

Western Australia

LEGISLATIVE ASSEMBLY/COUNCIL

**Electricity Industry Amendment (Alternative  
Electricity Services) Bill 2023**

**A Bill for**

**An Act to amend the *Electricity Industry Act 2004* and to make a consequential amendment to the *Energy Safety Act 2006*.**

The Parliament of Western Australia enacts as follows:

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## Part 1 — Preliminary

### 1. Short title

This is the *Electricity Industry Amendment (Alternative Electricity Services) Act 2023*.

### 2. Commencement

This Act comes into operation as follows —

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

1 **Part 2 — Electricity Industry Act 2004 amended**

2 **3. Act amended**

3 This Part amends the *Electricity Industry Act 2004*.

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

7 **Part 1 — Preliminary**

8 **1. Short title**

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

10 **2. Commencement**

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

14 **3. Terms used**

- 15 (1) In this Act, unless the contrary intention appears —  
16 *access*, in relation to services, has the same meaning that it has  
17 when used in that context in the *Competition and Consumer*  
18 *Act 2010* (Commonwealth);

19 *AES code of practice* means the code of practice for the time  
20 being in force under section 59U;

21 *AES customer contract* means a contract entered into between a  
22 registration holder and a small use customer, or a class of small  
23 use customers, for the provision of an alternative electricity  
24 service;

25 *alternative electricity service* means an activity prescribed by  
26 the regulations as an alternative electricity service;

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

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- 1            **Authority** means the Economic Regulation Authority  
2            established by the *Economic Regulation Authority Act 2003*;
- 3            **Board** has the meaning given to that term in the *Energy*  
4            *Arbitration and Review Act 1998* section 49;
- 5            **Code** means the Code for the time being in force under  
6            section 104;
- 7            **Competition Principles Agreement** means the Competition  
8            Principles Agreement made on 11 April 1995 by the  
9            Commonwealth, the States and the Territories, as in force for  
10           the time being;
- 11           **Coordinator** means the Coordinator of Energy referred to in the  
12           *Energy Coordination Act 1994* section 4;
- 13           **covered network** means network infrastructure facilities that —
- 14           (a) were covered by the Code immediately before the day  
15           on which the *Electricity Industry Amendment Act 2020*  
16           section 4(3) comes into operation and that have not  
17           ceased to be a covered network; or
- 18           (b) the Minister has decided under the Code are to be a  
19           covered network and that have not ceased to be a  
20           covered network; or
- 21           (c) are prescribed in the Pilbara Networks Access Code  
22           under section 120B(a) to be a covered Pilbara network  
23           and that have not ceased to be so prescribed; or
- 24           (d) a network service provider has opted, under the Pilbara  
25           Networks Access Code, to be regulated under Part 8A  
26           and that —
- 27           (i) have not ceased to be so regulated under that  
28           code as a consequence of an option by the  
29           network service provider for the facilities to  
30           cease to be so regulated; or
- 31           (ii) have not otherwise ceased to be a covered  
32           network;
- 33           **covered Pilbara network** means a covered network that is  
34           located wholly or partly in the Pilbara region;

- 1           **customer** means a person to whom electricity is sold for the  
2           purpose of consumption;
- 3           **distribution licence** means a licence with the classification  
4           described in section 4(1)(c);
- 5           **distribution system** means electricity infrastructure used, or to  
6           be used, for, or in connection with, or to control, the  
7           transportation of electricity at nominal voltages of less than  
8           66 kV;
- 9           **electricity** includes electrical energy of any kind however  
10          produced, stored, transported or consumed;
- 11          **electricity corporation** means —
- 12           (a)   the Electricity Generation and Retail Corporation; or  
13           (b)   the Electricity Networks Corporation; or  
14           (c)   the Regional Power Corporation;
- 15          **Electricity Generation and Retail Corporation** has the meaning  
16          given in the *Electricity Corporations Act 2005* section 3(1);
- 17          **electricity infrastructure** —
- 18           (a)   means wires, apparatus, equipment, plant or buildings  
19           used, or to be used, for, or in connection with, or to  
20           control, the transportation of electricity; and
- 21           (b)   includes electrical equipment used, or to be used, to  
22           transfer electricity to or from an electricity network at  
23           the relevant point of connection including any  
24           transformers or switchgear at the relevant point or that is  
25           installed to support, or to provide backup to, that  
26           electrical equipment as is necessary for that transfer;
- 27          **electricity network** means a distribution system or a  
28          transmission system;
- 29          **Electricity Networks Corporation** means the body established  
30          by the *Electricity Corporations Act 2005* section 4(1)(b);
- 31          **generating works** means any wires, apparatus, equipment, plant  
32          or buildings used, or to be used, for, or in connection with, or to  
33          control, the generation of electricity;

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

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

5 **licence** means —

- 6 (a) a generation licence; or  
7 (b) a transmission licence; or  
8 (c) a distribution licence; or  
9 (d) a retail licence; or  
10 (e) an integrated regional licence;

11 **licence area** means the area or areas designated in a licence  
12 under section 5;

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

15 **network infrastructure facilities** —

- 16 (a) means electricity infrastructure used, or to be used, for  
17 the purpose of transporting electricity from generators of  
18 electricity to other electricity infrastructure or to end  
19 users of electricity; and  
20 (b) includes stand-alone power systems, or storage works,  
21 used, or to be used, as an adjunct to electricity  
22 infrastructure;

23 **non-standard contract** means a contract entered into between a  
24 licensee and a small use customer, or a class of small use  
25 customers, that is not a standard form contract;

26 **operate**, in relation to generating works, a transmission system,  
27 or a distribution system, includes —

- 28 (a) to maintain the works or system; and  
29 (b) to make any modifications necessary or desirable for the  
30 operation of the works or system;

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

- 1           ***Pilbara Networks Access Code*** means the Pilbara Networks  
2           Access Code for the time being in force under Part 8A  
3           Division 2;
- 4           ***Pilbara networks rules*** means the Pilbara networks rules for the  
5           time being in force under Part 8A Division 3;
- 6           ***Pilbara region*** means the Pilbara region defined in the *Regional*  
7           *Development Commissions Act 1993* Schedule 1;
- 8           ***Regional Power Corporation*** means the body established by the  
9           *Electricity Corporations Act 2005* section 4(1)(d);
- 10          ***registration*** means a registration under Part 3A;
- 11          ***registration holder*** —
- 12                  (a) means the holder of a registration; and
- 13                  (b) includes a transferee of a registration;
- 14          ***retail licence*** means a licence with the classification described  
15          in section 4(1)(d);
- 16          ***services*** means —
- 17                  (a) the transport of electricity, and other services, provided  
18                  by means of network infrastructure facilities; and
- 19                  (b) services ancillary to those services;
- 20          ***small use customer*** means a customer who consumes not more  
21          than 160 MWh of electricity per annum;
- 22          ***South West interconnected system*** means the interconnected  
23          transmission and distribution systems, generating works and  
24          associated works —
- 25                  (a) located in the South West of the State and extending  
26                  generally between Kalbarri, Albany and Kalgoorlie; and
- 27                  (b) into which electricity is supplied by —
- 28                          (i) one or more of the electricity generation plants at  
29                          Kwinana, Muja, Collie and Pinjar; or
- 30                          (ii) any prescribed electricity generation plant;

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

- 4 (a) which together are used, or to be used, for, or in  
5 connection with, or to control, the supply of electricity  
6 to a single customer or not more than a prescribed  
7 number of customers; and  
8 (b) which are not connected to another electricity network  
9 (other than that of the customer or customers);

10 **standard form contract** means a contract that is approved under  
11 section 51;

12 **storage activity** means an activity comprising all of the  
13 following —

- 14 (a) receiving energy in the form of electricity;  
15 (b) storing the received energy in any form;  
16 (c) discharging the stored energy in the form of electricity;

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

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

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

- 24 (a) generate;  
25 (b) transport through a transmission system;  
26 (c) transport through a distribution system;  
27 (d) sell;

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

30 **transmission system** means electricity infrastructure used, or to  
31 be used, for, or in connection with, or to control, the  
32 transportation of electricity at nominal voltages of 66 kV or  
33 higher.

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

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

Consultation Draft

1 **Part 2 — Licensing of electricity supply**

2 **Division 1 — Licence classification and area**

3 **4. Classification of licences**

4 (1) Licences are classified as follows —

5 (a) generation, which authorises the licensee —

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

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

10 (b) transmission, which authorises the licensee —

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

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

15 (c) distribution, which authorises the licensee —

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

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

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

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

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

29 (3) Despite subsection (1), a licence does not authorise the  
30 provision of an alternative electricity service unless the holder

1 [of the licence is exempted under section 59D\(2\) from the](#)  
2 [requirement to hold a registration to provide the alternative](#)  
3 [electricity service.](#)

4 **5. Licence area**

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

9 **Division 2 — Licensing requirements**

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

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

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

17 **7. Requirement for licence**

- 18 (1) A person must not construct or operate generating works except  
19 under the authority of a generation licence or an integrated  
20 regional licence.
- 21 (2) A person must not construct or operate a transmission system  
22 except under the authority of a transmission licence or an  
23 integrated regional licence.
- 24 (3) A person must not construct or operate a distribution system  
25 except under the authority of a distribution licence or an  
26 integrated regional licence.
- 27 (4) A person must not sell electricity to customers except under the  
28 authority of a retail licence or an integrated regional licence.

- 1 (5) A person does not commit an offence under subsection (1), (2)  
2 or (3) if the generating works, transmission system or  
3 distribution system concerned is or are used, or to be used,  
4 solely for the supply of electricity for consumption by —
- 5 (a) the person who owns, controls or operates the works or  
6 system; or
- 7 (b) if the person referred to in paragraph (a) is a body  
8 corporate, a related body corporate (as defined in the  
9 *Corporations Act 2001* of the Commonwealth section 9)  
10 of the person; or
- 11 (c) a person who is in partnership with, or is a participant in  
12 a joint venture arrangement with, the person referred to  
13 in paragraph (a) in relation to that supply.

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

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

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

21 **8. Power to exempt**

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

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

22 **Division 3 — General licensing provisions**

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

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

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

3 **10. Application for licence**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **15. Duration of licence**

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

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

24 **16. Renewal of licence**

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

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

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

1 **17. Licence fees**

- 2 (1) A licensee must pay to the Authority the prescribed licence  
3 fee —
- 4 (a) within one month after the day of grant or renewal of the  
5 licence; and
- 6 (b) within one month after each anniversary of that day  
7 during the term of the licence.
- 8 (2) The regulations may prescribe different licence fees for each of  
9 the classifications referred to in section 4.
- 10 (3) The Authority may recover any outstanding licence fee in a  
11 court of competent jurisdiction as a debt due by the licensee to  
12 the State.

13 **18. Transfer of licence**

- 14 (1) A licence cannot be transferred except with the approval of the  
15 Authority.
- 16 (2) Approval for the purposes of subsection (1) may be given on  
17 such terms and conditions as are determined by the Authority.
- 18 (3) An application for approval to transfer a licence must be —  
19 (a) made in a form approved by the Authority; and  
20 (b) accompanied by the prescribed application fee.
- 21 (4) An applicant must provide any additional information that the  
22 Authority may require for the proper consideration of the  
23 application.

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

- 25 (1) Subject to section 9, the Authority must grant, renew or approve  
26 the transfer of a licence if it is satisfied that the applicant —
- 27 (a) has, and is likely to retain; or
- 28 (b) will acquire within a reasonable time after the grant,  
29 renewal or transfer, and is then likely to retain,

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

17 **20. Other laws not affected**

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

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

- 22 (1) A licensee may apply to the Authority at any time for  
23 amendment of the licence.
- 24 (2) An application for the amendment of a licence must be —  
25 (a) made in a form approved by the Authority; and  
26 (b) accompanied by the prescribed application fee.
- 27 (3) An applicant must provide any additional information that the  
28 Authority may require for the proper consideration of the  
29 application.

- 1       (4) The Authority may grant the application if —  
2             (a) it has been made in accordance with subsection (2); and  
3             (b) where a requirement has been made under  
4                 subsection (3), the relevant information has been  
5                 provided to the Authority.

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

- 7       (1) The Authority may, on its own initiative, determine that a  
8         licence is to be amended.
- 9       (2) A licence must specify the procedure to be followed in making  
10        such a determination, including the manner in which an  
11        amendment is to be notified to the licensee, and the  
12        determination may only be made in accordance with that  
13        procedure.
- 14       (3) An amendment under this section cannot take effect until it is  
15        notified to the licensee under the procedure referred to in  
16        subsection (2).
- 17       (4) This section applies to the substitution of a new licence for an  
18        existing licence in the same way as it applies to the amendment  
19        of a licence.

20       **23. Notice of decisions**

- 21       (1) The Authority must ensure that notice of the grant, renewal,  
22        transfer or amendment of a licence is published in the *Gazette* as  
23        soon as is practicable after the grant, renewal, transfer or  
24        amendment.
- 25       (2) The notice must include —  
26             (a) the date of the grant, renewal, transfer or amendment;  
27                 and  
28             (b) the name and business address of the licensee; and  
29             (c) the term of the licence; and  
30             (d) a description of the licence area; and

- 1 (e) in the case of an amendment, details of the amendment;  
2 and  
3 (f) the place where a copy of the licence and any plan may  
4 be inspected under section 24; and  
5 (g) the Authority's website address.
- 6 (3) The Authority must ensure that written notice of a decision to  
7 refuse to grant, renew, or approve the transfer of, a licence,  
8 together with a statement of the reasons for the decision, is  
9 given to the applicant within 14 days after the decision is made.

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

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

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

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

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

19 **25. Regulations about public consultation**

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

25 **Division 4 — Exclusive licences**

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

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

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

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

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

7 **27. Requirements for regulations**

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

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

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

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

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

25 (3) Regulations made under section 26 —

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

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

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

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

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

16 **29. Prohibition of further licences**

17 If —

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

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

25 **30. Trade practices authorisation**

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

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

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

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

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

6 **Division 5 — Interruption of supply**

7 **31. Interruption of supply**

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

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

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

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

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

21 or

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

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

27 (4) This section is in addition to —

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

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

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

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

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

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

### 11 **Division 6 — Enforcement**

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

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

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

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

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

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

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

28 (4) The Authority may recover —

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

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

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

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

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

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

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

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

19   **35. Cancellation of licence**

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

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

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

- 1 (5) If —  
2 (a) a licence other than a retail licence is cancelled under  
3 this section; and  
4 (b) regulations of the kind referred to in subsection (4)(a)  
5 are made,

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

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

- 12 (1) Following the cancellation of a licence under section 35, the  
13 former licensee —  
14 (a) must ensure that any generating works, transmission  
15 system or distribution system constructed or operated by  
16 the former licensee under the licence is left in a safe  
17 condition; and  
18 (b) is not to remove any part of the works or system except  
19 with the approval of the Minister.
- 20 (2) If, in the opinion of the Minister, a former licensee contravenes  
21 subsection (1), the Minister may cause the contravention to be  
22 rectified to the satisfaction of the Minister.
- 23 (3) Persons authorised by the Minister may enter any land or  
24 premises and do all things that are necessary for the purposes of  
25 subsection (2).
- 26 (4) The Minister may recover the costs and expenses of any action  
27 taken under subsection (2) in a court of competent jurisdiction  
28 as a debt due by the former licensee to the State.

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

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

4 **37. Authority to administer licensing scheme**

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

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

9 It is a function of the Authority —

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

15 **39. Authority may issue codes**

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

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

- 21 (a) metering of the supply of electricity by licensees  
22 including —  
23 (i) the provision, operation and maintenance of  
24 metering equipment; and  
25 (ii) ownership of and access to metering data;  
26 (b) the transfer of customers between licensees;  
27 (c) methods or principles to be applied by licensees in the  
28 preparation of accounts for customers;  
29 (d) standards relating to the quality and reliability of the  
30 supply of electricity that are to be observed by the

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

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

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

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

- 8 (1) In this section —

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

11 *relevant day* means —

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

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

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

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

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

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

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

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

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

8 (13) The Minister, by order published in the *Gazette*, may —  
9 (a) amend an order made under subsection (11); or  
10 (b) revoke an order made under subsection (11) and replace  
11 it with another order.

