

Western Australia

LEGISLATIVE ASSEMBLY/COUNCIL

Electricity Industry Amendment (Distributed Energy Resources) Bill 2023

A Bill for

An Act to amend the *Electricity Industry Act 2004* and to make consequential amendments to other Acts.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Electricity Industry Amendment (Distributed Energy Resources) Act 2023*.

2. Commencement

This Act comes into operation as follows —

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

Part 2 — *Electricity Industry Act 2004* amended

3. Act amended

This Part amends the *Electricity Industry Act 2004*.

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

Part 1 — Preliminary

1. Short title

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

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used

- (1) In this Act, unless the contrary intention appears —
 - access**, in relation to services, has the same meaning that it has when used in that context in the *Competition and Consumer Act 2010* (Commonwealth);
 - arbitrator** has the meaning given to that term in the *Energy Arbitration and Review Act 1998* section 61;
 - Authority** means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*;
 - Board** has the meaning given to that term in the *Energy Arbitration and Review Act 1998* section 49;
 - Competition Principles Agreement** means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the States and the Territories, as in force for the time being;

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1 **connected facility**, in relation to a distribution system, means a
2 facility connected to the distribution system that manages or
3 controls the flow of electricity to or from the distribution
4 system;

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

7 **covered network** means network infrastructure facilities that —

- 8 (a) were covered by the Code immediately before the day
9 on which the *Electricity Industry Amendment Act 2020*
10 section 4(3) comes into operation and that have not
11 ceased to be a covered network; or
12 (b) the Minister has decided under the electricity system and
13 market rules Code are to be a covered network and that
14 have not ceased to be a covered network; or
15 (c) are prescribed in the Pilbara Networks Access Code
16 under section 120B(a) to be a covered Pilbara network
17 and that have not ceased to be so prescribed; or
18 (d) a network service provider has opted, under the Pilbara
19 Networks Access Code, to be regulated under Part 8A
20 and that —
21 (i) have not ceased to be so regulated under that
22 code as a consequence of an option by the
23 network service provider for the facilities to
24 cease to be so regulated; or
25 (ii) have not otherwise ceased to be a covered
26 network;

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

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

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

33 **distribution system** means electricity infrastructure used, or to
34 be used, for, or in connection with, or to control, the

transportation of electricity at nominal voltages ~~that are~~ less than ~~66 kV~~ the voltage prescribed by regulation;

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

electricity corporation means —

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

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

electricity infrastructure —

- (a) means wires, apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, or to control, the transportation of electricity; and
- (b) includes electrical equipment used, or to be used, to transfer electricity to or from an electricity network at the relevant point of connection including any transformers or switchgear at the relevant point or that is installed to support, or to provide backup to, that electrical equipment as is necessary for that transfer;

electricity network means a distribution system or a transmission system;

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

electricity system and market rules has the meaning given in section 123(1);

energy data means information and documents relating to any of the following —

- (a) electricity services;
- (b) network services;
- (c) electricity generation;
- (d) electricity consumption;

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1 (e) suppliers of electricity, electricity services and network
2 services;

3 (f) consumers of electricity and electricity services, in
4 relation to that consumption;

5 **generating works** means any wires, apparatus, equipment, plant
6 or buildings used, or to be used, for, or in connection with, or to
7 control, the generation of electricity;

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

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

12 **licence** means —

- 13 (a) a generation licence; or
14 (b) a transmission licence; or
15 (c) a distribution licence; or
16 (d) a retail licence; or
17 (e) an integrated regional licence;

18 **licence area** means the area or areas designated in a licence
19 under section 5;

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

22 **network infrastructure facilities** —

- 23 (a) means electricity infrastructure used, or to be used, for
24 the purpose of transporting electricity from generators of
25 electricity to other electricity infrastructure or to end
26 users of electricity; and
27 (b) includes stand-alone power systems, or storage works,
28 used, or to be used, as an adjunct to electricity
29 infrastructure;

30 **operate**, in relation to generating works, a transmission system,
31 or a distribution system, includes —

- 32 (a) to maintain the works or system; and

- 1 (b) to make any modifications necessary or desirable for the
2 operation of the works or system;

3 **Pilbara network** means network infrastructure facilities that are
4 located wholly or partly in the Pilbara region;

5 **Pilbara Networks Access Code** means the Pilbara Networks
6 Access Code for the time being in force under Part 8A
7 Division 2;

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

10 **Pilbara region** means the Pilbara region defined in the *Regional*
11 *Development Commissions Act 1993* Schedule 1;

12 **quality**, in relation to an electricity system or the supply of
13 **electricity**, means the compliance of the system or supply with
14 **any technical requirements of the electricity system and market**
15 **rules**;

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

18 **reliability**, in relation to an electricity system or the supply of
19 **electricity**, means the ability of the electricity system or supply
20 **to deliver electricity in the quantity and quality demanded by**
21 **customers**;

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

24 **safety**, in relation to the supply of electricity or the operation of
25 **an electricity system**, means the supply of electricity or the
26 **operation of the electricity system without risk of injury to**
27 **persons or property**;

28 **security**, in relation to the supply of electricity or the operation
29 **of an electricity system**, includes the ability of the supply or
30 **electricity system to withstand disruption or disturbance or**
31 **changed circumstances of the supply**;

32 **services** means —

- 33 (a) the transport of electricity, and other services, provided
34 by means of network infrastructure facilities; and

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(b) services ancillary to those services;

South West interconnected system means the interconnected transmission and distribution systems, generating works and associated works —

(a) located in the South West of the State and extending generally between Kalbarri, Albany and Kalgoorlie; and

(b) into which electricity is supplied by —

(i) one or more of the electricity generation plants at Kwinana, Muja, Collie and Pinjar; or

(ii) any prescribed electricity generation plant;

stand-alone power system means wires, apparatus, equipment, plant or buildings (including generating works, a distribution system and any storage works) —

(a) which together are used, or to be used, for, or in connection with, or to control, the supply of electricity to a single customer or not more than a prescribed number of customers; and

(b) which are not connected to another electricity network (other than that of the customer or customers);

State electricity objective has the meaning given in section 3A(2);

storage activity means an activity comprising all of the following —

(a) receiving energy in the form of electricity;

(b) storing the received energy in any form;

(c) discharging the stored energy in the form of electricity;

storage works means any wires, apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, or to control, a storage activity;

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

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

- (a) generate;
- (b) transport through a transmission system;
- (c) transport through a distribution system;
- (d) sell;

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

transmission system means electricity infrastructure used, or to be used, for, or in connection with, or to control, the transportation of electricity at nominal voltages equal to or higher than the voltage of 66 kV or higher prescribed by regulations.

- (2) In this Act, a reference to the regulation of a covered network under Part 8 or 8A, or of a covered Pilbara network under Part 8A, is a reference to access to the services of that network being regulated under that Part.

[Section 3 amended: No. 18 of 2005 s. 139; No. 16 of 2009 s. 57; No. 25 of 2013 s. 39(2) and (3); No. 9 of 2020 s. 4.]

3A. State electricity objective

(1) In this section —

electricity services —

(a) means services that are necessary or incidental to the supply of electricity to consumers of electricity; and

(b) includes —

(i) the production of electricity; and

(ii) services provided by means of, or in connection with, an electricity network; and

(iii) the sale of electricity.

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- 1 (2) The *State electricity objective* is to promote efficient investment
2 in, and efficient operation and use of, electricity services for the
3 long-term interests of consumers of electricity in relation to —
4 (a) the quality, safety, security and reliability of supply of
5 electricity; and
6 (b) the price of electricity; and
7 (c) the environment, including reducing greenhouse gas
8 emissions.
- 9 (3) The Minister, the Authority, the Coordinator and the
10 Board must have regard to the State electricity objective in
11 carrying out a function under this Act.
- 12 (4) For the purposes of subsection (2), the Minister, the Authority,
13 the Coordinator or the Board may give the weight to any aspect
14 of the State electricity objective that the Minister, the Authority,
15 the Coordinator or the Board considers appropriate in all the
16 circumstances.

Part 2 — Licensing of electricity supply

Division 1 — Licence classification and area

4. Classification of licences

(1) Licences are classified as follows —

(a) generation, which authorises the licensee —

(i) to construct and operate one or more generating works; or

(ii) to operate one or more existing generating works;

(b) transmission, which authorises the licensee —

(i) to construct and operate one or more transmission systems; or

(ii) to operate one or more existing transmission systems;

(c) distribution, which authorises the licensee —

(i) to construct and operate one or more distribution systems; or

(ii) to operate one or more existing distribution systems;

(d) retail, which authorises the licensee to sell electricity to customers;

(e) integrated regional, which authorises the licensee to carry out one or more of the activities described in paragraphs (a) to (d) for the purpose of supplying electricity to customers otherwise than through the South West interconnected system.

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

1 **5. Licence area**

2 (1) A licence must be designated to apply to one or more areas of
3 the State specified in the licence.

4 (2) If 2 or more areas are specified in a licence those areas need not
5 be contiguous.

6 **Division 2 — Licensing requirements**

7 **6. Licensing extends to statutory providers**

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

11 (a) is authorised or provided for by or under a written law;
12 or

13 (b) has been approved under a written law.

14 **7. Requirement for licence**

15 (1) A person must not construct or operate generating works except
16 under the authority of a generation licence or an integrated
17 regional licence.

18 (2) A person must not construct or operate a transmission system
19 except under the authority of a transmission licence or an
20 integrated regional licence.

21 (3) A person must not construct or operate a distribution system
22 except under the authority of a distribution licence or an
23 integrated regional licence.

24 (4) A person must not sell electricity to customers except under the
25 authority of a retail licence or an integrated regional licence.

26 (5) A person does not commit an offence under subsection (1), (2)
27 or (3) if the generating works, transmission system or

1 distribution system concerned is or are used, or to be used,
2 solely for the supply of electricity for consumption by —

- 3 (a) the person who owns, controls or operates the works or
4 system; or
5 (b) if the person referred to in paragraph (a) is a body
6 corporate, a related body corporate (as defined in the
7 *Corporations Act 2001* of the Commonwealth section 9)
8 of the person; or
9 (c) a person who is in partnership with, or is a participant in
10 a joint venture arrangement with, the person referred to
11 in paragraph (a) in relation to that supply.

- 12 (6) A person does not commit an offence under subsection (4) if the
13 person is the holder of a generation licence and the electricity is
14 sold solely for consumption by another person on the premises
15 on which generating works to which the licence applies are
16 located.

17 Penalty applicable to this section: \$100 000.

18 Daily penalty applicable to this section: \$5 000.

19 **8. Power to exempt**

- 20 (1) The Governor may by order published in the *Gazette* exempt
21 any person or class of persons from all or any of the provisions
22 of section 7(1) to (4).
23 (2) An order under subsection (1) may provide for circumstances in
24 which, and conditions subject to which, an exemption is to
25 apply.
26 (3) An exemption is of no effect at any time when a condition to
27 which it is subject is not being observed.
28 (4) The Governor must not make an order under subsection (1)
29 unless he or she is satisfied that it would not be contrary to the
30 public interest to do so.
31 (5) Without limiting the other matters that may be taken into
32 account, matters that are to be taken into account by the

- 1 Governor in determining whether the making of the order would
2 not be contrary to the public interest are —
- 3 (a) environmental considerations;
- 4 (b) social welfare and equity considerations, including
5 community service obligations;
- 6 (c) economic and regional development, including
7 employment and investment growth;
- 8 (d) the interests of customers generally or of a class of
9 customers;
- 10 (e) the interests of any licensee, or applicant for a licence, in
11 respect of the area or areas to which the order, if made,
12 would apply;
- 13 (f) the importance of competition in electricity industry
14 markets;
- 15 (g) the policy objectives of government in relation to the
16 supply of electricity.
- 17 (6) The *Interpretation Act 1984* section 43(4) and (7) to (9) apply to
18 an order under subsection (1) as if the order were subsidiary
19 legislation.

20 **Division 3 — General licensing provisions**

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

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

1 **10. Application for licence**

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

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

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

- 1 (ba) in the case of a licence that relates to a Pilbara
2 network —
- 3 (i) the Pilbara Networks Access Code, if the
4 network is regulated under Part 8A; and
- 5 (ii) the Pilbara networks rules, if they apply to the
6 network;
- 7 or
- 8 (c) regulations made under the *Electricity Act 1945*
9 section 32.

10 *[Section 11 amended: No. 9 of 2020 s. 5.]*

11 **12. Regulations as to licence terms and conditions**

12 The regulations may prescribe terms and conditions that are to
13 be taken to be included in —

- 14 (a) every licence; or
- 15 (b) every licence of a prescribed class; or
- 16 (c) a licence held by an electricity corporation or a
17 subsidiary of an electricity corporation.

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

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

- 20 (1) It is a condition of every licence that the licensee must, not less
21 than once in every period of 24 months (or any longer period
22 that the Authority allows) calculated from the grant of the
23 licence, provide the Authority with a performance audit
24 conducted by an independent expert acceptable to the Authority.
- 25 (2) A performance audit is an audit of the effectiveness of measures
26 taken by the licensee to meet the performance criteria specified
27 in the licence.
- 28 (3) The Authority must give the Minister a report on each
29 performance audit within 2 months after its receipt of the audit.

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

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

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

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

18 **15. Duration of licence**

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

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

24 **16. Renewal of licence**

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

- 26 (a) made in a form approved by the Authority; and
27 (b) accompanied by the prescribed application fee.

28 (2) An applicant must provide any additional information that the
29 Authority may require for the proper consideration of the
30 application.

1 **17. Licence fees**

2 (1) A licensee must pay to the Authority the prescribed licence
3 fee —

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

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

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

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

13 **18. Transfer of licence**

14 (1) A licence cannot be transferred except with the approval of the
15 Authority.

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

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

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

20 (b) accompanied by the prescribed application fee.

21 (4) An applicant must provide any additional information that the
22 Authority may require for the proper consideration of the
23 application.

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

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

27 (a) has, and is likely to retain; or

- 1 (b) will acquire within a reasonable time after the grant,
2 renewal or transfer, and is then likely to retain,
3 the financial and technical resources to undertake the activities
4 authorised, or to be authorised, by the licence.
- 5 (2) The Authority must take all reasonable steps to make a decision
6 in respect of an application for —
7 (a) the grant or renewal of a licence; or
8 (b) approval to transfer a licence,
9 within 90 days after the application is made.
- 10 (3) The duties imposed on the Authority by subsections (1) and (2)
11 apply only if —
12 (a) an application has been made in accordance with
13 section 10, 16 or 18, as the case may be; and
14 (b) section 50 or 100 does not prohibit the grant or renewal
15 of the licence or the approval of the transfer; and
16 (c) where a requirement has been made under
17 section 10(2), 16(2) or 18(4), the relevant information
18 has been provided to the Authority.

19 **20. Other laws not affected**

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

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

- 24 (1) A licensee may apply to the Authority at any time for
25 amendment of the licence.
- 26 (2) An application for the amendment of a licence must be —
27 (a) made in a form approved by the Authority; and
28 (b) accompanied by the prescribed application fee.

- 1 (3) An applicant must provide any additional information that the
2 Authority may require for the proper consideration of the
3 application.
- 4 (4) The Authority may grant the application if —
5 (a) it has been made in accordance with subsection (2); and
6 (b) where a requirement has been made under
7 subsection (3), the relevant information has been
8 provided to the Authority.
- 9 **22. Amendment of licence on initiative of Authority**
- 10 (1) The Authority may, on its own initiative, determine that a
11 licence is to be amended.
- 12 (2) A licence must specify the procedure to be followed in making
13 such a determination, including the manner in which an
14 amendment is to be notified to the licensee, and the
15 determination may only be made in accordance with that
16 procedure.
- 17 (3) An amendment under this section cannot take effect until it is
18 notified to the licensee under the procedure referred to in
19 subsection (2).
- 20 (4) This section applies to the substitution of a new licence for an
21 existing licence in the same way as it applies to the amendment
22 of a licence.
- 23 **23. Notice of decisions**
- 24 (1) The Authority must ensure that notice of the grant, renewal,
25 transfer or amendment of a licence is published in the *Gazette* as
26 soon as is practicable after the grant, renewal, transfer or
27 amendment.
- 28 (2) The notice must include —
29 (a) the date of the grant, renewal, transfer or amendment;
30 and
31 (b) the name and business address of the licensee; and

- 1 (c) the term of the licence; and
2 (d) a description of the licence area; and
3 (e) in the case of an amendment, details of the amendment;
4 and
5 (f) the place where a copy of the licence and any plan may
6 be inspected under section 24; and
7 (g) the Authority's website address.

- 8 (3) The Authority must ensure that written notice of a decision to
9 refuse to grant, renew, or approve the transfer of, a licence,
10 together with a statement of the reasons for the decision, is
11 given to the applicant within 14 days after the decision is made.

12 *[Section 23 amended: No. 9 of 2020 s. 6.]*

13 **24. Licences to be available for inspection**

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

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

20 *[Section 24 amended: No. 9 of 2020 s. 6.]*

21 **25. Regulations about public consultation**

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

27 **Division 4 — Exclusive licences**

28 **26. Regulations may authorise an exclusive licence**

- 29 (1) The Governor may, on the recommendation of the Minister,
30 make regulations designating one or more areas of the State as

1 an area in respect of which an exclusive licence may be granted
2 for a specified period.

3 (2) If 2 or more areas are designated under subsection (1) those
4 areas need not be contiguous.

5 (3) The specified period (the *period of exclusivity*) is not to exceed
6 10 years.

7 **27. Requirements for regulations**

8 (1) The Minister may, under section 26, recommend the making of
9 regulations only if he or she considers that —

10 (a) without the grant of an exclusive licence of that kind in
11 respect of the area during the period of exclusivity there
12 will be no supply of electricity, or a limited supply, in
13 the area during that period; and

14 (b) it is not contrary to the public interest that an exclusive
15 licence of that kind have effect in respect of the area
16 during the period of exclusivity; and

17 (c) the regulations will provide for an open and competitive
18 tender process to be carried out to determine the person
19 to whom the licence must be granted.

20 (2) Without limiting the other matters that may be taken into
21 account, for the purposes of subsection (1)(b), the Minister is to
22 take into account the matters referred to in section 8(5) but as if
23 the area or areas referred to in section 8(5)(e) were the area
24 referred to in subsection (1)(b).

25 (3) Regulations made under section 26 —

26 (a) are to set out the requirements to be observed before an
27 application for an exclusive licence may be made; and

28 (b) are to set out the requirements to be observed, in
29 addition to the other provisions of this Part, before an
30 exclusive licence may be granted; and

- 1 (c) may provide for the terms and conditions of an
2 exclusive licence in addition to those otherwise provided
3 for by this Part.

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

- 5 (1) An application for an exclusive licence may only be made if the
6 Minister has determined that he or she is satisfied that all of the
7 requirements of the regulations to be observed before such an
8 application may be made have been complied with.
- 9 (2) Despite section 19, an exclusive licence may only be granted by
10 the Authority under that section if the Minister has determined
11 that he or she is satisfied that all of the requirements of the
12 regulations relevant to the grant of the licence have been
13 observed.
- 14 (3) A determination under subsection (1) or (2) is to be made by
15 instrument published in the *Gazette*.

16 **29. Prohibition of further licences**

17 If —

- 18 (a) an exclusive licence is granted in respect of an area in
19 accordance with regulations made under section 26; and
20 (b) the licence is not cancelled under section 35 or
21 surrendered,

22 no other person is to be granted a licence of the same kind to
23 have effect in respect of that area during the period of
24 exclusivity.

