



Western Australia

Electricity Industry Act 2004

## **Electricity Industry (Independent Market Operator) Regulations 2004**

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Western Australia

# Electricity Industry (Independent Market Operator) Regulations 2004

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Western Australia

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Electricity Industry Act 2004

## Electricity Industry (Independent Market Operator) Regulations 2004

### Part 1 — Preliminary

#### 1. Citation

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

#### 2. Commencement

- (1) These regulations come into operation on a day fixed by the Minister by order published in the *Gazette*<sup>1</sup>.
- (2) The day fixed under subregulation (1) is not to be later than 1 January 2005.

#### 3. Terms used

In these regulations, unless the contrary intention appears —  
***board*** means the board of directors provided for by regulation 7;  
***chief executive officer*** means the officer appointed under regulation 13 and, except in that regulation, includes an acting chief executive officer appointed under regulation 13(6);  
***Corporations Act*** means the *Corporations Act 2001* of the Commonwealth;

**director** means a member of the board;

**function**, except in regulations 21(1) and (2) and 23, includes powers, duties and authorities;

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

**IMO** means the Independent Market Operator established by regulation 4(1);

**member of staff** means a person engaged under regulation 14;

**Treasurer** means the Treasurer of the State.

*[Regulation 3 amended in Gazette 11 Feb 2011 p. 503;  
14 Jun 2013 p. 2234.]*

## **Part 2 — Independent Market Operator**

### **Division 1 — Establishment of Independent Market Operator**

#### **4. Independent Market Operator established**

- (1) A body called the Independent Market Operator is established.
- (2) The IMO is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the IMO in its corporate name.

#### **5. IMO not agent of Crown**

The IMO is not an agent of the Crown and does not have the status, immunities and privileges of the Crown.

#### **6. IMO and officers not part of Public Service**

- (1) The IMO is not, and is not to become, a public sector body under the *Public Sector Management Act 1994*.
- (2) Neither the chief executive officer nor any member of staff is to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

### **Division 2 — Board of directors**

#### **7. Board of directors**

- (1) The IMO is to have a board of directors comprising 3 or 4 persons appointed by the Minister.
- (2) The chief executive officer or any other member of staff is not to be a director.
- (3) In making appointments to the board the Minister is to ensure that each appointment is made only after consultation with the chairperson of the board.

- (4) Where a vacancy occurs in the membership of the board, the board may recommend a candidate to the Minister.
- (5) Subregulation (3) does not apply —
  - (a) to the initial appointments to the board; or
  - (b) where the appointee was recommended by the board under subregulation (4).

*[Regulation 7 amended in Gazette 29 Jun 2012 p. 2936.]*

**8. Role of board**

The board is the governing body of the IMO with authority, subject to these regulations, in the name of the IMO, to perform the functions, determine the policies and control the affairs of the IMO.

**9. Remuneration**

- (1) A director is to be paid out of the funds of the IMO such remuneration and allowances as are determined by the Minister in the case of that director.
- (2) Remuneration is not to be paid to a director who holds a full-time office or position that is remunerated out of moneys appropriated by Parliament.

**10. Conflict of duties**

- (1) In subregulation (2) —  
*public service officer* means a person who is employed in the Public Service under Part 3 of the *Public Sector Management Act 1994*.
- (2) If a public service officer is a director —
  - (a) his or her duties as a director are to prevail if a conflict arises between those duties and his or her other duties as a public service officer; and

- (b) he or she does not have any immunity of the Crown in respect of the duties and liabilities imposed on directors by these regulations or the *Statutory Corporations (Liability of Directors) Act 1996*.

**11. Provisions about constitution and proceedings of board**

Schedule 1 has effect with respect to the directors and the board.

**12. Duties of, and relating to, directors**

Schedule 2 has effect in relation to —

- (a) the duties of directors; and
- (b) the duties of the IMO in respect of directors and related persons.

Note: Other duties of directors are set out in the *Statutory Corporations (Liability of Directors) Act 1996* section 5 and Part 3.

**Division 3 — Staff**

**13. Chief executive officer**

- (1) The IMO is to have a chief executive officer.
- (2) The function of the chief executive officer is, subject to the control of the board, to administer the day to day operations of the IMO.
- (3) The powers —
  - (a) to appoint and remove the chief executive officer; and
  - (b) to fix and alter his or her terms and conditions of service,are vested in the board.
- (4) The board is to obtain the concurrence of the Minister before it exercises any of the powers in subregulation (3).

- (5) Subject to any provision of his or her terms and conditions of service, the chief executive officer may resign his or her office by giving notice in writing to the board.
- (6) The board may appoint a person to act in place of the chief executive officer —
  - (a) during a vacancy in that office; or
  - (b) during any period when the chief executive officer is unable to carry out his or her duties or is absent from the State.
- (7) Despite subregulation (3), the Minister is to appoint the initial chief executive officer.

**14. Other staff**

- (1) The power to engage and manage the staff of the IMO is vested in the board.
- (2) The power conferred by subregulation (1) —
  - (a) includes powers to determine remuneration and other terms and conditions of service and to remove, suspend and discipline staff; and
  - (b) does not preclude the delegation of any matter under regulation 25.
- (3) The remuneration of a member of staff and other terms and conditions of employment are not to be less favourable than is provided for in —
  - (a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or
  - (b) the *Minimum Conditions of Employment Act 1993*.

**15. Minimum standards for staff management**

- (1) The board must, after consultation with the Public Sector Commissioner, prepare and issue an instrument setting out

minimum standards of merit, equity and probity applicable to the management of the staff of the IMO.

- (2) In subregulation (1) —  
*management* includes recruitment, selection, appointment, transfer, secondment, performance management, redeployment, discipline and termination of employment.
- (3) In complying with subregulation (1) the board is to have regard to the principles set out in section 8 of the *Public Sector Management Act 1994*.
- (4) Regulation 13(4) is not affected by the requirements of subregulation (3).
- (5) The Public Sector Commissioner may at any time recommend to the board any amendment that he or she thinks should be made to an instrument issued under this regulation.
- (6) The board may —
- (a) amend an instrument issued under this regulation; or
  - (b) revoke it and substitute a new instrument,

but, except where subregulation (5) applies, is to do so only after consultation with the Public Sector Commissioner.

*[Regulation 15 amended in Gazette 11 Feb 2011 p. 503-4.]*

**16. Reports to Public Sector Commissioner on minimum standards**

- (1) The Public Sector Commissioner may in writing require the board —
- (a) to report to him or her on the observance of the minimum standards in force under regulation 15; and
  - (b) to make the reports at such times, but not more often than half-yearly,

as the Commissioner may specify.

- (2) The board must comply with a requirement made under subregulation (1).
- (3) The Public Sector Commissioner may at any time report to the Minister on the content or observance of the minimum standards in force under regulation 15.

*[Regulation 16 amended in Gazette 11 Feb 2011 p. 503-4.]*

## **17. Superannuation**

- (1) In this regulation —  
*members of staff* includes —
  - (a) the chief executive officer; and
  - (b) dependants of members of staff; and
  - (c) former members of staff and their dependants.
- (2) The IMO may grant, or make provision for the grant of, retirement benefits to members of staff and, for that purpose may —
  - (a) establish, manage and control; or
  - (b) enter into an arrangement with any body for the establishment, management and control by such body either alone or jointly with the IMO of,  
  
any fund or scheme for the purpose of providing for such retirement benefits.
- (3) The IMO may make contributions to any fund or scheme referred to in subregulation (2).
- (4) Subregulations (2) and (3) have effect subject to section 30 of the *State Superannuation Act 2000*.
- (5) Nothing in this regulation affects the operation of the *State Superannuation Act 2000* in relation to the IMO or any member of staff.



