Western Australia

Electricity Industry Act 2004

Compare between:

[26 Sep 2025, 03-f0-00] and [20 Aug 2026, 03-g0-00]

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);

AES code of practice means the code of practice for the time being in force under section 59X;

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

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

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;

connected facility, in relation to a distribution system, means electricity infrastructure connected to the distribution system that manages or controls the flow of electricity to or from the distribution system;

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

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 that are less than the prescribed voltage;

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

electricity corporation means —

(a) the Electricity Generation and Retail Corporation; or

(b) the Electricity Networks Corporation; or

(c) the Regional Power Corporation;

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

electricity infrastructure —

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

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

electricity network means a distribution system or a transmission system;

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

electricity services means services that are necessary or incidental to the supply of electricity to consumers of electricity;

electricity system means the following —

(a) distribution systems;

(b) generating works;

(c) stand-alone power systems;

(d) storage works;

(e) transmission systems;

(f) wires, apparatus, equipment, plant or buildings that are incidental to the supply of electricity;

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

embedded network —

(a) means a distribution system that —

(i) supplies electricity to at least 1 customer who is not an entity in control of the distribution system or at least 1 premises that is not occupied by an entity in control of the distribution system; and

(ii) is supplied with electricity by another distribution system; and

(iii) is not part of a covered network;

and

(b) includes a distribution system referred to in paragraph (a) that is capable of operating without receiving a supply of electricity from another electricity network; but

(c) does not include a distribution system of a class that is prescribed by the regulations not to be an embedded network;

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;

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

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;

prescribed voltage means the voltage prescribed by the regulations for this definition;

quality, in relation to the supply of electricity, means the extent to which the supply of electricity complies with any technical requirements of —

(a) the regulations; and

(b) the electricity system and market rules; and

(c) a standard made under section 39(2)(d);

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

registration means a registration under Part 3A;

registration holder —

(a) means the holder of a registration; and

(b) includes a transferee of a registration;

reliability, in relation to the supply of electricity or the operation of an electricity system, means the ability of the electricity system to maintain or supply consistent delivery of electricity to customers;

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

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

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;

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

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);

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

State electricity objective has the meaning given in section 3A(1);

storage activity means an activity comprising all of the following —

(a) receiving energy in the form of electricity;

(b) storing the received energy in any form;

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

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

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

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

(a) generate;

(b) transport through a transmission system;

(c) transport through a distribution system;

(d) sell;

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

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

(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; No. 1 of 2024 s. 4; No. 10 of 2024 s. 4.]

3A. State electricity objective

(1) The ***State electricity objective*** is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity in relation to —

(a) the quality, safety, security and reliability of supply of electricity; and

(b) the price of electricity; and

(c) the environment, including reducing greenhouse gas emissions.

(2) The Minister, the Authority, the Coordinator and the Board must have regard to the State electricity objective in carrying out a function under this Act.

(3) For the purposes of subsection (2), the Minister, the Authority, the Coordinator or the Board may give the weight to any aspect of the State electricity objective that the Minister, the Authority, the Coordinator or the Board considers appropriate in all the circumstances.

[Section 3A inserted: No. 1 of 2024 s. 5.]

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).

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

of the licence is exempted under the regulations under section 59D(2)(a) from the requirement to be registered to provide the alternative electricity service.

[Section 4 amended: No. 10 of 2024 s. 5.]

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.

Penalty for this subsection:

(a) a fine of $100 000;

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

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

Penalty for this subsection:

(a) a fine of $100 000;

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

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

Penalty for this subsection:

(a) a fine of $100 000;

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

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

Penalty for this subsection:

(a) a fine of $100 000;

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

(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.

(7) A person does not commit an offence under subsection (1), (2), (3) or (4) if the person is —

(a) a registration holder and the conduct to which the offence applies is authorised by that registration; or

(b) exempted under the regulations under section 59D(2)(c) from the requirement to be registered in relation to the conduct to which the offence applies.

[Section 7 amended: No. 10 of 2024 s. 6.]

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 the Governor 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.

[Section 8 amended: No. 10 of 2024 s. 7.]

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 (aa) the electricity system and market rules; 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; No. 1 of 2024 s. 6.]

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 the Minister 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.

[Section 27 amended: No. 10 of 2024 s. 8.]

28. Application for and grant of licence

(1) An application for an exclusive licence may only be made if the Minister has determined that the Minister 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 the Minister 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*.

[Section 28 amended: No. 10 of 2024 s. 9.]

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 the Governor 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 a Chapter 5 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.

[Section 35 amended: No. 10 of 2024 s. 10; No. 14 of 2025 s. 8(2).]

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, security 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; No. 1 of 2024 s. 7.]

39A. Review of 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 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, security and reliability of the supply of electricity that are provided for in an access arrangement.

(2) The Coordinator must carry out reviews of the operation and effect of the RPC standards.

[(3) deleted]

(4) Reviews must 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 Coordinator must give members of the public an opportunity to comment on matters relevant to the review.

(7) The Coordinator must 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 Coordinator, 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 Coordinator must —

(a) make the report available for public inspection in such manner as the Coordinator 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*, must fix a period for 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; No. 1 of 2024 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 small use customers

[Heading amended: No. 10 of 2024 s. 11.]

Division 1 — Preliminary

47. Term used: retail licensee

In this Part, unless the contrary intention appears —

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

[Section 47 amended: No. 10 of 2024 s. 12.]

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 small use customers; and

(b) the right of a small use customer at the customer's 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 small use customers.

(2) The regulations may —

(a) require a retail licensee to offer to supply electricity to small use 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 small use 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.

[Section 48 amended: No. 10 of 2024 s. 13.]

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 small use 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 small use 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 small use customers pursuant to the licence.

[Section 49 amended: No. 10 of 2024 s. 23.]

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 small use 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 small use customers pursuant to the licence if the standard form contract is approved by the Authority.

[Section 50 amended: No. 10 of 2024 s. 23.]

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 small use 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.

[Section 54 amended: No. 10 of 2024 s. 23.]

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 small use customer; or

(b) a contract in the form of a prescribed form of contract entered into by a corporation and a small use 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 small use 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 small use 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 small use 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); No. 10 of 2024 s. 23.]

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 small use customer.

[Section 57 amended: No. 10 of 2024 s. 23.]

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 small use 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.

[Section 59 amended: No. 10 of 2024 s. 23.]

Part 3A — Registration framework for alternative electricity services

[Heading inserted: No. 10 of 2024 s. 14.]

Division 1 — Preliminary

[Heading inserted: No. 10 of 2024 s. 14.]

59A. Purpose of Part

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

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

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

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

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

[Section 59A inserted: No. 10 of 2024 s. 14.]

59B. Terms used

In this Part —

affected person, in relation to a reviewable decision, has the meaning given in section 59U(1)(b);

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

registration framework means —

(a) this Part; and

(b) the regulations; and

(c) the AES code of practice;

reviewable decision has the meaning given in section 59U(1)(a).

[Section 59B inserted: No. 10 of 2024 s. 14.]

59C. Alternative electricity services

(1) The regulations may prescribe —

(a) an activity as an alternative electricity service; or

(b) a class of activities as a class of alternative electricity service.

(2) The regulations may regulate the provision of an alternative electricity service or a class of alternative electricity service to any of the following —

(a) small use customers or a class of small use customers;

(b) customers or a class of customers other than small use customers;

(c) all customers.

(3) The regulations may prescribe requirements to be complied with in the provision of an alternative electricity service or a class of alternative electricity service.

(4) The regulations may regulate the eligibility of a person or a class of persons to be granted a registration for an alternative electricity service or a class of alternative electricity service.

(5) Without limiting subsection (1), an activity may include any of the following —

(a) an activity that, in the absence of an exemption under section 8(1), would be required to be licensed under section 7;

(b) an activity that relates to storage works;

(c) an activity that relates to trading in, or monitoring or managing, the production, storage, consumption or use of electricity, whether directly or on behalf of another person;

(d) an activity that relates to the collection, retention or use of data relating to the production, storage, consumption or use of electricity, whether directly or on behalf of another person;

(e) any other activity that relates to the production, storage, transport, supply, consumption or use of electricity, including —

(i) an activity provided on a metered or unmetered basis; or

(ii) an activity relating to electricity acquired or aggregated from 1 or more sites for the purpose of trading, sale or participation in the wholesale electricity market; or

(iii) an activity relating to the measurement, analysis, manipulation or use of data for commercial purposes; or

(iv) an activity involving electricity generated or stored on a site or sites owned or occupied by the person providing the service or otherwise; or

(v) an activity relating to electricity provided through an embedded network or an unlicensed distribution system or by way of a stand-alone power system.

