

NORTHERN TERRITORY OF AUSTRALIA

NATIONAL ELECTRICITY (NORTHERN TERRITORY) (NATIONAL UNIFORM LEGISLATION) ACT 2015

As in force at 22 May 2015

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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 22 May 2015

NATIONAL ELECTRICITY (NORTHERN TERRITORY) (NATIONAL UNIFORM LEGISLATION) ACT 2015

An Act to apply, as a law of the Territory, a national law providing for the operation of a national electricity market, to make interim arrangements, and for related purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*.

2 Commencement

This Act commences as follows:

- (a) the Act, other than the provisions mentioned in paragraphs (b), (c) and (d) – on the day on which the Administrator's assent to the Act is declared;
- (b) Part 2 and Part 4, Division 2 – on 1 July 2016;
- (c) Part 4, Divisions 3 and 4 – on 1 July 2019;
- (d) Part 5 – on 1 July 2015.

3 Interpretation

- (1) In this Act:

National Electricity (NT) Law means the provisions applying because of section 6.

National Electricity (NT) Regulations means the provisions applying because of section 7.

National Electricity (NT) Rules means the National Electricity Rules having the force of law in this jurisdiction under section 9 of the National Electricity (NT) Law.

- (2) Words and expressions used in this Act and also in the National Electricity (NT) Law have the same meanings in this Act as they have in that Law.
- (3) Subsection (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.

4 Crown to be bound

This Act, the National Electricity (NT) Law and the National Electricity (NT) Regulations bind the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

5 Extra-territorial operation

It is the intention of the Legislative Assembly that the operation of this Act, the National Electricity (NT) Law and the National Electricity (NT) Regulations should, so far as possible, include operation in relation to the following:

- (a) land situated outside the Territory, whether in or outside Australia;
- (b) things situated outside the Territory, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside the Territory, whether in or outside Australia;
- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, a State, another Territory or a foreign country.

Part 2 Adoption of National Electricity Law

Division 1 National Electricity (NT) Law and National Electricity (NT) Regulations

6 Application in Territory of National Electricity Law

The National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA), as in force for the time being:

- (a) applies, with the modifications set out in Schedule 1, as a law of the Territory; and

- (b) as so applying, may be referred to as the National Electricity (NT) Law.

7 Application in Territory of regulations under National Electricity Law

The regulations in force for the time being under Part 4 of the *National Electricity (South Australia) Act 1996* (SA):

- (a) apply, with any modifications prescribed under section 13(2)(b), as regulations in force for the purposes of the National Electricity (NT) Law; and
- (b) as so applying, may be referred to as the National Electricity (NT) Regulations.

8 Interpretation of expressions in National Electricity (NT) Law and National Electricity (NT) Regulations

- (1) In the National Electricity (NT) Law and the National Electricity (NT) Regulations:

Legislature of this jurisdiction means the Legislative Assembly of the Northern Territory.

Supreme Court means the Supreme Court of the Northern Territory.

the jurisdiction or ***this jurisdiction*** means the Territory.

the National Electricity Law or ***this Law*** means the National Electricity (NT) Law.

- (2) The *Acts Interpretation Act 1915* (SA) and other Acts of South Australia do not apply to:
- (a) the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA) in its application as a law of the Territory; or
- (b) the regulations in force for the time being under Part 4 of the *National Electricity (South Australia) Act 1996* (SA) in their application as regulations in force for the purposes of the National Electricity (NT) Law.

Division 2 General matters

9 Declaration of local distribution systems

A distribution system listed in Schedule 2, and any augmentation of that system, is declared to be a local distribution system for the purposes of the National Electricity (NT) Law.

10 Conferral of functions and powers on Commonwealth bodies to act in this jurisdiction

(1) A Commonwealth body has power to do acts in or in relation to the Territory in the performance or exercise of a function or power expressed to be conferred on the Commonwealth body by the national electricity legislation of another participating jurisdiction.

(2) In this section:

Commonwealth body means the AER or the Tribunal.

11 Extension of reading-down provision

(1) Schedule 2, clause 2 of the National Electricity (NT) Law has effect in relation to the operation of any provision of this Act as if the provision formed part of that Law.

(2) Subsection (1) does not limit the effect that a provision would validly have apart from the subsection.

12 Exercise of powers under provisions not yet in effect

(1) This section applies if:

(a) a provision of the National Electricity (NT) Law, National Electricity (NT) Regulations or National Electricity (NT) Rules (the **deferred provision**) does not yet have effect as part of a law of the Territory because of a modification; and

(b) the modification:

(i) is expressed to expire at a future time; or

(ii) is to cease to be in force on the commencement of a regulation made under section 13(2).

- (2) Schedule 2, clause 27 of the National Electricity (NT) Law has effect in relation to the deferred provision as if:
- (a) a reference in that clause to a provision of the Law that did not commence on its enactment were a reference to the deferred provision; and
 - (b) a reference in that clause to the commencement of the provision were a reference to the deferred provision commencing to have effect as part of a law of the Territory because of the expiry or cessation of the modification.
- (3) In this section:
- modification** means:
- (a) for a provision of the National Electricity (NT) Law – a modification set out in Schedule 1; or
 - (b) for a provision of the National Electricity (NT) Regulations – a modification prescribed by regulation under section 13(2)(b); or
 - (c) for a provision of the National Electricity (NT) Rules – a modification prescribed by regulation under section 13(2)(c).

Part 3 Regulations

13 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may do any of the following:
 - (a) amend Schedule 1;
 - (b) prescribe modifications to the regulations in force for the time being under Part 4 of the *National Electricity (South Australia) Act 1996* (SA) for the purposes of section 7(a);
 - (c) modify the operation of the National Electricity Rules for the purpose of their having the force of law in this jurisdiction under section 9 of the National Electricity (NT) Law.
- (3) The Administrator may make regulations contemplated by the National Electricity (NT) Law as being made under this Act as the application Act of this jurisdiction.

14 Regulations for transitional matters and consequential amendments for 1 July 2016

- (1) The regulations may amend Part 4, Division 2 to provide for matters of a transitional nature:
 - (a) consequent on the commencement of Part 2; or
 - (b) to otherwise facilitate the transition to the application and operation of the National Electricity (NT) Law.
- (2) The regulations may amend any law of the Territory to make amendments of a consequential nature consequent on the commencement of Part 2.
- (3) This section, and each regulation made under it, expires on 2 July 2016.

15 Regulations for transitional matters and consequential amendments for 1 July 2019

- (1) The regulations may amend Part 4, Division 4 to provide for matters of a transitional nature:
 - (a) consequent on:
 - (i) the repeal of the Acts repealed by section 17; or
 - (ii) the deferred provisions starting to have effect as part of a law of the Territory; or
 - (b) to otherwise facilitate the transition to the operation of the National Electricity (NT) Law including the deferred provisions.
- (2) The regulations may amend any law of the Territory to make amendments of a consequential nature consequent on:
 - (a) the repeal of the Acts repealed by section 17; or
 - (b) the deferred provisions starting to have effect as part of a law of the Territory.
- (3) This section, and each regulation made under it, expires on 2 July 2019.

(4) In this section:

deferred provisions means the provisions of the National Electricity (NT) Law, the National Electricity (NT) Regulations and the National Electricity (NT) Rules that:

- (a) immediately before 1 July 2019 do not have effect as part of the law of the Territory because of a modification; and
- (b) are to have effect from 1 July 2019.

modification, see section 12(3).

Part 4 Repeals and transitional matters

Division 1 Transitional matters for National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 – 1 July 2015

16 Definitions

Despite section 3(1), until 1 July 2016, in this Act:

National Electricity (NT) Law means the provisions that are to apply because of section 6 on 1 July 2016.

National Electricity (NT) Regulations means the provisions that are to apply because of section 7 on 1 July 2016.

National Electricity (NT) Rules means the National Electricity Rules that are to have the force of law in this jurisdiction under section 9 of the National Electricity (NT) Law on 1 July 2016.

Division 2 Transitional matters for National Electricity (NT) Law – 1 July 2016

Note for Part 4, Division 2

This Division is reserved for transitional provisions to be inserted by regulations under section 14(1).

Division 3 Repeals – 1 July 2019

17 Acts repealed

The following Acts are repealed:

- (a) *Electricity Networks (Third Party Access) Act 2000* (Act No. 11 of 2000);

- (b) *Electricity Networks (Third Party Access) Amendment Act 2001* (Act No. 31 of 2001).

Division 4 Transitional matters for National Electricity (NT) Law – 1 July 2019

Note for Part 4, Division 4

This Division is reserved for transitional provisions to be inserted by regulations under section 15(1).

Part 5 Interim arrangements

Division 1 Electricity Networks (Third Party Access) Act

18 Act amended

This Division amends the *Electricity Networks (Third Party Access) Act*.

19 Long title replaced

Long title

repeal, insert

An Act to regulate third party access to electricity networks until 1 July 2019 and for other purposes

Note

This Act will be repealed on 1 July 2019 by section 17 of the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

20 Section 3 and Parts 2 and 3 replaced

Section 3 and Parts 2 and 3

repeal, insert

2A Interpretation

(1) In this Act:

access agreement, see clause 3 of the Network Access Code.

access applicant, see clause 3 of the Network Access Code.

access dispute, see clause 35 of the Network Access Code.

AER means the Australian Energy Regulator established by section 44AE of the *Competition and Consumer Act 2010* (Cth).

associate, in relation to a person, has the same meaning it would have under Part 1.2, Division 2 of the Corporations Act 2001, if sections 13, 16(2) and 17 did not form part of that Act.

authorised person means a person authorised under section 8A.

award, see clause 3 of the Network Access Code.

business day means a day other than a Saturday, Sunday or a public holiday.

civil penalty, see section 28.

civil penalty provision means a provision of this Act that is expressly stated to be a civil penalty provision.

contributing service, for Part 3A, Division 3, see section 10B(1).

customer, see section 4(1) of the *Electricity Reform Act*.

economic regulatory determination means a determination mentioned in section 6A.

economic regulatory decision means a decision (however described) of the regulator in the performance of a function mentioned in section 5A(b).

electricity entity, see section 4(1) of the *Electricity Reform Act*.

electricity network, see section 4(1) of the *Electricity Reform Act*.

general regulatory information order, see section 10C.

infringement notice means a notice served under section 36.

Infringement penalty, see section 38.

NAC electricity network, see section 4A.

National Electricity Law means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA) as in force for the time being.

National Electricity Regulations means the regulations in force for the time being under Part 4 the *National Electricity (South Australia) Act 1996* (SA).

National Electricity Rules, see section 2(1) of the National Electricity Law.

Network Access Code means the Electricity Networks (Third Party Access) Code set out in the Schedule as amended by the Regulations as mentioned in section 4B.

network participant means a network provider, network user or system controller.

network pricing determination means a determination made by the regulator under Chapter 6 of the Network Access Code.

network provider, see section 4(1) of the *Electricity Reform Act*.

network services, see section 4(1) of the *Electricity Reform Act*.

network user, see section 4(1) of the *Electricity Reform Act*.

offence provision means a provision of this Act the breach or contravention of which by a person exposes that person to a finding of guilt by a court.

officer, in relation to a body corporate, has the same meaning as officer has in relation to a corporation under section 9 of the Corporations Act 2001.

performance report means a report prepared by the regulator under section 13A.

publish on the regulator's website, see section 52.

regulator means the AER.

regulatory information instrument means a general regulatory information order or a regulatory information notice.

regulatory information notice, see section 10D.

related provider, for Part 3A, Division 3, see section 10A.

service standard means a standard imposed under this Act or the *Electricity Reform Act* relating to the standard of services to be provided by a network provider.

system controller, see section 4(1) of the *Electricity Reform Act*.

