

Electricity Industry Act 2004

# **Pilbara Networks Access Code**

Version 1

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## Introduction

This Code is made by the Minister under Part 8A of the *Electricity Industry Act 2004* (“**Act**”).

This Code may be amended from time to time in accordance with the procedure set out in sections 120H to 120J of the Act and must be reviewed every 5 years under section 120ZG of the Act.

The Code aims to be capable of certification as an effective *access* regime under Part IIIA of the *Competition and Consumer Act 2010*.

This Code establishes a framework for third party *access* to *Pilbara networks* with the objective to promote efficient investment in, and efficient operation and use of, *services* of *Pilbara networks* for the long-term interests of consumers of electricity in the Pilbara region in relation to —

- price, quality, safety, reliability and security of supply of electricity; and
- the reliability, safety and security of any *interconnected Pilbara system*.

Regulations made under section 120V of the Act may prescribe penalties for failure to comply with certain provisions of this Code.



# Chapter 1– Introductory

## Subchapter 1.1 – Commencement and application

### 1. This Code

- (1) This Code is made by the Minister under Part 8A of the *Electricity Industry Act 2004* (“**Act**”).
- (2) This Code may be amended from time to time in accordance with the procedure set out in sections 120H to 120J of the Act and must be reviewed every 5 years under section 120ZG of the Act.

### 2. Citation

This Code may be cited as the *Pilbara Networks Access Code*.

### 3. Commencement

This Code comes into operation on the date on which it is published in the Gazette.

### 4. Augmentations of a light regulation network

- (1) An *augmentation* of a *light regulation network* which is owned by the *NSP* (or an *associate* of the *NSP*) is part of the *light regulation network* from the time the *augmentation* is commissioned where —
  - (a) the *augmentation* is an extension of the geographic footprint of the *light regulation network* and comprises —
    - (i) a *distribution system*; or
    - (ii) a *transmission system* less than 10km in length;or
  - (b) the *augmentation* comprises an expansion of the capacity of the *light regulation network*; or
  - (c) the *NSP* opts in under section 4(3); or
  - (d) in the case of the *Horizon Power coastal network* — the Minister decides under section 3.1B of the *ENAC* that a *network interconnected* with the *Horizon Power coastal network* is to be part of the *Horizon Power coastal network*.

{Note: This subsection (1) allows for automatic extensions of coverage of a *light regulation network* in relation to *augmentations*. It is always open to an *NSP* to seek revocation of coverage in accordance with the *ENAC*.}

- (2) Section 4(1)(a) does not apply where the *augmentation* comprises the *connection* of a *Pilbara network* (or *interconnected Pilbara system*) which *connects generating works* with more than 30 MW of generation capacity.

{Note: If the *new connection* is a power system in its own right, i.e. contains generation, then it will not automatically be covered. A person seeking *access* would need to make a *fresh coverage application*, unless the *NSP* opts in to coverage under subsection (3).}.

- (3) Despite section 4(2), the *NSP* of a *light regulation network* may at any time opt to have an *augmentation* treated as part of the *light regulation network* by *publishing* an updated *system description* which includes the *augmentation*.

## Subchapter 1.2 – Interpretation

### 5. Glossary

In this Code, unless the contrary intention appears —

Label	Definition
<b>Access</b>	<p>is defined in the <i>Act</i>.</p> <p>{Note: At the time this Code was made, the definition in section 3 of the <i>Act</i> was —</p> <p>“<b>access</b>” in relation to services, has a meaning corresponding with the meaning that it has when used in that context in the <i>Competition and Consumer Act 2010</i> (Commonwealth).}</p>
<b>access application</b>	<p>means —</p> <p>(a) an application lodged with an <i>NSP</i> under this Code to establish an <i>access contract</i>; or</p> <p>(b) an application lodged with an <i>NSP</i> under this Code to modify an <i>access contract</i> or to modify any other <i>contract for services</i> where such modification would result in a change to the <i>services</i> provided including —</p> <p>(i) an increase to the contract maximum demand; or</p> <p>(ii) an extension of the term (other than in accordance with any existing options to extend the term); or</p> <p>(iii) a new <i>connection point</i>; and</p>

	(c) includes any additional information provided by the <i>applicant</i> in relation to the application.
<b>access contract</b>	<p>has the same meaning as ‘Pilbara access agreement’ does in Part 8A of the Act, and includes an <i>associate arrangement</i>.</p> <p>{Note: At the time this Code was made, the definition in section 120 of the Act was —</p> <p>“<b>Pilbara access agreement</b>” means an agreement under the Pilbara Networks Access Code between a network service provider and another person for that person to have access to services of a covered Pilbara network.}</p> <p>{Note: An <i>access contract</i> is not limited to a contract for the transfer of electricity, and may include a contract for other <i>services</i> such as connection, interconnection and metering.}</p>
<b>access dispute</b>	<p>means —</p> <p>(a) any dispute, between an <i>applicant</i> and the <i>NSP</i>, in connection with one or more aspects of <i>access to services of a light regulation network</i>, but does not include a dispute between a <i>user</i> and the <i>NSP</i> under or in connection with a <i>contract for services</i>; and</p> <p>(b) any dispute between a person and an <i>NSP</i> under or in connection with Chapter 8.</p> <p>{Note: An <i>access dispute</i> can include such matters as whether the <i>applicant</i> or the <i>NSP</i> has complied with applicable requirements regarding the <i>access application</i>, whether the <i>NSP</i> has correctly processed the <i>access application</i> in accordance with the <i>user access guide</i>, the terms and prices for <i>access</i>, technical requirements for <i>connection</i>, constraints, exemptions from the <i>harmonised technical rules</i>, and any other matter in connection with an <i>access application</i> on which an <i>NSP</i> and <i>applicant</i> cannot reach agreement.</p> <p>An <i>access dispute</i> may also include matters under this Code which are not directly related to an <i>access application</i> but are related to facilitating <i>access to services</i> such as <i>ringfencing rules</i>.}</p>
<b>access information standard</b>	is defined in section 35(2).
<b>access offer</b>	means an offer to provide <i>access</i> to a <i>covered service</i> that complies with section 71.

<b>Alinta Port Hedland network</b>	means the <i>network</i> comprising —  (a) the <i>network</i> as at the <i>code commencement date</i> used for connecting Alinta's Port Hedland and Boodarie power stations with each other, and with Horizon Power's Wedgefield and Murdoch substations; and  (b) any <i>augmentation</i> of the <i>network</i> which forms part of the <i>network</i> under section 4(1).
<b>alternative options</b>	means alternatives to part or all of a <i>network augmentation</i> or <i>new facilities investment</i> (whether <i>capital-related costs</i> or <i>non-capital costs</i> ), including <i>stand-alone power systems</i> , <i>storage works</i> , demand-side management and generation solutions (such as distributed generation), either instead of or in combination with <i>network augmentation</i> or <i>new facilities investment</i> .
<b>applicant</b>	means a person (who may be a <i>user</i> ) who seeks access to a <i>light regulation network</i> to establish or modify an <i>access contract</i> , and includes a prospective <i>applicant</i> .
<b>arbitral panel</b>	means a panel convened by the <i>arbitrator</i> under section 92.
<b>arbitral panel member</b>	has the meaning in section 94(1).
<b>arbitration</b>	means arbitration of an <i>access dispute</i> under Chapter 7.
<b>arbitrator</b>	in relation to an <i>access dispute</i> , means the person appointed to determine the <i>access dispute</i> under Chapter 7, either sitting alone, or as chair of an <i>arbitral panel</i> .  {Note: The "arbitrator" in this Code is not to be confused with the "arbitrator" as defined in the Act.}
<b>arbitrator's determination</b>	has the meaning in section 74.
<b>associate</b>	means in relation to a person and subject to section 129, has the meaning it would have under Division 2 of Part 1.2 of the <i>Corporations Act 2001</i> of the Commonwealth if sections 13, 16(2) and 17 of that Act were repealed, except that a person will not be considered to be an associate of an <i>NSP</i> solely because that person proposes to enter, or has entered, into a contract, arrangement or understanding with the <i>NSP</i> for the provision of a <i>covered service</i> .  {Note: Reference must be made to the <i>Corporations Act 2001</i> (Cth) to determine whether one person is an associate of another person. At the <i>Code commencement date</i> , the following are examples of persons who are associates of a body corporate under the <i>Corporations Act 2001</i> (Cth) —

	<ul style="list-style-type: none"> <li>- a director or secretary of the body corporate; and</li> <li>- a related body corporate of the body corporate; and</li> <li>- another body corporate that can control or influence the composition of the board or the conduct of the affairs of a body corporate.}</li> </ul>
<b>associate arrangement</b>	means a contract, arrangement or understanding by which an <i>NSP</i> provides, or otherwise makes available, <i>covered services</i> to, or for the benefit of, an <i>associate</i> and includes a <i>deemed associate arrangement</i> .
<b>augmentation</b>	in relation to a <i>light regulation network</i> , means an increase in the capability of the <i>light regulation network</i> to provide <i>covered services</i> .
<b>Australian Standards</b>	means the standards published by Standards Association of Australia (Standards Australia) from time to time.
<b>Authority</b>	means the Economic Regulation Authority established by the <i>Economic Regulation Authority Act 2003</i> .
<b>Authority's subscriber database</b>	means the database established and maintained by the <i>Authority</i> under section 155(3).
<b>bidirectional point</b>	means a point on a <i>light regulation network</i> which is, or is to be, identified as such (explicitly or by inference) in a <i>contract for services</i> at which, subject to the <i>contract for services</i> , electricity is expected to be, on a regular basis, both transferred into the <i>light regulation network</i> and transferred out of the <i>light regulation network</i> .
<b>business day</b>	means a day that is not a Saturday, Sunday or public holiday throughout Western Australia.
<b>capital base</b>	for a <i>light regulation network</i> , means the value of the <i>network assets</i> that are used to provide <i>covered services</i> on the <i>light regulation network</i> prescribed or determined under section 52, 53, 54 or Chapter 7 as applicable.
<b>capital contribution</b>	means a payment or provision in kind made, or to be made, by a <i>user</i> either in respect of any <i>new facilities investment</i> in <i>required work</i> or under a <i>headworks scheme</i> .
<b>capital-related costs</b>	<p>in relation to <i>covered services</i> provided by an <i>NSP</i> by means of a <i>light regulation network</i> for a period of time, means —</p> <p>(a) a return on the <i>capital base</i> of the <i>light regulation network</i>; and</p>

	(b) depreciation of the <i>capital base</i> of the <i>light regulation network</i> .
<b>charge</b>	for a <i>user</i> for a <i>covered service</i> , means the amount that is payable by the <i>user</i> to the <i>NSP</i> for the <i>covered service</i> , calculated by applying the <i>tariff</i> for the <i>covered service</i> .
<b>charging parameters</b>	means the constituent elements of a <i>tariff</i> .
<b>code commencement date</b>	means the date on which this Code is published in the Gazette.
<b>commercially sensitive information</b>	<p>means all confidential or commercially sensitive information in relation to, as applicable —</p> <ul style="list-style-type: none"> <li>(a) an <i>applicant</i> or <i>customer</i> which is developed by or comes into the possession of an <i>NSP</i> including a <i>network business's</i> present and future dealings with the <i>applicant</i>, or <i>customer</i>, but excludes aggregated information that does not relate to an identifiable <i>applicant</i> or <i>customer</i>; or</li> <li>(b) an <i>NSP</i> which comes into the possession of another <i>NSP</i> for the purposes of performing a function under the <i>Pilbara networks rules</i>; or</li> <li>(c) an <i>NSP</i> which is developed by or comes into the possession of an <i>applicant</i> or <i>customer</i>, but excludes information required by this Code to be <i>published</i> or aggregated information that does not relate to the identifiable <i>NSP</i>.</li> </ul> <p>{Note: This concept is used in ringfencing. The more general defined term is <i>confidential information</i>.}</p>
<b>committed</b>	<p>in the context of an <i>NSP</i> committing to expenditure, means doing an act which is more than merely preparatory to undertaking the expenditure, including by entering into —</p> <ul style="list-style-type: none"> <li>(a) a significant obligation which is legally binding; or</li> <li>(b) an obligation which would have significant commercial repercussions if cancelled, discontinued or dishonoured;</li> </ul> <p>but does not include merely —</p> <ul style="list-style-type: none"> <li>(c) undertaking preparatory system or other studies; or</li> <li>(d) engaging in preparatory planning, design or costing activities; or</li> <li>(e) obtaining an approval, unless the approval falls within (a) or (b) above.</li> </ul>

<b>complainant</b>	means a person who commences an <i>access dispute</i> by lodging a <i>dispute notice</i> under section 81(1).
<b>confidential information</b>	has the meaning in section 157, and in Chapter 7 is given additional meaning by section 78(1).
<b>connect</b>	means to form a physical link to or through a <i>light regulation network</i> .
<b>connection point</b>	means a point on a <i>light regulation network</i> which is, or is to be, identified (explicitly or by inference) in, a <i>contract for services</i> as being an <i>entry point</i> , <i>exit point</i> , <i>interconnection point</i> or <i>bidirectional point</i> .
<b>constraint rules</b>	is defined in the <i>Pilbara networks rules</i> .
<b>consume</b>	means to consume electricity.
<b>consumer</b>	means a person who <i>consumes</i> electricity.  {Note: A <i>consumer</i> may also be a <i>user</i> , if it acquires a <i>covered service</i> from an <i>NSP</i> . A <i>consumer</i> may also include a generator of electricity or an <i>NSP</i> where they <i>consume</i> electricity.}
<b>contract for services</b>	means an agreement between an <i>NSP</i> and another person for the person to have <i>access to services</i> , and includes an <i>access contract</i> .  {Note: The expression <i>contract for services</i> is broader than <i>access contract</i> , because it catches all such contracts and not merely those entered into under this Code.}
<b>contribution</b>	means a <i>capital contribution</i> or a <i>non-capital contribution</i> .
<b>contributions policy</b>	means a policy in a <i>network development policy</i> under section 41(2) dealing with <i>contributions</i> by <i>users</i> .
<b>Coordinator</b>	means the Coordinator of Energy referred to in section 4 of the <i>Energy Coordination Act 1994</i> .
<b>core function costs</b>	for a <i>quarter</i> , means costs that —  (a) are incurred by the <i>Authority</i> in the <i>quarter</i> in connection with performing its functions under section 120ZG of the Act, regulation 34 of the <i>regulations</i> and under this Code; and  (b) cannot be recovered through the imposition of <i>specific charges</i> under section 148.



<b>coverage application</b>	means an application under section 3.8 of the <i>ENAC</i> requesting that the whole or part of a <i>Pilbara network</i> be covered.
<b>coverage decision</b>	for a <i>coverage application</i> for a <i>Pilbara network</i> , means either or both of the “draft coverage decision” under section 3.17 of the <i>ENAC</i> by the Minister and the <i>final coverage decision</i> under section 3.21 of the <i>ENAC</i> by the Minister.
<b>covered network</b>	<p>has the meaning given in section 3 of the Act.</p> <p>{Note: At the time this definition was inserted in this Code, the definition of covered network in section 3 of the Act was—</p> <p><b>“covered network”</b> means network infrastructure facilities that—</p> <ul style="list-style-type: none"> <li>(a) were covered by the Code [ie. the ENAC] immediately before the day on which the Electricity Industry Amendment Act 2019 section 4(3) comes into operation and that have not ceased to be a covered network; or</li> <li>(b) the Minister has decided under the Code [ie. the ENAC] are to be a covered network and that have not ceased to be a covered network; or</li> <li>(c) are prescribed in the Pilbara Networks Access Code under section 120B(a) to be a covered Pilbara network and that have not ceased to be so prescribed; or</li> <li>(d) a network service provider has opted, under the Pilbara Networks Access Code, to be regulated under Part 8A and that — <ul style="list-style-type: none"> <li>(i) have not ceased to be so regulated under that code as a consequence of an option by the network service provider for the facilities to cease to be so regulated; or</li> <li>(ii) have not otherwise ceased to be a covered network.}</li> </ul> </li> </ul>
<b>covered Pilbara network</b>	<p>has the meaning given in section 3 of the Act and for the purposes of this Code includes both a <i>network</i> and a right of the <i>NSP</i> to use a <i>network</i> (to the extent of that right of use).</p> <p>{Note: At the time this definition was inserted in this Code, the definition of covered Pilbara network in section 3 of the Act was—</p>



	<p><b>“covered Pilbara network”</b> means a covered network that is located wholly or partly in the Pilbara region.’}</p>
<b>covered service</b>	<p>means a <i>service</i> provided by means of a <i>light regulation network</i>, but does not include an <i>excluded service</i>.</p> <p>{Note: This Code uses the expression <i>covered service</i> to describe what is sometimes called a ‘regulated service’. It can be distinguished from an <i>excluded service</i>.</p> <p><i>Covered services</i> subdivide into <i>reference services</i> and <i>non-reference services</i>.}</p>
<b>customer</b>	<p>means a —</p> <p>(a) <i>user</i>; or</p> <p>(b) <i>end-use customer</i> in the <i>end-use customer’s</i> capacity as indirect customer for <i>covered services</i>.</p>
<b>decision maker</b>	<p>means —</p> <p>(a) for the purposes of Appendix 1, a person who, under this Code, is obliged to consult the public on a matter for consultation; and</p> <p>(b) for the purposes of section 10, the <i>arbitrator</i> or the <i>Authority</i>.</p>
<b>deemed associate arrangement</b>	<p>has the meaning in section 131.</p>
<b>dispute notice</b>	<p>means notice that an <i>access dispute</i> exists and contains the information listed in section 81(2).</p>
<b>distributed generating works</b>	<p>means <i>generating works</i> with an <i>entry point</i> to a <i>light regulation network</i> at a nominal voltage of less than 66 kV and no <i>entry point</i> to a <i>light regulation network</i> at a nominal voltage of 66 kV or higher.</p>
<b>distribution system</b>	<p>means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV.</p>
<b>Electricity Review Board</b>	<p>means the “Board” as defined in the Act.</p> <p>{Note: At the time this definition was inserted in this Code, the definition of Board in section 3 of the Act referred to section 49 of the <i>Energy Arbitration and Review Act 1998</i> which provided—</p> <p>“Board” means the Western Australian Electricity Review Board established by section 50.’}</p>

<b>ENAC</b>	<p>means the Electricity Networks Access Code 2004 for the time being in force under section 104 of the Act.</p> <p>{Note: The Act refers to the <i>ENAC</i> as “the Code”.}</p>
<b>end-use customer</b>	means a <i>consumer</i> who obtains the benefit of <i>covered services</i> through a <i>user</i> .
<b>entry point</b>	means a point on a <i>light regulation network</i> which is, or is to be, identified as such (explicitly or by inference) in a <i>contract for services</i> at which, subject to the <i>contract for services</i> , electricity is more likely to be transferred into the <i>light regulation network</i> than transferred out of the <i>light regulation network</i> .
<b>excluded service</b>	<p>means a <i>service</i> provided by means of a <i>light regulation network</i>, which meets the following criteria —</p> <p>(a) the supply of the <i>service</i> is subject to effective competition; and</p> <p>(b) the cost of the <i>service</i> is able to be excluded from consideration for price control purposes without departing from the <i>Pilbara electricity objective</i>.</p>
<b>exit point</b>	means a point on a <i>light regulation network</i> which is, or is to be, identified as such (explicitly or by inference) in a <i>contract for services</i> at which, subject to the <i>contract for services</i> , electricity is more likely to be transferred out of the <i>light regulation network</i> than transferred into the <i>light regulation network</i> .
<b>expedited consultation process</b>	means the expedited consultation process set out in Appendix 1.
<b>expedited determination</b>	in respect of an <i>access dispute</i> , means the determination of an <i>expedited matter</i> under section 86.
<b>expedited matter</b>	has the meaning in section 86(1).
<b>final determination</b>	<p>in respect of an <i>access dispute</i>, means a final determination by the <i>arbitrator</i> of the <i>access dispute</i>.</p> <p>{Note: Section 115 sets out the <i>arbitrator’s determinations</i> which may be made.}</p>
<b>final coverage decision</b>	for a <i>coverage application</i> for a <i>network</i> , means a final decision under section 3.21 of the <i>ENAC</i> by the Minister on the <i>coverage application</i> that the <i>network</i> be a <i>covered network</i> or not be a <i>covered network</i> .
<b>final revocation decision</b>	for a <i>revocation application</i> for a <i>network</i> , means a final decision by the Minister on a <i>revocation application</i> under

	section 3.21 of the <i>ENAC</i> (as modified under section 3.31 of the <i>ENAC</i> ) that a <i>network</i> be a <i>covered network</i> or not be a <i>covered network</i> .
<b>first pricing period</b>	for a <i>light regulation network</i> means the first <i>pricing period</i> specified in the <i>NSP's services and pricing policy published</i> in accordance with Chapter 4.
<b>force majeure</b>	operating on a person, means a fact or circumstance beyond the person's control and which a <i>reasonable and prudent person</i> would not be able to prevent or overcome.
<b>form of regulation decision</b>	means a decision by the Minister as to whether a <i>covered Pilbara network</i> is to be <i>fully regulated</i> or <i>lightly regulated</i> .
<b>form of regulation factors</b>	has the meaning given by section 7.
<b>full discretion</b>	is defined in section 10(2).
<b>full regulation network</b>	means a <i>covered network</i> which is regulated by Part 8 of the Act.  {Note: A <i>fully regulated</i> network will have an access arrangement under the <i>ENAC</i> .}
<b>fully regulated</b>	in relation to a <i>network</i> , means that the <i>network</i> is a <i>full regulation network</i> .
<b>further investigations</b>	means investigations to determine the <i>terms and conditions</i> for provision of <i>covered services</i> sought by an <i>applicant</i> in a manner that is technically feasible and consistent with the safe and reliable operation of the <i>light regulation network</i> .
<b>generating works</b>	has the meaning given in section 3 of the Act.  {Note: At the time this definition was inserted in this Code, the definition in section 3 of the Act was—  “ <b>generating works</b> ” means any wires, apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, or to control, the generation of electricity;}
<b>good electricity industry practice</b>	means the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably exercise under comparable conditions and circumstances consistent with applicable <i>written laws</i> and <i>statutory instruments</i> and applicable recognised codes, standards (including relevant <i>Australian Standards</i> ) and guidelines.
<b>harmonised technical rules</b>	is defined in the <i>Pilbara networks rules</i> .

<p><b>headworks scheme</b></p>	<p>means a scheme under which a class of present and future <i>users</i> who do or may reasonably be expected to benefit from certain <i>work</i> or a certain <i>alternative option</i> contribute collectively towards its <i>capital-related cost</i>, <i>non-capital cost</i> or both.</p> <p>{Example: Some <i>network</i> operators have a “rural feeder” scheme in which each new <i>user connecting</i> to certain rural distribution <i>networks</i> pays a headworks charge in respect of deeper <i>network</i> reinforcement, whether or not the particular <i>user’s connection</i> made any such reinforcement necessary.}</p>
<p><b>Horizon Power coastal network</b></p>	<p>means the <i>network</i> comprising —</p> <ul style="list-style-type: none"> <li>(a) the <i>network</i> which became a <i>covered network</i> as a result of the Minister’s “final coverage decision” of 2 February 2018 under the <i>ENAC</i>; and</li> <li>(b) any other <i>network</i> owned by <i>Regional Power Corporation</i> and <i>interconnected</i> as at the <i>code commencement date</i> with the <i>network</i> in paragraph (a); and</li> <li>(c) any <i>augmentation</i> as at the <i>code commencement date</i> of a <i>network</i> in paragraph (a) or (b); and</li> <li>(d) any <i>augmentation</i> of the <i>network</i> which forms part of the <i>network</i> under section 4(1).</li> </ul> <p>{Note: The Minister’s decision defined the <i>network</i> as all of the electrically interconnected network infrastructure facilities (transmission and distribution) owned by Horizon Power and located in the Pilbara region of Western Australia. For the avoidance of doubt, this includes —</p> <ul style="list-style-type: none"> <li>"(a) all of Horizon Power’s network infrastructure in the West Pilbara area, which supplies customers located in and around Karratha, including the connections to the Port of Dampier, Cape Lambert, Point Samson and Roebourne;</li> <li>(b) all of Horizon Power’s network infrastructure in the East Pilbara area, which supplies customers in and around greater Port Hedland, including the connections to the port operations of BHP Billiton and Fortescue Metals Group;</li> <li>(c) the transmission line that connects Horizon Power’s network infrastructure in the West Pilbara and East Pilbara areas; and</li> </ul>

	(d) the transmission line that runs from Port Hedland to the site of the former mining town of Goldsworthy.”}
<b>information owner</b>	has the meaning in section 157.
<b>interconnected</b>	means a state in which two <i>networks</i> are or become <i>connected</i> , such that electricity can be transferred between them.
<b>interconnected Pilbara system</b>	<p>has the meaning given in the Act.</p> <p>{Note: At the time this Code was made, the definition in section 120 of the Act was —</p> <p>“<b>interconnected Pilbara system</b>” means a system of interconnected Pilbara networks, including the following when connected to an interconnected Pilbara network—</p> <ul style="list-style-type: none"> <li>(a) generating works and associated works;</li> <li>(b) loads;</li> <li>(c) facilities, including electricity storage facilities.} </li></ul>
<b>interconnection point</b>	means a point on a <i>network</i> at which an <i>interconnector</i> connects to the <i>network</i> .
<b>interconnector</b>	is defined in the <i>Pilbara networks rules</i> .
<b>interim determination</b>	<p>in respect of an <i>access dispute</i>, means an interim determination by the <i>arbitrator</i> of any or all matters in the <i>access dispute</i> which has effect as determined by the <i>arbitrator</i> pending a <i>final determination</i>.</p> <p>{Note: Section 115 sets out the arbitrator’s determinations which may be made.}</p>
<b>ISO</b>	means the Pilbara ISO as defined in regulation 14 of the <i>regulations</i> .
<b>light regulation commencement date</b>	<p>in relation to any <i>light regulation network</i> other than the <i>Alinta Port Hedland network</i> and the <i>Horizon Power coastal network</i> means the later of —</p> <ul style="list-style-type: none"> <li>(a) the date the <i>light regulation network</i> is first used for the transmission or distribution of electricity; and</li> <li>(b) the date the <i>Pilbara network</i> becomes a <i>light regulation network</i>.</li> </ul>
<b>light regulation network</b>	means a <i>covered Pilbara network</i> which is regulated by Part 8A of the Act.

<b>lightly regulated</b>	in relation to a <i>network</i> , means that the <i>network</i> is a <i>light regulation network</i> .
<b>limit advice</b>	is defined in the <i>Pilbara networks rules</i> .
<b>limited discretion</b>	is defined in section 10(1).
<b>maintain</b>	includes (as necessary and as applicable) renew, replace or update.
<b>matter for consultation</b>	means a document, determination or decision that, under this Code, is required to be or may be the subject of public consultation.
<b>network</b>	<p>has the meaning given to “network infrastructure facilities” in the Act.</p> <p>{Note: At the time this Code was made, the definition in section 3 of the Act was —</p> <p>“<b>network infrastructure facilities</b>” –</p> <p>(a) means electricity infrastructure used, or to be used, for the purpose of transporting electricity from generators of electricity to other electricity infrastructure or to end users of electricity; and</p> <p>(b) includes stand-alone power systems, or storage works, used, or to be used, as an adjunct to electricity infrastructure.}</p>
<b>network assets</b>	in relation to a <i>Pilbara network</i> , means the apparatus, equipment, plant and buildings used to provide or in connection with providing <i>covered services</i> on the <i>Pilbara network</i> .
<b>network business</b>	means the part of an <i>NSP</i> ’s business and functions which are responsible for the operation and maintenance of a <i>light regulation network</i> and the provision of <i>covered services</i> by means of the <i>light regulation network</i> .
<b>network development policy</b>	means the policy of an <i>NSP</i> which contains the details referred to in section 41.
<b>network limit</b>	is defined in the <i>Pilbara networks rules</i> .
<b>new connection</b>	is defined in the <i>Pilbara networks rules</i> .
<b>new facility</b>	means any capital asset developed, constructed or acquired to enable the <i>NSP</i> to provide <i>covered services</i> and to avoid doubt, includes <i>stand-alone power systems</i> or other assets required for the purpose of facilitating competition in retail markets for electricity.

