the decision and under which regulation or GSI rule the decision was made or purportedly made; and
 - (d) state how the applicant is adversely affected by the decision.
- (4) The Board may extend the time within which an application for review of a reviewable decision may be made, by 14 days, and may do so even though the time has elapsed.
- (5) The Board must give written notice of an application for review of a reviewable decision to the person who made the decision.

[Regulation 28 inserted: Gazette 28 Jun 2013 p. 2944-5.]

29. Effect of application for review

- (1) The making of an application for review of a reviewable decision does not affect the operation of the decision or prevent the taking of action to implement it unless the Board, on application by a party to the proceedings, makes an order under subregulation (2).
- (2) The Board may make an order staying or otherwise affecting the operation or implementation of the whole or a part of the decision if the Board thinks that it is appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the application, after taking into account the interests of any persons who may be affected by the review.

- (3) An order under this regulation —
- (a) may be varied or revoked; and
 - (b) is subject to the conditions specified in the order; and
 - (c) has effect until the earlier of —
 - (i) the end of the period of operation specified in the order (if any); or
 - (ii) the time at which the decision of the Board on the application comes into operation.

[Regulation 29 inserted: Gazette 28 Jun 2013 p. 2945.]

30. Procedure generally

- (1) This regulation applies to proceedings before the Board for a review of a reviewable decision.
- (2) The Board must make its determination on the review within 120 days after receiving the application for review.
- (3) The Board may extend, or further extend, the period referred to in subregulation (2) by a period of 30 days if it considers that the matter cannot be dealt with properly without the extension, either because of its complexity or because of other special circumstances.
- (4) If the Board extends the period, it must, before the end of the period, notify the applicant of the extension and the reasons for it.
- (5) The Board may require the operator or the ERA to give information and other assistance, and to make reports, as specified by the Board for the purposes of the proceedings.
- (6) In the proceedings —
 - (a) it is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person; and

- (b) it is a reasonable excuse for a person to fail to produce a document if producing the document might tend to incriminate the person.
- (7) On the application of a party to the proceedings, the Board may conduct the proceedings in the absence of the public.
- (8) If the Board is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, relating to the proceedings, the Board may, by order —
 - (a) give directions prohibiting or restricting the publication of evidence given before the Board (whether in public or private) or of matters contained in documents filed with, or received in evidence by, the Board; or
 - (b) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceedings, of evidence given before the Board or of matters contained in documents filed with, or received in evidence by, the Board.
- (9) In considering whether to make an order under subregulation (8) the Board is to take as the basis of its consideration the principle that the evidence and the matters contained in the documents should be made available to all parties, but must pay due regard to any reasons given to the Board as to why publication or disclosure of the evidence or matter should be prohibited or restricted.
- (10) A witness summoned to appear at a hearing of the Board is entitled to be paid such allowances and expenses as the Board determines.

*[Regulation 30 inserted: Gazette 28 Jun 2013 p. 2945-7;
amended: Gazette 13 Nov 2015 p. 4641; 24 Jun 2016 p. 2308-9.]*

31. Procedure: conferences

- (1) If an application is made to the Board for review of a reviewable decision, the Board may direct that a conference of the parties to the proceedings be held, presided over by a member of the Board.
- (2) If —
 - (a) a conference is held; and
 - (b) at or after the conference, agreement is reached between the parties as to the terms of a decision of the Board in the proceedings that would be acceptable to the parties; and
 - (c) the terms of the agreement are written down, signed by the parties and given to the Board; and
 - (d) the Board is satisfied that —
 - (i) a decision in those terms would be within the powers of the Board; and
 - (ii) that it would be appropriate to make a decision in those terms,

the Board may, without holding a hearing, make a decision in accordance with those terms.
- (3) At the hearing of proceedings before the Board evidence must not be given, and statements must not be made, about anything that happened at a conference held under subregulation (1) in relation to the proceedings, unless the parties otherwise agree.
- (4) If, in relation to the hearing of proceedings before the Board —
 - (a) a party to the proceedings who was present at a conference objects to the member of the Board who presided over the conference participating in the proceedings; and
 - (b) that party notifies the Board of that objection before or at the start of the hearing,

the member is not entitled to be a member of the Board constituted for the purposes of the proceedings.