- (2) To avoid doubt, in this Act **this Act** includes the Network Access Code.

2B Act binds Crown

- (1) This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) However, nothing in this Act makes the Crown:
 - (a) liable to be prosecuted for an offence; or
 - (b) liable to a civil penalty that may be imposed for breach of a civil penalty provision.
- (3) Subsection (2) does not apply to an authority of the Territory that is an electricity entity.

Part 1A General obligations of network participants

3A Compliance with Network Access Code

- (1) A network participant in relation to an NAC electricity network must comply with all of the following:
 - (a) the Network Access Code;
 - (b) a network pricing determination;
 - (c) any other economic regulatory determination made under the Network Access Code;
 - (d) an order or direction (however described) made or given by the regulator under the Network Access Code.
- (2) This section is a civil penalty provision.

3B Compliance with price regulation determinations

- (1) A network participant to whom a determination made under section 6B applies must comply with the determination.
- (2) This section is a civil penalty provision.

Part 2 Network Access Code

4A NAC electricity networks

The Network Access Code applies in relation to an electricity network that is prescribed by the Minister, by *Gazette* notice, to be an electricity network to which the Network Access Code applies (an ***NAC electricity network***).

4B Amendment of Network Access Code

Regulations may amend the Network Access Code.

4C Minister may prescribe matters for Network Access Code

The Minister may, by *Gazette* notice, prescribe matters:

- (a) required or permitted by the Network Access Code to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to the Network Access Code.

Part 3 Regulator

Division 1 Functions and powers – general matters

5A Functions of regulator

The regulator has the following functions:

- (a) the monitoring and enforcement of compliance with this Act, including by:
 - (i) investigating breaches or possible breaches of this Act (including offence provisions); and
 - (ii) instituting and conducting proceedings:
 - (A) in relation to breaches of this Act (including offences and civil penalty provisions); or
 - (B) otherwise contemplated by this Act; or
 - (C) under section 44AAG of the *Competition and Consumer Act 2010* (Cth);
 - (iii) instituting and conducting appeals from decisions in proceedings mentioned in subparagraph (ii);

- (b) the economic regulation of the electricity network industry through the use of:
 - (i) network pricing determinations under Chapter 6 of the Network Access Code; and
 - (ii) price regulation determinations under section 6B; and
 - (iii) other determinations under the Network Access Code; and
 - (iv) performance reports;
- (c) any other functions conferred on the regulator by this Act.

5B Matters to be taken into account when performing functions

In performing its functions under this Act, the regulator must have regard to the need:

- (a) to promote competitive and fair market conduct; and
- (b) to prevent misuse of monopoly or market power; and
- (c) to facilitate entry into relevant markets; and
- (d) to promote economic efficiency; and
- (e) to ensure consumers benefit from competition and efficiency; and
- (f) to protect the interests of consumers with respect to reliability and quality of services and supply; and
- (g) to promote the financial viability of the electricity networks industry; and
- (h) to ensure an appropriate rate of return on the assets forming part of an electricity network.

5C Independence of regulator

In the performance of its functions under this Act the regulator is not subject to the direction or control of the Minister.

5D Powers of regulator

The regulator has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

5E Conferral of functions and powers on AER

- (1) Without limiting section 59 of the *Interpretation Act*, this Act is not to be construed as imposing a duty on the regulator to perform a function or exercise a power if the imposition of the duty would exceed the legislative power of the Legislative Assembly.
- (2) In particular, if a provision of this Act appears to impose a duty on the regulator to perform a function or exercise a power in matters or circumstances in which the assumption of the duty cannot be validly authorised under the law of the Commonwealth, or is otherwise ineffective, the provision is to be construed as if its operation were expressly confined to:
 - (a) acts or omissions of corporations to which section 51(xx) of the Constitution of the Commonwealth applies; or
 - (b) acts or omissions taking place in the course of, or in relation to, trade or commerce between the Territory and places outside the Territory (whether within or outside Australia); or
 - (c) acts or omissions taking place outside Australia, or in relation to things outside Australia.
- (3) This section does not limit the effect that a provision of this Act would validly have apart from this section.

5F Delegation

- (1) The regulator may delegate any of its powers and functions under this Act to a person.
- (2) Any delegation by the AER under section 44AAH of the *Competition and Consumer Act 2010* (Cth) that is relevant to the regulator's powers and functions under this Act extends to, and has effect for the purposes of, this Act.

5G Guidelines

- (1) The regulator may make guidelines:
 - (a) that are required or permitted to be made by this Act; or
 - (b) otherwise in relation to the performance of its functions under this Act.

- (2) If:
- (a) the AER has prepared guidelines under the National Electricity Law (***NEL guidelines***) in relation to the exercise of a power or performance of a function under that Law; and
 - (b) the regulator has a comparable power or function under this Act;
- the NEL guidelines apply (with any necessary modifications) in relation to the regulator's exercise of the power or performance of the function under this Act.
- (3) If there is an inconsistency between NEL guidelines applying under subsection (2) and any guidelines under subsection (1), the NEL guidelines prevail to the extent of the inconsistency.
- (4) The regulator must publish guidelines made under this section on its website.

5H Statements and reports

The regulator may publish statements and reports in relation to the performance of its functions.

Division 2 Economic regulatory determinations

6A Regulator to make economic regulatory determinations

- (1) The regulator may make network pricing determinations in accordance with Chapter 6 of the Network Access Code.
- (2) The regulator may make any of the following:
- (a) price regulation determinations under section 6B;
 - (b) determinations (other than network pricing determinations) mentioned in the Network Access Code.

6B Price regulation determinations

- (1) The regulator may make a determination regulating prices and conditions for network services.
- (2) This section applies subject to the provisions of the Network Access Code.

- (3) The determination may regulate prices in any manner the regulator considers appropriate including any of the following:
- (a) fixing a price or the rate of increase or decrease in a price;
 - (b) fixing a maximum price or maximum rate of increase or minimum rate of decrease in a maximum price;
 - (c) fixing an average price for specified goods or services or an average rate of increase or decrease in an average price;
 - (d) specifying pricing policies or principles;
 - (e) specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;
 - (f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of goods or services;
 - (g) fixing a maximum revenue, or maximum rate of increase or minimum rate of decrease in maximum revenue, in relation to specified goods or services.
- (4) In making the determination, the regulator must have regard to the following:
- (a) the costs of making, producing or supplying the goods or services;
 - (b) the costs of complying with laws or regulatory requirements;
 - (c) the return on assets in the electricity networks industry;
 - (d) any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;
 - (e) the financial implications of the determination;
 - (f) any factors to which the regulator is required to have regard under the Network Access Code or Regulations under which the regulator is authorised to make the determination;
 - (g) any other factors the regulator considers relevant.
- (5) In this section:

price includes a price range.

6C Economic regulatory determination must include reasons

An economic regulatory determination must include a summary of the information on which it is based and a statement of the regulator's reasons for making the determination.

6D Publication of economic regulatory determination

The regulator must:

- (a) publish an economic regulatory determination on its website; and
- (b) make copies of the determination available for public inspection at the regulator's public offices.

6E Commencement and duration of economic regulatory determination

An economic regulatory determination:

- (a) takes effect on the date on which it is published on the regulator's website or a later date specified in it; and
- (b) has effect until it is revoked or until an expiry date specified in it.

Division 3 Miscellaneous matters for regulator

7A Consideration by regulator of submissions

If, under this Act, the regulator publishes a notice inviting submissions in relation to the making of an economic regulatory decision, the regulator, in making the decision:

- (a) must consider every submission it receives within the period specified in the notice; and
- (b) may, but need not, consider a submission it receives after the period specified in the notice expires.

7B Regulator to inform certain persons of decisions not to investigate breaches etc.

- (1) If the regulator is given information by any person in relation to a breach or a possible breach of this Act by a person but:
 - (a) decides not to investigate that breach or possible breach; or

- (b) following an investigation, decides not to:
- (i) institute any proceedings in respect of that breach or possible breach under Part 6; or
 - (ii) serve an infringement notice in accordance with Part 6, Division 5 in respect of that breach or possible breach;

the regulator must notify that person of that decision in writing.

- (2) This section does not apply if the person gave the information to the regulator anonymously.

7C Effect of delay in making decision

- (1) A decision (however described) made under this Act by the regulator after the expiry of the period of time specified by this Act for making the decision is not to be taken to be an invalid decision only because the decision is not made within the specified period.
- (2) A decision to which subsection (1) applies takes effect on the day it is made or any later day specified in it.

7D Annual report to be tabled

The Minister must table a copy of a report from the regulator under section 44AAJ of the *Competition and Consumer Act 2010* (Cth) in the Legislative Assembly within 6 sitting days after the Minister receives the report.

Part 3A Information gathering powers and related matters

Division 1 Search warrants

8A Authorised person

- (1) The regulator may, in writing, authorise a person that the regulator considers is suitably qualified or trained to be an authorised person for the purposes of this Division.
- (2) An authorised person must comply with any direction of the regulator in exercising powers or functions as an authorised person.

8B Identity cards

- (1) The regulator must issue an identity card to an authorised person.

- (2) The identity card must contain the name, a recent photograph and the signature of the authorised person.
- (3) An authorised person must carry the identity card at all times when exercising powers or performing functions as an authorised person.
- (4) An authorised person must produce his or her identity card for inspection:
 - (a) before exercising a power as an authorised person; or
 - (b) at any time during the exercise of a power as an authorised person, if asked to do so.

8C Return of identity cards

If a person to whom an identity card has been issued ceases to be an authorised person, the person must return the identity card to the regulator as soon as practicable.

Maximum penalty: 10 penalty units.

8D Search warrant

- (1) An authorised person may apply to a magistrate for the issue of a search warrant in relation to a particular place if the person:
 - (a) believes on reasonable grounds that:
 - (i) there is or has been or will be a breach of a provision of this Act; and
 - (ii) there is or may be a thing or things of a particular kind connected with that breach on or in that place; or
 - (b) reasonably suspects that:
 - (i) there may have been a breach of a provision of this Act; and
 - (ii) there is or may be a thing or things of a particular kind connected with that breach on or in that place.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of an authorised person that there are reasonable grounds for suspecting that there is, or may be within the next 7 days, a thing or things of a particular kind connected with a breach or possible breach of a provision of this Act on or in a place, the magistrate may issue a search warrant authorising an authorised person named in the warrant to do the following:

- (a) enter the place specified in the warrant, with such assistance and by the use of such force as is necessary and reasonable;
 - (b) search the place or any part of the place;
 - (c) search for and seize a thing named or described in the warrant and which the person believes on reasonable grounds to be connected with the breach or possible breach of the provision;
 - (d) inspect, examine or record an image of anything in the place;
 - (e) take extracts from, and make copies of, any documents in the place;
 - (f) take into the place such equipment and materials as the person requires for exercising the powers.
- (3) A search warrant issued under this section must state:
- (a) the purpose for which the search is required and the nature of the suspected breach of the provision of this Act; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants mentioned in any relevant laws of the Territory extend and apply to warrants under this section.