25 **30. Trade practices authorisation**

26 For the purposes of the *Competition and Consumer Act 2010*
27 (Commonwealth) and the Competition Code —

- 28 (a) the grant of an exclusive licence as provided by
29 regulations made under section 26; and

- 1 (b) conduct authorised or required by or under any such
2 licence,

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

5 *[Section 30 amended: No. 9 of 2020 s. 7.]*

6 **Division 5 — Interruption of supply**

7 **31. Interruption of supply**

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

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

15 (a) the interruption, suspension or restriction results from —

16 (i) a negligent act or omission of the licensee or an
17 officer or employee of the licensee; or

18 (ii) an act or omission of the licensee or an officer or
19 employee of the licensee done or made in bad
20 faith;

21 or

22 (b) an agreement to which the licensee is a party provides
23 otherwise.

24 (3) A licensee must take reasonable steps to minimise the extent or
25 duration of any interruption, suspension or restriction under
26 subsection (1).

27 (4) This section is in addition to —

28 (a) any powers that the licensee has under the *Electricity*
29 *Act 1945* or the *Electricity Corporations Act 2005* in

1 relation to the interruption, suspension or restriction of
2 the supply of electricity; and

3 (b) the provisions of the *Energy Operators (Powers)*
4 *Act 1979* sections 48 and 57 if those provisions are
5 prescribed provisions (as defined in section 45(1)) in
6 respect of the licensee; and

7 (c) any contractual rights that the licensee may have to
8 interrupt, suspend or restrict the supply of electricity,

9 and does not limit those powers, provisions or rights.

10 *[Section 31 amended: No. 18 of 2005 s. 139.]*

11 **Division 6 — Enforcement**

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

13 (1) If, in the opinion of the Authority, a licensee contravenes a
14 licence, the Authority may cause a notice to be served on the
15 licensee requiring the licensee to rectify the contravention
16 within a specified period.

17 (2) If, in the opinion of the Authority, a licensee fails to comply
18 with a notice under subsection (1), the Authority may, subject to
19 section 33, do one or more of the following —

20 (a) serve a letter of reprimand on the licensee;

21 (b) order the licensee to pay a monetary penalty fixed by the
22 Authority but not exceeding \$100 000;

23 (c) cause the contravention to be rectified to the satisfaction
24 of the Authority.

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

28 (4) The Authority may recover —

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

- 1 (b) the costs and expenses of any action taken under
2 subsection (2)(c),
3 in a court of competent jurisdiction as a debt due by the licensee
4 to the State.

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

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

- 8 (a) notified the licensee of the proposed action and the
9 reasons for it; and
10 (b) given the licensee a reasonable opportunity to make
11 submissions on the matter.

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

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

- 17 (a) serving notice on the licensee under section 32(1); or
18 (b) complying with section 33.

19 **35. Cancellation of licence**

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

- 22 (a) is in default as defined in subsection (2); or
23 (b) has failed to pay a licence fee as required under
24 section 17; or
25 (c) in the case of a company, is an externally-administered
26 body corporate as defined in the *Corporations Act 2001*
27 of the Commonwealth section 9; or

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

1 (5) If —

2 (a) a licence other than a retail licence is cancelled under
3 this section; and

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

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

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

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

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

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

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

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

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

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

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

37. Authority to administer licensing scheme

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

**38. Authority to monitor licensing scheme and licence
compliance**

It is a function of the Authority —

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

39. Authority may issue codes

(1) Subject to subsection (2b), the Authority may prepare and issue
a code or codes in respect of the matters referred to in
subsection (2).

(2) A code may make provision for and in relation to any one or
more of the following —

- (b) the transfer of customers between licensees;
- (c) methods or principles to be applied by licensees in the
preparation of accounts for customers;

~~(d) standards relating to the quality and reliability of the
supply of electricity that are to be observed by the
holders of transmission licences, distribution licences or
integrated regional licences;~~

~~(da) compensation payments to be made to customers by the
Electricity Networks Corporation or the Regional Power~~

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

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

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

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

- 8 (1) In this section —

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

11 **relevant day** means —

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

16 **RPC standards** means requirements and standards referred to in
17 referred to in section 124A(39(12)(d) that relate to section
18 124A(a) or (c) and that —

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

24 **service standards** means standards relating to the quality,
25 security and ~~and~~ reliability of the supply of electricity that are
26 provided for in an access arrangement.

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

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

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- 1 (4) Subsequent reviews are to be carried out as soon as is
2 practicable after the day on which the period fixed under
3 subsection (11) ends.
- 4 (5) The purpose of a review is to consider whether the RPC
5 standards are appropriate for each of the transmission systems
6 and distribution systems to which they apply when assessed
7 against the service standards that apply to the South West
8 interconnected system.
- 9 (6) When carrying out a review the Authority is to give members of
10 the public an opportunity to comment on matters relevant to the
11 review.
- 12 (7) The Authority is to give the Minister a report based on a review
13 within —
14 (a) the period of 4 months after the relevant day; or
15 (b) any longer period allowed by the Minister under
16 subsection (8).
- 17 (8) The Minister may, at the request of the Authority, extend the
18 period referred to in subsection (7)(a) by not more than 28 days.
- 19 (9) A report may contain recommendations as to changes that
20 should be made to the RPC standards.
- 21 (10) Within 28 days after the day on which a report is given to the
22 Minister, the Authority is to —
23 (a) make the report available for public inspection in such
24 manner as the Authority considers appropriate; and
25 (b) cause a notice giving details of where copies of the
26 report can be obtained to be published —
27 (i) in a daily newspaper circulating throughout the
28 State; and
29 (ii) on its website.

1 (11) The Minister, by order published in the *Gazette*, is to fix a
2 period for subsequent reviews for the purposes of
3 subsection (4).

4 (12) A period fixed under subsection (11) cannot be longer than
5 5 years after the day on which a notice in respect of the last
6 preceding report under this section was published under
7 subsection (10)(b)(i).

8 (13) The Minister, by order published in the *Gazette*, may —

9 (a) amend an order made under subsection (11); or

10 (b) revoke an order made under subsection (11) and replace
11 it with another order.

12 [Section 39A inserted: No. 18 of 2005 s. 139; amended: No. 9 of
13 2020 s. 8.]

14 Division 8 — Powers in relation to land

15 40. Power of public authority to grant certain interests

16 (1) In this section —

17 **public authority** means —

18 (a) a Minister of the Crown; or

19 (b) an agency, authority or instrumentality of the Crown in
20 right of the State or a local government; or

21 (c) a body, whether corporate or unincorporate, that is
22 established or continued for a public purpose by or
23 under a written law and prescribed for the purposes of
24 this definition;

25 **relevant interest** means a lease, easement, licence or other
26 authority necessary or expedient to enable the licensee to
27 construct, alter, operate or maintain generating works, a
28 transmission system or a distribution system, as the case
29 may be.

30 (2) A public authority may grant to a licensee, on such terms and
31 conditions as are agreed between the authority and the licensee,

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

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

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

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

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

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

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

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

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

- 1 (6) Any costs and expenses incurred in the taking of an interest or
2 easement under this section —
3 (a) are to be paid by the licensee; and
4 (b) may be recovered in a court of competent jurisdiction as
5 a debt due by the licensee to the State.

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

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

- 10 (1) Despite anything in the *Land Administration Act 1997* Part 9, on
11 the taking of an interest in land or easement over land under
12 section 41, the interest or easement vests in the licensee.
13 (2) The *Land Administration Act 1997* Part 9 applies, with all
14 necessary changes, in relation to the recording or registering of
15 an interest or easement taken under section 41.

16 **43. Proceedings and liability**

- 17 (1) Proceedings in respect of compensation, or otherwise for the
18 purpose of complying with the *Land Administration Act 1997*
19 Parts 9 and 10, may be taken against the licensee.
20 (2) The licensee is liable in respect of the taking of an interest in
21 land or easement over land under section 41 to the same extent
22 as the Minister administering the *Land Administration Act 1997*
23 would have been liable if the taking had been for the purpose of
24 a public work.

25 **44. Easements in gross**

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

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

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

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

- 1 (5) In this section —
2 **licensee** includes any person in whom the assets, rights and
3 interests of a former licensee are vested under regulations
4 referred to in section 35(4);
5 **relevant corporation** means —
6 (a) the Electricity Networks Corporation; or
7 (b) the Regional Power Corporation; or
8 (c) a subsidiary of a corporation mentioned in paragraph (a)
9 or (b).

10 [Section 45 amended: No. 18 of 2005 s. 139.]

11 **Division 10 — Transitional provision**

12 **46. Transitional provision for existing operators**

- 13 (1) In this section —
14 **commencement day** means the day on which this Part comes
15 into operation;
16 **Western Power Corporation** means the body corporate that was
17 the corporation under the *Electricity Corporation Act 1994* ¹
18 section 4 before that section was repealed by the *Electricity*
19 *Corporations Act 2005* Schedule 5 clause 11 ³.
20 (2) This section applies to every person (an **existing operator**) who
21 immediately before the commencement day was undertaking
22 any activity that, after that day, is required to be licensed under
23 section 7.
24 (3) An existing operator who wishes to apply for a licence in
25 respect of an activity referred to in subsection (2) must do so
26 within 12 months after the commencement day.
27 (4) An existing operator is to be treated as if the person were the
28 holder of the relevant licence —
29 (a) until the expiry of 18 months after the commencement
30 day; or

- 1 (b) until —
- 2 (i) a licence of that kind is granted to the person or
- 3 is refused; and
- 4 (ii) in the case of a refusal, the time for an
- 5 application for review of the decision under
- 6 section 130 expires without an application being
- 7 made or an application is made but is
- 8 unsuccessful,
- 9 whichever happens first.
- 10 (5) For the purposes of subsection (4)(b)(ii) an application is
- 11 unsuccessful if it —
- 12 (a) results in the refusal referred to in subsection (4)(b)(i)
- 13 being confirmed; or
- 14 (b) is withdrawn, discontinued or dismissed.
- 15 (6) Where after the day on which the *Electricity Corporations*
- 16 *Act 2005* Schedule 5 clause 30 comes into operation² —
- 17 (a) an electricity corporation undertakes an activity that
- 18 immediately before that day was undertaken by the
- 19 Western Power Corporation; and
- 20 (b) that activity is required to be licensed under section 7
- 21 but is not so licensed,
- 22 the electricity corporation is to be treated as an existing operator
- 23 in respect of that activity for the purposes of this section.
- 24 [Section 46 amended: No. 18 of 2005 s. 139.]

Part 3 — Supply of electricity to certain customers

Division 1 — Preliminary

47. Terms used

In this Part, unless the contrary intention appears —

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

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

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

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

Division 2 — Supply contracts

48. Regulations as to supply contracts

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

(a) the terms, conditions and provisions of —

(i) a standard form contract; and

(ii) a non-standard contract,

under which a retail licensee sells electricity to customers; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (2) The Authority must not give an approval if it considers that the
2 standard form contract —
- 3 (a) will not meet the requirements of the regulations in
4 respect of such contracts; or
- 5 (b) will be inconsistent with —
- 6 (i) this Act or any other written law; or
- 7 (ii) any term, condition or provision of the licence
8 concerned.
- 9 (3) The Authority must take all reasonable steps to make a decision
10 under subsection (1) within 45 days after the standard form
11 contract is submitted to it.
- 12 **52. Amendment or replacement of standard form contract**
- 13 (1) A retail licensee may submit to the Authority for approval —
- 14 (a) any amendment to the standard form contract approved
15 under section 51; or
- 16 (b) a replacement for the standard form contract so
17 approved.
- 18 (2) Section 51 applies to an amendment or a replacement submitted
19 under subsection (1) in the same way as it applied to the
20 standard form contract or the original standard form contract.
- 21 **53. Authority may direct that amendment be made**
- 22 (1) This section applies if, in the opinion of the Authority, a
23 standard form contract approved under this Division —
- 24 (a) no longer meets the requirements of the regulations in
25 respect of such contracts; or
- 26 (b) is no longer consistent with —
- 27 (i) this Act or any other written law; or
- 28 (ii) any term, condition or provision of the licence
29 concerned.

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

11 **54. Licence condition: contracts**

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

1 **54A. Electricity corporations required to offer to supply**
2 **electricity under prescribed form of contract**

3 (1) In this section —

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

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

9 **relevant contract** means —

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

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

16 **relevant day** means the day on which the *Electricity*
17 *Corporations Act 2005* Part 2 comes into operation².

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

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

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

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

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

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

12 *[Section 54A inserted: No. 18 of 2005 s. 139; amended: No. 25*

13 *of 2013 s. 39(4).]*

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

- 15 (1) If, in the opinion of the Authority, a corporation fails to comply
- 16 with the obligation in section 54A(2), the Authority may,
- 17 subject to subsection (2), do one or more of the following —

- 18 (a) serve a letter of reprimand on the corporation; or
- 19 (b) order the corporation to pay a monetary penalty fixed by
- 20 the Authority but not exceeding \$100 000.

- 21 (2) The Authority is not to take action under subsection (1)(b)
- 22 unless the Authority has —

- 23 (a) notified the corporation of the proposed action and the
- 24 reasons for it; and
- 25 (b) given the corporation a reasonable opportunity to make
- 26 submissions on the matter.

- 27 (3) The Authority may recover a penalty imposed under
- 28 subsection (1)(b) in a court of competent jurisdiction as a debt
- 29 due by the corporation to the State.

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

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

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

3 **57. Terms used**

4 In this Division, unless the contrary intention appears —
5 **connect** means to connect to a distribution system;
6 **premises** means premises owned or occupied by a new or
7 existing customer.

8 **58. Regulations as to connection**

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

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

- 12 (a) require a retail licensee to make arrangements with the
13 holder of a distribution licence or integrated regional
14 licence for the connection of premises of a prescribed
15 class; and
16 (b) require the holder of a distribution licence or an
17 integrated regional licence to connect premises of a
18 prescribed class to the holder's distribution system; and
19 (c) prescribe the circumstances in which an obligation
20 referred to in paragraph (a) or (b) arises; and
21 (d) authorise the holder of a distribution licence or an
22 integrated regional licence to adopt a method of
23 connection that results in the least cost to the holder; and
24 (e) make provision for and in relation to the costs of
25 connection, including provision as to who is liable to
26 pay those costs.

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

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

1 must comply with the obligation referred to in
2 subsection (2)(a); and

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

7 **Division 4 — Default supplier**

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

9 The regulations may —

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

**Part 4 — Extension and expansion policies for
certain corporations**

60. Terms used

In this Part, unless the contrary intention appears —

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

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

corporation means —

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

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

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

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

system means a transmission system or distribution system.

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

61. Draft policy to be submitted to Coordinator

(1) In subsection (2) —

prescribed period means —

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

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

9 **62. Approval of policy**

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

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

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

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

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

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

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

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

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

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

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

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

1 **Part 5 — Last resort supply arrangements**

2 **67. Terms used**

3 In this Part, unless the contrary intention appears —
4 **designated area** means an area designated under section 68(1);
5 **last resort supply plan** means a plan that meets the requirements
6 of section 69;
7 **retail licence** includes an integrated regional licence;
8 **supplier of last resort** has the meaning given to that term in
9 section 69(1).

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

- 11 (1) The Authority may, by notice published in the *Gazette*,
12 designate an area to which a retail licence applies as an area for
13 which there is to be a last resort supply plan.
- 14 (2) The Authority is to ensure —
15 (a) that, as soon as is practicable after an area becomes a
16 designated area, a last resort supply plan for the
17 designated area is approved or determined by the
18 Authority under section 73; and
19 (b) that, at all times thereafter, there is a last resort supply
20 plan for the designated area that has been approved or
21 determined by the Authority under section 73.

22 **69. Requirements for last resort supply plan**

- 23 (1) A last resort supply plan for a designated area is one that deals
24 with the supply of electricity to customers in the area by the
25 holder of a retail licence (the **supplier of last resort**) if the plan
26 comes into operation under section 70.
- 27 (2) A last resort supply plan must set out the arrangements, and
28 make the provisions, that are necessary for the supply of
29 electricity as mentioned in subsection (1).

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

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

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

18 **71. Supplier of last resort**

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

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

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

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

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

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

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

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

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

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

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

16 **75. Authority may make amendment**

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

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

21 It is a condition of every retail licence that —

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

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

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1 **77. Provision may be made by regulation**

2 The regulations may make provision for and in relation to —

- 3 (a) the preparation and approval process for a last resort
4 supply plan under sections 72 and 73, and the
5 amendment of a plan;
- 6 (b) last resort supply arrangements under a plan, including
7 for and in relation to —
- 8 (i) the commencement of arrangements; and
- 9 (ii) the extent to which particular arrangements are
10 to apply to a particular class of customers; and
- 11 (iii) notification to customers and other affected
12 persons of matters relating to the arrangements,
13 including —
- 14 (I) the commencement of arrangements;
15 and
- 16 (II) the effect of the arrangements and steps
17 that will or may be taken; and
- 18 (III) rights, powers, duties and procedures
19 that apply under the arrangements;
- 20 and
- 21 (iv) the identification of the customers affected by
22 the commencement of arrangements and the
23 provision of identifying information to the
24 supplier of last resort; and
- 25 (v) the transfer of customers to the supplier of last
26 resort and the nature of the relationship between
27 them; and
- 28 (vi) the terms and conditions of supply of electricity
29 under the arrangements, including those relating
30 to pricing and the imposition of charges; and
- 31 (vii) the recovery of costs by the supplier of last
32 resort; and

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

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

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

79. Code of conduct

(1) The Authority may, in consultation with the committee, approve a code of conduct under this section.

(2) The code of conduct is to regulate and control the conduct of —

- (a) the holders of retail licences, distribution licences and integrated regional licences; and
- (b) electricity marketing agents,

with the object of —

- (c) defining standards of conduct in the supply and marketing of electricity to customers and providing for compensation payments to be made to customers when standards of conduct are not met; and
- (d) protecting customers from undesirable marketing conduct.

(3) The code of conduct may contain such ancillary and incidental provisions as are necessary or expedient for the purposes of subsection (2).

(4) In the case of the initial code of conduct, subsection (1) has effect subject to Schedule 3 clause 1.

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

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1 **80. Code is subsidiary legislation**

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

4 **81. Consultative committee**

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

7 (2) The Authority —

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

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

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

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

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

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

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

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

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

83. Enforcement of code of conduct against marketing agents

The code of conduct may provide —

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

84. Code may provide for vicarious liability

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

85. Code may include presumption of authority

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

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

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

86. Authority to monitor compliance

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

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- 1 **87. Comment to be sought on amendment or replacement**
2 **of code**
- 3 (1) Whenever the Authority proposes to exercise the power —
4 (a) to amend the code of conduct; or
5 (b) to repeal and replace it,
6 the Authority must —
7 (c) refer the proposed amendment or replacement to the
8 committee for its advice; and
9 (d) have regard to any advice given by the committee.
- 10 (2) Before the committee gives its advice to the Authority, it must,
11 in accordance with section 89, give any interested person an
12 opportunity to offer comments on the amendment or
13 replacement.
- 14 (3) The committee must take into account any comments received
15 under subsection (1) in formulating its advice.
- 16 **88. Review of code**
- 17 (1) The committee must carry out a review of the code of conduct
18 as soon as is practicable after —
19 (a) the first anniversary of its commencement; and
20 (b) the expiry of each 2 yearly interval after that
21 anniversary.
- 22 (2) The object of a review is to re-assess the suitability of the
23 provisions of the code of conduct for the purposes of
24 section 79(2).
- 25 (3) The committee must, in accordance with section 89, give any
26 interested person an opportunity to offer comments relevant to
27 the review.
- 28 (4) The committee must take into account any comments received
29 under subsection (3) in carrying out the review.