(6) For the purposes of subsection (5), an activity that relates to the consumption or use of electricity may include the consumption or use of electricity under an arrangement that is —

(a) a membership scheme under which services are provided to the members of the scheme on payment of a membership fee and regular subscriptions; or

(b) a financing, leasing, licensing or hire arrangement.

(7) The regulations may provide that a class of activity is not an alternative electricity service for the purposes of this Act.

[Section 59C inserted: No. 10 of 2024 s. 14.]

Division 2 — Registration requirements

[Heading inserted: No. 10 of 2024 s. 14.]

59D. Requirement for registration

(1) A person must not provide an alternative electricity service to a customer unless the person is registered under this Part to provide that alternative electricity service.

Penalty for this subsection:

(a) a fine of $100 000;

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

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

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

(b) the holder of an existing registration for another specified alternative electricity service;

(c) any other person prescribed by the regulations.

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

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

(5) If the holder of a registration for an alternative electricity service is exempted under the regulations under subsection (2)(b) from the requirement to be registered to provide another alternative electricity service, the Authority may determine terms and conditions under section 59O(3) to

apply to the registration in relation to the provision of the alternative electricity service to which the exemption applies.

[Section 59D inserted: No. 10 of 2024 s. 14.]

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

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

Penalty:

(a) a fine of $100 000;

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

[Section 59E inserted: No. 10 of 2024 s. 14.]

Division 3 — General registration provisions

[Heading inserted: No. 10 of 2024 s. 14.]

59F. Authority to consider public interest

(1) The Authority must not exercise a power conferred by this Division or Division 2 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, must take into account the following —

(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 registration holder or applicant for registration who may be affected by the exercise of the power;

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

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

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

[Section 59F inserted: No. 10 of 2024 s. 14.]

59G. Application for registration

An application for registration must be —

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

(b) accompanied by the prescribed application fee.

[Section 59G inserted: No. 10 of 2024 s. 14.]

59H. Renewal of registration

An application for the renewal of a registration must be —

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

(b) accompanied by the prescribed application fee.

[Section 59H inserted: No. 10 of 2024 s. 14.]

59I. Amendment of registration

An application for an amendment to a registration must be —

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

(b) accompanied by the prescribed application fee.

[Section 59I inserted: No. 10 of 2024 s. 14.]

59J. Transfer of registration

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

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

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

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

(b) accompanied by the prescribed application fee.

[Section 59J inserted: No. 10 of 2024 s. 14.]

59K. Further information

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

[Section 59K inserted: No. 10 of 2024 s. 14.]

59L. Public consultation on grant, renewal, amendment or transfer of registration

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

(a) grants a registration; or

(b) renews a registration; or

(c) amends a registration; or

(d) approves the transfer of a registration.

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

(3) Subsection (1)(c) does not apply if the amendment is of a minor or administrative nature.

[Section 59L inserted: No. 10 of 2024 s. 14.]

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

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

(a) the grant, renewal or amendment of a registration;

(b) approval to transfer a registration.

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

(a) the application has been made in accordance with section 59G, 59H, 59I or 59J, as the case may be; and

(b) section 101B does not prohibit the grant, renewal or amendment of the registration or the approval of the transfer; and

(c) if a requirement has been made under section 59K, the relevant information has been provided to the Authority.

[Section 59M inserted: No. 10 of 2024 s. 14.]

59N. Registration area

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

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

[Section 59N inserted: No. 10 of 2024 s. 14.]

59O. Registration is subject to terms and conditions

(1) A registration is subject to a condition that the registration holder must comply with the provisions of the AES code of

practice that are prescribed by the regulations to apply to the alternative electricity service or class of alternative electricity service to which the registration applies.

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

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

(4) The Authority may at any time amend the terms and conditions of a registration determined by the Authority.

(5) The regulations may prescribe terms and conditions of registration for —

(a) an alternative electricity service; or

(b) a class of alternative electricity service.

[Section 59O inserted: No. 10 of 2024 s. 14.]

59P. Duration of registration

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

[Section 59P inserted: No. 10 of 2024 s. 14.]

59Q. Annual fees

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

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

[Section 59Q inserted: No. 10 of 2024 s. 14.]

59R. Surrender of registration

(1) A registration holder must not surrender a registration unless the Authority on the application of the registration holder has approved the surrender.

(2) An application for approval to surrender a registration must be —

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

(b) accompanied by the prescribed application fee.

(3) The Authority must not approve a surrender of a registration unless the Authority is satisfied that it would not be contrary to the public interest to do so.

[Section 59R inserted: No. 10 of 2024 s. 14.]

59S. Other laws not affected

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

[Section 59S inserted: No. 10 of 2024 s. 14.]

59T. Notice of decision

(1) The Authority must ensure that written notice of each of the following decisions is given to the applicant within 14 days after the decision is made —

(a) a decision to grant a registration;

(b) a decision to renew a registration;

(c) a decision to amend a registration;

(d) a decision to approve the transfer of a registration;

(e) a decision to approve the surrender of a registration.

(2) The Authority must ensure that written notice of each of the following decisions and a statement of the reasons for the decision is given to the applicant within 14 days after the decision is made —

(a) a decision to refuse to grant a registration;

(b) a decision to refuse to renew a registration;

(c) a decision to refuse to amend a registration;

(d) a decision to refuse to approve the transfer of a registration;

(e) a decision to refuse to approve the surrender of a registration.

[Section 59T inserted: No. 10 of 2024 s. 14.]

59U. Review of certain decisions

(1) The Table sets out —

(a) decisions made under this Part that are reviewable in accordance with this section (each a ***reviewable decision***); and

(b) who is eligible to apply for a review of a reviewable decision (the ***affected person***).

Table

Item	Reviewable decision	Affected person
1.	A decision of the Authority under section 59M to refuse to grant a registration	The applicant for registration
2.	A decision of the Authority under section 59M to refuse to renew a registration	The registration holder

Item	Reviewable decision	Affected person
3.	A decision of the Authority under section 59M to refuse to approve the transfer of a registration	The applicant for approval
4.	A decision of the Authority to impose a term or condition on a registration under section 59O(3)	The registration holder
5.	A decision of the Authority to amend a term or condition of a registration under section 59O(4)	The registration holder
6.	A decision by the Authority as to the period of registration or renewal of registration under section 59P	The registration holder
7.	A decision of the Authority under section 59R to refuse to approve the surrender of a registration	The applicant for approval

(2) An affected person who is aggrieved by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.

(3) The application must be made within 28 days after the day on which notice of the reviewable decision is given.

[Section 59U inserted: No. 10 of 2024 s. 14.]

59V. Register

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

(a) an application for registration;

(b) a grant or renewal of registration;

(c) an amendment of registration;

(d) an approval of a transfer of registration;

(e) a refusal of an application for registration or a renewal or amendment of registration;

(f) a surrender of registration;

(g) a suspension or revocation of registration.

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

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

(4) The Authority must publish each of the following decisions on the register within 14 days after the decision is made —

(a) a decision to grant a registration;

(b) a decision to refuse to grant a registration;

(c) a decision to renew a registration;

(d) a decision to refuse to renew a registration;

(e) a decision to amend a registration;

(f) a decision to refuse to amend a registration;

(g) a decision to approve a transfer of registration;

(h) a decision to refuse to approve a transfer of registration;

(i) a decision to approve a surrender of registration;

(j) a decision to refuse to approve a surrender of registration.

(5) If a registration is granted, the register must include —

(a) the name and street address of the registration holder; and

(b) the name and contact details of the person who will handle customer requests for information and complaints; and

(c) the alternative electricity service for which the registration is granted; and

(d) the dates of the grant or renewal, or approval of the transfer, of the registration; and

(e) the term of the registration; and

(f) a description of the registration area; and

(g) the date of any surrender of the registration; and

(h) the date, if any, of the suspension or revocation of the registration; and

(i) any other matter prescribed in the regulations in relation to an alternative electricity service or a class of alternative electricity service.

[Section 59V inserted: No. 10 of 2024 s. 14.]

59W. Fee regulations

The regulations may do all or any of the following —

(a) prescribe different application fees and annual fees for different alternative electricity services or different classes of alternative electricity service;

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

(c) specify circumstances in which the payment of some or all of a fee may be waived.

