



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

Proposed changes to the Pilbara, GSI and ESM Regulations – transitional rule- making powers and civil penalties

Consultation paper

22 May 2025

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An appropriate citation for this paper is: Proposed changes to the Pilbara, GSI and ESM Regulations – temporary rule-making powers and civil penalties

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1. Introduction

1.1 Background

1.1.1 Minister's rule-making powers

The Electricity Industry (Pilbara Networks) Regulations 2021 (Pilbara Regulations) and Gas Services Information (GSI) Regulations 2012 (GSI Regulations) do not currently provide the Minister for Energy (Minister) with the power to make, amend or repeal individual Pilbara Networks Rules or GSI Rules.

These regulations previously provided the Minister with the powers to make, amend or repeal individual Pilbara Networks Rules and GSI Rules respectively. However, these powers were time-limited and have expired.

The time-limited rule-making powers in the Pilbara Regulations were used on two occasions in 2021. The powers formerly present in the GSI Regulations were used on seven occasions between 2015 and 2021.

Temporary rule-making powers will allow the Minister to make changes to individual GSI Rules or Pilbara Networks Rules, without having to repeal and replace the entire set of Rules.

The reintroduction of time-limited rule-making powers to the Pilbara Regulations is necessary to facilitate the volume of Pilbara Networks Rule changes likely to emerge from the Evolution of the Pilbara Networks Rules Project. The reintroduction of time-limited rule-making powers to the GSI Regulations is necessary to facilitate the of GSI Rule changes which are anticipated following the Review of the GSI Rules and changes to the GSI framework arising from the Allowable Revenue Framework (ARF) Review.

These changes are expected to be staged over time, for example, in the Pilbara Networks, changes to the Harmonised Technical Rules may be prioritised. Changes may also be implemented using a staged approach, depending on their nature and their interdependencies.

Any proposed changes to either set of rules will be subject to a public consultation process, during which there will be an opportunity to comment on the recommendations that emerge from the Evolution of the PNR Project and the GSI Review, respectively.

1.1.2 Civil penalty framework

Under the Electricity Industry (Electricity System and Market) Regulations 2004 (ESM Regulations) the Economic Regulation Authority (ERA) can issue civil penalties when certain clauses in the ESM Rules are breached. The ERA will apply the civil penalty provisions as it deems appropriate based on the specific circumstances of each matter.

EPWA previously advised that during the most recent changes to the civil penalty provisions in Schedule 1, it intended to undertake a more thorough review of the current ESM Rules to identify any other existing clauses that should become a civil penalty provision¹.

¹ Energy Policy WA, [Changes to the Electricity Industry \(Wholesale Electricity Market\) Regulations 2004](#), EPWA website, accessed 30 April 2025

1.1.3 Expansion of immunity provision to include Delegates of AEMO

Previously, the ESM Regulations referred to “market governance participant”, which was a defined term in the *Electricity Industry Act 2004* (the Act) as someone that has been conferred functions under the ESM Rules. This included Delegates of AEMO under ESM Rule 2.1A.3. Pursuant to section 126 of the Act Delegates of AEMO, a market governance participant, were covered by the limited liability for negligence up to the prescribed amount.

Following amendments to the Act, the ESM Regulations were amended to replace references to “market governance participant”, with a new term “specified governance participant”. Specified governance participant is defined in the ESM regulations as AEMO and the Board. As a result, Delegates of AEMO (and employees and officers of Delegates of AEMO) will not be covered by the limited liability for negligence up to the prescribed amount. This exclusion was inadvertent, and EPWA intends to correct this oversight in the next changes to ESM Regulations.

1.2 Stakeholder consultation

Stakeholder feedback is invited on the proposals outlined in section 2.2 and 2.3 of this consultation paper. Submissions can be emailed to energymarkets@demirs.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 19 June 2025. Late submissions may not be considered.

2. Minister for Energy's rule making power

2.1 Issue

The Electricity Industry (Pilbara Networks) Regulations 2021 and GSI Regulations 2012 do not currently provide the Minister for Energy (Minister) with the power to make, amend or repeal individual Pilbara Network Rules or GSI Rules.

Time-limited powers will allow the Minister to make necessary Amending Rules for the Pilbara Network Rules (PNR) and GSI Rules, without having to repeal and replace either set of Rules in its entirety, as is currently required by the respective regulations.

These regulations previously contained time-limited rule making powers that allowed the Minister to make, amend or repeal individual rules. Clause 9(6) of the Pilbara Regulations provided for this between 18 June 2021 and 18 June 2023.