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

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

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

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

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

20 The regulations may provide that a prescribed enactment —

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

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

Part 7 — Electricity ombudsman scheme

Division 1 — Preliminary

90. Terms used

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

approved scheme means a scheme approved under section 92;

customer means —

(a) a customer who consumes not more than 160 MWh of electricity per annum; and

(b) if a dispute or complaint is prescribed for the purposes of section 92(1)(d) a person who is involved in that dispute or complaint as a customer;

customer contract means —

(a) a standard form contract; or

(b) a non-standard contract,

as defined in section 47;

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

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

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

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

91. Regulations as to electricity ombudsman scheme

The regulations may provide for and in relation to —

(a) the establishment and operation of a scheme of the kind referred to in section 92; and

(b) the functions of the electricity ombudsman under such a scheme.

Division 2 — Approval of electricity ombudsman scheme

92. Authority may approve scheme

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

93. Requirements for scheme or amendment to be approved

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

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

94. Revocation of approval

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

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

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

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

Division 3 — Scheme operation

95. Customer may have decision or complaint reviewed

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

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

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

that is provided for by the scheme.

1 **96. Jurisdiction of courts and tribunals**

2 (1) Nothing in this Part or in an approved scheme affects the
3 jurisdiction of a court or tribunal.

4 (2) The electricity ombudsman must decline to deal with a matter
5 if —

6 (a) it has been or is being dealt with by a court or tribunal;
7 or

8 (b) in his or her opinion the matter should be dealt with by a
9 court or tribunal.

10 **97. Enforcement against marketing agents and others**

11 (1) The regulations may make it an offence for an electricity
12 marketing agent to fail to comply with a decision or direction of
13 the electricity ombudsman under an approved scheme.

14 (2) If a dispute or complaint involving a person other than a
15 licensee or an electricity marketing agent is prescribed for the
16 purposes of section 92(1)(d), the regulations may make it an
17 offence for the person to fail to comply with a decision or
18 direction of the electricity ombudsman under an approved
19 scheme.

20 (3) Regulations made for the purposes of this section may provide
21 for penalties for an offence against the regulations not
22 exceeding —

23 (a) \$5 000 for an individual; and

24 (b) \$20 000 for a body corporate.

25 **98. Authority to monitor compliance with decisions**

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

1 **Division 4 — Membership of approved scheme by licensee**

2 **99. Proof of membership in applications relating to licence**

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

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

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

19 **100. Prerequisite to grant, renewal or transfer of licence**

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

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

28 **101. Licence condition: membership of scheme**

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

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

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

Consultation Draft

1 **Part 8 — Access to services of network infrastructure**
2 **facilities**

3 **Division 1 — Preliminary**

4 ~~102. — Purposes of this Part~~

5 ~~— The purposes of this Part are —~~

6 ~~— (a) to provide for full regulation of access to services; and~~

7 ~~— (b) to give effect to the relevant principles of the~~
8 ~~Competition Principles Agreement in respect of the~~
9 ~~provision of access to services.~~

10 ~~— [Section 102 amended: No. 9 of 2020 s. 9.]~~

11 **103. Terms used**

12 In this Part, unless the contrary intention appears —

13 **access agreement** means an agreement under the [electricity](#)
14 [system and market rules](#) ~~Code~~ between a network service
15 provider and another person for that person to have access to
16 services;

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

19 **network service provider** means a person who operates network
20 infrastructure facilities;

21 **network user** means a person provided or to be provided with
22 access to services under an access agreement.

23 *[Section 103 amended: No. 33 of 2004 s. 32; No. 9 of 2020*
24 *s. 10.]*

Division 2 — Access to services of network infrastructure facilities
~~Establishment of Code~~

104. Electricity system and market rules to regulate access to services of network infrastructure facilities

The electricity system and market rules must include provisions in relation to access to the services of network infrastructure facilities.

~~104. Minister to establish Code~~

~~The Minister is to establish a Code for the purposes of, and in accordance with, this Part.~~

~~[Section 104 inserted: No. 9 of 2020 s. 11.]~~

104A. Electricity system and market rules~~Code~~ to provide for coverage of networks

(1) The electricity system and market rules must include provisions~~Provision is to be made in the Code~~ —

- (a) prescribing the processes (including the matters to be considered and the criteria to apply) by which the Minister is to decide whether network infrastructure facilities are to be a covered network; and
- (b) prescribing the processes (including the matters to be considered and the criteria to apply) by which the Minister is to decide whether a covered network is to cease to be a covered network; and
- (c) regulating ~~for~~ the manner in which a decision referred to in paragraph (a) or (b) is to be published and come into effect.

- (2) A covered network is regulated under this Part (that is, access to services of the network is subject to full regulation) unless, in the case of a covered Pilbara network, the network is regulated under Part 8A (that is, access to services of the network is subject to light regulation).

1 (3) A decision under the [electricity system and market rules](#)~~Code~~ as
2 to whether network infrastructure facilities are to be a covered
3 network or are to cease to be a covered network is not liable to
4 be challenged in, or reviewed or called in question by, a court or
5 tribunal otherwise than under section 130.

6 (4) A stand-alone power system cannot be a covered network on its
7 own but it may, in accordance with the [electricity system and](#)
8 [market rules](#)~~Code~~, be treated as part of the covered network to
9 which it is an adjunct.

10 *[Section 104A inserted: No. 9 of 2020 s. 11.]*

11 **104B. ~~F~~Code to provide for full regulation of access to services of**
12 **covered networks**

13 [The electricity system and market rules must include](#)
14 [provisions](#)~~Provision is to be made in the Code~~ for or in relation
15 to the following in relation to covered networks that are
16 regulated under this Part —

17 (a) the lodgment by a network service provider of an
18 arrangement for its covered networks setting out [any of](#)
19 [the following](#) —

- 20 (i) the policies applying to access to services; ~~and~~
21 (ii) the basic terms and conditions that will apply to
22 access to services unless an access agreement
23 contains different terms and conditions; ~~and~~
24 (iii) any other matters prescribed by the [_electricity](#)
25 [system and market rules](#)~~Code~~;

26 (b) the production by a network service provider of
27 information to enable persons to understand the
28 derivation of the elements of an arrangement for its
29 covered networks lodged under paragraph (a), whether
30 or not that arrangement has become an access
31 arrangement;

32 (c) the approval by the Authority of arrangements lodged
33 under paragraph (a) and the matters to which the

- 1 Authority is to have regard in deciding whether to give
2 its approval;
- 3 (d) the registration of access arrangements;
- 4 (e) access by persons to services of a covered network as
5 provided for in the access arrangement for the covered
6 network and in accordance with —
- 7 (i) access agreements; or
8 (ii) determinations made by way of arbitration;
- 9 (f) network access pricing regulation principles;
- 10 (g) the rights, powers and duties that are to apply to and in
11 relation to the negotiation, making, and implementation
12 of access agreements;
- 13 (h) the duties and requirements in relation to the provision
14 of access to services that are to be complied with by a
15 network service provider;
- 16 (i) access arrangements to provide for any matter referred
17 to in paragraphs (f), (g) and (h);
- 18 (j) the obligations of a network service provider in respect
19 of the segregation of the functions and business of
20 providing services from the network service provider's
21 other functions and business and enabling the Authority
22 to add to those obligations or waive any of them;
- 23 (k) services between related bodies corporate (as defined in
24 the *Corporations Act 2001* (Commonwealth) section 9);
- 25 (l) the rights and obligations of network users;
- 26 ~~(m) the formulation by a network service provider, and~~
27 ~~approval by the Authority, of technical codes for the~~
28 ~~purposes of access to services that are to be complied~~
29 ~~with by network users and other persons specified in the~~
30 ~~Code;~~
- 31 (n) the disclosure and use of confidential information;
- 32 (o) the supervisory or other functions of the Authority for
33 the purposes of the [electricity system and market rules](#)

1 made for the purposes of this Part~~Code~~, including a
2 function of determining certain requirements in relation
3 to access to the services of covered networks that are to
4 be complied with by a network service provider or a
5 person making a proposal for access to services and
6 applied by the arbitrator.

7 *[Section 104B inserted: No. 9 of 2020 s. 11.]*

8 **105. Other matters for which electricity system and market**
9 **rules**~~Code~~ may make provision

10 (1) The electricity system and market rules~~Code~~ may ~~also~~ make
11 provision for or in relation to —

12 (a) the arbitration by the arbitrator of disputes between a
13 network service provider and a person who has made a
14 proposal for access to services; and

15 ~~(b) other functions of the arbitrator; and~~

16 ~~(c) the functions of the Authority; and~~

17 (ca) access to the services of stand-alone power systems; and

18 (cb) the regulation of the powers of the Electricity Networks
19 Corporation and Regional Power Corporation to provide
20 stand-alone power systems or storage works, including
21 stand-alone power systems or storage works that do not
22 form part of a covered network; and

23 (d) the regulation of matters —

24 (i) of a savings, transitional or supplementary
25 nature; or

26 (ii) that are otherwise necessary or convenient for
27 the purposes of this Part.

28 (2) Transitional provisions referred to in subsection (1)(d)(i) may
29 authorise the Minister to determine by order published in the
30 *Gazette* how any matter in progress immediately before ~~the~~
31 ~~commencement~~ a day specified in the order ~~of this Part~~ is to be

1 treated, after that commencement day, for the purposes of the
2 provisions of the electricity system and market rules Code.

3 [Section 105 amended: No. 9 of 2020 s. 12.]

4 **106. Electricity system and market rules Code does not affect**
5 **existing agreements**

6 (1) The making or amendment of the electricity system and market
7 rules Code or the approval of an access arrangement —

8 (a) does not affect the terms and conditions, or the
9 operation, of an agreement for access to services in
10 operation immediately before ~~the commencement of the~~
11 ~~Code~~ a day specified in the electricity system and
12 market rules for that purpose or the approval of the
13 arrangement whether under the *Electricity Transmission*
14 *and Distribution Systems (Access) Act 1994* or
15 otherwise; and

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

19 (2) Subsection (1)(a) or (b) does not apply if the electricity system
20 and market rules Code or the agreement or an enactment
21 provides otherwise.

22 [Section 106 amended: No. 33 of 2004 s. 34; No. 18 of 2005
23 s. 139.]

24 ~~**107. Code is subsidiary legislation**~~

25 ~~— (1) In this section —~~

26 ~~— Code includes —~~

27 ~~— (a) an amendment of the Code; or~~

28 ~~— (b) a code repealing and replacing the Code.~~

29 ~~— (2) The Code is subsidiary legislation for the purposes of the~~
30 ~~*Interpretation Act 1984*.~~

1 ~~— (3) The Code is to be laid before each House of Parliament within~~
2 ~~6 sitting days of that House next following publication of the~~
3 ~~Code in the Gazette.~~

4 ~~— (4) Notice of motion to disallow the Code or any part of the Code~~
5 ~~may be given in either House of Parliament within 10 sitting~~
6 ~~days of that House after the Code has been laid before it under~~
7 ~~subsection (3).~~

8 ~~— (5) Within 10 sitting days of a House of Parliament after notice of~~
9 ~~motion has been given in that House under subsection (4), that~~
10 ~~House may pass a resolution disallowing the Code or any part of~~
11 ~~the Code.~~

12 ~~— (6) If the Code is not laid before both Houses of Parliament under~~
13 ~~subsection (3), or is disallowed by either House in whole or in~~
14 ~~part under subsection (5), the Code, or the disallowed part of the~~
15 ~~Code (as applicable) ceases to have effect, but without affecting~~
16 ~~the validity or curing the invalidity of anything done or the~~
17 ~~omission of anything in the meantime.~~

18 ~~— (7) If a resolution has been passed under subsection (5), notice to~~
19 ~~that effect is to be published in the Gazette within 21 days.~~

20 ~~— [Section 107 amended: No. 9 of 2020 s. 13.]~~

21 **~~108. Public comment on amendment or replacement of Code~~**

22 ~~— (1) Before the Minister exercises the power —~~

23 ~~— (a) to amend the Code; or~~

24 ~~— (b) to repeal and replace it,~~

25 ~~— the Minister must make the proposed amendment or~~
26 ~~replacement available for public comment in accordance with~~
27 ~~subsection (2).~~

- 1 ~~— (2) The Minister must —~~
2 ~~— (a) cause a notice giving a general description of the~~
3 ~~proposal to be published —~~
4 ~~— (i) in an issue of a daily newspaper circulating~~
5 ~~throughout the Commonwealth; and~~
6 ~~— (ii) in an issue of a daily newspaper circulating~~
7 ~~throughout the State,~~
8 ~~— and on an appropriate website; and~~
9 ~~— (b) include in the notice the following information —~~
10 ~~— (i) the website at which a copy of the proposal may~~
11 ~~be obtained; and~~
12 ~~— (ii) a statement that written submissions on the~~
13 ~~proposal may be made to the Minister by any~~
14 ~~person within a specified period; and~~
15 ~~— (iii) the address (including an email address) to which~~
16 ~~the submissions may be delivered or sent.~~
17 ~~— (3) The period specified under subsection (2)(b)(ii) is not to be less~~
18 ~~than 30 days after both of the notices under subsection (2)(a)~~
19 ~~have been published.~~
20 ~~— (4) The Minister must have regard to any submission made in~~
21 ~~accordance with the notice.~~
22 ~~— [Section 108 amended: No. 9 of 2020 s. 14.]~~
23 **109. Exception to section 108**
24 ~~— (1) Section 108(1) does not apply if the Minister is satisfied that a~~
25 ~~proposed amendment to the Code is —~~
26 ~~— (a) of a minor nature; or~~
27 ~~— (b) required to be made urgently.~~

1 ~~— (2) If in reliance on subsection (1)(b) the Minister amends the Code~~
2 ~~without complying with section 108(1) —~~

3 ~~— (a) the Minister must call for public comment on the~~
4 ~~amendment as soon as is practicable after it has come~~
5 ~~into force; and~~

6 ~~— (b) section 108(2) and (3) apply with all necessary~~
7 ~~modifications.~~

8 ~~— (3) Having regard to any submissions made on the amendment, the~~
9 ~~Minister must consider whether the Code should be amended —~~

10 ~~— (a) to reverse the effect of the amendment; or~~

11 ~~— (b) in some other manner.~~

12 **~~110. Consultation with network service providers on amendment~~**
13 **~~or replacement of Code~~**

14 ~~— (1) Without limiting section 108, if the Minister considers that a~~
15 ~~proposed amendment or replacement of the Code may affect a~~
16 ~~network service provider, the Minister must consult with the~~
17 ~~network service provider and have regard to any submissions~~
18 ~~that the network service provider makes in relation to the~~
19 ~~proposal.~~

20 ~~— (2) If a network service provider considers that the Code, or a~~
21 ~~provision of it, has, as a result of altered circumstances, become~~
22 ~~unreasonable or inappropriate in its application to the network~~
23 ~~service provider, the network service provider may make a~~
24 ~~submission to the Minister requesting that the Code be amended~~
25 ~~or be repealed and replaced.~~

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

~~111.— Review of Code~~

~~(1) The Minister must cause a review of the Code to be carried out as soon as is practicable after—~~

~~(a) the fifth anniversary of its commencement; and~~

~~(b) the expiry of each 5 yearly interval after that anniversary.~~

~~(2) The purpose of a review is to assess the suitability of the provisions of the Code to achieve the purposes of this Part.~~

~~(3) Before carrying out a review of the Code, the Authority must call for public comment in accordance with subsection (4).~~

~~(4) The Authority must—~~

~~(a) cause notice of the review to be published—~~

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

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

~~and on an appropriate website; and~~

~~(b) include in the notice—~~

~~(i) a statement that written submissions on the Code may be made by any person within a specified period; and~~

~~(ii) the address (including an email address) to which the submissions may be delivered or sent.~~

~~(5) The period specified under subsection (4)(b)(i) is not to be less than 30 days after both of the notices under subsection (4)(a) have been published.~~

~~[Section 111 amended: No. 9 of 2020 s. 15.]~~

~~112. Functions of the Authority~~

~~The Authority —~~

~~(a) is responsible for monitoring and enforcing compliance by network service providers with this Part, the Code and access arrangements; and~~

~~(b) also has the functions given by particular provisions of this Part and the Code.~~

~~[113. Deleted: No. 16 of 2009 s. 58.]~~

Division 3 — Enforcement

~~114. References to contravening the Code~~

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

~~(a) attempting to contravene such a provision; or~~

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

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

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

~~(e) conspiring with others to contravene such a provision.~~

115. Prohibitions on hindering or preventing access

(1) The network service provider in relation to a covered network that is regulated under this Part, or an associate of the network service provider, must not engage in conduct for the purpose of hindering or preventing —

(a) access by any person to services in accordance with the electricity system and market rules~~Code~~; or

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

6 Penalty: \$100 000.

7 Daily penalty: \$20 000.

- 8 (2) A person who has access to services under an access agreement,
9 or an associate of the person, must not engage in conduct for the
10 purpose of hindering or preventing access by another person to
11 services of a covered network that is regulated under this Part.

12 Penalty: \$100 000.

13 Daily penalty: \$20 000.

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

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

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

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

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

- 26 (4) In this section —

- 27 (a) a reference to engaging in conduct is a reference to
28 doing or refusing to do any act and includes a reference
29 to —

30 (i) making a contract or arrangement or giving
31 effect to a provision of a contract or
32 arrangement; or

- 1 (ii) arriving at an understanding or giving effect to a
2 provision of an understanding; or
3 (iii) requiring a covenant to be given or giving a
4 covenant;
5 (b) a reference to refusing to do an act includes a reference
6 to —
7 (i) refraining (otherwise than inadvertently) from
8 doing the act; or
9 (ii) making it known that the act will not be done.
10 (5) Subsection (1) or (2) does not apply to conduct in which a
11 person engaged in accordance with an agreement, if the
12 agreement was in force on 30 March 1995.
13 (6) In this section —
14 **associate**, in relation to a person, has the meaning it would have
15 under the *Corporations Act 2001* (Commonwealth) Part 1.2
16 Division 2 if sections 13, 16(2) and 17 of that Act were
17 repealed.
18 [Section 115 amended: No. 33 of 2004 s. 35; No. 9 of 2020
19 s. 16.]

20 **~~116. Proceedings~~**

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

1 ~~—— (b) to bring proceedings for judicial review of a decision~~
2 ~~made under this Act or the Code.~~

3 ~~—— [Section 116 amended: No. 9 of 2020 s. 17.]~~

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

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

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

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

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

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

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

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

21 ~~—— (i) an amount not exceeding \$100 000; and~~

22 ~~—— (ii) in addition a daily amount not exceeding~~
23 ~~\$20 000,~~

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

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

- 1 ~~— (d) provide for the manner in which amounts received by~~
2 ~~way of civil penalties are to be dealt with and applied;~~
3 ~~and~~
- 4 ~~— (e) provide for and regulate the taking of proceedings~~
5 ~~before the Supreme Court for an injunction restraining~~
6 ~~engagement in conduct contravening a provision of the~~
7 ~~Code and provide for the granting of an injunction~~
8 ~~(including an interim injunction) and the rescission or~~
9 ~~variation of an injunction so granted; and~~
- 10 ~~— (f) provide for and regulate the taking of proceedings~~
11 ~~before the Supreme Court for a declaration as to whether~~
12 ~~a provision of the Code is being or has been contravened~~
13 ~~and provide for the orders that can be made in those~~
14 ~~proceedings; and~~
- 15 ~~— (g) provide for and regulate the taking of action for the~~
16 ~~recovery of an amount of loss or damage suffered~~
17 ~~because of conduct contravening a provision of the~~
18 ~~Code.~~
- 19 ~~— (3) In subsection (2)(b)(ii) —~~
20 ~~**daily amount** means an amount for each day or part of a day~~
21 ~~during which the contravention continues.~~
- 22 ~~[Division 4 deleted: No. 9 of 2020 s. 18.]~~

Part 8A — Pilbara networks

[Heading inserted: No. 9 of 2020 s. 19.]

