

CONFIDENTIAL

Western Australia

LEGISLATIVE ASSEMBLY/COUNCIL

DRAFT ~~52~~

**Electricity Industry Amendment (~~North-West~~
~~Interconnected System~~ Pilbara Networks)**
Bill 201~~9~~8

A Bill for

An Act to amend the *Electricity Industry Act 2004* .

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Electricity Industry Amendment* (~~North-West~~
3 ~~Interconnected System~~*Pilbara Networks*) Act 2019.

4 **2. Commencement**

5 This Act comes into operation as follows —

- 6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;
- 8 (b) the rest of the Act — on a day fixed by proclamation,
9 and different days may be fixed for different provisions.

10 **3. Act amended**

11 This Act amends the *Electricity Industry Act 2004*.

12 *[The following text is the Electricity Industry Act 2004 showing proposed*
13 *amendments in track changes. A formal amending instrument will be*
14 *drafted at a later stage.]*

15 **An Act to govern the operation and regulation of the Western**
16 **Australian electricity industry and for related purposes.**

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Electricity Industry Act 2004*¹.

2. Commencement

(1) This Act comes into operation on a day fixed by proclamation¹.

(2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

arbitrator has the meaning given to that term in the *Energy Arbitration and Review Act 1998* section 61;

Authority means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*;

Board has the meaning given to that term in the *Energy Arbitration and Review Act 1998* section 49;

Code means the Code for the time being in force under section 104;

Competition Principles Agreement means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the States and the Territories as in force for the time being;

covered network means a network infrastructure facility that —

(a) is prescribed under section 104A(1)(a); or

(b) the Minister has decided under the Code is to be a covered network and that has not ceased to be a covered network; or

(c) is prescribed under section 120C(a); or

s. 3

(d) the network service provider has opted under the Pilbara networks access code to be subject to light regulation and that has not ceased to be subject to light regulation;

covered Pilbara network means a covered network that is located wholly or partly in the Pilbara region;

customer means a person to whom electricity is sold for the purpose of consumption;

distribution licence means a licence with the classification described in section 4(1)(c);

distribution system means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV;

electricity includes electrical energy of any kind however produced, stored, transported or consumed;

electricity corporation means —

- (a) the Electricity Generation and Retail Corporation; or
- (b) the Electricity Networks Corporation; or
- (c) the Regional Power Corporation;

Electricity Generation and Retail Corporation has the meaning given in the *Electricity Corporations Act 2005* section 3(1);

Electricity Networks Corporation means the body established by the *Electricity Corporations Act 2005* section 4(1)(b);

full regulation, in relation to a covered network, means that access to the network is regulated under Part 8;

generating works means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the generation of electricity;

generation licence means a licence with the classification described in section 4(1)(a);

integrated regional licence means a licence with the classification described in section 4(1)(e);

1 *licence* means —

- 2 (a) a generation licence; or
3 (b) a transmission licence; or
4 (c) a distribution licence; or
5 (d) a retail licence; or
6 (e) an integrated regional licence;

7 *licence area* means the area or areas designated in a licence
8 under section 5;

9 *licensee* means the holder of a licence and includes any
10 transferee of a licence under section 18;

11 *light regulation*, in relation to a covered network, means that
12 access to the network is regulated under Part 8A;

13 *network infrastructure facilities* means the following which
14 together are operated by a person (a *network service provider*)
15 for the purpose of transporting electricity from generators of
16 electricity to other electricity networks or to end users of
17 electricity —

18 (a) the electrical equipment that is used only in order to
19 transfer electricity to or from an electricity network at
20 the relevant point of connection including any
21 transformers or switchgear at the relevant point or which
22 is installed to support or to provide backup to that
23 electrical equipment as is necessary for that transfer;

24 (b) the wires, apparatus, equipment, plant and buildings
25 used to convey, and control the conveyance of,
26 electricity;

27 *network service provider* has the meaning given in the
28 definition of *network infrastructure facilities*;

29 *Pilbara network* means a network infrastructure facility that is
30 located wholly or partly in the Pilbara region;

31 *Pilbara networks access code* means the Pilbara networks
32 access code for the time being in force under Part 8A
33 Division 2;

s. 3

1 **Pilbara networks rules** means the Pilbara networks rules for the
2 time being in force under Part 8A Division 3;

3 **Pilbara region** means the local government districts of
4 Ashburton, East Pilbara, Port Hedland and Roebourne;

5 **operate**, in relation to generating works, a transmission system,
6 or a distribution system, includes —

- 7 (a) to maintain the works or system; and
8 (b) to make any modifications necessary or desirable for the
9 operation of the works or system;

10 **Regional Power Corporation** means the body established by the
11 *Electricity Corporations Act 2005* section 4(1)(d);

12 **retail licence** means a licence with the classification described
13 in section 4(1)(d);

14 **services** means —

- 15 (a) the conveyance of electricity and other services provided
16 by means of network infrastructure facilities; and
17 (b) services ancillary to those services;

18 **South West interconnected system** means the interconnected
19 transmission and distribution systems, generating works and
20 associated works —

- 21 (a) located in the South West of the State and extending
22 generally between Kalbarri, Albany and Kalgoorlie; and
23 (b) into which electricity is supplied by —
24 (i) one or more of the electricity generation plants at
25 Kwinana, Muja, Collie and Pinjar; or
26 (ii) any prescribed electricity generation plant;

27 **subsidiary**, in relation to an electricity corporation, has the
28 meaning given to that term in the *Electricity Corporations*
29 *Act 2005* section 3(1);

30 **supply** means to do any one or more of the following —

- 31 (a) generate;
32 (b) transport through a transmission system;

1 (c) transport through a distribution system;

2 (d) sell;

3 **transmission licence** means a licence with the classification
4 described in section 4(1)(b);

5 **transmission system** means any apparatus, equipment, plant or
6 buildings used, or to be used, for, or in connection with, the
7 transportation of electricity at nominal voltages of 66 kV or
8 higher.

9 *[Section 3 amended by No. 18 of 2005 s. 139; No. 16 of 2009*
10 *s. 57; No. 25 of 2013 s. 39(2) and (3).]*

Part 2 — Licensing of electricity supply

Division 1 — Licence classification and area

4. Classification of licences

(1) Licences are classified as follows —

- (a) generation, which authorises the licensee —
 - (i) to construct and operate one or more generating works; or
 - (ii) to operate one or more existing generating works;
- (b) transmission, which authorises the licensee —
 - (i) to construct and operate one or more transmission systems; or
 - (ii) to operate one or more existing transmission systems;
- (c) distribution, which authorises the licensee —
 - (i) to construct and operate one or more distribution systems; or
 - (ii) to operate one or more existing distribution systems;
- (d) retail, which authorises the licensee to sell electricity to customers;
- (e) integrated regional, which authorises the licensee to carry out one or more of the activities described in paragraphs (a) to (d) for the purpose of supplying electricity to customers otherwise than through the South West interconnected system.

(2) A licence must be designated by reference to one of the classifications referred to in subsection (1).

5. Licence area

- (1) A licence must be designated to apply to one or more areas of the State specified in the licence.
- (2) If 2 or more areas are specified in a licence those areas need not be contiguous.

Division 2 — Licensing requirements

6. Licensing extends to statutory providers

The requirements of this Division apply to a person despite the fact that the person, in supplying electricity, is performing a function that —

- (a) is authorised or provided for by or under a written law;
or
(b) has been approved under a written law.

7. Requirement for licence

- (1) A person must not construct or operate generating works except under the authority of a generation licence or an integrated regional licence.
- (2) A person must not construct or operate a transmission system except under the authority of a transmission licence or an integrated regional licence.
- (3) A person must not construct or operate a distribution system except under the authority of a distribution licence or an integrated regional licence.
- (4) A person must not sell electricity to customers except under the authority of a retail licence or an integrated regional licence.

- 1 (5) A person does not commit an offence under subsection (1), (2)
2 or (3) if the generating works, transmission system or
3 distribution system concerned is or are used, or to be used,
4 solely for the supply of electricity for consumption by —
- 5 (a) the person who owns, controls or operates the works or
6 system; or
- 7 (b) if the person referred to in paragraph (a) is a body
8 corporate, a related body corporate (as defined in the
9 *Corporations Act 2001* of the Commonwealth section 9)
10 of the person; or
- 11 (c) a person who is in partnership with, or is a participant in
12 a joint venture arrangement with, the person referred to
13 in paragraph (a) in relation to that supply.
- 14 (6) A person does not commit an offence under subsection (4) if the
15 person is the holder of a generation licence and the electricity is
16 sold solely for consumption by another person on the premises
17 on which generating works to which the licence applies are
18 located.
- 19 Penalty applicable to this section: \$100 000.
- 20 Daily penalty applicable to this section: \$5 000.

21 **8. Power to exempt**

- 22 (1) The Governor may by order published in the *Gazette* exempt
23 any person or class of persons from all or any of the provisions
24 of section 7(1) to (4).
- 25 (2) An order under subsection (1) may provide for circumstances in
26 which, and conditions subject to which, an exemption is to
27 apply.
- 28 (3) An exemption is of no effect at any time when a condition to
29 which it is subject is not being observed.
- 30 (4) The Governor must not make an order under subsection (1)
31 unless he or she is satisfied that it would not be contrary to the
32 public interest to do so.

- 1 (5) Without limiting the other matters that may be taken into
2 account, matters that are to be taken into account by the
3 Governor in determining whether the making of the order would
4 not be contrary to the public interest are —
- 5 (a) environmental considerations;
- 6 (b) social welfare and equity considerations, including
7 community service obligations;
- 8 (c) economic and regional development, including
9 employment and investment growth;
- 10 (d) the interests of customers generally or of a class of
11 customers;
- 12 (e) the interests of any licensee, or applicant for a licence, in
13 respect of the area or areas to which the order, if made,
14 would apply;
- 15 (f) the importance of competition in electricity industry
16 markets;
- 17 (g) the policy objectives of government in relation to the
18 supply of electricity.
- 19 (6) The *Interpretation Act 1984* section 43(4) and (7) to (9) apply to
20 an order under subsection (1) as if the order were subsidiary
21 legislation.

22 **Division 3 — General licensing provisions**

23 **9. Authority to consider public interest**

- 24 (1) The Authority must not exercise a power conferred by this
25 Division unless the Authority is satisfied that it would not be
26 contrary to the public interest to do so.
- 27 (2) Without limiting the other matters that may be taken into
28 account, the Authority, in determining whether the exercise of
29 the power would not be contrary to the public interest, is to take
30 into account the matters referred to in section 8(5) but as if the
31 area or areas referred to in section 8(5)(e) were the area or areas

1 to which the licence in respect of which the power is exercised
2 applies.

3 **10. Application for licence**

- 4 (1) An application for a licence must be —
5 (a) made in a form approved by the Authority; and
6 (b) accompanied by the prescribed application fee.
7 (2) An applicant must provide any additional information that the
8 Authority may require for the proper consideration of the
9 application.

10 **11. Authority may determine licence terms and conditions**

- 11 (1) A licence is subject to any terms and conditions that are
12 determined by the Authority.
13 (2) Without limiting subsection (1), terms and conditions
14 determined under that subsection may include provisions
15 relating to any matter provided for by Schedule 1.
16 (3) The terms and conditions of licences that —
17 (a) have the same classification under section 4; and
18 (b) have the same licence area or licence areas that overlap
19 to a significant extent,
20 must be substantially similar, except to the extent that the
21 Authority considers that —
22 (c) it is not practicable to make them substantially similar;
23 or
24 (d) a difference is necessary to reflect particular supply
25 circumstances.
26 (4) [Subject to subsection \(5\),](#) ~~t~~Terms and conditions determined
27 under subsection (1) must not be inconsistent with —
28 (a) any other terms and conditions provided for in this Act
29 or the regulations that apply to the licence; or

1 (b) the Code ~~for the time being in force under section 104~~;
2 or

3 (ba) in the case of a Pilbara network to which Part 8A
4 applies, the Pilbara networks access code or the Pilbara
5 networks rules; or

6 (c) regulations made under the *Electricity Act 1945*
7 section 32.

8 (5) The terms and conditions of a licence for a covered network
9 that —

10 (a) is subject to light regulation, may be inconsistent with
11 the Code;

12 (b) is subject to full regulation, may be inconsistent with the
13 Pilbara networks access code.

14
15 **12. Regulations as to licence terms and conditions**

16 The regulations may prescribe terms and conditions that are to
17 be taken to be included in —

- 18 (a) every licence; or
19 (b) every licence of a prescribed class; or
20 (c) a licence held by an electricity corporation or a
21 subsidiary of an electricity corporation.

22 *[Section 12 amended by No. 18 of 2005 s. 139.]*

23 **13. Licence condition: performance audit**

- 24 (1) It is a condition of every licence that the licensee must, not less
25 than once in every period of 24 months (or any longer period
26 that the Authority allows) calculated from the grant of the
27 licence, provide the Authority with a performance audit
28 conducted by an independent expert acceptable to the Authority.

1 (2) A performance audit is an audit of the effectiveness of measures
2 taken by the licensee to meet the performance criteria specified
3 in the licence.

4 (3) The Authority must give the Minister a report on each
5 performance audit within 2 months after its receipt of the audit.

6 **14. Licence condition: asset management system**

7 (1) It is a condition of every licence, other than a retail licence, that
8 the licensee must —

- 9 (a) provide for an asset management system in respect of
10 the licensee's assets; and
11 (b) notify details of the system and any substantial changes
12 to it to the Authority; and
13 (c) not less than once in every period of 24 months (or any
14 longer period that the Authority allows) calculated from
15 the grant of the licence, provide the Authority with a
16 report by an independent expert acceptable to the
17 Authority as to the effectiveness of the system.

18 (2) An asset management system is to set out measures that are to
19 be taken by the licensee for the proper maintenance of assets
20 used in the supply of electricity and in the operation of, and,
21 where relevant, the construction of, any generating works,
22 transmission system or distribution system.

23 **15. Duration of licence**

24 (1) The Authority may grant or renew a retail licence for any period
25 not exceeding 15 years that the Authority considers appropriate.

26 (2) The Authority may grant or renew a licence other than a retail
27 licence for any period not exceeding 30 years that the Authority
28 considers appropriate.

1 **16. Renewal of licence**

2 (1) An application for the renewal of a licence must be —

3 (a) made in a form approved by the Authority; and

4 (b) accompanied by the prescribed application fee.

5 (2) An applicant must provide any additional information that the
6 Authority may require for the proper consideration of the
7 application.

8 **17. Licence fees**

9 (1) A licensee must pay to the Authority the prescribed licence
10 fee —

11 (a) within one month after the day of grant or renewal of the
12 licence; and

13 (b) within one month after each anniversary of that day
14 during the term of the licence.

15 (2) The regulations may prescribe different licence fees for each of
16 the classifications referred to in section 4.

17 (3) The Authority may recover any outstanding licence fee in a
18 court of competent jurisdiction as a debt due by the licensee to
19 the State.

20 **18. Transfer of licence**

21 (1) A licence cannot be transferred except with the approval of the
22 Authority.

23 (2) Approval for the purposes of subsection (1) may be given on
24 such terms and conditions as are determined by the Authority.

25 (3) An application for approval to transfer a licence must be —

26 (a) made in a form approved by the Authority; and

27 (b) accompanied by the prescribed application fee.

- 1 (4) An applicant must provide any additional information that the
2 Authority may require for the proper consideration of the
3 application.

4 **19. Decisions as to grant, renewal or transfer of licence**

- 5 (1) Subject to section 9, the Authority must grant, renew or approve
6 the transfer of a licence if it is satisfied that the applicant —

- 7 (a) has, and is likely to retain; or
8 (b) will acquire within a reasonable time after the grant,
9 renewal or transfer, and is then likely to retain,

10 the financial and technical resources to undertake the activities
11 authorised, or to be authorised, by the licence.

- 12 (2) The Authority must take all reasonable steps to make a decision
13 in respect of an application for —

- 14 (a) the grant or renewal of a licence; or
15 (b) approval to transfer a licence,

16 within 90 days after the application is made.

- 17 (3) The duties imposed on the Authority by subsections (1) and (2)
18 apply only if —

- 19 (a) an application has been made in accordance with
20 section 10, 16 or 18, as the case may be; and
21 (b) section 50 or 100 does not prohibit the grant or renewal
22 of the licence or the approval of the transfer; and
23 (c) where a requirement has been made under
24 section 10(2), 16(2) or 18(4), the relevant information
25 has been provided to the Authority.

26 **20. Other laws not affected**

27 The grant, renewal or transfer of a licence does not affect the
28 licensee's obligations to comply with any other written law in
29 relation to the matters covered by the licence.

1 **21. Amendment of licence on application of licensee**

- 2 (1) A licensee may apply to the Authority at any time for
3 amendment of the licence.
- 4 (2) An application for the amendment of a licence must be —
5 (a) made in a form approved by the Authority; and
6 (b) accompanied by the prescribed application fee.
- 7 (3) An applicant must provide any additional information that the
8 Authority may require for the proper consideration of the
9 application.
- 10 (4) The Authority may grant the application if —
11 (a) it has been made in accordance with subsection (2); and
12 (b) where a requirement has been made under
13 subsection (3), the relevant information has been
14 provided to the Authority.

15 **22. Amendment of licence on initiative of Authority**

- 16 (1) The Authority may, on its own initiative, determine that a
17 licence is to be amended.
- 18 (2) A licence must specify the procedure to be followed in making
19 such a determination, including the manner in which an
20 amendment is to be notified to the licensee, and the
21 determination may only be made in accordance with that
22 procedure.
- 23 (3) An amendment under this section cannot take effect until it is
24 notified to the licensee under the procedure referred to in
25 subsection (2).
- 26 (4) This section applies to the substitution of a new licence for an
27 existing licence in the same way as it applies to the amendment
28 of a licence.

23. Notice of decisions

- (1) The Authority must ensure that notice of the grant, renewal, transfer or amendment of a licence is published in the *Gazette* as soon as is practicable after the grant, renewal, transfer or amendment.
- (2) The notice must include —
- (a) the date of the grant, renewal, transfer or amendment; and
 - (b) the name and business address of the licensee; and
 - (c) the term of the licence; and
 - (d) a description of the licence area; and
 - (e) in the case of an amendment, details of the amendment; and
 - (f) the place where a copy of the licence and any plan may be inspected under section 24; and
 - (g) the Authority's internet website address.
- (3) The Authority must ensure that written notice of a decision to refuse to grant, renew, or approve the transfer of, a licence, together with a statement of the reasons for the decision, is given to the applicant within 14 days after the decision is made.

24. Licences to be available for inspection

The Authority must make available for public inspection at the Authority's office during normal office hours and on the Authority's internet website —

- (a) a copy of every licence in force from time to time; and
- (b) if any licence area is specified by reference to a plan, a copy of the plan.

25. Regulations about public consultation

The regulations may require the Authority, before it makes a decision on any application for the grant, renewal, transfer or amendment of a licence under this Division, to undertake public consultation in accordance with the procedure specified in the regulations.

Division 4 — Exclusive licences

26. Regulations may authorise an exclusive licence

- (1) The Governor may, on the recommendation of the Minister, make regulations designating one or more areas of the State as an area in respect of which an exclusive licence may be granted for a specified period.
- (2) If 2 or more areas are designated under subsection (1) those areas need not be contiguous.
- (3) The specified period (the *period of exclusivity*) is not to exceed 10 years.

27. Requirements for regulations

- (1) The Minister may, under section 26, recommend the making of regulations only if he or she considers that —
 - (a) without the grant of an exclusive licence of that kind in respect of the area during the period of exclusivity there will be no supply of electricity, or a limited supply, in the area during that period; and
 - (b) it is not contrary to the public interest that an exclusive licence of that kind have effect in respect of the area during the period of exclusivity; and
 - (c) the regulations will provide for an open and competitive tender process to be carried out to determine the person to whom the licence must be granted.
- (2) Without limiting the other matters that may be taken into account, for the purposes of subsection (1)(b), the Minister is to

1 take into account the matters referred to in section 8(5) but as if
2 the area or areas referred to in section 8(5)(e) were the area
3 referred to in subsection (1)(b).

