

# **NORTHERN TERRITORY OF AUSTRALIA**

## **ELECTRICITY NETWORKS (THIRD PARTY ACCESS) ACT**

As in force at 1 May 2016

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 May 2016

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## ELECTRICITY NETWORKS (THIRD PARTY ACCESS) ACT

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*This Act will be repealed on 1 July 2019 by section 17 of the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.*

### **Part 1                      Preliminary**

#### **1                      Short title**

This Act may be cited as the *Electricity Networks (Third Party Access) Act*.

#### **2                      Commencement**

The provisions of this Act come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

#### **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 Local Court Judge 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 Local Court Judge 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 Judge 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 Local Court Judge 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 Local Court Judge:
  - (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 Local Court Judge 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 Local Court Judge, 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.*

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## **Part 4                      Arbitration under Network Access Code**

### **15                      Powers of arbitrator**

- (1) An arbitrator appointed under the Network Access Code may do any of the following things for the purpose of arbitrating an access dispute:
- (a) give a direction in the course of, or for the purposes of, an arbitration hearing;
  - (b) summon a person to appear before the arbitrator to give evidence and to produce documents (if any) referred to in the summons;
  - (c) hear and determine the arbitration in the absence of a person who has been summoned or served with a notice to appear;
  - (d) give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of an arbitration, unless the person has the arbitrator's permission;
  - (e) generally give directions and do things that are necessary or expedient for the speedy hearing and determination of the access dispute.
- (2) A person must not do an act or thing in relation to the arbitration of an access dispute that would be a contempt of court if the arbitrator were a court of record.

Maximum penalty:        500 penalty units.

- (3) Subsection (1) has effect subject to any other provision of the Network Access Code or the Regulations.
- (4) A person who in accordance with the Regulations is served with a summons to appear as a witness before an arbitrator must not, without reasonable excuse, fail to:
- (a) attend as required by the summons; or
  - (b) appear and report himself or herself from day to day unless excused or released from further attendance by the arbitrator.

Maximum penalty:        500 penalty units.

- (5) A person must not:
- (a) threaten, intimidate or coerce another person; or

- (b) cause or procure damage, loss or disadvantage to another person,

because the other person:

- (c) proposes to produce, or has produced, documents to an arbitrator; or
- (d) proposes to appear or has appeared as a witness before an arbitrator.

Maximum penalty: 500 penalty units.

- (6) An award made by the arbitrator takes effect as a contract between the network user and the network provider and, subject to the provisions of the Network Access Code, is binding on the parties to the arbitration in which it is made.

## **16 Costs of arbitration may be recovered**

If under the Network Access Code a party to an arbitration is required to pay costs for the arbitration, the Minister may recover the amount in a court of competent jurisdiction as a debt due and payable by the party.

## **17 Non-application of commercial arbitration legislation**

Neither the *Commercial Arbitration Act* nor the *Commercial Arbitration (National Uniform Legislation) Act* applies to an arbitration under the Network Access Code.

## **18 Appeal to Supreme Court on question of law**

An appeal lies to the Supreme Court in respect of an award made under the Network Access Code, or a decision not to make an award, on a question of law.

# **Part 5 Enforcement of access agreements and awards**

## **19 Injunctive remedies**

- (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) The power of the Supreme Court to grant an injunction restraining a contravention of a provision of an access agreement or award may be exercised:
  - (a) whether or not the defendant has previously contravened the same provision; and
  - (b) whether or not there is imminent danger of substantial damage to any person.
- (3) The power of the Supreme Court to grant an injunction requiring compliance with a provision of an access agreement or award may be exercised:
  - (a) whether or not the defendant has previously failed to comply with the same provision; and
  - (b) whether or not there is imminent danger of substantial damage to any person.
- (4) The Supreme Court may make an interim injunction under this section.
- (5) An application for an injunction under this section may only be made by the regulator.
- (6) The Supreme Court may grant an injunction by consent without inquiry into the merits of the application.
- (7) The Supreme Court cannot require the regulator or any other person to give an undertaking as to damages as a condition of granting the injunction.
- (8) The Supreme Court may, on application by the regulator, discharge or vary an injunction.
- (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.

## **20 Enforcement of arbitrator's requirements**

- (1) If a person fails to comply with an order, direction or requirement of an arbitrator under the Network Access Code, the arbitrator may certify the failure to the Supreme Court.

- (2) The Supreme Court may inquire into the case and make orders that it considers appropriate in the circumstances.

## **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.

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- (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

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(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.

## **Schedule Electricity Networks (Third Party Access) Code**

section 4A

### **Part 1 Introduction**

#### **1 Access to electricity network infrastructure facilities**

- (1) This Code deals with access to NAC electricity networks.
- (2) The requirement for access to electricity networks arises because of the Government's decision to progressively open up certain sectors of the Territory's electricity market to competition.
- (3) As electricity networks involve infrastructure facilities that cannot be economically duplicated, third party use of those networks is an essential pre-requisite for introducing competition in upstream or downstream markets.

#### **2 Underlying principles**

- (1) This Code aims to be an effective access regime under Part IIIA of the *Competition and Consumer Act 2010* (Cth) and so meet the requirements laid down in clause 6 of the Competition Principles Agreement.
- (2) In deciding on the terms and conditions for access, the regulator when undertaking any of the functions assigned to the regulator by this Code and any arbitrator appointed under this Code to resolve access disputes should take into account:
  - (a) the network provider's legitimate business interests and investment in the electricity network;
  - (b) the costs to the network provider of providing access, including any costs of extending the electricity network but not costs associated with losses arising from increased competition in upstream or downstream markets;
  - (c) the economic value to the network provider of any additional investment that an access applicant or the network provider has agreed to undertake;
  - (d) the interests of all persons holding access agreements for use of the electricity network;

- (e) firm and binding contractual obligations of the network provider or other persons (or both) already using the electricity network;
  - (f) the operational and technical requirements necessary for the safe and reliable operation of the electricity network;
  - (g) the economically efficient operation of the electricity network; and
  - (h) the benefit to the public from having competitive markets.
- (3) In deciding whether the network provider is required to extend, or to permit extension of, the electricity network, the regulator when undertaking any of the functions assigned to the regulator by this Code and any arbitrator appointed under this Code to resolve access disputes must be satisfied that:
- (a) the extension is technically and economically feasible and consistent with safe and reliable operation of the electricity network;
  - (b) the network provider's legitimate business interests in the electricity network are protected; and
  - (c) the terms and conditions on which access to the extension is to be permitted are reasonable taking into account the costs to be borne by the parties and the economic benefits to the parties resulting from the extension.

## **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.

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### 3 Key definitions

In this Code, unless the contrary intention appears:

**access agreement** means a contract or agreement for the provision of network access services entered into between a network provider and a network user under the Code, and includes an award made by an arbitrator for the same purpose.

**access applicant** is a person who wants access to services provided by an electricity network, or who wants to vary an existing access agreement in a significant way or to a significant extent.

**access application** means an access application made under clause 10 of the Code.

**access offer** means an offer made by the network provider to an access applicant to provide network access services (and includes any modification to a previous offer).

**award** means an award made by an arbitrator under the Code.

**capital contribution** means a financial contribution made – or the equivalent in the form of assets – by a network user in accordance with the terms of a formal access agreement contributing towards the capital investment associated with designing, constructing, installing and commissioning the electricity network of a network provider.

**Competition Principles Agreement** means the *Competition Principles Agreement* made on 11 April 1995 between the Commonwealth, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory, being that agreement as in force from time to time.

**connect** or **connection** means to establish an effective link via installation of the necessary connection equipment.

**connection equipment** or **connection assets** mean all of the electrical equipment that is used only in order to transfer electricity to or from the electricity network at the relevant connection point and includes any transformers or switchgear at the relevant point or which is installed to support or to provide backup to such electrical equipment as is necessary for that transfer.

**connection point** means a point at which electricity is transferred to or from an electricity network.

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**connection services**, in relation to a connection point, mean the establishment and maintenance of that connection point.

**consumer price index** means an appropriate index of consumer prices as published by the Australian Bureau of Statistics.

**contract maximum demand**, in respect of a connection point, means the maximum level at which electricity may be transferred from the electricity network at the connection point (expressed in kW or kVA) specified in the access agreement in respect of the connection point (if any).

**declared sent-out capacity**, in respect of a connection point, means the maximum level at which electricity may be transferred to the electricity network at the connection point (expressed in kW or kVA) specified in the access agreement in respect of the connection point (if any).

**disconnect**, in respect of a connection point, means to operate switching equipment so as to prevent the transfer of electricity through the connection point.

**energy usage period** means an interval of time (eg. half hour or five minutes) as established by a network provider in accordance with good electricity industry practice.

**entry point** means a connection point at which electricity is more likely to be transferred to the electricity network than to be transferred from the electricity network.

**entry services** mean those network access services provided to a generator user at an entry point to the electricity network.

**exit point** means a connection point at which electricity is more likely to be transferred from the electricity network than to be transferred to the electricity network.

**exit services** mean those network access services provided to a load user at an exit point.

**extend** and **extension**, in relation to an electricity network, mean to enlarge or expand the capability of the electricity network to accept, transport and deliver electricity.

**force majeure event**, in respect of a party to an access agreement, means any event outside the party's control including:

- (a) any act of God, lightning, earthquake, storm, fire, flood or natural disaster;

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- (b) any insurrection or civil disorder;
  - (c) any determination, award or order of any court or tribunal;
  - (d) any act or omission of government or any unrelated government instrumentality;
  - (e) any industrial dispute of any kind;
  - (f) any act or omission of any persons with facilities connected to the network that affects or frustrates the party's ability to perform its obligations under the access agreement; or
  - (g) any significant plant or equipment failure which could not have been avoided by the exercise of good electricity industry practice.

**generally accepted regulatory practice** means the conventions, rules and procedures in use at a particular time by leading jurisdictional regulators in Australia when choosing and applying economic regulation methodologies to a power system for the generation, transmission, distribution and supply of electricity and consistent with applicable laws.

**generator user** means a person who has been granted access to the electricity network by the network provider and who supplies electricity into the electricity network at an entry point.

**generator** or **generation unit/facilities** mean an electricity generator, and related equipment essential to the generator's operation, which supplies electricity into an electricity network and together function as a single entity.

**good electricity industry practice** means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a significant proportion of operators of facilities forming part of a power system for the generation, transmission, distribution and supply of electricity comparable to those applicable to the relevant facility consistent with applicable laws, the Access Code, the Network Technical Code, the System Control Technical Code, licences, industry codes, reliability, safety and environmental protection.

**group of connections**, in respect of a network user's access agreement, means the entry points and exit points specified in the access agreement and the entry point or points from which energy is to be supplied to one or more of those connection points.

**initial year** means the period from the commencement of the Code until the following 30 June.

**load user** means a person who has been granted access to the electricity network by the network provider and who takes electricity from the electricity network at an exit point.

**load** means the amount of electrical energy delivered at a defined instant at a connection point or aggregated over a group of connection points.

**metering equipment** means equipment used to measure and record the rate at which electricity is transferred and the quantity of electricity transferred to and from an electricity network.

**network access services** mean the services provided to network users by a network provider whether in the form of connection services or use of network services.

**network capacity constraint** means the limitation on the capability of an electricity network such that it is unacceptable to transport the level of electricity that would occur if the limitation did not exist.

**network energy loss** means the energy loss incurred in the transportation of electricity from an entry or transfer point to an exit point or another transfer point on an electricity network.

**network system assets** mean the apparatus, equipment, plant and building used to convey, and control the conveyance of, electricity.

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

**permitted tolerance limit** means a set limit on the mismatch between the transfer of electrical energy to and from the electricity network after account is taken of energy losses expected in the conveyance of that electricity.

**power system** means the generation facilities and electricity network which together are integral to the supply of electricity, operated as an integrated arrangement.

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

**price cap** means the maximum average price determined by the regulator to be charged during a financial year, or nominated part of a year, for all regulated network access services by the network provider.