Division 1 — Preliminary

[Heading inserted: No. 9 of 2020 s. 19.]

119. Purposes and objective of this Part

(1) The purposes of this Part are —

- (a) to provide for light regulation of access to services of covered Pilbara networks; and
- (b) to give effect to the relevant principles of the Competition Principles Agreement in respect of the provision of access to services of certain covered Pilbara networks; and
- (c) to provide for the operation, management, security and reliability of the interconnected Pilbara system and other Pilbara networks.

(2) The objective of this Part (the **Pilbara electricity objective**) is to ~~promote~~ meet ~~efficient investment in, and efficient operation and use of, services of Pilbara networks for the long term interests of consumers of electricity~~ the State electricity objective in the Pilbara region ~~in relation to —~~

~~— (a) price, quality, safety, reliability and security of supply of electricity; and~~

~~— (b) the reliability, safety and security of any interconnected Pilbara system.~~

(3) The regulations, the Pilbara Networks Access Code and the Pilbara networks rules may provide for the matters a person or body who performs a function under this Part is to have regard to in determining whether the performance of the function meets the Pilbara electricity objective.

- 1 (4) Without limiting subsection (3), the matters referred to in that
2 subsection may include the following —
- 3 (a) the contribution of the Pilbara resources industry to the
4 State's economy;
- 5 (b) the nature and scale of investment in the Pilbara
6 resources industry;
- 7 (c) the importance to the Pilbara resources industry of a
8 secure and reliable electricity supply.

9 [Section 119 inserted: No. 9 of 2020 s. 19.]

10 **120. Terms used**

11 In this Part, unless the contrary intention appears —

12 **interconnected Pilbara network** means a Pilbara network that is
13 interconnected with another Pilbara network;

14 **interconnected Pilbara system** means a system of
15 interconnected Pilbara networks, including the following when
16 connected to an interconnected Pilbara network —

- 17 (a) generating works and associated works;
- 18 (b) loads;
- 19 (c) facilities, including electricity storage facilities;

20 **Pilbara access agreement** means an agreement under the
21 Pilbara Networks Access Code between a network service
22 provider and another person for that person to have access to
23 services of a covered Pilbara network;

24 **Pilbara electricity objective**, see section 119(2);

25 **Pilbara ISO**, see section 120W;

26 **Pilbara network service provider** means a person who —

- 27 (a) owns, controls or operates a Pilbara network or any part
28 of a Pilbara network; or
- 29 (b) proposes to own, control or operate a Pilbara network or
30 any part of a Pilbara network;

Pilbara network user means a person provided or to be provided with access to services under a Pilbara access agreement but does not include the Pilbara ISO;

Pilbara networks participant means —

- (a) the Pilbara ISO; or
- (b) a Pilbara network service provider; or
- (c) a licensee of a generation licence if the generating works to which the licence applies are connected to a Pilbara network; or
- (d) a licensee of a transmission licence if the transmission system is, or is part of, a Pilbara network; or
- (e) a licensee of a distribution licence if the distribution system is, or is part of, a Pilbara network; or
- (f) a licensee of a retail licence who sells electricity transported through a Pilbara network; or
- (g) a licensee of an integrated regional licence if at least one of the activities under the licence is an activity of a kind that could be covered by a licence referred to in paragraphs (c) to (f); or
- (h) a Pilbara network user; or
- (i) a person on whom functions are conferred under this Part; or
- (j) a person on whom functions relating to this Part are conferred by another written law; or
- (k) a person who is registered under the Pilbara networks rules as required by the regulations; or
- (l) a person whose conduct is regulated, or on whom obligations are imposed, by regulations made under section 120N(2)(a).

[Section 120 inserted: No. 9 of 2020 s. 19.]

Division 2 — Pilbara Networks Access Code

[Heading inserted: No. 9 of 2020 s. 19.]

120A. Minister to establish Pilbara Networks Access Code

(1) The Minister is to establish, in accordance with this Part, a code to be called the Pilbara Networks Access Code —

(a) to give effect to the purposes set out in section 119(1)(a) and (b); and

(b) to meet the Pilbara electricity objective.

(2) The Pilbara Networks Access Code may be established by amendment to the Code or by a separate instrument.

[Section 120A inserted: No. 9 of 2020 s. 19.]

120B. Pilbara Networks Access Code — covered Pilbara networks

Provision is to be made in the Pilbara Networks Access Code for or in relation to the following —

(a) prescribing Pilbara networks that are to be covered Pilbara networks regulated under this Part with effect from the coming into operation of the Pilbara Networks Access Code;

(b) prescribing the processes (including the matters to be considered and the criteria to apply) by which the Minister is to decide the following —

(i) whether a covered Pilbara network is to be regulated under this Part;

(ii) whether a covered Pilbara network that is regulated under this Part is to cease to be regulated under this Part;

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

(d) prescribing the circumstances in which a Pilbara network service provider may opt for a Pilbara network

- 1 to be regulated under this Part and the processes for
2 making, and determining the outcome of, that option;
- 3 (e) prescribing the circumstances in which a Pilbara
4 network service provider that opted for a Pilbara
5 network to be regulated under this Part may opt for the
6 network to cease to be regulated under this Part and the
7 processes for making, and determining the outcome of,
8 that option;
- 9 (f) the effect on any processes, requirements, access
10 arrangements or access agreements or other matter or
11 thing under the [electricity system and market rules](#)Code
12 or the Pilbara Networks Access Code or any contract
13 of —
- 14 (i) a decision referred to in paragraph (b) that a
15 covered Pilbara network is to be regulated under
16 this Part; or
- 17 (ii) a decision referred to in paragraph (b) that a
18 covered Pilbara network is to cease to be
19 regulated under this Part; or
- 20 (iii) a Pilbara network service provider opting for a
21 Pilbara network to be regulated under this Part;
22 or
- 23 (iv) a Pilbara network service provider opting for a
24 covered Pilbara network to cease to be regulated
25 under this Part;
- 26 (g) any transitional matters for the purposes of
27 paragraphs (a) to (f);
- 28 (h) generally, the relationship between the [electricity system](#)
29 [and market rules](#)Code and the Pilbara Networks Access
30 Code, including things done under, or governed by, the
31 [electricity system and market rules](#)Code or the Pilbara
32 Networks Access Code.

33 [Section 120B inserted: No. 9 of 2020 s. 19.]

1 **120C. Pilbara Networks Access Code — light regulation**

2 Provision is to be made in the Pilbara Networks Access Code
3 for or in relation to the following matters in relation to covered
4 Pilbara networks —

- 5 (a) access by persons to services of covered Pilbara
6 networks in accordance with —
- 7 (i) Pilbara access agreements; or
- 8 (ii) determinations made by way of arbitration;
- 9 (b) Pilbara access agreements and contracts to be subject to
10 determinations or requirements of the Pilbara ISO;
- 11 (c) network access pricing regulation principles;
- 12 (d) the procedures, requirements, methodologies,
13 guidelines, parameters, values and processes to be
14 followed or used by a Pilbara network service provider
15 in connection with prices, tariffs, revenue and costs;
- 16 (e) the rights, powers and duties that are to apply to and in
17 relation to the negotiation, making, and implementation
18 of Pilbara access agreements;
- 19 (f) the duties and requirements in relation to the provision
20 of access to services that are to be complied with by a
21 Pilbara network service provider;
- 22 (g) requiring a Pilbara network service provider to develop
23 and publish the following in relation to its services —
- 24 (i) standing prices for connection and access to its
25 services, including reasonable details of the
26 methodologies and assumptions used in
27 determining standing prices; and
- 28 (ii) standing terms for connection and access to its
29 services; and
- 30 (iii) information to assist persons seeking connection
31 and access to its services;

- 1 (h) the circumstances in which a Pilbara network service
2 provider may or may not offer or agree to different
3 prices and terms for different Pilbara network users
4 (including prices and terms determined in accordance
5 with provisions made under paragraphs (c) to (g));
- 6 (i) access to the services of stand-alone power systems;
- 7 (j) providing for the resolution of disputes in relation to
8 connection and access to services or in relation to things
9 done or omitted to be done by a Pilbara network service
10 provider under the Pilbara Networks Access Code
11 including —
- 12 (i) arbitration of disputes by a person or body that is
13 determined or appointed in accordance with the
14 Pilbara Networks Access Code; and
- 15 (ii) the conferral of functions on a person or body
16 arbitrating disputes;
- 17 (k) conferring functions on the Authority, including —
- 18 (i) supervisory and other functions for the purposes
19 of the Pilbara Networks Access Code, including
20 dispute resolution functions; and
- 21 (ii) the function of determining requirements
22 (including prices and terms) in relation to access
23 to services that are to be complied with by a
24 Pilbara network service provider or a person
25 seeking access to services and applied by a
26 person or body arbitrating disputes; and
- 27 (iii) the issuing of guidelines for the purposes of this
28 Division;
- 29 (l) the obligations of Pilbara networks participants to
30 comply with guidelines issued by the Authority;
- 31 (m) the obligations of a Pilbara network service provider in
32 respect of the segregation of the functions and business
33 of providing services from the Pilbara network service
34 provider's other functions and business;

- 1 (n) requiring the approval by the Authority of a proposed
2 segregation referred to in paragraph (m) and enabling
3 the Authority to amend the proposal or add to or waive
4 any of the obligations;
- 5 (o) services between related bodies corporate (as defined in
6 the *Corporations Act 2001* (Commonwealth) section 9);
- 7 (p) conferring rights and imposing obligations on Pilbara
8 networks participants;
- 9 (q) regulating the disclosure and use of confidential or
10 commercially sensitive information;
- 11 (r) conferring functions on —
12 (i) the Minister; or
13 (ii) the Pilbara ISO;
- 14 (s) in respect of costs incurred in the performance of
15 functions conferred on the Authority or the Pilbara ISO,
16 provide for —
17 (i) the implementation of accounting arrangements
18 to enable those costs to be identified; and
19 (ii) the allocation of those costs between Pilbara
20 networks participants; and
21 (iii) in the case of the Pilbara ISO, any costs incurred
22 in anticipation of, or preparation for, the
23 performance of the functions of the Pilbara ISO;
24 and
25 (iv) the recovery of those costs;
- 26 (t) providing for the relationship between the Minister, or
27 another Minister, and a participant referred to in
28 section 120ZA in respect of the performance of the
29 functions of the participant;
- 30 (u) providing for the regulation of matters —
31 (i) of a savings, transitional or supplementary
32 nature; or

- (ii) that are otherwise necessary or convenient for the purposes of this Division.

[Section 120C inserted: No. 9 of 2020 s. 19.]

120D. Additional matters for Pilbara Networks Access Code and other instruments

- (1) The regulations or the Pilbara Networks Access Code may provide that if the disclosure or use of confidential or commercially sensitive information is authorised by the regulations or the Pilbara Networks Access Code —
- (a) no civil or criminal liability is incurred in respect of the use or disclosure; and
 - (b) the use or disclosure is not to be regarded as —
 - (i) a breach of any duty of confidentiality or secrecy imposed by law or contract; or
 - (ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
 - (iii) unprofessional conduct.
- (2) The regulations, the Pilbara Networks Access Code, an instrument made under the Pilbara Networks Access Code or an instrument amending any of them, may apply, adopt or incorporate, with or without modification, material contained in any other document or writing as in effect or existing —
- (a) when the regulations, Pilbara Networks Access Code, instrument or amending instrument comes into operation; or
 - (b) at a specified prior time.
- (3) Without limiting section 120C(s), if it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function, the regulations or the Pilbara Networks Access Code may provide for the method of calculating the fee

1 or charge, including calculation according to the cost of
2 performing that function.

3 (4) The following decisions are not liable to be challenged in, or
4 reviewed or called in question by, a court or tribunal otherwise
5 than under section 130 —

6 (a) a decision under the Pilbara Networks Access Code as
7 to whether a covered Pilbara network is to be regulated
8 under this Part or is to cease to be regulated under this
9 Part;

10 (b) a decision under the Pilbara Networks Access Code as
11 to whether a Pilbara network service provider does or
12 does not satisfy the requirements to —

13 (i) opt for the Pilbara network to be regulated under
14 this Part; or

15 (ii) opt for the covered Pilbara network to cease to
16 be regulated under this Part.

17 (5) The regulations or the transitional provisions referred to in
18 section 120C(u)(i) may authorise the Minister to determine by
19 order published in the *Gazette* how any matter or thing in
20 progress immediately before the commencement of the Pilbara
21 Networks Access Code is to be treated, after that
22 commencement, for the purposes of the provisions of the
23 Pilbara Networks Access Code.

24 *[Section 120D inserted: No. 9 of 2020 s. 19.]*

25 **120E. Additional matters for Pilbara Networks Access Code: more**
26 **than one provider for network**

27 The Pilbara Networks Access Code may provide for the
28 following —

29 (a) that if there is more than one Pilbara network service
30 provider for a Pilbara network and a thing is required or
31 permitted under the Pilbara Networks Access Code to be
32 done by the Pilbara network service providers, one of
33 the Pilbara network service providers may, with the

- 1 consent of one or more of the other providers, do that
2 thing on behalf of those consenting providers;
- 3 (b) that a thing done or omitted to be done by a Pilbara
4 network service provider on behalf of another Pilbara
5 network service provider for a Pilbara network as
6 referred to in paragraph (a) is taken to have been done or
7 omitted to be done by that other Pilbara network service
8 provider;
- 9 (c) that if there is more than one Pilbara network service
10 provider that is a party to an access arrangement for a
11 Pilbara network and that arrangement allocates things
12 required or permitted under the Pilbara Networks
13 Access Code to be done between those Pilbara network
14 service providers, the provider to whom the thing is
15 allocated under that arrangement is required or
16 permitted to do that thing.

17 *[Section 120E inserted: No. 9 of 2020 s. 19.]*

18 **120F. Consequential amendments to the electricity system and**
19 **market rules Code**

- 20 (1) The Minister may amend the electricity system and market
21 rules Code to give effect to, and make any consequential
22 amendments relating to, the Pilbara Networks Access Code.

23 ~~—(2) Sections 108 and 109 do not apply to the making of~~
24 ~~amendments to the Code mentioned in subsection (1) in~~
25 ~~connection with the establishment of the initial Pilbara~~
26 ~~Networks Access Code.~~

27 (2) A requirement under this Act or the regulations for public
28 consultation before amending the electricity system and market
29 rules does not apply to an amendment made under
30 subsection (1).

31 *[Section 120F inserted: No. 9 of 2020 s. 19.]*

1 **120G. Pilbara Networks Access Code is subsidiary legislation**

2 (1) In this section —

3 ***Pilbara Networks Access Code*** includes —

4 (a) an amendment of the Pilbara Networks Access Code; or

5 (b) a code repealing and replacing the Pilbara Networks
6 Access Code.

7 (2) This section applies if the Pilbara Networks Access Code is
8 established by a separate instrument under section 120A(2).

9 (3) The Pilbara Networks Access Code is subsidiary legislation for
10 the purposes of the *Interpretation Act 1984*.

11 (4) The Pilbara Networks Access Code is to be laid before each
12 House of Parliament within 6 sitting days of that House after the
13 day on which the code is published in the *Gazette*.

14 (5) Notice of motion to disallow the Pilbara Networks Access Code
15 or any part of the code may be given in either House of
16 Parliament within 10 sitting days of that House after the day on
17 which the code is laid before it under subsection (4).

18 (6) Within 10 sitting days of a House of Parliament after notice of
19 motion has been given in that House under subsection (5), that
20 House may pass a resolution disallowing the Pilbara Networks
21 Access Code or any part of the code.

22 (7) If the Pilbara Networks Access Code is not laid before both
23 Houses of Parliament under subsection (4), or is disallowed by
24 either House in whole or in part under subsection (6), the code,
25 or the disallowed part of the code (as applicable) ceases to have
26 effect, but without affecting the validity or curing the invalidity
27 of anything done or the omission of anything in the meantime.

28 (8) If a resolution has been passed under subsection (6), notice to
29 that effect is to be published in the *Gazette* within 21 days.

30 *[Section 120G inserted: No. 9 of 2020 s. 19.]*

120H. Public comment on amendment or replacement of Pilbara Networks Access Code

(1) This section applies if the Pilbara Networks Access Code is established by a separate instrument under section 120A(2) and the Minister intends to exercise the power —

- (a) to amend the Pilbara Networks Access Code; or
- (b) to repeal and replace it.

(2) Before exercising the power, the Minister must make the proposed amendment or replacement available for public comment in accordance with subsection (3).

(3) The Minister must —

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

- (i) in an issue of a daily newspaper circulating throughout the Commonwealth; and
- (ii) in an issue of a daily newspaper circulating throughout the State; and
- (iii) on an appropriate website;

and

(b) include in the notice the following information —

- (i) the website at which a copy of the proposal may be obtained; and
- (ii) a statement that written submissions on the proposal may be made to the Minister by any person within a specified period; and
- (iii) how the submissions may be made.

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

- 1 (5) The Minister must have regard to any submission made in
2 accordance with the notice.

3 *[Section 120H inserted: No. 9 of 2020 s. 19.]*

4 **120I. Exception to section 120H**

- 5 (1) Section 120H(2) does not apply if the Minister is satisfied that a
6 proposed amendment to the Pilbara Networks Access Code
7 is —

- 8 (a) of a minor nature; or
9 (b) required to be made urgently.

- 10 (2) If in reliance on subsection (1)(b) the Minister amends the
11 Pilbara Networks Access Code without complying with
12 section 120H(2) —

- 13 (a) the Minister must call for public comment on the
14 amendment as soon as is practicable; and
15 (b) section 120H(3) and (4) apply with all necessary
16 modifications.

- 17 (3) Having regard to any submissions made on the amendment, the
18 Minister must consider whether the Pilbara Networks Access
19 Code should be amended —

- 20 (a) to reverse the effect of the amendment; or
21 (b) in some other manner.

22 *[Section 120I inserted: No. 9 of 2020 s. 19.]*

23 **120J. Consultation with network service providers on amendment**
24 **or replacement of Pilbara Networks Access Code**

- 25 (1) Without limiting section 120H, if the Minister considers that a
26 proposed amendment or replacement of the Pilbara Networks
27 Access Code that is established by a separate instrument under
28 section 120A(2) may materially affect a network service
29 provider, the Minister must —

- 30 (a) consult with the network service provider; and

1 (b) have regard to any submissions that the network service
2 provider makes in relation to the proposal.

3 (2) If a network service provider considers that the Pilbara
4 Networks Access Code, or a provision of it, has, as a result of
5 altered circumstances, become unreasonable or inappropriate in
6 its application to the network service provider, the network
7 service provider may make a submission to the Minister
8 requesting that the Pilbara Networks Access Code be amended
9 or be repealed and replaced.

