

**NORTHERN TERRITORY OF AUSTRALIA**

**GOVERNMENT OWNED CORPORATIONS (POWER AND WATER  
CORPORATION ELECTRICITY BUSINESSES RESTRUCTURE)  
REGULATIONS 2014**

As in force at 1 July 2014

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 2014

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## GOVERNMENT OWNED CORPORATIONS (POWER AND WATER CORPORATION ELECTRICITY BUSINESSES RESTRUCTURE) REGULATIONS 2014

### Regulations under the *Government Owned Corporations Act 2001*

#### Part 1 Preliminary matters

##### 1 Citation

These Regulations may be cited as the *Government Owned Corporations (Power and Water Corporation Electricity Businesses Restructure) Regulations 2014*.

##### 2 Purpose of Regulations

These Regulations are made as mentioned in section 53B(1) of the Act for the purposes of:

- (a) transferring P&WCorp's electricity generation business to GenCorp; and
- (b) transferring P&WCorp's electricity retailing business to RetailCorp.

##### 3 Definitions

In these Regulations:

**GenCorp** means the Power Generation Corporation established by section 5 of the *Power Generation Corporation Act 2014*.

**Generation Business Register**, see regulation 5(1).

**Minister** means P&WCorp's shareholding Minister.

**P&WCorp** means the Power and Water Corporation established by section 4 of the *Power and Water Corporation Act 1987*.

**Retail Business Register**, see regulation 36(1).

**RetailCorp** means the Power Retail Corporation established by section 5 of the *Power Retail Corporation Act 2014*.

**transferred asset** means:

- (a) for Part 2 – an asset to which regulation 7 or 8 applies; and
- (b) for Part 3 – an asset to which regulation 38 or 39 applies.

**transferred instrument** means:

- (a) for Part 2 – an instrument to which one of regulations 16 to 21 applies; and
- (b) for Part 3 – an instrument to which one of regulations 47 to 53 applies.

**transferred liability** means:

- (a) for Part 2 – a liability to which regulation 12 or 13 applies; and
- (b) for Part 3 – a liability to which regulation 43 or 44 applies.

#### **4            Reference to things included in a register**

A reference to something included in the Generation Business Register or the Retail Business Register includes a reference to a thing in a class of things included in that Register.

## **Part 2            Power generation business**

### **Division 1        Minister's obligations**

#### **5            Minister to prepare Generation Business Register**

- (1) Before 1 July 2014 the Minister must:
  - (a) prepare a register (the **Generation Business Register**) of the assets, liabilities, instruments, rights and proceedings that are to be affected by Divisions 2 to 6; and
  - (b) give a copy of the Generation Business Register to GenCorp and P&WCorp.
- (2) The Minister cannot amend or revoke the Generation Business Register on or after 1 July 2014.

**6            Generation Business Register to be available to interested persons**

- (1) This regulation applies if:
  - (a) a person requests a copy of all or part of the Generation Business Register from the Minister; and
  - (b) the Minister is satisfied that the person has a proper interest in having access to the Generation Business Register.
- (2) The Minister must give the person a copy of so much of the Generation Business Register as relates to the person's interest.

**Division 2            Assets**

**7            Transfer of whole assets**

If an asset is included in the Generation Business Register as one to which this regulation applies, on 1 July 2014 the asset:

- (a) ceases to be an asset of P&WCorp; and
- (b) becomes an asset of GenCorp.

**8            Transfer of part of assets**

If an asset is included in the Generation Business Register as one to which this regulation applies, on 1 July 2014 the part of the asset specified in the Generation Business Register:

- (a) ceases to be an asset of P&WCorp; and
- (b) becomes an asset of GenCorp.

**9            Consideration**

If an amount is included in the Generation Business Register as consideration to be provided by GenCorp for a transferred asset, GenCorp must provide the consideration on the terms specified in the Generation Business Register.

**10          Accounting matters**

- (1) If a value is ascribed to a transferred asset in the Generation Business Register, the value of the asset as at 1 July 2014 is that value.

