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ELECTRICITY INDUSTRY ACT 2004

**ELECTRICITY INDUSTRY
(ACCESS CODE
ENFORCEMENT)
REGULATIONS 2005**

Western Australia

Electricity Industry (Access Code Enforcement) Regulations 2005

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Electricity Industry Act 2004

Electricity Industry (Access Code Enforcement) Regulations 2005

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Electricity Industry (Access Code Enforcement) Regulations 2005*.

2. Commencement

These regulations come into operation on the day on which they are published in the *Gazette*.

3. Terms used in these regulations

In these regulations, unless the contrary intention appears —

“**civil penalty provision**” has the meaning given to that term in regulation 4(1);

“**Code**” means the Code for the time being in force under section 104 of the Act;

“**conduct provision**” means a provision of the Code listed in the Table to Schedule 2 clause 2;

“**regulatory provision**” means a provision of the Code listed in the Table to Schedule 2 clause 1.

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4. Civil penalty provisions and civil penalties

- (1) The provisions of the Code specified in the Table to Schedule 1 are “**civil penalty provisions**” for the purposes of these regulations.
- (2) The maximum civil penalty amount (which may include a daily amount) that the Supreme Court may determine is payable by a person who contravenes a civil penalty provision is prescribed in the Table to Schedule 1.

5. Civil penalties — contravention of civil penalty provisions

- (1) If, on application, the Supreme Court is satisfied that a person has contravened a civil penalty provision, the Court may determine that a civil penalty of an amount that does not exceed the maximum civil penalty amount prescribed for the contravention in the Table to Schedule 1 is payable by the person to the Authority.
- (2) An amount specified as a daily amount in the Table to Schedule 1 in respect of a contravention of a civil penalty provision applies, as part of the prescription of the maximum civil penalty amount, for each day or part of a day that the contravention continues after the day, specified in a warning notice given to the person, by or during which the contravention was to be rectified.
- (3) For the purposes of subregulation (2) —
 - (a) if the contravention consists of a failure to do something required to be done, the contravention is to be regarded as continuing until the act is done, despite the fact that any period within which, or time before which, the act is required to be done has expired or passed; and
 - (b) the warning notice is a notice, that complies with subregulation (7), given by the Authority to the person warning the person that the Authority believes that the person has contravened the civil penalty provision.

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r. 6

- (4) In determining the amount of any civil penalty, the Court must have regard to all relevant matters including —
 - (a) the nature and extent of the act or omission constituting the contravention and of any loss or damage suffered as a result of the act or omission;
 - (b) the circumstances in which the act or omission took place; and
 - (c) whether the person has previously been found by the Court in proceedings under this Part to have contravened a civil penalty provision.
- (5) An application may be made by the Authority, and no one else.
- (6) The Authority cannot make an application in respect of a person unless it has already given a warning notice to the person.
- (7) A warning notice must —
 - (a) identify the civil penalty provision that the Authority believes has been, or is being, contravened;
 - (b) describe the conduct that comprises the alleged contravention;
 - (c) request an explanation; and
 - (d) request that the alleged contravention be rectified and specify a day or time by which it must be rectified.

6. Injunctions — contravention of regulatory or conduct provisions

- (1) If, on application, the Supreme Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of a regulatory provision or a conduct provision the Court may grant an injunction in the terms it considers to be appropriate.

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- (2) An application may be made —
 - (a) in the case of a regulatory provision — by the Authority and no one else; or
 - (b) in the case of a conduct provision — by any person.
- (3) The Court may grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of the kind mentioned in subregulation (1).
- (4) The Court may grant an interim injunction pending determination of an application under subregulation (1).
- (5) The Court may rescind or vary an injunction granted under subregulation (1), (3) or (4).
- (6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised —
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (7) If the application for an injunction is made by the Authority, the Court must not require the Authority or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.
- (8) Nothing in this regulation affects any other power the Court may have to grant injunctive relief.

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r. 7**7. Action for damages — contravention of conduct provisions**

- (1) A person who suffers loss or damage because of conduct of another person that contravenes a conduct provision may recover the amount of the loss or damage by action in a court of competent jurisdiction against that other person.
- (2) An action under subregulation (1) may be commenced at any time within 3 years after the date on which the cause of action accrued and may not be commenced after that period.