4 (3) Regulations made under section 26 —

- 5 (a) are to set out the requirements to be observed before an
6 application for an exclusive licence may be made; and
7 (b) are to set out the requirements to be observed, in
8 addition to the other provisions of this Part, before an
9 exclusive licence may be granted; and
10 (c) may provide for the terms and conditions of an
11 exclusive licence in addition to those otherwise provided
12 for by this Part.

13 **28. Application for and grant of licence**

14 (1) An application for an exclusive licence may only be made if the
15 Minister has determined that he or she is satisfied that all of the
16 requirements of the regulations to be observed before such an
17 application may be made have been complied with.

18 (2) Despite section 19, an exclusive licence may only be granted by
19 the Authority under that section if the Minister has determined
20 that he or she is satisfied that all of the requirements of the
21 regulations relevant to the grant of the licence have been
22 observed.

23 (3) A determination under subsection (1) or (2) is to be made by
24 instrument published in the *Gazette*.

25 **29. Prohibition of further licences**

26 If —

- 27 (a) an exclusive licence is granted in respect of an area in
28 accordance with regulations made under section 26; and
29 (b) the licence is not cancelled under section 35 or
30 surrendered,

1 no other person is to be granted a licence of the same kind to
2 have effect in respect of that area during the period of
3 exclusivity.

4 **30. Trade practices authorisation**

5 For the purposes of the ~~Trade Practices Act 1974~~ Competition
6 and Consumer Act 2010 ~~of the~~ (Commonwealth) and the
7 Competition Code —

- 8 (a) the grant of an exclusive licence as provided by
9 regulations made under section 26; and
10 (b) conduct authorised or required by or under any such
11 licence,

12 are specifically authorised to the extent that the grant or conduct
13 would otherwise contravene that Act or that Code.

14 **Division 5 — Interruption of supply**

15 **31. Interruption of supply**

16 (1) A licensee may interrupt, suspend or restrict the supply of
17 electricity provided by the licensee if in the licensee's opinion it
18 is necessary to do so because of an accident, emergency,
19 potential danger or other unavoidable cause.

20 (2) A licensee is not liable for any loss or damage that arises from
21 an interruption, suspension or restriction under subsection (1)
22 except to the extent that —

- 23 (a) the interruption, suspension or restriction results from —
24 (i) a negligent act or omission of the licensee or an
25 officer or employee of the licensee; or
26 (ii) an act or omission of the licensee or an officer or
27 employee of the licensee done or made in bad
28 faith;

29 or

- 1 (b) an agreement to which the licensee is a party provides
2 otherwise.
- 3 (3) A licensee must take reasonable steps to minimise the extent or
4 duration of any interruption, suspension or restriction under
5 subsection (1).
- 6 (4) This section is in addition to —
- 7 (a) any powers that the licensee has under the *Electricity*
8 *Act 1945* or the *Electricity Corporations Act 2005* in
9 relation to the interruption, suspension or restriction of
10 the supply of electricity; and
- 11 (b) the provisions of the *Energy Operators (Powers)*
12 *Act 1979* sections 48 and 57 if those provisions are
13 prescribed provisions (as defined in section 45(1)) in
14 respect of the licensee; and
- 15 (c) any contractual rights that the licensee may have to
16 interrupt, suspend or restrict the supply of electricity,
17 and does not limit those powers, provisions or rights.
18 *[Section 31 amended by No. 18 of 2005 s. 139.]*

19 **Division 6 — Enforcement**

20 **32. Failure to comply with licence**

- 21 (1) If, in the opinion of the Authority, a licensee contravenes a
22 licence, the Authority may cause a notice to be served on the
23 licensee requiring the licensee to rectify the contravention
24 within a specified period.
- 25 (2) If, in the opinion of the Authority, a licensee fails to comply
26 with a notice under subsection (1), the Authority may, subject to
27 section 33, do one or more of the following —
- 28 (a) serve a letter of reprimand on the licensee;
- 29 (b) order the licensee to pay a monetary penalty fixed by the
30 Authority but not exceeding \$100 000;

1 (c) cause the contravention to be rectified to the satisfaction
2 of the Authority.

3 (3) Persons authorised by the Authority in writing may enter any
4 premises and do all things that are necessary for the purposes of
5 subsection (2)(c).

6 (4) The Authority may recover —

7 (a) a penalty imposed under subsection (2)(b); or

8 (b) the costs and expenses of any action taken under
9 subsection (2)(c),

10 in a court of competent jurisdiction as a debt due by the licensee
11 to the State.

12 **33. Right of licensee to make submissions**

13 The Authority is not to take any action under section 32(2)(b)
14 or (c) unless the Authority has —

15 (a) notified the licensee of the proposed action and the
16 reasons for it; and

17 (b) given the licensee a reasonable opportunity to make
18 submissions on the matter.

19 **34. Exception where public health endangered**

20 If, in the opinion of the Authority, the health or safety of
21 members of the public is or may be at risk as a result of the
22 contravention of a licence, the Authority may cause the
23 contravention to be rectified under section 32(2)(c) without —

24 (a) serving notice on the licensee under section 32(1); or

25 (b) complying with section 33.

26 **35. Cancellation of licence**

27 (1) The Governor may cancel a licence if he or she is satisfied that
28 the licensee —

29 (a) is in default as defined in subsection (2); or

- 1 (b) has failed to pay a licence fee as required under
2 section 17; or
- 3 (c) in the case of a company, is an externally-administered
4 body corporate as defined in the *Corporations Act 2001*
5 of the Commonwealth section 9; or
- 6 (d) has within a period of 24 months been convicted of
7 more than 3 offences for which the prescribed
8 punishment is a fine of \$10 000 or more or
9 imprisonment for 12 months or more.
- 10 (2) For the purposes of subsection (1)(a) a licensee is in default if
11 the Governor is satisfied that —
- 12 (a) the licensee has failed to comply with a term or
13 condition of the licence; and
- 14 (b) the failure is material in terms of the operation of the
15 licence as a whole; and
- 16 (c) the Minister has given to the licensee written notice of
17 the failure and the fact that in the Minister's opinion
18 paragraph (b) applies to it; and
- 19 (d) the licensee has not, within the time specified in the
20 notice, either remedied the failure or shown cause why
21 the licence should not be cancelled.
- 22 (3) If a licence is cancelled under this section the Authority must
23 ensure that notice of the cancellation is published in the *Gazette*.
- 24 (4) Regulations may be made under section 131 providing, in the
25 event of a licence being cancelled, for —
- 26 (a) the vesting of assets, rights and interests of the former
27 licensee in a person (including the Minister as a
28 corporation) for the purpose of enabling electricity to be
29 supplied after the cancellation; and
- 30 (b) the conferral of powers and duties for that purpose; and
- 31 (c) the discharge or assignment of liabilities; and
- 32 (d) the disposal of property; and

- 1 (e) all matters that are necessary or convenient for dealing
2 with the consequences of the cancellation and the
3 vesting referred to in paragraph (a).

4 (5) If —

5 (a) a licence other than a retail licence is cancelled under
6 this section; and

7 (b) regulations of the kind referred to in subsection (4)(a)
8 are made,

9 Division 8 applies, with all necessary changes, for the purpose
10 of enabling electricity to be supplied after the cancellation, as if
11 references in that Division to a licensee were references to the
12 person in whom the assets, rights and interests of the former
13 licensee are vested under the regulations.

14 **36. Duty to leave system in safe condition**

15 (1) Following the cancellation of a licence under section 35, the
16 former licensee —

17 (a) must ensure that any generating works, transmission
18 system or distribution system constructed or operated by
19 the former licensee under the licence is left in a safe
20 condition; and

21 (b) is not to remove any part of the works or system except
22 with the approval of the Minister.

23 (2) If, in the opinion of the Minister, a former licensee contravenes
24 subsection (1), the Minister may cause the contravention to be
25 rectified to the satisfaction of the Minister.

26 (3) Persons authorised by the Minister may enter any land or
27 premises and do all things that are necessary for the purposes of
28 subsection (2).

29 (4) The Minister may recover the costs and expenses of any action
30 taken under subsection (2) in a court of competent jurisdiction
31 as a debt due by the former licensee to the State.

Division 7 — Administration and monitoring of licensing scheme and issue of codes

[Heading amended by No. 33 of 2004 s. 28.]

37. Authority to administer licensing scheme

It is a function of the Authority to administer the licensing scheme provided for in this Part.

38. Authority to monitor licensing scheme and licence compliance

It is a function of the Authority —

- (a) to monitor and report to the Minister on the operation of the licensing scheme provided for in this Part; and
- (b) to inform the Minister about any failure by a licensee to meet performance criteria or other requirements of its licence.

39. Authority may issue codes

- (1) Subject to subsection (2b), the Authority may prepare and issue a code or codes in respect of the matters referred to in subsection (2).
- (2) A code may make provision for and in relation to any one or more of the following —
 - (a) metering of the supply of electricity by licensees including —
 - (i) the provision, operation and maintenance of metering equipment; and
 - (ii) ownership of and access to metering data;
 - (b) the transfer of customers between licensees;
 - (c) methods or principles to be applied by licensees in the preparation of accounts for customers;
 - (d) standards relating to the quality and reliability of the supply of electricity that are to be observed by the

- 1 holders of transmission licences, distribution licences or
2 integrated regional licences;
- 3 (da) compensation payments to be made to customers by the
4 Electricity Networks Corporation or the Regional Power
5 Corporation, as the case requires, if the corporation fails
6 to observe standards referred to in paragraph (d);
- 7 (e) any other matter prescribed by the regulations.
- 8 (2a) If the Authority has not prepared and issued a code in respect of
9 a code matter the Minister may —
- 10 (a) prepare and issue a code in respect of that code matter;
11 or
- 12 (b) by notice published in the *Government Gazette*, declare
13 that the Minister proposes to prepare and issue a code in
14 respect of that code matter.
- 15 (2b) If —
- 16 (a) a code prepared and issued by the Minister; or
17 (b) a declaration under subsection (2a)(b),
- 18 is in force in respect of a code matter, the Authority cannot issue
19 a code in respect of that code matter.
- 20 (2c) In subsections (2a) and (2b) —
- 21 **code matter** means —
- 22 (a) the matter mentioned in subsection (2)(a); or
23 (b) the matter mentioned in subsection (2)(b); or
24 (c) the matter mentioned in subsection (2)(d); or
25 (ca) the matter mentioned in subsection (2)(da); or
26 (d) a matter referred to in subsection (2)(e).
- 27 (3) A code is subsidiary legislation for the purposes of the
28 *Interpretation Act 1984*.
- 29 (4) A provision of a code is of no effect to the extent that it is
30 inconsistent with a provision of this Act or another written law.

s. 39A

- 1 (5) The regulations may require the Authority, before it issues a
2 code, to undertake public consultation in accordance with the
3 procedure specified in the regulations.

4 *[Section 39 amended by No. 33 of 2004 s. 29; No. 18 of 2005*
5 *s. 139.]*

6 **39A. Review of code standards applying to Regional Power**
7 **Corporation**

- 8 (1) In this section —

9 *access arrangement* has the meaning given to that term in
10 section 103;

11 *relevant day* means —

- 12 (a) for the first review, the day referred to in subsection (3);
13 and
14 (b) for a subsequent review, the day referred to in
15 subsection (4);

16 *RPC standards* means standards referred to in section 39(2)(d)
17 that —

- 18 (a) are to be observed by the Regional Power Corporation;
19 and
20 (b) are provided for in a code prepared and issued by the
21 Minister under section 39;

22 *service standards* means standards relating to the quality and
23 reliability of the supply of electricity that are provided for in an
24 access arrangement.

- 25 (2) The Authority is to carry out reviews of the operation and effect
26 of the RPC standards.

- 27 (3) The first review is to be carried out as soon as is practicable
28 after the day on which the first access arrangement in respect of
29 the South West interconnected system is approved under Part 8.

- 1 (11) The Minister, by order published in the *Gazette*, is to fix a
2 period for subsequent reviews for the purposes of
3 subsection (4).
- 4 (12) A period fixed under subsection (11) cannot be longer than
5 5 years after the day on which a notice in respect of the last
6 preceding report under this section was published under
7 subsection (10)(b)(i).
- 8 (13) The Minister, by order published in the *Gazette*, may —
9 (a) amend an order made under subsection (11); or
10 (b) revoke an order made under subsection (11) and replace
11 it with another order.
- 12 *[Section 39A inserted by No. 18 of 2005 s. 139.]*

13 **Division 8 — Powers in relation to land**

14 **40. Power of public authority to grant certain interests**

- 15 (1) In this section —
16 **public authority** means —
17 (a) a Minister of the Crown; or
18 (b) an agency, authority or instrumentality of the Crown in
19 right of the State or a local government; or
20 (c) a body, whether corporate or unincorporate, that is
21 established or continued for a public purpose by or
22 under a written law and prescribed for the purposes of
23 this definition;
- 24 **relevant interest** means a lease, easement, licence or other
25 authority necessary or expedient to enable the licensee to
26 construct, alter, operate or maintain generating works, a
27 transmission system or a distribution system, as the case
28 may be.
- 29 (2) A public authority may grant to a licensee, on such terms and
30 conditions as are agreed between the authority and the licensee,

1 a relevant interest in respect of land held by the public authority
2 in fee simple.

3 **41. Taking of interest or easement for purposes of licence**

4 (1) For the purpose of enabling a licensee to supply electricity as
5 authorised by a licence, an interest in land or easement over
6 land may be taken under the *Land Administration Act 1997*
7 Part 9 as if for a public work within the meaning of that Act.

8 (2) The power conferred by subsection (1) may only be exercised
9 on the recommendation of the Minister administering this Act.

10 (3) If in the opinion of the Minister administering this Act an
11 interest in land or easement over land is appropriate to a
12 licensee's needs in respect of —

- 13 (a) generating works; or
14 (b) a transmission system operating at 200 kV or higher; or
15 (c) any other electricity transmission system of a kind
16 prescribed for the purposes of this subsection,

17 that Minister is to advise the licensee of that opinion and the
18 licensee is required to acquire that interest in land or easement
19 over land where practicable by agreement but otherwise by
20 taking it under the *Land Administration Act 1997* Part 9 as if for
21 a public work within the meaning of that Act.

22 (4) The requirement imposed by subsection (3) applies to a licensee
23 even if the provisions of sections 28(3)(c) and 46 of the *Energy*
24 *Operators (Powers) Act 1979*, or any of those provisions, are
25 prescribed provisions as defined in section 45(1).

26 (5) The requirement imposed by subsection (3) does not extend to
27 land that is vested in, or otherwise occupied or managed by or
28 on behalf of, the Crown or a public authority as defined in
29 section 40(1).

30 (6) Any costs and expenses incurred in the taking of an interest or
31 easement under this section —

- 1 (a) are to be paid by the licensee; and
2 (b) may be recovered in a court of competent jurisdiction as
3 a debt due by the licensee to the State.

- 4 (7) For the purposes of this section a reference to an interest in land
5 in the *Land Administration Act 1997* Part 9 includes an
6 easement over land.

7 **42. Vesting of interest or easement**

- 8 (1) Despite anything in the *Land Administration Act 1997* Part 9, on
9 the taking of an interest in land or easement over land under
10 section 41, the interest or easement vests in the licensee.

- 11 (2) The *Land Administration Act 1997* Part 9 applies, with all
12 necessary changes, in relation to the recording or registering of
13 an interest or easement taken under section 41.

14 **43. Proceedings and liability**

- 15 (1) Proceedings in respect of compensation, or otherwise for the
16 purpose of complying with the *Land Administration Act 1997*
17 Parts 9 and 10, may be taken against the licensee.

- 18 (2) The licensee is liable in respect of the taking of an interest in
19 land or easement over land under section 41 to the same extent
20 as the Minister administering the *Land Administration Act 1997*
21 would have been liable if the taking had been for the purpose of
22 a public work.

23 **44. Easements in gross**

- 24 An easement may be taken under section 41 without there being
25 a dominant tenement and there may be made appurtenant or
26 annexed to any such easement another easement or the benefit
27 of a restriction as to the user of the land.

Division 9 — Extension of *Energy Operators (Powers) Act 1979* to licensees

45. Extension of certain provisions of *Energy Operators (Powers) Act 1979*

- (1) A reference to an energy operator in a provision of the *Energy Operators (Powers) Act 1979* that is prescribed in the regulations (a ***prescribed provision***) includes a licensee if the regulations provide that the provision is prescribed in respect of the licensee or a class of licensees to which the licensee belongs.
- (2) Regulations made for the purposes of this section may —
- (a) restrict the operation of, or add a further requirement to, a prescribed provision in relation to a licensee or class of licensees; or
 - (b) impose conditions or restrictions on the doing of any thing authorised by a prescribed provision by a licensee or a member of a class of licensees; or
 - (c) prohibit a licensee or a member of a class of licensees from doing any thing authorised by a prescribed provision; or
 - (d) require a consent or approval to be obtained for the doing of, or the manner of doing, any thing authorised by a prescribed provision.
- (3) Regulations made for the purposes of this section are not to prescribe the *Energy Operators (Powers) Act 1979* sections 28(3)(e) and 45(4) to (16) in respect of a licensee other than a relevant corporation.
- (4) If the provisions of the *Energy Operators (Powers) Act 1979* referred to in subsection (3) are prescribed provisions in respect of a relevant corporation, Division 8 does not apply to the corporation.

- 1 (5) In this section —
2 *licensee* includes any person in whom the assets, rights and
3 interests of a former licensee are vested under regulations
4 referred to in section 35(4);
5 *relevant corporation* means —
6 (a) the Electricity Networks Corporation; or
7 (b) the Regional Power Corporation; or
8 (c) a subsidiary of a corporation mentioned in paragraph (a)
9 or (b).
10 [Section 45 amended by No. 18 of 2005 s. 139.]
- 11 **Division 10 — Transitional provision**
- 12 **46. Transitional provision for existing operators**
- 13 (1) In this section —
14 *commencement day* means the day on which this Part comes
15 into operation;
16 *Western Power Corporation* means the body corporate that was
17 the corporation under the *Electricity Corporation Act 1994*²
18 section 4 before that section was repealed by the *Electricity*
19 *Corporations Act 2005* Schedule 5 clause 11³.
20 (2) This section applies to every person (an *existing operator*) who
21 immediately before the commencement day was undertaking
22 any activity that, after that day, is required to be licensed under
23 section 7.
24 (3) An existing operator who wishes to apply for a licence in
25 respect of an activity referred to in subsection (2) must do so
26 within 12 months after the commencement day.
27 (4) An existing operator is to be treated as if the person were the
28 holder of the relevant licence —
29 (a) until the expiry of 18 months after the commencement
30 day; or

- 1 (b) until —
- 2 (i) a licence of that kind is granted to the person or
- 3 is refused; and
- 4 (ii) in the case of a refusal, the time for an
- 5 application for review of the decision under
- 6 section 130 expires without an application being
- 7 made or an application is made but is
- 8 unsuccessful,
- 9 whichever happens first.
- 10 (5) For the purposes of subsection (4)(b)(ii) an application is
- 11 unsuccessful if it —
- 12 (a) results in the refusal referred to in subsection (4)(b)(i)
- 13 being confirmed; or
- 14 (b) is withdrawn, discontinued or dismissed.
- 15 (6) Where after the day on which the *Electricity Corporations*
- 16 *Act 2005* Schedule 5 clause 30 comes into operation³ —
- 17 (a) an electricity corporation undertakes an activity that
- 18 immediately before that day was undertaken by the
- 19 Western Power Corporation; and
- 20 (b) that activity is required to be licensed under section 7
- 21 but is not so licensed,
- 22 the electricity corporation is to be treated as an existing operator
- 23 in respect of that activity for the purposes of this section.
- 24 *[Section 46 amended by No. 18 of 2005 s. 139.]*

1 **Part 3 — Supply of electricity to certain customers**

2 **Division 1 — Preliminary**

3 **47. Terms used**

4 In this Part, unless the contrary intention appears —

5 **customer** means a customer who consumes not more than
6 160 MWh of electricity per annum;

7 **non-standard contract** means a contract entered into between a
8 licensee and a customer, or a class of customers, that is not a
9 standard form contract;

10 **retail licensee** means the holder of a retail licence or an
11 integrated regional licence;

12 **standard form contract** means a contract that is approved under
13 section 51.