[Section 59W inserted: No. 10 of 2024 s. 14.]

Division 4 — AES code of practice

[Heading inserted: No. 10 of 2024 s. 14.]

59X. AES code of practice

(1) The Minister may prepare and issue a code of practice for alternative electricity services.

(2) The AES code of practice must set out customer protection requirements to be complied with by registration holders.

(2A) The AES code of practice must be consistent with the State electricity objective.

(3) Without limiting subsection (2), the AES code of practice may include requirements relating to any 1 or more of the following —

(a) standards of conduct in the supply and marketing of electricity or electricity services to small use customers, including in relation to the following —

(i) the information to be contained in AES customer contracts;

(ii) the ongoing provision of information to small use customers;

(iii) the obtaining of the consent of a small use customer before entering into an AES customer contract or amending an AES customer contract (other than an amendment required to comply with a written law);

(iv) the methods or principles to be applied by registration holders in the preparation of accounts for small use customers;

(v) matters relating to bills for small use customers, including matters relating to the information to be provided on bills, how payments are to be made, the frequency of bills and the arrangements to be made for small use customers experiencing payment difficulties or financial hardship;

(vi) the use of and access to electricity for life support equipment;

(vii) customer protection for persons experiencing family violence;

(b) the regulation of pricing and price controls for the sale or supply of electricity or electricity services by registration holders to small use customers or the supply of electricity by a small use customer to a registration holder;

(c) the facilitation of access, at reasonable associated cost to the customer, to electricity or electricity services provided by other providers;

(d) the facilitation of access to electricity sources with low or zero greenhouse gas emissions;

(e) the metering of the supply of electricity, including —

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

(ii) the ownership of and access to meters and metering data;

(f) technical requirements, including quality and reliability standards;

(g) requirements for asset management systems;

(h) internal and external complaints handling and dispute resolution processes for small use customers;

(i) the continuity of supply of electricity to small use customers of a registration holder that ceases to provide an alternative electricity service for which it is registered;

(j) the disconnection, suspension and interruption and restoration of an alternative electricity service in relation to a small use customer.

(4) The AES code of practice may incorporate or apply with or without changes any provision of a code or standard issued and in force from time to time under section 39 or the electricity system and market rules.

[Section 59X inserted: No. 10 of 2024 s. 14; amended: No. 10 of 2024 s. 26(2) and (3).]

59Y. AES code of practice is subsidiary legislation

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

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

[Section 59Y inserted: No. 10 of 2024 s. 14.]

59Z. Public consultation on issue, amendment or replacement of AES code of practice

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

(a) issue the AES code of practice; or

(b) amend the AES code of practice; or

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

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

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

[Section 59Z inserted: No. 10 of 2024 s. 14.]

59ZA. Notice to registration holders of amendment or replacement of AES code of practice

The Authority must notify all registration holders of the amendment or replacement of the AES code of practice.

[Section 59ZA inserted: No. 10 of 2024 s. 14.]

59ZB. Review of AES code of practice

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

(a) the 5^{th} anniversary of its commencement; and

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

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

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

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

[Section 59ZB inserted: No. 10 of 2024 s. 14.]

59ZC. Public consultation on review

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

[Section 59ZC inserted: No. 10 of 2024 s. 14.]

Division 5 — Functions of Authority

[Heading inserted: No. 10 of 2024 s. 14.]

59ZD. Functions of Authority

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

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

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

(i) the operation of the registration framework; and

(ii) compliance by registration holders with the terms and conditions of registration;

and

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

[Section 59ZD inserted: No. 10 of 2024 s. 14.]

59ZE. Annual report

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

(2) The annual report —

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

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

(3) The Authority must publish each annual report on the Authority's website.

[Section 59ZE inserted: No. 10 of 2024 s. 14.]

Division 6 — Performance reporting and compliance monitoring

[Heading inserted: No. 10 of 2024 s. 14.]

59ZF. Requirement to provide information or report to Authority

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

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

[Section 59ZF inserted: No. 10 of 2024 s. 14.]

59ZG. Compliance audit

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

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

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

(4) The Authority —

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

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

[Section 59ZG inserted: No. 10 of 2024 s. 14.]

59ZH. Use and disclosure of information

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

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

(3) The regulations may provide for the use and disclosure of confidential information.

(4) The Authority must comply with the regulations when using or disclosing confidential information.

[Section 59ZH inserted: No. 10 of 2024 s. 14.]

Division 7 — Enforcement

[Heading inserted: No. 10 of 2024 s. 14.]

59ZI. Failure to comply with registration

(1) If, in the opinion of the Authority, a registration holder contravenes a term or condition of registration, the Authority may cause a notice to be served on the registration holder requiring the registration holder to rectify the contravention within a specified period.

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

- (a) accept a written undertaking from the registration holder under which the registration holder undertakes to rectify the contravention;
- (b) require the registration holder to give public notice of the contravention in the manner determined by the Authority;

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

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

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

(3) The registration holder is liable to pay to the Authority the costs and expenses incurred in taking any action under subsection (2)(d).

[Section 59ZI inserted: No. 10 of 2024 s. 14.]

59ZJ. Right of registration holder to make submissions

(1) Subject to section 59ZP(3), the Authority must not take any action under section 59ZI(2)(b) to (e) unless the Authority has notified the registration holder —

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

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

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

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

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

[Section 59ZJ inserted: No. 10 of 2024 s. 14.]

59ZK. Power to enter premises to rectify contravention

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

[Section 59ZK inserted: No. 10 of 2024 s. 14.]

59ZL. Recovery of penalty, costs and expenses

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

(a) a penalty imposed under section 59ZI(2)(c);

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

[Section 59ZL inserted: No. 10 of 2024 s. 14.]

59ZM. Enforceable undertakings

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

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

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

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

[Section 59ZM inserted: No. 10 of 2024 s. 14.]

59ZN. Certain actions prohibited while undertaking is in force

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

[Section 59ZN inserted: No. 10 of 2024 s. 14.]

59ZO. Certain actions prohibited if undertaking is complied with

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

[Section 59ZO inserted: No. 10 of 2024 s. 14.]

59ZP. Failure to comply with enforceable undertakings

(1) If the Authority considers that a registration holder who gave an undertaking under section 59ZI(2)(a) has failed to comply with any of its terms, the Authority may apply to a court of competent jurisdiction for an order under subsection (2) to enforce the undertaking.

(2) If the court is satisfied that the registration holder has failed to comply with a term of the undertaking, the court may make any of the following orders —

(a) an order directing the registration holder to comply with the term of the undertaking;

(b) an order that the registration holder take any specified action for the purpose of complying with the term of the undertaking;

(c) any other order that the court considers appropriate in the circumstances.

(3) If the court determines that a registration holder has failed to comply with a term of an undertaking under section 59ZI(2)(a), the Authority may without further notice take 1 or more actions under section 59ZI(2)(b) to (e) in relation to a matter that is covered by the term of the undertaking.

[Section 59ZP inserted: No. 10 of 2024 s. 14.]

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;

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; No. 10 of 2024 s. 15.]

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;

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 small use customers for the licensee; or

  (ii) in dealings with existing small use 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 small use customers; or

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

  in respect of the supply of electricity to the small use customer or small use 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 small use customer; or

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

[Section 78 amended: No. 10 of 2024 s. 16 and 23.]

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 small use customers and providing for compensation payments to be made to small use customers when standards of conduct are not met; and

(d) protecting small use 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) deleted]

[Section 79 amended: No. 33 of 2004 s. 30; No. 10 of 2024 s. 23; No. 14 of 2025 s. 21(2).]

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) deleted]

[Section 81 amended: No. 39 of 2010 s. 89; No. 14 of 2025 s. 21(3).]

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 small use customers; or

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

(c) does not apply in relation to the supply and marketing of electricity to small use 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 small use customers with such modifications as are prescribed.

[Section 89A inserted: No. 33 of 2004 s. 31; amended: No. 10 of 2024 s. 23.]

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 small use customer; 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; or

(c) an AES customer contract;

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; No. 10 of 2024 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 or the AES code of practice; and

(b) disputes between —

(i) customers and licensees; or

(ia) customers and registration holders; or

(ii) customers and electricity marketing agents;

and

(c) complaints by customers about —

(i) licensees; or

(ia) registration holders; 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) deleted]

[Section 92 amended: No. 10 of 2024 s. 18; No. 14 of 2025 s. 21(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 the electricity ombudsman's opinion the matter should be dealt with by a court or tribunal.

