Western Australia

Electricity Industry Act 2004

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Defined terms

Western Australia

Electricity Industry Act 2004

An Act to govern the operation and regulation of the Western Australian electricity industry and for related purposes.

Part 1 — Preliminary

1. Short title

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

2. Commencement

(1) This Act comes into operation on a day fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used

(1) In this Act, unless the contrary intention appears —

access, in relation to services, has the same meaning that it has when used in that context in the *Competition and Consumer Act 2010* (Commonwealth);

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

Authority means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*;

Board has the meaning given to that term in the *Energy Arbitration and Review Act 1998* section 49;

Code means the Code for the time being in force under section 104;

Competition Principles Agreement means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the States and the Territories, as in force for the time being;

covered network means network infrastructure facilities that —

(a) were covered by the Code immediately before the day on which the *Electricity Industry Amendment Act 2020* section 4(3) comes into operation and that have not ceased to be a covered network; or

(b) the Minister has decided under the Code are to be a covered network and that have not ceased to be a covered network; or

(c) are prescribed in the Pilbara Networks Access Code under section 120B(a) to be a covered Pilbara network and that have not ceased to be so prescribed; or

(d) a network service provider has opted, under the Pilbara Networks Access Code, to be regulated under Part 8A and that —

(i) have not ceased to be so regulated under that code as a consequence of an option by the network service provider for the facilities to cease to be so regulated; or

(ii) have not otherwise ceased to be a covered network;

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

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

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

distribution system means electricity infrastructure used, or to be used, for, or in connection with, or to control, the transportation of electricity at nominal voltages of less than 66 kV;

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

electricity corporation means —

(a) the Electricity Generation and Retail Corporation; or

(b) the Electricity Networks Corporation; or

(c) the Regional Power Corporation;

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

electricity infrastructure —

(a) means wires, apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, or to control, the transportation of electricity; and

(b) includes electrical equipment used, or to be used, to transfer electricity to or from an electricity network at the relevant point of connection including any transformers or switchgear at the relevant point or that is installed to support, or to provide backup to, that electrical equipment as is necessary for that transfer;

electricity network means a distribution system or a transmission system;

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

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

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

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

licence means —

(a) a generation licence; or

(b) a transmission licence; or

(c) a distribution licence; or

(d) a retail licence; or

(e) an integrated regional licence;

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

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

network infrastructure facilities —

(a) means electricity infrastructure used, or to be used, for the purpose of transporting electricity from generators of electricity to other electricity infrastructure or to end users of electricity; and

(b) includes stand-alone power systems, or storage works, used, or to be used, as an adjunct to electricity infrastructure;

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

(a) to maintain the works or system; and

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

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

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

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

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

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

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

services means —

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

(b) services ancillary to those services;

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

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

(b) into which electricity is supplied by —

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

(ii) any prescribed electricity generation plant;

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

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

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

storage activity means an activity comprising all of the following —

(a) receiving energy in the form of electricity;

(b) storing the received energy in any form;

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

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

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

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

(a) generate;

(b) transport through a transmission system;

(c) transport through a distribution system;

(d) sell;

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

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

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

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

Part 2 — Licensing of electricity supply

Division 1 — Licence classification and area

4. Classification of licences

(1) Licences are classified as follows —

(a) generation, which authorises the licensee —

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

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

(b) transmission, which authorises the licensee —

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

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

(c) distribution, which authorises the licensee —

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

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

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

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

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

5. Licence area

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

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

Division 2 — Licensing requirements

6. Licensing extends to statutory providers

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

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

(b) has been approved under a written law.

7. Requirement for licence

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

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

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

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

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

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

(a) the person who owns, controls or operates the works or system; or

(b) if the person referred to in paragraph (a) is a body corporate, a related body corporate (as defined in the *Corporations Act 2001* of the Commonwealth section 9) of the person; or

(c) a person who is in partnership with, or is a participant in a joint venture arrangement with, the person referred to in paragraph (a) in relation to that supply.

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

Penalty applicable to this section: $100 000.

Daily penalty applicable to this section: $5 000.

8. Power to exempt

(1) The Governor may by order published in the *Gazette* exempt any person or class of persons from all or any of the provisions of section 7(1) to (4).

(2) An order under subsection (1) may provide for circumstances in which, and conditions subject to which, an exemption is to apply.

(3) An exemption is of no effect at any time when a condition to which it is subject is not being observed.

(4) The Governor must not make an order under subsection (1) unless he or she is satisfied that it would not be contrary to the public interest to do so.

(5) Without limiting the other matters that may be taken into account, matters that are to be taken into account by the Governor in determining whether the making of the order would not be contrary to the public interest are —

(a) environmental considerations;

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

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

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

(e) the interests of any licensee, or applicant for a licence, in respect of the area or areas to which the order, if made, would apply;

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

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

(6) The *Interpretation Act 1984* section 43(4) and (7) to (9) apply to an order under subsection (1) as if the order were subsidiary legislation.

Division 3 — General licensing provisions

9. Authority to consider public interest

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

(2) Without limiting the other matters that may be taken into account, the Authority, in determining whether the exercise of the power would not be contrary to the public interest, is to take into account the matters referred to in section 8(5) but as if the area or areas referred to in section 8(5)(e) were the area or areas

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

10. Application for licence

(1) An application for a licence must be —

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

(b) accompanied by the prescribed application fee.

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

11. Authority may determine licence terms and conditions

(1) A licence is subject to any terms and conditions that are determined by the Authority.

(2) Without limiting subsection (1), terms and conditions determined under that subsection may include provisions relating to any matter provided for by Schedule 1.

(3) The terms and conditions of licences that —

(a) have the same classification under section 4; and

(b) have the same licence area or licence areas that overlap to a significant extent,

must be substantially similar, except to the extent that the Authority considers that —

(c) it is not practicable to make them substantially similar; or

(d) a difference is necessary to reflect particular supply circumstances.

(4) Terms and conditions determined under subsection (1) must not be inconsistent with —

(a) any other terms and conditions provided for in this Act or the regulations that apply to the licence; or

(b) the Code; or

(ba) in the case of a licence that relates to a Pilbara network —

(i) the Pilbara Networks Access Code, if the network is regulated under Part 8A; and

(ii) the Pilbara networks rules, if they apply to the network;

or

(c) regulations made under the *Electricity Act 1945* section 32.

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

12. Regulations as to licence terms and conditions

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

(a) every licence; or

(b) every licence of a prescribed class; or

(c) a licence held by an electricity corporation or a subsidiary of an electricity corporation.

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

13. Licence condition: performance audit

(1) It is a condition of every licence that the licensee must, not less than once in every period of 24 months (or any longer period that the Authority allows) calculated from the grant of the licence, provide the Authority with a performance audit conducted by an independent expert acceptable to the Authority.

(2) A performance audit is an audit of the effectiveness of measures taken by the licensee to meet the performance criteria specified in the licence.

(3) The Authority must give the Minister a report on each performance audit within 2 months after its receipt of the audit.

14. Licence condition: asset management system

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

(a) provide for an asset management system in respect of the licensee's assets; and

(b) notify details of the system and any substantial changes to it to the Authority; and

(c) not less than once in every period of 24 months (or any longer period that the Authority allows) calculated from the grant of the licence, provide the Authority with a report by an independent expert acceptable to the Authority as to the effectiveness of the system.

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

15. Duration of licence

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

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

16. Renewal of licence

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

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

(b) accompanied by the prescribed application fee.

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

17. Licence fees

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

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

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

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

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

18. Transfer of licence

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

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

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

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

(b) accompanied by the prescribed application fee.

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

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

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

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

(b) will acquire within a reasonable time after the grant, renewal or transfer, and is then likely to retain,

the financial and technical resources to undertake the activities authorised, or to be authorised, by the licence.

(2) The Authority must take all reasonable steps to make a decision in respect of an application for —

(a) the grant or renewal of a licence; or

(b) approval to transfer a licence,

within 90 days after the application is made.

(3) The duties imposed on the Authority by subsections (1) and (2) apply only if —

(a) an application has been made in accordance with section 10, 16 or 18, as the case may be; and

(b) section 50 or 100 does not prohibit the grant or renewal of the licence or the approval of the transfer; and

(c) where a requirement has been made under section 10(2), 16(2) or 18(4), the relevant information has been provided to the Authority.

20. Other laws not affected

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

21. Amendment of licence on application of licensee

(1) A licensee may apply to the Authority at any time for amendment of the licence.

(2) An application for the amendment of a licence must be —

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

(b) accompanied by the prescribed application fee.

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

(4) The Authority may grant the application if —

(a) it has been made in accordance with subsection (2); and

(b) where a requirement has been made under subsection (3), the relevant information has been provided to the Authority.

22. Amendment of licence on initiative of Authority

(1) The Authority may, on its own initiative, determine that a licence is to be amended.

(2) A licence must specify the procedure to be followed in making such a determination, including the manner in which an amendment is to be notified to the licensee, and the determination may only be made in accordance with that procedure.

(3) An amendment under this section cannot take effect until it is notified to the licensee under the procedure referred to in subsection (2).

(4) This section applies to the substitution of a new licence for an existing licence in the same way as it applies to the amendment of a licence.

23. Notice of decisions

(1) The Authority must ensure that notice of the grant, renewal, transfer or amendment of a licence is published in the *Gazette* as soon as is practicable after the grant, renewal, transfer or amendment.

(2) The notice must include —

(a) the date of the grant, renewal, transfer or amendment; and

(b) the name and business address of the licensee; and

(c) the term of the licence; and

(d) a description of the licence area; and

(e) in the case of an amendment, details of the amendment; and

(f) the place where a copy of the licence and any plan may be inspected under section 24; and

(g) the Authority's website address.

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

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

24. Licences to be available for inspection

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

(a) a copy of every licence in force from time to time; and

(b) if any licence area is specified by reference to a plan, a copy of the plan.

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

25. Regulations about public consultation

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

Division 4 — Exclusive licences

26. Regulations may authorise an exclusive licence

(1) The Governor may, on the recommendation of the Minister, make regulations designating one or more areas of the State as an area in respect of which an exclusive licence may be granted for a specified period.

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

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

27. Requirements for regulations

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

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

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

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

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

(3) Regulations made under section 26 —

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

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

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

28. Application for and grant of licence

(1) An application for an exclusive licence may only be made if the Minister has determined that he or she is satisfied that all of the requirements of the regulations to be observed before such an application may be made have been complied with.

(2) Despite section 19, an exclusive licence may only be granted by the Authority under that section if the Minister has determined that he or she is satisfied that all of the requirements of the regulations relevant to the grant of the licence have been observed.

(3) A determination under subsection (1) or (2) is to be made by instrument published in the *Gazette*.

29. Prohibition of further licences

If —

(a) an exclusive licence is granted in respect of an area in accordance with regulations made under section 26; and

(b) the licence is not cancelled under section 35 or surrendered,

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

30. Trade practices authorisation

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

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

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

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

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

Division 5 — Interruption of supply

31. Interruption of supply

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

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

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

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

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

or

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

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

(4) This section is in addition to —

(a) any powers that the licensee has under the *Electricity Act 1945* or the *Electricity Corporations Act 2005* in relation to the interruption, suspension or restriction of the supply of electricity; and

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

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

and does not limit those powers, provisions or rights.

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

Division 6 — Enforcement

32. Failure to comply with licence

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

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

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

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

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

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

(4) The Authority may recover —

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

(b) the costs and expenses of any action taken under subsection (2)(c),

in a court of competent jurisdiction as a debt due by the licensee to the State.

33. Right of licensee to make submissions

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

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

(b) given the licensee a reasonable opportunity to make submissions on the matter.

34. Exception where public health endangered

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

(a) serving notice on the licensee under section 32(1); or

(b) complying with section 33.

35. Cancellation of licence

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

(a) is in default as defined in subsection (2); or

(b) has failed to pay a licence fee as required under section 17; or

(c) in the case of a company, is an externally-administered body corporate as defined in the *Corporations Act 2001* of the Commonwealth section 9; or

(d) has within a period of 24 months been convicted of more than 3 offences for which the prescribed punishment is a fine of $10 000 or more or imprisonment for 12 months or more.

(2) For the purposes of subsection (1)(a) a licensee is in default if the Governor is satisfied that —

(a) the licensee has failed to comply with a term or condition of the licence; and

(b) the failure is material in terms of the operation of the licence as a whole; and

(c) the Minister has given to the licensee written notice of the failure and the fact that in the Minister's opinion paragraph (b) applies to it; and

(d) the licensee has not, within the time specified in the notice, either remedied the failure or shown cause why the licence should not be cancelled.

(3) If a licence is cancelled under this section the Authority must ensure that notice of the cancellation is published in the *Gazette*.