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

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

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

16 (1) In this section —

17 ***public authority*** means —

- 18 (a) a Minister of the Crown; or  
19 (b) an agency, authority or instrumentality of the Crown in  
20 right of the State or a local government; or  
21 (c) a body, whether corporate or unincorporate, that is  
22 established or continued for a public purpose by or  
23 under a written law and prescribed for the purposes of  
24 this definition;

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

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

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

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

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

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

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

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

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

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

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

- 1 (6) Any costs and expenses incurred in the taking of an interest or  
2 easement under this section —  
3 (a) are to be paid by the licensee; and  
4 (b) may be recovered in a court of competent jurisdiction as  
5 a debt due by the licensee to the State.
- 6 (7) For the purposes of this section a reference to an interest in land  
7 in the *Land Administration Act 1997* Part 9 includes an  
8 easement over land.

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

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

16 **43. Proceedings and liability**

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

25 **44. Easements in gross**

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

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

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

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

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

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

11 **Division 10 — Transitional provision**

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

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

- 1 (b) until —
- 2 (i) a licence of that kind is granted to the person or
- 3 is refused; and
- 4 (ii) in the case of a refusal, the time for an
- 5 application for review of the decision under
- 6 section 130 expires without an application being
- 7 made or an application is made but is
- 8 unsuccessful,
- 9 whichever happens first.
- 10 (5) For the purposes of subsection (4)(b)(ii) an application is
- 11 unsuccessful if it —
- 12 (a) results in the refusal referred to in subsection (4)(b)(i)
- 13 being confirmed; or
- 14 (b) is withdrawn, discontinued or dismissed.
- 15 (6) Where after the day on which the *Electricity Corporations*
- 16 *Act 2005* Schedule 5 clause 30 comes into operation<sup>2</sup> —
- 17 (a) an electricity corporation undertakes an activity that
- 18 immediately before that day was undertaken by the
- 19 Western Power Corporation; and
- 20 (b) that activity is required to be licensed under section 7
- 21 but is not so licensed,
- 22 the electricity corporation is to be treated as an existing operator
- 23 in respect of that activity for the purposes of this section.

24 [Section 46 amended: No. 18 of 2005 s. 139.]

1 **Part 3 — Supply of electricity to ~~certain~~ small use**  
2 **customers**

3 **Division 1 — Preliminary**

4 **47. Terms used: retail licensee**

5 In this Part, unless the contrary intention appears —

6 ~~*customer* means a customer who consumes not more than~~  
7 ~~160 MWh of electricity per annum;~~

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

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

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

15 **Division 2 — Supply contracts**

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

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

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

19 (i) a standard form contract; and

20 (ii) a non-standard contract,

21 under which a retail licensee sells electricity to small use  
22 customers; and

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

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

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

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

- 30 (1) An applicant for the grant or renewal of a retail licence or an  
31 integrated regional licence must submit with the application a

1 draft of the standard form contract under which the applicant  
2 will supply electricity to [small use](#) customers pursuant to the  
3 licence.

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

10 (3) The requirement in subsection (1) and (2) only applies if the  
11 applicant or proposed transferee intends to supply electricity to  
12 [small use](#) customers pursuant to the licence.

13 **50. Licence application not to be granted unless standard form**  
14 **contract approved**

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

- 18 (a) the applicant or the proposed transferee has submitted a  
19 draft form of contract as required by section 49; and  
20 (b) the Authority has approved the standard form contract  
21 under which the applicant or proposed transferee will  
22 supply electricity to [small use](#) customers pursuant to the  
23 licence.

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

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

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

5 (2) The Authority must not give an approval if it considers that the  
6 standard form contract —

7 (a) will not meet the requirements of the regulations in  
8 respect of such contracts; or

9 (b) will be inconsistent with —

10 (i) this Act or any other written law; or

11 (ii) any term, condition or provision of the licence  
12 concerned.

13 (3) The Authority must take all reasonable steps to make a decision  
14 under subsection (1) within 45 days after the standard form  
15 contract is submitted to it.

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

17 (1) A retail licensee may submit to the Authority for approval —

18 (a) any amendment to the standard form contract approved  
19 under section 51; or

20 (b) a replacement for the standard form contract so  
21 approved.

22 (2) Section 51 applies to an amendment or a replacement submitted  
23 under subsection (1) in the same way as it applied to the  
24 standard form contract or the original standard form contract.

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

26 (1) This section applies if, in the opinion of the Authority, a  
27 standard form contract approved under this Division —

28 (a) no longer meets the requirements of the regulations in  
29 respect of such contracts; or

- 1 (b) is no longer consistent with —  
2 (i) this Act or any other written law; or  
3 (ii) any term, condition or provision of the licence  
4 concerned.
- 5 (2) The Authority may direct the retail licensee concerned —  
6 (a) to submit an appropriate amendment to the form of  
7 contract to the Authority for approval under  
8 section 52(1); and  
9 (b) to do so within a specified period.
- 10 (3) In subsection (2)(a) —  
11 ***appropriate amendment*** means an amendment —  
12 (a) specified by the Authority; or  
13 (b) otherwise determined by the Authority to be suitable for  
14 approval.
- 15 **54. Licence condition: contracts**
- 16 (1) It is a condition of every retail licence and integrated regional  
17 licence that, subject to any exception provided for in the  
18 regulations, the licensee must not supply electricity to a [small](#)  
19 [use](#) customer otherwise than under —  
20 (a) a standard form contract; or  
21 (b) a non-standard contract that complies with this Act.
- 22 (2) It is also a condition of every retail licence and integrated  
23 regional licence that the licensee must comply with a direction  
24 given to the licensee under section 53.
- 25 (3) For the purposes of subsection (1)(b), a non-standard contract  
26 complies with this Act if it —  
27 (a) meets the requirements of the regulations in respect of  
28 such contracts; and  
29 (b) is not inconsistent with —  
30 (i) this Act or any other written law; or

- 1 (ii) any term, condition or provision of the licence  
2 concerned.

3 **54A. Electricity corporations required to offer to supply**  
4 **electricity under prescribed form of contract**

- 5 (1) In this section —

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

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

11 *relevant contract* means —

12 (a) a contract referred to in the *Electricity Corporations*  
13 *Act 2005* section 181(2) between a corporation and a  
14 [small use](#) customer; or

15 (b) a contract in the form of a prescribed form of contract  
16 entered into by a corporation and a [small use](#) customer  
17 other than a contract referred to in paragraph (a);

18 *relevant day* means the day on which the *Electricity*  
19 *Corporations Act 2005* Part 2 comes into operation<sup>2</sup>.

20 (2) A corporation is required to offer to supply electricity under a  
21 prescribed form of contract to [small use](#) customers who request  
22 supply on or after the relevant day.

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

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

31 (b) any relevant contract in force on that day is to be taken  
32 to be amended so that its terms, conditions and

1 provisions are consistent with those of the standard form  
2 contract.

3 (4) The regulations may —

4 (a) provide for exceptions to the obligation in  
5 subsection (2);

6 (b) provide for and in relation to the standards of service  
7 that a corporation is to provide to small use customers in  
8 connection with the supply of electricity;

9 (c) provide for the inclusion in relevant contracts of  
10 requirements that the corporation comply with any such  
11 standard.

12 (5) Section 48(4) applies to regulations made for the purposes of  
13 subsection (4)(b).

14 *[Section 54A inserted: No. 18 of 2005 s. 139; amended: No. 25*  
15 *of 2013 s. 39(4).]*

16 **54B. Enforcement of obligation in section 54A(2)**

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

20 (a) serve a letter of reprimand on the corporation; or

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

23 (2) The Authority is not to take action under subsection (1)(b)  
24 unless the Authority has —

25 (a) notified the corporation of the proposed action and the  
26 reasons for it; and

27 (b) given the corporation a reasonable opportunity to make  
28 submissions on the matter.

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

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

5 *[55, 56. Deleted: No. 18 of 2005 s. 139.]*

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

7 **57. Terms used**

8 In this Division, unless the contrary intention appears —  
9 **connect** means to connect to a distribution system;  
10 **premises** means premises owned or occupied by a new or  
11 existing [small use](#) customer.

12 **58. Regulations as to connection**

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

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

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

- 1 (3) Without limiting section 12, the regulations may provide —
- 2 (a) that it is a condition of every retail licence and every
- 3 integrated regional licence that the holder of the licence
- 4 must comply with the obligation referred to in
- 5 subsection (2)(a); and
- 6 (b) that it is a condition of every distribution licence and
- 7 every integrated regional licence that the holder of the
- 8 licence must comply with the obligation referred to in
- 9 subsection (2)(b).

10 **Division 4 — Default supplier**

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

12 The regulations may —

- 13 (a) require that a default supplier be determined, in
- 14 accordance with the regulations, for each connection
- 15 point as defined in the regulations; and
- 16 (b) require that the default supplier so determined be a retail
- 17 licensee that supplies electricity at the relevant
- 18 connection point; and
- 19 (c) require that a register be established and maintained, in
- 20 accordance with the regulations, showing the name of
- 21 the default supplier for the time being determined for
- 22 each connection point; and
- 23 (d) provide that if a [small use](#) customer commences to take
- 24 a supply of electricity at premises without entering into
- 25 a contract for the supply with a retail licensee, the
- 26 electricity is deemed to be supplied under the standard
- 27 form contract of the default supplier for the connection
- 28 point in respect of those premises as determined under
- 29 the regulations; and

- 1 (e) make provision for and in relation to the effect of  
2 contracts of the kind referred to in paragraph (d),  
3 including —  
4 (i) the period for which such contracts continue in  
5 force; and  
6 (ii) the exclusion or modification of any term,  
7 condition or provision of such contracts.

Consultation Draft

1 **Part 3A — Registration of alternative electricity**  
2 **services**

3 **Division 1 — Preliminary**

4 **59A. Purpose of Part**

5 The purpose of this Part is to provide a registration  
6 framework —

7 (a) to regulate the registration of providers of alternative  
8 electricity services; and

9 (b) to regulate the provision of alternative electricity  
10 services to customers; and

11 (c) to provide for customer protections that are relevant to  
12 the provision of alternative electricity services; and

13 (d) to enable access to dispute resolution for customers of  
14 alternative electricity services.

15 **59B. Terms used**

16 In this Part —

17 *class*, in relation to an alternative electricity service, includes  
18 sub-class;

19 *registration framework* means —

20 (a) this Part; and

21 (b) the regulations; and

22 (c) the AES code of practice.

23 **59C. Alternative electricity services**

24 (1) The regulations may prescribe an activity as an alternative  
25 electricity service.

- 1 (2) The regulations may regulate the provision of an alternative  
2 electricity service or a class of alternative electricity service to  
3 any of the following —
- 4 (a) small use customers or a class of small use customers;  
5 (b) customers or a class of customers other than small use  
6 customers;  
7 (c) all customers.
- 8 (3) The regulations may prescribe requirements to be complied with  
9 in the provision of an alternative electricity service or class of  
10 alternative electricity service.
- 11 (4) Without limiting subsection (1), an activity may include any of  
12 the following —
- 13 (a) an activity that, in the absence of an exemption under  
14 section 8(1), would be required to be licensed under  
15 section 7;
- 16 (b) an activity that relates to storage works;  
17 (c) an activity that relates to trading in, or monitoring or  
18 managing, the production, storage, consumption or use  
19 of electricity, whether directly or on behalf of another  
20 person;
- 21 (d) an activity that relates to the collection, retention or use  
22 of data relating to the production, storage, consumption  
23 or use of electricity, whether directly or on behalf of  
24 another person;
- 25 (e) any other activity that relates to the production, storage,  
26 transport, supply, consumption or use of electricity,  
27 including —
- 28 (i) an activity provided on a metered or unmetered  
29 basis; or
- 30 (ii) an activity relating to electricity acquired or  
31 aggregated from 1 or more sites for the purpose  
32 of trading, sale or participation in the wholesale  
33 electricity market; or

- 1 (iii) an activity relating to the measurement, analysis,  
2 manipulation or use of data for commercial  
3 purposes; or
- 4 (iv) an activity involving electricity generated or  
5 stored on a site or sites owned or occupied by the  
6 person providing the service or otherwise; or
- 7 (v) an activity relating to electricity provided  
8 through a microgrid, embedded network or an  
9 unregulated distribution system or by way of a  
10 stand-alone power system.
- 11 (5) For the purposes of subsection (4), an activity that relates to the  
12 consumption or use of electricity may include the consumption  
13 or use of electricity under an arrangement that is —
- 14 (a) a membership scheme under which services are  
15 provided to the members of the scheme on payment of a  
16 membership fee and regular subscriptions; or
- 17 (b) a financing, leasing, licensing or hire arrangement.
- 18 (6) The regulations may provide that a class of activity is not an  
19 alternative electricity service for the purposes of this Act.

20 **Division 2 — Registration requirements**

21 **59D. Requirement for registration**

- 22 (1) A person must not provide an alternative electricity service to a  
23 customer unless the person is registered under this Part to  
24 provide that alternative electricity service.
- 25 Penalty for this subsection:
- 26 (a) a fine of \$100 000;
- 27 (b) a daily penalty of a fine of \$5 000 for each day or  
28 part of a day during which the offence continues.

1 (2) The regulations may exempt the following from the requirement  
2 under subsection (1) to be registered to provide an alternative  
3 electricity service —

4 (a) the holder of a specified class of licence under Part 2;

5 (b) the holder of an existing registration for another  
6 specified class of alternative electricity service.

7 (3) A regulation under subsection (2) may provide for  
8 circumstances in which, and conditions subject to which, an  
9 exemption is to apply.

10 (4) If the holder of a licence is exempt under subsection (2) from  
11 the requirement to be registered to provide an alternative  
12 electricity service, the Authority may determine terms and  
13 conditions under section 11(1) to apply to the licence in relation  
14 to the provision of the alternative electricity service to which the  
15 exemption applies.

16 (5) If the holder of a registration for an alternative electricity  
17 service is exempt under subsection (2) from the requirement to  
18 be registered to provide another class of alternative electricity  
19 service, the Authority may determine terms and conditions  
20 under section 59O(1) to apply to the registration in relation to  
21 the provision of the alternative electricity service to which the  
22 exemption applies.

23 **59E. Registration holder to comply with terms and conditions of**  
24 **registration**

25 A registration holder must comply with the terms and conditions  
26 applying to the registration.

27 Penalty:

28 (a) a fine of \$100 000;

29 (b) daily penalty of a fine of \$5 000 for each day or part  
30 of a day during which the offence continues.

1 **Division 3 — General registration provisions**

2 **59F. Authority to consider public interest**

3 (1) The Authority must not exercise a power conferred by this  
4 Division or Division 2 unless the Authority is satisfied that it  
5 would not be contrary to the public interest to do so.

6 (2) Without limiting the other matters that may be taken into  
7 account, the Authority, in determining whether the exercise of  
8 the power would not be contrary to the public interest, must take  
9 into account the following —

10 (a) environmental considerations;

11 (b) social welfare and equity considerations, including  
12 community service obligations;

13 (c) economic and regional development, including  
14 employment and investment growth;

15 (d) the interests of customers generally or of a class of  
16 customers;

17 (e) the interests of any registration holder, or applicant for  
18 registration, in respect of the area or areas to which the  
19 registration in respect of which the power is exercised  
20 applies;

21 (f) the importance of competition in electricity industry  
22 markets;

23 (g) the policy objectives of government in relation to the  
24 supply of electricity.

25 (3) The Authority is not required to comply with subsection (1) and  
26 the *Economic Regulation Authority Act 2003* section 26(1)(a) in  
27 the circumstances prescribed in the regulations.

28 **59G. Application for registration**

29 An application for registration must be —

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

31 (b) accompanied by the prescribed application fee.

1 **59H. Renewal of registration**

2 An application for the renewal of a registration must be —

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

4 (b) accompanied by the prescribed application fee.

5 **59I. Amendment of registration**

6 An application for an amendment to a registration must be —

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

8 (b) accompanied by the prescribed application fee.

9 **59J. Transfer of registration**

10 (1) A registration cannot be transferred except with the approval of  
11 the Authority.

12 (2) An approval may be given on the terms and conditions  
13 determined by the Authority.

14 (3) An application for approval to transfer a registration must be —

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

16 (b) accompanied by the prescribed application fee.

17 **59K. Further information**

18 An applicant for registration, renewal or amendment of  
19 registration or approval of the transfer of registration must  
20 provide any additional information that the Authority may  
21 require for the proper consideration of the application.

22 **59L. Public consultation on grant, renewal or transfer of**  
23 **registration**

24 (1) The Authority must ensure that public consultation is carried out  
25 in accordance with the regulations before the Authority —

26 (a) grants a registration; or

27 (b) renews a registration; or

- 1 (c) amends a registration; or  
2 (d) approves the transfer of a registration.