14 **Division 2 — Supply contracts**

15 **48. Regulations as to supply contracts**

16 (1) The regulations may provide for and in relation to —

17 (a) the terms, conditions and provisions of —

18 (i) a standard form contract; and

19 (ii) a non-standard contract,

20 under which a retail licensee sells electricity to
21 customers; and

22 (b) the right of a customer at his or her discretion to rescind
23 a contract during a specified period after it is entered
24 into (a **cooling-off period**); and

25 (c) the supply of electricity, and payment for electricity
26 supplied, during a cooling-off period; and

27 (d) the format of, and manner of expression to be used in, a
28 contract referred to in paragraph (a); and

- 1 (e) the provision of information about contracts by a retail
2 licensee to customers.
- 3 (2) The regulations may —
- 4 (a) require a retail licensee to offer to supply electricity to
5 customers under a standard form contract; and
- 6 (b) prescribe the circumstances in which the obligation
7 referred to in paragraph (a) arises; and
- 8 (c) without limiting section 12, provide that it is a condition
9 of every retail licence and every integrated regional
10 licence that the retail licensee must comply with the
11 obligation referred to in paragraph (a).
- 12 (3) The regulations may provide —
- 13 (a) for and in relation to the standards of service that a retail
14 licensee is to provide to customers in connection with
15 the supply of electricity; and
- 16 (b) for the inclusion in contracts referred to in
17 subsection (1)(a) of requirements that the retail licensee
18 comply with any such standard.
- 19 (4) The regulations may apply, adopt or incorporate any provision
20 of a code or a standard that is contained in another document,
21 and may do so —
- 22 (a) with or without modification; or
- 23 (b) as the provision is in force —
- 24 (i) at the time when the regulations are made; or
- 25 (ii) from time to time.

26 **49. Form of contract to be submitted with application for grant,**
27 **renewal or transfer**

- 28 (1) An applicant for the grant or renewal of a retail licence or an
29 integrated regional licence must submit with the application a
30 draft of the standard form contract under which the applicant
31 will supply electricity to customers pursuant to the licence.

1 (2) Where an application is made under section 18 for the transfer
2 of a retail licence or an integrated regional licence to be
3 approved, the proposed transferee must submit with the
4 application a draft of the standard form contract under which the
5 proposed transferee will supply electricity to customers pursuant
6 to the licence if the transfer is approved.

7 (3) The requirement in subsection (1) and (2) only applies if the
8 applicant or proposed transferee intends to supply electricity to
9 customers pursuant to the licence.

10 **50. Licence application not to be granted unless standard form**
11 **contract approved**

12 (1) Despite section 19, the Authority must not grant or renew, or
13 approve a transfer of, a retail licence or an integrated regional
14 licence unless —

15 (a) the applicant or the proposed transferee has submitted a
16 draft form of contract as required by section 49; and

17 (b) the Authority has approved the standard form contract
18 under which the applicant or proposed transferee will
19 supply electricity to customers pursuant to the licence.

20 (2) If when a retail licence or an integrated regional licence was
21 granted or renewed, or the transfer of a retail licence or an
22 integrated regional licence was approved, subsection (1) did not
23 apply because of section 49(3), the licensee may at any
24 subsequent time submit to the Authority a draft of a standard
25 form contract under which the licensee will supply electricity to
26 customers pursuant to the licence if the standard form contract
27 is approved by the Authority.

28 **51. Approval of standard form contract**

29 (1) Subject to subsection (2), the Authority may at its discretion
30 approve or refuse to approve a standard form contract submitted
31 under section 49 or 50(2).

- 1 (2) The Authority must not give an approval if it considers that the
2 standard form contract —
- 3 (a) will not meet the requirements of the regulations in
4 respect of such contracts; or
- 5 (b) will be inconsistent with —
- 6 (i) this Act or any other written law; or
- 7 (ii) any term, condition or provision of the licence
8 concerned.
- 9 (3) The Authority must take all reasonable steps to make a decision
10 under subsection (1) within 45 days after the standard form
11 contract is submitted to it.

12 **52. Amendment or replacement of standard form contract**

- 13 (1) A retail licensee may submit to the Authority for approval —
- 14 (a) any amendment to the standard form contract approved
15 under section 51; or
- 16 (b) a replacement for the standard form contract so
17 approved.
- 18 (2) Section 51 applies to an amendment or a replacement submitted
19 under subsection (1) in the same way as it applied to the
20 standard form contract or the original standard form contract.

21 **53. Authority may direct that amendment be made**

- 22 (1) This section applies if, in the opinion of the Authority, a
23 standard form contract approved under this Division —
- 24 (a) no longer meets the requirements of the regulations in
25 respect of such contracts; or
- 26 (b) is no longer consistent with —
- 27 (i) this Act or any other written law; or
- 28 (ii) any term, condition or provision of the licence
29 concerned.

- 1 (2) The Authority may direct the retail licensee concerned —
2 (a) to submit an appropriate amendment to the form of
3 contract to the Authority for approval under
4 section 52(1); and
5 (b) to do so within a specified period.
- 6 (3) In subsection (2)(a) —
7 **appropriate amendment** means an amendment —
8 (a) specified by the Authority; or
9 (b) otherwise determined by the Authority to be suitable for
10 approval.

11 **54. Licence condition: contracts**

- 12 (1) It is a condition of every retail licence and integrated regional
13 licence that, subject to any exception provided for in the
14 regulations, the licensee must not supply electricity to a
15 customer otherwise than under —
16 (a) a standard form contract; or
17 (b) a non-standard contract that complies with this Act.
- 18 (2) It is also a condition of every retail licence and integrated
19 regional licence that the licensee must comply with a direction
20 given to the licensee under section 53.
- 21 (3) For the purposes of subsection (1)(b), a non-standard contract
22 complies with this Act if it —
23 (a) meets the requirements of the regulations in respect of
24 such contracts; and
25 (b) is not inconsistent with —
26 (i) this Act or any other written law; or
27 (ii) any term, condition or provision of the licence
28 concerned.

54A. Electricity corporations required to offer to supply electricity under prescribed form of contract

(1) In this section —

corporation means the Electricity Generation and Retail Corporation or the Regional Power Corporation;

prescribed form of contract means a form of contract prescribed under the *Electricity Corporations Act 2005* section 181(3);

relevant contract means —

(a) a contract referred to in the *Electricity Corporations Act 2005* section 181(2) between a corporation and a customer; or

(b) a contract in the form of a prescribed form of contract entered into by a corporation and a customer other than a contract referred to in paragraph (a);

relevant day means the day on which the *Electricity Corporations Act 2005* Part 2 comes into operation³.

(2) A corporation is required to offer to supply electricity under a prescribed form of contract to customers who request supply on or after the relevant day.

(3) If, following the grant of a retail licence or an integrated regional licence to a corporation, the corporation is required by regulations referred to in section 48(2) to offer to supply electricity to customers under a standard form contract, then on and from the day on which that obligation has effect —

(a) the obligation in subsection (2) ceases to have effect; and

(b) any relevant contract in force on that day is to be taken to be amended so that its terms, conditions and provisions are consistent with those of the standard form contract.

- 1 (4) The regulations may —
- 2 (a) provide for exceptions to the obligation in
- 3 subsection (2);
- 4 (b) provide for and in relation to the standards of service
- 5 that a corporation is to provide to customers in
- 6 connection with the supply of electricity;
- 7 (c) provide for the inclusion in relevant contracts of
- 8 requirements that the corporation comply with any such
- 9 standard.

- 10 (5) Section 48(4) applies to regulations made for the purposes of
- 11 subsection (4)(b).

12 *[Section 54A inserted by No. 18 of 2005 s. 139; amended by*

13 *No. 25 of 2013 s. 39(4).]*

14 **54B. Enforcement of obligation in section 54A(2)**

- 15 (1) If, in the opinion of the Authority, a corporation fails to comply
- 16 with the obligation in section 54A(2), the Authority may,
- 17 subject to subsection (2), do one or more of the following —
- 18 (a) serve a letter of reprimand on the corporation; or
- 19 (b) order the corporation to pay a monetary penalty fixed by
- 20 the Authority but not exceeding \$100 000.
- 21 (2) The Authority is not to take action under subsection (1)(b)
- 22 unless the Authority has —
- 23 (a) notified the corporation of the proposed action and the
- 24 reasons for it; and
- 25 (b) given the corporation a reasonable opportunity to make
- 26 submissions on the matter.
- 27 (3) The Authority may recover a penalty imposed under
- 28 subsection (1)(b) in a court of competent jurisdiction as a debt
- 29 due by the corporation to the State.

30 *[Section 54B inserted by No. 18 of 2005 s. 139.]*

1 [55, 56. Deleted by No. 18 of 2005 s. 139.]

2 **Division 3 — Connection to distribution system**

3 **57. Terms used**

4 In this Division, unless the contrary intention appears —

5 **connect** means to connect to a distribution system;

6 **premises** means premises owned or occupied by a new or
7 existing customer.

8 **58. Regulations as to connection**

9 (1) The regulations may make provision for and in relation to the
10 connection of premises.

11 (2) Without limiting subsection (1), the regulations may —

12 (a) require a retail licensee to make arrangements with the
13 holder of a distribution licence or integrated regional
14 licence for the connection of premises of a prescribed
15 class; and

16 (b) require the holder of a distribution licence or an
17 integrated regional licence to connect premises of a
18 prescribed class to the holder's distribution system; and

19 (c) prescribe the circumstances in which an obligation
20 referred to in paragraph (a) or (b) arises; and

21 (d) authorise the holder of a distribution licence or an
22 integrated regional licence to adopt a method of
23 connection that results in the least cost to the holder; and

24 (e) make provision for and in relation to the costs of
25 connection, including provision as to who is liable to
26 pay those costs.

27 (3) Without limiting section 12, the regulations may provide —

28 (a) that it is a condition of every retail licence and every
29 integrated regional licence that the holder of the licence

- 1 must comply with the obligation referred to in
2 subsection (2)(a); and
3 (b) that it is a condition of every distribution licence and
4 every integrated regional licence that the holder of the
5 licence must comply with the obligation referred to in
6 subsection (2)(b).

7 **Division 4 — Default supplier**

8 **59. Regulations as to default supplier**

9 The regulations may —

- 10 (a) require that a default supplier be determined, in
11 accordance with the regulations, for each connection
12 point as defined in the regulations; and
13 (b) require that the default supplier so determined be a retail
14 licensee that supplies electricity at the relevant
15 connection point; and
16 (c) require that a register be established and maintained, in
17 accordance with the regulations, showing the name of
18 the default supplier for the time being determined for
19 each connection point; and
20 (d) provide that if a customer commences to take a supply
21 of electricity at premises without entering into a contract
22 for the supply with a retail licensee, the electricity is
23 deemed to be supplied under the standard form contract
24 of the default supplier for the connection point in respect
25 of those premises as determined under the regulations;
26 and
27 (e) make provision for and in relation to the effect of
28 contracts of the kind referred to in paragraph (d),
29 including —
30 (i) the period for which such contracts continue in
31 force; and
32 (ii) the exclusion or modification of any term,
33 condition or provision of such contracts.

Part 4 — Extension and expansion policies for certain corporations

60. Terms used

In this Part, unless the contrary intention appears —

approved policy means an extension and expansion policy approved under section 62 as amended from time to time and includes any replacement for the policy approved under section 63;

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

corporation means —

- (a) the Electricity Networks Corporation; or
- (b) the Regional Power Corporation; or
- (c) a subsidiary of a corporation mentioned in paragraph (a) or (b);

extension and expansion policy means documentation that sets out arrangements for and in relation to —

- (a) the geographic extension of a particular system; and
- (b) the expansion of the electrical capacity of that system; and
- (c) the connection of customers to that system;

licence means a transmission licence, distribution licence or an integrated regional licence;

system means a transmission system or distribution system.

[Section 60 amended by No. 18 of 2005 s. 139.]

61. Draft policy to be submitted to Coordinator

(1) In subsection (2) —

prescribed period means —

- (a) 3 months after a written request by the Coordinator; or

s. 62

- 1 (b) any longer period allowed by the Coordinator in a
2 particular case.
- 3 (2) A corporation must, within the prescribed period, submit to the
4 Coordinator a draft extension and expansion policy for each
5 system operated by the corporation.
- 6 (3) An extension and expansion policy submitted by a corporation
7 may relate to one or more or all of the systems operated by the
8 corporation.

9 **62. Approval of policy**

- 10 (1) Subject to subsection (2), the Coordinator may —
11 (a) approve an extension and expansion policy submitted
12 under section 61; or
13 (b) direct that it be amended and approve it in an amended
14 form.
- 15 (2) The Coordinator must not approve an extension and expansion
16 policy if the Coordinator considers that it —
17 (a) will not meet the requirements of the regulations in
18 respect of such policies; or
19 (b) will be inconsistent with this Act or any other written
20 law.
- 21 (3) Without limiting the other matters that may be taken into
22 account, in exercising the powers conferred by this section and
23 sections 63 and 64 the Coordinator is to take into account the
24 matters referred to in section 8(5) but as if the area or areas
25 referred to in section 8(5)(e) were the area to be affected by the
26 exercise of the powers.

27 **63. Amendment or replacement of policy**

- 28 (1) A corporation may submit to the Coordinator for approval —
29 (a) an amendment to an approved policy; or
30 (b) a replacement for an approved policy.

- 1 (2) The Coordinator may approve or refuse to approve an
2 amendment or replacement submitted under subsection (1).
- 3 (3) The Coordinator must not approve an amendment or
4 replacement if the Coordinator considers that it —
- 5 (a) will not meet the requirements of the regulations in
6 respect of such policies; or
- 7 (b) will be inconsistent with this Act or any other written
8 law.

9 **64. Coordinator may direct that amendment be made**

- 10 (1) This section applies if, in the opinion of the Coordinator, an
11 approved policy —
- 12 (a) no longer meets the requirements of the regulations in
13 respect of such policies; or
- 14 (b) is no longer consistent with this Act or any other written
15 law.
- 16 (2) The Coordinator may direct the corporation concerned —
- 17 (a) to submit an appropriate amendment to the approved
18 policy to the Coordinator for approval under
19 section 63(1); and
- 20 (b) to do so within a specified period.
- 21 (3) In subsection (2)(a) —
- 22 *appropriate amendment* means an amendment —
- 23 (a) specified by the Coordinator; or
- 24 (b) otherwise determined by the Coordinator to be suitable
25 for approval.

26 **65. Licence condition: extension and expansion**

- 27 It is a condition of every licence held by a corporation that the
28 corporation must —
- 29 (a) comply with the obligation in section 61 in relation to
30 the system to which the licence applies; and

s. 66

- 1 (b) comply with a direction given to the corporation under
- 2 section 62(1)(b) that relates to the extension and
- 3 expansion policy for the system to which the licence
- 4 applies; and
- 5 (c) comply with a direction given to the corporation under
- 6 section 64(2) that relates to the approved policy for the
- 7 system to which the licence applies; and
- 8 (d) implement arrangements set out in the approved policy
- 9 for the system to which the licence applies.

10 **66. Regulations as to content of policies**

11 The regulations may prescribe matters that are to be dealt with
12 or set out in an extension and expansion policy including —

- 13 (a) methods or principles to be applied by a corporation in
14 relation to —
 - 15 (i) the extension and expansion of the system to
 - 16 which the policy relates; and
 - 17 (ii) the connection of customers to that system;
 - 18 and
- 19 (b) procedures to be followed by a corporation —
 - 20 (i) in undertaking the extension and expansion of
 - 21 the system to which the policy relates; and
 - 22 (ii) in connecting customers to that system;
 - 23 and
- 24 (c) criteria or parameters to be applied by a corporation
- 25 when determining the eligibility of particular classes of
- 26 customers for connection to the system to which the
- 27 policy relates; and
- 28 (d) information about the costs of implementing the policy.

Part 5 — Last resort supply arrangements

67. Terms used

In this Part, unless the contrary intention appears —

designated area means an area designated under section 68(1);

last resort supply plan means a plan that meets the requirements of section 69;

retail licence includes an integrated regional licence;

supplier of last resort has the meaning given to that term in section 69(1).

68. Authority to ensure supply plan in place in designated areas

(1) The Authority may, by notice published in the *Gazette*, designate an area to which a retail licence applies as an area for which there is to be a last resort supply plan.

(2) The Authority is to ensure —

(a) that, as soon as is practicable after an area becomes a designated area, a last resort supply plan for the designated area is approved or determined by the Authority under section 73; and

(b) that, at all times thereafter, there is a last resort supply plan for the designated area that has been approved or determined by the Authority under section 73.

69. Requirements for last resort supply plan

(1) A last resort supply plan for a designated area is one that deals with the supply of electricity to customers in the area by the holder of a retail licence (the **supplier of last resort**) if the plan comes into operation under section 70.

(2) A last resort supply plan must set out the arrangements, and make the provisions, that are necessary for the supply of electricity as mentioned in subsection (1).

s. 70

- 1 (3) A last resort supply plan must —
2 (a) make provision for any matter or circumstance that is
3 prescribed; and
4 (b) otherwise comply with the regulations.
- 5 (4) A last resort supply plan is of no effect to the extent that it is
6 inconsistent with any enactment.

7 **70. How plan brought into operation**

- 8 (1) This section applies if, and only if, the retail licence of the
9 supplier to whose customers a last resort supply plan applies —
10 (a) has been cancelled under section 35; or
11 (b) has expired and has not been renewed; or
12 (c) has been surrendered.
- 13 (2) If this section applies, the Authority may, by notice published in
14 the *Gazette*, determine that the last resort supply plan comes
15 into operation on a day specified in the notice.
- 16 (3) An order under subsection (2) is to specify the name of the
17 supplier to whose customers the last resort supply plan applies.

18 **71. Supplier of last resort**

- 19 (1) The Authority may, by notice in writing to the holder of a retail
20 licence (the *licensee*) —
21 (a) designate the licensee as the supplier of last resort for a
22 designated area; or
23 (b) cancel a designation so made.
- 24 (2) The Authority is to consult with the licensee before a notice is
25 given under subsection (1).
- 26 (3) The designation of the licensee cannot be expressed to have
27 effect for more than 2 years, but on the expiry of the designation
28 the licensee may be re-designated, whether once or more than
29 once.

- 1 (4) Unless another supplier of last resort for a designated area is
2 designated for the time being under subsection (1) —
- 3 (a) the Electricity Generation and Retail Corporation is the
4 supplier of last resort for the designated area if
5 electricity is supplied to customers in the area from the
6 South West interconnected system; and
- 7 (b) the Regional Power Corporation is the supplier of last
8 resort for the designated area if electricity is not
9 supplied to customers in the area from the South West
10 interconnected system.

11 *[Section 71 amended by No. 18 of 2005 s. 139; No. 25 of 2013*
12 *s. 39(5).]*

13 **72. Functions of supplier of last resort**

14 The supplier of last resort for a designated area is to —

- 15 (a) prepare a draft last resort supply plan for that area and
16 submit it to the Authority within 3 months after
17 becoming the supplier of last resort or within such
18 longer period as the Authority may allow; and
- 19 (b) consult with the Authority with a view to obtaining
20 approval of the draft plan; and
- 21 (c) carry out the arrangements and other provisions in the
22 last resort supply plan approved or determined by the
23 Authority under section 73, if the plan comes into
24 operation under section 70.