Clause 7(5) of the GSI Regulations gave the Minister this power between 13 November 2015 and 1 July 2018. Clause 7(6) provided for the same power and applied between 15 January 2021 and 31 March 2023.

Temporary rule making powers have historically been used during key reform processes when extensive changes to rules were expected. This has been the case in the WEM, where the Minister's temporary rule-making power has been extended to apply from 31 October 2025 to 31 October 2027 (the same period proposed here) to support reform.

The re-introduction of these powers is necessitated by two reform processes underway:

1. Evolution of the Pilbara Networks Rules Project

- A review of the current rules to identify and implement any changes necessary to evolve the Pilbara Network Rules to ensure they remain fit-for-purpose as renewable energy penetration increases in the North West Interconnected System.

2. Review of the Gas Services Information (GSI) Rules

- The Coordinator, in consultation with the Gas Advisory Board (GAB) and the Australian Electricity Market Operator (AEMO), is assessing the GSI Rules in line with the findings of the WA Domestic Gas Inquiry.

These reform initiatives are expected to result in recommendations for substantial changes. It is crucial that these changes can be implemented in a timely manner, without duplicating the extensive consultation undertaken as part of the respective projects.

Timely reform is essential for meeting the State Electricity Objective (SEO). Lack of ability to implement required reforms in a timely manner could delay or prevent the entry of renewable energy projects and/or negatively impact on overall system security and reliability, and achievement of environment objectives.

2.2 Proposed solution

Energy Policy WA (EPWA) is seeking to introduce temporary rule-making powers for the Minister into the Pilbara Regulations and GSI Regulations. The period of this rule-making power will run from 31 October 2025 to 31 October 2027 and be consistent with the temporary power which currently exists in the ESM Regulations. This will:

- facilitate the rule changes necessary for the ongoing implementation of reforms related to the Pilbara Networks Rules Project; and
- implement any amendments to the GSI Rules arising from the Review of the GSI Rules.

Ensuring that required reforms can be implemented efficiently will assist in achieving the SEO. Rule Changes addressing any identifies gaps in the relevant technical standards will enhance

safety and reliability. Rules facilitating the entrance and operation of renewable energy resources will facilitate the environmental limb of the SEO, including reducing greenhouse gas emissions.

3. Civil Penalty Framework

3.1 Issue

As the ESM 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 changes to the ESM Regulations in 2025². At the time, EPWA indicated a continuing review of Schedule 1.

A continuing review of Schedule 1 has been necessary because of the implementation of multiple tranches of ESM Rules to implement the new Wholesale Electricity Market, that commenced on 1 October 2023, and the outcomes of a number of WEM evolution reviews undertaken since early 2022.

3.2 Proposed solution

Since the completion of the most recent updates to Schedule 1, EPWA has identified clauses that warrant a category C classification.

EPWA considers that clauses identified as category C are the most urgent to implement due to the potentially significant impact a breach of the relevant clause can have on the market and its operations. The potential imposition of a civil penalty should serve to deter behaviour that may negatively affect the market.

These clauses are listed in Appendix A. The identified clauses in Appendix A have been categorised using the criteria in Table 1 below and the State Electricity Objective.

² Energy Policy WA, [Changes to the Electricity Industry \(Wholesale Electricity Market\) Regulations 2004](#), EPWA website, accessed 30 April 2025

Table 1: 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. • Non-compliance has not caused material harm to the market. • Does not interfere with achieving the State Electricity Objective.
Category B First - \$50,000 Subsequent - \$75,000 Daily - \$10,000	<ul style="list-style-type: none"> • May interfere with achieving the State Electricity Objective. • 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 the Market Operator's ability to carry out its obligations. • May interfere with the Coordinator of Energy's obligation. • May affect the ERA's ability to complete investigations in a timely manner. • May give unfair advantage. • May prevent resolutions/rectification occurring in a 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 an unfair advantage. • Likely to result in a financial gain to the contravener. • Likely to affect the 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 will continue to review the ESM Rules to identify clauses that warrant a category A or B classification. EPWA will consult on any other clauses it identifies are warranted to become a civil penalty provision.

Appendices

Appendix A. Category C civil penalty provision to be added to Schedule 1.