[Regulation 31 inserted: Gazette 28 Jun 2013 p. 2947-8.]

32. Parties to proceedings

- (1) If a party to proceedings before the Board has had reasonable notice of the proceedings and fails, without reasonable excuse, either to appear at a conference or at the hearing of the proceedings, the Board may —
 - (a) if the only other party to the proceedings is the person who made the reviewable decision — dismiss the application concerned; or
 - (b) in any other case — direct that the person who failed to appear ceases to be a party to the proceedings.
- (2) If an application has been made by a person for review of a reviewable decision, any other person whose interests are adversely affected by the decision may apply to the Board to be made a party to the proceedings and the Board may, by order, make the person a party to the proceedings.
- (3) An application under subregulation (2) must —
 - (a) be in writing; and
 - (b) state the name and address of the applicant; and
 - (c) provide details of the proceedings to which the applicant is applying to be made a party; and
 - (d) provide details of how the applicant's interests are adversely affected by the decision.

[Regulation 32 inserted: Gazette 28 Jun 2013 p. 2948-9.]

Division 2 — Arbitrator and Board funding

[Heading inserted: Gazette 28 Jun 2013 p. 2949.]

33. Terms used

In this Division —

assessment amount means the amount payable as specified in a notice of assessment under regulation 34(3)(b);

core functions costs, for a quarter, means costs that —

- (a) are incurred in the quarter in connection with the performance by the Arbitrator of the Arbitrator's functions under the *Energy Arbitration and Review Act 1998* in relation to the Board's functions under this Part; and
- (b) cannot be recovered under regulation 35;

determined costs means an amount determined by the Board under regulation 35 to be payable by a party to proceedings;

proceedings includes proceedings that are commenced but discontinued or otherwise not brought to finality;

quarter means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April, but does not include a quarter beginning before 1 July 2013;

standing charge means a charge under regulation 34.

[Regulation 33 inserted: Gazette 28 Jun 2013 p. 2949-50.]

34. Arbitrator funding: standing charges

- (1) At the end of each quarter the operator is liable to pay a charge in connection with the performance by the Arbitrator of the Arbitrator's functions under the *Energy Arbitration and Review Act 1998* in relation to the Board's functions under this Part.
- (2) The amount of the charge is the amount of the core functions costs for the quarter.

- (3) As soon as is practicable after the end of each quarter the Arbitrator must —
- (a) assess the standing charge payable; and
 - (b) give a notice of assessment specifying —
 - (i) the amount of the charge payable; and
 - (ii) the core functions costs used in calculating the charge; and
 - (iii) the day on which the notice of assessment was issued.

[Regulation 34 inserted: Gazette 28 Jun 2013 p. 2950.]

35. Costs and expenses of proceedings before Board

- (1) The Board may fix an amount that represents the cost and expenses of the hearing and determination of particular proceedings before it.
- (2) Without limiting subregulation (1), the cost and expenses of the hearing and determination of particular proceedings include —
- (a) the costs of constituting the Board for the purposes of those proceedings, including the payment of any remuneration and allowances payable under the *Energy Arbitration and Review Act 1998* section 55 to the members of the Board; and
 - (b) any cost and expenses attributable to the provision of services, facilities and support under the *Energy Arbitration and Review Act 1998* section 56(1) for the purposes of those proceedings.
- (3) The Board may determine —
- (a) which of the parties to the proceedings is liable for payment of the whole or any part of an amount fixed under subregulation (1); and
 - (b) the manner in which, and time within which, payment is to be made.

- (4) A party to proceedings must pay any amount determined by the Board to be payable by the person in the manner and within the time determined by the Board.

[Regulation 35 inserted: Gazette 28 Jun 2013 p. 2950-1.]

36. Recovery of unpaid amounts

- (1) The Arbitrator may recover —
- (a) any unpaid assessment amount; or
 - (b) any unpaid determined costs,

in a court of competent jurisdiction as a debt due to the Arbitrator.