8E Announcement of entry and details of warrant to be given to occupier or other person at premises

- (1) This section applies if the occupier or another person who apparently represents the occupier is present at premises when a search warrant is being executed.
- (2) The authorised person executing the warrant must:
- (a) identify himself or herself to that person; and
 - (b) announce that he or she is authorised by the warrant to enter the place; and
 - (c) before using force to enter, give the person an opportunity to allow entry; and

(d) give the person a copy of the warrant.

- (3) The authorised person executing the warrant is not entitled to exercise any powers under the warrant in relation to premises if the authorised person does not comply with subsection (2).

8F Announcement before entry

An authorised person executing a warrant need not comply with section 8E if he or she believes on reasonable grounds that immediate entry to premises is required to ensure:

- (a) the safety of any person; or
(b) that the effective execution of the search warrant is not frustrated.

8G Copies of seized documents

- (1) If an authorised person executing a warrant retains possession of a document seized from a person in accordance with the warrant, the authorised person must give that other person, within 21 days of the seizure, a copy of the document certified as correct by the authorised person executing the warrant.
- (2) A copy of a document certified under subsection (1) shall be received in all courts and tribunals as evidence of equal validity to the original.

8H Retention and return of seized documents or things

- (1) If an authorised person executing a warrant seizes a document or other thing in accordance with the warrant, the authorised person must if he or she is not a person employed by the regulator, give the document or other thing seized to the regulator.
- (2) The regulator must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (3) If the document or thing seized has not been returned within 3 months after it was seized, the regulator must take reasonable steps to return it unless:
- (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or

- (b) a magistrate makes an order under section 8J extending the period during which the document or thing may be retained.

8J Extension of period of retention of documents or things seized

- (1) The regulator may apply to a magistrate:
 - (a) within 3 months after a document or other thing was seized in accordance with a warrant; or
 - (b) if an extension has been granted under this section, before the end of the period of the extension;

for an extension of the period for which the regulator may retain the document or thing but so that the total period of retention does not exceed 12 months.

- (2) An application must be made before proceedings for the purpose for which the document or thing was retained have been commenced.
- (3) A magistrate may order such an extension if he or she is satisfied that:
 - (a) it is in the interests of justice; and
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the document or other thing is necessary:
 - (i) for the purposes of an investigation into whether a breach of a provision of this Act has occurred; or
 - (ii) to enable evidence of a breach of a provision of this Act to be obtained for the purposes of a proceeding under this Act.
- (4) If proceedings are commenced for the purpose for which the document or thing was retained at any time before the expiry of the period specified in an order under this section, the document or thing may be retained until those proceedings (including any appeal) have been completed despite those proceedings being completed after the period specified in the order.
- (5) At least 7 days prior to the hearing of an application under this section by a magistrate, notice of the application must be given to the owner of the document or thing described in the application.

8K Obstruction of person authorised to enter

A person must not, without reasonable excuse, obstruct or hinder an authorised person in the exercise of a power under a search warrant under this Division.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

Division 2 General information gathering powers

9A Power to obtain information and documents

- (1) If the regulator has reason to believe that a person is capable of providing information or producing a document that the regulator requires for the exercise of a power or performance of a function under this Act, the regulator may, by notice in writing, serve on that person a notice (a **relevant notice**).
- (2) A relevant notice may require the person to:
 - (a) provide to the regulator, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any information of the kind referred to in subsection (1); or
 - (b) produce to the regulator, or to a person specified in the notice acting on its behalf, in accordance with the notice, any documents of the kind referred to in subsection (1).
- (3) A person who has been served with a relevant notice must comply with the notice unless the person has a reasonable excuse for not doing so.
- (4) Subsection (3) is a civil penalty provision.
- (5) Without limiting subsection (3), it is a reasonable excuse for failing to comply with the notice if the person is not capable of doing so.
- (6) Without limiting subsection (3), it is a reasonable excuse for an individual to:
 - (a) fail to provide information of the kind referred to in subsection (1) to the regulator; or
 - (b) fail to produce a document of the kind referred to in subsection (1) to the regulator, or to a person specified in a relevant notice acting on behalf of the regulator;

if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of the Territory or another jurisdiction in Australia.

- (7) It is not a reasonable excuse for a person to:
- (a) fail to provide information of the kind referred to in subsection (1) to the regulator; or
 - (b) fail to produce a document of the kind referred to in subsection (1) to the regulator, or to a person specified in a relevant notice acting on behalf of the regulator;
- on the ground of any duty of confidence.
- (8) This section does not require a person to:
- (a) provide information that is the subject of legal professional privilege; or
 - (b) produce a document the production of which would disclose information that is the subject of legal professional privilege.
- (9) This section does not require a person to:
- (a) provide information that would disclose the contents of a document prepared for the purposes of a meeting of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory; or
 - (b) produce a document prepared for the purposes of a meeting of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory; or
 - (c) provide information, or produce a document, that would disclose the deliberations of the Cabinet or a committee of the Cabinet of the Commonwealth or of a State or a Territory.
- (10) A person incurs, by complying with a relevant notice, no liability for breach of contract, breach of confidence or any other civil wrong.

Division 3 Regulatory information notices and general regulatory information orders

Subdivision 1 Interpretation

10A Definitions

In this Division:

contributing service, see section 10B(1).

related provider means a person who supplies a contributing service to a network provider.

10B Meaning of *contributing service*

- (1) A ***contributing service*** is a service that the regulator, in accordance with this section, decides is a service that contributes in a material way to the provision of a network service by a network provider.
- (2) In deciding whether a service is a service that contributes in a material way to the provision of a network service by a network provider, the regulator must have regard to:
 - (a) the nature and kind of the service; and
 - (b) when the service was first supplied; and
 - (c) the nature and extent of the contribution of the service relative to:
 - (i) the network service; and
 - (ii) all other services supplied by the network provider; and
 - (d) whether the service was previously supplied:
 - (i) by the network provider; or
 - (ii) directly or indirectly by an associate of the network provider; and
 - (e) whether the service, together with other services, contributes in a material way to the provision of network services; and
 - (f) any other matter prescribed by the Regulations.

10C Meaning of *general regulatory information order*

A ***general regulatory information order*** is an order made by the regulator in accordance with this Division that requires each network provider of a specified class, or each related provider of a specified class, to do either or both of the following:

- (a) provide to the regulator the information specified in the order;
- (b) prepare, maintain or keep information specified in the notice in a manner and form specified in the order.

10D Meaning of *regulatory information notice*

A ***regulatory information notice*** is a notice prepared and served by the regulator in accordance with this Division that requires the network provider, or a related provider, named in the notice to do either or both of the following:

- (a) provide to the regulator the information specified in the notice;
- (b) prepare, maintain or keep information specified in the notice in a manner and form specified in the notice.

10E Division does not limit operation of information gathering powers under Division 2

This Division does not limit the operation of Division 2.

Subdivision 2 Serving and making of regulatory information instruments

10F Service and making of regulatory information instrument

- (1) Subject to this Division, the regulator, if it considers it reasonably necessary for the exercise of a power or performance of a function under this Act, may:
 - (a) serve a regulatory information notice on a network provider or a related provider; or
 - (b) make a general regulatory information order.
- (2) In considering whether it is reasonably necessary to serve a regulatory information notice, or make a general regulatory information order, the regulator must have regard to:
 - (a) the matter to be addressed by:
 - (i) the service of the regulatory information notice; or

- (ii) the making of the general regulatory information order;
and
 - (b) the likely costs that may be incurred by an efficient network provider or efficient related provider in complying with the notice or order.
- (3) A regulatory information notice must not be served, or a general regulatory information order must not be made, solely for the purpose of:
- (a) investigating breaches or possible breaches of provisions of this Act, including offences against this Act; or
 - (b) instituting and conducting proceedings in relation to breaches of provisions of this Act, including offences against this Act; or
 - (c) instituting and conducting appeals from decisions in proceedings referred to in paragraph (b); or
 - (d) collecting information for the preparation of a performance report.

10G Additional matters to be considered for related provider regulatory information instruments

- (1) This section applies if the regulator is intending to:
- (a) serve a regulatory information notice on a related provider; or
 - (b) make a general regulatory information order that will apply to a class of related providers.
- (2) In addition to the matters set out in section 10F(2), the regulator, in considering whether it is reasonably necessary to serve the regulatory information notice, or make the general regulatory information order, must have regard to:
- (a) whether the network provider being supplied a contributing service by the related provider or related providers to which the intended regulatory information instrument will apply can:
 - (i) provide the information to be specified in that instrument;
or
 - (ii) prepare, maintain or keep the information to be specified in the particular manner and form to be specified in that instrument; and

- (b) the extent to which the related provider or related providers to which the intended regulatory information instrument will apply is, or are, supplying a contributing service on a genuinely competitive basis; and
 - (c) the nature of any ownership or control between:
 - (i) the network provider being supplied a contributing service by a related provider to which the intended regulatory information instrument will apply; and
 - (ii) that related provider; and
 - (d) the nature of any ownership or control as between different related providers supplying the contributing service to the network provider; and
 - (e) any other matter the regulator considers relevant.
- (3) For the purposes of subsection (2)(b), in considering whether a contributing service is being supplied on a genuinely competitive basis, the regulator may take into account:
- (a) whether there is effective competition in the market for the supply of the contributing service; and
 - (b) whether the related provider supplies the contributing service to a network provider under a contract, arrangement or understanding entered into with that network provider following a competitive process for the awarding of the right to enter into that contract, arrangement or understanding involving persons who were not associates of the network provider.

10H Regulator must consult before publishing a general regulatory information order

The regulator must, in accordance with the Regulations, consult with the public in relation to the general regulatory information order it proposes to make before it makes that order.

10J Publication requirements for general regulatory information orders

- (1) A general regulatory information order made under section 10F(1)(b) must be published on the regulator's website as soon as practicable after it is made.

- (2) Notice of the making of a general regulatory information order must be published in a newspaper circulating generally throughout Australia as soon as practicable after the general regulatory information order is made.

10K Opportunity to be heard before regulatory information notice is served

- (1) The regulator, before serving a regulatory information notice, must:
- (a) notify, in writing, the network provider, or the related provider, on whom the regulator intends to serve the regulatory information notice of its intention to do so; and
 - (b) give the network provider or the related provider a draft of the regulatory information notice it intends to serve.
- (2) If the regulatory information notice to be served is an urgent notice, the regulator must, in a notice under subsection (1):
- (a) identify the regulatory information notice to be served as an urgent notice; and
 - (b) give its reasons, in writing, why the regulatory information notice to be served is an urgent notice.
- (3) A regulatory information notice is an urgent notice if:
- (a) under the notice the regulator will require the network provider or related provider to provide information to the regulator; and
 - (b) that requirement has arisen because the regulator considers it must deal with or address a particular matter or thing in order for it to make an economic regulatory decision; and
 - (c) the regulator considers that, having regard to the time within which it must make that economic regulatory decision, the time within which the regulator requires the information is of the essence.
- (4) A notice under subsection (1) must:
- (a) invite the network provider, or the related provider, to make written representations to the regulator as to whether the regulator should serve the regulatory information notice on them; and
 - (b) specify the period within which the network provider, or the related provider, may make the representations.

