

# NATIONAL ELECTRICITY (WESTERN AUSTRALIA) BILL 2016

## EXPLANATORY MEMORANDUM

### Overview

The National Electricity (Western Australia) Bill 2016 (**Bill**) is part of a legislative package that implements reforms to the scheme of access regulation that applies to Western Australia's electricity networks and gas pipelines.

These reforms will see responsibility for regulating access to Western Power's electricity network and gas pipelines shift from the local Economic Regulation Authority (**ERA**) to a national body, the Australian Energy Regulator (**AER**), under the National Electricity Law and National Gas Law, respectively.

The legislative package to implement these reforms consists of the following three bills:

- this Bill, the National Electricity (Western Australia) Bill 2016, which adopts the National Electricity Law as an applied law scheme in Western Australia for regulation of electricity networks;
- the National Gas Access (WA) Amendment Bill 2016, which modifies the National Gas Law already adopted in Western Australia under the *National Gas Access (WA) Act 2009* to an applied law for regulation of gas pipelines; and
- the Energy Legislation Amendment and Repeal Bill 2016, which amends existing local legislation to the extent necessary to facilitate the first two bills.

The primary purpose of this Bill is to apply the National Electricity Law as a law of Western Australia, and enable the AER to become the economic regulator for the Western Power electricity network.<sup>1</sup>

This objective is also supported by the Energy Legislation Amendment and Repeal Bill 2016. Accordingly, this explanatory memorandum should be read with the explanatory memorandum for the Energy Legislation Amendment and Repeal Bill 2016.

### The National Electricity Law

In each State and Territory except Western Australia, electricity networks are regulated under the National Electricity Law. The National Electricity Law is a cooperative national legislative scheme established by the Council of Australian Governments (**COAG**) Energy Council under the Australian Energy Market Agreement.

The Australian Energy Market Agreement is an intergovernmental agreement to which all Australian jurisdictions are a party, including Western Australia.

The National Electricity Law establishes a central governance framework with unique national regulatory bodies that oversee a single set of national rules (the National Electricity Rules) for the consistent regulation of the electricity sector in each participating jurisdiction.

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<sup>1</sup> A map of the Western Power network is contained at Appendix 1.

The four principal national bodies under the National Electricity Law are as follows.

- The COAG Energy Council is responsible for broad energy market policy and the legislative framework.
- The Australian Energy Regulator has the responsibility for the economic regulation of electricity networks and compliance and enforcement functions in the National Electricity Market.<sup>2</sup>
- The Australian Energy Market Commission is the custodian of the National Electricity Rules, with responsibility for adapting them over time to meet the dynamic needs of the electricity sector.
- The Australian Energy Market Operator has the responsibility for operating the National Electricity Market and has functions in respect of new network connections and planning for the development of future electricity infrastructure needs.

Each jurisdiction that is a signatory to the Australian Energy Market Agreement is able to become a participant in the National Electricity Law scheme. Under the cooperative scheme, the National Electricity Law is enacted through the South Australian Parliament as the host jurisdiction with each participating jurisdiction introducing application legislation to give effect to the South Australian legislation as applied law.

The National Electricity Law is a Schedule to the *National Electricity (South Australia) Act 1996* (SA). Changes to the National Electricity Law in the South Australian legislation can only occur on the approval of the COAG Energy Council.

All Australian jurisdictions, except for Western Australia, have enacted an application Act to adopt the National Electricity Law as a law of their jurisdiction. The Bill, when passed, will be the application Act for Western Australia and Western Australia will become a participating jurisdiction in the National Electricity Law.

### **Extent to which the National Electricity Law will be applied in Western Australia**

The Bill provides for the Western Power network to be subject to the National Electricity Law. Other unregulated electricity networks in Western Australia will not be affected: such as private electricity lines within the South West Interconnected System, the North West Interconnected System in the Pilbara region, and the distribution systems operated by Horizon Power in various regional and remote localities.

The Bill does contain a mechanism that will enable other electricity networks to be brought under the National Electricity Law via regulations that can be made under the Western Australian application Act. This would be contingent on a decision to this effect by the Western Australian Government at the time and be subject to the COAG Energy Council's approval.

The Bill does not apply the entirety of the National Electricity Law as a law of Western Australia. Only those parts of the National Electricity Law necessary for the regulation for electricity networks will apply in Western Australia.

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<sup>2</sup> The National Electricity Market is the wholesale electricity market for the east coast of Australia, which enables electricity to be traded through the interconnected National Electricity System serving New South Wales, Victoria, Queensland, South Australia, Tasmania and the Australian Capital Territory.

The Bill provides for modifications to the National Electricity Law for its application in Western Australia. These modifications are necessary to accommodate local circumstances of the electricity sector in Western Australia. These include:

- the Western Power network is not physically connected to the east coast interconnected national electricity system;
- Western Australia is maintaining its local wholesale electricity market rather than joining the National Electricity Market, and
- Western Australia is not adopting the National Energy Retail Law at this time.

Regulation making powers for the Western Australian Government are conferred under the Bill to allow modifications to be made to the National Electricity Law and its subsidiary instruments<sup>3</sup> insofar as they are to apply in Western Australia. These heads of power also allow for transitional regulations to be made to assist with transferring regulation of Western Power's network to the national framework.

### **The national framework for electricity network regulation**

Businesses that supply electricity transmission and distribution services (through an electricity network) are generally considered to be a "natural monopoly" because customer needs can be met at least cost if there is only one provider of those services. This is because it is not sensible to have two electricity networks serving the same geographical area.

The theory and evidence about the behaviour of natural monopolies suggests that, without regulation, electricity network businesses may set excessively high prices and potentially provide too low a quality of services, leading to poor outcomes for consumers. Such behaviours can also lead to poor outcomes for customers in related markets; that is, the electricity generation and electricity retail markets. These outcomes justify the need for regulatory intervention.

Electricity network services provided by Western Power have been regulated to date under Part 8 of the *Electricity Industry Act 2004* and the *Electricity Networks Access Code 2004*. However, this regulatory framework is no longer meeting the needs of electricity industry participants and electricity customers. Achieving the required improvements to the regulation of Western Power is best achieved by transferring regulation to the National Electricity Regime for electricity networks through adoption of the National Electricity Law.

The regulatory framework for electricity networks under the National Electricity Law is designed to ensure a robust regulatory oversight of electricity businesses like Western Power. The national framework is underpinned by one single objective - the National Electricity Objective. This objective requires regulatory decisions and outcomes to promote efficient investment, operation and use of electricity services for the long-term interests of consumers of those services.

Adopting the regulatory framework through the National Electricity Law will provide substantial benefits for electricity customers and the Western Australian economy. These benefits will include:

- improved access of generation businesses and electricity customers to the electricity network through lower connection costs and improvements in connection processes;

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<sup>3</sup> The National Electricity Regulations and National Electricity Rules.

- more efficient investment in the electricity network by focusing investment on benefits to electricity customers; and
- better regulatory decision-making through access to the capability, experience and regulatory methods of the national energy regulator.