**pricing schedule**, in respect of a financial year, means the schedule of prices published in respect of that financial year by a network provider with respect to network access services.



**reference tariff** means the maximum tariff to apply in a particular year with respect to a specific individual standard network access service, as set out in a pricing schedule published by a network provider.

**regulated network access services** mean all the network access services supplied by a network provider other than those specified by the regulator under clause 72 of the Code.

**regulatory control period** means the period between major price reviews during which time the methodology used in setting prices is 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.

**revenue cap** means the maximum allowed revenue determined by the regulator to be raised during a financial year, or nominated part of a year, from regulated network access services by the network provider.

**spare network capacity** means the capacity to transport electricity over a particular electricity network which the network provider assesses is in surplus to the capacity that existing end-use customers forecast will be required to satisfy their reasonably foreseeable requirements for the transportation of electricity.

**standard network access services** mean the network access services for which reference tariffs are published in respect of a financial year.

**standby generation agreement** means a contract or agreement for the provision of standby generation services entered into between network users and providers of such standby generation services in support of a particular access agreement.

**standby power** means the amount of electrical energy which could be supplied to a load user in accordance with the terms of a standby generation agreement.

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

**transfer point** means a point at which electricity is transferred between differently owned and operated electricity networks.

**use of network services** mean the services of providing, or providing and operating, an electricity network for the purpose of transporting electrical energy via electricity transmission or electricity distribution networks, including:

- (a) those network services provided to a network user for use of the electricity network for the transportation of electricity that can be reasonably allocated to a user on a locational basis, including:
  - (i) the electricity network's ability to transfer electricity;
  - (ii) configuration switching capability at nodes;
  - (iii) network security and stabilisation services; and
  - (iv) voltage and reactive control capabilities at nodes; and
- (b) network operation services, including:
  - (i) control of the performance of the electricity network;
  - (ii) monitoring of faults on the network and rectification of faults identified;
  - (iii) network maintenance of the electricity network; and
  - (iv) the management of the voltage of electricity transported through the electricity network.

#### **4 Structure of Code**

- (1) Part 2 establishes the terms and conditions under which access to an electricity network is to be granted to third parties and lays down the processes to be followed in negotiating and implementing access agreements and for resolving access disputes.
- (2) Part 3 specifies the principles to be followed by the regulator and by the providers of network access services when setting the prices to be paid by network users for the conveyance of electricity through an electricity network.

## **Part 2                    Access framework**

### **5                    Purpose of Part**

This Part sets out:

- (a) the terms and conditions under which access to an electricity network is to be granted to third party users and the associated obligations both on the network provider and on network users;
- (b) the framework within which access agreements are to be negotiated and implemented; and
- (c) the mechanism for resolving access disputes.

### **Chapter 1                    Obligations of network provider**

#### **6                    Obligation to provide access**

The network provider must use all reasonable endeavours to accommodate the requirements of those seeking access to the electricity network.

#### **6A                    Obligation to provide information on access arrangements and requirements**

- (1) The network provider must develop and maintain a package of information containing all matters of interest to access applicants regarding the arrangements and requirements for access, and supply an up to date information package to potential access applicants at their request.
- (2) The information supplied should include, but is not limited to:
  - (a) the reference tariffs and charges current at the time, together with specification of service standards associated with each standard reference tariff;
  - (b) information on the negotiation process, the matters that should be covered by the access application and the resulting access offer and the mechanisms to resolve disputes;
  - (c) regulatory decisions and information papers; and
  - (d) details of the system controller's operating protocols.

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## 7 Segregation of network provider's accounts and records

- (1) The network provider must keep accounts and records relating to its electricity network business that give a true and fair view of the business (as distinct from other businesses carried on by the network provider or any associate or related body corporate of the network provider).
- (2) The accounts and records must be capable of distinguishing among the separate geographical electricity networks operated by the network provider.
- (4) The accounts and records must be kept in a way that gives:
  - (a) a comprehensive view of the network provider's legal and equitable rights and liabilities in relation to its electricity network;
  - (b) a true and fair view of:
    - (i) income and expenditure derived from, and relating to, its electricity network; and
    - (ii) assets and liabilities of the network provider's business so far as they relate to its electricity network; and
  - (c) sufficient information to enable the pricing principles and methodologies set out in Part 3 to be applied in a reasonable manner.
- (5) The network provider must cause to be kept separate accounts and records referred to in this clause in relation to the business of any associate or related body corporate of the network provider to whom network access services are provided by the network provider.
- (6) The regulator may, at times the regulator thinks fit, seek the certification of an auditor that the accounts and records of the network provider comply with this clause.
- (7) In this clause, **accounts and records** mean accounts and records kept for regulatory and pricing purposes.

## 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.

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**9A Maintaining service quality**

Unless specifically agreed otherwise with network users in their access agreements, the network provider must use reasonable endeavours to provide network access services of a quality and a standard at least equivalent to the greater of:

- (a) the levels prevailing during the year before the commencement of this Code; and
- (b) the levels prevailing during the year before commencement of the access agreement.

**Chapter 2 Negotiation of access****10 Access application**

- (1) An access applicant may put a written proposal (the access application) to the network provider setting out:
  - (a) the nature and extent of the access required, or any significant variation to access provided under an existing access agreement; and
  - (b) any other information relevant to formulating a response to the access application (including information relevant to determining the price to be charged for access or on account of the variation as the case requires).
- (2) An access application:
  - (a) must contain the information listed in Schedule 2; and
  - (b) may specify that the applicant wishes the network provider to make a preliminary assessment of the access application in accordance with clause 15.
- (3) If implementation of an access application would require an extension to network infrastructure facilities or to a connection point to the network, the access application may include a proposal for the extension to the facilities involved.
- (4) The network provider may, within 7 days after receiving an access application, request the access applicant to provide further information that the network provider reasonably requires to enable the network provider to consider the access application.

- (5) The network provider must, within 7 days after receiving an access application or, if the network provider has requested further information under subclause (4), within 7 days after receiving the information:
  - (a) give written notice of the access application to:
    - (i) the regulator; and
    - (ii) any network user whose rights under an existing access agreement or award would be affected by implementation of the application; and
  - (b) provide to the access applicant the name and contact details of any other respondents.
- (6) The respondents to the access application are:
  - (a) the network provider; and
  - (b) any network user whose rights under an existing access agreement or award would be affected by implementation of the application.

## **11 Initial response**

- (1) The network provider must, within 10 days after receiving an access application involving existing end-use customers or within 21 days after receiving an access application involving a new end-use customer or, if within that period the network provider has requested further information, within the equivalent period after receiving the information, provide an initial response to the access application.
- (2) The initial response is to include:
  - (a) the period within which the network provider is able to make a preliminary assessment of the access application; and
  - (b) an estimate of the reasonable expenses expected to be incurred by the network provider in processing the access application, preparing an initial response, carrying out a preliminary assessment, making an offer and negotiating the access agreement.

## **12 Duty to negotiate**

- (1) The network provider and access applicant must, once an access offer is made, endeavour to accommodate each others' reasonable requirements and must negotiate in good faith with a view to

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reaching agreement on whether the access applicant's requirements as set out in the access application (or some agreed modification of the requirements) could reasonably be met and, if so, the terms and conditions for the provision of access for the access applicant.

- (2) A respondent to the access application whose rights or prospective rights of access will be affected by implementation of the access application must also negotiate in good faith with the access applicant with a view to reaching agreement on the provision of access to the access applicant and any consequent variation of the respondent's rights or prospective rights.

### **13 Referral of issues to regulator**

An access applicant, the network provider or any other respondent to an access application may request the regulator to consider and, if appropriate, to give advice or directions with respect to any matter that arises in connection with the operation of the Code in order to facilitate the conduct of negotiations under this Chapter.

### **14 Obligations of access applicant regarding information provided**

- (1) An access applicant must use reasonable endeavours to ensure that the access application and information provided to the network provider are accurate and complete.
- (2) If an access applicant becomes aware of material information relevant to the access application that is not included in the access application or of any material alteration to information contained in or relevant to the access application, the applicant must promptly notify the network provider in writing of the information or alteration.
- (3) If the network provider:
- (a) receives a notice under subclause (2); or
  - (b) becomes aware of material information relevant to the access application that is not included in the access application or of any material alteration to information contained in or relevant to the access application,

the network provider may, by written notice to the applicant, extend the period within which a response or a preliminary assessment is due by the period that the network provider reasonably requires.

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**15 Preliminary assessment**

- (1) If an access application specifies that the applicant wishes the network provider to make a preliminary assessment of the access application, the network provider must:
  - (a) make the assessment; and
  - (b) give the applicant a report of the assessment,within the period for making the preliminary assessment specified in the initial response to the application.
- (2) A preliminary assessment must contain the following information:
  - (a) whether it is likely that there is sufficient spare network capacity to provide the network access services requested in the access application or whether the electricity network will have to be extended to provide those services;
  - (b) whether it is likely that any connection equipment will have to be installed or upgraded to provide the connection services (if any) requested in the access application; and
  - (c) whether or not a capital contribution will be required from the user.

**16 Access offer**

- (1) Unless agreed by the access applicant and the network provider or as otherwise approved by the regulator, the network provider must, within 30 days or, if within that period the network provider has requested further information, within 30 days after receiving the information make an access offer to provide to the applicant the network access services requested in the access application.
- (2) An access offer must:
  - (a) relate to the transportation of electricity between:
    - (i) a specified entry point or points and a specified exit point or points; or
    - (ii) with respect to an inter-network access request – a specified entry point or points and a transfer point, or a transfer point and a specified exit point or points;
  - (b) be for network access services requested in the access application and be consistent with any technical parameters specified in that access application;



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- (c) be in writing and contain the proposed terms and conditions on which the network provider will provide the access services including those terms and conditions listed in Schedule 3;
  - (d) specify the charges for the access services requested in the access application;
  - (e) be consistent with this Code (and the technical code);
  - (f) be consistent with the pricing schedules approved by the regulator under Part 3; and
  - (g) with respect to terms and conditions other than price – be consistent with good electricity industry practice and not deter efficient and safe access or change the relative competitiveness of service providers.
- (3) Once the network provider makes an access offer to an applicant, and an access agreement in relation to the access services that are the subject of the access offer is not concluded within 60 days of the completion of negotiations, the access offer expires and the access application lapses.
- (4) If the access offer contemplates any extension of the network system or connection points to the network involved, the network provider may include in the access offer a condition that the access applicant makes a capital contribution in respect of any capital investment involved if the amount of the contribution is in accordance with the principles in Chapter 8 in Part 3.

**17      Limitation on network provider's right to contract to provide access**

The network provider must not enter into an access agreement unless:

- (a) there is no other respondent to the access application;
- (b) no other respondent to the proposal has demonstrated that their rights under an existing access agreement or award would be materially affected by implementation of the proposal; or
- (c) any access dispute in relation to the access application is resolved by conciliation or by arbitration in accordance with Chapter 4.

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**18 Dealing with network capacity limits**

- (1) If the network provider has received 2 or more access applications, and believes that there is insufficient spare network capacity to provide the network access services that are the subject of those access applications, the network provider may assign available capacity to the first applicant prepared to enter into an access agreement.
- (2) For the purpose of assessing the extent of spare network capacity, the capacity associated with contestable loads will attach to the associated end-use customer and not to the network user and, as a result, a network user will not have a fixed entitlement to network capacity (with the user's entitlement fluctuating depending on the capacity needed to service loads being supplied or to be supplied by the user).

**19 Access agreement**

- (1) The network provider is taken to have granted a person access if the network provider and the person enter into an access agreement.
- (2) The types of terms and conditions that may be included in an access agreement are set out in Schedule 4.
- (3) The provision of network access services by the network provider under an access agreement is subject to the following conditions precedent:
  - (a) the access applicant satisfies the network provider that the applicant has put in place all arrangements required by Chapter 3 and any regulations made under section 111(2)(d) of the *Electricity Reform Act*;
  - (b) the network provider or the access applicant gains environmental and planning approvals for any necessary extension to the network; and
  - (c) a financial guarantee is provided – if required by the network provider.