- (2) In proceedings under subregulation (1) a certificate —
- (a) purporting to be signed by the Arbitrator; and
 - (b) specifying an amount as being an assessment amount or determined costs; and
 - (c) specifying a person as being liable to pay the specified amount; and
 - (d) stating that the specified amount is unpaid,

is, without proof of the appointment of the Arbitrator or of the authenticity of the signature, sufficient evidence of the matters specified or stated.

[Regulation 36 inserted: Gazette 28 Jun 2013 p. 2951-2.]

37. Matters to be included in Arbitrator's annual report

The annual report submitted by the Arbitrator under the *Financial Management Act 2006* section 61 must include details of the following matters in respect of the financial year to which the annual report relates —

- (a) the total core functions costs;
- (b) the total amount of standing charges;

Energy Regulations Amendment Regulations 2023

Part 6 Review by the Board

Division 2 Arbitrator and Board funding

r. 37

(c) the total determined costs.

[Regulation 37 inserted: Gazette 28 Jun 2013 p. 2952.]

Part 7 — Protection of information

[Heading inserted: Gazette 28 Jun 2013 p. 2952.]

[38A. Deleted: Gazette 27 Jul 2018 p. 2689.]

38. Protection of protected information

- (1) The operator must take all reasonable measures to protect protected information from unauthorised use or disclosure.
- (2) The operator may use or disclose protected information if the use or disclosure is authorised or required under the Act.
- (3) Regulations 39 to 42 do not limit subregulation (2).

[Regulation 38 inserted: Gazette 28 Jun 2013 p. 2952.]

39. Disclosure with prior written consent

The operator is authorised to disclose protected information if it has the written consent of the person from whom the information was obtained.

[Regulation 39 inserted: Gazette 28 Jun 2013 p. 2953.]

40. Disclosure authorised or required by law

- (1) The operator is authorised to disclose protected information as authorised or required under a written law, or a law of the Commonwealth, a State or a Territory.
- (2) A person or body to whom protected information is disclosed under subregulation (1) is, to the extent consistent with the law, limited to using the information in connection with the performance of the functions, or the exercise of the powers, of the person or body for the purposes of which the information was disclosed.

[Regulation 40 inserted: Gazette 28 Jun 2013 p. 2953.]

41. Disclosure for purposes of proceedings before court or tribunal

The operator is authorised to disclose protected information for the purposes of —

- (a) civil or criminal proceedings; or
- (b) proceedings before a tribunal established by or under a written law or a law of the Commonwealth, a State or a Territory.

[Regulation 41 inserted: Gazette 28 Jun 2013 p. 2953.]

42. Other grounds for disclosure

- (1) If a document contains both protected information and other information, the operator is authorised to disclose the document if the protected information is omitted.
- (2) The operator must include a note at the place in the document from which the protected information is omitted to the effect that protected information has been omitted from the document.
- (3) The operator is authorised to disclose protected information if —
 - (a) it does not disclose any elements of the information that could lead to the identification of the person to whom the information relates; or
 - (b) the manner in which it discloses the information does not identify the person to whom that information relates and could not reasonably be expected to lead to the person being identified.
- (4) The operator is authorised to disclose protected information if the information is in the public domain.

[Regulation 42 inserted: Gazette 28 Jun 2013 p. 2953-4.]

Part 8 — Accountability and review of operations

[Heading inserted: Gazette 28 Jun 2013 p. 2954.]

[43-47. Deleted: Gazette 27 Jul 2018 p. 2689.]

48A. Provision of information and advice to Minister: operator's functions

- (1) The Minister may request the operator to —
 - (a) provide information about the performance of its functions; or
 - (b) provide advice, including advice in the nature of feasibility studies and consultancy services.
- (2) The operator must comply with a request.
- (3) Protected information provided in response to a request under subregulation (1) must be identified as such by the operator at the time of providing the information.
- (4) The costs of the operator in complying with a request under subregulation (1)(a) are not recoverable by way of fees and charges to be paid by registered gas market participants under the GSI rules.

[Regulation 48A inserted: Gazette 13 Nov 2015 p. 4641.]

