



Western Australia

Energy Industry (Rule Change Panel) Regulations 2016

Compare between:

[15 Jan 2021, 00-b0-00] and [01 Jul 2021, 00-c0-00]

Energy Industry (Rule Change Panel) Regulations 2016

Part 1 — Preliminary

1. Citation

These regulations are the *Energy Industry (Rule Change Panel) Regulations 2016*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — 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

In these regulations —

Authority has the meaning given in the *Electricity Industry Act 2004* section 3;

~~confidential~~ *Coordinator* means the Coordinator of Energy referred to in the *Energy Coordination Act 1994* section 4;

~~document~~ includes any record of information ~~means,~~ irrespective of how the information given to the Rule Change Panel under an obligation under a written law, the GSI rules is recorded or the market rules —

~~(a) — that is specified~~ stored or able to be confidential ~~by recovered, and includes~~ the ~~person who provided it (unless it~~

~~is not reasonable in the circumstances to so specify the following —~~

~~(a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else;~~

~~(b) any thing on which information); or is recorded or stored, whether electronically, magnetically, mechanically or by some other means;~~

~~(b) that by its nature is confidential; or~~

~~(c) that is classified as confidential under the GSI rules or the market rules;~~

~~**executive officer** means the executive officer made available by the Authority under regulation 23;~~

GSI rules means rules made under the *Gas Services Information Regulations 2012* Part 3;

~~**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);~~

market rules has the meaning given in the *Electricity Industry Act 2004* section 123(1);

Rule Change Panel means the body that was established under regulation 4;

~~**staff member** has~~Notes for this definition:

1. The Rule Change Panel is abolished under regulation 3A (inserted by the ~~meaning given in~~*Energy Regulations Amendment Regulations 2021* regulation 26) at the ~~Economic~~ beginning of 1 July 2021.

2. Regulation ~~Authority Act 2003~~ section 3.

~~Part 2 — Rule Change Panel~~

~~Division 1 — Establishment~~

~~4.~~ is deleted by the *Energy Regulations Amendment Regulations 2021* regulation 27 at the beginning of 1 July 2021.

Rule Change Panel ~~established~~ **document** means a document that, immediately before 1 July 2021, is in the possession or control of —

- (1) ~~A body called~~ a the Rule Change Panel ~~is established~~;
or
(2) ~~The~~ b the Authority as part of, or otherwise in relation to, its function under regulation 23;

Note for this definition:

Regulation 23 is deleted by the *Energy Regulations Amendment Regulations 2021* regulation 27 at the beginning of 1 July 2021.

Rule Change Panel ~~consists of 3 members appointed by the Minister.~~

- ~~(3) Each member of the Rule Change Panel is to be~~ **function** means a natural person.

~~5. — Remuneration and allowances~~

- ~~(1) — A member~~ **function** of the Rule Change Panel is entitled to the remuneration and allowances, ~~if~~ before 1 July 2021 under any, that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner. following —
- ~~(2) — The remuneration and allowances and conditions of office of a member of the Rule Change Panel must not be varied, while the member is in office, so as to become less favourable to the member.~~

~~Division 2 — Functions and powers~~

~~6. — Functions~~

~~The Rule Change Panel has the functions conferred on it by —~~

~~(a) (a) these regulations;~~

~~(b) the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*; ~~and~~~~

~~(bc) the *Gas Services Information Regulations 2012*; ~~and~~~~

~~(e) ~~the d~~ GSI rules; ~~and~~~~

~~(d) ~~the or~~ market rules;:~~

~~7. — Powers~~

~~The Rule Change Panel legal advice means any legal advice, or other information subject to legal professional privilege, that —~~

~~(a) relates to a Rule Change Panel function; and~~

~~(b) is, or is contained in, a Rule Change Panel document.~~

~~[Regulation 3 amended: SL 2021/2 r. 25.]~~

Part 1A — Abolition of Rule Change Panel ~~has all the powers it needs to perform its functions.~~

~~8. Delegation~~

~~The~~ [Heading inserted: SL 2021/2 r. 26.]

3A. Rule Change Panel ~~cannot delegate its functions.~~abolished

~~Division 3 — Constitution and proceedings~~

~~9. Appointment~~ At the beginning of members

~~(1) In making appointments to July 2021, the Rule Change Panel the Minister must, if possible, ensure that each appointment is made after consultation with the chairperson of the~~ is abolished (and its members go out of office).

