



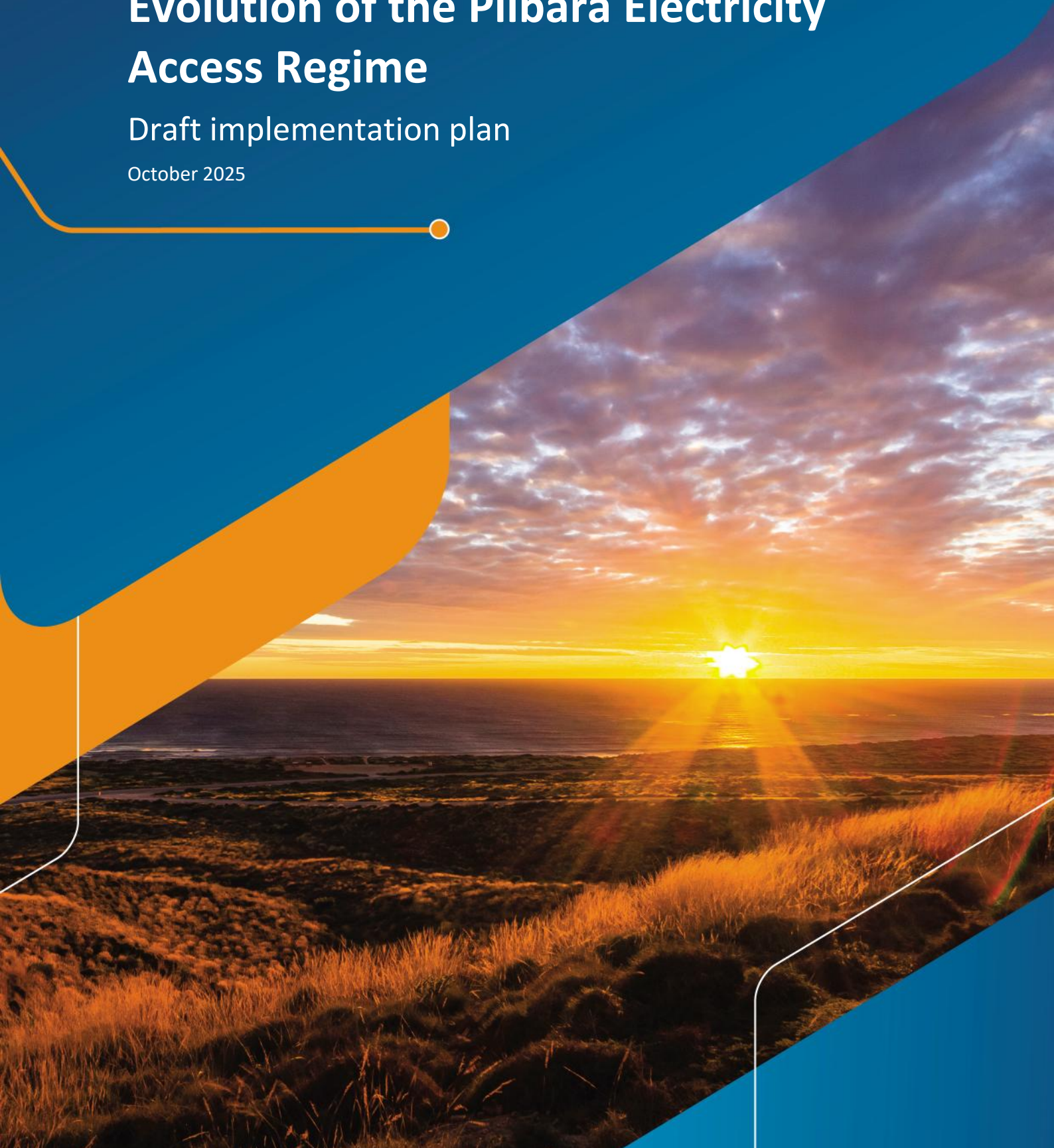
Department of
Energy and Economic
Diversification

Energy
Policy WA

Evolution of the Pilbara Electricity Access Regime

Draft implementation plan

October 2025



Important notice

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Abbreviations

Term	Definition
AEMO	Australian Energy Market Operator
ENAC	Electricity Networks Access Code
EOI	Pilbara Energy Transmission, Request for Expressions of Interest for Priority Projects, September 2024 ¹
EPNR	Evolution of the Pilbara Networks Rules (see separate Consultation Paper)
EPWA	Energy Policy WA
ERA	Economic Regulation Authority
ESS	Essential System Services
HTR	Harmonised Technical Rules
ISO	Refers to Pilbara ISOC Co Ltd currently appointed to ISO role ²
NSP	Network service provider
NWIS	North West Interconnected System
PET	Pilbara Energy Transition ³
PNAC	Pilbara Networks Access Code
PNR	Pilbara Networks Rules
SIA	Strategic Industrial Area
SWIS	South West Interconnected System
TUOS	Transmission Use of System (right of transit)
WEM	Wholesale Electricity Market

¹ More information is available <https://www.wa.gov.au/organisation/energy-policy-wa/expressions-of-interest-priority-projects>.

² EPWA proposes to restructure the ISO to be wholly and credibly independent from all NSPs, and adequately resourced (see section 1.6 below).

³ More information on the PET Plan is available at: <https://www.wa.gov.au/organisation/energy-policy-wa/pilbara-energy-transition-plan>.

Executive summary

Background and context

The Pilbara is one of the most important economic regions in Australia and the powerhouse of the Western Australian economy. The Pilbara also hosts some of Western Australia's most emissions-intensive industries, contributing over 40 per cent of the state's emissions, but less than two per cent of its electricity comes from renewable sources.

The State Government's Pilbara Energy Transition (PET) Plan seeks to help decarbonise the region by promoting construction of and shared access to transmission infrastructure that can supply the Pilbara's mining sector with electricity generated from renewable sources. Expanding the transmission system in the Pilbara will also help diversify the regional economy, attracting new business and industries by offering clean, reliable energy.

Third-party access to the Pilbara's electricity transmission networks is governed by the Pilbara Network Access Code (PNAC), which provides a lighter economic regulatory framework compared to the stricter full regulation applied to the South West Interconnected System (SWIS) under the Electricity Network Access Code (ENAC).

The PNAC allows flexible cost and price controls, relying on a combination of transparency measures and arbitration to promote fair pricing and manage access disputes. In contrast, full regulation under the ENAC involves periodic revenue or price setting based on detailed financial assessment by an independent economic regulator.

When the PNAC was established in 2021, the lighter regulatory approach was adopted to allow flexibility in price setting and negotiations, and to ensure regulation does not form a barrier to access, growth and investment in the Pilbara region. This light handed principle has been successful to date and, since the commencement of third party access in the Pilbara, there has been increased investment in the region. However, if the region is to decarbonise quickly and continue to attract energy infrastructure investment and economic growth, more is needed.

The State Government recognises the importance of minimising regulatory burden for all stakeholders. However, the lighter regulatory approach in the Pilbara must be balanced against achieving growth, emissions and economic diversity targets. The recent PNAC proposals and consultation process aimed to assess whether this approach remains appropriate for the region, and to explore potential enhancements to the regulatory framework through additional controls and clarifications.

Consultation on PNAC amendments

In February 2025, after comprehensive engagement with regional stakeholders via the [Pilbara Industry Roundtable](#) and the [Industry Liaison Committee](#), Energy Policy WA (EPWA) released a [Consultation Paper](#) (Consultation Paper) outlining 12 proposals to improve the PNAC regulatory regime.

The paper highlighted the three key objectives for electricity networks in the Pilbara:

1. The need to attract substantial private investment in new shared transmission infrastructure.
2. The need to ensure network access seekers can connect to shared infrastructure at reasonable prices, on reasonable terms and within a reasonable timeframe.
3. The need to maintain energy supply security and reliability in the region.

Striking a balance between these three objectives is essential. If regulatory controls are too stringent, they may form a barrier to investment and economic growth in the region. However, if the regulatory framework has insufficient safeguards, there is a risk existing and potential new network users may be impacted by anti-competitive behaviours and the broader PET objectives of decarbonisation and attracting new industries will not be achieved.

Summary of public submissions

EPWA received a range of confidential and [public submissions](#) on the Consultation Paper.

There is general support among stakeholders for increased transparency and enforceable access rights. Stakeholders also expressed a desire for clearer pricing and contract terms in third party access negotiations. A recurring theme is the need for investment certainty and the importance of not adding unnecessary complexity to the existing light regulatory framework.

Automatic coverage for new networks, the transfer of sensitive functions to a truly independent system operator, the expansion of the pre-approval framework and the introduction of fixed principles are supported by almost all respondents. These changes help embed user access rights and provide an opportunity for investors to recover reasonable infrastructure costs from those network users.

However, there is objection to some of the more interventionist proposals relating to ringfencing, revenue controls and the potential for network interconnection agreements to be made public. Stakeholders were concerned that these amendments were not necessary and would prefer that issues are addressed as and when they arise rather than pre-empting them with overly prescriptive regulation now. Moreover, stakeholders expressed the view that while the current light regulation framework would benefit from some modification, it is vital that the regulatory regime and the regulating bodies retain the current flexibility in the unique Pilbara environment.

Summary of policy direction

EPWA values the stakeholder feedback provided and the efforts of the Pilbara Industry Roundtable and Industry Liaison Committee members. EPWA has considered industry perspectives balanced against State Government objectives under the PET Plan.

The policy direction for the majority of the issues remains consistent with what was proposed in the Consultation Paper. In some cases, while the direction remains the same, the methodology has changed and/or additional clarity on direction has been provided.

The most significant variations to the original proposals are outlined below:

- **Proposal 1: Coverage (assets to be exempted).** The Consultation Paper proposed that certain connection assets would be exempt from automatic coverage. EPWA has now defined the scope of this exemption, namely assets that meet all of the following criteria: owned and operated by someone other than the host network service provider; less than 10km in length; radial from a covered network; and only used by a single generator or load. However, the exemption will not be available for: assets located within a Strategic Industrial Area; or transmission voltage substations directly connected to the host transmission network.
- **Proposal 1 – Coverage (suspension of compliance obligations).** While there is no change to the proposal regarding automatic coverage, the Consultation Paper proposal will be supplemented by a measure to mitigate the risk of an automatically covered network facing unnecessary regulatory burdens where there is no associated benefit to access seekers: NSPs will be able to apply to the ERA to suspend some of their compliance obligations until an access seeker emerges or some other specified trigger occurs.

- **Proposal 6 – Decision-maker for pre-approvals (greater up-front certainty).** EPWA proposes to introduce the ability for NSPs to seek pre-approval of items beyond new facilities investment. The Consultation Paper proposed that the decision maker on these pre-approvals be the Economic Regulation Authority (ERA). However, for Priority Projects, if pre-approvals are required, insufficient time is available to amend the regime to provide for the ERA to undertake these activities and recover the associated costs. Accordingly, for these projects, the Coordinator of Energy will determine the pre-approvals (if required) and the associated safeguards as part of the project's contractual negotiations with the State. After this initial period, consideration will be given as to whether this function should remain with the Coordinator.
- **Proposal 7 – Provision for possible revenue control.** The Consultation Paper proposed to add revenue control to the PNAC. This proposal was not well supported, and will not be progressed at this stage. EPWA will instead amend the PNAC's revenue and pricing principles to provide a clearer pricing framework to promote fair, efficient and transparent access while still attracting private capital investment. It will also review and amend the PNAC form of regulation factors and ENAC coverage criteria to make it clear that the Minister for Energy can move a network from light PNAC regulation to full ENAC regulation if they are determined to be earning revenues beyond a fair, risk reflective return.
- **Proposal 10 – Managing user rights (including foundation user rights) which hinder access by others.** The Consultation Paper proposed to introduce an 'effects test' prohibition. While this proposal was generally well supported, further assessment indicates this approach may be unworkable and may have unintended consequences. EPWA intends to retain the policy objective but implement it through a more nuanced approach which only prohibits certain specific clauses and otherwise enables clauses that hinder access to be rendered *ineffective* without attracting the penalties and reputational risk associated with a *prohibition*. To mitigate the risk associated with a clause being challenged long after the access contract is signed, these clauses will be added to the list of matters on which pre-approval can be sought (proposal 6).

Appendix A shows the policy direction for each of the 12 proposals and, where applicable, how it varies from the Consultation Paper.

Implementation approach

EPWA will start implementing the proposed regulatory changes late in 2025 and will continue throughout 2026 and into 2027. Appendix B of this paper provides a detailed list of actions and the proposed timing.

Proposed changes outlined in this paper will be progressed concurrently, noting that some amendments are interdependent.

