

Submission from Yindjibarndi Energy Corporation Evolution to Energy Policy WA's 'Evolution of the Pilbara Electricity Access Regime' consultation paper dated 4 February 2025

17th April 2025

1 Executive Summary

The Yindjibarndi Energy Corporation (**YEC**) welcomes the opportunity to provide this submission regarding the proposed regulatory changes to the Pilbara Networks Access Code (**PNAC**). YEC is strongly supportive of the Pilbara Energy Transition Plan (**PET Plan**) to support decarbonisation of the Pilbara while driving private sector investment in critical transmission infrastructure.

Energy Policy WA (**EPWA**) observes that the next evolution of the PNAC requires balancing several policy objectives. In YEC's view, the fundamental and overriding objective of the PNAC reform project should be to attract and support substantial private investment in the new transmission infrastructure required to support decarbonisation in the Pilbara. Without the right conditions for transmission investment, the PET Plan cannot be realised.

To assist the EPWA in shaping a regulatory framework that effectively supports investment, this submission will provide the perspective of a prospective investor, developer, and operator of new transmission infrastructure in the North West Interconnected System (**NWIS**).

We set out below our key observations on the proposed PNAC reforms. The body of this submission is structured to address the EPWA's key areas of focus and consultation questions.

1.1 Role of fixed principles to provide certainty for early projects

As EPWA is aware, YEC has been awarded 'priority project' status for the Chichester Range Transmission Corridor. The Chichester Range Corridor is one of four priority corridors identified by the WA Government for the development of new common-use transmission infrastructure in the Pilbara. The Chichester Range Corridor project, along with other priority projects, will need to be progressed ahead of the PNAC reform package being finalised.

As outlined in the Consultation Paper, EPWA is considering significant changes to some aspects of the PNAC, including tariff and revenue regulation models and ring-fencing arrangements. Depending on how these reforms are implemented, they have the potential to significantly affect the economics of priority projects.

Transitional or separate regulatory arrangements for priority projects will therefore be critical to provide regulatory certainty for YEC and other project proponents. The Consultation Paper notes that mechanisms to provide regulatory certainty – including potentially a 'fixed principles' mechanism linked to contracts between the State and a network service provider (**NSP**) – are still being considered.¹ YEC urges EPWA to consider the design of these mechanisms as a matter of priority.

Subject to appropriate design, YEC would support a mechanism that allowed certain principles recorded in State / NSP contracts to take effect as 'fixed principles' for the purposes of the PNAC. Such a mechanism could potentially provide the necessary support for investment in critical transmission infrastructure, by providing long-term certainty around cost recovery, tariffs, and future regulatory settings. If implemented appropriately, this mechanism could provide a stable regulatory foundation by ensuring that key commercial terms agreed with the State are not subject to future regulatory changes under the PNAC.

It is critical, however, that this mechanism is structured to provide sufficient certainty while maintaining some flexibility where appropriate. The scope of fixed principles should be clearly defined to ensure that agreed terms are protected, but without entirely preventing NSPs from responding to material market or operational changes. YEC is interested in further discussions on which specific elements should be covered, how they should be structured, and what conditions (if any) might justify adjustments over time.

¹ Consultation Paper, p 84.

Given the importance of this mechanism, YEC urges early and detailed consultation with industry to ensure that the framework is designed in a way that supports investment certainty while providing for appropriate regulatory oversight.

1.2 Supporting investment in 'future-ready' capacity

YEC notes that a key objective for EPWA is promoting investment in future-ready capacity.

YEC considers that any regulatory reforms should be designed with this objective squarely in mind. In particular, frameworks for revenue / tariff control and ring fencing should create sufficient incentives for such investment. Regulatory measures that seek to unduly limit the scope of NSP activities (thereby limiting diversification opportunities) and/or cap upside returns on investment could have the effect of dampening incentives for such investment.

1.3 Unique characteristics of the NWIS support lighter regulation

The Consultation Paper recognises that the Pilbara grid is unusual in several respects. The Pilbara grid is relatively small (compared to other systems in Australia and internationally), with a small number of connected customers and no regulated wholesale market.

The commercial structures that have evolved in the Pilbara partly reflect these unusual features. NSPs in the NWIS tend to be vertically integrated, unlike most NSPs in the National Electricity Market (**NEM**). Moreover, the commercial framework for access to the NWIS is based around commercial negotiation rather than a regulated common carriage model – in this regard the NWIS more closely resembles the framework for access to gas pipelines on the east coast (outside of Victoria) than the NEM or the SWIS.

Unlike the NEM, where a high degree of economic regulation is needed due to centralised market structures and retail competition, the Pilbara's network has fewer participants and a more industrially focused user base. These characteristics suggest that a flexible, light-handed regulatory approach is more appropriate.

Light-handed regulation is economically justified where competition, countervailing power of large users and/or existing safeguards already constrain market power, and consequently the costs of a more interventionist regulatory model would be disproportionate to any potential benefits. This is the case in the Pilbara. In the Pilbara, the development of network infrastructure has primarily been driven by commercial agreements rather than government planning, with NSPs needing to secure long-term access contracts to justify investment.

Overly heavy-handed regulation, particularly revenue caps or rigid tariff structures, could deter investment in future-ready capacity by limiting an NSP's ability to recover costs from uncertain or future demand growth. If networks cannot secure a reasonable return on investment, the incentive to expand infrastructure proactively is reduced, which is contrary to EPWA's broader objective of supporting growth in the region.

1.4 Ring fencing arrangements

YEC recognises the importance of protecting and promoting competition. However, we believe that this can be achieved by relatively light-handed ring-fencing controls, supported by an effective monitoring and enforcement regime.

YEC does not agree that the benchmark for any separation or ring-fencing regime should be the outcomes that would be expected under full ownership separation or 'deep operational separation'. It should be recognised that vertical integration can deliver significant economic benefits, including more efficient and coordinated investment in and operation of generation and network infrastructure. These benefits need not be jettisoned in pursuit of outcomes aligned with full ownership separation.

The rules for separation or ring fencing should strike a balance between addressing the potential harm to competition while retaining the economic benefits of integration where possible. In the context of the

Pilbara system where vertical integration is the predominant model for network operators, YEC believes that this balance would be best struck through:

- a standard set of rules for network operators in relation to non-discrimination and protection of confidential information; and
- an enhanced monitoring and enforcement regime.

Consistent with the approach adopted for network operators in the NEM (and also gas pipeline operators), vertical integration would be allowed subject to compliance with these behavioural rules.

1.5 Future revenue and tariff control arrangements

The Consultation Paper identifies several possible future changes to the PNAC revenue and tariff control framework. These include potentially splitting transmission use of system (**TUOS**) and connection charges and potentially moving to a revenue cap framework for at least some elements of transmission changes. Some of the changes flagged by EPWA would potentially move the Pilbara system to a more centrally managed system, more akin to the NEM.

YEC notes that these potential changes will require significant further consultation and time to implement. If and when these changes are implemented, transitional and 'grandfathering' arrangements are likely to be needed, in recognition of existing commercial arrangements.

As noted above, the Chichester Range Corridor project (and likely other priority projects) will need to be progressed well ahead of these reforms being finalised and implemented. YEC will therefore need to make investment decisions on the basis of current regulatory arrangements and any specific arrangements that are put in place for priority projects (including any fixed principles linked to State contracts).

YEC would urge EPWA, in the short term, to focus on regulatory arrangements for these priority projects, including how any transition to a future regulatory framework will be managed. YEC would welcome the opportunity to discuss the design of these priority project arrangements with EPWA.

2 Creating the new common user Pilbara grid

(1)(a) Do you support the proposal that almost all transmission assets (barring small single user connection assets) should be covered, with no ability to revoke coverage?

YEC is supportive of this proposal, but notes that the 'opt in' coverage should be limited to PNAC-style light regulation. Any move for coverage to move towards an ENAC-style regulation would impose regulatory burdens that are not justified for the commercial conditions in the Pilbara (such as bespoke access arrangements, high upfront investment risks, and the need for operational flexibility). This could deter investment and add unnecessary regulatory complexity.

(1)(b) How should access to connection assets be managed? Do you have any comment on the NEM's 2023 reforms in this respect?