The substantive content of the national network regulation framework is set out in the National Electricity Rules, a subsidiary instrument under the National Electricity Law. The Bill provides for the Minister for Energy to, by instrument, apply the relevant parts of the National Electricity Rules in Western Australia with relevant modifications. This is intended to occur shortly after the substantive commencement of the Bill.

Adopting the national regulatory framework under the National Electricity Law will also require the deactivation of the existing local regulatory regime overseen by the ERA under the *Electricity Industry Act 2004* and *Electricity Networks Access Code 2004*, in so far as it applies to the Western Power network. The Energy Legislation Amendment and Repeal Bill 2016 provides for this outcome.

### **Staged approach for transferring regulatory responsibility**

Under the local regulatory framework that currently applies to the Western Power network, Western Power is required to have an Access Arrangement in place that is approved by the ERA. The Access Arrangement covers prices, services, policies and terms and conditions for access to the Western Power network. Western Power is currently operating under its Third Access Arrangement that covers the five year period from 1 July 2012 to 30 June 2017.

The earliest date on which a regulatory determination under the National Electricity Law can have effect for the Western Power network is 1 July 2018. This is because of the expected timing of the National Electricity Law coming into force in Western Australia in late 2016, allowing for a minimum period that will be necessary for Western Power to prepare its regulatory proposal,<sup>4</sup> and the time necessary for the AER to review that proposal to make a regulatory determination for Western Power.

There will therefore be a 12 month regulatory ‘gap’ over the financial year 2017/18, following the time when the Third Access Arrangement will have expired but regulation of Western Power’s electricity network under the national framework will not yet have commenced. It is, therefore, necessary to retain the current Western Australian regulatory framework to ensure the ongoing regulation of Western Power’s prices and revenue for 2017/18, along with the application of the associated policies and contracts that provide the framework for customers to connect to the network and to modify their connection.

To accommodate these transitional matters, the Bill, in conjunction with the Energy Legislation Amendment and Repeal Bill 2016, provides for a staged approach for transitioning the regulation of the Western Power network from the ERA under the *Electricity Act 2004* to the AER under the National Electricity Law, as shown in Table 1.

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<sup>4</sup> A regulatory proposal is a detailed document prepared by a network business (such as Western Power) setting out and justifying the revenue required by the business to manage its network safely, reliably and efficiently. A regulatory proposal also details the tariffs that Western Power will use to recover the revenue in the regulatory proposal efficiently.

**Table 1. Transition of Regulatory Functions for Western Power Network**

<b>Transition Stage</b>	<b>Period</b>	<b>Summary</b>
Third Access Arrangement	Present day to 30 June 2017	The ERA's current access determination for the Western Power network under the local regulatory framework will expire on 30 June 2017.
Gap Year	1 July 2017 to 30 June 2018	<p>During the Gap Year, access to the Western Power network will be regulated under modified versions of the Third Access Arrangement and the <i>Electricity Networks Access Code 2004</i>.</p> <p>The Minister for Energy will be empowered to make modifications to the Third Access Arrangement and the <i>Electricity Networks Access Code 2004</i> to facilitate the effective regulation of the Western Power network during the Gap Year, and the transition to the National Electricity Law.</p> <p>During the Gap Year, the Minister for Energy, rather than the ERA, will be the decision maker for key regulatory decisions such as revisions to Western Power's prices and services.</p> <p>The Energy Legislation Amendment and Repeal Bill 2016 will amend the <i>Electricity Industry Act 2004</i> to establish the Gap Year regime.</p> <p>The AER's first regulatory determination process for the Western Power network under the National Electricity Law will also occur during the Gap Year period. This will involve Western Power submitting a regulatory proposal to the AER, and the AER considering the proposal and making a regulatory determination.</p>
First Regulatory Control Period under the National Electricity Law	1 July 2018 to 30 June 2022	<p>The first regulatory determination by the AER under National Electricity Law for the Western Power network will commence on 1 July 2018 and run for four years to 30 June 2022.</p> <p>The Western Power network will be regulated under the provisions of the National Electricity Law and National Electricity Rules, as modified by the Bill and subsidiary instruments made under it.</p> <p>Modifications to the National Electricity Law and National Electricity Rules will ensure that important local matters are accommodated and that the transition to the national regime is as smooth as possible.</p>

To facilitate this transition, the Bill provides for the provisions of the National Electricity Law to commence in two distinct tranches. Initially, on the proclamation of certain provisions of the Bill, those parts of the National Electricity Law necessary to enable Western Power and

the AER to commence the regulatory determination process for the Western Power network will be activated. This is intended to occur soon after the Bill is assented to.

The remaining parts of the National Electricity Law and National Electricity Rules, as modified to apply in Western Australia, will then commence on 1 July 2018, together with the AER's first regulatory determination for Western Power.

## Clause Notes

The National Electricity (Western Australia) Bill 2016 consists of two main components. The first component is Parts 1 to 3 of the Bill, being the Western Australian application provisions, and the second component is Part 4 of the Bill, which makes modifications to the National Electricity Law as it is to apply in Western Australia, including deferring commencement of certain provisions of the National Electricity (WA) Law to 1 July 2018.

For clarity and ease of understanding in this document, unless otherwise specified, a reference to a clause is a reference to a provision of the Bill, while a reference to a section is a reference to a section of the National Electricity Law.

## **NATIONAL ELECTRICITY (WESTERN AUSTRALIA) BILL 2016**

### **PART 1 – PRELIMINARY**

#### **Clause 1      Short title**

This clause formally titles the Bill.

#### **Clause 2      Commencement**

This clause sets out when the various parts of the Bill come into operation.

Part 1 of the Bill comes into operation on the day of Royal Assent.

The rest of the Bill comes into operation on a day fixed by proclamation. Different days may be fixed for different provisions. The intention is that the rest of the Bill (and parts of the National Electricity Law) will come into operation at the same time as regulations (and other instruments modifying the National Electricity Regime for Western Australian purposes) come into effect.

#### **Clause 3      Terms used in this Act**

This clause defines the following terms which are used in the Bill:

- “Electricity Networks Corporation”
- “National Electricity (South Australia) Act 1996” – this definition is used to distinguish between the National Electricity Law, as it is set out in the Schedule to the South Australian Act, and the National Electricity Law as it applies in Western Australia (ie the National Electricity (WA) Law)
- “National Electricity (WA) Law”
- “National Electricity (WA) Regulations”, and
- “National Electricity (WA) Rules”.

The last three definitions listed above refer to the versions of the Law, Regulations and Rules as they apply in WA (that is, as modified under the Bill).

This clause also provides that words used in the Bill have the same meaning as words used in the National Electricity Law, except to the extent that the context or subject matter otherwise indicates or requires.

This clause should be read in conjunction with clause 8, which defines certain terms used in the National Electricity (WA) Law and National Electricity (WA) Regulations.

**Clause 4      Crown bound**

This clause binds the Crown to the terms of the Bill, the National Electricity (WA) Law and the National Electricity (WA) Regulations.