[Regulation 3A inserted: SL 2021/2 r. 26.]

3B. Function of Authority relating to abolition of Rule Change Panel.

~~(2) In making an appointment to the Rule Change Panel the Minister must ensure~~ (1) It is a function of the Authority to do anything that the person appointed has experience, skills or qualifications relevant to the functions Authority considers necessary or convenient —

(a) for the purpose of ensuring the orderly winding-up of the affairs of the Rule Change Panel; or

(b) otherwise in consequence of the abolition of the Rule Change Panel or the transfer to a person or body of a Rule Change Panel function.

~~(3) Without limiting subregulation (2), experience, skills or qualifications relevant to the functions of the Rule Change Panel include~~ 1), the Authority —

- ~~(a) knowledge must take possession or control of the electricity or gas industry including the electricity or gas markets;~~
 - ~~(b) knowledge of the legislation relevant to the electricity or gas industry;~~
 - ~~(c) tertiary qualifications including in engineering, economics, finance or law;~~
 - ~~(d) experience in the electricity or gas industry in engineering, economics, finance, law or senior management;~~
 - ~~(e) experience or qualifications in public policy or public administration.~~
- ~~(4) The following persons are not eligible to be appointed as members of the all Rule Change Panel—~~
- ~~(a) the executive officer;~~
 - ~~(b) a member (as defined documents not already in the *Economic Regulation* possession or control of the Authority *Act 2003* section 3) of the Authority; and~~
 - ~~(c) a person who is employed in the Public Service;~~
 - ~~(d) a market participant;~~
 - ~~(e) a person who is employed or engaged by a market participant.~~

10. ~~Chairperson~~

- ~~The Minister is to designate one member of the~~
- ~~(b) must provide to the Coordinator —~~
- ~~(i) all Rule Change Panel ~~to be the chairperson of~~ the legal advice; and~~
 - ~~(ii) as and when requested by the Coordinator, any other Rule Change Panel.~~

11. Term of office

- ~~(1) Subject to subregulation (2), a member of the document or any other information contained in a Rule Change Panel holds office for the period, not exceeding 4 years, specified in the appointment document;~~
- ~~(2) A member of the _____ and~~
- ~~(c) may otherwise provide any Rule Change Panel whose term of office expires without a person having been appointed to fill the vacancy continues in office (unless the person resigns or is removed from office) until a person is appointed to fill the vacancy.~~
- ~~(3) A member of the document, or any information contained in a Rule Change Panel is eligible for reappointment once.~~
- ~~(4) A member of the document, to the Coordinator or to any other person or body to whom a Rule Change Panel need not be appointed on a full-time basis. function is transferred; and~~

12. Casual vacancies

- ~~(1) In this regulation —~~
- ~~*insolvent* means a person who is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws.~~
- ~~(2) A member of the _____ (d) _____ may otherwise directly or indirectly record, disclose or make use of any Rule Change Panel may resign from office by notice in writing given to the Minister.~~
- ~~(3) The Minister may remove a member of the document, or any information contained in a Rule Change Panel from office on the grounds of —~~

- ~~———— (a) — mental or physical incapacity to carry out the member's duties in a satisfactory manner; or~~
 - ~~———— (b) — the member being an insolvent; or~~
 - ~~———— (c) — neglect of duty; or~~
 - ~~———— (d) — misconduct; or~~
 - ~~———— (e) — incompetence; or~~
 - ~~———— (f) — the member being a person referred to in regulation 9(4); or~~
 - ~~———— (g) — the member's absence, without leave or reasonable excuse, from 3 consecutive meetings of the Rule Change Panel of which the member had notice.~~
- ~~———— (4) — If, before the term of office for which a person was appointed as a member of the Rule Change Panel expires, the person dies, resigns or is removed from office, the office becomes vacant.~~

13. — Alternate members

- ~~———— (1) — The Minister may in writing appoint a person to act temporarily in place of a member of the Rule Change Panel who is unable to act.~~
- ~~———— (2) — While acting in accordance with the appointment the alternate member is taken to be, and to have any relevant entitlement of, a member of the Rule Change Panel.~~
- ~~———— (3) — An act or omission of an alternate member is not to be questioned on the ground that the occasion document, for the appointment or acting had not arisen or had ceased. purpose of performing —~~
- ~~———— (4) — If a member of the Rule Change Panel (the *member*) is unable to act in relation to a matter because of regulation 21(1), an alternate member may act in relation to that matter even though the member is at the same time acting in relation to another matter.~~