**20 Confidentiality**

- (1) Information obtained by the network provider or a respondent to an access application as the result of an access application that could affect the competitive position of an access applicant or a respondent, or is commercially valuable or sensitive for some other reason, is to be regarded as confidential information.

- (2) A person who obtains confidential information must not disclose the information, other than to the regulator, unless:
  - (a) the disclosure is reasonably required for the purposes of this Code;
  - (b) the disclosure is made with the consent of the person who supplied the information; or
  - (c) the disclosure is required or allowed by law, or by a court or tribunal constituted by law.
- (3) A person who obtains confidential information as the result of an access application must not use the information for the purposes of securing an advantage for himself or herself or for some other person in competition to the person who provided the information.

**21 Prohibition on hindering access to electricity network service**

A person must not engage in conduct for the purpose of preventing or hindering the provision of an electricity network access service to any person who has a right to those services.

**22 Costs of processing access applications**

- (1) An applicant must, when requested by the network provider, reimburse the network provider for all reasonable expenses incurred by it in processing the access application, preparing an initial response, carrying out a preliminary assessment, making an offer and negotiating an access agreement.
- (2) The network provider must recover these costs on the same basis among all access applicants.
- (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.

**23 Access application flow chart**

The processes set out in this Chapter for applying for and negotiating access are shown in simplified form in the flow chart in Schedule 5.

## **Chapter 3 Access terms**

### **24 General**

- (1) The broad technical terms and conditions on which access to the electricity network is to be made available to network users are set out in this Chapter.
- (2) The technical terms and conditions on which access to an electricity network is to be made available as set out in this Chapter can be supplemented in an access agreement.
- (3) A reference in this Chapter to an access agreement includes an award made by an arbitrator under this Code.

### **25 Contract maximum demand and declared sent-out capacity**

- (1) A load user must use reasonable endeavours to ensure that the user's actual demand at a connection point does not exceed the contract maximum demand for that connection.
- (2) A generator user must use reasonable endeavours to ensure that the quantity of electricity transferred to the electricity network by or on behalf of the generator user at the connection point does not exceed the declared sent-out capacity from the generator user in respect of that connection.

### **31 Capital contributions and charges**

- (1) If the granting of an access application would necessitate the extension of connection equipment or network system assets, the network provider may include in the access offer a condition that the access applicant makes a capital contribution in respect of the capital investment associated with the designing, constructing, installing and commissioning of the connection equipment or network system assets.
- (1A) An access applicant may be required to make a capital contribution towards the extension of connection equipment or network system assets only if the extension is not commercially viable without such a capital contribution.
- (2) Capital contributions are to be established in accordance with principles laid down in Chapter 8 of this Code.

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- (3) The terms of access for the network user must take into account the capital contribution made by the network user for the extension of connection equipment or network system assets, and the economic benefits to the network provider and to other network users resulting from that extension.
  - (4) Capital contributions may be made in the form of a specified financial contribution or by way of assets associated with the network extension.

#### **34 Default**

- (1) A network user defaults if the network user fails to observe or perform any of its obligations under an access agreement.
- (2) If a network user, whether a generator user or a load user, defaults, the network provider may:
  - (a) notify the user of the default and require the user to remedy the default;
  - (b) if the default has not been remedied within 7 days after the notice was given – disconnect the user's connection point or points while that default continues; and
  - (c) if the default has not been remedied within 30 days after the notice was given – treat the default as a repudiation of the access agreement and terminate the access agreement.

### **Chapter 4 Access disputes**

#### **35 Access disputes**

An ***access dispute*** exists if:

- (a) a respondent to an access application, within 10 days after the initial response date or any other time that may be prescribed, refuses or fails to enter into good faith negotiations with the access applicant;
- (b) the access applicant, after making reasonable attempts to reach agreement with the respondents, fails to obtain an agreement on the access application or an agreed modification of the proposal within 30 days of submitting the access application or the alternative period of time specified by the network provider in the initial response as reasonable for making the access offer;

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- (c) the respondents to the access application agree or the regulator assesses that there is no reasonable prospect of reaching agreement; or
  - (d) a dispute arises between the parties to an access agreement (or award) about the application or interpretation of the access agreement (or award).

### **36 Request for reference of dispute to arbitration**

- (1) An access applicant with respect to an access application or a network user with respect to an access agreement or award may, by written notice given to the regulator, request the regulator to refer an access dispute to arbitration.
- (2) A copy of the notice must be given to all respondents to the access application.

### **37 Purpose of arbitration**

- (1) The general purpose of arbitration is to address those matters that are the prerogative of the network provider and network users under this Code and in the first instance are either matters for negotiation between the network provider and network users or matters that are the responsibility of the network provider to apply or administer.
- (2) Except as provided by this Code, matters that are determined or approved by the regulator under this Code are not subject to arbitration.

### **38 Conciliation and reference to arbitration**

- (1) On receiving a request to refer an access dispute to arbitration, the regulator must:
  - (a) if the parties to the dispute agree – attempt to settle the dispute by conciliation; or
  - (b) if the parties do not agree to settle the dispute by conciliation or they agree but fail to settle the dispute – appoint an arbitrator (or arbitrators) and refer the dispute to the arbitrator (or arbitrators).
- (2) The regulator is not obliged to attempt to settle the dispute by conciliation or refer the dispute to arbitration if, in the regulator's opinion:
  - (a) the dispute is trivial, misconceived or lacking in substance;

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- (b) the applicant has not provided information reasonably requested by the network provider;
  - (c) the applicant has not negotiated in good faith or has resorted to arbitration prematurely or unreasonably; or
  - (d) the regulator is satisfied, on the application of a party to the dispute, that there are good reasons why the dispute should not be referred to arbitration.
- (3) A dispute cannot be referred to arbitration if, before the appointment of the arbitrator, the applicant notifies the regulator that the applicant does not wish to proceed with the arbitration.

### **39 Qualifications of the arbitrator**

- (1) The regulator must keep a list of persons who are suitably qualified to be appointed as arbitrators but may appoint as an arbitrator a person who is not included in the list if the occasion requires.
- (2) An arbitrator must be a person who:
  - (a) is independent of the parties to the dispute;
  - (b) is not subject to the control or direction of the Government in any capacity;
  - (c) is properly qualified to act in the resolution of the dispute; and
  - (d) has no direct or indirect interest in the outcome of the dispute.
- (3) Before appointing an arbitrator, the regulator must consult with each of the parties to the dispute and must attempt (but is not bound) to make an appointment that is acceptable to all parties.

### **40 Parties to arbitration**

- (1) The parties to the arbitration of an access dispute are:
  - (a) the access applicant or network user, whichever the case may be;
  - (b) the network provider;
  - (c) any other respondent to the access application; and
  - (d) any other person who applies in writing to be made a party and is accepted by the arbitrator as having a sufficient interest.
- (2) The regulator may participate in an arbitration under this Chapter.

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- (3) The participation of the regulator may include providing or calling evidence, making representations on questions arising during the arbitration and assisting the parties or the arbitrator with any matter (as may be appropriate).

#### **41 Arbitrated prices for access services**

- (1) The arbitrator must set the prices payable by the access applicant under an arbitrated award by reference to the schedule of reference tariffs published annually by the network provider and approved by the regulator in accordance with Part 3.
- (2) If the arbitrator decides the dispute relates (wholly or partly) to the tariff that should apply to a standard network access service, the arbitrator must make a decision requiring the network provider to provide the access applicant with the service that the access applicant seeks at the reference tariff.
- (3) If the arbitrator decides the dispute relates (wholly or partly) to the tariff that should apply to a service (other than a standard network access service), the arbitrator must require the network provider to provide the access applicant with the service that the access applicant seeks at a tariff that is to be approved by the regulator for this purpose.
- (4) The tariff in subclause (3) is to be based on the same principles used by the regulator to approve reference tariffs.

#### **42 Arbitrated award affecting expansion or extension of network**

- (1) The arbitrator may make an award that would have the effect of requiring the network provider to expand or extend the electricity network.
- (2) In determining the economic feasibility of the extension of the electricity network, the arbitrator must base the assessment of costs and benefits in all relevant respects on use of the parameter values determined by the regulator for the purpose of establishing the annual revenue or price cap applying to the network provider in accordance with the principles set out in Part 3.

#### **43 Hearing to be in private**

- (1) Subject to subclause (2), an arbitration hearing is to be in private.
- (2) If the parties agree, an arbitration hearing or part of an arbitration hearing may be conducted in public.
- (3) The arbitrator in a hearing that is conducted in private may give written directions as to the persons who may be present.



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- (4) In giving directions under subclause (3), the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality.

**44 Right to representation**

In an arbitration hearing, a party may appear in person or be represented by someone else.

**45 Procedure of arbitrator**

- (1) In an arbitration hearing, the arbitrator:
- (a) is not bound by technicalities, legal forms or rules of evidence;
  - (b) must act as speedily as a proper consideration of the access dispute allows, having regard to the need to carefully and quickly inquire into and investigate the dispute and all matters affecting the merits, and fair settlement, of the dispute; and
  - (c) may inform himself or herself of any matter relevant to the access dispute in any way the arbitrator thinks appropriate.
- (2) The arbitrator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties and may require that the cases be presented within those periods.
- (3) The arbitrator may require evidence or argument to be presented in writing and may decide the matters on which the arbitrator will hear oral evidence or argument.
- (4) The arbitrator may determine that an arbitration hearing is to be conducted by:
- (a) telephone;
  - (b) closed circuit television; or
  - (c) any other means of communication.

**51 Party may request arbitrator to treat material as confidential**

- (1) A party to an arbitration hearing may:
- (a) inform the arbitrator that, in the party's opinion, a specified part of a document contains confidential commercial information; and
  - (b) request the arbitrator not to give a copy of that part to another party.

- (2) On receiving the request, the arbitrator must:
  - (a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and
  - (b) ask the other party or parties whether there is any objection to the arbitrator complying with the request.
- (3) If there is an objection to the arbitrator complying with a request, the party objecting may inform the arbitrator of its objection and of the reasons for it.
- (4) After considering:
  - (a) a request;
  - (b) any objection; and
  - (c) any further submissions that a party has made in relation to the request,

the arbitrator may decide not to give to the other party or parties a copy of so much of the document as contains confidential commercial information that the arbitrator thinks should not be given.

## **52 Award by arbitrator**

- (1) The arbitrator must make a written award on access to the electricity network by the access applicant.
- (2) The award may deal with any matter relating to access services by the access applicant, including matters that were not the basis for notification of the dispute.
- (3) Without limiting subclause (2) the award may:
  - (a) require the network provider to provide access to the services requested by the access applicant;
  - (b) require the access applicant to accept, and pay for, access to the service;
  - (c) specify the terms and conditions of the access applicant's access to the service;
  - (d) require the network provider to expand or extend the electricity network; or

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- (e) specify the extent to which the award overrides an earlier award or access contract.
  - (4) Before making an award, the arbitrator must give a draft award to the parties to the arbitration and the regulator and may take into account representations that any of them may make on the proposed award.
  - (5) When the arbitrator makes an award, the arbitrator must give the parties to the arbitration and the regulator written reasons for making the award.
  - (5A) The arbitrator should prepare a version of the award which is suitable for publication which excludes commercial information that the arbitrator thinks should not be made public on confidentiality or other grounds.
  - (6) An award made by the arbitrator takes effect as a contract between the network user and the network provider.

### **53 Restrictions on awards**

The arbitrator cannot make an award that:

- (a) grants access to the electricity network if the right of access cannot be satisfied because of a right of access already granted to, and used by, a network user;
- (b) prejudices the rights of a network user under an existing access agreement or award unless that user agrees or the arbitrator is satisfied that the user is or will be compensated on just terms for any loss suffered as a result;
- (c) varies a determination made by the regulator under this Code;  
or
- (d) varies the prices that network users must pay for standard network access services from those set out in published pricing schedules approved by the regulator in accordance with Part 3 (except as provided for by clause 41).

