

## **Energy Regulations Amendment Regulations 2021**

**SL 2021/2**

Made by the Governor in Executive Council.

### **Part 1 — Preliminary**

**1. Citation**

These regulations are the *Energy Regulations Amendment Regulations 2021*.

**2. Commencement**

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette* (***gazettal day***);
- (b) Part 2 (other than Divisions 2 and 3) — on the day after gazettal day;
- (c) Part 2 Division 2 — at 8 am on 1 February 2021;
- (d) Part 4 (other than Division 2) — on the day after gazettal day;
- (e) the rest of the regulations — on 1 July 2021.

### **Part 2 — *Electricity Industry (Wholesale Electricity Market) Regulations 2004* amended**

#### **Division 1 — Amendments coming into operation on day after gazettal day**

**3. Regulations amended**

This Division amends the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*.

**4. Regulation 7 amended**

- (1) In regulation 7(3)(c):
  - (a) in subparagraph (ii) delete “Coordinator.” and insert:  
  
Coordinator; or

(b) after subparagraph (ii) insert:

(iii) amend, repeal or replace market rules dealing with the matters referred to in regulation 12C(1A).

(2) In regulation 7(5) delete “1 July 2021.” and insert:

31 March 2023.

**5. Regulation 8 replaced**

Delete regulation 8 and insert:

**8. Availability of copies of market rules**

The Authority must make a copy of the market rules, as in force for the time being, available on a website maintained by, or on behalf of, the Authority.

**6. Regulation 12B amended**

In regulation 12B(3) delete “The” and insert:

Before 1 July 2021, the

**7. Regulation 12C amended**

(1) After regulation 12C(1) insert:

(1A) The market rules may make provision for governance matters, including financial management, relating to the performance of the functions of the Coordinator under these regulations and the market rules.

(2) After regulation 12C(2) insert:

(3) On and after 1 July 2021, the Coordinator is responsible for the development, in accordance with the market rules, of amendments of and replacements for the market rules.

- (4) The Coordinator may, directly or indirectly, record, disclose or make use of any information obtained in the course of duty (whether under these regulations, the market rules or any other written law or rules) if the recording, disclosing or making use of the information is for the purpose of —
  - (a) performing functions under these regulations or the market rules; or
  - (b) complying with provisions of these regulations or the market rules that impose requirements.
- (5) The market rules may impose restrictions or conditions on the Coordinator's authority to record, disclose or make use of information under subregulation (4).

**8. Regulation 17C inserted**

After regulation 17B insert:

**17C. Transitional market rules for transfer of functions from Rule Change Panel to Coordinator**

- (1) In this regulation —
  - function* means a function under these regulations or the market rules;
  - Rule Change Panel function* means a function of the Rule Change Panel before 1 July 2021.
- (2) Without limiting regulation 17(n), the market rules may provide for transitional matters arising in connection with the transfer to the Coordinator of a Rule Change Panel function.
- (3) The provision that may be made under subregulation (2) includes, without limitation, the following —
  - (a) provision for a thing done or omitted to be done by, to or in relation to the Rule Change Panel before a transfer to be taken after the transfer to have been done or omitted by, to or in relation to the Coordinator;
  - (b) provision for a right or obligation of the Rule Change Panel before a transfer to be taken after the transfer to be a right or obligation of the Coordinator;
  - (c) provision for a reference to the Rule Change Panel in an instrument or document made or given before a transfer for the purposes of these regulations or the market rules to be taken after the transfer to be a reference to the Coordinator.

- (4) For the purposes of this regulation, a Rule Change Panel function is transferred to the Coordinator if —
  - (a) the Rule Change Panel function becomes a function of the Coordinator (with or without modifications); or
  - (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 Coordinator.

## **Division 2 — Amendments coming into operation at 8 am on 1 February 2021**

### **9. Regulations amended**

This Division amends the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*.

### **10. Regulation 4A amended**

- (1) At the beginning of regulation 4A insert:
  - (1) In this regulation —  
*2020 amending rules* means the *Wholesale Electricity Market Amendment (Tranche 1 Amendments) Rules 2020* made under these regulations (notice of which was given in the *Gazette* on 24 November 2020) to the extent that those rules come into operation at 8 am on 1 February 2021.
- (2) In regulation 4A delete “A reference” and insert:
  - (2) Subject to subregulations (3) to (5), a reference
- (3) At the end of regulation 4A insert:
  - (3) A reference in Schedule 1 or 2 to a provision of the market rules that is amended, or that is inserted into the market rules, by the 2020 amending rules is a reference to that provision as so amended or inserted.