- (5) The period that must be specified in accordance with subsection (4) must be:
 - (a) in the case of an urgent notice to be served – a period of not less than 5 business days and not more than 10 business days calculated from the date of the notice under subsection (1); and
 - (b) in all other cases – a period of at least 20 business days calculated from the date of the notice under subsection (1).
- (6) The regulator must consider the written representations made in accordance with a notice under subsection (1) before making its decision in accordance with this Division to serve the regulatory information notice.

Subdivision 3 Form and content of regulatory information instruments

10L Form and content of regulatory information instrument

- (1) A regulatory information instrument:
 - (a) must specify the information required to be:
 - (i) provided to the regulator; or
 - (ii) prepared, maintained or kept in the particular manner and form specified in the instrument; and
 - (b) may specify the manner and form in which the information described in the instrument is required to be:
 - (i) provided to the regulator; or
 - (ii) prepared, maintained or kept; and
 - (c) must state the reasons of the regulator for requiring the information described in the instrument to be:
 - (i) provided to the regulator; or
 - (ii) prepared, maintained or kept in the particular manner and form specified in the instrument; and
 - (d) in the case of an instrument requiring information to be provided to the regulator, must specify when the information must be provided.

- (2) In the case of a regulatory information notice, the notice must name the network provider or the related provider to whom it applies.
- (3) In the case of a general regulatory information order, the order must specify the class of network providers, or related providers, to whom the order applies.

10M Further provision about the information that may be specified in a regulatory information instrument

Without limiting section 10L(1)(a), the information that may be required to be provided to the regulator, or to be prepared, maintained or kept, may include:

- (a) historic, current and forecast information (including financial information);
- (b) information that is or may be derived from other information in the possession or control of the network provider or the related provider to whom the instrument applies;
- (c) information to enable the regulator to verify whether the network provider to whom the instrument applies is or has been complying with a requirement under this Act relating to:
 - (i) the operational and structural separation of the network provider's business; or
 - (ii) arrangements between the network provider and an associate that provides network services;
- (d) information to enable the regulator to verify compliance with any requirements under this Act for the allocation of costs between services that are necessary or incidental to the supply of electricity to consumers, including network services and the generation and sale of electricity.

10N Further provision about manner in which information must be provided to regulator or kept

Without limiting section 10L(1)(b), a regulatory information instrument may require that the information specified in the instrument:

- (a) be provided to the regulator, or prepared, maintained or kept, on an annual basis or some other basis, including on the occurrence of a specified event or a state of affairs;
- (b) be provided to the regulator, or prepared, maintained or kept, in accordance with the Regulations;

- (c) be provided to the regulator, or prepared, maintained or kept, in accordance with any document, code, standard, rule, specification or method formulated, issued, prescribed or published by the regulator or any person, authority or body whether:
 - (i) wholly or partially or as amended by the instrument; or
 - (ii) as formulated, issued, prescribed or published at the time the instrument is served or published or at any time before the instrument is served or published; or
 - (iii) as amended from time to time;
- (d) be verified by way of statutory declaration by an officer of the network provider, or of a related provider, to whom the instrument applies;
- (e) be audited:
 - (i) by a class of person specified in the instrument before it is provided to the regulator; and
 - (ii) at the expense of the network provider or related provider to whom the instrument applies.

Example for section 10N(c)

The regulator may require a network provider to provide information in a form and manner that complies with relevant accounting standards.

Subdivision 4 Compliance with regulatory information instruments

10P Compliance with regulatory information notice that is served

- (1) On being served a regulatory information notice, a person named in the notice must comply with the notice.
- (2) This section is a civil penalty provision.

10Q Compliance with general regulatory information order

- (1) On publication of a general regulatory information order in accordance with section 10J(1), a person who is a member of the class of person to which a general regulatory information order applies must comply with the order.
- (2) Subsection (1) does not apply to a person who has been given an exemption under section 10R.

- (3) This section is a civil penalty provision.

10R Exemptions from compliance with general regulatory information order

- (1) The regulator may exempt a person, or a class of person, from complying with section 10Q:
- (a) unconditionally or on specified conditions; or
 - (b) wholly or to the extent as is specified in the exemption.
- (2) An exemption under this section must be in writing.

10S Assumptions where there is non-compliance with regulatory information instrument

- (1) This section applies if:
- (a) under a regulatory information instrument the regulator:
 - (i) requires a network provider to provide information to the regulator for the purpose of enabling the regulator to make an economic regulatory decision relating to the network provider; or
 - (ii) requires a related provider to provide information to the regulator that is relevant to the making of an economic regulatory decision relating to a network provider; and
 - (b) the network provider or related provider:
 - (i) does not provide the information to the regulator in accordance with the applicable regulatory information instrument; or
 - (ii) provides information that is insufficient (when compared to what was requested under the applicable regulatory information instrument).
- (2) Without limiting sections 10P and 10Q and despite anything to the contrary in this Act, the regulator:
- (a) may make the economic regulatory decision on the basis of the information the regulator has at the time it makes that decision; and
 - (b) in making that decision, may make reasonable assumptions (including assumptions adverse to the interests of the network provider) in respect of the matters the information required

under the regulatory information instrument would have addressed had that information been provided as required.

Subdivision 5 General

10T Person cannot rely on duty of confidence to avoid compliance with regulatory information instrument

- (1) A person must not refuse to comply with a regulatory information instrument on the ground of any duty of confidence.
- (2) A person incurs, by complying with a regulatory information instrument, no liability for breach of contract, breach of confidence or any other civil wrong.

10U Legal professional privilege not affected

A regulatory information instrument, and sections 10P and 10Q, are not to be taken as requiring a person to:

- (a) provide to the regulator information that is the subject of legal professional privilege; or
- (b) produce a document to the regulator the production of which would disclose information that is the subject of legal professional privilege.

10V Protection against self-incrimination

- (1) It is a reasonable excuse for an individual to whom section 10P applies not to comply with a regulatory information notice served on the person requiring the person to provide information to the regulator if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of the Territory or another jurisdiction in Australia.
- (2) It is a reasonable excuse for an individual to whom section 10Q applies not to comply with a general regulatory information order made requiring the person to provide information to the regulator if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of the Territory or another jurisdiction in Australia.

Division 4 Offences

11A False and misleading information

A person must not give information that is misleading in a material particular to the regulator under this Act.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

11B Intimidation to prevent cooperation with regulator

(1) A person (**person A**) must not cause, or threaten to cause, harm to another person (**person B**):

- (a) with intent to discourage person B from cooperating with the regulator; or
- (b) in retribution for person B's having cooperated with the regulator.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) For subsection (1)(b), it is immaterial whether person B intended to cooperate, or had cooperated, with the regulator.

(3) In this section:

cooperate with the regulator includes:

- (a) complying with a requirement under this Part to give information to the regulator; and
- (b) voluntarily providing information to the regulator.

Part 3B Use and disclosure of information

Division 1 Use of information by regulator

12A Use of information

The regulator may use information obtained by it:

- (a) in the exercise of its powers or performance of its functions under Part 3A; or
- (b) otherwise in connection with the administration of this Act;

for any purposes connected with the exercise of its powers or performance of its functions under this Act or the *National Electricity (Northern Territory) (National Uniform Legislation) Act*.

Division 2 Performance reports

13A Preparation of performance reports

- (1) Subject to this section, the regulator may prepare a report on the financial performance or operational performance of one or more network providers in providing network services.
- (2) A report prepared under this section may:
 - (a) deal with the financial or operational performance of the network provider in relation to:
 - (i) complying with service standards; and
 - (ii) standards relating to the provision of network services to network users; and
 - (iii) the profitability of network providers in providing network services; and
 - (b) if the regulator considers it appropriate, deal with the performance of the network provider in relation to other matters or things if that performance is directly related to the performance by the regulator of a function mentioned in section 5A(b).
- (3) A report prepared under this section may include:
 - (a) information provided to the regulator by a person in compliance with a regulatory information instrument; and
 - (b) in the case of a report dealing with the financial performance of one or more network providers, a comparison of the profitability of the network providers to which the report relates from the provision of network services by them.
- (4) Before preparing a report under this section, the regulator must, in accordance with the Regulations, consult with the persons or bodies specified by the Regulations.
- (5) The regulator may publish a report prepared under this section on its website.

Division 3 Disclosure of confidential information held by regulator

Subdivision 1 Requirement to keep information confidential

14A Confidentiality

Section 44AAF of the *Competition and Consumer Act 2010* (Cth) has effect for the purposes of this Act as if it formed part of this Act.

Note for section 14A

Section 44AAF requires the AER to take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence or obtained by compulsion. Disclosure of information as required or permitted by a law of the Commonwealth, a State or Territory, is taken to be authorised use and disclosure of the information.

Subdivision 2 Authorised disclosure of confidential information

14B Authorised disclosure of information given to regulator in confidence

The regulator is authorised to disclose information given to it in confidence in, or in connection with, the exercise of its powers or performance of its functions under this Act subject to and in accordance with this Part.

14C Disclosure with prior written consent is authorised

The regulator is authorised to disclose information given to it in confidence if the regulator has the written consent to do so of:

- (a) the person who gave the information; or
- (b) the person from whom the person referred to in paragraph (a) received that information.

14D Disclosure for purposes of proceedings and to accord natural justice

The regulator is authorised to disclose information given to it in confidence:

- (a) for the purposes of civil or criminal proceedings; or
- (b) for the purposes of according natural justice to a person affected by a decision (however described) of the regulator under this Act.

14E Disclosure of information given to regulator with confidential information omitted

- (1) This section applies if:
 - (a) in compliance with this Act or voluntarily, a person gives the regulator information in confidence; and
 - (b) that information is contained in a document with other information.
- (2) The regulator may disclose the document with the information given in confidence omitted.
- (3) The regulator must include a note at the place in the document from which the information given in confidence is omitted to the effect that that information has been omitted from the document.

14F Disclosure of information given in confidence does not identify anyone

The regulator is authorised to disclose the information given to it in confidence, in compliance with this Act or voluntarily, if:

- (a) it does not disclose any elements of the information that could lead to the identification of the person to whom that information relates; or
- (b) the manner in which it discloses the information does not identify the person to whom that information relates.

14G Disclosure of information that has entered the public domain

The regulator is authorised to disclose information given to it in confidence, in compliance with this Act or voluntarily, if the information is already in the public domain.

14H Disclosure of confidential information authorised if detriment does not outweigh public benefit

- (1) Despite section 14E, 14F or 14G but subject to this section, the regulator is authorised to disclose information given to it in confidence after the restricted period if the regulator is of the opinion:
 - (a) that the disclosure of the information would not cause detriment to the person who has given it or to the person from whom that person received it; or

- (b) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.
- (2) Before disclosing the information, the regulator must give the person who gave the information:
 - (a) a written notice (an **initial disclosure notice**) stating:
 - (i) that the regulator wishes to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that the regulator is of the opinion required by subsection (1); and
 - (iii) that the person, within the period specified in the notice, may make representations to the regulator not to disclose the information; and
 - (b) the regulator's decision, in writing, setting out the reasons why the regulator:
 - (i) wishes to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).
- (3) If the regulator is aware that the person who gave the information in turn received the information from another person and is aware of that other person's identity and address, the regulator must, before disclosing the information give that other person:
 - (a) a written notice (an **initial disclosure notice**) stating:
 - (i) that the regulator wishes to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that the regulator is of the opinion required by subsection (1); and
 - (iii) that the person, within the period specified in the notice, may make representations to the regulator not to disclose the information; and
 - (b) the regulator's decision, in writing, setting out the reasons why the regulator:
 - (i) wishes to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).