**Clause 5      Extra-territorial operation**

This clause confirms that it is the intention of Parliament that the Bill, the National Electricity (WA) Law and the National Electricity (WA) Regulations should, so far as possible, include operation in relation to: land and things situated outside Western Australia, whether in or outside Australia; things, acts, transactions or matters done, entered into or occurring outside Western Australia, whether in or outside Australia; and things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from the Bill, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

**PART 2 – APPLICATION OF THE NATIONAL ELECTRICITY LAW AND REGULATIONS**

**Clause 6      Application of National Electricity Law**

The National Electricity Law forms part of a co-operative scheme for national electricity regulation. The lead legislation is the *National Electricity (South Australia) Act 1996* (SA).

This clause provides that the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA), as in force from time to time (and as modified by Parts 3 and 4 of the Bill), applies as a law of Western Australia and applies as if it were an Act.

This clause provides that the National Electricity Law applying under this clause may be referred to as the National Electricity (WA) Law.

**Clause 7      Application of regulations under National Electricity Law**

This clause provides that the regulations under Part 4 of the *National Electricity (South Australia) Act 1996* (SA), as in force from time to time (and as modified by regulations under the Bill), apply as regulations of Western Australia and apply as if they were regulations for the purposes of the National Electricity (WA) Law.

This clause provides that the regulations applying under this clause may be referred to as the National Electricity (WA) Regulations.

**Clause 8 Interpretation of some terms in National Electricity (WA) Law and National Electricity (WA) Regulations**

This clause provides definitions for certain terms used in the National Electricity (WA) Law and National Electricity (WA) Regulations that require a separate meaning in the Western Australian context.

This clause also clarifies that the South Australian *Acts Interpretation Act 1915*, and other Acts of South Australia, do not apply to the National Electricity (WA) Law, the National Electricity (WA) Regulations, the National Electricity (WA) Rules or instruments under them. This is because specific interpretation provisions are included in schedule 2 of the National Electricity Law to apply to those instruments to ensure consistency of interpretation across jurisdictions.

**Clause 9 *Interpretation Act 1984* does not apply**

This clause excludes the *Interpretation Act 1984* (WA) from applying to the National Electricity (WA) Law, the National Electricity (WA) Regulations, the National Electricity (WA) Rules or instruments made under them.

The requisite interpretation clauses are included in the National Electricity Law to provide consistency of interpretation across jurisdictions. Those interpretation clauses will apply to the National Electricity (WA) Law, National Electricity (WA) Regulations and National Electricity (WA) Rules.

This clause does not exclude the *Interpretation Act 1984* (WA) from applying to the Bill and any regulations made under the Bill.

**Clause 10 Extension of reading down provision**

This clause provides that Schedule 2 clause 2 of the National Electricity (WA) Law has effect in relation to the operation of any provision of the Bill or an instrument under it, as if the provision of the Bill or other instrument formed part of the National Electricity (WA) Law. This does not limit the effect that a provision would validly have apart from that subsection. The intent of this clause is to ensure that the reading down provisions in Schedule 2 clause 2 apply to the Bill and any other instruments made or having effect under the Bill.

Schedule 2 clause 2 of the National Electricity (WA) Law is a reading down provision that provides that the National Electricity (WA) Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Parliament of Western Australia. If a provision is construed as exceeding the legislative power of Parliament, it is valid to the extent to which it is not in excess of power.

## PART 3 – LOCAL PROVISIONS

### Division 1 – Regulations

#### Clause 11      **Regulations**

This clause grants the Governor a general power to make regulations and sets out what the regulations under the Bill may do. It is provided that regulations may be made prescribing all matters that are required or permitted by the Bill to be prescribed, or are necessary or convenient to be prescribed to give effect to the Bill.

Regulations may be made for any purpose contemplated by the National Electricity (WA) Law as a purpose for which regulations may be made under the Bill as the application Act of Western Australia. It is intended that these regulations will establish mechanisms or otherwise deal with matters for which Western Australia requires a bespoke, WA-specific regime either because the corresponding national regime is inappropriate in light of existing WA arrangements or unable, as a practical matter, to be implemented in WA. For example, these regulations will establish a registration regime for Western Australian ‘registered participants’, because the national registration regime is connected with the national electricity market (which WA will not be joining).

In addition, as noted above, the National Electricity (WA) Law will (initially) only apply to the Western Power network. However, the WA modifications to the National Electricity Law contemplate that other networks may, in the future, become ‘covered’ by the National Electricity (WA) Law where those networks are prescribed under regulation. At that time, the regulations would also prescribe (for example) the person or body who will undertake ‘system operator’ functions for that network (the ‘Local System Operator’).

Regulations may also be made in relation to the conferral of a function on a person. This is intended to facilitate the transition to the National Electricity Regime and provide for the ongoing relationship between the National Electricity Regime and local Western Australian electricity instruments. Subclause (4) clarifies that functions may be conferred on persons holding a particular office, or a body established, under a written law (for example, the Local System Operator).

Regulations, or instruments under them, may also apply, adopt or incorporate a legislative instrument or other published document (such as guidelines or Australian Standards) relating to the purposes of the Bill. A text may be adopted in full or in part, and can be adopted in the form it exists in at a particular time, or as amended from time to time.

#### Clause 12      **Regulations: modification of National Electricity Law, National Electricity Regulations and National Electricity Rules**

This clause provides that regulations made under the Bill may modify the National Electricity Law, the National Electricity Regulations and the National Electricity Rules, as each applies in Western Australia. Modifications are required to ensure that the National Electricity Law, National Electricity Regulations and National Electricity Rules operate appropriately in the

Western Australian context. For example, Western Australia will not be participating in the national electricity market (or joining the national electricity system), and so modifications will be necessary to reflect this.

Modifications to the National Electricity Law which are currently known are set out in Part 4 of the Bill. For example, Part 4 permanently disappplies some provisions of the National Electricity Law in Western Australia. However, consistent with the other participating jurisdictions, Western Australia is adopting the National Electricity Regime on a dynamic basis. That is, amendments made to the National Electricity Law (as a schedule to the *National Electricity (South Australia) Act 1996*) and the National Electricity Rules will automatically apply in WA. Therefore, there may be circumstances in the future for which it is desirable that WA have the ability to further amend the National Electricity Law or National Electricity Rules.

Accordingly, clause 12(1)(a) contemplates that regulations made under this clause may amend Part 4 of the Bill. This regulation making power is limited to such modifications as are necessary or convenient for the purpose of enabling the effective operation of the National Electricity (WA) Law as a law of the State.

The types of jurisdictional-specific modifications that are expected to be made pursuant to the power in clause 12(1)(a) are not expected to deal with matters of policy. The amendments will be to address the technical workability of the applied law scheme in Western Australia generally as a response to amendments to the National Electricity Law by the lead legislator (South Australia).

There is a risk that such amendments to the National Electricity Law – even in a minor way such as changing a cross-reference – may render the legislation as applied in Western Australia nonsensical or the scheme unworkable. These circumstances may require a quick remedy which means the legislative process may be an inappropriate mechanism by which to implement the necessary modifications. The regulation making power in clause 12(1)(a) ensures that Parliament's time is not spent passing uncontroversial amendments to the Act to ensure the applied law scheme continues to operate in Western Australia.