(4) Regulations may be made under section 131 providing, in the event of a licence being cancelled, for —

(a) the vesting of assets, rights and interests of the former licensee in a person (including the Minister as a corporation) for the purpose of enabling electricity to be supplied after the cancellation; and

(b) the conferral of powers and duties for that purpose; and

(c) the discharge or assignment of liabilities; and

(d) the disposal of property; and

(e) all matters that are necessary or convenient for dealing with the consequences of the cancellation and the vesting referred to in paragraph (a).

(5) If —

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

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

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

36. Duty to leave system in safe condition

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

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

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

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

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

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

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

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

37. Authority to administer licensing scheme

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

38. Authority to monitor licensing scheme and licence compliance

It is a function of the Authority —

(a) to monitor and report to the Minister on the operation of the licensing scheme provided for in this Part; and

(b) to inform the Minister about any failure by a licensee to meet performance criteria or other requirements of its licence.

39. Authority may issue codes

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

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

(a) metering of the supply of electricity by licensees including —

(i) the provision, operation and maintenance of metering equipment; and

(ii) ownership of and access to metering data;

(b) the transfer of customers between licensees;

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

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

(da) compensation payments to be made to customers by the Electricity Networks Corporation or the Regional Power Corporation, as the case requires, if the corporation fails to observe standards referred to in paragraph (d);

(e) any other matter prescribed by the regulations.

(2a) If the Authority has not prepared and issued a code in respect of a code matter the Minister may —

(a) prepare and issue a code in respect of that code matter; or

(b) by notice published in the *Government Gazette*, declare that the Minister proposes to prepare and issue a code in respect of that code matter.

(2b) If —

(a) a code prepared and issued by the Minister; or

(b) a declaration under subsection (2a)(b),

is in force in respect of a code matter, the Authority cannot issue a code in respect of that code matter.

(2c) In subsections (2a) and (2b) —

code matter means —

(a) the matter mentioned in subsection (2)(a); or

(b) the matter mentioned in subsection (2)(b); or

(c) the matter mentioned in subsection (2)(d); or

(ca) the matter mentioned in subsection (2)(da); or

(d) a matter referred to in subsection (2)(e).

(3) A code is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(4) A provision of a code is of no effect to the extent that it is inconsistent with a provision of this Act or another written law.

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

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

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

(1) In this section —

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

relevant day means —

(a) for the first review, the day referred to in subsection (3); and

(b) for a subsequent review, the day referred to in subsection (4);

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

(a) are to be observed by the Regional Power Corporation; and

(b) are provided for in a code prepared and issued by the Minister under section 39;

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

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

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

(4) Subsequent reviews are to be carried out as soon as is practicable after the day on which the period fixed under subsection (11) ends.

(5) The purpose of a review is to consider whether the RPC standards are appropriate for each of the transmission systems and distribution systems to which they apply when assessed

against the service standards that apply to the South West interconnected system.

(6) When carrying out a review the Authority is to give members of the public an opportunity to comment on matters relevant to the review.

(7) The Authority is to give the Minister a report based on a review within —

(a) the period of 4 months after the relevant day; or

(b) any longer period allowed by the Minister under subsection (8).

(8) The Minister may, at the request of the Authority, extend the period referred to in subsection (7)(a) by not more than 28 days.

(9) A report may contain recommendations as to changes that should be made to the RPC standards.

(10) Within 28 days after the day on which a report is given to the Minister, the Authority is to —

(a) make the report available for public inspection in such manner as the Authority considers appropriate; and

(b) cause a notice giving details of where copies of the report can be obtained to be published —

(i) in a daily newspaper circulating throughout the State; and

(ii) on its website.

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

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

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

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

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

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

Division 8 — Powers in relation to land

40. Power of public authority to grant certain interests

(1) In this section —

public authority means —

(a) a Minister of the Crown; or

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

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

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

(2) A public authority may grant to a licensee, on such terms and conditions as are agreed between the authority and the licensee, a relevant interest in respect of land held by the public authority in fee simple.

41. Taking of interest or easement for purposes of licence

(1) For the purpose of enabling a licensee to supply electricity as authorised by a licence, an interest in land or easement over land

may be taken under the *Land Administration Act 1997* Part 9 as if for a public work within the meaning of that Act.

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

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

(a) generating works; or

(b) a transmission system operating at 200 kV or higher; or

(c) any other electricity transmission system of a kind prescribed for the purposes of this subsection,

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

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

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

(6) Any costs and expenses incurred in the taking of an interest or easement under this section —

(a) are to be paid by the licensee; and

(b) may be recovered in a court of competent jurisdiction as a debt due by the licensee to the State.

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

42. Vesting of interest or easement

(1) Despite anything in the *Land Administration Act 1997* Part 9, on the taking of an interest in land or easement over land under section 41, the interest or easement vests in the licensee.

(2) The *Land Administration Act 1997* Part 9 applies, with all necessary changes, in relation to the recording or registering of an interest or easement taken under section 41.

43. Proceedings and liability

(1) Proceedings in respect of compensation, or otherwise for the purpose of complying with the *Land Administration Act 1997* Parts 9 and 10, may be taken against the licensee.

(2) The licensee is liable in respect of the taking of an interest in land or easement over land under section 41 to the same extent as the Minister administering the *Land Administration Act 1997* would have been liable if the taking had been for the purpose of a public work.

44. Easements in gross

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

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

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

(1) A reference to an energy operator in a provision of the *Energy Operators (Powers) Act 1979* that is prescribed in the regulations (a ***prescribed provision***) includes a licensee if the regulations provide that the provision is prescribed in respect of the licensee or a class of licensees to which the licensee belongs.

(2) Regulations made for the purposes of this section may —

(a) restrict the operation of, or add a further requirement to, a prescribed provision in relation to a licensee or class of licensees; or

(b) impose conditions or restrictions on the doing of any thing authorised by a prescribed provision by a licensee or a member of a class of licensees; or

(c) prohibit a licensee or a member of a class of licensees from doing any thing authorised by a prescribed provision; or

(d) require a consent or approval to be obtained for the doing of, or the manner of doing, any thing authorised by a prescribed provision.

(3) Regulations made for the purposes of this section are not to prescribe the *Energy Operators (Powers) Act 1979* sections 28(3)(e) and 45(4) to (16) in respect of a licensee other than a relevant corporation.

(4) If the provisions of the *Energy Operators (Powers) Act 1979* referred to in subsection (3) are prescribed provisions in respect of a relevant corporation, Division 8 does not apply to the corporation.

(5) In this section —

licensee includes any person in whom the assets, rights and interests of a former licensee are vested under regulations referred to in section 35(4);

relevant corporation means —

(a) the Electricity Networks Corporation; or

(b) the Regional Power Corporation; or

(c) a subsidiary of a corporation mentioned in paragraph (a) or (b).

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

Division 10 — Transitional provision

46. Transitional provision for existing operators

(1) In this section —

commencement day means the day on which this Part comes into operation;

Western Power Corporation means the body corporate that was the corporation under the *Electricity Corporation Act 1994* [1] section 4 before that section was repealed by the *Electricity Corporations Act 2005* Schedule 5 clause 11 [3].

(2) This section applies to every person (an ***existing operator***) who immediately before the commencement day was undertaking any activity that, after that day, is required to be licensed under section 7.

(3) An existing operator who wishes to apply for a licence in respect of an activity referred to in subsection (2) must do so within 12 months after the commencement day.

(4) An existing operator is to be treated as if the person were the holder of the relevant licence —

(a) until the expiry of 18 months after the commencement day; or

(b) until —

(i) a licence of that kind is granted to the person or is refused; and

(ii) in the case of a refusal, the time for an application for review of the decision under section 130 expires without an application being made or an application is made but is unsuccessful,

whichever happens first.

(5) For the purposes of subsection (4)(b)(ii) an application is unsuccessful if it —

(a) results in the refusal referred to in subsection (4)(b)(i) being confirmed; or

(b) is withdrawn, discontinued or dismissed.

(6) Where after the day on which the *Electricity Corporations Act 2005* Schedule 5 clause 30 comes into operation [2] —

(a) an electricity corporation undertakes an activity that immediately before that day was undertaken by the Western Power Corporation; and

(b) that activity is required to be licensed under section 7 but is not so licensed,

the electricity corporation is to be treated as an existing operator in respect of that activity for the purposes of this section.

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

Part 3 — Supply of electricity to certain customers

Division 1 — Preliminary

47. Terms used

In this Part, unless the contrary intention appears —

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

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

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

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

Division 2 — Supply contracts

48. Regulations as to supply contracts

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

(a) the terms, conditions and provisions of —

(i) a standard form contract; and

(ii) a non-standard contract,

under which a retail licensee sells electricity to customers; and

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

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

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

(e) the provision of information about contracts by a retail licensee to customers.

(2) The regulations may —

(a) require a retail licensee to offer to supply electricity to customers under a standard form contract; and

(b) prescribe the circumstances in which the obligation referred to in paragraph (a) arises; and

(c) without limiting section 12, provide that it is a condition of every retail licence and every integrated regional licence that the retail licensee must comply with the obligation referred to in paragraph (a).

(3) The regulations may provide —

(a) for and in relation to the standards of service that a retail licensee is to provide to customers in connection with the supply of electricity; and

(b) for the inclusion in contracts referred to in subsection (1)(a) of requirements that the retail licensee comply with any such standard.

(4) The regulations may apply, adopt or incorporate any provision of a code or a standard that is contained in another document, and may do so —

(a) with or without modification; or

(b) as the provision is in force —

(i) at the time when the regulations are made; or

(ii) from time to time.

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

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

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

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

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

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

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

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

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

51. Approval of standard form contract

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

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

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

(b) will be inconsistent with —

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

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

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

52. Amendment or replacement of standard form contract

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

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

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

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

53. Authority may direct that amendment be made

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

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

(b) is no longer consistent with —

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

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

(2) The Authority may direct the retail licensee concerned —

(a) to submit an appropriate amendment to the form of contract to the Authority for approval under section 52(1); and

(b) to do so within a specified period.

(3) In subsection (2)(a) —

appropriate amendment means an amendment —

(a) specified by the Authority; or

(b) otherwise determined by the Authority to be suitable for approval.

54. Licence condition: contracts

(1) It is a condition of every retail licence and integrated regional licence that, subject to any exception provided for in the regulations, the licensee must not supply electricity to a customer otherwise than under —

(a) a standard form contract; or

(b) a non-standard contract that complies with this Act.

(2) It is also a condition of every retail licence and integrated regional licence that the licensee must comply with a direction given to the licensee under section 53.

(3) For the purposes of subsection (1)(b), a non-standard contract complies with this Act if it —

(a) meets the requirements of the regulations in respect of such contracts; and

(b) is not inconsistent with —

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

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

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

(1) In this section —

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

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

relevant contract means —

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

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

relevant day means the day on which the *Electricity Corporations Act 2005* Part 2 comes into operation [2].

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

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

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

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

(4) The regulations may —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Division 3 — Connection to distribution system

57. Terms used

In this Division, unless the contrary intention appears —

connect means to connect to a distribution system;

premises means premises owned or occupied by a new or existing customer.

58. Regulations as to connection

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

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

(a) require a retail licensee to make arrangements with the holder of a distribution licence or integrated regional licence for the connection of premises of a prescribed class; and

(b) require the holder of a distribution licence or an integrated regional licence to connect premises of a prescribed class to the holder's distribution system; and

(c) prescribe the circumstances in which an obligation referred to in paragraph (a) or (b) arises; and

(d) authorise the holder of a distribution licence or an integrated regional licence to adopt a method of connection that results in the least cost to the holder; and

(e) make provision for and in relation to the costs of connection, including provision as to who is liable to pay those costs.

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

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

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

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

Division 4 — Default supplier

59. Regulations as to default supplier

The regulations may —

(a) require that a default supplier be determined, in accordance with the regulations, for each connection point as defined in the regulations; and

(b) require that the default supplier so determined be a retail licensee that supplies electricity at the relevant connection point; and

(c) require that a register be established and maintained, in accordance with the regulations, showing the name of the default supplier for the time being determined for each connection point; and

(d) provide that if a customer commences to take a supply of electricity at premises without entering into a contract for the supply with a retail licensee, the electricity is deemed to be supplied under the standard form contract of the default supplier for the connection point in respect of those premises as determined under the regulations; and

(e) make provision for and in relation to the effect of contracts of the kind referred to in paragraph (d), including —

(i) the period for which such contracts continue in force; and

(ii) the exclusion or modification of any term, condition or provision of such contracts.

Part 4 — Extension and expansion policies for certain corporations

60. Terms used

In this Part, unless the contrary intention appears —

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

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

corporation means —

(a) the Electricity Networks Corporation; or

(b) the Regional Power Corporation; or

(c) a subsidiary of a corporation mentioned in paragraph (a) or (b);

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

(a) the geographic extension of a particular system; and

(b) the expansion of the electrical capacity of that system; and

(c) the connection of customers to that system;

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

system means a transmission system or distribution system.