**18. Codes of conduct**

- (1) In this regulation and in regulations 19 and 20 —  
*members of staff* includes the chief executive officer.
- (2) The board must, after consultation with the Public Sector Commissioner, prepare and issue a code or codes of conduct setting out minimum standards of conduct and integrity to be observed by members of staff.
- (3) In complying with subregulation (2) the board is to have regard to the principles set out in section 9 of the *Public Sector Management Act 1994*.
- (4) The board may, after consultation with the Public Sector Commissioner, amend any code of conduct in force under subregulation (2) or revoke it and substitute a new code of conduct.

*[Regulation 18 amended in Gazette 11 Feb 2011 p. 503-4.]*

**19. Reports to Public Sector Commissioner on code of conduct**

- (1) The Public Sector Commissioner may in writing require the board —
  - (a) to report to the Commissioner on the observance by members of staff of any code of conduct in force under regulation 18; and
  - (b) to make the reports at such times, but not more often than half-yearly,as the Commissioner may specify.
- (2) The board must comply with a requirement made under subregulation (1).
- (3) The Public Sector Commissioner may at any time report to the Minister on any matter relating to the observance by members of staff of a code of conduct in force under regulation 18 that the Commissioner thinks should be brought to the Minister's attention.

*[Regulation 19 amended in Gazette 11 Feb 2011 p. 503-4.]*

**20. Reports to Minister**

- (1) The board, when it delivers to the Minister its annual report under regulation 35, is also to deliver to the Minister a separate report on the observance by members of staff of any code of conduct in force under regulation 18.
- (2) The board is to give to the Public Sector Commissioner a copy of each report under subregulation (1).

*[Regulation 20 amended in Gazette 11 Feb 2011 p. 503-4.]*

## Part 3 — Functions and powers

### 21. Functions

- (1) The IMO has the functions (its *main functions*) conferred on it by —
  - (a) these regulations other than subregulation (2); and
  - (b) the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* and the market rules; and
  - (c) the *Gas Services Information Regulations 2012* or the GSI rules.
  
- (2) It is a function of the IMO —
  - (a) to undertake, maintain and operate any system, facilities or equipment required for or in connection with the performance of its main functions; and
  - (b) in order to generate a profit or, if it is otherwise conducive to the performance of its main functions, on a cost recovery basis —
    - (i) to use its expertise and resources to provide consultative, advisory or other services; or
    - (ii) to develop and turn to account any technology, software or other intellectual property that relates to its main functions; or
    - (iii) to use or exploit the fixed assets it has for the purpose of performing its main functions so long as the proper performance of those functions is not adversely affected;and
  - (b) to do anything that the IMO determines to be conducive or incidental to the performance of its main functions; and
  - (c) to do anything that it is authorised to do by any other written law.

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- (3) The IMO may perform any of its functions in the State or elsewhere.

*[Regulation 21 amended in Gazette 27 Jun 2008 p. 3127-8; 29 Jun 2012 p. 2937; 14 Jun 2013 p. 2234.]*

**22. IMO to endeavour to ensure that revenue sufficient to meet costs**

- (1) The IMO in performing its functions under the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* must endeavour to ensure that its revenue is sufficient to meet its costs as determined under the market rules.
- (2) The IMO in performing its functions under the *Gas Services Information Regulations 2012* must endeavour to ensure that its revenue is sufficient to meet its costs as determined under the GSI rules.

*[Regulation 22 amended in Gazette 29 Jun 2012 p. 2937; 14 Jun 2013 p. 2234.]*

**23. Powers**

- (1) In subregulation (3)(e) —  
***business arrangement*** means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;  
***participate*** includes to form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement.
- (2) The IMO may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (3) Without limiting subregulation (2) or the other powers conferred on the IMO, the IMO may for the purpose of performing any function —
- (a) acquire, hold, manage, improve, develop and dispose of any real or personal property; and
  - (b) enter into any contract or arrangement; and

- (c) produce and deal in —
    - (i) any by-product resulting from; or
    - (ii) any equipment, facilities or system associated with,  
the performance of any function; and
  - (d) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the IMO; and
  - (e) participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and
  - (f) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research; and
  - (g) promote and market the IMO and its activities.
- (4A) The reference in subregulation (3) to other powers conferred on the IMO is a reference to powers conferred on the IMO by —
- (a) these regulations; or
  - (b) the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* or the market rules; or
  - (c) the *Gas Services Information Regulations 2012* or the GSI rules.
- (4) Despite subregulation (3)(b) and (d), the IMO is not to enter into a contract or arrangement with —
- (a) another participant for the secondment of an officer or employee of the participant to assist the IMO in the performance of its functions; or
  - (b) a person who is an officer or employee of another participant for the provision of services by the person during any period that the person continues to be such an officer or employee.
- (5) The IMO may —

- (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;
- (b) make any ex gratia payment that the board considers to be in the IMO's interest;
- (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the IMO.

*[Regulation 23 amended in Gazette 29 Jun 2012 p. 2937; 14 Jun 2013 p. 2234.]*

**24. Minister to be consulted on major initiatives**

The IMO must consult the Minister before it enters upon a course of action that in its opinion —

- (a) amounts to a major initiative; or
- (b) is likely to be of significant public interest.

**25. Delegation**

- (1) The IMO may delegate any power or duty of the IMO under —
  - (a) another provision of these regulations; or
  - (b) the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*; or
  - (c) the *Gas Services Information Regulations 2012*.
- (2) A delegation under subregulation (1) may be made to —
  - (a) a director or directors; or
  - (b) the chief executive officer; or
  - (c) a member or members of staff; or
  - (d) any other person.
- (3) The delegation must be in writing executed by the IMO.
- (4) A person to whom a power or duty is delegated under this regulation cannot delegate that power or duty.

(5) A person exercising or performing a power or duty that has been delegated to the person under this regulation is to be taken to do so in accordance with the terms of the delegation, unless the contrary is shown.

(6) Nothing in this regulation limits the ability of the IMO to perform a function through an officer or agent.

*[Regulation 25 amended in Gazette 29 Jun 2012 p. 2938.]*

**26. Person dealing with IMO may make assumptions**

(1) A person having dealings with the IMO is entitled to make the assumptions mentioned in regulation 28.

(2) In any proceedings in relation to the dealings, any assertion by the IMO that the matters that the person is entitled to assume were not correct must be disregarded.

**27. Third party may make assumptions**

(1) A person having dealings with a person who has acquired, or purports to have acquired, title to property from the IMO (whether directly or indirectly) is entitled to make the assumptions mentioned in regulation 28.