25 **73. Approval or determination of plan**

- 26 (1) The Authority may —
- 27 (a) approve a draft last resort supply plan submitted under
28 section 72; or
- 29 (b) request that it be amended and approve it in an amended
30 form.

s. 74

- 1 (2) If a plan has not been approved by the Authority within a period
2 that it considers reasonable and notifies to the supplier of last
3 resort, the Authority may determine the contents of the last
4 resort supply plan.

5 **74. Amendment of plan by supplier**

- 6 (1) With the approval of the Authority, the supplier of last resort for
7 a designated area may amend the last resort supply plan for that
8 area.
- 9 (2) The supplier of last resort is to submit any proposed amendment
10 to the Authority for approval.
- 11 (3) If an amendment is so submitted the Authority may —
12 (a) approve it; or
13 (b) request that it be changed and approve it in a changed
14 form; or
15 (c) refuse to approve it.

16 **75. Authority may make amendment**

17 The Authority may at any time, after consultation with the
18 supplier of last resort for a designated area, amend the last resort
19 supply plan for that area.

20 **76. Licence condition: last resort supply**

21 It is a condition of every retail licence that —

- 22 (a) if the licensee is designated under section 71(1) for a
23 designated area; and
24 (b) so long as the designation under section 71(1) remains
25 in force,

26 the licensee will perform the functions of the supplier of last
27 resort for the designated area, and in particular will carry out the
28 arrangements and provisions in the last resort supply plan if it
29 comes into operation under section 70.

77. Provision may be made by regulation

The regulations may make provision for and in relation to —

- (a) the preparation and approval process for a last resort supply plan under sections 72 and 73, and the amendment of a plan;
- (b) last resort supply arrangements under a plan, including for and in relation to —
 - (i) the commencement of arrangements; and
 - (ii) the extent to which particular arrangements are to apply to a particular class of customers; and
 - (iii) notification to customers and other affected persons of matters relating to the arrangements, including —
 - (I) the commencement of arrangements; and
 - (II) the effect of the arrangements and steps that will or may be taken; and
 - (III) rights, powers, duties and procedures that apply under the arrangements;
 - and
 - (iv) the identification of the customers affected by the commencement of arrangements and the provision of identifying information to the supplier of last resort; and
 - (v) the transfer of customers to the supplier of last resort and the nature of the relationship between them; and
 - (vi) the terms and conditions of supply of electricity under the arrangements, including those relating to pricing and the imposition of charges; and
 - (vii) the recovery of costs by the supplier of last resort; and

s. 77

- 1 (viii) the duration and cessation of any obligation to
2 supply electricity under the arrangements; and
3 (ix) other rights, powers and duties of —
4 (I) the Authority; and
5 (II) the supplier of last resort; and
6 (III) customers; and
7 (IV) other persons,
8 in connection with the carrying out of the
9 arrangements or the operation of a last resort
10 supply plan.

Part 6 — Code of conduct for supply of electricity to small use customers

78. Terms used

In this Part, unless the contrary intention appears —

code of conduct means the code of conduct approved under section 79;

committee means the committee established under section 81;

customer means a customer who consumes not more than 160 MWh of electricity per annum;

electricity marketing agent means —

- (a) a person who acts on behalf of the holder of a retail licence or an integrated regional licence —
 - (i) for the purpose of obtaining new customers for the licensee; or
 - (ii) in dealings with existing customers in relation to contracts for the supply of electricity by the licensee;

and

- (b) a person who acts —
 - (i) on behalf of one or more customers; or
 - (ii) as an intermediary between one or more customers and a licensee,in respect of the supply of electricity to the customer or customers; and
- (c) a person who engages in any other activity relating to the marketing of electricity that is prescribed for the purposes of this definition; and
- (d) a representative, agent or employee of a person referred to in paragraph (a), (b) or (c);

s. 79

marketing includes engaging or attempting to engage in any of the following activities by any means, including door to door or by telephone or other electronic means —

- (a) negotiations for, or dealings in respect of, a contract for the supply of electricity to a customer; or
- (b) advertising, promotion, market research or public relations in relation to the supply of electricity to customers.

79. Code of conduct

- (1) The Authority may, in consultation with the committee, approve a code of conduct under this section.
- (2) The code of conduct is to regulate and control the conduct of —
 - (a) the holders of retail licences, distribution licences and integrated regional licences; and
 - (b) electricity marketing agents,with the object of —
 - (c) defining standards of conduct in the supply and marketing of electricity to customers and providing for compensation payments to be made to customers when standards of conduct are not met; and
 - (d) protecting customers from undesirable marketing conduct.
- (3) The code of conduct may contain such ancillary and incidental provisions as are necessary or expedient for the purposes of subsection (2).
- (4) In the case of the initial code of conduct, subsection (1) has effect subject to Schedule 3 clause 1.

[Section 79 amended by No. 33 of 2004 s. 30.]

1 **80. Code is subsidiary legislation**

2 The code of conduct is subsidiary legislation for the purposes of
3 the *Interpretation Act 1984*.

4 **81. Consultative committee**

5 (1) The Authority is to establish a committee to advise it on matters
6 relating to the code of conduct.

7 (2) The Authority —

8 (a) is to determine the membership, constitution and
9 procedures of the committee; and

10 (b) may discharge, alter, or reconstitute the committee.

11 (3) The Authority may determine that a member of the committee is
12 to receive remuneration or an allowance, and if the Authority so
13 determines it is to fix the remuneration or allowance on the
14 recommendation of the Public Sector Commissioner.

15 (4) Subject to this section, the committee may determine its own
16 procedure.

17 (5) The Authority is to provide the committee with such support
18 services as it may reasonably require.

19 (6) In the case of the initial code of conduct, this section has effect
20 subject to Schedule 3 clause 2.

21 *[Section 81 amended by No. 39 of 2010 s. 89.]*

22 **82. Licence condition: code of conduct**

23 It is a condition of every retail licence, distribution licence and
24 integrated regional licence that the licensee is to comply with
25 the provisions of the code of conduct that apply to the licensee.

s. 83

83. Enforcement of code of conduct against marketing agents

The code of conduct may provide —

- (a) that the contravention of a provision of the code of conduct by an electricity marketing agent constitutes an offence; and
- (b) that an offence is punishable by a penalty not exceeding —
 - (i) \$5 000 for an individual; and
 - (ii) \$20 000 for a body corporate.

84. Code may provide for vicarious liability

The code of conduct may provide for and in relation to the liability of the holder of a retail licence or an integrated regional licence, in the absence of excusatory circumstances, for an act or omission of the licensee's electricity marketing agents that contravene the code of conduct.

85. Code may include presumption of authority

The code of conduct may provide for a presumption that a person who carries out any marketing activity in the name of or for the benefit of —

- (a) the holder of a retail licence or an integrated regional licence; or
- (b) an electricity marketing agent,

is to be taken, unless the contrary is proved, to have been employed or authorised by that licensee or electricity marketing agent to carry out that activity.

86. Authority to monitor compliance

It is a function of the Authority to monitor and enforce compliance with the code of conduct.

87. Comment to be sought on amendment or replacement of code

- (1) Whenever the Authority proposes to exercise the power —
- (a) to amend the code of conduct; or
 - (b) to repeal and replace it,
- the Authority must —
- (c) refer the proposed amendment or replacement to the committee for its advice; and
 - (d) have regard to any advice given by the committee.
- (2) Before the committee gives its advice to the Authority, it must, in accordance with section 89, give any interested person an opportunity to offer comments on the amendment or replacement.
- (3) The committee must take into account any comments received under subsection (1) in formulating its advice.

88. Review of code

- (1) The committee must carry out a review of the code of conduct as soon as is practicable after —
- (a) the first anniversary of its commencement; and
 - (b) the expiry of each 2 yearly interval after that anniversary.
- (2) The object of a review is to re-assess the suitability of the provisions of the code of conduct for the purposes of section 79(2).
- (3) The committee must, in accordance with section 89, give any interested person an opportunity to offer comments relevant to the review.
- (4) The committee must take into account any comments received under subsection (3) in carrying out the review.

s. 89

- 1 (5) The committee must prepare a report based on the review and
2 give it to the Authority.

3 **89. Further provisions about opportunity to comment**

4 For the purposes of sections 87(2) and 88(3) —

- 5 (a) an interested person is a person —
- 6 (i) who the committee considers has a particular
7 interest in the amendment, replacement or
8 review; or
- 9 (ii) who is determined by the Authority, by notice in
10 writing to the committee, to have such an
11 interest;
- 12 (b) an opportunity to offer comments is an opportunity to
13 furnish written comments to the committee within —
- 14 (i) a period specified by the Authority by notice in
15 writing to the committee; or
- 16 (ii) in the absence of such a notice, a period
17 determined by the committee.

18 **89A. Regulations may modify application or operation of**
19 **enactments to facilitate operation of code**

20 The regulations may provide that a prescribed enactment —

- 21 (a) does not apply in relation to the supply and marketing of
22 electricity to customers; or
- 23 (b) does not apply in relation to the supply and marketing of
24 electricity to customers to the extent prescribed; or
- 25 (c) does not apply in relation to the supply and marketing of
26 electricity to customers to the extent that the enactment
27 is inconsistent with the code; or
- 28 (d) applies in relation to the supply and marketing of
29 electricity to customers with such modifications as are
30 prescribed.

31 *[Section 89A inserted by No. 33 of 2004 s. 31.]*

Part 7 — Electricity ombudsman scheme

Division 1 — Preliminary

90. Terms used

In this Part and in Schedule 2, unless the contrary intention appears —

approved scheme means a scheme approved under section 92;

customer means —

- (a) a customer who consumes not more than 160 MWh of electricity per annum; and
- (b) if a dispute or complaint is prescribed for the purposes of section 92(1)(d) a person who is involved in that dispute or complaint as a customer;

customer contract means —

- (a) a standard form contract; or
- (b) a non-standard contract,

as defined in section 47;

electricity marketing agent has the meaning given to that term in section 78;

electricity ombudsman has the meaning given to that term in section 92(1);

licensee means the holder of a retail licence, distribution licence or integrated regional licence.

[Section 90 amended by No. 46 of 2009 s. 17.]

91. Regulations as to electricity ombudsman scheme

The regulations may provide for and in relation to —

- (a) the establishment and operation of a scheme of the kind referred to in section 92; and
- (b) the functions of the electricity ombudsman under such a scheme.

Division 2 — Approval of electricity ombudsman scheme

92. Authority may approve scheme

- (1) The Authority may, by instrument in writing, approve a scheme that provides for a person (the *electricity ombudsman*) to investigate and deal with —
 - (a) disputes and complaints under customer contracts; and
 - (b) disputes between —
 - (i) customers and licensees; or
 - (ii) customers and electricity marketing agents;and
 - (c) complaints by customers about —
 - (i) licensees; or
 - (ii) electricity marketing agents;and
 - (d) any other kind of dispute or complaint (whether or not under a customer contract) that is prescribed by the regulations.
- (2) A scheme may treat a failure to make a decision within a specified period as a decision of a particular kind.
- (3) A scheme may be made applicable to a dispute or complaint that arose before the commencement of the scheme, but not earlier than 12 months before that commencement.
- (4) The Authority may, by instrument in writing, approve an amendment to an approved scheme.
- (5) Notice of an approval under subsection (1) is to be published in the *Gazette*.
- (6) In the case of the initial electricity ombudsman scheme, this section has effect subject to Schedule 3 clause 4.

93. Requirements for scheme or amendment to be approved

The Authority may approve a scheme, or an amendment to an approved scheme, only if it is satisfied that the scheme, or the scheme as amended, meets —

- (a) the objectives set out in Schedule 2; and
- (b) any other prescribed objective.

94. Revocation of approval

(1) Subject to subsection (2), the Authority may, by instrument in writing, revoke the status of a scheme as an approved scheme if it is satisfied that the scheme no longer meets the objectives referred to in section 93.

(2) In exercising the power of revocation the Authority must —

- (a) follow any prescribed procedure; and
- (b) comply with any other prescribed requirements.

(3) A copy of an instrument under subsection (1) is to be laid before each House of Parliament within 14 sitting days of that House after the day on which the revocation took effect.

Division 3 — Scheme operation

95. Customer may have decision or complaint reviewed

(1) A customer may apply to the electricity ombudsman under an approved scheme for a review of a decision or complaint to which the scheme relates.

(2) Where an application is so made the electricity ombudsman may, in respect of the decision or complaint —

- (a) make any order or determination; or
- (b) give any direction; or
- (c) decline to deal with a matter on any ground,

that is provided for by the scheme.

96. Jurisdiction of courts and tribunals

- (1) Nothing in this Part or in an approved scheme affects the jurisdiction of a court or tribunal.
- (2) The electricity ombudsman must decline to deal with a matter if —
- (a) it has been or is being dealt with by a court or tribunal; or
 - (b) in his or her opinion the matter should be dealt with by a court or tribunal.

97. Enforcement against marketing agents and others

- (1) The regulations may make it an offence for an electricity marketing agent to fail to comply with a decision or direction of the electricity ombudsman under an approved scheme.
- (2) If a dispute or complaint involving a person other than a licensee or an electricity marketing agent is prescribed for the purposes of section 92(1)(d), the regulations may make it an offence for the person to fail to comply with a decision or direction of the electricity ombudsman under an approved scheme.
- (3) Regulations made for the purposes of this section may provide for penalties for an offence against the regulations not exceeding —
- (a) \$5 000 for an individual; and
 - (b) \$20 000 for a body corporate.

98. Authority to monitor compliance with decisions

It is a function of the Authority to monitor and enforce compliance with decisions and directions of the electricity ombudsman under an approved scheme.

Division 4 — Membership of approved scheme by licensee

99. Proof of membership in applications relating to licence

(1) An applicant for the grant of a retail licence, distribution licence or integrated regional licence who proposes to supply electricity to customers must produce with the application evidence showing that the applicant will, if a licence is granted, be a member of an approved scheme.

(2) An applicant for the renewal of a retail licence, distribution licence or integrated regional licence who supplies electricity to customers must produce with the application evidence showing that the applicant will, if the licence is renewed, continue to be a member of an approved scheme.

(3) Where an application is made under section 18 for approval to transfer a retail licence, distribution licence or integrated regional licence to a person who proposes to supply electricity to customers, the proposed transferee must produce with the application evidence showing that the proposed transferee will, if the transfer is approved, be a member of an approved scheme.

100. Prerequisite to grant, renewal or transfer of licence

Despite section 19 the Authority is not to grant or renew, or approve a transfer of, a retail licence, distribution licence or integrated regional licence to a person who proposes to supply electricity to customers unless it is satisfied that the licensee, or the proposed transferee —

(a) is a member of an approved scheme; or

(b) will, if the licence is granted or the transfer is approved, be a member of an approved scheme.

101. Licence condition: membership of scheme

It is a condition of every retail licence, distribution licence and integrated regional licence that the licensee cannot supply electricity to customers unless the licensee —

(a) is a member of an approved scheme; and

- 1 (b) is bound by, and will comply with any decision or
2 direction of the electricity ombudsman under, the
3 scheme.

Consultation Draft

Part 8 — Access to services of network infrastructure facilities

Division 1 — Preliminary

102. Purposes of this Part

The purposes of this Part are —

- (a) to provide access to services; and
- (b) to give effect to the relevant principles of the Competition Principles Agreement in respect of the provision of access to services.

103. Terms used

In this Part, unless the contrary intention appears —

access, in relation to services, has a meaning corresponding with the meaning that it has when used in that context in the ~~Trade Practices Act 1974~~ Competition and Consumer Act 2010 of the (Commonwealth);

access agreement means an agreement under the Code between a network service provider and another person (a **network user**) for that person to have access to services;

access arrangement means an arrangement lodged under section 104B(2)(a) that has been approved by the Authority;

~~**Code** means the Code for the time being in force under section 104;~~

~~**Competition Principles Agreement** means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the States and the Territories as in force for the time being;~~

~~**network infrastructure facilities** means —~~

- ~~(a) the electrical equipment that is used only in order to transfer electricity to or from an electricity network at the relevant point of connection including any~~

- 1 ~~transformers or switchgear at the relevant point or which~~
2 ~~is installed to support or to provide backup to that~~
3 ~~electrical equipment as is necessary for that transfer; and~~
4 ~~(b) the wires, apparatus, equipment, plant and buildings~~
5 ~~used to convey, and control the conveyance of,~~
6 ~~electricity;~~
7 ~~which together are operated by a person (a *network service*~~
8 ~~*provider*) for the purpose of transporting electricity from~~
9 ~~generators of electricity to other electricity networks or to end~~
10 ~~users of electricity;~~
11 network user has the meaning given in the definition of *access*
12 *agreement*;
13 ~~*services* means~~
14 ~~(a) the conveyance of electricity and other services~~
15 ~~provided by means of network infrastructure facilities; and~~
16 ~~(b) services ancillary to such services.~~
17 *[Section 103 amended by No. 33 of 2004 s. 32.]*

Division 2 — Establishment of Code

104. Minister to establish Code

- 20 ~~(1)~~ The Minister is to establish a Code for the purposes of, and in
21 accordance with, this Part.

104A. Code to provide for covered networks

- 23 ~~(1)~~ Provision is to be made in the Code —

- 24 (a) prescribing network infrastructure facilities that are to
25 be covered networks ~~by the Code~~ with effect from the
26 coming into operation of the Code; and
27 (b) prescribing the processes (including the matters to be
28 considered and the criteria to apply) through which the
29 Minister is to decide whether any other network
30 infrastructure facility is to be a covered network; and

- 1 (c) prescribing the processes (including the matters to be
2 considered and the criteria to apply) through which the
3 Minister is to decide whether a covered network is to
4 cease to be a covered network; and
- 5 (d) for the manner in which a decision referred to in
6 paragraph (b) or (c) is to be published and come into
7 effect.
- 8 (2) Access to a covered network is regulated under this Part (**full**
9 **regulation**) unless, in the case of a covered Pilbara network,
10 access to the network is regulated under Part 8A (**light**
11 **regulation**).
- 12 (3) A decision under the Code as to whether a network
13 infrastructure facility is to be a covered network or is to cease to
14 be a covered network is not liable to be challenged in, or
15 reviewed or called in question by, a court or tribunal otherwise
16 than under section 130.
- 17 **104B. Code to provide for full regulation of covered networks**
- 18 Provision is to be made in the Code in relation to the following
19 in relation to covered networks that are subject to full
20 regulation—
- 21
- 22 ~~(b) prescribing the process through which the Minister is to~~
23 ~~decide whether other network infrastructure facilities are~~
24 ~~to become covered by the Code or whether network~~
25 ~~infrastructure facilities that are covered by the Code are~~
26 ~~to cease to be covered by the Code, and the manner in~~
27 ~~which the decision is to be published and come into~~
28 ~~effect; and~~
- 29 (ae) as to the lodgment by the network service provider of an
30 arrangement for ~~network infrastructure facilities covered~~
31 by the Code ~~its covered networks~~ setting out —
- 32 (i) the policies applying to access to services; and

- 1 (ii) the basic terms and conditions that will apply to
2 access to services unless an access agreement
3 contains different terms and conditions; and
- 4 (iii) any other matters prescribed by the Code;
- 5 ~~and~~
- 6 (bd) ~~as to~~ the production by the network service provider of
7 information to enable persons to understand the
8 derivation of the elements of an arrangement for
9 ~~network infrastructure facilities~~ covered networks lodged
10 under paragraph (ae), whether or not that arrangement
11 has become an access arrangement; ~~and~~
- 12 (ce) ~~as to~~ the approval by the Authority of arrangements
13 lodged under paragraph (ae) and the matters to which
14 the Authority is to have regard in deciding whether to
15 give its approval; ~~and~~
- 16 (df) ~~as to~~ the registration of access arrangements; ~~and~~
- 17 (eg) for persons to have access to services as provided for in
18 the access arrangement for the relevant covered network
19 ~~infrastructure facilities~~ and in accordance with —
- 20 (i) access agreements; or
- 21 (ii) determinations made by way of arbitration;
- 22 ~~and~~
- 23 (fh) setting out, or providing for access arrangements to set
24 out —
- 25 (i) network access pricing regulation principles; and
- 26 (ii) rights, powers and duties that are to apply to and
27 in relation to the negotiation, making, and
28 implementation of access agreements; and
- 29 (iii) duties and requirements in relation to the
30 provision of access to services that are to be
31 complied with by the relevant network service
32 provider;
- 33 ~~and~~

- 1 (gi) setting out the obligations of a network service provider
2 in respect of the segregation of the functions and
3 business of providing services from the network service
4 provider's other functions and business and enabling the
5 Authority to add to those obligations or waive any of
6 them; ~~and~~
- 7 (hj) ~~as to~~ services between related bodies corporate (as
8 defined in the *Corporations Act 2001* ~~of the~~
9 (Commonwealth) section 9); ~~and~~
- 10 (ik) setting out rights and obligations of network users; ~~and~~
- 11 (jl) for the formulation by a network service provider, and
12 approval by the Authority, of technical codes for the
13 purposes of access to services that are to be complied
14 with by access users and other persons specified in the
15 Code; ~~and~~
- 16 ~~[(m) deleted]~~
- 17 (kn) ~~as to~~ the disclosure and use of confidential information;
18 and
- 19 (le) for the Authority to have supervisory and other
20 functions for the purposes of the Code, including a
21 function of determining certain requirements in relation
22 to access to ~~network infrastructure facilities covered~~
23 networks that are to be complied with by the network
24 service provider, a person making a proposal for access
25 to services and the arbitrator.
- 26 ~~— (3) A decision under the Code as to whether network infrastructure~~
27 ~~facilities are to become covered by the Code or are to cease to~~
28 ~~be covered by the Code is not liable to be challenged in, or~~
29 ~~reviewed or called in question by, a court or tribunal otherwise~~
30 ~~than under section 130.~~
- 31 ~~[Section 104 amended by No. 33 of 2004 s. 33.]~~

1 **105. Other matters for which Code may make provision**

- 2 (1) The Code may also make provision for or in relation to —
- 3 (a) the arbitration by the arbitrator of disputes between a
- 4 network service provider and a person who has made a
- 5 proposal for access to services; [and](#)
- 6 (b) other functions of the arbitrator; [and](#)
- 7 (c) the functions of the Authority; [and](#)
- 8 (d) the regulation of matters —
- 9 (i) of a savings, transitional or supplementary
- 10 nature; or
- 11 (ii) that are otherwise necessary or convenient for
- 12 the purposes of this Part.
- 13 (2) Transitional provisions referred to in subsection (1)(d)(i) may
- 14 authorise the Minister to determine by order published in the
- 15 *Gazette* how any matter in progress immediately before the
- 16 commencement of this Part is to be treated, after that
- 17 commencement, for the purposes of the provisions of the Code.