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

61. Draft policy to be submitted to Coordinator

(1) In subsection (2) —

prescribed period means —

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

(b) any longer period allowed by the Coordinator in a particular case.

(2) A corporation must, within the prescribed period, submit to the Coordinator a draft extension and expansion policy for each system operated by the corporation.

(3) An extension and expansion policy submitted by a corporation may relate to one or more or all of the systems operated by the corporation.

62. Approval of policy

(1) Subject to subsection (2), the Coordinator may —

(a) approve an extension and expansion policy submitted under section 61; or

(b) direct that it be amended and approve it in an amended form.

(2) The Coordinator must not approve an extension and expansion policy if the Coordinator considers that it —

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

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

(3) Without limiting the other matters that may be taken into account, in exercising the powers conferred by this section and sections 63 and 64 the Coordinator is to take into account the matters referred to in section 8(5) but as if the area or areas referred to in section 8(5)(e) were the area to be affected by the exercise of the powers.

63. Amendment or replacement of policy

(1) A corporation may submit to the Coordinator for approval —

(a) an amendment to an approved policy; or

(b) a replacement for an approved policy.

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

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

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

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

64. Coordinator may direct that amendment be made

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

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

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

(2) The Coordinator may direct the corporation concerned —

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

(b) to do so within a specified period.

(3) In subsection (2)(a) —

appropriate amendment means an amendment —

(a) specified by the Coordinator; or

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

65. Licence condition: extension and expansion

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

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

(b) comply with a direction given to the corporation under section 62(1)(b) that relates to the extension and expansion policy for the system to which the licence applies; and

(c) comply with a direction given to the corporation under section 64(2) that relates to the approved policy for the system to which the licence applies; and

(d) implement arrangements set out in the approved policy for the system to which the licence applies.

66. Regulations as to content of policies

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

(a) methods or principles to be applied by a corporation in relation to —

(i) the extension and expansion of the system to which the policy relates; and

(ii) the connection of customers to that system;

and

(b) procedures to be followed by a corporation —

(i) in undertaking the extension and expansion of the system to which the policy relates; and

(ii) in connecting customers to that system;

and

(c) criteria or parameters to be applied by a corporation when determining the eligibility of particular classes of customers for connection to the system to which the policy relates; and

(d) information about the costs of implementing the policy.

Part 5 — Last resort supply arrangements

67. Terms used

In this Part, unless the contrary intention appears —

designated area means an area designated under section 68(1);

last resort supply plan means a plan that meets the requirements of section 69;

retail licence includes an integrated regional licence;

supplier of last resort has the meaning given to that term in section 69(1).

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

(1) The Authority may, by notice published in the *Gazette*, designate an area to which a retail licence applies as an area for which there is to be a last resort supply plan.

(2) The Authority is to ensure —

(a) that, as soon as is practicable after an area becomes a designated area, a last resort supply plan for the designated area is approved or determined by the Authority under section 73; and

(b) that, at all times thereafter, there is a last resort supply plan for the designated area that has been approved or determined by the Authority under section 73.

69. Requirements for last resort supply plan

(1) A last resort supply plan for a designated area is one that deals with the supply of electricity to customers in the area by the holder of a retail licence (the ***supplier of last resort***) if the plan comes into operation under section 70.

(2) A last resort supply plan must set out the arrangements, and make the provisions, that are necessary for the supply of electricity as mentioned in subsection (1).

(3) A last resort supply plan must —

(a) make provision for any matter or circumstance that is prescribed; and

(b) otherwise comply with the regulations.

(4) A last resort supply plan is of no effect to the extent that it is inconsistent with any enactment.

70. How plan brought into operation

(1) This section applies if, and only if, the retail licence of the supplier to whose customers a last resort supply plan applies —

(a) has been cancelled under section 35; or

(b) has expired and has not been renewed; or

(c) has been surrendered.

(2) If this section applies, the Authority may, by notice published in the *Gazette*, determine that the last resort supply plan comes into operation on a day specified in the notice.

(3) An order under subsection (2) is to specify the name of the supplier to whose customers the last resort supply plan applies.

71. Supplier of last resort

(1) The Authority may, by notice in writing to the holder of a retail licence (the ***licensee***) —

(a) designate the licensee as the supplier of last resort for a designated area; or

(b) cancel a designation so made.

(2) The Authority is to consult with the licensee before a notice is given under subsection (1).

(3) The designation of the licensee cannot be expressed to have effect for more than 2 years, but on the expiry of the designation the licensee may be re-designated, whether once or more than once.

(4) Unless another supplier of last resort for a designated area is designated for the time being under subsection (1) —

(a) the Electricity Generation and Retail Corporation is the supplier of last resort for the designated area if electricity is supplied to customers in the area from the South West interconnected system; and

(b) the Regional Power Corporation is the supplier of last resort for the designated area if electricity is not supplied to customers in the area from the South West interconnected system.

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

72. Functions of supplier of last resort

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

(a) prepare a draft last resort supply plan for that area and submit it to the Authority within 3 months after becoming the supplier of last resort or within such longer period as the Authority may allow; and

(b) consult with the Authority with a view to obtaining approval of the draft plan; and

(c) carry out the arrangements and other provisions in the last resort supply plan approved or determined by the Authority under section 73, if the plan comes into operation under section 70.

73. Approval or determination of plan

(1) The Authority may —

(a) approve a draft last resort supply plan submitted under section 72; or

(b) request that it be amended and approve it in an amended form.

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

74. Amendment of plan by supplier

(1) With the approval of the Authority, the supplier of last resort for a designated area may amend the last resort supply plan for that area.

(2) The supplier of last resort is to submit any proposed amendment to the Authority for approval.

(3) If an amendment is so submitted the Authority may —

(a) approve it; or

(b) request that it be changed and approve it in a changed form; or

(c) refuse to approve it.

75. Authority may make amendment

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

76. Licence condition: last resort supply

It is a condition of every retail licence that —

(a) if the licensee is designated under section 71(1) for a designated area; and

(b) so long as the designation under section 71(1) remains in force,

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

77. Provision may be made by regulation

The regulations may make provision for and in relation to —

(a) the preparation and approval process for a last resort supply plan under sections 72 and 73, and the amendment of a plan;

(b) last resort supply arrangements under a plan, including for and in relation to —

(i) the commencement of arrangements; and

(ii) the extent to which particular arrangements are to apply to a particular class of customers; and

(iii) notification to customers and other affected persons of matters relating to the arrangements, including —

(I) the commencement of arrangements; and

(II) the effect of the arrangements and steps that will or may be taken; and

(III) rights, powers, duties and procedures that apply under the arrangements;

and

(iv) the identification of the customers affected by the commencement of arrangements and the provision of identifying information to the supplier of last resort; and

(v) the transfer of customers to the supplier of last resort and the nature of the relationship between them; and

(vi) the terms and conditions of supply of electricity under the arrangements, including those relating to pricing and the imposition of charges; and

(vii) the recovery of costs by the supplier of last resort; and

(viii) the duration and cessation of any obligation to supply electricity under the arrangements; and

(ix) other rights, powers and duties of —

(I) the Authority; and

(II) the supplier of last resort; and

(III) customers; and

(IV) other persons,

in connection with the carrying out of the arrangements or the operation of a last resort supply plan.

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

78. Terms used

In this Part, unless the contrary intention appears —

code of conduct means the code of conduct approved under section 79;

committee means the committee established under section 81;

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

electricity marketing agent means —

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

(i) for the purpose of obtaining new customers for the licensee; or

(ii) in dealings with existing customers in relation to contracts for the supply of electricity by the licensee;

and

(b) a person who acts —

(i) on behalf of one or more customers; or

(ii) as an intermediary between one or more customers and a licensee,

in respect of the supply of electricity to the customer or customers; and

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

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

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

(a) negotiations for, or dealings in respect of, a contract for the supply of electricity to a customer; or

(b) advertising, promotion, market research or public relations in relation to the supply of electricity to customers.

79. Code of conduct

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

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

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

(b) electricity marketing agents,

with the object of —

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

(d) protecting customers from undesirable marketing conduct.

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

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

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

80. Code is subsidiary legislation

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

81. Consultative committee

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

(2) The Authority —

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

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

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

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

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

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

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

82. Licence condition: code of conduct

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

83. Enforcement of code of conduct against marketing agents

The code of conduct may provide —

(a) that the contravention of a provision of the code of conduct by an electricity marketing agent constitutes an offence; and

(b) that an offence is punishable by a penalty not exceeding —

(i) $5 000 for an individual; and

(ii) $20 000 for a body corporate.

84. Code may provide for vicarious liability

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

85. Code may include presumption of authority

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

(a) the holder of a retail licence or an integrated regional licence; or

(b) an electricity marketing agent,

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

86. Authority to monitor compliance

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

87. Comment to be sought on amendment or replacement of code

(1) Whenever the Authority proposes to exercise the power —

(a) to amend the code of conduct; or

(b) to repeal and replace it,

the Authority must —

(c) refer the proposed amendment or replacement to the committee for its advice; and

(d) have regard to any advice given by the committee.

(2) Before the committee gives its advice to the Authority, it must, in accordance with section 89, give any interested person an opportunity to offer comments on the amendment or replacement.

(3) The committee must take into account any comments received under subsection (1) in formulating its advice.

88. Review of code

(1) The committee must carry out a review of the code of conduct as soon as is practicable after —

(a) the first anniversary of its commencement; and

(b) the expiry of each 2 yearly interval after that anniversary.

(2) The object of a review is to re-assess the suitability of the provisions of the code of conduct for the purposes of section 79(2).

(3) The committee must, in accordance with section 89, give any interested person an opportunity to offer comments relevant to the review.

(4) The committee must take into account any comments received under subsection (3) in carrying out the review.

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

89. Further provisions about opportunity to comment

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

(a) an interested person is a person —

(i) who the committee considers has a particular interest in the amendment, replacement or review; or

(ii) who is determined by the Authority, by notice in writing to the committee, to have such an interest;

(b) an opportunity to offer comments is an opportunity to furnish written comments to the committee within —

(i) a period specified by the Authority by notice in writing to the committee; or

(ii) in the absence of such a notice, a period determined by the committee.

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

The regulations may provide that a prescribed enactment —

(a) does not apply in relation to the supply and marketing of electricity to customers; or

(b) does not apply in relation to the supply and marketing of electricity to customers to the extent prescribed; or

(c) does not apply in relation to the supply and marketing of electricity to customers to the extent that the enactment is inconsistent with the code; or

(d) applies in relation to the supply and marketing of electricity to customers with such modifications as are prescribed.

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

Part 7 — Electricity ombudsman scheme

Division 1 — Preliminary

90. Terms used

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

approved scheme means a scheme approved under section 92;

customer means —

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

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

customer contract means —

(a) a standard form contract; or

(b) a non-standard contract,

as defined in section 47;

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

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

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

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

91. Regulations as to electricity ombudsman scheme

The regulations may provide for and in relation to —

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

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

Division 2 — Approval of electricity ombudsman scheme

92. Authority may approve scheme

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

(a) disputes and complaints under customer contracts; and

(b) disputes between —

(i) customers and licensees; or

(ii) customers and electricity marketing agents;

and

(c) complaints by customers about —

(i) licensees; or

(ii) electricity marketing agents;

and

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

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

(3) A scheme may be made applicable to a dispute or complaint that arose before the commencement of the scheme, but not earlier than 12 months before that commencement.

(4) The Authority may, by instrument in writing, approve an amendment to an approved scheme.

(5) Notice of an approval under subsection (1) is to be published in the *Gazette*.

(6) In the case of the initial electricity ombudsman scheme, this section has effect subject to Schedule 3 clause 4.

93. Requirements for scheme or amendment to be approved

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

(a) the objectives set out in Schedule 2; and

(b) any other prescribed objective.

94. Revocation of approval

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

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

(a) follow any prescribed procedure; and

(b) comply with any other prescribed requirements.

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

Division 3 — Scheme operation

95. Customer may have decision or complaint reviewed

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

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

(a) make any order or determination; or

(b) give any direction; or

(c) decline to deal with a matter on any ground,

that is provided for by the scheme.

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

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

(a) $5 000 for an individual; and

(b) $20 000 for a body corporate.

98. Authority to monitor compliance with decisions

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

Division 4 — Membership of approved scheme by licensee

99. Proof of membership in applications relating to licence

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

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

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

100. Prerequisite to grant, renewal or transfer of licence

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

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

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

101. Licence condition: membership of scheme

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

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

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

Part 8 — Access to services of network infrastructure facilities

Division 1 — Preliminary

102. Purposes of this Part

The purposes of this Part are —

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

(b) to give effect to the relevant principles of the Competition Principles Agreement in respect of the provision of access to services.