(2) In any proceedings in relation to the dealings, any assertion by the IMO or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

**28. Assumptions that may be made**

The assumptions that a person is, because of regulation 26 or 27 entitled to make are —

(a) that, at all relevant times, these regulations have been complied with; and

(b) that a person who is held out by the IMO to be a director, the chief executive officer, a member of staff or an agent of a particular kind —

- (i) has been properly appointed; and
  - (ii) has authority to perform the functions customarily performed by a director, the chief executive officer, a member of staff or an agent of that kind, as the case may require;
- and
- (c) that a member of staff or agent of the IMO who has authority to issue a document on behalf of the IMO has authority to warrant that the document is genuine; and
  - (d) that a member of staff or agent of the IMO who has authority to issue a certified copy of a document on behalf of the IMO has authority to warrant that the copy is a true copy; and
  - (e) that a document has been properly sealed by the IMO if —
    - (i) it bears what appears to be an imprint of the IMO's common seal; and
    - (ii) the sealing of the document appears to comply with regulation 52;
- and
- (f) that the directors, chief executive officer, members of staff and agents of the IMO have properly performed their duties to the IMO.

**29. Exception to regulations 26 and 27**

- (1) Despite regulations 26 and 27, a person is not entitled to assume a matter mentioned in regulation 28 if —
  - (a) the person has actual knowledge that the assumption would be incorrect; or
  - (b) because of the person's connection or relationship with the IMO, the person ought to know that the assumption would be incorrect.



- (2) If, because of subregulation (1), a person is not entitled to make a particular assumption —
- (a) if the assumption is in relation to dealings with the IMO, regulation 26(2) does not apply to any assertion by the IMO in relation to the assumption; or
  - (b) if the assumption is in relation to an acquisition or purported acquisition from the IMO of title to property, regulation 27(2) does not apply to any assertion by the IMO or another person in relation to the assumption.

## Part 4 — Accountability

### 30. Draft operational plan to be submitted to Minister

- (1) In each financial year the IMO is to prepare, and submit to the Minister for approval, a draft operational plan.
- (2) The draft operational plan is to be submitted not later than 2 months before the start of the next financial year (called the *relevant financial year* in this regulation and regulations 31 and 32).
- (3) When the Minister approves a draft operational plan it becomes the IMO's operational plan for the relevant financial year but the Minister must have the Treasurer's concurrence before approving a draft operational plan.
- (4) If a draft operational plan has not been approved by the Minister before the start of the relevant financial year, the latest draft plan is to be the operational plan for the IMO until a draft operational plan is approved by the Minister.
- (5) In subregulation (4) —  
*latest draft plan* means the draft operational plan submitted, or last submitted, by the IMO to the Minister before the start of the relevant financial year with any modifications made by the IMO, whether before or after that time, at the direction of the Minister.

### 31. Content of operational plan

An operational plan is to —

- (a) give an outline of the nature and scope of the functions to be performed during the relevant financial year; and
- (b) specify business and service performance targets and other measures by which to judge performance for the relevant financial year in relation to —
  - (i) the objectives set out in section 122(2) of the Act; and

(ii) the objectives set out in the *Gas Services Information Act 2012* section 6;

and

- (c) address allocation of resources; and
- (d) give an estimate of income and expenditure and source of funding during the relevant financial year; and
- (e) address any other matters that the Minister directs the IMO to address in the operational plan.

*[Regulation 31 amended in Gazette 29 Jun 2012 p. 2938.]*

**32. Minister's powers in relation to draft operational plan**

- (1) The Minister may return a draft operational plan to the IMO and request it to consider or further consider any matter and deal with it in the draft plan.
- (2) The IMO is to comply with a request under subregulation (1) as soon as is practicable.
- (3) If —
  - (a) the Minister has returned a draft operational plan to the IMO requesting it to consider, or further consider, any matter and deal with it; and
  - (b) less than one month remains before the start of the relevant financial year and the Minister has not approved a draft operational plan,the Minister may, by written notice, direct the IMO to make specified modifications to the draft plan.
- (4) The IMO is to comply with a direction under subregulation (3) as soon as is practicable.

**33. Modifications of operational plan**

- (1) An operational plan may be modified by the IMO with the approval of the Minister.

- (2) The Minister cannot approve a modification of an operational plan without the Treasurer's concurrence if the modification could result in financial costs, or increased financial costs, to the State.

**34. Duty to observe operational plan**

The IMO is to perform its functions in accordance with its operational plan as existing from time to time.

**35. Annual report**

- (1) The IMO must prepare and deliver to the Minister in each year an annual report on the operations of the IMO, which is to be done in accordance with clauses 30 and 31 of Schedule 3.
- (2) The Minister must within 21 days after the day on which a copy of the annual report is delivered to the Minister cause a copy of the report to be laid before each House of Parliament or dealt with in accordance with regulation 51.

**36. Contents of annual report**

- (1) The annual report in respect of the IMO must —
  - (a) contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of the operations of the IMO; and
  - (b) include a comparison of the performance of the IMO with any relevant operational plan; and
  - (c) include particulars of any directions given by the Minister under regulation 32(3), 39(1) or 45(4) that were given during the relevant financial year, or at any other time to the extent that they continued to be material during that year; and
  - (d) include particulars of the impact on the financial position, profits and losses and prospects of the IMO of any modifications to —
    - (i) the operational plan; and

(ii) any directions given by the Minister under regulation 39(1),

that were given during the relevant financial year.

- (2) The annual report must also include a summary of the report referred to in regulation 20.
- (3) The requirements of this regulation are in addition to clauses 30 and 31 of Schedule 3.

**37. Deletion of commercially sensitive matters from reports**

- (1) The board may request the Minister to delete from the copies of an annual report (and accompanying documents) that are to be made public, a matter that is of a commercially sensitive nature.
- (2) The Minister may, despite regulation 36, comply with a request under subregulation (1).

**38. Directions to IMO**

Except as provided by these regulations or any other written law, the IMO is not required to comply with any direction or administrative request given or made by or on behalf of the Government.

**39. Minister may give directions**

- (1) The Minister may give directions in writing to the IMO with respect to the performance of its functions, either generally or in relation to a particular matter, and, subject to regulation 40, the IMO is to give effect to any such direction.
- (2) A direction under subregulation (1) is not to be inconsistent with the objectives set out in section 122(2) of the Act.
- (3) The Minister must cause the text of any direction under subregulation (1) to be laid before each House of Parliament or dealt with under regulation 51 —
  - (a) within 14 days after the direction is given; or

- (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.

**40. When directions take effect**

- (1) A direction under regulation 39(1) becomes effective —
  - (a) on the expiry of 7 days after its receipt by the board or of such longer period as the Minister may, at the request of the board, determine; or
  - (b) if it is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, on its being confirmed under that section.
- (2) If the board asks the Minister to extend the 7 day period under subregulation (1), the Minister must consider the request and notify the board of his or her decision before the 7 day period has expired.

**41. Consultation**

The IMO 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 IMO's operations.

**42. Minister to have access to information**

- (1) In this regulation —
  - 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 IMO.
- (2) The Minister is entitled —
  - (a) to have information in the possession of the IMO; and

- (b) where 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 chief executive officer or the board to furnish information to the Minister;
  - (b) request the chief executive officer or the board to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the staff of the IMO to obtain the information and furnish it to the Minister.
- (4) A request under subregulation (3)(a) may specify a time before which the information is to be furnished.
- (5) The chief executive officer or the board is to —
  - (a) comply with a request under subregulation (3); and
  - (b) make staff and facilities available to the Minister for the purposes of subregulation (3)(c).
- (6) Where the chief executive officer or the board furnishes or gives access to information to the Minister, the Minister is to be advised whether or not in the opinion of the chief executive officer or the board the public disclosure of the information may adversely affect the commercial interests of the IMO or any other participant.