YEC urges caution in broadly adopting the NEM model for connection asset classification and treatment. While the Connections Reform Initiative and earlier rule changes were intended to promote contestability for connection assets and other 'edge of network' investment in the NEM, the impact has so far been limited, and they have introduced significant regulatory complexity with uncertain benefits.

That said, there are some features of the recent NEM reforms that could potentially be adapted to the Pilbara system. For example, as discussed in section 11 below, the design of the designated network asset (DNA) model could provide a starting point for consideration of foundation user arrangements in a multi-user setting. The NEM framework for access to DNAs explicitly acknowledges the need to provide some form of protection for foundation users, to reflect their role in underwriting initial development. The DNA arrangements also recognise that in some cases there may need to be bespoke pricing and cost sharing arrangements to support the individual DNA investment case.²

(1)(c) Do you support the proposed legacy treatment for existing networks?

YEC supports this.

3 Managing vertical integration

YEC considers that any measures to address vertical integration should be proportionate and recognise that vertical integration is both a feature of the current Pilbara system and potentially delivers significant benefits to customers as well as raising risks to competition. The policy response should seek to balance these benefits and risks.

YEC makes the following observations which inform its responses to the EPWA's specific questions on managing vertical integration. First, the EPWA's discussion does not fully explore the benefits of vertical integration, which is a factor that any theoretical anti-competitive risks must be weighed against. Vertical integration has significant and widely-recognised economic benefits that are particularly relevant to achieving the PET Plan's objective of driving investment in transmission infrastructure for renewable energy in the Pilbara. In YEC's experience, the potential for vertical integration is a key driver of private investment in energy markets.³

The key benefits include:

- **Lower transaction costs and reduced investment uncertainty.** Vertical integration eliminates the need for complex long-term contracts between generators and transmission providers, reducing legal, administrative, and negotiation costs while also internalising investment risks,

² For example, see: AEMC, Rule Determination: National Electricity Amendment (Connection to Dedicated Connection Assets) Rule 2021, 8 July 2021, Appendix C.

³ For a comprehensive overview on the economic literature regarding the benefits of vertical integration see Oxera's report on vertical functional separation in the electronic communications sector here.

ensuring stable and timely infrastructure development. In a common-use transmission corridor, these benefits can still be realised for the vertically integrated business, provided that appropriate access and pricing frameworks are in place to ensure equivalent access rights for third-party users.

- **More efficient investment in transmission and generation.** By aligning transmission and generation investments, vertical integration prevents inefficient overbuilding or underbuilding of infrastructure, improves coordination across the supply chain, and enables more efficient capital allocation for system-wide benefits.
- **Lower cost of capital and greater financial viability.** With diversified revenue streams and reduced exposure to market volatility, vertically integrated businesses achieve stronger financial stability, attract lower-cost capital, and avoid the higher financing costs that fragmented market structures impose.
- **Greater incentive for first-mover investment in clean energy.** Unlike independent transmission operators that wait for firm generation commitments, vertically integrated businesses have a direct incentive to invest in transmission ahead of demand, accelerating renewable energy deployment and lowering entry barriers for smaller developers.
- **More effective and efficient network utilisation.** Vertical integration ensures transmission assets are used efficiently, avoiding the misalignment and congestion issues that arise when independent businesses make investment decisions in isolation, ultimately improving system-wide coordination and reliability.

The EPWA's analysis does not appear to give adequate consideration to the fact that full ownership separation removes all of these benefits, and would thereby risk significantly reduced investment incentives in renewable energy in the Pilbara.

Second, (and discussed in further detail below) in EPWA's analysis of the policy problem to be solved, there is an undue focus on completely removing incentives rather than addressing how incentives interact with regulatory constraints. EPWA's analysis seems to assume that the mere existence of the 'in-built' incentive necessarily leads to anti-competitive behaviour. With respect, YEC submits this is a simplistic view. In reality, firms act based on a balance of incentives and constraints (both economic and regulatory). While a vertically integrated NSP might have an incentive to discriminate, that doesn't mean it will do so if the costs (e.g. regulatory penalties, reputational harm, reduced investment attractiveness) outweigh the benefits. This is why, with some limited exceptions in very specific circumstances, most competition law regimes focus on conduct rather than structure—because incentives alone are not sufficient to prove harm.

EPWA seems to argue that the only way to prevent discrimination is to eliminate any theoretical *potential* for it entirely (via ownership separation). This ignores a fundamental regulatory trade-off: whether removing an incentive entirely is worth the cost of disrupting efficient business structures. A more rational approach would consider whether targeted constraints, such as transparency obligations, access oversight, effective enforcement, are sufficient to mitigate harmful conduct.

Third, we note that EPWA refers to the ACCC's analysis regarding Brookfield's acquisition of Neoen which expressed scepticism about the effectiveness of regulation in addressing the potential harm from vertical integration. The ACCC's comments on that particular transaction should be considered in the particular context of the parties involved and the market environment. It should also be noted that the ACCC was conducting an informal merger review, where its consideration was restricted to the potential impact of the transaction on competition (the ACCC was not considering the broader public interest). A potentially more relevant case study is the ACCC's decision to authorise the proposed Brookfield/Origin merger, where the ACCC was considering both potential impacts on competition *and public benefits* associated with increased vertical integration. While the ACCC considered that there may be some competitive detriment arising from increased vertical integration of electricity generation and transmission, such detriment would be outweighed by the public benefits resulting from fact that the transaction would lead to an acceleration of, and increased development of, renewable generation

and storage. This, in turn, would lead to a material decrease in emissions intensity.⁴ It was on this basis that the ACCC was prepared to authorise the Brookfield/Origin transaction.

(2)(a) Are the measures and benchmark set out in Box 5 an appropriate way to judge outcomes in managing vertical integration?

YEC does not consider the benchmark set out in Box 5, which assumes that the appropriate standard for managing vertical integration is achieving outcomes equivalent to full ownership separation or deep operational separation, to be an appropriate measure for assessing the management of vertical integration. With respect, we submit that this proceeds from a false premise that mis-frames the policy problem to be solved in a circular manner: the issue is not whether vertical integration can be made to function as if it does not exist (the current framing), but whether its risks can be appropriately managed while preserving its benefits. By defining the benchmark in terms of the outcomes of full separation, EPWA assumes the very conclusion it should be evaluating; whether separation is the necessary or proportionate response to managing vertical integration risks. This reasoning presupposes that vertical integration must be functionally eliminated and presumes that vertical integration is inherently harmful requiring mitigation to the maximum extent possible, rather than recognising that it also delivers significant efficiency and investment benefits. If a benchmark is structured to assume that separation is the optimal outcome, then any regulatory solution short of separation will always be seen as inadequate.

A more appropriate benchmark would measure whether the net impact of vertical integration remains positive, assessing vertical integration through the lens of risk mitigation. This would provide a more practical and commercially realistic standard than the rigid separation-focused approach set out in Box 5. The appropriate regulatory objective should not be to replicate the outcomes of a fully separated structure, but rather to ensure that competition risks are effectively managed while allowing businesses to retain the efficiencies that integration provides, including reduced transaction costs, improved investment coordination, and lower financing costs.

Instead of treating separation as the default standard, the benchmark should assess whether the practical risks of discrimination and cross-subsidy are being mitigated through targeted regulatory mechanisms, such as transparency requirements, access oversight, and enforcement measures. The focus should be on whether access seekers receive fair and efficient access—not whether the market operates as though vertical integration does not exist.

(2)(b) Should the regime prescribe the measures and benchmark set out in Box 5 as a formal tool for use by the ERA or an arbitrator to evaluate measures to manage vertical integration proposed by an NSP, and the outcomes from those measures?

YEC supports the dimensions on which outcomes can be measured, as outlined by EPWA, being:

- the time and cost taken for an access seeker who is not related to the NSP to secure access;
- the extent to which the access terms and prices for users unrelated to the NSP differ without good justification from those for its related users;
- the extent to which operational outcomes for, and in connection with, users unrelated to the NSP differ without good justification from those for its related users;
- the degree of transparency in the access contracting process and in operational decision-making;
- the degree of protection afforded to unrelated users' commercially sensitive information; and
- no cross-subsidy to a related business.