18 **106. Code does not affect existing agreements**

- 19 (1) The making of the Code or the approval of an access
- 20 arrangement —
- 21 (a) does not affect the terms and conditions, or the
- 22 operation, of an agreement for access to services in
- 23 operation immediately before the commencement of the
- 24 Code or the approval of the arrangement whether under
- 25 the *Electricity Transmission and Distribution Systems*
- 26 (*Access*) *Act 1994* or otherwise; and
- 27 (b) does not afford a party to the agreement any ground or
- 28 reason for not complying with the agreement according
- 29 to its terms and conditions.

- 1 (2) Subsection (1)(a) or (b) does not apply if the Code or the
2 agreement or an enactment provides otherwise.

3 *[Section 106 amended by No. 33 of 2004 s. 34; No. 18 of 2005*
4 *s. 139.]*

5 **107. Code is subsidiary legislation**

- 6 (1) In this section —

7 **Code** includes —

- 8 (a) an amendment of the Code; or
9 (b) a code repealing and replacing the Code.

- 10 (2) The Code is subsidiary legislation for the purposes of the
11 *Interpretation Act 1984*.

- 12 (3) The Code is to be laid before each House of Parliament within
13 6 sitting days of that House next following publication of the
14 Code in the *Gazette*.

- 15 (4) Notice of motion to disallow the Code or any part of the Code
16 may be given in either House of Parliament within 10 sitting
17 days of that House after the Code has been laid before it under
18 subsection (3).

- 19 (5) Within 10 sitting days of a House of Parliament after notice of
20 motion has been given in that House under subsection (4), that
21 House may pass a resolution disallowing the Code or any part of
22 the Code.

- 23 (6) If the Code is not laid before both Houses of Parliament under
24 subsection (3), or is disallowed by either House under
25 subsection (5), the Code ceases to have effect, but without
26 affecting the validity or curing the invalidity of anything done
27 or the omission of anything in the meantime.

- 28 (7) If a resolution has been passed under subsection (5), notice to
29 that effect is to be published in the *Gazette* within 21 days.

1 **108. Public comment on amendment or replacement of Code**

2 (1) Before the Minister exercises the power —

3 (a) to amend the Code; or

4 (b) to repeal and replace it,

5 the Minister must make the proposed amendment or
6 replacement available for public comment in accordance with
7 subsection (2).

8 (2) The Minister must —

9 (a) cause a notice giving a general description of the
10 proposal to be published —

11 (i) in an issue of a daily newspaper circulating
12 throughout the Commonwealth; and

13 (ii) in an issue of a daily newspaper circulating
14 throughout the State,

15 and on an appropriate internet website; and

16 (b) include in the notice the following information —

17 (i) the places at which a copy of the proposal may
18 be obtained; and

19 (ii) a statement that written submissions on the
20 proposal may be made to the Minister by any
21 person within a specified period; and

22 (iii) the address to which the submissions may be
23 delivered or posted.

24 (3) The period specified under subsection (2)(b)(ii) is not to be less
25 than 30 days after both of the notices under subsection (2)(a)
26 have been published.

27 (4) The Minister must have regard to any submission made in
28 accordance with the notice.

1 **109. Exception to section 108**

- 2 (1) Section 108(1) does not apply if the Minister is satisfied that a
3 proposed amendment to the Code is —
4 (a) of a minor nature; or
5 (b) required to be made urgently.
- 6 (2) If in reliance on subsection (1)(b) the Minister amends the Code
7 without complying with section 108(1) —
8 (a) the Minister must call for public comment on the
9 amendment as soon as is practicable after it has come
10 into force; and
11 (b) section 108(2) and (3) apply with all necessary
12 modifications.
- 13 (3) Having regard to any submissions made on the amendment, the
14 Minister must consider whether the Code should be amended —
15 (a) to reverse the effect of the amendment; or
16 (b) in some other manner.

17 **110. Consultation with network service providers on amendment**
18 **or replacement of Code**

- 19 (1) Without limiting section 108, if the Minister considers that a
20 proposed amendment or replacement of the Code may affect a
21 network service provider, the Minister must consult with the
22 network service provider and have regard to any submissions
23 that the network service provider makes in relation to the
24 proposal.
- 25 (2) If a network service provider considers that the Code, or a
26 provision of it, has, as a result of altered circumstances, become
27 unreasonable or inappropriate in its application to the network
28 service provider, the network service provider may make a
29 submission to the Minister requesting that the Code be amended
30 or be repealed and replaced.

- 1 (3) The Minister must consider a submission made under
2 subsection (2) and, if requested by the network service provider,
3 consult with the network service provider in relation to it.

4 **111. Review of Code**

- 5 (1) The Minister must cause a review of the Code to be carried out
6 as soon as is practicable after —
7 (a) the fifth anniversary of its commencement; and
8 (b) the expiry of each 5 yearly interval after that
9 anniversary.
- 10 (2) The purpose of a review is to assess the suitability of the
11 provisions of the Code to achieve the purposes of this Part.
- 12 (3) Before carrying out a review of the Code, the Authority must
13 call for public comment in accordance with subsection (4).
- 14 (4) The Authority must —
15 (a) cause notice of the review to be published —
16 (i) in an issue of a daily newspaper circulating
17 throughout the Commonwealth; and
18 (ii) in an issue of a daily newspaper circulating
19 throughout the State,
20 and on an appropriate internet website; and
21 (b) include in the notice —
22 (i) a statement that written submissions on the Code
23 may be made by any person within a specified
24 period; and
25 (ii) the address to which the submissions may be
26 delivered or posted.
- 27 (5) The period specified under subsection (4)(b)(i) is not to be less
28 than 30 days after both of the notices under subsection (4)(a)
29 have been published.

112. Functions of the Authority

The Authority —

- (a) is responsible for monitoring and enforcing compliance by network service providers with this Part, the Code and access arrangements; and
- (b) also has the functions given by particular provisions of this Part and the Code.

[113. Deleted by No. 16 of 2009 s. 58.]

Division 3 — Enforcement

114. References to contravening the Code

A reference in this Division to contravening a provision of the Code includes a reference to —

- (a) attempting to contravene such a provision; or
- (b) aiding, abetting, counselling or procuring a person to contravene such a provision; or
- (c) inducing, or attempting to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
- (d) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (e) conspiring with others to contravene such a provision.

115. Prohibitions on hindering or preventing access

- (1) The network service provider in relation to ~~network infrastructure facilities covered by the Code~~ a covered network that is subject to full regulation, or an associate of the network service provider, must not engage in conduct for the purpose of hindering or preventing —

- (a) access by any person to services in accordance with the Code; or

- 1 (b) the making of access agreements or any particular
2 agreement in respect of those facilities; or
3 (c) the access to which a person is entitled under an access
4 agreement or a determination made by way of
5 arbitration.

6 Penalty: \$100 000.

7 Daily penalty: \$20 000.

- 8 (2) A person who has access to services under an access agreement,
9 or an associate of the person, must not engage in conduct for the
10 purpose of hindering or preventing access by another person to
11 services of ~~network infrastructure facilities covered by the~~
12 ~~Code~~covered networks that are subject to full regulation.

13 Penalty: \$100 000.

14 Daily penalty: \$20 000.

- 15 (3) Without limiting subsection (1) or (2) —
16 (a) a person is taken to engage in conduct for a particular
17 purpose if —
18 (i) the conduct is or was engaged in for purposes
19 that include, or included, that purpose; and
20 (ii) that purpose is or was a substantial purpose;
21 (b) a person may be taken to have engaged in conduct for a
22 particular purpose even though, after all the evidence
23 has been considered, the existence of that purpose is
24 ascertainable only by inference from the conduct of the
25 person or of any other person or from other relevant
26 circumstances.

- 27 (4) In this section —

- 28 (a) a reference to engaging in conduct is a reference to
29 doing or refusing to do any act and includes a reference
30 to —
31 (i) making a contract or arrangement or giving
32 effect to a provision of a contract or
33 arrangement; or

- 1 (ii) arriving at an understanding or giving effect to a
2 provision of an understanding; or
3 (iii) requiring a covenant to be given or giving a
4 covenant;
5 (b) a reference to refusing to do an act includes a reference
6 to —
7 (i) refraining (otherwise than inadvertently) from
8 doing the act; or
9 (ii) making it known that the act will not be done.
10 (5) Subsection (1) or (2) does not apply to conduct in which a
11 person engaged in accordance with an agreement, if the
12 agreement was in force on 30 March 1995.
13 (6) In this section —
14 *associate*, in relation to a person, has the meaning it would have
15 under ~~Part 1.2 Division 2 of the Corporations Act 2001 of the~~
16 (Commonwealth) Part 1.2 Division 2 if sections 13, 14, 16(2)
17 and 17 of that Act were repealed.
18 *[Section 115 amended by No. 33 of 2004 s. 35.]*

19 **116. Proceedings**

- 20 (1) Civil proceedings cannot be brought in respect of a matter
21 arising under the Code except —
22 (a) in accordance with the regulations; or
23 (b) by arbitration under the Code; or
24 (c) in accordance with section 130.
25 (2) Nothing in subsection (1) affects the right of a person —
26 (a) to bring civil proceedings in respect of any matter or
27 thing, or seek any relief or remedy, if the cause of action
28 arises, or the relief or remedy is sought, on grounds that
29 do not rely on the Code; or

- 1 (b) to bring proceedings for judicial review of a decision
2 under this Act or the Code of the Minister, the arbitrator
3 or the Board.

4 **117. Criminal proceedings do not lie**

- 5 (1) Criminal proceedings (including proceedings under *The*
6 *Criminal Code* section 177 or 178) do not lie against a person
7 by reason only that the person has contravened a provision of
8 the Code.

- 9 (2) Nothing in subsection (1) affects section 115.

10 **118. Regulations as to enforcement of Code**

- 11 (1) The regulations may prescribe all matters that are necessary or
12 convenient to be prescribed for the enforcement of the Code.

- 13 (2) Without limiting section 131 or subsection (1), the regulations
14 may —

- 15 (a) provide that a provision of the Code specified in the
16 regulations, or of a class specified in the regulations, is a
17 civil penalty provision for the purposes of the
18 regulations; and

- 19 (b) prescribe, for a contravention of a civil penalty
20 provision —

- 21 (i) an amount not exceeding \$100 000; and
22 (ii) in addition a daily amount not exceeding
23 \$20 000,

24 that the Supreme Court may determine is payable by a
25 person who contravenes the provision; and

- 26 (c) provide for and regulate the taking of proceedings
27 before the Supreme Court in respect of alleged
28 contraventions of civil penalty provisions and provide
29 for the orders that can be made in those proceedings;
30 and

- 1 (d) provide for the manner in which amounts received by
2 way of civil penalties are to be dealt with and applied;
3 and
- 4 (e) provide for and regulate the taking of proceedings
5 before the Supreme Court for an injunction restraining
6 engagement in conduct contravening a provision of the
7 Code and provide for the granting of an injunction
8 (including an interim injunction) and the rescission or
9 variation of an injunction so granted; and
- 10 (f) provide for and regulate the taking of proceedings
11 before the Supreme Court for a declaration as to whether
12 a provision of the Code is being or has been contravened
13 and provide for the orders that can be made in those
14 proceedings; and
- 15 (g) provide for and regulate the taking of action for the
16 recovery of an amount of loss or damage suffered
17 because of conduct contravening a provision of the
18 Code.

- 19 (3) In subsection (2)(b)(ii) —
20 **daily amount** means an amount for each day or part of a day
21 during which the contravention continues.

22 [Division 4⁶ (s. 119-120) omitted under the Reprints Act 1984
23 s. 7(4)(e).]

Part 8A — Pilbara networks

Division 1 — Preliminary

119. Purposes of this Part

The purposes of this Part are —

- (a) to provide for light regulation of access to services; and
- (b) to provide for an independent system operator for the interconnected Pilbara system and any other Pilbara networks; and
- (c) to provide for the Pilbara networks rules; and
- (d) to give effect to the relevant principles of the Competition Principles Agreement in respect of the provision of access to services.

120. Terms used

In this Part, unless the contrary intention appears —

access agreement means an agreement under the Pilbara networks access code between a network service provider and another person (a ***network user***) for that person to have access to services;

independent system operator means the person specified to be the independent system operator under Division 5, section 120V;

interconnected Pilbara network means a Pilbara network that is interconnected with another Pilbara network;

interconnected Pilbara system means a system of interconnected Pilbara networks to which are connected —

- (a) generating works and associated works; and
- (b) loads; and
- (c) other facilities including electricity storage facilities;

network user has the meaning given in the definition of access agreement;

Pilbara networks participant means —

- (a) the independent system operator; or
- (b) a network service provider of a Pilbara network; or
- (c) a licensee of a licence for a Pilbara network; or
- (d) a network user; or
- (e) a person on whom functions are conferred under this Part; or
- (f) a person on whom functions relating to this Part are conferred by another written law; or
- (g) a person who is registered under the Pilbara networks rules as required by the regulations; or
- (h) a person whose conduct is regulated, or on whom obligations are imposed, by regulations made under section 120O(2)(a).

120A. Objectives of this Part

The objectives of this Part are to promote efficient investment in, and efficient operation and use of, services for the long-term interests of consumers of electricity in the Pilbara region in relation to —

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the interconnected Pilbara system.

Division 2 — Pilbara networks access code

120B. Minister to establish Pilbara networks access code

- (1) The Minister is to establish a code to be called the Pilbara networks access code in accordance with this Part to meet the purposes set out in section 119(a) and (d) and the objective set out in section 120A.

- 1 (2) The Pilbara networks access code may be established by
2 amendment to the Code or by a separate instrument.

3 **120C. Pilbara networks access code —covered Pilbara networks**

4 Provision is to be made in the Pilbara networks access code —

5 (a) prescribing network infrastructure facilities that are
6 located wholly or partly in the Pilbara region that are to
7 be regulated under this Part with effect from the coming
8 into operation of the Pilbara networks access code; and

9 (b) prescribing the processes through which the Minister is
10 to decide the following, including the matters to be
11 considered and the criteria to apply —

12 (i) whether a covered Pilbara network is to be
13 subject to light regulation;

14 (ii) whether a covered Pilbara network that is subject
15 to light regulation is to cease to be subject to
16 light regulation;

17 and

18 (c) for the manner in which a decision referred to in
19 paragraph (b) is to be published and come into effect;
20 and

21 (d) prescribing the processes for, and circumstances in
22 which, a network service provider of a Pilbara network
23 that is not a covered Pilbara network may opt for the
24 network to be subject to light regulation; and

25 (e) prescribing the processes for, and circumstances in
26 which, a network service provider of a Pilbara network
27 that opted for the network to be subject to light
28 regulation may opt for the network to cease to be subject
29 to light regulation; and

30 (f) for the effect on any process, requirement, access
31 arrangement or access agreement under the Code or
32 access agreement under the Pilbara networks access
33 code or any contract of —

- 1 (i) a decision referred to in paragraph (b) that a
2 covered Pilbara network is to be subject to light
3 regulation; or
4 (ii) a decision referred to in paragraph (b) that a
5 covered Pilbara network that is subject to light
6 regulation is to cease to be subject to light
7 regulation; or
8 (iii) a network service provider opting for a Pilbara
9 network to be subject to light regulation; or
10 (iv) a network service provider opting for a covered
11 Pilbara network to cease to be subject to light
12 regulation;
13 and
14 (g) for any transitional matters for the purposes of
15 paragraphs (b) to (f); and
16 (h) generally for the relationship between the Code and the
17 Pilbara networks access code, including things done
18 under, or governed by, the Code or the Pilbara networks
19 access code.

20 Note for this section:

21 . A covered network that ceases to be subject to light regulation is
22 subject to full regulation.:

23 **120D. Pilbara networks access code —light regulation**

24 Provision is to be made in the Pilbara networks access code —

- 25 (a) for persons to have access to services in accordance
26 with —
27 (i) access agreements; or
28 (ii) determinations made by way of arbitration;
29 and
30 (b) for access agreements and contracts to be subject to
31 determinations or requirements of the independent
32 system operator under the Pilbara networks access code;
33 and

- 1 (c) providing for —
2 (i) network access pricing regulation principles; and
3 (ii) the procedures, requirements, methodologies,
4 guidelines, parameters, values and processes to
5 be followed or used by network service providers
6 in connection with prices, tariffs, revenue and
7 costs; and
8 (iii) rights, powers and duties that are to apply to and
9 in relation to the negotiation, making, and
10 implementation of access agreements; and
11 (iv) duties and requirements in relation to the
12 provision of access to services that are to be
13 complied with by the relevant network service
14 provider;
15 and
16 (d) requiring network service providers to develop and
17 publish the following in relation to their services —
18 (i) standing prices for connection and access to the
19 services, including reasonable details of the
20 methodologies and assumptions used in
21 determining standing prices; and
22 (ii) standing terms for connection and access to the
23 services; and
24 (iii) information to assist persons seeking connection
25 and access to the services;
26 and
27 (e) setting out the circumstances in which a network service
28 provider may or may not offer or agree to different
29 prices and terms for different network users; and
30 (f) providing for the resolution of disputes in relation to
31 access to services including —

- 1 (i) arbitration of disputes by a person or body that is
2 determined or appointed in accordance with the
3 Pilbara networks access code; and
- 4 (ii) the conferral of functions on a person or body
5 arbitrating disputes; and
- 6 (g) conferring functions on the Authority, including —
7 (i) supervisory and other functions for the purposes
8 of dispute resolution under the Pilbara networks
9 access code; and
10 (ii) a function of determining requirements in
11 relation to access to network infrastructure
12 facilities that are to be complied with by the
13 network service provider, a person seeking
14 access to services and an arbitrator; or
15 (iii) the issuing of guidelines for the purposes of this
16 Division; and
- 17 (h) setting out the obligations of a network service provider
18 in respect of the segregation of the functions and
19 business of providing services from the network service
20 provider's other functions and business and enabling the
21 Authority to add to those obligations or waive any of
22 them; and
- 23 (i) making provision as to services between related bodies
24 corporate (as defined in the *Corporations Act 2001*
25 (Commonwealth) section 9); and
- 26 (j) setting out rights and obligations of network users; and
27 (k) providing for the making of, or for the formulation by a
28 network service provider and approval by the Authority
29 of, technical codes for the purposes of access to services
30 that are to be complied with by access users and other
31 persons specified in the Pilbara networks access code;
32 and
- 33 (l) making provision in relation to the disclosure and use of
34 confidential or commercially sensitive information; and

- 1 (m) conferring functions on —
2 (i) the Minister; or
3 (ii) the independent system operator;
4 and
5 (n) providing for the regulation of matters —
6 (i) of a savings, transitional or supplementary
7 nature; or
8 (ii) that are otherwise necessary or convenient for
9 the purposes of this Division.