- (2) If the Generation Business Register provides for the manner in which a transferred asset is to be dealt with in P&WCorp's or GenCorp's accounts, P&WCorp or GenCorp must deal with the asset in its accounts in that manner.

## **11            Asset related rights**

- (1) On and after 1 July 2014, a right in relation to a transferred asset that would, but for this regulation, have been available to or against P&WCorp:
- (a) is not available to or against P&WCorp; and
  - (b) is available instead to or against GenCorp in the same way as it would, but for this regulation, have been available to or against P&WCorp.
- (2) Subregulation (1) does not apply in relation to either of the following:
- (a) if a right in relation to an asset is specified in the Generation Business Register as a right to which this paragraph applies – that right, to the extent specified in the Generation Business Register;
  - (b) a right that is the subject of proceedings to which regulation 28, 29 or 30 applies.

## **Division 3            Liabilities**

### **12            Transfer of whole liabilities**

If a liability is included in the Generation Business Register as one to which this regulation applies, on 1 July 2014 the liability:

- (a) ceases to be a liability of P&WCorp; and
- (b) becomes a liability of GenCorp.

### **13            Transfer of part of liabilities**

If a liability is included in the Generation Business Register as one to which this regulation applies, on 1 July 2014 the part of the liability specified in the Generation Business Register:

- (a) ceases to be a liability of P&WCorp; and
- (b) becomes a liability of GenCorp.



**14            Accounting matters**

- (1) If a value is ascribed to a transferred liability in the Generation Business Register, the value of the liability as at 1 July 2014 is that value.
- (2) If the Generation Business Register provides for the manner in which a transferred liability is to be dealt with in P&WCorp's or GenCorp's accounts, P&WCorp or GenCorp must deal with the liability in its accounts in that manner.

**15            Liability related rights**

- (1) On and after 1 July 2014, a right in relation to a transferred liability that would, but for this regulation, have been available to or against P&WCorp:
  - (a) is not available to or against P&WCorp; and
  - (b) is available instead to or against GenCorp in the same way as it would, but for this regulation, have been available to or against P&WCorp.
- (2) Subregulation (1) does not apply in relation to either of the following:
  - (a) if a right in relation to a liability is specified in the Generation Business Register as a right to which this paragraph applies – that right, to the extent specified in the Generation Business Register;
  - (b) a right that is the subject of proceedings to which regulation 28, 29 or 30 applies.

**Division 4            Instruments**

**16            Instruments to apply to GenCorp instead of P&WCorp**

If an instrument is included in the Generation Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:

- (a) does not apply to P&WCorp; and
- (b) applies instead to GenCorp in the same way as it would, but for this regulation, have applied to P&WCorp; and
- (c) has effect as otherwise modified as specified in the Generation Business Register.

**17            Instruments to apply to GenCorp and P&WCorp severally**

If an instrument is included in the Generation Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:

- (a) continues to apply to P&WCorp; and
- (b) also applies to GenCorp in the same way as it applies to P&WCorp; and
- (c) applies to P&WCorp and GenCorp severally, not jointly; and
- (d) has effect as otherwise modified as specified in the Generation Business Register.

**18            *Electricity Reform Act 2000* generation licence**

- (1) On and after 1 July 2014:
  - (a) Part A of the existing licence:
    - (i) does not apply to P&WCorp; and
    - (ii) applies instead to GenCorp in the same way as it would, but for this regulation, have applied to P&WCorp; and
  - (b) Part B of the existing licence continues to apply to P&WCorp and does not apply to GenCorp.
- (2) Part A of the existing licence as so applying to GenCorp and Part B of the existing licence as so applying to P&WCorp are taken, for all purposes, to be separate generation licences held individually by GenCorp and P&WCorp respectively.
- (3) In this regulation:

***existing licence*** means the generation licence held by P&WCorp dated 1 September 2010 as amended.

***generation licence*** means a licence granted under section 16 of the *Electricity Reform Act 2000* for the generation of electricity.

