



Western Australia

Electricity Industry Amendment Act 2020

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Electricity Industry Amendment Act 2020

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Western Australia

Electricity Industry Amendment Act 2020

No. 9 of 2020

An Act to amend the *Electricity Industry Act 2004*, and to amend the *Electricity Corporations Act 2005* and the *Energy Operators (Powers) Act 1979* consequentially.

[Assented to 6 April 2020]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Electricity Industry Amendment Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after the day on which this Act receives the Royal Assent.

Part 2 — *Electricity Industry Act 2004* amended

3. Act amended

This Part amends the *Electricity Industry Act 2004*.

4. Section 3 amended

- (1) In section 3 delete “In this Act,” and insert:

(1) In this Act,

- (2) In section 3 delete the definitions of:

distribution system

generating works

transmission system

- (3) In section 3 insert in alphabetical order:

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);

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;

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 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;

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;

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;

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;

services means —

- (a) the transport of electricity, and other services, provided by means of network infrastructure facilities; and
- (b) services ancillary to those services;

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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;

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.

- (4) At the end of section 3 insert:
 - (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.

5. Section 11 amended

Delete section 11(4)(b) and insert:

- (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

6. Sections 23 and 24 amended

In sections 23(2)(g) and 24 delete “internet”.

7. Section 30 amended

In section 30 delete “*Trade Practices Act 1974 of the Commonwealth*” and insert:

Competition and Consumer Act 2010 (Commonwealth)

8. Section 39A amended

In section 39A(10)(b)(ii) delete “internet”.

9. Section 102 amended

In section 102(a) after “provide” insert:

for full regulation of

10. Section 103 amended

- (1) In section 103 delete the definitions of:

access

Code

Competition Principles Agreement

network infrastructure facilities

services

- (2) In section 103 insert in alphabetical order:

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.

- (3) In section 103 in the definition of *access agreement* delete “(a *network user*)”.
- (4) In section 103 in the definition of *access arrangement* delete “section 104(2)(c)” and insert:

section 104B(a)

11. Section 104 replaced

Delete section 104 and insert:

104. Minister to establish Code

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

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.

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;

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- (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.

12. Section 105 amended

In section 105(1):

- (a) after paragraph (c) insert:

- (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

- (b) after each of paragraphs (a) to (c) insert:

and

13. Section 107 amended

In section 107(6) delete “under subsection (5), the Code” and insert:

in whole or in part under subsection (5), the Code, or the disallowed part of the Code (as applicable)

14. Section 108 amended

In section 108(2):

- (a) in paragraph (a) delete “internet”;
- (b) in paragraph (b)(i) delete “places” and insert:

website
- (c) delete paragraph (b)(iii) and insert:

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

15. Section 111 amended

In section 111(4):

- (a) in paragraph (a) delete “internet”;
- (b) delete paragraph (b)(ii) and insert:

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

16. Section 115 amended

(1) In section 115(1):

- (a) delete “network infrastructure facilities covered by the Code,” and insert:

a covered network that is regulated under this Part,

(b) in paragraph (b) delete “those facilities; or” and insert:

that network; or

(2) In section 115(2) delete “network infrastructure facilities covered by the Code.” and insert:

a covered network that is regulated under this Part.

(3) In section 115(6) in the definition of “*associate*” delete “Part 1.2 Division 2 of the *Corporations Act 2001* of the Commonwealth if sections 13, 14,” and insert:

the *Corporations Act 2001* (Commonwealth) Part 1.2 Division 2 if sections 13,

17. Section 116 amended

In section 116(2)(b) delete “under this Act or the Code of the Minister, the arbitrator or the Board.” and insert:

made under this Act or the Code.

18. Part 8 Division 4 deleted

Delete Part 8 Division 4.

19. Part 8A inserted

After Part 8 insert:

Part 8A — Pilbara networks

Division 1 — Preliminary

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.

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).

Division 2 — Pilbara Networks Access Code

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.

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.

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;

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- (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.

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.

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.

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.

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.

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.

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.

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.