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**54 Matters arbitrator must take into account**

Except as provided in clauses 41, 42 and 53, the arbitrator must take the following matters (or any other matters not inconsistent with the following matters that he or she thinks are relevant) into account in making an award:

- (a) the legitimate business interests of the network provider, and the network provider's investment in the electricity network generally;
- (b) the cost to the network provider of providing access, including any costs of extending the electricity network, but not costs associated with losses arising from increased competition in upstream or downstream markets;
- (c) the public interest, including in having competitive markets;
- (d) the interests of all network users and other persons who have rights to use the electricity network;
- (e) firm and binding contractual obligations of the network provider or of network users already using the electricity network;
- (f) the economic value to the network provider of extensions to the electricity network, the cost of which is borne by someone else, and any additional investment that the access applicant or network provider has agreed to undertake;
- (g) the operational and technical requirements necessary for the safe and reliable operation of the electricity network; and
- (h) the economically efficient operation of the electricity network.

**56 Effect of awards**

- (1) Subject to this clause, an award is binding on the parties to the arbitration in which it is made.
- (2) An award has effect 21 days after it is made unless the access applicant, before that time, elects not to be bound by it.
- (3) An access applicant may, within 7 days after an award is made, elect not to be bound by the award by giving written notice of the election to the regulator.
- (4) If the access applicant elects not to be bound by an award, the award is rescinded.

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**57 Variation or revocation of awards**

- (1) The regulator may vary or revoke an award if all parties to the award agree.
- (2) If the parties are unable to agree on a proposed variation of an award, the regulator may, on application of one or more of the parties and if in the regulator's opinion there are prima facie grounds for varying the award, refer the dispute to arbitration.

**58 Costs of arbitration**

The costs of an arbitrator are to be borne by the parties in proportions decided by the arbitrator.

**59 Removal and replacement of arbitrator**

- (1) The regulator may remove an arbitrator if the arbitrator:
  - (a) becomes mentally or physically incapable of carrying out the arbitrator's duties satisfactorily;
  - (b) is convicted of an indictable offence;
  - (c) becomes bankrupt or applies to take the benefit of a law for the benefit of bankrupt or insolvent debtors; or
  - (d) has a direct or indirect interest in the outcome of the dispute or matter under arbitration.
- (2) If an arbitrator resigns, is removed from office or dies, the regulator may appoint another person to take the place of the arbitrator.

**Part 3 Access pricing****60 Purpose of Part**

- (1) This Part sets out the principles to be followed by the regulator and by providers of access services when setting regulated prices to be paid by network users for the conveyance of electricity through an electricity network covered by this Code.
- (2) This Part covers the pricing of network access services provided by the network provider.

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## **Chapter 5      Pricing principles**

### **61      Pricing schedules**

- (1) At least 30 days before the commencement of each financial year, or before any new prices take effect, pricing schedules must be published for the financial year by each provider of network access services.
- (2) For the purpose of this Part of the Code, and unless a contrary meaning is suggested:
  - (a) a reference to a financial year shall be taken to be a reference also to the initial year, being the period between the date of commencement of access to a network as prescribed by the Minister and the following 30 June; and
  - (b) a reference to a network shall be taken to be a reference to a geographically distinct network, which may be one of a number of geographically separated networks operated by the same network provider.
- (3) Except as provided in this Code, the tariffs contained in the network provider's pricing schedule with respect to standard network access services are to be the maximum tariffs applying to those services.

### **62      Role of regulator**

- (1) Before pricing schedules are published, the regulator must:
  - (a) with respect to tariffs and charges to be set by the network provider for the supply of regulated network access services – determine the cap or limit on the total revenue to be raised from or the average price to be charged for the supply of those services in a network;
  - (b) oversee the application by the network provider of principles for setting reference tariffs to apply to standard network access services; and
  - (c) oversee the application by the network provider of principles for setting of capital contributions and charges.
- (2) In determining or approving prices or pricing methodologies under this Part of the Code, the regulator is to conduct all its determination and approval processes in an open, transparent and competitively-neutral manner, including by consulting with network users, end-use customers, members of the public and all licensed electricity entities that may be affected, directly or indirectly, by the resultant prices.

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- (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.

### **63 Objectives of price regulation**

Price regulation under this Part must be administered to achieve the following outcomes:

- (a) efficient costs of supply;
- (aa) expected revenue for a network access service or services that is at least sufficient to meet the efficient long-run costs of providing that service or services, and includes a return on investment commensurate with the commercial and regulatory risks involved;
- (b) prevention of monopoly rent extraction by the network provider;
- (c) promotion of competition in upstream and downstream markets and promotion of competition in the provision of network services where economically feasible;
- (ca) an efficient and cost-effective regulatory environment;
- (d) regulatory accountability through transparency and public disclosure of regulatory processes and the basis of regulatory decisions;
- (e) reasonable certainty and consistency over time of the outcomes of regulatory processes;
- (f) an acceptable balancing of the interests of the network provider, network users and the public interest; and
- (g) such other outcomes as the regulator determines are consistent with the underlying principles set out in clause 2.

### **64 Information disclosure by regulator**

In making a determination or decision under this Part, the regulator must publish full and reasonable details of the basis of and rationale for the determination or decision including but not limited to the following:

- (a) reasonable details of qualitative and quantitative methodologies applied including any calculations and formulae; and

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- (b) options considered and all discretions exercised that have a material bearing on the outcome of the regulator's determination or decision.

## **65 Information disclosure to regulator by service providers**

- (1) Before the network or service provider publishes the annual pricing schedules required under this Part, it must within a reasonable time before doing so (or a period set by this Code or by the regulator) provide the regulator with:
  - (a) information relating to the proposed prices that is required under the arrangements set out in Chapter 7 and any regulations made under section 111(2)(d) of the *Electricity Reform Act*; and
  - (b) any other information that the regulator reasonably requires for the purpose of performing his or her functions.
- (2) Information required under subclause (1) may be in the form of forecasts and estimates.
- (3) If information is provided in the form of forecasts and estimates, the forecasts and estimates must be reasonable in light of all the surrounding circumstances and past performance and may not be amended without prior notification to the regulator.
- (4) The regulator may by written notice require that information provided in the form of forecasts and estimates be reviewed.
- (5) The notice must specify the reason why the regulator believes the information is required to be reviewed.
- (6) The network or service provider to whom the notice is given must review the forecasts and estimates and, within 7 days after receiving the notice, notify the regulator whether the forecasts or estimates have been amended or confirmed and justifying the amendments or confirming the forecasts or estimates in detail.
- (7) The regulator may only give a notice under subclause (4) within 30 days of receiving the forecasts and estimates under subclause (1).
- (8) Information required under subclause (1) may be in the form of certified annual financial statements.



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- (9) If information is provided in the form of certified annual financial statements, the financial statements must provide a true and fair statement of the financial and operating performance for the reporting period and be in a form and be provided by the date determined by the regulator.
  - (10) Certified annual financial statements submitted under subclause (1) may be used by the regulator:
    - (a) to monitor the compliance of the network provider with the revenue or price cap;
    - (b) to assess the allocation of costs between services that are subject to regulation under the revenue or price cap and services or activities that are not and to identify any cross-subsidy between these different types of services or activities; and
    - (c) to collate data regarding the financial, economic and operational performance of the network provider and to be used as input to the regulator's decision making regarding the setting of revenue or price caps.

## **Chapter 6      Network revenue and price caps**

### **66      Role of regulator**

- (1) The regulator is responsible for determining the revenue or price caps to apply to the network provider with regard to a network covered by this Code at the time.
- (2) Revenue caps are to be determined by the regulator for each financial year during the first regulatory control period in accordance with the principles set out in this Chapter.
- (3) The revenue or price caps that are to apply during the second and subsequent regulatory control periods are to be determined by the regulator in a manner that:
  - (a) in the regulator's opinion, most effectively achieves the desired outcomes set out in clause 63; and
  - (b) is consistent with generally accepted regulatory practice at the time.

### **67      Regulated network access services**

A revenue or price cap applies only to tariffs and charges for regulated network access services.

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**68 Revenue and price cap principles**

In setting a revenue or price cap, the regulator must take into account the revenue requirements of the network provider during the relevant financial year or years having regard to:

- (a) the demand growth that the network provider is expected to service using any appropriate measure including but not limited to:
  - (i) energy consumption by category of network users or other relevant groups of persons who consume energy;
  - (ii) demand by category of network users or other relevant groups of persons who consume energy;
  - (iii) numbers of network users or other relevant groups of persons who consume energy by category of network users; and
  - (iv) length of the electricity network;
- (b) the service standards applicable to the network provider under this Code and any other standards imposed on the network provider by any regulatory regime administered by the regulator and by agreement with the relevant network users;
- (c) the potential for efficiency gains to be realised by the network provider in expected operating, maintenance and capital costs, taking into account the expected demand growth and service standards referred to in paragraphs (a) and (b);
- (d) the network provider's cost of capital applicable to the relevant network access service, having regard to the risk-adjusted rate of return required by investors in commercial enterprises facing similar business risks to those faced by the network provider in the provision of that service;
- (e) the provision of a return on efficient capital investment undertaken by the network provider in order to maintain or extend network capacity that is commensurate with the commercial and regulatory risks involved;

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- (f) the right of the network provider to recover reasonable costs incurred by the network provider in connection with the operation and maintenance of the network, including those arising from but not limited to:
    - (i) any Territory and Commonwealth taxes or equivalent taxes paid in connection with the operation of its business as a provider of network access services; and
    - (ii) the tariffs and charges paid to other network providers irrespective of whether these tariffs and charges are regulated under this Code;
  - (g) any increase in the rate of a tax or any new tax, whether it is a tax or tax equivalent imposed by the Territory, a State or the Commonwealth that directly increases the cost of providing the access services that are directly attributable to the increase in the rate or to the new tax;
  - (h) any reduction or increase in network energy losses; and
  - (j) the on-going commercial viability of the network provider.

**69 Revenue caps to apply in first full financial year of first regulatory control period**

- (1) The revenue cap to apply to the network provider during the first full year of the first regulatory control period (and the revenue cap to apply during any preceding part year) is to be calculated using the methodology set out in Schedule 6.
- (2) The revenue cap set by the regulator is to provide a fair and reasonable risk-adjusted rate of return to the network provider on efficient investment given efficient operating and maintenance practices on the part of the network provider where:
  - (a) the assets making up the investment are to be identified and valued in accordance with Schedule 7; and
  - (b) the fair and reasonable rate of return is to be established by the regulator in accordance with Schedule 8, and is to be consistent with the method of valuation of new assets and revaluation, if any, of existing assets and consistent with achievement of a commercial return on efficient investment.
- (3) The fair and reasonable rate of return is to be determined by the regulator at least 90 days before the commencement of the first full financial year in the regulatory control period.

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**70 Revenue or price cap adjustment between years**

- (1) For the second full financial year and for each following year in the first regulatory control period, the revenue cap to apply to the network provider is to be derived by the methodology in Schedule 9.
- (2) The methodology to be used by the regulator to adjust the revenue or price cap is to involve increasing the previous year's cap in line with both:
  - (a) the factors which the regulator considers to be the main real-terms drivers affecting the network provider's costs (such as the growth in the quantity of electricity transported annually over the electricity network); and
  - (b) inflation (as measured by the rate of change in the consumer price index),and decreasing it by an efficiency gains factor (**X factor**).
- (3) The use of an efficiency gains factor is to ensure that the benefits of efficiency gains are shared between end-use customers (those gains achieved up to the X factor level) and the network provider (any gains achieved in excess of the X factor).
- (4) The efficiency gains factor (X factor) and any other factors required for the purposes of applying the methodology in Schedule 9 are to be determined by the regulator at least 90 days before commencement of the first financial year in which the factor will apply.
- (5) The efficiency gains factor is to be established and applied by the regulator in accordance with the principles in Schedule 10.