[Section 96 amended: No. 10 of 2024 s. 19.]

97. Enforcement against marketing agents and others

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

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

[Section 97 amended: No. 10 of 2024 s. 20.]

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.

Division 5 — Membership of approved scheme by registration holder

[Heading inserted: No. 10 of 2024 s. 21.]

101A. Proof of membership in applications relating to registration

(1) An applicant for the grant of a registration of an alternative electricity service who proposes to provide the alternative electricity service to a customer must produce with the application evidence showing that the applicant will, if the registration is granted, be a member of an approved scheme.

(2) An applicant for the renewal of a registration of an alternative electricity service who provides the alternative electricity service to customers must produce with the application evidence

showing that the applicant will, if the registration is renewed, continue to be a member of an approved scheme.

(3) If an application is made under section 59J for approval to transfer a registration of an alternative electricity service to a person who proposes to provide the alternative electricity service 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.

[Section 101A inserted: No. 10 of 2024 s. 21.]

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

Despite Part 3A Division 3, the Authority must not grant, renew or amend a registration or approve a transfer of a registration of an alternative electricity service to a person who provides or proposes to provide the alternative electricity service to customers unless it is satisfied that the registration holder, or the proposed transferee —

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

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

[Section 101B inserted: No. 10 of 2024 s. 21.]

101C. Registration condition: membership of scheme

It is a condition of registration of an alternative electricity service that the registration holder must not provide the alternative electricity service to customers unless the registration holder —

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

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

[Section 101C inserted: No. 10 of 2024 s. 21.]

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 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, including stand-alone power systems or storage works that do not form part of a covered network; and

(cc) generally, the relationship between the Code and the electricity system and market rules, including things done under or governed by the Code or the electricity system and market rules; 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 accordance with the *Interpretation Act 1984* section 41(1)(a) 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; No. 1 of 2024 s. 10.]

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 the electricity system and market rules; 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; No. 1 of 2024 s. 11.]

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 meet the State electricity objective in the Pilbara region.

(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; amended: No. 1 of 2024 s. 12.]

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) deleted]

[Section 120A inserted: No. 9 of 2020 s. 19; amended: No. 1 of 2024 s. 13.]

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, the Pilbara Networks Access Code or the electricity system and market rules 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 or the electricity system and market rules and the Pilbara Networks Access Code, including things done under, or governed by, the Code, the electricity system and market rules or the Pilbara Networks Access Code.

[Section 120B inserted: No. 9 of 2020 s. 19; amended: No. 1 of 2024 s. 14.]

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 or electricity system and market rules

(1) The Minister may amend the Code or the electricity system and market rules 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; amended: No. 1 of 2024 s. 15.]

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);

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

(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; amended: No. 1 of 2024 s. 16.]

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 and reliability 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; amended: No. 1 of 2024 s. 17.]

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 met.

(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 met, the report is to set out recommendations as to how the objective can be met.

(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; amended: No. 1 of 2024 s. 18.]

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 met (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; amended: No. 1 of 2024 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 — Electricity system and electricity markets

[Heading inserted: No. 1 of 2024 s. 20.]

Division 1 — Preliminary

[Heading inserted: No. 1 of 2024 s. 20.]

121. Terms used

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

confer includes impose;

governance participant means a person —

(a) on whom functions are conferred under the regulations or the electricity system and market rules; or

(b) on whom functions relating to this Part are conferred by another written law;

network service provider has the meaning given in section 103;

participant means —

(a) a person who is registered in accordance with the electricity system and market rules as required under the regulations; or

(b) a governance participant;

wholesale electricity market means the wholesale electricity market established by regulations made under section 122.

[(2) deleted]

[Section 121 amended: No. 1 of 2024 s. 21.]

Division 2 — Wholesale electricity market and electricity system and market rules

[Heading inserted: No. 1 of 2024 s. 22.]

122. Regulations to provide for a wholesale electricity market

(1) Regulations are to be made for the purpose of establishing a wholesale electricity market in relation to the wholesale supply of electricity in the South West interconnected system.

[(2) deleted]

[Section 122 amended: No. 1 of 2024 s. 23.]

123. Regulations to provide for electricity system and market rules

(1) Without limiting section 122, the regulations are to provide for there to be rules (the ***electricity system and market rules***).

(1A) The electricity system and market rules may provide for —

(a) any matter relating to meeting the State electricity objective; and

(b) any matter relating to an electricity system in the State that is authorised under this Part to be provided for in the electricity system and market rules; and

(c) any matter relating to the wholesale electricity market; and

(d) any matter relating to the operation of the South West interconnected system; and

(e) any matter authorised under Part 8 or 8A to be provided for in the electricity system and market rules; and

(f) the registration of persons engaged in specified activities for which registration is required under the regulations made under section 124(3); and

(g) technical requirements and standards in relation to access to electricity systems; and

(h) any other matter that under this Act may be provided for in the electricity system and market rules.

(2) The electricity system and market rules are subsidiary legislation for the purposes of the *Interpretation Act 1984* but sections 42 and 43(6) of that Act do not apply to them or to rules amending them or repealing and replacing them.

[(3) deleted]

(4) The regulations may provide for —

(a) the making of the electricity system and market rules; and

(b) the amendment, or repeal and replacement, of the electricity system and market rules by rules made in accordance with the regulations and the electricity system and market rules; and

(c) the publication, commencement, and laying before each House of Parliament, of the electricity system and market rules and rules amending, or repealing and replacing, the electricity system and market rules.

(5) The regulations, and the electricity system and market rules 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, or rules or any amendment of the regulations or rules comes into operation; or

(b) at a specified prior time; or

(c) from time to time.

[Section 123 amended: No. 1 of 2024 s. 24.]

124. Matters to be dealt with in regulations

(1) The regulations may prescribe all matters that are necessary or convenient to be prescribed in relation to the following —

(a) meeting the State electricity objective;

(b) the purpose set out in section 122(1);

(c) any matters that may be included in the electricity system and market rules.

(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 electricity system and market rules to confer functions, on the Minister, the Authority or the Coordinator or any other person (including a person holding an office under a written law or a body established under a written law); and

(c) provide for the establishment, or authorise the formation, of a body (including a body corporate) and confer functions, or authorise the electricity system and market rules to confer functions, on a body so established or formed; and

(d) provide for the relationship between the Minister, or another Minister, and a governance participant in respect of the performance of the functions of the governance participant; and

(e) provide, or authorise the electricity system and market rules to provide, for the resolution of disputes between participants; and

[(f)-(m) deleted]

(n) in respect of costs incurred in the performance of functions conferred on a governance participant, 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 electricity system and 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) If there is an inconsistency between a provision of the regulations and a provision of the electricity system and market rules, the provision of the regulations prevails.

[(6) deleted]

[Section 124 amended: No. 1 of 2024 s. 25.]

Division 3 — Reliable supply and electricity systems

[Heading inserted: No. 1 of 2024 s. 26.]

124A. Reliable supply and electricity systems

Without limiting section 123 or 124, the electricity system and market rules may provide for the following —

(a) matters relating to any of the following —

(i) the reliability of electricity supply and electricity systems;

(ii) the security of electricity supply and electricity systems;

(iii) the quality of electricity supply;

(iv) the safe supply of electricity and the safe operation of electricity systems;

(b) requirements and standards for the purposes of paragraph (a);

(c) the obligations of holders of transmission licences, distribution licences or integrated regional licences or other persons to comply with any requirements or standards referred to in paragraph (b);

(d) the compensation payments to be made to customers by the holder of a transmission licence, distribution licence or integrated regional licence or any other person for a failure to comply with any obligations prescribed under paragraph (c).

[Section 124A inserted: No. 1 of 2024 s. 26.]

124B. System voltage or frequency

The regulations may impose, or authorise the electricity system and market rules to impose, duties on network operators (as defined in the *Electricity Act 1945* section 5(1)) in relation to —

(a) the system voltage or frequency at which the network operator supplies electricity to the premises of a consumer at the point where the electricity will pass beyond the service apparatus of the network operator; and

(b) the maintenance of system voltage within specified limits.

[Section 124B inserted: No. 1 of 2024 s. 26.]

124C. Directions to rectify non-compliance

(1) The regulations may confer power on a network service provider or another person —

(a) to direct a person who has failed to comply with a specified requirement of this Act, the regulations or the electricity system and market rules to rectify the non-compliance to ensure the safe supply of electricity or the safe operation of the electricity system; and

(b) if a direction referred to in paragraph (a) is not complied with —

(i) to take specified actions to rectify the non-compliance; and

(ii) to recover the cost of taking a specified action from the person to whom the direction is given and to bring proceedings for that purpose.