14. Quorum

~~Three members of the Rule Change Panel constitute a quorum of the Rule Change Panel.~~

15. Presiding at meetings

~~(1) The chairperson if present is to preside at a meeting of the Rule Change Panel.~~

~~(2) If the chairperson is not presiding, the members of the Rule Change Panel present at the meeting are to appoint one of their number to preside.~~

16. Voting

~~(1) At a meeting of the Rule Change Panel each member of the Rule Change Panel present has a deliberative vote unless regulation 21(1) prevents the member from voting.~~

~~(2) A question is resolved according to how a majority of the votes are cast.~~

17. Telephone and video meetings

~~The presence of a person at a meeting of the Rule Change Panel need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.~~

18. Resolution without meeting

~~A resolution in writing signed or otherwise assented to in writing by 3 members of the Rule Change Panel has the same effect as if it had been passed at a meeting of the Rule Change Panel.~~

19. ~~Minutes and records~~

~~The Rule Change Panel must ensure that an accurate record is kept of—~~

~~(a) the proceedings at each meeting of the Rule Change Panel; and~~

~~(b) each resolution made under regulation 18.~~

20. ~~Disclosure of material personal interest~~

~~(1) A member of the Rule Change Panel who has a material personal interest in a matter being considered or about to be considered by the Rule Change Panel must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to each other member of the Rule Change Panel.~~

~~Penalty for this subregulation: a fine of \$6 000.~~

~~(2) If a disclosure under subregulation (1) is not made in person at a meeting of the Rule Change Panel, it must be made in writing.~~

21. ~~Voting by interested member~~

~~(1) A member of the Rule Change Panel who has a material personal interest in a matter being considered or about to be considered by the Rule Change Panel—~~

~~(a) must not vote, whether at a meeting or (i)
the Authority's function under regulation 18, on the matter; and~~

~~(b) must not be present while the matter is being considered at a meeting.~~

~~(2) Subregulation (1) does not apply if the Rule Change Panel has at any time passed a resolution that—~~

~~(a) specifies the member of the Rule Change Panel, the interest and the matter; and~~

- ~~———— (b) — states that the members of the Rule Change Panel voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.~~
- ~~———— (3) — A reference in subregulation (1)(a) or (b) to a matter includes a reference to a proposed resolution under subregulation (2) in respect of the matter.~~
- ~~———— (4) — Despite regulation 14, a resolution under subregulation (2) is passed if 2 members of the Rule Change Panel vote for it.~~
- ~~———— (5) — The Minister may in writing declare that subregulation (1) does not apply in relation to a specified matter either generally or in voting on particular resolutions.~~
- ~~———— (6) — The Minister must, within 14 days after a declaration under subregulation (5) is made, cause a copy of the declaration to be laid before each House of Parliament or dealt with in accordance with regulation 30.~~

22. — Rule Change Panel to determine own procedures

- ~~———— The Rule Change Panel may determine its own procedures except to the extent that its procedures are set out in ———~~
- ~~———— (a) — these regulations; or~~
- ~~———— (b) — the GSI rules; or~~
- ~~———— (c) — the market rules.~~

Division 4 — Administrative support for Rule Change Panel

23. — Authority to provide administrative support

- ~~———— (1) — There is to be an executive officer of the Rule Change Panel.~~
- ~~———— (2) — The Authority must ———~~
 - ~~———— (a) — make available the executive officer and any other staff member whose assistance the Rule Change Panel may reasonably require; and~~

Energy Industry (Rule Change Panel) Regulations 2016

Part 1A Abolition of Rule Change Panel

Division 4 Administrative support for Rule Change Panel

r. 23

~~———— (b) — make available the services and facilities that the Rule Change Panel may reasonably require on the terms agreed to by the Rule Change Panel and the Authority; and~~

~~———— (c) — provide any other assistance the Rule Change Panel or the members of the Rule Change Panel may reasonably require for the Rule Change Panel to perform its functions.~~

~~———— (3) — It is a function of the Authority to —~~

~~———— (a) — make available the executive officer, staff members, services and facilities referred to in subregulation (2); and~~