**71 Revoking or resetting revenue or price cap**

The regulator may only revoke or reset a revenue or price cap with respect to a particular financial year or years if it appears to the regulator that:

- (a) the cap was set on the basis of false or materially misleading information provided to the regulator;
- (b) there was a material error in the setting of the cap; or
- (c) there were extraordinary developments with respect to any one of the key factors identified in clause 68 which, in the opinion of the regulator, were outside the network provider's control.

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**72 Exclusions from revenue or price cap**

- (1) The excluded network access services, being those services for which the associated costs and revenue are excluded from the revenue or price cap, are to be determined by the regulator (when the regulator determines the network revenue caps) in a manner consistent with clause 6(3) of the *Competition Principles Agreement*.
- (2) Excluded network access services not subject to any price regulation relate to services:
  - (a) the supply of which, in the assessment of the regulator, is subject to effective competition; and
  - (b) the cost of which, in the assessment of the regulator, can be satisfactorily excluded from the cost base (including all asset-related costs) used for the purpose of calculating the revenue or price cap applying to regulated network access services.
- (3) Excluded network access services which, in the regulator's opinion, do not lend themselves to being regulated by the price control mechanisms set out in Chapters 6 and 7 relate to services:
  - (a) the supply of which, in the assessment of the regulator, is not subject to effective competition; and
  - (b) the cost of which, in the assessment of the regulator, cannot be satisfactorily included in the cost base (including all asset-related costs) used for the purpose of calculating the revenue or price cap applying to regulated network access services.
- (4) The network provider should provide any excluded network access services of the type identified in subclause (3) to network users on fair and reasonable terms.
- (5) The regulator is to determine what may constitute fair and reasonable terms for the purposes of subclause (4) if the network provider and affected network users are unable to reach agreement on such terms.
- (6) If the regulator is required to determine what may constitute fair and reasonable terms under subclause (5), the regulator is to make a determination:
  - (a) applying principles consistent with those set out in clause 63 and (where applicable) clauses 68 and 74; and
  - (b) observing the consultation processes applying to an arbitration under Chapter 4.

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## **Chapter 7      Network tariffs**

### **73      General**

- (1) This Chapter regulates the individual reference tariffs to be published annually by the network provider with respect to standard network access services.
- (2) Reference tariffs are:
  - (a) the tariff that the network provider cannot exceed when charging for a standard network access service;
  - (b) the reference point for use in establishing the tariffs that cannot be exceeded when charging for new or non-standard network access services; and
  - (c) the tariffs that an arbitrator must apply in making an award in the case of an access dispute relating (wholly or partly) to the tariff that should apply to a standard network access service.
- (3) The establishment of individual reference tariffs in accordance with the principles set out in this Chapter is primarily the responsibility of the network provider through a process overseen by the regulator.
- (4) Where the network access services required differ in some regard to the relevant standard network access services or where the circumstances associated with the provision of standard network access services may give rise to cost savings on the part of the network provider, the tariffs to apply in those circumstances are to be matters for commercial negotiation between the network user and the network provider.
- (5) The principles set out in this Chapter also provide the basis upon which the maximum tariffs to apply to new or non-standard network access services are to be approved by the regulator in the case of an access dispute where the dispute relates (wholly or partly) to the tariff to apply to those services.

### **74      Objectives of network pricing**

- (1) The reference tariffs are:
  - (a) to reflect efficient costs of supply;
  - (b) to involve a common approach for all network users, with the actual tariff with respect to a particular network access service only differing between users because of:
    - (i) the user's geographical and electrical location;

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- (ii) the quantities in which the relevant network access service is to be supplied or is supplied;
    - (iii) the pattern of network usage;
    - (iv) the technical characteristics or requirements of the user's load or generation;
    - (v) the nature of the plant or equipment required to provide the network access service; and
    - (vi) the periods for which the network access service is expected to be supplied;
  - (c) to be transparent and published in order to provide pricing signals to network users;
  - (d) to promote price stability; and
  - (e) to reflect a balancing of the quest for detail against the administrative costs of doing so which would be passed through to end-use customers.
- (2) In the event that the regulator considers there to be a conflict between the requirements set out in subclause (1) and the requirements set out in clause 63, the requirements in clause 63 are to take precedence.

## **75 Structure of regulated network prices**

- (1) The network provider is to be responsible for establishing the pricing structure that best gives effect to the principles in clause 74.
- (2) In determining the pricing structure, the network provider may distinguish tariffs and charges for the following categories of standard network access services:
  - (a) entry services that include the asset-related costs and services provided to serve a generator user at its connection point;
  - (b) exit services that include the asset-related costs and services provided to serve a load user at its connection point;
  - (c) common services that include the asset-related costs and services that ensure the integrity of the network and benefit all network users and cannot be allocated on the basis of voltage levels or location; and

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- (d) use of network services that include the network shared by generator users and load users, but exclude entry services, exit services and common services.
  - (3) Tariffs and charges may relate to specific connection points, and may involve a combination of fixed and variable amounts and may be related to one or more of the following elements:
    - (a) demand levels (maximum kW or kVA per period);
    - (b) energy quantities involved (kWh or kVAh per period); and
    - (c) time of use.
  - (4) If quantities are used in determining tariffs and charges, these quantities may refer to minimum, maximum or actual quantities.
  - (5) Prior to commencement of each regulatory control period or to the network provider's coverage by this Code, the network provider must provide the regulator with a draft statement setting out details of principles and methods to be used for defining the individual standard network access services to be supplied by the network provider and for establishing the reference tariffs to apply to those services.
  - (6) The regulator must approve the statement for use by the network provider unless, in the opinion of the regulator, the statement is not consistent with the principles in clause 74.

## **77 Publication of network tariffs**

- (1) At least 30 days before the start of each financial year, the network provider must publish a pricing schedule.
- (2) The pricing schedule must specify the reference tariffs to apply during the relevant period to standard network access services with regard to the network provider's network and, where appropriate, distinguish between:
  - (a) voltage level;
  - (b) load class; and/or
  - (c) pricing zone,to apply to load users and generator users.
- (4) The pricing schedule need not include the charges the network provider expects to levy on those services excluded from price regulation under clause 72.



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**78 Role of regulator**

- (1) At least 60 days prior to the start of each financial year, the network provider must provide to the regulator a statement setting out its proposed reference tariffs for the standard network access services it will be supplying that will apply in the relevant period with respect to a network.
- (2) The statement must detail how the tariffs and charges have been calculated by application of the principles in this Chapter.
- (3) The regulator must approve the tariffs and charges, or individual tariffs and charges, unless in the opinion of the regulator the tariffs and charges would result in the network provider not complying with the principles laid down in this Chapter or is inconsistent with requirements elsewhere in this Code.
- (4) If the regulator has not notified the network provider within 30 days of receiving the statement under subclause (1) that the regulator disapproves of the tariffs and charges, the regulator is to be taken to have approved the tariffs and charges.
- (5) If the regulator notifies the network provider that the regulator has not approved a tariff or charge with respect to the initial year of operation of this Code, the tariff or charge will be set at a level determined by the regulator until the regulator approves a tariff or charge submitted by the network provider.
- (6) If, in any of the financial years following the initial year, the regulator notifies the network provider that the regulator has not approved a proposed tariff or charge, the tariff or charge applying to that service in the immediately preceding year (or any other tariff or charge that the regulator determines) will apply until the regulator approves the tariff or charge.
- (7) Before the regulator approves the reference tariffs, the pricing schedule to be published by the network provider must incorporate any modifications that the regulator directs.

**Chapter 8 Capital contributions****79 General**

- (1) For the purposes of this Code, **capital contributions** only cover contributions expected of network users with a formal access agreement with the network provider.

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- (2) If the granting of an access application involves the provision of connection or system extension, the network provider may require the network user to make a capital contribution in respect of the capital investment associated with the designing, constructing, installing and commissioning of the connection or system equipment only if such contributions are calculated in accordance with this Chapter.
- (2A) Capital contributions assessed as necessary under this Chapter may be made to the network provider by the network user in the form of assets – which the network user constructs or acquires in compliance with the Network Technical Code – or a financial payment.
- (2B) The choice of the form of capital contribution referred to in subclause (2A) is to be the prerogative of the network user.
- (3) Capital contributions are to be distinguished from:
- (a) financial contributions that the network provider might require any network user seeking a new or modified connection to pay for prudential purposes so as to minimise financial risks associated with investment in network assets; and
  - (b) any capital contributions that the Government requires of individual end-use customers under franchise arrangements, where the existing distribution system extension policy (DSEP) principles established under the *Electricity Reform Act* will continue to apply.
- (4) Prudential requirements referred to in subclause (3)(a) may include one or more of the following arrangements:
- (a) financial contributions;
  - (b) non-cash asset contributions;
  - (c) service charge pre-payments;
  - (d) minimum service charges or quantities for an agreed period; and/or
  - (e) financial guarantees.
- (5) Prudential requirements referred to in subclause (3)(a) are not regulated by this Code and are a matter to be negotiated by the network provider and network users.

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**80 Capital contributions principles**

- (1) The capital contributions and charges covered by this Chapter are to be established by the network provider in accordance with the principles in this Chapter.
- (2) An access applicant or network user may be required to make a capital contribution towards the extension of connection equipment or network system assets only if the network provider can demonstrate that the extension is not commercially viable without that capital contribution.
- (3) For the purpose of subclause (1), an extension is commercially viable if:
  - (a) the network provider can be reasonably expected to recover within a reasonable time the costs, the capital investment and a reasonable rate of return on the capital investment of that extension and not increase the tariffs and charges payable by existing network users; and
  - (b) the network provider can be reasonably expected to obtain the necessary financial capital to fund that extension, from internal reserves or via new borrowings, on reasonable terms and conditions.
- (4) The value of the capital contribution should be equal to no more than the amount that would be required to make the extension commercially viable.
- (5) The capital contribution must be made to the network provider in the manner and at the time set out in the access agreement.
- (6) The reasonable rate of return on the capital investment associated with the proposed extension required in subclause (3) is to be established by the network provider taking into account:
  - (a) the network provider's cost of capital and its components, determined in a manner consistent with Schedule 8;
  - (b) the potential future use of the extension by existing and potential users; and
  - (c) the financial viability of the access applicant and the applicant's business at that location.

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- (7) The reasonable time within which the costs, the capital investment and a reasonable rate of return on the capital investment in respect of a proposed extension must be recovered as required in subclause (3) is to be established by the network provider taking into account:
- (a) the anticipated commercial life of the extension; and
  - (b) the purpose for which the applicant requires the network capacity the subject of the access application.
- (8) The reasonable terms and conditions upon which funding is to be obtained to finance the proposed extension as required in subclause (3) are to be established by the network provider taking into account:
- (a) the anticipated effect of any increased borrowing upon the network provider's cost of borrowings; and
  - (b) the availability of debt funding for those purposes and the covenants that prospective lenders might require in support of any borrowings.

## **81 Role of regulator**

- (1) The broad application by the network provider of the principles set out in this Chapter will be overseen by the regulator.
- (2) Prior to commencement of each regulatory control period or to the network provider's coverage by this Code, the network provider must provide to the regulator a draft statement providing details of principles and methods for establishing capital contributions under this Chapter.
- (3) The regulator must approve the statement for use by the network provider unless, in the opinion of the regulator, the statement does not comply with the requirements in this Chapter or is inconsistent with requirements elsewhere in this Code.

