



Western Australia

## **Electricity Industry (Wholesale Electricity Market) Regulations 2004**

Compare between:

[01 Jul 2016, 02-h0-02] and [24 Nov 2016, 02-i0-02]



## Electricity Industry (Wholesale Electricity Market) Regulations 2004

### Part 1 — Preliminary

**1. Citation**

These are the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*<sup>1</sup>.

**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;

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

**impose requirements** means to regulate conduct and impose obligations;

r. 4A

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**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 by the *Energy Industry (Rule Change Panel) Regulations 2016* regulation 4;

**specified** means specified in the market rules;

**SWIS** means the South West interconnected system;

**System Management** has the meaning given to that term in regulation 13(2);

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

[Regulation 3 amended in Gazette 16 Aug 2005 p. 3829; 2 Oct 2015 p. 3931; 13 Nov 2015 p. 4633; 23 Nov 2016 p. 5265.]

**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 on the commencement of the *Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2015* regulation 4.

[Regulation 4A inserted in Gazette 24 Feb 2015 p. 737.]

**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*<sup>1</sup> —
- (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 in 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) Market rules commence at a time fixed —
  - (a) by the market rules; or
  - (b) in a manner provided for by the market rules.
- (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 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*.

### **7. Amending 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) rules amending, repealing or replacing market rules  
dealing with the matters referred to in regulation 12B(2)  
must be approved by the Minister before they are made.

(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 2017.

*[Regulation 7 amended in Gazette 13 Nov 2015 p. 4633-4;  
23 Nov 2016 p. 5266.]*

## 8. Availability of copies of market rules

The ~~IMO~~ Authority must make a copy of the market rules as in  
force for the time being available —

(a) for inspection free of charge at its principal place of  
business during its ordinary working hours at that place;  
and

(b) on ~~the market's~~ website [maintained by the Authority](#).

*[Regulation 8 amended in Gazette 23 Nov 2016 p. 5266.]*

## 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 in 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 in Gazette 24 Jun 2016 p. 2297.]*

**12. Functions of operator and IMO**

- (1) The market rules may confer functions and impose requirements on the operator and on the IMO.



- (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) The IMO 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, ~~and the market rules.~~
- (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 and the IMO of functions under the market rules.

[(5) *deleted*]

*[Regulation 12 amended in Gazette 13 Nov 2015 p. 4634 and 4637; [23 Nov 2016 p. 5266.](#)]*

#### **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 in Gazette 31 Mar 2006 p. 1321; amended in Gazette 27 Dec 2013 p. 6475.]*

#### **12B. Functions of Rule Change Panel**

- (1) The market rules may confer functions on the Rule Change Panel to the extent to which those functions relate to the matters referred to in regulation 7(1).
- (2) The market rules may make provision for governance matters, including financial management, relating to the performance of the functions of the Rule Change Panel under these regulations and the market rules.

*[Regulation 12B inserted in Gazette 23 Nov 2016 p. 5267.]*

**13. Functions of System Management**

- (1) The market rules are to confer on an entity the function of ensuring that the SWIS is operated in a secure and reliable manner.
- (2) The entity on which the function mentioned in subregulation (1) is conferred is referred to in these regulations as ***System Management***.
- (2a) The function referred to in subregulation (1) is a system management function for the purposes of the definition of ***system management participant*** in section 126(1) of the Act.
- (3) The market rules may confer other functions and impose requirements on System Management.
- (4) System Management must act in a manner consistent with the objectives set out in section 122(2) of the Act.
- (5) The market rules may make provision for financial, accounting and governance matters in relation to the performance by System Management of its functions under the market rules.
- (6) The market rules may authorise the Authority to give directions to, or impose requirements on, System Management as to the performance of its functions under the market rules and System Management must comply with directions so given or requirements so imposed.

*[Regulation 13 amended in Gazette 16 Aug 2005 p. 3830;  
13 Nov 2015 p. 4634 and 4637.]*

**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 in 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, the IMO, System Management 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 in Gazette 13 Nov 2015 p. 4634.]*

#### **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 in 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 —
  - (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

**r. 17B**

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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 in 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 in Gazette 24 Jun 2016 p. ~~2297~~-2297-8; amended in Gazette 23 Nov 2016 p. 5267-8.]