To support the reform program, EPWA will:

- establish an access evolution working group with an intention to use this group to test thinking on various design elements and implementation options as the reforms progress;
- work with NSPs with existing networks to develop appropriate transition measures, and where appropriate clarify and document legacy arrangements; and
- continue discussions with proponents of Priority Projects to develop contracts that allow an efficient and effective transition to the new arrangements.

Thereafter, amendments to the PNAC will be progressed through consultation processes set out in sections 120H and 120J of the *Electricity Industry Act 2004*.

Figure ES 1 provides a high-level indicative timeline of the implementation activities.

Alignment with the Evolution of the Pilbara Network Rules

This paper has been released concurrently with the draft implementation plan for the Evolution of the Pilbara Network Rules (EPNR). Several proposals concerning third party access to the Pilbara electricity network are closely aligned with, and complementary to, the reforms being advanced through the EPNR project. In particular:

- the role of the ISO in managing conflicts of interest and promoting access;
- operationalising the new services (statutory right to transit); and
- ensuring the civil penalty, compliance and immunity regime is cohesive, comprehensive and effective.

This coordinated approach ensures consistency across regulatory initiatives and supports a more integrated framework for network access and operation in the region.

Submissions

EPWA values external feedback and will continue to engage with industry and interested parties throughout the implementation process.

Sections 2 to 6 of this paper describe the implementation approach for each of the 12 Pilbara regulatory design proposals. EPWA is now seeking comments on the proposed implementation approach, specifically:

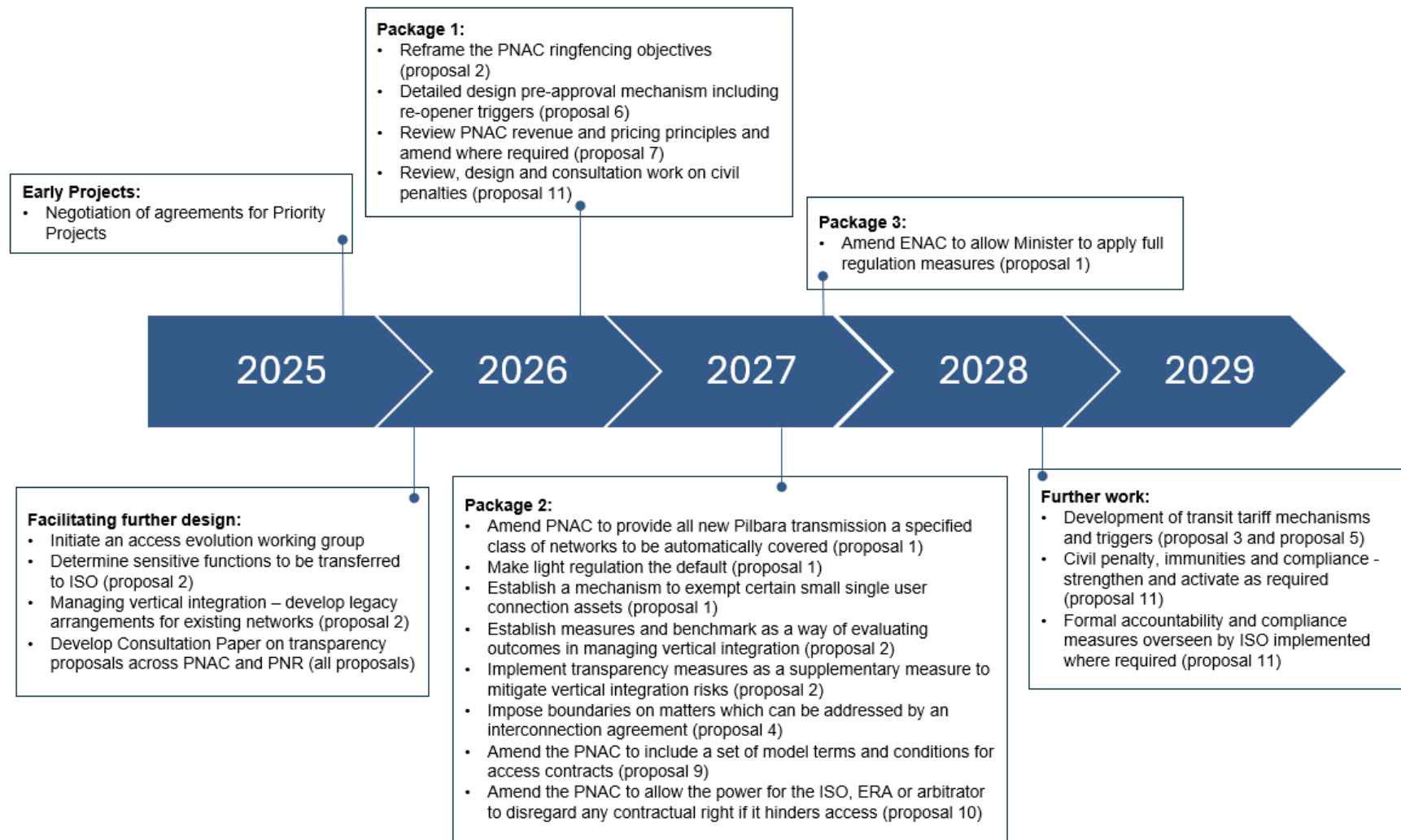
- appropriate triggers for the design or implementation of those proposals that are not proposed to be immediate (e.g. the introduction of a TUOS tariff mechanism, enhanced compliance and enforcement, increased transparency measures);
- the proposed implementation timing;
- material barriers or risks stakeholder consider may arise during implementation, and suggestions on how these can best be addressed; and
- useful precedents seen elsewhere that could help the implementation approach for the Pilbara.

Stakeholder feedback is also welcomed on proposals that vary from the original Consultation Paper approach (i.e. proposals 6, 7 and 10) and on the proposed definition of assets to be exempt from automatic coverage (proposal 1).

EPWA invites written submissions on this Consultation Paper. Submissions must be provided by **12:00 noon WST on Thursday, 30 October 2025**. Any submissions not marked as confidential will be published on the Energy Policy WA website at www.energy.wa.gov.au.

Submissions should be emailed to pet.secretariat@deed.wa.gov.au.

Figure ES 1: Implementation plan



1 Introduction

1.1 Background

The Pilbara region is a vital contributor to Australia's economy and export success. Its mining and port operations depend heavily on a reliable electricity supply. As industries in the region move toward cleaner energy and lower emissions, this reliance on electricity will grow. Decarbonisation involves not only replacing gas-fired power with renewable sources like solar and wind but also shifting diesel-powered equipment to electric alternatives.

Private sector investment in renewable electricity generation and transmission infrastructure is expected to significantly increase as existing Pilbara businesses seek to decarbonise and new industries come to the region. In late 2023, the WA Government endorsed the Pilbara Energy Transition (PET) Plan, which aims to ensure the shift towards renewable energy is coordinated, inclusive, and delivers long-term benefits for businesses, workers, and local communities.

Reducing the duplication of transmission infrastructure is a key objective of the PET Plan. [Pilbara modelling](#) shows users can achieve significant efficiencies if they share network infrastructure. However, with electricity a critical business input, users will only join a shared grid if they are confident that:

- they will be able to access the network on reasonable terms;
- the cost of that electricity will remain affordable; and
- the security of their electricity supply will not be compromised.

1.2 The evolution of the Pilbara electricity access regime

The current regulatory regime in the Pilbara has functioned effectively to date. Third parties have been able to negotiate access to network infrastructure and there have been no access disputes so far. EPWA expects the current framework to continue to work in the medium term. However, as the Pilbara grid becomes more interconnected and the number of NSPs, users and access seekers increases, the access regime that governs it will need to evolve.

A long term aim of the PET is to facilitate Pilbara decarbonisation and attract new industries to the region by offering connection to a reliable, lower emission electricity network on a reasonable basis. The third party access regime must therefore balance the needs of investors, foundation users, later access seekers and energy consumers, while maintaining transparency and accountability and facilitating greenfield projects.

Rather than assume the regulatory arrangements in place today will remain suited to Pilbara's future state, the WA Government has developed a series of proposals to improve the third party access regime while maintaining the original intent of lighter regulation, where possible.

1.3 Consultation on changes to the access regime

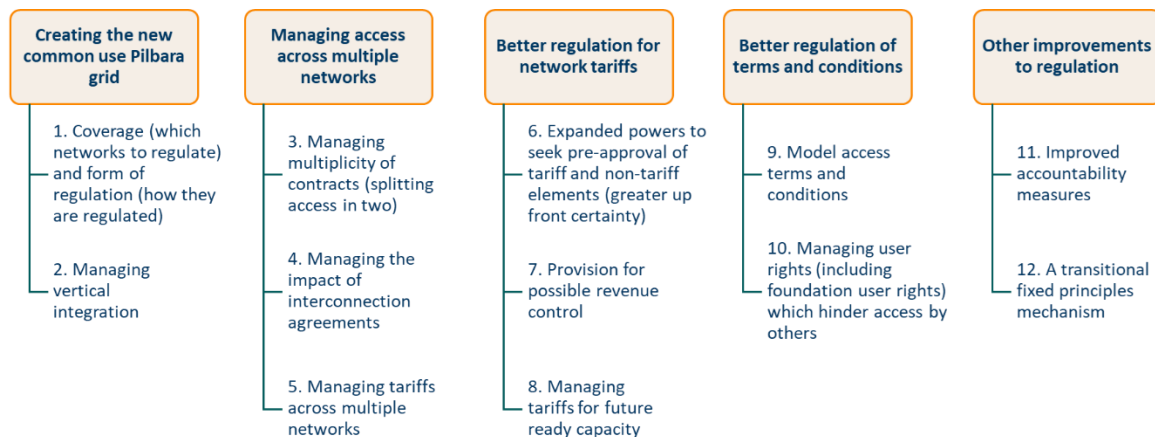
In February 2025, EPWA released two Consultation Papers outlining proposals to amend the access regime and the PNR. The access regime paper detailed a suite of 12 design proposals, covering five broad themes for the Pilbara access regime:

- **Creating the new common use Pilbara grid** – matters relating to which Pilbara networks will be covered under the PNAC, and managing the risks of vertical integration.
- **Managing access across multiple networks** – matters relating to how network access will be managed across an expanded Pilbara network comprising multiple interconnection and a variety of owners.

- **Better regulation for network tariffs** – how to provide great upfront certainty for greenfields projects and suitable tariff and revenue controls.
- **Better regulation of terms and conditions** – model terms and conditions and how to best manage user rights that hinder access by others.
- **Other improvements to regulation** – accountability measures and fixed principles.

The 12 proposals under these themes are shown in Figure 1.1.

Figure 1.1: Summary of the 12 amendment proposals



1.4 Transitional arrangements

Transition for early projects

The evolution of the PNR and PNAC will occur in stages, as described in this paper and the EPNR Consultation Paper.

In parallel, EPWA is negotiating with Priority Proponents appointed as a result of the 2024 EOI process,⁴ regarding the contracts they will enter into with the State to develop transmission infrastructure in the four identified priority corridors. For these projects, EPWA intends to supplement the present regulatory regime with contractual arrangements, which may include fixed principles as discussed in proposal 12.

Legacy arrangements for existing networks

Arrangements for existing networks will be developed and discussed in consultation with the affected NSPs and their users, as outlined in the Consultation Paper.

1.5 Alignment with the Evolution of the Pilbara Network Rules

This paper has been released concurrently with the draft implementation plan for the EPNR. Several proposals concerning third party access to the Pilbara electricity network are closely aligned with, and complementary to, the reforms being advanced through the EPNR. These proposals include:

- **Proposal 2: Managing vertical integration.** Determining the list of sensitive functions and transferring them from the NSPs to ISO, and increasing transparency measures more broadly.
- **Proposal 3: Avoiding multiplicity of contracts.** Accommodating the new services (statutory right to transit) in the PNR.

⁴ More information is available at: <https://www.wa.gov.au/organisation/energy-policy-wa/expressions-of-interest-priority-projects>

- **Proposal 4: Managing the impact of interconnection agreements.** Introducing ISO oversight of these contracts.
- **Proposal 10: Managing user rights which hinder access by others.** Introducing ISO oversight of contracts and allowing the ISO to disregard any non-compliant clauses when making determinations.
- **Proposal 11: Improved accountability.** Reviewing and revising the civil penalty and compliance regime.

This coordinated approach ensures consistency across regulatory initiatives and supports a more integrated framework for network access and operation in the region.

The design and implementation timing in this paper is consistent with that included in the EPNR draft implementation plan. This is particularly important where actions arising from changes to third party access need to be implemented in the PNR and/or Harmonised Technical Rules (HTR).