**19            Bundled contracts to apply to GenCorp and P&WCorp**

- (1) If an instrument is included in the Generation Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:
- (a) to the extent that it relates to generation matters:
    - (i) does not apply to P&WCorp; and
    - (ii) applies instead to GenCorp in the same way as it would, but for this regulation, have applied to P&WCorp; and
  - (b) to the extent that it does not relate to generation matters – continues to apply to P&WCorp; and
  - (c) has effect as otherwise modified as specified in the Generation Business Register.
- (2) In this regulation:

***generation matter*** means something that:

- (a) relates to:
    - (i) an asset, liability, right or obligation of GenCorp; or
    - (ii) the performance by GenCorp of a function mentioned in section 9 of the *Power Generation Corporation Act 2014*; and
  - (b) is not excluded by subregulation (3).
- (3) If, in relation to an instrument, something is specified in the Generation Business Register as not being a generation matter, then in relation to that instrument the thing is excluded from being a generation matter.

**20            Instruments to apply to GenCorp and P&WCorp to specified extent with modifications**

If an instrument is included in the Generation Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:

- (a) applies to each of GenCorp and P&WCorp to the extent specified in the Generation Business Register; and
- (b) has effect as otherwise modified as specified in the Generation Business Register.

## **21            Internal instruments**

- (1) If an internal instrument is included in the Generation Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:
  - (a) applies to each of GenCorp and P&WCorp to the extent specified in the Generation Business Register as if it were a contract between them; and
  - (b) has effect as otherwise modified as specified in the Generation Business Register.
- (2) In this regulation:

*internal instrument*, see section 53C(1)(b) of the Act.

## **22            Instruments to apply with necessary changes**

- (1) To the extent that a transferred instrument applies to GenCorp, it has effect as modified by subregulations (2) and (3).
- (2) A reference in the transferred instrument to P&WCorp is modified to be or include (as the context requires) a reference to GenCorp.
- (3) The transferred instrument is modified to make such other changes as are necessary.

## **23            Instrument related rights**

- (1) On and after 1 July 2014, a right in relation to a transferred instrument that would, but for this regulation, have been available to or against P&WCorp:
  - (a) to the extent that the instrument applies to P&WCorp – continues to be available to or against P&WCorp; and
  - (b) to the extent that, on 1 July 2014, the instrument ceased to apply to P&WCorp – is not available to or against P&WCorp; and
  - (c) to the extent that the instrument applies to GenCorp – is available to or against GenCorp.

- (2) Subregulation (1) does not apply in relation to either of the following:
- (a) if a right in relation to an instrument is specified in the Generation Business Register as a right to which this paragraph applies – that right, to the extent specified in the Generation Business Register;
  - (b) a right that is the subject of proceedings to which regulation 28, 29 or 30 applies.

## 24            **Contracts to be retained by P&WCorp**

- (1) If a contract is included in the Generation Business Register as one to which this regulation applies, on and after 1 July 2014 the contract:
- (a) continues to apply to P&WCorp; and
  - (b) has effect:
    - (i) as modified by subregulations (2), (3) and (4); and
    - (ii) as otherwise modified as specified in the Generation Business Register.
- (2) If, immediately before 1 July 2014, the contract contained a compensation clause in relation to costs incurred by P&WCorp, the clause is modified to apply in relation to costs incurred by P&WCorp or GenCorp.
- (3) If, immediately before 1 July 2014, the contract contained an affected asset clause relating to an asset owned or operated by P&WCorp, the clause is modified to apply in relation to an asset owned or operated by P&WCorp or GenCorp.
- (4) In this regulation:

**affected asset clause** means a provision giving P&WCorp a right to cease performing, or modify the performance of, its obligations under the contract on the occurrence of an event affecting an asset.

**compensation clause** means a provision requiring a party to the contract to compensate P&WCorp for costs incurred as a result of a breach of the contract by that party.