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

13 *[Section 120J inserted: No. 9 of 2020 s. 19.]*

14 **Division 3 — Pilbara networks rules**

15 *[Heading inserted: No. 9 of 2020 s. 19.]*

16 **120K. Regulations to provide for Pilbara networks rules**

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

20 (2) The regulations may provide for the Pilbara networks rules to
21 provide for, and in relation to, the operation, management,
22 security and reliability of covered Pilbara networks that are not
23 part of an interconnected Pilbara system.

24 (3) The regulations may also provide for the Pilbara networks rules
25 to provide for, and in relation to, the following matters in
26 relation to Pilbara networks that are not covered Pilbara
27 networks or part of an interconnected Pilbara system —

28 (a) the functions of the Pilbara ISO under
29 section 120W(4)(d);

30 (b) the obligations of Pilbara network service providers to
31 provide information to, and assist, the Pilbara ISO in the

1 performance of the functions referred to in
2 paragraph (a);¹

3 (c) the regulation of the powers of the Regional Power
4 Corporation to provide stand-alone power systems or
5 storage works, including stand-alone power systems or
6 storage works that do not form part of a covered Pilbara
7 network.

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

10 *[Section 120K inserted: No. 9 of 2020 s. 19.]*

11 **120L. Pilbara networks rules not subsidiary legislation**

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

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

20 *[Section 120L inserted: No. 9 of 2020 s. 19.]*

21 **120M. Establishment and amendment of Pilbara networks rules**

22 The regulations may provide for —

- 23 (a) the establishment of the initial Pilbara networks rules;
24 and
25 (b) the amendment, or repeal and replacement, of the
26 Pilbara networks rules by rules made in accordance with
27 the regulations and the Pilbara networks rules; and
28 (c) the publication, commencement, and laying before each
29 House of Parliament, of the initial Pilbara networks

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

3 *[Section 120M inserted: No. 9 of 2020 s. 19.]*

4 **120N. General matters to be dealt with in regulations**

- 5 (1) The regulations may prescribe all matters that are necessary or
6 convenient to be prescribed —
7 (a) in relation to the matters set out in section 120K; and
8 (b) to give effect to the purpose set out in section 119(1)(c);
9 and
10 (c) to meet the Pilbara electricity objective in relation to
11 those matters.
- 12 (2) Without limiting section 120K, 131 or 131B or subsection (1),
13 the regulations may do all or any of the following —
14 (a) regulate the conduct of persons and impose obligations
15 on them;
16 (b) confer functions, or authorise the Pilbara networks rules
17 to confer functions, on any of the following —
18 (i) the Minister;
19 (ii) the Authority;
20 (iii) the Pilbara ISO;
21 (iv) a person holding an office under a written law;
22 (v) a body established under a written law;
23 (vi) any other person;
24 (c) provide for the relationship between the Minister or
25 another Minister and a person or body referred to in
26 paragraph (b)(ii) to (vi) in relation to the performance of
27 the functions of the person or body;
28 (d) authorise the Pilbara networks rules to confer rights and
29 impose obligations on Pilbara networks participants;

- 1 (e) provide, or authorise the Pilbara networks rules to
2 provide, for the resolution of disputes between Pilbara
3 networks participants;
- 4 (f) authorise the Pilbara networks rules to —
- 5 (i) authorise the Pilbara ISO to make instruments
6 establishing protocols and procedures and any
7 other instruments related to the performance of
8 its functions; and
- 9 (ii) provide for the effect of those instruments;
- 10 (g) provide for the process of making, amending, repealing
11 or replacing an instrument made by the Pilbara ISO
12 under a power conferred under paragraph (f);
- 13 (h) provide, or authorise the Pilbara networks rules to
14 provide, for metering of electricity in covered Pilbara
15 networks and interconnected Pilbara networks, including
16 by providing for —
- 17 (i) the provision, operation and maintenance of
18 metering equipment; and
- 19 (ii) ownership of and access to metering data;
- 20 (i) provide, or authorise the Pilbara networks rules to
21 provide, for the regulation of the disclosure and use of
22 confidential or commercially sensitive information;
- 23 (j) in respect of costs incurred in the performance of
24 functions conferred on a person or body referred to in
25 paragraph (b)(ii) to (vi), provide for —
- 26 (i) the implementation of accounting arrangements
27 to enable those costs to be identified; and
- 28 (ii) the allocation of those costs between Pilbara
29 networks participants; and
- 30 (iii) the recovery of those costs;

- 1 (k) provide, or authorise the Pilbara networks rules to
2 provide, for the regulation of matters —
3 (i) of a savings, transitional or supplementary
4 nature; or
5 (ii) that are otherwise necessary or convenient for
6 the purposes of this Division.
- 7 (3) The reference to costs in subsection (2)(j) includes, in relation to
8 the Pilbara ISO, any costs incurred in anticipation of, or in
9 preparation for, the performance of the functions of the Pilbara
10 ISO.
- 11 (4) Despite subsection (2), the regulations may regulate the conduct
12 of, and confer rights and impose obligations on, network service
13 providers of Pilbara networks that are not covered Pilbara
14 networks or interconnected Pilbara networks only for the
15 purposes set out in section 120K(3).
- 16 *[Section 120N inserted: No. 9 of 2020 s. 19.]*
- 17 **120O. Additional matters to be dealt with in regulations or rules**
- 18 (1) Without limiting section 120N(2)(a), the regulations may
19 prohibit persons from engaging in an activity specified in the
20 regulations unless they are registered in accordance with the
21 Pilbara networks rules.
- 22 (2) The regulations or the Pilbara networks rules may provide that
23 if the disclosure or use of confidential or commercially sensitive
24 information is authorised by the rules —
25 (a) no civil or criminal liability is incurred in respect of the
26 use or disclosure; and
27 (b) the use or disclosure is not to be regarded as —
28 (i) a breach of any duty of confidentiality or secrecy
29 imposed by law or contract; or
30 (ii) a breach of professional ethics or standards or
31 any principles of conduct applicable to a
32 person's employment; or

- 1 (iii) unprofessional conduct.
- 2 (3) The regulations, the Pilbara networks rules, an instrument made
3 under the Pilbara networks rules or an instrument amending any
4 of them, may apply, adopt or incorporate, with or without
5 modification, material contained in any other document or
6 writing as in effect or existing —
- 7 (a) when the regulations, Pilbara networks rules, instrument
8 or amending instrument comes into operation; or
- 9 (b) at a specified prior time.
- 10 (4) Without limiting section 120N(2)(j), if it is inappropriate to
11 prescribe a set fee or charge in connection with the performance
12 of a particular function, the regulations may provide for the
13 method of calculating the fee or charge, including calculation
14 according to the cost of performing that function.
- 15 (5) The regulations, or the rules referred to in section 120N(2)(k)(i),
16 may authorise the Minister to determine by order published in
17 the *Gazette* how any matter or thing in progress immediately
18 before the commencement of the Pilbara networks rules is to be
19 treated, after that commencement, for the purposes of the
20 provisions of the Pilbara networks rules.

21 *[Section 120O inserted: No. 9 of 2020 s. 19.]*

22 **120P. Additional matters to be dealt with in rules: more than one**
23 **provider**

24 The regulations may provide that the Pilbara networks rules
25 may provide for the following —

- 26 (a) that if there is more than one Pilbara network service
27 provider for a Pilbara network and a thing is required or
28 permitted by the Pilbara networks rules to be done by
29 the Pilbara network service providers, one of the Pilbara
30 network service providers may, with the consent of one
31 or more of the other providers, do that thing on behalf of
32 those consenting providers;

- (b) that a thing done or omitted to be done by a Pilbara network service provider on behalf of another Pilbara network service provider for a Pilbara network as referred to in paragraph (a) is taken to have been done or omitted to be done by that other Pilbara network service provider;
- (c) that if there is more than one Pilbara network service provider for a Pilbara network and the Pilbara network service providers publish an instrument in accordance with the Pilbara networks rules that allocates things required or permitted by those rules to be done between those Pilbara network service providers, the provider to whom the thing is allocated under that instrument is required or permitted to do that thing.

[Section 120P inserted: No. 9 of 2020 s. 19.]

Division 4 — Pilbara networks technical rules

[Heading inserted: No. 9 of 2020 s. 19.]

120Q. Technical rules

- (1) The regulations may provide for the following —
- (a) for the making, formulation and approval of technical rules for the purposes of this Part;
- (b) for the Pilbara Networks Access Code or the Pilbara networks rules to provide for the making, formulation and approval of technical rules for the purposes of this Part.
- (2) The technical rules may include rules made for the purposes of all or any of the following —
- (a) access to services of covered Pilbara networks;
- (b) network and system operations ~~and~~ [power electricity](#) system reliability ~~and stability and system security~~ for

1 covered Pilbara networks and interconnected Pilbara
2 networks.

3 *[Section 120Q inserted: No. 9 of 2020 s. 19.]*

4 **Division 5 — Enforcement**

5 *[Heading inserted: No. 9 of 2020 s. 19.]*

6 **120R. References to contravening regulations, Pilbara Networks**
7 **Access Code or Pilbara networks rules**

8 A reference in this Division to contravening a provision of the
9 regulations or the Pilbara Networks Access Code or the Pilbara
10 networks rules includes a reference to —

- 11 (a) attempting to contravene the provision; or
12 (b) aiding, abetting, counselling or procuring a person to
13 contravene the provision; or
14 (c) inducing, or attempting to induce, a person, whether by
15 threats or promises or otherwise, to contravene the
16 provision; or
17 (d) being in any way, directly or indirectly, knowingly
18 concerned in, or party to, the contravention by a person
19 of the provision; or
20 (e) conspiring with others to contravene the provision.

21 *[Section 120R inserted: No. 9 of 2020 s. 19.]*

22 **120S. Prohibitions on hindering or preventing access**

23 (1) In this section —

24 **associate**, in relation to a person, has the meaning it would have
25 under the *Corporations Act 2001* (Commonwealth) Part 1.2
26 Division 2 if sections 13, 16(2) and 17 of that Act were deleted.

27 (2) A Pilbara network service provider of a covered Pilbara network
28 that is regulated under this Part, or an associate of the Pilbara

1 network service provider, must not engage in conduct for the
2 purpose of hindering or preventing —

- 3 (a) access by any person to services in accordance with this
4 Part; or
5 (b) the making of Pilbara access agreements or any
6 particular agreement in respect of that network; or
7 (c) the access to which a person is entitled under a Pilbara
8 access agreement or a determination made by way of
9 arbitration.

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

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

- 12 (3) A person who has access to services, or an associate of the
13 person, must not engage in conduct for the purpose of hindering
14 or preventing access by another person to services of a covered
15 Pilbara network that is regulated under this Part.

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

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

- 18 (4) Without limiting subsection (2) or (3) —

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

- 21 (i) the conduct is or was engaged in for purposes
22 that include, or included, that purpose; and
23 (ii) that purpose is or was a substantial purpose;

24 and

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

- 1 (5) In this section —
- 2 (a) a reference to engaging in conduct is a reference to
- 3 doing or refusing to do any act and includes a reference
- 4 to —
- 5 (i) making a contract, agreement or arrangement or
- 6 giving effect to a provision of a contract,
- 7 agreement or arrangement; or
- 8 (ii) arriving at an understanding or giving effect to a
- 9 provision of an understanding; or
- 10 (iii) requiring a covenant to be given or giving a
- 11 covenant;
- 12 and
- 13 (b) a reference to refusing to do an act includes a reference
- 14 to —
- 15 (i) refraining (otherwise than inadvertently) from
- 16 doing the act; or
- 17 (ii) making it known that the act will not be done.
- 18 (6) Subsection (2) or (3) does not apply to conduct in which a
- 19 person engaged in accordance with an agreement, if the
- 20 agreement was in force on 30 March 1995.

21 *[Section 120S inserted: No. 9 of 2020 s. 19.]*

22 **~~120T. Proceedings~~**

- 23 ~~— (1) Civil proceedings cannot be brought in respect of a matter~~
- 24 ~~arising under the Pilbara Networks Access Code except —~~
- 25 ~~— (a) in accordance with the regulations; or~~
- 26 ~~— (b) by arbitration under the Pilbara Networks Access Code;~~
- 27 ~~or~~
- 28 ~~— (c) in accordance with section 130.~~
- 29 ~~— (2) Nothing in subsection (1) affects the right of a person —~~
- 30 ~~— (a) to bring civil proceedings in respect of any matter or~~
- 31 ~~thing, or seek any relief or remedy, if the cause of action~~

~~arises, or the relief or remedy is sought, on grounds that
do not rely on the Pilbara Networks Access Code; or~~

~~(b) to bring proceedings for judicial review of a decision
made under this Act or the Pilbara Networks Access
Code.~~

~~[Section 120T inserted: No. 9 of 2020 s. 19.]~~

120U. Criminal proceedings do not lie

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

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

[Section 120U inserted: No. 9 of 2020 s. 19.]

120V. Regulations as to enforcement of Pilbara Networks Access Code and Pilbara networks rules

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

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

(a) provide that a provision of the Pilbara Networks Access Code or the Pilbara networks rules specified in the regulations, or of a class specified in the regulations, is a civil penalty provision for the purposes of the regulations;

(b) prescribe, for a contravention of a civil penalty provision the following amounts that may, in accordance with the regulations, be demanded from or imposed upon a person who contravenes the provision —

(i) an amount not exceeding \$100 000; and

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

1 Networks Access Code or the Pilbara networks rules and
2 for the powers exercisable under warrants.

3 (3) In subsection (2)(b)(ii) —

4 **daily amount** means an amount for each day or part of a day
5 during which the contravention continues.

6 [Section 120V inserted: No. 9 of 2020 s. 19.]

7 **Division 6 — Independent system operator**

8 [Heading inserted: No. 9 of 2020 s. 19.]

9 **120W. Independent system operator**

10 (1) There is to be an independent system operator for Pilbara
11 networks (the **Pilbara ISO**).

12 (2) The Pilbara ISO is to be a person specified in the regulations.

13 (3) Without limiting subsection (2), the regulations may specify the
14 Regional Power Corporation as the Pilbara ISO.

15 (4) Subject to subsection (5), the Pilbara ISO has the following
16 functions —

17 (a) to maintain and improve system security [and reliability](#)
18 in any interconnected Pilbara system;

19 (b) to facilitate overall network co-ordination and planning
20 for interconnected Pilbara systems;

21 (c) any functions in relation to covered Pilbara networks
22 given by this Act, the regulations, the Pilbara Networks
23 Access Code or the Pilbara networks rules;

24 (d) in relation to Pilbara networks that are not covered
25 Pilbara networks or part of an interconnected Pilbara
26 system —

27 (i) to collect and consider information relating to the
28 operation, management, security and reliability
29 of the Pilbara networks; and

- 1 (ii) to report as specified by the regulations to the
2 Minister, the Authority or a specified person on
3 those matters; and
4 (iii) to publish information on those matters.

- 5 (5) The regulations may specify that the initial Pilbara ISO is to
6 have only those functions mentioned in subsection (4) that are
7 specified in the regulations.

8 *[Section 120W inserted: No. 9 of 2020 s. 19.]*

9 **120X. Regulations relating to Pilbara ISO**

10 The regulations may provide, or authorise the Pilbara Networks
11 Access Code or the Pilbara networks rules to provide, for the
12 following —

- 13 (a) that the Pilbara ISO may delegate the performance of a
14 function to another person or body;
15 (b) that a delegation under paragraph (a) may permit the
16 delegate to further delegate the performance of the
17 function in accordance with the delegation;
18 (c) the regulation of delegations under this section;
19 (d) the regulation of contracts relating to delegations under
20 this section, including that such contracts must comply
21 with the requirements specified in the regulations, code
22 or rules;
23 (e) the obligations of the Pilbara ISO in relation to a
24 function the performance of which has been delegated to
25 another person or body;
26 (f) the obligations of the Pilbara ISO in relation to the
27 segregation of the functions of the Pilbara ISO under
28 this Part (including as to personnel, operations, financial
29 and legal matters and related matters) from other
30 functions and business of the Pilbara ISO;

- 1 (g) the obligations of the Pilbara ISO to —
- 2 (i) report as specified by the regulations to the
- 3 Minister, the Authority or a specified person on
- 4 specified matters; and
- 5 (ii) prepare and publish information on specified
- 6 matters.

7 *[Section 120X inserted: No. 9 of 2020 s. 19.]*

8 **Division 7 — Functions of Authority**

9 *[Heading inserted: No. 9 of 2020 s. 19.]*

10 **120Y. Functions of Authority**

- 11 (1) The Authority has the functions conferred on it under this Part.
- 12 (2) Without limiting section 131 or 131B or subsection (1), the
- 13 regulations may provide for the obligations of the Authority
- 14 to —
- 15 (a) report to the Minister on specified matters; and
- 16 (b) prepare and publish information on specified matters.

17 *[Section 120Y inserted: No. 9 of 2020 s. 19.]*

18 **Division 8 — Reviews of decisions**

19 *[Heading inserted: No. 9 of 2020 s. 19.]*

20 **120Z. Reviews of decisions**

- 21 (1) Application may be made to the Board for the review by the
- 22 Board of decisions of the following that are made under the
- 23 regulations or the Pilbara networks rules and are of a class
- 24 specified in the regulations —
- 25 (a) a person on whom functions are conferred under this
- 26 Part;
- 27 (b) a person on whom functions relating to this Part are
- 28 conferred by another written law.

- 1 (2) Regulations may —
2 (a) provide for the powers of the Board in relation to
3 reviews provided for in those regulations; and
4 (b) make other provision that it is necessary or convenient
5 to make in relation to those reviews.
- 6 (3) Nothing in subsection (1) prevents or affects the review by a
7 court or tribunal, according to law, of decisions of the persons
8 referred to in that subsection made under the regulations or the
9 Pilbara networks rules.
- 10 *[Section 120Z inserted: No. 9 of 2020 s. 19.]*

11 **Division 9 — Immunity**

12 *[Heading inserted: No. 9 of 2020 s. 19.]*

13 **120ZA. Terms used**

- 14 (1) In this Division —
15 **civil monetary liability** means liability to pay damages or
16 compensation or any other amount ordered in a civil
17 proceeding, but does not include liability to pay a civil penalty
18 under the regulations;
19 **entity** includes the following —
20 (a) a body corporate;
21 (b) a partnership;
22 (c) an unincorporated body;
23 (d) an individual;
24 (e) for a trust that has only 1 trustee —the trustee;
25 (f) for a trust that has more than 1 trustee —the trustees
26 together;
27 **officer** of an entity that is a corporation has the meaning given
28 to officer of a corporation in the *Corporations Act 2001*
29 (Commonwealth) section 9;

officer of an entity that is neither an individual nor a corporation has the meaning given to that term in the *Corporations Act 2001* (Commonwealth) section 9;

participant means a person —

- (a) on whom functions are conferred under this Part; or
- (b) to whom the performance of a function has been delegated under this Part; or
- (c) on whom functions relating to this Part are conferred by another written law;

preparing entity means an entity that enters into an arrangement with the State, including before the commencement of the *Electricity Industry Amendment Act 2020*, to carry out preparatory work in anticipation of, or in preparation for, the performance by the entity of any of the functions of the Pilbara ISO under this Part.

- (2) In this Division, a reference to the commencement of the *Electricity Industry Amendment Act 2020* is a reference to the day on which section 19 of that Act comes into operation.

[Section 120ZA inserted: No. 9 of 2020 s. 19.]

120ZB. Immunity of participants and their officers or employees

- (1) A participant, or an officer or employee of a participant, does not incur any civil monetary liability for an act or omission of the participant, a delegate of the participant or a delegate of the delegate, or an officer or employee of any of them, done or made in good faith in the performance, or purported performance, of a function under this Part.