**43. Provision of information in compiled form**

- (1) Subregulation (2) applies if the Minister wishes to obtain from the IMO information that —
  - (a) is not itself in the possession of the IMO; but
  - (b) is capable of being assembled or compiled from information in the possession of the IMO.
- (2) The Minister may request the chief executive officer or the board to furnish to the Minister a document containing information that —

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- (a) is of a specified description; or
- (b) is presented in a specified way; or
- (c) relates to a specified period; or
- (d) has some other specified characteristic,

or that comes within 2 or more of the preceding paragraphs.

- (3) A request under subregulation (2) may specify a time before which the document is to be furnished.
- (4) The chief executive officer or the board is to comply with a request under subregulation (2) and is to take, or cause to be taken, whatever steps are necessary in order to do so.
- (5) Regulation 42(2) applies to a document prepared or compiled for the purposes of this regulation in the same way as it applies to other information in the possession of the IMO.
- (6) Regulation 42(6) applies where a document is furnished under this regulation in the same way as it applies where information is furnished under regulation 42.

**44. Minister to be kept informed**

The IMO must —

- (a) keep the Minister reasonably informed of the operations, financial performance, and financial position of the IMO, including the assets and liabilities, profits and losses, and prospects of the IMO; and
- (b) give the Minister reports and information that the Minister requires for the making of informed assessments of matters referred to in paragraph (a); and
- (c) if matters arise that in the IMO's opinion may prevent, or significantly affect, achievement of the IMO's targets outlined in its operational plan, promptly inform the Minister of the matters and its opinion in relation to them.



**45. Notice of financial difficulty**

- (1) The board must notify the Minister if the board forms the opinion that the IMO is unable to, or will be unlikely to be able to, satisfy any financial obligation, of the IMO from the financial resources available or likely to be available to the IMO at the time the financial obligation is due.
- (2) The notice must —
  - (a) be in writing; and
  - (b) provide the reasons for the board's opinion; and
  - (c) provide such other information as the board considers relevant.
- (3) Within 7 days of receipt of the notice, the Minister must —
  - (a) confer with the Treasurer and the board for the purpose of determining what action is required to ensure that the IMO is able to satisfy the relevant financial obligation when it is due; and
  - (b) initiate such action as is required to ensure that the IMO is able to satisfy the relevant financial obligation when it is due.
- (4) For the purposes of subregulation (3) the Minister may give directions to the IMO including a direction requiring the IMO to cease or limit the performance of any function.
- (5) The board must give effect to any such direction.
- (6) The Minister must within 14 days after a direction has been given under subregulation (4) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with regulation 51.

## Part 5 — Financial provisions

### 46. Bank account

- (1) In this regulation —

*bank* has the meaning given to that term in section 3(1) of the *Financial Management Act 2006*.

- (2) The IMO may have an account or accounts at any bank or banks, and money received by and expenditure of the IMO is to be paid to or from such an account.

[Regulation 46 amended in Gazette 14 Jun 2013 p. 2234.]

### 47. Investment

Funds of the IMO that are not being used for the performance of the IMO's functions may be invested in such investments as the board determines.

### 48. Borrowing

- (1) In this regulation —

*debt paper* means inscribed stock, bonds, debentures with coupons annexed, bills of exchange, promissory notes or bearer securities, or other similar instruments evidencing indebtedness.

- (2) The IMO may, subject to regulation 49 —

- (a) borrow or re-borrow moneys; or
- (b) obtain credit; or
- (c) acquire, hold or dispose of debt paper; or
- (d) otherwise arrange for financial accommodation to be extended to the IMO.

### 49. Borrowing restrictions

- (1) The IMO is not to exercise the power conferred by regulation 48(2)(a) except with, and in accordance with, the Treasurer's approval.

- (2) Without limiting subregulation (1), the Treasurer's approval may be given by way of a notice under subregulation (3).
- (3) The Treasurer may, by notice to the IMO, impose monetary limits on the exercise of the power conferred by regulation 48(2)(a).
- (4) A monetary limit is to be determined for the exercise of that power in a financial year specified by the Treasurer and may relate to —
  - (a) the total amount that can be outstanding at any one time during that year as a result of the exercise of that power; or
  - (b) the total liabilities that can be incurred during that year as a result of the exercise of that power.
- (5) A monetary limit for the time being in force may be varied for a subsequent financial year by the Treasurer by a further notice under subregulation (3).
- (6) A monetary limit for the time being in force continues to apply until it is so varied.
- (7) The Treasurer may, by notice to the IMO, impose other conditions on the exercise of the power conferred by regulation 48(2)(a) or vary a condition for the time being in force.
- (8) The IMO must comply with any monetary limit or other condition for the time being in force in relation to it.
- (9) A liability of the IMO is not unenforceable or in any way affected by a failure of the IMO to comply with this regulation.
- (10) No person dealing with the IMO is bound or concerned to enquire whether the IMO has complied or is complying with this regulation.

**50. Financial administration and audit**

- (1) Schedule 3 has effect in relation to the financial administration and audit of the IMO.
- (2) Despite anything in the *Financial Management Act 2006* that Act, other than the provisions referred to in clauses 32(2) and 33(2) of Schedule 3, does not apply to the IMO or any person performing functions under these regulations.

*[Regulation 50 amended in Gazette 14 Jun 2013 p. 2235.]*

## Part 6 — Miscellaneous

### 51. Supplementary provision for laying document before Parliament

- (1) If—
  - (a) at the commencement of a period referred to in regulation 35(2), 39(3), 45(6), Schedule 2 clause 3(7) or Schedule 3 clause 28(2) in respect of a document a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to 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 taken to have been laid before that House.
- (3) The laying of a copy of a document that is taken to have 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 receipt of the copy by the Clerk.

### 52. Execution of documents

- (1) The IMO is to have a common seal.
- (2) A document is duly executed by the IMO if—
  - (a) the common seal of the IMO is affixed to it in the presence of 2 directors or of a director and the chief executive officer; or
  - (b) it is signed on behalf of the IMO by a person or persons referred to in subregulation (4).
- (3) The common seal of the IMO is not to be affixed to a document except in accordance with this regulation.

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- (4) The IMO may, by writing under its common seal, authorise a director, the chief executive officer, a member of staff or other agent of the IMO to execute documents on its behalf.
- (5) An authority under subregulation (4) —
  - (a) may be given —
    - (i) either generally or in respect of a specified matter or specified matters; and
    - (ii) so as to authorise 2 or more persons to execute documents jointly;
  - and
  - (b) may be presumed by a person dealing with the IMO to continue —
    - (i) during any period for which it is conferred; or
    - (ii) if subparagraph (i) does not apply, until notice of termination of the authority is given to the person so dealing.
- (6) A document purporting to be executed in accordance with this regulation is to be taken to be duly executed until the contrary is shown.

**53. Contract formalities**

- (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of the IMO may make, vary or discharge a contract in the name of or on behalf of the IMO in the same manner as if that contract were made, varied or discharged by a natural person.
- (2) The making, variation or discharge of a contract in accordance with subregulation (1) is effectual in law and binds the IMO and other parties to the contract.
- (3) Subregulation (1) does not prevent the IMO from making, varying or discharging a contract under its common seal.