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

103. Terms used

In this Part, unless the contrary intention appears —

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

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

network service provider means a person who operates network infrastructure facilities;

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

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

Division 2 — Establishment of Code

104. Minister to establish Code

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

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

104A. Code to provide for coverage of networks

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

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

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

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

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

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

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

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

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

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

(a) the lodgment by a network service provider of an arrangement for its covered networks setting out —

(i) the policies applying to access to services; and

(ii) the basic terms and conditions that will apply to access to services unless an access agreement contains different terms and conditions; and

(iii) any other matters prescribed by the Code;

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

(c) the approval by the Authority of arrangements lodged under paragraph (a) and the matters to which the Authority is to have regard in deciding whether to give its approval;

(d) the registration of access arrangements;

(e) access by persons to services of a covered network as provided for in the access arrangement for the covered network and in accordance with —

(i) access agreements; or

(ii) determinations made by way of arbitration;

(f) network access pricing regulation principles;

(g) the rights, powers and duties that are to apply to and in relation to the negotiation, making, and implementation of access agreements;

(h) the duties and requirements in relation to the provision of access to services that are to be complied with by a network service provider;

(i) access arrangements to provide for any matter referred to in paragraphs (f), (g) and (h);

(j) the obligations of a network service provider in respect of the segregation of the functions and business of providing services from the network service provider's other functions and business and enabling the Authority to add to those obligations or waive any of them;

(k) services between related bodies corporate (as defined in the *Corporations Act 2001* (Commonwealth) section 9);

(l) the rights and obligations of network users;

(m) the formulation by a network service provider, and approval by the Authority, of technical codes for the purposes of access to services that are to be complied with by network users and other persons specified in the Code;

(n) the disclosure and use of confidential information;

(o) the supervisory or other functions of the Authority for the purposes of the Code, including a function of determining certain requirements in relation to access to the services of covered networks that are to be complied with by a network service provider or a person making a proposal for access to services and applied by the arbitrator.

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

105. Other matters for which Code may make provision

(1) The Code may also make provision for or in relation to —

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

(b) other functions of the arbitrator; and

(c) the functions of the Authority; and

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

(cb) the regulation of the powers of the Electricity Networks Corporation and Regional Power Corporation to provide stand-alone power systems or storage works; and

(d) the regulation of matters —

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

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

(2) Transitional provisions referred to in subsection (1)(d)(i) may authorise the Minister to determine by order published in the *Gazette* how any matter in progress immediately before the commencement of this Part is to be treated, after that commencement, for the purposes of the provisions of the Code.

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

106. Code does not affect existing agreements

(1) The making of the Code or the approval of an access arrangement —

(a) does not affect the terms and conditions, or the operation, of an agreement for access to services in operation immediately before the commencement of the Code or the approval of the arrangement whether under the *Electricity Transmission and Distribution Systems (Access) Act 1994* or otherwise; and

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

(2) Subsection (1)(a) or (b) does not apply if the Code or the agreement or an enactment provides otherwise.

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

107. Code is subsidiary legislation

(1) In this section —

Code includes —

(a) an amendment of the Code; or

(b) a code repealing and replacing the Code.

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

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

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

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

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

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

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

108. Public comment on amendment or replacement of Code

(1) Before the Minister exercises the power —

(a) to amend the Code; or

(b) to repeal and replace it,

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

(2) The Minister must —

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

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

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

and on an appropriate website; and

(b) include in the notice the following information —

(i) the website at which a copy of the proposal may be obtained; and

(ii) a statement that written submissions on the proposal may be made to the Minister by any person within a specified period; and

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

(3) The period specified under subsection (2)(b)(ii) is not to be less than 30 days after both of the notices under subsection (2)(a) have been published.

(4) The Minister must have regard to any submission made in accordance with the notice.

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

109. Exception to section 108

(1) Section 108(1) does not apply if the Minister is satisfied that a proposed amendment to the Code is —

(a) of a minor nature; or

(b) required to be made urgently.

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

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

(b) section 108(2) and (3) apply with all necessary modifications.

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

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

(b) in some other manner.

110. Consultation with network service providers on amendment or replacement of Code

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

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

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

111. Review of Code

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

(a) the fifth anniversary of its commencement; and

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

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

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

(4) The Authority must —

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

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

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

and on an appropriate website; and

(b) include in the notice —

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

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

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

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

112. Functions of the Authority

The Authority —

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

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

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

Division 3 — Enforcement

114. References to contravening the Code

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

(a) attempting to contravene such a provision; or

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

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

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

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

115. Prohibitions on hindering or preventing access

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

(a) access by any person to services in accordance with the Code; or

(b) the making of access agreements or any particular agreement in respect of that network; or

(c) the access to which a person is entitled under an access agreement or a determination made by way of arbitration.

Penalty: $100 000.

Daily penalty: $20 000.

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

Penalty: $100 000.

Daily penalty: $20 000.

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

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

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

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

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

(4) In this section —

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

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

(ii) arriving at an understanding or giving effect to a provision of an understanding; or

(iii) requiring a covenant to be given or giving a covenant;

(b) a reference to refusing to do an act includes a reference to —

(i) refraining (otherwise than inadvertently) from doing the act; or

(ii) making it known that the act will not be done.

(5) Subsection (1) or (2) does not apply to conduct in which a person engaged in accordance with an agreement, if the agreement was in force on 30 March 1995.

(6) In this section —

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

[Section 115 amended: No. 33 of 2004 s. 35; No. 9 of 2020 s. 16.]

116. Proceedings

(1) Civil proceedings cannot be brought in respect of a matter arising under the Code except —

(a) in accordance with the regulations; or

(b) by arbitration under the Code; or

(c) in accordance with section 130.

(2) Nothing in subsection (1) affects the right of a person —

(a) to bring civil proceedings in respect of any matter or thing, or seek any relief or remedy, if the cause of action arises, or the relief or remedy is sought, on grounds that do not rely on the Code; or

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

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

117. Criminal proceedings do not lie

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

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

118. Regulations as to enforcement of Code

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

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

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

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

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

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

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

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

(d) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied; and

(e) provide for and regulate the taking of proceedings before the Supreme Court for an injunction restraining engagement in conduct contravening a provision of the Code and provide for the granting of an injunction (including an interim injunction) and the rescission or variation of an injunction so granted; and

(f) provide for and regulate the taking of proceedings before the Supreme Court for a declaration as to whether a provision of the Code is being or has been contravened and provide for the orders that can be made in those proceedings; and

(g) provide for and regulate the taking of action for the recovery of an amount of loss or damage suffered because of conduct contravening a provision of the Code.

(3) In subsection (2)(b)(ii) —

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

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

Part 8A — Pilbara networks

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

Division 1 — Preliminary

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

119. Purposes and objective of this Part

(1) The purposes of this Part are —

(a) to provide for light regulation of access to services of covered Pilbara networks; and

(b) to give effect to the relevant principles of the Competition Principles Agreement in respect of the provision of access to services of certain covered Pilbara networks; and

(c) to provide for the operation, management, security and reliability of the interconnected Pilbara system and other Pilbara networks.

(2) The objective of this Part (the ***Pilbara electricity objective***) is to promote 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.

(4) Without limiting subsection (3), the matters referred to in that subsection may include the following —

(a) the contribution of the Pilbara resources industry to the State's economy;

(b) the nature and scale of investment in the Pilbara resources industry;

(c) the importance to the Pilbara resources industry of a secure and reliable electricity supply.

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

120. Terms used

In this Part, unless the contrary intention appears —

interconnected Pilbara network means a Pilbara network that is interconnected with another Pilbara network;

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

(a) generating works and associated works;

(b) loads;

(c) facilities, including electricity storage facilities;

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

Pilbara electricity objective, see section 119(2);

Pilbara ISO, see section 120W;

Pilbara network service provider means a person who —

(a) owns, controls or operates a Pilbara network or any part of a Pilbara network; or

(b) proposes to own, control or operate a Pilbara network or any part of a Pilbara network;

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

Pilbara networks participant means —

(a) the Pilbara ISO; or

(b) a Pilbara network service provider; or

(c) a licensee of a generation licence if the generating works to which the licence applies are connected to a Pilbara network; or

(d) a licensee of a transmission licence if the transmission system is, or is part of, a Pilbara network; or

(e) a licensee of a distribution licence if the distribution system is, or is part of, a Pilbara network; or

(f) a licensee of a retail licence who sells electricity transported through a Pilbara network; or

(g) a licensee of an integrated regional licence if at least one of the activities under the licence is an activity of a kind that could be covered by a licence referred to in paragraphs (c) to (f); or

(h) a Pilbara network user; or

(i) a person on whom functions are conferred under this Part; or

(j) a person on whom functions relating to this Part are conferred by another written law; or

(k) a person who is registered under the Pilbara networks rules as required by the regulations; or

(l) a person whose conduct is regulated, or on whom obligations are imposed, by regulations made under section 120N(2)(a).

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

Division 2 — Pilbara Networks Access Code

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

120A. Minister to establish Pilbara Networks Access Code

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

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

(b) to meet the Pilbara electricity objective.

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

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

120B. Pilbara Networks Access Code — covered Pilbara networks

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

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

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

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

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

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

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

to be regulated under this Part and the processes for making, and determining the outcome of, that option;

(e) prescribing the circumstances in which a Pilbara network service provider that opted for a Pilbara network to be regulated under this Part may opt for the network to cease to be regulated under this Part and the processes for making, and determining the outcome of, that option;

(f) the effect on any processes, requirements, access arrangements or access agreements or other matter or thing under the Code or the Pilbara Networks Access Code or any contract of —

(i) a decision referred to in paragraph (b) that a covered Pilbara network is to be regulated under this Part; or

(ii) a decision referred to in paragraph (b) that a covered Pilbara network is to cease to be regulated under this Part; or

(iii) a Pilbara network service provider opting for a Pilbara network to be regulated under this Part; or

(iv) a Pilbara network service provider opting for a covered Pilbara network to cease to be regulated under this Part;

(g) any transitional matters for the purposes of paragraphs (a) to (f);

(h) generally, the relationship between the Code and the Pilbara Networks Access Code, including things done under, or governed by, the Code or the Pilbara Networks Access Code.

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

120C. Pilbara Networks Access Code — light regulation

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

(a) access by persons to services of covered Pilbara networks in accordance with —

(i) Pilbara access agreements; or

(ii) determinations made by way of arbitration;

(b) Pilbara access agreements and contracts to be subject to determinations or requirements of the Pilbara ISO;

(c) network access pricing regulation principles;

(d) the procedures, requirements, methodologies, guidelines, parameters, values and processes to be followed or used by a Pilbara network service provider in connection with prices, tariffs, revenue and costs;

(e) the rights, powers and duties that are to apply to and in relation to the negotiation, making, and implementation of Pilbara access agreements;

(f) the duties and requirements in relation to the provision of access to services that are to be complied with by a Pilbara network service provider;

(g) requiring a Pilbara network service provider to develop and publish the following in relation to its services —

(i) standing prices for connection and access to its services, including reasonable details of the methodologies and assumptions used in determining standing prices; and

(ii) standing terms for connection and access to its services; and

(iii) information to assist persons seeking connection and access to its services;

(h) the circumstances in which a Pilbara network service provider may or may not offer or agree to different prices and terms for different Pilbara network users (including prices and terms determined in accordance with provisions made under paragraphs (c) to (g));

(i) access to the services of stand-alone power systems;

(j) providing for the resolution of disputes in relation to connection and access to services or in relation to things done or omitted to be done by a Pilbara network service provider under the Pilbara Networks Access Code including —

(i) arbitration of disputes by a person or body that is determined or appointed in accordance with the Pilbara Networks Access Code; and

(ii) the conferral of functions on a person or body arbitrating disputes;

(k) conferring functions on the Authority, including —

(i) supervisory and other functions for the purposes of the Pilbara Networks Access Code, including dispute resolution functions; and

(ii) the function of determining requirements (including prices and terms) in relation to access to services that are to be complied with by a Pilbara network service provider or a person seeking access to services and applied by a person or body arbitrating disputes; and

(iii) the issuing of guidelines for the purposes of this Division;

(l) the obligations of Pilbara networks participants to comply with guidelines issued by the Authority;

(m) the obligations of a Pilbara network service provider in respect of the segregation of the functions and business of providing services from the Pilbara network service provider's other functions and business;

(n) requiring the approval by the Authority of a proposed segregation referred to in paragraph (m) and enabling the Authority to amend the proposal or add to or waive any of the obligations;

(o) services between related bodies corporate (as defined in the *Corporations Act 2001* (Commonwealth) section 9);

(p) conferring rights and imposing obligations on Pilbara networks participants;

(q) regulating the disclosure and use of confidential or commercially sensitive information;

(r) conferring functions on —

(i) the Minister; or

(ii) the Pilbara ISO;

(s) in respect of costs incurred in the performance of functions conferred on the Authority or the Pilbara ISO, provide for —

(i) the implementation of accounting arrangements to enable those costs to be identified; and

(ii) the allocation of those costs between Pilbara networks participants; and

(iii) in the case of the Pilbara ISO, any costs incurred in anticipation of, or preparation for, the performance of the functions of the Pilbara ISO; and

(iv) the recovery of those costs;

(t) providing for the relationship between the Minister, or another Minister, and a participant referred to in section 120ZA in respect of the performance of the functions of the participant;

(u) providing for the regulation of matters —

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

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

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

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

(1) The regulations or the Pilbara Networks Access Code may provide that if the disclosure or use of confidential or commercially sensitive information is authorised by the regulations or the Pilbara Networks Access Code —

(a) no civil or criminal liability is incurred in respect of the use or disclosure; and

(b) the use or disclosure is not to be regarded as —

(i) a breach of any duty of confidentiality or secrecy imposed by law or contract; or

(ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or

(iii) unprofessional conduct.