10 **120E. Additional matters for Pilbara networks access code**

- 11 (1) The regulations, the Pilbara networks access code or an
12 instrument made under the Pilbara networks access code may
13 apply, adopt or incorporate any provision of a rule, code or
14 standard that is contained in another document, and may do
15 so —
16 (a) with or without modification; or
17 (b) as the provision is in force —
18 (i) at the time when the regulations, the Pilbara
19 networks access code or the instrument are
20 made; or
21 (ii) from time to time.
22 (2) A decision under the Pilbara networks access code as to whether
23 a covered Pilbara network is to become subject to light
24 regulation or is to cease to be subject to light regulation is not
25 liable to be challenged in, or reviewed or called in question by,
26 a court or tribunal otherwise than under section 130.
27 (3) The regulations or the transitional provisions referred to in
28 section 120D(n)(i) may authorise the Minister to determine by
29 order published in the *Gazette* how any matter in progress
30 immediately before the commencement of the Pilbara networks
31 access code is to be treated, after that commencement, for the
32 purposes of the provisions of the Pilbara networks access code.

120F. Consequential amendments to the Code

The Minister may amend the Code to give effect to, and make any consequential amendments relating to, a provision of the Pilbara networks access code made under section 120C.

120G. Pilbara networks access code does not affect existing agreements

(1) The making of the Pilbara networks access code —

(a) does not affect the terms and conditions, or the operation, of an agreement for access to services in operation immediately before the commencement of the code whether under the *Electricity Transmission and Distribution Systems (Access) Act 1994* or otherwise; and

(b) does not afford a party to the agreement any ground or reason for not complying with the agreement according to its terms and conditions.

(2) Subsection (1)(a) or (b) does not apply if the Pilbara networks access code or the agreement or an enactment provides otherwise.

120H. Pilbara networks access code is subsidiary legislation

(1) In this section —

Pilbara networks access code includes —

(a) an amendment of the Pilbara networks access code; or

(b) a code repealing and replacing the Pilbara networks access code.

(2) This section applies if the Pilbara networks access code is established by a separate instrument under section 120B(2).

(3) The Pilbara networks access code is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

- 1 (4) The Pilbara networks access code is to be laid before each
2 House of Parliament within 6 sitting days of that House next
3 following publication of the code in the *Gazette*.
- 4 (5) Notice of motion to disallow the Pilbara networks access code
5 or any part of the code may be given in either House of
6 Parliament within 10 sitting days of that House after the code
7 has been laid before it under subsection (4).
- 8 (6) Within 10 sitting days of a House of Parliament after notice of
9 motion has been given in that House under subsection (5), that
10 House may pass a resolution disallowing the Pilbara networks
11 access code or any part of the code.
- 12 (7) If the Pilbara networks access code is not laid before both
13 Houses of Parliament under subsection (4), or is disallowed by
14 either House under subsection (6), the code ceases to have
15 effect, but without affecting the validity or curing the invalidity
16 of anything done or the omission of anything in the meantime.
- 17 (8) If a resolution has been passed under subsection (6), notice to
18 that effect is to be published in the *Gazette* within 21 days.
- 19 **120I. Public comment on amendment or replacement of Pilbara**
20 **networks access code**
- 21 (1) This section applies if the Pilbara networks access code is
22 established by a separate instrument and the Minister intends to
23 exercise the power —
- 24 (a) to amend the Pilbara networks access code; or
25 (b) to repeal and replace it.
- 26 (2) Before exercising the power, the Minister must make the
27 proposed amendment or replacement available for public
28 comment in accordance with subsection (3).

- 1 (3) The Minister must —
2 (a) cause a notice giving a general description of the
3 proposal to be published —
4 (i) in an issue of a daily newspaper circulating
5 throughout the Commonwealth; and
6 (ii) in an issue of a daily newspaper circulating
7 throughout the State; and
8 (iii) on an appropriate internet website; and
9 (b) include in the notice the following information —
10 (i) the places at which a copy of the proposal may
11 be obtained; and
12 (ii) a statement that written submissions on the
13 proposal may be made to the Minister by any
14 person within a specified period; and
15 (iii) the address to which the submissions may be
16 delivered or posted.
17 (4) The period specified under subsection (3)(b)(ii) is not to be less
18 than 30 days after both of the notices under subsection (3)(a)(i)
19 and (ii) have been published.
20 (5) The Minister must have regard to any submission made in
21 accordance with the notice.
22 **120J. Exception to section 120I**
23 (1) Section 120I(2) does not apply if the Minister is satisfied that a
24 proposed amendment to the Pilbara networks access code is —
25 (a) of a minor nature; or
26 (b) required to be made urgently.

- 1 (2) If in reliance on subsection (1)(b) the Minister amends the
2 Pilbara networks access code without complying with
3 section 120I(2) —
- 4 (a) the Minister must call for public comment on the
5 amendment as soon as is practicable after it has come
6 into force; and
- 7 (b) section 120I(3) and (4) apply with all necessary
8 modifications.
- 9 (3) Having regard to any submissions made on the amendment, the
10 Minister must consider whether the Pilbara networks access
11 code should be amended —
- 12 (a) to reverse the effect of the amendment; or
13 (b) in some other manner.
- 14 **120K. Consultation with network service providers on amendment**
15 **or replacement of Pilbara networks access code**
- 16 (1) Without limiting section 120I, if the Minister considers that a
17 proposed amendment or replacement of the Pilbara networks
18 access code that is established by a separate instrument may
19 affect a network service provider, the Minister must —
- 20 (a) consult with the network service provider; and
21 (b) have regard to any submissions that the network service
22 provider makes in relation to the proposal.
- 23 (2) If a network service provider considers that the Pilbara networks
24 access code, or a provision of it, has, as a result of altered
25 circumstances, become unreasonable or inappropriate in its
26 application to the network service provider, the network service
27 provider may make a submission to the Minister requesting that
28 the Pilbara networks access code be amended or be repealed and
29 replaced.
- 30 (3) The Minister must consider a submission made under
31 subsection (2) and, if requested by the network service provider,
32 consult with the network service provider in relation to it.

Division 3 — Pilbara networks rules

120L. Regulations to provide for Pilbara networks rules

(1) The regulations are to provide for rules (*Pilbara networks rules*) for the operation, management, security and reliability of interconnected Pilbara system.

(2) The regulations may also provide for the Pilbara networks rules to apply to —

(a) covered Pilbara networks; and

(b) any other Pilbara networks.

(3) The rules are to set out or deal with the matters prescribed by the regulations.

120M. Pilbara networks rules not subsidiary legislation

(1) The Pilbara networks rules are not subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of that Act does not apply to them or to rules amending them or repealing and replacing them.

(2) The *Interpretation Act 1984* sections 43 (other than subsection (6)), 44, 48, 48A, 50(1), 53, 55, 56, 58, 59, 75 and 76 and Part VIII apply to the Pilbara networks rules as if they were subsidiary legislation.

120N. Establishment and amendment of Pilbara networks rules

The regulations may provide for —

(a) the establishment of the initial Pilbara networks rules; and

(b) the amendment, or repeal and replacement, of the Pilbara networks rules by rules made in accordance with the regulations and the Pilbara networks rules; and

(c) the publication, commencement, and laying before each House of Parliament, of the initial Pilbara networks

1 rules and rules amending, or repealing and replacing, the
2 Pilbara networks rules.

3 **120O. General matters to be dealt with in regulations**

4 (1) The regulations may prescribe all matters that are necessary or
5 convenient to be prescribed for the matters set out in
6 section 120L and to meet the purposes set out in section 119 and
7 the objective set out in section 120A.

8 (2) Without limiting section 120L or subsection (1), the regulations
9 may do all or any of the following —

10 (a) regulate the conduct of persons and impose obligations
11 on them;

12 (b) confer powers and functions, or authorise the Pilbara
13 networks rules to confer powers and functions, on any of
14 the following —

15 (i) the Minister;

16 (ii) the Authority;

17 (iii) the independent system operator;

18 (iv) a person holding an office under a
19 written law;

20 (v) a body established under a written law;

21 (vi) any other person;

22 (c) provide for the relationship between the Minister, or
23 another Minister, and a person or body referred to in
24 paragraph (b)(ii) to (vi) in respect of the performance of
25 the functions of the person or body;

26 (d) authorise the Pilbara networks rules to confer rights and
27 impose obligations and responsibilities on Pilbara
28 networks participants;

29 (e) provide, or authorise the Pilbara networks rules to
30 provide, for the resolution of disputes between Pilbara
31 networks participants;

- 1 (f) authorise the Pilbara networks rules to provide for the
2 making of, or for the formulation by the independent
3 system operator or a network service provider and
4 approval by the Authority of, technical codes regarding
5 network and system operations, power system reliability
6 and system security for Pilbara networks;
- 7 (g) provide, or authorise the Pilbara networks rules to
8 provide, or authorise the making of another instrument
9 to provide, for metering of the supply to consumers of
10 electricity in Pilbara networks, including by providing
11 for —
- 12 (i) the provision, operation and maintenance of
13 metering equipment; and
- 14 (ii) ownership of and access to metering data;
- 15 (h) provide, or authorise the Pilbara networks rules to
16 provide, the regulation of the disclosure and use of
17 confidential or commercially sensitive information;
- 18 (i) in respect of costs incurred in the performance of
19 functions conferred on a person or body referred to in
20 paragraph (b)(ii) to (vi), provide for —
- 21 (i) the implementation of accounting arrangements
22 to enable those costs to be identified; and
- 23 (ii) the allocation of those costs between Pilbara
24 networks participants; and
- 25 (iii) the recovery of those costs;
- 26 (j) provide, or authorise the Pilbara networks rules to
27 provide, for matters of a saving or transitional nature.
- 28 (3) Without limiting subsection (2)(a), the regulations may prohibit
29 persons from engaging in an activity specified in the regulations
30 unless they are registered in accordance with the Pilbara
31 networks rules.

(4) The regulations, the Pilbara networks rules or an instrument made under the Pilbara networks rules may apply, adopt or incorporate any provision of a rule, code or standard that is contained in another document, and may do so —

(a) with or without modification; or

(b) as the provision is in force —

(i) at the time when the regulations, the Pilbara networks rules or the instrument are made; or

(ii) from time to time.

(5) Without limiting subsection (2)(i), if it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function, the regulations may provide for the method of calculating the fee or charge, including calculation according to the cost of performing that function.

Division 4 — Enforcement

120P. References to contravening the Pilbara networks access code or Pilbara networks rules

A reference in this Division to contravening a provision of the regulations or the Pilbara networks access code or the Pilbara networks rules includes a reference to —

(a) attempting to contravene the provision; or

(b) aiding, abetting, counselling or procuring a person to contravene the provision; or

(c) inducing, or attempting to induce, a person, whether by threats or promises or otherwise, to contravene the provision; or

(d) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the provision; or

(e) conspiring with others to contravene the provision.

120Q. Prohibitions on hindering or preventing access

(1) The network service provider of a covered Pilbara network, or an associate of the network service provider, must not engage in conduct for the purpose of hindering or preventing —

(a) access by any person to services in accordance with this Part; or

(b) the making of access agreements or any particular agreement in respect of those services; or

(c) the access to which a person is entitled under an access agreement or a determination made by way of arbitration.

Penalty for this subsection: a fine of \$100 000.

Daily penalty for this subsection: a fine of \$20 000.

(2) A person who has access to services, or an associate of the person, must not engage in conduct for the purpose of hindering or preventing access by another person to services.

Penalty for this subsection: a fine of \$100 000.

Daily penalty for this subsection: a fine of \$20 000.

(3) Without limiting subsection (1) or (2) —

(a) a person is taken to engage in conduct for a particular purpose if —

(i) the conduct is or was engaged in for purposes that include, or included, that purpose; and

(ii) that purpose is or was a substantial purpose; and

(b) a person may be taken to have engaged in conduct for a particular purpose even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

- 1 (4) In this section —
- 2 (a) a reference to engaging in conduct is a reference to
3 doing or refusing to do any act and includes a reference
4 to —
- 5 (i) making a contract, agreement or arrangement or
6 giving effect to a provision of a contract,
7 agreement or arrangement; or
- 8 (ii) arriving at an understanding or giving effect to a
9 provision of an understanding; or
- 10 (iii) requiring a covenant to be given or giving a
11 covenant;
- 12 (b) a reference to refusing to do an act includes a reference
13 to —
- 14 (i) refraining (otherwise than inadvertently) from
15 doing the act; or
- 16 (ii) making it known that the act will not be done.
- 17 (5) In this section —
- 18 associate, in relation to a person, has the meaning it would have
19 under the Corporations Act 2001 (Commonwealth) Part 1.2
20 Division 2 if sections 13, 14, 16(2) and 17 of that Act were
21 deleted.
- 22 **120R. Proceedings**
- 23 (1) Civil proceedings cannot be brought in respect of a matter
24 arising under the Pilbara networks access code except —
- 25 (a) in accordance with the regulations; or
- 26 (b) by arbitration under the Pilbara networks access code; or
- 27 (c) in accordance with section 130.
- 28 (2) Nothing in subsection (1) affects the right of a person —
- 29 (a) to bring civil proceedings in respect of any matter or
30 thing, or seek any relief or remedy, if the cause of action

arises, or the relief or remedy is sought, on grounds that do not rely on the Pilbara networks access code; or

(b) to bring proceedings for judicial review of a decision of the Minister, the Authority, the Board, the independent system operator or person or body carrying out an arbitration under this Act or the Pilbara networks access code.

120S. Criminal proceedings do not lie

(1) Criminal proceedings (including proceedings under *The Criminal Code* section 177 or 178) do not lie against a person by reason only that the person has contravened a provision of the Pilbara networks access code.

(2) Nothing in subsection (1) affects section 120Q.

120T. Matters relating to compliance and enforcement

The regulations may —

(a) provide that a contravention of a regulation is an offence; and

(b) prescribe a penalty of a fine of not more than \$100 000, with or without a daily penalty of a fine of not more than \$20 000, for an offence against the regulations.

120U. Regulations as to enforcement of Pilbara networks access code and Pilbara networks rules

(1) The regulations may prescribe all matters that are necessary or convenient to be prescribed for the enforcement of the Pilbara networks access code and the Pilbara networks rules.

(2) Without limiting section 131 or subsection (1), the regulations may do all or any of the following —

(a) provide that a provision of the Pilbara networks access code or the Pilbara networks rules specified in the regulations, or of a class specified in the regulations, is a

- 1 civil penalty provision for the purposes of the
2 regulations;
- 3 (b) prescribe, for a contravention of a civil penalty
4 provision the following amounts that may, in accordance
5 with the regulations, be demanded from or imposed
6 upon a person who contravenes the provision —
- 7 (i) an amount not exceeding \$100 000; and
8 (ii) in addition a daily amount not exceeding
9 \$20 000;
- 10 (c) provide for demands for the payment of amounts
11 referred to in paragraph (b) and the enforcement of
12 demands for their payment;
- 13 (d) provide for and regulate the taking of proceedings in
14 respect of alleged contraventions of provisions of the
15 Pilbara networks access code or the Pilbara networks
16 rules, provide for the orders that can be made and other
17 sanctions that can be imposed in those proceedings and
18 provide for the enforcement of those orders and
19 sanctions;
- 20 (e) provide for the manner in which amounts received by
21 way of civil penalties are to be dealt with and applied;
- 22 (f) provide for and regulate the taking of proceedings
23 before the Supreme Court for an injunction restraining
24 engagement in conduct contravening a provision of the
25 Pilbara networks access code and provide for the
26 granting of an injunction (including an interim
27 injunction) and the rescission or variation of an
28 injunction so granted;
- 29 (g) provide for and regulate the taking of proceedings
30 before the Supreme Court for a declaration as to whether
31 a provision of the Pilbara networks access code is being
32 or has been contravened and provide for the orders that
33 can be made in those proceedings;
- 34 (h) provide for and regulate the taking of action for the
35 recovery of an amount of loss or damage suffered

1 because of conduct contravening a provision of the
2 Pilbara networks access code;
3 (i) provide for and regulate the making of applications for,
4 and the issue of, warrants relating to the investigation of
5 alleged contraventions of provisions of the Pilbara
6 networks rules and for the powers exercisable under
7 warrants.

8 (3) In subsection (2)(b)(ii) —
9 *daily amount* means an amount for each day or part of a day
10 during which the contravention continues.

11 **Division 5 — Independent system operator**

12 **120V. Independent system operator**

- 13 (1) There is to be an independent system operator for Pilbara
14 networks.
- 15 (2) The independent system operator is to be a person specified in
16 the regulations.
- 17 (3) The regulations may specify that the Regional Power
18 Corporation established under the *Electricity Corporations Act*
19 2005 section 4(1)(d) is the initial independent system operator
20 until another person is specified as the independent system
21 operator under the regulations.
- 22 (4) The independent system operator has the following functions —
23 (a) to maintain and improve system security in the
24 interconnected Pilbara system; and
25 (b) to facilitate overall network co-ordination and planning
26 for the interconnected Pilbara system; and
27 (c) any other functions in relation to Pilbara networks given
28 by this Act, the regulations, the Pilbara networks access
29 code or the Pilbara networks rules.

120W. Regulations relating to independent system operator

The regulations may provide, or authorise the Pilbara networks access code or the Pilbara networks rules to provide, for the following —

(a) that the independent system operator may delegate specified functions of the operator to another person or body;

(b) that the independent system operator may enter into a contract with another person or body —

(i) for the purposes of performing its functions; or

(ii) in relation to the performance by the person or body of specified functions of the operator;

(c) that a contract referred to in paragraph (b) must comply with the requirements specified in the regulations, code or rules;

(d) the obligations of the independent system operator in relation to a function that it has delegated or contracted to another person or body to perform;

(e) the obligations of the independent system operator in respect of the segregation of the functions of the independent system operator under this Part (including as to personnel, operations, financial and legal matters and related matters) from other functions and business of the independent system operator;

(f) the obligations of the independent system operator to —

(i) report to the Authority on specified matters; and

- 1 (ii) prepare and publish information on specified
2 matters.

3 **Division 6 — Functions of Authority**

4 **120X. Functions of the Authority**

- 5 (1) The Authority has the functions and powers conferred on it
6 under this Part.
- 7 (2) Without limiting subsection (1), the regulations may provide for
8 the obligations of the Authority to —
- 9 (a) report to the Minister on specified matters; and
10 (b) prepare and publish information on specified matters.