⁴ Brookfield/Origin, Reasons for Determination at paragraphs [7.297] – [7.301].

As above YEC does not support the benchmark proposed by EPWA.

(2)(c) Do you favour Option A, Option B, or Option C?

Of the three options proposed, YEC considers that either Option C or a modified version of Option B could be appropriate.

Option A presents significant practical and structural challenges that makes it unworkable and highly problematic. Requiring ownership or full operational separation is not a workable solution given the existing structures of the Pilbara networks. Many current and proposed operators in the region are vertically integrated and restructuring them to meet an ownership or full operational separation requirement would be commercially and legally disruptive, costly, and impractical. Additionally, forcing operators into an ownership-separation model would create significant uncertainty and potentially discourage further investment in the Pilbara, running counter to the PET Plan's objective of encouraging transmission investment for clean energy.

Option B may be less intrusive than Option A, and therefore potentially workable, provided that the 'sensitive functions' which are carved out and transferred to the ISO are limited to systems operation functions that are appropriate for central management. For example, this could potentially include functions like real time system operation and dispatch that are given to the ISO in other jurisdictions (such as AEMO in the NEM). However, the ISO's functions cannot extend to overseeing and approving connection contracts, or other commercial functions – this would impose a significant cost on the ISO and would likely add considerable time and cost to the connection process, for little benefit.

Option C also represents a practical way forward. Rather than attempting to force structural changes or carve out key functions, the focus of Option C could be on strengthening the compliance and enforcement regime to address any perceived or actual risks of discrimination. This would allow competition risks to be managed effectively while preserving the efficiency and investment benefits of vertical integration.

YEC would be supportive of either Option C or a modified Option B that incorporates elements of Option C. However, if any form of Option B is to be implemented, clarity and further consultation is required on what specific functions EPWA proposes to transfer to the ISO. This is discussed further below.

(2)(d) If you favour Option B, how could it best be implemented in a way which comes closest to the benchmark set out in Box 5, and which maximises the benefit offered by its flexibility, without becoming too complex or compromising the quality of outcomes in managing vertical integration?

(2)(e) If you favour Option B, please comment on the preliminary list of sensitive functions in Box 6. What else might need to be removed from a vertically integrated NSP's control or influence, to ensure that its vertical integration does not jeopardise effective third-party access? Is the ISO (suitably independent and resourced) the appropriate entity to take on these functions?

(2)(f) Option B envisages that interventions might be assessed on a granular basis, with different levels of transfer or supervision being applied to each sensitive function. Would you see benefit in implementing Option B even more flexibly, such that some interventions might also differ between networks, or would the associated complexity outweigh the benefit?

As noted above, if Option B is to be implemented, clarity and further consultation is required on what specific functions EPWA proposes to transfer to the ISO.

YEC considers that some systems operations functions could potentially be transferred to the ISO. These could include the ISO control desk function, ESS dispatch, outage management and potentially some aspects of the connection process (e.g. advising on performance standards). However, the

process and timeframe for transfer of these functions, and associated ISO resourcing requirements, would need to be carefully considered and subject to further consultation.

However, YEC does not consider that the ISO should be given responsibility for commercial matters relating to the connection process. For example, it would seem inappropriate and unnecessary for the ISO to be involved in managing the access queue or approval / determination of terms for individual access contracts. These are not functions that are typically given to an ISO (e.g. AEMO does not have this role in the NEM).

(2)(g) If you favour Option C, please describe how it could be implemented in a way which materially advances from the status quo, and which comes closest to the benchmark set out in Box 5. If you are a prospective access seeker, what would be required under Option C to give you confidence that an NSP's vertical integration was being effectively mitigated? If you are a prospective NSP, how would you ensure that prospective access-seekers will consider your measures credible?

YEC considers that Option C represents a workable and proportionate approach to managing vertical integration in the Pilbara. However, its effectiveness depends on ensuring robust compliance and enforcement mechanisms rather than imposing structural restrictions.

Instead of tightening ring-fencing rules in a way that undermines the efficiency and investment benefits of vertical integration, the focus should be on strengthening the regulatory framework to ensure fair access and prevent anti-competitive conduct. The following enhancements could improve Option C while preserving its practicality:

- Strengthening compliance and enforcement powers
 - The ERA's monitoring and enforcement powers should be expanded to mirror those of the AER in the NEM, including stronger penalties for non-compliance with ring-fencing obligations.
 - Regular compliance audits and reporting requirements should be introduced to ensure transparency, without imposing excessive administrative burdens.
 - The ERA should have the power to investigate and address disputes over discriminatory conduct or access delays, with clear and timely resolution processes.
- Enhancing transparency and oversight
 - NSPs should be required to publish standardised, non-discriminatory access terms to ensure all parties have clear and consistent expectations.
 - Ring-fencing compliance statements should be independently reviewed to ensure that separation obligations (e.g. non-discrimination, staff separation) are being properly followed.
- Structured dispute resolution
 - Establishing a formal dispute resolution mechanism for third parties who believe they have been unfairly denied access or subjected to discriminatory treatment.
 - Providing binding arbitration or regulatory intervention options to address disputes swiftly, without creating regulatory uncertainty for investors.

YEC considers that the above measures would provide credible comfort to access seekers that they will receive fair and effective treatment.

(2)(h) You are welcome to comment of the convergence between operational separation under Option A, the more interventionist end of sensitive function transfer under Option B, and the (shelved) 'NSP Co' model discussed at page 40 below. In particular, do you see advantages or disadvantages in the outsourced delegate role under operational separation being either separate from, or combined with, the broader ISO role under the PNR?

See above.

(2)(i) Early project proponents, please comment on the matters set out in proposal 2.7, or contact EPWA to discuss them further.

YEC supports the proposal for early projects to be regulated under the existing PNAC regime, supplemented by commitments made in contractual negotiations with the State, as this provides stability and investment certainty while allowing for necessary flexibility.

4 Managing access across multiple networks

(3)(a) Please comment on the proposal to split access, with connection/ interconnection, injection and withdrawal managed by contract as now, and TUOS managed by the PNR

We acknowledge that the proposed reform to split access into two components — connection / interconnection (managed by contract under the PNAC) and Transmission Use of System (**TUOS**) (regulated under the Pilbara Network Rules (**PNR**)) — represents a significant departure from the existing PNAC-style regulatory framework. This shift moves the Pilbara regime closer to NEM-style regulation of transmission access and pricing, which has both potential benefits and risks for transmission developers such as YEC.

YEC does not oppose the broad concept of splitting access into connection and TUOS but believes further refinement is required before implementation. In particular, EPWA should provide greater detail on how TUOS will be priced, allocated, and adjusted across multiple networks to ensure fair cost recovery for NSPs. The regulatory model should retain investment incentives for transmission developers by ensuring predictable revenue recovery mechanisms.

This clarity is particularly important for new network developments such as YEC's proposed Chichester Range Corridor line, which will be underwritten by long-term commercial agreements necessary to support the project's financing. While the revenue model for YEC's proposed Chichester transmission project is still in development, YEC anticipates it may incorporate some combination of connection and access charges from generators and potentially also load customers, as well as the possibility of some proportion of development costs being shared with other existing networks which benefit from the Chichester connection.

Based on the proposal as described in the consultation paper, it is unclear whether a proportion of Chichester costs would be recovered through TUOS charges (and if so the basis for that) and otherwise what impacts that would have on pre-existing commercial relationship between various counterparties.

Clarity is also needed around the application of any future regulatory changes to priority projects, and how those regulatory changes might interact with commitments set out in long-term agreements with the state for project delivery. This issue is discussed further below.

(3)(b) Having regard to the current content of the PNR and HTR, and the reforms being proposed concurrently under the Evolution of the Pilbara Networks Rules review, are there any matters which might have been regulated by a TUOS contract which could not be adequately regulated by the amended PNR/HTR? If so, for any such matters would it be inappropriate or unworkable to appoint the ISO to manage them, rather than the NSP under an access contract?

While many elements traditionally governed by TUOS contracts can be incorporated into the amended regulatory framework, there may still be some commercially negotiated terms that are difficult to regulate effectively through a standardised set of rules. These could include bespoke service levels, long-term tariff arrangements, and risk allocation mechanisms that are specific to particular projects or users.