Clause Number	Clause Wording	Rationale	Addressing the State Electricity Objective
2.28.7.	<p>A person that owns, controls or operates a Facility containing an Energy Producing System with a System Size of less than 10 MW, but which equals or exceeds 5 MW, and is electrically connected to a transmission system or distribution system which forms part of the South West Interconnected System, or is electrically connected to that system, must apply to AEMO:</p> <p>(a) for registration as a Rule Participant in the Market Participant class; or</p> <p>(b) for an exemption from the requirement to register as a Rule Participant in the Market Participant Class.</p>	Likely to affect market operator's ability to manage power system security and reliability as the Market Operator needs to be aware of them.	The quality, safety, security and reliability of the supply of electricity.
2.29.4.	<p>Subject to clauses 2.29.4M and 2.30B.8D, a person who owns, controls or operates a Facility containing an Energy Producing System with a System Size that equals or exceeds 10 MW and is electrically connected to a transmission system or distribution system which forms part of the South West Interconnected System, or is electrically connected to that system, must register the Facility as a Semi-Scheduled Facility or a Scheduled Facility</p>	Likely to affect market operator's ability to manage power system security and reliability as the Market Operator needs to be aware of them.	The quality, safety, security and reliability of the supply of electricity.
2.30.5A.	<p>Unless the Facilities are Separate Facilities, if a single Credible Contingency Event other than a Network Contingency would result in the disconnection of two or more Facilities, then the Market Participant responsible for each of the Facilities must apply to AEMO to aggregate the relevant Facilities into an Aggregated Facility.</p>	Likely to affect market operator's ability to manage power system security and reliability if facilities are not registered under the correct category when a contingency even occurs.	The quality, safety, security and reliability of the supply of electricity.
2.31.15.	<p>A person who has an application to deregister as a Rule Participant accepted by AEMO must cease trading as a Market Participant by the date and time specified in clause 2.31.11(b)(i).</p>	Likely to cause adverse market impact if deregistered Market Participants continue to trade after their cease date.	The quality, safety, security and reliability of the supply of electricity.

Clause Number	Clause Wording	Rationale	Addressing the State Electricity Objective
2.36A.4.	A Rule Participant must operate and maintain equipment in order to meet and comply with the requirements specified in the WEM Procedure referred to in clause 2.36A.5.	Likely to undermine operability of connected software systems and likely to affect market operator's ability to manage power system security and reliability. Market Participants must ensure they comply with AEMO's communication and control system requirements.	The quality, safety, security and reliability of the supply of electricity.
3.7.22.	Each Network Operator must use its reasonable endeavours to ensure that, at all times, its Network is capable of being restarted or restored in accordance with the System Restart Plan in the event of a system shutdown or major supply disruption	Likely to affect market operator's ability to manage power system security and reliability if the Network Operator is not capable of being restarted or restored per its System Restart plan.	The quality, safety, security and reliability of the supply of electricity.
4.14.3.	A Market Participant holding Certified Reserve Capacity with respect to a Facility subject to an NCESS Contract must nominate all Certified Reserve Capacity under clauses 4.14.1(a) and 4.14.1(c) as applicable.	Likely to cause adverse market impact if an obligated NCESS facility withholds from the Reserve Capacity Mechanism.	The price of electricity.
4.28C.12. (a)	If an additional amount of Reserve Capacity Security is required, the Market Participant must ensure that AEMO holds the benefit of the additional Reserve Capacity Security by the time and date specified in clause 4.1.13; and	Likely to cause financial harm if Market Participants do not ensure that they have paid the correct amount of the Reserve Capacity Security.	The quality, safety, security and reliability of the supply of electricity.
4.4B.1.	Each Network Operator must provide RCM Limit Advice to AEMO in respect to its Network in accordance with this section 4.4B and section 2.27A	Likely to affect market operator's ability to manage power system security and reliability if Network Operators do not provide Limit Advice.	The quality, safety, security and reliability of the supply of electricity.
5.2A.2.	Where a Market Participant enters into an NCESS Contract for a Facility, and the Facility Technology Type for the Facility would ordinarily be capable of being assigned Certified Reserve Capacity, then the Market Participant must apply to AEMO for Certified Reserve Capacity, must meet the requirements of clause 4.8A.3(c) where applicable, and use best endeavours to meet the requirements of	Likely to cause adverse market impact if an obligated NCESS facility does not participate in the Reserve Capacity Mechanism.	The price of electricity.