1.6 References to the ISO

As part of the EPNR Project, EPWA proposes to restructure the ISO to be wholly and credibly independent from all NSPs, and adequately resourced. This is one of the early actions that will be completed as part of the EPNR Project (more information is provided in section 5 of the EPNR Consultation Paper, and section 3.8 of the EPNR Draft Implementation Plan).

All references to the ISO in this paper reflect the ISO as it will be reformed.

1.7 Purpose of this paper

EPWA received 15 stakeholder submissions⁵ to the [Evolution of the Pilbara Electricity Access Regime Consultation Paper](#) (Consultation Paper). These submissions have been considered in the development of the revised policy positions for the 12 proposed amendments. The purpose of this paper is to present the policy direction on the proposed PNAC changes, how stakeholder feedback has been considered in that position, and the approach for implementing the PNAC amendments.

Stakeholder feedback on this paper is sought primarily on the implementation approach, with submissions due by **12:00 noon WST on Thursday, 30 October 2025**.

Please email submissions to pet.secretariat@deed.wa.gov.au. Any submissions not marked as confidential will be published on EPWA's website at www.energy.wa.gov.au.

The final implementation plan will be published on EPWA's website. EPWA will provide regular status updates throughout the implementation process and will continue to engage with industry throughout.

1.8 Structure of this paper

The following sections of this paper discuss each of the 12 design proposals across each of the five themes. For each proposal this paper discusses:

- the original proposal in the Consultation Paper;
- stakeholder feedback on that proposal;
- the policy direction on each proposal; and
- implementation approach and actions.

⁵ Six of these submissions were made confidentially.

This paper is intended to be able to be read as a standalone document and includes a brief overview of each of the issues and proposals included in the Consultation Paper. It is structured in the same order, with the same numbering, as the Consultation Paper for ease of reference (i.e. proposal 1 is section 2.1 in the Consultation Paper and section 2.1 of this draft implementation plan).

2 Creating the new common use Pilbara grid

A core element of the PET Plan is establishing common use transmission infrastructure in the Pilbara to:

- remove the potential for the inefficient duplication of transmission lines; and
- create the opportunity for users to access this infrastructure on reasonable terms and at reasonable prices.

Four priority transmission corridors have been identified in the Pilbara to support shared infrastructure development⁶. However, under current arrangements, network service providers (NSPs) are not obligated to offer third party access to their networks unless those networks are formally 'covered' by a regulatory framework.

To facilitate the PET Plan and create an effective common use Pilbara grid, EPWA proposes changes to the process for determining which networks are covered and deciding how those covered networks are to be regulated. EPWA also proposes changes to improve how the Pilbara regime manages the conflicts of interest and adverse incentives inherent in vertical integration.

These matters are discussed in the following sections.

2.1 Proposal 1 – Coverage (deciding which networks to regulate) and form of regulation (deciding how they are regulated)

The *Electricity Industry Act 2004* (the Act) creates a two stage process for regulating access to electricity networks:

1. The Minister for Energy decides whether a network should be 'covered', i.e. compelled to provide third party access.
1. It is then necessary to determine the form of regulation that applies to the covered network:
 - the default mechanism, and the only option for networks outside the Pilbara, is what the Act calls full regulation under Part 8 of the Act and the Electricity Networks Access Code (ENAC), in which the NSP must periodically submit its proposed access prices and terms to the ERA for approval; but
 - for Pilbara networks, the Minister for Energy can decide instead to impose what the Act calls 'light' regulation under Part 8A of the Act and the Pilbara Networks Access Code (PNAC), in which there is no up-front approval by the ERA. Instead, the NSP prepares and publishes its own access documents after consulting publicly.

Both regimes result in a published set of prices and access terms, and both provide for an arbitrator to enforce third party access. The primary difference between them is that PNAC-style regulation avoids the periodic multi-year process of ERA approval, a significant task for both the NSP and ERA. Accountability for the NSP under the PNAC comes if an access seeker challenges the NSP's documents in an access dispute.⁷

⁶ <https://www.wa.gov.au/organisation/energy-policy-wa/designated-priority-corridors>

⁷ The differences between ENAC-style and PNAC-style regulation is shown in Box 3 of the Consultation Paper

2.1.1 Consultation paper proposal

The Consultation Paper proposed that all new Pilbara transmission assets will be automatically covered for third party access, with the exception of certain connection assets.⁸ It proposed that Pilbara networks covered in this manner will be subject to light PNAC-style regulation by default, unless the Minister for Energy decides to impose full ENAC-style regulation or the NSP opts in to full regulation.⁹ The paper proposed there be no option for revocation of this automatic coverage.¹⁰

It was proposed that existing covered networks will be subject to the above arrangements.¹¹ To mitigate sovereign risk, existing uncovered networks would not be subject to automatic coverage, and if anyone applied to have the networks covered, the general ENAC coverage criteria would apply.¹²

Because the amendments to automatically apply light regulation would not be in place in time for the four priority projects, these proponents would need to opt into regulation under the PNAC through agreements with the State, as foreshadowed in the Request for Expressions of Interest (EOI) for Priority Projects Application Guidelines.¹³

2.1.2 Stakeholder feedback

Stakeholders were broadly supportive of all three aspects of this proposal.

One submission recommended the current approach, whereby the Minister makes coverage decisions on a case by case basis, should be retained in preference to the proposed automatic coverage.

Stakeholders sought clarification on how the proposal would be applied, particularly around the definition of which connection assets would be automatically covered and which will be exempt.

2.1.3 Policy direction

EPWA has maintained the proposed approach outlined in the Consultation Paper. More information on each aspect of the proposal is discussed in the following sections.

Automatic coverage with PNAC-style, light regulation

The core proposal of automatic coverage remains unchanged. This will remove the cost and uncertainty of the coverage application process for network investors and access seekers.

In summary:

- legacy networks will retain their existing coverage status, i.e:
 - the existing covered networks (Horizon Power's and APA's) will remain covered; and
 - the existing non-covered networks will remain non-covered unless someone makes a successful coverage application under the ENAC; and
- all new transmission assets in the Pilbara, other than certain small connection assets will be covered.¹⁴

⁸ Consultation Paper, proposal 1.1

⁹ Consultation Paper, proposal 1.2

¹⁰ Consultation Paper, proposal 1.1

¹¹ Consultation Paper, proposal 1.5(a)

¹² Consultation Paper, proposal 1.5(b)

¹³ More information is available <https://www.wa.gov.au/organisation/energy-policy-wa/expressions-of-interest-priority-projects>

¹⁴ Pending these reforms, proponents with Priority Projects will be required to opt in to PNAC regulation under their agreements with the State.

As proposed in the Consultation Paper, the PNAC will be amended so that the default outcome for these automatically-covered networks is light regulation. As now, networks can opt in to ENAC-style full regulation, or the Minister can impose such regulation by a form of regulation decision.¹⁵

Consistent with the proposal to ensure sufficient revenue controls in the Pilbara framework (see section 4.2), EPWA will revise the form of regulation factors in the PNAC¹⁶ to ensure they are fit for the PET Plan's purpose. This will include making it clear that the Minister can impose ENAC-style regulation on a network if the NSP is earning more than a fair, risk reflective rate of return in relation to that network. (See also 'Coverage criteria' later in this section.)

Assets exempt from automatic coverage

EPWA has now defined which assets will be exempt from automatic coverage. The exemption will generally apply to assets that meet all of the following criteria:

- owned and operated by someone other than the 'host NSP'¹⁷; and
- less than 10km in length; and
- radial from a covered network; and
- only used by a single generator or load.

The exemption will not be available for certain strategic assets, namely those which are:

- located within a Strategic Industrial Area; or
- transmission voltage substations directly connected to the host transmission network.

These strategic assets will continue to be automatically covered.

Connection assets exempted from automatic coverage can still be subject to a coverage application¹⁸ and so can still become covered if the Minister for Energy considers the 'coverage criteria'¹⁹ are satisfied.

Suspension of obligations where no benefit served

Although light regulation involves a lower compliance burden than full regulation, the PNAC still imposes compliance obligations on the covered NSP. In particular, the PNAC requires the NSP to develop, consult publicly on, publish and periodically update materials such as a User Access Guide, a Network Development Policy and a Services and Pricing Policy.²⁰ However, if there are no likely access seekers for the network, there is little benefit in producing and consulting on these documents.

One solution would be to allow the NSP to seek revocation of coverage in these circumstances, but this would leave possible future access seekers without a right to access potentially valuable assets.

¹⁵ PNAC Chapter 3

¹⁶ PNAC section 7

¹⁷ 'Host NSP' means the NSP of the transmission network to which these assets are connected

¹⁸ ENAC Subchapter 3.3

¹⁹ ENAC section 3.5

²⁰ PNAC Chapter 4

EPWA therefore proposes to adapt the National Gas Rules' solution to this issue,²¹ and allow the NSP of a PNAC-regulated network to apply to the ERA to have some or all of its PNAC consultation and publication obligations suspended for as long as the network has no third party users and no credible access seekers. The suspension will be subject to conditions, including that the NSP report all approaches by prospective access seekers so that the ERA and the Minister can determine when the obligations should be reactivated.

This is a refinement of the model described in the Consultation Paper. EPWA will consult further on the detailed design of this suspension mechanism.

Coverage criteria

As discussed in the Consultation Paper, the coverage criteria currently in the ENAC are no longer fit for purpose and must be amended to reflect a modern industry standard. One of the revenue/price controls contemplated for the Pilbara framework is the ability for the Minister for Energy to impose full regulation on an NSP that the Minister determines that it is earning more than a fair, risk reflective rate of return, contrary to the PNAC's revenue and pricing principles²² (which are to be refreshed, see section 4.2). The coverage criteria in the ENAC are not currently suitable for this purpose.

ENAC coverage criteria must also be consistent with:

- concepts under the *Competition and Consumer Act 2010*,²³
- the State Electricity Objective; and
- the PET objectives.

The exact wording of the new Pilbara coverage criteria will be developed through further consultation.

2.1.4 Implementation

Table 2.1 shows key actions required to implement this proposal and their indicative timing.

Table 2.1: Actions required to implement coverage of Pilbara networks

No.	Action	Owner	Indicative timing
1.1	<p>Amend the PNAC to:</p> <ul style="list-style-type: none"> • provide for all new Pilbara transmission networks to be automatically covered, if they meet certain criteria; • provide for an exception from automatic coverage for specified connection assets; • provide the ability for the ERA to suspend some compliance obligations for an automatically-covered NSP should they meet certain criteria; and • supplement the form of regulation factors and process, and make complementary changes to ENAC coverage criteria, to make it clear that full regulation can be imposed if the NSP is earning 	EPWA	<p>Design: 2026</p> <p>Implementation: To be determined (likely 2027)</p>

²¹ The National Gas Rules (implemented in WA under the *National Gas Access (WA) Act 2009*) allow the regulated asset owner to apply to the ERA for an exemption from information disclosure requirements: NGR rule 102. There are two classes of exemption, a broad one for pipelines which presently have no third party users, and a narrower one for pipelines with only a single third party user.

²² PNAC section 8.

²³ As a result of the Harper Review recommendations in 2015, the 'uneconomic to duplicate' test currently in section 3.5(b) of the ENAC, which when enacted reflected a very similar test in then sections 44G(2)(b) and 44H(4)(b) of the *Trade Practices Act 1974* (Cth) (which became the *Competition and Consumer Act 2010* (Cth)), has been significantly rewritten in the Commonwealth Act and now tests the 'least cost way to meet foreseeable demand', see current section 44CA(1)(b) of that Act.

No.	Action	Owner	Indicative timing
	more than a fair, risk reflective rate of return contrary to the (refreshed) revenue and pricing principles (related to action 7.2).		
1.2	Amend the coverage criteria in the ENAC to be consistent with concepts under the <i>Competition and Consumer Act 2010</i> , the State Electricity Objective and the PET objectives.	EPWA	Design: 2026 Implementation: Q4 2027

2.2 Proposal 2 – Managing vertical integration

An NSP providing network access services is said to be vertically integrated if it also has a related business that competes in one or more upstream or downstream markets. This could be where an NSP or a related body corporate owns or operates generation assets, retails electricity, or consumes electricity as a material load. The upstream or downstream operations are referred to as the NSP's related business or associates.

Most regulatory regimes do not permit NSPs to be vertically integrated. This is because a vertically integrated NSP has an incentive to make decisions and act in a way that favours its own related business or disadvantages a competitor's business.

In the Pilbara, the majority of current and presently proposed transmission operators are, or propose to be, vertically integrated. For the reasons discussed in the Consultation Paper,²⁴ EPWA has decided to allow this vertical integration to continue.

This requires a balance to be struck. The risks raised by vertical integration require clear and effective protections. However, these protections should not stymie investment in the Pilbara.