If certain matters cannot be adequately regulated under the PNR/Harmonised Technical Rules (**HTR**), it is essential that the framework provides sufficient flexibility for NSPs and users to negotiate additional contractual arrangements where required. Appointing the ISO to manage these elements could be inappropriate or unworkable, particularly where an NSP bears the investment risk and requires certainty over cost recovery. The ISO's role should be focused on system coordination and ensuring fair access, rather than assuming commercial responsibilities that are better managed through direct NSP-user agreements.

To ensure a balanced approach, YEC supports a model where the PNR/HTR provide a baseline regulatory framework, but NSPs retain the ability to negotiate additional terms with users where justified. This would allow for standardisation where possible while preserving the commercial flexibility needed to support investment and long-term infrastructure planning.

(3)(c) Splitting access in two (Option B) is being preferred over the NSP Co model (Option A). However, there is some convergence between the NSP Co model and two of the models discussed in section 2.2, namely the operational separation model (Figure 9, and part of section 2.2's Option A) and the 'sensitive decisions' model (Box 6, and section 2.2's Option B). There may be scope to combine elements of more than one model, to address the matters discussed in section 2.2 and this section 3.2. Do you have any observations on this?

As outlined above, YEC does not support operational separation in the Pilbara. For this reason YEC does not support its inclusion in other policy proposals.

(3)(d) Early project proponents, please comment on the matters set out in proposal 3.2, or contact EPWA to discuss them further.

YEC supports the approach of allowing early project NSPs and users to negotiate access contracts under the existing PNAC and PNR framework, as this ensures that near-term investments are not delayed by regulatory uncertainty. However, the transition into the new regime must be carefully managed to avoid disrupting commercial certainty, particularly for projects with long-term cost recovery models that include TUOS components.

A key concern is ensuring that TUOS arrangements agreed under existing contracts remain enforceable and do not become subject to retrospective regulatory changes once TUOS is incorporated into the PNR. If TUOS is to be centrally managed, it must be done in a way that respects pre-existing agreements, ensuring that NSPs retain confidence in their investment decisions. Clarity is needed on how these contracts will transition, particularly whether adjustments will be required and if so, on what terms.

YEC welcomes EPWA's commitment to working directly with early project proponents to determine the best transition approach and seeks further engagement on how TUOS components will be incorporated into the new framework while preserving investment certainty and cost recovery stability for network developers and users.

(3)(e) Existing NSPs, please comment on the matters set out in proposal 3.3, or contact EPWA to discuss them further.

YEC is not an existing NSP.

5 Managing interconnection points and interconnection agreements

(4)(a) Are there any circumstances in which it is necessary for an NSP-NSP interconnection agreement to prescribe matters which result directly or indirectly in restrictions on network users' rights, which cannot be managed through the PNR or PNAC?

YEC does not consider there to be any circumstances in which an interconnection agreement should prescribe matters which result directly or indirectly in restrictions on network users' rights, and notes the existing principles-based provisions in the *Electricity Industry Act 2004* (WA), such as ss 115 and 120S that already prohibit NSPs from preventing or hindering third-party access.

We also recognise that interconnection agreements play an essential role in maintaining the operational and technical stability of interconnected networks. It is important that interconnection agreements retain the ability to address legitimate technical, security, and operational considerations that may indirectly impact access. These agreements often need to establish technical standards to ensure safe and stable interconnection between networks, set out physical or security-based constraints to protect network assets, and define congestion management mechanisms where capacity is limited. Restrictions imposed for these reasons should be explicitly permitted, provided they are justified on objective technical grounds rather than for commercial advantage.

As such, YEC recommends that any regulatory changes make clear distinctions between anti-competitive conduct and reasonable operational constraints. A well-calibrated approach will ensure that interconnection agreements do not become a tool for restricting competition while still allowing NSPs to fulfil their technical and security obligations. We encourage EPWA to ensure that the final framework maintains this balance, giving industry participants confidence that access restrictions will only arise where they are operationally necessary and not as a means of limiting competition.

(4)(b) Are there any disadvantages to requiring interconnection agreements to be made public? Do interconnection agreements include commercially sensitive matters that need to be kept confidential, and if so why?

YEC does not consider it necessary or appropriate for interconnection agreements to be made public. In other regulated access regimes, including the NEM, interconnection agreements are not subject to full public disclosure. YEC does not see a clear justification, nor has EPWA provided one, as to why the Pilbara regime should depart from this standard practice, particularly given the potential for interconnection agreements to contain commercially sensitive terms.

Interconnection agreements typically include detailed provisions on cost-sharing, risk allocation, operational coordination, and technical specifications. Many of these elements are the result of negotiated commercial arrangements between NSPs, reflecting the specific risks and costs associated with each interconnection. Public disclosure of these agreements could compromise the commercial position of NSPs, particularly where cost structures or negotiated risk allocations could be used by competitors or counterparties to gain a strategic advantage in future negotiations.

Moreover, mandatory public disclosure of interconnection agreements could discourage investment and innovation in transmission development. NSPs may be less willing to enter into flexible or commercially innovative arrangements if they know that all terms will be subject to scrutiny by third parties who are not directly involved in the interconnection. This could lead to more rigid, standardised agreements that do not always reflect the most efficient or cost-effective approach to interconnection.

If EPWA's primary concern is ensuring transparency for access seekers, this objective can be achieved through alternative mechanisms that do not require full public disclosure. For example, the ISO or regulator could have access to interconnection agreements to ensure compliance with regulatory obligations, while allowing NSPs to maintain confidentiality over commercially sensitive terms. Another option would be to require NSPs to publish a high-level summary of key access-related provisions, rather than disclosing the full agreement.

6 Managing tariffs across multiple networks

(5)(a) Stakeholder feedback and proposals are invited on these matters.

YEC considers this a critical issue for the future of the Pilbara network however the current proposals appear underdeveloped. The shift to separating connection services from TUOS access is significant, and without a clear revenue allocation model, there is a risk of unfair cost recovery, financial instability for NSPs, and inefficient pricing for users.

The PNAC currently leaves cost recovery to individual NSPs, which has worked in a less interconnected system but will become unsustainable as meshing increases. A system where NSPs recover costs through bilateral agreements would ultimately see users bearing interconnection charges they had no role in negotiating, leading to uncertainty, inefficiencies, and distorted investment incentives.

Some form of central coordination may be necessary, but the consultation paper lacks detail on how this would work. If a central body is introduced, it must balance NSP and user interests, ensure predictability for investment, and avoid excessive regulatory complexity. A fully centralised pricing model may reduce uncertainty but risks rigidity and inefficiency.

YEC urges EPWA to engage further with industry before finalising a model. If central cost allocation is pursued, it must be designed to ensure fair compensation for NSPs while maintaining efficient investment incentives and avoiding unnecessary administrative burdens. More clarity is needed on cost apportionment and its interaction with existing contractual arrangements to prevent unintended consequences. Most critically, any model must be sufficiently transparent certain to ensure bankability for future transmission projects.

7 Better regulation for network tariffs

(6)(a) Do you support the proposed expansion of an NSP's pre-approval options?

YEC supports the proposed expansion of an NSP's pre-approval options, as it would provide greater investment certainty and mitigate the risk of regulatory decisions undermining cost recovery after investment commitments have been made. Allowing NSPs to seek pre-approval of key parameters such as the regulated asset base (RAB), depreciation profile, and rate of return would enhance confidence in the long-term revenue model, particularly for new projects requiring significant capital investment.

For existing networks, pre-approval would be subject to ERA oversight, which is appropriate given the broader regulatory framework governing cost recovery. However, for early projects, EPWA has flagged the potential for agreements with the State to lock in key pricing parameters, which could provide additional certainty. Whether this mechanism is beneficial will depend on the specific terms the State is willing to agree to and how these parameters are incorporated into the PNAC.

A key issue requiring further clarification is how pre-approved cost recovery parameters would interact with the proposed separation of connection and TUOS frameworks. If elements such as the RAB and rate of return are locked in, it is unclear how cost allocation between connection charges and TUOS would be structured. YEC seeks further detail on how these two frameworks will align to ensure a stable and predictable pricing model.

(6)(b) Is the list of proposed pre-approval topics appropriate? What would you add or delete?