(2) The regulations, the Pilbara Networks Access Code, an instrument made under the Pilbara Networks Access Code or an instrument amending any of them, may apply, adopt or incorporate, with or without modification, material contained in any other document or writing as in effect or existing —

(a) when the regulations, Pilbara Networks Access Code, instrument or amending instrument comes into operation; or

(b) at a specified prior time.

(3) Without limiting section 120C(s), if it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function, the regulations or the Pilbara Networks Access Code may provide for the method of calculating the fee

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

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

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

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

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

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

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

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

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

The Pilbara Networks Access Code may provide for the following —

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

the Pilbara network service providers may, with the consent of one or more of the other providers, do that thing on behalf of those consenting providers;

(b) that a thing done or omitted to be done by a Pilbara network service provider on behalf of another Pilbara network service provider for a Pilbara network as referred to in paragraph (a) is taken to have been done or omitted to be done by that other Pilbara network service provider;

(c) that if there is more than one Pilbara network service provider that is a party to an access arrangement for a Pilbara network and that arrangement allocates things required or permitted under the Pilbara Networks Access Code to be done between those Pilbara network service providers, the provider to whom the thing is allocated under that arrangement is required or permitted to do that thing.

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

120F. Consequential amendments to the Code

(1) The Minister may amend the Code to give effect to, and make any consequential amendments relating to, the Pilbara Networks Access Code.

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

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

120G. Pilbara Networks Access Code is subsidiary legislation

(1) In this section —

Pilbara Networks Access Code includes —

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

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

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

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

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

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

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

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

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

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

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

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

(a) to amend the Pilbara Networks Access Code; or

(b) to repeal and replace it.

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

(3) The Minister must —

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

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

(ii) in an issue of a daily newspaper circulating throughout the State; and

(iii) on an appropriate website;

and

(b) include in the notice the following information —

(i) the website at which a copy of the proposal may be obtained; and

(ii) a statement that written submissions on the proposal may be made to the Minister by any person within a specified period; and

(iii) how the submissions may be made.

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

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

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

120I. Exception to section 120H

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

(a) of a minor nature; or

(b) required to be made urgently.

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

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

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

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

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

(b) in some other manner.

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

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

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

(a) consult with the network service provider; and

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

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

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

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

Division 3 — Pilbara networks rules

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

120K. Regulations to provide for Pilbara networks rules

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

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

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

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

(b) the obligations of Pilbara network service providers to provide information to, and assist, the Pilbara ISO in the performance of the functions referred to in paragraph (a).

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

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

120L. Pilbara networks rules not subsidiary legislation

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

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

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

120M. Establishment and amendment of Pilbara networks rules

The regulations may provide for —

(a) the establishment of the initial Pilbara networks rules; and

(b) the amendment, or repeal and replacement, of the Pilbara networks rules by rules made in accordance with the regulations and the Pilbara networks rules; and

(c) the publication, commencement, and laying before each House of Parliament, of the initial Pilbara networks rules and rules amending, or repealing and replacing, the Pilbara networks rules.

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

120N. General matters to be dealt with in regulations

(1) The regulations may prescribe all matters that are necessary or convenient to be prescribed —

(a) in relation to the matters set out in section 120K; and

(b) to give effect to the purpose set out in section 119(1)(c); and

(c) to meet the Pilbara electricity objective in relation to those matters.

(2) Without limiting section 120K, 131 or 131B or subsection (1), the regulations may do all or any of the following —

(a) regulate the conduct of persons and impose obligations on them;

(b) confer functions, or authorise the Pilbara networks rules to confer functions, on any of the following —

(i) the Minister;

(ii) the Authority;

(iii) the Pilbara ISO;

(iv) a person holding an office under a written law;

(v) a body established under a written law;

(vi) any other person;

(c) provide for the relationship between the Minister or another Minister and a person or body referred to in paragraph (b)(ii) to (vi) in relation to the performance of the functions of the person or body;

(d) authorise the Pilbara networks rules to confer rights and impose obligations on Pilbara networks participants;

(e) provide, or authorise the Pilbara networks rules to provide, for the resolution of disputes between Pilbara networks participants;

(f) authorise the Pilbara networks rules to —

(i) authorise the Pilbara ISO to make instruments establishing protocols and procedures and any other instruments related to the performance of its functions; and

(ii) provide for the effect of those instruments;

(g) provide for the process of making, amending, repealing or replacing an instrument made by the Pilbara ISO under a power conferred under paragraph (f);

(h) provide, or authorise the Pilbara networks rules to provide, for metering of electricity in covered Pilbara networks and interconnected Pilbara networks, including by providing for —

(i) the provision, operation and maintenance of metering equipment; and

(ii) ownership of and access to metering data;

(i) provide, or authorise the Pilbara networks rules to provide, for the regulation of the disclosure and use of confidential or commercially sensitive information;

(j) in respect of costs incurred in the performance of functions conferred on a person or body referred to in paragraph (b)(ii) to (vi), provide for —

(i) the implementation of accounting arrangements to enable those costs to be identified; and

(ii) the allocation of those costs between Pilbara networks participants; and

(iii) the recovery of those costs;

(k) provide, or authorise the Pilbara networks rules to provide, for the regulation of matters —

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

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

(3) The reference to costs in subsection (2)(j) includes, in relation to the Pilbara ISO, any costs incurred in anticipation of, or in preparation for, the performance of the functions of the Pilbara ISO.

(4) Despite subsection (2), the regulations may regulate the conduct of, and confer rights and impose obligations on, network service providers of Pilbara networks that are not covered Pilbara networks or interconnected Pilbara networks only for the purposes set out in section 120K(3).

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

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

(1) Without limiting section 120N(2)(a), the regulations may prohibit persons from engaging in an activity specified in the regulations unless they are registered in accordance with the Pilbara networks rules.

(2) The regulations or the Pilbara networks rules may provide that if the disclosure or use of confidential or commercially sensitive information is authorised by the rules —

(a) no civil or criminal liability is incurred in respect of the use or disclosure; and

(b) the use or disclosure is not to be regarded as —

(i) a breach of any duty of confidentiality or secrecy imposed by law or contract; or

(ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or

(iii) unprofessional conduct.

(3) The regulations, the Pilbara networks rules, an instrument made under the Pilbara networks rules or an instrument amending any of them, may apply, adopt or incorporate, with or without modification, material contained in any other document or writing as in effect or existing —

(a) when the regulations, Pilbara networks rules, instrument or amending instrument comes into operation; or

(b) at a specified prior time.

(4) Without limiting section 120N(2)(j), if it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function, the regulations may provide for the method of calculating the fee or charge, including calculation according to the cost of performing that function.

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

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

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

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

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

(b) that a thing done or omitted to be done by a Pilbara network service provider on behalf of another Pilbara network service provider for a Pilbara network as referred to in paragraph (a) is taken to have been done or omitted to be done by that other Pilbara network service provider;

(c) that if there is more than one Pilbara network service provider for a Pilbara network and the Pilbara network service providers publish an instrument in accordance with the Pilbara networks rules that allocates things

required or permitted by those rules to be done between those Pilbara network service providers, the provider to whom the thing is allocated under that instrument is required or permitted to do that thing.

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

Division 4 — Pilbara networks technical rules

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

120Q. Technical rules

(1) The regulations may provide for the following —

(a) for the making, formulation and approval of technical rules for the purposes of this Part;

(b) for the Pilbara Networks Access Code or the Pilbara networks rules to provide for the making, formulation and approval of technical rules for the purposes of this Part.

(2) The technical rules may include rules made for the purposes of all or any of the following —

(a) access to services of covered Pilbara networks;

(b) network and system operations, power system reliability and stability and system security for covered Pilbara networks and interconnected Pilbara networks.

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

Division 5 — Enforcement

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

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

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

(a) attempting to contravene the provision; or

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

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

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

(e) conspiring with others to contravene the provision.

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

120S. Prohibitions on hindering or preventing access

(1) In this section —

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

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

(a) access by any person to services in accordance with this Part; or

(b) the making of Pilbara access agreements or any particular agreement in respect of that network; or

(c) the access to which a person is entitled under a Pilbara access agreement or a determination made by way of arbitration.

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

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

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

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

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

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

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

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

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

and

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

(5) In this section —

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

(i) making a contract, agreement or arrangement or giving effect to a provision of a contract, agreement or arrangement; or

(ii) arriving at an understanding or giving effect to a provision of an understanding; or

(iii) requiring a covenant to be given or giving a covenant;

and

(b) a reference to refusing to do an act includes a reference to —

(i) refraining (otherwise than inadvertently) from doing the act; or

(ii) making it known that the act will not be done.

(6) Subsection (2) or (3) does not apply to conduct in which a person engaged in accordance with an agreement, if the agreement was in force on 30 March 1995.

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

120T. Proceedings

(1) Civil proceedings cannot be brought in respect of a matter arising under the Pilbara Networks Access Code except —

(a) in accordance with the regulations; or

(b) by arbitration under the Pilbara Networks Access Code; or

(c) in accordance with section 130.

(2) Nothing in subsection (1) affects the right of a person —

(a) to bring civil proceedings in respect of any matter or thing, or seek any relief or remedy, if the cause of action arises, or the relief or remedy is sought, on grounds that do not rely on the Pilbara Networks Access Code; or

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

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

120U. Criminal proceedings do not lie

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

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

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

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

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

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

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

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

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

(ii) in addition a daily amount not exceeding $20 000;

(c) provide for demands for the payment of amounts referred to in paragraph (b) and the enforcement of demands for their payment;

(d) provide for and regulate the taking of proceedings in respect of alleged contraventions of provisions of the

Pilbara Networks Access Code or the Pilbara networks rules, provide for the orders that can be made and other sanctions that can be imposed in those proceedings and provide for the enforcement of those orders and sanctions;

(e) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied;

(f) provide for and regulate the taking of proceedings before the Supreme Court for an injunction restraining engagement in conduct contravening a provision of the Pilbara Networks Access Code or the Pilbara networks rules and provide for the granting of an injunction (including an interim injunction) and the rescission or variation of an injunction so granted;

(g) provide for and regulate the taking of proceedings before the Supreme Court for a declaration as to whether a provision of the Pilbara Networks Access Code or the Pilbara networks rules is being or has been contravened and provide for the orders that can be made in those proceedings;

(h) provide for and regulate the taking of action for the recovery of an amount of loss or damage suffered because of conduct contravening a provision of the Pilbara Networks Access Code or the Pilbara networks rules;

(i) provide for and regulate the making of applications for, and the issue of, warrants relating to the investigation of alleged contraventions of provisions of the Pilbara Networks Access Code or the Pilbara networks rules and for the powers exercisable under warrants.

(3) In subsection (2)(b)(ii) —

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

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

Division 6 — Independent system operator

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

120W. Independent system operator

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

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

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

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

(a) to maintain and improve system security in any interconnected Pilbara system;

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

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

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

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

(ii) to report as specified by the regulations to the Minister, the Authority or a specified person on those matters; and

(iii) to publish information on those matters.

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

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

120X. Regulations relating to Pilbara ISO

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

(a) that the Pilbara ISO may delegate the performance of a function to another person or body;

(b) that a delegation under paragraph (a) may permit the delegate to further delegate the performance of the function in accordance with the delegation;

(c) the regulation of delegations under this section;

(d) the regulation of contracts relating to delegations under this section, including that such contracts must comply with the requirements specified in the regulations, code or rules;

(e) the obligations of the Pilbara ISO in relation to a function the performance of which has been delegated to another person or body;

(f) the obligations of the Pilbara ISO in relation to the segregation of the functions of the Pilbara ISO under this Part (including as to personnel, operations, financial and legal matters and related matters) from other functions and business of the Pilbara ISO;

(g) the obligations of the Pilbara ISO to —

(i) report as specified by the regulations to the Minister, the Authority or a specified person on specified matters; and

(ii) prepare and publish information on specified matters.

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

Division 7 — Functions of Authority

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

120Y. Functions of Authority

(1) The Authority has the functions conferred on it under this Part.