## **Schedule 2 Information to be submitted in access application**

An access application must contain the following information where appropriate:

- (a) the name and address of the person making the access application and of any other persons for whom that person is acting in making the access application;
- (b) the type of network access services requested, when those access services are required and for how long they will be required;
- (c) the entry points, exit points and transfer points (as applicable) in respect of which access is being applied for and the capacity (expressed in kVA) for each of these entry points and exit points for which access is being applied for;
- (d) whether the access application is being made in connection with a tender process to supply a project and, if so, who the sponsor is in respect of the project;
- (e) the premises and type of plant in respect of which network access services are required and the configuration of that plant;
- (f) the geographical location of the premises;
- (g) the maximum generation capacity and the proposed declared sent out capacity of the plant connected or to be connected at each entry point;
- (h) the expected maximum demand of the user connected or to be connected at each exit point;
- (i) the expected electricity production and consumption of the premises connected or to be connected at each of the entry points and exit points;
- (k) when the applicant expects the plant to be connected at each of the entry points and exit points in respect of which access is being applied for;
- (m) the arrangements that the applicant proposes to enter into in relation to the construction and supply of the connection equipment in respect of the connection points involved;
- (n) the nature of any disturbing load;

- (p) any commercial information concerning the applicant that is required by the network provider to allow the network provider to make an assessment of the ability of the applicant to meet its obligations under any access agreement that results from the access application.

### **Schedule 3 Terms and conditions to be included in access offer**

An access offer must include (as applicable) terms and conditions of the following kind:

- (a) details of each entry point and each exit point;
- (b) details of any transfer point;
- (c) the contract maximum demand and declared sent-out capacity in respect of each connection point;
- (d) if more than one person is selling or purchasing the electricity transferred at the connection point – the mechanism for deciding how much of the electricity transferred at that connection point is sold or purchased by each of those persons;
- (e) a requirement that the user complies with the Network Technical Code and the System Control Technical Code;
- (f) any metering arrangements and, if appropriate, a methodology for adjusting losses where the point of metering is significantly different to the connection point;
- (g) the payment conditions;
- (h) the date on which payments in respect of the network access services are to commence (whether or not the applicant's plant is actually commissioned by that date);
- (j) the duration and termination conditions of the proposed access agreement;
- (k) terms and conditions in relation to the carrying out of works to establish a connection point;
- (m) testing and commissioning requirements;
- (n) agreed protocols for maintenance coordination;
- (p) the provision, installation, operation and maintenance of automatic load shedding facilities;
- (q) the circumstances under which the terms of the resulting access agreement would require renegotiation;

- (r) the amount of any capital contributions required in accordance with Chapter 8 of the Code and the manner in which and the time at which the capital contribution must be paid to the network provider.



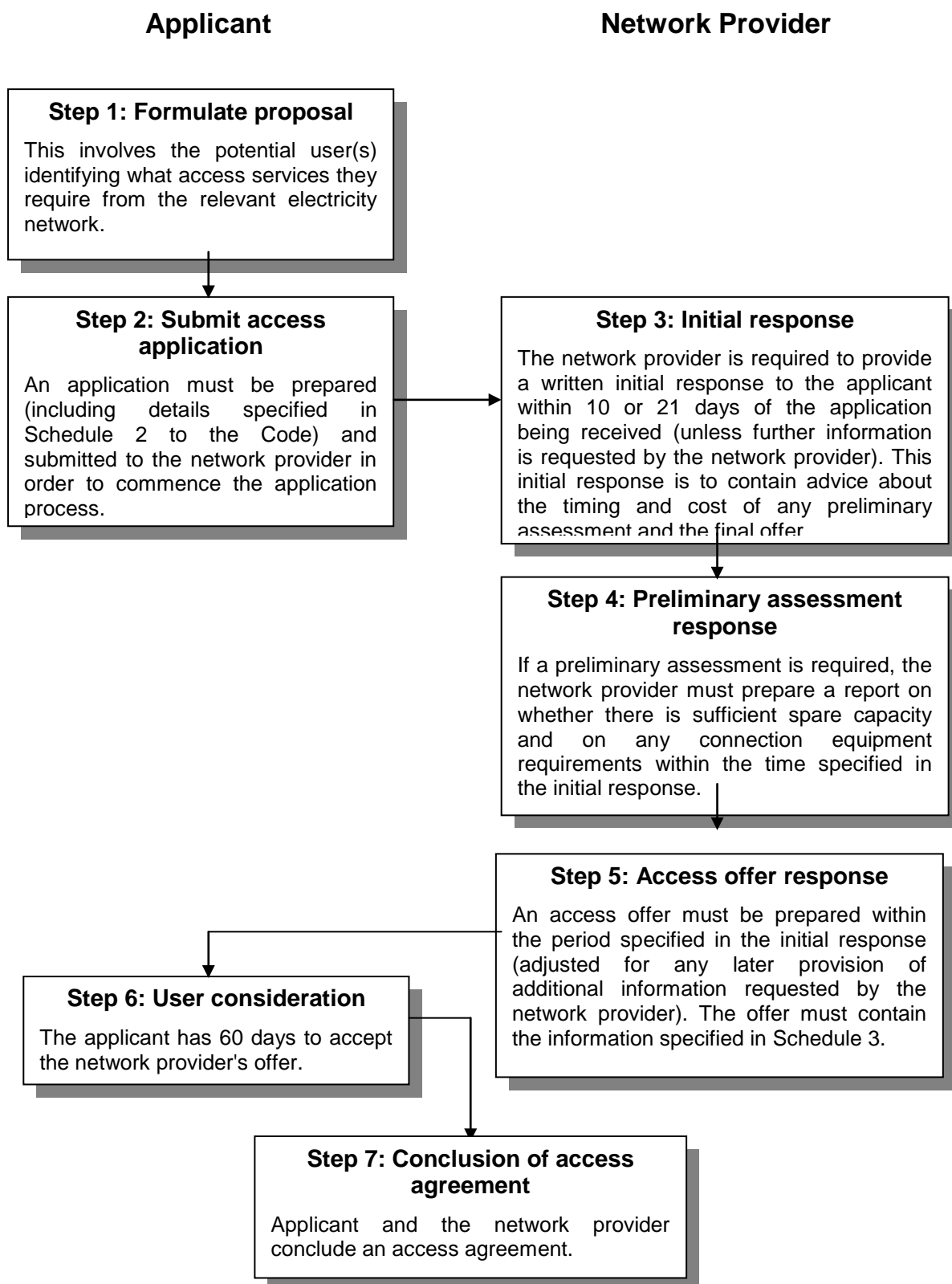
## **Schedule 4 Indicative terms and conditions of access agreements**

- (1) Access applicants must enter into legally binding and enforceable access agreements with the network provider(s) that must require the parties to abide by and comply with the Code.
- (2) Access agreements must contain the specific conditions that have been agreed to for connection and access to the electricity network, and may include:
  - (a) details of the connection point including network coupling points where appropriate;
  - (b) metering arrangements and adjustments for losses where the point of metering is significantly different to the connection point;
  - (c) authorised demand that may be taken or supplied at the connection point (under specified conditions);
  - (d) connection service charges;
  - (e) payment conditions;
  - (f) duration and termination conditions of the access agreement;
  - (g) terms, conditions and constraints that have been agreed to for connection to the network to protect the legitimate interest of the access providers including rights to disconnect the user for breach of commercial undertakings;
  - (h) details of any agreed standards of reliability of network service levels at the connection points or within the network;
  - (i) testing intervals for protection systems associated with the connection point;
  - (k) agreed protocols for maintenance co-ordination; and
  - (m) where an expected load to be connected to the network has a peak load requirement in excess of 10 MW – the provision, installation, operation and maintenance of automatic load shedding facilities for an agreed share of the load at any time.

(3) Access agreements may include:

- (a) other technical, commercial and legal conditions governing works required for the connection or extension to the network that the parties have negotiated and agreed to; and
- (b) circumstances under which the terms of access agreements would require renegotiation.

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**Schedule 5 Access application flow chart**

## **Schedule 6 Determining network provider's annual revenue cap**

### **1 Introduction**

- (1) This Schedule outlines the broad methodology to be used by the regulator to determine the revenue cap to apply to the network provider with respect to the first full financial year (and the cap applying in any preceding part financial year) in the first regulatory control period. The revenue cap in subsequent financial years within the first regulatory control period is to be determined in accordance with Schedule 9.
- (1A) The methodology for determining revenue or price caps in the second and subsequent regulatory control periods is to be determined by the regulator in a manner that most effectively achieves the outcomes in clause 63 and is consistent with generally accepted regulatory practice at the time.
- (2) Each revenue or price cap determined by the regulator is to apply only to tariffs and charges for regulated network access services as defined by the Code.

### **2 Accrual building block approach**

- (1) The methodology to be used to determine the revenue cap in the first year of the first regulatory control period is termed the accrual building block approach.
- (2) The approach calculates an annual revenue cap, that is the maximum allowable revenue to be earned in a financial year by the network provider from prices and charges for regulated network access services, as the sum of:
  - (a) an allowable return on capital;
  - (b) an allowable return of capital; and
  - (c) an allowable return of non-capital costs.

- (3) The maximum allowable revenue for a year is defined as:

$$A + B + C$$

where:

A is the allowable return on capital;

B is the allowable return of capital; and

C is the allowable return of non-capital costs.

- (4) The elements of the accrual building block approach are detailed in this Schedule.

### **3 Allowable return on capital**

- (1) The allowable return on capital is to be measured as a return on assets employed by the network provider were the network provider achieving an allowable rate of return, that is as:

$$A * B$$

where:

A is the written down (depreciated) value of the network provider's asset base; and

B is the allowable rate of return on the asset base.

- (2) Application of the formula in subclause (1) requires measures of both the network provider's asset base and the allowable rate of return on those assets.

### **4 Asset base**

- (1) The asset base is to include the fixed assets used to provide the regulated network access services and an allowance for working capital (such as cash or short term deposits) to meet the network provider's short term obligations.
- (2) For the purpose of calculating the allowable return on capital, the portion of assets funded by end-use customers or network users through capital contributions and the like after a date to be prescribed are to be excluded from the relevant asset base.
- (3) The fixed assets must embody the most efficient technology for providing the service and only include those assets related to the optimal configuration and capacity of the network.
- (4) Such an optimisation process is to ensure that network users do not have to pay for redundant or oversized assets that are not used to provide network services and should provide the network provider with the incentive to undertake optimum investment decisions.
- (5) The written down (depreciated) value of fixed assets is to be used to determine the allowable return on capital.

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- (6) The use of a written down (depreciated) value is to ensure that there is no double counting, such as would result from giving a return on the undepreciated asset base as well as allowing a return of capital.
  - (7) The network assets to be included and the method of valuation to be used are to be identified in accordance with the principles laid down in Schedule 7.

## **5 Allowable rate of return on the asset base**

- (1) The allowable rate of return on capital is to be measured by the rate equal to the network provider's weighted average cost of capital (WACC).
- (2) The use of the WACC approach is consistent with the *Competition Principles Agreement* and promotes the efficient allocation of resources by ensuring a government-owned network provider operates under the same financial conditions as a network provider in the private sector and will ensure returns in the public sector are equal to the opportunity cost of capital in the private sector.
- (3) The WACC is to be determined by the regulator for the network provider in accordance with the methodology laid down in Schedule 8.

## **6 Allowable return of capital**

- (1) Allowing a return of capital recognises the need to recoup the capital which the network provider currently has invested in network assets over the remaining useful lives of those assets.
- (2) The asset lives used for the purpose of calculating depreciation rates are to be consistent with good electricity industry practice.

## **7 Allowable return of non-capital costs**

- (1) The final component of maximum allowable revenue is the return of non-capital costs involved in providing network services.
- (2) These costs include operating and maintenance (O&M) costs and administration and general (A&G) costs (together referred to as **operating expenditure** (opex)).
- (3) As one of the objectives of the regulation of network prices is to provide the network provider with incentives to utilise efficient operating and maintenance practices, the operating expenditure to be included in the calculation of a revenue cap is to be based on costs facing an efficient operation taking into account the scale of operations.

- (4) The allowable return of non-capital costs is to exclude costs that relate to the provision of excluded network services and unrelated business activities including, but not limited to, costs in respect of energy trading and generation.

## **Schedule 7 Identifying and measuring the network asset base**

### **1 Distinguishing network assets**

Network assets can be separated into 3 components:

- (a) those assets that provide service to the overall system that may not be appropriate to allocate to individual parts of the system (**common service assets**);
- (b) those assets that are fully dedicated to providing connection to a single generator or group connected at a single point within the network (**entry assets**) or fully dedicated to the supply of load users connected at a single point within the network (**exit assets**) together referred to as **connection assets**; and
- (c) those assets that are shared to a greater or lesser extent by all users across the system and can be identified as related to a specific part of the system (**network system assets**).