3 (2) The regulations may exempt a class of alternative electricity  
4 service from the requirements of subsection (1).

5 **59M. Decision to grant, renew or approve transfer of registration**

6 (1) The Authority must take all reasonable steps to decide an  
7 application for the following within 90 days after the application  
8 is made —

- 9 (a) the grant, renewal or amendment of a registration; or  
10 (b) approval to transfer a registration.

11 (2) The duties imposed on the Authority by subsection (1) apply  
12 only if —

- 13 (a) the application has been made in accordance with  
14 section 59G, 59H, 59I or 59J, as the case may be; and  
15 (b) section 101B does not prohibit the grant, renewal or  
16 amendment of the registration or the approval of the  
17 transfer; and  
18 (c) if a requirement has been made under section 59K, the  
19 relevant information has been provided to the Authority.

20 **59N. Registration area**

21 (1) A registration must be designated to apply to 1 or more areas of  
22 the State specified in the registration.

23 (2) If 2 or more areas are specified in a registration those areas need  
24 not be contiguous.

25 **59O. Registration is subject to terms and conditions**

26 (1) A registration is subject to a condition that the registration  
27 holder must comply with the provisions of the AES code of  
28 practice that are prescribed by the regulations to apply to the  
29 alternative electricity service to which the registration applies.

1 (2) A registration is subject to a condition that the registration  
2 holder must notify the Authority of any change of circumstances  
3 that may affect the registration holder's ability to meet their  
4 obligations under this Act.

5 (3) A registration is subject to any other terms and conditions that  
6 are determined by the Authority or prescribed by this Act or the  
7 regulations.

8 (4) The regulations may prescribe terms and conditions of  
9 registration for —

10 (a) an alternative electricity service; or

11 (b) a class of alternative electricity service.

12 **59P. Duration of registration**

13 The Authority may grant or renew a registration for any period  
14 not exceeding 15 years that the Authority considers appropriate.

15 **59Q. Registration and annual fees**

16 (1) A registration holder must pay the prescribed registration fee to  
17 the Authority within a period determined by the Authority.

18 (2) A registration holder must pay the prescribed annual fee to the  
19 Authority within a period determined by the Authority.

20 (3) The regulations may —

21 (a) prescribe different fees for different classes of  
22 alternative electricity service; or

23 (b) specify the amount of a fee or provide for a fee to be  
24 calculated in accordance with a specified method or  
25 formula.

26 (4) The regulations may specify circumstances in which the  
27 payment of some or all of a fee may be waived.

28 (5) The Authority may recover any outstanding registration fee or  
29 annual fee in a court of competent jurisdiction as a debt due by  
30 the registration holder to the State.

1 **59R. Other laws not affected**

2 The grant, renewal or amendment of a registration or the  
3 approval of the transfer of a registration does not affect the  
4 registration holder's obligations to comply with any other  
5 written law in relation to the matters covered by the registration.

6 **59S. Notice of decision**

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

12 **59T. Register**

13 (1) The Authority must publish a register in accordance with this  
14 section of any of the following —

- 15 (a) an application for registration;  
16 (b) a grant or renewal of registration;  
17 (c) an amendment of registration;  
18 (d) an approval of a transfer of registration;  
19 (e) a refusal of an application for registration or a renewal  
20 or amendment of registration;  
21 (f) a surrender of a registration;  
22 (g) a suspension or revocation of registration.

23 (2) The register is to be published on the Authority's website and  
24 made available for members of the public to inspect free of  
25 charge.

26 (3) If an application for registration is refused, the Authority may  
27 include in the register any details relating to that refusal that the  
28 Authority thinks fit.

- 1      (4) If a registration is granted, the register must include —  
2      (a) the name and street address of the registration holder;  
3      and  
4      (b) the name and contact details of the person who will  
5      handle customer requests for information and  
6      complaints; and  
7      (c) the class of alternative electricity service for which the  
8      registration is granted; and  
9      (d) the dates of the grant or renewal, or approval of the  
10      transfer, of the registration; and  
11      (e) the term of the registration; and  
12      (f) a description of the registration area; and  
13      (g) the date of any surrender of the registration; and  
14      (h) the date, if any, of the suspension or revocation of the  
15      registration.

16      **Division 4 — AES code of practice**

17      **59U. AES code of practice**

- 18      (1) The Minister may prepare and issue a code of practice for  
19      alternative electricity services.  
20      (2) The AES code of practice must set out customer protection  
21      requirements to be complied with by registration holders.  
22      (3) Without limiting subsection (2), the AES code of practice may  
23      include requirements relating to any one or more of the  
24      following —  
25      (a) the information to be contained in AES customer  
26      contracts;  
27      (b) the ongoing provision of information to small use  
28      customers;  
29      (c) obtaining the consent of a small use customer before —  
30      (i) entering into an AES customer contract; or

- 1 (ii) amending an AES customer contract other than  
2 an amendment required to comply with a written  
3 law.
- 4 (d) regulating pricing and price controls for the sale or  
5 supply of electricity or electricity services by  
6 registration holders to small use customers;
- 7 (e) standards of conduct in the supply and marketing of  
8 electricity or electricity services to small use customers;
- 9 (f) facilitating access to electricity or electricity services  
10 provided by other providers;
- 11 (g) facilitating access to electricity sources with low  
12 greenhouse gas emissions;
- 13 (h) the methods or principles to be applied by registration  
14 holders in the preparation of accounts for small use  
15 customers;
- 16 (i) matters relating to bills for small use customers,  
17 including —
- 18 (i) the information to be provided on bills; and  
19 (ii) how payments are to be made; and  
20 (iii) the frequency of bills; and  
21 (iv) the arrangements to be made for small use  
22 customers experiencing payment difficulties or  
23 financial hardship;
- 24 (j) metering of the supply of electricity, including —
- 25 (i) the provision, operation and maintenance of  
26 metering equipment; and
- 27 (ii) ownership of and access to meters and metering  
28 data;
- 29 (k) technical requirements, including quality and reliability  
30 standards;
- 31 (l) asset management systems;
- 32 (m) internal and external complaints handling and dispute  
33 resolution processes;

1 (n) the continuity of supply of electricity to small use  
2 customers of a registration holder that ceases to provide  
3 the contracted alternative electricity service;

4 (o) the disconnection, suspension and interruption and  
5 restoration of an alternative electricity service.

6 (4) The AES code of practice may incorporate or apply with  
7 changes any code issued and in force from time to time under  
8 section 39.

9 **59V. AES code of practice is subsidiary legislation**

10 (1) The AES code of practice is subsidiary legislation for the  
11 purpose of the *Interpretation Act 1984*.

12 (2) A provision of the AES code of practice is of no effect to the  
13 extent that it is inconsistent with a provision of this Act or  
14 another written law.

15 **59W. Public consultation on issue, amendment or replacement of**  
16 **AES code of practice**

17 (1) The Minister must ensure that public consultation is carried out  
18 in accordance with the regulations before the Minister exercises  
19 the power —

20 (a) to issue the AES code of practice; or

21 (b) to amend the AES code of practice; or

22 (c) to repeal and replace the AES code of practice.

23 (2) Subsection (1) does not apply to an amendment to the AES code  
24 of practice if the Minister is satisfied that the amendment is of a  
25 minor nature.

26 (3) Despite subsection (1), the public consultation before the issue  
27 of the initial AES code of practice may be carried out in the  
28 manner determined by the Minister.

1 **59X. Review of AES code of practice**

2 (1) The Minister must cause a review of the AES code of practice  
3 to be carried out as soon as is practicable after —

4 (a) the 5<sup>th</sup> anniversary of its commencement; and

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

7 (2) The Minister may cause an earlier review of the AES code of  
8 practice to be carried out if the Minister considers it necessary.

9 (3) The purpose of a review is to assess the suitability of the  
10 provisions of the AES code of practice to achieve the purpose of  
11 this Part.

12 (4) The Minister may, by instrument, delegate any power or  
13 function under this section or section 59Y to the Authority.

14 **59Y. Public consultation on review**

15 The Minister must ensure that public consultation is carried out  
16 in accordance with the regulations when a review of the AES  
17 code of practice is carried out.

18 **Division 5 — Functions of Authority**

19 **59Z. Functions of Authority**

20 (1) The Authority is responsible for administering and enforcing the  
21 registration framework.

22 (2) Without limiting subsection (1), the Authority is responsible  
23 for —

24 (a) monitoring and reporting to the Minister on —

25 (i) the operation of the registration framework; and

26 (ii) compliance by registration holders with the  
27 conditions of registration;

28 and

1 (b) reporting to the Minister on the enforcement of the  
2 registration framework.

3 **59ZA. Annual report**

4 (1) The Authority must prepare and provide to the Minister an  
5 annual report on the registration framework.

6 (2) The annual report —

7 (a) must detail the performance and compliance of  
8 registration holders with the registration framework; and

9 (b) may identify improvements that may be made to the  
10 operation of the registration framework.

11 (3) The Authority must publish each annual report on the  
12 Authority’s website.

13 **Division 6 — Performance reporting and compliance**  
14 **monitoring**

15 **59ZB. Requirement to provide information to Authority**

16 (1) A registration is subject to a condition that the registration  
17 holder must provide to the Authority any information or report  
18 that the Authority considers reasonable for the Authority to  
19 carry out its responsibility to administer the registration  
20 framework.

21 (2) The information or report must be provided in a manner and  
22 form, and at a frequency, determined by the Authority.

23 **59ZC. Compliance audit**

24 (1) The Authority may appoint a person to audit the compliance of  
25 a registration holder with the registration framework and the  
26 conditions of registration.

27 (2) The audit must be carried out in accordance with the process  
28 determined by the Authority.

1 (3) The registration holder, at the request of the auditor, must  
2 provide the auditor with any information reasonably required  
3 for the audit.

4 (4) The Authority —

5 (a) may recover from the registration holder its reasonable  
6 costs and expenses arising from the appointment and  
7 remuneration of an auditor appointed under  
8 subsection (1); and

9 (b) may seek an order for the recovery of those costs and  
10 expenses in a court of competent jurisdiction.

11 **59ZD. Use and disclosure of information**

12 (1) The Authority may use and disclose any information or report  
13 provided to the Authority under this Part to carry out its  
14 responsibility to administer the registration framework.

15 (2) The Authority may disclose information relating to the  
16 registration framework to the Coordinator, on request.

17 **Division 7— Enforcement**

18 **59ZE. Failure to comply with registration**

19 (1) If, in the opinion of the Authority, a registration holder  
20 contravenes the conditions of registration, the Authority may  
21 cause a notice to be served on the registration holder requiring  
22 the registration holder to rectify the contravention within a  
23 specified period.

24 (2) If, in the opinion of the Authority, a registration holder fails to  
25 comply with a notice under subsection (1), the Authority may,  
26 subject to section 59ZF, do 1 or more of the following —

27 (a) accept a written undertaking from the registration holder  
28 under which the registration holder undertakes to rectify  
29 the contravention;

1 (b) require the registration holder to give public notice of  
2 the contravention in the manner determined by the  
3 Authority;

4 (c) order the registration holder to pay a monetary penalty  
5 fixed by the Authority but not exceeding \$100 000;

6 (d) cause the contravention to be rectified to the satisfaction  
7 of the Authority;

8 (e) revoke or suspend the registration of the registration  
9 holder.

10 **59ZF. Right of registration holder to make submissions**

11 (1) Subject to section 59ZL(3), the Authority must not take any  
12 action under section 59ZE(2)(b) to (e) unless the Authority has  
13 notified the registration holder —

14 (a) of the proposed action and the reasons for it; and

15 (b) that the registration holder may within the period  
16 specified in the notice show cause why the action should  
17 not be taken.

18 (2) The Authority must consider any response of the registration  
19 holder given within the period specified in the notice.

20 (3) The Authority must make its decision within 30 business days  
21 after the end of the period specified in the notice.

22 (4) The Authority must notify the registration holder of its decision.

23 **59ZG. Power to enter land to rectify contravention**

24 Persons authorised by the Authority in writing may enter any  
25 premises and do all things that are necessary for the purposes of  
26 section 59ZE(2)(d).

1 **59ZH. Recovery of penalty, costs and expenses**

2 The Authority may recover the following in a court of  
3 competent jurisdiction as a debt due by the registration holder to  
4 the State —

5 (a) a penalty imposed under section 59ZE(2)(c); or

6 (b) the costs and expenses of any action taken under  
7 section 59ZE(2)(d).

8 **59ZI. Enforceable undertakings**

9 (1) This section applies if the Authority accepts an undertaking  
10 under section 59ZE(2)(a).

11 (2) The registration holder may, with the consent of the Authority,  
12 withdraw or amend an undertaking.

13 (3) The Authority may withdraw its acceptance of the undertaking  
14 at any time and the undertaking ceases to be in force on that  
15 withdrawal.

16 (4) The Authority may publish on the Authority's website an  
17 undertaking accepted under section 59ZE(2)(a).

18 **59ZJ. Certain actions prohibited while undertaking is in force**

19 While an undertaking is in force under section 59ZE(2)(a), the  
20 Authority must not take an action under section 59ZE(2)(b)  
21 to (e) in relation to a matter that is covered by the undertaking.

22 **59ZK. Certain actions prohibited if undertaking is complied with**

23 If a registration holder complies with the requirements of an  
24 undertaking under section 59ZE(2)(a), the Authority must not  
25 take an action under section 59ZE(2)(b) to (e) in relation to a  
26 matter that is covered by the undertaking.

27 **59ZL. Failure to comply with enforceable undertakings**

28 (1) If the Authority considers that a registration holder who gave an  
29 undertaking under section 59ZE(2)(a) has failed to comply with

- 1           any of its terms, the Authority may apply to a court of  
2           competent jurisdiction for an order under subsection (2) to  
3           enforce the undertaking.
- 4           (2) If the court is satisfied that the registration holder has failed to  
5           comply with a term of the undertaking, the court may make any  
6           of the following orders —
- 7           (a) an order directing the registration holder to comply with  
8           the term of the undertaking;
- 9           (b) an order that the registration holder take any specified  
10           action for the purpose of complying with a term of the  
11           undertaking;
- 12           (c) any other order that the court considers appropriate in  
13           the circumstances.
- 14           (3) If the court determines that a registration holder has failed to  
15           comply with a term of an undertaking under section 59ZE(2)(a),  
16           the Authority may without further notice take 1 or more actions  
17           under section 59ZE(2)(b) to (e) in relation to a matter that is  
18           covered by the term of the undertaking.

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

3   **60.       Terms used**

4                   In this Part, unless the contrary intention appears —

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

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

11                   **corporation** means —

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

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

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

22                   **licence** means a transmission licence, distribution licence or an  
23                   integrated regional licence;

24                   **system** means a transmission system or distribution system.

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

26   **61.       Draft policy to be submitted to Coordinator**

27                   (1) In subsection (2) —

28                   **prescribed period** means —

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

- 1 (b) any longer period allowed by the Coordinator in a  
2 particular case.
- 3 (2) A corporation must, within the prescribed period, submit to the  
4 Coordinator a draft extension and expansion policy for each  
5 system operated by the corporation.
- 6 (3) An extension and expansion policy submitted by a corporation  
7 may relate to one or more or all of the systems operated by the  
8 corporation.
- 9 **62. Approval of policy**
- 10 (1) Subject to subsection (2), the Coordinator may —
- 11 (a) approve an extension and expansion policy submitted  
12 under section 61; or
- 13 (b) direct that it be amended and approve it in an amended  
14 form.
- 15 (2) The Coordinator must not approve an extension and expansion  
16 policy if the Coordinator considers that it —
- 17 (a) will not meet the requirements of the regulations in  
18 respect of such policies; or
- 19 (b) will be inconsistent with this Act or any other written  
20 law.
- 21 (3) Without limiting the other matters that may be taken into  
22 account, in exercising the powers conferred by this section and  
23 sections 63 and 64 the Coordinator is to take into account the  
24 matters referred to in section 8(5) but as if the area or areas  
25 referred to in section 8(5)(e) were the area to be affected by the  
26 exercise of the powers.

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

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

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1 (2) The Coordinator may approve or refuse to approve an  
2 amendment or replacement submitted under subsection (1).

3 (3) The Coordinator must not approve an amendment or  
4 replacement if the Coordinator considers that it —

5 (a) will not meet the requirements of the regulations in  
6 respect of such policies; or

7 (b) will be inconsistent with this Act or any other written  
8 law.