**54. Delegation by Treasurer**

- (1) In subregulation (2) —  
*Treasury officer* means an officer of the department that principally assists the Minister administering the *Financial Management Act 2006* in the administration of that Act.
- (2) The Treasurer may delegate to a Treasury officer any power or duty of the Treasurer under another provision of these regulations.
- (3) The delegation must be in writing signed by the Treasurer.
- (4) An officer to whom a power or duty is delegated under this regulation cannot delegate that power or duty.
- (5) An officer exercising or performing a power or duty that has been delegated to the officer under this regulation is to be taken to do so in accordance with the terms of the delegation, unless the contrary is shown.

*[Regulation 54 amended in Gazette 14 Jun 2013 p. 2235.]*

**55. Relationship to Gas Services Information Act 2012**

- (1) Regulations 21(1)(c), 23(4A)(c), 25(1)(c) and 31(b)(ii) do not have effect if functions are not conferred on the IMO by regulations made under the *Gas Services Information Act 2012* section 7(2)(a).
- (2) Regulations 39, 40, 41, 42, 43 and 44 do not apply to or in relation to the performance of the IMO's functions under the *Gas Services Information Act 2012*.

*[Regulation 55 inserted in Gazette 29 Jun 2012 p. 2938; amended in Gazette 14 Jun 2013 p. 2235.]*

## **Schedule 1 — Provisions about the constitution and proceedings of the board**

[r. 11]

### **1. Term of office**

- (1) Subject to clause 2, a director holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, and is eligible for reappointment.
- (2) A director, unless he or she sooner resigns or is removed from office, continues in office until his or her successor comes into office, even if the period for which the director was appointed has expired.
- (3) A director's duties are not required to be performed on a full-time basis.

### **2. Resignation and removal**

- (1) A director may resign from office by notice in writing delivered to the Minister.
- (2) The Minister may at any time remove a director from office and is not required to give any reason for doing so.

### **3. Chairperson and deputy chairperson**

- (1) The Minister is to appoint a director to be chairperson and another to be deputy chairperson.
- (2) Where the chairperson is unable to act because of sickness, accident or other cause, the deputy chairperson is to act in the chairperson's place.
- (3) Where the deputy chairperson is acting in place of the chairperson at a meeting, clause 4(1) applies as if the deputy chairperson were absent from the meeting.

### **4. Alternate directors**

- (1) The Minister may in writing appoint a person to act temporarily in place of a director who is unable to act because of sickness, absence or other cause.



- (2) A person appointed under subclause (1), while acting according to the tenor of the appointment —
  - (a) is to be taken to be a director; and
  - (b) is entitled to remuneration under regulation 9.
- (3) No act or omission of a person acting in place of another under this clause may be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

**5. Meetings**

- (1) The first meeting of the board is to be convened by the chairperson and, subject to subclause (2), subsequent meetings are to be held at such times and places as the board determines.
- (2) A special meeting of a board may at any time be convened by the chairperson or any 2 directors.
- (3) The chairperson, or the deputy chairperson acting under clause 3(2), is to preside at all meetings of a board at or in which he or she is present, or participating under clause 6.
- (4) At any meeting of a board —
  - (a) 2 directors constitute a quorum; and
  - (b) in the case of an equality of votes the person presiding has a casting vote in addition to a deliberative vote.

**6. Telephone and video meetings**

Despite anything in this Schedule, a communication between directors constituting a quorum under clause 5(4)(a) by telephone or audiovisual means is a valid meeting of directors, but only if each participating director is capable of communicating with every other participating director instantaneously at all times during the proceedings.

**7. Resolution may be passed without meeting**

- (1) If —
  - (a) a document containing a statement to the effect that an act, matter or thing has been done or a resolution has been passed is sent or given to all directors; and

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- (b) the document is assented to by a majority of the directors who signify a response; and
  - (c) the majority comprises not less than 2 directors,

that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the board.
- (2) For the purposes of subclause (1) —
  - (a) the meeting is to be taken as having been held —
    - (i) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
    - (ii) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
  - and
  - (b) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken to constitute one document; and
  - (c) a director may signify assent to a document —
    - (i) by signing the document; or
    - (ii) by notifying the IMO of the director's assent in person or by post, facsimile transmission, telephone, email or other method of written, electronic, audio or audiovisual communication.
- (3) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the board attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.

**8. Minutes and records**

The board is to ensure that an accurate record is kept and preserved of —

- (a) the proceedings at each meeting of the board; and
- (b) each resolution passed under clause 7.

**9. Leave of absence**

The board may, on such terms and conditions as it thinks fit, grant to a director leave of absence from a meeting, including the meeting at which it is intended to grant the leave.

**10. Board to determine own procedures**

Subject to these regulations, the board may determine its own procedures.

## **Schedule 2 — Provisions about duties of directors and related provisions**

[r. 12]

### **1. Interpretation**

A person who attempts (within the meaning of section 4 of *The Criminal Code*) to commit an offence against a provision of this Schedule commits an offence.

### **2. Disclosure of interest in contracts**

- (1) A director who has a material personal interest in a matter involving the IMO must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the board.

Penalty: \$6 000.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

### **3. Voting by interested directors**

- (1) A director who has a material personal interest in a matter that is being considered by the board —

- (a) must not vote whether at a meeting or otherwise —
- (i) on the matter; or
  - (ii) in relation to a proposed resolution under subclause (3) in relation to the matter, whether in relation to that or a different director;

and

- (b) must not be present while —
- (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

- (2) For the purpose of subclause (1), a director does not have an interest in a matter relating to an existing or proposed contract of insurance

merely because the contract insures, or would insure, the director against a liability incurred by the director in his or her capacity as a director of the IMO, but this subclause does not apply if the IMO is the insurer.

- (3) Subclause (1) does not apply if the board has at any time passed a resolution that —
  - (a) specifies the director, the interest and the matter; and
  - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (4) Despite clause 5(4) of Schedule 1, if a director is disqualified under subclause (1) in relation to a matter, a quorum is present during the consideration of that matter if at least 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (5) The Minister may deal with a matter in so far as the board cannot deal with it because of subclause (4).
- (6) The Minister may by writing declare that subclauses (1) and (4) do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (7) The Minister must within 14 days after a declaration under subclause (6) is made cause a copy of the declaration to be laid before each House of Parliament or to be dealt with under regulation 51.

#### **4. Prohibition on loans to directors and related persons**

- (1) In this clause —

*relative* means —

  - (a) a parent or remoter lineal ancestor; or
  - (b) son, daughter or remoter issue; or
  - (c) a brother or sister.

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- (2) The IMO must not, whether directly or indirectly —
- (a) make a loan to a director, a spouse or de facto partner of a director or a relative of a director or spouse or de facto partner of a director; or
  - (b) give a guarantee or provide security in connection with a loan made to a director, a spouse or de facto partner of a director or a relative of a director or spouse or de facto partner of a director.
- (3) A director who is knowingly concerned in a contravention of subclause (2) by the IMO (whether or not in relation to the director) commits an offence.
- Penalty:
- (a) if the contravention was committed with intent to deceive or defraud the IMO or creditors of the IMO or creditors of any other person or for any other fraudulent purpose, \$20 000;
  - (b) otherwise, \$5 000.

