

Western Australia

## **Electricity Industry (Independent Market Operator) Repeal Regulations 2018**

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Electricity Industry Act 2004  
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## **Electricity Industry (Independent Market Operator) Repeal Regulations 2018**

Made by the Governor in Executive Council.

### **Part 1 — Preliminary**

#### **1. Citation**

These regulations are the *Electricity Industry (Independent Market Operator) Repeal Regulations 2018*.

#### **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**

- (1) In these regulations —

**AEMO** means the Australian Energy Market Operator Limited (ACN 072 010 327);

**asset** means property of any kind whether tangible, intangible, real or personal and includes (without limitation) any chose in action, goodwill, right, interest or claim of any kind, whether arising from, accruing under, created or evidenced by or the subject of an instrument or otherwise and whether liquidated or unliquidated or actual, contingent or prospective;

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**Coordinator** means the Coordinator of Energy under the *Energy Coordination Act 1994* section 4;

**IMO Regulations** means the *Electricity Industry (Independent Market Operator) Regulations 2004*;

**liability** means any liability, duty or obligation —

- (a) whether liquidated or unliquidated or actual, contingent or prospective; and
- (b) whether owed alone or jointly or jointly and severally with any other person;

**market participant** means —

- (a) a participant as defined in the *Electricity Industry Act 2004* section 121(2); or
- (b) a gas market participant as defined in the *Gas Services Information Act 2012* section 3(1);

**repeal day** means the day on which regulation 4 comes into operation;

**reporting officer** means the person designated as the reporting officer under regulation 8(2);

**right** means any right, power, privilege or immunity whether actual, contingent or prospective;

**WEM rules** means the market rules made under the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* Part 2.

- (2) A term has the same meaning in these regulations as it has in the IMO Regulations, as in force immediately before repeal day.

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Repeal of IMO Regulations

**Part 2**

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**Part 2 — Repeal of IMO Regulations**

**4. Regulations repealed**

The *Electricity Industry (Independent Market Operator) Regulations 2004* are repealed.

**5. Directors and chief executive officer go out of office**

When the IMO Regulations are repealed, the directors and the chief executive officer go out of office.

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**Part 3** Winding up of affairs of IMO

**Division 1** IMO continues for transitional purposes

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## **Part 3 — Winding up of affairs of IMO**

### **Division 1 — IMO continues for transitional purposes**

#### **6. IMO to continue for transitional purposes**

- (1) Despite the repeal of the IMO Regulations, the IMO continues in existence for the purposes of these regulations.
- (2) The IMO has the functions and powers necessary or convenient for the purposes referred to in subregulation (1).
- (3) The reporting officer constitutes the governing body of the IMO and is to —
  - (a) perform, in the name of the IMO, the functions of the IMO under these regulations; and
  - (b) perform any function of the board, or a director, either relating to the functions referred to in paragraph (a) or otherwise necessary for the purposes of these regulations.

### **Division 2 — Residual assets and liabilities of IMO**

#### **7. Dealing with residual assets and liabilities of IMO**

- (1) This regulation applies to an asset or liability that —
  - (a) the IMO had immediately before repeal day; or
  - (b) becomes an asset or liability of the IMO on or after repeal day and before the day fixed by the Minister under regulation 12.
- (2) An asset to which this regulation applies is to be dealt with as the Minister directs.
- (3) A liability to which this regulation applies is to be discharged or otherwise dealt with as the Minister, with the concurrence of the Treasurer, directs.

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- (4) The Minister has all the powers that are necessary or convenient for the purposes of this regulation.
- (5) If an asset or liability is transferred to the State or another entity under this regulation —
- (a) the Minister may, without limiting subregulation (4), specify that an agreement or instrument that relates to or creates the asset or liability has effect on and after the day of transfer as if a reference in it to the IMO were, on that day, replaced by a reference to the successor entity; and
  - (b) any proceedings or remedy that might have been commenced by, or available against or to, the IMO in relation to the asset or liability may be commenced by, or is available against or to, the successor entity; and
  - (c) anything relating to the asset or liability that was done or omitted to be done by, to or in respect of the IMO before the day of transfer and that is of any effect is to be taken, on and after that day, to have been done or omitted to be done by, to or in respect of the successor entity.
- (6) The reference in subregulation (5)(a) to an instrument does not include a reference to an instrument having legislative effect.
- (7) A direction or specification by the Minister under this regulation must be in writing and, to the extent practicable, a copy must be given to each person who has a direct interest in the matter.

**Division 3 — Final reporting, final reconciliation and  
dissolution of IMO**

**8. Reporting officer**

- (1) In this regulation —

***Department*** means the department of the Public Service principally assisting the Minister in the administration of the Act;

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*employee* has the meaning given in the *Public Sector Management Act 1994* section 3(1).

- (2) As soon as practicable after repeal day, the Minister must designate an employee in the Department as the reporting officer for the purposes of these regulations.
- (3) It is a function of the AEMO to assist the reporting officer in the performance of the reporting officer's functions under these regulations.