<b>new facilities investment</b>	for a <i>new facility</i> , means the capital costs incurred in developing, constructing and acquiring the <i>new facility</i> .
<b>new facilities investment test</b>	for a <i>light regulation network</i> , means the test established under section 55.
<b>new pricing period</b>	in respect of the start of a <i>pricing period</i> , means the <i>pricing period</i> which is commencing.
<b>non-capital contribution</b>	means a payment or provision in kind made, or to be made, by a <i>user</i> either in respect of any <i>non-capital costs of required work</i> or under a <i>headworks scheme</i> .
<b>non-capital costs</b>	in relation to <i>covered services</i> provided by an <i>NSP</i> by means of a <i>light regulation network</i> for a period of time, means all costs incurred in providing the <i>covered services</i> for the period of time which are not <i>new facilities investment</i> or <i>capital-related costs</i> , including those operating, maintenance and administrative costs which are not <i>new facilities investment</i> or <i>capital-related costs</i> .
<b>non-reference service</b>	means a <i>covered service</i> that is not a <i>reference service</i> .
<b>NSP</b>	<p>subject to section 11, has the meaning given to “Pilbara network service provider” in the Act.</p> <p>{Note: At the time this Code was made, the definition in section 120 of the Act was —</p> <p><b>“Pilbara network service provider”</b> means a person who —</p> <p>(a) owns, controls or operates a Pilbara network or any part of a Pilbara network; or</p> <p>(b) proposes to own, control or operate a Pilbara network or any part of a Pilbara network.}</p>
<b>NWIS</b> {short for “North West interconnected system”}	means the <i>interconnected Pilbara system</i> which includes the <i>Horizon Power coastal network</i> .
<b>other business</b>	means the part or parts of an <i>NSP’s</i> business which are not the <i>network business</i> , and includes any part or parts of the <i>NSP’s</i> business and functions which acquire <i>covered services</i> from the <i>network business</i> .
<b>panel expert</b>	means a member of an <i>arbitral panel</i> appointed under section 92(8)(b).
<b>Pilbara electricity objective</b>	means the “Pilbara electricity objective” as defined in the Act.



	<p>{Note: At the time this Code was made, the definition in section 119(2) of the Act was —</p> <p>The objective of this Part (the <b>Pilbara electricity objective</b>) is to promote efficient investment in, and efficient operation and use of, services of Pilbara networks for the long-term interests of consumers of electricity in the Pilbara region in relation to —</p> <ul style="list-style-type: none"> <li>(a) price, quality, safety, reliability and security of supply of electricity; and</li> <li>(b) the reliability, safety and security of any interconnected Pilbara system.</li> </ul> <p>Regulation 4 of the <i>regulations</i> sets out 'have regard to' matters, when applying this objective.}</p>
<b>Pilbara network</b>	<p>has the meaning given in the Act.</p> <p>{Note: At the time this Code was made, the definition in section 3 of the Act was —</p> <p><b>"Pilbara network"</b> means network infrastructure facilities that are located wholly or partly in the Pilbara region.}</p>
<b>Pilbara networks rules</b>	<p>has the meaning given in the Act.</p> <p>{Note: At the time this Code was made, the definition in section 3 of the Act was —</p> <p><b>"Pilbara networks rules"</b> means the Pilbara networks rules for the time being in force under Part 8A Division 3.}</p>
<b>pool member</b>	<p>means a member of the pool of potential <i>arbitrators</i> established under section 75(1)(a).</p>
<b>prescribed customer</b>	<p>means a <i>customer</i> who is a prescribed customer for the purposes of section 54(3) of the <i>Electricity Corporations Act 2005</i>.</p>
<b>prescribed rate</b>	<p>in relation to interest on amounts not paid within an allowed period, means the interest rate that is 5 percentage points higher than —</p> <ul style="list-style-type: none"> <li>(a) the rate quoted on Reuters Screen BBSW as the Bank Bill Reference Rate (Mid Rate) for a one month bill at or about 10 a.m. (Sydney time) on the first day after the allowed period; or</li> <li>(b) if a rate is not quoted as described in paragraph (a) — the rate determined by the <i>Authority</i> having regard to comparable indices then available.</li> </ul>
<b>previous pricing period</b>	<p>in respect of the start of a <i>pricing period</i>, means the <i>pricing period</i> which is ending.</p>
<b>price list</b>	<p>means the schedule of tariffs for a <i>light regulation network</i>.</p>



<b>pricing period</b>	means the defined future period, which must not be more than 5 years, for which a <i>services and pricing policy</i> is applicable.
<b>priority</b>	<p>means in relation to —</p> <p>(a) an <i>access application</i>, the priority that the <i>applicant</i> has, as against any other <i>applicant</i> with a competing <i>access application</i>, to obtain <i>access to covered services</i> as determined in accordance with the <i>user access guide</i>; or</p> <p>(b) an “access application” under the <i>ENAC</i>, the priority that the “applicant” has, as against any other “applicant” with a competing “access application”, to obtain access to “covered services” as determined by the “applications and queuing policy” (as each of those terms are defined in the <i>ENAC</i>) for the <i>covered Pilbara network</i>.</p>
<b>publish</b>	means, where a person is required to publish a thing — that the person must make the thing available on a publicly available part of the person’s website.
<b>quarter</b>	means the period of 3 months that begins on 1 July, 1 October, 1 January or 1 April.
<b>queuing policy</b>	has the meaning in section 42(2)(f).
<b>rate of return</b>	for a <i>light regulation network</i> means the value determined under section 57, 58 or, where applicable, Chapter 7.
<b>reasonable and prudent person</b>	means a person acting in good faith and in accordance with <i>good electricity industry practice</i> .
<b>reasons</b>	<p>in relation to a decision or other determination, means a written statement of the reasons for deciding or determining including, as applicable —</p> <p>(a) findings on material questions of fact relied on by the person in reaching the decision or determination; and</p> <p>(b) reference to the evidence on which findings of fact are based; and</p> <p>(c) identification of the steps in the decision-making process, explanation of the link between the findings of fact and the final decision or determination and a description of the role of policy or guidelines in the decision-making process.</p>

<b>reference service</b>	means a <i>covered service</i> designated by a <i>services and pricing policy</i> to be a reference service, and which is provided on the corresponding <i>reference terms and conditions</i> .
<b>reference tariff</b>	means the <i>tariff</i> specified in a <i>price list</i> for a <i>reference service</i> .
<b>reference terms and conditions</b>	means the <i>terms and conditions</i> specified in the <i>services and pricing policy</i> on which a <i>reference service</i> will be provided at a <i>reference tariff</i> .
<b>Regional Power Corporation</b>	means the body established by the <i>Electricity Corporations Act 2005</i> section 4(1)(d).
<b>regulatory change event</b>	means a change in a <i>written law</i> or <i>statutory instrument</i> that — (a) occurs during the course of a <i>pricing period</i> ; and (b) substantially affects the manner in which the <i>NSP</i> provides <i>covered services</i> ; and (c) materially increases or materially decreases the costs of providing those <i>covered services</i> .
<b>related business</b>	means the business of generating, purchasing or selling electricity, but does not include generating, purchasing or selling electricity to the extent necessary — (a) for the safe and reliable operation of a <i>light regulation network</i> ; or (b) to enable an <i>NSP</i> to provide balancing and ancillary services in connection with a <i>light regulation network</i> ; or (c) to comply with an obligation under the <i>Pilbara networks rules</i> .
<b>related market</b>	means the market in which a <i>related business</i> of an <i>NSP</i> , or an <i>associate</i> of an <i>NSP</i> , participates.
<b>regulations</b>	means the <i>Electricity Industry (Pilbara Networks) Regulations 2021</i> .
<b>required work</b>	means <i>work</i> which is necessary in order to provide a <i>covered service</i> under an <i>access contract</i> and includes anything the subject of an <i>arbitrator's determination</i> under section 115(2)(c).
<b>revenue and pricing principles</b>	means the revenue and pricing principles in section 8.

<b>revocation application</b>	means an application for revocation of <i>coverage</i> made under section 3.8 (as modified under section 3.31) of the <i>ENAC</i> .
<b>revocation decision</b>	for a <i>revocation application</i> for a <i>network</i> , means either or both of the “draft revocation decision” under section 3.17 (as modified under section 3.31) of the <i>ENAC</i> by the Minister and the <i>final revocation decision</i> under section 3.21 of the <i>ENAC</i> by the Minister.
<b>ringfencing approval</b>	has the meaning in section 135(4) or section 135(6)(b)(iii), as applicable.
<b>ringfencing commencement date</b>	means the date <i>ringfencing rules</i> are expressed to take effect in accordance with section 133(2).
<b>ringfencing publication date</b>	<p>(a) in relation to a <i>covered Pilbara network</i> that is a <i>light regulation network</i> on the <i>code commencement date</i>, the date which is 6 months after the later of 1 July 2021 and the <i>code commencement date</i>; or</p> <p>(b) in respect of any other <i>light regulation network</i>, the date which is 6 months after the date on which a <i>form of regulation decision</i> that a <i>covered Pilbara network</i> is to be <i>lightly regulated</i> takes effect.</p>
<b>ringfencing rules</b>	means rules <i>published</i> by an <i>NSP</i> which contain the measures set out in section 134(1).
<b>services</b>	<p>has the meaning given to that term in the Act, and <b>service</b> has a corresponding meaning.</p> <p>{Note: At the time this Code was made, the definition in section 3 of the Act was —</p> <p>“<b>services</b>” means –</p> <p>(a) the transport of electricity, and other services, provided by means of network infrastructure facilities; and</p> <p>(b) services ancillary to those services.}</p> <p>{Note: For example, <i>services</i> may include <i>connection services</i>, being the right to <i>connect</i> to a <i>network</i> at a <i>connection point</i> or <i>services</i> to transfer electricity into or out of a <i>covered Pilbara network</i> at an <i>entry point</i>, <i>exit point</i> or <i>bidirectional point</i>.}</p>
<b>services and pricing policy</b>	means the policy of an <i>NSP</i> which contains the details referred to in section 40.
<b>small use customer</b>	means a customer within the meaning of section 78 of the Act (for the purposes of Part 6 of the Act).

	<p>{Note: At the time this Code was made, the definition in section 78 of the Act for the purposes of Part 6 of the Act was —</p> <p><b>“customer”</b> means a customer who consumes not more than 160 MWh of electricity per annum.}</p>
<b>specific charge</b>	means a charge payable under section 148.
<b>stand-alone cost of service provision</b>	in relation to a <i>customer</i> or group of <i>customers</i> , a <i>covered service</i> and a specified period of time, means that part of <i>total costs</i> that the <i>NSP</i> would incur in providing the <i>covered service</i> to the <i>customer</i> or group of <i>customers</i> for the period of time, if the <i>covered service</i> was the sole <i>covered service</i> provided by the <i>NSP</i> and the <i>customer</i> or group of <i>customers</i> was the sole <i>customer</i> or group of <i>customers</i> supplied by the <i>NSP</i> during the specified period of time.
<b>stand-alone power system</b>	<p>has the meaning given to that term in the Act.</p> <p>{Note: At the time this Code was made, the definition in section 3 of the Act was —</p> <p><b>“stand-alone power system”</b> means wires, apparatus, equipment, plant or buildings (including generating works, a distribution system and any storage works) —</p> <p>(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</p> <p>(b) which are not connected to another electricity network (other than that of the customer or customers).}</p>
<b>standard consultation process</b>	means the standard consultation process set out in Appendix 1.
<b>standing charge</b>	means a charge payable under section 147.
<b>statutory instruments</b>	<p>means all relevant instruments made under a <i>written law</i> including all directions, notices, orders and other instruments given or made under a <i>written law</i> and includes, as existing from time to time —</p> <p>(a) orders made under section 8 of the Act; and</p> <p>(b) licences granted, renewed or transferred under section 19 of the Act; and</p> <p>(c) standard form contracts approved under section 51 of the Act; and</p>

	<p>(d) orders made under section 181(3) of the <i>Electricity Corporations Act 2005</i>; and</p> <p>(e) approved policies as defined in section 60 of the Act; and</p> <p>(f) last resort supply plans approved under section 73 of the Act as amended under sections 74 and 75 of the Act; and</p> <p>(g) the Pilbara <i>networks rules</i>; and</p> <p>(h) this Code.</p>
<b>storage works</b>	<p>has the meaning given to it in the Act.</p> <p>{Note: At the time this Code was made, the definition in section 3 of the Act was —</p> <p><b>“storage works”</b> means any wires, apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, or to control, a <i>storage activity</i>.</p> <p>The definition of “storage activity” was —</p> <p><b>“storage activity”</b> means an activity comprising all of the following —</p> <p>(a) receiving energy in the form of electricity;</p> <p>(b) storing the received energy in any form;</p> <p>(c) discharging the stored energy in the form of electricity.}</p>
<b>sub-transmission system</b>	<p>means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of 22kV or higher but less than 66kV dedicated to a single <i>connection point</i> above 15 MVA.</p>
<b>supplementary service</b>	<p>is defined in section 72(2).</p>
<b>Supreme Court</b>	<p>means the Supreme Court of Western Australia.</p>
<b>system description</b>	<p>means a system description which complies with the <i>system description requirements</i>.</p>
<b>system description requirements</b>	<p>means the requirements set out in section 9.</p>

<b>TAC eligible customer exit point</b>	means a <i>customer's exit point</i> on the <i>Horizon Power coastal network</i> at which electricity is consumed by a customer who is not a <i>prescribed customer</i> .
<b>target revenue</b>	for a <i>light regulation network</i> for a <i>pricing period</i> , means as determined in accordance with sections 47 to 60.
<b>tariff</b>	for a <i>covered service</i> , means the criteria that determine the <i>charge</i> that is payable by a <i>user</i> to the <i>NSP</i> .
<b>tariff setting methodology</b>	is defined in section 62.
<b>terms and conditions</b>	includes price and non-price terms and conditions.
<b>total costs</b>	in relation to <i>covered services</i> provided by an <i>NSP</i> by means of a <i>light regulation network</i> for a period of time, means —  (a) <i>capital-related costs</i> determined under section 47(1)(a); and  (b) <i>non-capital costs</i> determined under section 47(1)(b).
<b>transmission system</b>	means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of 66 kV or higher.
<b>user</b>	means a person, who is a party to a <i>contract for services</i> with an <i>NSP</i> , and in connection with a <i>deemed associate arrangement</i> , includes the <i>NSP's other business</i> .
<b>user access guide</b>	means a user access guide which contains the details referred to in section 42.
<b>work</b>	means any activity or undertaking in connection with the <i>light regulation network</i> , whether of a capital or non-capital nature, including the planning, designing, development, approval, construction, acquisition and commissioning of <i>new facilities</i> and new <i>network assets</i> and the procurement or provision of any good or service.
<b>written law</b>	(a) all Western Australian Acts and all Western Australian subsidiary legislation for the time being in force; and  (b) all Commonwealth Acts and all Commonwealth subsidiary legislation for the time being in force, where the term subsidiary legislation has the meaning given to it under the <i>Interpretation Act 1984</i> , if “Commonwealth Act” were substituted for “written law”.

## 6. Other rules of interpretation

- (1) This Code is a written law under the *Electricity Industry Act 2004*, and unless the contrary intention appears the *Interpretation Act 1984* applies to it.
- (2) In this Code, unless the contrary intention is apparent —
  - (a) **including** and similar expressions are not words of limitation; and
  - (b) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
  - (c) a reference to a law includes any amendment or re-enactment of it that is for the time being in force, and includes all laws made under it from time to time; and
  - (d) where italic typeface has been applied to some words and expressions, it is solely to indicate that those words or expressions may be defined in section 5 or elsewhere in this Code, and in interpreting this Code the fact that italic typeface has or has not been applied to a word or expression is to be disregarded, to avoid doubt, nothing in this section 6(2) limits the application of section 5; and
  - (e) where information in this Code is set out in braces (namely { and } ), whether or not preceded by the expression Note, Outline or Example, the information —
    - (i) is provided for information only and does not form part of this Code; and
    - (ii) is to be disregarded in interpreting this Code; and
    - (iii) might not reflect amendments to this Code or other documents or *written laws*,and
  - (f) a reference to —
    - (i) this Code includes any Appendix to this Code; and
    - (ii) a section, Chapter or Appendix is a reference to a section of, Chapter of or Appendix to this Code, and
    - (iii) a clause is a reference to a clause in an Appendix to this Code,and
  - (g) without limiting section 6(1) —
    - (i) where in this Code the word may is used in conferring a power, such word shall be interpreted to imply that the power may be exercised or not, at discretion; and

- (ii) where in this Code the word *must* is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.
- (3) In this Code, references to —
  - (a) *access to a light regulation network* is a reference to *access to services of that network*; and
  - (b) *lightly regulated* is a reference to *access to the services of the relevant light regulation network being lightly regulated*; and
  - (c) the *NSP*, are to the *NSP* for the *Pilbara network* in question.

### **Subchapter 1.3 – Key concepts**

#### **7. Form of regulation factors**

The *form of regulation factors* are —

- (1) the presence and extent of any barriers to entry in a market for *network services*;
- (2) the presence and extent of any *network* externalities (that is, interdependencies) between a *service* provided by an *NSP* and any other *service* provided by the *NSP*;
- (3) the presence and extent of any *network* externalities (that is, interdependencies) between a *service* provided by an *NSP* and any other *service* provided by the *NSP* in any other market;
- (4) the extent to which any market power possessed by an *NSP* is, or is likely to be, mitigated by any countervailing market power possessed by a *user* or *applicant*;
- (5) the presence and extent of any substitute, and the elasticity of demand, in a market for a *service* in which an *NSP* provides that *service*;
- (6) the presence and extent of any substitute for, and the elasticity of demand in a market for, electricity or gas (as the case may be);
- (7) the extent to which there is information available to an *applicant* or *user*, and whether that information is adequate, to enable the *applicant* or *user* to negotiate on an informed basis with an *NSP* for the provision of a *service* to them by the *NSP*;
- (8) the impact of the regulatory burden resulting from the *covered Pilbara network* being *fully regulated* or *lightly regulated* on the *NSP's* (or its *associates*) business other than its *network business*.

#### **8. Revenue and pricing principles**

- (1) The *revenue and pricing principles* that apply to *light regulation networks* are set out in sections 8(2) to 8(5).



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- (2) An *NSP* of a *light regulation network* should be provided with a reasonable opportunity to recover at least the efficient costs it incurs in —
    - (a) providing *covered services*; and
    - (b) complying with regulatory obligations, but excluding any costs it incurs in connection with *access disputes*.
  - (3) An *NSP* of a *light regulation network* should be provided with effective incentives in order to promote economic efficiency with respect to the *covered services* it provides. The economic efficiency that should be promoted includes —
    - (a) efficient investment in the *light regulation network*;
    - (b) the efficient provision of *covered services*; and
    - (c) the efficient use of the *light regulation network*.
  - (4) The price for provision of a *covered service* should allow for a return commensurate with the regulatory and commercial risks involved in providing the *covered service* to which that price relates.
  - (5) Regard should be had to the economic costs and risks of the potential for —
    - (a) under and over investment in a *light regulation network*; and
    - (b) under and over utilisation of the *light regulation network*.

## 9. System description requirements

The “**system description requirements**” for a *light regulation network* are that the description is *maintained* up to date and includes at least —

- (1) a map showing the geographical extent of the *light regulation network*; and
- (2) a simplified single line diagram of the *light regulation network* that shows the location of key facilities; and
- (3) if applicable, all *constraint rules* which may affect access to or use of the *network*; and
- (4) current *limit advice* provided to the *ISO* under the *Pilbara networks rules*; and
- (5) any other key technical constraints in the *light regulation network* that will or are reasonably likely to materially affect access to or use of the *network*; and
- (6) reasonable information about the *light regulation network’s* capacity in key locations.

## 10. Limited discretion for decision makers in certain circumstances

- (1) If a provision of this Code states that a *decision maker* has “**limited discretion**” in respect of a matter, then the *decision maker* must not *require changes* to an *NSP’s proposal* in respect of that matter, if the *decision maker* is satisfied that the *proposal* —

- (a) complies with applicable requirements of this Code and the Act; and
- (b) is consistent with applicable criteria (if any) prescribed by or under this Code and the Act.

{Note: *Limited discretion* means that if the *NSP's proposal* complies with the legal requirements, the *arbitrator* or *Authority* cannot intervene merely because they see a preferable way of dealing with the matter – compare section 10(2).

*Limited discretion* is used in some pricing matters in Chapter 5, and in relation to ringfencing in Chapter 8.

Example: See section 59. Because the *arbitrator* has *limited discretion* with respect to depreciation, the *arbitrator* cannot insist on a change to an aspect of a depreciation schedule unless the *arbitrator* considers the change necessary to correct non-compliance with a provision of this Code or the Act, or an inconsistency between the schedule and the applicable criteria. Even though the *arbitrator* might consider the change desirable to achieve more complete conformity between the schedule and the principles and objectives of this Code and the Act, the *arbitrator* would not be entitled to give effect to that view in the *arbitrator's determination*.)

- (2) In all other cases, a *decision maker* has a discretion (“**full discretion**”) to *require changes* to an *NSP's proposal* if, in the *decision maker's* opinion, a preferable alternative exists that —
  - (a) complies with applicable requirements of this Code and the Act; and
  - (b) is consistent with applicable criteria (if any) prescribed by or under this Code and the Act.
- (3) For the purposes of this section —
  - (a) “**proposal**”, in respect of an *NSP*, includes any matter which the *NSP* is required or permitted under this Code to determine, derive, calculate, *publish*, propose or otherwise bring into existence; and
  - (b) “**require changes**”, in respect of an *NSP's proposal*, includes —
    - (i) make or require changes to the *proposal*; and
    - (ii) withhold its consent to or approval of the *proposal*; and
    - (iii) make a decision or other determination adverse to the *proposal*.

## **Subchapter 1.4 – Multiple parties**

### **11. Passive owners, operators or controllers of light regulation networks deemed to provide or intend to provide services**

- (1) This section applies to a person who owns, controls or operates a *light regulation network* but does not provide or intend to provide *services* by means of that *network*.

- (2) The person is, for the purposes of this Code, deemed to provide or intend to provide *services* by means of the *network* even if the person does not, in fact, do so.

## 12. Things done by one NSP to be treated as being done by all of an NSP group

- (1) This section applies if—
  - (a) more than one *NSP* (an “**NSP group**”) owns, controls or operates a *covered Pilbara network* (or a part of a *covered Pilbara network*); and
  - (b) under this Code an *NSP* is required or allowed to do a thing.
- (2) An *NSP* of the *NSP group* (the “**complying NSP**”) may do the thing on behalf of the other *NSPs* of the *NSP group* if the *complying NSP* has been given the requisite authority from all of the *NSPs* of the *NSP group* to do that thing on behalf of the *NSP group*.
- (3) Unless the *regulations*, this Code or the *Pilbara networks rules* provide otherwise —
  - (a) on the doing of a thing referred to in section 12(2) by a *complying NSP*, the *NSPs* of the *NSP group* on whose behalf the *complying NSP* does that thing, must each be taken to have done the thing done by the *complying NSP*; and
  - (b) on the omission to do a thing referred to in section 12(2) by a *complying NSP*, the *NSPs* of the *NSP group* on whose behalf the *complying NSP* omits to do that thing, must each be taken to have omitted the thing omitted by the *complying NSP*; and
  - (c) if a provision of this Code refers to the *NSP* bearing any costs, the provision applies as if the provision referred to any *NSP* in the *NSP group* bearing any costs.
- (4) This section does not apply to a thing required or allowed to be done under sections 115 or 120S of the Act or Chapter 8 of this Code.

## Chapter 2 – General Principles

### 13. Pilbara electricity objective

- (1) A person or body must, in performing a function under this Code, seek to do so in a manner that will or is likely to contribute to the achievement of the *Pilbara electricity objective* whether or not the provision refers expressly to the *Pilbara electricity objective*.

{Note: At the time this Code was made, section 119(2) read —

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

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

- (2) In determining whether the performance of a function meets the *Pilbara electricity objective*, the person or body is to have regard to the matters in regulation 4 of the *regulations*.

{Note: At the time this Code was made, the matters in regulation 4 read —

- (a) the contribution of the Pilbara resources industry to the State's economy;
- (b) the nature and scale of investment in the Pilbara resources industry;
- (c) the importance to the Pilbara resources industry of a secure and reliable electricity supply;
- (d) the nature of electricity supply in the Pilbara region, including whether or not regulatory approaches used outside the Pilbara region are appropriate for that region, Pilbara network users and Pilbara networks;
- (e) any other matter the person or body considers relevant.}

### 14. Freedom to contract

- (1) Subject to this Code and to —

- (a) *published ringfencing rules* for a *network business* under Chapter 8; and
- (b) the *Pilbara networks rules*, including any applicable *harmonised technical rules*,

an *NSP* and a *user* or *applicant* may negotiate regarding, and may make and implement, an *access contract* for access to any *service*.

{Note: This provision confirms the Code's central emphasis on negotiated outcomes.}

- (2) Section 14(1) does not—

- (a) permit an *NSP*, *user* or *applicant* to do anything which a *written law* prohibits; or
- (b) by implication limit the rights, powers or obligations of an *NSP*, *user* or *applicant*.

- (3) Nothing in this Code except —
- (a) the provisions of Chapter 8 and any *published ringfencing rules* for a *network business*; and
  - (b) section 14(5),
- limits —
- (c) the *services* an *NSP* may agree to provide to a *user* or *applicant*; or
  - (d) the terms for, or connected with, the provision of *services* which may be agreed between an *NSP* and a *user* or *applicant*; or
  - (e) the *covered services* which may be the subject of an *access dispute* or *arbitrator's determination* under Chapter 7; or
  - (f) the terms for, or connected with, the provision of *covered services* which may be the subject of an *access dispute* or *arbitrator's determination* under Chapter 7; or
  - (g) any other matters which may be the subject of an *access dispute*.
- (4) Nothing in this Code prevails over or modifies the provisions of an *access contract*, except for —
- (a) the provisions of Chapter 8 and any *published ringfencing rules* for a *network business*; and
  - (b) section 14(5); and
  - (c) an *arbitrator's determination*.
- (5) A person must not seek to impose, and an *arbitrator* must not approve, any contractual term that restricts a *user*, *applicant* or *NSP* from raising matters with the *Authority* or the *arbitrator* or disclosing proposed or existing *access* conditions or other contract terms or information to the *Authority*, *arbitrator* or, for the purposes of any review of this Code, the Minister or the Minister's delegates.
- (6) In exercising a right to disclose proposed or existing *access* conditions or other contract terms or information under section 14(5), a *user*, *applicant* or *NSP* must use reasonable endeavours to only disclose the conditions, terms or information as are reasonably necessary for the purposes set out in section 14(5). An *arbitrator* may approve a contractual term which contains appropriate preliminary measures for the purposes of this section 14(6).
- (7) All things done or omitted to be done under this Code or purported to be done or omitted to be done under this Code by an *NSP* or a *user*, including any processes, inputs, terms or assumptions relating to a thing done, omitted or purported to be done or omitted to be done by an *NSP* or a *user* under this Code, or otherwise relating to *access* to *services* of a *light regulation network*, may be the subject of an *access dispute*.

- (8) A dispute between an *NSP* and a *user* under or in connection with a *contract for services* is not an *access dispute*.

**15. NSP functions and obligation to use reasonable endeavours to provide access to covered services**

- (1) It is a function of an *NSP* to perform its obligations under this Code, including the *NSP's* obligations under an *access contract* and an *arbitrator's determination*.
- (2) An *NSP* for a *light regulation network* must use all reasonable endeavours to accommodate an *applicant's* —
- (a) request to obtain *covered services*; and
  - (b) requests in connection with the negotiation of an *access contract*.
- (3) Without limiting section 15(1), an *NSP* must —
- (a) comply with its *network development policy* and *services and pricing policy* for its *light regulation network* and must expeditiously and diligently process *access applications*; and
  - (b) negotiate in good faith with an *applicant* regarding the terms for an *access contract*; and
  - (c) to the extent reasonably practicable in accordance with *good electricity industry practice*, permit an *applicant* to acquire a *covered service* containing only those elements of the *covered service* which the *applicant* wishes to acquire; and
  - (d) to the extent reasonably practicable, specify a separate *tariff* for an element of a *covered service* if requested by an *applicant*, which *tariff* must be determined in accordance with Chapter 5.

**16. Requirement to undertake work and funding of work**

- (1) Subject to section 16(2), the *NSP* must undertake and fund any *required work*.
- (2) If one or more *contributions* are required to be made under the *contributions policy* in respect of *required work*, then the *NSP* may refuse to undertake and fund any relevant *required work* under section 16(1) —
- (a) in respect of an *access application*, unless the *applicant* and the *NSP* reach agreement on, or the *arbitrator* determines, the terms on which the *applicant* will make the *contributions* under an *access contract*; and
  - (b) if the *access contract* provides that one or more *contributions* must be provided before the *required work* will commence, until the *user* provides the *contributions* in accordance with the *access contract*.

## Chapter 3 – Light regulation for Pilbara networks

### Subchapter 3.1 – Light regulation by prescription

#### 17. Horizon Power coastal network

The *network* comprising —

- (a) the *network* which became a *covered network* as a result of the Minister’s “final coverage decision” of 2 February 2018 under the *ENAC*; and
- (b) any other *network* owned by *Regional Power Corporation* and *interconnected* as at the *code commencement date* with the *network* referred to in section 17(a); and
- (c) any *augmentation* as at the *code commencement date* of a *network* referred to in section 17(a) or 17(b),

is a *covered Pilbara network* regulated under Part 8A of the Act with effect from the later of 1 July 2021 and the *code commencement date*, unless —

- (d) *coverage* is revoked under section 3.30 of the *ENAC*; or
- (e) a *form of regulation decision* is made under section 22(1)(b) to make it a *full regulation network*; or
- (f) the *NSP* makes an election under section 30 to be *fully regulated*.