- (4) The regulator must consider every representation made to it by a person given an initial disclosure notice within the time specified in the notice.
- (5) The period of time specified in an initial disclosure notice must not be less than 5 business days after the date the initial disclosure notice is given to the person.
- (6) If after considering the representations, the regulator wishes to disclose the information, the regulator must give the person given the initial disclosure notice:
- (a) a written notice (a **further disclosure notice**) stating:
 - (i) that the regulator wishes to disclose the information, specifying the nature of the intended disclosure; and
 - (ii) that the regulator is of the opinion required by subsection (1); and
 - (b) the regulator's decision, in writing, setting out the reasons why the regulator:
 - (i) wishes to make the disclosure; and
 - (ii) is of the opinion required by subsection (1).
- (7) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the regulator wishes to disclose it cannot cause detriment to any person referred to in subsection (2) or (3).
- (8) In this section:

restricted period means a period of 5 business days after:

- (a) an initial disclosure notice has been given under this section;
or
 - (b) a further disclosure notice has been given under this section;
- whichever is the later.

Subdivision 3 Information sharing with regulator

14J Disclosure by Territory authority to regulator

- (1) A Territory authority is authorised to disclose to the regulator information in the possession of the Territory authority that is reasonably required by the regulator for the administration of this Act.
- (2) The regulator may use the information for any purpose connected with the administration of this Act.
- (3) The Territory authority may impose conditions to be complied with in relation to the information.
- (4) If a person discloses information under this section in good faith:
 - (a) the person is not civilly or criminally liable for doing so; and
 - (b) the disclosure does not constitute a breach of any obligation of confidentiality.
- (5) In this section:

electricity Act means one of the following:

- (a) this Act;
- (b) the *Electricity Reform Act*;
- (c) the *Utilities Commission Act*.

Territory authority means one of the following:

- (a) the Utilities Commission;
- (b) the electricity safety regulator (as defined in section 4(1) of the *Electricity Reform Act*);
- (c) a Minister;
- (d) the CEO of the Agency administering an electricity Act.

Note for section 14J

Under section 44AAF of the Competition and Consumer Act 2010 (Cth), the AER is authorised to disclose information to persons or bodies listed in that section or prescribed by regulations under that Act.

21 Section 16 amended

Section 16

omit

regulator

insert

Minister

22 Part 5 heading amended

Part 5, heading, at the end

insert

of access agreements and awards

23 Section 19 amended

(1) Section 19(1)

omit, insert

(1) The Supreme Court may grant an injunction:

- (a) restraining a person from contravening a provision of an access agreement or award; or
- (b) requiring a person to comply with a provision of an access agreement or award; or
- (c) suspending rights under, or terminating, an access agreement or award.

(2) Section 19(2) and (3)

omit

the Network Access Code or

(3) Section 19(2) and (3)

omit

made under the Network Access Code

(4) After section 19(8)

insert

(9) This section does not affect any right of a party to an access agreement or award to enforce the agreement or award under the law of contract.

24 Parts 6 and 7 replaced

Parts 6 and 7

repeal, insert

Part 6 Enforcement of compliance with Act

Division 1 General

21 Instituting civil proceedings

- (1) Proceedings may not be instituted in a Territory court in respect of a breach of a provision of this Act that is not an offence provision by any person (other than the regulator) except as provided for in this Part.
- (2) A person other than the regulator (**person A**) may not, in any proceedings, seek to rely on an alleged contravention of the Network Access Code by another person (**person B**) unless:
 - (a) person A is a network participant or an access applicant; and
 - (b) person B is a network participant, an access applicant or the regulator.
- (3) To avoid doubt, nothing in this Part prevents the use of this Act as evidence in any proceedings.

Division 2 Enforceable undertakings

22 Enforceable undertakings

- (1) The regulator may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the regulator has a function or power under this Act.
- (2) A person may withdraw or vary the undertaking at any time, but only with the consent of the regulator.

- (3) If the regulator considers that the person who gave the undertaking has breached any of its terms, the regulator may apply to the Supreme Court for an order under subsection (4).
- (4) If the Supreme Court is satisfied that the person has breached a term of the undertaking, the Supreme Court may make any or all of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) an order directing the person to pay the Territory an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is attributable to the breach;
 - (c) an order that the Supreme Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Supreme Court considers appropriate.

Division 3 Proceedings for breaches of provisions that are not offences

Subdivision 1 Proceedings for breaches generally

23 Time limit within which regulator may institute proceedings

A proceeding for a breach of a provision of this Act that is not an offence provision may only be instituted by the regulator within 6 years of the date on which the breach occurred.

24 Order that person is in breach

- (1) The Supreme Court may make an order, on application by the regulator on behalf of the Commonwealth, declaring that a person is in breach of a provision of this Act that is not an offence provision.
- (2) If the order declares the person to be in breach of a provision of this Act that is not an offence provision, the order may include one or more of the following:
 - (a) an order that the person pay a civil penalty determined in accordance with this Act;
 - (b) an order that the person cease, within a specified period, the act, activity or practice constituting the breach;

- (c) an order that the person take such action, or adopt such practice, as the Supreme Court requires for remedying the breach or preventing a recurrence of the breach;
 - (d) an order that the person implement a specified program for compliance with this Act;
 - (e) an order of a kind prescribed by the Regulations.
- (3) If a person has engaged, is engaging or is proposing to engage in any conduct in breach of a provision of this Act that is not an offence provision, the Supreme Court may, on application by the regulator on behalf of the Commonwealth, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
 - (b) if, in the Supreme Court's opinion, it is desirable to do so – requiring the person to do something.
- (4) The power of the Supreme Court under subsection (3) to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the Supreme Court is satisfied that the person has engaged in conduct of that kind – whether or not it appears to the Supreme Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Supreme Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind – whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

25 Additional Court orders

An order under section 24 by the Supreme Court may, in relation to a network participant that has been declared in that order to be in breach of a provision of this Act that is not an offence provision, also include one or more of the following:

- (a) an order requiring the physical disconnection of the network participant's connection points, if that is contemplated by the Network Access Code;
- (b) an order suspending rights under, or terminating, an access agreement or award to which the network participant is a party;

- (c) if the Court is satisfied that the network participant has profited from the breach – an order that the network participant pay to the Territory an amount not exceeding the amount of the profit.

26 Orders for disconnection in certain circumstances where there is no breach

- (1) The Supreme Court, on application by the regulator on behalf of the Commonwealth, may make an order requiring the physical disconnection of a network participant's connection points if a relevant disconnection event occurs.
- (2) In this section:

relevant disconnection event means an event specified in the Network Access Code as being an event for which a network participant's connection points may be disconnected, being an event that does not constitute a breach of this Act.

27 Double jeopardy

- (1) The Court must not make a declaration that a person is in breach of a provision of this Act that is not an offence provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the breach.
- (2) Proceedings for a declaration referred to in subsection (1) are stayed if:
 - (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the breach.
- (3) The proceedings for the declaration referred to in subsection (1) may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration must be dismissed.

Subdivision 2 Matters about civil penalty provisions

28 Meaning of *civil penalty*

The ***civil penalty*** for a breach of a civil penalty provision is as follows:

- (a) for an individual:
 - (i) an amount not exceeding 860 penalty units; and

- (ii) an amount not exceeding 85 penalty units for every day during which the breach continues;
- (b) for a body corporate:
 - (i) an amount not exceeding 4 300 penalty units; and
 - (ii) an amount not exceeding 425 penalty units for every day during which the breach continues.

29 Matters for which there must be regard in determining amount of civil penalty

Every civil penalty ordered to be paid by a person declared to be in breach of a provision of this Act must be determined having regard to all relevant matters, including:

- (a) the nature and extent of the breach; and
- (b) the nature and extent of any loss or damage suffered as a result of the breach; and
- (c) the circumstances in which the breach took place; and
- (d) whether the person has engaged in any similar conduct and been found to be in breach of a provision of this Act in respect of that conduct.

30 Breach of a civil penalty provision is not an offence

A breach of a civil penalty provision is not an offence.

31 Breaches of civil penalty provisions involving continuing failure

For the purpose of determining the civil penalty for a breach of a civil penalty provision if the breach consists of a failure to do something that is required to be done, the breach is to be regarded as continuing until the act is done despite the fact that any period within which, or time before which, the act is required to be done has expired or passed.

32 Conduct in breach of more than one civil penalty provision

- (1) If the conduct of a person constitutes a breach of 2 or more civil penalty provisions, proceedings may be instituted under this Act against the person in relation to the breach of any one or more of those provisions.

- (2) However, the person is not liable to more than one civil penalty under this Act in respect of the same conduct.

33 Persons involved in breach of civil penalty provision

- (1) A person must not:
- (a) aid, abet, counsel or procure a breach of a civil penalty provision by another person; or
 - (b) be in any way directly or indirectly knowingly concerned in, or a party to, a breach of a civil penalty provision by another person.
- (2) This Act applies to a person who breaches subsection (1) in relation to a civil penalty provision as if the person were a person who has breached the civil penalty provision.

34 Attempt to breach civil penalty provision

A person who attempts to commit a breach of a civil penalty provision commits a breach of that provision.

Division 4 Other civil proceedings

35 Obligations under Act to make payments

- (1) If, under the this Act, a network participant is required to pay an amount to another network participant and that amount is not paid within 28 days after it is due in accordance with this Act, the network participant to whom the amount is due may recover that amount in a court of competent jurisdiction as a civil debt payable to them.
- (2) If, under this Act, a network participant is required to pay an amount to another network participant, and this Act does not specify a date for payment of that amount:
- (a) that amount must be paid within the period of time specified in any notice to pay issued by the network participant that specifies that amount; and
 - (b) the network participant that issued the notice to pay may, if that amount is not paid within 28 days after it is due in accordance with that notice, recover that amount in a court of competent jurisdiction as a civil debt payable to them.

- (3) Subsections (1) and (2) apply despite a network participant disputing, in accordance with this Act, an amount to be paid under this Act, or specified in a notice to pay, unless:
- (a) this Act otherwise provides; or
 - (b) the parties to the dispute agree otherwise; or
 - (c) a court of competent jurisdiction determines that subsection (1) or (2) does not apply.
- (4) In this section:

network participant includes an access applicant.

notice to pay includes a statement of payment, settlement statement, bill or invoice.

Division 5 Infringement notices for breaches of civil penalty provisions

36 Power to serve a notice

- (1) Subject to this section, the regulator may serve an infringement notice on a person that it has reason to believe has breached a civil penalty provision.
- (2) The regulator must, however, serve an infringement notice not later than 12 months after the date on which the regulator forms a belief that there has been a breach of a civil penalty provision.
- (3) An infringement notice may be served on a person:
- (a) if the person is an individual:
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post addressed to the person to their usual or last known place of residence or business; or
 - (b) if the person is a body corporate:
 - (i) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or
 - (ii) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.

37 Form of notice

An infringement notice must state the following:

- (a) the date of the notice;
- (b) that the alleged breach is a breach of a civil penalty provision;
- (c) the nature, and a brief description, of the alleged breach;
- (d) the date, time and place of the alleged breach;
- (e) the infringement penalty for the alleged breach;
- (f) the manner in which the infringement penalty may be paid;
- (g) the time (being not less than 28 days after the date on which the notice is served) within which the infringement penalty must be paid;
- (h) that, if the amount of the infringement penalty is paid before the end of the time specified in the notice, proceedings will not be instituted in respect of the alleged breach by the regulator unless the notice is withdrawn before the end of that time in accordance with section 41;
- (i) that the person is entitled to disregard the notice and defend any proceedings in respect of the civil penalty provision;
- (j) any other particulars prescribed by the Regulations.