~~———— (b) — provide the assistance referred to in subregulation (2).~~

~~Part 3 — Accountability and relationship of Rule Change Panel with Minister~~

~~24. — Consultation~~

~~— The Rule Change Panel and the Minister, at the request of either, are to consult together, either directly or through appropriate representatives, in relation to any aspect of the Rule Change Panel's operations.~~

~~25. — Directions by Minister~~

~~(1) — The Minister may give written directions to the Rule Change Panel as to the general policy to be followed in the performance of the Rule Change Panel's functions.~~

~~(2) — The Minister must not give a direction under subregulation (1) that is —~~

~~— (a) — in respect of a particular matter; or~~

~~— (b) — inconsistent with the objectives set out in the *Electricity Industry Act 2004* section 122(2) or the *Gas Services Information Act 2012* section 6.~~

~~(3) — The Rule Change Panel must comply with a direction under subregulation (1) when it becomes effective.~~

~~(4) — A direction under subregulation (1) becomes effective on the expiry of 7 days after the Rule Change Panel receives it or of any longer period that the Minister may determine.~~

~~(5) — The Minister must, within 14 days after giving a direction under subregulation (1), cause a copy of the direction to be laid before each House of Parliament or dealt with in accordance with regulation 30.~~

~~26. — Minister to have access to information~~

~~(1) — In this regulation — [; or](#)~~

r. 26

- ~~— **document** includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;~~
- ~~— **information** means information specified, or of a description specified, by the Minister that relates to the functions of the Rule Change Panel.~~
- ~~— (2) Subject to subregulation (6), the Minister is entitled —~~
 - ~~— (a) to have information in the possession of the Rule Change Panel; and~~
 - ~~— (b) if the information is in or on a document, to have, and make and retain copies of, that document.~~
- ~~— (3) For the purposes of subregulation (2), the Minister may —~~
 - ~~— (a) request the Rule Change Panel to give the Minister information; or~~
 - ~~— (b) request the Rule Change Panel to give the Minister access to information; or~~
 - ~~— (c) make use of the services of the executive officer and other staff members referred to in regulation 23, to obtain the information and give it to the Minister.~~
- ~~— (4) A request under subregulation (3)(a) or (b) may specify a time before which the information or access must be given.~~
- ~~— (5) The Rule Change Panel must comply with a request under subregulation (3).~~
- ~~— (6) Subregulation (2) does not entitle the Minister to information that the Rule Change Panel considers to be commercially sensitive or confidential unless the disclosure of the information —~~
 - ~~— (a) is required under another written law; or~~
 - ~~— (b) is made with the written consent of the person or persons to whom the information relates.~~

27. Minister to be kept informed

~~The Rule Change Panel must keep the Minister reasonably informed of the operations of the Rule Change Panel.~~

28. Activities report

- ~~(1) Within 2 months after 30 June in each year, the Rule Change Panel must prepare and give to the Minister a report (the *activities report*) on the general activities of the Rule Change Panel during the financial year ending on that day.~~
- ~~(2) The Minister must within 21 days after the day on which a copy of the activities report is given to the Minister cause a copy of the report to be laid before each House of Parliament or dealt with in accordance with regulation 30.~~

29. Information to Authority

~~The Rule Change Panel must give the Authority any information that the Authority may require to comply with its (ii) the Authority's obligations under the *Financial Management Act 2006*.~~

30. Laying before House of Parliament that is not sitting

- ~~(1) If at the commencement of a period referred to in regulations 21(6), 25(5) and 28(2) in respect of a document, a House of Parliament is not sitting and the Minister is of the opinion that that House will not sit during that period, the Minister must transmit a copy of the document to the Clerk of that House.~~
- ~~(2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.~~
- ~~(3) The laying of a copy of a document that is regarded as having occurred under subregulation (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.~~

31. ~~Deletion of confidential or commercially sensitive information~~

- ~~(1) The Any legal professional privilege of the Rule Change Panel may request the Minister to delete from a copy of a document that is to be made public, or of the Authority, attaching to any information that the Rule Change Panel considers to be confidential or commercially sensitive. legal advice immediately before 1 July 2021 is taken, on and after 1 July 2021, to be the legal professional privilege of the Coordinator.~~
- ~~(2) The Minister may, despite regulations 21(6), 25(5) and 28(2), comply with a request under subregulation (1).~~
- ~~(3) A copy of a document from which any information has been deleted under subregulation (2) must —~~
- ~~(a) contain a statement detailing the reasons for the deletion at the place in the document where the information deleted would otherwise appear; and~~
 - ~~(b) be accompanied by an opinion from the Auditor General stating whether or not the information deleted is confidential or commercially sensitive.~~