The PNAC currently includes a requirement for NSPs to develop a set of ringfencing rules that detail:

- accounting measures to prevent cross subsidies;
- measures, processes and procedures to manage commercially sensitive information; and
- measures, processes and procedures to ameliorate the potential for discriminatory treatment in favour of the NSP's related businesses, or against its competitors.

Compliance with ringfencing rules currently relies on NSP self-reporting and is not subject to civil penalties.

2.2.1 Consultation paper proposal

The Consultation Paper outlined several options, from continuing to rely on ringfencing arrangements to significantly more intrusive mitigation measures such as financial and legal separation. The preferred option was to permit vertical integration, but to mitigate its adverse effects by reducing the NSP's ability to act on the adverse incentives that such integration creates.

This would be done by identifying those areas in which NSPs are called on to take actions or make decisions that could create a risk of discrimination or similar anti-competitive behaviour, and revising the regime to ensure that, wherever possible, these sensitive functions are either performed by, or overseen by, the Independent System Operator (ISO)²⁵ rather than the NSP.

²⁴ Consultation Paper, section 2.2.2

²⁵ All references to the ISO in this paper reflect the ISO as it will be reformed (see section 1.6)

The Consultation Paper identified the following possible sensitive NSP functions:

- control desk functions including real time system operation, essential system services (ESS) dispatch and contingency response;
- system-wide outage and commissioning scheduling and coordination;
- connection and interconnection modelling, assessment and approvals;
- managing the queue for access applications; and
- monitoring or approving access contract terms and conditions.

The Consultation Paper stated that other suitable functions to be transferred might be identified during detailed design.

This approach was the preferred option²⁶ because it can readily accommodate staged or flexible introduction, in which some functions can be flagged for later transition if problems emerge or certain triggers occur.

The Consultation Paper also outlined proposals to:

- reframe the ringfencing objectives to include an explicit recognition of the fact that vertically integrated NSPs have an incentive to engage in harmful behaviour, and to require that, if the ringfencing measures that do not eliminate the NSP's ability to engage in harmful behaviour, they effectively remove any incentive for the NSP to do so;²⁷
- establish measures to assess the mechanisms in place to manage vertical integration;²⁸
- use transparency wherever possible;²⁹
- strengthen compliance monitoring and enforcement of ringfencing breaches;³⁰ and
- consider limited exceptions to the standard treatment of vertical integration, for example if NSPs are providing provide system strength, security or reliability services.³¹

2.2.2 Stakeholder feedback

Stakeholders that acknowledged the need for improvement supported the preferred option outlined in the Consultation Paper proposal. Generators and customers supported the transfer of all the proposed functions, however, NSPs had more diverse views.

NSP's expressed a mix of views on whether there was a need for increased rigour in the management of vertically integration.

There was mixed support for giving the ISO a role in reviewing / approving access contracts or other commercial terms, and managing access queues.

Additional functions stakeholders suggested could be transferred to the ISO were:

- whole of system planning and coordination;
- reviewing NSPs' maintenance and upgrading/augmentation activities and related plans;
- pricing approval;

²⁶ Consultation Paper, proposal 2.3

²⁷ Consultation Paper, proposal 2.1

²⁸ Consultation Paper, proposal 2.2, box 5

²⁹ Consultation Paper, proposal 2.4

³⁰ Consultation Paper, proposal 2.5

³¹ Consultation Paper, proposal 2.6

- scrutinising related business and foundation user contracts; and
- monitoring and enforcing compliance with access and ringfencing obligations.

One stakeholder suggested the staged transition of functions should be considered.

EPWA also requested feedback on the need for, and proposed measures to assess the success of management of vertical integration. Stakeholders did not have a strong view on either the need for this, or the proposed measures.

Stakeholders did not comment on the proposed reframing of the ringfencing objectives.

2.2.3 Policy direction

Despite the risk that the NSP may be incentivised to favour its own related business, EPWA will permit vertical integration, but will transfer certain sensitive functions or decisions to the ISO and increase transparency for functions that are best left with the NSP. This is consistent with the preferred option outlined in the Consultation Paper.

Some of the proposed changes already form part of the EPNR reforms, including transferring the control desk function to the ISO and giving the ISO a greater role in outage management, long term planning and other matters. Reforms to the ESS and balancing arrangements will also increase the ISO's autonomy and diminish the scope for anti-competitive conduct by vertically integrated NSPs.

Other changes will require further development by way of changes to the PNAC or PNR. This includes determining which functions should be transferred as a priority, and what triggers should apply for transferring others. EPWA will consult further with stakeholders, with a view ensuring the adverse effects and incentives of vertical integration on third party access are minimised, while avoiding wherever possible inefficient duplication or bureaucracy.

EPWA will amend the PNAC's primary ringfencing objectives to add a requirement that ringfencing measures must aim to mitigate or remove incentives for an NSP to engage in harmful behaviour.

2.2.4 Implementation

Table 2.2 shows key actions required to implement this proposal and their indicative timing.

Table 2.2: Actions required to implement mitigation measures to address vertical integration

No.	Action	Owner	Indicative timing
2.1	Agree the list of sensitive functions that should be transferred to the ISO and the timing or triggers for transfer.	EPWA / NSPs	Q1 2026
2.2	Amend the PNR to confer the list of sensitive functions on the ISO.	EPWA	Design: 2026 Implementation: Q1 2027 or thereafter as triggers occur
2.3	Develop Consultation Paper drawing together all proposals to increase transparency across PNAC and PNR to provide more detail and integrated proposal.	EPWA	Q1 2026
2.4	Amend the PNAC to reframe the ringfencing objectives to better recognise and mitigate the incentives in vertically integrated businesses towards anti-competitive behaviour.	EPWA	Design: Mid 2026 Implementation: Q4 2026

No.	Action	Owner	Indicative timing
2.5	Amend PNAC (and PNR) to include greater transparency measures to mitigate risk of anti-competitive behaviour for functions remaining with vertically integrated NSPs.	EPWA	Design: 2026 Implementation: Q2 2027

3 Managing access across multiple networks

The NWIS already comprises three interconnected, separately owned networks³². This means the third party access framework is already able to accommodate a network with multiple ownership. However, as more networks are built, each with different ownership, access will become more complex. This will especially be the case as the system becomes increasingly 'meshed' or 'looped', which causes complexity and affects energy flows across the system. Matters relating to energy flows and interconnection are currently addressed through a mix of contractual arrangements and elements of the PNR, with oversight from the ISO.

Currently, a network user or access seeker must contract with each NSP for, as applicable:

- the right to connect (or interconnect);
- the right to inject and withdraw electricity at a connection/interconnection point; and
- the right to transport electricity through the network (right of transit).

As the number of interconnected networks grow, this model will become unwieldy and could become a barrier to entry.

Fundamental to the PET objectives is that the regulatory framework for the Pilbara grid must provide effective access across multiple interconnected networks, each with different owners. Issues that need to be considered are:

- how to make it as simple as possible to contract for access, even if the user's electricity will be traversing multiple networks (proposal 3);
- how to ensure interconnection agreements do not unduly hinder access (proposal 4);
- how to manage situations where users of one network benefit from, or cause congestion for, another network (being managed through the EPNR reforms)³³; and
- how best to share network tariffs between users and revenue between neighbouring networks (proposal 5).

Proposals to address these issues are discussed in the following sections.

3.1 Proposal 3 – Managing multiplicity of contracts (splitting access in two)

As the Pilbara system expands, users are more likely to have electricity transported through multiple networks between where it is injected and withdrawn.

If the framework is not changed, as the grid grows, the number of contracts a user will need will also grow. Negotiating a single access contract can be time-consuming and expensive. The task would grow significantly with the number of NSPs. Further, as soon as the grid becomes significantly meshed, the task of identifying where contracts are needed may become almost impossible.

This will be cumbersome, and a barrier to entry, and will impede the achievement of the PET objectives.

³² There are actually six networks in the NWIS, but three of them (BHP's, Fortescue's and Roy Hills' networks in Port Hedland) are small 'excluded networks' which are treated as consumer facilities.

³³ Refer to proposals balancing and constraints in EPNR Implementation Plan

3.1.1 Consultation paper proposal

The Consultation Paper proposed streamlining contractual arrangements by eliminating the requirement for users to hold individual agreements with every NSP through whose infrastructure electricity may flow. Instead, users would only be required to maintain two contracts: one at the injection point and one at the withdrawal point.

Although multiple approaches were considered, the proposed solution involved dividing network access into two distinct rights:

1. The right to connect (or interconnect) to a shared network, and to inject or withdraw electricity at that point; and
2. The right to have electricity pass through a network between the injection and withdrawal points (the right of transit, sometimes called a 'use of system' service).

It was proposed that the first of these rights be established and implemented through contracts negotiated or arbitrated under the PNAC, as now, and the second be managed by legislated rights enshrined in the PNR.³⁴

It was proposed that the transition to this new regime for early projects would be managed contractually,³⁵ and for existing networks would be managed by discussion with the affected parties.³⁶

3.1.2 Stakeholder feedback

The majority of respondents provided support or qualified support for this proposal. Several respondents stated a need for further information on how this would be practically achieved, and how the use of system service would be priced (see proposal 5).

A common view was that, while this proposal will be difficult to design and implement, it will make connecting to the new common use network a far simpler process.

3.1.3 Policy direction

EPWA has not materially changed the proposed approach to managing the multiplicity of contracts from that outlined in the Consultation Paper, although it is now considering placing some of the key provisions in the PNAC rather than the PNR by amending the PNAC to:

- create a statutory right of transit as follows: if a network user has an access contract governing connection (or interconnection) at a point and a right to inject or withdraw electricity at that point, then:
 - if the user has a contractual right to inject electricity at that point — it includes a statutory right to have electricity transit through the interconnected network from that point of injection to wherever it is consumed; and
 - if the user has a contractual right to withdraw electricity at that point — it includes a statutory right to have electricity transit through the interconnected network from wherever it is generated to that point of withdrawal; and
- define the classes of service which may be embodied in that statutory right (e.g. 'firm' or interruptible).

³⁴ Consultation Paper, proposal 3.1

³⁵ Consultation Paper, proposal 3.2

³⁶ Consultation Paper, proposal 3.3

As proposed in the Consultation Paper, this statutory right of transit will apply to all networks, new and existing, covered and non-covered.³⁷ However, the operators of non-covered networks will be able to take measures to preserve the integrity of their own operations, provided they do not jeopardise power system security and reliability in the covered networks they are connected to.

These changes to the PNAC will be developed and consulted on as early as possible in the evolution timetable so that stakeholders can see how the new arrangements will work in practice, including the potential impacts on non-covered networks and the nature of the relevant services. EPWA will work with the operators of existing networks and existing contract holders to manage the transition to the new arrangements.

While the right to transit and the nature of the associated service will be set out in the PNAC, most of the provisions dealing with how the transit service is to operate either are already, or will be, set out in the PNR and Harmonised Technical Rules (HTR) as part of the general rules governing system operations and power system security and reliability.

The evolving PNR rules will deal with, among other things; backup capacity, energy balancing and trading, network planning standards, constraint management, and outage management. Many of these are being reformed as part of the ENPR project.

The above changes will relate only to the nature and operation of the transit right. They will not deal with payment for the system transit service, which is discussed in proposal 5 (section 3.3 of this paper).

3.1.4 Implementation

Table 3.1 shows key actions required to implement this proposal and their indicative timing.

Table 3.1: Actions required to implement splitting access rights into two

No.	Action	Owner	Indicative timing
3.1	Consult on and finalise detailed design of “right of transit” service for inclusion in the PNAC, including the types of service available (e.g. ‘firm’, interruptible).	EPWA	Stream 1: see EPNR Implementation Paper Stream 2 design: Early 2026 Publish intended parameters of the service: Mid 2026
3.2	Review to ensure the “right of transit” services are adequately operationalised in the PNR.	EPWA	Design: 2026
3.3	Activate ‘right of transit’ service in PNAC and implement any necessary changes in PNR.	EPWA	Design: 2026 Implementation: Q2 2027

3.2 Proposal 4 – Managing the impact of interconnection agreements

Whenever two networks interconnect, there must be an NSP-NSP interconnection contract. The scope of this contract will necessarily vary dependent on general circumstances but the range of matters that must be dealt with to manage network interconnection include:

- practical physical matters dealing with establishing and maintaining the physical interconnection, site access for both parties and the like;

³⁷ Consultation Paper, proposal 3.1(b)

- technical standards for operating the two networks to preserve security and reliability in both;
- rules designed to prevent or manage a situation in which one network causes congestion or power quality disturbances on the other; and
- commercial matters such as compensation for energy imbalances and any ESS benefits provided by one network to another.