- (4) Despite subregulation (3), subregulation (2) applies to a provision of the market rules that is amended by the 2020 amending rules as follows —
  - (a) for a reference to the provision in Schedule 1 — subregulation (2) applies in relation to —
    - (i) a contravention of the provision that occurs before the 2020 amending rules come into operation; and
    - (ii) any continuation of that contravention;
  - (b) for a reference to the provision in Schedule 2 — subregulation (2) applies in relation to any decision made under the provision before the 2020 amending rules come into operation.
- (5) If, when or after the 2020 amending rules come into operation, a person contravenes a provision of the market rules that is amended by the 2020 amending rules, in determining whether the contravention is a subsequent contravention for the purposes of Schedule 1, any contravention of the provision by the person before the 2020 amending rules come into operation is to be counted.

## **11. Schedule 1 amended**

In Schedule 1 insert in numerical order:

cl. 1.41.2	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 3A.1.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 3A.5.7	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 3A.6.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 3A.8.1	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 3A.8.5(a)	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 3A.10.1(a)	A	first contravention: \$10 000 subsequent contraventions: \$20 000
cl. 3A.13.3	A	first contravention: \$10 000 subsequent contraventions: \$20 000

**Division 3 — Amendments coming into operation on  
1 July 2021**

**12. Regulations amended**

This Division amends the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*.

**13. Regulation 3 amended**

- (1) In regulation 3 delete the definitions of:

***Rule Change Panel***  
***System Management***

- (2) In regulation 3 insert in alphabetical order:

***Rule Change Panel*** means the Rule Change Panel established under the *Energy Industry (Rule Change Panel) Regulations 2016* regulation 4 before the deletion of that regulation by the *Energy Regulations Amendment Regulations 2021* regulation 27;

**14. Regulation 6 amended**

Delete regulation 6(8) and insert:

- (8) The Coordinator must make a copy of amending rules made by the Minister available on a website maintained by, or on behalf of, the Coordinator.

**15. Regulation 7 amended**

Delete regulation 7(3)(b).

**16. Regulation 8 replaced**

Delete regulation 8 and insert:

**8. Availability of copies of market rules**

The Coordinator must make a copy of the market rules, as in force for the time being, available on a website maintained by, or on behalf of, the Coordinator.

**17. Regulation 12 amended**

After regulation 12(4) insert:

- (5) The market rules are to confer on the operator the function of ensuring that the SWIS is operated in a secure and reliable manner.

- (6) The market rules may authorise the Authority to give directions to, or impose requirements on, the operator as to the performance of the operator's function conferred in accordance with subregulation (5) and the operator must comply with directions so given or requirements so imposed.

**18. Regulation 12B deleted**

Delete regulation 12B.

**19. Regulation 12C amended**

In regulation 12C(3) delete "On and after 1 July 2021, the" and insert:

The

**20. Regulation 13 deleted**

Delete regulation 13.

**21. Regulation 15 amended**

In regulation 15(2) delete "operator, System Management" and insert:

operator

**22. Regulation 19 amended**

In regulation 19(2) delete "operator or System Management," and insert:

operator,

**23. Regulation 21 amended**

- (1) In regulation 21(1) delete "Authority, the Rule Change Panel" and insert:

Authority

- (2) Delete regulation 21(1A).

- (3) Delete regulation 21(2)(c).

(4) Delete regulation 21(2A) and insert:

(2A) Costs identified under subregulation (1) or (2) must not relate to functions under the *Gas Services Information Act 2012*.

### **Part 3 — *Energy Industry (Rule Change Panel) Regulations 2016* amended**

#### **24. Regulations amended**

This Part amends the *Energy Industry (Rule Change Panel) Regulations 2016*.