Part 4—Protection of information

32.—Protection of confidential information

~~The Rule Change Panel must take all reasonable measures to protect confidential information from unauthorised use or disclosure.~~

33.—Authorised disclosure

~~(1)~~ (4) Any professional or contractual duty owed to the Rule Change Panel, or to the Authority, immediately before 1 July 2021 by a person as the provider of any Rule Change Panel legal advice is taken, on and after 1 July 2021, to be owed by that person to the Coordinator.

~~(5)~~ For the purposes of this regulation ~~32, authorised disclosure of confidential information includes the following—~~

~~(a) disclosure with the written consent of the person to whom the information relates;~~

~~(b) disclosure that, a Rule Change Panel function is authorised or required under—~~

~~(i) these regulations; or~~

~~(ii) the GSI rules; or~~

~~(iii) the market rules; or~~

~~(iv) a written law; or~~

~~(v) a law of the Commonwealth, a State or a Territory;~~

~~(c) disclosure required for the purposes of—~~

~~(i) civil or criminal proceedings; or~~

~~(ii) proceedings before a tribunal established under a written law or a law of the Commonwealth, a State or a Territory;~~

- ~~(d) disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom the information relates;~~
- ~~(e) disclosure of information if the information is in the public domain.~~
- ~~(2) A transferred to a person or body to whom confidential information is disclosed under subregulation (1)(b) is, to the extent consistent with the rules and law referred to in subregulation (1)(b), limited to using the information if —~~
- ~~(a) in connection with the performance of the functions Rule Change Panel function becomes a function of the person or body; and (with or without modifications); or~~
- ~~(b) for the purposes for which the information was disclosed.~~

~~34. Disclosure and (b) a function that is substantially the same as, or that is similar to, or that otherwise replaces, the Rule Change Panel function is otherwise conferred on the person or body.~~

~~[Regulation 3B inserted: SL 2021/2 r. 26.]~~

3C. Restriction on recording, disclosure or use of information obtained by Rule Change Panel restricted

~~A member or former members of Rule Change Panel~~

~~A person (the former member) who was a member of the Rule Change Panel at any time must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty as a member except —~~

- ~~(a) for the purpose of, or in connection with, performing a function of a member of the Rule Change Panel; or~~
- ~~(b) as required or allowed by a written law; or~~
- ~~(eb) for the purposes of any legal —~~
- ~~(i) civil or criminal proceedings arising; or~~

_____ (ii) proceedings before a tribunal established under
~~the *Electricity Industry Act 2004*~~a written law or
~~the *Gas Services Information Act 2012*~~; under a
law of the Commonwealth, another State or a
Territory;

_____ or

_____ (c) for the purpose of obtaining legal or other advice from a
professional adviser who owes the former member a
professional or contractual duty to keep the information
confidential; or

(d) with the written consent of the person to whom the
information relates; or

_____ (e) where the information is in the public domain.

Penalty: a fine of \$10 000.

_____ [*Regulation 3C inserted: SL 2021/2 r. 26.*]

_____ [*Parts 2-4 (r. 4-34) deleted: SL 2021/2 r. 27.*]

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Notes

This is a compilation of the *Energy Industry (Rule Change Panel) Regulations 2016* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

Compilation table

Citation	Published	Commencement
<i>Energy Industry (Rule Change Panel) Regulations 2016</i>	23 Nov 2016 p. 5247-64	r. 1 and 2: 23 Nov 2016 (see r. 2(a)); Regulations other than r. 1 and 2: 24 Nov 2016 (see r. 2(b))

~~Uncommenced provisions table~~

~~To view the text of the uncommenced provisions see *Subsidiary legislation as made on the WA Legislation website*.~~

Citation	Published	Commencement
<i>Energy Regulations Amendment Regulations 2021 Pt. 3</i>	SL 2021/2 15 Jan 2021	1 Jul 2021 (see r. 2(e))