Clause Number	Clause Wording	Rationale	Addressing the State Electricity Objective
	clause 4.10.1, in respect of the Facility, in respect of each Reserve Capacity Cycle that the Facility would be eligible to participate in over the period of the NCESS Contract.		
6.3C.9.	<p>If a Market Participant's ability to consume or supply energy in any Trading Interval of a Trading Day is less than the maximum level of its STEM supply or consumption as indicated by its current Standing STEM Submission then that Market Participant must either:</p> <p>(a) submit to AEMO Standing STEM Submission data so as to revise its Standing STEM Submission to comply with this clause 6.3C.9; or</p> <p>(b) for each Trading Interval for which the current Standing STEM Submission over-states the Market Participant's supply or consumption capabilities, submit STEM Submission data that complies with section 6.6 to AEMO.</p>	<p>Likely to cause adverse market impact if STEM offers do not reflect the Market Participant's ability and the Market Participant does nothing to address it.</p>	The price of electricity.
7.4.2.	<p>Subject to clause 7.4.37, a Market Participant must make reasonable endeavours to ensure that its Real-Time Market Submission for each of its Scheduled Facilities, Semi-Scheduled Facilities and Interruptible Loads for each Dispatch Interval accurately reflects:</p> <p>(a) for Dispatch Intervals in the Week-Ahead Schedule Horizon:</p> <ol style="list-style-type: none"> the Market Participant's reasonable expectation of the capability of its Registered Facility to be dispatched in the Real-Time Market; any applicable tests required under these WEM Rules, including tests for Reserve Capacity under section 4.25; any Outage Plans applicable to the Dispatch Interval that have not been rejected, withdrawn or subjected to an Outage Recall Direction that affects the Dispatch Interval; and any applicable Forced Outages applying to the Dispatch Interval; 	<p>7.4.2(c) is already a category C civil penalty provision.</p> <p>EPWA is proposing that the entire clause becomes a civil penalty provision due to it likely to cause adverse market impact. The more accurate information in the Week-Ahead Schedule Horizon and the Pre-Dispatch Schedule Horizon should allow for better planning by Market Participants and allow for issues to be identified earlier.</p>	The price of electricity.

Clause Number	Clause Wording	Rationale	Addressing the State Electricity Objective
	<p>(b) for Dispatch Intervals in the Pre-Dispatch Schedule Horizon, all information reasonably available to the Market Participant, including:</p> <ul style="list-style-type: none"> i. the Market Participant's intentions for commitment, control and decommitment; ii. the Market Participant's intentions for providing Frequency Co-optimised Essential System Services; and iii. in the case of a Semi-Scheduled Facility, any changes to the Market Participant's Unconstrained Injection Forecast or Unconstrained Withdrawal Forecast that exceed the Tolerance Range or Facility Tolerance Range applicable to the Semi-Scheduled Facility; and <p>(c) the prices at which the Market Participant intends the Registered Facility will participate in the Real-Time Market for:</p> <ul style="list-style-type: none"> i. Injections; ii. Withdrawals; and iii. providing a Frequency Co-optimised Essential System Service for which the Registered Facility is accredited, <p>as applicable.</p>		
7.4.5.	<p>For the purpose of a Real-Time Market Submission under clause 7.4.4, a Market Participant must:</p> <p>(a) for all Dispatch Intervals within the SESSM Service Timing and the Week Ahead Schedule Horizon:</p> <ul style="list-style-type: none"> i. offer a quantity of the relevant Frequency Co-optimised Essential System Service greater than or equal to the lower of: <ul style="list-style-type: none"> 1. the sum of the relevant Base ESS Quantity and SESSM Availability Quantity; and 2. the lowest Remaining Available Capacity for that Frequency Co-optimised Essential System Service under any Outage applying to the Registered Facility in the Dispatch Interval, 	<p>Likely to cause adverse market impact as offers should accurately reflect FCESS and SESSM obligations. Otherwise, a distorted view can form within the market.</p>	<p>The price of electricity.</p>

Clause Number	Clause Wording	Rationale	Addressing the State Electricity Objective
	<p>or, if there are no applicable Outages, the relevant maximum accredited quantity of that Frequency Co-optimised Essential System Service for the Registered Facility, in Price-Quantity Pairs; and</p> <p>ii. specify an offer price in Price-Quantity Pairs relating to the SESSM Availability Quantity not exceeding the SESSM Offer Cap for the SESSM Award;</p> <p>(b) where the Available Capacity Scenario for a Pre-Dispatch Interval projects a shortfall in an awarded Frequency Co-optimised Essential System Service, ensure that the Real-Time Market Submissions for the Registered Facility and Frequency Co-optimised Essential System Service for that Pre-Dispatch Interval are offering a quantity of the relevant Frequency Co-optimised Essential System Service greater than or equal to the lowest Remaining Available Capacity for that Frequency Co-optimised Essential System Service under any Outage applying to the Registered Facility in the Pre-Dispatch Interval, or, if there are no applicable Outages, the relevant maximum accredited quantity of the Frequency Co-optimised Essential System Service for the Registered Facility; and</p> <p>(c) where the Available Capacity Scenario for a Pre-Dispatch Interval or Dispatch Interval projects that the Registered Facility will be enabled to provide an awarded Frequency Co-optimised Essential System Service, ensure that the Real-Time Market Submissions for the Registered Facility for that Pre-Dispatch Interval or Dispatch Interval:</p> <p>i. present the relevant Essential System Service Enablement Quantity as In-Service Capacity; and</p> <p>ii. offer sufficient capacity as In-Service Capacity for energy to allow the Registered Facility to be dispatched for energy between any relevant Enablement Limits</p>		