(2) The regulations may provide for —

(a) applications to be made to the State Administrative Tribunal for review of any decision to give a direction or to take an action referred to in subsection (1); and

(b) the effect on a direction or action pending the determination of an application referred to in paragraph (a).

(3) A regulation under subsection (2)(b) may provide for the stay of the operation of a decision to give a direction or to take an action despite the *State Administrative Tribunal Act 2004* section 25(1).

[Section 124C inserted: No. 1 of 2024 s. 26.]

Division 4 — Distribution systems and connected facilities

[Heading inserted: No. 1 of 2024 s. 26.]

124D. Terms used

In this Division —

connected facility operator means a person or persons responsible for —

(a) owning or operating a connected facility; or

(b) supplying electricity or electricity services through a connected facility;

distribution system includes a stand-alone power system;

distribution system market means a market for the sale, trading or purchase of electricity and electricity services principally generated or otherwise produced and consumed on a distribution system;

distribution system market operator, in relation to a distribution system market, means a person or body designated under the electricity system and market rules as the operator of the distribution system market;

distribution system operator, in relation to a distribution system, means a person or body designated under the electricity system and market rules as the operator of the distribution system;

network user has the meaning in section 103.

[Section 124D inserted: No. 1 of 2024 s. 26.]

124E. Distribution system regulation

The electricity system and market rules may provide for any of the following in relation to distribution systems (including embedded networks) or connected facilities —

(a) the operation of distribution systems or connected facilities;

(b) standards and technical requirements for connected facilities;

(c) the designation of a person or body as a distribution system operator in relation to a distribution system and the functions and rights of a distribution system operator;

(d) the identification of a connected facility operator in relation to a connected facility and the functions and rights of a connected facility operator;

(e) the identification of a network user in relation to a distribution system or connected facility and the functions and rights of a network user;

(f) the extent and transparency of control that a distribution system operator must establish and maintain in relation to a distribution system or confer on another person in relation to a distribution system;

(g) the extent and transparency of control that a connected facility operator must establish and maintain in relation to a connected facility or confer on another person in relation to a connected facility;

(h) the creation, governance and operation of a distribution system market;

(i) the designation of a person or body as the operator of a distribution system market;

(j) the conferral of rights and functions on a person or body (including a person holding office under a written law or a body established under a written law) in relation to the governance and operation of a distribution system market;

(k) the regulation of the relationship between any of the following —

(i) a distribution system operator and any other distribution system operator;

(ii) a connected facility operator and any other connected facility operator;

(iii) a distribution system operator and a connected facility operator;

(iv) a distribution system operator and the operator of the wholesale electricity market;

(v) a connected facility operator and the operator of the wholesale electricity market;

(vi) a distribution system market and the wholesale electricity market;

(vii) a distribution system market operator and the operator of the wholesale electricity market;

(viii) a distribution system market operator and a distribution system operator;

(ix) a distribution system operator and any other participant;

(x) a connected facility operator and any other participant;

(xi) a distribution system market operator and any other participant;

(xii) a distribution system operator and a network user;

(xiii) a connected facility operator and a network user.

[Section 124E inserted: No. 1 of 2024 s. 26.]

124F. Technical and other standards

The electricity system and market rules may provide for any of the following in relation to distribution systems (including embedded networks) or connected facilities —

(a) technical or other standards, including standards relating to —

(i) the supply of electricity or electricity services through the distribution system or connected facility; and

(ii) the transfer of electricity into and out of the distribution system or connected facility;

(b) technical requirements, standards or other requirements relating to the connection of premises to a distribution system or connected facility or a distribution system and connected facility to each other, including requirements and standards relating to —

(i) remote monitoring, data capture and meter reading; and

(ii) remote disconnection and reconnection; and

(iii) other aspects of remote control.

[Section 124F inserted: No. 1 of 2024 s. 26.]

Division 5 — Metering and data

[Heading inserted: No. 1 of 2024 s. 26.]

124G. Metering

The electricity system and market rules may provide for any matter relating to the metering of the supply of electricity, including —

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

(b) ownership of and access to metering data.

[Section 124G inserted: No. 1 of 2024 s. 26.]

124H. Electricity data and electricity data systems

(1) In this section —

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

(a) electricity services;

(b) network services;

(c) electricity generation;

(d) electricity consumption;

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

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

electricity data service means a service relating to —

(a) the collection, distribution, storage and processing of electricity data; or

(b) the operation of an electricity data system;

electricity data system means a system on which electricity data is stored, distributed or processed.

(2) The electricity system and market rules may prescribe requirements and standards relating to electricity data systems and electricity data services and electricity data collected, distributed, stored, processed or used in connection with the operation of electricity data systems and electricity data services, including requirements and standards relating to —

(a) confidentiality; and

(b) the protection of personal information; and

(c) cyber security; and

(d) the data rights of consumers.

(3) The electricity system and market rules may authorise or require the sharing of electricity data between network service providers.

[Section 124H inserted: No. 1 of 2024 s. 26.]

Division 6 — Enforcement

[Heading inserted: No. 1 of 2024 s. 26.]

124I. Term used: contravene

In this Division —

contravene, in relation to a provision of the electricity system and market rules, includes —

(a) attempt to contravene the provision; or

(b) aid, abet, counsel or procure a person to contravene the provision; or

(c) induce, or attempt 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) conspire with others to contravene the provision.

[Section 124I inserted: No. 1 of 2024 s. 26.]

124J. Regulations as to enforcement of electricity system and market rules

(1) The regulations may provide for the enforcement of the electricity system and market rules.

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

(a) provide that a provision of the electricity system and 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

(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 on a person who contravenes the provision —

(i) an amount not exceeding $100 000;

(ii) in addition, a daily amount not exceeding $20 000 for each day or part of a day during which the contravention continues;

and

(c) provide for demands for the payment of amounts referred to in paragraph (b) and the enforcement of demands for their payment; and

(d) provide for —

(i) and regulate the taking of proceedings in the Supreme Court or otherwise in respect of alleged contraventions of provisions of the electricity system and market rules; and

(ii) the orders that can be made and other sanctions that can be imposed in those proceedings; and

(iii) the enforcement of those orders and sanctions;

and

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

(f) provide for —

(i) and regulate the taking of proceedings in the Supreme Court for an injunction restraining engagement in conduct contravening a provision of the electricity system and market rules; and

(ii) the granting of an injunction (including an interim injunction); and

(iii) the rescission or variation of an injunction so granted;

and

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

(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 electricity system and market rules; and

(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 electricity system and market rules and for the powers exercisable under warrants; and

(j) provide for any matter that is necessary or convenient to be prescribed in relation to the enforcement of the electricity system and market rules.

[Section 124J inserted: No. 1 of 2024 s. 26.]

124K. 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 electricity system and market rules.

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

[Section 124K inserted: No. 1 of 2024 s. 26.]

Division 7 — Functions of Authority

[Heading inserted: No. 1 of 2024 s. 26.]

124L. Functions of Authority

The Authority is responsible for —

(a) monitoring, investigating and enforcing compliance with the electricity system and market rules; and

(b) carrying out any other function conferred on it by the regulations or the electricity system and market rules.

[Section 124L inserted: No. 1 of 2024 s. 26.]

Division 8 — Review of decisions

[Heading inserted: No. 1 of 2024 s. 27.]

125. Reviews

(1) Application may be made to the Board for the review by the Board of decisions of a governance participant that are made under the regulations or the electricity system and market rules and are not of a class specified in the regulations.

(2) Regulations may —

(a) provide for the powers of the Board; and

(b) make other provisions that it is necessary or convenient to make,

in relation to reviews provided for in those regulations.

(3A) Regulations that, immediately before the day on which the *National Gas Access (WA) Act 2009* section 59(1) comes into 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 governance participants made under the regulations or the electricity system and market rules.

[Section 125 amended: No. 16 of 2009 s. 59; No. 1 of 2024 s. 28.]

Division 9 — Immunity

[Heading inserted: No. 1 of 2024 s. 29.]

126. Immunity of certain persons and bodies

(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;

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).

(1A) The following do not incur any civil monetary liability for an act or omission done or made in good faith in the performance, or purported performance, of a function under this Part, the regulations or the electricity system and market rules —

(a) the Minister;

(b) the Authority;

(c) the Coordinator.