**25            Instruments to apply to P&WCorp with modifications**

If an instrument is included in the Generation Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:

- (a) continues to apply to P&WCorp; and
- (b) has effect as otherwise modified as specified in the Generation Business Register.

**26            Instruments may be amended etc.**

Subject to section 53F of the Act, the fact that an instrument is affected by this Division does not affect the right of any person or persons to amend, renew, replace or terminate the instrument.

**Division 5        Rights**

**27            Rights**

If a right is included in the Generation Business Register as a right to which this regulation applies, on and after 1 July 2014:

- (a) to the extent specified in the Generation Business Register – the right is not available to or against P&WCorp; and
- (b) to the extent that it is not available to or against P&WCorp – the right is available instead to or against GenCorp in the same way as it would, but for this regulation, have been available to or against P&WCorp.

**Division 6        Proceedings**

**28            GenCorp to replace P&WCorp as party**

If proceedings are included in the Generation Business Register as proceedings to which this regulation applies, on 1 July 2014:

- (a) P&WCorp ceases to be a party to the proceedings; and
- (b) GenCorp becomes a party to the proceedings in place of P&WCorp.

**29            GenCorp to be added as additional party**

If proceedings are included in the Generation Business Register as proceedings to which this regulation applies, on 1 July 2014:

- (a) GenCorp becomes a party to the proceedings to the extent specified in the Generation Business Register; and
- (b) P&WCorp continues as a party to the proceedings.

**30            P&WCorp to remain as party**

If proceedings are included in the Generation Business Register as proceedings to which this regulation applies, P&WCorp continues as a party to the proceedings as if these Regulations had not been made.

**31            Court etc. may make orders**

The person or body hearing proceedings to which regulation 28, 29 or 30 applies, may make any orders that are necessary or convenient to facilitate the change of parties to the proceedings.

**Division 7            General matters**

**32            Continuation of ongoing things**

- (1) This regulation applies in relation to anything that:
  - (a) relates to one of the following:
    - (i) a transferred asset;
    - (ii) a transferred liability;
    - (iii) a transferred instrument;
    - (iv) a right that is available to or against GenCorp under regulation 11, 15, 23 or 27; and
  - (b) was done, or not done, by or in relation to P&WCorp before 1 July 2014; and
  - (c) as at 1 July 2014 is of ongoing effect.
- (2) On and after 1 July 2014, the thing is taken to have been done, or not done, by or in relation to GenCorp.
- (3) However, this regulation does not apply in relation to a thing for which provision is made by another regulation in this Part.

## **Division 8            Employees**

### **33            P&WCorp to provide employees to GenCorp**

- (1) The chief executive officer of P&WCorp may provide public sector employees employed in P&WCorp to the chief executive officer of GenCorp to enable GenCorp to perform its functions.
- (2) A public sector employee provided under subregulation (1):
  - (a) remains an employee employed in P&WCorp; but
  - (b) is subject to the direction of the chief executive officer of GenCorp in the day-to-day performance of the employee's duties.
- (3) For the purposes of the *Public Sector Employment and Management Act 1993*, providing public sector employees under subregulation (1) is taken to be a function of P&WCorp.
- (4) The chief executive officer of P&WCorp may, in writing, delegate any of his or her powers or functions under the *Public Sector Employment and Management Act 1993* in relation to employees provided under subregulation (1) to:
  - (a) the chief executive officer of GenCorp; or
  - (b) an employee in GenCorp; or
  - (c) an employee provided under subregulation (1).

*Note for regulation 33*

*The operation of the Public Sector Employment and Management Act 1993 is modified in its application to P&WCorp by section 7(2) of the Power and Water Corporation Act 1987 and in its application to GenCorp by section 8(2) of the Power Generation Corporation Act 2014.*

### **34            Commissioner may make determinations**

The Commissioner for Public Employment may, in writing, determine all matters relating to the provision of public sector employees under regulation 33(1) as the Commissioner considers appropriate for giving effect to the purposes of these Regulations.