YEC considers the proposed list of pre-approval topics to be broadly appropriate, as it covers the key cost recovery parameters that underpin long-term financial viability for NSPs. Allowing pre-approval of the RAB, rate of return, and depreciation schedule is particularly important, as these elements directly influence the ability of NSPs to recover their investment costs and earn a risk-reflective return.

One potential addition to the pre-approval list could be a mechanism for NSPs to seek pre-approval of a long-term tariff path where appropriate, particularly for major new investments with extended cost recovery periods. This would provide additional certainty for both NSPs and access seekers by reducing the risk of tariff volatility.

(6)(c) Should the ERA's costs of pre-approval be recovered from all covered NSPs through the fee PNAC mechanism, or in some other way?

YEC acknowledges that the ERA's pre-approval process will incur costs and that a fair mechanism for cost recovery is necessary. However, any approach taken must align with the 'beneficiary-pays' principle, and create a bespoke fee for pre-approvals rather than spreading costs across all NSPs through the general PNAC fee mechanism. This would ensure that only NSPs benefiting from the process bear the associated costs, while avoiding unnecessary financial burdens on other network operators.

(6)(d) Considering the matters discussed in section 6 of this paper, should any other form of prior accountability be considered in this context, in addition to or instead of ERA preapproval?

YEC is unclear on the precise nature of this question, given that section 6 of the PNAC consultation paper relates to both enforcement measures and fixed principles. To the extent that the question relates to fixed principles, YEC considers that the matters covered as fixed principles should closely align to matters which later become capable of pre-approval.

(6)(e) What safeguards are needed to prevent pre-approvals having adverse unintended or unforeseen outcomes? Would it be appropriate for a pre-approved item on a PNAC-style regulation network to stand effectively in perpetuity, when a similar item on an ENAC-style regulation network would normally be re-examined at the next reset? If not, how might this be addressed without defeating the purpose of pre-approval? If there is to be a review, should it be periodic, or only on the occurrence of certain trigger events, or should this question have a flexible answer depending on the circumstances?

YEC recognises that while pre-approval mechanisms provide investment certainty, they must also include safeguards to prevent unintended consequences, such as locking in outdated cost assumptions or creating imbalances in network pricing over time. A key issue is determining how long pre-approved items should remain in effect and under what circumstances they should be revisited.

With some exceptions, such as the initial RAB value, it would generally not be appropriate for pre-approved items to remain in place indefinitely without review, particularly given that similar items on an ENAC-style network are subject to periodic resets. However, requiring automatic periodic reassessment could undermine the certainty that the pre-approval mechanism is designed to provide. An approach more consistent with purpose of EPWA's pre-approval proposal would be to allow pre-approved items to stand unless prescribed trigger events occur, as opposed to rigid periodic reviews.

Trigger events could include significant changes in market conditions, material shifts in network utilisation, or regulatory developments that impact cost recovery assumptions. It would be up to the party seeking reassessment to demonstrate to the ERA's satisfaction that the event is material enough to warrant intervention. For example, if demand growth diverges significantly from initial forecasts, or if a major new interconnection alters network flows, it may be appropriate to revisit elements such as the depreciation schedule or rate of return. Similarly, if an NSP seeks to expand its network in a way that materially affects the cost base, the regulator should have the ability to reassess relevant pre-approved parameters.

This approach would maintain investment certainty while ensuring that pre-approvals do not become misaligned with market conditions over time. Further consultation on the specific triggers for review would be beneficial to ensure they are well-calibrated to industry needs without introducing unnecessary regulatory risk.

(6)(f) Would you support this extended pre-approval option being available for existing assets, or should it only be available for greenfields networks? If the latter, for how long after construction should this expanded pre-approval option be available?

YEC supports the extended pre-approval option being made available to both existing and greenfield networks, provided it is structured in a way that balances investment certainty with appropriate regulatory oversight. While greenfield projects have the most to gain from pre-approval—given the need for upfront certainty in financing and long-term cost recovery—existing networks could also benefit, particularly where they are undertaking significant capital upgrades or expansions.

For existing assets, pre-approval should be available on a case-by-case basis, rather than as a blanket entitlement. It should primarily be used where an NSP is making substantial new investments that materially affect its cost structure, rather than for routine operational expenses. This would ensure that the mechanism is used to support long-term investment planning without allowing existing NSPs to retroactively lock in terms that may not reflect current market conditions.

If pre-approval is limited to greenfield networks, YEC considers that it should be available for a reasonable period after construction, to ensure that new projects have sufficient stability in their early operational years. A timeframe of 10 years post-construction could be appropriate, aligning with typical financing and investment cycles. This would provide investors with confidence in their cost recovery framework while still allowing for regulatory adjustments if needed over the long term.

8 Provision for revenue control

(7)(a) Please comment generally on the proposed reforms.

YEC acknowledges the potential benefits of revenue control in providing greater certainty around cost recovery and protecting NSPs from downside risk. However, the potential downsides of a revenue cap model also need to be recognised, including the potential impact on incentives for 'future ready' investment and implications for sharing of volume risk with customers. The proposal as it stands requires further consideration, and there are key issues that require further clarification before it can be effectively implemented. Potential options for EPWA's consideration are explored below, however, whatever mechanism for revenue control is implemented, it is critical that it is sufficiently certain, and unable to be disturbed on review except in limited and exigent circumstances.

Revenue caps are a common feature in the NEM and have been widely adopted by NSPs as a means of stabilising revenue over regulatory periods. However, a revenue cap also means that NSPs do not benefit from growth in network utilisation, which could reduce incentives for investment in future-ready capacity. This is at odds with EPWA's broader objectives of encouraging network expansion to accommodate long-term demand growth. Price caps are an alternative option, which incentivises growth, however, parties must also wear the risk if such growth does not materialise. In the Pilbara's unique market conditions, this may materially impact the bankability of major projects.

As such, if revenue or price controls are introduced, there needs to be a clear mechanism to balance revenue stability with appropriate incentives for proactive investment. Some potential options include:

- **Revenue cap with demand growth sharing**, in which a baseline revenue cap is set to provide stability, but NSPs are allowed to retain a portion of additional revenue if network utilisation grows beyond forecasts. This ensures that NSPs benefit from demand growth rather than having all excess revenue returned through tariff adjustments. Regulatory incentive schemes such as the Efficiency Benefit Sharing Scheme (**EBSS**) and Capital Expenditure Sharing Scheme (**CESS**) show that financial mechanisms can be used to balance revenue stability with investment

incentives. A similar incentive structure could be adapted to ensure NSPs are rewarded for facilitating higher network utilisation and efficient investment in capacity expansion.

- **Investment-triggered revenue adjustments or cost-pass through**, in which NSPs that undertake pre-approved network expansions or critical infrastructure upgrades are either allowed to increase their revenue cap or recover costs directly through users with a transparent pass-through mechanism, subject to regulatory approval.
- **Multi-tiered revenue cap (capacity-linked)**, in which NSPs operate under a tiered revenue structure, where NSPs receive additional upward revenue adjustments when they achieve specific network expansion targets.

It is also unclear what scope any revenue control would have within the PNAC framework. In the NEM, revenue caps apply only to prescribed network services, while other services remain subject to commercial negotiation. The consultation paper does not specify whether the proposed revenue control would apply solely to TUOS revenue or extend across all services provided by an NSP. This is particularly important given the proposed separation of access rights into connection services and TUOS, as any revenue control model must align with this new framework to avoid unintended distortions in cost recovery.

YEC notes that moving to a new model that appropriately balances these considerations is likely to take time. Moreover, there may need to be transitional arrangements for existing networks.

For early projects, revenue and tariff control arrangements are likely best addressed through agreements with the State, with appropriate protections within the regulatory framework for these arrangements (e.g. through a fixed principles mechanism). This issue is discussed further below.

(7)(b) Should revenue control apply automatically to all networks, or only if a network opts in or certain trigger events occur? If the latter, what might be suitable trigger events?

YEC does not support revenue control applying automatically to all networks, as this would remove flexibility and could discourage investment in new transmission infrastructure. Instead, revenue control should be optional for NSPs or triggered only under specific, predefined conditions where it is necessary to protect users or ensure network stability.