48. Review of GBB and GSOO

- (1) The Minister may, after consulting with the operator, appoint a person to conduct a strategic review of the operation and content of the GBB and the preparation and content of the GSOO.
- (2) The operator must, for the purposes of subregulation (1) —
 - (a) give the person access to information, including protected information, in the possession of the operator; and
 - (b) give the person all reasonable assistance; and

- (c) make staff and facilities available to the person.
- (3) A person who conducts a strategic review cannot use or disclose protected information obtained during the course of the review other than —
 - (a) for the purposes of the review; or
 - (b) under regulation 40 or 41, which apply to the person as if references in those regulations to the operator were references to the person.
- (4) In the report to the Minister on a strategic review, the person conducting the review must not include protected information unless —
 - (a) the person from whom the information was obtained has consented to the inclusion of the information in the report; or
 - (b) it is included in such a way that the identity of the person to whom it relates is not apparent and could not reasonably be worked out; or
 - (c) it is in the public domain.
- (5) The Minister may direct the operator to conduct a review of the operation and content of the GBB and the preparation and content of the GSOO and, as part of that, may direct the operator as to —
 - (a) the scope of the review; and
 - (b) consulting with gas market participants and other persons and entities; and
 - (c) when the review should be undertaken; and
 - (d) reporting to the Minister on the results of the review.

[Regulation 48 inserted: Gazette 28 Jun 2013 p. 2958-9.]

Part 9 — Miscellaneous

[Heading inserted: Gazette 28 Jun 2013 p. 2959.]

49. Maximum civil monetary liabilities

- (1) For the purposes of section 14(3) of the Act, the following maximum amounts are prescribed —
 - (a) in relation to the civil monetary liability of a gas market participant to a person who suffers loss as a result of an act or omission, the lesser of —
 - (i) \$400 000; and
 - (ii) the maximum amount worked out under subregulation (2);
 - (b) in relation to the civil monetary liability of the operator or the IMO, or an officer or employee of the operator or the IMO, to a person who suffers loss as a result of an act or omission — \$1.
- (2) The maximum amount of a person's civil monetary liability under subregulation (1)(a) is worked out by deducting from \$20 million the aggregate of the amounts already paid by the person in the discharge of the person's civil monetary liabilities to persons suffering losses as a result of acts or omissions occurring during the financial year in which the relevant act or omission occurred.

[Regulation 49 inserted: Gazette 28 Jun 2013 p. 2959; amended: Gazette 13 Nov 2015 p. 4641.]

50. Continuing offences: daily penalties

- (1) If, in addition to a penalty specified for an offence under these regulations, a daily penalty is specified for the offence, a person convicted of the offence is also liable to a daily penalty, not exceeding the amount specified, for each day or part of a day during which the offence continues after notice of the alleged offence has been given to the offender.

r. 51

- (2) A notice referred to in subregulation (1) must —
- (a) be in writing; and
 - (b) state the name and address of the person to whom the notice is directed; and
 - (c) specify the particular provision that the person is alleged to have contravened; and
 - (d) provide details of the contravention; and
 - (e) state that criminal proceedings may be instituted against the person.

[Regulation 50 inserted: Gazette 28 Jun 2013 p. 2960.]

51. Supplementary provision for laying documents before Parliament

- (1) If —
- (a) at the commencement of a period referred to in regulation 43(3) a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that that House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is to be regarded as having occurred under subregulation (2) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

[Regulation 51 inserted: Gazette 28 Jun 2013 p. 2960-1.]

Part 10 — Savings and transitional provisions

52. Savings and transitional provisions for *Energy Regulations Amendment Regulations 2023*

(1) In this regulation —

former regulations 15 and 16 means regulations 15 and 16 as in force immediately before 8 a.m. on 1 October 2023.

(2) Former regulations 15 and 16 continue to apply for the purposes of a contravention of a civil penalty provision listed in Schedule 1.

[DD: Note my changes further to your instructions. Is this correct?]

Schedule 1 — Civil penalty provisions and amounts

[r. 15]

[Heading inserted: Gazette 28 Jun 2013 p. 2961.]