### **35            Expiry of Division**

This Division expires when the first of the following occurs:

- (a) an enterprise agreement covering public sector employees employed in GenCorp comes into operation under the *Fair Work Act 2009* (Cth);



- (b) the 2010 – 2015 Power and Water Enterprise Agreement ceases to operate.

## **Part 3            Power retail business**

### **Division 1        Minister's obligations**

#### **36            Minister to prepare Retail Business Register**

- (1) Before 1 July 2014 the Minister must:
  - (a) prepare a register (the ***Retail Business Register***) of the assets, liabilities, instruments, rights and proceedings that are to be affected by Divisions 2 to 6; and
  - (b) give a copy of the Retail Business Register to RetailCorp and P&WCorp.
- (2) The Minister cannot amend or revoke the Retail Business Register on or after 1 July 2014.

#### **37            Retail Business Register to be available to interested persons**

- (1) This regulation applies if:
  - (a) a person requests a copy of all or part of the Retail Business Register from the Minister; and
  - (b) the Minister is satisfied that the person has a proper interest in having access to the Retail Business Register.
- (2) The Minister must give the person a copy of so much of the Retail Business Register as relates to the person's interest.

### **Division 2        Assets**

#### **38            Transfer of whole assets**

If an asset is included in the Retail Business Register as one to which this regulation applies, on 1 July 2014 the asset:

- (a) ceases to be an asset of P&WCorp; and
- (b) becomes an asset of RetailCorp.

**39            Transfer of part of assets**

If an asset is included in the Retail Business Register as one to which this regulation applies, on 1 July 2014 the part of the asset specified in the Retail Business Register:

- (a) ceases to be an asset of P&WCorp; and
- (b) becomes an asset of RetailCorp.

**40            Consideration**

If an amount is included in the Retail Business Register as consideration to be provided by RetailCorp for a transferred asset, RetailCorp must provide the consideration on the terms specified in the Retail Business Register.

**41            Accounting matters**

- (1) If a value is ascribed to a transferred asset in the Retail Business Register, the value of the asset as at 1 July 2014 is that value.
- (2) If the Retail Business Register provides for the manner in which a transferred asset is to be dealt with in P&WCorp's or RetailCorp's accounts, P&WCorp or RetailCorp must deal with the asset in its accounts in that manner.

**42            Asset related rights**

- (1) On and after 1 July 2014, a right in relation to a transferred asset that would, but for this regulation, have been available to or against P&WCorp:
  - (a) is not available to or against P&WCorp; and
  - (b) is available instead to or against RetailCorp in the same way as it would, but for this regulation, have been available to or against P&WCorp.
- (2) Subregulation (1) does not apply in relation to either of the following:
  - (a) if a right in relation to an asset is specified in the Retail Business Register as a right to which this paragraph applies – that right, to the extent specified in the Retail Business Register;
  - (b) a right that is the subject of proceedings to which regulation 60, 61 or 62 applies.

## **Division 3            Liabilities**

### **43            Transfer of whole liabilities**

If a liability is included in the Retail Business Register as one to which this regulation applies, on 1 July 2014 the liability:

- (a) ceases to be a liability of P&WCorp; and
- (b) becomes a liability of RetailCorp.

### **44            Transfer of part of liabilities**

If a liability is included in the Retail Business Register as one to which this regulation applies, on 1 July 2014 the part of the liability specified in the Retail Business Register:

- (a) ceases to be a liability of P&WCorp; and
- (b) becomes a liability of RetailCorp.

### **45            Accounting matters**

- (1) If a value is ascribed to a transferred liability in the Retail Business Register, the value of the liability as at 1 July 2014 is that value.
- (2) If the Retail Business Register provides for the manner in which a transferred liability is to be dealt with in P&WCorp's or RetailCorp's accounts, P&WCorp or RetailCorp must deal with the liability in its accounts in that manner.