In the absence of a regulatory regime, all these matters must be dealt with in the bilateral interconnection agreement. That was the position in the Pilbara before the current regime commenced in 2021.

Some of these matters can have implications for third party network users. This means an access seeker could be significantly impacted by obligations set out in a bespoke bilateral interconnection agreement to which they are not a party, and over which they may have limited control or even visibility.

3.2.1 Consultation paper proposal

The Consultation Paper proposed to limit the scope of NSP-NSP interconnection agreements, specifically prohibiting any provisions that seek directly or indirectly to impose obligations or restrictions on other network users.³⁸ Under this approach, the interconnection agreement would only deal with physical operational matters that affect only the two NSPs, and purely bilateral commercial matters between those NSPs. Any matters that may affect network users should be included in the PNR or HTR,³⁹ because these rules are publicly available and are controlled through a transparent and independent process in which all parties can participate.

EPWA proposed to support this prohibition by introducing more transparency over interconnection arrangements,⁴⁰ and sought feedback on whether these should have ISO oversight / approval, or be available to all network users (i.e. made public).⁴¹

3.2.2 Stakeholder feedback

The majority of stakeholders supported the proposal to limit matters that can be included in an interconnection agreement. However, there was significant opposition to the idea that these agreements be made public.

3.2.3 Policy direction

EPWA maintains the proposal put forward in the Consultation Paper and will amend the PNAC to prohibit provisions in interconnection agreements that seek directly or indirectly to impose obligations or restrictions on network users. This will prevent NSPs from relying on or giving effect to such provisions in their negotiations or dealings with access seekers and network users.

The prohibition will be designed such that an NSP will not be able to, for example:

- pass on to the user charges it may have agreed with the other NSP that relate to ESS or energy balancing (because these charges should be governed exclusively by the PNR); or
- impose technical or operational requirements on the user in addition to any set out in the PNR and HTR; and

³⁸ Consultation Paper, proposal 4.1

³⁹ Consultation Paper, proposal 4.2

⁴⁰ Consultation Paper, proposal 4.4

⁴¹ Consultation Paper, consultation question (4)(b)

- require the ISO to give effect to operational constraints (e.g. limitations on energy flows) not directly related to the physical characteristics of the interconnection assets (because the PNR regime of limit advice and constraint rules⁴² should be the exclusive regime for managing these matters).

EPWA will amend the PNAC to give the ISO the function of overseeing interconnection agreements. EPWA will consider whether additional transparency measures may be warranted, as part of its general review of transparency across the PNAC and PNR.

3.2.4 Implementation

Table 3.2 shows key actions required to implement this proposal and their indicative timing.

Table 3.2: Actions required to implement the management of interconnection agreements

No.	Action	Owner	Indicative timing
4.1	EPWA will consider whether any additional transparency measures are needed.	EPWA	Q1 2026
4.2	Amend the PNAC to: <ul style="list-style-type: none"> • limit the matters that can be included in an interconnection agreement; • prohibit an interconnection agreement from seeking directly or indirectly to impose obligations or restrictions on other network users; • prohibit an NSP from relying on an interconnection agreement as a basis for insisting that an access contract contain, or the ISO recognise, any provisions not directly related to the physical characteristics of the interconnection assets; and • confer oversight of interconnection agreements on the ISO. 	EPWA	Design: 2026 Implementation: Q4 2027

3.3 Proposal 5 – Managing tariffs across multiple networks

As the network meshing grows, the number of networks that electricity will be transported through will increase. Given the proposal to separate the contractual connection/injection/withdrawal service from the statutory transit service (see section 3.1), a user's electricity will be transported through networks for which it may not have a contract. The PNAC does not currently include a mechanism for these 'transit only' networks to recover a service charge from these users⁴³.

In the Consultation Paper, EPWA sought views on whether the structure of network tariffs will need to evolve to calculate and allocate a service charge from transit users to these networks. This charge is generally called a 'transmission use of system (TUOS) tariff'.

⁴² PNR subchapter 9.1

⁴³ Pending the reforms described in Proposal 4 (section 3.2), a service charge may be levied indirectly on network users through the NSP-NSP interconnection agreement– the NSP which does not have an access contract with the user can impose the charge on a neighbouring NSP which does have an access contract with the user, and the neighbouring NSP can then use that access contract to pass the charge on to the user. Abolishing this mechanism may result in a transitional issue for networks with high volumes of transit electricity.

3.3.1 Consultation paper proposal

The Consultation Paper did not yet propose any changes to the PNAC to create a TUOS tariff mechanism or otherwise allow the allocation of network costs and revenue between users and NSPs of neighbouring networks. It highlighted that further work would be undertaken to determine the best approach to address this matter.

3.3.2 Stakeholder feedback

Most stakeholders did not comment on this matter. Of those who did comment, most respondents supported maintaining the status quo for the time being, with a view to EPWA continuing work to design and consult on a proposed mechanism to manage tariffs across multiple networks in the future.

3.3.3 Policy direction

The current approach relies on bilateral contracts to manage tariffs across networks. This means that each NSP can only recover its required revenue from its contracted parties. The reforms to be implemented under proposal 3 above (see section 3.1.3) mean that this will be limited to only those parties physically connected to its network. The NSP will not be able to charge users whose electricity is merely transiting its system but who do not have a connection or interconnection contract with it.

EPWA proposes to leave that arrangement in place at this stage. However, as network interconnection and meshing increase, and as the number, technology mix and geographical diversity of network users increases, the lack of a tariff mechanism may eventually begin to result in inefficiencies or unfairness.

A TUOS tariff solution will need to be designed and implemented ahead of the next anticipated phase of network expansion in the Pilbara, projected to occur around 2030. Work is underway to develop an appropriate tariff mechanism and identify potential triggers for its future activation.

EPWA will consult with all stakeholders, including those with existing contracts, to determine how best to transition to the new tariff regime having regard to investment decisions already made.

A further transitional complexity may arise from the interaction of this issue with proposal 4 (see section 3.2), to not allow interconnection agreements to impose network charges on users. Pending a TUOS tariff, if a network is carrying substantial amounts of transit energy, it may be unfair for the NSP to be forced to recover 100 per cent of the network's required revenue from only connected users, and nothing from transit users.

EPWA encourages any NSPs who feel they may be in this position to make contact to discuss whether an interim measure may be necessary.

3.3.4 Implementation

Table 3.3 shows key actions required to implement this proposal and their indicative timing.

Table 3.3: Actions required to implement management of tariffs across multiple networks

No.	Action	Owner	Indicative timing
5.1	Develop and consult on a fit-for-purpose transmission use of system (TUOS) charging mechanism prior to the next round of network expansions.	EPWA	Design 2027

4 Better regulation for network tariffs

Whenever a network is regulated for third party access, a mechanism is needed to ensure it charges reasonable prices. The two current covered networks in the Pilbara are subject to PNAC-style light regulation,⁴⁴ and EPWA has proposed that this be the default mechanism for all future automatically covered Pilbara transmission networks.⁴⁵

The Consultation Paper addressed three questions relating to cost and tariff control:

- could the PNAC-style regulatory regime provide greater upfront certainty for investors, for example by allowing a greater range of pre-approvals relating to tariffs and other risk factors for greenfield projects? (proposal 6);
- should the Pilbara regime include a modified form of revenue control? (proposal 7); and
- does the PNAC offer sufficient flexibility to allow NSPs to determine reference tariffs for future-ready uncontracted capacity? (proposal 8).

These matters are discussed in the following sections.

4.1 Proposal 6 – Expanded powers to seek pre-approval of tariff and non-tariff elements (greater upfront certainty)

Uncertainty is often cited as a major barrier to investment. Concerns around future tariffs, expected returns and depreciation schedules can inhibit investor willingness to fund a greenfield project. One source of uncertainty is the risk that a regulator or arbitrator might, at some point after assets have been constructed, overturn a commercial arrangement which underpinned the decision to invest in those assets.

To help mitigate this risk, the current PNAC framework offers pre-approval by the ERA of capital expenditure, timing and scope for developing new network infrastructure.⁴⁶ However, that pre-approval does not extend to other elements such as the rate of return, ongoing costs, depreciation or tariff setting.

An NSP can opt to move to full regulation under the ENAC, which offers certainty on the above factors, but also locks the NSP and users into expensive periodic regulatory reviews and potentially other stricter regulatory controls. The Consultation Paper discussed⁴⁷ whether the PNAC should be amended to expand the application of pre-approvals under the PNAC beyond new infrastructure investment.

4.1.1 Consultation paper proposal

The Consultation Paper proposed to expand the scope of the ERA's existing pre-approval process under the PNAC to allow an NSP to seek pre-approval on items other than new capital expenditure.⁴⁸ EPWA sought feedback on the extension of pre-approval to cover economic tariff and non-tariff elements such as:⁴⁹

- the regulated asset base;
- forecast operating and maintenance costs;

⁴⁴ Horizon Power's coastal network by prescription under PNAC section 17, and APA's (formerly Alinta's) Port Hedland network by prescription under PNAC section 18

⁴⁵ Consultation Paper, proposal 1.2

⁴⁶ PNAC section 56. It is not clear whether this pre-approval is or is not available for setting the initial capital base (also known as the regulated asset base, or RAB) for greenfields networks. The initial capital base is set under PNAC section 53, and must normally be between depreciated optimised replacement cost and depreciated actual cost.

⁴⁷ Consultation Paper, section 4

⁴⁸ Consultation Paper, proposal 6.1

⁴⁹ Consultation Paper, proposal 6.2

- the rate of return;
- depreciation schedules;
- reference service terms and conditions; and
- the tariff setting methodology.

The Consultation Paper noted that EPWA was considering what safeguards should be included in respect of pre-approvals, for example a method to re-open approval in certain circumstances.⁵⁰ It also sought feedback on whether an expanded pre-approval mechanism might be extended to existing networks.⁵¹

4.1.2 Stakeholder feedback

There was strong support for the proposed expansion of pre-approvals. Stakeholders supported a public and transparent pre-approval process.

Most stakeholders supported the list of potential elements that may benefit from pre-approvals, with the RAB, rate of return and depreciation schedule highlighted as particularly important. Some stakeholder suggested NSPs should be able to seek pre-approval on any matter.

There were mixed views on whether pre-approvals should be limited to greenfield projects only, or whether there would be benefit in allowing pre-approvals for existing networks.

The need to be able to re-open or revisit pre-approvals was highlighted as an important issue. It was suggested that pre-approvals should only apply for a set period of time or be subject to review triggers. Suggestions included allowing greenfield NSPs to review pre-approvals after an initial 12 months of operation to test alignment with forecasts, and allowing pre-approvals to be linked to the timeframe of contracts entered-into by NSPs (with consumers and generators), with approvals required again when contracts come up for renegotiation.

Most stakeholders requested further information on how the pre-approval process would work in practice.

4.1.3 Policy direction

The policy direction relating to pre-approvals remains broadly unchanged from the proposal outlined in the Consultation Paper, with some minor modifications. The fundamental principle of expanding the scope of pre-approvals remains. The definitive list of what elements will be able to be pre-approved is not yet defined.

EPWA remains open on what elements can be pre-approved but considers the list of economic, tariff and non-tariff elements originally proposed in the Consultation Paper should form the basis of the pre-approval mechanism. EPWA will work with current project proponents to get a better understanding of which pre-approvals provide the most investment certainty and look to expand or reduce the list following that process, and what safeguards should accompany each pre-approval.⁵²

⁵⁰ Consultation Paper, proposal 6.3 For example, it would make little sense for a pre-approved rate of return to stand in perpetuity, with no scope for review as market conditions change in either direction.

⁵¹ Consultation Paper, proposal 6.5 and question (6)(f)

⁵² For example, the current PNAC mechanism for pre-approval of new facilities investment provides that the pre-approval only binds a subsequent arbitrator if the new facilities investment has proceeded as proposed: PNAC section 56(5). The PNAC also allows the ERA to impose any conditions on the pre-approval which it considers appropriate: section 56(3). The ERA, when considering what conditions to impose, will have regard to, among other things:

- the Pilbara electricity objective: Act section 3A(2) and 119(2));
- the section 119 'have regard to' factors: Act section 119(3) and *Electricity Industry (Pilbara Networks)*
- *Regulations 2021*, regulation 4; and
- the PNAC's revenue and pricing principles in PNAC section 8: PNAC section 45(1)(a).

The original intent was for the ERA to administer the expanded pre-approval process. However, given the short timeframes before pre-approvals would be required to support Priority Projects, there is not enough time to provide make the regulatory changes required to enable the ERA to undertake these activities, and to recover the associated costs. Therefore, for the current round of Priority Projects, the Coordinator of Energy may determine the pre-approvals (if required) and the associated safeguards as part of the contractual process.