Rule	Category	Maximum civil penalty amount
r. 18(5)	A	first contravention: \$10 000 subsequent contraventions: \$20 000
r. 18(6)	B	first contravention: \$40 000 subsequent contraventions: \$80 000
r. 22	B	\$25 000 plus a daily amount of \$5 000
r. 23	B	\$25 000 plus a daily amount of \$5 000
r. 27(4)	A	\$5 000 plus a daily amount of \$1 000
r. 32(6)	A	\$5 000 plus a daily amount of \$1 000
r. 34(3)	A	\$5 000 plus a daily amount of \$1 000
r. 36(3)	A	\$5 000 plus a daily amount of \$1 000
r. 39(4)	A	\$5 000 plus a daily amount of \$1 000
r. 49(1)	A	\$5 000 plus a daily amount of \$1 000
r. 49(2)	A	\$5 000 plus a daily amount of \$1 000
r. 53(1)	A	\$5 000 plus a daily amount of \$1 000
r. 53(2)	A	\$5 000 plus a daily amount of \$1 000
r. 54(1)	A	\$5 000 plus a daily amount of \$1 000
r. 54(2)	A	\$5 000 plus a daily amount of \$1 000
r. 54(3)	A	\$5 000 plus a daily amount of \$1 000
r. 55(1)	A	\$5 000 plus a daily amount of \$1 000
r. 55(2)	A	\$5 000 plus a daily amount of \$1 000
r. 56(1)	A	\$5 000 plus a daily amount of \$1 000
r. 56(4)	A	\$5 000 plus a daily amount of \$1 000
r. 57(1)	A	\$5 000 plus a daily amount of \$1 000
r. 57(2)	A	\$5 000 plus a daily amount of \$1 000

Rule	Category	Maximum civil penalty amount
r. 58(1)	A	\$5 000 plus a daily amount of \$1 000
r. 58(2)	A	\$5 000 plus a daily amount of \$1 000
r. 59(1)	A	\$5 000 plus a daily amount of \$1 000
r. 59(2)	A	\$5 000 plus a daily amount of \$1 000
r. 59(3)	A	\$5 000 plus a daily amount of \$1 000
r. 60	A	\$5 000 plus a daily amount of \$1 000
r. 61(1)	A	\$20 000 plus a daily amount of \$2 000
r. 61(2)	A	\$20 000 plus a daily amount of \$2 000
r. 62(1)	A	\$5 000 plus a daily amount of \$1 000
r. 62(2)	A	\$5 000 plus a daily amount of \$1 000
r. 63(1)	A	\$5 000 plus a daily amount of \$1 000
r. 63(2)	A	\$5 000 plus a daily amount of \$1 000
r. 64(1)	A	\$5 000 plus a daily amount of \$1 000
r. 64(4)	A	\$5 000 plus a daily amount of \$1 000
r. 65(1)	A	\$5 000 plus a daily amount of \$1 000
r. 65(2)	A	\$5 000 plus a daily amount of \$1 000
r. 66(1)	A	\$5 000 plus a daily amount of \$1 000
r. 66(2)	A	\$5 000 plus a daily amount of \$1 000
r. 67(1)	A	\$5 000 plus a daily amount of \$1 000
r. 67(2)	A	\$5 000 plus a daily amount of \$1 000
r. 68(1)	A	\$5 000 plus a daily amount of \$1 000
r. 69(1)	A	\$5 000 plus a daily amount of \$1 000
r. 69(2)	A	\$5 000 plus a daily amount of \$1 000
r. 70(1)	A	\$5 000 plus a daily amount of \$1 000
r. 70(2)	A	\$5 000 plus a daily amount of \$1 000
r. 71(1)	A	\$5 000 plus a daily amount of \$1 000