### **46            Liability related rights**

- (1) On and after 1 July 2014, a right in relation to a transferred liability that would, but for this regulation, have been available to or against P&WCorp:
  - (a) is not available to or against P&WCorp; and
  - (b) is available instead to or against RetailCorp in the same way as it would, but for this regulation, have been available to or against P&WCorp.
- (2) Subregulation (1) does not apply in relation to either of the following:
  - (a) if a right in relation to a liability is specified in the Retail Business Register as a right to which this paragraph applies – that right, to the extent specified in the Retail Business Register;

- (b) a right that is the subject of proceedings to which regulation 60, 61 or 62 applies.

#### **Division 4 Instruments**

##### **47 Instruments to apply to RetailCorp instead of P&WCorp**

If an instrument is included in the Retail Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:

- (a) does not apply to P&WCorp; and
- (b) applies instead to RetailCorp in the same way as it would, but for this regulation, have applied to P&WCorp; and
- (c) has effect as otherwise modified as specified in the Retail Business Register.

##### **48 Instruments to apply to RetailCorp and P&WCorp severally**

If an instrument is included in the Retail Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:

- (a) continues to apply to P&WCorp; and
- (b) also applies to RetailCorp in the same way as it applies to P&WCorp; and
- (c) applies to P&WCorp and RetailCorp severally, not jointly; and
- (d) has effect as otherwise modified as specified in the Retail Business Register.

##### **49 *Electricity Reform Act 2000* retail licence**

- (1) On and after 1 July 2014:
  - (a) Part A of the existing licence:
    - (i) does not apply to P&WCorp; and
    - (ii) applies instead to RetailCorp in the same way as it would, but for this regulation, have applied to P&WCorp; and
  - (b) Part B of the existing licence continues to apply to P&WCorp and does not apply to RetailCorp.

- (2) Part A of the existing licence as so applying to RetailCorp and Part B of the existing licence as so applying to P&WCorp are taken, for all purposes, to be separate retail licences held individually by RetailCorp and P&WCorp respectively.

- (3) In this regulation:

**existing licence** means the retail licence held by P&WCorp dated 31 March 2005 as amended.

**retail licence** means a licence granted under section 16 of the *Electricity Reform Act 2000* for the retail sale of electricity.

## 50 Statutory customer contracts

- (1) On and after 1 July 2014, the existing terms:

(a) to the extent that they are a customer contract under section 47 of the *Water Supply and Sewerage Services Act 2000* – continue to apply to P&WCorp; and

(b) to the extent that they are standard terms and conditions under section 91 of the *Electricity Reform Act 2000*:

(i) cease to apply to P&WCorp; and

(ii) apply to RetailCorp in the same way as they would, but for this regulation, have applied to P&WCorp.

- (2) In this regulation:

**existing terms** means the contractual terms and conditions in force immediately before 1 July 2014 as both:

(a) its standard terms and conditions published in the *Gazette* under section 91 of the *Electricity Reform Act 2000*; and

(b) its customer contract under section 47 of the *Water Supply and Sewerage Services Act 2000*.

## 51 Bundled contracts to apply to RetailCorp and P&WCorp

- (1) If an instrument is included in the Retail Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:

(a) to the extent that it relates to retail matters:

(i) does not apply to P&WCorp; and

- (ii) applies instead to RetailCorp in the same way as it would, but for this regulation, have applied to P&WCorp; and
  - (b) to the extent that it does not relate to retail matters – continues to apply to P&WCorp; and
  - (c) has effect as otherwise modified as specified in the Retail Business Register.
- (2) In this regulation:
- retail matter** means something that:
- (a) relates to:
    - (i) an asset, liability, right or obligation of RetailCorp; or
    - (ii) the performance by RetailCorp of a function mentioned in section 9 of the *Power Retail Corporation Act 2014*; and
  - (b) is not excluded by subregulation (3).
- (3) If, in relation to an instrument, something is specified in the Retail Business Register as not being a retail matter, then in relation to that instrument the thing is excluded from being a retail matter.

**52 Instruments to apply to RetailCorp and P&WCorp to specified extent with modifications**

If an instrument is included in the Retail Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:

- (a) applies to each of RetailCorp and P&WCorp to the extent specified in the Retail Business Register; and
- (b) has effect as otherwise modified as specified in the Retail Business Register.