## 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* 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

**r. 18A**

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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 in Gazette 12 Feb 2008 p. 337-8; amended in 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, the IMO or System Management, 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 in Gazette 13 Nov 2015 p. 4635;  
24 Jun 2016 p. 2303.]*

**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 in 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* ~~or~~, the Authority [or the Rule Change Panel](#)) must —
  - (a) implement accounting arrangements to identify costs of the participant in performing functions under these regulations, the *Electricity Industry (Independent Market Operator) Regulations 2004*, 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.

~~(2A)~~ [1A](#) Costs submitted by the AEMO in relation to performing functions under the *Australian Energy Market Operator (Functions) Regulations 2015* must not relate to functions under the *Gas Services Information Act 2012*.

- (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 ~~or~~, the market rules ~~or the~~ [Energy Industry \(Rule Change Panel\) Regulations 2016](#); and
  - [\(c\) costs identified by the Authority as costs incurred in the performance of the functions of the Rule Change Panel under these regulations or the market rules.](#)

[\(2A\)](#) [Costs identified by the Authority under subregulation \(2\)\(b\) in relation to performing functions under the Energy Industry](#)

**r. 21**

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[\(Rule Change Panel\) Regulations 2016 and costs identified by it under subregulation \(2\)\(c\) 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 in 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.](#)]*

## Part 5 — Enforcement of the market rules

*[Heading inserted in Gazette 16 Aug 2005 p. 3830.]*

### Division 1 — Preliminary

*[Heading inserted in 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 in Gazette 16 Aug 2005 p. 3830;  
amended in Gazette 24 Jun 2016 p. 2303.]*

### Division 2 — Investigation

*[Heading inserted in 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 in Gazette 16 Aug 2005 p. 3830;  
amended in 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 in 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 in 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 in 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 in 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 in 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 in Gazette 16 Aug 2005 p. 3835.]*

### **Division 3 — Orders and penalties**

*[Heading inserted in 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 in Gazette 16 Aug 2005 p. 3835-6; amended in 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.
- (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, 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 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 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 in Gazette 16 Aug 2005 p. 3836-9; amended in 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.

*[(6) deleted]*

*[Regulation 32 inserted in Gazette 16 Aug 2005 p. 3839; amended in 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 that does not exceed the maximum civil penalty amount prescribed for the contravention in Schedule 1;

- (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, 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 in Gazette 16 Aug 2005 p. 3839-42; amended in 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 in 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 in 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 in 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
- (b) if the market rules do not provide for such a distribution — credited to the Consolidated Account <sup>2</sup>.

*[Regulation 37 inserted in Gazette 16 Aug 2005 p. 3842-3; amended in 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 in 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 in Gazette 16 Aug 2005 p. 3843-4; amended in Gazette 13 Nov 2015 p. 4635; 24 Jun 2016 p. 2301.]*

#### **Division 4 — Payments under the market rules**

*[Heading inserted in 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 28<sup>th</sup> 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 28<sup>th</sup> 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.

***Electricity Industry (Wholesale Electricity Market) Regulations 2004***

**Part 5** Enforcement of the market rules

**Division 4** Payments under the market rules

**r. 40**

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

## Part 6 — Review by the Board

*[Heading inserted in 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 in 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 provisions of Schedule 1 section 38(3), (4), (5), (8), (9), (11) and (12) of the *Gas Pipelines Access (Western Australia) Act 1998*<sup>3</sup> 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 or the IMO (whichever is relevant);
- (c) in relation to the review of a procedural decision — modifications resulting from regulation 43.

**r. 43**

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- (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.

*[Regulation 42 inserted in Gazette 16 Aug 2005 p. 3846; amended in Gazette 31 Dec 2009 p. 5375; 13 Nov 2015 p. 4636.]*

**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 in 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 in 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

**r. 46**

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- (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 in Gazette 16 Aug 2005 p. 3848-9.]*

**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 in Gazette 16 Aug 2005 p. 3849-50.]*

#### **47. Procedure**

- (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 —
- (a) be in writing; and
  - (b) state the name and address of the applicant; and

**r. 47**

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- (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 in Gazette 16 Aug 2005 p. 3850-1.]*

## Part 7 — The Board

*[Heading inserted in 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 in 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*<sup>3</sup> 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 in 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 in Gazette 16 Aug 2005 p. 3852-3.]*

## **Part 8 — Limitation of liability**

*[Heading inserted in 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) deleted]~~ [the Rule Change Panel](#);

- (f) the Board.