38 Infringement penalty

The ***infringement penalty*** for a breach of a civil penalty provision is:

- (a) if the breach is alleged to have been committed by an individual – 86 penalty units or any lesser number of units prescribed by the Regulations in relation to the civil penalty provision; and
- (b) if the breach is alleged to have been committed by a body corporate – 430 penalty units or any lesser number of units prescribed by the Regulations in relation to the civil penalty provision.

39 Regulator cannot institute proceedings while infringement notice on foot

On serving an infringement notice under this Division, the regulator must not institute a proceeding in respect of the breach for which the infringement notice was served if:

- (a) the time for payment stated in the infringement notice has not expired; and
- (b) the infringement notice has not been withdrawn by the regulator in accordance with section 41.

40 Late payment of penalty

The regulator may accept payment of the infringement penalty even after the expiration of the time for payment stated in the infringement notice if:

- (a) a proceeding has not been instituted in respect of the breach to which the infringement penalty relates; and
- (b) the infringement notice has not been withdrawn by the regulator in accordance with section 41.

41 Withdrawal of notice

- (1) The regulator may withdraw an infringement notice at any time before the end of the time for payment specified in the notice by serving a withdrawal notice on the person served with the infringement notice.
- (2) A withdrawal notice may be served on a person:
 - (a) if the person is an individual:
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post addressed to the person to their usual or last known place of residence or business; or
 - (b) if the person is a body corporate:
 - (i) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or
 - (ii) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.

- (3) An infringement notice may be withdrawn even if the infringement penalty has been paid.

42 Refund of infringement penalty

If an infringement notice is withdrawn in accordance with section 41, the amount of any infringement penalty paid must be refunded by the regulator.

43 Payment expiates breach of civil penalty provision

No proceedings may be taken by the regulator against a person on whom an infringement notice was served in respect of an alleged breach of a civil penalty provision if:

- (a) both:
- (i) the infringement penalty has been paid within the time for payment stated in the notice; and
 - (ii) the infringement notice has not been withdrawn in accordance with section 41; or
- (b) the infringement penalty has been accepted in accordance with section 40.

44 Payment not to have certain consequences

The payment of an infringement penalty under this Division is not and must not be taken to be an admission of a breach of a civil penalty provision or an admission of liability for the purpose of any proceeding instituted in respect of the breach.

45 Conduct in breach of more than one civil penalty provision

- (1) If the conduct of a person constitutes a breach of 2 or more civil penalty provisions, an infringement notice may be served on the person under this Division in relation to the breach of any one or more of those provisions.
- (2) However, the person is not liable to pay more than one infringement penalty in respect of the same conduct.

Division 6 Liability of bodies corporate, officers and employees

46 Offences and breaches of civil penalty provisions by body corporate

- (1) If a body corporate contravenes an offence provision or is in breach of a civil penalty provision, each officer of the body corporate is to be taken to have contravened the offence provision or to have been in breach of the civil penalty provision if the officer knowingly authorised or permitted the contravention or breach.
- (2) An officer of a body corporate may be proceeded against under an offence provision or civil penalty provision pursuant to this section whether or not the body corporate has been proceeded against under the provision.
- (3) Nothing in this section affects the liability of a body corporate for a contravention of an offence provision or for a breach of a civil penalty provision.

47 Body corporate also in breach if officers and employees are in breach

If an officer or employee of a body corporate commits an act in his or her capacity as officer or employee of the body corporate that would, if that act were committed by the body corporate, constitute a breach of a provision of this Act, the body corporate is taken to have contravened that provision.

Division 7 Evidentiary matters

48 Evidentiary certificates

- (1) In any proceedings under this Act, a certificate signed or purported to be signed by an AER officer, stating any of the following matters is evidence of the matter:
 - (a) a stated document is one of the following things made, issued, developed, prepared, served or given under this Act:
 - (i) a decision or determination (however described);
 - (ii) an authorisation under section 8A;
 - (iii) a general regulatory information order;
 - (iv) a notice, notification, direction or requirement;

- (b) a stated document is a copy of a thing referred to in paragraph (a);
- (c) on a stated day, a person was or was not:
 - (i) given a decision or determination (however described);
 - (ii) an authorised person;
 - (iii) served a notice under section 9A or a regulatory information notice;
 - (iv) notified under section 10K;
- (d) on a stated day any of the following were published on the regulator's website:
 - (i) a decision or determination (however described);
 - (ii) a general regulatory information order;
 - (iii) a notice calling for submissions in relation to a decision of the regulator under this Act.

(2) In this section:

AER officer means one of the following:

- (a) an AER member (as defined in section 4(1) of the *Competition and Consumer Act 2010* (Cth));
- (b) an SES employee or acting SES employee (both as defined in section 7 of the *Public Service Act 1999* (Cth)) who is assisting the regulator as mentioned in section 44AAC of the *Competition and Consumer Act 2010* (Cth).

Part 7 Miscellaneous

49 Money payable to Territory

- (1) All money payable under this Act (including fines, civil penalties, amounts payable under section 22(4)(b) and infringement penalties) is payable to the Territory.
- (2) Subsection (1) does not apply to money payable by a network participant or access applicant to another person who is a network participant or access applicant.

50 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power under this Act as any of the following:
 - (a) an AER member (as defined in section 4(1) of the *Competition and Consumer Act 2010* (Cth));
 - (b) a person assisting the regulator under section 44AAC of the *Competition and Consumer Act 2010* (Cth);
 - (c) an authorised person;
 - (d) an arbitrator appointed under the Network Access Code.
- (2) In addition, a person mentioned in subsection (1) is not civilly or criminally liable for an act done or omitted to be done by the regulator in the exercise of a power under this Act.
- (3) Subsections (1) and (2) do not affect any liability the Territory or the regulator would, apart from those subsections, have for the act or omission.
- (4) A person is not civilly or criminally liable for anything done by the person in good faith as any of the following:
 - (a) a system controller;
 - (b) a network provider;
 - (c) an officer or employee of a system controller or network provider.
- (5) In this section:

exercise of a power means the exercise, or purported exercise of a power or the performance or purported performance of a function.

Network Access Code action means an act done or omitted to be done:

- (a) in the exercise of a power under the Network Access Code; or
- (b) in connection with a network provider providing, or not providing, network services under an access agreement or award.

51 Confidentiality of information

- (1) A person who obtains information in the course of performing functions connected with the administration of this Act must not disclose that information other than in accordance with this section.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) The person may disclose the information if:
- (a) the disclosure is expressly authorised under this Act; or
 - (b) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or
 - (c) the information is otherwise available to the public.
- (3) This section does not apply in relation to a person who is a Commonwealth officer as defined in section 3(1) of the *Crimes Act 1914* (Cth).

Notes for section 51

- 1 *In addition to the circumstances mentioned in subsection (2), a person who discloses confidential information will not be guilty of an offence if the disclosure is authorized, justified or excused (see section 23 of the Criminal Code).*
- 2 *Commonwealth officers are subject to section 70 of the Crimes Act 1914 (Cth) relating to the disclosure of information by Commonwealth officers.*

52 Publication on regulator's website

- (1) For the purposes of this Act, a document that is required by this Act to be published on the regulator's website is to be taken to be published on the website if:
- (a) the document is made accessible in full on the website; or
 - (b) notice of the making of the document is made accessible on the website and the document is made accessible separately in full on that website or in any other identified location.

- (2) The date on which the document is published on the website is the date notified by the regulator on the website as the date of the document's publication (being not earlier than the date on which it was first made so accessible).

53 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) Regulations may provide for provisions in the regulations to be civil penalty provisions.
- (3) If Part 3 or Part 6, Division 1, 1A, 2, 4, 5 or 6 of the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA) is amended, regulations may amend this Act:
- (a) to amend the provisions of this Act in a way that corresponds with those amendments to the National Electricity Law; and
 - (b) to provide for matters of a transitional nature consequent on the amendments mentioned in paragraph (a).

Part 8 Transitional provisions for National Electricity (Northern Territory) (National Uniform Legislation) Act 2015

Division 1 Preliminary matters

54 Definitions

In this Part:

2015 Act means Part 5 of the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*.

former, in relation to a provision of this or another Act, means that provision as in force before 1 July 2015.

in force, includes has ongoing effect.

Utilities Commission, see section 3 of the *Utilities Commission Act*.

Division 2 Continuation provisions

55 Continuation of *Gazette* notices for prescribed networks

On 1 July 2015, a *Gazette* notice made under former section 5 that was in force immediately before 1 July 2015 becomes a *Gazette* notice under section 4A.

56 Continuation of *Gazette* notices made for Network Access Code

(1) On 1 July 2015, an ongoing notice becomes a *Gazette* notice under the provision of the Network Access Code for the purposes of which it was made.

(2) In this section:

ongoing notice means a *Gazette* notice made under former section 7 for the purposes of a provision of the Network Access Code that was in force immediately before 1 July 2015.

57 Continuation of network pricing determination

(1) On 1 July 2015, an ongoing network pricing determination becomes a network pricing determination made under section 6A(1).

(2) In this section:

ongoing network pricing determination means a determination that:

(a) was made by the Utilities Commission under this Act and the *Utilities Commission Act* for the purposes of Chapter 6 of the Network Access Code; and

(b) was in force immediately before 1 July 2015.

58 Continuation of other economic regulatory determinations

(1) On 1 July 2015, an ongoing determination becomes a determination made under section 6A(2).

(2) In this section:

ongoing determination means a determination (other than an ongoing network pricing determination as defined in section 57(2)) that:

(a) was made by the Utilities Commission under this Act or the *Utilities Commission Act* or both; and

- (b) relates to a matter in relation to which a determination could be made under section 6A(2); and
- (c) was in force immediately before 1 July 2015.

59 Continuation of guidelines

- (1) On 1 July 2015, ongoing guidelines relating to a function of the regulator before 1 July 2015 become guidelines made under section 5G relating to the comparable function of the regulator on or after 1 July 2015.
- (2) In this section:

ongoing guidelines means guidelines that:

- (a) were published by the Utilities Commission (whether under this Act, the Network Access Code or the *Utilities Commission Act*) before 1 July 2015; and
- (b) relate to the regulator's functions under this Act; and
- (c) were in force immediately before 1 July 2015.

60 Continuation of statements and reports

- (1) On 1 July 2015, an ongoing statement relating to a function of the regulator before 1 July 2015 becomes a statement published under section 5H relating to the comparable function of the regulator on or after 1 July 2015.
- (2) In this section:

ongoing statement means a statement or report that:

- (a) was published by the Utilities Commission under section 7 of the *Utilities Commission Act* before 1 July 2015; and
- (b) relates to the regulator's functions under this Act; and
- (c) was in force immediately before 1 July 2015.

61 Continuation of ongoing things relating to regulator

- (1) This section applies if:
 - (a) immediately before 1 July 2015 an existing thing had a particular effect; and
 - (b) something having a comparable effect could be made by, or done by or in relation to, the regulator on 1 July 2015.

(2) On 1 July 2015, the existing thing becomes a thing made by, or done by or in relation to, the AER as regulator and having that comparable effect.