**5. Directors and auditors not to be indemnified for certain matters**

- (1) The IMO must not —
- (a) indemnify a person who is or has been a director or auditor of the IMO against a liability incurred by the person as a director or auditor; or
  - (b) exempt such a person from such a liability.
- (2) Any agreement or arrangement is void so far as it provides for the IMO to do anything that subclause (1) prohibits.
- (3) Subclause (1) does not prevent a person from being indemnified against a civil liability to a person, other than the IMO, unless the liability arises out of conduct involving a lack of good faith.
- (4) Subclause (1) does not prevent a person from being indemnified against a liability for costs and expenses incurred by the person —
- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or

- (b) in obtaining relief under section 20 or 21 of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (5) The IMO must not pay, or agree to pay, a premium, in respect of a contract insuring a person who is or has been a director or auditor of the IMO against a liability —
  - (a) incurred by the person as such a director or auditor; and
  - (b) arising out of conduct involving —
    - (i) a wilful breach of duty in relation to the IMO; or
    - (ii) without limiting subparagraph (i), a contravention of section 11 or 12 of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (6) In subclause (5) —  
**pay** includes pay indirectly through one or more interposed entities.
- (7) If subclause (5) is contravened, the contract is void so far as it insured the person against such a liability.
- (8) Subclauses (5) and (7) do not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal and whatever their outcome.

**6. False or misleading information**

- (1) A director must not make available or furnish information, or authorise or permit the making available or furnishing of information, to —
  - (a) the Treasurer or the Minister; or
  - (b) a director, auditor, debenture holder or trustee for debenture holders of the IMO,being information, whether in documentary or any other form, that relates to the affairs of the IMO and that, to the knowledge of the director —
  - (c) is false or misleading in a material particular; or
  - (d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect.

Penalty: \$10 000.

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- (2) A director must not make available or furnish information, or authorise or permit the making available or furnishing of information, to —
- (a) the Treasurer or the Minister; or
  - (b) a director, auditor, debenture holder or trustee for debenture holders of the IMO,

being information whether in documentary or any other form, relating to the affairs of the IMO that —

- (c) is false or misleading in a material particular; or
- (d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

without having taken reasonable steps to ensure that the information —

- (e) was not false or misleading in a material particular; and
- (f) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect.

Penalty: \$5 000.

- (3) The references in subclauses (1) and (2) to a director making available or furnishing, or authorising or permitting the making available or furnishing of, information relating to the affairs of the IMO include references to a director making available or furnishing, or authorising or permitting the making available or furnishing of, information as to the state of knowledge of that director with respect to the affairs of the IMO.
- (4) Where information is made available or furnished to a person referred to in subclauses (1)(a) or (b) or (2)(a) or (b) in response to a question asked by that person, the question and information are to be considered together in determining whether the information was false or misleading.



## **Schedule 3 — Financial administration and audit**

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### **Division 1 — Preliminary**

#### **1. Terms used**

- (1) In this Schedule, unless the contrary intention appears —  
*financial year* has the meaning given by clause 23(1);  
*regulations* means regulations made under the Corporations Act.
- (2) In this Schedule, unless the contrary intention appears, expressions (including the expressions *accounting standard*, *company* and *financial records*) have the meanings given to those terms in Part 1.2 of the Corporations Act.

### **Division 2 — Financial records**

#### **2. Obligation to keep financial records** *(cf. s. 286 Corporations Act)*

- (1) The IMO must keep written financial records that —
  - (a) correctly record and explain its transactions and financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited.
- (2) The obligation to keep financial records of transactions extends to transactions undertaken as trustee.
- (3) The financial records must be retained for 7 years after the transaction covered by the records are completed.

#### **3. Physical format** *(cf. s. 288 Corporations Act)*

If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

**4. Place where records are kept**  
*(cf. s. 289 Corporations Act)*

- (1) The IMO may decide where to keep the financial records.
- (2) If financial records about particular matters are kept outside Australia, sufficient written information about those matters must be kept in Australia to enable true and fair financial statements to be prepared.
- (3) The IMO must give the Treasurer written notice of the place where the information is kept.
- (4) The Minister may direct the IMO to produce specified financial records that are kept outside Australia.
- (5) The direction must —
  - (a) be in writing; and
  - (b) specify a place in Australia where the records are to be produced (the place must be reasonable in the circumstances); and
  - (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

**5. Director access**  
*(cf. s. 290 Corporations Act)*

- (1) A director has a right of access to the financial records at all reasonable times.
- (2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.
- (3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following —
  - (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;
  - (b) an order limiting the right of a person who inspects the records to make copies in accordance with subclause (3).

### **Division 3 — Financial reporting**

#### **Subdivision 1 — Annual financial reports and directors' reports**

**6. Preparation of annual financial reports and directors' reports**  
*(cf. s. 292 Corporations Act)*

A financial report and a directors' report must be prepared for each financial year by the IMO before 30 September.

**7. Contents of annual financial report**  
*(cf. s. 295 Corporations Act)*

- (1) The financial report for a financial year consists of —
  - (a) the financial statements for the year; and
  - (b) the notes to the financial statements; and
  - (c) the directors' declaration about the statements and notes.
- (2) The financial statements for the year are —
  - (a) a profit and loss statement for the year; and
  - (b) a balance sheet as at the end of the year; and
  - (c) a statement of cash flows for the year; and
  - (d) if required by the accounting standards — a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (3) The notes to the financial statements are —
  - (a) disclosures required by the regulations; and
  - (b) notes required by the accounting standards; and
  - (c) any other information necessary to give a true and fair view.
- (4) The directors' declaration is a declaration by the directors —
  - (a) that the financial statements, and the notes referred to in subclause (3)(b), comply with the accounting standards; and
  - (b) that the financial statements and notes give a true and fair view; and
  - (c) whether, in the directors' opinion, there are reasonable grounds to believe that the IMO will be able to pay its debts as and when they become due and payable; and

- (d) whether, in the directors' opinion, the financial statements and notes are in accordance with this Schedule, including —
  - (i) clause 8 (compliance with accounting standards and regulations); and
  - (ii) clause 9 (true and fair view).

- (5) The declaration must —
  - (a) be made in accordance with a resolution of the directors; and
  - (b) specify the date on which the declaration is made; and
  - (c) be signed by at least 2 directors.

**8. Compliance with accounting standards and regulations**  
*(cf. s. 296 Corporations Act)*

- (1) The financial report for a financial year must comply with the accounting standards.
- (2) The financial report must comply with any further requirements in the regulations.

**9. True and fair view**  
*(cf. s. 297 Corporations Act)*

- (1) The financial statements and notes in respect of the IMO for a financial year must give a true and fair view of —
  - (a) the financial position and performance of the IMO; and
  - (b) if consolidated financial statements are required — the financial position and performance of the consolidated entity.
- (2) This clause does not affect the obligation under clause 8 for a financial report to comply with accounting standards.

**10. Annual directors' report**  
*(cf. s. 298 Corporations Act)*

- (1) The IMO must prepare a directors' report for each financial year.
- (2) The report must include —
  - (a) the general information required by clause 11; and
  - (b) the specific information required by clause 12.

- (3) The report must —
  - (a) be made in accordance with a resolution of the directors; and
  - (b) specify the date on which the report is made; and
  - (c) be signed by at least 2 directors.