(2) Without limiting section 131 or 131B or subsection (1), the regulations may provide for the obligations of the Authority to —

(a) report to the Minister on specified matters; and

(b) prepare and publish information on specified matters.

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

Division 8 — Reviews of decisions

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

120Z. Reviews of decisions

(1) Application may be made to the Board for the review by the Board of decisions of the following that are made under the regulations or the Pilbara networks rules and are of a class specified in the regulations —

(a) a person on whom functions are conferred under this Part;

(b) a person on whom functions relating to this Part are conferred by another written law.

(2) Regulations may —

(a) provide for the powers of the Board in relation to reviews provided for in those regulations; and

(b) make other provision that it is necessary or convenient to make in relation to those reviews.

(3) Nothing in subsection (1) prevents or affects the review by a court or tribunal, according to law, of decisions of the persons

referred to in that subsection made under the regulations or the Pilbara networks rules.

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

Division 9 — Immunity

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

120ZA. Terms used

(1) In this Division —

civil monetary liability means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty under the regulations;

entity includes the following —

(a) a body corporate;

(b) a partnership;

(c) an unincorporated body;

(d) an individual;

(e) for a trust that has only 1 trustee —the trustee;

(f) for a trust that has more than 1 trustee —the trustees together;

officer of an entity that is a corporation has the meaning given to officer of a corporation in the *Corporations Act 2001* (Commonwealth) section 9;

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

participant means a person —

(a) on whom functions are conferred under this Part; or

(b) to whom the performance of a function has been delegated under this Part; or

(c) on whom functions relating to this Part are conferred by another written law;

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

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

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

120ZB. Immunity of participants and their officers or employees

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

(2) Subsection (1) has effect —

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

(b) in respect of all participants, and officers and employees of them — subject to section 120ZD.

(3) An entity with which the Pilbara ISO enters into a contract in relation to the Pilbara ISO's performance of a function under this Part does not incur any civil monetary liability for an act or omission of the entity, or an officer or employee of it, done or made in good faith in the performance, or purported performance, of the contract.

(4) Subsection (3) has effect subject to sections 120ZC and 120ZD, as if the reference in section 120ZD(1) to 12 months were a reference to 2 months.

(5) The Pilbara ISO or a preparing entity, or an officer or employee of either of them, does not incur any civil monetary liability for an act or omission of the Pilbara ISO or the preparing entity, or an officer or employee of either of them, done or made, including before the commencement of the *Electricity Industry Amendment Act 2020*, in good faith in anticipation of, or in preparation or purported preparation for, the performance of a function under this Part.

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

120ZC. Regulations may limit or affect immunity

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

(a) impose conditions on an immunity granted to an entity under section 120ZB; or

(b) prescribe that an immunity granted under section 120ZB is limited in its application to entities, events, circumstances, losses or periods to which they are expressed to apply.

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

120ZD. Limitation on immunity after initial period

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

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

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

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

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

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

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

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

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

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

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

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

Division 10 — Competition authorisation

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

120ZF. Competition authorisation by regulation

(1) In this section —

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

(2) The regulations may authorise or approve any arrangement, act, matter or thing in relation to the Pilbara Networks Access Code or the Pilbara networks rules for the purposes of the

Competition and Consumer Act 2010 (Commonwealth) and the Competition Code.

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

Division 11 — Review of system

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

120ZG. Review of regulation of Pilbara networks

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

(a) as soon as practicable after the 5th anniversary of the day on which the *Electricity Industry Amendment Act 2020* section 19 comes into operation; and

(b) after that, at intervals of not more than 5 years.

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

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

(4) If the Authority considers that part or all of the Pilbara electricity objective has not been or is not being achieved, the report is to set out recommendations as to how the objective can be achieved.

(5) Not later than 6 months after receiving the report the Minister is to —

(a) cause the report to be laid before each House of Parliament; and

(b) prepare a response to the report and cause the response to be laid before each House of Parliament.

(6) As soon as practicable after the report is laid before each House of Parliament, the Authority is to make a copy of the report

publicly available on a website maintained by or on behalf of the Authority.

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

120ZH. Public consultation

(1) In the course of conducting a review under section 120ZG, the Authority is to seek public comment on the extent to which the Pilbara electricity objective has been or is being achieved (the ***issue***).

(2) The Authority is to cause a notice giving a general description of the issue to be —

(a) published in a daily newspaper circulating throughout the State; and

(b) made publicly available on a website maintained by or on behalf of the Authority.

(3) The notice is to include —

(a) a statement that any person may, within a specified period, make written submissions on the issue to the Authority; and

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

(4) The period specified under subsection (3)(a) is not to end less than 30 days after the day on which the notice is published under subsection (2)(a).

(5) The Authority is to have regard to any submission made in accordance with the notice and may have regard to any other submission received on the issue.

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

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.]

Part 9 — Wholesale electricity market

121. Terms used

(1) In this Part, unless the contrary intention appears —

confer includes impose;

market has the meaning given to that term in section 122;

market rules has the meaning given to that term in section 123(1).

(2) A person is a ***participant*** for the purposes of this Part if —

(a) the person is registered in accordance with the market rules as required under the regulations; or

(b) functions are conferred on the person under the regulations or the market rules; or

(c) functions relating to this Part are conferred on the person by another written law.

122. Regulations for a wholesale electricity market

(1) Regulations are to be made for the purpose of establishing a market (the ***market***) in relation to the wholesale supply of electricity in the South West interconnected system.

(2) The objectives of the market are —

(a) to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system; and

(b) to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors; and

(c) to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies such as those that make

use of renewable resources or that reduce overall greenhouse gas emissions; and

(d) to minimise the long-term cost of electricity supplied to customers from the South West interconnected system; and

(e) to encourage the taking of measures to manage the amount of electricity used and when it is used.

123. Market rules

(1) Without limiting section 122, the regulations are to provide for there to be rules (the ***market rules***) relating to the market and to the operation of the South West interconnected system setting out or dealing with such matters as are prescribed by the regulations.

(2) The market rules are not subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of that Act does not apply to them or to rules amending them or repealing and replacing them.

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

(4) The regulations may provide for —

(a) the establishment of the initial market rules; and

(b) the amendment, or repeal and replacement, of the market rules by rules made in accordance with the regulations and the market rules; and

(c) the publication, commencement, and laying before each House of Parliament, of the initial market rules and rules amending, or repealing and replacing, the market rules.

124. Matters to be dealt with in regulations

(1) The regulations may prescribe all matters that are necessary or convenient to be prescribed for the purpose set out in section 122(1) and to achieve the objectives set out in section 122(2).

(2) Without limiting section 122, 123 or 131 or subsection (1), the regulations may —

(a) regulate the conduct of persons and impose obligations on them; and

(b) confer functions, or authorise the market rules to confer functions, on the Minister or any other person (including a person holding an office under a written law or a body established under a written law); and

(c) provide for the establishment, or authorise the formation, of a body (including a body corporate) and confer functions, or authorise the market rules to confer functions, on a body so established or formed; and

(d) provide for the relationship between the Minister, or another Minister, and a participant referred to in section 121(2)(b) or (c) in respect of the performance of the functions of the participant; and

(e) provide, or authorise the market rules to provide, for the resolution of disputes between participants; and

(f) provide that a contravention of a regulation is an offence; and

(g) prescribe a penalty of not more than $100 000, with or without a daily penalty of not more than $20 000, for an offence against the regulations; and

(h) provide that a provision of the market rules specified in the regulations, or of a class specified in the regulations, is a civil penalty provision for the purposes of the regulations; and

(i) prescribe, for a contravention of a civil penalty provision —

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

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

that may, in accordance with the regulations, be demanded from or imposed upon a person who contravenes the provision; and

(j) provide for demands for the payment of amounts referred to in paragraph (i) and the enforcement of demands for their payment; and

(k) provide for and regulate the taking of proceedings in respect of alleged contraventions of provisions of the market rules, provide for the orders that can be made and other sanctions that can be imposed in those proceedings and provide for the enforcement of those orders and sanctions; and

(l) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied; and

(m) provide for and regulate the making of applications for, and the issue of, warrants relating to the investigation of alleged contraventions of provisions of the market rules and for the powers exercisable under warrants; and

(n) in respect of costs incurred in the performance of functions conferred on a participant referred to in section 121(2)(b) or (c), provide for —

(i) the implementation of accounting arrangements to enable those costs to be identified; and

(ii) the allocation of those costs between participants; and

(iii) the recovery of those costs.

(3) Without limiting subsection (2)(a), the regulations may prohibit persons from engaging in an activity specified in the regulations unless they are registered in accordance with the market rules.

(4) Without limiting subsection (2)(n), if it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function the regulations may provide for the method of calculating the fee or charge, including calculation according to the cost of performing that function.

(5) A reference in subsection (2) to contravening a provision of the market rules includes a reference to —

(a) attempting to contravene such a provision; or

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

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

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

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

(6) In subsection (2)(i)(ii) —

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

125. Reviews

(1) Application may be made to the Board for the review by the Board of decisions of a participant referred to in section 121(2)(b) or (c) that are made under the regulations or the market rules and are not of a class specified in the regulations.

(2) Regulations may —

(a) provide for the powers of the Board; and

(b) make other provisions that it is necessary or convenient to make,

in relation to reviews provided for in those regulations.

(3A) Regulations that, immediately before the day on which the *National Gas Access (WA) Act 2009* section 59(1) comes into operation [3], apply provisions of the *Gas Pipelines Access (Western Australia) Act 1998* [4] continue to have the effect they had immediately before that day until the contrary intention appears from a regulation made after that day.

(3) Nothing in subsection (1) prevents or affects the review by a court or tribunal, according to law, of decisions of participants made under the regulations or the market rules.

[Section 125 amended: No. 16 of 2009 s. 59.]

126. Immunity of certain participants

(1) In this section —

civil monetary liability means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty under the regulations;

market governance participant means a participant referred to in section 121(2)(b) or (c);

officer of a body corporate that is a corporation has the same meaning as it has in section 9 of the *Corporations Act 2001* (Commonwealth);

officer of a body corporate that is not a corporation has the same meaning as it has in section 9 of the *Corporations Act 2001* (Commonwealth);

system management participant means a market governance participant the functions of which include a function under the regulations or the market rules specified in the regulations as a system management function.

(2) A market governance participant, or an officer or employee of a market governance participant, does not incur any civil monetary liability for an act or omission done or made in good faith in the performance, or purported performance, of a function under the regulations or the market rules.

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

(a) the immunity given by subsection (2) does not apply to that act or omission; but

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

(4) Regulations may exempt a specified market governance participant, other than a system management participant, from the operation of subsection (3)(a).

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

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

(b) prescribe maximum amounts that vary in their application according to the persons to whom, or the events, circumstances, losses or periods to which, they are expressed to apply; or

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

(6) This section does not apply to any liability of an officer of a body corporate to the body corporate.

[Section 126 amended: No. 46 of 2009 s. 17; No. 9 of 2020 s. 20.]

127. Competition authorisation by regulation

(1) In this section —

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

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

[Section 127 amended: No. 9 of 2020 s. 21.]

128. Review of market operation

(1) The Authority is to review the operation of the market as soon as practicable after the expiration of 3 years from the commencement of this Part and thereafter as soon as practicable after the expiration of 3 years from a report being laid before each House of Parliament under subsection (5)(a).

(2) The purpose of the review is to assess the extent to which the objectives set out in section 122(2) have been or are being achieved.

(3) Not later than 3 years and 6 months after the commencement of this Part, or after the last preceding report was laid before each House of Parliament under subsection (5)(a), as the case may be, the Authority is to give the Minister a written report based on the review.

(4) If the Authority considers that some or all of the objectives set out in section 122(2) have not been and are not being achieved, the report is to set out recommendations as to how those objectives can be achieved.

(5) As soon as practicable after receiving the report, the Minister is to —

(a) cause the report to be laid before each House of Parliament; and

(b) prepare a response to the report and cause the response to be laid before each House of Parliament.

(6) As soon as practicable after the report is laid before each House of Parliament, the Authority is to post a copy of the report on a website maintained by the Authority.

[Section 128 amended: No. 9 of 2020 s. 22.]

129. Public consultation

(1) In the course of conducting a review under section 128(1), the Authority is to seek public comment on the extent to which the objectives set out in section 122(2) have been or are being achieved (the ***issue***).

(2) The Authority is to cause a notice giving a general description of the issue to be —

(a) published in a daily newspaper circulating throughout the State; and

(b) posted on a website maintained by the Authority.

(3) The notice is to include —

(a) a statement that any person may, within a specified period, make written submissions on the issue to the Authority; and

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

(4) The period specified under subsection (3)(a) is not to end less than 30 days after the day on which the notice is published under subsection (2)(a).

(5) The Authority is to have regard to any submission made in accordance with the notice.

[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.]

129C. Tariff Equalisation Account

(1) An agency special purpose account called the Tariff Equalisation Account is established under the *Financial Management Act 2006* section 16.