*[Regulation 51 inserted in Gazette 16 Aug 2005 p. 3853; amended in Gazette 31 Mar 2006 p. 1322; 13 Nov 2015 p. 4636; 24 Jun 2016 p. 2302; [23 Nov 2016 p. 5269](#).]*

### **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 —
  - (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 in Gazette 16 Aug 2005 p. 3853-4; amended in 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 in Gazette 16 Aug 2005 p. 3854.]*

## **Part 9 — Provision of information and advice to Minister**

### **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 in Gazette 13 Nov 2015 p. 4636-7.]*



## **Part 10 — Authority may prosecute offences**

*[Heading inserted in 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 in Gazette 24 Jun 2016 p. 2303.]*

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## **Schedule 1 — Civil penalty provisions and amounts**

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

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

<b>Provision</b>	<b>Category</b>	<b>Maximum civil penalty amounts</b>
cl. 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
cl. 2.13.13A	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 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
cl. 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
cl. 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
cl. 2.27.6	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 2.27.12	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 2.27.14	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 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

<b>Provision</b>	<b>Category</b>	<b>Maximum civil penalty amounts</b>
cl. 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
cl. 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
cl. 2.30C.4	B	first contravention: \$15 000 subsequent contraventions: \$30 000
cl. 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
cl. 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
cl. 2.34.2	B	first contravention: \$15 000 subsequent contraventions: \$30 000
cl. 2.34.3	B	first contravention: \$15 000 subsequent contraventions: \$30 000
cl. 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
cl. 2.35.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 2.35.2	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 2.35.3	A	first contravention: \$5 000 subsequent contraventions: \$10 000
cl. 2.36.3	A	first contravention: \$10 000 subsequent contraventions: \$20 000

<b>Provision</b>	<b>Category</b>	<b>Maximum civil penalty amounts</b>
cl. 2.36.4	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 2.37.8(a)	B	first contravention: \$15 000 subsequent contraventions: \$30 000
cl. 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
cl. 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
cl. 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
cl. 2.41.2	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 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
cl. 2.44.4	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 3.4.6	C	first contravention: \$45 000 subsequent contraventions: \$90 000
cl. 3.4.8	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.5.8	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 3.5.10	C	first contravention: \$45 000 subsequent contraventions: \$90 000
cl. 3.6.5	C	first contravention: \$50 000 subsequent contraventions: \$100 000

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<b>Provision</b>	<b>Category</b>	<b>Maximum civil penalty amounts</b>
cl. 3.6.6B	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 3.8.2(c)	B	first contravention: \$25 000 plus a daily amount of \$5 000 subsequent contraventions: \$50 000 plus a daily amount of \$10 000
cl. 3.11.7A	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 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
cl. 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
cl. 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
cl. 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
cl. 3.17.6	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 3.18.7	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.18.8	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.18.9	C	first contravention: \$40 000 subsequent contraventions: \$80 000

<b>Provision</b>	<b>Category</b>	<b>Maximum civil penalty amounts</b>
cl. 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
cl. 3.19.1	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.19.8	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 3.20.2	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 3.21.4	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.21A.2	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 3.21A.6	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 3.21A.12	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 3.21A.13(a)	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 3.21B.1	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 3.21B.2	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 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
cl. 4.10.2	C	first contravention: \$40 000 subsequent contraventions: \$80 000

<b>Provision</b>	<b>Category</b>	<b>Maximum civil penalty amounts</b>
cl. 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
cl. 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
cl. 4.22.5(b)	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 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
cl. 6.5.1A	B	first contravention: \$20 000 subsequent contraventions: \$40 000
cl. 6.6.3	C	first contravention: \$100 000 subsequent contraventions: \$100 000
cl. 6.7.3	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 6.7.4	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 6.19.9	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 7.5.5	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7.6A.2(g)	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.6A.3(c)	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 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