Division 3 — Pilbara networks rules

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.

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.

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.

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).

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.

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.

Division 4 — Pilbara networks technical rules

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.

Division 5 — Enforcement

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.

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.

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.

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.

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;

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- (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.

Division 6 — Independent system operator

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.

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.

Division 7 — Functions of Authority

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.

Division 8 — Reviews of decisions

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.

Division 9 — Immunity

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.

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.

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.

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.

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.

Division 10 — Competition authorisation

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.

Division 11 — Review of system

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.

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.

Division 12 — Transitional provisions

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.

20. Section 126 amended

- (1) In section 126(1) delete the definition of *officer*.
- (2) In section 126(1) insert in alphabetical order:

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);

- (3) In section 126(1) in the definition of *civil monetary penalty* delete “*penalty*” and insert:

liability

s. 21

- (4) In section 126(3)(b) delete “penalty” and insert:

liability

21. Section 127 amended

In section 127(2) delete “*Trade Practices Act 1974* of the Commonwealth” and insert:

Competition and Consumer Act 2010 (Commonwealth)

Note: The heading to amended section 127 is to read:

Competition authorisation by regulation

22. Section 128 amended

In section 128(6) delete “an internet website” and insert:

a website

23. Section 129 amended

- (1) In section 129(2)(b) delete “an internet website” and insert:

a website

- (2) Delete section 129(3)(b) and insert:

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

24. Section 129B amended

In section 129B delete the definition of *Code*.

25. Section 129F amended

In section 129F(3):

- (a) in paragraph (b)(i) delete “section 104(2)(c); and” and insert:

section 104B(a); and

- (b) in paragraph (b)(ii) delete “section 104(2)(h)(i).” and insert:

section 104B(f).

26. Part 9B inserted

After Part 9A insert:

Part 9B — Temporary access contribution

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.

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.

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.

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.

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.

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.

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.

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.

129S. Treasurer to recommend regulations

Regulations are not to be made for this Part except on the Treasurer's recommendation.

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.

27. Section 130 amended

- (1) In section 130(1) delete the definition of *Code*.
- (2) In section 130(2):
 - (a) delete paragraph (i) and insert:
 - (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
 - (b) in paragraph (j) after “Code” insert:

or the Pilbara Networks Access Code

- (c) in paragraph (k) delete “section 104(2)(c); or” and insert:

section 104B(a); or

- (d) after paragraph (k) insert:

- (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

- (e) in paragraph (l) delete “Part 8.” and insert:

Part 8 or 8A.

28. Section 131B inserted

After section 131 insert:

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.

29. Section 133 amended

In section 133(1) delete “the arbitrator” and insert:

an arbitrator

Part 3 — Consequential amendments to other Acts

30. *Electricity Corporations Act 2005* amended

- (1) This section amends the *Electricity Corporations Act 2005*.
- (2) In section 41:
 - (a) after paragraph (b) insert:
 - (ba) to provide stand-alone power systems (as defined in the *Electricity Industry Act 2004* section 3(1)) in accordance with the regulations and Code made under Part 8 of that Act; and
 - (b) in paragraph (i) before “undertake,” insert:

construct, install,
- (3) After section 50(c) insert:
 - (ca) to do anything that it is authorised or required to do by the *Electricity Industry Act 2004* Part 8A (which relates to network access in the Pilbara region) and the regulations, Pilbara Networks Access Code and Pilbara networks rules made under that Part; and
- (4) In section 54(1) in the definition of *services* delete “section 103.” and insert:

section 3.

- (5) In section 54(8) delete “Part 8.” and insert:

Part 8 or 8A.

31. *Energy Operators (Powers) Act 1979* amended

- (1) This section amends the *Energy Operators (Powers) Act 1979*.

- (2) After section 45(4) insert:

- (4A) In subsection (4)(a) —

generating works does not include a stand-alone power system (as defined in the *Electricity Industry Act 2004* section 3(1)) being constructed, installed, operated or maintained in accordance with the regulations and Code made under Part 8 of that Act.

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