(2) There are to be credited to the Tariff Equalisation Account —

(a) each tariff equalisation contribution paid by the Electricity Networks Corporation under section 129F(1); and

(b) the amount of any income determined by the Treasurer (at a rate determined by the Treasurer) to be attributable to the investment under the *Financial Management Act 2006* section 37 of money standing to the credit of the Tariff Equalisation Account; and

(c) any other amount lawfully received for the purposes of the Account.

[Section 129C inserted: No. 18 of 2005 s. 139; amended: No. 77 of 2006 Sch. 1 cl. 54(2) and (3).]

129D. Determination of tariff equalisation contributions

(1) The Treasurer, at such intervals of time as are prescribed, must determine whether there is a disparity between —

(a) the efficient cost of supply of electricity to persons in areas outside of the South West interconnected system; and

(b) the revenues available to the Regional Power Corporation from supplying electricity to persons in areas outside of the South West interconnected system at the regulated retail tariffs.

(2) If the Treasurer determines that a disparity exists, the Treasurer must determine, by notice published in the *Gazette*, the tariff equalisation contribution that is payable by the Electricity Networks Corporation for the purpose of this Part in respect of a period specified in the determination.

(3) In making a determination for the purposes of subsection (2) the Treasurer must have regard to —

(a) the amount required to compensate the Regional Power Corporation for the disparity; and

(b) the extent to which the amount paid to the Regional Power Corporation under section 129G(1) in respect of a previous period was greater or less than the disparity between —

(i) the cost referred to in subsection (1)(a); and

(ii) the revenues referred to in subsection (1)(b),

in respect of that previous period; and

(c) the moneys standing to the credit of the Tariff Equalisation Account; and

(d) any service standards to be observed by the Regional Power Corporation; and

(e) any other prescribed matters.

(4) In subsection (3)(d) —

service standards means standards referred to in section 39(2)(d) that are provided for in a code prepared and issued under section 39.

(5) The Treasurer must consult with the Minister before making a determination under this section.

[Section 129D inserted: No. 18 of 2005 s. 139; amended: No. 77 of 2006 Sch. 1 cl. 54(4).]

129E. Treasurer may seek advice from the Authority

(1) Before making a determination under section 129D(2) the Treasurer may ask the Authority for advice on any matter referred to in section 129D(3) or any other matter that the Treasurer considers relevant.

(2) It is a function of the Authority to give advice when asked to do so under subsection (1).

(3) Advice given by the Authority must be published in the *Gazette* with the notice under section 129D(2).

[Section 129E inserted: No. 18 of 2005 s. 139.]

129F. Payment and passing on of tariff equalisation contributions

(1) The Electricity Networks Corporation must pay tariff equalisation contributions into the Tariff Equalisation Account at the times, and in the manner, prescribed.

(2) Users must make payments to the Electricity Networks Corporation in accordance with the Code in respect of tariff equalisation contributions payable by the Electricity Networks Corporation under subsection (1).

(3) Without limiting Part 8 Division 2, the Code may make provision —

(a) for the determination of the amounts payable by users under subsection (2) and the manner in which those amounts are to be collected; and

(b) for the duties and powers of the Electricity Networks Corporation in relation to tariff equalisation contributions to be taken into account —

(i) by the Authority in deciding whether to give its approval to an arrangement lodged under section 104B(a); and

(ii) in the formulation of the network access pricing regulation principles referred to in section 104B(f).

(4) Until there is an access arrangement for the network infrastructure facilities of the Electricity Networks Corporation —

(a) subsection (2) does not have effect; and

(b) users must make payments to the Electricity Networks Corporation in accordance with the regulations in respect of tariff equalisation contributions payable by the Electricity Networks Corporation under subsection (1); and

(c) the regulations may make provision for the determination of the amounts payable by users under paragraph (b) and the manner in which those amounts are to be collected.

(5) In subsection (4) —

user means a user as defined in the *Electricity Transmission and Distribution Systems (Access) Act 1994* Schedule 5 clause 1 or Schedule 6 clause 1.

[Section 129F inserted: No. 18 of 2005 s. 139; amended: No. 77 of 2006 Sch. 1 cl. 54(5); No. 9 of 2020 s. 25.]

129G. Payments from the Account

(1) If a tariff equalisation contribution is payable by the Electricity Networks Corporation in respect of a period, the Treasurer must pay to the Regional Power Corporation in respect of that period such amount as the Treasurer considers necessary for the purpose of this Part having regard to —

(a) the matters referred to in section 129D(3)(a), (b), (c) and (d); and

(b) any other prescribed matters.

(2) Payments under subsection (1) are to be made from the Tariff Equalisation Account.

[Section 129G inserted: No. 18 of 2005 s. 139; amended: No. 77 of 2006 Sch. 1 cl. 54(6).]

129H. Information

The Electricity Networks Corporation and the Regional Power Corporation must provide such information, or access to

information, as is necessary to assist the Treasurer and the Authority to perform their functions under this Part.

[Section 129H inserted: No. 18 of 2005 s. 139.]

129I. Treasurer to recommend regulations

Regulations are not to be made for this Part except on the Treasurer's recommendation.

[Section 129I inserted: No. 18 of 2005 s. 139.]

129J. Delegation by Treasurer

The *Financial Management Act 2006* sections 74(2), 76(2) and 77 apply to a power conferred on the Treasurer by a provision of this Part (other than section 129I) as if it were conferred by that Act.

[Section 129J inserted: No. 18 of 2005 s. 139; amended: No. 77 of 2006 Sch. 1 cl. 54(7).]

Part 9B — Temporary access contribution

[Heading inserted: No. 9 of 2020 s. 26.]

129K. Purpose of this Part

The purpose of this Part is to contribute towards maintaining the financial viability of the Regional Power Corporation by allowing the Regional Power Corporation to recover all or part of its historical generation costs.

[Section 129K inserted: No. 9 of 2020 s. 26.]

129L. Terms used

In this Part, unless the contrary intention appears —

contestable annual volume means the portion of total annual volume that is a contestable supply;

contestable proportion means that proportion of the Regional Power Corporation's total supply of electricity in a financial year to consumers through its covered Pilbara network that is a contestable supply, calculated as contestable annual volume divided by total annual volume;

contestable supply means the supply of electricity to consumers who are not prescribed customers;

costs means capital and non-capital costs;

generation costs means any costs incurred by the Regional Power Corporation to generate or procure electricity for supply to consumers through the interconnected Pilbara network;

historical generation costs means any generation costs —

(a) that were incurred before 19 August 2019; or

(b) that are incurred on or after 19 August 2019 under commitments made by the Regional Power Corporation before that date and that are costs that a prudent supplier, seeking to reasonably minimise costs, could not reasonably avoid;

NBU means the segment of the Regional Power Corporation that has the functions and business of providing services through the interconnected Pilbara network;

prescribed customer has the meaning given to that term in the *Electricity Corporations Act 2005* section 54;

Temporary Access Contribution Account means the account referred to in section 129M;

temporary access contribution means a temporary access contribution determined under section 129N(1);

termination date means the date prescribed by the regulations as the termination date;

total annual volume means the total quantity of electricity supplied by the Regional Power Corporation in a financial year through its covered Pilbara network, expressed in kilowatt hours;

user means a Pilbara network user as defined in section 120.

[Section 129L inserted: No. 9 of 2020 s. 26.]

129M. Temporary Access Contribution Account

(1) An agency special purpose account called the Temporary Access Contribution Account is established under the *Financial Management Act 2006* section 16.

(2) There are to be credited to the Temporary Access Contribution Account —

(a) each temporary access contribution paid by the NBU under section 129P(1); and

(b) the amount of any income determined by the Treasurer (at a rate determined by the Treasurer) to be attributable to the investment under the *Financial Management Act 2006* section 37 of money standing to the credit of the Temporary Access Contribution Account; and

(c) any other amount lawfully received for the purposes of the Account.

[Section 129M inserted: No. 9 of 2020 s. 26.]

129N. Determination of temporary access contributions

(1) The Treasurer must for each financial year, until the termination date, determine, by notice published in the *Gazette*, an amount of temporary access contribution that is payable by NBU in respect of that financial year.

(2) The Treasurer must for each financial year, until the termination date, determine the cost to the Regional Power Corporation of its historical generation costs for that financial year.

(3) The temporary access contribution determined for a financial year must not exceed the contestable proportion of the cost determined for that financial year under subsection (2).

(4) In making a determination under subsection (1) for a financial year, the Treasurer must have regard to —

(a) the amount required to compensate the Regional Power Corporation for the cost determined under subsection (2) for that financial year; and

(b) the moneys standing to the credit of the Temporary Access Contribution Account; and

(c) any service standards to be observed by the Regional Power Corporation; and

(d) any other prescribed matters.

(5) In subsection (4)(c) —

service standards means standards referred to in section 39(2)(d) that are provided for in a code prepared and issued under section 39.

(6) The Treasurer must consult with the Minister before making a determination under this section.

[Section 129N inserted: No. 9 of 2020 s. 26.]

129O. Treasurer may seek advice from the Authority

(1) Before making a determination under section 129N(1) the Treasurer may ask the Authority for advice on any matter referred to in section 129N(4) or any other matter that the Treasurer considers relevant.

(2) It is a function of the Authority to give advice when asked to do so under subsection (1).

(3) The Treasurer must cause advice given by the Authority under subsection (2) to be published on an appropriate website when the determination is made.

[Section 129O inserted: No. 9 of 2020 s. 26.]

129P. Payment and passing on of temporary access contribution

(1) NBU must pay temporary access contributions into the Temporary Access Contribution Account, at the times and in the manner determined by the Treasurer.

(2) Users accessing services of the Regional Power Corporation's covered Pilbara network must make payments to NBU in accordance with the Pilbara Networks Access Code in respect of temporary access contributions payable by NBU under subsection (1).

(3) The Pilbara Networks Access Code may exempt users or classes of users specified in the code from subsection (2) in the circumstances specified in the code.

(4) Without limiting Part 8A Division 2, the Pilbara Networks Access Code may provide for —

(a) the determination of the amounts payable by users under subsection (2) and the manner in which those amounts are to be collected; and

(b) temporary access contributions and the obligations of users under subsection (2) to be taken into account in the determination, publication or approval of prices under Part 8 or Part 8A or in the resolution of disputes in relation to those prices.

(5) The regulations may provide for the regulation of matters of a savings or transitional nature in relation to payments in respect of temporary access contributions.

[Section 129P inserted: No. 9 of 2020 s. 26.]

129Q. Payments from Temporary Access Contribution Account

(1) If a temporary access contribution is payable by NBU in respect of a financial year, the Treasurer must pay to the Regional Power Corporation in respect of that financial year the amount that the Treasurer considers necessary for the purpose of this Part having regard to —

(a) the matters referred to in section 129N(4)(a), (b) and (c); and

(b) any other prescribed matters.

(2) Payments under subsection (1) are to be made from the Temporary Access Contribution Account.

(3) Without limiting Part 8A Division 2, the Pilbara Networks Access Code may provide for reporting by the Regional Power Corporation of any amounts received from the Temporary Access Contribution Account in each financial year.

[Section 129Q inserted: No. 9 of 2020 s. 26.]

129R. Information

The Regional Power Corporation must provide any information, or access to information, that is necessary to assist the Treasurer and the Authority to perform their functions under this Part.

[Section 129R inserted: No. 9 of 2020 s. 26.]

129S. Treasurer to recommend regulations

Regulations are not to be made for this Part except on the Treasurer's recommendation.

[Section 129S inserted: No. 9 of 2020 s. 26.]

129T. Delegation by Treasurer

The *Financial Management Act 2006* sections 74(2), 76(2) and 77 apply to a power conferred on the Treasurer under a provision of this Part (other than section 129S) as if it were conferred by that Act.

[Section 129T inserted: No. 9 of 2020 s. 26.]

Part 10 — Other matters

130. Review by the Board

(1) In this section —

gas pipelines access provisions means the *Gas Pipelines Access (Western Australia) Act 1998* [4] Schedule 1 as in force immediately before the day on which the *National Gas Access (WA) Act 2009* section 51 deleted it [3].