However, further substantive Western Australia specific modifications to the National Electricity Law will need to be made by way of an Act of the Western Australian Parliament amending Part 4 of the Bill. This ensures that policy changes to the National Electricity (WA) Law require parliamentary approval before they can be made.

The regulations made for the purposes of clause 12(1)(b) and (c) may also amend the Regulations and Rules (insofar as they apply in WA). In addition, regulations may grant the Minister a limited power to modify the National Electricity (WA) Rules by way of ministerial instrument. It is envisaged that any modifications to the National Electricity (WA) Rules made by the Minister will be for the purposes of the transition period (as defined in clause 13 of the Bill) (during which time the AER will make the first regulatory determination for Western Power) and the period from 1 July 2018 to 30 June 2022 (being the first regulatory control period for Western Power under the new regulatory regime). For example, these modifications will ensure that the AER regulatory determination takes into account specific issues relating to Western

Power and its transition into the National Electricity Regime. It is intended that the regulations will prescribe the parameters applicable to the Minister's powers to make modifications, such as how the ministerial instrument may be amended. The power to amend the Rules under a ministerial instrument is time limited.

Subclause 12(2) provides a non-exhaustive list of the modifications that may be made to the National Electricity (WA) Regulations and National Electricity (WA) Rules, including dealing with transitional, application and savings matters. This subclause is not intended to limit the scope of subclause 12(1), but rather clarify that modifications can be made in relation to a particular system, or for transitional or other purposes. It is currently proposed that the National Electricity (WA) Law and National Electricity (WA) Rules will only apply to the South West Interconnected System, and not to any other electricity system in Western Australia. However, additional electricity systems may, in the future, be made subject to the National Electricity (WA) Law, in which case regulations may be necessary in respect of a particular system only.

It is intended that, after the first regulatory control period, any amendments to the National Electricity Rules which are required for WA (whether for policy reasons or to reflect existing WA arrangements) should be sought by way of jurisdictional derogations under the Rules. These types of amendments include lowering the voltage threshold for transmission networks and prescribing the Tariff Equalisation Contribution as a 'jurisdictional scheme' under the Rules.

Given the critical nature of a number of these amendments, the Bill allows regulations to be made which permanently amend the Rules (insofar as they apply in WA). It is intended that this power will only be exercised where the AEMC does not make appropriate jurisdictional derogations following a WA Rule change submission. Subclause 12(3) lists a number of the more significant matters for which (permanent) modifications may be made to the National Electricity (WA) Rules. These matters are specifically listed in the interests of clarity and certainty, and this subclause is not intended to limit the purposes for which modifications may be made under the other provisions of clause 12.

Subclause (4) provides definitions of certain terms for the purposes of subclause (3).

Subclause (5) provides that regulations which authorise the Minister to make a ministerial instrument pursuant to clause 12(1)(c) must not permit the Minister to make any such instrument on or after 1 July 2019 (although amendments made under a ministerial instrument may continue to have effect beyond this date, in accordance with the terms of the instrument).

Subclause (6) provides that as soon as practicable after regulations or a ministerial instrument modifying the National Electricity Rules are made, a copy of the relevant "modification instrument" must be provided to the AEMC by the Minister.

Subclause (7) defines "modification instrument" for the purposes of subclause (6).

## Division 2 – Transitional matters

### Clause 13 Terms used

This clause provides a definition for “transition period” for the purposes of Division 2 of the Bill, meaning the period that begins on the day on which this clause comes into operation and ends immediately before 1 July 2018. This clause also clarifies that the term “transitional matters” includes matters of an application or savings nature.

### Clause 14 Regulations: transitional matters

This clause provides that regulations made under the Bill may provide for transitional matters relating to the coming into effect of the National Electricity (WA) Law, National Electricity (WA) Regulations and National Electricity (WA) Rules. Subclause (2) provides a non-exhaustive list of transitional matters for which regulations may be made. Subclauses (3) and (4) provide for the clarification of the meaning of certain terms used in this clause.

This power will assist in facilitating the transition from the current regulatory regime to the National Electricity Regime.

Subclause 14(2)(c) provides that regulations may make provision for the determination, charging and recovery by Australian Energy Market Operator (**AEMO**) of costs incurred by AEMO in carrying out certain functions, providing certain services and exercising certain powers before 1 July 2018. The purpose of this is to allow AEMO to, during the transition period, commence preparing to perform functions and provide services after 1 July 2018. It is intended that any costs incurred by AEMO during that transition period will be recoverable on and after 1 July 2018. This is necessary because AEMO fees will be recovered from WA Registered participants, and the WA registration regime will not commence until 1 July 2018 (and so there will be no Registered participants during the transition period to whom AEMO could otherwise charge its preparatory fees).

### Clause 15 Effect of certain provisions of National Electricity (WA) Law prior to 1 July 2018

The implementation of the National Electricity (WA) Law will be occurring in two stages. The first stage, which will commence upon relevant parts of the Bill being proclaimed and run until 1 July 2018 (the transition period), will see certain parts of the National Electricity Regime (both under the National Electricity (WA) Law and the National Electricity (WA) Rules) come into effect. Remaining parts of the National Electricity (WA) Law are deferred until 1 July 2018 (see Part 4 Division 3 of the Bill) and are referred to in the Bill as “deferred provisions”.

As noted in the introduction to this document, the purpose of this early commencement is to enable the AER to undertake the regulatory determination process in respect of Western Power over the 18 month transition period. The second stage will commence on 1 July 2018 (after the Western Power transmission and distribution determinations have been made) and it is at this point that the remaining provisions of the National

Electricity (WA) Law and the National Electricity (WA) Rules will come into effect.

In order to confer the appropriate functions on the AER (without commencing the National Electricity (WA) Law in its entirety), subclause 15(1) provides that the provisions of Parts 3, 5B and 6 of the National Electricity (WA) Law do not have effect during the transition period *except to the extent necessary* for the exercise of, or the review of the exercise of, AER economic regulatory functions and powers. This will enable the AER (during the transition period) to make the relevant regulatory determinations for Western Power which will then commence on 1 July 2018.

Parts 3, 5B and 6 of the National Electricity (WA) Law deal with the functions and powers of the AER and Australian Competition Tribunal (the **Tribunal**), and proceedings under the National Electricity Law. This clause prevents these provisions from having any operation beyond what is necessary during the transition period. Any provisions that are unnecessary for the exercise of, or the review of the exercise of, AER economic regulatory functions and powers are effectively deferred until 1 July 2018 and come into effect on that date. Such provisions are referred to in the Bill as “limited provisions”.

Subclause (2) provides that for the purposes of clause 15 (and the making of the AER’s regulatory determinations), Western Power is to be treated as if it were a network service provider or a regulated network service provider (as the case requires).

This is required because most of the provisions of the National Electricity (WA) Law (and the functions of the AER) apply to a person who is a ‘Registered participant’ under the Law (ie a network service provider) and, in some cases, who is already subject to a regulatory determination (ie a regulated network service provider). Given that the registration regime will not commence under the National Electricity (WA) Law until 1 July 2018, it is necessary to treat Western Power as *if it were registered* in order to enliven the functions of the AER and the rest of the National Electricity (WA) Law insofar as they apply to regulated network service providers. Without this provision, the AER would not be able to undertake the regulatory determination process during the transition period.

