

## Energy Industry (Rule Change Panel) Amendment Regulations 2020

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Consultation Draft

## **Energy Industry (Rule Change Panel) Amendment Regulations 2020**

Made by the Governor in Executive Council.

### **1. Citation**

These regulations are the *Energy Industry (Rule Change Panel) Amendment Regulations 2020*.

### **2. Commencement**

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

### **3. Regulations amended**

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

*[The following text is Parts 1 and 2 of the Energy Industry (Rule Change Panel) Regulations 2016 showing proposed amendments in track changes. A formal amending instrument will be drafted at a later stage.]*

## **Part 1 — Preliminary**

### **1. Citation**

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

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**2. Commencement**

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

**3. Terms used**

In these regulations —

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

**confidential information** means information given to the Rule Change Panel under an obligation under a written law, the GSI rules or the market rules —

- (a) that is specified to be confidential by the person who provided it (unless it is not reasonable in the circumstances to so specify the information); or
- (b) that by its nature is confidential; or
- (c) that is classified as confidential under the GSI rules or the market rules;

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

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

**market participant** means —

- (a) a participant as defined in the *Electricity Industry Act 2004* section 121(2); or
- (b) a gas market participant as defined in the *Gas Services Information Act 2012* section 3(1);

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

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

*staff member* has the meaning given in the *Economic Regulation Authority Act 2003* section 3.

## Part 2 — Rule Change Panel

### Division 1 — Establishment

#### 4. Rule Change Panel established

- (1) A body called the Rule Change Panel is established.
- (2) The Rule Change Panel consists of ~~5~~3 members appointed by the Minister.
- (3) Each member of the Rule Change Panel is to be a natural person.

#### 5. Remuneration and allowances

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

### Division 2 — Functions and powers

#### 6. Functions

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

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

**7. Powers**

The Rule Change Panel has all the powers it needs to perform its functions.

**8. Delegation**

The Rule Change Panel cannot delegate its functions.

**Division 3 — Constitution and proceedings**

**9. Appointment of members**

- (1) In making appointments to the Rule Change Panel the Minister must, if possible, ensure that each appointment is made after consultation with the chairperson of the Rule Change Panel.
- (2) In making an appointment to the Rule Change Panel the Minister must ensure that the person appointed has experience, skills or qualifications relevant to the functions of the Rule Change Panel.
- (3) Without limiting subregulation (2), experience, skills or qualifications relevant to the functions of the Rule Change Panel include —
  - (a) knowledge of the electricity or gas industry including the electricity or gas markets;
  - (b) knowledge of the legislation relevant to the electricity or gas industry;
  - (c) tertiary qualifications including in engineering, economics, finance or law;
  - (d) experience in the electricity or gas industry in engineering, economics, finance, law or senior management;
  - (e) experience or qualifications in public policy or public administration.

- (4) The following persons are not eligible to be appointed as members of the Rule Change Panel —
- (a) the executive officer;
  - (b) a member (as defined in the *Economic Regulation Authority Act 2003* section 3) of the Authority;
  - ~~(c) a staff member;~~
  - ~~(d) the Coordinator of Energy referred to in the *Energy Coordination Act 1994* section 4;~~
  - ~~(e) a person appointed or made available under the *Energy Coordination Act 1994* section 4B;~~
  - ~~(f) an employee, member, director or company secretary of the Australian Energy Market Operator Limited (ACN 072 010 327).~~
  - ~~(c) a person who is employed in the Public Service;~~
  - ~~(d) a market participant;~~
  - ~~(e) a person who is employed or engaged by a market participant.~~

#### 10. Chairperson

The Minister is to designate one member of the Rule Change Panel to be the chairperson of the Rule Change Panel.