- (2) Subsection (1) has effect —

- (a) in respect of all participants, and officers and employees of them, other than the Pilbara ISO, and officers and employees of it — subject to section 120ZC; and
- (b) in respect of all participants, and officers and employees of them — subject to section 120ZD.

- 1 (3) An entity with which the Pilbara ISO enters into a contract in
2 relation to the Pilbara ISO's performance of a function under
3 this Part does not incur any civil monetary liability for an act or
4 omission of the entity, or an officer or employee of it, done or
5 made in good faith in the performance, or purported
6 performance, of the contract.
- 7 (4) Subsection (3) has effect subject to sections 120ZC and 120ZD,
8 as if the reference in section 120ZD(1) to 12 months were a
9 reference to 2 months.
- 10 (5) The Pilbara ISO or a preparing entity, or an officer or employee
11 of either of them, does not incur any civil monetary liability for
12 an act or omission of the Pilbara ISO or the preparing entity, or
13 an officer or employee of either of them, done or made,
14 including before the commencement of the *Electricity Industry*
15 *Amendment Act 2020*, in good faith in anticipation of, or in
16 preparation or purported preparation for, the performance of a
17 function under this Part.

18 *[Section 120ZB inserted: No. 9 of 2020 s. 19.]*

19 **120ZC. Regulations may limit or affect immunity**

20 The regulations may, for the purposes of section 120ZB,
21 without limitation —

- 22 (a) impose conditions on an immunity granted to an entity
23 under section 120ZB; or
- 24 (b) prescribe that an immunity granted under section 120ZB
25 is limited in its application to entities, events,
26 circumstances, losses or periods to which they are
27 expressed to apply.

28 *[Section 120ZC inserted: No. 9 of 2020 s. 19.]*

1 **120ZD. Limitation on immunity after initial period**

2 (1) If an act or omission done or made after the expiration of the
3 period of 12 months from the establishment of the initial Pilbara
4 networks rules is negligent —

5 (a) the immunity given by section 120ZB does not apply to
6 that act or omission; but

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

10 (2) The regulations may exempt a specified participant from the
11 operation of subsection (1)(a).

12 (3) The regulations may, for the purposes of subsection (1)(b),
13 without limitation —

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

17 (b) prescribe maximum amounts that vary in their
18 application according to the entities, events,
19 circumstances, losses or periods to which they are
20 expressed to apply; or

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

23 *[Section 120ZD inserted: No. 9 of 2020 s. 19.]*

24 **120ZE. Liability of officer of an entity to that entity not affected**

25 This Division does not apply to any liability of an officer of an
26 entity (other than an entity that is an individual) to that entity.

27 *[Section 120ZE inserted: No. 9 of 2020 s. 19.]*

Division 10 — Competition authorisation

[Heading inserted: No. 9 of 2020 s. 19.]

120ZF. Competition authorisation by regulation

(1) In this section —

arrangement includes any contract, arrangement or understanding, or any market practice or market or customer restriction, division, allocation or segregation of any nature, or a course of conduct or dealing.

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

[Section 120ZF inserted: No. 9 of 2020 s. 19.]

Division 11 — Review of system

[Heading inserted: No. 9 of 2020 s. 19.]

120ZG. Review of regulation of Pilbara networks

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

- (a) as soon as practicable after the 5th anniversary of the day on which the *Electricity Industry Amendment Act 2020* section 19 comes into operation; and
- (b) after that, at intervals of not more than 5 years.

(2) The purpose of the review is to assess the extent to which the Pilbara electricity objective has been or is being achieved.

(3) The Authority is, for each review, to give the Minister a written report based on the review not later than 12 months after the review commences.

- 1 (4) If the Authority considers that part or all of the Pilbara
2 electricity objective has not been or is not being achieved, the
3 report is to set out recommendations as to how the objective can
4 be achieved.
- 5 (5) Not later than 6 months after receiving the report the Minister is
6 to —
- 7 (a) cause the report to be laid before each House of
8 Parliament; and
- 9 (b) prepare a response to the report and cause the response
10 to be laid before each House of Parliament.
- 11 (6) As soon as practicable after the report is laid before each House
12 of Parliament, the Authority is to make a copy of the report
13 publicly available on a website maintained by or on behalf of
14 the Authority.

15 *[Section 120ZG inserted: No. 9 of 2020 s. 19.]*

16 **120ZH. Public consultation**

- 17 (1) In the course of conducting a review under section 120ZG, the
18 Authority is to seek public comment on the extent to which the
19 Pilbara electricity objective has been or is being achieved (the
20 **issue**).
- 21 (2) The Authority is to cause a notice giving a general description
22 of the issue to be —
- 23 (a) published in a daily newspaper circulating throughout
24 the State; and
- 25 (b) made publicly available on a website maintained by or
26 on behalf of the Authority.
- 27 (3) The notice is to include —
- 28 (a) a statement that any person may, within a specified
29 period, make written submissions on the issue to the
30 Authority; and

1 (b) the address (including an email address) to which the
2 submissions may be delivered or sent.

3 (4) The period specified under subsection (3)(a) is not to end less
4 than 30 days after the day on which the notice is published
5 under subsection (2)(a).

6 (5) The Authority is to have regard to any submission made in
7 accordance with the notice and may have regard to any other
8 submission received on the issue.

9 *[Section 120ZH inserted: No. 9 of 2020 s. 19.]*

10 **Division 12 — Transitional provisions**

11 *[Heading inserted: No. 9 of 2020 s. 19.]*

12 **120ZI. Pilbara Networks Access Code and Pilbara networks rules**
13 **do not affect existing agreements**

14 (1) The making and operation of the Pilbara Networks Access Code
15 or the Pilbara networks rules —

16 (a) do not affect the terms and conditions, or the operation,
17 of —

18 (i) an agreement for access to services in operation
19 immediately before the commencement of the
20 Pilbara Networks Access Code whether under
21 the *Electricity Transmission and Distribution*
22 *Systems (Access) Act 1994* or otherwise; or

23 (ii) an agreement for the supply of electricity or
24 related services in operation immediately before
25 the commencement of the Pilbara networks rules;

26 and

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

- 1 (2) Subsection (1)(a) or (b) does not apply if the Pilbara Networks
2 Access Code or the Pilbara networks rules or the agreement or
3 an enactment provides otherwise.

4 *[Section 120ZI inserted: No. 9 of 2020 s. 19.]*

Consultation Draft

Part 9 — Electricity system and electricity markets

~~Wholesale electricity market~~

Division 1 — Preliminary

121. Terms used

- (1) In this Part, unless the contrary intention appears —
confer includes impose;

participant has the meaning given in subsection (2);

wholesale electricity market has the meaning given to that term means the wholesale electricity market established by regulations made under in section 122.;

~~*market rules* has the meaning given to that term in section 123(1).~~

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

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

Division 2 — Electricity system, wholesale electricity market and electricity system and market rules

121A. Regulations for electricity systems

The regulations may provide generally for the regulation of the operation of electricity systems in the State.

122. Regulations for a wholesale electricity market

(1) Without limiting section 121A, regulations are to be made for the purpose of establishing a wholesale electricity market ~~(the market)~~ in relation to the wholesale supply of electricity in the South West interconnected system.

~~(2) The objectives of the market are —~~

~~(a) to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system; and~~

~~(b) to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors; and~~

~~(c) to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies such as those that make use of renewable resources or that reduce overall greenhouse gas emissions; and~~

~~(d) to minimise the long term cost of electricity supplied to customers from the South West interconnected system; and~~

~~(e) to encourage the taking of measures to manage the amount of electricity used and when it is used.~~

123. Electricity system and market rules

(1) Without limiting section 121A or 122, the regulations are to provide for there to be rules (the electricity system and market rules).

(1A) The electricity system and market rules may provide for —

(a) any matter relating to the operation generally of electricity systems in the State; and

(b) any matter relating to the wholesale electricity market; and

- 1 (c) any matter relating to the operation of the South West
2 interconnected system; and
- 3 (d) any matter authorised under Part 8 or 8A or this Part to
4 be provided for in the electricity system and market
5 rules; and
- 6 (e) any matter set out in Schedule 2A; and
- 7 (f) any other matter that under this Act may be provided for
8 in the electricity system and market rules.
- 9 ~~relating to the market and to the operation of the South West~~
10 ~~interconnected system setting out or dealing with such matters~~
11 ~~as are prescribed by the regulations.~~
- 12 (2) The electricity system and market rules are ~~not~~ subsidiary
13 legislation for the purposes of the *Interpretation Act 1984* ~~and~~
14 but sections 42 and 43(6) of that Act ~~does~~ not apply to them or
15 to rules amending them or repealing and replacing them.
- 16 ~~(3) The *Interpretation Act 1984* sections 43 (other than~~
17 ~~subsection (6)), 44, 48, 48A, 50(1), 53, 55, 56, 58, 59, 75 and 76~~
18 ~~and Part VIII apply to the market rules as if they were~~
19 ~~subsidiary legislation.~~
- 20 (4) The regulations may provide for —
- 21 (a) the ~~making establishment~~ of the ~~initial~~ electricity system
22 and market rules; and
- 23 (b) the amendment, ~~or repeal and replacement,~~ of the
24 electricity system and market rules by rules made in
25 accordance with the regulations and the electricity
26 system and market rules; and
- 27 (c) the publication, commencement, and laying before each
28 House of Parliament, of the ~~initial~~ electricity system and
29 market rules and rules amending, ~~or repealing and~~
30 ~~replacing,~~ the electricity system and market rules.
- 31 (5) The regulations, and the electricity system and market rules may
32 apply, adopt or incorporate, with or without modification,

material contained in any other document or writing as in effect
or existing —

(a) when the regulations, or rules or any amendment of the
regulations or rules comes into operation; or

(b) at a specified prior time.

124. Matters to be dealt with in regulations

(1) The regulations may prescribe all matters that are necessary or
convenient to be prescribed ~~for the purpose set out in
sections 122(1) and to achieve the objectives set out in
section 122(2), in relation to —~~

(a) the State electricity objective; or

(b) the purposes set out in sections 121A and 122; or

(c) any matters that may be included in the electricity
system and market rules.

(2) Without limiting section 121A, 122, 123 or 131 or
subsection (1), the regulations may —

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

(b) confer functions, or authorise the electricity system and
market rules to confer functions, on the Minister or any
other person (including a person holding an office under
a written law or a body established under a written law);
and

(c) provide for the establishment, or authorise the
formation, of a body (including a body corporate) and
confer functions, or authorise the electricity system and
market rules to confer functions, on a body so
established or formed; and

(d) provide for the relationship between the Minister, or
another Minister, and a participant referred to in
section 121(2)(b) or (c) in respect of the performance of
the functions of the participant; and

- 1 (e) provide, or authorise the [electricity system and](#) market
2 rules to provide, for the resolution of disputes between
3 participants; and
- 4 ~~(f) provide that a contravention of a regulation is an~~
5 ~~offence; and~~
- 6 ~~(g) prescribe a penalty of not more than \$100 000, with or~~
7 ~~without a daily penalty of not more than \$20 000, for an~~
8 ~~offence against the regulations; and~~
- 9 ~~(h) provide that a provision of the market rules specified in~~
10 ~~the regulations, or of a class specified in the regulations,~~
11 ~~is a civil penalty provision for the purposes of the~~
12 ~~regulations; and~~
- 13 ~~(i) prescribe, for a contravention of a civil penalty~~
14 ~~provision —~~
- 15 ~~(i) an amount not exceeding \$100 000; and~~
16 ~~(ii) in addition a daily amount not exceeding~~
17 ~~\$20 000,~~
- 18 ~~that may, in accordance with the regulations, be~~
19 ~~demanding from or imposed upon a person who~~
20 ~~contravenes the provision; and~~
- 21 ~~(j) provide for demands for the payment of amounts~~
22 ~~referred to in paragraph (i) and the enforcement of~~
23 ~~demands for their payment; and~~
- 24 ~~(k) provide for and regulate the taking of proceedings in~~
25 ~~respect of alleged contraventions of provisions of the~~
26 ~~market rules, provide for the orders that can be made~~
27 ~~and other sanctions that can be imposed in those~~
28 ~~proceedings and provide for the enforcement of those~~
29 ~~orders and sanctions; and~~
- 30 ~~(l) provide for the manner in which amounts received by~~
31 ~~way of civil penalties are to be dealt with and applied;~~
32 ~~and~~
- 33 ~~(m) provide for and regulate the making of applications for,~~
34 ~~and the issue of, warrants relating to the investigation of~~

- 1 ~~alleged contraventions of provisions of the market rules~~
2 ~~and for the powers exercisable under warrants; and~~
- 3 (n) in respect of costs incurred in the performance of
4 functions conferred on a participant referred to in
5 section 121(2)(b) or (c), provide for —
- 6 (i) the implementation of accounting arrangements
7 to enable those costs to be identified; and
8 (ii) the allocation of those costs between
9 participants; and
10 (iii) the recovery of those costs.
- 11 (3) Without limiting subsection (2)(a), the regulations may prohibit
12 persons from engaging in an activity specified in the regulations
13 unless they are registered in accordance with the [electricity](#)
14 [system and](#) market rules.
- 15 (4) Without limiting subsection (2)(n), if it is inappropriate to
16 prescribe a set fee or charge in connection with the performance
17 of a particular function the regulations may provide for the
18 method of calculating the fee or charge, including calculation
19 according to the cost of performing that function.
- 20 ~~(5) A reference in subsection (2) to contravening a provision of the~~
21 ~~market rules includes a reference to —~~
- 22 ~~(a) attempting to contravene such a provision; or~~
23 ~~(b) aiding, abetting, counselling or procuring a person to~~
24 ~~contravene such a provision; or~~
25 ~~(c) inducing, or attempting to induce, a person, whether by~~
26 ~~threats or promises or otherwise, to contravene such a~~
27 ~~provision; or~~
28 ~~(d) being in any way, directly or indirectly, knowingly~~
29 ~~concerned in, or party to, the contravention by a person~~
30 ~~of such a provision; or~~
31 ~~(e) conspiring with others to contravene such a provision.~~

- 1 ~~— (6) In subsection (2)(i)(ii) —~~
2 ~~— **daily amount** means an amount for each day or part of a day~~
3 ~~during which the contravention continues.~~

4 **Division 3 — Reliable supply and electricity systems**

5 **124A. Reliable supply and electricity systems**

6 Without limiting section 124, the electricity system and market
7 rules must provide for the following matters —

- 8 (a) the reliability of electricity systems;
9 (b) the security of electricity systems;
10 (c) the quality of electricity supply;
11 (d) the safety of electricity supply and electricity system
12 operation;
13 (e) requirements and standards for the purposes of
14 paragraphs (a) to (d);
15 (f) the obligations of holders of transmission licences,
16 distribution licences or integrated regional licences or
17 other persons to comply with any requirements or
18 standards referred to in paragraph (e);
19 (g) the compensation payments to be made to customers by
20 the holder of a transmission licence, distribution licence
21 or integrated regional licence or any other person for a
22 failure to comply with the obligations prescribed under
23 paragraph (f).

24 **124B. System voltage or frequency**

25 The regulations may impose, or authorise the electricity system
26 and market rules to impose, duties on network operators (as
27 defined in the *Electricity Act 1945* section 5(1)) in relation to —

- 28 (a) the system voltage or frequency at which the network
29 operator supplies electricity to the premises of a
30 consumer at the point where the electricity will pass

1 beyond the service apparatus of the network operator;
2 and

3 (b) the maintenance of system voltage within specified
4 limits.

5 **124C. Directions to rectify non-compliance**

6 (1) The regulations may confer power on a network service
7 provider, a person performing a network management function
8 or another person —

9 (a) to direct a person who has failed to comply with a
10 specified requirement of this Act, the regulations or the
11 electricity system and market rules to rectify the
12 non-compliance to ensure the safety of the electricity
13 supply or electricity system operation; and

14 (b) if a direction referred to in paragraph (a) is not complied
15 with —

16 (i) to take specified actions to rectify the
17 non-compliance; and

18 (ii) to recover the cost of taking a specified action
19 from the person to whom the direction is given
20 and to bring proceedings for that purpose.

21 (2) The regulations may provide for —

22 (a) applications to be made to the State Administrative
23 Tribunal for review of any decision to give a direction or
24 to take an action referred to in subsection (1); and

25 (b) the effect on a direction or action pending the
26 determination of an application referred to in
27 paragraph (a).

Division 4 — Distribution systems

124D. Terms used

(1) In this Division —

distribution system market means a market for the sale, trading or purchase of electricity and electricity services (including alternative electricity services) principally generated or otherwise produced and consumed on a distribution system;

distribution system market operator, in relation to a distribution system market, means a person or body designated under the electricity system and market rules to be the operator of the distribution system market;

embedded network—

(a) means a distribution system that —

(i) is operated by or under the control of 1 entity;
and

(ii) supplies electricity to at least 1 customer who is not the entity referred to in paragraph (a) or 1 premises that is not occupied by the entity referred to in paragraph (a); and

(iii) is supplied with electricity by another distribution system; and

(iv) is not part of a covered network;

but

(b) does not include a distribution system of a class that is prescribed by the regulations not to be an embedded network;

microgrid —

(a) means a distribution system that —

(i) is operated by or under the control of 1 entity;
and

(ii) is connected to a connected facility; and

1 (iii) is capable of operating without receiving a
2 supply of electricity from another electricity
3 network for a period prescribed by regulation;

4 but

5 (b) does not include a distribution system of a class that is
6 prescribed by the regulations not to be a microgrid;

7 **system or facility operator** means a person or persons
8 responsible for —

9 (a) owning or operating or controlling a distribution system
10 or connected facility; or

11 (b) supplying electricity or electricity services through a
12 distribution system or connected facility.

13 (2) The regulations may prescribe any of the following —

14 (a) a class of distribution system not to be an embedded
15 network;

16 (b) a class of distribution system not to be a microgrid.

17 **124E. Distribution system regulation**

18 The electricity system and market rules may provide, for any of
19 the following in relation to a distribution system (including a
20 stand-alone power system, an embedded network or a
21 microgrid) or a connected facility —

22 (a) the operation of a distribution system or connected
23 facility;

24 (b) the identification of a system or facility operator in
25 relation to a distribution system or connected facility
26 and prescribing their functions and rights;

27 (c) the extent and transparency of control that an owner or
28 operator of a distribution system or connected facility
29 must establish and maintain in relation to that system or
30 facility or confer on another person in relation to that
31 distribution system or connected facility;

- 1 (d) the creation, governance and operation of a distribution
2 system market;
- 3 (e) the designation of a person or body as the operator of a
4 distribution system market;
- 5 (f) the conferral of rights and functions on a person or body
6 (including a person holding office under a written law or
7 a body established under a written law) in relation to the
8 governance and operation of a distribution system
9 market;
- 10 (g) the relationships between any of the following —
- 11 (i) system or facility operators for a distribution
12 system;
- 13 (ii) system or facility operators for different
14 distribution systems;
- 15 (iii) system or facility operators and the operator of
16 the wholesale electricity market;
- 17 (iv) a distribution system market and the wholesale
18 electricity market;
- 19 (v) a distribution system market operator and the
20 operator of the wholesale electricity market;
- 21 (vi) a system or facility operator or distribution
22 system market operator and any other
23 participant.