#### 18. Alinta Port Hedland network

The *network*, as at the *code commencement date*, used for connecting Alinta’s Port Hedland and Boodarie power stations with each other, and with Horizon Power’s Wedgefield and Murdoch substations is a *covered Pilbara network* regulated under Part 8A of the Act with effect from the later of 1 July 2021 and the *code commencement date*, unless —

- (a) *coverage* is revoked under section 3.30 of the *ENAC*; or
- (b) a *form of regulation decision* is made under section 22(1)(b) to make it a *full regulation network*; or
- (c) the *NSP* makes an election under section 30 to be *fully regulated*.

## **Subchapter 3.2– Light regulation by form of regulation decision**

### **Division 1 – Application for form of regulation decision**

#### **19. Application by NSP to be lightly regulated**

- (1) An *NSP* may apply to the Minister for a *form of regulation decision* that —
  - (a) a *covered Pilbara network* to which an access arrangement under the *ENAC* applies be *lightly regulated*; or
  - (b) a *Pilbara network* in respect of which a *coverage application* has been made under Chapter 3 of the *ENAC* be *lightly regulated*.
- (2) An application may only be made in respect of the whole of the *covered Pilbara network* or that part of the *Pilbara network* the subject of the *coverage application*, as applicable.

#### **20. Application (other than by NSP) for light regulation network to be fully regulated**

- (1) A person other than the *NSP* may apply to the Minister for a *form of regulation decision* that a *light regulation network* should be a *full regulation network*.
  - (2) Subject to section 20(3), an application under section 20(1) cannot be made if any of the following apply —
    - (a) the *light regulation network* was designated a *light regulation network* under section 17 or section 18 and has been so for less than 5 years; or
    - (b) a *form of regulation decision* designated the *Pilbara network* as a *light regulation network* and the *network* has been so for less than 5 years; or
    - (c) the *Pilbara network* is deemed a *light regulation network* as a result of the *NSP* opting for the *Pilbara network* to be *lightly regulated* under section 31, and the *network* has been so for less than 10 years.
  - (3) Despite section 20(2), the Minister may grant consent, which may be subject to conditions, for the person to apply for a *form of regulation decision* if —
    - (a) in the case of a *light regulation network* referred to in section 20(2)(a) or 20(2)(b), the Minister determines, in the Minister's discretion, that —
      - (i) the status of the *Pilbara network* as a *light regulation network* has failed to provide *access* so as to achieve the *Pilbara electricity objective* (whether due to a material change in circumstances affecting the *light regulation network* or otherwise); or
      - (ii) the *NSP* has committed a serious or recurring breach of this Code;
- or



- (b) in the case of a *light regulation network* referred to in section 20(2)(c), the Minister determines, in the Minister's discretion that the *NSP* has committed a serious or recurring breach of this Code.
- (4) If the Minister grants consent under section 20(3)(b) in respect of a *light regulation network*, the person making the application must also make a concurrent *coverage application* under the *ENAC*.

## 21. Application requirements for form of regulation decision

- (1) An application for a *form of regulation decision* must —
  - (a) be in writing; and
  - (b) state the applicant's name and contact details; and
  - (c) identify the relevant *NSP*; and
  - (d) identify the *Pilbara network* in respect of which the *form of regulation decision* is sought; and
  - (e) include the applicant's grounds for asserting that the *Pilbara network* should be *lightly regulated* or *fully regulated*, as relevant; and
  - (f) include other information and materials on which the applicant relies in support of the application.
- (2) Where the person applying for a *form of regulation decision* is the *NSP*, the application must also include the following information —
  - (a) a description of the *Pilbara network* which at least complies with the *system description requirements*; and
  - (b) a description of all *covered services* provided or to be provided by means of the *Pilbara network*; and
  - (c) the capacity of the *Pilbara network* and the extent to which that capacity is currently utilised; and
  - (d) an indication of any other sources of energy available to *customers* from the *Pilbara network*; and
  - (e) a description of the following relationships —
    - (i) the identity of the parties with an interest in the *Pilbara network* and the nature and extent of each interest, including whether they are an owner, operator or controller of the *Pilbara network*;
    - (ii) any relationship between any of those parties and a *customer* of *covered services* in a location or geographical area served by the *Pilbara network*;
    - (iii) any relationship between any of those parties and the owner, operator or controller of any other *Pilbara network* serving any

one or more of the same locations or the same geographical area; and

- (f) an estimate of the annual cost to the *NSP* of regulation on the basis of the *Pilbara network* being *lightly regulated* and on the basis of the *Pilbara network* being *fully regulated*; and
  - (g) any other information the *NSP* considers relevant to the application of the *Pilbara electricity objective* or the *form of regulation factors* in the circumstances of the present case.
- (3) The Minister may request further information in support of the application before making a *form of regulation decision*. The person making the application must provide any further information within 10 *business days* of the Minister's request unless the Minister allows a longer time period.

## **Division 2 – Form of regulation decision**

### **22. Minister to make form of regulation decision**

- (1) If an application is made under section 19 or 20, the Minister must make a *form of regulation decision* either —
  - (a) that the *Pilbara network* is, or is to remain, a *light regulation network*; or
  - (b) that the *Pilbara network* is, or is to remain, a *full regulation network*.
- (2) The Minister must make a *form of regulation decision* —
  - (a) within 4 months after receiving an application (unless section 24 applies); or
  - (b) in the case of a *Pilbara network* subject to a *coverage application*, at the same time as the Minister makes the *coverage decision*.
- (3) In respect of a *Pilbara network* subject to a *coverage application*, if the Minister's *final coverage decision* under the *ENAC* is that the *Pilbara network* not be covered, the Minister must not make a *form of regulation decision*.
- (4) A *form of regulation decision* must be made in accordance with this Code and in making a *form of regulation decision* in relation to a *Pilbara network*, the Minister must proceed in accordance with —
  - (a) section 23; and
  - (b) the *standard consultation process*.
- (5) A *form of regulation decision* must —
  - (a) be in writing; and
  - (b) identify the *Pilbara network*, to which the *form of regulation decision* relates; and

- (c) include a reference to a website at which the description of the *Pilbara network* can be inspected; and
  - (d) state the terms of the *form of regulation decision* and the *reasons* for it; and
  - (e) in respect of a decision made at the same time as a *coverage decision*, be attached to the *coverage decision*; and
  - (f) in respect of any other decision, be given to the affected *NSP* and the *Authority*.
- (6) The Minister must *publish* the *form of regulation decision*.

## **23. Principles governing form of regulation decisions**

- (1) In making a *form of regulation decision*, the Minister must consider—
- (a) the likely effectiveness of the forms of regulation provided for under the *ENAC* and this Code to regulate the *Pilbara network* (the subject of the decision) and to promote —
    - (i) the *Pilbara electricity objective* (having regard to the factors specified in section 13(2)); and
    - (ii) *access* to the *Pilbara network*;and
  - (b) the effect of being *fully regulated* and *lightly regulated* on—
    - (i) the likely costs that may be incurred by an efficient *NSP*; and
    - (ii) the likely costs that may be incurred by efficient *users* and efficient *applicants*; and
    - (iii) the likely costs of *end-use customers*.
- (2) In doing so, the Minister—
- (a) must have regard to the *form of regulation factors*; and
  - (b) may have regard to any other matters the Minister considers relevant.

## **24. Concurrent applications for revocation of coverage and imposition of full regulation**

- (1) If an application is made under section 20 and—
- (a) at the time Minister receives the application, the Minister has received a *revocation application* under the *ENAC*, in respect of the *light regulation network*; or

- (b) after the time the Minister receives the application but before the Minister makes a decision with respect to the application, the Minister receives a *revocation application* under the *ENAC*,
- the Minister must make the decision under section 22,
- (c) at the same time as the *final revocation decision*; and
  - (d) within the time the Minister must make the *final revocation decision*.
- (2) If the Minister's *final revocation decision* under the *ENAC* is that the *network* ceases to be a *covered network*, the Minister must not make a *form of regulation decision*.

## 25. Minister may dismiss application

If the Minister receives an application under section 20 which the Minister considers to have been made on trivial or vexatious grounds, then, without further consideration, the Minister may dismiss the application, in which case the Minister must not make a *form of regulation decision*.

## 26. When a form of regulation decision takes effect

- (1) A *form of regulation decision* takes effect—
- (a) in the case of a *form of regulation decision* made concurrently with a *final coverage decision* — on the day the relevant *coverage decision* takes effect; or
  - (b) in the case of a *form of regulation decision* that —
    - (i) a *light regulation network* is to remain a *light regulation network*; or
    - (ii) a *full regulation network* is to remain a *full regulation network*—immediately upon the Minister making the *form of regulation decision*;
- or
- (c) subject to section 28(3), in any other case — 60 *business days* after the *form of regulation decision* is made.

{Note: A *form of regulation decision* that a *light regulation network* is to be *fully regulated*, cannot take effect until conclusion of the Chapter 4 process under the *ENAC*.}

- (2) A *form of regulation decision* continues in operation until —
- (a) it is revoked in accordance with this Code; or  
{Note: See section 30.}
  - (b) a new *form of regulation decision* in respect of the *Pilbara network* comes into effect; or
  - (c) the *Pilbara network* ceases to be a *covered network*.

## **Division 3 – Transitional matters relating to form of regulation decision**

### **27. Contracts preserved**

- (1) Subject to section 14(4), if a *form of regulation decision* that a *covered Pilbara network* is to be *lightly regulated* takes effect under section 26(1)(a), then any existing *contracts for services* to the relevant *Pilbara network*, will continue in accordance with their terms, including for the duration of any option periods provided for in any such contracts (subject to any variations the parties may agree from time to time).
- (2) If the Minister makes a *form of regulation decision* that a *Pilbara network* which was previously *fully regulated* is to be *lightly regulated*, then any existing *contracts for services* in respect of the *Pilbara network*, will continue, in accordance with their terms, including for the duration of any option periods provided for in any such contracts (subject to any variations the parties may agree from time to time).
- (3) If a contract which is continued under section 27(2) depends upon a regulated outcome under the *ENAC* (for example, because it adopts a regulated tariff from time to time) then the *arbitrator* has jurisdiction to hear a dispute in respect of the relevant contract and the provisions of Chapter 7 will apply to such dispute with appropriate modification.
- (4) Section 27(3) applies in addition to any other dispute resolution mechanism included in a contract, and the *arbitrator* has jurisdiction to determine the effect of this section 27(4).
- (5) If the Minister makes a *form of regulation decision* that a *Pilbara network* which was previously *lightly regulated* is to be *fully regulated*, then any *contracts for services* in respect of the *Pilbara network* will continue in accordance with their terms, including for the duration of any option periods provided for in any such contracts (subject to any variations the parties may agree from time to time).

### **28. How applications and disputes in progress are managed**

- (1) Following a *form of regulation decision* that a *Pilbara network* be *lightly regulated* any “access application” (as that term is defined in the *ENAC*) made before the date of the *form of regulation decision*, is to be transitioned to being *lightly regulated* under this Code and —
  - (a) the application’s *priority* under this Code remains the same as its *priority* under the *ENAC*; and
  - (b) the *applicant* and the *NSP* must meet expeditiously and negotiate in good faith with a view to agreeing any amendments or additional information needed in respect of the *access application* as a result of the transition, and failing agreement the question may be the subject of an *access dispute* under this Code; and
  - (c) any “access dispute” (as that term is defined in the *ENAC*) notified to the *Authority* before the date of the *form of regulation decision*, is to be transitioned to be determined by *arbitration* under this Code, in which

case the *arbitrator* under this Code may make such orders as the *arbitrator* deems necessary in respect of the transition.

- (2) If the Minister makes a *form of regulation decision* that a *Pilbara network* which was previously *lightly regulated* is to be *fully regulated*, the *NSP* must submit to the *Authority*, as applicable, either —
  - (a) (if the *Pilbara network* has not previously had an “access arrangement” (as defined in the *ENAC*)) a proposed access arrangement and access arrangement information under section 4.1 of the *ENAC*; or
  - (b) (if the *Pilbara network* has previously had an “access arrangement” (as defined in the *ENAC*)) proposed revisions to an access arrangement and proposed revised access arrangement information under section 4.48 of the *ENAC*.
- (3) The *form of regulation decision* that a *Pilbara network* is *fully regulated* does not take effect until, as applicable, the access arrangement start date or revisions commencement date at the conclusion of the *ENAC* Chapter 4 process in respect of the submission referred to in section 28(2).
- (4) Following a *form of regulation decision* that a *Pilbara network* which was previously *lightly regulated* is to be *fully regulated*, any *access application* made under this Code before the date of the *form of regulation decision*, is to be transitioned to be determined under the *ENAC* and the *access application* has effect for the purposes of the *ENAC* as though it was an “access application” (as defined in the *ENAC*) lodged under the *NSP*’s “access arrangement” (as defined in the *ENAC*); and —
  - (a) the application’s *priority* under the *ENAC* remains the same as its *priority* under this Code; and
  - (b) the *applicant* and the *NSP* must meet expeditiously and negotiate in good faith with a view to agreeing any amendments or additional information needed in respect of the “access application” as a result of the transition, and failing agreement the question may be the subject of an *access dispute* under the *ENAC*; and
  - (c) any *access dispute* notified to the *Authority* before the date of the *form of regulation decision*, is to be transitioned to be determined in accordance with Chapter 10 of the *ENAC*, in which case the *arbitrator* under this Code may make such orders as the *arbitrator* deems necessary in respect of the transition.

## **29. Light regulation ceases on cessation of coverage**

If a *light regulation network* ceases to be a *covered network*, it also ceases to be a *light regulation network*.

## **30. NSP may elect that light regulation network is fully regulated**

- (1) The *NSP* of a *light regulation network* may elect that the *network* be *fully regulated* by notice to the Minister.
- (2) A notice under section 30(1) must be in writing.

- (3) On receiving a notice under section 30(1), the Minister must, without delay, *publish* notice of receipt of that notice.
- (4) On publication of a notice under section 30(3) the *NSP* must submit to the *Authority*, as applicable, either —
  - (a) (if the *network* has not previously had an “access arrangement” as defined in the *ENAC*)) a proposed access arrangement and access arrangement information under section 4.1 of the *ENAC*; or
  - (b) (if the *network* has previously had an “access arrangement” as defined in the *ENAC*)) proposed revisions to an access arrangement and proposed revised access arrangement information under section 4.48 of the *ENAC*.
- (5) The *form of regulation decision* which determined that the *Pilbara network* was a *light regulation network* is, by force of this section, revoked on, as applicable, the access arrangement start date or revisions commencement date at the conclusion of the *ENAC* Chapter 4 process in respect of the submission referred to in section 30(4).
- (6) On the revocation of the *form of regulation decision* the *Pilbara network* becomes a *full regulation network*.

### **Subchapter 3.3 – Light regulation by opting in**

#### **31. Opting in to light regulation**

- (1) An *NSP* of a *Pilbara network* which is not a *covered network* and which is not the subject of a *coverage application* may notify the Minister that it wishes to opt in for the *Pilbara network* to be *lightly regulated*.
- (2) A notice under section 31(1) must be in writing.
- (3) On receiving a notice under section 31(1), the Minister must, without delay, *publish* that notice.
- (4) On publication of a notice under section 31(3), the *Pilbara network* will be deemed to be a *light regulation network* for the purposes of this Code.
- (5) If a *Pilbara network* —
  - (a) is deemed to be a *light regulation network* under section 31(4) above; and
  - (b) has not provided a notice that it will cease being a *light regulation network* in accordance with section 32,

then a *coverage application* can be made before the end of a period of 10 years from the date of the publication of the notice under section 31(3) but only if the coverage sought in the *coverage application* is to commence from, or after, the end of that 10 year period.



- (6) Section 31(5) does not apply if the Minister has determined that the *NSP* has committed a serious or recurring breach of its obligations under this Code in accordance with section 20(3)(b), and *published* a notice to that effect.
- (7) Despite a *Pilbara network* being deemed a *light regulation network* under this section 31, any existing contracts for *access* to the relevant *Pilbara network*, will continue in accordance with their terms, including for the duration of any option periods provided for in any such contracts (subject to any variations the parties may agree from time to time).

### **32. Opting out of light regulation**

- (1) An *NSP* of a *Pilbara network* which is deemed to be a *light regulation network* under section 31 may elect that the *Pilbara network* will cease being *lightly regulated* by notice to the Minister.
- (2) A notice under section 32(1) —
  - (a) must be in writing; and
  - (b) subject to section 32(4), takes effect on the date 12 months after the date it is given.
- (3) On receiving a notice under section 32(1), the Minister must, without delay, *publish* that notice.
- (4) If an *NSP* gives a notice under section 32(1) and there is a *coverage application* pending at the time the notice is given or a *coverage application* is made at any time before the notice takes effect, the Minister may extend the period during which the *Pilbara network* will be *lightly regulated* until a *coverage decision* is made, if the Minister considers that there is a reasonable prospect that the coverage criteria in section 3.5 of the *ENAC* will be met.
- (5) Despite the giving of a notice by an *NSP* under section 32(1), if an *applicant* has lodged an *access application* before the date on which the notice under section 32(1) was given, then the *Pilbara network* is deemed to be *lightly regulated* until that *access application*, including any *access dispute*, is concluded.
- (6) Any *access contracts* entered into during the period the *Pilbara network* was deemed to be a *lightly regulated* under section 31, 32(4) or 32(5) will continue in accordance with their terms, including for the duration of any option periods provided for in any such contracts (subject to any variations the parties may agree from time to time).

### **33. NSP of light regulation network may elect to cover augmentations**

- (1) An *NSP* of a *light regulation network* may by updating the *system description* for that *network* elect that an *augmentation* of the *light regulation network* be deemed part of the *light regulation network*.
- (2) Section 33(1) does not apply to any *augmentation* to which section 4 applies.



### **Subchapter 3.4 – Miscellaneous**

#### **34. Extensions of time under this Chapter**

- (1) Subject to section 34(2), the Minister may extend any deadline, or provide for stages in the making of a *form of regulation decision* in addition to those provided for, in this Chapter, but only if, and only to the extent that, the Minister first determines that —
  - (a) a longer period of time is essential for due consideration of all the matters under consideration; and
  - (b) the Minister has taken all reasonable steps to fully utilise the times and processes provided for in this Chapter.
- (2) The Minister —
  - (a) must not exercise the power in section 34(1) to extend any deadline unless, before the day on which the time would otherwise have expired, the Minister *publishes* the decision to extend the deadline; and
  - (b) may exercise the power in section 34(1) to extend a deadline on more than one occasion but the total time for the extension of a relevant deadline cannot exceed the period originally specified in this Chapter for the relevant deadline.

## Chapter 4 – Network Service Provider to publish information

### Subchapter 4.1 – Preliminary

#### 35. Access information standard

- (1) An *NSP* required by this Chapter to prepare, *publish* and *maintain* information must do so in accordance with the *access information standard*.
- (2) The *access information standard* means that the information —
  - (a) is not false or misleading in a material particular; and
  - (b) in relation to information of a technical nature, is prepared, *published* and *maintained* in accordance with *good electricity industry practice*; and
  - (c) in relation to a forecast or estimate, is supported by a statement of the basis of the forecast or estimate and is arrived at on a reasonable basis; and
  - (d) in relation to information relevant to *tariffs*, is sufficient to enable *applicants* to understand how the *tariffs* set out in the *price list* comply with this Code and reflect the matters set out in Chapter 5.
- (3) Where an *NSP* becomes aware that information required to be *published* by it under this Chapter does not comply with the *access information standard* or this Chapter, the *NSP* must *publish* information that does comply as soon as practicable after the *NSP* becomes aware of the non-compliance.
- (4) Information *published* under this Chapter must include the date of publication, the date to which the information is current and, if the information replaces an earlier version as provided for by section 35(3), notice of that fact.

#### 36. Obligation to publish information

- (1) An *NSP* for a *light regulation network* must in accordance with this Code prepare, *publish* and *maintain* the following instruments in respect of the *light regulation network* —
  - (a) a *system description*;
  - (b) a *services and pricing policy* under section 40;
  - (c) a *network development policy* under section 41;
  - (d) a *user access guide*, under section 42.
- (2) The information referred to in section 36(1) must be *published* at the times prescribed under Subchapter 4.2.

### 37. Light regulation – consultation on published information, but no approval required

- (1) An *NSP* is not required to seek or obtain any consent or approval before *publishing* information under section 36, but —
  - (a) must undertake the *standard consultation process* before first *publishing* a class of information under section 36; and
  - (b) subject to sections 37(2) and 37(3), must undertake the *standard consultation process* before *publishing* any update, amendment or replacement to information previously *published* under section 36.
- (2) If the *NSP* acting reasonably, in consultation with the *ISO* where appropriate, determines that an update, amendment or replacement referred to in section 37(1)(b) is of a minor nature and affects the interests of only a limited class of persons, the *NSP* may limit its consultation to only that class of persons before *publishing* it.
- (3) If an update, amendment or replacement referred to in section 37(1)(b) is to implement a document on which another *decision maker* has already undertaken public consultation under this Code or the *Pilbara networks rules*, then the *NSP* may proceed in accordance with the *expedited consultation process*.
- (4) The *arbitrator* has *limited discretion* in an *access dispute* relating to consultation under this section 37.

## Subchapter 4.2 – Timing of publication

### 38. Timing of first publication

- (1) The *NSP* for a *light regulation network* must first *publish* information required by Chapter 4 in the following timeframes —

Information	First publication for <i>Alinta Port Hedland network</i> and <i>Horizon Power coastal network</i>	First publication
<i>system description</i>	7 January 2022	No later than 40 <i>business days</i> after the <i>light regulation commencement date</i> for the <i>light regulation network</i> .
<i>services and pricing policy</i>	7 January 2022	No later than 12 months after the <i>light regulation</i>

		<i>commencement date</i> for the <i>light regulation network</i> .
<i>network development policy</i>	7 January 2022	No later than 12 months after the <i>light regulation commencement date</i> for the <i>light regulation network</i> .
<i>user access guide</i>	7 January 2022	No later than 12 months after the <i>light regulation commencement date</i> for the <i>light regulation network</i> .

- (2) If an *NSP* extends any time limits in respect of the *standard consultation process* under Appendix 1, this must not result in the extension to the timeframes in section 38(1).

### Subchapter 4.3 – Information about services and prices

#### 39. First pricing period for certain light regulation networks

- (1) The *first pricing period* for the *Horizon Power coastal network* and *Alinta Port Hedland network* is a maximum period of five years from the later of 1 July 2021 and the *code commencement date*.
- (2) If the period referred to in section 39(1), would result in the *first pricing period* ending on a date which is not the end of the financial year of the relevant *NSP*, then the relevant *NSP* may extend the *first pricing period* to the end of that financial year.

#### 40. Services and pricing policy

- (1) The *NSP* of a *light regulation network* must ensure that its *services and pricing policy* sets out —
- (a) the *pricing period*; and
  - (b) subject to section 40(6), each *reference service* to be offered on the *light regulation network*, and *reference terms and conditions* for each such *service* in accordance with section 40(2); and
- {Note: The *reference terms and conditions* may be in the form of a standard form or model access contract.}
- (c) the *target revenue* for the *pricing period* together with reasonable details of how it was calculated, consistent with the requirements of Chapter 5; and

- (d) the methodology for adjustment of the *target revenue* during a *pricing period* in accordance with section 49 (if applicable); and
  - (e) its *tariff setting methodology*; and
  - (f) its *price list*; and
  - (g) the circumstances under which the *price list* will be reviewed for each year of the *pricing period*; and
  - (h) a *prudent discount policy* as required by section 67(4).
- (2) The *reference terms and conditions* for each *reference service* must comply with section 61, and must include at least —
- (a) *service* characteristics and quality; and
  - (b) the *user's* operational and technical performance obligations; and
  - (c) duration; and
  - (d) curtailment regime; and
  - (e) risk and liability regime; and
  - (f) payment terms; and
  - (g) prudential requirements.
- (3) The *NSP* of a *light regulation network* must review the *services and pricing policy* before the start of each *new pricing period*.
- (4) As part of the review, the *NSP* must —
- (a) *publish* a documented proposal addressing the matters specified in section 40(1) together with —
    - (i) an explanation and justification of those matters; and
    - (ii) a demonstration of how they comply with this Code; and
    - (iii) without limiting section 40(4)(a)(ii), a demonstration of how its *tariff setting methodology* meets the *revenue and pricing principles*;and
  - (b) proceed in accordance with the *standard consultation process*.
- (5) Following the review, the *NSP* must update the *services and pricing policy* with any amendments to apply from the start of the *new pricing period*.
- (6) An *applicant* may, in an *access dispute*, either —

- (a) adopt the *reference terms and conditions* for a *reference service* as a starting position for the *arbitrator*, in which case —
  - (i) the *arbitrator* is to use them as a starting position when determining terms, conditions and *tariffs*; but
  - (ii) the adoption does not limit the *applicant's* right to request departures from the *reference terms and conditions* in respect of its own access, as it sees fit;
- or
- (b) reject the *reference terms and conditions* for a *reference service* as a starting position for the *arbitrator*, in which case the *arbitrator* may have regard to the *reference terms and conditions* but is not to use them as a basis for determining terms, conditions and *tariffs* in the course of the *arbitration*.

## **Subchapter 4.4 – Information about network development and planning**

### **41. Network Development Policy**

- (1) The *NSP* of a *light regulation network* must ensure that the *network development policy* sets out —
  - (a) information regarding, and setting benchmarks for, network planning and the technical standard and reliability of delivered electricity, comprising —
    - (i) its “network planning criteria” as defined in, and in accordance with, the *Pilbara networks rules*; and
    - (ii) information about limits, constraints and likely outages; and
    - (iii) any other information as required,to ensure that the information provided under this section 41(1)(a) is —
    - (iv) consistent with *good electricity industry practice*; and
    - (v) sufficiently detailed and complete to enable an *applicant* or *user* to determine the value represented by a particular *reference service* when considered together with the other information *published* by the *NSP* under this Chapter 4;
  - and
  - (b) a *contributions policy* in accordance with section 41(2).
- (2) A *contributions policy* —
  - (a) must set out principles for —

- (i) determining when the *NSP* may require a *user* to pay a *contribution* in respect of *required work*; and
  - (ii) determining the amount of any such *contribution*; and
  - (iii) determining how any *contributions* are to be accounted for when calculating *reference tariffs*; and
  - (iv) ensuring that there is no double recovery of costs as a result of any *capital contributions* associated with *new facilities investment* being included in the *capital base*;
- and
- (b) despite section 63(2) but otherwise subject to this Code including section 62(4), may contain a *headworks scheme*.