#### 11. Term of office

- (1) Subject to subregulation (2), a member of the Rule Change Panel holds office for the period, not exceeding 4 years, specified in the appointment.
- (2) A member of the Rule Change Panel whose term of office expires without a person having been appointed to fill the vacancy continues in office (unless the person resigns or is removed from office) until a person is appointed to fill the vacancy.
- ~~(3) A member of the Rule Change Panel is eligible for reappointment once.~~

- (4) A member of the Rule Change Panel need not be appointed on a full-time basis.

**12. Casual vacancies**

- (1) In this regulation —

*insolvent* means a person who is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws.

- (2) A member of the Rule Change Panel may resign from office by notice in writing given to the Minister.

- (3) The Minister may remove a member of the Rule Change Panel from office on the grounds of —

- (a) mental or physical incapacity to carry out the member's duties in a satisfactory manner; or
- (b) the member being an insolvent; or
- (c) neglect of duty; or
- (d) misconduct; or
- (e) incompetence; or
- (f) the member being a person referred to in regulation 9(4); or
- (g) the member's absence, without leave or reasonable excuse, from 3 consecutive meetings of the Rule Change Panel of which the member had notice.

- (4) If, before the term of office for which a person was appointed as a member of the Rule Change Panel expires, the person dies, resigns or is removed from office, the office becomes vacant.

**13. Alternate members**

- (1) The Minister may in writing appoint a person to act temporarily in place of a member of the Rule Change Panel who is unable to act.



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

**14. Quorum**

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

**15. Presiding at meetings**

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

**16. Voting**

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

(1A) In the case of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.

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

**17. Telephone and video meetings**

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

**18. Resolution without meeting**

Subject to regulation 21, a resolution in writing signed or otherwise assented to in writing by 3 or more members of the Rule Change Panel has the same effect as if it had been passed at a meeting of the Rule Change Panel.

**19. Minutes and records**

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

- (a) the proceedings at each meeting of the Rule Change Panel; and
- (b) each resolution made under regulation 18.

**20. Disclosure of material personal interest**

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

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

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

**21. Voting by interested member**

- (1) A member of the Rule Change Panel who has a material personal interest in a matter being considered or about to be considered by the Rule Change Panel —
  - (a) must not vote, whether at a meeting or under regulation 18, on the matter; and
  - (b) must not be present while the matter is being considered at a meeting.
- (2) Subregulation (1) does not apply if the Rule Change Panel has at any time passed a resolution that —
  - (a) specifies the member of the Rule Change Panel, the interest and the matter; and
  - (b) states that the members of the Rule Change Panel voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.
- (3) A reference in subregulation (1)(a) or (b) to a matter includes a reference to a proposed resolution under subregulation (2) in respect of the matter.
- ~~(4) Despite regulation 14, a resolution under subregulation (2) is passed if 2 members of the Rule Change Panel vote for it.~~
- (5) The Minister may in writing declare that subregulation (1) does not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (6) The Minister must, within 14 days after a declaration under subregulation (5) is made, cause a copy of the declaration to be laid before each House of Parliament or dealt with in accordance with regulation 30.

**22. Rule Change Panel to determine own procedures**

The Rule Change Panel may determine its own procedures except to the extent that its procedures are set out in —

- (a) these regulations; or
- (b) the GSI rules; or
- (c) the market rules.

**Division 4 — Administrative support for Rule Change Panel**

**23. Authority to provide administrative support**

- (1) There is to be an executive officer of the Rule Change Panel.
- (2) The Authority must —
  - (a) make available the executive officer and any other staff member whose assistance the Rule Change Panel may reasonably require; and
  - (b) make available the services and facilities that the Rule Change Panel may reasonably require on the terms agreed to by the Rule Change Panel and the Authority; and
  - (c) provide any other assistance the Rule Change Panel or the members of the Rule Change Panel may reasonably require for the Rule Change Panel to perform its functions.
- (3) It is a function of the Authority to —
  - (a) make available the executive officer, staff members, services and facilities referred to in subregulation (2); and
  - (b) provide the assistance referred to in subregulation (2).

Clerk of the Executive Council