(1B) The following persons do not incur any civil monetary liability for an act or omission done or made in good faith in the performance, or purported performance, of a function under this Part, the regulations or the electricity system and market rules —

(a) an officer or employee of the Department of the public service principally assisting in the administration of this Act;

(b) an officer or employee of the Authority;

(c) an officer or employee of the Coordinator.

(2) A governance participant, or an officer or employee of a 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 electricity system and market rules.

(3) If an act or omission mentioned in subsection (2) is negligent —

(a) the immunity given by that subsection 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) Nothing in subsection (2) or (3) limits the immunity given by subsection (1A) or (1B).

(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; No. 1 of 2024 s. 30.]

Division 10 — Competition authorisation

[Heading inserted: No. 1 of 2024 s. 31.]

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 electricity system and 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; No. 1 of 2024 s. 32.]

Division 11 — Review of wholesale electricity market operation

[Heading inserted: No. 1 of 2024 s. 33.]

128. Review of wholesale electricity market operation

(1) The Coordinator must review the operation of the wholesale electricity market, and prepare a report based on the review —

(a) as soon as practicable after the 3rd anniversary of the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* section 3 comes into operation; and

(b) after that, at intervals of not more than 3 years.

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

(3) The Coordinator must give the Minister a written report based on the review not later than 3 years and 6 months after —

(a) for the first review, the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* section 3 came into operation; or

(b) for a subsequent review, the last preceding report was laid before each House of Parliament under subsection (5)(a).

(4) If the Coordinator considers that the State electricity objective has not been and is not being met in whole or in part, the report must set out recommendations as to how the State electricity objective can be met.

(5) As soon as practicable after receiving the report, the Minister must —

(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 Coordinator must post a copy of the report on a website maintained by the Coordinator.

[Section 128 amended: No. 9 of 2020 s. 22; No. 1 of 2024 s. 34.]

129. Public consultation

(1) In the course of conducting a review under section 128(1), the Coordinator must seek public comment on the extent to which the State electricity objective has been or is being met (the ***issue***).

(2) The Coordinator must ensure that a notice giving a general description of the issue is —

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

(b) posted on a website maintained by the Coordinator.

(3) The notice must include —

(a) a statement that any person may, within a specified period, make written submissions on the issue to the Coordinator; 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) must not end less than 30 days after the day on which the notice is published under subsection (2)(a).

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

[Section 129 amended: No. 9 of 2020 s. 23; No. 1 of 2024 s. 35.]

129AA. Coordinator may appoint panels

The regulations may confer power on the Coordinator —

(a) to appoint panels of persons to provide advice and assistance to the Coordinator in conducting a review or implementing any recommendations of a review; and

(b) to recover the costs of the appointment of a panel by requiring the payment of fees, determined in accordance with the regulations, by participants and operators of covered networks.

[Section 129AA inserted: No. 1 of 2024 s. 36.]

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~~9C — Capital Charges Scheme

~~130. Review by the Board~~

[Heading inserted: No. 12 of 2026 s. 4.]

129U. Objective of Part

(1) The objective of this Part is to establish a scheme to support connections to certain transmission systems that is consistent with the State electricity objective.

(2) To achieve this objective, this Part aims to —

(a) increase certainty for charges for access to services provided by means of the systems by providing for the imposition of capital charges; and

(b) ensure that, over a certain period, the network service providers who operate the systems do not earn more revenue than would have been permitted under Part 8 if this Part had not come into operation.

[Section 129U inserted: No. 12 of 2026 s. 4.]

129V. Terms used

(1) In~~ ~~ this Part —

adjustment mechanism has the meaning given in section ~~—~~ 129X(1);

~~***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 —~~

capital charge has the meaning given in section 129W(2);

relevant network means —

(a) ~~a decision~~any transmission system that is part 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~~South West interconnected system that ~~a covered Pilbara network~~ is ~~to be subject to regulation~~regulated under Part 8~~ or Part 8A, or is to cease to be subject to regulation under Part 8 or 8A; or~~; and

~~(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~~ (b) any other transmission system prescribed by the regulations.

(2) If a term used in this Part is given a meaning in section 103, it has the same meaning in this Part.

(3) The regulations may prescribe ~~all matters that are necessary or convenient to be prescribed for the enforcement of the regulations~~a transmission system as a relevant network only if the system is regulated under Part 8.

~~(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~~129V inserted: No. ~~9~~12 of ~~2020~~2026 s. ~~28~~4.]

~~132. Regulations as to fees and~~129W. Capital charges for ~~supply and~~access to services

(1) ~~Without limiting~~In this 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~~ ***related entity***, of a person —

(a) means a related body corporate as defined in the *Corporations Act 2001* (Cth) section 9; and

(b) includes any other person prescribed by the regulations.

(2) A person is required to pay a ***capital charge*** to a network service provider if —

(a) the person enters into, or modifies, an access agreement in the circumstances, if any, prescribed by the regulations and, under the access agreement, the person has access to services provided by the network service provider by means of a relevant network; or

(b) an additional circumstance, if any, specified in the Code exists in which the person has access to services provided by the network service provider by means of a relevant network.

(3) The regulations may make provision ~~of any prescribed~~for or in relation to the following —

(a) the amount of the capital charge, including —

(i) a method for calculating the amount; and

(ii) indexation of the amount;

(b) the circumstances in which the capital charge is payable, including eligibility criteria for determining which persons or classes of persons are required to pay the capital charge;

(c) different capital charge amounts payable in different circumstances, including by reference to the following —

(i) a relevant network;

(ii) a network service provider;

~~and~~

(iii) the rate at which the person may transfer electricity into or out of a relevant network.

(4) Without limiting subsection (2)(b), an additional circumstance may include a person, or a related entity of the person —

(a) making an application to enter into or modify an access agreement that provides for access to the services; or

(b) ~~deal~~having access to the services under, or in accordance with, any other ~~matter relating to the fixing or~~contract or agreement or a determination ~~of fees and charges~~made by way of arbitration.

[Section 129W inserted: No. 12 of 2026 s. 4.]

129X. Adjustment mechanisms

(1) If a regulation made under this Part prescribes circumstances in which a person is required to pay a capital charge, the regulation must also provide for a requirement (an ***adjustment mechanism***) designed to ensure that, over a certain period, a network service provider does not earn more revenue than would have been permitted under Part 8 if this Part had not come into operation.

(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.~~or in relation to the following —

~~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**~~

(a) the way in which an adjustment mechanism must be implemented or facilitated;

(b) the period during which an adjustment mechanism applies, including a method for determining the period;

(c) authorising the Authority to determine or implement an adjustment mechanism.

[Section 129X inserted: No. 12 of 2026 s. 4.]

129Y. Modification of regulations to implement or facilitate additional circumstances

(1) If the Code specifies an additional circumstance under section 129W(2)(b), the Code may modify a regulation made under this Part to the extent necessary for the purposes of adapting the application of the regulation to or in relation to the circumstance.

(2) This section has effect despite section 129ZA.

[Section 129Y inserted: No. 12 of 2026 s. 4.]

129Z. Code may also deal with certain matters

(1) In this section —

~~***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 electricity system and 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; amended: No. 1 of 2024 s. 37.]*~~

~~Part 11 — Transitional provisions for *Electricity Industry Amendment (Distributed Energy Resources) Act 2024*~~

~~*[Heading inserted: No. 1 of 2024 s. 38.]*~~

~~135. Term used: relevant instrument~~

~~In this Part —~~

relevant instrument means —

(a) an instrument published or approved under the Code; and

(b) any type of contract or agreement specified in the Code under which a person has access to services provided by means of a relevant network.

(2) Without limiting section 104B or 105, the Code may make provision for or in relation to the following —

(a) the way in which a capital charge is payable, including payment by instalments, the charging of interest on capital charge amounts and the use of guarantees as security;

(b) the maintenance and keeping of records of revenue earned by a network service provider from a capital charge, including the method of maintaining and keeping the records;

(c) the way in which an adjustment mechanism must be implemented or facilitated;

(d) a requirement for a relevant instrument to facilitate or otherwise provide for a requirement under this Part;

(e) any other matter prescribed by the regulations.

[Section 129Z inserted: No. 12 of 2026 s. 4.]

129ZA. Relationship between regulations and Code

If there is a conflict or inconsistency between regulations made under this Part and the Code, the regulations prevail to the extent of the conflict or inconsistency.