## **Subchapter 4.5 – Information about access**

### **42. User access guide**

- (1) The *NSP* of a *light regulation network* must ensure that the *user access guide* provides sufficient clarity in terms of process and timelines for the making of an *access application*, arrangements for *further investigations*, the making of an *access offer* and negotiations, such that —
  - (a) all process steps and requirements are clearly specified; and
  - (b) wherever practicable, timelines are clearly specified, or if timing must be flexible, the process for determining a timeline is clearly specified; and
  - (c) *applicants* can hold the *NSP* accountable to those processes and timelines, including when timing is flexible; and
  - (d) where timing is flexible, *applicants* are provided with reasonable information as to the required steps to progress the *access application* and the targeted time frames in which those steps should occur; and
  - (e) the *NSP* is required to notify an *applicant* where timelines or targeted timelines cannot be met, including *reasons* for the delay, new timelines or targeted timelines, and measures it is implementing to avoid further delay.
- (2) In particular, a *user access guide* must —
  - (a) identify the *NSP* for the *light regulation network* and, where there is more than one *NSP* for the *light regulation network*, identify the *NSP* responsible for dealing with preliminary enquiries and *access applications*; and
  - (b) set out the contact details for an officer of the *NSP* to whom preliminary enquiries and *access applications* can be sent; and

- (c) to the extent reasonably practicable, balance the interests of the *NSP* and reasonably foreseeable requirements of *users* and *applicants* generally; and
- (d) describe the process for making an *access application*, the information to be included with the *access application* (subject to section 42(3)) and the *NSP*'s required response times; and
- (e) include the basis for determining how reasonable costs to be paid by the *applicant* in respect of preliminary enquires will be calculated; and
- (f) set out a process ("**queuing policy**") for managing multiple or competing applications in accordance with the *Pilbara electricity objective* and, if applicable, section 42(11); and
- (g) describe and delineate the roles and responsibilities of the *NSP* and the *ISO* regarding the processing and modelling of *access applications* in accordance with this Code and the *Pilbara networks rules*; and
- (h) describe the arrangements for undertaking *further investigations*, including the basis for determining reasonable costs to be paid by the *applicant* in respect of *further investigations*; and
- (i) explain how the *NSP* will deal with and use any *confidential information* exchanged between the *NSP* and the *applicant* in accordance with Subchapter 9.5; and
- (j) describe the process for preparing an *access offer* and for requesting negotiations in relation to an *access offer*, including timelines; and
- (k) describe the process for terminating an *access application* where the *access application* has become dormant due to a failure by the *applicant* to satisfactorily progress the *access application*. As a minimum, the process must —
  - (i) require the *NSP* to give the *applicant* a notice requiring the *applicant* to provide information to the *NSP* demonstrating why the dormant *access application* should not be terminated; and
  - (ii) not allow the termination of a dormant *access application* until at least 3 years after the date of the *access application*; and
  - (iii) not allow termination where the *access application*'s lack of progress is due to the *NSP* not progressing the *access application*;but
  - (iv) the process may, following a period of 12 months from the date of the *access application*, allow the *NSP* to make a prudent assessment of how likely an *applicant* is to progress a dormant *access application* and the *NSP* is not considered to be in breach of this Code if the *NSP* makes planning decisions in good faith based on the outcomes of that assessment;



and

- (l) include a statement of the obligation to negotiate in good faith and the right to refer an *access dispute* to *arbitration*; and
  - (m) describe the arrangements for the exchange of information during negotiations; and
  - (n) facilitate the operation of the *Pilbara networks rules*.
- (3) The information to be included with the *access application* as specified in a *user access guide* under section 42(2)(d) must be no more than is reasonably required to enable the *NSP* to assess the *access application* and make an *access offer*.
- (4) Subject to section 42(3) in each instance, the *user access guide* may require the following —
- (a) the *connection points* where the *applicant* is seeking access; and
  - (b) if applicable — models and modelling inputs as required under the *Pilbara networks rules*; and
  - (c) to the extent not addressed under section 42(4)(b) —
    - (i) relevant technical details for any *new connection* to the *light regulation network*; and
    - (ii) details regarding sources of generation to be used by the *applicant*; and
    - (iii) details regarding the *applicant's* load pattern; and
    - (iv) details regarding the *applicant's* time of peak demand; and
    - (v) details regarding the *applicant's* maximum load swings (intra-day, intra-week and intra-hour).
- (5) A *user access guide* must require the *NSP* to process an *access application* expeditiously and diligently and, subject to section 42(6), must set a maximum timeframe in which the *NSP* is to give an *access offer* to the *applicant*. This timeframe should generally be no more than —
- (a) 30 *business days* after receipt of a completed *access application* if no *further investigations* are required; or
  - (b) 60 *business days* after receipt of a completed *access application* where *further investigations* are required.
- {Note: Section 71 allows these timeframes to be extended in some circumstances.}
- (6) The *user access guide* may specify that the timeframes in section 42(5) do not apply to *access applications* which require modelling to be undertaken by the *ISO* as referred to in section 70(8) and in such cases the relevant timeframes will be determined by the *ISO* —

- (a) if the *Pilbara networks rules* provide timeframes, or a means of, or process for, determining timeframes — in accordance with the *Pilbara networks rules*; and
  - (b) otherwise — in consultation with the *NSP* and the *applicant*.
- (7) A *user access guide* must facilitate an expedited process for processing *access applications* wherever possible, in particular where other *users* are not impacted by the *access application*.
- (8) A *user access guide* —
  - (a) must not contain anything inconsistent with this Code or the *Pilbara electricity objective*; and
  - (b) must not operate or be applied by an *NSP* in a manner that prevents or delays an *applicant* from referring an *access dispute* to *arbitration*.
- (9) The same *user access guide* may apply to one or more of the *NSP's light regulation networks*.
- (10) The *NSP* for a *light regulation network* must *publish* a revised version of the *user access guide* for the *light regulation network* as soon as practicable after the *NSP* becomes aware of facts or circumstances that require material updates to the guide.
- (11) A *queuing policy* may (but is not required to) adopt an approach by which some or all rights of competing *access applications* are determined by reference to the time at which the *access applications* were lodged or satisfied some other requirement, but if so, the *queuing policy*:
  - (a) must also provide transparent information to each affected *applicant* about its *access application's* position in the queue; and the position in the queue of all other *access applications* whose satisfaction, delay or progression might affect the timing or terms of *access*; and
  - (b) ensure that *access applications* which are in a position to progress are not blocked or unreasonably delayed or disadvantaged by *access applications* which are not in a position to progress.

## Chapter 5 – Pricing

### Subchapter 5.1 – Introductory

#### 43. Pricing arrangements for light regulation networks

- (1) The *charges* to be paid for *access to services* of a *light regulation network* are to be determined by negotiation between the *applicant* and the *NSP* under the Act and this Code, and failing agreement by *arbitration* under Chapter 7.
- (2) The pricing arrangements set out in this Chapter 5 are designed to produce a *price list* for *reference services*, to be used as a starting point for price negotiations and *arbitration* for *covered services*.
- (3) This Chapter 5 does not apply to price negotiations and *arbitration* for an *excluded service*, but the *tariff* for an *excluded service* is to be consistent with the *revenue and pricing principles* and the *Pilbara electricity objective*.
- (4) The *NSP* for a *light regulation network* may determine the prices to be set out in a *price list* by using different pricing arrangements to those set out in this Chapter 5 provided those pricing arrangements —
  - (a) apply the *revenue and pricing principles*; and
  - (b) meet the *Pilbara electricity objective*.

{Note: For example, where an *NSP* for a *light regulation network* provides a *supplementary service* to a *user* which involves no or minimal *capital-related costs* but significant *non-capital costs* then a different pricing arrangement to the building block cost of service model set out in Chapter 5 may better meet the *Pilbara electricity objective* whilst applying the *revenue and pricing principles*.}

#### 44. Three-step process for determining prices

- (1) The prices set out in a *price list* are to be calculated by —
  - (a) **step 1** – calculating the *target revenue* for the *light regulation network* in accordance with sections 47 to 60; and then
  - (b) **step 2** – developing *tariff-setting methodologies* and applying them to derive *tariffs* that are expected to deliver that *target revenue*; and then
  - (c) **step 3** – applying the *tariff-setting methodologies* to derive a *price list*.

#### 45. Revenue and pricing principles and Pilbara electricity objective

- (1) In doing anything or making any determination under this Chapter 5, including determining any *access dispute* —
  - (a) the *revenue and pricing principles* must be applied; and

- (b) the thing must be done or the determination must be made in a manner that will or is likely to contribute to the achievement of the *Pilbara electricity objective*.

#### 46. Real or nominal pricing

Pricing for a *light regulation network* may be determined on a real or nominal basis but the methodology chosen by the *NSP* must be applied consistently.

### Subchapter 5.2 – Determine target revenue (step 1)

#### 47. Building block approach to target revenue

- (1) The *target revenue* for each year (or other interval) in a *pricing period* is to be determined using the building block approach in which the building blocks are —

- (a) “**capital-related costs**” calculated by —

- (i) (**return on capital**) calculating a return on the *capital base* for the *pricing period* by applying the *rate of return* as determined under section 57 or 58; and adding
- (ii) (**return of capital**) depreciation for the *pricing period* under section 59);

{Note: The *capital base* is determined at the start of the *pricing period* as set out in or as determined by sections 52 to 54 (as applicable).}

plus

- (b) “**non-capital costs**” determined under section 60; plus

- (c) an amount (if any) determined under section 48.

- (2) The *target revenue* for each year (or other interval) in a *pricing period* may include *capital-related costs* in relation to forecast *new facilities investment* which at the time of inclusion are reasonably expected to satisfy the *new facilities investment test* when the forecast *new facilities investment* is made.

- (3) The *target revenue* is to be determined for each *year* (or other interval) in a *pricing period* at start of the relevant *pricing period*.

{Note: The *target revenue* will be determined for each year in a *pricing period*. The *target revenue* for each year cannot be adjusted during the *pricing period* except in accordance with section 49.}

- (4) The amount determined under section 47(1) is a target, not a ceiling or a floor.

{Note: Most, but not all, elements of the *target revenue* can be the subject of an *access dispute*. This is set out in the following sections.}

**48. Temporary access contributions may be added to target revenue**

If the *NSP* for the *Horizon Power coastal network* is or will be required, by a notice made under section 129N(1) of the Act, to pay a temporary access contribution into the Temporary Access Contribution Account during a *pricing period*, then an amount may be added to the *target revenue* for the *Horizon Power coastal network* for the *pricing period* which —

- (1) must not exceed the total of the temporary access contributions which are or will be required to be paid under the notice, including any amount that was payable or paid before the commencement of the *pricing period* and not already included in the *target revenue*; and
- (2) must be separately identified in the *services and pricing policy* as being under this section 48.

**49. Target revenue may be adjusted during a pricing period**

- (1) The *NSP* for a *light regulation network* may include in its *services and pricing policy*, a methodology to determine adjustments to the *target revenue* during the relevant *pricing period* in respect of costs for which no allowance was made in the *target revenue*.
- (2) The methodology referred to in section 49(1), may only adjust the *target revenue* for a year (or other interval) during a *pricing period*, in respect of costs incurred by the *NSP* as a result of —
  - (a) a *force majeure* event; where —
    - (i) the *NSP* was unable to, or is unlikely to be able to recover some or all of the costs under its insurance policies; and
    - (ii) at the time of the *force majeure* event, the *NSP* had insurance to the standard of a *reasonable and prudent person*;
  - or
  - (b) in the case of the *Regional Power Corporation*, a significant restructure of that corporation; or
  - (c) significant changes in loads on the *light regulation network*; or
  - (d) a *regulatory change event*.
- (3) Nothing in this section 49 requires the amount added to be equal to the amount of the unrecovered costs.
- (4) An amount can only be added to the *target revenue* under this section 49 in respect of costs, to the extent the amount is efficient, prudent and justifiable.

**50. Adjustments to target revenue at the start of a new pricing period**

- (1) If during a *pricing period*, the *NSP* —
  - (a) incurred costs in respect of any matters in section 49(2); and

- (b) was unable to recover some or all of those costs during that *pricing period*,
- then the *NSP* may adjust the *target revenue* for a year (or other interval) at the start of a *new pricing period* to recover those costs.
- (2) Nothing in section 50(1) —
  - (a) requires the amount added to be equal to; or
  - (b) permits the amount to be greater than,the amount of the unrecovered costs.
- (3) An amount can only be added to the *target revenue* under section 50(1) in respect of costs, to the extent the amount is efficient, prudent and justifiable.
- (4) The *NSP* for a *light regulation network* must adjust the *target revenue* for the *new pricing period* for any difference between —
  - (a) *capital-related costs* actually incurred during the *previous pricing period* in respect of *new facilities investment* which meet the *new facilities investment test*; and
  - (b) *capital-related costs* which were included in the *target revenue* during the *previous pricing period* in respect of forecast *new facilities investment* as permitted by section 47(2).
- (5) The adjustment in section 50(4) must also remove any surplus or shortfall associated with any difference between the *capital-related costs* in respect of forecast *new facilities investment* and *capital-related costs* actually incurred.

## **51. No double recovery**

The *NSP's services and pricing policy* must contain a mechanism designed to ensure that there is no double recovery of costs as a result of either —

- (1) the inclusion of *capital-related costs* in relation to forecast *new facilities investment* in the *target revenue*; or
- (2) any adjustments to the *target revenue*.

## **52. Initial capital base — Horizon Power coastal network**

- (1) The *capital base* for the *Horizon Power coastal network* to be used from the start of the *first pricing period* for that *network* is \$535 million.
- (2) The *capital base* set out in section 52(1) must not be the subject of an *access dispute* and must not otherwise be the subject of civil proceedings.
- (3) The value of *network assets* prescribed to various asset classes and which make up the total *capital base* in section 52(1) must be set out in the *services and pricing policy* and, despite section 52(2), may be the subject of an *access dispute* but the *arbitrator* has *limited discretion* in determining any *access dispute* on the composition of such *capital base*.

### 53. Initial capital base — any other light regulation network

- (1) For a *light regulation network* other than the *Horizon Power coastal network*, the *NSP* must determine the *capital base* to be used from the start of the *first pricing period* for that *network*, in accordance with this section 53.
- (2) The initial *capital base* determined under section 53(1) must be an objectively reasonable asset valuation of the *light regulation network*, having regard (in addition to the matters set out in section 45) to —
  - (a) the depreciated optimised replacement cost (“**DORC**”) of the *network assets*; and
  - (b) the depreciated actual cost (“**DAC**”) of the *network assets*; and
  - (c) the desirability of avoiding material *tariff* adjustments between succeeding years.
- (3) The initial *capital base* determined under section 53(1) normally should not fall outside the *DAC* and *DORC* values as defined in section 53(2).

### 54. Roll-forward of capital base for subsequent pricing periods

- (1) The *NSP* must determine the *capital base* for a *light regulation network* to be used from the start of each *pricing period* after the *first pricing period*, as follows —
  - (a) start with the *capital base* used from the start of the *previous pricing period*; then
  - (b) add *new facilities investment* from the *previous pricing period* which satisfy the *new facilities investment test*; andsubtract the following —
  - (c) depreciation over the *previous pricing period* (to be calculated in accordance with the relevant provisions of the *services and pricing policy* governing the calculation of depreciation over the *previous pricing period*); and  
{Note see section 59.}
  - (d) an amount for redundant assets to the extent necessary to ensure that *network assets* which have ceased to contribute in any material way to the provision of *covered services* are not included in the *capital base*; and
  - (e) the disposal value of *network assets* disposed of during the *previous pricing period*.
- (2) Subject to section 54(3), the *capital base* for a *light regulation network* must not include any amount in respect of forecast *new facilities investment*.
- (3) In developing the *capital base* for a *pricing period*, the *capital base* for a *light regulation network* may include forecast *new facilities investment* which —

- (a) has not yet occurred but is forecast to occur before the start date of the *new pricing period*; and
- (b) at the time of inclusion is reasonably expected to satisfy the *new facilities investment test*.

{Note: The NSP will develop the *capital base* for the *new pricing period* before the start of that *pricing period*. Forecast *new facilities investment* may actually have occurred by the start date of the *new pricing period*. Under this section, such *new facilities investment* may be included in the *capital base* for a *light regulation network*.}

- (4) To the extent forecast *new facilities investment* is included in the *capital base* under section 54(3) but such *new facilities investment* has not actually occurred by the start of the *new pricing period*, then the NSP must within 30 *business days* of the start of the *new pricing period* —
  - (a) remove the forecast *new facilities investment* from the *capital base*; and
  - (b) to the extent the inclusion of the forecast *new facilities investment* is included in *tariffs*, adjust those *tariffs* to remove any surplus or shortfall associated with the inclusion of the forecast *new facilities investment*.
- (5) In any *access dispute* related to a matter or determination under this section 54 —
  - (a) the *arbitrator* must only take into account information and analysis that the NSP could reasonably be expected to have considered or undertaken at the time that it *committed* to the relevant capital expenditure; and
  - (b) the *new facilities investment test* must not be applied to exclude from the *capital base* any *new facilities investment* which —
    - (i) has been pre-approved under section 56; or
    - (ii) was *committed* to more than 5 years before the *access dispute* is notified.

## 55. New facilities investment test

- (1) *New facilities investment* satisfies the *new facilities investment test* if it is both *prudent* and *justified*, as follows —
  - (a) the *new facilities investment* is “**prudent**” if it does not exceed the amount that would be invested by a prudent NSP, acting efficiently and in accordance with *good electricity industry practice*, having regard, without limitation, to —
    - (i) whether the *new facility* exhibits economies of scale or scope; and
    - (ii) whether incremental capacity can be added to the *new facility*; and



- (iii) whether the lowest sustainable cost of delivering *covered services* forecast to be provided over a reasonable period may require the installation of a *new facility* with capacity sufficient to meet the forecast supply, having regard to the *revenue and pricing principles* and the *Pilbara electricity objective*;
- and
- (b) the *new facilities investment* is “**justified**” if one or more of the following conditions is satisfied —
  - (i) the anticipated incremental revenue for the *new facility* is expected to at least recover the *new facilities investment*; or
  - (ii) the *new facility* provides a net benefit to those who generate, transport and *consume* electricity in the *light regulation network* or the *light regulation network* and any *interconnected Pilbara system* over a reasonable period of time that reasonably justifies higher *reference tariffs*; or
  - (iii) the *new facility* is necessary to *maintain* the safety or reliability of the *light regulation network* or its ability to provide contracted *covered services*.
- (2) The determination of whether *new facilities investment* satisfies the *new facilities investment test* is only to take into account information and analysis that the *NSP* could reasonably be expected to have considered or undertaken at the time that it *committed* to the relevant capital expenditure.

## 56. Pre-approval

- (1) Subject to section 56(2), the *NSP* may at any time apply to the *Authority* for the *Authority* to determine one or more of the following —
  - (a) whether actual *new facilities investment* meets the *new facilities investment test*; or
  - (b) whether forecast *new facilities investment*, would, if made in the manner forecast, meet the *new facilities investment test* when made.
- (2) An *NSP* may only apply for a determination under section 56(1) in respect of actual or forecast *new facilities investment* with a value that exceeds either —
  - (a) 10% of the value of the *capital base* of the *light regulation network*; or
  - (b) \$10 million.
- (3) If an application is made to the *Authority* under section 56(1), then the *Authority* must make and *publish* a determination (subject to such conditions as the *Authority* may consider appropriate).
- (4) Before making a determination under section 56(3), the *Authority* must consult the public in accordance with the *standard consultation process*.

- (5) The effect of a determination under section 56(2) is to bind the *arbitrator* in respect of an *access dispute* regarding *new facilities investment*, but in the case of forecast *new facilities investment* under section 56(1)(b), the *arbitrator* is only bound if the *new facilities investment* has proceeded as proposed.

**57. Rate of return – Horizon Power coastal network and Alinta Port Hedland network**

- (1) The *Authority* must, within six months of the *code commencement date*, determine the *rate of return* to be applied under section 47(1)(a)(i) to the *capital base for the first pricing period* for each of the *Horizon Power coastal network* and the *Alinta Port Hedland network*.
- (2) A determination under section 57(1) must —
- (a) be commensurate with the regulatory and commercial risks involved in providing *covered services*; and
  - (b) have regard to regulatory precedent on rates of return in the electricity and other industries, but —
    - (i) undertake a specific assessment for the particular *light regulation network* based on its unique circumstances and any matters prescribed under regulation 4 of the *regulations*; and
    - (ii) not assume that the circumstances of each *light regulation network* are the same;
- and
- (c) use a pre-tax version of the cost of capital; and
  - (d) be undertaken in accordance with the *standard consultation process*.
- (3) Subject to any review by the *Electricity Review Board* under section 130 of the Act, the determination under section 57(1) is binding on —
- (a) the *NSP* of the relevant *light regulation network*; and
  - (b) the *arbitrator*,
- in respect of the *first pricing period*, and must not be the subject of an *access dispute* or otherwise be the subject of civil proceedings.

**58. Rate of return**

- (1) Except to the extent section 57 applies, the *NSP* for a *light regulation network* must determine, for a *pricing period*, and include in its *services and pricing policy*, the *rate of return* to be applied to the *capital base* under section 47(1)(a)(i), together with the methodology used to determine that *rate of return*.
- (2) A determination under section 58(1) —
- (a) must be commensurate with the regulatory and commercial risks involved in providing *covered services*; and

- (b) have regard to regulatory precedent on rates of return in the electricity and other industries, but —
  - (i) undertake a specific assessment for the particular *light regulation network* based on its unique circumstances and any matters prescribed under regulation 4 of the *regulations*; and
  - (ii) not assume that the circumstances of each *light regulation network* are the same;and
- (c) use a pre-tax version of the cost of capital.

## 59. Depreciation (return of capital)

- (1) The *NSP* of a *light regulation network* must determine and include in its *services and pricing policy*, its criteria and methodology for the depreciation, including a depreciation schedule, for each *pricing period* to be applied under section 47(1)(a)(ii), of the *network assets* comprising the *capital base*.
- (2) The depreciation criteria and methodology should be designed —
  - (a) so that *reference tariffs* will vary, over time, in a way that promotes efficient growth in the market for *reference services*; and
  - (b) so that each *network asset* or group of *network assets* is depreciated over the economic life of that *network asset* or group of *network assets*; and
  - (c) so as to allow, as far as reasonably practicable, for adjustment reflecting changes in the expected economic life of a particular *network asset*, or a particular group of *network assets*; and
  - (d) so that (subject to the rules about capital redundancy in section 54), a *network asset* is depreciated only once (that is, that the amount by which the *network asset* is depreciated over its economic life does not exceed the value of the *network asset* at the time of its inclusion in the *capital base* (adjusted, if the accounting method used by the *NSP* (as referred to in section 46 permits, for inflation)); and
  - (e) so as to allow for the *NSP*'s reasonable needs for cash flow to meet financing, *non-capital costs* and other costs.
- (3) Compliance with section 59(2) may involve a deferral of a substantial proportion of the depreciation, particularly where —
  - (a) the present market for *covered services* is relatively immature; and
  - (b) the *reference tariffs* have been calculated on the assumption of significant market growth; and
  - (c) the *light regulation network* has been designed and constructed so as to accommodate future growth in demand.

- (4) The *arbitrator* has *limited discretion* in *determining* any *access dispute* related to a determination under section 59(1).

{Note: See section 10(1) regarding *limited discretion*.}

## 60. Non-capital costs

- (1) The *non-capital costs* component of *total costs* for a *light regulation network* to be applied under section 47(1)(b) must only include those *non-capital costs* (including any *non-capital costs* associated with pursuing *alternative options*) —
- (a) that do not exceed the amount that would be incurred by a prudent *NSP*, acting efficiently, in accordance with *good electricity industry practice*, to achieve the lowest sustainable cost of delivering *covered services* having regard to the *revenue and pricing principles* and *Pilbara electricity objective*; and
  - (b) in respect of an *alternative option* if at least one of the following conditions is satisfied —
    - (i) the additional revenue for the *alternative option* is expected to at least recover the *alternative option non-capital costs*; or
    - (ii) the *alternative option* provides a net benefit to those who generate, transport and *consume* electricity in the *light regulation network* or the *light regulation network* and any *interconnected Pilbara system* over a reasonable period of time that reasonably justifies higher *reference tariffs*; or
    - (iii) the *alternative option* is necessary to *maintain* the safety or reliability of the *light regulation network* or its ability to provide contracted *covered services*.
- (2) The *non-capital costs* component of *total costs* must not include any costs of the *NSP* incurred or forecast to be incurred in respect of *access disputes*.
- (3) In any such *access dispute* related to a matter referred to in section 60(1), the *arbitrator* must only take into account information and analysis that the *NSP* could reasonably be expected to have considered or undertaken at the time that it *committed* to the relevant *non-capital costs*.

## Subchapter 5.3 – Establish tariff setting methodology (step 2)

### 61. Selection of reference services

- (1) The *NSP* of a *light regulation network* must ensure that at all times its *services and pricing policy* —
- (a) specifies at least one *reference service* (including *reference terms and conditions*); and

- (b) specifies a *reference service* (including *reference terms and conditions*) for each *covered service* that is likely to be sought by (or the benefit of which is likely to be sought by) either or both of —
    - (i) a significant number of *customers and applicants*; or
    - (ii) a substantial proportion of the market for *services* in the *light regulation network*;and
  - (c) to the extent reasonably practicable, specifies *reference services* in such a manner that a *user* or *applicant* is able to acquire by way of one or more *reference services* only those elements of a *covered service* that the *user* or *applicant* wishes to acquire.
- (2) The *arbitrator* has jurisdiction to hear a dispute under a *contract for services* which relates to the application of the *price list* for *reference services* and the provisions of Chapter 7 apply to the *arbitrator's* hearing of such dispute with appropriate modification.

## 62. Tariff setting methodology

- (1) In this Code “**tariff setting methodology**” —
- (a) means the structure of *tariffs* for all or part of the relevant *pricing period*, which determines how *target revenue* is allocated across and within *covered services*; and
  - (b) includes all methodologies, processes, assumptions, inputs and criteria used in developing that structure and applying it to determine *tariffs*.
- (2) The *NSP* of a *light regulation network* must ensure that it determines and includes in its *services and pricing policy*, a *tariff setting methodology* in accordance with section 63.
- (3) The *arbitrator* has *limited discretion* in *determining* an *access dispute* related to a *tariff setting methodology*.
- {Note: See section 10(1) regarding *limited discretion*.}
- (4) The *tariff setting methodology* for a *light regulation network* must have regard to the *Pilbara electricity objective* and must apply the *revenue and pricing principles*.

## 63. Elements and objectives of tariff setting methodology

- (1) The *tariff setting methodology* for a *light regulation network* must include the following elements —
- (a) the structures for each proposed *reference tariff*, and
  - (b) the *charging parameters* for each proposed *reference tariff*, and

- (c) a description of the approach that the *NSP* will take in setting each *reference tariff* in each *price list* during the relevant *pricing period*.
- (2) Subject to sections 64 and 65, the *tariff setting methodology* must have the objective that the *reference tariffs* that an *NSP* charges in respect of its provision of *reference services* should reflect the *NSP*'s efficient costs of providing those *reference services*.
- (3) Subject to section 65, for each *reference tariff*, the revenue expected to be recovered must lie on or between —
  - (a) an upper bound representing the *stand-alone cost of service provision* for *customers* to whom or in respect of whom that *reference tariff* applies; and
  - (b) a lower bound representing the avoidable cost of not serving the *customers* to whom or in respect of whom that *reference tariff* applies.
- (4) The structure of *reference tariffs* must, to the extent practicable, be consistent with the *Pilbara electricity objective*, accommodate the reasonable requirements of *users* collectively and *end-use customers* collectively.
- (5) Each *reference tariff* must be based on the forward-looking efficient costs of providing the *reference service* to which it relates with the method of calculating such cost and the manner in which that method is applied to be determined having regard to —
  - (a) the additional costs likely to be associated with meeting demand from *end-use customers* that are currently on that *reference tariff* at times of greatest utilisation of the relevant part of the *light regulation network*; and
  - (b) the location of *end-use customers* that are currently on that *reference tariff* and the extent to which costs vary between different locations in the *light regulation network*.
- (6) The revenue expected to be recovered from each *reference tariff* must —
  - (a) reflect the *NSP*'s total efficient costs of serving the *customers* on that *reference tariff*; and
  - (b) when summed with the revenue expected to be received from all other *reference tariffs*, permit the *NSP* to recover the expected revenue for the *reference services* in accordance with the *services and pricing policy*; and
  - (c) comply with sections 63(6)(a) and 63(6)(b) in a way that minimises distortions to the price signals for efficient usage which would result from *reference tariffs* that comply with section 63(5).
- (7) The structure of each *reference tariff* must be reasonably capable of being understood by *customers* that are currently on that *reference tariff*, including enabling a *customer* to predict the likely annual changes in *reference tariffs* during a *pricing period* having regard to —
  - (a) the type and nature of those customers; and

- (b) the information provided to, and the consultation undertaken with, those customers.

**64. Postage stamp charges in certain cases**

The *tariff setting methodology* must require that the *reference tariff* to be paid by a *user* in connection with the *user's* supply of electricity to a *small use customer* at a *connection point*, does not differ from the *tariff* applying to that or any other *user* supplying electricity to *small use customers* at other *connection points* within the *network*, as a result solely of differences in the geographic locations of the *connection points*.

**65. Temporary access contributions must be included as tariff component for network users**

- (1) If an amount is added to the *target revenue* under section 48 it must only be recovered from *users* of *reference services* in respect of *TAC eligible customer exit points* and the recovery must have the objective of —
  - (a) being equitable in its effect as between those *users*; and
  - (b) otherwise being consistent with the *Pilbara electricity objective*.
- (2) None of the amount added to the *target revenue* under section 48 is to be recovered from *users* of *reference services* in respect of *TAC eligible customer exit points* located on a *transmission system* or a *sub-transmission system*.
- (3) A temporary access contribution *tariff* component to be recovered under this section 65 must be separately identified in the *price list*.

**Subchapter 5.4 – Price list (step 3)**

**66. NSP must develop price list**

- (1) The *NSP* of a *light regulation network* must ensure that it develops and includes in its *services and pricing policy*, a *price list* for at least the first year of the *pricing period* derived by applying the current *tariff setting methodology* for the *light regulation network* to the current *target revenue* for the *light regulation network*.
- (2) The *NSP* of a *light regulation network*, must *publish* any changes to the *price list* at least 3 months before the start of each subsequent year of the *pricing period* to take effect at the start of the next year of the *pricing period*.
- (3) If for any reason the *NSP* does not *publish* any changes to the *price list* within the time frames referred to in this section 66 then the previous *price list* most recently in effect continues in effect until 3 months after any new *price list* is *published* by the *NSP*.



## Subchapter 5.5– Other pricing matters

### 67. Prudent discounts and discounts for distributed generating works

- (1) In this section 67, “**equivalent tariff**” means —
  - (a) for a *reference service* – the *reference tariff*; and
  - (b) for a *non-reference service* – the *tariff* that it is reasonably likely would have been set as the *reference tariff* had the *non-reference service* been a *reference service*.
- (2) If a *user* seeks to implement initiatives to promote the economically efficient investment in and operation of a *light regulation network*, the *NSP* must reflect in the *user’s tariff*, by way of a discount, a share of any reductions in either or both of the *NSP’s capital-related costs* or *non-capital costs* which arise in relation to the initiative —
  - (a) by entering into an agreement with a *user* to apply a discount to the *equivalent tariff* to be paid by the *user* for a *covered service*; and
  - (b) then recovering the amount of the discount from other *users* of *covered services* through *reference tariffs*.
- (3) If a *user* seeks to *connect distributed generating works* to a *light regulation network*, an *NSP* must reflect in the *user’s tariff*, by way of a discount, a share of any reductions in either or both of the *NSP’s capital-related costs* or *non-capital costs* which arise as a result of the *entry point* or *bidirectional point* for the *distributed generating works* being located in a particular part of the *light regulation network* by —
  - (a) entering into an agreement with a *user* to apply a discount to the equivalent *tariff* to be paid by the *user* for a *covered service*; and
  - (b) then, recovering the amount of the discount from other *users* of *covered services* through *reference tariffs*.
- (4) The *tariff setting methodology* must include a detailed policy setting how the *NSP* will implement —
  - (a) if the *NSP* so chooses section 67(2); and
  - (b) section 67(3),

including a detailed mechanism for determining when a *user* will be entitled to receive a discount and for calculating the discount to which the *user* will be entitled.