If approved, pre-approval elements for these projects will be recorded as fixed principles in each project's contract (see proposal 12 in section 6.2). In due course, the effectiveness of this process will be reviewed and consideration given as to whether pre-approvals should remain with the Coordinator, or whether there is a material benefit in conferring these functions on the ERA.

EPWA proposes extending the pre-approval process to existing networks, where relevant.

4.1.4 Implementation

Table 4.1 shows key actions required to implement this proposal and their indicative timing.

Table 4.1: Actions required to implement an expanded scope for pre-approvals

No.	Action	Owner	Indicative timing
6.1	Work with stakeholders to develop a list of tariff and non-tariff elements that should be able to be pre-approved (including any contractual provisions which might hinder access by others, as discussed under proposal 10).	EPWA	Q1 2026
6.2	Amend the PNAC to allow for agreed pre-approvals to be undertaken.	EPWA	Q4 2026

4.2 Proposal 7 – Provision for possible revenue control

Tariff regulation is designed to give the NSP of a covered network an opportunity to earn a fair, but not excessive, level of revenue. Regulated tariff models determine how much revenue the NSP needs in a year to cover its efficient costs of running the network, including a risk reflective return on its investment. This revenue is then to be recovered from network users through tariffs.

Under ENAC-style full regulation, tariff regulation may make an NSP subject to:

- a revenue cap, which limits the amount of revenue the NSP can earn from providing regulated network services, with prices set to recover that revenue amount and no more (unless incentive mechanisms are included, e.g. to encourage additional sales); or
- a price cap, which directly limits the tariffs charged but allows the NSP to earn more revenue if it can increase its volume of sales, or less revenue if sales fall short of projected volumes.⁵³

Under PNAC-style light regulation, there is currently no form of revenue or price cap to control the amount of revenue an NSP can earn beyond the high level statements in the PNAC's revenue and pricing principles.⁵⁴

The most relevant of these revenue and pricing principles are those which state that:

⁵³ See Consultation Paper, section 4.2.2

⁵⁴ PNAC section 8

- network tariffs should allow the NSP an opportunity to recover ‘at least’ its efficient costs of operating the network⁵⁵; and
- prices should allow to earn a fair, risk reflective return on the NSP’s investment.⁵⁶

These principles must be applied in determining price lists, and the arbitrator must apply them in resolving an access dispute,⁵⁷ but there is no general regulatory scrutiny of an NSP’s revenue. Further, because any access dispute involves only the parties to the particular bilateral access negotiation and will focus only on the tariffs payable by the relevant access seeker, there is no easy way for an arbitrator to address general over-recovery across more than one contract.

4.2.1 Consultation paper proposal

In the Consultation Paper, EPWA proposed the PNAC be amended to allow a covered NSP to be made subject to revenue control. While the form of control to be applied was not defined, EPWA considered the feasibility of introducing a form of revenue cap,⁵⁸ designed to ensure NSP revenue from negotiated outcomes did not exceed an appropriate risk-reflective rate of return, subject to any incentives.⁵⁹

On the question of incentives, the Consultation Paper proposed that any form of revenue control should incentivise efficient growth in network utilisation, and share the benefits of utilisation growth appropriately between the NSP, existing users and new users.⁶⁰

4.2.2 Stakeholder feedback

The majority of stakeholders did not support the introduction of revenue control. Several stakeholders submitted that revenue control is generally not necessary in the Pilbara and application of any form of revenue or price cap should be optional for NSPs or triggered under specific predefined conditions. The general consensus was that revenue control should not be applied automatically.

Stakeholders highlighted the potential impact of revenue controls on investment returns and urged caution on the design of any reforms in this area. Erosion of investor confidence was cited as an issue. Some stakeholders suggested a price cap is preferential to a revenue cap on the basis that a price cap gives an NSP incentive to maximise asset use and attract new users.

Several stakeholders felt the ERA would be the most appropriate body to administer any form of revenue or price control.

4.2.3 Policy direction and implementation

No form of revenue cap or price cap regulation will be introduced under the PNAC at this stage. EPWA will instead amend the PNAC’s revenue and pricing principles to ensure they align with the PET objectives and provide a clear pricing framework to ensure fair, efficient and transparent access while still attracting private capital investment in transmission projects.

For the time being, revenue regulation will continue to be founded on transparency⁶¹ and public scrutiny, backed by appropriate powers for the arbitrator to ensure adequate accountability.⁶²

⁵⁵ PNAC section 8(2) (simplified)

⁵⁶ PNAC section 8(4) (simplified, and omitting the fact that section 8(4) applies on a per-service basis)

⁵⁷ PNAC section 45(1)(a)

⁵⁸ Consultation Paper, proposal 7.1

⁵⁹ Consultation Paper, proposal 7.2

⁶⁰ Consultation Paper, proposal 7.3

⁶¹ This will be included in the general review of PNAC and PNR transparency measures, see action 2.3.

⁶² This will include a review under proposal 11 (section 6.1 below) of whether PNAC section 14(8), which provides that access dispute arbitration is not available after the access contract has been signed, might inadvertently limit network users’ ability to hold the NSP accountable to the revenue and pricing principles.

For Priority Projects, EPWA will address this issue contractually by fixed principles. Proponents will be required to adhere to the PNAC revenue and pricing principles (as amended) and be subject to monitoring and reporting.

As is already the case for all PNAC-regulated networks, the Minister for Energy will be able to convert any NSP from PNAC regulation to ENAC regulation by Ministerial form of regulation decision.⁶³ As discussed in section 2.1, EPWA will review the PNAC form of regulation factors and ENAC coverage criteria to make it clear that one basis on which the Minister can do this is if the NSP is found to be overcharging, i.e. earning more than a fair, risk reflective rate of return. This prospect of full regulation as a backstop is an important mechanism for deterring monopolistic behaviour.

4.2.4 Implementation

Table 4.2 shows key actions required to implement this proposal and their indicative timing.

Table 4.2: Actions required to implement revenue control

No.	Action	Owner	Indicative timing
7.1	Review PNAC revenue and pricing principles to ensure they support the PET Plan objectives while remaining consistent with PNAC light regulation.	EPWA	Q3 2026
7.2	Amend the PNAC to reflect updated revenue and pricing principles.	EPWA	Design: 2026 Implementation: Q4 2026
7.3	Amend the PNAC form of regulation and ENAC coverage criteria to clarify that the Minister can intervene and impose full regulation under the ENAC when an NSP is found to be non-compliant with the (amended) revenue and pricing principles (related to action 1.2).	EPWA	Design: Mid 2027 Implementation: Q4 2027

4.3 Proposal 8 – Managing tariffs for future-ready capacity

A key criterion of the PET Plan required early project proponents to build in additional ‘future-ready uncontracted capacity’, above what is needed to service foundation users, and to take the risk of that capacity not being sold. The EOI Application Guidelines asked proponents to show how their tariff models will deal with this capacity.

The PNAC does not contain an explicit mechanism to deal with investment made in anticipation of future demand (sometimes called ‘speculative investment’ in other regulatory regimes), but the PNAC does allow NSPs great flexibility in tariff setting.

4.3.1 Consultation paper proposal

The Consultation Paper did not propose any changes to the PNAC to manage this issue,⁶⁴ because EPWA considered that the PNAC’s current flexibility will likely be sufficient to manage the issue of setting tariffs for uncontracted capacity. EPWA sought views on whether the PNAC requires any amendments to address this matter.⁶⁵

⁶³ PNAC section 20

⁶⁴ Consultation Paper, proposal 8.1

⁶⁵ Consultation Paper, question (8)(a)

4.3.2 Stakeholder feedback

EPWA received limited feedback on this matter, but those that responded agreed that the PNAC allows sufficient flexibility to manage this issue and therefore no changes are required. Some stakeholders suggested that managing tariffs for future ready capacity is best addressed through contractual arrangements with individual proponents.

4.3.3 Policy direction

No amendments will be made to the PNAC to specifically accommodate future-ready uncontracted capacity. However, the EOI Application Guidelines indicated that Priority Proponent's tariff models must address this issue and must produce revenue outcomes consistent with the PNAC pricing principles.

4.3.4 Implementation

There are no further actions required for this proposal.

5 Better regulation of terms and conditions

Access regimes typically seek to regulate not just tariffs, but also the terms of access contracts, because whether a given tariff is good or poor value depends on the service standards, risk allocation and other matters set out in the accompanying contract.

This raises two questions:

- how can the regime assist access negotiations by providing a suitable set of model terms and conditions? (proposal 9); and
- how could/should foundation and other user contracts be regulated if they might hinder access by others? (proposal 10).

These are addressed in the following sections.

5.1 Proposal 9 – Model access terms and conditions

Under the PNAC, NSPs must publish a services and pricing policy, which must among other things set out reference terms and conditions for every reference service⁶⁶ the NSP proposes to offer. The PNAC provides a non-exhaustive list of the matters these reference terms and conditions must address.

The NSP must consult the public on the services and pricing policy before publishing or amending it. It must consider any public feedback on its proposed policy, but there is no regulatory approval or oversight on the proposed policy. The content of the policy, including the proposed reference terms and conditions, remains wholly in the NSP's control.

As a consequence, the PNAC allows an access seeker flexibility to adopt or not adopt the NSP's published reference terms.⁶⁷

An inability to agree on access terms can be as much an obstacle to access as an ability to agree a tariff. Providing a set of model terms and conditions is often used to maximise the chances of parties reaching a commercially appropriate outcome without having to resort to arbitration. If arbitration cannot be avoided, model terms and conditions can simplify the arbitration process.

5.1.1 Consultation paper proposal

The Consultation Paper set out three options to address this issue: pre-approval of access contract terms; non-binding advice; and model access terms.⁶⁸ EPWA recommended model access terms as the preferred option⁶⁹ on the basis that it would strike a balance between flexibility for the NSP and providing clear guidance on what reasonable terms might look like.

Under this model, a schedule to the PNAC would set out a model set of access terms, as the ENAC does⁷⁰. However, because the PNAC does not include a mandatory⁷¹ up-front ERA approval mechanism, the PNAC's use of these model terms will need to be slightly different.

⁶⁶ "Reference service" is a regulatory concept describing a pre-defined service set out in the NSP's published (and, under ENAC regulation, ERA-approved) access arrangement documents, with defined "reference terms and conditions", and an associated "reference tariff". These operate only as a guide – the NSP and access seeker are free to negotiate for any service, terms and conditions and tariff they choose: PNAC section 14.

⁶⁷ PNAC section 14 (3) and 40(6)

⁶⁸ Consultation Paper, section 5.1.2

⁶⁹ Consultation Paper, proposal 9.1

⁷⁰ ENAC Appendix 3

⁷¹ As noted in section 4.1, access terms are proposed to be one of the elements for which pre-approval is available.

The Consultation Paper noted that development was still needed on the extent to which the NSP's published services and pricing policy would be permitted to depart from the model terms and, if it did so, what weight the arbitrator should give to the NSP's approach.⁷² The paper proposed that the NSP might be encouraged but not compelled to adopt these model terms in its services and pricing policy and required to identify and explain any departures,⁷³ and that the arbitrator will apply the model terms as a benchmark.⁷⁴ These proposals will be included in the further consideration referred to below.

5.1.2 Stakeholder feedback

Of those that responded, most stakeholders acknowledged the need to provide some standard terms and conditions that could provide users with an expectation of the starting point for contract negotiations.

Most stakeholders agreed that the preferred option (to include model access terms and conditions in the PNAC) would provide a reasonable balance of certainty and flexibility for NSPs and users.

5.1.3 Policy direction

EPWA maintains the proposal put forward in the Consultation Paper and will work with stakeholders to develop those model access terms and conditions, including rules governing the extent to which these model terms may constrain the NSP and arbitrator.

Table 5.1 shows key actions required to implement this proposal and their indicative timing.

5.1.4 Implementation

Table 5.1: Actions required to implement model access terms and conditions

No.	Action	Owner	Indicative timing
9.1	Develop model access terms and conditions in consultation with stakeholders, and determine the extent to which these model terms should constrain the NSP and arbitrator.	EPWA	Q1 2026
9.2	Amend PNAC to include model access terms and conditions added as a schedule, and guidance for NSP and arbitrator on their use.	EPWA	Design: Mid 2026 Implementation: Q4 2027

5.2 Proposal 10 – Managing user rights (including foundation user rights) which hinder access by others

Currently, contracts for third party access in the Pilbara are negotiated between the NSP and network user, with no upfront governance of terms or conditions, or after-the-event transparency. This means a contract might include terms that favour that specific user at the expense of other users (current users or future access seekers).