Similar changes will be required to the National Electricity Rules – in some instances the text of relevant provisions of the National Electricity Rules expressly refer to a Registered Participant (ie not a network service provider or regulated network service provider), in which case a modification may need to be made to expressly treat Western Power as a Registered Participant for the purposes of that provision. In order to ensure that such modifications can be made, subclause (3) clarifies that subclause (2) does not limit the modifications that can be made to the National Electricity Rules for the purposes of this clause. This ensures that modifications may be made to the National Electricity Rules for the purposes of giving effect to subclauses (1) and (2), and that where such modifications are necessary, they are not limited to treating Western Power as a network service provider or a regulated network service provider.

## **Clause 16      Exercise of powers under provisions not yet in effect**

As noted above, a number of provisions of the National Electricity (WA) Law will not commence until 1 July 2018. This clause allows for the exercise of powers under those provisions that have not yet commenced or have commenced in a limited manner. This ensures that functions or powers conferred under those deferred or limited provisions (such as to make appointments or make statutory instruments) can still be exercised, prior to the commencement of the relevant provision.

In order to allow for the exercise of such functions and powers, this clause applies Schedule 2 clause 27 of the National Electricity (WA) Law to those deferred provisions (or, in the case of clause 15 of the Bill which partially defers commencement of certain Parts of the Law, to those limited provisions).

Schedule 2 clause 27 of the National Electricity (WA) Law provides that where a provision confers a power, then the power may be exercised before the provision commences. As such, this clause ensures that powers conferred under the National Electricity (WA) Law, National Electricity (WA) Regulations or National Electricity (WA) Rules (such as powers to make appointments or to make statutory instruments) can be exercised during the transition period where necessary.

## **Clause 17      Authorisation of preparatory steps by AER or AEMO**

In advance of a decision or instrument being made under the National Electricity (WA) Law, the National Electricity (WA) Regulations or the National Electricity (WA) Rules (for example, by the AER or AEMO), certain ‘preparatory steps’ may be required (for example, public consultation).

Given the deferred commencement of certain provisions (and the effect of clause 16 which allows powers under those provisions to be exercised), this clause 17 provides that preparatory steps undertaken during the transition period are to be taken, on and after 1 July 2018, to have complied with any requirement under the Law to take the relevant preparatory step.

## **Clause 18      Provision of information and assistance by ERA**

There is a period of 18 months from the commencement of the Bill during which the ERA will continue to administer the regulation of the Western Power network while the AER is undertaking the first regulatory determination process under the National Electricity (WA) Law. To make its regulatory determination, the AER will need certain information from the ERA and the previously applicable WA regulatory regime as inputs for its determination.

This clause facilitates the provision of information (including information given in confidence) and other assistance by the ERA to the AER where reasonably necessary for the AER to perform its functions under the new regulatory regime. This extends to the AER preparing, during the transition period, to perform functions which it will have on or after 1 July 2018, or which it is permitted to perform in the transition period pursuant to clauses 15 and 16 of the Bill. The ERA may also authorise the AER to disclose information provided to it pursuant to this clause, even if the information was given in confidence.

To prevent the ERA from being exposed to any liability in relation to things done pursuant to this clause, this clause provides for an express exclusion of liability for the ERA.

This clause also provides that it is a function of the AER to receive information and assistance provided to it under this clause. This ensures that the AER is authorised to receive such information and assistance.

## **PART 4 – MODIFICATIONS TO NATIONAL ELECTRICITY LAW**

### **Division 1 – Preliminary matters**

#### **Clause 19 Modifications to National Electricity Law**

This clause provides that Part 4 of the Bill sets out the modifications made to the National Electricity Law as it applies in Western Australia as a law of Western Australia (and as so applying, is referred to as the National Electricity (WA) Law).

Subclause (2) provides that Part 4 Division 3 of the Bill ceases to have effect on 1 July 2018. Part 4 Division 3 contains the transitional modifications to the National Electricity Law which defer commencement of certain provisions. Those deferral provisions expire on 30 June 2018 (which results in those provisions commencing immediately, ie on 1 July 2018).

Subclause (3) provides that Part 4 Division 4 of the Bill ceases to have effect on the day prescribed for the purposes of subclause (3). Part 4 Division 4 contains a modification to the National Electricity Law which defers AEMO's function of facilitating retail customer transfer, metering and retail competition. At the time of drafting the Bill, it was not clear whether AEMO would commence its retail market operator functions for the Wholesale Electricity Market on 1 July 2018, or a later date. Part 4 Division 4 allows for a later date to be prescribed.

### **Division 2 – Continuing modifications**

Unlike the modifications set out in Part 4 Divisions 3 and 4, which expire according to the terms of clause 19, the modifications in this Division are permanent modifications.

#### **Clause 20 Section 2 modified**

Subclause (1) deletes the definitions of the following terms in section 2(1):

- “energy ombudsman”;
- “interconnected national electricity system”;
- “Registered participant”;
- “Regulations”; and
- “retailer”.

Subclause (2) inserts definitions of the following terms in section 2(1):

- “energy ombudsman”;
- “interconnected national electricity system”;
- “local electricity system”;
- “local regulations”;
- “local system operator”;
- “Registered participant”;
- “Regulations”;
- “retailer”;
- “South West Interconnected System” or “SWIS”;
- “WA Application Act”; and
- “wholesale electricity market”.

Subclauses (3) to (5) amends the following definitions in section 2(1):

- “national electricity market”;
- “network service provider”; and
- “VENCorp”.

These new definitions and amendments to existing definitions are necessary to ensure the National Electricity (WA) Law operates effectively in the Western Australian context. In particular, the new definitions reflect the fact that Western Australia:

- (1) is not connected to the interconnected national electricity system
- (2) will not participate in the National Electricity Market, and
- (3) is not adopting the National Energy Retail Law.

Subclause (6) inserts a new section 2(3), which confirms that a reference to the National Electricity Rules or the Rules is a reference to the National Electricity (WA) Rules, unless the contrary intention appears or the context otherwise requires. This ensures that references to the National Electricity Rules are (where appropriate) references to the National Electricity Rules as modified in Western Australia.

Subclause (6) also inserts a new section 2(4), which provides that a reference in certain definitions to Rules includes a reference to Rules made before the day on which clause 6 of the Bill comes into effect (ie the day on which the National Electricity Rules are first applied in WA).

## **Clause 21      Section 2AAA inserted**

This clause inserts a new section 2AAA, which provides that references to AEMO in certain provisions of the National Electricity (WA) Law are to be read as references to a Local System Operator.

The local regulations will specify to which provisions this section applies. This section will only apply to local electricity systems (other than the South West Interconnected System) which are prescribed (at a future time) to be networks which are subject to the National Electricity (WA) Law. Whilst AEMO will be conferred with certain functions in relation to the South West Interconnected System, it is not yet known whether AEMO (or some other body) would undertake these functions for any other local electricity system. This modification therefore ensures that the relevant provisions of the National

Electricity (WA) Law make reference to the appropriate body in respect of those local electricity systems.