**53 Internal instruments**

- (1) If an internal instrument is included in the Retail Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:
  - (a) applies to each of RetailCorp and P&WCorp to the extent specified in the Retail Business Register as if it were a contract between them; and

(b) has effect as otherwise modified as specified in the Retail Business Register.

(2) In this regulation:

***internal instrument***, see section 53C(1)(b) of the Act.

#### **54 Instruments to apply with necessary changes**

(1) To the extent that a transferred instrument applies to RetailCorp, it has effect as modified by subregulations (2) and (3).

(2) A reference in the transferred instrument to P&WCorp is modified to be or include (as the context requires) a reference to RetailCorp.

(3) The transferred instrument is modified to make such other changes as are necessary.

#### **55 Instrument related rights**

(1) On and after 1 July 2014, a right in relation to a transferred instrument that would, but for this regulation, have been available to or against P&WCorp:

(a) to the extent that the instrument applies to P&WCorp – continues to be available to or against P&WCorp; and

(b) to the extent that, on 1 July 2014, the instrument ceased to apply to P&WCorp – is not available to or against P&WCorp; and

(c) to the extent that the instrument applies to RetailCorp – is available to or against RetailCorp.

(2) Subregulation (1) does not apply in relation to either of the following:

(a) if a right in relation to an instrument is specified in the Retail Business Register as a right to which this paragraph applies – that right, to the extent specified in the Retail Business Register;

(b) a right that is the subject of proceedings to which regulation 60, 61 or 62 applies.

#### **56 Contracts to be retained by P&WCorp**

(1) If a contract is included in the Retail Business Register as one to which this regulation applies, on and after 1 July 2014 the contract:

(a) continues to apply to P&WCorp; and

- (b) has effect:
- (i) as modified by subregulations (2), (3) and (4); and
  - (ii) as otherwise modified as specified in the Retail Business Register.
- (2) If, immediately before 1 July 2014, the contract contained a compensation clause in relation to costs incurred by P&WCorp, the clause is modified to apply in relation to costs incurred by P&WCorp or RetailCorp.
- (3) If, immediately before 1 July 2014, the contract contained an affected asset clause relating to an asset owned or operated by P&WCorp, the clause is modified to apply in relation to an asset owned or operated by P&WCorp or RetailCorp.
- (4) In this regulation:

**affected asset clause** means a provision giving P&WCorp a right to cease performing, or modify the performance of, its obligations under the contract on the occurrence of an event affecting an asset.

**compensation clause** means a provision requiring a party to the contract to compensate P&WCorp for costs incurred as a result of a breach of the contract by that party.

## **57 Instruments to apply to P&WCorp with modifications**

If an instrument is included in the Retail Business Register as one to which this regulation applies, on and after 1 July 2014 the instrument:

- (a) continues to apply to P&WCorp; and
- (b) has effect as otherwise modified as specified in the Retail Business Register.

## **58 Instruments may be amended etc.**

Subject to section 53F of the Act, the fact that an instrument is affected by this Division does not affect the right of any person or persons to amend, renew, replace or terminate the instrument.



## **Division 5 Rights**

### **59 Rights**

If a right is included in the Retail Business Register as a right to which this regulation applies, on and after 1 July 2014:

- (a) to the extent specified in the Retail Business Register – the right is not available to or against P&WCorp; and
- (b) to the extent that it is not available to or against P&WCorp – the right is available instead to or against RetailCorp in the same way as it would, but for this regulation, have been available to or against P&WCorp.

## **Division 6 Proceedings**

### **60 RetailCorp to replace P&WCorp as party**

If proceedings are included in the Retail Business Register as proceedings to which this regulation applies, on 1 July 2014:

- (a) P&WCorp ceases to be a party to the proceedings; and
- (b) RetailCorp becomes a party to the proceedings in place of P&WCorp.