[Section 129ZA inserted: No. 12 of 2026 s. 4.]

129ZB. Recommendation of Minister

(1) Regulations may only be made under this Part on the recommendation of the Minister.

(2) The Minister may make the recommendation only if the Minister is satisfied that the regulations are consistent with —

(a) the objective of this Part; and

(b) the State electricity objective.

[Section 129ZB inserted: No. 12 of 2026 s. 4.]

129ZC. Coordinator's review

(1) The Coordinator must review and report on whether the scheme established by this Part is consistent with the objective of this Part and the State electricity objective —

(a) as soon as practicable after the 5^{th} anniversary of the day on which this Part comes into operation; and

(b) after that, at intervals of not more than 5 years.

(2) The Coordinator must, as soon as practicable after preparing the report, provide the report to the Minister.

[Section 129ZC inserted: No. 12 of 2026 s. 4.]

129ZD. Disclosure of information to Coordinator

(1) The Authority must, on the request of the Coordinator, disclose to the Coordinator any information necessary to enable the Coordinator to perform the Coordinator's functions under section 129ZC.

(2) If information is disclosed under this section —

(a) no civil or criminal liability is incurred for the disclosure; and

(b) the disclosure is not —

(i) a breach of any duty of confidentiality or secrecy imposed by law; or

(ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or

(iii) unprofessional conduct.

[Section 129ZD inserted: No. 12 of 2026 s. 4.]

129ZE. Imposition of tax

To the extent that a capital charge payable under this Part includes an amount that is a tax, the tax is imposed.

[Section 129ZE inserted: No. 13 of 2026 s. 4.]

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 —

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 electricity system and 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; amended: No. 1 of 2024 s. 37.]

Part 11 — Transitional provisions for *Electricity Industry Amendment (Distributed Energy Resources) Act 2024*

[Heading inserted: No. 1 of 2024 s. 38.]

135. Term used: relevant instrument

In this Part —

relevant instrument means —

(a) the Code; or

(b) a technical code or technical rules approved by the Authority under the Code or any other instrument made under the Code; or

(c) the *Electricity Industry (Metering) Code 2012* made under section 39(2a) or an instrument made under that code; or

(d) the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* made under section 39(2a)(a) or an instrument made under that code.

[Section 135 inserted: No. 1 of 2024 s. 38.]

136. Transitional regulations: general

(1) In this section —

specified means specified or described in the regulations;

transitional matter —

(a) means a matter or issue of a transitional nature that arises as a result of any of the amendments to this Act made by the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024*, including a matter or issue that arises as a result of the coming into operation of different provisions of that Act at different times; and

(b) includes a savings or application matter.

(2) If there is not sufficient provision in this Act for dealing with a transitional matter, regulations may prescribe all matters that are required, or are necessary or convenient, to be prescribed for dealing with the matter.

(3) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a) but not earlier than the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* section 38 comes into operation, the regulations have effect according to their terms.

(4) If regulations made under subsection (2) contain a provision of a kind described in subsection (3), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Section 136 inserted: No. 1 of 2024 s. 38.]

137. Transitional provisions: power to make orders

Without limiting section 136, the regulations may authorise the Minister to determine by order published in accordance with the *Interpretation Act 1984* section 41(1)(a) how any matter in progress immediately before a day specified in the order is to be treated, after that day, for the purposes of the provisions of the regulations or the electricity system and market rules.

[Section 137 inserted: No. 1 of 2024 s. 38.]

138. Transitional provisions: relevant instruments

(1) Without limiting section 136, the regulations may provide, or authorise the electricity system and market rules to provide, for the regulation of matters of a savings, transitional or supplementary nature relating to the transition of matters contained in a relevant instrument to the electricity system and market rules.

(2) The regulations may provide, or authorise the electricity system and market rules to provide, for the continuation of the operation of a relevant instrument after its revocation for the purpose of the transition of any matter to the electricity system and market rules.

(3) The regulations may provide, or authorise the electricity system and market rules to provide, how anything done or in progress or required to be done under a relevant instrument is to be treated on and after a day specified in the electricity system and market rules.

(4) The regulations may provide, or authorise the electricity system and market rules to provide, that a reference in any instrument to a relevant instrument is to be treated on and after a day specified in the electricity system and market rules as a reference to the electricity system and market rules or specified provisions of the electricity system and market rules.

[Section 138 inserted: No. 1 of 2024 s. 38.]

139. Powers of Minister: relevant instruments

(1) The Minister may amend a relevant instrument to facilitate, or as a consequence of, the transition of any matter in any relevant instrument to the electricity system and market rules.

(2) The Minister may amend the Code and any other relevant instrument in relation to the application of the State electricity objective to the Code or instrument.

(3) The Minister may amend the electricity system and market rules to provide for the transition of any matter in any relevant instrument to the electricity system and market rules.

(4) A requirement under this Act or the regulations or a relevant instrument for public consultation before amending a relevant instrument or the electricity system and market rules does not apply to an amendment made under subsection (1), (2) or (3).

[Section 139 inserted: No. 1 of 2024 s. 38.]

140. Electricity system and market rules do not affect existing agreements

(1) The making or amendment of the electricity system and market rules —

(a) does not affect the terms and conditions, or the operation, of an agreement or arrangement in operation under a relevant instrument immediately before a day specified in the electricity system and market rules for that purpose; and

(b) does not afford a party to the agreement or arrangement 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 to an agreement or arrangement to the extent that the electricity system and market rules or the agreement or arrangement or an enactment provides otherwise.

[Section 140 inserted: No. 1 of 2024 s. 38.]

141. References to market rules and wholesale electricity market objectives

(1) A reference in any Act or instrument to the market rules under this Act is taken on and after the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024*

section 24 comes into operation to be a reference to the electricity system and market rules.

(2) A reference in any Act or instrument to the objectives of the wholesale electricity market under this Act is taken on and after the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* section 23 comes into operation to be a reference to the State electricity objective.

[Section 141 inserted: No. 1 of 2024 s. 38.]

142. Power to make electricity system and market rules for matters that may be provided for in relevant instruments

(1) Until the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* Part 3 comes into operation, the electricity system and market rules may make provision for any matter that may be provided for in a relevant instrument.

(2) If there is an inconsistency between a provision of the electricity system and market rules and a provision of a relevant instrument, the provision of the electricity system and market rules prevails.

(3) Until the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* Part 3 comes into operation, a reference in this Act or an instrument under this Act to a relevant instrument includes a reference to any provision included in the electricity system and market rules in accordance with subsection (1).

[Section 142 inserted: No. 1 of 2024 s. 38.]

143. References to Code and technical codes under Code

(1) A reference in any Act or instrument to the Code is taken on and after the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* Part 3 comes into

operation to be a reference to the electricity system and market rules.

(2) A reference in any Act or instrument to a technical code approved by the Authority under the Code is taken on and after day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* Part 3 comes into operation to be a reference to a technical standard or requirement provided for under the electricity system and market rules under section 123(1A)(g) of this Act.

[Section 143 inserted: No. 1 of 2024 s. 38.]

144. References to standards

Until the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* Part 3 comes into operation —

(a) a reference in section 39A to RPC standards includes a reference to requirements and standards provided by the electricity system and market rules for the purposes of section 124A(a)(i) to (iii); and

(b) a reference in sections 129D and 129N to service standards includes a reference to requirements and standards provided by the electricity system and market rules for the purposes of section 124A(a)(i) to (iii).

[Section 144 inserted: No. 1 of 2024 s. 38.]

145. References to *Electricity Industry (Metering) Code 2012* made under section 39(2a)

A reference in any Act or instrument to the *Electricity Industry (Metering) Code 2012* made under section 39(2a) is taken on and after the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* Part 3 comes into operation to be a reference to the electricity system and market rules made under section 124G.

[Section 145 inserted: No. 1 of 2024 s. 38.]

146. References to *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* made under section 39(2a)(a)

A reference in any Act or instrument to the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* made under section 39(2a)(a) is taken on and after the day on which the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* Part 3 comes into operation to be a reference to the electricity system and market rules made for the purposes of section 124A(a)(i) to (iii).

[Section 146 inserted: No. 1 of 2024 s. 38.]

Part 12 — Transitional provisions for *Electricity Industry Amendment (Capital Charges) Act 2026*

[Heading inserted: No. 12 of 2026 s. 5.]