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

10 (1) This section applies if, in the opinion of the Coordinator, an  
11 approved policy —

12 (a) no longer meets the requirements of the regulations in  
13 respect of such policies; or

14 (b) is no longer consistent with this Act or any other written  
15 law.

16 (2) The Coordinator may direct the corporation concerned —

17 (a) to submit an appropriate amendment to the approved  
18 policy to the Coordinator for approval under  
19 section 63(1); and

20 (b) to do so within a specified period.

21 (3) In subsection (2)(a) —

22 ***appropriate amendment*** means an amendment —

23 (a) specified by the Coordinator; or

24 (b) otherwise determined by the Coordinator to be suitable  
25 for approval.

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

27 It is a condition of every licence held by a corporation that the  
28 corporation must —

29 (a) comply with the obligation in section 61 in relation to  
30 the system to which the licence applies; and

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

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

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

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

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

2 **67. Terms used**

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

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

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

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

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

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

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

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

18 **71. Supplier of last resort**

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

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

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

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

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

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

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

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

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

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

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

16 **75. Authority may make amendment**

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

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

21 It is a condition of every retail licence that —

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

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

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

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

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

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

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

3 **78. Terms used**

4 In this Part, unless the contrary intention appears —

5 ***code of conduct*** means the code of conduct approved under  
6 section 79;

7 ***committee*** means the committee established under section 81;

8 ***electricity marketing agent*** means —

9 (a) a person who acts on behalf of the holder of a retail  
10 licence or an integrated regional licence —

11 (i) for the purpose of obtaining new [small use](#)  
12 customers for the licensee; or

13 (ii) in dealings with existing [small use](#) customers in  
14 relation to contracts for the supply of electricity  
15 by the licensee;

16 and

17 (b) a person who acts —

18 (i) on behalf of one or more [small use](#) customers; or

19 (ii) as an intermediary between one or more [small](#)  
20 [use](#) customers and a licensee,

21 in respect of the supply of electricity to the [small use](#)  
22 customer or customers; and

23 (c) a person who engages in any other activity relating to  
24 the marketing of electricity that is prescribed for the  
25 purposes of this definition; and

26 (d) a representative, agent or employee of a person referred  
27 to in paragraph (a), (b) or (c);

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

4            (a) negotiations for, or dealings in respect of, a contract for  
5            the supply of electricity to a [small use](#) customer; or

6            (b) advertising, promotion, market research or public  
7            relations in relation to the supply of electricity to [small](#)  
8            [use](#) customers.

9            **79. Code of conduct**

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

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

13           (a) the holders of retail licences, distribution licences and  
14           integrated regional licences; and

15           (b) electricity marketing agents,

16           with the object of —

17           (c) defining standards of conduct in the supply and  
18           marketing of electricity to [small use](#) customers and  
19           providing for compensation payments to be made to  
20           [small use](#) customers when standards of conduct are not  
21           met; and

22           (d) protecting [small use](#) customers from undesirable  
23           marketing conduct.

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

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

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

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1 **80. Code is subsidiary legislation**

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

4 **81. Consultative committee**

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

7 (2) The Authority —

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

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

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

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

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

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

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

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

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

1 **83. Enforcement of code of conduct against marketing agents**

2 The code of conduct may provide —

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

10 **84. Code may provide for vicarious liability**

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

16 **85. Code may include presumption of authority**

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

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

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

26 **86. Authority to monitor compliance**

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

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

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

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

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

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

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

20 The regulations may provide that a prescribed enactment —

- 21 (a) does not apply in relation to the supply and marketing of  
22 electricity to [small use](#) customers; or  
23 (b) does not apply in relation to the supply and marketing of  
24 electricity to [small use](#) customers to the extent  
25 prescribed; or  
26 (c) does not apply in relation to the supply and marketing of  
27 electricity to [small use](#) customers to the extent that the  
28 enactment is inconsistent with the code; or

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- 1 (d) applies in relation to the supply and marketing of  
2 electricity to [small use](#) customers with such  
3 modifications as are prescribed.

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

Consultation Draft

1 **Part 7 — Electricity ombudsman scheme**

2 **Division 1 — Preliminary**

3 **90. Terms used**

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

6 *approved scheme* means a scheme approved under section 92;

7 *customer* means —

8 (a) a small use customer ~~who consumes not more than~~  
9 ~~160 MWh of electricity per annum~~; and

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

13 *customer contract* means —

14 (a) a standard form contract; or

15 (b) a non-standard contract; or

16 (c) an AES customer contract;

17 ~~(a) a standard form contract; or~~

18 ~~(b) a non-standard contract,~~

19 ~~as defined in section 47;~~

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

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

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

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

1 **91. Regulations as to electricity ombudsman scheme**

2 The regulations may provide for and in relation to —

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

7 **Division 2 — Approval of electricity ombudsman scheme**

8 **92. Authority may approve scheme**

9 (1) The Authority may, by instrument in writing, approve a scheme  
10 that provides for a person (the *electricity ombudsman*) to  
11 investigate and deal with —

12 (a) disputes and complaints under customer contracts or the  
13 AES code of practice; and

14 (b) disputes between —

15 (i) customers and licensees; or

16 (ia) customers and registration holders; or

17 (ii) customers and electricity marketing agents;

18 and

19 (c) complaints by customers about —

20 (i) licensees; or

21 (ia) registration holders; or

22 (ii) electricity marketing agents;

23 and

24 (d) any other kind of dispute or complaint (whether or not  
25 under a customer contract) that is prescribed by the  
26 regulations.

27 (2) A scheme may treat a failure to make a decision within a  
28 specified period as a decision of a particular kind.

- 1 (3) A scheme may be made applicable to a dispute or complaint that  
2 arose before the commencement of the scheme, but not earlier  
3 than 12 months before that commencement.
- 4 (4) The Authority may, by instrument in writing, approve an  
5 amendment to an approved scheme.
- 6 (5) Notice of an approval under subsection (1) is to be published in  
7 the *Gazette*.
- 8 (6) In the case of the initial electricity ombudsman scheme, this  
9 section has effect subject to Schedule 3 clause 4.

10 **93. Requirements for scheme or amendment to be approved**

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

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

16 **94. Revocation of approval**

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

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

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

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

**Division 3 — Scheme operation**

**95. Customer may have decision or complaint reviewed**

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

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

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

that is provided for by the scheme.

**96. Jurisdiction of courts and tribunals**

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

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

- (a) it has been or is being dealt with by a court or tribunal; or
- (b) ~~in his or her opinion~~ the electricity ombudsman's opinion the matter should be dealt with by a court or tribunal.

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

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

(2) If a dispute or complaint involving a person other than a licensee, a registration holder or an electricity marketing agent is prescribed for the purposes of section 92(1)(d), the regulations may make it an offence for the person to fail to

1 comply with a decision or direction of the electricity  
2 ombudsman under an approved scheme.

- 3 (3) Regulations made for the purposes of this section may provide  
4 for penalties for an offence against the regulations not  
5 exceeding —  
6 (a) \$5 000 for an individual; and  
7 (b) \$20 000 for a body corporate.

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

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

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

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

- 14 (1) An applicant for the grant of a retail licence, distribution licence  
15 or integrated regional licence who proposes to supply electricity  
16 to customers must produce with the application evidence  
17 showing that the applicant will, if a licence is granted, be a  
18 member of an approved scheme.
- 19 (2) An applicant for the renewal of a retail licence, distribution  
20 licence or integrated regional licence who supplies electricity to  
21 customers must produce with the application evidence showing  
22 that the applicant will, if the licence is renewed, continue to be a  
23 member of an approved scheme.
- 24 (3) Where an application is made under section 18 for approval to  
25 transfer a retail licence, distribution licence or integrated  
26 regional licence to a person who proposes to supply electricity  
27 to customers, the proposed transferee must produce with the  
28 application evidence showing that the proposed transferee will,  
29 if the transfer is approved, be a member of an approved scheme.

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

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

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

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

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

- 14 (a) is a member of an approved scheme; and  
15 (b) is bound by, and will comply with any decision or  
16 direction of the electricity ombudsman under, the  
17 scheme.

18 **Division 5 — Membership of approved scheme by registration**  
19 **holder**

20 **101A. Proof of membership in applications relating to registration**

21 (1) An applicant for the grant of registration of an alternative  
22 electricity service must produce with the application evidence  
23 showing that the applicant will, if a registration is granted, be a  
24 member of an approved scheme.

25 (2) An applicant for the renewal of a registration of an alternative  
26 electricity service must produce with the application evidence  
27 showing that the applicant will, if the registration is renewed,  
28 continue to be a member of an approved scheme.

29 (3) If an application is made under section 59J for approval to  
30 transfer a registration of an alternative electricity service, the  
31 proposed transferee must produce with the application evidence

1 showing that the proposed transferee will, if the transfer is  
2 approved, be a member of an approved scheme.

3 **101B. Prerequisite to grant, renewal or transfer of registration**

4 Despite Part 3A Division 3, the Authority must not grant, renew  
5 or amend a registration or approve a transfer of a registration of  
6 an alternative electricity service to a person unless it is satisfied  
7 that the registration holder, or the proposed transferee —

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

9 (b) will, if the registration is granted, renewed or amended  
10 or the transfer is approved, be a member of an approved  
11 scheme.

12 **101C. Registration condition: membership of scheme**

13 It is a condition of registration of an alternative electricity  
14 service that the registration holder must not provide the  
15 alternative electricity service unless the registration holder —

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

17 (b) is bound by and complies with any decision or direction  
18 of the electricity ombudsman under the scheme.

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

3 **Division 1 — Preliminary**

4 **102. Purposes of this Part**

5 The purposes of this Part are —

- 6 (a) to provide for full regulation of access to services; and  
7 (b) to give effect to the relevant principles of the  
8 Competition Principles Agreement in respect of the  
9 provision of access to services.

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

11 **103. Terms used**

12 In this Part, unless the contrary intention appears —

13 ***access agreement*** means an agreement under the Code between  
14 a network service provider and another person for that person to  
15 have access to services;

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

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

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

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

24 **Division 2 — Establishment of Code**

25 **104. Minister to establish Code**

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

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

1 **104A. Code to provide for coverage of networks**

2 (1) Provision is to be made in the Code —

3 (a) prescribing the processes (including the matters to be  
4 considered and the criteria to apply) by which the  
5 Minister is to decide whether network infrastructure  
6 facilities are to be a covered network; and

7 (b) prescribing the processes (including the matters to be  
8 considered and the criteria to apply) by which the  
9 Minister is to decide whether a covered network is to  
10 cease to be a covered network; and

11 (c) for the manner in which a decision referred to in  
12 paragraph (a) or (b) is to be published and come into  
13 effect.

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

19 (3) A decision under the Code as to whether network infrastructure  
20 facilities are to be a covered network or are to cease to be a  
21 covered network is not liable to be challenged in, or reviewed or  
22 called in question by, a court or tribunal otherwise than under  
23 section 130.

24 (4) A stand-alone power system cannot be a covered network on its  
25 own but it may, in accordance with the Code, be treated as part  
26 of the covered network to which it is an adjunct.

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

1 **104B. Code to provide for full regulation of access to services of**  
2 **covered networks**

3 Provision is to be made in the Code for or in relation to the  
4 following in relation to covered networks that are regulated  
5 under this Part —

- 6 (a) the lodgment by a network service provider of an  
7 arrangement for its covered networks setting out —  
8 (i) the policies applying to access to services; and  
9 (ii) the basic terms and conditions that will apply to  
10 access to services unless an access agreement  
11 contains different terms and conditions; and  
12 (iii) any other matters prescribed by the Code;  
13 (b) the production by a network service provider of  
14 information to enable persons to understand the  
15 derivation of the elements of an arrangement for its  
16 covered networks lodged under paragraph (a), whether  
17 or not that arrangement has become an access  
18 arrangement;  
19 (c) the approval by the Authority of arrangements lodged  
20 under paragraph (a) and the matters to which the  
21 Authority is to have regard in deciding whether to give  
22 its approval;  
23 (d) the registration of access arrangements;  
24 (e) access by persons to services of a covered network as  
25 provided for in the access arrangement for the covered  
26 network and in accordance with —  
27 (i) access agreements; or  
28 (ii) determinations made by way of arbitration;  
29 (f) network access pricing regulation principles;  
30 (g) the rights, powers and duties that are to apply to and in  
31 relation to the negotiation, making, and implementation  
32 of access agreements;

- 1 (h) the duties and requirements in relation to the provision  
2 of access to services that are to be complied with by a  
3 network service provider;
- 4 (i) access arrangements to provide for any matter referred  
5 to in paragraphs (f), (g) and (h);
- 6 (j) the obligations of a network service provider in respect  
7 of the segregation of the functions and business of  
8 providing services from the network service provider's  
9 other functions and business and enabling the Authority  
10 to add to those obligations or waive any of them;
- 11 (k) services between related bodies corporate (as defined in  
12 the *Corporations Act 2001* (Commonwealth) section 9);
- 13 (l) the rights and obligations of network users;
- 14 (m) the formulation by a network service provider, and  
15 approval by the Authority, of technical codes for the  
16 purposes of access to services that are to be complied  
17 with by network users and other persons specified in the  
18 Code;
- 19 (n) the disclosure and use of confidential information;
- 20 (o) the supervisory or other functions of the Authority for  
21 the purposes of the Code, including a function of  
22 determining certain requirements in relation to access to  
23 the services of covered networks that are to be complied  
24 with by a network service provider or a person making a  
25 proposal for access to services and applied by the  
26 arbitrator.

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

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

- 29 (1) The Code may also make provision for or in relation to —
- 30 (a) the arbitration by the arbitrator of disputes between a  
31 network service provider and a person who has made a  
32 proposal for access to services; and
- 33 (b) other functions of the arbitrator; and

- 1 (c) the functions of the Authority; and  
2 (ca) access to the services of stand-alone power systems; and  
3 (cb) the regulation of the powers of the Electricity Networks  
4 Corporation and Regional Power Corporation to provide  
5 stand-alone power systems or storage works; and  
6 (d) the regulation of matters —  
7 (i) of a savings, transitional or supplementary  
8 nature; or  
9 (ii) that are otherwise necessary or convenient for  
10 the purposes of this Part.
- 11 (2) Transitional provisions referred to in subsection (1)(d)(i) may  
12 authorise the Minister to determine by order published in the  
13 *Gazette* how any matter in progress immediately before the  
14 commencement of this Part is to be treated, after that  
15 commencement, for the purposes of the provisions of the Code.  
16 *[Section 105 amended: No. 9 of 2020 s. 12.]*

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

- 18 (1) The making of the Code or the approval of an access  
19 arrangement —  
20 (a) does not affect the terms and conditions, or the  
21 operation, of an agreement for access to services in  
22 operation immediately before the commencement of the  
23 Code or the approval of the arrangement whether under  
24 the *Electricity Transmission and Distribution Systems*  
25 *(Access) Act 1994* or otherwise; and  
26 (b) does not afford a party to the agreement any ground or  
27 reason for not complying with the agreement according  
28 to its terms and conditions.
- 29 (2) Subsection (1)(a) or (b) does not apply if the Code or the  
30 agreement or an enactment provides otherwise.  
31 *[Section 106 amended: No. 33 of 2004 s. 34; No. 18 of 2005*  
32 *s. 139.]*

- 1   **107.   Code is subsidiary legislation**
- 2       (1) In this section —
- 3       **Code** includes —
- 4           (a) an amendment of the Code; or
- 5           (b) a code repealing and replacing the Code.
- 6       (2) The Code is subsidiary legislation for the purposes of the
- 7       *Interpretation Act 1984*.
- 8       (3) The Code is to be laid before each House of Parliament within
- 9       6 sitting days of that House next following publication of the
- 10       Code in the *Gazette*.
- 11       (4) Notice of motion to disallow the Code or any part of the Code
- 12       may be given in either House of Parliament within 10 sitting
- 13       days of that House after the Code has been laid before it under
- 14       subsection (3).
- 15       (5) Within 10 sitting days of a House of Parliament after notice of
- 16       motion has been given in that House under subsection (4), that
- 17       House may pass a resolution disallowing the Code or any part of
- 18       the Code.
- 19       (6) If the Code is not laid before both Houses of Parliament under
- 20       subsection (3), or is disallowed by either House in whole or in
- 21       part under subsection (5), the Code, or the disallowed part of the
- 22       Code (as applicable) ceases to have effect, but without affecting
- 23       the validity or curing the invalidity of anything done or the
- 24       omission of anything in the meantime.
- 25       (7) If a resolution has been passed under subsection (5), notice to
- 26       that effect is to be published in the *Gazette* within 21 days.
- 27       *[Section 107 amended: No. 9 of 2020 s. 13.]*
- 28   **108.   Public comment on amendment or replacement of Code**
- 29       (1) Before the Minister exercises the power —
- 30           (a) to amend the Code; or

- 1 (b) to repeal and replace it,  
2 the Minister must make the proposed amendment or  
3 replacement available for public comment in accordance with  
4 subsection (2).
- 5 (2) The Minister must —
- 6 (a) cause a notice giving a general description of the  
7 proposal to be published —
- 8 (i) in an issue of a daily newspaper circulating  
9 throughout the Commonwealth; and
- 10 (ii) in an issue of a daily newspaper circulating  
11 throughout the State,  
12 and on an appropriate website; and
- 13 (b) include in the notice the following information —
- 14 (i) the website at which a copy of the proposal may  
15 be obtained; and
- 16 (ii) a statement that written submissions on the  
17 proposal may be made to the Minister by any  
18 person within a specified period; and
- 19 (iii) the address (including an email address) to which  
20 the submissions may be delivered or sent.
- 21 (3) The period specified under subsection (2)(b)(ii) is not to be less  
22 than 30 days after both of the notices under subsection (2)(a)  
23 have been published.
- 24 (4) The Minister must have regard to any submission made in  
25 accordance with the notice.