**Clause 22    Section 2AA modified**

This clause deletes the reference to section 11(3) in the table in section 2AA(1). This modification is made because section 11(3) is deleted for the purposes of the National Electricity (WA) Law. This should be read in conjunction with the note to clause 28.

**Clause 23    Section 2D modified**

This clause makes a number of deletions in section 2D to remove references to the National Electricity Retail Law and National Electricity Retail Rules.

These deleted provisions are not necessary for the purposes of the National Electricity (WA) Law, as the National Energy Retail Law and the National Energy Retail Rules will not apply in Western Australia.

**Clause 24    Section 6A deleted**

This clause deletes section 6A. It is not intended that the power conferred by section 6A be used in Western Australia.

**Clause 25    Section 8 modified**

This clause inserts a new section 8(2a), which provides that a reference in the national electricity objective to the national electricity system must be read as a reference to one or more or all of the local electricity systems where appropriate. Under the National Electricity Law, the national electricity objective requires consideration of the 'reliability, safety and security of the national electricity system'.

This modification is required because Western Australia is separate from the national electricity system, and it is necessary for the COAG Energy Council to be able to consider the WA 'local electricity systems' (being initially, the South West Interconnected System) when exercising various functions and powers.

**Clause 26    Section 9 modified**

This clause modifies section 9 to confirm that the National Electricity Rules, as modified by the Bill, have effect as a law of Western Australia.

This ensures that the National Electricity Rules apply only to the extent prescribed, and as modified, by regulations made under the Bill.

**Clause 27    Part 2 heading replaced**

This clause replaces the Part 2 heading to substitute the reference to the National Electricity Market with a reference to local electricity systems. It is not necessary for the National Electricity (WA) Law to deal with participation in the National Electricity Market as Western Australia will not be participating in the National Electricity Market.

**Clause 28      Section 11 modified**

Part 2 of the National Electricity (WA) Law imposes certain prohibitions on activities in relation to a ‘local electricity system’ unless the person undertaking that activity is registered or exempt from registration. It is this prohibition which dictates whether a person is subject to the Law and the National Electricity Rules (ie because they are a Registered participant) or not (ie where an exemption is granted).

Subclauses (1) and (2) make a number of amendments to section 11 to replace “interconnected national electricity system” with “a local electricity system”, reflecting the fact that Western Australia is not a part of the interconnected national electricity system. This is to ensure that the prohibition attaches to the Western Australian electricity systems. The registration regime will be established under regulations.

Subclauses (1), (2) and (4) provide for an exemption from the prohibition on persons engaging in certain activities in Western Australia in relation to local electricity systems where the person has been exempted under local regulations from the requirement to be a Registered participant in relation to those activities in Western Australia.

Subclause (3) removes the restriction on persons other than AEMO operating or administering a wholesale exchange of electricity in Western Australia (by deleting section 11(3) of the Law). This is because Western Australia will not be joining the National Electricity Market and therefore this prohibition should not apply in Western Australia.

Subclause (5) inserts a definition of “wholesale exchange” for the purposes of section 11(4), meaning, in relation to the South West Interconnected System, the wholesale electricity market, and in relation to any other local electricity system, the market prescribed by local regulations.

**Clause 29      Section 12 deleted**

This clause deletes section 12, which deals with the registration or exemption of persons participating in the national electricity market. Registration and exemptions in connection with the Western Australian Wholesale Electricity Market will continue to be dealt with under WA instruments.

**Clause 30      Section 13 modified**

This clause modifies section 13 to allow a person to request an exemption from the AER from the requirement to register as a Registered participant in relation to the activity of owning, controlling or operating a transmission system or distribution system that forms part of a local electricity system in Western Australia.

For consistency with the national framework, it is proposed that Western Australia adopt the AER exemption regime for network service providers rather than have a Western Australian-based regulator administer the exemption regime (which could result in inconsistencies between the application of the National Electricity Regime at the national and Western Australia level).

**Clause 31      Section 14 modified**

This clause modifies section 14 to reflect the fact that evidence of registration or exemption is to be given in accordance with the local regulations.

**Clause 32      Section 15 modified**

This clause modifies section 15 to extend the AER's power in relation to exempting persons from being registered as Registered participants to allow the AER to exempt persons proposing to engage, or engaged, in the activity of owning, controlling or operating a local electricity system (in addition to having this power in relation to the interconnected transmission and distribution system).

For consistency with the national framework, it is proposed that Western Australia adopt the AER exemption regime for network service providers rather than have a Western Australian-based regulator administer the exemption regime (which could result in inconsistencies between the application of the National Electricity Regime at the national and Western Australia level).

**Clause 33      Section 16 modified**

This clause inserts a new section 16(1a), which provides that a reference in the national electricity objective to the national electricity system must be read as a reference to one or more or all of the local electricity systems as appropriate.

This modification is required because Western Australia is separate from the national electricity system and it is necessary for the AER to be able to consider the WA 'local electricity systems' (being initially, the South West Interconnected System) when exercising various functions and powers and making reviewable regulatory decisions.

**Clause 34      Section 28V modified**

This clause deletes section 28V(4A). As the National Energy Retail Law and the National Energy Retail Rules will not apply to Western Australia, it is not necessary for the AER to be able to use information it uses in the preparation of reports under section 28V for the purpose of preparing reports under the National Energy Retail Law or National Energy Retail Rules.

**Clause 35      Section 28ZD modified**

This clause deletes section 28ZD(c). As the National Energy Retail Law and the National Energy Retail Rules will not apply to Western Australia, it is not necessary for the AER to be able to use information provided to it by persons in compliance with a notice under section 28 or a regulatory information instrument for any purposes connected with the performance or exercise of a function or power of the AER under the National Energy Retail Law or National Energy Retail Rules.

**Clause 36      Section 28ZH modified**

This clause deletes the references to the National Energy Retail Law and the National Energy Retail Rules in section 28ZH(1). As the National Energy Retail Law and the National Energy Retail Rules will not apply to Western Australia, these references are not required.

**Clause 37      Section 28ZI modified**

This clause deletes the references to the National Energy Retail Law and the National Energy Retail Rules in section 28ZI(1). As the National Energy Retail Law and the National Energy Retail Rules will not apply to Western Australia, it is not necessary for the AER to be able to use information obtained under the National Electricity (WA) Law or National Electricity (WA) Rules for the performance or exercise of its functions or powers under the National Energy Retail Law or National Energy Retail Rules.

**Clause 38      Section 32A inserted**

This clause inserts a new section 32A, which provides that subject to section 88(2a), a reference in the national electricity objective to the national electricity system must be read as a reference to one or more or all of the local electricity systems where appropriate.

This modification is required because Western Australia is separate from the national electricity system and it is necessary for the AEMC to be able to consider the WA ‘local electricity systems’ (being initially, the South West Interconnected System) when exercising various functions and powers.

**Clause 39      Section 34 modified**

This clause makes a number of modifications to section 34. These modifications extend the AEMC’s power to make National Electricity Rules to allow the AEMC to make rules in respect of local electricity systems and the activities of persons (including Registered participants) involved in the operation of those systems. This modification is required because Western Australia is separate from the national electricity system, and the AEMC needs to have the power to make relevant Rules in respect of local electricity systems.