(3) In this section:

discontinued thing means one of the following:

- (a) a direction given under former section 11;
- (b) a delegation under former section 12;
- (c) a delegation under section 16 of the *Utilities Commission Act* to the extent it relates to this Act;
- (d) a request given under former section 13(1).

existing thing means anything that:

- (a) was made by, or done by or in relation to, the Utilities Commission as regulator before 1 July 2015; and
- (b) was in force immediately before 1 July 2015; and
- (c) is not the subject of another provision in this Part; and
- (d) is not a discontinued thing.

62 References to Utilities Commission in documents

(1) A reference in a continuing document to the Utilities Commission in its capacity as regulator includes, in relation to a time on or after 1 July 2015, a reference to the AER as regulator, unless the context otherwise requires.

(2) In this section:

continuing document means a document that was made before 1 July 2015 and that has effect on or after 1 July 2015.

Division 3 Transitional obligations of Utilities Commission

63 Final annual report

On or before the 30 September 2015, the Utilities Commission must give to the Minister a report on the work it carried out as regulator during the financial year ending on 30 June 2015.

64 Utilities Commission to give information to AER

Before, or as soon as practicable after, 1 July 2015 the Utilities Commission must give to the AER all information obtained by the Utilities Commission as regulator that the AER might reasonably need in order to perform its functions as regulator.

Division 4 Other transitional matters

65 Appeals

- (1) Former section 14 and former Part 6 of the *Utilities Commission Act* (the **former appeal provisions**) continue to apply in relation to a decision made before 1 July 2015 as if the 2015 Act had not been enacted.
- (2) For the purposes of any appeal under the former appeal provisions, the Utilities Commission is taken to continue to be the regulator as if the 2015 Act had not been enacted.

66 Transitional regulation making power

- (1) The Administrator may make regulations under this section to provide for a matter of a transitional nature because of the enactment of the 2015 Act.
- (2) The Regulations may modify a provision of this Part in relation to anything that, in the Administrator's opinion, is not, or is not adequately or appropriately, dealt with in this Part.
- (3) The Regulations may have retrospective operation to a day not earlier than 1 July 2015.
- (4) However, to the extent to which the Regulations have retrospective operation, they do not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (5) The Regulations section must declare that they are made under this section.

25 Schedule, heading amended

Schedule, heading

omit

section 4

insert

section 4A

26 Schedule, clause 1 amended

(1) Schedule, clause 1(1)

omit, insert

(1) This Code deals with access to NAC electricity networks.

(2) Schedule, clause 1(2)

omit

all words from "at times" to "Act"

(3) Schedule, clause 1(4)

omit

27 Schedule, clause 2A inserted

After Schedule, clause 2

insert

2A Application to NAC electricity networks

(1) This Code applies in relation to an NAC electricity network.

(2) In this Code:

(a) a reference to an **electricity network** is a reference to an NAC electricity network; and

(b) a reference to a **network provider, network user, system controller** or other **electricity entity** is a reference to a person or entity of that kind that uses an NAC electricity network.

28 Schedule, clause 3 amended

- (1) Schedule, clause 3, definitions **access dispute**, **electricity network** or **electricity network assets/facilities**, **network provider**, **network user**, **out-of-balance power**, **PAWC Networks**, **Power and Water Corporation**, **power system controller**, **prescribed**, **regulator** and **Regulatory Minister**

omit

- (2) Schedule, clause 3

insert (in alphabetical order)

Network Technical Code, for a network, see section 66A(2) of the *Electricity Reform Act*.

prescribed means prescribed by the Minister by *Gazette* notice.

System Control Technical Code, see section 38(1) of the *Electricity Reform Act*.

- (3) Schedule, clause 3, definition **capital contribution**

omit (second reference)

assets

- (4) Schedule, clause 3, definition **power system**

omit (second reference)

facilities

- (5) Schedule, clause 3, definition **pricing schedule**

omit

, or with respect to out-of-balance energy supplied

- (6) Schedule, clause 3, definition **reference tariff**

omit

PAWC Networks

insert

a network provider

(7) Schedule, clause 3, definition **regulatory control period**

omit

all words from "held" to "1 July 2004."

insert

held constant. The first regulatory control period is the period between commencement of the Code and 30 June 2004, the second and third regulatory control periods are the five yearly periods commencing 1 July 2004 and 1 July 2009 and the fourth regulatory control period is the period commencing on 1 July 2014.

(8) Schedule, clause 3, definition **use of network services**

omit

electricity network facilities

insert

an electricity network

29 Schedule, clause 4 amended

Schedule, clause 4(2)

omit

both network access services and out-of-balance energy

insert

network access services

30 Schedule, clause 6 amended

(1) Schedule, clause 6(1)

omit

(1)

(2) Schedule, clause 6(2)

omit

31 Schedule, clause 7 amended

Schedule, clause 7(3)

omit

32 Schedule, clauses 7A to 9 replaced

Schedule, clauses 7A to 9

omit, insert

9 Provider to comply with good electricity industry practice

The network provider must comply with good electricity industry practice when providing network access services and in planning, operating, maintaining, developing and extending the electricity network.

33 Schedule, clause 19 amended

Schedule, clause 19(3)(a), after "Chapter 3"

insert

and any regulations made under section 111(2)(d) of the *Electricity Reform Act*

34 Schedule, clause 22 amended

Schedule, clause 22(3)

omit, insert

- (3) If the applicant and network provider cannot agree on the amount payable under subclause (1), the regulator may determine that amount having regard to what would be fair and reasonable in the circumstances.

35 Schedule, clauses 23A, 25A to 30, 32 and 33 repealed

Schedule, clauses 23A, 25A to 30, 32 and 33

repeal

36 Schedule, clause 35 amended

Schedule, clause 35

omit

access dispute

insert

access dispute

37 Schedule, clause 53 amended

Schedule, clause 53, heading

omit

access

38 Schedule, clause 60 amended

(1) Schedule, clause 60(2)

omit

both

(2) Schedule, clause 60(2)

omit

and the pricing of out-of-balance energy

39 Schedule, clause 61 amended

(1) Schedule, clause 61(1)

omit

regulated

insert

network access

(2) Schedule, clause 61(2)(a)

omit

Regulatory

(3) Schedule, clause 61(2)(a), at the end

insert

and

(4) Schedule, clause 61(2)(b)

omit

provider; and

insert

provider.

(5) Schedule, clause 61(2)(c) and (4)

omit

40 Schedule, clause 62 amended

(1) Schedule, clause 62(1)(b), at the end

insert

and

(2) Schedule, clause 62(1)(c)

omit

charges; and

insert

charges.

(3) Schedule, clause 62(1)(d)

omit

(4) After Schedule, clause 62(2)

insert

(3) If a person applies to the regulator for approval under this Part the regulator must give notice in writing to the applicant of its decision to grant or not to grant the approval.

41 Schedule, clause 63 amended

- (1) Schedule, clause 63(aa)
omit
a regulated
insert
a network access
- (2) Schedule, clause 63(aa)
omit
regulated (*second reference*)

42 Schedule, clause 65 amended

- (1) Schedule, clause 65(1)(a)
omit
Chapters 7 and 9
insert
Chapter 7 and any regulations made under section 111(2)(d) of the *Electricity Reform Act*
- (2) Schedule, clause 65(1)(b)
omit
his of
insert
his or

43 Schedule, clause 79 amended

- Schedule, clause 79(2A)
omit
network technical code and network planning criteria
insert
Network Technical Code

44 Schedule, Chapter 9 and Schedules 1 and 13 repealed

Schedule, Chapter 9 and Schedules 1 and 13

repeal

Division 2 Electricity Reform Act

45 Act amended

This Division amends the *Electricity Reform Act*.

46 Section 4 amended

- (1) Section 4(1), definitions **Network Access Code** and **network provider**

omit

- (2) Section 4(1)

insert (in alphabetical order)

Network Access Code, see section 2A of the *Electricity Networks (Third Party Access) Act*.

network provider means a person licensed under Part 3 to operate an electricity network.

Network Technical Code, see section 66A(2).

System Control Technical Code, see section 38(1).

- (3) Section 4(1), definition **access agreement**

omit

access

47 Section 19 amended

Section 19(7), definition **administrative costs**

omit

, the *Electricity Networks (Third Party Access) Act* or the Network Access Code

48 Section 27 amended

Section 27(1)(a)(iii) and (c)

omit

network

insert

electricity

49 Section 29 amended

Section 29(b) and (c)

omit

can not

insert

cannot

50 Section 38 amended

(1) Section 38(1), after "code"

insert

(the **System Control Technical Code**)

(2) After section 38(1)

insert

(1A) As soon as practicable after the System Control Technical Code is approved, the system controller must give a copy of it to the regulator under the *Electricity Networks (Third Party Access) Act*.

51 Section 40 amended

Section 40(2)(a)

omit

Network Access Code

insert

Electricity Networks (Third Party Access) Act

52 Section 42 amended

Section 42(5)

omit

and any other Act, the conditions of the licence and the Network Access Code

insert

(including the conditions of the licence), the *Electricity Networks (Third Party Access) Act* and any other Act

53 Section 43 amended

(1) Section 43(a), at the end

insert

and

(2) Section 43(b)

omit

54 Part 4, Division 6 inserted

After section 66

insert

Division 6 Network Technical Codes

66A Network provider to publish Network Technical Code

- (1) This section applies in relation to an NAC electricity network (as defined in section 2A of the *Electricity Networks (Third Party Access) Act*).
- (2) The network provider for the network must prepare and make publicly available a network technical code and network planning criteria (the **Network Technical Code**) for the network.
- (3) The Network Technical Code must cover the requirements set out in Schedule 2.

- (4) Before making or amending the Network Technical Code, the network provider must:
 - (a) consult:
 - (i) the Utilities Commission; and
 - (ii) the regulator under the *Electricity Networks (Third Party Access) Act* as to whether the proposed Network Technical Code or proposed amendments contain provisions inconsistent with the objectives of the Network Access Code; and
 - (b) change the proposed Network Technical Code or proposed amendments if required by the Utilities Commission or regulator.
- (5) Before amending the Network Technical Code in a material way, the network provider must:
 - (a) make publicly available details of the proposed amendments; and
 - (b) allow a reasonable time for persons affected to comment on the proposed amendments.
- (6) As soon as practicable after making or amending the Network Technical Code, the network provider must give a copy of it to the Utilities Commission or regulator.
- (7) The network provider must provide a copy of the Network Technical Code to any network user or access applicant (as defined in the Network Access Code) who requests it.

55 Section 72 amended

Section 72(2)

omit

not be)

insert

not) be

56 Section 111 amended

After section 111(2)(c)

insert

(d) system control and electricity market operations;

57 Section 112 amended

Section 112

omit

the Schedule

insert

Schedule 1

58 Part 9 inserted

After section 113

insert

**Part 9 Transitional provisions for National Electricity
(Northern Territory) (National Uniform
Legislation) Act 2015**

114 Definitions

In this Part:

2015 Act means Part 5 of the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*.

115 Continuation of network technical codes

(1) On 1 July 2015, an existing technical code for a network becomes a Network Technical Code in force under section 66A for that network.

(2) In this section:

existing technical code means a network technical code and network planning criteria that are in force under clause 9 of the Network Access Code immediately before 1 July 2015.