An opt-in model would allow NSPs to assess whether revenue control aligns with their commercial and investment strategies. This is particularly important given that revenue caps, while offering stability, also limit the ability of NSPs to benefit from network utilisation growth (leaving aside the potential incentive mechanisms proposed above), which could reduce incentives to invest in future-ready capacity.

If revenue control is to be triggered automatically, it should only occur under well-defined trigger events that indicate a clear need for intervention. Potential triggers could include:

- **Prolonged revenue over-recovery**. If an NSP consistently earns revenues well above the cost-reflective level, this could indicate a need for regulatory intervention.
- **State-supported infrastructure projects**. If an NSP is developing a transmission asset with direct State involvement, revenue control could be a condition of government funding or long-term agreements.
- **Regulatory or structural changes in the Pilbara grid**. If the evolution of the network results in unintended pricing distortions or inefficiencies, a mechanism should exist to introduce revenue control when necessary.

For early projects, where revenue arrangements are likely to be best addressed in agreements with the State, revenue control should only be imposed where it aligns with broader commercial objectives and does not unduly limit investment flexibility.

YEC recommends that further industry consultation is needed to ensure that any triggering framework is well-calibrated and does not create unintended barriers to investment.

(7)(c) Who should administer any revenue control – the ERA or an arbitrator?

YEC considers that the ERA is the more appropriate body to administer revenue control if such a mechanism is introduced. The ERA has the regulatory expertise, economic analysis capability, and established processes required to assess cost recovery, tariff structures, and financial sustainability within a structured and transparent framework.

Revenue control is a system-wide regulatory function rather than a dispute resolution matter. An arbitrator's role is primarily to resolve individual access disputes between parties, not to oversee ongoing economic regulation. If revenue control were placed under arbitration, this could result in inconsistent outcomes, as arbitrators make determinations case by case rather than applying a uniform regulatory framework. This would create uncertainty for NSPs and users and could undermine the effectiveness of revenue control as a stable pricing mechanism.

Furthermore, if revenue control involves setting or adjusting a tariff cap or revenue allowance over a period, this requires economic modelling, stakeholder consultation, and regulatory oversight—functions that align more closely with the ERA's responsibilities. The ERA also has experience in administering revenue caps in other sectors, such as gas and electricity networks in the NEM, making it better equipped to manage a structured revenue control regime.

However, there may still be a role for arbitration in disputes related to revenue control, particularly where an NSP or user challenges the way revenue limits are applied. In such cases, arbitration could be used as a secondary dispute resolution mechanism, but not as the primary administrator of revenue control.

9 Managing tariffs for future-ready capacity

(8)(a) Stakeholder feedback is invited on this matter.

YEC agrees that managing tariffs for future-ready capacity is best addressed through contractual arrangements with the State, rather than immediate regulatory amendments to the PNAC. Given the unique commercial and operational considerations involved in developing future-ready infrastructure, a case-by-case approach through negotiated agreements is preferable to a prescriptive regulatory framework that may not accommodate the varying needs of different projects.

However, if issues arise in practice—such as difficulties in recovering investment costs for future-ready capacity or misalignment between regulatory settings and commercial financing requirements—YEC supports targeted regulatory adjustments to address these concerns. Any future amendments to the PNAC should be industry-led and responsive to real-world challenges, rather than imposing unnecessary upfront restrictions on network development.

10 Better regulation for terms and conditions

(9)(a) Please comment on the proposed reforms.

YEC considers the proposal to introduce model terms and conditions for access contracts to be worthy of further consideration. Establishing a core set of principles within the PNAC could provide greater transparency, consistency, and efficiency in access negotiations while reducing the risk of protracted disputes. However, it is essential that sufficient flexibility is retained to allow NSPs to depart from or modify these terms where necessary to reflect project-specific commercial, operational, or technical considerations.

The approach of encouraging but not compelling NSPs to adopt the model terms is reasonable, as long as any departures are assessed on a case-by-case basis rather than being subject to rigid compliance requirements. NSPs must have the ability to negotiate bespoke terms where justified, particularly for large-scale infrastructure projects or where future-ready capacity is involved. The requirement for NSPs to identify and explain any departures strikes a fair balance between maintaining transparency and preserving commercial flexibility.

In the context of dispute resolution, the proposal for arbitrators to use model terms as a benchmark is broadly acceptable, provided that the arbitrator retains discretion to consider contextual factors, market conditions, and the commercial intent of the parties when resolving disputes. The model terms should inform but not dictate the outcome of arbitration, ensuring that they do not become an inflexible regulatory constraint.

For early projects, the ability to append model terms within development agreements with the State may be beneficial, particularly where it provides greater certainty on contractual arrangements before the PNAC is formally amended. However, there must be clarity on how such terms will be treated once the PNAC is updated and whether pre-existing agreements will be subject to any transitional measures.

11 Managing foundation user terms

(10)(a) Stakeholder feedback and proposals are invited on these matters

YEC supports the objective of ensuring that foundation user agreements do not unduly restrict third-party access but considers that this can be effectively addressed through high-level access obligations in the PNAC, rather than direct intervention in contractual terms. Existing provisions under the *Electricity Industry Act 2004* already prohibit NSPs from engaging in conduct that prevents or hinders access, and this framework could be strengthened where necessary without over-regulating foundation contracts.

YEC does not support expanding this obligation to include an effects test, as this would introduce greater uncertainty and compliance risk for NSPs. The “purpose” test provides a clear threshold by focusing on intentional conduct, whereas an effects-based approach could capture agreements that were not designed to limit access but may have incidental impacts due to broader network constraints. This could lead to unnecessary regulatory intervention in legitimate commercial arrangements, creating additional complexity for both NSPs and foundation users.

The proposal to introduce transparency measures should also be approached cautiously. While ensuring compliance is important, any disclosure requirements should be proportionate and targeted, rather than imposing unnecessary administrative burdens on NSPs. It is unclear what level of transparency EPWA intends to introduce, and further consultation is needed to ensure that commercially sensitive information is protected while still allowing for regulatory oversight.

The AEMC’s approach to DNAs in the NEM provides a useful precedent for managing foundation user arrangements in a way that supports efficient investment while maintaining fair access. In its final rule determination the AEMC emphasised importance of providing flexibility to DNA investors, including the ability to offer differentiated pricing to foundation users and to structure access arrangements that reflect the commercial risks underwritten by early movers.⁵ Similarly, rather than prescribing or reviewing the specific terms of foundation contracts, YEC considers that the regulatory framework should accommodate commercial flexibility, provided that baseline access obligations are preserved and third-party access is not deliberately obstructed.

For early projects, addressing these matters through development agreements with the State may be appropriate, particularly where long-term infrastructure commitments are involved. However, any

⁵ AEMC, Rule Determination: National Electricity Amendment (Connection to Dedicated Connection Assets) Rule 2021, 8 July 2021.

contractual requirements must be aligned with broader regulatory settings and should not create inconsistencies with existing access principles under the PNAC.

YEC recommends that EPWA focus on strengthening general access obligations in the PNAC, rather than expanding regulatory oversight into foundation contract terms. Maintaining a purpose-based test is the best way to ensure fair access without creating unnecessary compliance risks for NSPs and investors.

12 More flexible accountability measures

(11)(a) Will the PNAC benefit if these lower-threshold accountability measures are added, to supplement arbitration as a last resort?

YEC considers that the PNAC could benefit from some targeted enhancements to the compliance and enforcement framework, particularly where they improve transparency and ensure compliance without requiring full arbitration. Arbitration is a valuable mechanism for resolving disputes but, as identified by EPWA, can be costly, time-consuming, and adversarial, making it an inefficient tool for addressing routine compliance issues. Introducing lower-threshold accountability measures could provide a more practical alternative for resolving certain matters while maintaining arbitration as a last resort.

YEC supports giving the ERA greater powers to investigate and enforce compliance with the PNAC, particularly as YEC may act as an access seeker on other Pilbara networks. Strengthening information-gathering powers would improve regulatory oversight and help identify compliance issues before they escalate into formal disputes. Additionally, attaching civil penalties to specific obligations—such as clear breaches of access provisions—could enhance accountability without overburdening NSPs with excessive regulatory risk.