#### **25. Regulation 3 amended**

(1) In regulation 3 delete the definitions of:

*confidential information*

*executive officer*

*market participant*

*Rule Change Panel*

*staff member*

(2) In regulation 3 insert in alphabetical order:

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

***document*** includes any record of information, irrespective of how the information is recorded or stored or able to be recovered, and includes 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 is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

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

Notes for this definition:

- 1. The Rule Change Panel is abolished under regulation 3A (inserted by the *Energy Regulations Amendment Regulations 2021* regulation 26) at the beginning of 1 July 2021.
- 2. Regulation 4 is deleted by the *Energy Regulations Amendment Regulations 2021* regulation 27 at the beginning of 1 July 2021.



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

- (a) the Rule Change Panel; or
- (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 function** means a function of the Rule Change Panel before 1 July 2021 under any of the following —

- (a) these regulations;
- (b) the *Electricity Industry (Wholesale Electricity Market) Regulations 2004*;
- (c) the *Gas Services Information Regulations 2012*;
- (d) GSI rules or market rules;

**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.

## 26. Part 1A inserted

After regulation 3 insert:

### Part 1A — Abolition of Rule Change Panel

#### 3A. Rule Change Panel abolished

At the beginning of 1 July 2021, the Rule Change Panel is abolished (and its members go out of office).

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

- (1) It is a function of the Authority to do anything that the 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.

- (2) Without limiting subregulation (1), the Authority —
- (a) must take possession or control of all Rule Change Panel documents not already in the possession or control of the Authority; and
  - (b) must provide to the Coordinator —
    - (i) all Rule Change Panel legal advice; and
    - (ii) as and when requested by the Coordinator, any other Rule Change Panel document or any other information contained in a Rule Change Panel document;
- and
- (c) may otherwise provide any Rule Change Panel document, or any information contained in a Rule Change Panel document, to the Coordinator or to any other person or body to whom a Rule Change Panel function is transferred; and
  - (d) may otherwise directly or indirectly record, disclose or make use of any Rule Change Panel document, or any information contained in a Rule Change Panel document, for the purpose of performing —
    - (i) the Authority’s function under this regulation; or
    - (ii) the Authority’s obligations under the *Financial Management Act 2006*.
- (3) Any legal professional privilege of the Rule Change Panel, or of the Authority, attaching to any Rule Change Panel legal advice immediately before 1 July 2021 is taken, on and after 1 July 2021, to be the legal professional privilege of the Coordinator.
- (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, a Rule Change Panel function is transferred to a person or body if —
- (a) the Rule Change Panel function becomes a function of the person or body (with or without modifications); or
  - (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.

**3C. Restriction on recording, disclosure or use of information by 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) as required or allowed by a written law; or
- (b) for the purposes of —
  - (i) civil or criminal proceedings; or
  - (ii) proceedings before a tribunal established under a written law or 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.

**27. Parts 2 to 4 deleted**

Delete Parts 2 to 4.

**Part 4 — *Gas Services Information Regulations 2012* amended**

**Division 1 — Amendments coming into operation on day after gazettal day**

**28. Regulations amended**

This Division amends the *Gas Services Information Regulations 2012*.

**29. Regulation 7 amended**

- (1) In regulation 7(4):
  - (a) in paragraph (b) delete “made.” and insert:  
  
made; and

(b) after paragraph (b) insert:

(c) rules must be approved by the Minister before they are made if they —

- (i) amend, repeal or replace GSI rules to confer functions on the Coordinator; or
- (ii) amend, repeal or replace GSI rules that confer functions on the Coordinator; or
- (iii) amend, repeal or replace GSI rules dealing with the matters referred to in regulation 8(2)(c) in relation to the Coordinator.

(2) After regulation 7(5) insert:

(6) Despite anything in this regulation or the GSI rules, the Minister may make amending rules during the period beginning on the day on which the *Energy Regulations Amendment Regulations 2021* regulation 29 comes into operation and ending on 31 March 2023.

### **30. Regulation 8 amended**

In regulation 8(2):

(a) in paragraph (c) delete “operator” and insert:

operator, the Coordinator

(b) in paragraph (d)(i) after “operator,” insert:

the Coordinator,

### **31. Regulation 8B inserted**

After regulation 8A insert:

#### **8B. Transitional GSI rules for transfer of functions from Rule Change Panel to Coordinator**

(1) In this regulation —

*function* means a function under these regulations or the GSI rules;

*Rule Change Panel function* means a function of the Rule Change Panel before 1 July 2021.