⁷² Consultation Paper section 5.1.2

⁷³ Consultation Paper, proposal 9.2

⁷⁴ Consultation Paper, proposal 9.3

Managing user rights that could hinder access by others is critical to achieving the PET objectives and ensuring the regime remains viable for subsequent access seekers. The Consultation Paper discussed this subject primarily in terms of foundation users⁷⁵ but noted the issue can arise in any access contract. EPWA observed there was a strong case for measures to manage such user rights to apply to all access contracts, and plans to proceed on that basis.

5.2.1 Consultation paper proposal

The Consultation Paper outlined two options to ensure contractual user rights do not form a barrier to other users accessing the network. These options were:

1. To prohibit contract conditions that prevent or substantially inhibit third party access through addition of an 'effects test' in the PNAC (to supplement the 'purpose' test in the Act⁷⁶); or
2. To prohibit contractual provisions that have more specific effects.

Both options would need to be supported by adequate transparency measures to ensure any breaches of prohibitions can be detected.⁷⁷

EPWA proposed adopting the first option, i.e. introducing an effects test applicable to all user contracts (foundation or otherwise) to supplement the Act's purpose test.⁷⁸

5.2.2 Stakeholder feedback

Most submissions acknowledged the need to ensure user contract terms and conditions do not hinder the ability of future access seekers to access the network. There were, however, mixed views on how this could or should be achieved. Of the stakeholders supporting this proposal, most stakeholders supported the introduction of an effects test.

There was also support for a level of oversight of the contents of contracts (e.g. by the ISO), but no support for the publication of contracts.

5.2.3 Policy direction

EPWA maintains its position that access contracts should not hinder future access or otherwise harm achievement of the Pilbara electricity objective or the PET objectives. However, on further reflection, EPWA considers a blanket effects test prohibiting all conditions that might hinder other users' access, is not practicable and too heavy-handed an approach.

The effects test is not considered practicable because it is too blunt an instrument – it would arguably catch every access contract because the act of reserving capacity for one user makes that capacity unavailable for another. It would also be too heavy-handed – prohibition would attract civil penalties and expose the parties to the reputational harm associated with having engaged in illegal conduct. These sanctions might not be appropriate in all cases.

Further, there are circumstances where it is desirable for contractual provisions to impact subsequent users. For example, where a foundation user has funded construction of an asset, it is perfectly reasonable to expect subsequent users to share in its costs. This can be achieved by entitling the foundation user to receive a rebate from subsequent users. A blanket effects test would prohibit this normal user pays approach because having to pay the rebate makes access more expensive for the next access seeker.

⁷⁵ The term "foundation user" is used loosely to describe those users who, by signing long-term take or pay access contracts, provide sufficient revenue certainty to enable a greenfield development to secure finance. In a sense, these users underwrite the project risk. They are mentioned specifically here because they typically have more negotiating leverage against the NSP than subsequent access seekers once the network is up and running, and so are in a better position to extract favourable terms, including terms which hinder access by others.

⁷⁶ *Electricity Industry Act 2004*, section 120S

⁷⁷ Consultation Paper, proposal 10.2

⁷⁸ Consultation Paper, proposal 10.1

Rather than making such clauses illegal, EPWA proposes to use measures to simply render them ineffective, by allowing decision makers (predominantly the ISO and arbitrator) to disregard the relevant contract terms in specified circumstances, for example, if it operates contrary to the Pilbara electricity objective. Making this a decision by a decision-maker in each case, rather than a blanket prohibition, also leaves room for the regime to recognise that some user rights of this nature are appropriate. See discussion of pre-approval below, for how the regime can manage the risk associated with this discretion.

However, even though there will be no blanket prohibition, some clauses will still be prohibited outright. For example, the regime will not permit contractual clauses which purport to give a user a right of first refusal or even a veto over someone else's access application. Such clauses will be addressed by specific, targeted prohibitions.

EPWA intends to engage further with stakeholders to identify the types of user rights that may hinder access by others, and to identify a reasonable and effective solution for each.

Managing priority rights to spare capacity

One place this issue arises is when the user requests a priority right to future spare capacity. It is understandable for a user (foundation or otherwise) to want to know that it will be able to access spare capacity when it needs to increase its electricity demand. But such priority rights can distort the access queue and make access much harder or impossible for everyone else.

EPWA does not consider it appropriate for the regime to allow priority rights of this nature. It considers that a user seeking additional capacity should take its place in the access queue equally with all other users.

EPWA recognises that the ability to access spare capacity quickly and equitably is an important commercial issue for project proponents and their customers. Fundamental to the achievement of the PET objectives is the ability to provide users confidence about their future expansion plans. EPWA considers the regime can do this, without individual contractual priority rights, through a complimentary set of measures designed to give users confidence that future capacity will be available when needed:

1. Priority Project Proponents are being required to build future-ready spare capacity into their projects, so there should be little capacity scarcity risk in the short to medium term.
2. For the longer term, as this spare capacity is used up, the ISO's expanded planning function (see section 3.7 of the EPNR Consultation Paper) is intended to enable all parties to see when expansion works need to be considered.
3. The PNAC already obliges the NSP to undertake expansion work as required by access seekers,⁷⁹ and empowers the arbitrator to order the NSP to do so.⁸⁰

EPWA will continue to engage with stakeholders on the management of user rights, seeking to achieve a suitable balance between securing adequate certainty for project proponents, and preserving the PET objective of effective common use infrastructure on the other.

Pre-approval to mitigate the risk of clauses later being overturned

A problem with regulating user rights clauses, whether by blanket prohibition or by more flexible and bespoke measures as proposed, is that parties who relied on a clause when making an investment decision might subsequently find the clause challenged or rendered ineffective, possibly years later. To address this risk, EPWA proposes to add clauses such as this to the list of things for which pre-approval is available, see proposal 6 in section 4.1.

⁷⁹ PNAC section 16

⁸⁰ PNAC section 115(2)(c)

5.2.4 Implementation

Subject to stakeholder feedback on the revised proposal for this issue, Table 5.2 shows key actions required to implement this proposal and their indicative timing.

Table 5.2: Actions required to implement managing foundation user rights

No.	Action	Owner	Indicative timing
10.1	Amend the PNAC to allow the power for the ISO, ERA or arbitrator to disregard any contractual right if it hinders access or is contrary to Pilbara electricity objective.	EPWA	Design: 2026 Implementation: Q4 2027
10.2	Introduce transparency measures in PNAC and the PNR that provide visibility of contracts to enable compliance monitoring and enforcement.	EPWA	Linked to general transparency work (refer 2.3)
10.3	Develop and implement in the PNAC prohibitions on specific types of user right, e.g. rights of first refusal or veto over, or visibility of, applications.	EPWA	Design: Q1 2026 Implementation: Q4 2026

6 Other improvements to regulation

The PNAC review provides opportunity to make other improvements to the regulatory framework, including:

- how to improve mechanisms for accountability and compliance with the PNAC (proposal 11); and
- whether fixed principles could be introduced to the PNAC framework and how this mechanism could be used (proposal 12).

These matters are discussed in the following sections.

6.1 Proposal 11 – Improved accountability measures

The light regulation model used in the Pilbara relies on an access seeker's willingness, time and resources to commence an access dispute. Arbitration can be lengthy and the outcome uncertain, which means users may be reluctant or unable to start disputes. This means there is a risk NSPs may not be held properly to account.

One alternative to relying solely on arbitration is to shift to full regulation under the ENAC. However, imposing a full ENAC-style regulatory regime in the Pilbara is not desired by NSPs, users or government, and would be inconsistent with the PET objectives at this time.

EPWA has therefore considered what other accountability measures could be used to complement arbitration in the Pilbara.

6.1.1 Consultation paper proposal

In the Consultation Paper, EPWA proposed to supplement arbitration with other accountability measures,⁸¹ and requested feedback on the following measures under consideration:⁸²

- activating the civil penalty and other enforcement regimes under the *Electricity Industry Act 2004* for both the PNAC and PNR;
- a form of rapid (likely binding) expert determination for technical matters;
- formal published advisory options by an agency or independent expert; and
- triggers that activate more stringent regulation, including triggers to switch a network from light regulation under the PNAC to full regulation under the ENAC.

6.1.2 Stakeholder feedback

Several respondents either supported or provided qualified support to activate the Act's civil penalty and other enforcement regimes for both the PNAC and the PNR. There was also some support for expert determination for technical disputes and the use of independent expertise. There was little support for triggers that activate more stringent regulation.

6.1.3 Policy direction

Accountability and compliance will be increased across the PNAC and the PNR,⁸³ including through the expanded oversight functions of the ISO, as described in proposal 2. EPWA will also review the penalty and compliance regime for both the PNR and PNAC to ensure it is fit for purpose in an expanded network, and will continue in consultation with stakeholders to consider the other options outlined including rapid determinations and advisory opinions.

⁸¹ Consultation Paper, proposal 11.1

⁸² Consultation Paper, proposal 11.2

⁸³ As referenced in section 4.2.3, this will include a review of whether PNAC section 14(8), which provides that access dispute arbitration is not available after the access contract has been signed, might inadvertently limit network users' ability to hold the NSP accountable to the revenue and pricing principles.

Wherever possible, EPWA will favour the use of transparency over more prescriptive measures. It proposes to consult generally on how to increase transparency across both the PNR and PNAC, see action 2.3 in section 2.2.

During this review, EPWA will also consider what would be appropriate to trigger more stringent regulation. For example, coverage criteria in the ENAC and the revenue and pricing principles and form of regulation factors in the PNAC will be amended to enable the Minister for Energy to place a network under the ENAC if it is found to be overcharging or earning more than a reasonable risk reflective return.

6.1.4 Implementation

Table 6.1: Actions required to implement improved accountability measures

No.	Action	Owner	Indicative timing
11.1	Review and revise the civil penalty and compliance regime for both the PNAC and PNR. Concurrently, complete reforms of immunity regime.	EPWA	Design: 2026
11.2	Further review and develop additional accountability measures as required (links to transparency review in action 2.3).	EPWA	Design: 2026
11.3	Amend the PNAC to strengthen and streamline the existing third party access dispute resolution and arbitration framework.	EPWA	Design: 2027 Implementation: Q4 2027
11.4	Monitor what additional accountability/enforcement measures may be required as networks and regime evolve.	EPWA	Ongoing

6.2 Proposal 12 – A transitional fixed principles mechanism

Fixed principles are commonly used in full regulation to allow the regulator to approve certain components of an access arrangement for longer than one regulatory period. For example, a fixed principle might be used to establish how depreciation or incentive mechanisms should be applied for an extended period, with aim of giving the NSP certainty on returns or incentives. Fixed principles are used to de-risk issues, by protecting the NSP from a regulator changing its mind at a subsequent regulatory reset.

Fixed principles of this nature would not be appropriate in a light regulation framework as it may allow an NSP to grant itself protection from the arbitrator. However, EPWA has proposed introducing a different version of the fixed principle concept, for at least a transitional period, as a means of providing investment certainty for early transmission projects.

6.2.1 Consultation paper proposal

In the Consultation Paper, EPWA did not specify a fixed principles mechanism. EPWA asked stakeholders to provide their views on whether fixed principles would be a useful and practicable mechanism in the PNAC and how they might be applied.⁸⁴

⁸⁴ Consultation Paper, proposal 12.1 and section 6.2.2

6.2.2 Stakeholder feedback

Most stakeholders supported the introduction of a transitional fixed principles mechanism. Limited feedback was provided on what that mechanism may look like, however, several stakeholders felt development of a fixed principles mechanism should be designed as a priority, and were willing to participate further in that design process.

Stakeholders generally felt that fixed principles would be a useful way of providing investment certainty, particularly for greenfield projects. One suggestion relating to design was that the fixed principle mechanism should consist of clear regulatory safeguards to prevent situations where investors bear disproportionate risk while waiting for demand to materialise.

6.2.3 Policy direction

Within the current constraints of the Act, EPWA is now considering a mechanism for the PNAC as follows:

- The State and a project proponent will agree that certain matters be proposed for inclusion in the PNAC as fixed principles.
- For each such principle, a code change proposal will be developed for public consultation to include the fixed principle in a schedule to the PNAC.⁸⁵
- Subject to the outcomes of that consultation, the fixed principle will be incorporated in a PNAC schedule.
- The PNAC will include a mechanism which specifies the effect fixed principles can have, for example that a decision maker (the ISO, an arbitrator or the ERA) must not make a decision inconsistent with the fixed principle, or that their discretion is limited⁸⁶ on matters dealt with by the fixed principle.

Depending on the matters being negotiated with project proponents, a similar mechanism may be required in the PNR.