However, any civil penalty framework must be carefully designed to ensure it applies only to well-defined obligations. In other regulatory regimes, penalties are limited to certain breaches, and NSPs are protected where they act in good faith, with due care, or based on reasonable commercial judgment. A similar approach should be taken in the Pilbara to ensure that enforcement measures are proportionate and do not discourage legitimate network investment or operational decisions.

(11)(b) Please comment on the possible measures under consideration. What other such measures have you seen work effectively?

In relation to the proposal to activate the *Electricity Act 2004*, see above.

Expert determination for technical disputes could also be a useful addition, providing a faster and more specialised resolution process for operational matters without requiring full arbitration. In other access regimes, graduated enforcement mechanisms—such as warning notices before penalties—have been effective in promoting compliance while allowing NSPs to rectify issues.

YEC is open to the introduction of formal published advisory opinions by an agency or independent expert as a tool for enhancing regulatory certainty, provided they remain non-binding and purely interpretative. In a lightly regulated market like the Pilbara, where access and pricing principles can be subject to interpretation, such opinions could help prevent disputes by offering clarity on regulatory expectations.

YEC does not support the introduction of regulatory triggers that would automatically shift a network from PNAC-style (light) regulation to ENAC-style (full) regulation, as this would create regulatory uncertainty and discourage investment. If investors face the risk that their network could be subject to more stringent price and revenue controls in the future, this could undermine the commercial rationale for long-term investment in transmission infrastructure. If any triggers are introduced, they must be clear, objective, and based on demonstrable market failures rather than broad or discretionary criteria that could be interpreted inconsistently. Potential triggers should be limited to extreme cases, such as

sustained, proven abuse of market power, rather than simply reflecting network growth or increased utilisation—as higher demand and greater interconnection should not automatically justify heavier regulation.

(11)(c) For matters that make it to arbitration, do you consider the PNAC's current arbitration regime to be fit for purpose? How might it be improved?

YEC considers that while the PNAC's current arbitration regime provides a necessary dispute resolution mechanism, it could be improved to enhance efficiency, predictability, and accessibility for all parties. Arbitration can be costly and time-consuming, making it less effective for resolving routine access disputes. This reinforces the need for lower-threshold accountability measures, such as expert determination for technical matters and expanded ERA enforcement powers, to resolve issues before they escalate to arbitration.

One area for improvement is greater procedural clarity and time limits, ensuring disputes are resolved efficiently without unnecessary delays. In other regulatory regimes, arbitration frameworks include strict timelines for key stages of the process, reducing uncertainty and preventing drawn-out disputes. Additionally, clearer guidance on arbitrator discretion—including principles for assessing commercial reasonableness—would improve predictability in dispute outcomes.

YEC also suggests that cost allocation rules could be reviewed to ensure they do not create disincentives for legitimate claims. If arbitration remains the primary mechanism for resolving access disputes, it must be streamlined and cost-effective, with a focus on early resolution where possible.

(11)(d) Do you agree that no special transition for early projects or legacy arrangements for existing projects are required?

YEC broadly agrees that no special transition arrangements are necessary for early or existing projects, provided that any new accountability measures, enforcement powers, or arbitration reforms are clearly defined and do not retrospectively alter existing contractual rights. If changes to the compliance framework apply prospectively, NSPs and access seekers will have sufficient time to adjust without requiring transitional protections.

For early projects, any compliance and enforcement obligations should be addressed in development agreements with the State, ensuring commercial certainty before final investment decisions are made. For existing projects, it is important that legacy contracts remain unaffected, and that any new measures apply only to future access agreements.

While YEC does not see an immediate need for special transition measures, we recommend further consultation on any material changes to arbitration, civil penalties, or ERA enforcement powers to ensure that existing projects are not unintentionally impacted.

13 A transitional 'fixed principles' mechanism

(12)(a) Feedback on this concept is welcome.

YEC is strongly supportive of the EPWA's proposed mechanism whereby certain principles (i.e. 'fixed' principles) can be specified in the development agreement between the State and a proponent, with a similar effect to ERA pre-approval (i.e. a decision maker is not later able to overturn the agreed principle).

YEC considers the proposed fixed principles mechanism to be a crucial element of the regulatory framework, particularly for early projects requiring long-term certainty around cost recovery, tariffs, and future investment conditions. If implemented correctly, this mechanism could provide a stable regulatory foundation by ensuring that key commercial terms agreed with the State remain valid and are not subject to future regulatory changes under the PNAC. As noted by the EPWA, while it would be

convenient if the required reforms were complete before the proponents needed to make their contracting and investment decisions, the Pilbara decarbonisation timetable requires early projects to make these decisions ahead of the timetable for regulatory reform.

The ability to lock in key pricing and revenue parameters under State agreements is particularly valuable, as it would provide investors with confidence that tariffs, revenue requirements, and expansion allowances will remain predictable over the investment horizon. This could also extend to ring-fencing arrangements, ensuring that NSPs operating under State agreements are not later subject to unforeseen regulatory burdens.

It is critical, however, that this mechanism is structured to provide sufficient certainty while maintaining some flexibility where appropriate. The scope of fixed principles should be clearly defined to ensure that agreed terms are protected, but without entirely preventing NSPs from responding to material market or operational changes. YEC is interested in further discussions on which specific elements should be covered, how they should be structured, and what conditions (if any) might justify adjustments over time.

Given the significance of this mechanism, YEC urges early and detailed consultation with industry to ensure that the framework is designed in a way that supports investment certainty while balancing regulatory oversight.

YEC makes the following recommendations as to how a mechanism could potentially be designed.

(a) Legal design of the mechanism

YEC supports EPWA's proposal that the mechanism would operate to bind an arbitrator and the ERA in subsequent access disputes. YEC considers this could be achieved by amending the PNAC to constrain a decision maker's ability to overturn an agreed principle, which has been specified in a development agreement as a 'fixed principle'. This would operate in a similar manner as the current s 10 of the PNAC which limits the discretion of decision makers in changing an NSP's proposal.

A key issue in formalising such a mechanism in law will be how the PNAC refers to, and in some ways incorporates, the development agreement with the State with sufficient specificity by drawing a clear and legally operable connection between the PNAC and particular clauses in the development agreement. YEC suggests amending s 10 of the PNAC (example drafting is set out at **Annexure A**) and including in the development agreement a specific list of fixed principles for the purposes of s 10 of the amended PNAC.⁶

(b) Timing

The appropriate duration of the fixed principles will depend on the particular principle being fixed. For example, some matters, such as the RAB will need to be fixed for a significant duration, whereas others may not need to be fixed for as long. YEC will require close consideration of the relevant principles to be fixed, but on average, YEC considers a minimum of at least a 15-20 year term for any fixed principle is necessary to provide the level of revenue certainty required to support a final investment decision in greenfields transmission infrastructure. The initial foundation customers for the project are expected to enter into long-term access agreements, which will underpin the project's financing and determine the asset's early revenue profile. A fixed principle of shorter duration would fail to align with these commercial arrangements and would leave YEC exposed to the risk that key tariff inputs — such as depreciation schedules or the rate of return — could be re-opened and revised before sufficient capital has been recovered. This would materially weaken the bankability of the project. Accordingly, a minimum of a 15-20 year term would be required to appropriately balance the need for investor certainty

⁶ An example of a legislative instrument which makes specific reference to a private contract in such a way to incorporate it to the operation of the instrument is s 46 of the *Electricity Infrastructure Investment Act 2020* (NSW), which refers to long-term energy service agreements.

with the State's interest in maintaining long-term regulatory flexibility, particularly when coupled with agreed reopener triggers for exceptional circumstances.

(c) What matters should be included as fixed principles in development agreements with the State?

YEC submits that the following matters could potentially be addressed through a fixed principles mechanism.

Initial Regulated Asset Base (RAB)

Fixing the initial value of the RAB is critical to the bankability of a greenfields transmission project. The RAB determines the return of and on capital — that is, the depreciation and the return components of the NSP's allowed revenue — and therefore forms the cornerstone of the revenue model underpinning the investment. If the RAB value remains open to later challenge or regulatory reinterpretation, the investor and its financiers are exposed to a risk of stranded or unrecoverable capital, which may render the project unbankable. Securing up-front certainty on the RAB ensures that the cost base used to calculate tariffs is stable, predictable, and aligned with the project's investment assumptions. It is crucial that this principle is fixed from the outset of the scheme: the decision to proceed with the project, and to commit irreversible capital, is made in reliance on a defined capital base. Any possibility that the RAB could be revised after investment has occurred would fundamentally undermine that reliance and introduce regulatory risk that the fixed principles mechanism is designed to eliminate.