### 68. Non-reference tariffs

If a *user* requests a *non-reference service* and there is a comparable *reference service* to that service, then in determining the *tariff* for the *non-reference service* —



- (1) the *reference tariff* for that *reference service* is to be used as a starting point; and
- (2) the *reference tariff* must be adjusted upwards or downwards to reflect the differences in the cost of service between the *reference service* and the *non-reference service*.

**69. Grandfathering of existing agreements for tariff setting**

In respect of any *contracts for services* entered into by an *NSP* before the date of the relevant *Pilbara network* becoming a *light regulation network* —

- (1) the *tariff* payable under those agreements must not be taken into account in the *tariff setting methodology* for *reference services*, and instead the *user* must be treated for *tariff* setting purposes as though it were paying the *reference tariff*, and
- (2) if that agreement specifies a higher level of reliability than the *reference service*, no additional contributions can be sought by the *NSP* in respect of the cost incurred to provide that higher level of reliability.

## Chapter 6 – Access application and process

### 70. Access applications

- (1) An *applicant* may request the *NSP* for a *light regulation network* to provide access to the *light regulation network*.
- (2) A *user access guide* may recommend, and an *applicant* may make, a preliminary enquiry about access to the *light regulation network* before making an *access application*. The *NSP* must —
  - (a) not require an *applicant* to make a preliminary enquiry before making an *access application*; and
  - (b) if requested by the *applicant*, carry out *further investigations* on the basis of the preliminary enquiry and before the *applicant* makes an *access application* but only if those investigations are reasonable in nature and reasonably required to inform the *applicant's* decision on whether or not to make an *access application*.
- (3) An *access application* must be in writing and must include the information required by the *user access guide* for the *light regulation network* for making an *access application*.
- (4) The *NSP* must make every effort to progress an *access application* in accordance with *good electricity industry practice*, even if the *access application* is not complete in every respect. If the *NSP* identifies that an *access application* is incomplete, the *NSP* must notify the *applicant* within the time frame specified in the *user access guide*, specifying the information required to complete the *access application*.
- (5) A dispute between the *NSP* and the *applicant* as to the need for, and nature of, any further information needed to complete an *access application* may be the subject of an *expedited determination* as an *expedited matter* under section 86.
- (6) The *NSP* must notify the *applicant* if the *NSP* needs to undertake *further investigations* in relation to the *access application*.
- (7) An *NSP* must —
  - (a) only undertake *further investigations* in relation to an *access application* when and to the extent reasonably necessary; and
  - (b) carry out *further investigations* expeditiously.
- (8) An *NSP* and an *applicant* must cooperate with the *ISO* to enable the *ISO* to carry out its roles and responsibilities regarding the processing and modelling of *access applications* in accordance with the *Pilbara networks rules*.
- (9) An *applicant* may amend the details of the access sought in an *access application* with the consent of the *NSP*. The *NSP* must not unreasonably withhold its consent and may give its consent subject to reaching agreement on

a reasonable extension to the period for making an *access offer* under the *user access guide*.

- (10) An *applicant* may at any time before it enters into an *access contract*, by notice in writing to the *NSP*, withdraw its *access application*.

## 71. Access offer

- (1) The *NSP* for a *light regulation network* in receipt of an *access application* must prepare and make an *access offer* within the timeframe specified by the *user access guide*, unless the *applicant* and the *NSP* agree an alternate timeframe, and in a manner that complies with the *user access guide* for the *light regulation network*.

{Note: The timeframes to be included in the *user access guide* are referenced in section 42(5).}

- (2) The period for making an *access offer* under section 71(1) may be extended in circumstances where —
- (a) the *applicant* fails to pay any reasonable costs associated with progressing the *access application* in accordance with the *user access guide*; or
  - (b) the *applicant* fails to accept a reasonable proposal by the *NSP* for conducting *further investigations* in relation to the *access application*; or
  - (c) the *applicant* otherwise fails to take actions in a timely manner which are reasonably required by the *NSP* in order for the *NSP* to progress the *access application*; or
  - (d) there is another reason, beyond the reasonable control of the *NSP*, which directly affects the progress of the *access application* and prevents the *NSP* from progressing the *access application* within that period.
- (3) An *access offer* must —
- (a) set out the price and other *terms and conditions* on which the *NSP* offers to make *covered services* requested in the *access application* available to the *applicant*; and
  - (b) contain the details of any *required works* to be undertaken by the *NSP* or the *applicant* and any applicable technical and performance specifications; and
  - (c) be in a form capable of acceptance by the *applicant* so as to constitute a new *access contract* or form part of an existing *access contract*.
- (4) An *NSP* is not required to make an *access offer* under section 71(1) in relation to a *light regulation network* —
- (a) if the *access application* has been withdrawn; or
  - (b) if the *NSP* has concluded that it is not technically feasible or consistent with the safe and reliable operation of the *light regulation network* to

provide the *covered service* requested by the *applicant*, having used all reasonable efforts to accommodate the reasonable requirements of the *applicant* including in relation to any *required work*; or

- (c) if the provision of the *covered service* requested by the *applicant* would require the extension of the *NSP's light regulation network* and that extension is not an *augmentation* covered by section 4;

and

- (d) in the case of a *new connection*, until the *ISO* has provided a certification that the *new connection* may proceed in accordance with the *Pilbara networks rules*.

{Note: Refer to Subchapter 9.2 – Access and connection of the *Pilbara networks rules*. Note also that Subchapter 9.2 of the *Pilbara networks rules* allows for *new connections* to be exempted from *ISO* supervision.}

- (5) If an *NSP* does not make an *access offer* on the grounds specified in section 71(4)(b), the *NSP* must give the *applicant reasons* explaining why the requested *covered service* cannot be provided.
- (6) If the *ISO* notifies the *NSP* that a new *connection* must not proceed under the *Pilbara networks rules*, then the *ISO* and the *NSP* and, if applicable, the *applicant*, must collaborate to find a solution to address the *ISO's* concerns in accordance with the *Pilbara networks rules*.

## 72. Supplementary services

- (1) The objective of this section 72 is to ensure that adequate arrangements exist between a *user* and an *NSP* in respect of those matters which, in addition to core *services* such as the right to *connect* and the right to transfer electricity, need to be addressed in order to enable and facilitate the *user's access* to *services* in accordance with, and with a view to progressing, the *Pilbara electricity objective*.
- (2) Each of the following matters is a “**supplementary service**”, to the extent that arrangements must exist between a *user* and an *NSP* in respect of the matter, in order to achieve the objective in section 72(1) —
  - (a) essential system services; and
  - (b) energy balancing and settlement; and
  - (c) metering; and
  - (d) any other matter which meets this description.
- (3) To the extent the provision of the *supplementary service* is not adequately dealt with by other means, for example by provision as a service under the *Pilbara networks rules*, an *access offer* and *access contract* must deal with each *supplementary service*, and must do so for each in a manner which —
  - (a) to the extent that the *supplementary service* is dealt with in the *Pilbara networks rules* applying to the *light regulation network* — is consistent

with and facilitates the treatment of the *supplementary service* in the *Pilbara networks rules*; and

- (b) otherwise — in accordance with the *harmonised technical rules* applying to the *light regulation network*, *good electricity industry practice* and the *Pilbara electricity objective*.
- (4) For the purposes of section 72(3), for a *light regulation network* in the *NWIS*, the matters referred to in sections 72(2)(a), 72(2)(b) and 72(2)(c) are adequately dealt with in the *Pilbara networks rules* as they are in force at the *code commencement date*, and so are not required to be dealt with as a *supplementary service* under this section 72.

{Note: Section 116 requires an *arbitrator's* award to be consistent with the *Pilbara networks rules*.}

### 73. Negotiations

- (1) An *applicant* who has made an *access application* may by notice to the *NSP* for the *light regulation network* request negotiations in relation to any aspect of *access* to a *covered service* including —
  - (a) whether *access* can be granted; and
  - (b) the price and other *terms and conditions* of an *access offer*.
- (2) Following a request under section 73(1), the *NSP* and the *applicant* (and any other person that the *NSP* and the *applicant* agree to include as a party to negotiations) must negotiate in good faith about how *access* can be granted and if so, the *terms and conditions* for the provision of *access*.
- (3) If an *access application* is for more than one *covered service*, the *applicant* may by notice to the *NSP* require negotiations in relation to those *covered services* take place as part of the same negotiation process.
- (4) An *applicant* may at any time by notice to the *NSP* bring negotiations requested under this section 73 to an end, whether or not the *applicant* also refers or has referred a related *access dispute* to *arbitration*.
- (5) Subchapter 9.5 applies in connection with negotiations between an *NSP* and an *applicant*.

## Chapter 7 – Arbitration of access disputes

{Note that the *arbitrator* has *limited discretion* under this Code in relation to the following *access disputes* —

1. Consultation under section 37 on information to be *published* – see section 37(4).
2. The composition of the *Horizon Power coastal network* initial *capital base* – see section 52(3).
3. A determination under section 59(1) (depreciation) – see section 59(4).
4. *Tariff setting methodology* – see section 62(3).
5. Interim ringfencing under section 140 – see section 140(4).
6. Ringfencing rules – see section 133(3)}

### Subchapter 7.1- Administration

#### 74. Meaning of “arbitrator’s determination”

In this Code “**arbitrator’s determination**” means an *expedited determination*, an *interim determination*, or a *final determination*.

#### 75. Authority’s role

- (1) The *Authority*’s functions include —
  - (a) establishing a pool of potential *arbitrators*;
  - (b) in respect of a *dispute notice* — appointing an *arbitrator* and referring the *access dispute* the subject of the notice to it;
  - (c) *publishing* information about *access disputes* and *arbitrator’s determinations*; and
  - (d) any other function expressly set out in this Code.
- (2) The *Authority* has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

#### 76. Authority to maintain pool of potential arbitrators

- (1) The *Authority* must —
  - (a) establish and *maintain* a pool of at least 3 commercial arbitrators from which an *arbitrator* may be appointed; and
  - (b) ensure that each *pool member* —
    - (i) is an “Australian legal practitioner” as defined in the *Legal Profession Act 2008*; and

- (ii) has been admitted to practice in Australia for at least 10 years; and
  - (iii) has practiced primarily in arbitration or litigation; and
  - (iv) is suitably qualified to act as *arbitrator*.
- (2) The *Authority* may at any time add a person to, or remove a person from, the pool established under section 76(1)(a), and in doing so may consult with any person it considers appropriate including a current *pool member*.
- (3) The *Authority* must *publish* a list of *pool members*, setting out each *pool member's* name, contact details and (where provided by the *pool member*) curriculum vitae.
- (4) The *Authority* may determine in its discretion from time to time the process for identifying candidates to be *pool members*.
- (5) The pools created under this section 76 and under the *Pilbara networks rules* can be the same.

## 77. Publication of information

- (1) Within 5 *business days* after it receives the publication version of an *arbitrator's determination* from an arbitrator, the *Authority* must —
  - (a) *publish* the following information —
    - (i) the *light regulation network* the subject of the *arbitration*; and
    - (ii) the parties' names; and
    - (iii) the name of the *arbitrator* and, if applicable, the other members of the *arbitral panel*; and
    - (iv) the time elapsed between the *access dispute* being referred to the *arbitrator* and the making of the *arbitrator's determination*; and
    - (v) the publication version of the *arbitrator's determination*;and
  - (b) email a copy of, or a hyperlink to, the information under section 77(1) to each email address listed on the *Authority's subscriber database*.
- (2) At least once a year on a date of its choosing, the *Authority* must —
  - (a) *publish* information about —
    - (i) the number of *dispute notices* lodged; and
    - (ii) in respect of each *dispute notice* — whether it was —
      - A. withdrawn; or

- B. resolved by a *final determination*; or
- C. resolved in some other manner;

and

- (b) email a copy of, or a hyperlink to, the information under section 77(2) to each email address listed on the *Authority's subscriber database*.
- (3) A good faith disclosure of information by the *Authority* under or purportedly under this section 77 is a permitted disclosure under section 161, and section 165 {Pre-disclosure process} does not apply to it.

## 78. Confidentiality

- (1) Without limiting the definition of *confidential information*, for the purposes of this Chapter 7 “**confidential information**” includes information that is prepared, filed, lodged, or served on another party, in the course of the *arbitration* and specifically includes the following —
  - (a) statements in the nature of pleadings or submissions, and other information supplied to the *arbitrator* by a party to the *access dispute*; and
  - (b) any information supplied by a party to another party in compliance with a direction of the *arbitrator*; and
  - (c) any evidence (whether documentary or otherwise) supplied to the *arbitrator*; and
  - (d) any notes made by the *arbitrator* of oral evidence or submissions given before the *arbitrator*; and
  - (e) any transcript of oral evidence or submissions given before the *arbitrator*; and
  - (f) any ruling or *arbitrator's determination* which is not required to be *published* under this Chapter 7; and
  - (g) any other thing declared by the *arbitrator* to be *confidential information* (whether of the *arbitrator's* own motion or on the request by a party).
- (2) Subject to this section 78, a person must comply with Subchapter 9.5 in respect of this Chapter 7.
- (3) The *arbitrator* may give an oral or written order to any person not to disclose or use specified information that was given to the person in the course of an *arbitration* without the *arbitrator's* permission and a person must comply with that order.
- (4) An order under section 78(3), prevails over, and may modify the effect of, Subchapter 9.5 of this Code as it applies in respect of this Chapter 7.
- (5) Without limiting section 78(4), section 165 {Pre-disclosure process} applies subject to any order under section 78(3).



## 79. Functions

It is a function of each of —

- (1) the *Authority*; and
- (2) a *pool member*; and
- (3) an *arbitrator*; and
- (4) a *panel expert*; and
- (5) the *ISO*; and
- (6) an independent expert appointed under section 112,

respectively, to do each thing required of them under this Chapter 7.

## 80. Commercial Arbitration Act does not apply

An *arbitration* under this Chapter 7 is not an arbitration within the meaning of the *Commercial Arbitration Act 2012*.

### Subchapter 7.2 – Commencement and termination

## 81. Dispute notice

- (1) At any time, an *applicant* or an *NSP* may lodge a *dispute notice* with the *Authority*.
- (2) The *dispute notice* must state —
  - (a) the *service* to which the *dispute notice* relates; and
  - (b) where applicable — the *access application* and the *access offer* made in response to the *access application*; and
  - (c) the matters (if any) on which agreement has been reached; and
  - (d) each matter that is in dispute and, if the *complainant* proposes that a matter or matters be dealt with as an *expedited matter*, that proposal; and
  - (e) the *complainant's* name and address, and contact details for a contact person; and
  - (f) the name and address of the other party to the *access dispute*; and
  - (g) the name and address of each other person that the *complainant* reasonably believes may have an interest in being joined as a party to, or otherwise heard in, the *access dispute*.

## 82. Notifications following dispute notice

- (1) As soon as practicable, and in any event within 2 *business days* after a *dispute notice* is lodged under section 81(1), the *complainant* must serve it on the other party.
- (2) Upon receipt of a *dispute notice*, the *Authority* must —
  - (a) *publish* a notice setting out —
    - (i) the parties to the *access dispute*; and
    - (ii) the *complainant's* contact details;and
  - (b) email a copy of, or a hyperlink to, the *published* notice to each email address in the *Authority's subscriber database*.

## 83. Trivial or vexatious claims

- (1) Subject to section 99, at any time, the *arbitrator* may, of their own motion or on the application of a party to an *access dispute* (other than the *complainant*), terminate an *arbitration* without making an *arbitrator's determination* if the *arbitrator* considers that —
  - (a) the *complainant* lodged the *dispute notice* frivolously, vexatiously, prematurely or unreasonably; or
  - (b) before lodging the *dispute notice*, the *complainant* failed to negotiate in good faith regarding the matters now subject to the *dispute notice*; or
  - (c) the subject matter of the *access dispute* is trivial, misconceived or lacking in substance.
- (2) The *arbitrator* terminates an *arbitration* under section 83(1) by giving notice of the termination to the parties, the *ISO* and the *Authority*.
- (3) A notice under section 83(2) —
  - (a) must include the *arbitrator's reasons* for the termination; and
  - (b) takes effect from the later of —
    - (i) the time the parties receive the notice; or
    - (ii) the time (if any) specified in the notice.
- (4) The termination of an *arbitration* under section 83(2) is final and binding on the parties.

{Note: Section 124 deals with costs of the *arbitration*.}

#### 84. Withdrawal of a dispute notice

- (1) A *complainant* (other than a *complainant* who is an *NSP*) may withdraw a *dispute notice* at any time before the *arbitrator* makes a *final determination*.
- (2) If the *complainant* is an *NSP*, it may withdraw a *dispute notice* at any time before the *arbitrator* makes a *final determination*, but only with the other parties' written consent.
- (3) If a *dispute notice* is withdrawn under this section 84 —
  - (a) the *arbitration* terminates on the date on which the *dispute notice* is withdrawn; and  
{Note: Section 124 deals with costs of the *arbitration*.}
  - (b) within 5 *business days* after the notice is withdrawn under this section 84, the *arbitrator* must notify the *Authority* that the *arbitration* has terminated.

#### 85. Mediation

- (1) If a party to an *access dispute* is not —
  - (a) the *ISO*; or
  - (b) a party joined under section 88(6),it may request that the *arbitrator* direct some or all of the parties to attend mediation to attempt to resolve some or all of the issues in dispute.
- (2) The *arbitrator* —
  - (a) may, of its own motion or at the request of a party under section 85(1), having regard to the objective in section 98(1); and
  - (b) must, if two or more parties make a joint request under section 85(1),  
  
direct any or all of the parties to attend mediation to attempt to resolve some or all of the issues in dispute.
- (3) The *arbitrator's* direction under this section 85 may set out timeframes and procedures for the mediation.
- (4) Within 2 *business days* after a mediation terminates, the parties which attended mediation must give notice to the *arbitrator* setting out the issues in dispute (if any) which were resolved at mediation.

#### 86. Determination of an expedited matter

- (1) In this section 86, "**expedited matter**" means a matter (including a discrete matter arising in the course of an *arbitration*) —
  - (a) which is capable of being fairly determined within the timeframe set out under this section 86; and

- (b) the resolution of which may permit the *access application* or negotiation to which the matter relates to be further progressed without the parties having to resort to a longer or full-scale dispute process.
- {Note: Each of the matters listed under section 115(2) is not an *expedited matter*. Examples of an *expedited matter* include —
- the procedure applying in the course of an *access application* or a negotiation under section 73; and
  - a modelling conclusion.}
- (2) An *expedited determination* must not deal with any of the matters listed under section 115(2).
- (3) At any time, an *applicant* or the *NSP* may apply to the *arbitrator* for the determination of an *expedited matter* under this section by giving notice —
- (a) requesting expedited hearing of the matter; and
  - (b) setting out the grounds for why the expedited hearing and resolution of the matter may permit the *access application* or negotiation to which the matter relates to be further progressed without the parties having to resort to a longer or full-scale dispute process.
- (4) Within 2 *business days* after receiving a notice under section 86(3), the *arbitrator* must give notice to each other party of the request —
- (a) attaching a copy of the notice under section 86(3); and
  - (b) inviting the party to make a submission in response to the notice under section 86(3) within the timeframe under section 86(5).
- (5) Within 5 *business days* after receiving a notice under section 86(4), a party may lodge a submission with the *arbitrator* —
- (a) supporting or opposing the request; and
  - (b) giving reasons for its position; and
  - (c) whether or not the party supports or opposes the request — setting out the party's position in relation to the matters under section 86(8).
- (6) Within 10 *business days* after receiving a notice under section 86(4), the *arbitrator* must consider any submissions lodged under section 86(5) and either —
- (a) if, the *arbitrator* determines that the expedited hearing and resolution of the matter may permit the *access application* or negotiation to which the matter relates to be further progressed without the parties having to resort to a longer or full-scale dispute process — direct that the hearing and determination of an *expedited matter* proceed under sections 86(8) and 86(9); and
  - (b) otherwise — direct that the matter continue as a normal *arbitration*.

- (7) Upon making a direction under section 86(6), the *arbitrator* must immediately give the parties notice of the direction.
- (8) If the *arbitrator* makes a direction under section 86(6)(a) —
- (a) unless the *arbitrator* directs otherwise, the parties are restricted to —
    - (i) one round of written submissions and evidence; and
    - (ii) one round of written submissions and evidence in reply  
(which must not be amended except with the *arbitrator's* leave);and
  - (b) unless the *arbitrator* directs otherwise, any hearing is to be conducted without legal representation (but a party may obtain legal advice in preparing the written submission); and
  - (c) the *arbitrator* may elect to dispense with a hearing and determine the matter on the papers; and
  - (d) the *arbitrator* is to treat the objective of informality and expedition as paramount; and
  - (e) the *arbitrator* must endeavour to determine the *expedited matter* within 10 *business days* after the issue of the notice under section 86(7); and
  - (f) the parties must take all reasonable steps to assist the *arbitrator* to determine the *expedited matter* within 10 *business days* after the issue of the notice under section 86(7).
- {Note: Section 118 sets out general requirements in respect of an *arbitrator's determination*.}
- (9) If in the course of an expedited hearing the *arbitrator* determines that it is not possible to determine the *expedited matter* in the time, or on the materials, available under section 86(8), the *arbitrator* may do one or more of the following —
- (a) determine the matter as soon as practicable within a longer period not exceeding 20 *business days* after the expedited process is commenced; or
  - (b) direct that the matter cease being expedited, and continue as a normal *arbitration*; or
  - (c) make an *interim determination*.
- (10) An *expedited determination* is binding on the parties.

### Subchapter 7.3 – Parties

#### 87. Parties to an arbitration

- (1) The parties to an *arbitration* are —
  - (a) the *applicant* and the *NSP*; and
  - (b) if the *arbitrator* permits a person to be joined as a party under section 88(6) or directs the *ISO* to join under section 89 — that person or the *ISO*, from the time they are joined.
- (2) A party to an *arbitration* must comply with any direction or order of the *arbitrator*.

#### 88. Consolidation, joinder and other third party participation

- (1) Within 5 *business days* after the *Authority publishes* information under section 90(6)(c), a person who is not a party to an *arbitration* may apply to the *arbitrator* to —
  - (a) consolidate part or all of the *arbitration* with part or all of another *arbitration* (“**second arbitration**”) to which the person is a party; or
  - (b) be joined as a party; or
  - (c) be heard in, or participate in, the *arbitration*; or
  - (d) otherwise have their views or interests considered in the *arbitration*.
- (2) An application under section 88(1) must —
  - (a) set out the applicant’s name and address, and contact details for a contact person; and
  - (b) set out the order or orders sought under section 88(1); and
  - (c) be accompanied by —
    - (i) submissions in support of the application; and
    - (ii) any evidence in support of the application;and
  - (d) in the case of an application under section 88(1)(a) — set out the name and address and contact details for —
    - (i) the arbitrator appointed in the *second arbitration*; and
    - (ii) each party to the *second arbitration*.
- (3) Within 2 *business days* after receipt of an application under section 88(1), the *arbitrator* must give notice of the application to each party and each person listed under section 88(2)(d) (if applicable) —

- (a) enclosing a copy of the application; and
  - (b) inviting submissions and evidence in response to the application within *5 business days*.
- (4) Within *5 business days* after receiving notice under section 88(3), a person may lodge submissions and evidence in response to an application under section 88(1).
- (5) Within *10 business days* after the *arbitrator* gives notice under section 88(3), the *arbitrator* may convene a hearing in relation to an application under section 88(1) and each person who received a notice under section 88(3) may participate in the hearing.
- (6) As soon as practicable after receiving an application under section 88(1) and in any event within *20 business days* after the *arbitrator* gives notice under section 88(3), the *arbitrator* must —
  - (a) make such orders (if any) regarding the conduct of the *arbitration* (including the applicant's participation in the *arbitration*) as the *arbitrator* considers appropriate; and
  - (b) give notice of the orders to the parties; and
  - (c) in the case of an application under section 88(1)(a) — give notice of the orders to each person listed under section 88(2)(d).
- (7) In determining an application under section 88(1), the *arbitrator* must have regard to —
  - (a) the objective in section 98(1); and
  - (b) any submissions received under section 88(4); and
  - (c) if the person has applied under section 88(1)(a) —
    - (i) whether there is a compelling case for the application to be granted; and
    - (ii) the benefits of the application being granted; and
    - (iii) the disadvantages of the application being granted, including —
      - A. any delay in determining the *access dispute* or the *second arbitration*; and
      - B. any additional cost to the parties to the *access dispute* or the *second arbitration*;
  - and
  - (iv) whether the request can be addressed by allowing participation in some other form;
  - and

- (d) if the person has applied under section 88(1)(b) to 88(1)(d) —
    - (i) whether there is a compelling case for the application to be granted; and
    - (ii) the benefits of the application being granted; and
    - (iii) the disadvantages of the application being granted, including —
      - A. any delay in determining the *access dispute*; and
      - B. any additional cost to the parties;
    - and
    - (iv) whether the person's participation should be limited in any way; and
    - (v) whether the request can be addressed by allowing participation in some other form;
    - and
  - (e) the extent to which allowing the person's participation in this *access dispute* may avoid another *access dispute*, and any resulting efficiencies.
- (8) If an *arbitrator* determines under section 88(6) that part or all of an *arbitration* is to be consolidated with part or all of another *arbitration*, within 5 *business days* after giving notice under section 88(6), the two arbitrators must —
- (i) confer in relation to procedural steps consequent upon the consolidation of the *arbitrations*, including which of them will hear and determine the consolidated *arbitration*; and
- {Note: Section 98 applies to a consolidated *arbitration*.}
- (ii) if the arbitrators agree on the procedural steps consequent upon the consolidation of the *arbitrations* — give notice of the steps to the arbitrators and the parties to the consolidated *arbitration*.
- (9) If the arbitrators do not agree on the procedural steps consequent upon the consolidation of the *arbitrations* under section 88(8) —
- (a) within 1 *business day* after the expiry of the period under section 88(8) —
    - (i) the *arbitrator* must immediately give notice to the *Authority* to that effect; and
    - (ii) each arbitrator must give notice to the *Authority* of proposed procedural steps consequent upon the consolidation of the *arbitrations* and the *reasons* for the proposed steps;
  - and



- (b) within 5 *business days* after the *Authority* receives notice under section 88(9)(a), the *Authority* must determine the procedural steps consequent upon the consolidation of the *arbitrations* and give notice of them to the parties to the consolidated *arbitration*.
- (10) The *arbitrator* may at any time —
  - (a) direct a party to provide the *arbitrator* with sufficient information to enable it to identify other persons who might wish to apply under section 88(1); and  
{Note: This may include information as to any (or any other) *applicants* and details of each *applicant's* access application.}
  - (b) notify any person identified by it under section 88(10)(a) of the *access dispute* and the parties to the *access dispute*.
- (11) A party must promptly comply with a direction under section 88(10)(a).

**89. Arbitrator may join the ISO as a party if absolutely necessary**

- (1) Subject to this section 89, the *arbitrator* may, on its own initiative or at a party's request, consider joining the *ISO* as a party.
- (2) Before joining the *ISO* as a party, the *arbitrator* must give notice to each party and the *ISO* —
  - (a) proposing the joinder of the *ISO*; and
  - (b) setting out its *reasons* for the potential joinder; and
  - (c) inviting them to make a submission on the proposal within the timeframe under section 89(3).
- (3) As soon as practicable, and in any event within 5 *business days*, after receiving the *arbitrator's* notice under section 89(2), each of the parties and the *ISO* may make a submission to the *arbitrator* —
  - (a) supporting or opposing the proposal; and
  - (b) giving reasons including its views on the matters set out under section 89(4) and 89(5).
- (4) The *arbitrator* may only join the *ISO* as a party if —
  - (a) having regard to the objective at section 98(1), and the benefits of preserving the *ISO's* independence, the *arbitrator* considers it absolutely necessary to join the *ISO* as a party, to enable the *arbitrator* to properly determine the *access dispute*; and
  - (b) the *arbitrator* determines that there is no other practicable way in which to obtain the necessary information or assistance, including any combination of requests under section 107(1), engagement under section 113(1), and independent experts under section 112.

- (5) The *arbitrator* must not join the *ISO* as a party solely on the ground that an act or omission of the *ISO* is in dispute.
- (6) Within 10 *business days* after giving notice under 89(3), the *arbitrator* —
  - (a) may direct the *ISO* to become a party to an *arbitration*; and
  - (b) must give the parties and the *ISO* notice of its decision on the joinder of the *ISO*.
- (7) A direction under section 89(6) is final and binding on the parties (including the *ISO*).