**11. Annual directors' report — general information**  
*(cf. s. 299 Corporations Act)*

- (1) The directors' report for a financial year must —
  - (a) contain a review of operations during the year of the IMO and the results of those operations; and
  - (b) give details of any significant changes in the IMO's state of affairs during the year; and
  - (c) state the IMO's principal activities during the year and any significant changes in the nature of those activities during the year; and
  - (d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect —
    - (i) the IMO's operations in future financial years; or
    - (ii) the results of those operations in future financial years; or
    - (iii) the IMO's state of affairs in future financial years;and
  - (e) refer to likely developments in the IMO's operations in future financial years and the expected results of those operations; and
  - (f) if the IMO's operations are subject to any particular and significant environmental regulation under a law of the State or of the Commonwealth or of another State or a Territory —give details of the IMO's performance in relation to environmental regulation.
- (2) If consolidated financial statements are required, the report must be on the consolidated entity of which the IMO is part.
- (3) The report may omit material that would otherwise be included under subclause (1)(e) if it is likely to result in unreasonable prejudice to —

- (a) the IMO; or
  - (b) if consolidated financial statements are required — the consolidated entity or any entity (including the IMO) that is part of the consolidated entity.
- (4) If material is omitted from the report, the report must say so.

**12. Annual directors' report — specific information**  
*(cf. s. 300 Corporations Act)*

- (1) The directors' report for a financial year must include details of —
- (a) dividends or distributions paid during the year; and
  - (b) dividends or distributions recommended or declared for payment, but not paid, during the year; and
  - (c) the name of each person who has been a director of the IMO at any time during or since the end of the year and the period for which they were a director.
- (2) If —
- (a) during or since the financial year, the IMO has indemnified against a liability a person who is or has been a director or auditor of the IMO or of a related body corporate; and
  - (b) but for Schedule 2 clause 5(3) or (4), subclause (1) of that clause would have prohibited the IMO from indemnifying the person against that liability,
- the report must set out —
- (c) the person's name; and
  - (d) the nature of the liability; and
  - (e) how much the IMO paid, and what else the IMO did, by way of indemnifying the person against the liability.
- (3) If —
- (a) during or since the financial year, the IMO has made a relevant agreement (as defined in section 9 of the Corporations Act) for indemnifying against a liability a person who is or has been a director or auditor of the IMO or of a related body corporate; and

- (b) but for Schedule 2 clause 5(3) or (4), subclause (1) of that clause would prohibit the IMO from indemnifying the person against that liability,

the report must set out particulars of the relevant agreement, including —

- (c) the person's name; and
- (d) the nature of the liability; and
- (e) how much the relevant agreement provides for the IMO to pay, and what else it provides for the IMO to do, by way of indemnifying the person against the liability.

(4) If —

- (a) during or since the financial year, the IMO has paid, or agreed to pay, a premium in respect of a contract insuring against a liability a person who is or has been a director or auditor of the IMO or of a related body corporate; and
- (b) but for Schedule 2 clause 5(8), subclause (5) of that clause would have prohibited the IMO from paying, or agreeing to pay, the premium,

the report must —

- (c) name the person and state that the IMO has paid, or agreed to pay, a premium in respect of a contract insuring the person against a liability; and
- (d) set out, except so far as prohibited by the contract itself, the nature of the liability and the amount of the premium.

(5) The report must also include details of —

- (a) each director's qualifications, experience and special responsibilities; and
- (b) the number of meetings of the board held during the year and each director's attendance at those meetings; and
- (c) the number of meetings of each board committee held during the year and each director's attendance at those meetings.

**13. Annual directors' report — other specific information**  
*(cf. s. 300A Corporations Act)*

The directors' report for a financial year must also include —

- (a) discussion of board policy for determining the nature and amount of emoluments of directors and senior executives of the IMO; and
- (b) discussion of the relationship between such policy and the IMO's performance; and
- (c) details of the nature and amount of each element of the emolument of each director and each of the 5 named officers of the IMO receiving the highest emolument.

**14. Audit of annual financial report**  
*(cf. s. 301 Corporations Act)*

The IMO must have the financial report for a financial year audited by the Auditor General in accordance with Subdivision 2 and clauses 32 and 33 and obtain an auditor's report.

**Subdivision 2 — Audit and auditor's report**

**15. Audit opinion**  
*(cf. s. 307 Corporations Act)*

The Auditor General must form an opinion about —

- (a) whether the financial report is in accordance with this Schedule, including —
  - (i) clause 8 (compliance with accounting standards and regulations); and
  - (ii) clause 9 (true and fair view);and
- (b) whether he or she has been given all information, explanation and assistance necessary for the conduct of the audit; and
- (c) whether the IMO has kept financial records sufficient to enable a financial report to be prepared and audited; and
- (d) whether the IMO has kept other records and registers as required by this Schedule.



**16. Auditor General's report on annual financial report**  
*(cf. s. 308 Corporations Act)*

- (1) The Auditor General must report to the Minister on whether he or she is of the opinion that the financial report is in accordance with this Schedule, including —
  - (a) clause 8 (compliance with accounting standards and regulations); and
  - (b) clause 9 (true and fair view).
- (2) If not of that opinion, the Auditor General's report must say why.
- (3) If the Auditor General is of the opinion that the financial report does not comply with an accounting standard, his or her report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report.
- (4) If it is not practicable to quantify the effect fully, the report must say why.
- (5) The Auditor General's report must describe —
  - (a) any defect or irregularity in the financial report; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in clause 15.
- (6) The report must specify the date on which it is made.
- (7) The Auditor General must give a copy of the report to the directors as soon as practicable after it has been given to the Minister.

**17. Auditor General's power to obtain information**  
*(cf. s. 310 Corporations Act)*

The Auditor General —

- (a) has a right of access at all reasonable times to the books of the IMO; and
- (b) may require any officer of the IMO to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

**18. Assisting Auditor General**  
*(cf. s. 312 Corporations Act)*

An officer of the IMO must —

- (a) allow the Auditor General access to the books of the IMO;  
and
- (b) give the Auditor General any information, explanation or assistance required under clause 17.

**Subdivision 3 — Special provisions about consolidated financial statements**

**19. Directors and officers of controlled entity to give information**  
*(cf. s. 323 Corporations Act)*

If the IMO has to prepare consolidated financial statements, a director or officer of a controlled entity must give the IMO all information requested that is necessary to prepare the consolidated financial statements and the notes to those statements.

**20. Auditor General's power to obtain information from controlled entity**  
*(cf. s. 323A Corporations Act)*

- (1) Where the financial report includes consolidated financial statements, the Auditor General —
  - (a) has a right of access at all reasonable times to the books of any controlled entity; and
  - (b) may require any officer of the entity to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.
- (2) Any information, explanation or other assistance required under subclause (1)(b) is to be given at the expense of the IMO.

**21. Controlled entity to assist Auditor General**  
*(cf. s. 323B Corporations Act)*

If the IMO has to prepare a financial report that includes consolidated financial statements, an officer or auditor of a controlled entity must —

- (a) allow the Auditor General access to the controlled entity's books; and

- (b) give the Auditor General any information, explanation or assistance required under clause 20.

**22. Application of subdivision to entity that has ceased to be controlled**  
*(cf. s. 323C Corporations Act)*

Clauses 19, 20 and 21 apply to the preparation or audit of a financial report that covers a controlled entity even if the entity is no longer controlled by the IMO when its financial report is being prepared or audited.

**Subdivision 4 — Financial years of the IMO and the entities it controls**

**23. Financial years**  
*(cf. s. 323D Corporations Act)*

- (1) The financial year of the IMO is the 12 month period ending on 30 June.
- (2) Where the IMO has to prepare consolidated financial statements, it must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years.
- (3) It must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.