Planned new investment

Fixing the regulatory treatment of planned new investment enhances bankability by providing certainty that capital expenditure required to complete or expand the project will be rolled into the RAB and earn a regulated return. For a greenfields project with staged development or contingent expansions (e.g. to support new loads or redundancy), uncertainty about whether future capex will satisfy the new facilities investment test (NFIT) creates a material financing risk. Financiers will be reluctant to fund early stages of the project if they cannot be confident that follow-on investments — necessary to deliver the contracted services or full functionality — will be recoverable through regulated revenue. Locking in the treatment of identified planned investment provides assurance that the full investment profile is recognised and remunerated under the access regime. It is essential that this principle is to some extent fixed from the outset of the scheme, as the scope and phasing of the investment — and the associated funding commitments — are determined at the time of financial close. Allowing future decision-makers to second-guess the regulatory treatment of planned capex after it has been committed would expose the proponent to retrospective risk and may prevent the project from proceeding at all.

Rate of return

Fixing the rate of return (or weighted average cost of capital, WACC) is fundamental to the bankability of a greenfields transmission project, as it directly determines the regulated return on the capital invested. The WACC reflects the minimum return required by equity and debt providers to support the project, and is a central assumption in the proponent's financial model. If the rate of return is left open to later revision or dispute — particularly through arbitration after investment has been committed — there is a real risk that the regulated revenue stream will not be sufficient to service debt or deliver an acceptable equity return. This uncertainty increases the project's perceived regulatory risk and can significantly raise financing costs, or make the project unbankable altogether. It is essential that the applicable rate of return is to some extent fixed from the outset of the scheme, consistent with the treatment of the RAB and expansion expenditures, as this is the point at which the proponent and its financiers commit capital on the basis of a defined regulatory return. Allowing this rate to be re-determined later would create retrospective risk and defeat the purpose of the fixed principles mechanism.

Depreciation schedule

Fixing the depreciation schedule increases bankability by providing certainty over the timing of capital recovery, which directly affects the project's early-year cash flows and ability to meet debt service obligations. In a greenfields context, particularly where foundation customers are only willing to commit to medium-term contracts (e.g. 15–20 years), the proponent must be able to recover a sufficient portion of its capital investment within that timeframe to make the project financeable. If the depreciation profile is later challenged and replaced with a longer horizon, the result would be lower early-year revenues and a material risk of unrecovered capital once customer contracts expire. This would fundamentally compromise the project's economics and deter investment. It is therefore crucial that the depreciation schedule is to some extent fixed from the outset of the scheme, at the point where the proponent commits capital and secures finance. Without certainty that the agreed depreciation approach will be preserved, the proponent and its financiers cannot rely on the forecast revenue profile, rendering the project commercially unviable.

Reference service terms and conditions, which contain import risk allocations

Fixing the reference service terms and conditions — particularly those that allocate key commercial and operational risks — increases bankability by ensuring alignment between the regulatory access framework and the foundation contracts that underpin the project. For greenfields infrastructure, foundation customers typically require clarity and stability in how risks such as curtailment, liability, outages, and force majeure are allocated before committing to long-term offtake or access agreements. If these reference terms remain open to later regulatory or arbitral reinterpretation, there is a risk that the proponent will be unable to honour its commercial agreements or will be exposed to unanticipated liabilities. This uncertainty undermines the bankability of the project by weakening customer confidence and increasing the perceived risk profile for financiers. It is essential that these service terms and risk allocations are fixed from the outset of the scheme, as they are often embedded in binding foundation contracts negotiated at the time of financial close. If the regulatory framework were to subsequently displace or override these agreed positions, the result would be a misalignment between contractual and regulatory risk, with potentially severe consequences for revenue certainty, compliance exposure, and project viability.

Tariff setting methodology

Fixing the tariff setting methodology increases bankability by ensuring that the process for translating the NSP's target revenue into user tariffs remains stable and predictable over time. For a greenfields project, the financial model — and the willingness of foundation customers to commit — depends not only on the aggregate revenue entitlement, but also on how that revenue is allocated across users and services. If the methodology for calculating individual tariffs (e.g. pricing structure, allocation of common costs, treatment of demand variability) is left open to later reinterpretation, there is a material risk that the tariffs actually recoverable from users will diverge from what was assumed at financial close. This undermines cash flow forecasts, affects customer contract pricing, and ultimately increases revenue risk. It is therefore crucial that the tariff setting methodology is fixed from the outset of the scheme, so that the proponent and its financiers can rely on a defined and durable link between regulatory revenue entitlements and customer tariffs. Without this, the project is exposed to regulatory drift that can erode margins or create exposure to uneconomic access outcomes.

Foundation customer access rights

Fixing foundation customer access rights — including priority and queuing arrangements — increases bankability by providing assurance that the network capacity reserved for anchor customers, who typically underwrite the initial investment, will remain available on the agreed terms. These foundation customers are often critical to securing financing and enabling the project to reach financial close. If queuing rules or access priority can later be reinterpreted or displaced by a regulator or arbitrator, there is a risk that new entrants could displace or dilute the firm access rights of early customers, undermining the project's contracted revenue base and deterring future offtake commitments. This would materially increase investment risk and threaten the viability of the initial capital deployment. It is essential that foundation customer priority and queuing arrangements are fixed from the outset of the scheme, so that

the proponent and its customers can enter long-term access arrangements with confidence that their rights will not be subsequently undermined through regulatory reallocation. Without this certainty, neither customer commitment nor project financing can be reliably secured

Annexure A – Proposed PNAC Amendments to Implement Fixed Principles Mechanism

10. Limited discretion for decision makers in certain circumstances

- (1) If a provision of this Code states that a *decision maker* has “limited discretion” in respect of a matter, then the *decision maker* must not require changes to an *NSP’s proposal* in respect of that matter, if the *decision maker* is satisfied that the *proposal* —
 - (a) complies with applicable requirements of this Code and the Act; and
 - (b) is consistent with applicable criteria (if any) prescribed by or under this Code and the Act
- (2) In all other cases, a *decision maker* has a discretion (“full discretion”) to *require changes* to an *NSP’s proposal* if, in the *decision maker’s* opinion, a preferable alternative exists that —
 - (a) complies with applicable requirements of this Code and the Act; and
 - (b) is consistent with applicable criteria (if any) prescribed by or under this Code and the Act.
- (3) Notwithstanding subsections (1) and (2), if a matter is the subject of a *fixed principle*, contained in a *development agreement*, that applies under this Code —
 - (a) the decision maker has no discretion in relation to that matter; and
 - (b) the decision maker must not make a determination that is inconsistent with the fixed principle, or substitute any alternative approach to that matter, regardless of whether the decision maker considers the fixed principle to be inconsistent with any other provision of this Code or the Act.
- (4) For the purposes of this section —
 - (a) “proposal”, in respect of an NSP, includes any matter which the NSP is required or permitted under this Code to determine, derive, calculate, publish, propose or otherwise bring into existence; and
 - (b) “require changes”, in respect of an NSP’s proposal, includes —
 - i. make or require changes to the proposal; and
 - ii. withhold its consent to or approval of the proposal; and
 - iii. make a decision or other determination adverse to the proposal.
 - (c) “development agreement” means a written agreement between the State and a service provider that:
 - i. relates to the development, construction or expansion of Pilbara network infrastructure; and
 - ii. is identified in the agreement as a development agreement for the purposes of this Code.
 - (d) “fixed principle” means a principle which —
 - i. is recorded in a development agreement between the State and a service provider;

- ii. is expressly identified in that agreement as a fixed principle for the purposes of this Code;
- iii. relates to a matter of a kind prescribed in regulations made under this Code; and
- iv. applies for the period specified in the development agreement, unless earlier terminated or suspended in accordance with that agreement or regulations under this Code.