26 *[Section 108 amended: No. 9 of 2020 s. 14.]*

27 **109. Exception to section 108**

- 28 (1) Section 108(1) does not apply if the Minister is satisfied that a  
29 proposed amendment to the Code is —
- 30 (a) of a minor nature; or

- 1 (b) required to be made urgently.
- 2 (2) If in reliance on subsection (1)(b) the Minister amends the Code  
3 without complying with section 108(1) —
- 4 (a) the Minister must call for public comment on the  
5 amendment as soon as is practicable after it has come  
6 into force; and
- 7 (b) section 108(2) and (3) apply with all necessary  
8 modifications.
- 9 (3) Having regard to any submissions made on the amendment, the  
10 Minister must consider whether the Code should be amended —
- 11 (a) to reverse the effect of the amendment; or  
12 (b) in some other manner.
- 13 **110. Consultation with network service providers on amendment**  
14 **or replacement of Code**
- 15 (1) Without limiting section 108, if the Minister considers that a  
16 proposed amendment or replacement of the Code may affect a  
17 network service provider, the Minister must consult with the  
18 network service provider and have regard to any submissions  
19 that the network service provider makes in relation to the  
20 proposal.
- 21 (2) If a network service provider considers that the Code, or a  
22 provision of it, has, as a result of altered circumstances, become  
23 unreasonable or inappropriate in its application to the network  
24 service provider, the network service provider may make a  
25 submission to the Minister requesting that the Code be amended  
26 or be repealed and replaced.
- 27 (3) The Minister must consider a submission made under  
28 subsection (2) and, if requested by the network service provider,  
29 consult with the network service provider in relation to it.

1 **111. Review of Code**

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

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

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

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

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

11 (4) The Authority must —

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

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

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

17 and on an appropriate website; and

18 (b) include in the notice —

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

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

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

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

1 **112. Functions of the Authority**

2 The Authority —

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

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

9 **Division 3 — Enforcement**

10 **114. References to contravening the Code**

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

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

23 **115. Prohibitions on hindering or preventing access**

- 24 (1) The network service provider in relation to a covered network  
25 that is regulated under this Part, or an associate of the network  
26 service provider, must not engage in conduct for the purpose of  
27 hindering or preventing —  
28 (a) access by any person to services in accordance with the  
29 Code; or

- 1 (b) the making of access agreements or any particular  
2 agreement in respect of that network; or
- 3 (c) the access to which a person is entitled under an access  
4 agreement or a determination made by way of  
5 arbitration.
- 6 Penalty: \$100 000.  
7 Daily penalty: \$20 000.
- 8 (2) A person who has access to services under an access agreement,  
9 or an associate of the person, must not engage in conduct for the  
10 purpose of hindering or preventing access by another person to  
11 services of a covered network that is regulated under this Part.  
12 Penalty: \$100 000.  
13 Daily penalty: \$20 000.
- 14 (3) Without limiting subsection (1) or (2) —
- 15 (a) a person is taken to engage in conduct for a particular  
16 purpose if —
- 17 (i) the conduct is or was engaged in for purposes  
18 that include, or included, that purpose; and  
19 (ii) that purpose is or was a substantial purpose;
- 20 (b) a person may be taken to have engaged in conduct for a  
21 particular purpose even though, after all the evidence  
22 has been considered, the existence of that purpose is  
23 ascertainable only by inference from the conduct of the  
24 person or of any other person or from other relevant  
25 circumstances.
- 26 (4) In this section —
- 27 (a) a reference to engaging in conduct is a reference to  
28 doing or refusing to do any act and includes a reference  
29 to —
- 30 (i) making a contract or arrangement or giving  
31 effect to a provision of a contract or  
32 arrangement; or

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

20 **116. Proceedings**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 [Division 4 deleted: No. 9 of 2020 s. 18.]

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## **Part 8A — Pilbara networks**

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

### **Division 1 — Preliminary**

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

#### **119. Purposes and objective of this Part**

- (1) The purposes of this Part are —
- (a) to provide for light regulation of access to services of covered Pilbara networks; and
  - (b) to give effect to the relevant principles of the Competition Principles Agreement in respect of the provision of access to services of certain covered Pilbara networks; and
  - (c) to provide for the operation, management, security and reliability of the interconnected Pilbara system and other Pilbara networks.
- (2) The objective of this Part (the *Pilbara electricity objective*) is to promote 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.
- (3) The regulations, the Pilbara Networks Access Code and the Pilbara networks rules may provide for the matters a person or body who performs a function under this Part is to have regard to in determining whether the performance of the function meets the Pilbara electricity objective.

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

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

10 **120. Terms used**

11 In this Part, unless the contrary intention appears —

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

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

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

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

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

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

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

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

- 1           ***Pilbara network user*** means a person provided or to be  
2           provided with access to services under a Pilbara access  
3           agreement but does not include the Pilbara ISO;
- 4           ***Pilbara networks participant*** means —
- 5           (a) the Pilbara ISO; or
- 6           (b) a Pilbara network service provider; or
- 7           (c) a licensee of a generation licence if the generating works  
8           to which the licence applies are connected to a Pilbara  
9           network; or
- 10          (d) a licensee of a transmission licence if the transmission  
11          system is, or is part of, a Pilbara network; or
- 12          (e) a licensee of a distribution licence if the distribution  
13          system is, or is part of, a Pilbara network; or
- 14          (f) a licensee of a retail licence who sells electricity  
15          transported through a Pilbara network; or
- 16          (g) a licensee of an integrated regional licence if at least one  
17          of the activities under the licence is an activity of a kind  
18          that could be covered by a licence referred to in  
19          paragraphs (c) to (f); or
- 20          (h) a Pilbara network user; or
- 21          (i) a person on whom functions are conferred under this  
22          Part; or
- 23          (j) a person on whom functions relating to this Part are  
24          conferred by another written law; or
- 25          (k) a person who is registered under the Pilbara networks  
26          rules as required by the regulations; or
- 27          (l) a person whose conduct is regulated, or on whom  
28          obligations are imposed, by regulations made under  
29          section 120N(2)(a).

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

1                   **Division 2 — Pilbara Networks Access Code**

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

3   **120A. Minister to establish Pilbara Networks Access Code**

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

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

8           (b) to meet the Pilbara electricity objective.

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

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

12   **120B. Pilbara Networks Access Code — covered Pilbara networks**

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

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

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

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

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

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

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

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

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

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

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

- 5 (a) access by persons to services of covered Pilbara  
6 networks in accordance with —
- 7 (i) Pilbara access agreements; or  
8 (ii) determinations made by way of arbitration;
- 9 (b) Pilbara access agreements and contracts to be subject to  
10 determinations or requirements of the Pilbara ISO;
- 11 (c) network access pricing regulation principles;
- 12 (d) the procedures, requirements, methodologies,  
13 guidelines, parameters, values and processes to be  
14 followed or used by a Pilbara network service provider  
15 in connection with prices, tariffs, revenue and costs;
- 16 (e) the rights, powers and duties that are to apply to and in  
17 relation to the negotiation, making, and implementation  
18 of Pilbara access agreements;
- 19 (f) the duties and requirements in relation to the provision  
20 of access to services that are to be complied with by a  
21 Pilbara network service provider;
- 22 (g) requiring a Pilbara network service provider to develop  
23 and publish the following in relation to its services —
- 24 (i) standing prices for connection and access to its  
25 services, including reasonable details of the  
26 methodologies and assumptions used in  
27 determining standing prices; and
- 28 (ii) standing terms for connection and access to its  
29 services; and
- 30 (iii) information to assist persons seeking connection  
31 and access to its services;
- 32 (h) the circumstances in which a Pilbara network service  
33 provider may or may not offer or agree to different

- 1 prices and terms for different Pilbara network users  
2 (including prices and terms determined in accordance  
3 with provisions made under paragraphs (c) to (g));
- 4 (i) access to the services of stand-alone power systems;
- 5 (j) providing for the resolution of disputes in relation to  
6 connection and access to services or in relation to things  
7 done or omitted to be done by a Pilbara network service  
8 provider under the Pilbara Networks Access Code  
9 including —
- 10 (i) arbitration of disputes by a person or body that is  
11 determined or appointed in accordance with the  
12 Pilbara Networks Access Code; and
- 13 (ii) the conferral of functions on a person or body  
14 arbitrating disputes;
- 15 (k) conferring functions on the Authority, including —
- 16 (i) supervisory and other functions for the purposes  
17 of the Pilbara Networks Access Code, including  
18 dispute resolution functions; and
- 19 (ii) the function of determining requirements  
20 (including prices and terms) in relation to access  
21 to services that are to be complied with by a  
22 Pilbara network service provider or a person  
23 seeking access to services and applied by a  
24 person or body arbitrating disputes; and
- 25 (iii) the issuing of guidelines for the purposes of this  
26 Division;
- 27 (l) the obligations of Pilbara networks participants to  
28 comply with guidelines issued by the Authority;
- 29 (m) the obligations of a Pilbara network service provider in  
30 respect of the segregation of the functions and business  
31 of providing services from the Pilbara network service  
32 provider's other functions and business;
- 33 (n) requiring the approval by the Authority of a proposed  
34 segregation referred to in paragraph (m) and enabling

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

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

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

4 **120D. Additional matters for Pilbara Networks Access Code and**  
5 **other instruments**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **120F. Consequential amendments to the Code**

- 19 (1) The Minister may amend the Code to give effect to, and make  
20 any consequential amendments relating to, the Pilbara Networks  
21 Access Code.
- 22 (2) Sections 108 and 109 do not apply to the making of  
23 amendments to the Code mentioned in subsection (1) in  
24 connection with the establishment of the initial Pilbara  
25 Networks Access Code.

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

27 **120G. Pilbara Networks Access Code is subsidiary legislation**

- 28 (1) In this section —  
29 ***Pilbara Networks Access Code*** includes —
- 30 (a) an amendment of the Pilbara Networks Access Code; or  
31 (b) a code repealing and replacing the Pilbara Networks  
32 Access Code.

- 1 (2) This section applies if the Pilbara Networks Access Code is  
2 established by a separate instrument under section 120A(2).
- 3 (3) The Pilbara Networks Access Code is subsidiary legislation for  
4 the purposes of the *Interpretation Act 1984*.
- 5 (4) The Pilbara Networks Access Code is to be laid before each  
6 House of Parliament within 6 sitting days of that House after the  
7 day on which the code is published in the *Gazette*.
- 8 (5) Notice of motion to disallow the Pilbara Networks Access Code  
9 or any part of the code may be given in either House of  
10 Parliament within 10 sitting days of that House after the day on  
11 which the code is laid before it under subsection (4).
- 12 (6) Within 10 sitting days of a House of Parliament after notice of  
13 motion has been given in that House under subsection (5), that  
14 House may pass a resolution disallowing the Pilbara Networks  
15 Access Code or any part of the code.
- 16 (7) If the Pilbara Networks Access Code is not laid before both  
17 Houses of Parliament under subsection (4), or is disallowed by  
18 either House in whole or in part under subsection (6), the code,  
19 or the disallowed part of the code (as applicable) ceases to have  
20 effect, but without affecting the validity or curing the invalidity  
21 of anything done or the omission of anything in the meantime.
- 22 (8) If a resolution has been passed under subsection (6), notice to  
23 that effect is to be published in the *Gazette* within 21 days.

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

25 **120H. Public comment on amendment or replacement of Pilbara**  
26 **Networks Access Code**

- 27 (1) This section applies if the Pilbara Networks Access Code is  
28 established by a separate instrument under section 120A(2) and  
29 the Minister intends to exercise the power —
- 30 (a) to amend the Pilbara Networks Access Code; or  
31 (b) to repeal and replace it.

- 1 (2) Before exercising the power, the Minister must make the  
2 proposed amendment or replacement available for public  
3 comment in accordance with subsection (3).
- 4 (3) The Minister must —
- 5 (a) cause a notice giving a general description of the  
6 proposal to be published —
- 7 (i) in an issue of a daily newspaper circulating  
8 throughout the Commonwealth; and
- 9 (ii) in an issue of a daily newspaper circulating  
10 throughout the State; and
- 11 (iii) on an appropriate website;
- 12 and
- 13 (b) include in the notice the following information —
- 14 (i) the website at which a copy of the proposal may  
15 be obtained; and
- 16 (ii) a statement that written submissions on the  
17 proposal may be made to the Minister by any  
18 person within a specified period; and
- 19 (iii) how the submissions may be made.
- 20 (4) The period specified under subsection (3)(b)(ii) is not to be less  
21 than 30 days after both of the notices under subsection (3)(a)(i)  
22 and (ii) have been published.
- 23 (5) The Minister must have regard to any submission made in  
24 accordance with the notice.

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

26 **120I. Exception to section 120H**

- 27 (1) Section 120H(2) does not apply if the Minister is satisfied that a  
28 proposed amendment to the Pilbara Networks Access Code  
29 is —
- 30 (a) of a minor nature; or
- 31 (b) required to be made urgently.

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

4 (a) the Minister must call for public comment on the  
5 amendment as soon as is practicable; and

6 (b) section 120H(3) and (4) apply with all necessary  
7 modifications.

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

11 (a) to reverse the effect of the amendment; or

12 (b) in some other manner.

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

14 **120J. Consultation with network service providers on amendment**  
15 **or replacement of Pilbara Networks Access Code**

16 (1) Without limiting section 120H, if the Minister considers that a  
17 proposed amendment or replacement of the Pilbara Networks  
18 Access Code that is established by a separate instrument under  
19 section 120A(2) may materially affect a network service  
20 provider, the Minister must —

21 (a) consult with the network service provider; and

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

24 (2) If a network service provider considers that the Pilbara  
25 Networks Access Code, or a provision of it, has, as a result of  
26 altered circumstances, become unreasonable or inappropriate in  
27 its application to the network service provider, the network  
28 service provider may make a submission to the Minister  
29 requesting that the Pilbara Networks Access Code be amended  
30 or be repealed and replaced.

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

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

5 **Division 3 — Pilbara networks rules**

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

7 **120K. Regulations to provide for Pilbara networks rules**

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

- 11 (2) The regulations may provide for the Pilbara networks rules to  
12 provide for, and in relation to, the operation, management,  
13 security and reliability of covered Pilbara networks that are not  
14 part of an interconnected Pilbara system.

- 15 (3) The regulations may also provide for the Pilbara networks rules  
16 to provide for, and in relation to, the following matters in  
17 relation to Pilbara networks that are not covered Pilbara  
18 networks or part of an interconnected Pilbara system —

- 19 (a) the functions of the Pilbara ISO under  
20 section 120W(4)(d);  
21 (b) the obligations of Pilbara network service providers to  
22 provide information to, and assist, the Pilbara ISO in the  
23 performance of the functions referred to in  
24 paragraph (a).

- 25 (4) The rules are to set out or deal with the matters prescribed by  
26 the regulations.