24 **Division 5 — Enforcement**

25 **124F. Term used: contravene**

26 In this Division —

27 **contravene**, in relation to a provision of the electricity system
28 and market rules, includes —

- 29 (a) attempt to contravene such a provision; or
- 30 (b) aid, abet, counsel or procure a person to contravene such
31 a provision; or

- 1 (c) induce, or attempt to induce, a person, whether by
2 threats or promises or otherwise, to contravene such a
3 provision; or
4 (d) being in any way, directly or indirectly, knowingly
5 concerned in, or party to, the contravention by a person
6 of such a provision; or
7 (e) conspire with others to contravene such a provision.

8 **124G. Regulations as to enforcement of electricity system and**
9 **market rules**

- 10 (1) The regulations may prescribe all matters that are necessary or
11 convenient to be prescribed for the enforcement of the
12 electricity system and market rules.
13 (2) Without limiting section 122, 123, 124, 131 or 131B or
14 subsection (1), the regulations may —
15 (a) provide that a provision of the electricity system and
16 market rules specified in the regulations, or of a class
17 specified in the regulations, is a civil penalty provision
18 for the purposes of the regulations; and
19 (b) prescribe, for a contravention of a civil penalty
20 provision the following amounts that may, in accordance
21 with the regulations, be demanded from or imposed
22 upon a person who contravenes the provision —
23 (i) an amount not exceeding \$100 000;
24 (ii) in addition, a daily amount not exceeding
25 \$20 000 for each day or part of a day during
26 which the contravention continues;
27 and
28 (c) provide for demands for the payment of amounts
29 referred to in paragraph (b) and the enforcement of
30 demands for their payment; and
31 (d) provide for and regulate the taking of proceedings in the
32 Supreme Court or otherwise in respect of alleged
33 contraventions of provisions of the electricity system

- 1 and market rules, provide for the orders that can be
2 made and other sanctions that can be imposed in those
3 proceedings and provide for the enforcement of those
4 orders and sanctions; and
5 (e) provide for the manner in which amounts received by
6 way of civil penalties are to be dealt with and applied;
7 and
8 (f) provide for and regulate the taking of proceedings
9 before the Supreme Court for an injunction restraining
10 engagement in conduct contravening a provision of the
11 electricity system and market rules and provide for the
12 granting of an injunction (including an interim
13 injunction) and the rescission or variation of an
14 injunction so granted; and
15 (g) provide for and regulate the taking of proceedings
16 before the Supreme Court for a declaration as to whether
17 a provision of the electricity system and market rules is
18 being or has been contravened and provide for the
19 orders that can be made in those proceedings; and
20 (h) provide for and regulate the taking of action for the
21 recovery of an amount of loss or damage suffered
22 because of conduct contravening a provision of the
23 electricity system and market rules; and
24 (i) provide for and regulate the making of applications for,
25 and the issue of, warrants relating to the investigation of
26 alleged contraventions of provisions of the electricity
27 system and market rules and for the powers exercisable
28 under warrants.

29 **124H. Criminal proceedings do not lie**

- 30 (1) Criminal proceedings (including proceedings under *The*
31 *Criminal Code* section 177 or 178) do not lie against a person
32 by reason only that the person has contravened a provision of
33 the electricity system and market rules.
34 (2) Nothing in subsection (1) affects section 115.

Division 6 — Functions of Authority

124I. Functions of the Authority

The Authority is responsible for —

- (a) monitoring, investigating and enforcing compliance with the electricity system and market rules; and
- (b) carrying out any other function conferred on it by the electricity system and market rules.

Division 7 — Review of decisions

125. Reviews

- (1) Application may be made to the Board for the review by the Board of decisions of a participant referred to in section 121(2)(b) or (c) that are made under the regulations or the electricity system and market rules and are not of a class specified in the regulations.
- (2) Regulations may —
 - (a) provide for the powers of the Board; and
 - (b) make other provisions that it is necessary or convenient to make,in relation to reviews provided for in those regulations.
- (3A) Regulations that, immediately before the day on which the *National Gas Access (WA) Act 2009* section 59(1) comes into operation³, apply provisions of the *Gas Pipelines Access (Western Australia) Act 1998*⁴ continue to have the effect they had immediately before that day until the contrary intention appears from a regulation made after that day.
- (3) Nothing in subsection (1) prevents or affects the review by a court or tribunal, according to law, of decisions of participants made under the regulations or the electricity system and market rules.

[Section 125 amended: No. 16 of 2009 s. 59.]

Division 8 — Immunity

126. Immunity of certain participants

(1) In this section —

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

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

officer of a body corporate that is a corporation has the same meaning as it has in section 9 of the *Corporations Act 2001* (Commonwealth);

officer of a body corporate that is not a corporation has the same meaning as it has in section 9 of the *Corporations Act 2001* (Commonwealth).;

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

(1A) The Minister, the Authority or the Coordinator does not incur any civil monetary liability for an act or omission done or made in good faith in the performance, or purported performance, of a function under this Part, the regulations or the electricity system and market rules.

(1B) The following persons do not incur any civil monetary liability for an act or omission done or made in good faith in the performance, or purported performance, of a function under this Part, the regulations or the electricity system and market rules —

(a) an officer or employee of the Department of the public service principally assisting in the administration of this Act;

(b) an officer or employee of the Authority;

- 1 (c) an officer or employee of the Co-ordinator.
- 2 (2) A market governance participant, or an officer or employee of a
3 market ~~governance~~ participant, does not incur any civil
4 monetary liability for an act or omission done or made in good
5 faith in the performance, or purported performance, of a
6 function under the regulations or the electricity system and
7 market rules that is specified in the regulations as a system
8 management function.
- 9 (3) If an act or omission mentioned in subsection (2) ~~done or made~~
10 ~~after the expiration of the period of 12 months from the~~
11 ~~establishment of the initial market rules~~ is negligent —
- 12 (a) the immunity given by subsection (2) does not apply to
13 that act or omission; but
- 14 (b) as long as that act or omission is done or made in good
15 faith, the civil monetary liability for it is not to exceed
16 the prescribed maximum amount.
- 17 (4) Nothing in subsections (2) and (3) limits the immunity given by
18 subsection (1A) or (1B).
- 19 ~~(4) Regulations may exempt a specified market governance~~
20 ~~participant, other than a system management participant, from~~
21 ~~the operation of subsection (3)(a).~~
- 22 (5) The regulations may, for the purposes of subsection (3)(b),
23 without limitation —
- 24 (a) prescribe a maximum amount that is limited in its
25 application to persons, events, circumstances, losses or
26 periods to which they are expressed to apply; or
- 27 (b) prescribe maximum amounts that vary in their
28 application according to the persons to whom, or the
29 events, circumstances, losses or periods to which, they
30 are expressed to apply; or
- 31 (c) prescribe a manner in which the maximum amount is to
32 be divided amongst claimants.

- 1 (6) This section does not apply to any liability of an officer of a
2 body corporate to the body corporate.

3 [Section 126 amended: No. 46 of 2009 s. 17; No. 9 of 2020
4 s. 20.]

5 **Division 9 — Competition authorisation**

6 **127. Competition authorisation by regulation**

- 7 (1) In this section —

8 **arrangement** includes any contract, arrangement or
9 understanding, or any market practice or market or customer
10 restriction, division, allocation or segregation of any nature, or a
11 course of conduct or dealing.

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

16 [Section 127 amended: No. 9 of 2020 s. 21.]

17 **Division 10 — Review of wholesale electricity market operation**

18 **128. Review of wholesale electricity market operation**

- 19 (1) The Coordinator must ~~Authority is to~~ review the operation of the
20 wholesale electricity market ~~— as soon as practicable after the~~
21 ~~expiration of 3 years from the commencement of this Part and~~
22 ~~thereafter as soon as practicable after the expiration of 3 years~~
23 ~~from a report being laid before each House of Parliament under~~
24 ~~subsection (5)(a).~~

25 (a) as soon as practicable after the expiration of 3 years
26 after the commencement of the *Electricity Industry*
27 *Amendment (Distributed Energy Resources) Act 2023;*
28 and

29 (b) after the review under paragraph (a), as soon as
30 practicable after the expiration of 3 years after each

- 1 report is laid before each House of Parliament under
2 subsection (5)(a).
- 3 (2) The purpose of the review is to assess the extent to which the
4 State electricity objective has ~~objectives set out in~~
5 ~~section 122(2) have been or are being achieved~~ been or is being
6 met.
- 7 (3) The Coordinator must give the Minister a written report based
8 on the review not later than 3 years and 6 months after —
9 (a) for the first review, the commencement of the *Electricity*
10 *Industry Amendment (Distributed Energy Resources)*
11 *Act 2023*; or
12 (b) for a subsequent review, the last preceding report was
13 laid before each House of Parliament under
14 subsection (5)(a).
- 15 ~~— Not later than 3 years and 6 months after the commencement of~~
16 ~~this Part, or after the last preceding report was laid before each~~
17 ~~House of Parliament under subsection (5)(a), as the case may~~
18 ~~be, the Authority is to give the Minister a written report based~~
19 ~~on the review.~~
- 20 (4) If the ~~Coordinator~~ Authority considers that ~~some or all of the~~
21 ~~objectives set out in section 122(2)~~ State electricity objective
22 ~~has~~ is ~~not been and are~~ is ~~not being achieved~~ met in whole or in
23 part, the report ~~is to~~ must set out recommendations as to how the
24 State electricity ~~those~~ objectives can be ~~achieved~~ met.
- 25 (5) As soon as practicable after receiving the report, the Minister ~~is~~
26 ~~to~~ must —
27 (a) cause the report to be laid before each House of
28 Parliament; and
29 (b) prepare a response to the report and cause the response
30 to be laid before each House of Parliament.
- 31 (6) As soon as practicable after the report is laid before each House
32 of Parliament, the Coordinator must ~~Authority is to~~ post a copy

1 of the report on a website maintained by the
2 [Coordinator](#)~~Authority~~.

3 *[Section 128 amended: No. 9 of 2020 s. 22.]*

4 **129. Public consultation**

5 (1) In the course of conducting a review under section 128(1), the
6 [Coordinator](#) ~~must~~ ~~Authority~~ ~~Coordinator is to~~ seek public
7 comment on the extent to which the [State electricity](#) objective ~~s~~
8 ~~set out in section 122(2) have~~ ~~has~~ been or ~~are~~ ~~is~~ being achieved
9 (the *issue*).

10 (2) The [Coordinator](#)~~Authority~~ ~~is to cause~~ ~~must ensure that~~ a notice
11 giving a general description of the issue ~~to be~~ ~~is~~ —

12 (a) published in a daily newspaper circulating throughout
13 the State; and

14 (b) posted on a website maintained by the
15 [Coordinator](#)~~Authority~~.

16 (3) The notice ~~is to~~ ~~must~~ include —

17 (a) a statement that any person may, within a specified
18 period, make written submissions on the issue to the
19 [Coordinator](#) ~~Authority~~; and

20 (b) the address (including an email address) to which the
21 submissions may be delivered or sent.

22 (4) The period specified under subsection (3)(a) ~~is not to~~ ~~must not~~
23 end less than 30 days after the day on which the notice is
24 published under subsection (2)(a).

25 (5) The [Coordinator](#) ~~must~~ ~~Authority is to~~ have regard to any
26 submission made in accordance with the notice.

27 *[Section 129 amended: No. 9 of 2020 s. 23.]*

1 **129AA. Coordinator may appoint panels**

2 The regulations may confer power on the Coordinator —

3 (a) to appoint panels of persons to provide advice and
4 assistance to the Coordinator in conducting a review or
5 implementing any recommendations of a review; and

6 (b) to recover the costs of the appointment of a panel by
7 requiring the payment of fees, determined in accordance
8 with the regulations, by participants and covered
9 network operators.

Part 9A — Tariff equalisation

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

129A. Purpose of this Part

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

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

129B. Terms used

In this Part, unless the contrary intention appears —

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

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

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

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

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

[Section 129B inserted: No. 18 of 2005 s. 139; amended: No. 77 of 2006 Sch. 1 cl. 54(1); No. 9 of 2020 s. 24.]

1 **129C. Tariff Equalisation Account**

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

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

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

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

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- 1 (3) In making a determination for the purposes of subsection (2) the
2 Treasurer must have regard to —
- 3 (a) the amount required to compensate the Regional Power
4 Corporation for the disparity; and
- 5 (b) the extent to which the amount paid to the Regional
6 Power Corporation under section 129G(1) in respect of a
7 previous period was greater or less than the disparity
8 between —
- 9 (i) the cost referred to in subsection (1)(a); and
10 (ii) the revenues referred to in subsection (1)(b),
11 in respect of that previous period; and
- 12 (c) the moneys standing to the credit of the Tariff
13 Equalisation Account; and
- 14 (d) any service standards to be observed by the Regional
15 Power Corporation; and
- 16 (e) any other prescribed matters.
- 17 (4) In subsection (3)(d) —
- 18 *service standards* means standards referred to in
19 section [124A\(e\) that relate to section 124A\(a\) or \(c\) and](#)
20 ~~124A(1)39(2)(d)~~ that are provided for in ~~a code prepared and~~
21 ~~issued under section 39~~ [the electricity system and market rules](#).
- 22 (5) The Treasurer must consult with the Minister before making a
23 determination under this section.
- 24 *[Section 129D inserted: No. 18 of 2005 s. 139; amended:*
25 *No. 77 of 2006 Sch. 1 cl. 54(4).]*
- 26 **129E. Treasurer may seek advice from the Authority**
- 27 (1) Before making a determination under section 129D(2) the
28 Treasurer may ask the Authority for advice on any matter
29 referred to in section 129D(3) or any other matter that the
30 Treasurer considers relevant.

1 (2) It is a function of the Authority to give advice when asked to do
2 so under subsection (1).

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

5 *[Section 129E inserted: No. 18 of 2005 s. 139.]*

6 **129F. Payment and passing on of tariff equalisation contributions**

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

10 (2) Users must make payments to the Electricity Networks
11 Corporation in accordance with the [electricity system and](#)
12 [market rules](#)~~Code~~ in respect of tariff equalisation contributions
13 payable by the Electricity Networks Corporation under
14 subsection (1).

15 (3) Without limiting Part 8 Division 2, the [electricity system and](#)
16 [market rules](#)~~Code~~ may make provision —

17 (a) for the determination of the amounts payable by users
18 under subsection (2) and the manner in which those
19 amounts are to be collected; and

20 (b) for the duties and powers of the Electricity Networks
21 Corporation in relation to tariff equalisation
22 contributions to be taken into account —

23 (i) by the Authority in deciding whether to give its
24 approval to an arrangement lodged under
25 section 104B(a); and

26 (ii) in the formulation of the network access pricing
27 regulation principles referred to in
28 section 104B(f).

29 (4) Until there is an access arrangement for the network
30 infrastructure facilities of the Electricity Networks
31 Corporation —

32 (a) subsection (2) does not have effect; and

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- 1 (b) users must make payments to the Electricity Networks
2 Corporation in accordance with the regulations in
3 respect of tariff equalisation contributions payable by
4 the Electricity Networks Corporation under
5 subsection (1); and
- 6 (c) the regulations may make provision for the
7 determination of the amounts payable by users under
8 paragraph (b) and the manner in which those amounts
9 are to be collected.
- 10 (5) In subsection (4) —
11 **user** means a user as defined in the *Electricity Transmission and*
12 *Distribution Systems (Access) Act 1994* Schedule 5 clause 1 or
13 Schedule 6 clause 1.
14 [Section 129F inserted: No. 18 of 2005 s. 139; amended: No. 77
15 of 2006 Sch. 1 cl. 54(5); No. 9 of 2020 s. 25.]

16 **129G. Payments from the Account**

- 17 (1) If a tariff equalisation contribution is payable by the Electricity
18 Networks Corporation in respect of a period, the Treasurer must
19 pay to the Regional Power Corporation in respect of that period
20 such amount as the Treasurer considers necessary for the
21 purpose of this Part having regard to —
22 (a) the matters referred to in section 129D(3)(a), (b), (c)
23 and (d); and
24 (b) any other prescribed matters.
- 25 (2) Payments under subsection (1) are to be made from the Tariff
26 Equalisation Account.
27 [Section 129G inserted: No. 18 of 2005 s. 139; amended:
28 No. 77 of 2006 Sch. 1 cl. 54(6).]

29 **129H. Information**

- 30 The Electricity Networks Corporation and the Regional Power
31 Corporation must provide such information, or access to

1 information, as is necessary to assist the Treasurer and the
2 Authority to perform their functions under this Part.

3 *[Section 129H inserted: No. 18 of 2005 s. 139.]*

4 **129I. Treasurer to recommend regulations**

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

7 *[Section 129I inserted: No. 18 of 2005 s. 139.]*

8 **129J. Delegation by Treasurer**

9 The *Financial Management Act 2006* sections 74(2), 76(2) and
10 77 apply to a power conferred on the Treasurer by a provision
11 of this Part (other than section 129I) as if it were conferred by
12 that Act.

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

Part 9B — Temporary access contribution

[Heading inserted: No. 9 of 2020 s. 26.]

129K. Purpose of this Part

The purpose of this Part is to contribute towards maintaining the financial viability of the Regional Power Corporation by allowing the Regional Power Corporation to recover all or part of its historical generation costs.

[Section 129K inserted: No. 9 of 2020 s. 26.]

129L. Terms used

In this Part, unless the contrary intention appears —

contestable annual volume means the portion of total annual volume that is a contestable supply;

contestable proportion means that proportion of the Regional Power Corporation's total supply of electricity in a financial year to consumers through its covered Pilbara network that is a contestable supply, calculated as contestable annual volume divided by total annual volume;

contestable supply means the supply of electricity to consumers who are not prescribed customers;

costs means capital and non-capital costs;

generation costs means any costs incurred by the Regional Power Corporation to generate or procure electricity for supply to consumers through the interconnected Pilbara network;

historical generation costs means any generation costs —

- (a) that were incurred before 19 August 2019; or
- (b) that are incurred on or after 19 August 2019 under commitments made by the Regional Power Corporation before that date and that are costs that a prudent supplier, seeking to reasonably minimise costs, could not reasonably avoid;

NBU means the segment of the Regional Power Corporation that has the functions and business of providing services through the interconnected Pilbara network;

prescribed customer has the meaning given to that term in the *Electricity Corporations Act 2005* section 54;

Temporary Access Contribution Account means the account referred to in section 129M;

temporary access contribution means a temporary access contribution determined under section 129N(1);

termination date means the date prescribed by the regulations as the termination date;

total annual volume means the total quantity of electricity supplied by the Regional Power Corporation in a financial year through its covered Pilbara network, expressed in kilowatt hours;

user means a Pilbara network user as defined in section 120.

[Section 129L inserted: No. 9 of 2020 s. 26.]

129M. Temporary Access Contribution Account

- (1) An agency special purpose account called the Temporary Access Contribution Account is established under the *Financial Management Act 2006* section 16.
- (2) There are to be credited to the Temporary Access Contribution Account —
 - (a) each temporary access contribution paid by the NBU under section 129P(1); and
 - (b) the amount of any income determined by the Treasurer (at a rate determined by the Treasurer) to be attributable to the investment under the *Financial Management Act 2006* section 37 of money standing to the credit of the Temporary Access Contribution Account; and

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- 1 (c) any other amount lawfully received for the purposes of
2 the Account.

3 *[Section 129M inserted: No. 9 of 2020 s. 26.]*

4 **129N. Determination of temporary access contributions**

5 (1) The Treasurer must for each financial year, until the termination
6 date, determine, by notice published in the *Gazette*, an amount
7 of temporary access contribution that is payable by NBU in
8 respect of that financial year.