## **Subchapter 7.4 – The arbitrator and the arbitral panel**

### **90. Appointing the arbitrator**

- (1) As soon as practicable, and in any event within 5 *business days*, after a *dispute notice* is served, each party must give a notice to the other party —
  - (a) nominating two or more *pool members* to determine the *access dispute*; and
  - (b) attaching a notice from each nominated *pool member* —
    - (i) confirming the *pool member's* availability to determine the *access dispute*; and
    - (ii) setting out the *pool member's* indicative schedule of fees; and
    - (iii) disclosing any matters likely to give rise to justifiable doubts as to the *pool member's* impartiality or independence to determine the *access dispute*.
- (2) Upon receipt of the notice under section 90(1) the parties must negotiate in good faith with a view to agreeing one or more *pool members* they will jointly nominate to the *Authority* to determine the *access dispute*.
- (3) As soon as practicable, and in any event within 10 *business days* after a *dispute notice* is served —
  - (a) if the parties have agreed on the *pool member* to determine the *access dispute* — the parties must give a joint notice to the *Authority* of the agreed *pool member* and attaching a copy of the *pool member's* notice under section 90(1)(b); or
  - (b) if the parties have not agreed on the *pool member* to determine the *access dispute*, each party must give a notice to the *Authority* —
    - (i) setting out —
      - A. the *pool members* the party nominated under section 90(1); and

- B. if applicable, any submissions the party wishes to make about a nominated *pool member*, including regarding any matters disclosed under section 90(1)(b)(iii);
  - and
  - (ii) attaching each nominated *pool member's* notice under section 90(1)(b).
  - (c) Subject to section 90(4), within 2 *business days* after receipt of a notice under section 90(3)(a), the *Authority* must appoint the *pool member* jointly nominated by the parties to determine the *access dispute*.
- (4) If the *Authority* considers there to be justifiable doubts as to the impartiality or independence of a *pool member* jointly nominated in a notice under section 90(3)(a) to determine the dispute —
- (a) it must not appoint the *pool member* to determine the *access dispute*; and
  - (b) as soon as practicable, the *Authority* must give the parties notice that it will not appoint the *pool member*; and
  - (c) within 3 *business days* after the issue of notice under section 90(4)(b), each party must give a notice to the *Authority* setting out the information under section 90(3)(b); and
  - (d) within 5 *business days* after the issue of notice under section 90(4)(b), the *Authority* must —
    - (i) have regard to any notices it receives under section 90(4)(c); and
    - (ii) consider whether there are justifiable doubts as to the impartiality or independence of any *pool member* to determine the *access dispute*; and
    - (iii) appoint a *pool member* to determine the *access dispute*.
- (5) If the parties give notice under section 90(3)(b) or fail to give any notice under section 90(3) — within 15 *business days* after service of the *dispute notice* under section 82(1), the *Authority* must —
- (a) where applicable — have regard to any notices under section 90(3)(b); and
  - (b) consider whether there are justifiable doubts as to the impartiality or independence of any *pool member* to determine the *access dispute*; and
  - (c) appoint a *pool member* to determine the *access dispute*.
- (6) Within 1 *business day* of appointing a *pool member*, the *Authority* must —
- (a) give a notice to the parties and the selected *pool member* —

- (i) confirming the appointment of the selected *pool member* as *arbitrator* to determine the *access dispute*; and
    - (ii) attaching the *dispute notice*; and
    - (iii) referring the *access dispute* to the *arbitrator* for determination under this Chapter 7;
  - and
  - (b) give notice of the *arbitrator's* contact details to —
    - (i) the *ISO*; and
    - (ii) each person named under section 81(2)(g);
  - and
  - (c) *publish* the following information —
    - (i) the *light regulation network* the subject of the *arbitration*;
    - (ii) the parties' names; and
    - (iii) the name and contact details of the *arbitrator*; and
    - (iv) the timeframe for a person who is not a party to apply under section 88(1); and
  - (d) email a copy of, or a hyperlink to, the *published* notice to each email address in the *Authority's subscriber database*.
- (7) Subject to sections 94 and 96, the *Authority's* appointment of an *arbitrator* under this section 90 is final and binding on the parties.

**91. [Not used]**

**92. Arbitrator may convene an arbitral panel**

- (1) Within 5 *business days* after receipt of a notice under section 90(6), a party may apply to the *arbitrator* to convene an *arbitral panel*, comprising the *arbitrator* and up to two experts, to hear the *access dispute*.
- (2) An application under section 92(1) must —
  - (a) set out the party's view on —
    - (i) the expertise required on the *arbitral panel*;
    - (ii) the number of experts to serve on the *arbitral panel*; and
    - (iii) the identity of the expert or experts to serve on the *arbitral panel*;
  - and

- (b) set out the party's submissions in support of the application; and
  - (c) be accompanied by any evidence in support of the application.
- (3) Within 10 *business days* after receipt of a notice under section 90(6), the *arbitrator* —
  - (a) may of its own motion; and
  - (b) must upon receipt of an application under section 92(1),  
give notice to each party —
    - (c) informing it of the proposal that the *access dispute* be heard by an *arbitral panel*; and
    - (d) in the case of the *arbitrator* proposing of their own motion that an *arbitral panel* hear the *access dispute* — setting out the *reasons* for the proposal; and
    - (e) in the case of an application under section 92(1) — attaching a copy of the application and all material lodged in support of the application; and
    - (f) inviting a submission on the proposal within the timeframe under section 92(4).
- (4) As soon as practicable, and in any event within 10 *business days*, after receiving the *arbitrator's* notice under section 92(3), each party may make a submission to the *arbitrator* —
  - (a) supporting or opposing the proposal, and giving reasons for its position; and
  - (b) setting out the party's views on —
    - (i) the expertise required on the *arbitral panel*;
    - (ii) the number of experts to serve on the *arbitral panel*; and
    - (iii) the identity of the expert or experts to serve on the *arbitral panel*.
- (5) Within 15 *business days* after giving notice under section 92(3), the *arbitrator* must —
  - (a) consider any submissions provided under section 92(4); and
  - (b) if the *arbitrator* considers it appropriate that the *access dispute* be heard by an *arbitral panel* —
    - (i) obtain, from each person it proposes as an expert member, a notice —
      - A. confirming their availability to hear the *access dispute*; and

- B. disclosing any matters likely to give rise to justifiable doubts as to their impartiality or independence to hear the *access dispute*; and
    - C. attaching the proposed expert member's current curriculum vitae;
  - and
  - (ii) give a notice to the parties —
    - A. setting out —
      - i. the identity of any proposed expert members; and
      - ii. the relevance of the proposed expert member's expertise to the *access dispute*;
      - iii. the fee each expert member will charge for the engagement or the manner in which that fee will be determined; and
    - B. attaching each notice under section 92(5)(b)(i); and
    - C. inviting the parties to make submissions in response to the notice within the period under section 92(6).
- (6) Within 5 *business days* after receipt of the notice under section 92(5)(b)(ii), a party may lodge submissions in response to the notice.
- (7) The *arbitrator* must only appoint a proposed expert member to an *arbitral panel* if —
  - (a) the *arbitrator* considers that the person has professional expertise or experience that will assist the *arbitrator* to determine the *access dispute* efficiently and in accordance with the *Pilbara electricity objective*; and
  - (b) the *arbitrator* is satisfied that there are no justifiable doubts as to the person's impartiality or independence to hear the *access dispute*.
- (8) Within 10 *business days* after issuing the notice under section 92(5)(b)(ii), the *arbitrator* must —
  - (a) consider any submissions provided under section 92(6) and either —
    - (i) decide to hear the *access dispute* as a single *arbitrator*; or
    - (ii) decide to convene and chair an *arbitral panel*;
  - and
  - (b) in the case of a decision to convene an *arbitral panel* — give notice to each proposed expert member appointed to the *arbitral panel* of their appointment; and

- (c) give notice to the parties of the *arbitrator's* decision and (if applicable) the names of any *panel expert* appointed to hear the *access dispute*.
- (9) The *arbitrator's* decisions to convene an *arbitral panel* and appoint expert members are final and binding on the parties.

### 93. Operation of the arbitral panel

- (1) If an *access dispute* is to be heard by an *arbitral panel*, it is to be determined by the *arbitrator* as though the *arbitrator* is sitting as an *arbitrator* alone, except that the *arbitrator* must —
  - (a) consider how the expertise of each *panel expert* could assist the *arbitrator* to determine a matter in the dispute; and
  - (b) to the extent it determines that the expertise of a *panel expert* could assist, seek that person's views on the matter and have regard to those views in determining the dispute.
- (2) The *arbitrator* is to chair the *arbitral panel* and may determine its procedures.

### 94. Impartiality and independence of arbitral panel member

- (1) In this section 94, “**arbitral panel member**” means, collectively —
  - (a) an *arbitrator* hearing a dispute as a single *arbitrator* or as chair of an *arbitral panel*; and
  - (b) a *panel expert* appointed under section 92(8)(b).
- (2) An *arbitral panel member* must promptly disclose to the parties any circumstance likely to give rise to justifiable doubts as to the member's impartiality or independence, which the member has not previously disclosed to the parties.
- (3) Subject to sections 94(4) to 94(5), if a party becomes aware that circumstances exist that give rise to justifiable doubts as to an *arbitral panel member's* impartiality or independence, it must within 3 *business days* after becoming aware of those circumstances give notice to the *arbitrator* and the other parties —
  - (a) challenging the *arbitral panel member's* impartiality or independence; and
  - (b) setting out the circumstances that give rise to justifiable doubts as to the *arbitral panel member's* impartiality or independence.
- (4) If a party was aware of circumstances that give rise to justifiable doubts as to an *arbitral panel member's* impartiality or independence before their appointment as an *arbitral panel member* — the party must not give notice under section 94(3) in respect of those circumstances.
- (5) In this section 94, there are justifiable doubts as to the impartiality or independence of an *arbitral panel member* only if there is a real danger of bias

- on the part of the person in hearing or determining the *arbitration* (as the case may be).
- (6) Within 5 *business days* after receipt of a notice under section 94(3), a party may give notice to the *arbitrator* and the other parties stating whether the party —
- (a) supports the challenge; or
  - (b) does not support the challenge.
- (7) Within 10 *business days* after the *arbitrator* receives a notice under section 94(3), the *arbitral panel member* the subject of the notice —
- (a) must give notice of their withdrawal from office if all the other parties give notices supporting the challenge; and
  - (b) otherwise — may give notice of their withdrawal from office.
- (8) A notice of withdrawal under section 94(7) must be given to —
- (a) in the case of the withdrawal of a *panel expert* — the *arbitrator* and the parties; and
  - (b) in the case of the withdrawal of the *arbitrator* — the *Authority* and the parties.
- (9) An *arbitral panel member's* appointment in respect of an *access dispute* terminates immediately upon them giving notice under section 94(7).
- {Note: Section 95 deals with change of *panel expert* and section 96 deals with change of *arbitrator*.}
- (10) If an *arbitral panel member* does not withdraw from office under section 94(7)(b)—
- (a) within 10 *business days* after the *arbitrator* receives a notice under section 94(3) — the *arbitral panel member* must prepare *reasons* for the decision to not withdraw from office and (in the case of a *panel expert* provide a copy to the *arbitrator*); and
  - (b) within a further 2 *business days* — the *arbitrator* must give the parties notice that the *arbitrator* rejects the challenge and give the parties a copy of the *reasons* under section 94(10)(a).
- (11) If the *arbitrator* rejects a challenge under section 94(10)(b), the challenging party may, within 10 *business days* after receiving notice of the rejection, request the Chair of Resolution Institute ACN: 008 651 232 (or, if Resolution Institute no longer exists or refuses the request — the President of the Law Society of Western Australia) to decide on the challenge.
- (12) A decision on a request under section 94(11) is final.
- (13) While a request under section 94(11) is pending, the *arbitrator* must not progress the course of the *arbitration* and must not make an *arbitrator's determination*.



## 95. Change of panel expert

- (1) If for any reason a *panel expert* abandons the hearing of an *access dispute* or is unable to continue hearing the *access dispute*, the *panel expert* or any party may give notice to the other parties and the *arbitrator* —
  - (a) requesting that a new *panel expert* be appointed; and
  - (b) setting out the basis for the request.
- (2) Within 5 *business days* after receiving a notice under section 95(1), the *panel expert* and each party may make a submission to the *arbitrator* —
  - (a) supporting or opposing the request; and
  - (b) giving reasons for its position.
- (3) Within 5 *business days* after expiry of the time for the lodgement of a submission under section 95(2), the *arbitrator* must give notice to the *panel expert* and the parties of its decision whether to terminate the appointment of the *panel expert* and appoint a new *panel expert*.
- (4) Where the *arbitrator* receives a notice under section 94(8)(a) or decides to appoint a new *panel expert* under section 95(3) — the *arbitrator* and the parties must follow the process in section 92(5)(b) to 92(8) to appoint a new *panel expert*.
- (5) Where a new *panel expert* is appointed in place of a previous *panel expert* —
  - (a) the *arbitrator* may, having regard to the objective at section 98(1), order the proceeding to be reheard —
    - (i) in full, in which case all evidence heard by the previous *arbitral panel* is to be disregarded by the *arbitrator* unless resubmitted or retendered; or
    - (ii) in part, in which case any evidence heard by the *arbitral panel* during the parts of the *arbitration* which are reheard is to be disregarded by the *arbitrator* unless resubmitted or retendered;
  - and
  - (b) if no order is made under section 95(5)(a), then the *arbitration* is to continue as though the new *panel expert* had been present from the commencement of the *arbitration*.

## 96. Change of arbitrator

- (1) If for any reason the *arbitrator* —
  - (a) does not make a *final determination* within the time provided for under section 120(3) (as extended, if applicable); or
  - (b) abandons the *arbitration*; or

- (c) is unable to continue the *arbitration*,  
the *arbitrator* or any party may give notice to the other parties and the *Authority* —
  - (d) requesting that a new *arbitrator* to be appointed; and
  - (e) setting out the basis for the request.
- (2) Within 5 *business days* after receiving a notice under section 96(1), the *arbitrator* and each party may make a submission to the *Authority* —
- (a) supporting or opposing the request; and
  - (b) giving reasons for its position.
- (3) Where the *Authority* receives a notice under section 96(1)(a) —
- (a) within 5 *business days* after expiry of the time for the lodgement of a submission under section 96(2), the *Authority* must —
    - (i) decide whether to allow further time (not exceeding 2 months) for the *arbitrator* to make a *final determination*; and
    - (ii) give notice of its decision to the *arbitrator* and the parties;and
  - (b) if the *Authority* does not allow further time under section 96(3)(a), it must terminate the appointment of the *arbitrator* and follow the process in section 90 to appoint a new *arbitrator*, for which purpose time is to be calculated from the date of the notice as if it were a *dispute notice*; and
  - (c) if the existing *arbitrator* makes a *final determination* before a new *arbitrator* is appointed, then the notice under section 96(1) lapses and the *Authority* must not appoint a new *arbitrator*.
- (4) If —
- (a) the *Authority* decides under section 96(3)(a) to allow further time for an *arbitrator* to make a *final determination*; and
  - (b) the *Authority* considers in its absolute discretion that the *arbitrator* is unable to make a *final determination* within the extended time period,
- the *Authority* must give notice to the *arbitrator* and the parties terminating the appointment of the *arbitrator* and follow the process in section 90 to appoint a new *arbitrator*, for which purpose time is to be calculated from the date of the notice as if it were a *dispute notice*.
- (5) Where the *Authority* receives a notice under section 96(1)(b) or 96(1)(c) —within 5 *business days* after expiry of the time for the lodgement of a submission under section 96(2), the *Authority* must —

- (a) decide whether to terminate the *arbitrator's* appointment and appoint a new *arbitrator*; and
- (b) give notice of its decision to the *arbitrator* and the parties.
- (6) An *arbitrator's* appointment in respect of an *access dispute* terminates immediately upon the *Authority* giving notice under section 96(5).
- (7) Where an *arbitrator* gives a notice of withdrawal under section 94(7) or an *arbitrator's* appointment is terminated — the *Authority* must follow the process in section 90 to appoint a new *arbitrator*, for which purpose time is to be calculated from the date of the notice as if it were a *dispute notice*.

**97. Effect of appointment of new arbitrator or panel expert on evidence previously given and determinations previously made**

- (1) Where a new *arbitrator* is appointed in place of a previous *arbitrator* —
  - (a) the new *arbitrator* may, having regard to the objective at section 98(1), order the proceedings to be reheard —
    - (i) in full, in which case all evidence heard by the previous *arbitrator* is to be disregarded by the new *arbitrator* unless resubmitted or retendered; or
    - (ii) in part, in which case any evidence heard by the previous *arbitrator* during the parts of the *arbitration* which are reheard is to be disregarded by the new *arbitrator* unless resubmitted or retendered;
  - and
  - (b) if no order is made under section 97(1)(a), then the *arbitration* is to continue as though the new *arbitrator* had been present from the commencement of the *arbitration*; and
  - (c) if an order is made under section 97(1)(a)(ii), then —
    - (i) the *arbitration* is to continue as though the new *arbitrator* had been present during the *earlier arbitration*; and
    - (ii) the new *arbitrator* is to treat any evidence given, document produced, or thing done in the course of the *earlier arbitration* in the same manner in all respects as if it had been given, produced or done in the course of the *arbitration* conducted by the new *arbitrator*;
  - and
  - (d) any *interim determination* made in the course of the *earlier arbitration* is to be taken to have been made by the new *arbitrator*; and
  - (e) the new *arbitrator* may adopt and act on any determination of a matter made in the course of the *earlier arbitration* without applying the new *arbitrator's* own judgment to the matter.

- (2) In section 97(1), “**earlier arbitration**” means the *arbitration* or parts of the *arbitration* which the new *arbitrator* does not order to be re-heard under section 97(1)(a)(ii).

## **Subchapter 7.5 – Procedure**

### **98. Expedition, informality and efficiency**

- (1) The *arbitrator* must resolve *access disputes* with as little formality and technicality, and as much expedition and efficiency, as the requirements of this Chapter 7, and a proper hearing and determination of the *access dispute*, permit.
- (2) The parties must do all things necessary for the proper and expeditious conduct of the *arbitration*, and must not seek to delay or frustrate proceedings.
- (3) Without limiting section 98(1) but subject to section 99, the *arbitrator* —
- (a) is not bound by technicalities, legal forms or rules of evidence; and
  - (b) may determine such procedures for the *arbitration*, and conduct the *arbitration* in such manner, as it considers appropriate from time to time.

### **99. Natural justice**

The *arbitrator* must afford the parties natural justice.

### **100. Arbitrator’s procedural powers**

- (1) The *arbitrator* may do any of the following things for the purpose of determining an *access dispute* —
- (a) from time to time — give directions and make orders regulating the conduct of, and regulating the conduct of a party or third party in relation to, the *access dispute* including orders directed towards achieving the objective in section 98(1); and
  - (b) make an *interim determination* under section 119; and
  - (c) hear and determine the *arbitration* in the absence of a party who has been given notice of the hearing; and
  - (d) refer matters for determination as a “rules dispute” under the *Pilbara networks rules*.
- (2) Subject to the timeframes expressly set out in this Chapter 7 and section 100(4), the *arbitrator* may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties in the *arbitration* hearing, and may require that the cases be presented within those periods.

- (3) The *arbitrator* may require evidence or argument to be presented in writing, and may decide the matters (if any) on which the *arbitrator* will hear oral evidence or argument, and the matters (if any) on which a party may put forward expert evidence.
- (4) Subject to section 100(5), an *arbitrator* may, upon application by a party or of its own motion, extend a deadline applying under this Chapter 7 to —
  - (a) a party; or
  - (b) a third party; or
  - (c) the *ISO*; or
  - (d) the *arbitrator*; or
  - (e) a *panel expert*,by a reasonable period and on more than one occasion, but only if, and to the extent that a longer period of time is essential for due consideration of all the matters under consideration.
- (5) In deciding whether to extend any deadline under section 100(4), the *arbitrator* must have regard to —
  - (a) section 98; and
  - (b) whether there is a compelling case for extending the deadline; and
  - (c) the benefits and disadvantages of extending the deadline.

## 101. Precedent

- (1) A party may request the *arbitrator* to take into account a precedent set by a previous *final determination*.
- (2) If a party makes a request under section 101(1) —
  - (a) the *arbitrator* must consider the extent to which the precedent is relevant to the current *access dispute*; and
  - (b) to the extent the *arbitrator* considers the precedent relevant, it must take the precedent into account when making the current *arbitrator's determination*; and
  - (c) the *arbitrator* may decide to not follow a relevant precedent, but —
    - (i) if so, must with the *final determination* give *reasons* for not following the precedent; and
    - (ii) before making the decision, must have regard to the desirability of promoting predictability in regulatory outcomes.

## 102. Programming

- (1) As soon as practicable, and in any event within 10 *business days* after receipt of the notice under section 90(6)(a), the parties must confer on a proposed timetable of steps to determine the *access dispute*.
- (2) Within 10 *business days* after receipt of the notice under section 90(6)(a), each party must either —
  - (a) if the parties have agreed a proposed timetable of steps to determine the *access dispute* — ensure that the agreed proposed timetable is lodged with the *arbitrator*; or
  - (b) otherwise — lodge with the *arbitrator* —
    - (i) its proposed timetable of steps to determine the *access dispute*; and
    - (ii) its submissions in support of its proposed timetable.
- (3) The *arbitrator* may convene a hearing for the purposes of this section 102.
- (4) Within 15 *business days* after the issue of the notice under section 90(6)(a), the *arbitrator* must —
  - (a) determine the procedures and timetable of steps for the *arbitration* of the *access dispute*; and
  - (b) notify the parties of the determination.
- (5) The *arbitrator* may from time to time in its discretion amend the procedures and timetable of steps under section 102(4).

## 103. Hearing to be in private

- (1) Unless the parties to an *access dispute* agree otherwise, the *access dispute* must be heard by the *arbitrator* in private.
- (2) The *arbitrator* may give written directions as to the persons who may be present at a dispute hearing that is conducted in private.
- (3) In giving directions under section 103(2), the *arbitrator* must have regard to the wishes of the parties and the need for commercial confidentiality.

## 104. Contempt

A person must not do any act or thing in relation to the *arbitration* of an *access dispute* that would be a contempt of court if the *arbitrator* were a court of record.

## Subchapter 7.6 – Evidence and experts

### 105. Arbitrator may inform itself as it sees fit

- (1) Subject to section 99, the *arbitrator* may gather information about any matter relevant to the *access dispute* in any way the *arbitrator* thinks appropriate, including by seeking (by whatever means the *arbitrator* considers appropriate) written submissions from persons who are not parties.
- (2) If a person (including a party) provides information to the *arbitrator* pursuant to section 105(1) which is *confidential information* of that person, it must at the time of providing that information to the *arbitrator* make a submission to the *arbitrator* —
  - (a) identifying the *confidential information*; and
  - (b) stating whether the person consents to or objects to the information being provided to the other parties; and
  - (c) if the person objects to the information being provided to the other parties — setting out a proposal for dealing with the information so that the *arbitrator* may provide it to the parties, which proposal may include redacting material or the *arbitrator* making an order under section 78(3).
- (3) If a person (including a party) provides information to the *arbitrator* pursuant to section 105(1) which is *confidential information* of another person who is the *information owner* for the *confidential information*, it must at the time of providing that information to the *arbitrator* give a notice to the *information owner* and the *arbitrator* —
  - (a) identifying any material which the person believes is *confidential information* of the *information owner*; and
  - (b) providing current contact details for the *information owner* and the *arbitrator*.
- (4) Nothing in section 105(3) authorises a person to provide an *information owner's confidential information* to a party or to any other person.
- (5) Within 5 *business days* after an *information owner* receives a notice under section 105(3), the *information owner* may make a submission to the *arbitrator* —
  - (a) identifying information which is its *confidential information*; and
  - (b) stating whether it consents to or objects to the *confidential information* being provided to the parties; and
  - (c) if it objects to the *confidential information* being provided to the parties — setting out a proposal for dealing with the material so that the *arbitrator* may provide it to the parties, which proposal may include redacting *confidential information* or the *arbitrator* making a direction under section 78(3).

- (6) To the extent necessary to comply with the rules of natural justice, the *arbitrator* may, having regard to submissions received under section 105(2) or section 105(5), disclose to the parties information it gathers under section 105(1) —
  - (a) in such form as the *arbitrator* determines; and
  - (b) subject to such conditions or directions as the *arbitrator* determines.

## 106. Submissions

The *arbitrator* —

- (1) must have regard to a submission from a party received within the time allowed for the submission (whether under this Code or under a direction by the *arbitrator*); and
- (2) without limiting section 106(1), may have regard to any other submission.

## 107. Arbitrator may obtain information from Authority or ISO

- (1) Without limiting section 106(1), the *arbitrator* may request the *Authority* or the *ISO* (called the “**relevant agency**” in this section 107) to give the *arbitrator* any information in the *relevant agency’s* possession that is relevant to the *access dispute*.
- (2) If the *arbitrator* issues a request under section 107(1) —
  - (a) the *relevant agency* must give the *arbitrator* any information requested, whether or not it is *confidential information* and whether or not it came into the *relevant agency’s* possession for the purposes of the *arbitration*; and
  - (b) if the *relevant agency* gives the *arbitrator confidential information*, it must identify to the *arbitrator* the nature and extent of the confidentiality or commercially sensitivity and, subject to section 107(2)(c), the *arbitrator* is to treat the information accordingly; and
  - (c) to the extent necessary to comply with the rules of natural justice, the *arbitrator* may disclose to the parties any information provided by the *relevant agency* whether or not it is *confidential information*, but may make an order under section 78(3) in respect of such information.

## 108. Power to take evidence on oath or affirmation, issue summons

- (1) The *arbitrator* may take evidence on oath or affirmation and for that purpose may administer an oath or affirmation.
- (2) The *arbitrator* may summon a person to appear before the *arbitrator* to give evidence and to produce such documents (if any) as are referred to in the summons.
- (3) The powers contained in sections 108(1) and 108(2) may only be exercised for the purposes of arbitrating an *access dispute*.



### **109. Failing to attend as a witness, answer questions, etc**

- (1) A person who is served with a summons to appear as a witness before the *arbitrator* must not, without reasonable excuse —
  - (a) fail to attend as required by the summons; or
  - (b) fail to appear and report from day to day unless excused, or released from further attendance, by the *arbitrator*.
- (2) A person appearing as a witness before the *arbitrator* must not, without reasonable excuse —
  - (a) refuse or fail to be sworn or to make an affirmation; or
  - (b) refuse or fail to answer a question that the *arbitrator* directs the person to answer; or
  - (c) refuse or fail to produce a document that a summons served on the person requires the person to produce.
- (3) Subject to section 109(4), the determination as to what is a reasonable excuse for the purposes of this section 109 is solely in the *arbitrator's* discretion.
- (4) It is a reasonable excuse for the purposes of section 109(2) for an individual to refuse or fail to answer a question or produce a document if the *arbitrator* determines that the answer or the production of the document might tend to incriminate the individual or to expose the individual to a penalty.
- (5) Section 109(4) does not limit what is a reasonable excuse for the purposes of section 109(2).

### **110. Intimidation etc.**

A person must not —

- (1) threaten, intimidate or coerce another person; or
- (2) cause or procure damage, loss or disadvantage to another person,  
because that other person —
  - (3) proposes to produce, or has produced, documents to the *arbitrator*; or
  - (4) proposes to appear, or has appeared, as a witness before the *arbitrator*.

### **111. Documents and evidence**

- (1) If documents are produced to an *arbitrator*, the *arbitrator* may take possession of, make copies of, and take extracts from, the documents and may keep the documents for as long as is necessary for the purposes of the *arbitration*.
- (2) Subject to section 78 and 105, all statements, documents or other information supplied to the *arbitrator* by a party must be supplied to the other parties at the same time.

- (3) Subject to section 78 and 105, any expert report or evidentiary document on which the *arbitrator* may rely in making its decision must be communicated to the parties.

## **112. Procedure if arbitrator appoints expert**

- (1) The *arbitrator* may refer any matter to an independent expert under this section 112.
- (2) Before appointing an independent expert, the *arbitrator* must —
- (a) obtain from the proposed independent expert —
    - (i) a current curriculum vitae; and
    - (ii) a written statement —
      - A. confirming their availability to act as an independent expert in relation to the *access dispute*; and
      - B. disclosing any matters likely to give rise to justifiable doubts as to its impartiality or independence to act as an independent expert in relation to the *access dispute*;and
  - (b) notify the parties of —
    - (i) the *arbitrator's* intention to appoint an independent expert; and
    - (ii) the *arbitrator's reasons* for appointing an independent expert; and
    - (iii) the proposed independent expert; and
    - (iv) the amount the independent expert will charge or the manner in which that amount will be determined;and
  - (c) provide the parties with a copy of the curriculum vitae and the statement under section 112(2)(a); and
  - (d) obtain the parties' consent to the maximum amount that may be charged by the independent expert in connection with the reference.
- (3) A party must not unreasonably withhold its consent under section 112(2)(d).
- (4) Once the *arbitrator* has obtained the parties' consent under section 112(2)(d), the *arbitrator* may —
- (a) appoint the independent expert; and
  - (b) accept the independent expert's written or oral report as evidence in the *arbitration*.

