



Department of Energy, Mines,
Industry Regulation and Safety
Energy Policy WA

Proposed changes to the Electricity Industry (Wholesale Electricity Market) Regulations 2004

Extending the Minister for Energy's Rule Making
Powers and corrections to civil penalty provisions

4 April 2024

Working together for a **brighter** energy future.

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Energy Policy WA

Level 1, 66 St Georges Terrace
Perth WA 6000

Locked Bag 100, East Perth WA 6892
Telephone: 08 6551 4600

www.energy.wa.gov.au
ABN 84 730 831 715

Enquiries about this report should be directed to:

Name: Bronwyn Gunn, Assistant Director Wholesale Markets

Email: energymarkets@dmirs.wa.gov.au

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1. Introduction

1.1 Background

1.1.1 Minister's Rule Making Powers

The Electricity Industry (Wholesale Electricity Market) Regulations 2004 (WEM Regulations) provide the Minister for Energy (Minister) with time-limited power to make, amend or repeal individual Wholesale Electricity Market (WEM) Rules. These powers have been used by the Minister to make WEM Amending Rules required for the implementation of Stage 1 of the Energy Transformation Strategy (ETS).

These transitional powers allow the Minister to make WEM Rule changes, without having to repeal and replace the entire WEM Rules as required by regulation 7(3).

These powers need to be extended to allow for the ongoing implementation of ETS Stage 1 reforms.

1.1.2 Civil Penalty Framework

Under the WEM Rules, the Economic Regulation Authority (ERA) can issue civil penalties when certain clauses in the WEM Rules are breached.

Schedule 1 of the WEM Regulations outlines the list of clauses in the WEM Rules that are classified as civil penalty provisions. Schedule 1 needs to be updated to correct some previous drafting errors.

1.2 Stakeholder consultation

Stakeholder feedback is invited on the proposals outlined in this consultation paper. Submissions can be emailed to energymarkets@dmirs.wa.gov.au.

Any submissions received will be made publicly available on www.energy.wa.gov.au, unless requested otherwise.

The consultation period closes at 5:00pm (WST) on 26 April 2024. Late submissions may not be considered.

2. Minister for Energy's rule making power

2.1 Issue

The *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WEM Regulations) provide the Minister for Energy (Minister) with time-limited power to make, amend or repeal individual Wholesale Electricity Market (WEM) Rules. These powers have been used by the Minister to make WEM Amending Rules required for the implementation of Stage 1 of the Energy Transformation Strategy (ETS).

These transitional powers allow the Minister to make necessary WEM Rule changes, without having to repeal and replace the entire WEM Rules as required by regulation 7(3).

These transitional rule making powers were initially introduced in 2019 and have been previously extended twice. The Minister's transitional powers are due to expire on 31 October 2025 and, without an extension, this will impede the continued implementation of the WEM reform related changes that are necessary to finalise Stage 1 of the ETS.

While the Minister does have some transitional rule making powers through the *Electricity Industry Amendment (Distributed Energy Resources) Bill 2024*, these are not sufficient for this purpose as they only provide for the Minister to:

- amend a relevant instrument¹ to facilitate, or as a consequence of, the transition in any relevant instrument to the electricity system and market rules;
- amend the relevant Code and any other relevant instrument in relation to the application of the State electricity objective to the Code or instrument; or
- amend the electricity system and market rules to provide for the transition of any matter in any relevant instrument to the electricity system and market rules.

2.2 Proposed solution

Energy Policy WA (EPWA) is seeking to extend the end-date of the Minister's rule-making powers from 31 October 2025 to 31 October 2027, in order to:

- expediently address any issues arising from the implementation of the new WEM (which commenced on 1 October 2023); and
- allow the Minister to make rules for the ongoing implementation of other ETS-related reforms that are still in the process of being developed and implemented.

¹ Relevant instruments include: the Electricity Networks Access Code 2004 ('the Access Code'); the Technical Rules made under the Access Code; the Electricity Industry (Metering) Code 2012; and the Electricity Industry (Network Quality and Reliability of Supply) Code 2005.