**Division 4 — Accounting standards**

**24. Accounting standards**  
*(cf. s. 334 Corporations Act)*

- (1) An accounting standard applies to —
  - (a) periods ending after the commencement of the standard; or
  - (b) periods ending, or starting, on or after a later date specified in the standard.
- (2) The IMO may elect to apply the accounting standard to an earlier period unless the standard says otherwise.
- (3) The election must be made in writing by the directors.

**25. Equity accounting**  
*(cf. s. 335 Corporations Act)*

This Schedule (and, in particular, the provisions on consolidation of financial statements) does not prevent accounting standards from incorporating equity accounting principles.

**26. Interpretation of accounting standards**  
*(cf. s. 337 Corporations Act)*

In interpreting an accounting standard —

- (a) unless the contrary intention appears, expressions used in the standard have the same meaning as they have in Chapter 2M of the Corporations Act; and
- (b) the provisions of Part 1.2 of the Corporations Act apply as if the standard's provisions were provisions of that Chapter.

**27. Evidence of text of accounting standard**  
*(cf. s. 339 Corporations Act)*

- (1) This clause applies to a document that purports to be published by or on behalf of the AASB or ASIC and to set out the text of —
  - (a) a specified standard as in force at a specified time under section 334 of the Corporations Act; or
  - (b) a specified provision of a standard of that kind.
- (2) It also applies to a copy of a document of that kind.
- (3) In the absence of evidence to the contrary, a document to which this clause applies is proof in proceedings under these regulations that —
  - (a) the specified standard was in force at that time under that section; and
  - (b) the text set out in the document is the text of the standard referred to in subclause (1)(a) or the provision referred to in subclause (1)(b).

### **Division 5 — Extensions**

#### **28. Extension of time**

- (1) Where any provision of this Schedule requires any act or thing to be observed or performed by a certain date or within a specified time by a person, other than the Auditor General, the Minister may on application by that person extend the date of, or the time for observance or performance of such act or thing to such date or time as the Minister thinks appropriate.
- (2) The Minister must within 14 days after an extension of time is granted under subclause (1) cause the text of the memorandum evidencing the extension to be laid before each House of Parliament or dealt with under regulation 51.

### **Division 6 — Sanctions for contraventions of this Schedule**

#### **29. Contravention of Divisions 2 and 3**

*(cf. s. 344 Corporations Act)*

- (1) A director contravenes this subclause if he or she fails to take all reasonable steps to comply with, or to secure compliance with, Division 2 or 3.
- (2) The penalty applicable to a contravention of subclause (1) is —
  - (a) in a case to which paragraph (b) does not apply, \$5 000; or
  - (b) if the offence was committed with intent to deceive or defraud the Minister or the Treasurer or creditors of the IMO, \$20 000.
- (3) Subclause (1) does not apply to clause 17, 18, 20 or 21.

### **Division 7 — Miscellaneous**

#### **30. Deadline for reporting to the Minister**

*(cf. s. 315 Corporations Act)*

- (1) In subclause (2) —  
*prescribed day* means the tenth working day after receipt by the directors under clause 16 of the Auditor General's report.

- (2) The IMO must, as soon as practicable but not later than the close of business on the prescribed day in each year, send to the Minister a copy of the annual report required by regulation 35.

**31. Annual financial reporting to Minister**  
*(cf. s. 314 Corporations Act)*

The annual report of the IMO under regulation 35 is to contain the following documents —

- (a) the financial report for the year;
- (b) the directors' report for the year;
- (c) the Auditor General's report on the financial report.

**32. Audit**

- (1) If the Auditor General cannot complete the audit of the IMO by 30 September in any year he or she is to submit an interim report to the Minister setting out the reasons for his or her inability to complete the audit by that date, and the Minister is to cause copies of the report to be laid before both Houses of Parliament, within 7 sitting days of receiving that report.

*[(2) deleted]*

*[Clause 32 amended in Gazette 14 Jun 2013 p. 2235.]*

**33. Powers and duties of Auditor General**

- (1) If the Auditor General in the course of the performance of duties as auditor of the IMO, is satisfied that —
- (a) there has been a contravention of any provision of this Schedule; and
  - (b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the financial statements or by bringing the matter to the notice of the board,

the Auditor General is to forthwith report the matter to the Minister in writing.

- (2) The *Auditor General Act 2006* applies to the IMO as if it were a statutory authority listed in the *Financial Management Act 2006* Schedule 1, except to the extent to which the *Auditor General Act 2006* requires the auditing of key performance indicators.

*[Clause 33 amended in Gazette 14 Jun 2013 p. 2235.]*



**Notes**

<sup>1</sup> This reprint is a compilation as at 7 March 2014 of the *Electricity Industry (Independent Market Operator) Regulations 2004* and includes the amendments made by the other written laws referred to in the following table <sup>2</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Electricity Industry (Independent Market Operator) Regulations 2004</i>	30 Sep 2004 p. 4207-69	1 Dec 2004 (see r. 2 and <i>Gazette</i> 30 Nov 2004 p. 5515)
<i>Electricity Industry (Independent Market Operator) Amendment Regulations 2008</i>	27 Jun 2008 p. 3125-8	r. 1 and 2: 27 Jun 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 28 Jun 2008 (see r. 2(b))
<i>Public Sector Reform (Consequential Amendments) Regulations 2011 Pt. 3</i>	11 Feb 2011 p. 502-7	12 Feb 2011 (see r. 2(d))
<i>Electricity Industry (Independent Market Operator) Amendment Regulations 2012</i>	29 Jun 2012 p. 2936-8	r. 1 and 2: 29 Jun 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 30 Jun 2012 (see r. 2(b) and <i>Gazette</i> 29 Jun 2012 p. 2929)
<i>Electricity Industry (Independent Market Operator) Amendment Regulations 2013</i>	14 Jun 2013 p. 2233-5	r. 1 and 2: 14 Jun 2013 (see r. 2(a)); Regulations other than r. 1, 2 and 4-7: 15 Jun 2013 (see r. 2(c)); Regulations 4-7: 29 Jun 2013 (see r. 2(b) and <i>Gazette</i> 28 Jun 2013 p. 2933)

**Reprint 1: The Electricity Industry (Independent Market Operator) Regulations 2004 as at 7 Mar 2014** (includes amendments listed above)

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<sup>2</sup> The amendment in the *State Superannuation Amendment Act 2007* s. 89 is not included because it was deleted by the *State Superannuation Amendment Act 2011* s. 4 before the amendment purported to come into operation.



## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
accounting standard .....	Sch. 3 cl. 1(2)
bank .....	46(1)
board .....	3
business arrangement .....	23(1)
chief executive officer .....	3
company .....	Sch. 3 cl. 1(2)
Corporations Act .....	3
debt paper .....	48(1)
director .....	3
document .....	42(1)
financial records .....	Sch. 3 cl. 1(2)
financial year .....	Sch. 3 cl. 1(1)
function .....	3
GSI rules .....	3
IMO .....	3
information .....	42(1)
latest draft plan .....	30(5)
main functions .....	21(1)
management .....	15(2)
member of staff .....	3
members of staff .....	17(1), 18(1)
participate .....	23(1)
pay .....	Sch. 2 cl. 5(6)
prescribed day .....	Sch. 3 cl. 30(1)
public service officer .....	10(1)
regulations .....	Sch. 3 cl. 1(1)
relative .....	Sch. 2 cl. 4(1)
relevant financial year .....	30(2)
Treasurer .....	3
Treasury officer .....	54(1)