- (5) The *arbitrator* must only appoint an independent expert if the *arbitrator* is satisfied that there are no justifiable doubts as to the person's impartiality or independence in relation to the *access dispute*.
- (6) Unless otherwise agreed by the parties, the *arbitrator* may require a party to give the independent expert any relevant information or to produce, or to provide access to, any relevant documents or places for the expert's inspection.  
{Note: Section 78 deals with Confidentiality.}
- (7) The *arbitrator* may, of their own motion or on the application of a party, direct the independent expert to participate in a hearing where the parties have the opportunity to —
  - (a) put questions to the expert; and
  - (b) if the *arbitrator* so permits — present expert witnesses in order to testify on the points at issue.
- (8) An independent expert must comply with a direction under section 112(7).

### **113. Arbitrator may engage the ISO's assistance**

- (1) At any time, a party may request that the *arbitrator*, or the *arbitrator* may on the *arbitrator's* own motion, engage the *ISO* to —
  - (a) present a report to the *arbitrator* in relation to a matter in the *access dispute*; or
  - (b) appear as a witness in the *arbitration*; or
  - (c) otherwise provide information to the *arbitrator* relevant to a matter in the *access dispute*; or
  - (d) undertake modelling or other analyses as reasonably necessary to assist in any of the above,and the *ISO* must accept the engagement.
- (2) Subject to section 113(3), before engaging the *ISO* under section 113(1), the *arbitrator* must —
  - (a) notify the parties and the *ISO* of —
    - (i) the proposed scope of the engagement; and
    - (ii) the *reasons* for proposing the engagement;and
  - (b) specify a time by which a party or the *ISO* may make a written submission in response to the proposal.
- (3) If a party has made a request under section 113(1), the *arbitrator* must issue the notice under section 113(2) within 2 *business days* after receipt of the request.

- (4) Within 15 *business days* after issuing the notice under section 113(2), the *arbitrator* must, after considering any submissions provided on the proposal under section 113(2) —
  - (a) decide whether to engage the *ISO* for any of the purposes under section 113(1)(a) to 113(1)(d), in a manner consistent with the objective in section 98(1) and accept the *ISO*'s written or oral report as evidence in the *arbitration*; and
  - (b) give notice to the *ISO* and the parties of its decision.
- (5) The *arbitrator* may consult with the *ISO* before and after engaging it under section 113(1), including as to the content and timing of the engagement and the manner in which the *ISO* may undertake the engagement.
- (6) The *arbitrator* may from time to time, after consulting with the parties and the *ISO*, revise or withdraw an engagement under section 113(1).
- (7) If the *arbitrator*, of its own motion or at a party's request, so directs, after the *ISO* has delivered its report on any matter referred to it under section 113(1), the *ISO* must attend at a hearing where each party has the opportunity to put questions to it and, if the *arbitrator* so permits, present expert witnesses in order to testify on the points at issue.

## **Subchapter 7.7 – Determinations**

### **114. Factors the arbitrator must take into account**

- (1) When making an *arbitrator's determination*, the *arbitrator* must take the following matters into account, to the extent applicable —
  - (a) the *Pilbara electricity objective*; and
  - (b) the *revenue and pricing principles* in section 8; and
  - (c) the operational and technical requirements necessary for the safe, secure and reliable operation of the *light regulation network*; and
  - (d) the *NSP's* legitimate business interests; and
  - (e) the interests of all *users* of the *light regulation network*; and
  - (f) the value to the *NSP* of any extension or expansion of, or *interconnection* to, the *light regulation network* the cost of which is borne by another person; and
  - (g) any other matters the *arbitrator* considers relevant.
- (2) In determining the reasonableness of the *new facilities investment* to be included in the *capital base*, the *arbitrator* must apply section 54(5).
- (3) In determining an *access dispute* related to the *non-capital costs* component of *total costs* under section 60(1), the *arbitrator* must apply section 60(3).

## 115. Determinations which may be made

- (1) An *interim determination* or a *final determination* may deal with any matter the subject of the *access dispute*.
- (2) Without limiting section 115(1), an *interim determination* or a *final determination* may —
  - (a) require the *NSP* for a *light regulation network* to provide *access* to a *covered service*; and
  - (b) specify the price and other *terms and conditions* on which the *applicant* must be given *access* to the *covered service*; and
  - (c) subject to sections 116(1) and 116(2), require the *NSP* to carry out, either alone or in combination —
    - (i) an expansion of the capacity of a *light regulation network*; or
    - (ii) an *interconnection* with another *network*; or
    - (iii) a *connection* to a facility; or
    - (iv) *work* to remove or reduce a *network limit* in a *light regulation network* in accordance with the *Pilbara networks rules*,  
{Note: If a *final determination* requires *work* to be undertaken to remove or reduce a *network limit*, under section 16(2), the *NSP* may refuse to undertake the *work* until the *user* provides any required *contributions*.}
- (3) An *interim determination* or a *final determination* may require *access* to be provided for a duration different to that sought by the *applicant* but, unless the *applicant* agrees otherwise, must not be made in relation to a different *covered service* or *services* than was sought by the *applicant*.

## 116. Restrictions on determinations

- (1) An *arbitrator's determination* may only require the *NSP* to provide a *covered service* or to carry out any of the activities referred to in section 115(2)(c) if the *arbitrator* is satisfied that the provision of the *covered service* or activity is —
  - (a) technically feasible; and
  - (b) consistent with *good electricity industry practice*; and
  - (c) consistent with the *Pilbara networks rules*.
- (2) Unless the *NSP* agrees, an *arbitrator's determination* must not —

- (a) require the *NSP* to —
  - (i) extend the geographical range of a *light regulation network* except where the extension comprises —
    - A. a *distribution system*; or
    - B. a *transmission system* less than 10km in length; or
  - (ii) carry out any of the activities referred to in section 115(2)(c) unless the *applicant* funds the activity in its entirety;or
- (b) result in the *applicant* becoming the owner (or one of the owners) of any part of the *light regulation network*, or of *augmentations* to the *light regulation network* (including expansions of the capacity and extensions of the geographical reach of the *light regulation network*).
- (3) Unless the *NSP* agrees, a *user* or *applicant* does not acquire any interest in a *light regulation network* by funding an *augmentation* of the *light regulation network* (including an expansion of capacity and extension of the geographical reach of *light regulation network*) pursuant to an *access application* or under an *arbitrator's determination*.
- (4) If a *supplementary service* is dealt with in the *Pilbara networks rules*, the *arbitrator* cannot make an award on the *supplementary service* which is inconsistent with the *Pilbara networks rules*.

## 117. Recommendations on access matters generally

- (1) Without limiting the things which may be done under section 115 to resolve the *access dispute*, an *arbitrator's determination* may recommend (but not direct) a change to how *access* is implemented more generally under this Code and the *Pilbara networks rules*, including a possible Code, rule or procedure change, or a change to system and network modelling capabilities, processes and procedures, if the *arbitrator* considers that the change might better achieve the *Pilbara electricity objective*.
- (2) The *ISO* and an affected *NSP* must consider any such recommendation.
- (3) If the *arbitrator* recommends under section 117(1) that the *ISO* undertake a review of some or all of its system modelling rules, capabilities, processes and procedures, then unless the *ISO* determines that the likely costs of the review clearly outweigh any potential resulting benefits, the *ISO* must —
  - (a) undertake the review; and
  - (b) consider in light of that review whether any change is required.
- (4) An *arbitrator's determination* must not include a recommendation of the sort described in section 117(3) unless the *arbitrator* has first consulted with the *ISO*.
- (5) This section 117 —

- (a) is intended to permit high level recommendations on issues which arise in the course of the *arbitrator's* determination of an *access dispute*, and:
- (b) does not detract from the objective in section 98(1); and
- (c) does not give an *arbitrator* a general inquiry, rule change or reform function.

## 118. General requirements for determinations

{Note: Section 119 sets out specific requirements in respect of an *interim determination*. Section 120 sets out specific requirements in respect of a *final determination*.}

- (1) An *arbitrator's determination* must —
  - (a) be in writing, dated and signed by the *arbitrator*; and
  - (b) identify the parties and the place where the *arbitrator's determination* is made; and
  - (c) specify the time and day on which it takes effect; and
  - (d) include *reasons* for the decision set out in the *arbitrator's determination*; and
  - (e) set out any matters the subject of the *arbitrator's determination* which —
    - (i) were in dispute but were agreed by the parties; and
    - (ii) remained in dispute between the parties;and
  - (f) set out how the *arbitrator* took into account the matters in section 114 in making the *arbitrator's determination*;
- (2) Within 2 *business days* after making an *arbitrator's determination*, the *arbitrator* must communicate the *arbitrator's determination* to the parties and the *Authority*.
- (3) An *arbitrator's determination* takes effect from the time and date specified under section 118(1)(c), and if no time or date is specified, from the time it is received by the *Authority*.

## 119. Interim determinations

{Note: Section 118 sets out general requirements in respect of an *arbitrator's determination*.}

- (1) An *interim determination* must, if it provides for *access* to a *covered service* before a *final determination* is made —
  - (a) specify the *terms and conditions* on which the *applicant* must be given *access* to the *covered service*; and
  - (b) include measures to facilitate the operation of section 120(2); and

- (c) specify when and how the interim access is to terminate if a *final determination* does not result in an *access contract* to continue the access.
- (2) Subject to a *final determination* and any order of the *arbitrator* to the contrary, an *interim determination* is binding on the parties.

## 120. Final determinations

{Note: Section 118 sets out general requirements in respect of an *arbitrator's determination*.}

- (1) Subject to clause 120(3) to 120(5), the *arbitrator* must, as soon as possible make a *final determination*.
- (2) If an *arbitrator* makes an *interim determination* that provides for access to a covered service before the *final determination* is made, the *final determination* must provide for adjustments to reflect any differences between the *interim determination* and the *final determination* in respect of the period prior to —
  - (a) the *applicant* gaining access under the *final determination*; or
  - (b) access under the *interim determination* ceasing under section 119.
- (3) Subject to section 120(4), the *arbitrator* must make the *final determination* within 7 months after the date on which notice was given under section 90(6)(a).
- (4) The *arbitrator* may, of their own motion or on the joint application of the parties, extend the time period under 120(3) by up to 90 *business days* if the *arbitrator* considers that an extension is necessary in order to determine the *access dispute*.
- (5) When calculating a timeframe under section 120(3) or section 120(4), the following time periods must be excluded to the extent applicable —
  - (a) [*arbitral panel*] the time between the issue of a notice under section 92(3) and the issue of notice under section 92(8)(b);
  - (b) [other parties joining or otherwise participating] the time between the issue of a notice under section 88(3) and the issue of a notice under section 88(6)(b);
  - (c) [joinder of *ISO*] the time between the issue of a notice under section 89(2) and the issue of a notice under section 89(6)(b);
  - (d) [impartiality and independence] the time between the issue of a notice under section 94(3) and the last to occur of —
    - (i) the issue of a notice under section 94(7)(b); and
    - (ii) the issue of a notice under 94(10)(b); and
    - (iii) a decision under section 94(11); and
  - (e) [change of *panel expert*] the time between the issue of a notice under section 95(1) and either —



- (i) the *arbitrator* giving notice of their decision under section 95(3) to not terminate the appointment of the *panel expert*; or
    - (ii) the appointment of a new panel expert under section 95(4).
  - (f) [change of *arbitrator*] the time between the issue of a notice under section 96(1) and either —
    - (i) the *Authority* giving notice under section 96(3)(a); or
    - (ii) the appointment of a new *arbitrator* under section 96(3)(b), 96(4) or 96(7);and
  - (g) [mediation] the time between a referral to mediation under section 85(2) and the notice under section 85(4); and
  - (h) [*expedited determination*] the time between an application under section 86(3) and the direction under section 86(6);
  - (i) [independent expert] the time between the issue of a notice under section 112(2)(b) and the appointment of an independent expert under section 112(4);
  - (j) [engaging the *ISO*] the time between the issue of a notice under section 113(2) and a decision under section 113(4).
- (6) Within 20 *business days* after making a *final determination*, the *arbitrator* must give the parties a notice —
- (a) inviting each party to make a submission on the *arbitrator's* proposed publication version of the documents under 120(6)(b) within the timeframe under section 120(7); and
  - (b) attaching the *arbitrator's* proposed publication versions of the *final determination* from which the *arbitrator* has redacted *confidential information* to the extent it considers reasonably necessary to protect the parties' legitimate business interests.
- (7) Within 10 *business days* after receiving notice under section 120(6), a party may make a submission to the *arbitrator* regarding the proposed publication versions of the documents under section 120(6)(b).
- (8) The *arbitrator* must take into account any submissions made under section 120(7), and may make further redactions or remove redactions in respect of the proposed publication version of the documents under 120(6)(b).
- (9) Within 20 *business days* after giving notice under section 120(6), the *arbitrator* must give to the *Authority* a final publication version of the *final determination* for *publication* under section 77(1)(a)(v).

## 121. Determination is binding

Subject to section 122, each of an *interim determination* and a *final determination* is binding upon the parties and each party must comply with any requirement in the *arbitrator's determination*.

## 122. Applicant's election after determination

(1) Within 30 *business days* after receiving either an *interim determination* or a *final determination* which provides for *access* to a *covered service*, the *applicant* must give notice to the other parties and the *Authority* setting out its election to either —

(a) enter into; or

(b) not enter into,

an *access contract* as specified by the *arbitrator's determination*.

(2) If an *applicant* does not give a notice of its election under section 122(1), it is deemed to have elected under section 122(1)(b) not to enter into an *access contract*.

(3) If the *applicant* elects under section 122(1)(a) to enter into an *access contract*, the *NSP* and the *applicant* must enter into an *access contract* in accordance with the *arbitrator's determination*.

{Note: Section 126 deals with enforcement under this Chapter 7.}

(4) If the *applicant* elects not to enter into an *access contract* or is deemed to have elected not to enter into an *access contract*, the *applicant's access application* remains in effect (subject to any *user access guide* provisions about dormant *access applications*).

{Note section 42(2) deals with provisions that may be included in a *user access guide* with regard to dormant *access applications*.}

(5) If the *applicant* which had *access* under the terms of an *interim determination* elects, or is deemed to have elected, under section 122(1)(b) not to enter into an *access contract* under a *final determination*, then —

(a) that *access* ends at the time and in the manner, and on the terms, specified in the *interim determination*; and

(b) the parties must comply with the *final determination* to the extent it provides for adjustments under section 120(2).

## 123. Correction of errors

(1) Within 10 *business days* after the *arbitrator* provides an *arbitrator's determination* to the parties, it may, on its own initiative or at the request of a party, give notice to the parties and to the *Authority* —

(a) proposing to correct the *arbitrator's determination* or any accompanying instrument (including *reasons*) to remedy —

- (i) a clerical mistake; or
    - (ii) an accidental slip or omission or an error arising therefrom; or
    - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
    - (iv) a defect in form;
  - and
  - (b) inviting the parties and the *Authority* to make a submission on the proposal within the timeframe under section 123(2).
- (2) Within 5 *business days* after receipt of a notice under section 123(1), the parties and the *Authority* may make a submission to the *arbitrator* on the *arbitrator's* proposal to correct the *arbitrator's determination* or any accompanying instrument.
- (3) Within 10 *business days* after giving notice under section 123(1), the *arbitrator* may make a correction under section 123(1), having regard to each submission received under section 123(2).
- (4) In the case of *publishing* a correction to an *arbitrator's determination* —
- (a) sections 120(6)(b), 120(7), 120(8) and 77(1)(a)(v) apply with appropriate modifications; and
  - (b) the *arbitrator* may reduce the timeframes set out under those sections.

## **Subchapter 7.8 – Costs and appeal**

### **124. Costs**

- (1) This section 124 applies even if —
- (a) a *complainant* withdraws a *dispute notice* under section 84; or
  - (b) an *arbitration* has terminated by way of *final determination* or otherwise.
- (2) Subject to section 124(3), the parties must —
- (a) bear their own costs of *arbitration*; and
  - (b) each pay an equal share of the following costs of the *arbitration* —
    - (i) the fees and expenses of the *arbitrator* and *arbitral panel*; and
    - (ii) the costs of room hire; and
    - (iii) the cost of any additional input agreed by the parties to be necessary to the conduct of the *arbitration*; and

(iv) the cost of an independent expert appointed under section 112.

(3) At the time of, or within 30 *business days* after —

- (a) the *arbitrator* terminates an *arbitration* under section 83(2); or
- (b) a *complainant* withdraws a *dispute notice* under section 84; or
- (c) the *arbitrator* makes a *final determination*;

the *arbitrator* may direct a party to pay part or all of another party's costs of the *arbitration* or to pay part or all of the costs referred to in section 124(2)(b), taking into account —

(d) if applicable —

- (i) the *reasons* for terminating the *arbitration* under section 83(2);
- (ii) the circumstances of the *complainant* withdrawing a *dispute notice* under section 84;

and

(e) whether a party has conducted itself in the *arbitration* in a way that unnecessarily disadvantaged another party by conduct such as —

- (i) failing to comply with an order or direction of the *arbitrator* without reasonable excuse; or
- (ii) failing to comply with the Act, the *Pilbara networks rules* or this Code; or
- (iii) requesting an extension of time without a reasonable basis; or
- (iv) causing an adjournment; or
- (v) attempting to deceive another party or the *arbitrator*;

and

(f) whether a party has been responsible for unreasonably prolonging the time taken to progress or complete the *arbitration*; and

(g) in the case of a party other than the *NSP* or *applicant* – the role of the party in the *access dispute* and the *arbitration*; and

(h) whether the *applicant* elected, or was deemed to have elected, under section 122(1)(b) not to enter into an *access contract*; and

(i) any agreement between any or all of the parties in respect of costs; and

(j) any other matter the *arbitrator* considers relevant.

(4) Costs payable under this section —

- (a) are a debt due by the party to the *arbitrator*, or the person to whom the *arbitrator* has ordered that they be paid; and
- (b) may be recovered by that person in a court of competent jurisdiction.

## 125. Appeal to Court

- (1) A party may appeal a *final determination* to the *Supreme Court*, on a question of law.
- (2) An appeal must be instituted —
  - (a) not later than one month after the day on which the *final determination* is *published* under section 77(1) or within such further period as the *Supreme Court* (whether before or after the end of that period) allows; and
  - (b) in accordance with the applicable rules of the *Supreme Court* (if any).
- (3) The parties to an appeal under this section are the parties to the *arbitration* in respect of which the appeal is instituted.
- (4) Within 2 *business days* after instituting an appeal, the party appealing the *final determination* must give notice to the *Authority* of the appeal.
- (5) On the determination of an appeal under this section the *Supreme Court* may by order —
  - (a) confirm the *final determination*; or
  - (b) vary the *final determination*; or
  - (c) remit the *final determination*, together with the *Supreme Court's* opinion on the question of law which was the subject of the appeal, to the *arbitrator* for reconsideration; or
  - (d) set aside the *final determination* in whole or in part.
- (6) The *Supreme Court* must not exercise its power to set aside a *final determination*, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the *arbitrator* for reconsideration.
- (7) Where the *final determination* is remitted under section 125(5)(c), the *arbitrator* must, unless the order otherwise directs, make the remitted *final determination* within 2 months after the date of the order.
- (8) Where the *final determination* of an *arbitrator* is varied on an appeal under this section, the *final determination* as varied has effect (except for the purposes of this section) as if it were a *final determination* of the *arbitrator*.
- (9) Within 5 *business days* after the *Supreme Court* makes an order under section 125(5), the *arbitrator* must give notice of the order to the *Authority*.

## Subchapter 7.9 – Enforcement of this Chapter 7

### 126. Supreme Court may make orders

- (1) For the purposes of this section, a person is a “**person in default**” in relation to proceedings before an *arbitrator* if the person breaches a provision of this Chapter 7.
- (2) Unless otherwise agreed by the parties, the *Supreme Court* may, on the application of a party or the *arbitrator*, order a *person in default* to do any or all of the following —
  - (a) retrieve, destroy or otherwise deal with information disclosed in breach of section 78(2) or 78(3); and
  - (b) attend the *Supreme Court* to be examined as a witness; and
  - (c) produce a relevant document to the *Supreme Court*; and
  - (d) comply with a provision of this Chapter 7.
- (3) A party may only make an application to the *Supreme Court* under subsection 126(2) with the permission of the *arbitrator*.
- (4) The *Supreme Court* must not make an order under subsection 126(2) in relation to a person who is not a party unless —
  - (a) before the order is made, the person is given an opportunity to make representations to the *Supreme Court*; and
  - (b) the *Supreme Court* is satisfied that it is reasonable in all the circumstances to make the order.
- (5) A person must not be compelled under an order made under subsection 126(2) to answer any question or produce any document which the person could not be compelled to answer or produce in a proceeding before the *Supreme Court*.
- (6) If the *Supreme Court* makes an order under subsection 126(2), it may in addition make orders for the transmission to the *arbitrator* of any of the following —
  - (a) a record of any evidence given under the order; and
  - (b) any document produced under the order or a copy of any such document; and
  - (c) any order made by the *Supreme Court*.
- (7) Any evidence, document or thing transmitted under subsection 126(6) is taken to have been given, produced or done (as the case requires) in the course of the *access dispute*.
- (8) If the *Authority* or an *arbitrator* fails to meet an obligation under a timeframe specified under this Chapter 7 —

- (a) they are not a *person in default* as defined in section 126(1) by reason only of the failure; and
- (b) the failure does not affect the validity of the *arbitration* or the *arbitrator's determination*.

## Chapter 8 – Ringfencing

### Subchapter 8.1 – General

#### 127. Ringfencing policy objective

- (1) The primary objective of Chapter 8 is to ensure that vertical integration of an *NSP* with an *other business* does not lead to a reduction of competition in a *related market* by requiring rules which —
  - (a) prevent the use of *commercially sensitive information* outside of the *network business* or for a purpose other than the purpose for which the information was acquired or developed; and
  - (b) allocate costs between the *network business* and any *associate* or *other business* of the *NSP* in a manner which avoids the charges being paid by *users* of the *network business* incorporating costs or charges associated with an *associate* or *other business* of the *NSP* (other than charges properly and transparently levied by the *associate* or *other business* for *services* or other things provided to, or at the direction of, the *network business* or the *ISO* for the benefit of *users*, such as charges for the supply of essential system services); and
  - (c) prevent discriminatory treatment:
    - (i) in favour of an *associate* or *other business* of the *NSP* as compared to a competitor in a *related market*; or
    - (ii) against such a competitor.
- (2) A secondary objective of Chapter 8 is to achieve the primary objective by allowing for —
  - (a) flexibility, recognising the fact that the structure and nature of *NSP*'s businesses differ substantially; and
  - (b) a balancing of cost and disruption against the primary objective of this Chapter 8; and
  - (c) flexibility to deal with changing circumstances over time.
- (3) The primary objective in section 127(1) applies in respect of a *network business* unless the Minister makes a determination under section 138(1).

#### 128. General obligation in relation to ringfencing policy objective

- (1) The *NSP* of a *light regulation network* must ensure that it does not knowingly engage in conduct that is contrary to the primary objective in section 127(1).
- (2) Section 128(1) applies with effect from —



- (a) in respect of the *Alinta Port Hedland network* and the *Horizon Power coastal network* — the later of 1 July 2021 and the *code commencement date*; and
  - (b) in respect of any other *light regulation network* — the date on which a *form of regulation decision* that the relevant *network* is to be *lightly regulated* takes effect.
- (3) If a determination has been issued by the Minister under section 138(1) in respect of a *network business*, then —
  - (a) section 128(1) does not apply; and
  - (b) the *NSP* of the *light regulation network* must ensure that it does not knowingly engage in conduct that is contrary to any specific objectives in that determination.

## 129. Application of this chapter to vertically-integrated businesses

If the *NSP* for a *light regulation network* also carries on an *other business*, a reference in this Chapter 8 to an “**associate**” of the *NSP* or of its *network business* includes any *other business* of the *NSP*.

## Subchapter 8.2 – Associate arrangements

### 130. Associate arrangements must be in writing

An *NSP* must record in writing the full *terms and conditions* of any *associate arrangement*.

### 131. NSP’s internal associate arrangements must be in writing

If the *network business* of an *NSP* provides one or more *covered services* to an *other business* of the *NSP* (**deemed associate arrangement**) then —

- (1) the *network business* and the *other business* must record in writing the full *terms and conditions* of the *deemed associate arrangement* by which the *network business* is to provide the *covered services* to the *other business*, to the same standard as they would if they were arms-length separate entities; and
- (2) unless the contrary intention appears, a reference in this Code to an *access contract* includes a *deemed associate arrangement*; and
- (3) unless the contrary intention appears, a reference in this Code to a *user* includes the *other business* under a *deemed associate arrangement*.

### 132. Requirements for associate arrangements

The parties to an *associate arrangement* must ensure that —

- (1) it is consistent with the objectives under this Chapter 8; and
- (2) it is not contrary to the *Pilbara electricity objective*; and

- (3) it is not entered into for the purpose, and does not have the effect or likely effect, of substantially lessening competition in a market for *access* by any person to *services*; and
- (4) in respect of any goods or services that the *network business* provides to, or receives from any *associate* of the *network business* — those goods or services are provided or received on terms that would be reasonable if the parties were dealing at arm's length; and
- (5) in respect of any goods or services that the *network business* provides to, or receives from, a third party operating in competition with an *associate* of the *network business* — those goods or services are provided or received on a basis that does not competitively or financially disadvantage the third party, relative to the *associate*.

### **Subchapter 8.3 – Ringfencing rules**

#### **133. NSP must adopt ringfencing rules**

- (1) Except to the extent that a determination issued by the Minister under section 138(1) provides otherwise, an *NSP* must, in relation to a *network business* —
  - (a) by the *ringfencing publication date* — *publish ringfencing rules* for the *network business*; and
  - (b) from the *ringfencing commencement date* — comply with the *published ringfencing rules* for the *network business*.
- (2) *Ringfencing rules* may be expressed to take effect immediately or at a specified time, but must commence within 6 months of the *ringfencing publication date*.
- (3) The *arbitrator* has *limited discretion* in relation to an *access dispute* related to *ringfencing rules*.
- (4) The *published ringfencing rules* of the *NSP* will continue to apply until any revised *ringfencing rules* are approved under section 135.

#### **134. Content of ringfencing rules**

- (1) *Ringfencing rules* must contain measures, which may include processes and procedures, designed to ensure the following, in each case to the extent the relevant subsection below is applicable —
  - (a) in respect of section 127(1)(a) of the primary objective — that *commercially sensitive information* and any information received by the *NSP* in respect of a function under the *Pilbara network rules* is kept confidential and is only used within the *network business* and for the purpose for which it was acquired or developed; and
  - (b) in respect of section 127(1)(b) of the primary objective — that the *NSP* allocates or attributes costs relating to its *network business* in a way that, from the *ringfencing commencement date* —

- (i) provides a true and fair view of —
    - A. the *network business* as distinct from any *other business* carried on by the *NSP* or any *associate* of the *NSP*; and
    - B. income derived from, and expenditure relating to, the *network business*; and
    - C. the *NSP*'s assets and liabilities so far as they relate to the *network business*; and
    - D. the percentage of any corporate overhead costs applied to the *network business* for services that provide the *network business* with necessary resources;and
  - (ii) enables all revenue received by the *NSP* from the provision of goods or services to an *associate* of the *network business* to be separately identified; and
  - (iii) enables all expenditure by the *NSP* on goods or services provided by an *associate* of the *network business* to be separately identified;
- and
- (c) in respect of section 127(1)(c) of the primary objective — measures to ameliorate the potential for discriminatory treatment in favour of an *associate* or *other business* of the *NSP* as compared to competitors in a *related market*, or against such competitors, whether the treatment occurs through operational decision making, contracting or otherwise; and
  - (d) in respect of any specific objectives included in a determination under section 138(1) — measures to effectively address those objectives, including any measures specified by the Minister in the determination; and
  - (e) that the *NSP* establishes, *maintains* and keeps records that demonstrate —
    - (i) how the *NSP* meets its obligations under this section 134; and
    - (ii) which provide sufficient information to enable an assessment as to whether the *NSP* and its *network business* are complying, and have complied, with this section 134, and to detect any non-compliances.
- (2) *Ringfencing rules* which apply to a *network business* may, and must to the extent necessary to achieve the objectives under this Chapter 8, require an *NSP* to procure an *associate* of the *network business* to comply with any applicable *ringfencing rules*.