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

28 **120L. Pilbara networks rules not subsidiary legislation**

- 29 (1) The Pilbara networks rules are not subsidiary legislation for the  
30 purposes of the *Interpretation Act 1984* and section 42 of that

1 Act does not apply to them or to rules amending them or  
2 repealing and replacing them.

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

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

8 **120M. Establishment and amendment of Pilbara networks rules**

9 The regulations may provide for —

- 10 (a) the establishment of the initial Pilbara networks rules;  
11 and  
12 (b) the amendment, or repeal and replacement, of the  
13 Pilbara networks rules by rules made in accordance with  
14 the regulations and the Pilbara networks rules; and  
15 (c) the publication, commencement, and laying before each  
16 House of Parliament, of the initial Pilbara networks  
17 rules and rules amending, or repealing and replacing, the  
18 Pilbara networks rules.

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

20 **120N. General matters to be dealt with in regulations**

- 21 (1) The regulations may prescribe all matters that are necessary or  
22 convenient to be prescribed —  
23 (a) in relation to the matters set out in section 120K; and  
24 (b) to give effect to the purpose set out in section 119(1)(c);  
25 and  
26 (c) to meet the Pilbara electricity objective in relation to  
27 those matters.

- 1 (2) Without limiting section 120K, 131 or 131B or subsection (1),  
2 the regulations may do all or any of the following —
- 3 (a) regulate the conduct of persons and impose obligations  
4 on them;
- 5 (b) confer functions, or authorise the Pilbara networks rules  
6 to confer functions, on any of the following —
- 7 (i) the Minister;
- 8 (ii) the Authority;
- 9 (iii) the Pilbara ISO;
- 10 (iv) a person holding an office under a written law;
- 11 (v) a body established under a written law;
- 12 (vi) any other person;
- 13 (c) provide for the relationship between the Minister or  
14 another Minister and a person or body referred to in  
15 paragraph (b)(ii) to (vi) in relation to the performance of  
16 the functions of the person or body;
- 17 (d) authorise the Pilbara networks rules to confer rights and  
18 impose obligations on Pilbara networks participants;
- 19 (e) provide, or authorise the Pilbara networks rules to  
20 provide, for the resolution of disputes between Pilbara  
21 networks participants;
- 22 (f) authorise the Pilbara networks rules to —
- 23 (i) authorise the Pilbara ISO to make instruments  
24 establishing protocols and procedures and any  
25 other instruments related to the performance of  
26 its functions; and
- 27 (ii) provide for the effect of those instruments;
- 28 (g) provide for the process of making, amending, repealing  
29 or replacing an instrument made by the Pilbara ISO  
30 under a power conferred under paragraph (f);

- 1 (h) provide, or authorise the Pilbara networks rules to  
2 provide, for metering of electricity in covered Pilbara  
3 networks and interconnected Pilbara networks, including  
4 by providing for —  
5 (i) the provision, operation and maintenance of  
6 metering equipment; and  
7 (ii) ownership of and access to metering data;  
8 (i) provide, or authorise the Pilbara networks rules to  
9 provide, for the regulation of the disclosure and use of  
10 confidential or commercially sensitive information;  
11 (j) in respect of costs incurred in the performance of  
12 functions conferred on a person or body referred to in  
13 paragraph (b)(ii) to (vi), provide for —  
14 (i) the implementation of accounting arrangements  
15 to enable those costs to be identified; and  
16 (ii) the allocation of those costs between Pilbara  
17 networks participants; and  
18 (iii) the recovery of those costs;  
19 (k) provide, or authorise the Pilbara networks rules to  
20 provide, for the regulation of matters —  
21 (i) of a savings, transitional or supplementary  
22 nature; or  
23 (ii) that are otherwise necessary or convenient for  
24 the purposes of this Division.  
25 (3) The reference to costs in subsection (2)(j) includes, in relation to  
26 the Pilbara ISO, any costs incurred in anticipation of, or in  
27 preparation for, the performance of the functions of the Pilbara  
28 ISO.  
29 (4) Despite subsection (2), the regulations may regulate the conduct  
30 of, and confer rights and impose obligations on, network service  
31 providers of Pilbara networks that are not covered Pilbara

1 networks or interconnected Pilbara networks only for the  
2 purposes set out in section 120K(3).

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

4 **120O. Additional matters to be dealt with in regulations or rules**

- 5 (1) Without limiting section 120N(2)(a), the regulations may  
6 prohibit persons from engaging in an activity specified in the  
7 regulations unless they are registered in accordance with the  
8 Pilbara networks rules.
- 9 (2) The regulations or the Pilbara networks rules may provide that  
10 if the disclosure or use of confidential or commercially sensitive  
11 information is authorised by the rules —
- 12 (a) no civil or criminal liability is incurred in respect of the  
13 use or disclosure; and
- 14 (b) the use or disclosure is not to be regarded as —
- 15 (i) a breach of any duty of confidentiality or secrecy  
16 imposed by law or contract; or
- 17 (ii) a breach of professional ethics or standards or  
18 any principles of conduct applicable to a  
19 person's employment; or
- 20 (iii) unprofessional conduct.
- 21 (3) The regulations, the Pilbara networks rules, an instrument made  
22 under the Pilbara networks rules or an instrument amending any  
23 of them, may apply, adopt or incorporate, with or without  
24 modification, material contained in any other document or  
25 writing as in effect or existing —
- 26 (a) when the regulations, Pilbara networks rules, instrument  
27 or amending instrument comes into operation; or
- 28 (b) at a specified prior time.
- 29 (4) Without limiting section 120N(2)(j), if it is inappropriate to  
30 prescribe a set fee or charge in connection with the performance  
31 of a particular function, the regulations may provide for the

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

3 (5) The regulations, or the rules referred to in section 120N(2)(k)(i),  
4 may authorise the Minister to determine by order published in  
5 the *Gazette* how any matter or thing in progress immediately  
6 before the commencement of the Pilbara networks rules is to be  
7 treated, after that commencement, for the purposes of the  
8 provisions of the Pilbara networks rules.

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

10 **120P. Additional matters to be dealt with in rules: more than one**  
11 **provider**

12 The regulations may provide that the Pilbara networks rules  
13 may provide for the following —

14 (a) that if there is more than one Pilbara network service  
15 provider for a Pilbara network and a thing is required or  
16 permitted by the Pilbara networks rules to be done by  
17 the Pilbara network service providers, one of the Pilbara  
18 network service providers may, with the consent of one  
19 or more of the other providers, do that thing on behalf of  
20 those consenting providers;

21 (b) that a thing done or omitted to be done by a Pilbara  
22 network service provider on behalf of another Pilbara  
23 network service provider for a Pilbara network as  
24 referred to in paragraph (a) is taken to have been done or  
25 omitted to be done by that other Pilbara network service  
26 provider;

27 (c) that if there is more than one Pilbara network service  
28 provider for a Pilbara network and the Pilbara network  
29 service providers publish an instrument in accordance  
30 with the Pilbara networks rules that allocates things  
31 required or permitted by those rules to be done between  
32 those Pilbara network service providers, the provider to

1                   whom the thing is allocated under that instrument is  
2                   required or permitted to do that thing.

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

4                   **Division 4 — Pilbara networks technical rules**

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

6                   **120Q. Technical rules**

7                   (1) The regulations may provide for the following —

8                   (a) for the making, formulation and approval of technical  
9                   rules for the purposes of this Part;

10                  (b) for the Pilbara Networks Access Code or the Pilbara  
11                  networks rules to provide for the making, formulation  
12                  and approval of technical rules for the purposes of this  
13                  Part.

14                  (2) The technical rules may include rules made for the purposes of  
15                  all or any of the following —

16                  (a) access to services of covered Pilbara networks;

17                  (b) network and system operations, power system reliability  
18                  and stability and system security for covered Pilbara  
19                  networks and interconnected Pilbara networks.

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

21                  **Division 5 — Enforcement**

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

23                  **120R. References to contravening regulations, Pilbara Networks**  
24                  **Access Code or Pilbara networks rules**

25                  A reference in this Division to contravening a provision of the  
26                  regulations or the Pilbara Networks Access Code or the Pilbara  
27                  networks rules includes a reference to —

28                  (a) attempting to contravene the provision; or

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

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

11 **120S. Prohibitions on hindering or preventing access**

- 12 (1) In this section —
- 13 *associate*, in relation to a person, has the meaning it would have  
14 under the *Corporations Act 2001* (Commonwealth) Part 1.2  
15 Division 2 if sections 13, 16(2) and 17 of that Act were deleted.
- 16 (2) A Pilbara network service provider of a covered Pilbara network  
17 that is regulated under this Part, or an associate of the Pilbara  
18 network service provider, must not engage in conduct for the  
19 purpose of hindering or preventing —
- 20 (a) access by any person to services in accordance with this  
21 Part; or
- 22 (b) the making of Pilbara access agreements or any  
23 particular agreement in respect of that network; or
- 24 (c) the access to which a person is entitled under a Pilbara  
25 access agreement or a determination made by way of  
26 arbitration.
- 27 Penalty for this subsection: a fine of \$100 000.
- 28 Daily penalty for this subsection: a fine of \$20 000.
- 29 (3) A person who has access to services, or an associate of the  
30 person, must not engage in conduct for the purpose of hindering

1 or preventing access by another person to services of a covered  
2 Pilbara network that is regulated under this Part.

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

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

5 (4) Without limiting subsection (2) or (3) —

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

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

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

11 and

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

18 (5) In this section —

19 (a) a reference to engaging in conduct is a reference to  
20 doing or refusing to do any act and includes a reference  
21 to —

22 (i) making a contract, agreement or arrangement or  
23 giving effect to a provision of a contract,  
24 agreement or arrangement; or

25 (ii) arriving at an understanding or giving effect to a  
26 provision of an understanding; or

27 (iii) requiring a covenant to be given or giving a  
28 covenant;

29 and

- 1 (b) a reference to refusing to do an act includes a reference  
2 to —  
3 (i) refraining (otherwise than inadvertently) from  
4 doing the act; or  
5 (ii) making it known that the act will not be done.

- 6 (6) Subsection (2) or (3) does not apply to conduct in which a  
7 person engaged in accordance with an agreement, if the  
8 agreement was in force on 30 March 1995.

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

10 **120T. Proceedings**

- 11 (1) Civil proceedings cannot be brought in respect of a matter  
12 arising under the Pilbara Networks Access Code except —  
13 (a) in accordance with the regulations; or  
14 (b) by arbitration under the Pilbara Networks Access Code;  
15 or  
16 (c) in accordance with section 130.  
17 (2) Nothing in subsection (1) affects the right of a person —  
18 (a) to bring civil proceedings in respect of any matter or  
19 thing, or seek any relief or remedy, if the cause of action  
20 arises, or the relief or remedy is sought, on grounds that  
21 do not rely on the Pilbara Networks Access Code; or  
22 (b) to bring proceedings for judicial review of a decision  
23 made under this Act or the Pilbara Networks Access  
24 Code.

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

26 **120U. Criminal proceedings do not lie**

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

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

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

3 **120V. Regulations as to enforcement of Pilbara Networks Access**  
4 **Code and Pilbara networks rules**

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

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

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

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

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

20 (ii) in addition a daily amount not exceeding  
21 \$20 000;

22 (c) provide for demands for the payment of amounts  
23 referred to in paragraph (b) and the enforcement of  
24 demands for their payment;

25 (d) provide for and regulate the taking of proceedings in  
26 respect of alleged contraventions of provisions of the  
27 Pilbara Networks Access Code or the Pilbara networks  
28 rules, provide for the orders that can be made and other  
29 sanctions that can be imposed in those proceedings and  
30 provide for the enforcement of those orders and  
31 sanctions;

32 (e) provide for the manner in which amounts received by  
33 way of civil penalties are to be dealt with and applied;

- 1 (f) provide for and regulate the taking of proceedings  
2 before the Supreme Court for an injunction restraining  
3 engagement in conduct contravening a provision of the  
4 Pilbara Networks Access Code or the Pilbara networks  
5 rules and provide for the granting of an injunction  
6 (including an interim injunction) and the rescission or  
7 variation of an injunction so granted;
- 8 (g) provide for and regulate the taking of proceedings  
9 before the Supreme Court for a declaration as to whether  
10 a provision of the Pilbara Networks Access Code or the  
11 Pilbara networks rules is being or has been contravened  
12 and provide for the orders that can be made in those  
13 proceedings;
- 14 (h) provide for and regulate the taking of action for the  
15 recovery of an amount of loss or damage suffered  
16 because of conduct contravening a provision of the  
17 Pilbara Networks Access Code or the Pilbara networks  
18 rules;
- 19 (i) provide for and regulate the making of applications for,  
20 and the issue of, warrants relating to the investigation of  
21 alleged contraventions of provisions of the Pilbara  
22 Networks Access Code or the Pilbara networks rules and  
23 for the powers exercisable under warrants.

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

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

28 **Division 6 — Independent system operator**

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

30 **120W. Independent system operator**

- 31 (1) There is to be an independent system operator for Pilbara  
32 networks (the **Pilbara ISO**).

- 1 (2) The Pilbara ISO is to be a person specified in the regulations.
- 2 (3) Without limiting subsection (2), the regulations may specify the  
3 Regional Power Corporation as the Pilbara ISO.
- 4 (4) Subject to subsection (5), the Pilbara ISO has the following  
5 functions —
- 6 (a) to maintain and improve system security in any  
7 interconnected Pilbara system;
- 8 (b) to facilitate overall network co-ordination and planning  
9 for interconnected Pilbara systems;
- 10 (c) any functions in relation to covered Pilbara networks  
11 given by this Act, the regulations, the Pilbara Networks  
12 Access Code or the Pilbara networks rules;
- 13 (d) in relation to Pilbara networks that are not covered  
14 Pilbara networks or part of an interconnected Pilbara  
15 system —
- 16 (i) to collect and consider information relating to the  
17 operation, management, security and reliability  
18 of the Pilbara networks; and
- 19 (ii) to report as specified by the regulations to the  
20 Minister, the Authority or a specified person on  
21 those matters; and
- 22 (iii) to publish information on those matters.
- 23 (5) The regulations may specify that the initial Pilbara ISO is to  
24 have only those functions mentioned in subsection (4) that are  
25 specified in the regulations.

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

1 **120X. Regulations relating to Pilbara ISO**

2 The regulations may provide, or authorise the Pilbara Networks  
3 Access Code or the Pilbara networks rules to provide, for the  
4 following —

- 5 (a) that the Pilbara ISO may delegate the performance of a  
6 function to another person or body;
- 7 (b) that a delegation under paragraph (a) may permit the  
8 delegate to further delegate the performance of the  
9 function in accordance with the delegation;
- 10 (c) the regulation of delegations under this section;
- 11 (d) the regulation of contracts relating to delegations under  
12 this section, including that such contracts must comply  
13 with the requirements specified in the regulations, code  
14 or rules;
- 15 (e) the obligations of the Pilbara ISO in relation to a  
16 function the performance of which has been delegated to  
17 another person or body;
- 18 (f) the obligations of the Pilbara ISO in relation to the  
19 segregation of the functions of the Pilbara ISO under  
20 this Part (including as to personnel, operations, financial  
21 and legal matters and related matters) from other  
22 functions and business of the Pilbara ISO;
- 23 (g) the obligations of the Pilbara ISO to —
- 24 (i) report as specified by the regulations to the  
25 Minister, the Authority or a specified person on  
26 specified matters; and
- 27 (ii) prepare and publish information on specified  
28 matters.

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

1 **Division 7 — Functions of Authority**

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

3 **120Y. Functions of Authority**

4 (1) The Authority has the functions conferred on it under this Part.

5 (2) Without limiting section 131 or 131B or subsection (1), the  
6 regulations may provide for the obligations of the Authority  
7 to —

8 (a) report to the Minister on specified matters; and

9 (b) prepare and publish information on specified matters.

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

11 **Division 8 — Reviews of decisions**

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

13 **120Z. Reviews of decisions**

14 (1) Application may be made to the Board for the review by the  
15 Board of decisions of the following that are made under the  
16 regulations or the Pilbara networks rules and are of a class  
17 specified in the regulations —

18 (a) a person on whom functions are conferred under this  
19 Part;

20 (b) a person on whom functions relating to this Part are  
21 conferred by another written law.

22 (2) Regulations may —

23 (a) provide for the powers of the Board in relation to  
24 reviews provided for in those regulations; and

25 (b) make other provision that it is necessary or convenient  
26 to make in relation to those reviews.

27 (3) Nothing in subsection (1) prevents or affects the review by a  
28 court or tribunal, according to law, of decisions of the persons

1 referred to in that subsection made under the regulations or the  
2 Pilbara networks rules.