<b>Provision</b>	<b>Category</b>	<b>Maximum civil penalty amounts</b>
cl. 7.6A.6	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 7.7.6(b)(i)	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7.7.6A	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.9.1	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.9.3	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.9.5	C	first contravention: \$45 000 subsequent contraventions: \$90 000
cl. 7.9.7	C	first contravention: \$45 000 subsequent contraventions: \$90 000
cl. 7.9.9	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.9.10	C	first contravention: \$45 000 subsequent contraventions: \$90 000
cl. 7.9.12(a)	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.10.1	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7.10.3	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7.10.3A	C	first contravention: \$40 000 subsequent contraventions: \$80 000
cl. 7.10.6	C	first contravention: \$35 000 subsequent contraventions: \$70 000
cl. 7.10.6A(a)	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7.11.7	C	first contravention: \$40 000 subsequent contraventions: \$80 000



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<b>Provision</b>	<b>Category</b>	<b>Maximum civil penalty amounts</b>
cl. 7.11.9	C	first contravention: \$30 000 subsequent contraventions: \$60 000
cl. 7A.2.8	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7A.2.9	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7A.2.13	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7A.2.17	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7B.2.10	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7B.2.11	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 7B.2.15	C	first contravention: \$50 000 subsequent contraventions: \$100 000
cl. 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
cl. 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
cl. 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
cl. 8.3.5	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 8.4.1	B	first contravention: \$25 000 subsequent contraventions: \$50 000

Provision	Category	Maximum civil penalty amounts
cl. 8.5.2	B	first contravention: \$20 000 subsequent contraventions: \$40 000
cl. 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
cl. 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
cl. 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
cl. 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
cl. 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
cl. 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
cl. 10.1.2	B	first contravention: \$25 000 subsequent contraventions: \$50 000
cl. 10.2.4	B	first contravention: \$25 000 subsequent contraventions: \$50 000

*[Schedule 1 inserted in Gazette 5 Jun 2012 p. 2354-60; amended in Gazette 24 Feb 2015 p. 738.]*

## Schedule 2 — Reviewable decisions and procedural decisions

[r. 4A and 41]

*[Heading inserted in Gazette 16 Aug 2005 p. 3861; amended in 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)	cl. 2.3.8	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. 2.10.14
cl. 2.13.28	cl. 2.28.16	cl. 2.30.4
cl. 2.30.8	cl. 2.31.10	cl. 2.32.7E(b)
cl. 2.34.7	cl. 2.34.7A(b)(ii)	cl. 2.34.7C(c)
cl. 2.34.11	cl. 2.37.1	cl. 2.37.2
cl. 2.37.3	cl. 4.9.9	cl. 4.15.1
cl. 4.20.11	cl. 4.27.7	cl. 4.28.7
cl. 7A.1.11	cl. 10.2.1	

*[Clause 1 inserted in Gazette 16 Aug 2005 p. 3861-2; amended in 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**

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. 2.10.14	

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

**cl. 2**

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## Notes

- <sup>1</sup> This is a compilation of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Electricity Industry (Wholesale Electricity Market) Regulations 2004</i>	30 Sep 2004 p. 4189-205	Regulations other than r. 4(3)(b): 30 Sep 2004; r. 4(3)(b): 1 Oct 2004 (see r. 4(3) and the <i>Wholesale Electricity Market Rules</i> published in <i>Gazette</i> 5 Oct 2004 r. 1.8.2 and 1.9.7)
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2005</i>	16 Aug 2005 p. 3825-62	16 Aug 2005 (see r. 2)
<i>Electricity Corporations (Consequential Amendments) Regulations 2006 Pt. 3</i>	31 Mar 2006 p. 1299-357	1 Apr 2006 (see r. 2)
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No. 2) 2006</i>	29 Dec 2006 p. 5881-3	29 Dec 2006
<b>Reprint 1: The <i>Electricity Industry (Wholesale Electricity Market) Regulations 2004</i> as at 23 Feb 2007</b> (includes amendments listed above)		
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2008</i>	12 Feb 2008 p. 337-8	r. 1 and 2: 12 Feb 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 13 Feb 2008 (see r. 2(b))
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2009</i>	31 Dec 2009 p. 5375-7	1 Jan 2010 (see r. 2 and <i>Gazette</i> 31 Dec 2009 p 5327)
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2011</i>	25 Nov 2011 p. 4870-1	r. 1 and 2: 25 Nov 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 26 Nov 2011 (see r. 2(b))
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2012</i>	14 Feb 2012 p. 667-8	r. 1 and 2: 14 Feb 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 15 Feb 2012 (see r. 2(b))