- (2) Without limiting regulation 8(2)(o), the GSI rules may provide for transitional matters arising in connection with the transfer to the Coordinator of a Rule Change Panel function.
- (3) The provision that may be made under subregulation (2) includes, without limitation, the following —
  - (a) provision for a thing done or omitted to be done by, to or in relation to the Rule Change Panel before a transfer to be taken after the transfer to have been done or omitted by, to or in relation to the Coordinator;
  - (b) provision for a right or obligation of the Rule Change Panel before a transfer to be taken after the transfer to be a right or obligation of the Coordinator;
  - (c) provision for a reference to the Rule Change Panel in an instrument or document made or given before a transfer for the purposes of these regulations or the GSI rules to be taken after the transfer to be a reference to the Coordinator.
- (4) For the purposes of this regulation, a Rule Change Panel function is transferred to the Coordinator if —
  - (a) the Rule Change Panel function becomes a function of the Coordinator (with or without modifications); or
  - (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 Coordinator.

**32. Regulation 9 replaced**

Delete regulation 9 and insert:

**9. Availability of copies of GSI rules**

The ERA must —

- (a) make a copy of the GSI rules, as in force for the time being, available on a website maintained by, or on behalf of, the ERA; and
- (b) if the GSI rules adopt a text of a published document, either as that text exists at a particular time or as it may from time to time be amended — make that text available on that website or specify on that website a place where the text may be obtained.

**33. Regulation 11 amended**

- (1) In regulation 11(5) delete “The” and insert:

Before 1 July 2021, the

- (2) After regulation 11(5) insert:

- (6) The Coordinator is responsible for the development, in accordance with the GSI rules, of amendments of and replacements for the GSI procedures, to the extent to which the procedures relate to the Coordinator’s functions.
- (7) On and after 1 July 2021, the Coordinator is responsible for the development, in accordance with the GSI rules, of amendments of and replacements for the GSI rules.

**34. Regulation 11A inserted**

At the end of Part 3 insert:

**11A. Use of information by Coordinator**

- (1) The Coordinator may, directly or indirectly, record, disclose or make use of any information obtained in the course of duty (whether under these regulations, the GSI rules or any other written law or rules) if the recording, disclosing or making use of the information is for the purpose of performing functions under these regulations or the GSI rules.
- (2) The GSI rules may impose restrictions or conditions on the Coordinator’s authority to record, disclose or make use of information under subregulation (1).

**Division 2 — Amendments coming into operation on  
1 July 2021**

**35. Regulations amended**

This Division amends the *Gas Services Information Regulations 2012*.

**36. Regulation 3 amended**

In regulation 3(1) delete the definition of *Rule Change Panel* and insert:

*Rule Change Panel* means the Rule Change Panel established under the *Energy Industry (Rule Change Panel) Regulations 2016* regulation 4 before the deletion of that regulation by the *Energy Regulations Amendment Regulations 2021* regulation 27;

**37. Regulation 7 amended**

Delete regulation 7(4)(b).

**38. Regulation 8 amended**

- (1) In regulation 8(1) delete “the Rule Change Panel (to the extent to which those functions relate to the matters referred to in regulation 7(2)),”.
- (2) In regulation 8(2):
  - (a) in paragraph (c) delete “operator, the Coordinator or the Rule Change Panel” and insert:

operator or the Coordinator
  - (b) in paragraph (d)(i) delete “Coordinator, the Rule Change Panel” and insert:

Coordinator

**39. Regulation 9 replaced**

Delete regulation 9 and insert:

**9. Availability of copies of GSI rules**

The Coordinator must —

- (a) make a copy of the GSI rules, as in force for the time being, available on a website maintained by, or on behalf of, the Coordinator; and
- (b) if the GSI rules adopt a text of a published document, either as that text exists at a particular time or as it may from time to time be amended — make that text available on that website or specify on that website a place where the text may be obtained.

**40. Regulation 11 amended**

- (1) Delete regulation 11(5).
- (2) In regulation 11(7) delete “On and after 1 July 2021, the” and insert:

The

M. INGLIS, Clerk of the Executive Council.