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

4 **Division 9 — Immunity**

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

6 **120ZA. Terms used**

7 (1) In this Division —

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

12 ***entity*** includes the following —

- 13 (a) a body corporate;
- 14 (b) a partnership;
- 15 (c) an unincorporated body;
- 16 (d) an individual;
- 17 (e) for a trust that has only 1 trustee —the trustee;
- 18 (f) for a trust that has more than 1 trustee —the trustees  
19 together;

20 ***officer*** of an entity that is a corporation has the meaning given  
21 to officer of a corporation in the *Corporations Act 2001*  
22 (Commonwealth) section 9;

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

26 ***participant*** means a person —

- 27 (a) on whom functions are conferred under this Part; or
- 28 (b) to whom the performance of a function has been  
29 delegated under this Part; or

1 (c) on whom functions relating to this Part are conferred by  
2 another written law;

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

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

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

13 **120ZB. Immunity of participants and their officers or employees**

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

20 (2) Subsection (1) has effect —

21 (a) in respect of all participants, and officers and employees  
22 of them, other than the Pilbara ISO, and officers and  
23 employees of it — subject to section 120ZC; and

24 (b) in respect of all participants, and officers and employees  
25 of them — subject to section 120ZD.

26 (3) An entity with which the Pilbara ISO enters into a contract in  
27 relation to the Pilbara ISO's performance of a function under  
28 this Part does not incur any civil monetary liability for an act or  
29 omission of the entity, or an officer or employee of it, done or  
30 made in good faith in the performance, or purported  
31 performance, of the contract.

1 (4) Subsection (3) has effect subject to sections 120ZC and 120ZD,  
2 as if the reference in section 120ZD(1) to 12 months were a  
3 reference to 2 months.

4 (5) The Pilbara ISO or a preparing entity, or an officer or employee  
5 of either of them, does not incur any civil monetary liability for  
6 an act or omission of the Pilbara ISO or the preparing entity, or  
7 an officer or employee of either of them, done or made,  
8 including before the commencement of the *Electricity Industry*  
9 *Amendment Act 2020*, in good faith in anticipation of, or in  
10 preparation or purported preparation for, the performance of a  
11 function under this Part.

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

13 **120ZC. Regulations may limit or affect immunity**

14 The regulations may, for the purposes of section 120ZB,  
15 without limitation —

- 16 (a) impose conditions on an immunity granted to an entity  
17 under section 120ZB; or  
18 (b) prescribe that an immunity granted under section 120ZB  
19 is limited in its application to entities, events,  
20 circumstances, losses or periods to which they are  
21 expressed to apply.

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

23 **120ZD. Limitation on immunity after initial period**

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

- 27 (a) the immunity given by section 120ZB does not apply to  
28 that act or omission; but  
29 (b) as long as that act or omission is done or made in good  
30 faith, the civil monetary liability for it is not to exceed  
31 the prescribed maximum amount.

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

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

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

8 (b) prescribe maximum amounts that vary in their  
9 application according to the entities, events,  
10 circumstances, losses or periods to which they are  
11 expressed to apply; or

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

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

15 **120ZE. Liability of officer of an entity to that entity not affected**

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

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

19 **Division 10 — Competition authorisation**

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

21 **120ZF. Competition authorisation by regulation**

22 (1) In this section —

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

27 (2) The regulations may authorise or approve any arrangement, act,  
28 matter or thing in relation to the Pilbara Networks Access Code  
29 or the Pilbara networks rules for the purposes of the



1 publicly available on a website maintained by or on behalf of  
2 the Authority.

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

4 **120ZH. Public consultation**

5 (1) In the course of conducting a review under section 120ZG, the  
6 Authority is to seek public comment on the extent to which the  
7 Pilbara electricity objective has been or is being achieved (the  
8 *issue*).

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

11 (a) published in a daily newspaper circulating throughout  
12 the State; and

13 (b) made publicly available on a website maintained by or  
14 on behalf of the Authority.

15 (3) The notice is to include —

16 (a) a statement that any person may, within a specified  
17 period, make written submissions on the issue to the  
18 Authority; and

19 (b) the address (including an email address) to which the  
20 submissions may be delivered or sent.

21 (4) The period specified under subsection (3)(a) is not to end less  
22 than 30 days after the day on which the notice is published  
23 under subsection (2)(a).

24 (5) The Authority is to have regard to any submission made in  
25 accordance with the notice and may have regard to any other  
26 submission received on the issue.

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

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**Division 12 — Transitional provisions**

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

**120ZI. Pilbara Networks Access Code and Pilbara networks rules do not affect existing agreements**

(1) The making and operation of the Pilbara Networks Access Code or the Pilbara networks rules —

(a) do not affect the terms and conditions, or the operation, of —

(i) an agreement for access to services in operation immediately before the commencement of the Pilbara Networks Access Code whether under the *Electricity Transmission and Distribution Systems (Access) Act 1994* or otherwise; or

(ii) an agreement for the supply of electricity or related services in operation immediately before the commencement of the Pilbara networks rules;

and

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

(2) Subsection (1)(a) or (b) does not apply if the Pilbara Networks Access Code or the Pilbara networks rules or the agreement or an enactment provides otherwise.

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

1 **Part 9 — Wholesale electricity market**

2 **121. Terms used**

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

8 (2) A person is a *participant* for the purposes of this Part if —  
9 (a) the person is registered in accordance with the market  
10 rules as required under the regulations; or  
11 (b) functions are conferred on the person under the  
12 regulations or the market rules; or  
13 (c) functions relating to this Part are conferred on the  
14 person by another written law.

15 **122. Regulations for a wholesale electricity market**

16 (1) Regulations are to be made for the purpose of establishing a  
17 market (the *market*) in relation to the wholesale supply of  
18 electricity in the South West interconnected system.

19 (2) The objectives of the market are —  
20 (a) to promote the economically efficient, safe and reliable  
21 production and supply of electricity and electricity  
22 related services in the South West interconnected  
23 system; and  
24 (b) to encourage competition among generators and retailers  
25 in the South West interconnected system, including by  
26 facilitating efficient entry of new competitors; and  
27 (c) to avoid discrimination in that market against particular  
28 energy options and technologies, including sustainable  
29 energy options and technologies such as those that make  
30 use of renewable resources or that reduce overall  
31 greenhouse gas emissions; and

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

6 **123. Market rules**

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

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

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

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

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

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- 1 of a particular function the regulations may provide for the  
2 method of calculating the fee or charge, including calculation  
3 according to the cost of performing that function.
- 4 (5) A reference in subsection (2) to contravening a provision of the  
5 market rules includes a reference to —
- 6 (a) attempting to contravene such a provision; or  
7 (b) aiding, abetting, counselling or procuring a person to  
8 contravene such a provision; or  
9 (c) inducing, or attempting to induce, a person, whether by  
10 threats or promises or otherwise, to contravene such a  
11 provision; or  
12 (d) being in any way, directly or indirectly, knowingly  
13 concerned in, or party to, the contravention by a person  
14 of such a provision; or  
15 (e) conspiring with others to contravene such a provision.
- 16 (6) In subsection (2)(i)(ii) —  
17 **daily amount** means an amount for each day or part of a day  
18 during which the contravention continues.

19 **125. Reviews**

- 20 (1) Application may be made to the Board for the review by the  
21 Board of decisions of a participant referred to in  
22 section 121(2)(b) or (c) that are made under the regulations or  
23 the market rules and are not of a class specified in the  
24 regulations.
- 25 (2) Regulations may —  
26 (a) provide for the powers of the Board; and  
27 (b) make other provisions that it is necessary or convenient  
28 to make,  
29 in relation to reviews provided for in those regulations.
- 30 (3A) Regulations that, immediately before the day on which the  
31 *National Gas Access (WA) Act 2009* section 59(1) comes into

1 operation<sup>3</sup>, apply provisions of the *Gas Pipelines Access*  
2 (*Western Australia*) Act 1998<sup>4</sup> continue to have the effect they  
3 had immediately before that day until the contrary intention  
4 appears from a regulation made after that day.

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

8 [*Section 125 amended: No. 16 of 2009 s. 59.*]

## 9 **126. Immunity of certain participants**

10 (1) In this section —

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

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

17 ***officer*** of a body corporate that is a corporation has the same  
18 meaning as it has in section 9 of the *Corporations Act 2001*  
19 (Commonwealth);

20 ***officer*** of a body corporate that is not a corporation has the  
21 same meaning as it has in section 9 of the *Corporations*  
22 *Act 2001* (Commonwealth);

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

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

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- 1 (3) If an act or omission done or made after the expiration of the  
2 period of 12 months from the establishment of the initial market  
3 rules is negligent —
- 4 (a) the immunity given by subsection (2) does not apply to  
5 that act or omission; but
- 6 (b) as long as that act or omission is done or made in good  
7 faith, the civil monetary liability for it is not to exceed  
8 the prescribed maximum amount.
- 9 (4) Regulations may exempt a specified market governance  
10 participant, other than a system management participant, from  
11 the operation of subsection (3)(a).
- 12 (5) The regulations may, for the purposes of subsection (3)(b),  
13 without limitation —
- 14 (a) prescribe a maximum amount that is limited in its  
15 application to persons, events, circumstances, losses or  
16 periods to which they are expressed to apply; or
- 17 (b) prescribe maximum amounts that vary in their  
18 application according to the persons to whom, or the  
19 events, circumstances, losses or periods to which, they  
20 are expressed to apply; or
- 21 (c) prescribe a manner in which the maximum amount is to  
22 be divided amongst claimants.
- 23 (6) This section does not apply to any liability of an officer of a  
24 body corporate to the body corporate.

25 [Section 126 amended: No. 46 of 2009 s. 17; No. 9 of 2020  
26 s. 20.]

27 **127. Competition authorisation by regulation**

- 28 (1) In this section —
- 29 **arrangement** includes any contract, arrangement or  
30 understanding, or any market practice or market or customer  
31 restriction, division, allocation or segregation of any nature, or a  
32 course of conduct or dealing.

- 1       (2) The regulations may authorise or approve any arrangement, act,  
2 matter or thing in relation to the market rules for the purposes of  
3 the *Competition and Consumer Act 2010* (Commonwealth) and  
4 the Competition Code.

5       *[Section 127 amended: No. 9 of 2020 s. 21.]*

6       **128. Review of market operation**

- 7       (1) The Authority is to review the operation of the market as soon  
8 as practicable after the expiration of 3 years from the  
9 commencement of this Part and thereafter as soon as practicable  
10 after the expiration of 3 years from a report being laid before  
11 each House of Parliament under subsection (5)(a).
- 12       (2) The purpose of the review is to assess the extent to which the  
13 objectives set out in section 122(2) have been or are being  
14 achieved.
- 15       (3) Not later than 3 years and 6 months after the commencement of  
16 this Part, or after the last preceding report was laid before each  
17 House of Parliament under subsection (5)(a), as the case may  
18 be, the Authority is to give the Minister a written report based  
19 on the review.
- 20       (4) If the Authority considers that some or all of the objectives set  
21 out in section 122(2) have not been and are not being achieved,  
22 the report is to set out recommendations as to how those  
23 objectives can be achieved.
- 24       (5) As soon as practicable after receiving the report, the Minister is  
25 to —
- 26       (a) cause the report to be laid before each House of  
27 Parliament; and
- 28       (b) prepare a response to the report and cause the response  
29 to be laid before each House of Parliament.

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1 (6) As soon as practicable after the report is laid before each House  
2 of Parliament, the Authority is to post a copy of the report on a  
3 website maintained by the Authority.

4 *[Section 128 amended: No. 9 of 2020 s. 22.]*

5 **129. Public consultation**

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

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

- 12 (a) published in a daily newspaper circulating throughout  
13 the State; and  
14 (b) posted on a website maintained by the Authority.

15 (3) The notice is to include —

- 16 (a) a statement that any person may, within a specified  
17 period, make written submissions on the issue to the  
18 Authority; and  
19 (b) the address (including an email address) to which the  
20 submissions may be delivered or sent.

21 (4) The period specified under subsection (3)(a) is not to end less  
22 than 30 days after the day on which the notice is published  
23 under subsection (2)(a).

24 (5) The Authority is to have regard to any submission made in  
25 accordance with the notice.

26 *[Section 129 amended: No. 9 of 2020 s. 23.]*

## Part 9A — Tariff equalisation

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

### 129A. Purpose of this Part

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

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

### 129B. Terms used

In this Part, unless the contrary intention appears —

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

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

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

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

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

[Section 129B inserted: No. 18 of 2005 s. 139; amended: No. 77 of 2006 Sch. 1 cl. 54(1); No. 9 of 2020 s. 24.]

**s. 129C**

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1 **129C. Tariff Equalisation Account**

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

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

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

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

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

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

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

**s. 129F**

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- 1 (3) Advice given by the Authority must be published in the *Gazette*  
2 with the notice under section 129D(2).  
3 *[Section 129E inserted: No. 18 of 2005 s. 139.]*
- 4 **129F. Payment and passing on of tariff equalisation contributions**
- 5 (1) The Electricity Networks Corporation must pay tariff  
6 equalisation contributions into the Tariff Equalisation Account  
7 at the times, and in the manner, prescribed.
- 8 (2) Users must make payments to the Electricity Networks  
9 Corporation in accordance with the Code in respect of tariff  
10 equalisation contributions payable by the Electricity Networks  
11 Corporation under subsection (1).
- 12 (3) Without limiting Part 8 Division 2, the Code may make  
13 provision —
- 14 (a) for the determination of the amounts payable by users  
15 under subsection (2) and the manner in which those  
16 amounts are to be collected; and
- 17 (b) for the duties and powers of the Electricity Networks  
18 Corporation in relation to tariff equalisation  
19 contributions to be taken into account —
- 20 (i) by the Authority in deciding whether to give its  
21 approval to an arrangement lodged under  
22 section 104B(a); and
- 23 (ii) in the formulation of the network access pricing  
24 regulation principles referred to in  
25 section 104B(f).
- 26 (4) Until there is an access arrangement for the network  
27 infrastructure facilities of the Electricity Networks  
28 Corporation —
- 29 (a) subsection (2) does not have effect; and
- 30 (b) users must make payments to the Electricity Networks  
31 Corporation in accordance with the regulations in  
32 respect of tariff equalisation contributions payable by

1 the Electricity Networks Corporation under  
2 subsection (1); and

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

7 (5) In subsection (4) —

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

11 *[Section 129F inserted: No. 18 of 2005 s. 139; amended: No. 77*  
12 *of 2006 Sch. 1 cl. 54(5); No. 9 of 2020 s. 25.]*

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

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

19 (a) the matters referred to in section 129D(3)(a), (b), (c)  
20 and (d); and

21 (b) any other prescribed matters.

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

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

26 **129H. Information**

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

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

**s. 129I**

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

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

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

5 **129J. Delegation by Treasurer**

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

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

1 **Part 9B — Temporary access contribution**

2 [Heading inserted: No. 9 of 2020 s. 26.]

3 **129K. Purpose of this Part**

4 The purpose of this Part is to contribute towards maintaining the  
5 financial viability of the Regional Power Corporation by  
6 allowing the Regional Power Corporation to recover all or part  
7 of its historical generation costs.

8 [Section 129K inserted: No. 9 of 2020 s. 26.]

9 **129L. Terms used**

10 In this Part, unless the contrary intention appears —

11 **contestable annual volume** means the portion of total annual  
12 volume that is a contestable supply;

13 **contestable proportion** means that proportion of the Regional  
14 Power Corporation's total supply of electricity in a financial  
15 year to consumers through its covered Pilbara network that is a  
16 contestable supply, calculated as contestable annual volume  
17 divided by total annual volume;

18 **contestable supply** means the supply of electricity to consumers  
19 who are not prescribed customers;

20 **costs** means capital and non-capital costs;

21 **generation costs** means any costs incurred by the Regional  
22 Power Corporation to generate or procure electricity for supply  
23 to consumers through the interconnected Pilbara network;

24 **historical generation costs** means any generation costs —

- 25 (a) that were incurred before 19 August 2019; or  
26 (b) that are incurred on or after 19 August 2019 under  
27 commitments made by the Regional Power Corporation  
28 before that date and that are costs that a prudent  
29 supplier, seeking to reasonably minimise costs, could  
30 not reasonably avoid;

**s. 129M**

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- 1 *NBU* means the segment of the Regional Power Corporation  
2 that has the functions and business of providing services  
3 through the interconnected Pilbara network;  
4 *prescribed customer* has the meaning given to that term in the  
5 *Electricity Corporations Act 2005* section 54;  
6 *Temporary Access Contribution Account* means the account  
7 referred to in section 129M;  
8 *temporary access contribution* means a temporary access  
9 contribution determined under section 129N(1);  
10 *termination date* means the date prescribed by the regulations  
11 as the termination date;  
12 *total annual volume* means the total quantity of electricity  
13 supplied by the Regional Power Corporation in a financial year  
14 through its covered Pilbara network, expressed in kilowatt  
15 hours;  
16 *user* means a Pilbara network user as defined in section 120.  
17 [Section 129L inserted: No. 9 of 2020 s. 26.]