### **2 Network assets that provide common services**

Common service network assets can include but are not limited to:

- (a) power system communications networks;
- (b) control systems;
- (c) control centres;
- (d) dynamic reactive control plant;
- (e) static reactive plant;
- (f) spare plant and equipment including that installed at substations;
- (g) fixed assets such as buildings and land that are not associated with substation or line easements, eg. head office buildings, land for future stations etc.;
- (h) load control signalling equipment in substations and on customer premises; and
- (j) motor vehicles and construction equipment.



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**3 Connection assets (entry and exit assets)**

- (1) Entry and exit assets include only stationary assets including transformers that are used to supply load at the interface between network users and the electricity network.
- (2) Transmission lines connecting generators to the network provider's assets may be assets of the generator and, if owned by the network provider, are to be treated as connection assets.
- (3) Connection assets can include but are not limited to:
  - (a) participant generator switchyards:
    - (i) entry (connection assets):
      - (A) transmission switchgear and associated plant used for connection of generator transformers; and
      - (B) station establishment and buildings; and
    - (ii) shared network – all switchgear for termination of transmission lines from the station;
  - (b) load point substation:
    - (i) exit (connection assets):
      - (A) all switchgear at intermediate voltage levels (ie feeder circuit breakers and sub-transmission bus-tie circuit breakers and isolators);
      - (B) all transformers which supply intermediate voltage levels, and associated switchgear at both the transmission and sub-transmission voltage levels;
      - (C) station establishment and building costs;
      - (D) any bus-ties at the transmission voltage level; and
      - (E) reactive plant installed for power factor correction;
  - (c) distribution network connection assets, which typically include the following:
    - (i) service lines plus meters for domestic customers;
    - (ii) service lines, meters, dedicated distribution transformers and associated switchgear for medium size commercial and industrial customers;

- (iii) high voltage lines and plant for major commercial and industrial customers;
- (d) metering installations on network user feeders; and
- (e) land at stations which supply load or connect generators.

#### **4 Network system assets**

- (1) The remaining network assets are included as network system assets.
- (2) Network system assets include all elements of the network that provide use of system services and give rise to the majority of the costs.
- (3) Network system assets can include but are not limited to:
  - (a) transmission network:
    - (i) transmission lines;
    - (ii) switchgear (circuit breakers and isolators) on transmission lines and transformers which are part of the transmission network and are switched at the station including associated bus work and control and protection schemes;
    - (iii) transformers which transform voltage between transmission levels;
    - (iv) any dynamic reactive plant and associated switchgear and transformation regardless of voltage level;
    - (v) all existing static reactive plant and associated switchgear; and
    - (vi) all system controls required for monitoring and control of the integrated transmission system – this includes remote monitoring and associated communications, load shedding and special control schemes and voltage regulating plant required for operation of the system;
  - (b) distribution network:
    - (i) distribution lines including all poles and associated hardware;
    - (ii) terminating switchgear (circuit breakers and isolators) including associated protection and controls;

- (iii) transformers between distribution voltage levels;
- (iv) switchgear for above transformers; and
- (v) underground cable systems including conduits and trenching;
- (c) reactive plant; and
- (d) station establishment and buildings.

## **5 Valuing network assets for first regulatory control period**

- (1) Sunk assets (assets in place before the commencement date of the Code) are to be valued at available book values underlying the published and audited financial accounts at the end of the preceding financial year (30 June 1999) provided those values do not exceed the assets' optimised deprival value, as defined in this Schedule.
- (2) Deprival value is the minimum loss that would result if the business were deprived of the asset.
- (3) For example:
  - (a) if the asset can and should be replaced – the deprival value of the asset is its replacement cost; or
  - (b) if the asset would not be replaced – the deprival value of the asset is the greater of the net present value of expected cash flows from its continued use or the net realisable value of disposing of the asset (its economic value).
- (3) Optimised deprival value is a variant of the deprival value approach and takes account of the most efficient method of providing the asset's services if the asset is to be replaced.
- (4) For example, if the asset can and should be replaced – the optimised deprival value of the asset is its optimised replacement cost.
- (5) During a regulatory control period, assets acquired after commencement of that period are to be valued at cost.

## **6 Valuing network assets for second and subsequent regulatory control periods**

- (1) Subsequent revaluation of assets brought into service after 1 July 1999 and subsequent valuation of existing assets generally in service on 1 July 1999 (for use during the second or subsequent

regulatory control periods, where the revaluations are to be used for regulatory purposes) are to be undertaken on a basis to be approved by the regulator.

- (2) In approving the basis of asset valuation to be used, the regulator must have regard to:
  - (a) the agreement of the Council of Australian Governments of 19 August 1994 that deprival value should be the preferred approach to valuing network assets;
  - (b) any subsequent decisions of the Council of Australian Governments regarding the valuation of public sector assets; and
  - (c) generally accepted regulatory practice at the time.

## **Schedule 8 Establishing network provider's weighted average cost of capital (WACC)**

### **1 Introduction**

- (1) The WACC to be used during the first regulatory control period is to be measured in accordance with this Schedule.
- (2) The methodology for determining any WACC for use in the second and subsequent regulatory control periods is to be determined by the regulator in a manner that most effectively achieves the outcomes in clause 63 and is consistent with generally accepted regulatory practice at the time.

### **2 Determining weighted average cost of capital**

The pre-tax WACC formula to be used is:

$$\left[ \frac{A}{1 - B*(1 - C)} * (1 - D) \right] + [E * D]$$

where:

A is the required rate of return on equity, after company tax;

B is the corporate tax rate;

C is the value of franking credits or imputation factor;

D is the gearing ratio; and

E is the pre-tax weighted average cost of debt.

### **3 The required rate of return on equity**

- (1) The required rate of return on equity to be used is:

$$A + B * C$$

where:

A is the risk free rate of return;

B is the relative systematic risk of the individual company's equity (or equity beta); and

C is the market risk premium.

- (2) Each of the elements of the formula in subclause (1) is detailed in this Schedule.

#### **4      Risk free rate of return**

The risk free rate of return represents the expected return from an investment where returns are completely invariant to changes in average market returns. It may be proxied by a Commonwealth government bond rate of an appropriate maturity.

#### **5      Equity beta**

- (1) An equity beta measures the expected volatility of returns on an individual equity investment relative to the total market. It measures the systematic risk of an equity investment, that is the risk that cannot be eliminated in a well balanced diversified portfolio.
- (2) An equity beta can be measured by reference to an asset beta, where the de-levered (or asset) beta is the market risk associated with an investment had it been financed completely by equity.

#### **6      Market risk premium**

The market risk premium represents the return that investors expect the market as a whole to deliver in excess of the expected risk free return. It may be proxied by an average rate – observed over an economic cycle – of returns achieved by the equity market.

#### **7      Corporate tax rate**

- (1) The tax rate refers to the expected rate of tax paid on accounting profits.
- (2) The rate may be proxied either by the statutory rate (that is, the marginal tax rate) or by the effective or average tax rate, whichever is the more appropriate in the circumstances.

#### **8      Value of franking credits or imputation factor**

The availability of tax imputation credits requires a modification to the standard WACC model to allow for the value to shareholders of tax credits associated with franked dividends.

#### **9      Gearing ratio**

- (1) The gearing ratio is the ratio of the market value of debt to the market value of debt plus equity.

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- (2) A gearing ratio is required both:
    - (a) to re-lever (or gear-up) any asset beta used for estimating the cost of equity; and
    - (b) to appropriately weight the cost of equity and the cost of debt when calculating the weighted average cost of capital.
  - (3) The gearing ratio used is to abstract from fluctuations over time, including the state of capital markets and individual market and utility circumstances.

## 10 Required rate of return on debt

- (1) The pre-tax cost of debt to be used is:
 

A + B

where:

A is the risk free rate of return; and

B is the margin over the risk free rate at which debt can be obtained (debt premium).
- (2) The network provider's credit standing will influence the margin over the risk free rate at which debt can be obtained.
- (3) The cost of debt used is to be consistent with the value of the gearing ratio used.

## 11 Calculating real WACC

- (1) Wherever fixed asset values are regularly revalued and so move in line with inflation, a measure of the *real-terms* WACC is to be used. Using the real WACC will prevent double-dipping on the return on assets component of the revenue cap.
- (2) Where appropriate, the formula to be used for calculating a *real-terms* WACC from estimates of a nominal WACC is as follows:

$$\frac{1 + A}{1 + B} - 1$$

where:

A is the nominal WACC; and

B is a measure of expected or forecast inflation.

## **Schedule 9 Network revenue caps for subsequent financial years**

- (1) The revenue caps for the second and subsequent full financial years of the first regulatory control period are to be determined prior to the start of each of these financial years in accordance with this Schedule.
- (1A) The methodology for determining revenue or price caps for the second and subsequent full financial years in the second and subsequent regulatory control periods is to be determined by the regulator in a manner that most effectively achieves the outcomes in clause 63 and is consistent with generally accepted regulatory practice at the time.
- (2) The revenue cap for the network provider for the financial year "t" (in \$) for the second and any subsequent financial years in the first regulatory control period is to be determined by the regulator prior to the start of that financial year in a manner consistent with the following general formulation:

$$[A + b*B + n*N] * [1 + (CPI-X)] + K$$

where:

A is the revenue cap established by the regulator a year earlier for the preceding financial year (in \$);

B (in MWh) is the total amount of additional electricity which it is forecast will be transported by the network provider over the network during financial year "t";

b (in dollars per MWh) is the allowed revenue per additional unit of electricity;

N is a general term for the expected change in the value of any other cost drivers considered by the regulator to be relevant during year "t";

n (in dollars per units relevant to the variable in N) is the allowed revenue per additional unit of the variable N;

CPI is the forecast annual percentage change in the consumer price index for the year in question;

X is the efficiency gains factor (as a percentage) determined by the regulator in accordance with Schedule 10; and



K (in \$) is a correction factor for the year in question (for the third and subsequent financial years in a regulatory control period) which, in the regulator's opinion, is necessary to offset differences between the expected or forecast parameter values used to calculate the previous year's revenue cap and the actual values, and where doing so would be consistent with the principles set out in Schedule 10.

- (3) In applying the formula in subclause (2) to the first regulatory control period, the regulator may adopt values for the various coefficients which in the regulator's opinion are the most appropriate in the circumstances in light of the objectives set out in clause 63 of the Code and the principles set out in clause 68 of the Code.
- (4) The regulator may apply the formula in subclause (2) at either the aggregate level or by choosing to apply elements of the formula at an individual tariff or tariff group level and obtaining the result for that element by summing results across all tariffs or tariff groups.
- (5) When making a determination under subclause (4), the regulator is to take into account measurement and definitional conventions generally accepted at the time.

## **Schedule 10 Determining efficiency gains factor (X factor)**

### **1 Introduction**

- (1) Under the Code, the revenue or price cap set for the network provider is increased each year in line with inflation (as measured by CPI) and certain cost drivers but decreased by an efficiency driver (the **X factor**) determined at the commencement of each regulatory control period by the regulator.
- (2) The CPI-X regulation provides the network provider with an incentive to increase efficiency (by reducing costs). In its simplest terms, the network provider must increase its efficiency by the X factor in order to maintain its profits at the level implied by the revenue or price cap. However, if the network provider can achieve efficiencies greater than those allowed for in the X factor, the higher level of profits remains with the business. In other words, the benefits of efficiency gains are shared between network users (ie. those gains achieved up to the X factor level) and the network provider (the gains achieved in excess of the X factor).
- (3) The X factor is to be applied by the regulator in a way that allows network providers to benefit from any cost reductions and improvements in productive efficiency that are in excess of a set benchmark, and to bear the impact of any under-performance against such benchmarks, without removing the incentives for managers and owners to undertake the activities that create efficiencies. The benefits to network users stem from the long-term downward pressure on prices, resulting from the efficiency gains achieved.