Fixed principles will not bind the Minister's discretion in respect of future PNAC changes, or the Coordinator's discretion in respect of future PNR changes.

For Priority Projects, EPWA will discuss both the above mechanism and the content of any proposed fixed principles with project proponents. If these discussions produce an agreement, the resulting PNAC changes will be put forward for public consultation.

6.2.4 Implementation

Table 6.2 shows key actions required to implement this proposal and their indicative timing.

Table 6.2: Actions required to implement the fixed principles mechanism

No.	Action	Owner	Indicative timing
12.1	Amend PNAC to allow inclusion of fixed principles.	EPWA	Design: Q1 2026 Implementation: Q2 2026

⁸⁵ Section 120H requires all proposed PNAC changes to undergo public consultation

⁸⁶ PNAC section 10 sets out a "limited discretion" regime

Appendix A Summary of policy direction

The following table summarises the initial high-level consultation paper proposals and proposed policy directions after stakeholder feedback.

Consultation paper proposal	Policy direction
1. Coverage	
<ul style="list-style-type: none"> Automatic coverage for all new large-scale transmission network infrastructure No revocation of coverage All Priority Projects will be required to opt into PNAC-style regulation prior to automatic coverage 	<p>As originally proposed, with minor modifications:</p> <ul style="list-style-type: none"> Exemptions to automatic coverage will include (but not be limited to) connection assets owned and operated by someone other than the host network service provider; less than 10km in length; radial from a covered network; and only used by a single generator or load Exemption will not be available for: assets located within a Strategic Industrial Area; or transmission voltage substations directly connected to the host transmission network Inclusion of potential suspension of obligations Revise outdated coverage criteria in ENAC and PNAC to ensure they are fit-for-purpose
2. Managing vertical integration	
<ul style="list-style-type: none"> Transfer sensitive functions to ISO subject to establishing a truly independent ISO General increased transparency in the Pilbara's electricity market and system operations as a supplementary mitigation measure 	<p>As originally proposed, with the following clarifications:</p> <ul style="list-style-type: none"> Transparency to be achieved through mix of publication and ISO oversight, subject to ISO governance reforms
3. Avoiding multiplicity of contracts – splitting access in two	
<ul style="list-style-type: none"> Split the third-party right to access a network into a right to connect and a right to use 	As originally proposed
4. Managing the impact of interconnection agreements	
<ul style="list-style-type: none"> Impose boundaries on interconnection agreements to prohibit them from restricting other network users Make interconnection agreements public, subject to limited exceptions 	<p>As originally proposed, with minor modifications:</p> <ul style="list-style-type: none"> Implement transparency requirements with ISO oversight, subject to governance reforms
5. Managing tariffs across multiple networks	
<ul style="list-style-type: none"> No changes proposed, suggestions invited 	<ul style="list-style-type: none"> EPWA will continue to develop and consult on suitable mechanism and triggers for activation
6. Expanded powers to seek pre-approval of tariff and non-tariff elements (greater upfront certainty)	
<ul style="list-style-type: none"> Amend PNAC to allow pre-approval from ERA on items other than new facilities investment 	<p>As originally proposed, with minor modifications:</p> <ul style="list-style-type: none"> Pre-approval elements for priority projects will be identified through contract negotiations If required, the Coordinator of Energy to provide pre-approvals for priority projects Further consideration of safeguards (reopener on certain trigger events)

Consultation paper proposal	Policy direction
7. Provision for possible revenue control	
<ul style="list-style-type: none"> Amend PNAC to allow a covered NSP to be made subject to revenue control. 	<ul style="list-style-type: none"> No present proposal to add revenue control to the PNAC PNAC pricing principles to be reviewed for alignment with PET Plan objectives and to provide a clear pricing framework but to remain consistent with light regulation Amend ENAC coverage criteria and PNAC form of regulation criteria to confirm Minister can impose full price regulation (ENAC) if light regulated network is found to be overcharging
8. Managing tariffs for future-ready capacity	
<ul style="list-style-type: none"> Proposed that PNAC remains unchanged until a case for change emerges 	<ul style="list-style-type: none"> As originally proposed
9. Model access terms and conditions	
<ul style="list-style-type: none"> Amend the PNAC to set out model terms and conditions to access contracts Model terms used as a benchmark in a dispute 	<ul style="list-style-type: none"> As originally proposed
10. Managing user rights (including foundation user rights) which hinder access by others	
<ul style="list-style-type: none"> Supplement the 'purpose test' in the <i>Electricity Industry Act 2004</i> to better regulate foundation user and other contractual rights which may have the effect of preventing or hindering access by others Increase transparency of these arrangements 	<ul style="list-style-type: none"> No supplement to the 'purpose' test Amend the PNAC to require decision-makers to disregard any contractual provisions that may hinder access or the achievement of one or more elements of the Pilbara Electricity Objective or PET objectives
11. Improved accountability measures	
<ul style="list-style-type: none"> Supplement current forms of arbitration of access disputes with new measures that have a lower threshold of activation (e.g. rapid expert determination, advisory opinions) 	<ul style="list-style-type: none"> As originally proposed to supplement arbitration options Review civil penalty and compliance regime in Pilbara Regulations to ensure it is, and remains fit-for-purpose in the Pilbara Continue to develop improved accountability measures and potential triggers
12. A transitional fixed principles mechanism	
<ul style="list-style-type: none"> Consideration of a fixed principle mechanism by which certain principles recorded in contract between the State Government and an NSP are binding 	<ul style="list-style-type: none"> As originally proposed Amend PNAC to reflect fixed principle agreement

Appendix B Implementation activities

The following table provides a summary list of the actions required to give effect to the proposed reforms and their indicative timing and key dependencies.

Activity		Indicative timing	Dependency
1. Coverage			
1.1	Amend the PNAC to: <ul style="list-style-type: none"> provide for all new Pilbara transmission networks to be automatically covered, if they meet certain criteria; provide for an exception from automatic coverage for specified connection assets; provide the ability for the ERA to suspend some compliance obligations for an automatically-covered NSP should they meet certain criteria; and supplement the form of regulation factors and process, and make complementary changes to ENAC coverage criteria, to make it clear that full regulation can be imposed if the NSP is earning more than a fair, risk reflective rate of return contrary to the (refreshed) revenue and pricing principles (related to action 7.2). 	Design: 2026 Implementation: To be determined (likely 2027)	Head of power
1.2	Amend the coverage criteria in the ENAC to be consistent with concepts under the <i>Competition and Consumer Act 2010</i> , the State Electricity Objective and the PET objectives.	Design: 2026 Implementation: Q4 2027	Subsequent to action 1.1
2. Managing vertical integration			
2.1	Agree the list of sensitive functions that should be transferred to the ISO and the timing or triggers for transfer.	Q1 2026	Subsequent to ISO governance reform expected in early 2026
2.2	Amend the PNR to confer the list of sensitive functions on the ISO.	Design: 2026 Implementation: Q1 2027 or thereafter as triggers occur	Subsequent to ISO governance reform expected in early 2026
2.3	Develop Consultation Paper drawing together all proposals to increase transparency across PNAC and PNR to provide more detail and integrated proposal.	Q1 2026	N/A
2.4	Amend the PNAC to reframe the ringfencing objectives to better recognise and mitigate the incentives in vertically integrated businesses towards anti-competitive behaviour.	Design: Mid 2026 Implementation: Q4 2026	Part of a broader set of transparency measures overseen by ISO – dependent on changes under EPNR Implementation Plan
2.5	Amend PNAC (and PNR) to include greater transparency measures to mitigate risk of anti-competitive behaviour for functions remaining with vertically integrated NSPs.	Design: 2026 Implementation: Q2 2027	As above

Activity		Indicative timing	Dependency
3. Managing multiplicity of contracts – splitting access in two			
3.1	Consult on and finalise detailed design of “right of transit” service for inclusion in the PNAC, including the types of service available (e.g. ‘firm’, interruptible).	Stream 1: see EPNR Implementation Paper Stream 2: Design: Early 2026 Publish intended parameters of the service: Mid 2026	Subject to triggers developed in detailed design
3.2	Review to ensure the “right of transit” services are adequately operationalised in the PNR.	Design: 2026	N/A
3.3	Activate ‘right of transit’ service in PNAC and implement any necessary changes in PNR.	Design: 2026 Implementation: Q2 2027	EPNR reforms dependent
4. Managing the impact of interconnection agreements			
4.1	EPWA will consider whether any additional transparency measures are needed.	Q1 2026	Dependent on ISO changes as outlined in the EPNR Implementation Plan
4.2	Amend the PNAC to: <ul style="list-style-type: none"> limit the matters that can be included in an interconnection agreement; prohibit an interconnection agreement from seeking directly or indirectly to impose obligations or restrictions on other network users; prohibit an NSP from relying on an interconnection agreement as a basis for insisting that an access contract contain, or the ISO recognise, any provisions not directly related to the physical characteristics of the interconnection assets; and confer oversight of interconnection agreements on the ISO. 	Design: 2026 Implementation: Q4 2027	Dependent on ISO changes as outlined in the EPNR Implementation Plan
5. Managing tariffs across multiple networks			
5.1	Develop and consult on a fit-for-purpose transmission use of system (TUOS) charging mechanism prior to the next round of network expansions.	Design 2027	Implementation triggers to be developed in detailed design
6. Expanded powers to seek pre-approval of tariff and non-tariff elements (greater upfront certainty)			
6.1	Work with stakeholders to develop a list of tariff and non-tariff elements that should be able to be pre-approved (including any contractual provisions which might hinder access by others, as discussed under proposal 10).	Q1 2026	N/A
6.2	Amend the PNAC to allow for agreed pre-approvals to be undertaken.	Q4 2026	Dependent stakeholder feedback during detailed design

Activity		Indicative timing	Dependency
7. Provision for possible revenue control			
7.1	Review PNAC revenue and pricing principles to ensure they support the PET Plan objectives while remaining consistent with PNAC light regulation.	Q3 2026	N/A
7.2	Amend the PNAC to reflect updated revenue and pricing principles.	Design: 2026 Implementation: Q4 2026	N/A
7.3	Amend the PNAC form of regulation and ENAC coverage criteria to clarify that the Minister can intervene and impose full regulation under the ENAC when an NSP is found to be non-compliant with the (amended) revenue and pricing principles (related to action 1.2).	Design: Mid 2027 Implementation: Q4 2027	Head of power
8. Managing tariffs for future-ready capacity			
8.1	PNAC will remain unchanged until a case for change emerges.	N/A	N/A
9. Model access terms and conditions			
9.1	Develop model access terms and conditions in consultation with stakeholders, and determine the extent to which these model terms should constrain the NSP and arbitrator.	Q1 2026	Design and consultation work required through ILC working group
9.2	Amend PNAC to include model access terms and conditions added as a schedule, and guidance for NSP and arbitrator on their use.	Design: Mid 2026 Implementation: Q4 2027	Subsequent to 9.1.
10. Managing user rights (including foundation user rights) which hinder access by others			
10.1	Amend the PNAC to allow the power for the ISO, ERA or arbitrator to disregard any contractual right if it hinders access or is contrary to Pilbara electricity objective.	Design: 2026 Implementation: Q4 2027	Dependent on ISO changes in EPNR Implementation Paper
10.2	Introduce transparency measures in PNAC and the PNR that provide visibility of contracts to enable compliance monitoring and enforcement.	Linked to general transparency work (refer 2.3)	Dependent on ISO changes in EPNR Implementation Paper
10.3	Develop and implement in the PNAC prohibitions on specific types of user right, e.g. rights of first refusal or veto over, or visibility of, applications	Design: Q1 2026 Implementation: Q4 2026	N/A
11. Improved accountability			
11.1	Review and revise the civil penalty and compliance regime for both the PNAC and PNR. Concurrently, complete reforms of immunity regime.	Design: 2026	Dependent on transparency work (see 2.3)
11.2	Further review and develop additional accountability measures as required (links to transparency review in action 2.3).	Design: 2026	as above
11.3	Amend the PNAC to strengthen and streamline the existing third party access dispute resolution and arbitration framework.	Design: 2027 Implementation: Q4 2027	N/A

Activity		Indicative timing	Dependency
11.4	Monitor what additional accountability/ enforcement measures may be required as networks and regime evolve.	Ongoing	N/A
12. A transitional fixed principles mechanism			
12.1	Amend PNAC to allow inclusion of fixed principles.	Design: Q1 2026 Implementation: Q2 2026	Dependent on negotiation of agreements for Priority Projects

The logo consists of a large, vertical orange rectangle with rounded corners on the right side. A white line starts from the middle of the right edge of this rectangle, curves downwards and to the left, then turns upwards and to the right, ending near the bottom right corner of the page. The background is a solid blue color with a subtle gradient.

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