Citation	Gazettal	Commencement
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No. 2) 2012</i>	5 Jun 2012 p. 2353-60	r. 1 and 2: 5 Jun 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2012 at 8:00 WST (see r. 2(b))
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2013</i>	10 May 2013 p. 1935-6 (as amended 31 May 2013 p. 2117)	r. 1 and 2: 10 May 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jun 2013 (see r. 2(b))
<b>Reprint 2: The <i>Electricity Industry (Wholesale Electricity Market) Regulations 2004</i> as at 16 Aug 2013</b> (includes amendments listed above)		
<i>Electricity Corporations (Consequential Amendments) Regulations 2013</i> r. 9	27 Dec 2013 p. 6469-79	1 Jan 2014 (see r. 2(c) and <i>Gazette</i> 27 Dec 2013 p. 6465)
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2015</i>	24 Feb 2015 p. 737-8	r. 1 and 2: 24 Feb 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 25 Feb 2015 (see r. 2(b))
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No. 2) 2015</i>	2 Oct 2015 p. 3930-1	r. 1 and 2: 2 Oct 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 3 Oct 2015 (see r. 2(b))
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No. 3) 2015</i>	13 Nov 2015 p. 4633-7	r. 1 and 2: 13 Nov 2015 (see r. 2(a)); r. 5: 14 Nov 2015 (see r. 2(b)); Regulations other than 1, 2, 5, 7, 17(2) and 18: 30 Nov 2015 8.00 am (see r. 2(d)); r. 7, 17(2) and 18: 1 Jul 2016 8.00 am (see r. 2(c) and <i>Gazette</i> 31 May 2016 p. 1657)
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No. 4) 2015</i>	25 Nov 2015 p. 4741-2	r. 1 and 2: 25 Nov 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 26 Nov 2015 (see r. 2(b))
<i>Electricity Industry (Wholesale Electricity Market) Amendment Regulations 2016</i>	24 Jun 2016 p. 2296-303	r. 1 and 2: 24 Jun 2016 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2016 (see r. 2(b) and <i>Gazette</i> 30 Jun 2016 p. 2695)

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<a href="#"><u>Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No. 2) 2016 (other than r. 9)</u></a>	<a href="#"><u>23 Nov 2016 p. 5265-9</u></a>	<a href="#"><u>r. 1 and 2: 23 Nov 2016 (see r. 2(a)); Regulations other than r. 1, 2 and 9: 24 Nov 2016 (see r. 2(c) and Gazette 23 Nov 2016 p. 5249)</u></a>

<sup>1a</sup> [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

### **Provisions that have not come into operation**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<a href="#"><u>Electricity Industry (Wholesale Electricity Market) Amendment Regulations (No. 2) 2016 r. 9<sup>5</sup></u></a>	<a href="#"><u>23 Nov 2016 p. 5265-9</u></a>	<a href="#"><u>3 Apr 2017 (see r. 2(b))</u></a>

<sup>2</sup> Under the *Financial Legislation Amendment and Repeal Act 2006* Sch. 2 cl. 13 a reference to the Consolidated Fund may, where the context so requires, be read as if it had been amended to be a reference to the Consolidated Account. This reference was changed under the *Reprints Act 1984* s. 7(5)(a).

<sup>3</sup> Now known as the *Energy Arbitration and Review Act 1998*.

<sup>4</sup> [Footnote no longer required.](#)

<sup>5</sup> [On the date as at which this compilation was prepared, the \*Electricity Industry \(Wholesale Electricity Market\) Amendment Regulations \(No. 2\) 2016\* r. 9 had not come into operation. It reads as follows:](#)

#### **9. Regulation 12B amended**

[After regulation 12B\(2\) insert:](#)

[\(3\) The Rule Change Panel is responsible for the development, in accordance with the market rules, of amendments of and replacements for the market rules.](#)