3. Civil penalty provisions

3.1 Issue

As the WEM Rules evolve, the list of civil penalty provisions in Schedule 1 needs to be updated to reflect this. The current Schedule 1 was updated following the completion of the Market Power Mitigation Strategy review in 2023.

Throughout the process of drafting multiple tranches of WEM Rules to implement the new WEM that commenced on 1 October 2023, some clauses have been incorrectly referenced as civil penalty provisions or missed and Schedule 1 requires updating.

3.2 Proposed solution

Since the commencement of the new WEM on 1 October 2023, EPWA and the ERA have identified several clauses that have been missed or incorrectly referenced in Schedule 1. These clauses are shown in Table 1 below.

Table 1: Civil penalty provisions to be updated in Schedule 1 of the WEM Regulations

Clause Number in Schedule 1	Action to be taken	Rationale	Civil penalty category
2.16A.2.	Amend clause	This clause was drafted incorrectly in a previous Schedule 1 update and should be 2.16A.3.	C
2.26C.2T	Amend clause	This clause was drafted incorrectly in a previous Schedule 1 update and should be 2.26.2T.	A
3.18A.5	Include clause	Clause 3.18A.5 was identified as a civil penalty provision through an EPWA/ERA review.	C
3.18A.10	Include clause	Clause 3.18A.10 was identified as a civil penalty provision through an EPWA/ERA review.	C
3.20.2	Include clause	Clause 3.20.2 was identified as a civil penalty provision through an EPWA/ERA review.	C
3.21.2	Include clause	Clause 3.21.2 was identified as a civil penalty provision through an EPWA/ERA review.	C
3.18C.2	Include clause	Clause 3.18.2 was identified as a civil penalty provision through an EPWA/ERA review.	C
7.9.10	Remove clause	Clause 7.9.10 was set to [Blank] in the new WEM Rules by the Tranche 6 Amending Rules.	NA
10.1.2	Amend clause	Chapter 10 of the WEM Rules was deleted and replaced by the Tranche 6 Amending Rules. Sections 10.1 to 10.9 (inclusive) were deleted and replaced, including 10.1.2, although, a similar clause was introduced. Schedule 1 is to be amended to remove clause 10.1.2. and replace it with equivalent clause 10.1.1.	B

The clauses that have been identified for inclusion in Schedule 1 have been categorised in accordance with the criteria in Table 2.

Table 2: Criteria for categorising civil penalties

Civil penalty	Impact of non-compliance/ breach of obligation
Category A First - \$10,000 Subsequent - \$20,000 Daily - \$5,000	<ul style="list-style-type: none"> • Administrative difficulties and inefficiencies. • Where non-compliance has not caused material harm to the market. • Does not interfere with achieving the WEM objectives.
Category B First - \$50,000 Subsequent - \$75,000 Daily - \$10,000	<ul style="list-style-type: none"> • May interfere with achieving the WEM objectives. • Non-compliance may be difficult to detect. • May result in avoidance of paying correct fees/charges. • May cause harm to the market. • May have commercial detriment to affected party. • May interfere with market operator's ability to carry out obligations under WEM rules. • May interfere with Coordinator of Energy obligations. • May give unfair advantage. • May prevent resolutions/rectification occurring in a timely manner. • May affect ERAs ability to complete investigations in timely manner.
Category C First - \$100,000 Subsequent - \$100,000 Daily - \$20,000	<ul style="list-style-type: none"> • Likely to distort the market or amount to an abuse of market power. • Likely to cause financial harm. • Likely to give unfair advantage. • Likely to result in financial gain to the contravener. • Likely to affect market operator's ability to manage power system security and reliability. • Likely to undermine operability of connected software systems. • Likely to cause adverse market impact. • Inappropriate disclosure of confidential information.

EPWA also intends to undertake a more thorough review of the current WEM Rules to identify any other existing clauses that should be identified as civil penalty provisions. This will include assessing the WEM Rules arising from more recent reviews, such as the Reserve Capacity Mechanism Review, the Demand Side Response Review and the Cost Allocation Review. This will be subject to further consultation in the second half of 2024.

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