### **2 Determining appropriate X factor**

- (1) For the first regulatory control period, the value of the X factor is to be determined by the regulator in accordance with subclauses (2), (3), (4) and (5) so that, if efficiency benchmarks are achieved, the network provider would achieve over time the allowable rate of return as defined in Schedules 6 and 8.
- (1A) The methodology for determining the value of X to apply in the second and subsequent regulatory control periods is to be determined by the regulator in a manner that most effectively achieves the outcomes in subclauses (1) and (3) and is consistent with generally accepted regulatory practice at the time.

- (2) To this end, the regulator is to develop a profile for the maximum allowable revenue in each of the second and subsequent years of the first regulatory control period using the building block approach based on:
  - (a) initial costs and financial position;
  - (b) assessed efficiency cost paths;
  - (c) quality of services provided;
  - (d) principles for sharing efficiency gains; and
  - (e) the pace that cost reductions can be expected to be achieved.
- (3) The X factor is to be set so as to provide a transition that links the maximum allowable revenue at the end of the period with the value in the first year. Taking the parameters used in the revenue formula, the X factor is to be calculated to achieve a desired glide path, resulting in end-year revenues consistent with the building block analysis outcome.
- (4) In this way, the X factor will not simply reflect assumed productivity gains. The level of the X factor will also be influenced by which cost drivers are included in the revenue formula as well as the shape of the glide path proposed. X is therefore to be the real-terms change in revenues to be achieved if efficiency benchmarks are achieved relative to the revenues which would otherwise be generated, given assumptions regarding the nominated cost driver(s).
- (5) The pace at which cost reductions can be expected to be achieved is to be assessed by the regulator with reference to:
  - (a) expected productivity improvements to be achieved by the network provider;
  - (b) industry trends and benchmarks;
  - (c) expected changes in input prices, which may differ from the general economy-wide rate of price change (as measured by the rate of change in the consumer price index (CPI)); and
  - (d) the services to be provided by the network provider and the standards at which those services are to be provided.

### **3 Sharing benefit of out-performance**

- (1) The CPI-X approach also requires indications on how efficiency gains achieved during a regulatory control period are to be shared with network users in subsequent regulatory control periods, and when.
- (2) The following general approach is to be followed:
  - (a) the network provider is to retain all profits earned within each regulatory control period by outperforming the relevant benchmarks (underlying the X factor), and to bear all profit shortfalls associated with any under-performance, except where:
    - (i) the revenue or price cap was set on the basis of false or materially misleading information;
    - (ii) there was a material error in setting the revenue or price cap and written consent of the parties affected by any amendment to the revenue or price cap has been obtained; or
    - (iii) extraordinary developments occur during a regulatory control period that, in the opinion of the regulator, were outside the network provider's control (including a change in ownership);
  - (b) any excess profits (or unanticipated losses) arising during a regulatory control period on account of the actual values of the parameters used to estimate a revenue or price cap departing from forecast values are to be eliminated in full from the commencement of the following regulatory control period; and
  - (c) any efficiency gains achieved during a regulatory control period which are beyond those foreshadowed in the X factor are to be phased out progressively over the course of the following regulatory control period, with such a glide path approach being achieved by building an explicit efficiency carryover component into the revenue or price cap for the following regulatory control period (which translates into an increase in the allowed rate of return over and above the rate that would otherwise be applied).

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Electricity Networks (Third Party Access) Act 2000 (Act No. 11, 2000)***

Assent date	21 March 2000
Commenced	1 April 2000 ( <i>Gaz</i> S14, 31 March 2000)

***Electricity Networks (Third Party Access) Amendment Act 2001 (Act No. 31, 2001)***

Assent date	19 July 2001
Commenced	19 July 2001

***Statute Law Revision Act 2009 (Act No. 25, 2009)***

Assent date	1 September 2009
Commenced	16 September 2009 ( <i>Gaz</i> G37, 16 September 2009, p 3)

***Penalties Amendment (Justice and Treasury Legislation) (Act No. 38, 2010)***

Assent date	18 November 2010
Commenced	1 February 2011 ( <i>Gaz</i> S6, 1 February 2011)

***Consumer Affairs and Fair Trading Amendment (National Uniform Legislation) Act 2010 (Act No. 41, 2010)***

Assent date	8 December 2010
Commenced	1 January 2010 ( <i>Gaz</i> S71, 20 December 2010)

***Commercial Arbitration (National Uniform Legislation) Act 2011 (Act No. 23, 2011)***

Assent date	31 August 2011
Commenced	1 August 2012 ( <i>Gaz</i> G26, 27 June 2012, p 4)

***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)

**Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)**

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 <i>Local Court (Repeals and Related Amendments) Act 2016</i> (Act No. 9, 2016) and Gaz S34, 29 April 2016)

**3 GAZETTE NOTICES**

Gaz G19, 17 May 2000, p 5  
 Gaz S32, 27 June 2001  
 Gaz G12, 26 March 2003, p 5  
 Gaz G43, 29 October 2003, p 5  
 Gaz S51, 27 May 2015

**4 PRESCRIBED ELECTRICITY NETWORKS**

By notice published in Gaz G31, 8 August 2001, p 8, the Darwin-Katherine transmission line, is prescribed as an electricity network for section 5.

**5 LIST OF AMENDMENTS**

It	sub No. 16, 2015, s 19
ss 2A – 2B	ins No. 16, 2015, s 20
s 3	rep No. 16, 2015, s 20
pt 1A hdg	ins No. 16, 2015, s 20
ss 3A – 3B	ins No. 16, 2015, s 20
pt 2 hdg	sub No. 16, 2015, s 20
s 4	rep No. 16, 2015, s 20
ss 4A – 4C	ins No. 16, 2015, s 20
pt 3 hdg	sub No. 16, 2015, s 20
pt 3	
div 1 hdg	ins No. 16, 2015, s 20
s 5	sub No. 31, 2001, s 3
	rep No. 16, 2015, s 20
ss 5A – 5H	ins No. 16, 2015, s 20
pt 3	
div 2 hdg	ins No. 16, 2015, s 20
s 6	rep No. 16, 2015, s 20
ss 6A – 6E	ins No. 16, 2015, s 20
pt 3	
div 3 hdg	ins No. 16, 2015, s 20
s 7	rep No. 16, 2015, s 20
ss 7A – 7D	ins No. 16, 2015, s 20
pt 3A hdg	ins No. 16, 2015, s 20
pt 3A	
div 1 hdg	ins No. 16, 2015, s 20
s 8	rep No. 16, 2015, s 20
ss 8A – 8C	ins No. 16, 2015, s 20
s 8D	ins No. 16, 2015, s 20
	amd No. 8, 2016, s 45
ss 8E – 8G	ins No. 16, 2015, s 20
s 8H	ins No. 16, 2015, s 20
	amd No. 8, 2016, s 45
s 8I	ins No. 16, 2015, s 20

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s 8J	ins No. 16, 2015, s 20 amd No. 8, 2016, s 45
s 8K	ins No. 16, 2015, s 20
pt 3A	
div 2 hdg	ins No. 16, 2015, s 20
s 9	rep No. 16, 2015, s 20
s 9A	ins No. 16, 2015, s 20
pt 3A	
div 3 hdg	ins No. 16, 2015, s 20
pt 3A	
div 3	
sdiv 1 hdg	ins No. 16, 2015, s 20
s 10	amd No. 31, 2001, s 4 rep No. 16, 2015, s 20
ss 10A – 10E	ins No. 16, 2015, s 20
pt 3A	
div 3	
sdiv 2 hdg	ins No. 16, 2015, s 20
ss 10F – 10K	ins No. 16, 2015, s 20
pt 3A	
div 3	
sdiv 3 hdg	ins No. 16, 2015, s 20
ss 10L – 10N	ins No. 16, 2015, s 20
pt 3A	
div 3	
sdiv 4 hdg	ins No. 16, 2015, s 20
ss 10P – 10S	ins No. 16, 2015, s 20
pt 3A	
div 3	
sdiv 5 hdg	ins No. 16, 2015, s 20
ss 10T – 10V	ins No. 16, 2015, s 20
pt 3A	
div 4 hdg	ins No. 16, 2015, s 20
s 11	rep No. 16, 2015, s 20
ss 11A – 11B	ins No. 16, 2015, s 20
pt 3B hdg	ins No. 16, 2015, s 20
pt 3B	
div 1 hdg	ins No. 16, 2015, s 20
s 12	rep No. 16, 2015, s 20
s 12A	ins No. 16, 2015, s 20
pt 3B	
div 2 hdg	ins No. 16, 2015, s 20
s 13	rep No. 16, 2015, s 20
s 13A	ins No. 16, 2015, s 20
pt 3B	
div 3 hdg	ins No. 16, 2015, s 20
pt 3B	
div 3	
sdiv 1 hdg	ins No. 16, 2015, s 20
s 14	amd No. 31, 2001, s 5 rep No. 16, 2015, s 20
s 14A	ins No. 16, 2015, s 20
pt 3B	
div 3	
sdiv 2 hdg	ins No. 16, 2015, s 20
ss 14B – 14H	ins No. 16, 2015, s 20

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pt 3B	
div 3	
sdiv 3 hdg	ins No. 16, 2015, s 20
s 14J	ins No. 16, 2015, s 20
s 15	amd No. 38, 2010, s 3
s 16	amd No. 16, 2015, s 21
s 17	amd No. 23, 2011, s 46
pt 5 hdg	amd No. 16, 2015, s 22
s 19	amd No. 16, 2015, s 23
pt 6 hdg	sub No. 16, 2015, s 24
pt 6	
div 1 hdg	ins No. 16, 2015, s 24
s 21	sub No. 16, 2015, s 24
pt 6	
div 2 hdg	ins No. 16, 2015, s 24
s 22	sub No. 16, 2015, s 24
pt 6	
div 3 hdg	ins No. 16, 2015, s 24
pt 6	
div 3	
sdiv 1 hdg	ins No. 16, 2015, s 24
ss 23 – 25	sub No. 16, 2015, s 24
pt 7 hdg	rep No. 16, 2015, s 24
ss 26 – 27	sub No. 16, 2015, s 24
pt 6	
div 3	
sdiv 2 hdg	ins No. 16, 2015, s 24
s 28	amd No. 38, 2010, s 3
	sub No. 16, 2015, s 24
ss 29 – 34	ins No. 16, 2015, s 24
pt 6	
div 4 hdg	ins No. 16, 2015, s 24
s 35	ins No. 16, 2015, s 24
pt 6	
div 5 hdg	ins No. 16, 2015, s 24
ss 36 – 45	ins No. 16, 2015, s 24
pt 6	
div 6 hdg	ins No. 16, 2015, s 24
ss 46 – 47	ins No. 16, 2015, s 24
pt 6	
div 7 hdg	ins No. 16, 2015, s 24
s 48	ins No. 16, 2015, s 24
pt 7 hdg	ins No. 16, 2015, s 24
ss 49 – 53	ins No. 16, 2015, s 24
pt 8 hdg	ins No. 16, 2015, s 24
pt 8	
div 1 hdg	ins No. 16, 2015, s 24
s 54	ins No. 16, 2015, s 24
pt 8	
div 2 hdg	ins No. 16, 2015, s 24
ss 55 – 62	ins No. 16, 2015, s 24
pt 8	
div 3 hdg	ins No. 16, 2015, s 24
ss 63 – 64	ins No. 16, 2015, s 24
pt 8	
div 4 hdg	ins No. 16, 2015, s 24
ss 65 – 66	ins No. 16, 2015, s 24
sch hdg	amd No. 16, 2015, s 25



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sch                    amd Gaz G19  
                         sub Gaz S32  
                         amd Gaz G12; Gaz G43; No. 25, 2009, s 10; No. 41, 2010, s 29; Gaz S51;  
                         No. 16, 2015, ss 26 – 44; No. 8, 2016, s 45