### **61 RetailCorp to be added as additional party**

If proceedings are included in the Retail Business Register as proceedings to which this regulation applies, on 1 July 2014:

- (a) RetailCorp becomes a party to the proceedings to the extent specified in the Retail Business Register; and
- (b) P&WCorp continues as a party to the proceedings.

### **62 P&WCorp to remain as party**

If proceedings are included in the Retail Business Register as proceedings to which this regulation applies, P&WCorp continues as a party to the proceedings as if these Regulations had not been made.

### **63 Court etc. may make orders**

The person or body hearing proceedings to which regulation 60, 61 or 62 applies, may make any orders that are necessary or convenient to facilitate the change of parties to the proceedings.

## **Division 7      General matters**

### **64            Continuation of ongoing things**

- (1) This regulation applies in relation to anything that:
  - (a) relates to one of the following:
    - (i) a transferred asset;
    - (ii) a transferred liability;
    - (iii) a transferred instrument;
    - (iv) a right that is available to or against RetailCorp under regulation 42, 46, 55 or 59; and
  - (b) was done, or not done, by or in relation to P&WCorp before 1 July 2014; and
  - (c) as at 1 July 2014 is of ongoing effect.
- (2) On and after 1 July 2014, the thing is taken to have been done, or not done, by or in relation to RetailCorp.
- (3) However, this regulation does not apply in relation to a thing for which provision is made by another regulation in this Part.

## **Division 8      Employees**

### **65            P&WCorp to provide employees to RetailCorp**

- (1) The chief executive officer of P&WCorp may provide public sector employees employed in P&WCorp to the chief executive officer of RetailCorp to enable RetailCorp to perform its functions.
- (2) A public sector employee provided under subregulation (1):
  - (a) remains an employee employed in P&WCorp; but
  - (b) is subject to the direction of the chief executive officer of RetailCorp in the day-to-day performance of the employee's duties.
- (3) For the purposes of the *Public Sector Employment and Management Act 1993*, providing public sector employees under subregulation (1) is taken to be a function of P&WCorp.

- (4) The chief executive officer of P&WCorp may, in writing, delegate any of his or her powers or functions under the *Public Sector Employment and Management Act 1993* in relation to employees provided under subregulation (1) to:
- (a) the chief executive officer of RetailCorp; or
  - (b) an employee in RetailCorp; or
  - (c) an employee provided under subregulation (1).

*Note for regulation 65*

*The operation of the Public Sector Employment and Management Act 1993 is modified in its application to P&WCorp by section 7(2) of the Power and Water Corporation Act 1987 and in its application to RetailCorp by section 8(2) of the Power Retail Corporation Act 2014.*

## **66            Commissioner may make determinations**

The Commissioner for Public Employment may, in writing, determine all matters relating to the provision of public sector employees under regulation 65(1) as the Commissioner considers appropriate for giving effect to the purposes of these Regulations.

## **67            Expiry of Division**

This Division expires when the first of the following occurs:

- (a) an enterprise agreement covering public sector employees employed in RetailCorp comes into operation under the *Fair Work Act 2009* (Cth);
- (b) the 2010 – 2015 Power and Water Enterprise Agreement ceases to operate.

## ENDNOTES

### 1

#### KEY

Key to abbreviations

amd = amended

app = appendix

bl = by-law

ch = Chapter

cl = clause

div = Division

exp = expires/expired

f = forms

Gaz = Gazette

hdg = heading

ins = inserted

lt = long title

nc = not commenced

od = order

om = omitted

pt = Part

r = regulation/rule

rem = remainder

renum = renumbered

rep = repealed

s = section

sch = Schedule

sdiv = Subdivision

SL = Subordinate Legislation

sub = substituted

### 2

#### LIST OF LEGISLATION

##### ***Government Owned Corporations (Power and Water Corporation Electricity Businesses Restructure) Regulations (SL No. 17, 2014)***

Notified 30 June 2014

Commenced 30 June 2014

### 3

#### GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: rr 1, 3, 18, 19, 33, 49, 50, 51 and 65.