11 **Division 7 — Reviews of decisions**

12 **120Y. Reviews of decisions**

- 13 (1) Application may be made to the Board for the review by the
14 Board of decisions of the following that are made under the
15 regulations or the Pilbara networks rules and are of a class
16 specified in the regulations —
- 17 (a) a person on whom functions are conferred under this
18 Part or the regulations or the Pilbara networks rules; or
- 19 (b) a person on whom functions relating to this Part are
20 conferred by another written law.
- 21 (2) Regulations may —
- 22 (a) provide for the powers of the Board in relation to
23 reviews provided for in those regulations; and
- 24 (b) make other provisions that it is necessary or convenient
25 to make in relation to those reviews.
- 26 (3) Nothing in subsection (1) prevents or affects the review by a
27 court or tribunal, according to law, of decisions of the persons
28 referred to in that subsection made under the regulations or the
29 Pilbara networks rules.

Division 8 — Immunity

120Z. Immunity of participants

(1) In this section —

civil monetary penalty means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty under the regulations;

officer of a body corporate includes a person who is an officer within the meaning of the *Corporations Act 2001* (Commonwealth) section 82A;

participant means a person on whom —

(a) functions are conferred under this Part or the regulations relating to this Part or under the Pilbara networks access code or the Pilbara networks rules; or

(b) functions relating to this Part are conferred by another written law.

(2) The independent system operator does not incur any civil monetary liability for an act or omission done or made in good faith in the performance, or purported performance, of a function under this Act, the regulations, the Pilbara networks access code or the Pilbara networks rules by —

(a) the independent system operator; or

(b) an officer or employee of the independent system operator; or

(c) a person or body to which the independent system operator delegates any of its functions; or

(d) a person or body with which the independent system operator enters into a contract to perform any of its functions.

(3) The following persons and bodies do not incur any civil monetary liability for an act or omission done or made in good faith in the performance, or purported performance, of a

function under this Act, the regulations, the Pilbara networks access code or the Pilbara networks rules —

(a) an officer or employee of the independent system operator; or

(b) a person or body that is a delegate of the independent system operator under section 120W; or

(c) a person or body with whom the independent system operator enters into a contract under section 120W.

(4) A participant, or an officer or employee of a participant, does not incur any civil monetary liability for an act or omission done or made in good faith in the performance, or purported performance, of a function under this Act, the regulations, the Pilbara networks access code or the Pilbara networks rules.

(5) If an act or omission done or made after the expiration of the period of 12 months from the establishment of the initial Pilbara networks access code or the initial Pilbara networks rules, as the case requires, is negligent —

(a) the immunity given by subsection (2), (3) or (4) does not apply to that act or omission; but

(b) as long as that act or omission is done or made in good faith, the civil monetary penalty for it is not to exceed the prescribed maximum amount.

(6) Regulations may exempt a specified participant from the operation of subsection (3)(a).

(7) The regulations may, for the purposes of subsection (5)(b), without limitation —

(a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods to which they are expressed to apply; or

(b) prescribe maximum amounts that vary in their application according to the persons to whom, or the events, circumstances, losses or periods to which, they are expressed to apply; or

1 (c) prescribe a manner in which the maximum amount is to
2 be divided amongst claimants.

3 (8) This section does not apply to any liability of an officer of a
4 body corporate to the body corporate.

5 **Division 9 — Trade practices authorisation**

6 **120ZA. Trade practices authorisation by regulation**

7 (1) In this section —
8 *arrangement* includes any contract, arrangement or
9 understanding, or any market practice or market or customer
10 restriction, division, allocation or segregation of any nature, or a
11 course of conduct or dealing.

12 (2) The regulations may authorise or approve any arrangement, act,
13 matter or thing in relation to the Pilbara networks access rules
14 for the purposes of the *Competition and Consumer Act 2010*
15 (Commonwealth) and the Competition Code.

16 **Division 10 — Review of system**

17 **120ZB. Review of regulation of Pilbara networks**

18 (1) The Authority is to review the operation of the regulatory
19 arrangements established for Pilbara networks under this Part —

20 (a) as soon as practicable after the 5th anniversary of the
21 day on which section [] of the *Electricity Industry*
22 *Amendment (Pilbara Networks) Act 2018* comes into
23 operation; and

24 (b) after that at intervals of not more than 5 years.

25 (2) The purpose of the review is to assess the extent to which the
26 objective set out in section 120A has been or is being achieved.

27 (3) The Authority is to give the Minister a written report based on
28 the review not later than 6 months after the review commences.

1 (4) If the Authority considers that part or all of the objective set out
2 in section 120A has not been and is not being achieved, the
3 report is to set out recommendations as to how the objective can
4 be achieved.

5 (5) As soon as practicable after receiving the report but not later
6 than 12 months after the 5th anniversary or the expiry of the
7 period of 5 years, as the case may be, the Minister is to —

8 (a) cause the report to be laid before each House of
9 Parliament; and

10 (b) prepare a response to the report and cause the response
11 to be laid before each House of Parliament.

12 (6) As soon as practicable after the report is laid before each House
13 of Parliament, the Authority is to post a copy of the report on a
14 website maintained by or on behalf of the Authority.

15 **120ZC. Public consultation**

16 (1) In the course of conducting a review under section 120ZB(1),
17 the Authority is to seek public comment on the extent to which
18 the objective set out in section 120A has been or is being
19 achieved (the *issue*).

20 (2) The Authority is to cause a notice giving a general description
21 of the issue to be —

22 (a) published in a daily newspaper circulating throughout
23 the State; and

24 (b) posted on an internet website maintained by the
25 Authority.

26 (3) The notice is to include —

27 (a) a statement that any person may, within a specified
28 period, make written submissions on the issue to the
29 Authority; and

30 (b) the address to which the submissions may be delivered
31 or posted.

- 1 (4) The period specified under subsection (3)(a) is not to end less
2 than 30 days after the day on which the notice is published
3 under subsection (2)(a).
- 4 (5) The Authority is to have regard to any submission made in
5 accordance with the notice.

Consultation Draft

Part 9 — Wholesale electricity market

121. Terms used

- (1) In this Part, unless the contrary intention appears —
- confer* includes impose;
- market* has the meaning given to that term in section 122;
- market rules* has the meaning given to that term in section 123(1).

- (2) A person is a *participant* for the purposes of this Part if —

- (a) the person is registered in accordance with the market rules as required under the regulations; or
- (b) functions are conferred on the person under the regulations or the market rules; or
- (c) functions relating to this Part are conferred on the person by another written law.

122. Regulations for a wholesale electricity market

- (1) Regulations are to be made for the purpose of establishing a market (the *market*) in relation to the wholesale supply of electricity in the South West interconnected system.
- (2) The objectives of the market are —
- (a) to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system; and
 - (b) to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors; and
 - (c) to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies such as those that make use of renewable resources or that reduce overall greenhouse gas emissions; and

s. 123

- 1 (d) to minimise the long-term cost of electricity supplied to
2 customers from the South West interconnected system;
3 and
4 (e) to encourage the taking of measures to manage the
5 amount of electricity used and when it is used.

6 **123. Market rules**

- 7 (1) Without limiting section 122, the regulations are to provide for
8 there to be rules (the **market rules**) relating to the market and to
9 the operation of the South West interconnected system setting
10 out or dealing with such matters as are prescribed by the
11 regulations.
12 (2) The market rules are not subsidiary legislation for the purposes
13 of the *Interpretation Act 1984* and section 42 of that Act does
14 not apply to them or to rules amending them or repealing and
15 replacing them.
16 (3) The *Interpretation Act 1984* sections 43 (other than
17 subsection (6)), 44, 48, 48A, 50(1), 53, 55, 56, 58, 59, 75 and 76
18 and Part VIII apply to the market rules as if they were
19 subsidiary legislation.
20 (4) The regulations may provide for —
21 (a) the establishment of the initial market rules; and
22 (b) the amendment, or repeal and replacement, of the
23 market rules by rules made in accordance with the
24 regulations and the market rules; and
25 (c) the publication, commencement, and laying before each
26 House of Parliament, of the initial market rules and rules
27 amending, or repealing and replacing, the market rules.

28 **124. Matters to be dealt with in regulations**

- 29 (1) The regulations may prescribe all matters that are necessary or
30 convenient to be prescribed for the purpose set out in
31 section 122(1) and to achieve the objectives set out in
32 section 122(2).

- 1 (2) Without limiting section 122, 123 or 131 or subsection (1), the
2 regulations may —
- 3 (a) regulate the conduct of persons and impose obligations
4 on them; and
- 5 (b) confer functions, or authorise the market rules to confer
6 functions, on the Minister or any other person (including
7 a person holding an office under a written law or a body
8 established under a written law); and
- 9 (c) provide for the establishment, or authorise the
10 formation, of a body (including a body corporate) and
11 confer functions, or authorise the market rules to confer
12 functions, on a body so established or formed; and
- 13 (d) provide for the relationship between the Minister, or
14 another Minister, and a participant referred to in
15 section 121(2)(b) or (c) in respect of the performance of
16 the functions of the participant; and
- 17 (e) provide, or authorise the market rules to provide, for the
18 resolution of disputes between participants; and
- 19 (f) provide that a contravention of a regulation is an
20 offence; and
- 21 (g) prescribe a penalty of not more than \$100 000, with or
22 without a daily penalty of not more than \$20 000, for an
23 offence against the regulations; and
- 24 (h) provide that a provision of the market rules specified in
25 the regulations, or of a class specified in the regulations,
26 is a civil penalty provision for the purposes of the
27 regulations; and
- 28 (i) prescribe, for a contravention of a civil penalty
29 provision —
- 30 (i) an amount not exceeding \$100 000; and

s. 124

- 1 (ii) in addition a daily amount not exceeding
2 \$20 000,
3 that may, in accordance with the regulations, be
4 demanded from or imposed upon a person who
5 contravenes the provision; and
6 (j) provide for demands for the payment of amounts
7 referred to in paragraph (i) and the enforcement of
8 demands for their payment; and
9 (k) provide for and regulate the taking of proceedings in
10 respect of alleged contraventions of provisions of the
11 market rules, provide for the orders that can be made
12 and other sanctions that can be imposed in those
13 proceedings and provide for the enforcement of those
14 orders and sanctions; and
15 (l) provide for the manner in which amounts received by
16 way of civil penalties are to be dealt with and applied;
17 and
18 (m) provide for and regulate the making of applications for,
19 and the issue of, warrants relating to the investigation of
20 alleged contraventions of provisions of the market rules
21 and for the powers exercisable under warrants; and
22 (n) in respect of costs incurred in the performance of
23 functions conferred on a participant referred to in
24 section 121(2)(b) or (c), provide for —
25 (i) the implementation of accounting arrangements
26 to enable those costs to be identified; and
27 (ii) the allocation of those costs between
28 participants; and
29 (iii) the recovery of those costs.
30 (3) Without limiting subsection (2)(a), the regulations may prohibit
31 persons from engaging in an activity specified in the regulations
32 unless they are registered in accordance with the market rules.

- 1 (4) Without limiting subsection (2)(n), if it is inappropriate to
2 prescribe a set fee or charge in connection with the performance
3 of a particular function the regulations may provide for the
4 method of calculating the fee or charge, including calculation
5 according to the cost of performing that function.
- 6 (5) A reference in subsection (2) to contravening a provision of the
7 market rules includes a reference to —
8 (a) attempting to contravene such a provision; or
9 (b) aiding, abetting, counselling or procuring a person to
10 contravene such a provision; or
11 (c) inducing, or attempting to induce, a person, whether by
12 threats or promises or otherwise, to contravene such a
13 provision; or
14 (d) being in any way, directly or indirectly, knowingly
15 concerned in, or party to, the contravention by a person
16 of such a provision; or
17 (e) conspiring with others to contravene such a provision.
- 18 (6) In subsection (2)(i)(ii) —
19 *daily amount* means an amount for each day or part of a day
20 during which the contravention continues.

21 **125. Reviews**

- 22 (1) Application may be made to the Board for the review by the
23 Board of decisions of a participant referred to in
24 section 121(2)(b) or (c) that are made under the regulations or
25 the market rules and are not of a class specified in the
26 regulations.
- 27 (2) Regulations may —
28 (a) provide for the powers of the Board; and
29 (b) make other provisions that it is necessary or convenient
30 to make,
31 in relation to reviews provided for in those regulations.

s. 126

1 (3A) Regulations that, immediately before the day on which the
2 *National Gas Access (WA) Act 2009* section 59(1) comes into
3 operation⁴, apply provisions of the *Gas Pipelines Access*
4 *(Western Australia) Act 1998*⁵ continue to have the effect they
5 had immediately before that day until the contrary intention
6 appears from a regulation made after that day.

7 (3) Nothing in subsection (1) prevents or affects the review by a
8 court or tribunal, according to law, of decisions of participants
9 made under the regulations or the market rules.

10 *[Section 125 amended by No. 16 of 2009 s. 59.]*

11 **126. Immunity of certain participants**

12 (1) In this section —

13 ***civil monetary penalty*** means liability to pay damages or
14 compensation or any other amount ordered in a civil
15 proceeding, but does not include liability to pay a civil penalty
16 under the regulations;

17 ***market governance participant*** means a participant referred to
18 in section 121(2)(b) or (c);

19 ***officer*** of a body corporate includes a person who is an officer
20 within the meaning of the *Corporations Act 2001* of the
21 Commonwealth section 82A;

22 ***system management participant*** means a market governance
23 participant the functions of which include a function under the
24 regulations or the market rules specified in the regulations as a
25 system management function.

26 (2) A market governance participant, or an officer or employee of a
27 market governance participant, does not incur any civil
28 monetary liability for an act or omission done or made in good
29 faith in the performance, or purported performance, of a
30 function under the regulations or the market rules.

31 (3) If an act or omission done or made after the expiration of the
32 period of 12 months from the establishment of the initial market
33 rules is negligent —

- 1 (a) the immunity given by subsection (2) does not apply to
2 that act or omission; but
- 3 (b) as long as that act or omission is done or made in good
4 faith, the civil monetary penalty for it is not to exceed
5 the prescribed maximum amount.
- 6 (4) Regulations may exempt a specified market governance
7 participant, other than a system management participant, from
8 the operation of subsection (3)(a).
- 9 (5) The regulations may, for the purposes of subsection (3)(b),
10 without limitation —
- 11 (a) prescribe a maximum amount that is limited in its
12 application to persons, events, circumstances, losses or
13 periods to which they are expressed to apply; or
- 14 (b) prescribe maximum amounts that vary in their
15 application according to the persons to whom, or the
16 events, circumstances, losses or periods to which, they
17 are expressed to apply; or
- 18 (c) prescribe a manner in which the maximum amount is to
19 be divided amongst claimants.
- 20 (6) This section does not apply to any liability of an officer of a
21 body corporate to the body corporate.
- 22 *[Section 126 amended by No. 46 of 2009 s. 17.]*

23 **127. Trade practices authorisation by regulation**

- 24 (1) In this section —
- 25 **arrangement** includes any contract, arrangement or
26 understanding, or any market practice or market or customer
27 restriction, division, allocation or segregation of any nature, or a
28 course of conduct or dealing.
- 29 (2) The regulations may authorise or approve any arrangement, act,
30 matter or thing in relation to the market rules for the purposes of
31 the ~~Trade Practices Act 1974~~[Competition and Consumer Act](#)
32 [2010](#) of the Commonwealth and the Competition Code.

s. 128

128. Review of market operation

- (1) The Authority is to review the operation of the market as soon as practicable after the expiration of 3 years from the commencement of this Part and thereafter as soon as practicable after the expiration of 3 years from a report being laid before each House of Parliament under subsection (5)(a).
- (2) The purpose of the review is to assess the extent to which the objectives set out in section 122(2) have been or are being achieved.
- (3) Not later than 3 years and 6 months after the commencement of this Part, or after the last preceding report was laid before each House of Parliament under subsection (5)(a), as the case may be, the Authority is to give the Minister a written report based on the review.
- (4) If the Authority considers that some or all of the objectives set out in section 122(2) have not been and are not being achieved, the report is to set out recommendations as to how those objectives can be achieved.
- (5) As soon as practicable after receiving the report, the Minister is to —
 - (a) cause the report to be laid before each House of Parliament; and
 - (b) prepare a response to the report and cause the response to be laid before each House of Parliament.
- (6) As soon as practicable after the report is laid before each House of Parliament, the Authority is to post a copy of the report on an internet website maintained by the Authority.

129. Public consultation

- (1) In the course of conducting a review under section 128(1), the Authority is to seek public comment on the extent to which the objectives set out in section 122(2) have been or are being achieved (the *issue*).

- 1 (2) The Authority is to cause a notice giving a general description
2 of the issue to be —
- 3 (a) published in a daily newspaper circulating throughout
4 the State; and
- 5 (b) posted on an internet website maintained by the
6 Authority.
- 7 (3) The notice is to include —
- 8 (a) a statement that any person may, within a specified
9 period, make written submissions on the issue to the
10 Authority; and
- 11 (b) the address to which the submissions may be delivered
12 or posted.
- 13 (4) The period specified under subsection (3)(a) is not to end less
14 than 30 days after the day on which the notice is published
15 under subsection (2)(a).
- 16 (5) The Authority is to have regard to any submission made in
17 accordance with the notice.

s. 129A

Part 9A — Tariff equalisation

[Heading inserted by No. 18 of 2005 s. 139.]

129A. Purpose of this Part

The purpose of this Part is to contribute towards maintaining the financial viability of the Regional Power Corporation while enabling the regulated retail tariffs for electricity that is not supplied from the South West interconnected system to be, so far as is practicable, the same as the regulated retail tariffs for electricity that is supplied from that system.

[Section 129A inserted by No. 18 of 2005 s. 139.]

129B. Terms used

In this Part, unless the contrary intention appears —

Code means the Code for the time being in force under section 104;

efficient cost of supply means those costs that would be incurred by a prudent service provider acting efficiently and in accordance with accepted and good industry practice;

regulated retail tariffs means fees and charges prescribed as referred to in section 132(1) or the *Energy Operators (Powers) Act 1979* section 124(4);

Tariff Equalisation Account means the account referred to in section 129C;

tariff equalisation contribution means a tariff equalisation contribution determined under section 129D(2);

user means a network user as defined in section 103 or a user as defined in the *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 clause 1 or Schedule 6 clause 1.

[Section 129B inserted by No. 18 of 2005 s. 139; amended by No. 77 of 2006 Sch. 1 cl. 54(1).]

1 **129C. Tariff Equalisation Account**

- 2 (1) An agency special purpose account called the Tariff
3 Equalisation Account is established under the *Financial*
4 *Management Act 2006* section 16.
- 5 (2) There are to be credited to the Tariff Equalisation Account —
- 6 (a) each tariff equalisation contribution paid by the
7 Electricity Networks Corporation under section 129F(1);
8 and
- 9 (b) the amount of any income determined by the Treasurer
10 (at a rate determined by the Treasurer) to be attributable
11 to the investment under the *Financial Management*
12 *Act 2006* section 37 of money standing to the credit of
13 the Tariff Equalisation Account; and
- 14 (c) any other amount lawfully received for the purposes of
15 the Account.

16 [Section 129C inserted by No. 18 of 2005 s. 139; amended by
17 No. 77 of 2006 Sch. 1 cl. 54(2) and (3).]