This clause also modifies section 34 to allow the AEMC to make rules which vary in their terms as between the national electricity system and one or more or all of the local electricity systems, and to allow the AEMC to make rules that have no effect with respect to the national electricity system or a local electricity system. This gives the AEMC greater flexibility in its rule making power, enabling it to make rules that are suited to the individual circumstances of the national electricity system or a local electricity system as the case may be.

**Clause 40      Section 38 modified**

This clause modifies section 38 to extend the Reliability Panel’s functions and obligations to cover the local electricity systems. This modification is required because Western Australia is separate from the national electricity system, and it is necessary for the Reliability Panel to be able to exercise its functions

in relation to local electricity systems in accordance with the National Electricity Rules.

While the AEMC Reliability Panel will be adopted in Western Australia for certain purposes under the National Electricity Rules, it is intended that Western Australia will also establish its own Reliability Advisory Committee (under separate legislation) (**RAC**). The RAC will undertake a number of advisory roles in respect of reliability and security of the power system in Western Australia. The ERA will likely be conferred with decision making authority for power system performance and reliability in Western Australia, which will include determining frequency system standards. For the purposes of applying the National Electricity Rules in Western Australia, the frequency system standards will not be determined by the AEMC Reliability Panel, and instead the WA standards (as determined by the ERA) will be adopted by reference.

**Clause 41      Section 46 modified**

This clause provides that the AEMC must update the copies of the National Electricity Rules that it maintains on its website and makes available to the public for inspection to reflect each modification to the Rules made by regulations or a ministerial instrument pursuant to clause 12(1)(c) of the Bill. This ensures that a version of the Rules, as they apply in Western Australia, is available to the public.

**Clause 42      Section 49 modified**

Subclause (1) modifies sections 49(1)(a) and (b) to clarify that AEMO's functions in relation to the wholesale exchange are limited to the participating jurisdictions other than the Northern Territory and Western Australia.

Subclause (2) deletes section 49(2), as it is not intended that AEMO have the functions listed in this section 49(2) in Western Australia.

Subclause (3) inserts a new section 49(4), which provides that a reference in the national electricity objective to the national electricity system must be read as a reference to one or more or all of the local electricity systems as appropriate. This modification is required because Western Australia is separate from the national electricity system and it is necessary for AEMO to be able to consider the WA 'local electricity systems' (being initially, the South West Interconnected System) when exercising various functions and powers.

**Clause 43      Section 54G modified**

This clause modifies section 54G to extend AEMO's authorisation to disclose protected information to circumstances where the disclosure is necessary for the safety, reliability or security of a local electricity system. This modification is required because Western Australia is separate from the national electricity system, and AEMO needs to be able to exercise this power in relation to local electricity systems.

**Clause 44      Section 62 modified**

This clause modifies section 62 to clarify that the reference to the wholesale exchange operated and administered by AEMO is a reference to the wholesale exchange operated and administered by AEMO in the participating jurisdictions (other than the Northern Territory and Western Australia), not a reference to the wholesale exchange being operated in Western Australia.

**Clause 45      Section 71P modified**

This clause inserts a new section 71P(2d), which provides that a reference in the national electricity objective to the national electricity system must be read as a reference to one or more or all of the local electricity systems as appropriate.

This modification is required because Western Australia is separate from the national electricity system and it is necessary for the Tribunal to be able to consider the WA ‘local electricity systems’ (being initially, the South West Interconnected System) when exercising various functions and powers.

**Clause 46      Section 87 modified**

This clause inserts the following definitions in section 87:

- “differential Rule”; and
- “uniform Rule”.

These new definitions are necessary due to the modifications to the National Electricity Law set out in clause 39 of the Bill, which allow the AEMC to make rules which vary according to whether they apply to the national electricity system or a local electricity system, and to allow the AEMC to make rules that have no effect with respect to the national electricity system or a local electricity system. The amendments outlined in this clause 46 and clauses 47 to 55 are all intended to facilitate the making of differential Rules (ie Rules which differ in terms between the national electricity system and one or more or all local electricity systems, or do not apply to a particular system), because both Western Australia and the Northern Territory will not be part of the national electricity system.

This clause also replaces the definition of “urgent Rule” in section 87 with a definition that provides that an “urgent Rule” includes a Rule relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening the safety, security or reliability of a local electricity system. This modification is made to ensure that the provisions of the National Electricity (WA) Law relating to urgent Rules have application to local electricity systems as well as the national electricity system.

The new definition of “urgent Rule” also clarifies that the reference to the wholesale exchange operated and administered by AEMO is a reference to the wholesale exchange operated and administered by AEMO in the participating jurisdictions (other than the Northern Territory and Western Australia), not a reference to the wholesale exchange being operated in Western Australia.

**Clause 47      Section 88 modified**

This clause inserts a new section 88(2a), which provides that a reference in the national electricity objective to the national electricity system must be read as a reference to one or more or all of the local electricity systems where appropriate.

This modification is required because Western Australia is separate from the national electricity system and it is necessary for the AEMC to be able to consider the WA ‘local electricity systems’ (being initially, the South West Interconnected System) when exercising various functions and powers.

**Clause 48      Section 88AA inserted**

This clause inserts a new section 88AA, which provides that in general, the AEMC may only make a Rule if it is satisfied that it is a uniform Rule, unless the AEMC is satisfied that, having regard to any relevant COAG Energy Council statement of policy principles, a differential Rule will, or is likely to, better contribute to the achievement of the national electricity objective than a uniform Rule.

This new section promotes uniformity of the National Electricity Rules between jurisdictions by limiting the circumstances in which it is open to the AEMC to make Rules which vary according to whether they apply to the national electricity system or a local electricity system. However, the AEMC is given the flexibility to make differential Rules where this is the most appropriate course of action in the circumstances, taking into account the national electricity objective.

**Clause 49      Sections 88A and 88B modified**

This clause amends sections 88A and 88B to insert a reference to the AEMC’s obligations under the new section 88AA.

**Clause 50      Section 89 modified**

This clause amends section 89(c) to insert a reference to local electricity systems in addition to a reference to the national electricity system. This modification is required because Western Australia is separate from the national electricity system, and ensures that the AEMC has regard to the local electricity system in considering derogations relating to technical standards for connection to that system.

**Clause 51      Section 91 modified**

This clause inserts a new section 91(1a), which clarifies that a request that the AEMC make a new Rule may include a request that the AEMC make a differential Rule.

**Clause 52      Section 91A modified**

This clause inserts a new section 91A(2), which clarifies that where the AEMC makes a more preferable Rule, that more preferable Rule may be a differential Rule, whether or not the market initiated proposed Rule (to which the more preferable Rule relates) proposed the making of a differential Rule.

This gives the AEMC greater flexibility to make Rules that better contribute to the achievement of the national electricity objective.