### 135. Authority to approve ringfencing rules

- (1) An *NSP* must apply to the *Authority* for a determination whether the *NSP*'s proposed *ringfencing rules* adequately address the requirements of this Chapter 8.
- (2) Following an application by an *NSP* under section 135(1), the *Authority* must complete the process in this section 135 within six months after receipt of the proposed *ringfencing rules*.
- (3) Before making a determination under section 135(4) the *Authority* may (but is not required to) consult the public in accordance with the *standard consultation process*.
- (4) The *Authority* must determine that the proposed *ringfencing rules* either —
  - (a) effectively address the requirements of this Chapter 8 — in which case the *Authority* must *publish* a determination to that effect (“**ringfencing approval**”); or
  - (b) do not effectively address the requirements of this Chapter 8, in which case the *Authority* —
    - (i) must notify the *NSP* of the determination; and
    - (ii) with the notice may, but is not required to, suggest amendments to the *ringfencing rules* that would meet the relevant requirements.
- (5) Any amendments to *ringfencing rules* suggested by the *Authority* under section 135(4)(b)(ii) must be consistent with the applicable objectives under this Chapter 8 and —
  - (a) must have regard to —
    - (i) the potential harms the *ringfencing rules* are intended to address; and
    - (ii) the direct and indirect costs that are likely to be incurred by the *NSP* in imposing a particular requirement;and
  - (b) must not result in the cost of compliance with the relevant requirement for the *NSP* (and its *associates*) outweighing the public benefit resulting from compliance. If the relevant requirement would, in the *Authority*'s opinion, lead to increased competition in a market, the *Authority* must, in carrying out the assessment, disregard costs associated with losses arising from competition in upstream or downstream markets.
- (6) If the *Authority* makes a determination under section 135(4)(b), then —
  - (a) the *NSP* must, within 30 *business days* of the notice under section 135(4)(b)(i), amend the *ringfencing rules* and resubmit them to the *Authority* and the *Authority* must assess the resubmitted *ringfencing*

*rules* in accordance with this section 135. If the *Authority* chooses to consult in the public in relation to the resubmitted *ringfencing rules* the *Authority* may do so in accordance with the *expedited consultation process*; and

- (b) if following an assessment of the resubmitted *ringfencing rules*, the *Authority* determines that the amended *ringfencing rules* do not effectively address the requirements of this Chapter 8, then the *Authority* must —

- (i) *publish* a determination to that effect; and
- (ii) draft *ringfencing rules* for the purpose of ensuring that the requirements of this Chapter 8 are adequately addressed, which rules must be consistent with the requirements of section 135(5), and provide those *ringfencing rules* to the *NSP* at the same time as the *Authority's* determination under section 135(6)(b)(i); and
- (iii) *publish* a determination (“**ringfencing approval**”) approving the *ringfencing rules* drafted and provided under section 135(6)(b)(ii);

and

- (c) if the *NSP* does not submit amended *ringfencing rules* within the time required by section 135(6)(a) — the *Authority* must *publish* a determination that the *NSP's* proposed *ringfencing rules* do not effectively address the requirements of this Chapter 8.
- (7) The *Authority* must not make a determination which would require an *NSP* or other person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.
  - (8) Subject to section 135(7), the *Authority* has *limited discretion* under this section 135.  
{Note: See section 10 regarding *limited discretion*.}
  - (9) The effect of a *ringfencing approval* by the *Authority* under this section 135 is to bind the *arbitrator* in respect of an *access dispute* regarding the effectiveness of the *ringfencing rules* to address the requirements of this Chapter 8.

## 136. [Not used]

## 137. Review of ringfencing rules

An *NSP* must review its *ringfencing rules* —

- (1) not less than 15 months before the start of a *new pricing period* for the *light regulation network*; and
- (2) within three months after the occurrence of an event that is likely to have a material effect on the operation of the *ringfencing rules*,

and if any changes are required to address the requirements of this Chapter 8, submit revised *ringfencing rules* to the *Authority* for a determination under section 135.

{Note: Examples of events that are likely to have a material effect on the operation of the *ringfencing rules* include a corporate restructure, merger or acquisition.}

## **Subchapter 8.4 – Network specific objectives and deferral**

### **138. Determination of specific objectives**

- (1) An *NSP* may, at any time, apply to the Minister to determine specific ringfencing policy objectives in respect of a *network business* which may include —
  - (a) the primary objective in section 127(1), or part of it; or
  - (b) a modified ringfencing policy objective designed to achieve a similar effect; or
  - (c) a determination that no ringfencing policy objectives are applicable to the *network business*,

and the Minister may determine and *publish* specific ringfencing policy objectives in respect of that *network business*.

- (2) The Minister must make a determination under section 138(1) if having regard to —
  - (a) the potential harms this Chapter 8 is intended to address; and
  - (b) the direct and indirect costs that are likely to be incurred by the *NSP* in requiring compliance with this Chapter 8 in accordance with primary objective in section 127(1);

the *NSP* demonstrates to the satisfaction of the Minister that the cost of compliance with the primary objective in section 127(1) outweighs the public benefit resulting from compliance. If compliance with this Chapter 8, including in accordance with primary objective in section 127(1), would, in the Minister's opinion, lead to increased competition in a market, the Minister must, in carrying out the assessment, disregard costs associated with losses arising from competition in upstream or downstream markets.

- (3) The Minister's determination under section 138(1) —
  - (a) may apply for a specified period or indefinitely; and
  - (b) may be unconditional or impose conditions (including ringfencing measures) upon the *NSP* as the Minister considers fit in which case the *NSP* must comply with the conditions; and
  - (c) may be varied or replaced by the Minister after reasonable notice to the *NSP*.

- (4) A person may apply to the Minister for a determination made under section 138(1) to be varied or replaced and the Minister must consider the application and within a reasonable time advise the person and the *NSP* of the Minister's determination in relation to the application.
- (5) Before issuing, varying or replacing a determination under section 138(1), the Minister may (but is not required to) consult with the public in accordance with the *standard consultation process* and must *publish* notice of the determination or its variation or replacement.

### 139. Deferral of ringfencing publication date

- (1) If an *NSP* applies for a determination under section 138(1) either —
  - (a) before, or within one month after, a *form of regulation decision* that the relevant *network* is to be *lightly regulated*; or
  - (b) in respect of the *Alinta Port Hedland network* or the *Horizon Power coastal network*, before, or within one month after, the *code commencement date*,the *ringfencing publication date* (to the extent applicable) is deferred until the date which is 6 months after the date of the Minister's decision on the determination application (where such date is later than the original *ringfencing publication date*).
- (2) An *NSP* must apply for a determination by the *Authority* under section 135(1) either —
  - (a) before, or within one month after, a *form of regulation decision* that the relevant *network* is to be *lightly regulated*; or
  - (b) in respect of the *Alinta Port Hedland network* or the *Horizon Power coastal network*, before, or within one month after, the *code commencement date*; or
  - (c) if section 139(1) applies, before, or within one month after, the date of a determination by the Minister under section 138(1).
- (3) Provided an *NSP* complies with section 139(2), the *ringfencing publication date* is deferred until the date which is 10 *business days* after a *ringfencing approval* (where such date is later than the original *ringfencing publication date*).

### 140. Interim ringfencing

- (1) Until the *ringfencing commencement date* in respect of a *network business*, the *NSP* of the *network business* must ensure, as far as is practicable in the circumstances, that —
  - (a) basic procedures are in place within the *network business*; and
  - (b) proportionate training of relevant personnel is undertaken,designed to address the primary objective of this Chapter 8.



- (2) An *NSP* is not required to comply with section 140(1) in respect of the primary objective if the *NSP* has applied for a determination under section 138(1), in the timeframe specified in section 139(1)(a) or 139(1)(b) (as applicable), and the Minister has not yet made a decision on that determination application.
- (3) The procedures implemented under section 140(1) cannot be subject to a determination by the *Authority* under section 135.
- (4) The *arbitrator* has *limited discretion* in relation to an *access dispute* relating to the procedures implemented under section 140(1) and must take into account the fact that the procedures are a temporary measure until *ringfencing rules* are in effect.

## **Subchapter 8.5 – Compliance**

### **141. Compliance monitoring and compliance reporting**

- (1) An *NSP* must —
  - (a) establish, *maintain* and implement effective procedures to ensure and monitor its compliance with the *ringfencing rules*; and
  - (b) report to the *Authority* details of any breach of section 133(1)(b) within 5 *business days* of determining that the breach has occurred.
- (2) A person who considers that an *NSP* has breached section 133(1)(b) may provide details of the breach to the *Authority*.
- (3) The *Authority* may *publish* the nature of any non-compliance with an *NSP*'s *ringfencing rules*.
- (4) If the *Authority* proposes to disclose *confidential information* under section 141(3) —
  - (a) it must first comply with section 165 {Pre-disclosure process}; but
  - (b) for the purposes of the balancing in section 165(2), the *Authority* may disregard any detriment to the *NSP* by way of reputational harm or embarrassment.



## Chapter 9 – Miscellaneous

### Subchapter 9.1 – Horizon Power coastal network and Alinta Port Hedland network transition

#### 142. Obligation to negotiate access during transition

If an *applicant* requests an *access contract* in respect of the *Horizon Power coastal network* or the *Alinta Port Hedland network* before the date on which information must be first *published* in respect of those *networks* under section 38, then —

- (1) the *NSP* for the relevant *network* must provide a draft information pack to the *applicant* which must include any information issued for public consultation under section 37; and
- (2) the *NSP* for the relevant *network* and the *applicant* must negotiate the terms of access to the *light regulation network* in good faith.

#### 143. Transition pricing

- (1) If an *access application* is received in respect of the *Horizon Power coastal network* or the *Alinta Port Hedland network* before the *Authority* has determined the *rate of return* to be applied to those *networks* under section 57, then the relevant *NSP* must negotiate the *charges* to be paid for access to the *light regulation network* having regard to section 45.
- (2) Following the *rate of return* being determined by the *Authority* under section 57, the *NSP* for each of the *Horizon Power coastal network* and the *Alinta Port Hedland network* must calculate the prices to be set out in the *price list* in accordance with Chapter 5 of this Code and *publish* its *services and pricing policy* within the time permitted by section 38.
- (3) The prices in the *price list* must be effective from the *code commencement date* and apply to each *access contract* entered into on or after the *code commencement date* with effect from that date unless an *access contract* contains a clause which explicitly excludes the operation of this clause 143(3).

#### 144. No access disputes during transition

Despite any other provision of this Code —

- (1) an *access dispute* cannot be commenced in respect of access to either the *Horizon Power coastal network* or the *Alinta Port Hedland network* until 7 January 2022; and
- (2) the information contained in a draft information pack provided under section 142(1) cannot be the subject of any *access dispute* commenced after that date.

## 145. Contracts preserved

- (1) Subject to section 14(4), any *contracts for services* to either the *Horizon Power coastal network* or the *Alinta Port Hedland network* as at the *code commencement date*, will continue in accordance with their terms, including for the duration of any option periods provided for in any such contracts (subject to any variations the parties may agree from time to time).

## Subchapter 9.2– Authority Cost Recovery

## 146. Standing charges, liability for and amount of

- (1) If, during any period in a *quarter*, a *light regulation network* is specified in Sub-appendix 2.1, a charge is payable in connection with the performance by the *Authority* of its functions under section 120ZG of the *Act*, regulation 34 of the *regulations* and under this Code.
- (2) A charge payable under section 146(1) for a *light regulation network* for a *quarter* must be paid by any person who is an *NSP* in relation to the *light regulation network* during the *quarter*.
- (3) The amount of the charge payable under section 146(1) by a person for a *light regulation network* for a *quarter* is determined in accordance with this formula —

$$S = C \times P \times \frac{D_p}{D_q}$$

where —

S is the amount of the *standing charge*;

C is the amount of the *core function costs* for the *quarter*;

P is the percentage specified in Sub-appendix 2.1 for the *light regulation network*;

D<sub>P</sub> is the number of days in the *quarter* during which —

(i) the *network* specified in Sub-appendix 2.1 is a *light regulation network*; and

(ii) the person is the *NSP* in relation to the *network*;

D<sub>Q</sub> is the number of days in the *quarter*.

## 147. Standing charges, assessment and payment of

- (1) As soon as is practicable after the end of each *quarter* the *Authority* must —
  - (a) assess the *standing charges* payable by a person for the *quarter*; and

- (b) give a notice of assessment to the person specifying —
  - (i) the amount of each of those charges and the total amount payable; and
  - (ii) the amount of the *core function costs* used in calculating those charges; and
  - (iii) the day on which the notice of assessment was issued.
- (2) A person given a notice of assessment must pay the assessment amount to the *Authority* within 30 days after the day specified in it under section 147(1)(b)(iii).
- (3) If the person does not pay the assessment amount in full within the allowed period, interest on the outstanding amount is payable to the *Authority* at the *prescribed rate* calculated daily.
- (4) If a person given a notice of assessment so requests, the *Authority* must give the person a written explanation of how the *core function costs* specified in the notice were calculated and reasonable details of the core functions they relate to.

#### 148. Specific charges, liability for and amount of

- (1) If the *Authority* performs a function listed in Sub-appendix 2.2, it may give a person who, under Sub-appendix 2.2, is liable to pay a *specific charge* for the *Authority's* performance of the function a notice requiring the person to pay a charge —
  - (a) for the *Authority's* performance of the function; and
  - (b) for anything the *Authority* did that was necessary or convenient to be done for or in connection with performing the function.
- (2) If under Sub-appendix 2.2 more than one *NSP* is liable to pay the *specific charge* for the performance by the *Authority* of a function listed in Sub-appendix 2.2, the charge is to be apportioned between them as follows —
  - (a) if each of the *NSPs* who are liable is the *NSP* for a *light regulation network*, then —
    - (i) if those *light regulation networks* are only some of the *light regulation networks* listed in Sub-appendix 2.1 — each *NSP* is liable for the proportion of the *specific charge* that is the same proportion as the percentage, specified in Sub-appendix 2.1, for the *NSPs network* bears to the sum of the percentages, specified in Sub-appendix 2.1, for all of the *light regulation networks* of which the *NSPs* are liable;
    - (ii) otherwise — each *NSP* is liable for the percentage, specified in Sub-appendix 2.1 for the *light regulation network*, of the *specific charge*;
  - (b) otherwise — each *NSP* is liable for an equal share of the *specific charge*.

- (3) A notice given under section 148(1) must specify —
  - (a) the amount of the *specific charge*; and
  - (b) the day on which the notice was issued.
- (4) The amount of a *specific charge* is to be an amount equivalent to costs described in section 148(5) that —
  - (a) have been incurred by the *Authority*; and
  - (b) are directly attributable to the performance of the relevant function or to the doing of anything that was necessary or convenient to be done for or in connection with the performance of the relevant function.
- (5) For the purposes of section 148(4), the costs are —
  - (a) costs of consultants or contractors engaged by the *Authority* including accommodation costs, travel costs and equipment costs; and
  - (b) photocopying, mailing, publishing and advertising costs; and
  - (c) costs associated with public consultation conducted under this Code.
- (6) The *Authority* must provide the person liable to pay a *specific charge* with an itemised account of the costs covered by the charge if the person so requests.
- (7) A person given a notice under section 148(1) must pay the *specific charge* to the *Authority* within 30 days after the day specified in it under section 148(3)(b).
- (8) If the person does not pay the *specific charge* in full within the allowed period, interest on the outstanding amount is payable to the *Authority* at the *prescribed rate* calculated daily.

#### **149. Authority document, fee for**

- (1) The *Authority* may require a person who requests a document prepared by or on behalf of the *Authority* in the performance of a function under this Code to pay a fee for the document.
- (2) The fee is to be calculated by the *Authority* according to the costs incurred in providing the document but is not in any case to exceed \$100.
- (3) The *Authority* cannot require the *Coordinator* or the Director of Energy Safety (referred to in the *Energy Coordination Act 1994*) to pay a fee under section 149(1).

#### **150. Unpaid amounts, recovery of**

- (1) The *Authority* may recover any unpaid assessment amount or *specific charge*, together with any interest payable under this Subchapter 9.2 in a court of competent jurisdiction as a debt due to the *Authority*.
- (2) In proceedings under section 150(1) a certificate —

- (a) purporting to be signed by the chairperson; and
- (b) specifying an amount as being an assessment amount or a *specific charge*; and
- (c) specifying an amount as being interest payable under section 147(3) or 148(8); and
- (d) specifying a person as being liable to pay the specified amounts; and
- (e) stating that the specified amounts are unpaid,

is, without proof of the appointment of the chairperson or of the authenticity of the signature, sufficient evidence of the matters specified or stated.

#### **151. Authority's annual report, matters to be included in**

The annual report submitted by the *Authority* under the *Financial Management Act 2006* section 61 must include details of the following matters in respect of the financial year to which the annual report relates —

- (1) the total amount of *standing charges* for each person; and
- (2) the total amount of *specific charges* for each person.

#### **152. No double recovery**

If the *Authority* performs a function under Part 8A of the Act, this Code or the *Pilbara networks rules*, the *Authority* must ensure that there is no double recovery of costs as a result of either —

- (1) the recovery of a *standing charge* or a *specific charge* under this Code; or
- (2) the recovery of costs under the *Pilbara networks rules*.

### **Subchapter 9.3 – ISO Cost Recovery**

#### **153. ISO cost recovery**

If the *ISO* performs a function under this Code, the costs of performing that function are to be recovered by way of the “ISO fees” (as defined in the *Pilbara networks rules*).

### **Subchapter 9.4 – Publication**

#### **154. Meaning of “publish”**

- (1) Where an *NSP* is required by this Code to *publish* a thing, that thing must remain *published* until the later of the date which is 7 years after —
  - (a) the date this Code is repealed; and

- (b) the date the final *access contract* entered into by the *NSP* under this Code expires or is terminated.

#### **155. Authority's subscriber database**

- (1) Any person may make a request to the *Authority* to receive all notices *published* by the *Authority* under this Code by providing the *Authority* with their —
  - (a) name; and
  - (b) email address.
- (2) Within one month of the *code commencement date*, the *Authority* must *publish* a notice on its website inviting requests under section 155(1).
- (3) The *Authority* must establish and maintain a database containing the name and email address of each person who has requested to receive all notices *published* by the *Authority* under this Code under section 155(1) by —
  - (a) as soon as practicable after receiving a request under section 155(1) — adding the person's name and email address to the database; and
  - (b) as soon as practicable after receiving a written request from a person to remove their name and email address from the database — removing the person's name and email address from the database; and
  - (c) removing a person's name and email address from the database if the *Authority* reasonably believes that emails sent to the email address are not successfully delivered.

### **Subchapter 9.5 – Confidential information**

#### **156. Confidentiality objective**

- (1) The primary objective of this Subchapter 9.5 is —
  - (a) to preserve the confidentiality of *confidential information* to the greatest extent practicable consistent with —
    - (i) a person's performance of their functions under the *Pilbara regime*; and
    - (ii) the *Pilbara electricity objective* and any applicable objective stated in this Code;
  - and
  - (b) if a *recipient* receives *confidential information* in connection with the *Pilbara regime*, to ensure that a *recipient* uses it only for —
    - (i) the *recipient's* performance of their functions under the *Pilbara regime*; and

- (ii) in accordance with the *Pilbara electricity objective* and any applicable objective stated in this Code.
- (2) A secondary objective of this Subchapter 9.5 is to achieve the primary objective as quickly, simply, and with as little compliance burden and cost, as practicable.

## 157. Definitions

In this Subchapter 9.5 —

- (a) **“confidential information”** means, subject to section 158, information that —
  - (i) by its nature is confidential; or
  - (ii) is specified to be confidential by the *discloser*;and
- (b) **“discloser”** means a person who discloses *confidential information* to a *recipient* under the *Pilbara regime*, and includes an *information owner*;
- (c) **“information owner”**, for an element of *confidential information*, means the person whose confidence would be breached by the element's disclosure; and
  - {Note: This will often be the person who first discloses confidential information under the Pilbara regime, or the person who owns the *confidential information*.}
- (d) **“Pilbara regime”** means Parts 8A and 9B of the Act, Parts 8 and 10 of the Act applying in respect of a *Pilbara network*, this Code, and the *Pilbara networks rules*; and
- (e) **“recipient”** means a person to whom *confidential information* is disclosed under the *Pilbara regime*.

## 158. Information which is not confidential

The following is not *confidential information* for the purposes of this Code —

- (1) information which is in the public domain or ascertainable from public domain sources; and
- (2) information which came into the *recipient's* hands by means which did not create a duty of confidentiality under the *Pilbara regime*; and
- (3) information which the *recipient* already possessed at the time it was disclosed to the *recipient* by the *discloser*; and
- (4) information which the *recipient* develops independently.

## 159. Restriction on use of confidential information

- (1) A *recipient* may use *confidential information* —

- (a) for the purposes of performing a function under the *Pilbara regime*; and
  - (b) as required or permitted by this Code or the *Pilbara regime*.
- (2) A *recipient* must not use *confidential information* for any other purpose, without the *information owner's* written consent.

## 160. Restriction on disclosure of confidential information

Except as permitted under sections 161, 162 and 163, a *recipient* must not disclose *confidential information*.

## 161. Permitted disclosure – In performance of a function

- (1) A *recipient* may disclose *confidential information* to the extent the *recipient* in good faith determines is reasonably necessary for performing a function under the *Pilbara regime*.
- (2) Section 165 {Pre-disclosure process} applies to a disclosure under this section 161.

## 162. Permitted disclosure – General

- (1) A *recipient* may disclose *confidential information* —
  - (a) with the *information owner's* written consent, in accordance with any conditions in that consent; or
  - (b) on a confidential basis to its legal and other professional advisers; or
  - (c) as required under a written law, the listing rules of the Australian Securities Exchange or the rules of any other applicable financial market; or
  - (d) to, or as directed by, a court, arbitrator or other tribunal, on a confidential basis unless the court, arbitrator or other tribunal directs otherwise; or
  - (e) if —
    - (i) the *recipient* does not disclose any elements of the information that could lead to the identification of the *information owner*; or
    - (ii) the manner in which the *recipient* discloses the information does not identify the *information owner* and could not reasonably be expected to lead to the *information owner* being identified.

{Note: *Confidential information* may be combined or arranged with other information to prevent the identification of the *information owner* to whom the *confidential information* relates.}

- (2) Section 165 {Pre-disclosure process} applies to a disclosure under this section 162.

## 163. Permitted disclosure – To a governance entity

A *recipient* may disclose *confidential information* on a confidential basis to the *ISO*, the *Authority*, the *Coordinator* or the Minister (a “**governance entity**”), and the *governance entity* may use the information, for the purposes of, or in connection with,



the *governance entity's* performance of a function under the *Pilbara regime* or another *written law*.

#### 164. Permitted disclosure – Non-confidential parts of documents

If a document contains both *confidential information* and other information, a *recipient* may disclose the document if —

- (1) the *confidential information* is omitted or obscured; and
- (2) the omission of *confidential information* is evident from a mark or note at the place in the document from which the information is omitted.

#### 165. Pre-disclosure process

- (1) The process in this section 165 applies if called for by, and as modified by, a section of this Code.
- (2) If a person (“**intending discloser**”) proposes to disclose *confidential information* (“**proposed disclosure**”) then the person must first have regard to the primary and secondary objectives in section 156, and consider the balance between —
  - (a) the benefits associated with the *proposed disclosure*; and
  - (b) any likely detriment to the *information owner* from the *proposed disclosure*.
- (3) The *intending discloser*, acting reasonably and in good faith, may abridge or modify the process in this section 165 having regard to the factors in section 165(2).
- (4) Subject to section 165(3), the *intending discloser* must, before making the *proposed disclosure* —
  - (a) notify the *information owner* of the *proposed disclosure*, describing the information proposed to be disclosed and, if practicable, the circumstances of the disclosure; and
  - (b) allow the *information owner* an opportunity to express its views and to request redactions or other changes in order to minimise disclosure of the *confidential information*; and
  - (c) have regard to the *information owner's* views and requests; and
  - (d) if the *proposed disclosure* is being compelled through a process under a *written law* or otherwise —
    - (i) make reasonable endeavours (so far as is permitted) to minimise what is disclosed; and
    - (ii) if the *information owner* is able to intervene in the process and seeks to do so, not seek to hinder, or impose unreasonable conditions on, that intervention.

## **166. Intermediate disclosers**

If the *discloser* is not the *information owner*, it must give the *recipient* reasonable information to enable the *recipient* to identify the *information owner*.

## **167. Protection for disclosure under this Code**

{Note: This section 167 is made under section 120D(1) of the Act.}

- (1) A disclosure or use of confidential or commercially sensitive information which is required or permitted by this Code, is authorised by this Code.
- (2) If the disclosure or use of confidential or commercially sensitive information is authorised by this 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.

## Appendix 1 – Standard and expedited consultation processes

### Introduction

- A1.1 If this Code requires a *decision maker* to deal with a *matter for consultation* in accordance with the *standard consultation process* or the *expedited consultation process*, the *decision maker* must proceed in accordance with this Appendix 1.
- A1.2 The timings in this Appendix 1 apply, unless the section which refers to this Appendix 1 provides otherwise.

### Expedited consultation process

- A1.3 If required to proceed in accordance with the *expedited consultation process*, the *decision maker* must proceed as follows —
- (a) the *decision maker* must, after such consultation (if any) as the *decision maker* considers appropriate (and any revision of the *matter for consultation* that results from that consultation), make a draft decision; and
  - (b) the *decision maker* must then *publish* —
    - (i) the draft decision; and
    - (ii) a notice inviting written submissions and comments on the draft decision, within a period (at least 15 *business days*) stated in the notice; and
  - (c) the *decision maker* must, within 20 *business days* after the period allowed for making submissions and comments on the draft decision, consider all submissions and comments made within the time allowed (and may consider any other material including any late submission) and make its final decision.

### Standard consultation process

If required to proceed in accordance with the *standard consultation process*, the *decision maker* must proceed as follows —

- A1.4 Issues paper
- (a) The *decision maker* may produce and *publish* an issues paper examining the issues relating to the *matter for consultation*.
- A1.5 Submissions from the NSP
- (a) Where the *decision maker* is someone other than the *NSP* and is required to invite submissions from the public in relation to a *matter for consultation* in relation to a *covered Pilbara network* it must also invite submissions from the *NSP*.
- A1.6 First round public submissions

- (a) The *decision maker* must *publish* an invitation for submissions in relation to a *matter for consultation*.
- (b) A *decision maker* must specify in its invitation for submissions under clause A1.6(a) the length of time it will allow for the making of submissions on a *matter for consultation* in accordance with clause A1.6(d).
- (c) A person may make a submission on a *matter for consultation* within the period of time specified by the *decision maker*.
- (d) The time specified by the *decision maker* for the making of submissions must be at least 10 *business days* after the invitation is *published*, and must be at least 10 *business days* after any issues paper was *published* under clause A1.4(a).

A1.7 Draft decision by the decision maker

- (a) Subject to clause A1.11, the *decision maker* must consider any submissions made on the *matter for consultation*.
- (b) The *decision maker* may make a draft decision if, in the opinion of the *decision maker* the circumstances warrant the making of a draft decision.
- (c) If the *decision maker* determines that a draft decision is warranted, the *decision maker* must *publish* the draft decision within 2 months after the due date for submissions under clause A1.6(b).

A1.8 Second round public submissions (if applicable)

- (a) Clauses A1.8(b) to A1.8(e) apply only if the *decision maker makes* a draft decision under clause A1.7(b).
- (b) The *decision maker* must *publish* an invitation for submissions on the draft decision at the time it *publishes* the draft decision.
- (c) A *decision maker* must specify in its invitation for submissions under clause A1.8(b) the length of time it will allow for the making of submissions on a *matter for consultation* in accordance with clause A1.8(e).
- (d) A person may make a submission on the draft decision to the *decision maker* within the time period specified by the *decision maker*.
- (e) The time specified by the *decision maker* for the making of submissions on the draft decision must be at least 10 *business days* after the draft decision is *published*.

A1.9 Final decision by the decision maker

- (a) Subject to clause A1.11, the *decision maker* must consider any submissions and make a final decision in relation to the *matter for consultation*.
- (b) The time for the *decision maker* to make and *publish* its final decision is —
  - (i) where a draft decision has been made, within 30 *business days* after the due date for submissions under clause A1.8(c); or
  - (ii) otherwise, within 2 months after the due date for submissions under clause A1.6(b).

### **Publication of submissions**

A1.10 The *decision maker* must *publish* all submissions made under this Appendix 1.

### **Late submissions**

A1.11 The *decision maker* may, consider any submission made after the time for making that submission has expired.

### **Additional consultation**

A1.12 The *decision maker* may undertake additional consultation at any point during the process if required.

### **Extension of deadlines**

A1.13 The *decision maker* may on one or more occasions extend any time limit specified in this Appendix 1 for a period determined by the *decision maker* if, and only to the extent that, the *decision maker* first reasonably determines that —

- (a) a longer period of time is essential for due consideration of all matters under consideration or satisfactory performance of its obligations under this Code, or both; and
- (b) the *decision maker* has taken all reasonable steps to fully utilise the times and processes provided for in this Appendix 1.

A1.14 The *decision maker* must not exercise the power in clause A1.13 to extend a time limit unless, before the day on which the time would otherwise have expired, it *publishes* notice of, and *reasons* for, its decision to extend the time limit.

## Appendix 2 – Authority's costs

### Sub-appendix 2.1 - Percentages for calculating standing charges

Item	Network	Percentage
A2.1	<i>Horizon Power coastal network</i>	50%
A2.2	<i>Alinta Port Hedland network</i>	50%

### Sub-appendix 2.2 - Functions for which specific charges are payable

Item	<b>Authority's function under this Code for which specific charge payable</b>	<b>Person liable to pay specific charge for Authority's performance of the functions</b>
A2.3	Functions under section 56 in relation to approval of <i>new facilities investment</i> .	<i>NSP</i> that applies to the <i>Authority</i> for approval.
A2.4	Functions under section 57 to determine the rate of return for the <i>Horizon Power coastal network</i> and the <i>Alinta Port Hedland network</i> .	<i>NSP</i> for the <i>light regulation network</i> to which the determination relates.
A2.5	Functions under section 135 in relation to <i>ringfencing rules</i>	<i>NSP</i> for the <i>network business</i> to which the <i>ringfencing rules</i> will or do apply.