



Information Paper

Changes to the National Gas Law civil penalties and enforcement regime in Western Australia

Western Australia intends to adopt national reforms to the National Gas Law (NGL) to expand the enforcement powers of economic regulators and introduce a three-tiered civil penalty framework and increased civil and criminal offence penalty amounts.

Background

The national reforms have already commenced in other jurisdictions as a result of the Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020 (SA Act) and the National Gas (South Australia) (Penalties) Variation Regulations 2021 (SA Regulations).

These laws are a culmination of work initiated by the former COAG Energy Council in 2010, where it agreed to a “comprehensive review of the enforcement regimes across all the national energy laws to ensure that the interests of customers continue to be protected, and the integrity of the energy market is maintained.”

The SA Act amended the NGL, National Electricity Law and the National Electricity Retail Law (the National Energy Laws) by:

- expanding the enforcement powers of the regulator, including enabling the regulator to require witnesses to attend for oral examination during investigations (oral evidence power);
- amending the civil penalty framework by introducing a three-tier penalty regime; and
- increasing the civil and criminal offence penalty amounts and introducing an All Groups CPI adjustment every three years, with the first adjustment to occur on 1 July 2023.

Civil penalty provisions

The SA Regulations identify the sections of the NGL and the clauses of the National Gas Rules (NGR) that are to be identified as Tier 1, 2, or 3 offences under the new penalties and enforcement regime and the indexation mechanism to reflect the change in the value of money over time. A summary of the civil penalty provisions is provided in Table 1 below.

Table 1: Summary of Civil Penalty Penalties

| Tier | In Breach | Maximum Penalty |
|--------|-------------|---|
| Tier 1 | Individual | \$500,000 |
| | Corporation | The greater of \$10 million, or 3 times the benefit value obtained by the breach or 10% of annual turnover if the value of the benefit cannot be determined |
| Tier 2 | Individual | \$287,000 (plus \$14,400 per day that the breach continues) |
| | Corporation | \$1,435,000 (plus \$71,800 per day that the breach continues) |
| Tier 3 | Individual | \$33,900 (plus \$3,390 per day that the breach continues) |
| | Corporation | \$170,000 (plus \$17,000 per day that the breach continues) |

If there is a breach of a provision that is classified as a civil penalty provision, the relevant regulator could:

- take action resulting in a court applying a civil penalty up to a maximum amount set out in the NGL, depending on which tier the civil penalty provision was classified under and whether it was an individual or a corporation in breach; or
- issue an infringement notice up to a maximum amount, which differs depending on whether an individual or a corporation is in breach.

Criminal offence provisions

The SA Act also amends the NGL by increasing the maximum criminal offence penalty amounts, as set out in Table 2 below, and introducing an All Groups CPI adjustment every three years.

Table 2: Summary of Criminal Offence Penalties

| Existing amounts | Amended amounts |
|----------------------------|---|
| \$500 | \$620 |
| For individuals: \$2,000 | For individuals: Some provisions have a maximum penalty amount of \$3,400 and other provisions relating to the ERA's information gathering functions have a maximum penalty amount of \$6,300. |
| For corporations: \$10,000 | For corporations: Some provisions have a maximum penalty amount of \$17,000 and other provisions relating to the ERA's information gathering functions have a maximum penalty amount of \$31,500. |

National consultation

A consultation package with proposed classification of existing civil penalty provisions into each tier was released nationally on 13 July 2020, with 14 submissions received. Those submissions were considered when developing the changes to the enforcement powers and civil penalty framework.

Further information about consultation submissions and the outcomes of the process can be found at: <https://www.energy.gov.au/government-priorities/energy-ministers/energy-ministers-publications/proposed-classification-tiers-reform-australian-energy-regulator-civil-penalty-regime>

Adoption of the reforms in Western Australia

South Australia is the lead legislator for NGL changes, which apply automatically in all jurisdictions other than Western Australia, where a modified version of the NGL applies. This is provided for in the *National Gas Access (WA) Act 2009* (WA Act), and is known as the Western Australian National Gas Access Law (WA NGL).

The reforms are to be adopted in Western Australia through the following:

- the [National Gas Access \(WA\) Adoption of Amendments Order 2023](#), which declares that the amendments made by the SA Act are relevant to the WA NGL, with the exception of some clauses that have no relevance in Western Australia (as the sections of the NGL referred to in those clauses have not been adopted in Western Australia);
- the [National Gas Access \(WA\) \(Act Amendment\) Regulations 2023](#), which amends Schedule 1 of the WA Act, modified to suit the Western Australian context where the Economic Regulation Authority (ERA) is the regulator. Specifically, the regulations:
 - remove references to Senior Executive Service (SES) staff assisting the Australian Energy Regulator and replace them with a member of the ERA;
 - remove references to the words “on behalf of the Commonwealth”, as the ERA does not act on behalf of the Commonwealth; and

- the [National Gas Access \(WA\) \(Part 3\) Amendment Regulations 2023](#) which amends the *National Gas Access (WA) (Part 3) Regulations 2009* to prescribe the three tiers of civil penalty provisions, list the provisions (offences) in the NGL and NGR that each tier applies to and introduce an All Groups Consumer Price Index adjustment every three years.

The purpose of this information paper is to advise stakeholders that the Western Australian Government intends to adopt these national reforms and to provide information about the mechanism for implementation of the reforms in Western Australia. While feedback on the policy is not required, Energy Policy WA welcomes stakeholder input on the draft regulatory instruments.

Please email comments to EPWA-Submissions@dmirs.wa.gov.au by 5:00pm on 28 April 2023.

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