9 (2) The Treasurer must for each financial year, until the termination
10 date, determine the cost to the Regional Power Corporation of
11 its historical generation costs for that financial year.

12 (3) The temporary access contribution determined for a financial
13 year must not exceed the contestable proportion of the cost
14 determined for that financial year under subsection (2).

15 (4) In making a determination under subsection (1) for a financial
16 year, the Treasurer must have regard to —

- 17 (a) the amount required to compensate the Regional Power
18 Corporation for the cost determined under subsection (2)
19 for that financial year; and
20 (b) the moneys standing to the credit of the Temporary
21 Access Contribution Account; and
22 (c) any service standards to be observed by the Regional
23 Power Corporation; and
24 (d) any other prescribed matters.

25 (5) In subsection (4)(c) —

26 **service standards** means standards referred to in
27 section [124A\(e\)](#) that relate to section [124A\(a\)](#) or (c) and
28 ~~124A39(12)(d)~~ that are provided for in ~~a code prepared and~~
29 ~~issued under section 39~~ [the electricity system and market rules](#).

- 1 (6) The Treasurer must consult with the Minister before making a
2 determination under this section.

3 *[Section 129N inserted: No. 9 of 2020 s. 26.]*

4 **129O. Treasurer may seek advice from the Authority**

- 5 (1) Before making a determination under section 129N(1) the
6 Treasurer may ask the Authority for advice on any matter
7 referred to in section 129N(4) or any other matter that the
8 Treasurer considers relevant.

- 9 (2) It is a function of the Authority to give advice when asked to do
10 so under subsection (1).

- 11 (3) The Treasurer must cause advice given by the Authority under
12 subsection (2) to be published on an appropriate website when
13 the determination is made.

14 *[Section 129O inserted: No. 9 of 2020 s. 26.]*

15 **129P. Payment and passing on of temporary access contribution**

- 16 (1) NBU must pay temporary access contributions into the
17 Temporary Access Contribution Account, at the times and in the
18 manner determined by the Treasurer.

- 19 (2) Users accessing services of the Regional Power Corporation's
20 covered Pilbara network must make payments to NBU in
21 accordance with the Pilbara Networks Access Code in respect of
22 temporary access contributions payable by NBU under
23 subsection (1).

- 24 (3) The Pilbara Networks Access Code may exempt users or classes
25 of users specified in the code from subsection (2) in the
26 circumstances specified in the code.

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- 1 (4) Without limiting Part 8A Division 2, the Pilbara Networks
2 Access Code may provide for —
3 (a) the determination of the amounts payable by users under
4 subsection (2) and the manner in which those amounts
5 are to be collected; and
6 (b) temporary access contributions and the obligations of
7 users under subsection (2) to be taken into account in the
8 determination, publication or approval of prices under
9 Part 8 or Part 8A or in the resolution of disputes in
10 relation to those prices.
- 11 (5) The regulations may provide for the regulation of matters of a
12 savings or transitional nature in relation to payments in respect
13 of temporary access contributions.

14 *[Section 129P inserted: No. 9 of 2020 s. 26.]*

15 **129Q. Payments from Temporary Access Contribution Account**

- 16 (1) If a temporary access contribution is payable by NBU in respect
17 of a financial year, the Treasurer must pay to the Regional
18 Power Corporation in respect of that financial year the amount
19 that the Treasurer considers necessary for the purpose of this
20 Part having regard to —
21 (a) the matters referred to in section 129N(4)(a), (b) and (c);
22 and
23 (b) any other prescribed matters.
- 24 (2) Payments under subsection (1) are to be made from the
25 Temporary Access Contribution Account.
- 26 (3) Without limiting Part 8A Division 2, the Pilbara Networks
27 Access Code may provide for reporting by the Regional Power
28 Corporation of any amounts received from the Temporary
29 Access Contribution Account in each financial year.

30 *[Section 129Q inserted: No. 9 of 2020 s. 26.]*

1 **129R. Information**

2 The Regional Power Corporation must provide any information,
3 or access to information, that is necessary to assist the Treasurer
4 and the Authority to perform their functions under this Part.

5 *[Section 129R inserted: No. 9 of 2020 s. 26.]*

6 **129S. Treasurer to recommend regulations**

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

9 *[Section 129S inserted: No. 9 of 2020 s. 26.]*

10 **129T. Delegation by Treasurer**

11 The *Financial Management Act 2006* sections 74(2), 76(2) and
12 77 apply to a power conferred on the Treasurer under a
13 provision of this Part (other than section 129S) as if it were
14 conferred by that Act.

15 *[Section 129T inserted: No. 9 of 2020 s. 26.]*

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Part 10 — Other matters

130. Review by the Board

(1) In this section —

gas pipelines access provisions means the *Gas Pipelines Access (Western Australia) Act 1998*⁴ Schedule 1 as in force immediately before the day on which the *National Gas Access (WA) Act 2009* section 51 deleted it³.

(2) This section applies to —

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

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

27 Note:

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

- 29 (3) A person adversely affected by a decision or direction to which
30 this section applies may apply to the Board for a review of the
31 decision.

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- 1 (4) Section 38(2) to (5) and (7) to (12) of the gas pipelines access
2 provisions apply to the application and to the review of the
3 decision or direction as if references in them to —
4 (a) the relevant appeals body were references to the Board;
5 (b) a decision included references to a direction;
- 6 (5) The application operates to stay the decision or direction unless,
7 in the case of a decision under subsection (2)(j), the Board
8 determines otherwise.
- 9 (6) In the case of a decision under subsection (2)(k), section 39(2)
10 to (5) of the gas pipelines access provisions also apply to the
11 application and to the review of the decision as if references in
12 them to —
13 (a) the relevant appeals body were references to the Board;
14 (b) the relevant regulator were references to the Authority.
- 15 (7) In the case of a decision under subsection (2)(l), section 43(2)
16 to (4) of the gas pipelines access provisions also apply to the
17 application and to the review of the decision as if references in
18 them to —
19 (a) the relevant appeals body were references to the Board;
20 (b) the relevant regulator were references to the Authority.
- 21 (8) When the *Energy Arbitration and Review Act 1998* Part 6
22 Division 2 refers to the functions of, and proceedings before, the
23 Board those functions and proceedings include functions and
24 proceedings under this section.
- 25 (9) For proceedings to which subsection (8) extends the provisions
26 described in that subsection, sections 57(1) and 59(4) of those
27 provisions apply only to the extent that it is consistent with the
28 [electricity system and market rules](#) Code for them to apply.
- 29 [Section 130 amended: No. 16 of 2009 s. 60; No. 9 of 2020
30 s. 27.]

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

If a licence is transferable by the licensee, in accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of **licence** paragraph (d), the licence is declared not to be personal property for the purposes of that Act.

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

131. Regulations

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

131B. Enforcement of the regulations

(1) Without limiting section 131, the regulations may prescribe all matters that are necessary or convenient to be prescribed for the enforcement of the regulations.

(2) The regulations may —

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

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

[Section 131B inserted: No. 9 of 2020 s. 28.]

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

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

(a) fix the fees and charges, or the means of determining the fees and charges, that, unless otherwise agreed, are to be

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- 1 payable by customers of a prescribed class in relation
2 to —
- 3 (i) the supply of electricity in prescribed
4 circumstances; or
- 5 (ii) the provision of any prescribed service;
6 and
- 7 (b) deal with any other matter relating to the fixing or
8 determination of fees and charges.
- 9 (2) Without limiting subsection (1), the regulations may make
10 provision for and in relation to discounts, rebates, or
11 concessions to be made available to customers of a prescribed
12 class or in prescribed circumstances in respect of fees or charges
13 payable in relation to the supply of electricity or the provision of
14 a prescribed service.
- 15 **133. Regulations as to fees and charges for functions of**
16 **arbitrator and Board**
- 17 (1) Without limiting section 131, regulations may make provision
18 for and in relation to the imposition and payment of fees and
19 charges in connection with any matter under this Act, including
20 in connection with the performance of the respective functions
21 of an arbitrator and the Board under this Act.
- 22 (2) If it is inappropriate to prescribe a set fee or charge in
23 connection with the performance of a particular function the
24 regulations may provide for the method of calculating the fee or
25 charge, including calculation according to the cost of
26 performing that function.
- 27 (3) Without limiting subsection (1) or (2) the regulations may —
- 28 (a) authorise the Board to fix, and determine the incidence
29 of liability for, the cost and expenses of the hearing and
30 determination of proceedings before the Board; and
- 31 (b) make any incidental or supplementary provision that is
32 expedient for the purposes of paragraph (a).

- 1 (4) The application of subsection (3) extends to the cost and
2 expenses of proceedings that are commenced but discontinued
3 or otherwise not brought to finality.

4 [Section 133 amended: No. 16 of 2009 s. 61; No. 9 of 2020
5 s. 29.]

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

- 7 (1) In this section —

8 ~~market rules has the meaning given in Part 9;~~

9 **matter** includes act, omission, body, person or thing.

- 10 (2) The regulations may declare a matter dealt with, provided for,
11 done or occurring under this Act, the regulations or the
12 electricity system and market rules to be an excluded matter for
13 the purposes of the *Corporations Act 2001* (Commonwealth)
14 section 5F in relation to —

- 15 (a) the whole of the Corporations legislation to which the
16 *Corporations Act 2001* (Commonwealth) Part 1.1A
17 applies; or
18 (b) a specified provision of that legislation; or
19 (c) that legislation other than a specified provision; or
20 (d) that legislation otherwise than to a specified extent.

21 [Section 134 inserted: No. 32 of 2007 s. 4.]

**Part 11 — Transitional provisions for Electricity
Industry Amendment (Distributed Energy Resources)
Act 2023**

135. Term used: relevant instrument

In this Part —

relevant instrument means —

- (a) the Electricity Networks Access Code under section 104; or
- (b) a technical code approved by the Authority under the Electricity Networks Access Code; or
- (c) the Electricity Industry (Metering) Code 2012 made under section 39(2a); or
- (d) the Electricity Industry (Network Quality and Reliability of Supply) Code 2005 made under section 39(2a)(a).

136. Transitional provisions: general

- (1) The regulations may provide, or authorise the electricity system and market rules to provide, for the regulation of matters of a savings, transitional or supplementary nature.
- (2) Transitional provisions referred to in subsection (1) may authorise the Minister to determine by order published in the Gazette how any matter in progress immediately before a day specified in the order is to be treated, after that day, for the purposes of the provisions of the regulations or the electricity system and market rules.

137. Transitional provisions: relevant instruments

- (1) Without limiting section 136, the regulations may provide, or authorise the electricity system and market rules to provide, for the regulation of matters of a savings, transitional or supplementary nature relating to the transition of matters

1 contained in a relevant instrument to the electricity system and
2 market rules.

3 (2) The regulations may provide, or authorise the electricity system
4 and market rules to provide, for the continuation of the
5 operation of a relevant instrument after its revocation for the
6 purpose of the transition of any matter to the electricity system
7 and market rules.

8 (3) The regulations may provide, or authorise the electricity system
9 and market rules to provide, how anything done or in progress
10 under a relevant instrument is to be treated on and after a day
11 specified in the electricity system and market rules.

12 (4) The regulations may provide, or authorise the electricity system
13 and market rules to provide, that a reference in any instrument
14 to a relevant instrument is to be treated on and after a day
15 specified in the electricity system and market rules to be a
16 reference to the electricity system and market rules or specified
17 provisions of the electricity system and market rules.

18 **138. Powers of Minister: relevant instruments:**

19 (1) The Minister may amend a relevant instrument to facilitate, or
20 as a consequence of, the transition of any matter in any relevant
21 instrument to the electricity system and market rules.

22 (2) The Minister may amend the electricity system and market rules
23 to provide for the transition of any matter in any relevant
24 instrument to the electricity system and market rules.

25 (3) A requirement under this Act or the regulations for public
26 consultation before amending a relevant instrument or the
27 electricity system and market rules does not apply to an
28 amendment made under subsection (1) or (2).

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139. Electricity system and market rules do not affect existing agreements

(1) The making or amendment of the electricity system and market rules under this Division —

(a) does not affect the terms and conditions, or the operation, of an agreement or arrangement in operation under a relevant instrument immediately before a day specified in the electricity system and market rules for that purpose or the approval of an arrangement whether under a relevant instrument, the *Electricity Transmission and Distribution Systems (Access) Act 1994* or otherwise; and

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

(2) Subsection (1)(a) or (b) does not apply if the electricity system and market rules or the agreement or an enactment provides otherwise.

140. References to market rules

A reference in any Act or instrument to the market rules under this Act is taken on and after (*insert day*) to be a reference to the electricity system and market rules.

141. References to market rules

A reference in any Act or instrument to the market rules under this Act is taken on and after (*insert day amendment to name of rules takes effect*) to be a reference to the electricity system and market rules.

1 **142. Power to make electricity system and market rules for Code**
2 **matters**

3 Until (the day the amendment to section 104 takes effect) the
4 electricity system and market rules may make provision for any
5 matter which may be provided for in the Electricity Networks
6 Access Code.

Schedule 1 — Licence terms and conditions

[s. 11]

1. Licence terms and conditions

A licence may include provisions —

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

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

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

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

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

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

[s. 93]

1. Objectives stated

The objectives referred to in section 93 are that —

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

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

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

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

Schedule 2A — Electricity system and market rules

[s. 123(1A)]

1. State electricity objective

Methods of meeting the State electricity objective.

2. Registration

Registration of persons engaged in specified activities for which registration is required under the regulations under section 124(3).

3. Technical codes for access to services

Technical codes for the purposes of access to services that are to be complied with by network users and other specified persons.

4. Metering

Metering of the supply of electricity by licensees and other persons including —

- (a) the provision, operation and maintenance of metering equipment; and
- (b) ownership of and access to metering data.

5. Distribution systems and connected facilities

In relation to distribution systems and connected facilities —

- (a) technical or other standards relating to a distribution system or connected facility, including standards relating to —
 - (i) the supply of electricity or electricity services through the distribution system or connected facility; and
 - (ii) the transfer of electricity into and out of the distribution system or connected facility;
- (b) technical requirements, standards or other requirements relating to the connection of premises to a distribution system or connected facility or a distribution system and connected facility to each other, including requirements relating to —
 - (i) remote monitoring, data capture and meter reading; and
 - (ii) remote disconnection and reconnection; and

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(iii) other aspects of remote control.

6. Energy data and energy data platforms

(1) In this clause —

energy data platform means a system on which energy data is stored, distributed or processed;

energy data service means a service relating to —

(a) the collection, distribution, storage and processing of energy data; or

(b) the operation of an energy data platform.

(2) Requirements and standards relating to energy data platforms and energy data services and energy data collected, distributed, stored, processed or used in connection with the operation of energy data platforms and energy data services, including requirements and standards relating to —

(a) confidentiality; and

(b) the protection of personal information; and

(c) cyber-security; and

(d) recognition of the data rights of consumers.

Schedule 3 — Transitional provisions

[s. 79, 81]

Division 1 — Initial customer service code of conduct

1. Approval of initial customer service code of conduct

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

2. Appointment of initial committee

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

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

4 **3. Regulations for transitional matters**

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

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

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

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

13 **Division 2 — Initial electricity ombudsman scheme**

14 **4. Approval of initial electricity ombudsman scheme**

- 15 (1) The Minister instead of the Authority is to —

- 16 (a) approve the initial electricity ombudsman scheme under
17 sections 92 and 93; and
18 (b) give the initial approval required for the purposes of
19 Schedule 2 paragraph (j).

- 20 (2) The provisions of —

- 21 (a) Part 7 Division 2; and
22 (b) Schedule 2; and
23 (c) the *Interpretation Act 1984* section 25 in its application to the
24 provisions mentioned in paragraphs (a) and (b),

25 are modified so far as is necessary to enable effect to be given to
26 subclause (1).

- 27 (3) A scheme approved in accordance with this clause is to be taken, for
28 the purposes of Part 7, to be a scheme approved by the Authority
29 under Division 2 of that Part.

1 **5. Regulations for transitional matters**

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

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

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

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

Part 3 — Consequential amendments

Division 1 — Electricity Act 1945 amended

4. Act amended

This Division amends the *Electricity Act 1945*.

5. Section 25 amended

In section 25(1):

(a) in paragraph (c) delete ‘polarity; and’ and insert:

polarity.

(b) delete paragraph (d).

Division 2 — Electricity Corporations Act 2005 amended

6. Act amended

This Division amends the *Electricity Corporations Act 2005*.

7. Section 41 amended

In section 41:

(a) delete paragraphs (b) and (ba) and insert:

(b) to do anything that it is authorised or required to do by the *Electricity Industry Act 2004* Part 8 (which relates to network access) and the regulations and electricity system and market rules made under that Part; and

(ba) to provide stand-alone power systems (as defined in the *Electricity Industry Act 2004* section 3(1)) in accordance with the regulations

1 and electricity system and market rules made
2 under Part 8 of that Act; and

3
4 (b) in paragraph (c) delete “market rules” and insert:

5
6 electricity system and market rules
7

8 **8. Section 50 amended**

9 Delete section 50(c) and insert:

10
11 (ba) to do anything that it is authorised or required
12 to do by the *Electricity Industry Act 2004* Part 8
13 (which relates to network access) and the
14 regulations and electricity system and market
15 rules made under that Part; and

16 (bb) to do anything that it is authorised or required
17 to do by the *Electricity Industry Act 2004* Part 9
18 (which relates to the wholesale electricity
19 market) and the regulations and electricity
20 system and market rules made under that Part;
21 and

22 (bc) to provide stand-alone power systems (as
23 defined in the *Electricity Industry Act 2004*
24 section 3(1)) in accordance with the regulations
25 and electricity system and market rules made
26 under that Part 8 of that Act; and

27 (c) to provide stand-alone power systems (as
28 defined in the *Electricity Industry Act 2004*
29 section 3(1)) in accordance with the
30 regulations, Pilbara Networks Access Code or
31 Pilbara networks rules made under Part 8A of
32 that Act; and

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Part 3 Consequential amendments

Division 3 Electricity Transmission and Distribution Systems (Access)
Act 1994 amended

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9. Section 59 amended

In section 63(4) delete “section 124,” and insert:

Part 9,

10. Section 63 amended

In section 63(4) delete “section 124,” and insert:

Part 9,

11. Section 111 amended

In section 111 delete “market rules” and insert:

electricity system and market rules

**Division 3 — Electricity Transmission and Distribution Systems
(Access) Act 1994 amended**

12. Act amended

This Division amends the *Electricity Transmission and
Distribution Systems (Access) Act 1994*.

13. Section 95A amended

In section 95A(2)(b)(ii), delete “Code established under” and
insert:

electricity system and market rules made for the purposes of

Division 4 — Energy Operators (Powers) Act 1979 amended

14. Act amended

This Division amends the *Energy Operators (Powers) Act 1979*.

15. Section 45 amended

In section 45(4A), delete the definition of ***generating works*** and insert:

generating works does not include a stand-alone power system (as defined in the *Electricity Industry Act 2004* section 3(1)) that is being constructed, installed, operated or maintained —

(a) in accordance with the regulations and the electricity system and market rules made for the purposes of Part 8 of that Act; or

(b) by the Regional Power Corporation in accordance with the regulations, Pilbara Networks Access Code or Pilbara networks rules made under Part 8A of that Act; or

(c) by the Regional Power Corporation in accordance with its powers under the *Electricity Corporations Act 2005* and the regulations made under the *Electricity Industry Act 2004* Part 8A; or