18 **129D. Determination of tariff equalisation contributions**

- 19 (1) The Treasurer, at such intervals of time as are prescribed, must
20 determine whether there is a disparity between —
- 21 (a) the efficient cost of supply of electricity to persons in
22 areas outside of the South West interconnected system;
23 and
- 24 (b) the revenues available to the Regional Power
25 Corporation from supplying electricity to persons in
26 areas outside of the South West interconnected system at
27 the regulated retail tariffs.
- 28 (2) If the Treasurer determines that a disparity exists, the Treasurer
29 must determine, by notice published in the *Gazette*, the tariff
30 equalisation contribution that is payable by the Electricity
31 Networks Corporation for the purpose of this Part in respect of a
32 period specified in the determination.

s. 129E

- 1 (3) In making a determination for the purposes of subsection (2) the
2 Treasurer must have regard to —
- 3 (a) the amount required to compensate the Regional Power
4 Corporation for the disparity; and
- 5 (b) the extent to which the amount paid to the Regional
6 Power Corporation under section 129G(1) in respect of a
7 previous period was greater or less than the disparity
8 between —
- 9 (i) the cost referred to in subsection (1)(a); and
10 (ii) the revenues referred to in subsection (1)(b),
11 in respect of that previous period; and
- 12 (c) the moneys standing to the credit of the Tariff
13 Equalisation Account; and
- 14 (d) any service standards to be observed by the Regional
15 Power Corporation; and
- 16 (e) any other prescribed matters.
- 17 (4) In subsection (3)(d) —
- 18 *service standards* means standards referred to in
19 section 39(2)(d) that are provided for in a code prepared and
20 issued under section 39.
- 21 (5) The Treasurer must consult with the Minister before making a
22 determination under this section.
- 23 *[Section 129D inserted by No. 18 of 2005 s. 139; amended by*
24 *No. 77 of 2006 Sch. 1 cl. 54(4).]*

25 **129E. Treasurer may seek advice from the Authority**

- 26 (1) Before making a determination under section 129D(2) the
27 Treasurer may ask the Authority for advice on any matter
28 referred to in section 129D(3) or any other matter that the
29 Treasurer considers relevant.
- 30 (2) It is a function of the Authority to give advice when asked to do
31 so under subsection (1).

- 1 (3) Advice given by the Authority must be published in the *Gazette*
2 with the notice under section 129D(2).

3 *[Section 129E inserted by No. 18 of 2005 s. 139.]*

4 **129F. Payment and passing on of tariff equalisation contributions**

- 5 (1) The Electricity Networks Corporation must pay tariff
6 equalisation contributions into the Tariff Equalisation Account
7 at the times, and in the manner, prescribed.

- 8 (2) Users must make payments to the Electricity Networks
9 Corporation in accordance with the Code in respect of tariff
10 equalisation contributions payable by the Electricity Networks
11 Corporation under subsection (1).

- 12 (3) Without limiting Part 8 Division 2, the Code may make
13 provision —

- 14 (a) for the determination of the amounts payable by users
15 under subsection (2) and the manner in which those
16 amounts are to be collected; and
17 (b) for the duties and powers of the Electricity Networks
18 Corporation in relation to tariff equalisation
19 contributions to be taken into account —
20 (i) by the Authority in deciding whether to give its
21 approval to an arrangement lodged under
22 section 104(2)(c); and
23 (ii) in the formulation of the network access pricing
24 regulation principles referred to in
25 section 104(2)(h)(i).

- 26 (4) Until there is an access arrangement for the network
27 infrastructure facilities of the Electricity Networks
28 Corporation —

- 29 (a) subsection (2) does not have effect; and
30 (b) users must make payments to the Electricity Networks
31 Corporation in accordance with the regulations in
32 respect of tariff equalisation contributions payable by

s. 129G

- 1 the Electricity Networks Corporation under
2 subsection (1); and
3 (c) the regulations may make provision for the
4 determination of the amounts payable by users under
5 paragraph (b) and the manner in which those amounts
6 are to be collected.

- 7 (5) In subsection (4) —

8 **user** means a user as defined in the *Electricity Transmission and*
9 *Distribution Systems (Access) Act 1994* Schedule 5 clause 1 or
10 Schedule 6 clause 1.

11 *[Section 129F inserted by No. 18 of 2005 s. 139; amended by*
12 *No. 77 of 2006 Sch. 1 cl. 54(5).]*

13 **129G. Payments from the Account**

- 14 (1) If a tariff equalisation contribution is payable by the Electricity
15 Networks Corporation in respect of a period, the Treasurer must
16 pay to the Regional Power Corporation in respect of that period
17 such amount as the Treasurer considers necessary for the
18 purpose of this Part having regard to —

- 19 (a) the matters referred to in section 129D(3)(a), (b), (c)
20 and (d); and
21 (b) any other prescribed matters.

- 22 (2) Payments under subsection (1) are to be made from the Tariff
23 Equalisation Account.

24 *[Section 129G inserted by No. 18 of 2005 s. 139; amended by*
25 *No. 77 of 2006 Sch. 1 cl. 54(6).]*

26 **129H. Information**

27 The Electricity Networks Corporation and the Regional Power
28 Corporation must provide such information, or access to
29 information, as is necessary to assist the Treasurer and the
30 Authority to perform their functions under this Part.

31 *[Section 129H inserted by No. 18 of 2005 s. 139.]*

1 **129I. Treasurer to recommend regulations**

2 Regulations are not to be made for this Part except on the
3 Treasurer's recommendation.

4 *[Section 129I inserted by No. 18 of 2005 s. 139.]*

5 **129J. Delegation by Treasurer**

6 The *Financial Management Act 2006* sections 74(2), 76(2) and
7 77 apply to a power conferred on the Treasurer by a provision
8 of this Part (other than section 129I) as if it were conferred by
9 that Act.

10 *[Section 129J inserted by No. 18 of 2005 s. 139; amended by*
11 *No. 77 of 2006 Sch. 1 cl. 54(7).]*

Part 10 — Other matters

130. Review by the Board

(1) In this section —

~~Code means the Code for the time being in force under section 104;~~

gas pipelines access provisions means the *Gas Pipelines Access (Western Australia) Act 1998*⁵ Schedule 1 as in force immediately before the day on which the *National Gas Access (WA) Act 2009* section 51 deleted it⁴.

(2) This section applies to —

- (a) a decision of the Authority to refuse to grant or renew a licence; or
- (b) a decision of the Authority to refuse to approve the transfer of a licence; or
- (c) a decision of the Authority to refuse to amend a licence under section 21; or
- (d) a decision of the Authority as to the length of the period for which a licence is granted or renewed; or
- (e) a decision of the Authority as to any term or condition of a licence; or
- (f) a decision of the Authority to amend a licence under section 22; or
- (g) a decision of the Authority to refuse to approve —
 - (i) a standard form contract under section 51; or
 - (ii) an amendment to, or replacement for, a standard form contract under section 52;
- or
- (h) a direction given by the Authority under section 53; or
- (i) a decision by the Minister under the Code that network infrastructure facilities are to become covered networks

- 1 ~~by the Code~~ or are to cease to be covered ~~by~~ networks
 2 ~~the Code~~; or
- 3 (ia) a decision by the Minister under the Pilbara networks
 4 access code that a covered Pilbara network is to be
 5 subject to light regulation or full regulation, or is to
 6 cease to be subject to light regulation or full regulation;
 7 or
- 8 (ib) a decision under the Pilbara networks access code as to
 9 whether a network service provider of a Pilbara network
 10 has satisfied the requirements in the Pilbara networks
 11 access code for the provider to opt for the network to
 12 subject to light regulation; or
- 13 (j) a decision by the Authority to add to the obligations of a
 14 network service provider under the Code or the Pilbara
 15 networks access code in respect of the segregation of the
 16 functions and business of providing services from the
 17 network service provider's other functions and business,
 18 or to waive any of those obligations; or
- 19 (k) a decision by the Authority to approve or not to approve
 20 an arrangement lodged under section 104B(c2)(e); or
- 21 (ka) a decision by the Authority to approve or not to approve
 22 a thing for which the approval of the Authority is
 23 required under the Pilbara networks access code; or
- 24 (l) a decision by the Authority to release confidential data
 25 given to the Authority for the performance of its
 26 functions under Part 8 or 8A.

27 Note:

28 See *Economic Regulation Authority Act 2003* Part 6.

- 29 (3) A person adversely affected by a decision or direction to which
 30 this section applies may apply to the Board for a review of the
 31 decision.
- 32 (4) Section 38(2) to (5) and (7) to (12) of the gas pipelines access
 33 provisions apply to the application and to the review of the
 34 decision or direction as if references in them to —

s. 131A

- 1 (a) the relevant appeals body were references to the Board;
2 (b) a decision included references to a direction;
- 3 (5) The application operates to stay the decision or direction unless,
4 in the case of a decision under subsection (2)(j), the Board
5 determines otherwise.
- 6 (6) In the case of a decision under subsection (2)(k), section 39(2)
7 to (5) of the gas pipelines access provisions also apply to the
8 application and to the review of the decision as if references in
9 them to —
- 10 (a) the relevant appeals body were references to the Board;
11 (b) the relevant regulator were references to the Authority.
- 12 (7) In the case of a decision under subsection (2)(l), section 43(2)
13 to (4) of the gas pipelines access provisions also apply to the
14 application and to the review of the decision as if references in
15 them to —
- 16 (a) the relevant appeals body were references to the Board;
17 (b) the relevant regulator were references to the Authority.
- 18 (8) When the *Energy Arbitration and Review Act 1998* Part 6
19 Division 2 refers to the functions of, and proceedings before, the
20 Board those functions and proceedings include functions and
21 proceedings under this section.
- 22 (9) For proceedings to which subsection (8) extends the provisions
23 described in that subsection, sections 57(1) and 59(4) of those
24 provisions apply only to the extent that it is consistent with the
25 Code for them to apply.
- 26 *[Section 130 amended by No. 16 of 2009 s. 60.]*

**131A. Licence not personal property for the purposes of the
Personal Property Securities Act 2009 (Commonwealth)**

29 If a licence is transferable by the licensee, in accordance with
30 the *Personal Property Securities Act 2009* (Commonwealth)
31 section 10 the definition of *licence* paragraph (d), the licence is

declared not to be personal property for the purposes of that Act.

[Section 131A inserted by No. 42 of 2011 s. 61.]

131. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

132. Regulations as to fees and charges for supply and services

(1) Without limiting section 131, the regulations may —

(a) fix the fees and charges, or the means of determining the fees and charges, that, unless otherwise agreed, are to be payable by customers of a prescribed class in relation to —

(i) the supply of electricity in prescribed circumstances; or

(ii) the provision of any prescribed service;

and

(b) deal with any other matter relating to the fixing or determination of fees and charges.

(2) Without limiting subsection (1), the regulations may make provision for and in relation to discounts, rebates, or concessions to be made available to customers of a prescribed class or in prescribed circumstances in respect of fees or charges payable in relation to the supply of electricity or the provision of a prescribed service.

133. Regulations as to fees and charges for functions of arbitrator and Board

(1) Without limiting section 131, regulations may make provision for and in relation to the imposition and payment of fees and charges in connection with any matter under this Act, including

s. 134

- 1 in connection with the performance of the respective functions
2 of ~~the~~ an arbitrator and the Board under this Act.
- 3 (2) If it is inappropriate to prescribe a set fee or charge in
4 connection with the performance of a particular function the
5 regulations may provide for the method of calculating the fee or
6 charge, including calculation according to the cost of
7 performing that function.
- 8 (3) Without limiting subsection (1) or (2) the regulations may —
9 (a) authorise the Board to fix, and determine the incidence
10 of liability for, the cost and expenses of the hearing and
11 determination of proceedings before the Board; and
12 (b) make any incidental or supplementary provision that is
13 expedient for the purposes of paragraph (a).
- 14 (4) The application of subsection (3) extends to the cost and
15 expenses of proceedings that are commenced but discontinued
16 or otherwise not brought to finality.
- 17 *[Section 133 amended by No. 16 of 2009 s. 61.]*

18 **134. Regulations as to excluding Corporations legislation**

- 19 (1) In this section —
20 **market rules** has the meaning given in Part 9;
21 **matter** includes act, omission, body, person or thing.
- 22 (2) The regulations may declare a matter dealt with, provided for,
23 done or occurring under this Act, the regulations or the market
24 rules to be an excluded matter for the purposes of the
25 *Corporations Act 2001* (Commonwealth) section 5F in relation
26 to —
27 (a) the whole of the Corporations legislation to which the
28 *Corporations Act 2001* (Commonwealth) Part 1.1A
29 applies; or
30 (b) a specified provision of that legislation; or
31 (c) that legislation other than a specified provision; or

1 (d) that legislation otherwise than to a specified extent.

2 *[Section 134 inserted by No. 32 of 2007 s. 4.]*

Consultation Draft

Schedule 1 — Licence terms and conditions

[s. 11]

1. Licence terms and conditions

A licence may include provisions —

- (a) if the licence is a generation licence or integrated regional licence, requiring the licensee to prepare and implement strategies for the management of greenhouse gas emissions;
- (b) if the licence is a generation licence, a retail licence or an integrated regional licence, requiring the licensee to maintain and publish specified records in respect of greenhouse gas emissions caused by, or associated with, the generation of electricity supplied by the licensee;
- (c) if the licence is a retail licence or an integrated regional licence, requiring the licensee to prepare and implement strategies to encourage the use of renewable energy;
- (d) if the licence is a retail licence or an integrated regional licence, requiring the licensee to give information to customers on matters relating to electricity consumption, electricity conservation and the efficient use of electricity;
- (e) if the licence is a retail licence or an integrated regional licence, specifying methods or principles to be applied by the licensee in determining fees or charges payable by customers of a class prescribed under section 132(1)(a) (*tariff customers*);
- (f) if the licence is a retail licence or an integrated regional licence, requiring the licensee, when seeking payment by tariff customers of a fee or charge, to specify —
 - (i) the portion of the fee or charge that is attributable to the cost of generating the electricity supplied; and
 - (ii) the portion of the fee or charge that is attributable to the cost of transporting that electricity through a transmission system; and
 - (iii) the portion of the fee or charge that is attributable to the cost of transporting that electricity through a distribution system;

- (g) if the licence is a retail licence or an integrated regional licence, regulating the extent to which the licensee's customers may be of a particular class;
- (h) requiring the licensee to maintain specified accounting records;
- (i) preventing the licensee from engaging in or undertaking specified business activities or any other business in the electricity industry in the State;
- (j) specifying methods or standards to be applied in supplying electricity under the authority of the licence;
- (k) requiring the licensee to observe specified codes (including any codes issued by the Authority or the Minister under section 39) with such modifications or exemptions as may be determined by the Authority or the Minister, as the case may be;
- (l) specifying procedures for surrender of the licence;
- (m) requiring the licensee to provide to the Authority, in the manner and form determined by the Authority, specified information on any matter relevant to the operation or enforcement of the licence, the operation of the licensing scheme provided for in Part 2, or the performance of the Authority's functions under that Part;
- (n) requiring the licensee to lodge with the Authority securities in an amount and of a nature acceptable to the Authority securing the performance by the licensee of the requirements, responsibilities and obligations under the licence;
- (o) relating to the performance of functions by the licensee including —
 - (i) the range of functions that may be performed by the licensee; and
 - (ii) performance criteria to be met by the licensee; and
 - (iii) community service obligations, that is obligations that are not commercially justified, to be discharged by the licensee;
- (p) requiring the licensee to publish specified information in relation to its performance under the licence;

cl. 1

- (q) relating to obligations of the licensee with respect to public authorities and other licensees;
- (r) regulating the construction or operation, or both, of any generating works, transmission system or distribution system to which the licence applies;
- (s) relating to the disposal or transfer of property, rights or liabilities of a specified kind either during the term of the licence or on or after its expiration by effluxion of time including provisions —
 - (i) prohibiting any disposal or transfer of property except with the approval of a specified person; and
 - (ii) prohibiting the giving of any encumbrance over specified property except with the approval of the Authority; and
 - (iii) requiring the transfer of property, rights or liabilities of a specified kind to a specified person on or within a specified time after the expiration of the licence; and
 - (iv) with respect to the consideration to be provided in respect of any disposal or transfer; and
 - (v) with respect to the arbitration of disputes that arise in connection with any disposal or transfer; and
 - (vi) of a supplementary, consequential or transitional nature in relation to any disposal or transfer.

[Clause 1 amended by No. 19 of 2010 s. 51.]

[Schedule 1 amended by No. 33 of 2004 s. 36; No. 19 of 2010 s. 51.]

Schedule 2 — Objectives to be met by the electricity ombudsman scheme

[s. 93]

1. Objectives stated

The objectives referred to in section 93 are that —

- (a) all licensees who are required to be members of the scheme —
 - (i) are members of the scheme; and
 - (ii) have agreed to be bound by decisions and directions of the electricity ombudsman under the scheme; and
 - (iii) as members, are so bound;and
- (b) the scheme will be appropriately funded by the licensees who are required to be members; and
- (c) the scheme has satisfactory arrangements in place to deal with all disputes and complaints referred to in section 92(1); and
- (d) the electricity ombudsman will be able to operate independently of all licensees in performing his or her functions under the scheme; and
- (e) the scheme will be accessible to customers; and
- (f) membership of the scheme will —
 - (i) be accessible to all potential members; and
 - (ii) provide appropriate representation for all members on the governing body of the scheme;and
- (g) without limiting any other application of the scheme, the scheme will apply to all disputes and complaints referred to in section 92(1); and
- (h) the scheme will operate expeditiously and without cost to customers; and
- (i) the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations; and

cl. 1

- (j) the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Authority; and
- (k) the scheme will maintain the capacity of the electricity ombudsman, where appropriate, to refer disputes or complaints to other forums; and
- (l) the scheme will require the electricity ombudsman to inform the Authority of substantial breaches of—
 - (i) any licence condition; or
 - (ii) the code of conduct under Part 6, of which the ombudsman becomes aware.

[Clause 1 amended by No. 19 of 2010 s. 51.]

[Schedule 2 amended by No. 19 of 2010 s. 51.]

Schedule 3 — Transitional provisions

[s. 79, 81]

Division 1 — Initial customer service code of conduct

1. Approval of initial customer service code of conduct

- (1) The initial code of conduct under section 79 is to be approved by the Minister instead of by the Authority.
- (2) The Minister is to act under subclause (1) in consultation with the committee.
- (3) The provisions of —
 - (a) Part 6; and
 - (b) the *Interpretation Act 1984* section 25 in its application to that Part,are modified so far as is necessary to enable effect to be given to subclauses (1) and (2).
- (4) The code of conduct approved in accordance with this clause is to be taken, for the purposes of Part 6, to be a code of conduct approved by the Authority under Part 6.

2. Appointment of initial committee

- (1) The Minister instead of the Authority is to —
 - (a) determine the initial membership, constitution and procedures of the committee under section 81; and
 - (b) appoint the initial members of the committee,and may make the initial determinations under section 81(3).
- (2) The provisions of —
 - (a) section 81; and
 - (b) the *Interpretation Act 1984* section 25 in its application to that section,are modified so far as is necessary to enable effect to be given to subclause (1).

- (3) The committee established in accordance with this clause is to be taken, for the purposes of section 81 to be the committee established by the Authority under that section.

3. Regulations for transitional matters

If in the opinion of the Minister an anomaly arises in —

- (a) the carrying out of clause 1 or 2; or
- (b) the operation of Part 6 in accordance with the *Interpretation Act 1984* section 25,

the Governor may by regulations make such provision as is necessary —

- (c) to remove the anomaly; and
- (d) to achieve the purpose of clause 1(1) or 2(1).

Division 2 — Initial electricity ombudsman scheme

4. Approval of initial electricity ombudsman scheme

- (1) The Minister instead of the Authority is to —
- (a) approve the initial electricity ombudsman scheme under sections 92 and 93; and
 - (b) give the initial approval required for the purposes of Schedule 2 paragraph (j).
- (2) The provisions of —
- (a) Part 7 Division 2; and
 - (b) Schedule 2; and
 - (c) the *Interpretation Act 1984* section 25 in its application to the provisions mentioned in paragraphs (a) and (b),
- are modified so far as is necessary to enable effect to be given to subclause (1).
- (3) A scheme approved in accordance with this clause is to be taken, for the purposes of Part 7, to be a scheme approved by the Authority under Division 2 of that Part.

5. Regulations for transitional matters

If in the opinion of the Minister an anomaly arises in —

- (a) the carrying out of clause 4; or
- (b) the operation of Part 7 Division 2 in accordance with the *Interpretation Act 1984* section 25,

the Governor may by regulations make such provision as is necessary —

- (c) to remove the anomaly; and
- (d) to achieve the purpose of clause 4.

=====