

NATIONAL ENERGY LAWS: CIVIL PENALTY PROVISIONS CONCEPTS TABLE

Consultation Draft – July 2020

This Table accompanies the Decision Matrix, to assist in applying the questions in the Decision Matrix.

TIER	CONCEPT	CONCEPT DEFINITION
<p>Tier 1: <i>Maximum penalty</i></p> <p>a) If the breach is by a natural person—an amount not exceeding \$500 000.</p> <p>b) If the breach is by a body corporate—an amount not exceeding the greater of the following:</p> <ul style="list-style-type: none"> – \$10 000 000; – if the Court can determine the value of any benefit reasonably attributable to the breach of the civil penalty provision that the body corporate, and any body corporate related to the body corporate, has obtained, directly or indirectly—3 times the value of that benefit; – if the Court cannot determine the value of the benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate breached, or began breaching, the civil penalty provision. 	<p>Consumer Harm (Type 1)</p>	<p>Consumer Harm (Type 1) is primarily concerned with the national objectives of promoting efficient operation of energy services for the long term interest of consumers with respect to the 5 Consumer Interests, and particularly safety, reliability and security of supply. It captures the most severe types of consumer harm (for large and small customers or consumers) that could result from a contravention of a CPP.</p> <p>This is intended to capture CPPs where a breach of the provision may result in or involves:</p> <ul style="list-style-type: none"> • a risk to public safety • death or serious injury to a person • reduction of consumers’ fundamental right to access essential electricity and gas services • financial harm or economic loss for consumers (large and small) • a failure to deal with hardship (or other vulnerable) customers appropriately

TIER	CONCEPT	CONCEPT DEFINITION
[Tier 1 cont.]	Adverse Market Impact	<p>Adverse Market Impact is primarily concerned with the national objective of promoting efficient investment in, and the efficient operation of energy services for the long term interests of consumer, particularly with regard to price, quality and security of supply.</p> <p>This captures CPPs where a breach of the provision may result in or involves:</p> <ul style="list-style-type: none"> • distortion of a market • financial harm to other market participants • adverse impact on integrity of wholesale market
[Tier 1 cont.]	Supply Security and Reliability	<p>Supply Security and Reliability is primarily concerned with the national objective of promoting efficient investment in, and the efficient operation of energy services for the long term interests of consumers, , particularly with regard to quality, reliability, safety and security of energy supply and services.</p> <p>This captures CPPs where compliance with the provision is necessary to ensure:</p> <ul style="list-style-type: none"> • effective operation/ proper performance of the system and service • reliability of the system and service • AEMO ability to plan and operate the power system efficiently • no interruptions to the power system • avoidance/ prevention of large scale events, such as black systems • security and safety of the electricity or gas supply • providers comply with their quality obligations in relation to electricity and gas • service providers comply with their obligations in relation to service levels and standards

TIER	CONCEPT	CONCEPT DEFINITION
[Tier 1 cont.]	Unacceptable Market Participant Behaviour	<p>Unacceptable Market Participant Behaviour is primarily concerned with the national objectives of promoting efficient investment in, and the efficient operation of energy services for the long term interest of consumers with respect to the 5 Consumer Interests. It also captures types of conduct and behaviours which need to attract a higher maximum penalty to achieve deterrence.</p> <p>This captures CPPs where:</p> <ul style="list-style-type: none"> • a breach of the provision may result in financial gain to the contravener • a breach of the provision requires deliberate or reckless conduct by the contravener • a breach of the provision involves failure to comply with specific notices or requests from a regulator • a contravention of the provision is likely to be difficult to detect
<p>Tier 2 : <i>Maximum penalty</i></p> <p>a) If the breach is by a natural person—</p> <ul style="list-style-type: none"> – an amount not exceeding \$287 000; plus – an amount not exceeding \$14 400 for every day during which the breach continues. <p>b) If the breach is by a body corporate—</p> <ul style="list-style-type: none"> – an amount not exceeding \$1 435 000; plus – an amount not exceeding \$71 800 for every day during which the breach continues. 	Consumer Harm (Type 2)	<p>Consumer Harm (Type 2) is primarily concerned with the national objectives of promoting efficient operation of energy services for the long term interest of consumers with respect to the 5 Consumer Interests, particularly price, quality, and reliability of supply. It captures the types of consumer harm (for large and small customers or consumers) which do not fall in to the Consumer Harm (Type 1) concept.</p> <p>This captures CPPs where a breach of the provision may result in or involves:</p> <ul style="list-style-type: none"> • consumers not being informed or incorrectly informed of their rights • failure to provide consumers with supplementary services • inappropriate disclosure of consumer data • a failure to give proper notice of tariffs and charges • failure to comply with any rules regarding fees and charges • failure to comply with pre-contractual duties of retailers or distributors • failure to comply with requirements regarding estimation, content and issuing of bills • failure to comply with requirements regarding security deposits and billing disputes

TIER	CONCEPT	CONCEPT DEFINITION
[Tier 2 cont.]	Market Administration	<p>Market Administration is primarily concerned with promoting the efficient operation of energy services for the long term interests of consumers with respect to the 5 Consumer Interests.</p> <p>This captures CPPs where a breach of the provision may result in or involves:</p> <ul style="list-style-type: none"> ● failure to retain records appropriately ● inadequate record keeping or administrative processes
[Tier 2 cont.]	Inappropriate Market Participant Behaviour	<p>Inappropriate Market Participant Behaviour is primarily concerned with the national objectives of promoting the efficient operation of energy services for the long term interests of consumers with respect to the 5 Consumer Interests. It also captures types of conduct and behaviours that, while not directly resulting in consumer harm, regulators otherwise seek to deter.</p> <p>This captures contraventions of CPPs where a breach of the provision involves:</p> <ul style="list-style-type: none"> ● failure to comply with general reporting obligations to a regulator
<p>Tier 3: <i>Maximum penalty</i> a) If the breach is by a natural person—</p> <ul style="list-style-type: none"> – an amount not exceeding \$33 900; plus – an amount not exceeding \$3 390 for every day during which the breach continues. <p>b) If the breach is by a body corporate—</p> <ul style="list-style-type: none"> – an amount not exceeding \$170 000; plus – an amount not exceeding \$17 000 for every day during which the breach continues. 	All remaining CPPs	<p>It is intended that Tier 3 will capture all other civil penalty provisions, which are not classified as Tier 1 or Tier 2.</p> <p>The classification process for Tier 1 and Tier 2 CPPs will result in Tier 3 comprising of CPPs:</p> <ul style="list-style-type: none"> ● which impose administrative requirements on the content and issuing of bills ● which impose administrative requirements on the content of contracts ● which impose requirements relating to the provision of notices or information to customers ● where non-compliance can be readily remedied or regularised without causing harm to consumer or market ● where non-compliance would not result in adverse effects with respect to any of the national objectives.