**Clause 53      Section 95A inserted**

This clause inserts a new section 95A, which applies if the AEMC considers that it should take action under Part 7 Division 3 of the National Electricity (WA) Rules in respect of a request for the making of a Rule, and the request included a request that the AEMC make a differential Rule. In such circumstances, the AEMC must (in addition to its existing obligations) give the Western Australian Minister a copy of the notice published under section 95(1a)(a), a draft of the proposed Rule, and any other document prescribed by the National Electricity (WA) Regulations. This ensures that the Minister receives notice of a differential Rule which the AEMC may be proposing to make.

**Clause 54      Section 99 modified**

This clause inserts a new section 99(1c), which provides that in relation to proposed differential Rules, the AEMC must as soon as practicable after publishing a notice under section 99(1a)(b) or (1b), give the Western Australian Minister the draft Rule determination and a copy of the notice. This ensures that the Minister is kept informed of developments in relation to differential Rules.

This clause also inserts a new section 99(2)(a)(iia), which provides that a draft Rule determination must contain, in relation to a proposed differential Rule, the reasons of the AEMC as to whether it is satisfied the proposed Rule will, or is likely to, better contribute to the achievement of the national electricity objective than a uniform Rule. This allows interested parties to consider the AEMC's reasoning and make submissions in relation to this issue, and assists in ensuring that differential Rules are, or are not, made as may be appropriate in the circumstances.

**Clause 55      Section 102 modified**

This clause inserts a new section 102(1b), which provides that if a Rule to be made is a differential Rule, the AEMC must as soon as practicable after publishing a notice under section 102(1a)(b), give the Western Australian Minister the final Rule determination and a copy of the notice. This ensures that the Minister is kept informed of developments in relation to differential Rules.

This clause also inserts a new section 102(2)(a)(iia), which provides that if a Rule to be made is a differential Rule, the final Rule determination must contain the reasons of the AEMC as to whether it is satisfied the proposed Rule will, or is likely to, better contribute to the achievement of the national electricity objective than a uniform Rule.

**Clause 56      Section 108B inserted**

This clause inserts a new section 108B, which provides that Part 8 of the National Electricity Law does not have effect as a law of Western Australia.

Part 8 deals with the safety and security of the national electricity system, and is therefore not required for Western Australia as Western Australia is separate from the national electricity system. The safety and security of the Western Australian electricity system will continue to be regulated under the Western Australian regulatory regime.

**Clause 57      Section 118B modified**

This clause inserts a new section 118B(2a), which provides that a reference in the national electricity objective to the national electricity system must be read as a reference to one or more or all of the local electricity systems as appropriate.

This modification is required because Western Australia is separate from the national electricity system and it is necessary for the Minister to be able to consider the WA ‘local electricity systems’ (being initially, the South West Interconnected System) when exercising various functions and powers.

**Clause 58      Section 120 modified**

This clause deletes section 120(2A). As the National Energy Retail Law and the National Energy Retail Rules will not apply to Western Australia, this section is not necessary for Western Australia.

**Clause 59      Schedule 1 modified**

Subclauses (1), (2), (3) and (5) modify Schedule 1 items 4, 7, 9 and 34(a) of the National Electricity (WA) Law to clarify that the reference to the wholesale exchange operated and administered by AEMO is a reference to the wholesale exchange operated and administered by AEMO in the participating jurisdictions (other than the Northern Territory and Western Australia), not a reference to the wholesale exchange being operated in Western Australia.

Subclause (4) modifies Schedule 1 item 32 of the National Electricity (WA) Law to insert a reference to local electricity systems in addition to a reference to the national electricity system. This modification supports the adoption of Chapter 7 of the National Electricity (WA) Rules in Western Australia, and is required because Western Australia is separate from the national electricity system.

**Clause 60      Schedule 3 Part 1A inserted**

This clause inserts a new Schedule 3 Part 1A in the National Electricity (WA) Law, which provides that Schedule 3 Parts 2 to 12 of the National Electricity Law do not have effect as a law of Western Australia.

These Parts provide for savings and transitional provisions for the transition from the old National Electricity Law and National Electricity Code to the current National Electricity Law and National Electricity Rules, and other historical matters. As Western Australia was not subject to the old National Electricity Law and National Electricity Code, these provisions are of no relevance to Western Australia.

### **Division 3 – Modifications expiring on 1 July 2018**

This Division makes a number of modifications which defer the operation of certain Parts and Divisions of the National Electricity (WA) Law until 1 July 2018. This is consistent with the two-stage adoption process for the National Electricity Regime, with the first stage consisting of the AER undertaking the regulatory determination process for Western Power during the transition period (which ends on 1 July 2018). The remaining parts of the regime will then come into force on 1 July 2018.

#### **Clause 61      Part 2 Division 1A inserted**

This clause inserts a new Part 2 Division 1A, which defers the operation of Part 2 of the National Electricity (WA) Law to 1 July 2018. This part deals with registration and exemption under the National Electricity (WA) Law and is not required until commencement of all parts of the National Electricity (WA) Law and National Electricity (WA) Rules in Western Australia on 1 July 2018.

#### **Clause 62      Part 5 Division 1A inserted**

This clause inserts a new Part 5 Division 1A, which defers the operation of Part 5 of the National Electricity (WA) Law to 1 July 2018. Part 5 deals with the role of AEMO under the National Electricity (WA) Law. AEMO is not intended to undertake substantive functions with respect to the regulation of Western Power during the transition period and so this Part is not required until commencement of all parts of the National Electricity (WA) Law and National Electricity (WA) Rules in Western Australia on 1 July 2018. To the extent AEMO undertakes any preparatory steps during the transition period, clauses 16 and 17 of the Bill will apply.

#### **Clause 63      Part 8A Division 1A inserted**

This clause inserts a new Part 8A Division 1A, which defers the operation of Part 8A of the National Electricity (WA) Law to 1 July 2018. Part 8A deals with smart metering services and is not required during the transition period.

#### **Clause 64      Part 10 Division 1A inserted**

This clause inserts a new Part 10 Division 1A, which defers the operation of Part 10 of the National Electricity (WA) Law to 1 July 2018. Part 10 deals with access determinations. Given that the connection and access provisions under the National Electricity (WA) Rules will not commence until 1 July 2018, Part 10 is not required until that time.

#### **Clause 65      Section 157 modified**

This clause inserts a new section 157(1a), which defers the operation of section 157 to 1 July 2018. This section prohibits certain conduct which prevents or hinders access to a regulated network service. Given that the connection and access provisions under the National Electricity (WA) Rules will not commence until 1 July 2018, section 157 is not required until that time.

#### **Division 4 – Modification expiring on a day prescribed**

##### **Clause 66      Section 49 modified**

This clause inserts a new section 49(1a), which defers the operation of section 49(1)(f) until the day prescribed for the purposes of clause 19(3) of the Bill.

Section 49(1)(f) provides that one of AEMO's functions is to facilitate retail customer transfer, metering and retail competition. It is intended that AEMO not have this function in Western Australia until a date to be determined. It is not yet clear whether this date will be 1 July 2018 (or a later date) and so this clause 66 allows for a commencement date to be prescribed at a later time.

**APPENDIX 1**  
**WESTERN POWER NETWORK**



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