8. Other orders — contravention of regulatory or conduct provisions

- (1) If, on application, the Supreme Court determines that a person has contravened a regulatory provision or conduct provision, the Court may make one or both of the following orders —
 - (a) an order that the person cease, within a specified period, the act, activity or practice constituting the contravention;
 - (b) an order that the person take the action, or adopt the practice, that the Court requires for remedying the contravention or preventing a recurrence of the contravention.
- (2) An application may be made —
 - (a) in the case of a regulatory provision — by the Authority and no one else; or
 - (b) in the case of a conduct provision — by any person.

9. No proceedings against the Minister or the Authority

A proceeding under these regulations cannot be brought against the Minister or the Authority.

10. Civil penalty to be credited to Consolidated Fund

A civil penalty received by the Authority must be credited to the Consolidated Fund.

Electricity Industry (Access Code Enforcement) Regulations 2005**Schedule 1** Civil penalty provisions and amounts**Schedule 1 — Civil penalty provisions and amounts**

[r. 4]

Table

Civil penalty provisions	Maximum civil penalty amounts
s. 3.36(a)	\$50 000
s. 3.36(b)	\$50 000 plus a daily amount of \$10 000
s. 4.1	\$100 000 plus a daily amount of \$20 000
s. 4.4	\$50 000
s. 4.8	\$100 000 plus a daily amount of \$20 000
s. 4.37(c)	\$100 000
s. 4.37(d)	\$100 000 plus a daily amount of \$20 000
s. 4.48	\$100 000 plus a daily amount of \$20 000
s. 8.1	\$50 000 plus a daily amount of \$10 000
s. 8.7	\$20 000 plus a daily amount of \$4 000
s. 9.2	\$100 000
s. 10.34	\$100 000
s. 10.41	\$100 000
s. 11.3	\$50 000 plus a daily amount of \$10 000
s. 12.7	\$100 000 plus a daily amount of \$20 000
s. 12.10	\$100 000 plus a daily amount of \$20 000
s. 12.38	\$20 000
s. 13.1(b)	\$100 000 plus a daily amount of \$20 000
s. 13.6	\$50 000 plus a daily amount of \$10 000
s. 13.7	\$50 000 plus a daily amount of \$10 000
s. 13.42	\$50 000
s. 13.45	\$50 000 plus a daily amount of \$10 000
s. 14.2	\$50 000
s. 14.4	\$50 000 plus a daily amount of \$10 000
s. 14.14	\$100 000
cl. A5.24	\$50 000

Electricity Industry (Access Code Enforcement) Regulations 2005
Civil penalty provisions and amounts **Schedule 1**

Civil penalty provisions	Maximum civil penalty amounts
cl. A5.26	\$50 000
cl. A5.30	\$50 000
cl. A5.31	\$50 000
cl. A5.35	\$50 000

Electricity Industry (Access Code Enforcement) Regulations 2005
Schedule 2 Regulatory and conduct provisions

Schedule 2 — Regulatory and conduct provisions

[r. 3]

1. Regulatory provisions

The Table to this clause lists the provisions of the Code that are regulatory provisions for the purposes of these regulations.

Table

s. 3.36(a) and (b)	s. 12.38
s. 4.1	s. 13.6
s. 4.4	s. 13.7
s. 4.8	s. 13.37
s. 4.37(c)	s. 13.42
s. 4.37(d)	s. 13.45
s. 4.48	s. 14.2
s. 8.1	s. 14.3
s. 8.7	s. 14.4
s. 9.2	cl. A5.24
s. 9.9	cl. A5.26
s. 10.41	cl. A5.30
s. 11.3	cl. A5.31
s. 12.7	cl. A5.35
s. 12.10	

2. Conduct provisions

The Table to this clause lists the provisions of the Code that are conduct provisions for the purposes of these regulations.

Table

s. 2.8(a)	s. 12.59
s. 2.9	s. 13.1(b)
s. 10.34	s. 14.14
s. 10.43	

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.



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