r. 52

Rule	Category	Maximum civil penalty amount
r. 71(4)	A	\$5 000 plus a daily amount of \$1 000
r. 72(1)	A	\$5 000 plus a daily amount of \$1 000
r. 72(2)	A	\$5 000 plus a daily amount of \$1 000
r. 73(1)	A	\$5 000 plus a daily amount of \$1 000
r. 74(1)	A	\$20 000 plus a daily amount of \$2 000
r. 74(3)	A	\$20 000 plus a daily amount of \$2 000
r. 74(4)	A	\$20 000 plus a daily amount of \$2 000
r. 75(5)	A	\$20 000 plus a daily amount of \$2 000
r. 76(1)	A	\$5 000 plus a daily amount of \$1 000
r. 76(2)	A	\$5 000 plus a daily amount of \$1 000
r. 77(1)	A	\$5 000 plus a daily amount of \$1 000
r. 77(2)	A	\$5 000 plus a daily amount of \$1 000
r. 78(1)	A	\$5 000 plus a daily amount of \$1 000
r. 98(1)	A	\$5 000 plus a daily amount of \$1 000
r. 98(2)	A	\$5 000 plus a daily amount of \$1 000
r. 99(1)	A	\$5 000 plus a daily amount of \$1 000
r. 99(2)	A	\$5 000 plus a daily amount of \$1 000
r. 100(1)	A	\$5 000 plus a daily amount of \$1 000
r. 100(2)	A	\$5 000 plus a daily amount of \$1 000
r. 101(1)	A	\$5 000 plus a daily amount of \$1 000
r. 101(2)	A	\$5 000 plus a daily amount of \$1 000
r. 106(2)	A	first contravention: \$10 000 plus a daily amount of \$2 000 subsequent contraventions: \$20 000 plus a daily amount of \$2 000
r. 115(1)	A	\$10 000 plus a daily amount of \$2 000
r. 115(3)	A	\$10 000 plus a daily amount of \$2 000

Rule	Category	Maximum civil penalty amount
r. 115A(3)	A	\$10 000 plus a daily amount of \$2 000
r. 118(1)	A	\$10 000 plus a daily amount of \$2 000
r. 118(3)	A	\$10 000 plus a daily amount of \$2 000
r. 119(5)	A	\$10 000 plus a daily amount of \$2 000
r. 166	A	\$5 000 plus a daily amount of \$1 000
r. 169(3)	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
r. 169(5)	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000
r. 173(2)	B	first contravention: \$15 000 plus a daily amount of \$500 subsequent contraventions: \$30 000 plus a daily amount of \$1 000

[Schedule 1 inserted: Gazette 28 Jun 2013 p. 2961-5; amended: Gazette 8 Sep 2015 p. 3720.]

Schedule 2 — Reviewable decisions and procedural decisions

[r. 25]

[Heading inserted: Gazette 28 Jun 2013 p. 2966.]

1. Reviewable decisions

For the purposes of regulation 25(2), the following provisions are listed: reg. indicates a provision of these regulations and r. indicates a provision of the GSI rules.

Table

reg. 16(1)	r. 13(1)	r. 28(2)
r. 34(2)	r. 36(2)	r. 39(3)
r. 43(2)	r. 46(3)	r. 48(2)
r. 67(4)	r. 68(3)	r. 73(3)
r. 78(3)	r. 131(1)(a)	r. 131(2)
r. 134(1)(a)	r. 137(1)(a)	r. 156(3)(a)
r. 160(2)		

[Clause 1 inserted: Gazette 28 Jun 2013 p. 2966.]

2. Procedural decisions

For the purposes of definition of *procedural decision* in regulation 25(1), the following provisions of the GSI rules are listed.

Table

r. 13(1)	r. 28(2)	r. 34(2)
r. 36(2)	r. 39(3)	r. 43(2)
r. 46(3)	r. 48(2)	r. 67(4)
r. 68(3)	r. 73(3)	r. 78(3)
r. 131(1)(a)	r. 131(2)	r. 134(1)(a)
r. 137(1)(a)	r. 156(3)(a)	r. 160(2)

[Clause 2 inserted: Gazette 28 Jun 2013 p. 2966-7.]

Clerk of the Executive Council

THIS DRAFT IS PROVIDED IN CONFIDENCE

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COMMENTS

Further to your instructions I attach draft 3 of the above regulations.

Note my comments and queries in the body of the draft.