116 References to transferred provisions

- (1) A reference in an existing document to clause 9(2) to (6) of the Network Access Code includes a reference to section 66A, unless the context otherwise requires.
- (2) A reference in an existing document to a provision of Chapter 3 (other than clauses 24, 25, 31 and 34) or Chapter 9 of the Network Access Code includes a reference to the corresponding provision of any regulations made under section 111(2)(d), unless the context otherwise requires.
- (3) In this section:

existing document means an Act or other document that was made before 1 July 2015.

59 Schedule amended

Schedule, heading, after "Schedule"

insert

1

60 Schedule 2 inserted

After the Schedule

insert

Schedule 2 Operational and technical requirements for access

section 66A

1 Network Technical Code

The Network Technical Code for a network must contain the following:

- (a) performance standards in respect of service quality parameters in relation to the electricity network;
- (b) the technical requirements that apply to the design or operation of plant or equipment connected to the electricity network;

- (c) requirements relating to the operation of the electricity network (including the operation of the network in emergency situations);
- (d) obligations to test plant or equipment in order to demonstrate compliance with the Network Technical Code;
- (e) procedures that apply if the network provider believes that an item of plant or equipment does not comply with the requirements of the Network Technical Code;
- (f) requirements relating to the inspection of plant or equipment connected to the electricity network;
- (g) requirements that relate to control and protection settings for plant or equipment connected to the electricity network;
- (h) procedures that apply in the case of commissioning and testing of new plant or equipment connected to the electricity network;
- (j) aside from matters appropriately dealt with in the System Control Technical Code, procedures that apply to the disconnection of plant or equipment from the electricity network;
- (k) aside from matters appropriately dealt with in the System Control Technical Code, procedures relating to the operation of generating units connected to the electricity network (including the giving of dispatch instructions and compliance with those instructions);
- (m) metering requirements in relation to connections;
- (n) the information required to be provided to the access provider in relation to the operation of plant or equipment connected to the electricity network at a connection and how and when that information is to be provided.

2 Network planning criteria

The network planning criteria for a network must be consistent with the Network Technical Code for the network and must contain the following:

- (a) contingency criteria;
- (b) steady-state criteria including:
 - (i) voltage limits; and

- (ii) thermal rating criteria; and
- (iii) fault rating criteria;
- (c) stability criteria including:
 - (i) transient stability criteria; and
 - (ii) voltage stability criteria;
- (d) quality of supply criteria including:
 - (i) voltage fluctuation criteria; and
 - (ii) harmonic voltage criteria; and
 - (iii) harmonic current criteria; and
 - (iv) voltage unbalance criteria; and
 - (v) electro-magnetic interference criteria;
- (e) construction standards criteria;
- (f) environmental criteria.

Division 3 Expiry of Part

61 Expiry of Part

This Part expires on the day after it commences.

Schedule 1 Modifications to National Electricity Law

section 6

Part 1 Preliminary matters

1 Law modified

This Schedule modifies the National Electricity Law set out in the Schedule to *National Electricity (South Australia) Act 1996* (SA) for the purposes of section 6(a).

2 Expiry of certain modifications

- (1) Part 3 expires on 1 July 2019.
- (2) Part 4 expires when the National Energy Retail Law is applied in this jurisdiction.
- (3) This clause expires on the later of the expiry of Part 3 or the expiry of Part 4.

Part 2 Continuing modifications

3 Section 2 modified

- (1) Section 2(1), definitions ***distribution system***, ***interconnected national electricity system***, ***network service provider*** and ***Registered participant***

omit

- (2) Section 2(1)

insert (in alphabetical order)

distribution system means the apparatus, electric lines, equipment, plant and buildings used to convey or control the conveyance of electricity:

- (a) that the Rules specify as, or as forming part of, a distribution system; or
- (b) that is wholly within this jurisdiction and would be a distribution system as so specified if it were connected to another distribution system;

interconnected national electricity system means the interconnected transmission and distribution system in the other participating jurisdictions used to convey and control the conveyance of electricity to which are connected—

- (a) generating systems and other facilities; and
- (b) loads settled through the wholesale exchange operated and administered by AEMO in those other participating jurisdictions;

local distribution system means a distribution system declared in the application Act of this jurisdiction to be a local distribution system;

local electricity system means:

- (a) a local distribution system; and
- (b) the generating systems and other facilities owned, controlled or operated in this jurisdiction connected to that local distribution system;

network service provider means a Registered participant that owns, controls or operates a distribution system that forms part of a local distribution system;

Registered participant means a person who is licensed under Part 3 of the *Electricity Reform Act* of the Northern Territory to carry on operations in relation to a local distribution system;

Territory electricity market means all of the local electricity systems in this jurisdiction;

- (3) Section 2(1), definition **national electricity market**, paragraph (a)

omit

under this Law and the Rules

insert

in the other participating jurisdictions

4 Section 9 modified

Section 9, after "Rules"

insert

, with any modifications prescribed under section 13(2)(c) of the *National Electricity (Northern Territory) (National Uniform Legislation) Act*,

5 Part 2, heading modified

Part 2, heading

omit

National

insert

Territory

6 Section 11 modified

(1) Section 11(1)

omit

the interconnected national electricity system

insert

a local distribution system

(2) Section 11(1)(b)

omit

, or is otherwise exempted by AEMO,

(3) Section 11(2)

omit

transmission system or distribution system that forms part of the interconnected national electricity system

insert

distribution system that forms part of a local distribution system

(4) Section 11(3)
omit
, other than AEMO,

(5) Section 11(4)(b)
omit
, or is otherwise exempted by AEMO,

7 Section 12 modified

Section 12
repeal

8 Section 15 modified

Section 15(1)(e)
omit

transmission system or distribution system forming part of the interconnected transmission and distribution system

insert

distribution system forming part of a local distribution system

9 Section 16 modified

After section 16(1)
insert

(1A) For the purposes of subsection (1)(a) and (d), the AER must regard the reference in the national electricity objective to the national electricity system as a reference to a local electricity system or to all local electricity systems, as the case requires.

10 Part 5, Division 1AA inserted

Before Part 5, Division 1

insert

Division 1AA—Part has no effect

48A Part has no effect

This Part has no effect in this jurisdiction.

11 Section 49 modified

After section 49(3)

insert

- (4) For the purposes of subsection (3), AEMO must regard the reference in the national electricity objective to the national electricity system as a reference to a local electricity system or to all local electricity systems, as the case requires.

12 Section 62 modified

Section 62(b), after " AEMO"

insert

in the other participating jurisdictions

13 Section 71P modified

After section 71P(3)

insert

- (4) For the purposes of subsections (2a)(c) and (2b)(c), the Tribunal must regard the reference in the national electricity objective to the national electricity system as a reference to a local electricity system or to all local electricity systems, as the case requires.

14 Section 87 modified

Section 87, definition ***urgent Rule***, paragraph (a). after "AEMO"

insert

in the other participating jurisdictions

15 Section 108B inserted

Before section 109, in Part 8

insert

108B Part has no effect

This Part has no effect in this jurisdiction.

16 Section 118B modified

After section 118B(2)

insert

- (2A) For the purposes of subsection (2)(a), the Minister must regard the reference in the national electricity objective to the national electricity system as a reference to a local electricity system or to all local electricity systems, as the case requires.

17 Schedule 1 modified

Schedule 1, items 4, 7, 9 and 34(a), after "AEMO"

insert

in the other participating jurisdictions

18 Schedule 3, Part 1AA inserted

Schedule 3, before Part 1

insert

Part 1AA Parts 1 to 11 have no effect

1AA Parts 1 to 11 have no effect

Parts 1 to 11 of this Schedule have no effect in this jurisdiction.

Part 3 Modifications expiring on 1 July 2019

19 Section 2 modified

Section 2(1), definition *regulated distribution system operator*
omit, insert

regulated distribution system operator means an owner, controller or operator of a distribution system who is a Registered participant;

20 Part 2, Division 1AA inserted

Before Part 2, Division 1

insert

Division 1AA—Part deferred until 1 July 2019

10B Part deferred until 1 July 2019

This Part has no effect in this jurisdiction until 1 July 2019.

21 Section 15 modified

After section 15(3)

insert

- (4) Further, the AER cannot make a network revenue or pricing determination that applies to electricity network services provided in this jurisdiction for a regulatory control period (as defined in the Rules) that begins before 1 July 2019.

22 Part 8A, Division 1AA inserted

Before Part 8A, Division 1

insert

Division 1AA—Part deferred until 1 July 2019

118AA Part deferred until 1 July 2019

This Part has no effect in this jurisdiction until 1 July 2019.

23 Section 124A inserted

After section 124

insert

124A Part deferred until 1 July 2019

This Part has no effect in this jurisdiction until 1 July 2019.

Part 4 Modifications expiring on adoption of National Energy Retail Law

24 Section 2 modified

Section 2(1), definition *end user*

omit

, and includes a retail customer

25 Section 2A modified

Section 2A

repeal, insert

2A—Meaning of access dispute

An access dispute is a dispute between a network service user (or prospective network service user) and a network service provider about an aspect of access to an electricity network service specified by the Rules to be an aspect to which Part 10 applies.

26 Section 2D modified

(1) Section 2D(1)(b)(ia)

omit

(2) Section 2D(2)(b)

omit

, the National Energy Retail Law or the National Energy Retail Rules

(3) Section 2D, Note 2

omit

27 Section 6A modified

Section 6A

repeal

28 Section 28V modified

Section 28V(4A)

omit

29 Section 28ZD modified

(1) Section 28ZD(b)

omit

Rules; or

insert

Rules.

(2) Section 28ZD(c)

omit

30 Section 28ZH modified

(1) Section 28ZH(1)(c) and (d)

omit

(2) Section 28ZH, Note

omit

and section 219 of the National Energy Retail Law

31 Section 28ZI modified

(1) Section 28ZI(1)(b)

omit

Rules;

insert

Rules.

(2) Section 28ZI(1)(c) and (d)

omit

(3) Section 28ZI, Note

omit

and section 220 of the National Energy Retail Law

32 Section 54C modified

Section 54C(2)(f)

omit

33 Section 120 modified

Section 120(2A)

omit

Schedule 2 Local distribution systems

section 9

1 Darwin distribution system

The distribution system:

- (a) located in the Darwin region; and
- (b) operated, as at 1 July 2015, by Power and Water Corporation;

but not including the Darwin to Katherine 132kV power line described in item 5.

2 Katherine distribution system

The distribution system:

- (a) located in the Katherine region; and
- (b) operated, as at 1 July 2015, by Power and Water Corporation;

but not including the Darwin to Katherine 132kV power line described in item 5.

3 Tennant Creek distribution system

The distribution system:

- (a) located in the Tennant Creek region; and
- (b) operated, as at 1 July 2015, by Power and Water Corporation.

4 Alice Springs distribution system

The distribution system:

- (a) located in the Alice Springs region; and
- (b) operated, as at 1 July 2015, by Power and Water Corporation.

5 Darwin to Katherine 132kV power line

The 132 kV power line that extends from the network 132 kV bus at Channel Island Power Station to a 132/22 kV zone substation adjacent to the Katherine Power Station, with 132/22 kV zone substations at Manton and Batchelor and a 132/66kV transmission terminal station at Pine Creek.

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

National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (Act No. 16, 2015)

Assent date	22 May 2015
Commenced	pt 2 and pt 4, div 2: 1 July 2016; pt 4 divs 3 and 4: 1 July 2019; pt 5: 1 July 2015; rem: 22 May 2015 (s 2)