Clause Number	Clause Wording	Rationale	Addressing the State Electricity Objective
7.7.11.	Subject to clause 7.7.12, Market Participants must comply with directions given by AEMO in accordance with this section 7.7	Likely to affect market operator's ability to manage power system security and reliability if Market Participants do not follow AEMO's instructions to return the market back to its safe environment.	The quality, safety, security and reliability of the supply of electricity.
7.9.2.	If a Market Participant intends to synchronise a Registered Facility, or any part of it, for which it has not specified a Dispatch Inflexibility Profile, then it must notify AEMO of the expected time of synchronisation by designating the Registered Facility's capacity as In-Service Capacity in the Real-Time Market Submission for the Registered Facility	Likely to affect market operator's ability to manage power system security and reliability if Market Participants do not inform AEMO about the intent to synchronise a registered facility.	The quality, safety, security and reliability of the supply of electricity.
7.9.3.	If a Market Participant intends to desynchronise a Registered Facility, or any part of it, for which it has not specified a Dispatch Inflexibility Profile, the Market Participant must notify AEMO of the expected time of desynchronisation by updating the Real-Time Market Submission for the Registered Facility to reflect the Registered Facility's Available Capacity and In-Service Capacity	Likely to affect market operator's ability to manage power system security and reliability if Market Participants do not inform AEMO about the intent to desynchronise a registered facility.	The quality, safety, security and reliability of the supply of electricity.
7.10.4.	<p>Subject to clause 7.10.6A, if a Semi-Scheduled Facility contains an Electric Storage Resource, a Market Participant must not operate the Electric Storage Resource to increase the deviation of the Semi-Scheduled Facility's Injection or Withdrawal from the Semi-Scheduled Facility's Dispatch Forecast, unless the deviation is:</p> <ul style="list-style-type: none"> (a) instructed as part of the delivery of one or more Essential System Services; (b) to provide a required response as part of the Facility's Registered Generator Performance Standard; or (c) required to comply with a direction issued by AEMO 	Likely to cause adverse market impact if a deviation from a Semi-Scheduled Facility's Dispatch Forecast does not comply with this clause.	The quality, safety, security and reliability of the supply of electricity.

Clause Number	Clause Wording	Rationale	Addressing the State Electricity Objective
7.10.6.	<p>Subject to clause 7.10.6A, if a Market Participant can control the Injection or Withdrawal of a Semi-Scheduled Facility, it must not exercise that control so as to increase the deviation of the Semi-Scheduled Facility's Injection or Withdrawal from the Semi-Scheduled Facility's Dispatch Forecast, unless this deviation is:</p> <ul style="list-style-type: none"> (a) instructed as part of the delivery of one or more Essential System Services; (b) to provide a required response as part of the Facility's Registered Generator Performance Standard; or (c) required to comply with a direction issued by AEMO. 	Likely to cause adverse market impact if a deviation from a Semi-Scheduled Facility's Dispatch Forecast does not comply with this clause.	The quality, safety, security and reliability of the supply of electricity.
7.10.19.	<p>Where a Market Participant receives a Dispatch Instruction to enable a Facility to provide a quantity of Regulation Raise or Regulation Lower in a Dispatch Interval, the Market Participant must ensure that the Facility (subject to the Facility's maximum ramp rates in relation to the provision of the relevant Essential System Service) is able to provide the full enabled MW quantity of response at any time during the Dispatch Interval, according and subject to commands from AEMO's Automatic Generation Control System.</p>	Likely to affect market operator's ability to manage power system security and reliability if a Market Participant does not ensure it can provide the full enabled quantity for a Regulation Service received in a Dispatch Instruction.	The quality, safety, security and reliability of the supply of electricity.

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