**9. Final reporting**

- (1) The reporting officer must prepare and give to the Minister a report (the *final report*) in respect of the IMO for the period (the *final reporting period*) commencing on 1 July 2017 and ending immediately before repeal day.
- (2) Despite its repeal, the IMO Regulations regulation 35 has effect, to the extent necessary for the purposes of subregulation (1), as if references in it to the annual report were references to the final report.
- (3) The final report is to include, in addition to the matters required under subregulation (2) —
  - (a) a report on the operations of the IMO during the final reporting period; and
  - (b) a brief description of the transferring of the functions of the IMO to other persons; and
  - (c) a report on the activities undertaken under this Part to wind up the affairs of the IMO, including the reconciliation of a surplus or deficit referred to in regulation 10.
- (4) The final report is in substitution for any financial reporting obligation that the IMO would otherwise have under the WEM rules or the GSI rules in respect of the final reporting period.

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- (5) Despite their repeal, the IMO Regulations regulations 37 and 51 and Schedule 3 have effect, to the extent necessary (and with all necessary modifications) for the purposes of subregulation (2), as if —
- (a) references in them to an annual report were references to the final report; and
  - (b) references in them to a financial year were references to the final reporting period; and
  - (c) Schedule 3 Division 6 were deleted; and
  - (d) the words “but not later than the close of business on the prescribed day” were deleted from Schedule 3 clause 30(2); and
  - (e) Schedule 3 clause 31(b) were deleted.

**10. Final reconciliation**

- (1) The reporting officer must determine whether the IMO had, immediately before repeal day —
  - (a) a surplus or deficit in relation to the recovery of the costs of performing its functions under the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*; and
  - (b) a surplus or deficit in relation to the recovery of the costs of performing its functions under the *Gas Services Information Regulations 2012*.
- (2) The reporting officer must do so in accordance with the WEM rules and the GSI rules.
- (3) The determination of a surplus or deficit is not to take into account the equity of the State.
- (4) The WEM rules and the GSI rules may provide for a surplus to be distributed to, or a deficit to be recovered from, market participants, whether directly or indirectly.

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**Part 3** Winding up of affairs of IMO

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**11. Closing bank accounts**

Once the reporting officer is satisfied that a bank account of the IMO is no longer needed, the reporting officer must close it.

**12. IMO dissolved**

- (1) The IMO ceases to exist at the end of the day fixed, for the purposes of this regulation, by the Minister by notice published in the *Gazette*.
- (2) A notice cannot be published under subregulation (1) unless the Minister is satisfied that there is no reason for the IMO to continue to exist.

**Division 4 — General matters**

**13. Reporting officer entitled to access to information**

- (1) For the purposes of these regulations, the reporting officer is entitled to have access at all reasonable times to all accounts and any other information, documents and records, in the possession of any person, that the reporting officer considers necessary for those purposes.
- (2) The reporting officer may make copies of, or take extracts from, any of those accounts, documents or records or make a record of any of that information.
- (3) A person who has possession of any accounts, information, documents or records of the kind referred to in subregulation (1) must at any reasonable time, on the request of the reporting officer, produce any of those accounts, documents or records, or any of that information, specified in the request.

Penalty for this subregulation: a fine of \$10 000.

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**14. Delivery of and access to records**

- (1) As soon as practicable after repeal day, the IMO must deliver to the Minister all of the accounts, documents and records in the possession of the IMO immediately before repeal day.
- (2) The Minister must ensure that a former director or former officer has access to the accounts, documents and records referred to in subregulation (1), to the extent necessary to deal with a claim made against the former director or former officer, whether made before, on or after repeal day, in relation to the performance of their functions under the IMO Regulations.
- (3) In subregulation (2) —  
*officer* means the chief executive officer or a member of staff.
- (4) The Minister must ensure that the AEMO has access to the accounts, documents and records referred to in subregulation (1), to the extent necessary for the performance of its functions under a written law.
- (5) The rights of access under subregulations (2) and (4) do not require the accounts, documents and records to be retained for longer than required under the relevant record keeping plan under the *State Records Act 2000*.

**15. Registration of documents**

- (1) In this regulation —  
*relevant officials* means —
  - (a) the Registrar of Titles under the *Transfer of Land Act 1893*; and
  - (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; and
  - (c) the Minister administering the *Land Administration Act 1997*; and

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- (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property.
- (2) The relevant officials are to take notice of these regulations and are empowered to record and register in the appropriate manner the documents necessary to show the effect of these regulations or anything done under them.

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Miscellaneous matters

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**Part 4 — Miscellaneous matters**

**16. Effect of regulations on existing rights and obligations**

The operation of these regulations, and any act or omission under them, is not to be regarded as —

- (a) a breach of contract or confidence or other civil wrong;  
or
- (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
- (c) giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any assets, rights or liabilities; or
- (d) causing any contract or instrument to be void or otherwise unenforceable; or
- (e) releasing or allowing the release of any surety.

**17. Application of *Interpretation Act 1984***

The provisions of these regulations are in addition to the relevant provisions of the *Interpretation Act 1984*.

**18. Repeal of these regulations**

- (1) These regulations are repealed at the end of the day fixed, for the purposes of this regulation, by the Minister by notice published in the *Gazette*.