147. Terms used

In this Part —

amendment Act means the *Electricity Industry Amendment (Capital Charges) Act 2026*;

commencement day means the day on which the amendment Act section 4 comes into operation;

publication day, in relation to transitional regulations, means the day on which the transitional regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a);

transitional event means the following —

(a) the enactment or coming into operation of the amendment Act;

(b) the coming into operation of regulations made under Part 9C, as inserted by the amendment Act;

transitional matter means a matter of a transitional, savings or application nature;

transitional regulations means regulations made under section 148.

[Section 147 inserted: No. 12 of 2026 s. 5.]

148. Transitional regulations

(1) The regulations may make provision for and in relation to transitional matters arising in connection with a transitional event.

(2) Transitional regulations may provide that a specified state of affairs is taken to have existed, or not to have existed, earlier than publication day, but not earlier than commencement day.

(3) If transitional regulations contain a provision referred to in subsection (2), the provision does not operate so as to —

(a) affect in a manner prejudicial to any person (other than the State or a public authority), the rights of that person existing before publication day; or

(b) impose liabilities on any person (other than the State or a public authority) in respect of anything done or omitted to be done before publication day.

[Section 148 inserted: No. 12 of 2026 s. 5.]

149. Minister may deal with transitional matters

(1) In this section —

existing instrument means a relevant instrument published, approved or entered into before commencement day;

relevant instrument has the meaning given in section 129Z(1).

(2) Transitional regulations may authorise the Minister to, by order published in accordance with the *Interpretation Act 1984* section 41(1)(a) —

(a) determine how any matter in progress immediately before a day (not earlier than commencement day) specified in the order is to be treated on and after that day; and

(b) amend an existing instrument to facilitate or provide for, or as a consequence of, a transitional matter.

(3) The Code may provide for how anything done or in progress or required to be done under an existing instrument in relation to a transitional matter is to be treated from a day, not earlier than commencement day, specified in the Code.

[Section 149 inserted: No. 12 of 2026 s. 5.]

Schedule 1 — Licence terms and conditions

[s. 11]

1. Licence terms and conditions

A licence may include provisions —

(a) if the licence is a generation licence or integrated regional licence, requiring the licensee to prepare and implement strategies for the management of greenhouse gas emissions;

(b) if the licence is a generation licence, a retail licence or an integrated regional licence, requiring the licensee to maintain and publish specified records in respect of greenhouse gas emissions caused by, or associated with, the generation of electricity supplied by the licensee;

(c) if the licence is a retail licence or an integrated regional licence, requiring the licensee to prepare and implement strategies to encourage the use of renewable energy;

(d) if the licence is a retail licence or an integrated regional licence, requiring the licensee to give information to customers on matters relating to electricity consumption, electricity conservation and the efficient use of electricity;

(e) if the licence is a retail licence or an integrated regional licence, specifying methods or principles to be applied by the licensee in determining fees or charges payable by customers of a class prescribed under section 132(1)(a) (***tariff customers***);

(f) if the licence is a retail licence or an integrated regional licence, requiring the licensee, when seeking payment by tariff customers of a fee or charge, to specify —

(i) the portion of the fee or charge that is attributable to the cost of generating the electricity supplied; and

(ii) the portion of the fee or charge that is attributable to the cost of transporting that electricity through a transmission system; and

(iii) the portion of the fee or charge that is attributable to the cost of transporting that electricity through a distribution system;

(g) if the licence is a retail licence or an integrated regional licence, regulating the extent to which the licensee's customers may be of a particular class;

(h) requiring the licensee to maintain specified accounting records;

(i) preventing the licensee from engaging in or undertaking specified business activities or any other business in the electricity industry in the State;

(j) specifying methods or standards to be applied in supplying electricity under the authority of the licence;

(k) requiring the licensee to observe specified codes (including any codes issued by the Authority or the Minister under section 39) or requirements or standards under specified electricity system and market rules with such modifications or exemptions as may be determined by the Authority or the Minister, as the case may be;

(l) specifying procedures for surrender of the licence;

(m) requiring the licensee to provide to the Authority, in the manner and form determined by the Authority, specified information on any matter relevant to the operation or enforcement of the licence, the operation of the licensing scheme provided for in Part 2, or the performance of the Authority's functions under that Part;

(n) requiring the licensee to lodge with the Authority securities in an amount and of a nature acceptable to the Authority securing the performance by the licensee of the requirements, responsibilities and obligations under the licence;

(o) relating to the performance of functions by the licensee including —

 (i) the range of functions that may be performed by the licensee; and

 (ii) performance criteria to be met by the licensee; and

 (iii) community service obligations, that is obligations that are not commercially justified, to be discharged by the licensee;

(p) requiring the licensee to publish specified information in relation to its performance under the licence;

(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. 33 of 2004 s. 36; No. 19 of 2010 s. 51; No. 1 of 2024 s. 39.]

Schedule 2 — Objectives to be met by the electricity ombudsman scheme

[s. 93]

1. Objectives stated

The objectives referred to in section 93 are that —

(a) all licensees or registration holders who are required to be members of the scheme —

(i) are members of the scheme; and

(ii) have agreed to be bound by decisions and directions of the electricity ombudsman under the scheme; and

(iii) as members, are so bound;

and

(b) the scheme will be appropriately funded by the licensees and registration holders who are required to be members; and

(c) the scheme has satisfactory arrangements in place to deal with all disputes and complaints referred to in section 92(1); and

(d) the electricity ombudsman will be able to operate independently of all licensees or registration holders in performing the electricity ombudsman's functions under the scheme; and

(e) the scheme will be accessible to customers; and

(f) membership of the scheme will —

(i) be accessible to all potential members; and

(ii) provide appropriate representation for all members on the governing body of the scheme;

and

(g) without limiting any other application of the scheme, the scheme will apply to all disputes and complaints referred to in section 92(1); and

(h) the scheme will operate expeditiously and without cost to customers; and

(i) the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations; and

(j) the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Authority; and

(k) the scheme will maintain the capacity of the electricity ombudsman, where appropriate, to refer disputes or complaints to other forums; and

(l) the scheme will require the electricity ombudsman to inform the Authority if the electricity ombudsman becomes aware of substantial breaches of any of the following —

  (i) any licence condition;

  (ia) any registration condition;

  (ib) the AES code of practice;

  (ii) the code of conduct under Part 6.

[Clause 1 amended: No. 19 of 2010 s. 51; No. 10 of 2024 s. 22.]

[Schedule 2 amended: No. 19 of 2010 s. 51.]

[Schedule 3 deleted: No. 14 of 2025 s. 21(5).]

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))
Electricity Industry Amendment (Distributed Energy Resources) Act 2024 Pt. 2 Div. 1 [5]	1 of 2024 (as amended by No. 10 of 2024 s. 27)	7 Mar 2024	6 Feb 2025 (see s. 2(b) and SL 2025/31 cl. 2)
Electricity Industry Amendment (Alternative Electricity Services) Act 2024 Pt. 2 and s. 26(2) and (3)	10 of 2024	22 Apr 2024	Pt. 2: 23 Apr 2024 (see s. 2(1)(d))' s. 26(2) and (3): 6 Feb 2025 (see s. 2(1)(b)(ii) and (c)(ii) and SL 2025/31 cl. 2)
Statutes (Repeals and Minor Amendments) Act 2025 s. 8 and 21	14 of 2025	25 Sep 2025	26 Sep 2025 (see s. 2(b))
Electricity Industry Amendment (Capital Charges) Act 2026 (other than Pt. 3)	12 of 2026	19 Aug 2026	Pt. 1: 19 Aug 2026 (see s. 2(a)); Act other than Pt. 1 and 3: 20 Aug 2026 (see s. 2(c))

Short title	Number and year	Assent	Commencement
Electricity Industry Amendment (Capital Charges) Act (No. 2) 2026	13 of 2026	19 Aug 2026	s. 1 and 2: 19 Aug 2026 (see s. 2(a)); Act other than s. 1 and 2: 20 Aug 2026 (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. 3 Div. 1	1 of 2024	7 Mar 2024	To be proclaimed (see s. 2(b))
Electricity Industry Amendment (Capital Charges) Act 2026 Pt. 3	12 of 2026	19 Aug 2026	Operative immediately after the *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* s. 53 comes into operation (see s. 2(b)(ii))

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.

5 The *Electricity Industry Amendment (Distributed Energy Resources) Act 2024* s. 4 (to the extent it inserts the definition of Coordinator) and s. 9 were deleted by the *Electricity Industry Amendment (Alternative Electricity Services) Act 2024* s. 27 before they purported to come into operation.