(2) This section applies to —

(a) a decision of the Authority to refuse to grant or renew a licence; or

(b) a decision of the Authority to refuse to approve the transfer of a licence; or

(c) a decision of the Authority to refuse to amend a licence under section 21; or

(d) a decision of the Authority as to the length of the period for which a licence is granted or renewed; or

(e) a decision of the Authority as to any term or condition of a licence; or

(f) a decision of the Authority to amend a licence under section 22; or

(g) a decision of the Authority to refuse to approve —

(i) a standard form contract under section 51; or

(ii) an amendment to, or replacement for, a standard form contract under section 52;

or

(h) a direction given by the Authority under section 53; or

(i) a decision by the Minister under the Code that network infrastructure facilities are to become covered networks or are to cease to be covered networks; or

(ia) a decision by the Minister under the Pilbara Networks Access Code that a covered Pilbara network is to be subject to regulation under Part 8 or Part 8A, or is to cease to be subject to regulation under Part 8 or 8A; or

(ib) a decision under the Pilbara Networks Access Code as to whether a network service provider of a Pilbara network has satisfied the requirements in the Pilbara Networks Access Code for the provider to opt for the access to services of the network to be subject to regulation under Part 8A or to cease to be subject to regulation under Part 8A; or

(j) a decision by the Authority to add to the obligations of a network service provider under the Code or the Pilbara Networks Access Code in respect of the segregation of the functions and business of providing services from the network service provider's other functions and business, or to waive any of those obligations; or

(k) a decision by the Authority to approve or not to approve an arrangement lodged under section 104B(a); or

(ka) a decision by the Authority to approve or not to approve a thing for which the approval of the Authority is required under the Pilbara Networks Access Code; or

(l) a decision by the Authority to release confidential data given to the Authority for the performance of its functions under Part 8 or 8A.

Note:

See *Economic Regulation Authority Act 2003* Part 6.

(3) A person adversely affected by a decision or direction to which this section applies may apply to the Board for a review of the decision.

(4) Section 38(2) to (5) and (7) to (12) of the gas pipelines access provisions apply to the application and to the review of the decision or direction as if references in them to —

(a) the relevant appeals body were references to the Board;

(b) a decision included references to a direction;

(5) The application operates to stay the decision or direction unless, in the case of a decision under subsection (2)(j), the Board determines otherwise.

(6) In the case of a decision under subsection (2)(k), section 39(2) to (5) of the gas pipelines access provisions also apply to the application and to the review of the decision as if references in them to —

(a) the relevant appeals body were references to the Board;

(b) the relevant regulator were references to the Authority.

(7) In the case of a decision under subsection (2)(l), section 43(2) to (4) of the gas pipelines access provisions also apply to the application and to the review of the decision as if references in them to —

(a) the relevant appeals body were references to the Board;

(b) the relevant regulator were references to the Authority.

(8) When the *Energy Arbitration and Review Act 1998* Part 6 Division 2 refers to the functions of, and proceedings before, the Board those functions and proceedings include functions and proceedings under this section.

(9) For proceedings to which subsection (8) extends the provisions described in that subsection, sections 57(1) and 59(4) of those provisions apply only to the extent that it is consistent with the Code for them to apply.

[Section 130 amended: No. 16 of 2009 s. 60; No. 9 of 2020 s. 27.]

131A. Licence not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth)

If a licence is transferable by the licensee, in accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of ***licence*** paragraph (d), the licence is declared not to be personal property for the purposes of that Act.

[Section 131A inserted: No. 42 of 2011 s. 61.]

131. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

131B. Enforcement of the regulations

(1) Without limiting section 131, the regulations may prescribe all matters that are necessary or convenient to be prescribed for the enforcement of the regulations.

(2) The regulations may —

(a) provide that a contravention of a regulation is an offence; and

(b) prescribe a penalty of a fine of not more than $100 000, with or without a daily penalty of a fine of not more than $20 000, for an offence against the regulations.

[Section 131B inserted: No. 9 of 2020 s. 28.]

132. Regulations as to fees and charges for supply and services

(1) Without limiting section 131, the regulations may —

(a) fix the fees and charges, or the means of determining the fees and charges, that, unless otherwise agreed, are to be payable by customers of a prescribed class in relation to —

(i) the supply of electricity in prescribed circumstances; or

(ii) the provision of any prescribed service;

and

(b) deal with any other matter relating to the fixing or determination of fees and charges.

(2) Without limiting subsection (1), the regulations may make provision for and in relation to discounts, rebates, or concessions to be made available to customers of a prescribed class or in prescribed circumstances in respect of fees or charges payable in relation to the supply of electricity or the provision of a prescribed service.

133. Regulations as to fees and charges for functions of arbitrator and Board

(1) Without limiting section 131, regulations may make provision for and in relation to the imposition and payment of fees and charges in connection with any matter under this Act, including in connection with the performance of the respective functions of an arbitrator and the Board under this Act.

(2) If it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function the regulations may provide for the method of calculating the fee or charge, including calculation according to the cost of performing that function.

(3) Without limiting subsection (1) or (2) the regulations may —

(a) authorise the Board to fix, and determine the incidence of liability for, the cost and expenses of the hearing and determination of proceedings before the Board; and

(b) make any incidental or supplementary provision that is expedient for the purposes of paragraph (a).

(4) The application of subsection (3) extends to the cost and expenses of proceedings that are commenced but discontinued or otherwise not brought to finality.

[Section 133 amended: No. 16 of 2009 s. 61; No. 9 of 2020 s. 29.]

134. Regulations as to excluding Corporations legislation

(1) In this section —

market rules has the meaning given in Part 9;

matter includes act, omission, body, person or thing.

(2) The regulations may declare a matter dealt with, provided for, done or occurring under this Act, the regulations or the market rules to be an excluded matter for the purposes of the *Corporations Act 2001* (Commonwealth) section 5F in relation to —

(a) the whole of the Corporations legislation to which the *Corporations Act 2001* (Commonwealth) Part 1.1A applies; or

(b) a specified provision of that legislation; or

(c) that legislation other than a specified provision; or

(d) that legislation otherwise than to a specified extent.

[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;

(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 who are required to be members of the scheme —

(i) are members of the scheme; and

(ii) have agreed to be bound by decisions and directions of the electricity ombudsman under the scheme; and

(iii) as members, are so bound;

and

(b) the scheme will be appropriately funded by the licensees who are required to be members; and

(c) the scheme has satisfactory arrangements in place to deal with all disputes and complaints referred to in section 92(1); and

(d) the electricity ombudsman will be able to operate independently of all licensees in performing his or her functions under the scheme; and

(e) the scheme will be accessible to customers; and

(f) membership of the scheme will —

(i) be accessible to all potential members; and

(ii) provide appropriate representation for all members on the governing body of the scheme;

and

(g) without limiting any other application of the scheme, the scheme will apply to all disputes and complaints referred to in section 92(1); and

(h) the scheme will operate expeditiously and without cost to customers; and

(i) the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations; and

(j) the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Authority; and

(k) the scheme will maintain the capacity of the electricity ombudsman, where appropriate, to refer disputes or complaints to other forums; and

(l) the scheme will require the electricity ombudsman to inform the Authority of substantial breaches of —

(i) any licence condition; or

(ii) the code of conduct under Part 6,

of which the ombudsman becomes aware.

[Clause 1 amended: No. 19 of 2010 s. 51.]

[Schedule 2 amended: No. 19 of 2010 s. 51.]

Schedule 3 — Transitional provisions

[s. 79, 81]

Division 1 — Initial customer service code of conduct

1. Approval of initial customer service code of conduct

(1) The initial code of conduct under section 79 is to be approved by the Minister instead of by the Authority.

(2) The Minister is to act under subclause (1) in consultation with the committee.

(3) The provisions of —

(a) Part 6; and

(b) the *Interpretation Act 1984* section 25 in its application to that Part,

are modified so far as is necessary to enable effect to be given to subclauses (1) and (2).

(4) The code of conduct approved in accordance with this clause is to be taken, for the purposes of Part 6, to be a code of conduct approved by the Authority under Part 6.

2. Appointment of initial committee

(1) The Minister instead of the Authority is to —

(a) determine the initial membership, constitution and procedures of the committee under section 81; and

(b) appoint the initial members of the committee,

and may make the initial determinations under section 81(3).

(2) The provisions of —

(a) section 81; and

(b) the *Interpretation Act 1984* section 25 in its application to that section,

are modified so far as is necessary to enable effect to be given to subclause (1).

(3) The committee established in accordance with this clause is to be taken, for the purposes of section 81 to be the committee established by the Authority under that section.

3. Regulations for transitional matters

If in the opinion of the Minister an anomaly arises in —

(a) the carrying out of clause 1 or 2; or

(b) the operation of Part 6 in accordance with the *Interpretation Act 1984* section 25,

the Governor may by regulations make such provision as is necessary —

(c) to remove the anomaly; and

(d) to achieve the purpose of clause 1(1) or 2(1).

Division 2 — Initial electricity ombudsman scheme

4. Approval of initial electricity ombudsman scheme

(1) The Minister instead of the Authority is to —

(a) approve the initial electricity ombudsman scheme under sections 92 and 93; and

(b) give the initial approval required for the purposes of Schedule 2 paragraph (j).

(2) The provisions of —

(a) Part 7 Division 2; and

(b) Schedule 2; and

(c) the *Interpretation Act 1984* section 25 in its application to the provisions mentioned in paragraphs (a) and (b),

are modified so far as is necessary to enable effect to be given to subclause (1).

(3) A scheme approved in accordance with this clause is to be taken, for the purposes of Part 7, to be a scheme approved by the Authority under Division 2 of that Part.

5. Regulations for transitional matters

If in the opinion of the Minister an anomaly arises in —

(a) the carrying out of clause 4; or

(b) the operation of Part 7 Division 2 in accordance with the *Interpretation Act 1984* section 25,

the Governor may by regulations make such provision as is necessary —

(c) to remove the anomaly; and

(d) to achieve the purpose of clause 4.

Notes

This is a compilation of the *Electricity Industry Act 2004* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Electricity Industry Act 2004	5 of 2004	23 Apr 2004	s. 1 and 2: 23 Apr 2004; s. 3, Pt. 4 (other than s. 65), Pt. 9 and 10: 23 Jun 2004 (see s. 2 and *Gazette* 22 Jun 2004 p. 2161); Pt. 8: 1 Jul 2004 (see s. 2 and *Gazette* 22 Jun 2004 p. 2161); Pt. 2, 3, 5 and 6, s. 65, Sch. 1 and Sch. 3 Div. 1: 31 Dec 2004 (see s. 2 and *Gazette* 12 Nov 2004 p. 5017); Pt. 7, Sch. 2 and Sch. 3 Div. 2: 25 Jun 2005 (see s. 2 and *Gazette* 24 Jun 2005 p. 2751)
Electricity Legislation Amendment Act 2004 Pt. 2 Div. 3	33 of 2004	20 Oct 2004	31 Dec 2004 (see s. 2 and *Gazette* 23 Nov 2004 p. 5243)
Electricity Corporations Act 2005 s. 139	18 of 2005	13 Oct 2005	1 Apr 2006 (see s. 2(2) and *Gazette* 31 Mar 2006 p. 1153)
Reprint 1: The *Electricity Industry Act 2004* as at 16 Jun 2006 (includes amendments listed above)			
Financial Legislation Amendment and Repeal Act 2006 Sch. 1 cl. 54	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Electricity Industry Amendment Act 2007	32 of 2007	21 Dec 2007	s. 1 and 2: 21 Dec 2007 (see s. 2(a)); Act other than s. 1 and 2: 22 Dec 2007 (see s. 2(b))

Short title	Number and year	Assent	Commencement
National Gas Access (WA) Act 2009 Pt. 7 Div. 3	16 of 2009	1 Sep 2009	1 Jan 2010 (see s. 2(b) and *Gazette* 31 Dec 2009 p. 5327)
Statutes (Repeals and Minor Amendments) Act 2009 s. 17	46 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))
Reprint 2: The *Electricity Industry Act 2004* as at 9 Apr 2010 (includes amendments listed above)			
Standardisation of Formatting Act 2010 s. 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 5 Div. 1	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)
Electricity Corporations Amendment Act 2013 s. 39	25 of 2013	18 Dec 2013	1 Jan 2014 (see s. 2(c) and *Gazette* 27 Dec 2013 p. 6465)
Reprint 3: The *Electricity Industry Act 2004* as at 29 Mar 2018 (includes amendments listed above)			
Electricity Industry Amendment Act 2020 Pt. 2	9 of 2020	6 Apr 2020	7 Apr 2020 (see s. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Electricity Industry Amendment (Distributed Energy Resources) Act 2024 Pt. 2 Div. 1 and Pt. 3 Div. 1	1 of 2024	7 Mar 2024	To be proclaimed (see s. 2(b))

Other notes

[1] The *Electricity Corporation Act 1994* was renamed as the *Electricity Transmission and Distribution Systems (Access) Act 1994* by the *Electricity Corporations Act 2005* Sch. 5 cl. 9.

[2] The *Electricity Corporations Act 2005* Sch. 5 cl. 11 came into operation on 1 Apr 2006, see *Gazette* 31 Mar 2006 p. 1153.

[3] The *National Gas Access (WA) Act 2009* s. 59(1) came into operation on 1 Jan 2010, see *Gazette* 31 Dec 2009 p. 5327.

[4] The *Gas Pipelines Access (Western Australia) Act 1998* was renamed as the *Energy Arbitration and Review Act 1998* by the *National Gas Access (WA) Act 2009* s. 26.

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