18 **129M. Temporary Access Contribution Account**

- 19 (1) An agency special purpose account called the Temporary  
20 Access Contribution Account is established under the *Financial*  
21 *Management Act 2006* section 16.  
22 (2) There are to be credited to the Temporary Access Contribution  
23 Account —  
24 (a) each temporary access contribution paid by the NBU  
25 under section 129P(1); and  
26 (b) the amount of any income determined by the Treasurer  
27 (at a rate determined by the Treasurer) to be attributable  
28 to the investment under the *Financial Management*  
29 *Act 2006* section 37 of money standing to the credit of  
30 the Temporary Access Contribution Account; and

- 1 (c) any other amount lawfully received for the purposes of  
2 the Account.

3 *[Section 129M inserted: No. 9 of 2020 s. 26.]*

4 **129N. Determination of temporary access contributions**

- 5 (1) The Treasurer must for each financial year, until the termination  
6 date, determine, by notice published in the *Gazette*, an amount  
7 of temporary access contribution that is payable by NBU in  
8 respect of that financial year.

- 9 (2) The Treasurer must for each financial year, until the termination  
10 date, determine the cost to the Regional Power Corporation of  
11 its historical generation costs for that financial year.

- 12 (3) The temporary access contribution determined for a financial  
13 year must not exceed the contestable proportion of the cost  
14 determined for that financial year under subsection (2).

- 15 (4) In making a determination under subsection (1) for a financial  
16 year, the Treasurer must have regard to —

- 17 (a) the amount required to compensate the Regional Power  
18 Corporation for the cost determined under subsection (2)  
19 for that financial year; and  
20 (b) the moneys standing to the credit of the Temporary  
21 Access Contribution Account; and  
22 (c) any service standards to be observed by the Regional  
23 Power Corporation; and  
24 (d) any other prescribed matters.

- 25 (5) In subsection (4)(c) —

26 *service standards* means standards referred to in  
27 section 39(2)(d) that are provided for in a code prepared and  
28 issued under section 39.

- 29 (6) The Treasurer must consult with the Minister before making a  
30 determination under this section.

31 *[Section 129N inserted: No. 9 of 2020 s. 26.]*

**s. 129O**

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1 **129O. Treasurer may seek advice from the Authority**

2 (1) Before making a determination under section 129N(1) the  
3 Treasurer may ask the Authority for advice on any matter  
4 referred to in section 129N(4) or any other matter that the  
5 Treasurer considers relevant.

6 (2) It is a function of the Authority to give advice when asked to do  
7 so under subsection (1).

8 (3) The Treasurer must cause advice given by the Authority under  
9 subsection (2) to be published on an appropriate website when  
10 the determination is made.

11 *[Section 129O inserted: No. 9 of 2020 s. 26.]*

12 **129P. Payment and passing on of temporary access contribution**

13 (1) NBU must pay temporary access contributions into the  
14 Temporary Access Contribution Account, at the times and in the  
15 manner determined by the Treasurer.

16 (2) Users accessing services of the Regional Power Corporation's  
17 covered Pilbara network must make payments to NBU in  
18 accordance with the Pilbara Networks Access Code in respect of  
19 temporary access contributions payable by NBU under  
20 subsection (1).

21 (3) The Pilbara Networks Access Code may exempt users or classes  
22 of users specified in the code from subsection (2) in the  
23 circumstances specified in the code.

24 (4) Without limiting Part 8A Division 2, the Pilbara Networks  
25 Access Code may provide for —

26 (a) the determination of the amounts payable by users under  
27 subsection (2) and the manner in which those amounts  
28 are to be collected; and

29 (b) temporary access contributions and the obligations of  
30 users under subsection (2) to be taken into account in the  
31 determination, publication or approval of prices under

1 Part 8 or Part 8A or in the resolution of disputes in  
2 relation to those prices.

3 (5) The regulations may provide for the regulation of matters of a  
4 savings or transitional nature in relation to payments in respect  
5 of temporary access contributions.

6 *[Section 129P inserted: No. 9 of 2020 s. 26.]*

7 **129Q. Payments from Temporary Access Contribution Account**

8 (1) If a temporary access contribution is payable by NBU in respect  
9 of a financial year, the Treasurer must pay to the Regional  
10 Power Corporation in respect of that financial year the amount  
11 that the Treasurer considers necessary for the purpose of this  
12 Part having regard to —

13 (a) the matters referred to in section 129N(4)(a), (b) and (c);  
14 and

15 (b) any other prescribed matters.

16 (2) Payments under subsection (1) are to be made from the  
17 Temporary Access Contribution Account.

18 (3) Without limiting Part 8A Division 2, the Pilbara Networks  
19 Access Code may provide for reporting by the Regional Power  
20 Corporation of any amounts received from the Temporary  
21 Access Contribution Account in each financial year.

22 *[Section 129Q inserted: No. 9 of 2020 s. 26.]*

23 **129R. Information**

24 The Regional Power Corporation must provide any information,  
25 or access to information, that is necessary to assist the Treasurer  
26 and the Authority to perform their functions under this Part.

27 *[Section 129R inserted: No. 9 of 2020 s. 26.]*

**s. 129S**

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

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

4 *[Section 129S inserted: No. 9 of 2020 s. 26.]*

5 **129T. Delegation by Treasurer**

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

10 *[Section 129T inserted: No. 9 of 2020 s. 26.]*

1 **Part 10 — Other matters**

2 **130. Review by the Board**

3 (1) In this section —

4 *gas pipelines access provisions* means the *Gas Pipelines Access*  
5 *(Western Australia) Act 1998*<sup>4</sup> Schedule 1 as in force  
6 immediately before the day on which the *National Gas Access*  
7 *(WA) Act 2009* section 51 deleted it<sup>3</sup>.

8 (2) This section applies to —

9 (a) a decision of the Authority to refuse to grant or renew a  
10 licence; or

11 (b) a decision of the Authority to refuse to approve the  
12 transfer of a licence; or

13 (c) a decision of the Authority to refuse to amend a licence  
14 under section 21; or

15 (d) a decision of the Authority as to the length of the period  
16 for which a licence is granted or renewed; or

17 (e) a decision of the Authority as to any term or condition  
18 of a licence; or

19 (f) a decision of the Authority to amend a licence under  
20 section 22; or

21 (g) a decision of the Authority to refuse to approve —

22 (i) a standard form contract under section 51; or

23 (ii) an amendment to, or replacement for, a standard  
24 form contract under section 52;

25 or

26 (h) a direction given by the Authority under section 53; or

27 (i) a decision by the Minister under the Code that network  
28 infrastructure facilities are to become covered networks  
29 or are to cease to be covered networks; or

30 (ia) a decision by the Minister under the Pilbara Networks  
31 Access Code that a covered Pilbara network is to be

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- 1                    subject to regulation under Part 8 or Part 8A, or is to  
2                    cease to be subject to regulation under Part 8 or 8A; or
- 3                    (ib) a decision under the Pilbara Networks Access Code as  
4                    to whether a network service provider of a Pilbara  
5                    network has satisfied the requirements in the Pilbara  
6                    Networks Access Code for the provider to opt for the  
7                    access to services of the network to be subject to  
8                    regulation under Part 8A or to cease to be subject to  
9                    regulation under Part 8A; or
- 10                    (j) a decision by the Authority to add to the obligations of a  
11                    network service provider under the Code or the Pilbara  
12                    Networks Access Code in respect of the segregation of  
13                    the functions and business of providing services from  
14                    the network service provider's other functions and  
15                    business, or to waive any of those obligations; or
- 16                    (k) a decision by the Authority to approve or not to approve  
17                    an arrangement lodged under section 104B(a); or
- 18                    (ka) a decision by the Authority to approve or not to approve  
19                    a thing for which the approval of the Authority is  
20                    required under the Pilbara Networks Access Code; or
- 21                    (l) a decision by the Authority to release confidential data  
22                    given to the Authority for the performance of its  
23                    functions under Part 8 or 8A.
- 24                    Note:  
25                    See *Economic Regulation Authority Act 2003* Part 6.
- 26                    (3) A person adversely affected by a decision or direction to which  
27                    this section applies may apply to the Board for a review of the  
28                    decision.
- 29                    (4) Section 38(2) to (5) and (7) to (12) of the gas pipelines access  
30                    provisions apply to the application and to the review of the  
31                    decision or direction as if references in them to —
- 32                    (a) the relevant appeals body were references to the Board;  
33                    (b) a decision included references to a direction;

- 1 (5) The application operates to stay the decision or direction unless,  
2 in the case of a decision under subsection (2)(j), the Board  
3 determines otherwise.
- 4 (6) In the case of a decision under subsection (2)(k), section 39(2)  
5 to (5) of the gas pipelines access provisions also apply to the  
6 application and to the review of the decision as if references in  
7 them to —  
8 (a) the relevant appeals body were references to the Board;  
9 (b) the relevant regulator were references to the Authority.
- 10 (7) In the case of a decision under subsection (2)(l), section 43(2)  
11 to (4) of the gas pipelines access provisions also apply to the  
12 application and to the review of the decision as if references in  
13 them to —  
14 (a) the relevant appeals body were references to the Board;  
15 (b) the relevant regulator were references to the Authority.
- 16 (8) When the *Energy Arbitration and Review Act 1998* Part 6  
17 Division 2 refers to the functions of, and proceedings before, the  
18 Board those functions and proceedings include functions and  
19 proceedings under this section.
- 20 (9) For proceedings to which subsection (8) extends the provisions  
21 described in that subsection, sections 57(1) and 59(4) of those  
22 provisions apply only to the extent that it is consistent with the  
23 Code for them to apply.

24 [Section 130 amended: No. 16 of 2009 s. 60; No. 9 of 2020  
25 s. 27.]

26 **131A. Licence not personal property for the purposes of the**  
27 ***Personal Property Securities Act 2009* (Commonwealth)**

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

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

3            *[Section 131A inserted: No. 42 of 2011 s. 61.]*

4            **131.    Regulations**

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

9            **131B.   Enforcement of the regulations**

10          (1)    Without limiting section 131, the regulations may prescribe all  
11          matters that are necessary or convenient to be prescribed for the  
12          enforcement of the regulations.

13          (2)    The regulations may —

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

16                  (b)    prescribe a penalty of a fine of not more than \$100 000,  
17                  with or without a daily penalty of a fine of not more than  
18                  \$20 000, for an offence against the regulations.

19          *[Section 131B inserted: No. 9 of 2020 s. 28.]*

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

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

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

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

28                          (ii)   the provision of any prescribed service;

29                  and

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

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

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

11 (1) Without limiting section 131, regulations may make provision  
12 for and in relation to the imposition and payment of fees and  
13 charges in connection with any matter under this Act, including  
14 in connection with the performance of the respective functions  
15 of an arbitrator and the Board under this Act.

16 (2) If it is inappropriate to prescribe a set fee or charge in  
17 connection with the performance of a particular function the  
18 regulations may provide for the method of calculating the fee or  
19 charge, including calculation according to the cost of  
20 performing that function.

21 (3) Without limiting subsection (1) or (2) the regulations may —  
22 (a) authorise the Board to fix, and determine the incidence  
23 of liability for, the cost and expenses of the hearing and  
24 determination of proceedings before the Board; and  
25 (b) make any incidental or supplementary provision that is  
26 expedient for the purposes of paragraph (a).

27 (4) The application of subsection (3) extends to the cost and  
28 expenses of proceedings that are commenced but discontinued  
29 or otherwise not brought to finality.

30 *[Section 133 amended: No. 16 of 2009 s. 61; No. 9 of 2020*  
31 *s. 29.]*

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

2 (1) In this section —

3 *market rules* has the meaning given in Part 9;

4 *matter* includes act, omission, body, person or thing.

5 (2) The regulations may declare a matter dealt with, provided for,  
6 done or occurring under this Act, the regulations or the market  
7 rules to be an excluded matter for the purposes of the  
8 *Corporations Act 2001* (Commonwealth) section 5F in relation  
9 to —

10 (a) the whole of the Corporations legislation to which the  
11 *Corporations Act 2001* (Commonwealth) Part 1.1A  
12 applies; or

13 (b) a specified provision of that legislation; or

14 (c) that legislation other than a specified provision; or

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

16 *[Section 134 inserted: No. 32 of 2007 s. 4.]*

## Schedule 1 — Licence terms and conditions

[s. 11]

### 1. Licence terms and conditions

A licence may include provisions —

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

**cl. 1**

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

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

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

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

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

[s. 93]

### **1. Objectives stated**

The objectives referred to in section 93 are that —

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

- (i) the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations; and
- (j) the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Authority; and
- (k) the scheme will maintain the capacity of the electricity ombudsman, where appropriate, to refer disputes or complaints to other forums; and
- (l) the scheme will require the electricity ombudsman to inform the Authority if the ombudsman becomes aware of substantial breaches of any of the following —
  - (i) any licence condition; ~~or~~
  - (ia) any registration condition;
  - (ib) the AES code of practice;
  - (ii) the code of conduct under Part 6,<sup>5</sup>  
~~of which the ombudsman becomes aware.~~

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

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

1 **Schedule 3 — Transitional provisions**

2 [s. 79, 81]

3 **Division 1 — Initial customer service code of conduct**

4 **1. Approval of initial customer service code of conduct**

5 (1) The initial code of conduct under section 79 is to be approved by the  
6 Minister instead of by the Authority.

7 (2) The Minister is to act under subclause (1) in consultation with the  
8 committee.

9 (3) The provisions of —

10 (a) Part 6; and

11 (b) the *Interpretation Act 1984* section 25 in its application to  
12 that Part,

13 are modified so far as is necessary to enable effect to be given to  
14 subclauses (1) and (2).

15 (4) The code of conduct approved in accordance with this clause is to be  
16 taken, for the purposes of Part 6, to be a code of conduct approved by  
17 the Authority under Part 6.

18 **2. Appointment of initial committee**

19 (1) The Minister instead of the Authority is to —

20 (a) determine the initial membership, constitution and procedures  
21 of the committee under section 81; and

22 (b) appoint the initial members of the committee,

23 and may make the initial determinations under section 81(3).

24 (2) The provisions of —

25 (a) section 81; and

26 (b) the *Interpretation Act 1984* section 25 in its application to  
27 that section,

28 are modified so far as is necessary to enable effect to be given to  
29 subclause (1).

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

4   **3. Regulations for transitional matters**

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

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

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

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

13           **Division 2 — Initial electricity ombudsman scheme**

14   **4. Approval of initial electricity ombudsman scheme**

15          (1) The Minister instead of the Authority is to —

- 16           (a) approve the initial electricity ombudsman scheme under  
17           sections 92 and 93; and  
18           (b) give the initial approval required for the purposes of  
19           Schedule 2 paragraph (j).

20          (2) The provisions of —

- 21           (a) Part 7 Division 2; and  
22           (b) Schedule 2; and  
23           (c) the *Interpretation Act 1984* section 25 in its application to the  
24           provisions mentioned in paragraphs (a) and (b),

25          are modified so far as is necessary to enable effect to be given to  
26          subclause (1).

27          (3) A scheme approved in accordance with this clause is to be taken, for  
28          the purposes of Part 7, to be a scheme approved by the Authority  
29          under Division 2 of that Part.

1 **5. Regulations for transitional matters**

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

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

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

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

1 **Part 3 — Consequential amendment to *Energy Safety***  
2 ***Act 2006***

3 **4. Act amended**

4 This Part amends the *Energy Safety Act 2006*.

5 **5. Section 3 amended**

6 In section 3(1) in the definition of *energy industry participant*  
7 after paragraph (d) insert:

- 8
- 9 (da) a registration holder as defined in the  
10 *Electricity Industry Act 2004* section 3 for a  
11 class or sub-class of alternative electricity  
12 service prescribed by the regulations;  
13
-