
ELECTRICITY INDUSTRY BILL 2003

EXPLANATORY MEMORANDUM

The Electricity Industry Bill is one of three Bills necessary to facilitate implementation of the Government's electricity reform agenda. The Bills give effect to the recommendations made by the Electricity Reform Task Force in October 2002 and endorsed by the Government in November 2002.

The electricity reforms include:

- establishing a wholesale market for the South West interconnected system ("SWIS");
- restructuring Western Power into four new Government owned entities in the form of the Electricity Generation Corporation, Retail Corporation, Networks Corporation and Regional Power Corporation to facilitate competition;
- establishing an independent licensing regime for electricity industry participants;
- establishing an Electricity Access Code to provide for third party access to electricity networks in Western Australia; and
- implementing measures to protect customers in a competitive electricity market.

The Industry Bill creates a wholesale electricity market, establishes an independent licensing regime and Tariff Equalisation Fund, provides for the development of an Electricity Access Code and grants the heads of power to develop measures to protect customers in the new market.

The Bill outlines the high level objectives of the wholesale market and provides a mechanism to establish the Wholesale Market Rules. The Market Rules will prescribe the rights and obligations of all market participants and outline the rules for operation of the wholesale market. The Market Rules are being developed by the Electricity Reform Implementation Steering Committee through the Market Rules Development Group which involves more than 36 stakeholder representatives. Enforcement and penalty provisions are also contained within the Bill in addition to provisions for resolving disputes between market participants.

Effective regulation of a competitive electricity industry requires the commercial licensing of market participants. The Bill details the framework for the licensing of market participants involved in electricity generation, transmission, distribution and retail in Western Australia. The Bill specifies procedures in relation to granting licences, including terms and conditions that may be imposed by the proposed Economic Regulation Authority, licence exemption conditions, licence amendment and transfer, enforcement and cancellation procedures.

The licensing framework has been developed in full consultation with stakeholders, specifically the Electricity Industry Reference Group, Industry Legislation Reference Group, North West Interconnected System Project Group and the Electricity Reform Consumer Forum.

The electricity licensing framework, to a very large degree, is based upon Part 2 of the *Energy Coordination Act 1994* as modified by the *Energy Legislation Amendment Act 2003*.

The Bill also grants the heads of power to establish an Electricity Access Code to provide for third party access to designated public and private electricity networks in Western Australia. The Access Code will be implemented in the form of subsidiary legislation and is currently being developed in consultation with industry stakeholders.

The cost of supplying electricity at the uniform tariff to customers outside the South West Interconnected System ("SWIS") is funded by Western Power through internal transfers from its profits in the SWIS. The Bill provides for the establishment of a Tariff Equalisation Fund to allow the transparent transfer of appropriate funds to the Regional Power Corporation to enable it to maintain tariff protection in its areas of operation.

Customer protection is a key component of the new electricity market. Experience in other deregulated markets, such as telecommunications, indicates that smaller retail customers, with limited experience in choosing their preferred supplier, need to be provided with protection to safeguard their interests.

The Bill provides the heads of power to establish a number of mechanisms to protect customers in the new electricity market. These include a supplier of last resort scheme, an Ombudsman scheme, Customer Service Code, standard supply contracts and obligations to connect and supply.

The Electricity Reform Consumer Forum consisting, of Government and welfare agencies, has determined that a number of customer protections are to apply to persons who consume 160 megawatt hours of electricity per annum. This equates to an annual electricity bill of \$30,000 or less and includes all residential and small business customers.

Underpinning the creation of a competitive electricity market is independent economic regulation. The Bill provides a mechanism to confer a number of electricity related functions upon the proposed Economic Regulation Authority. These include responsibility for the licensing regime and access regime, providing advice to Government on electricity tariffs, electricity market surveillance and wholesale market functions.

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Part 1 - Preliminary

Clause 1 Short title

This clause formally titles the Bill.

Clause 2 Commencement

This clause provides for the Bill to come into operation. Various provisions need to come into effect at different times because the restructure of Western Power, creation of Western Power's successor entities and restructuring of the Western Australian electricity industry will occur in different stages.

Clause 3 Terms used in this Act

This clause provides for the definitions to be used throughout the Act.

“arbitrator” has the meaning given to that term in the *Gas Pipelines Access (Western Australia) Act 1998* section 61 (Definitions);

“Authority” means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*;

“Board” has the meaning given to that term in the *Gas Pipelines Access (Western Australia) Act 1998* section 49 (Definitions);

“customer” means a person to whom electricity is sold for the purpose of consumption;

“distribution licence” means a licence with the classification described in clause 4(1)(c) (Classification of licences);

“distribution system” means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV;

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

“generating works” means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the generation of electricity;

“generation licence” means a licence with the classification described in clause 4(1) (a) (Classification of licences);

“integrated regional licence” means a licence with the classification described in clause 4(1)(e) (Classification of licences);

“licence” means —

- (a) a generation licence;
- (b) a transmission licence;
- (c) a distribution licence;
- (d) a retail licence; or
- (e) an integrated regional licence;

“licence area” means the area or areas designated in a licence under clause 5 (Licence area);

“licensee” means the holder of a licence and includes any transferee of a licence under clause 18 (Transfer of licence);

“operate”, in relation to generating works, a transmission system, or a distribution system, includes —

- (a) to maintain the works or system; and
- (b) to make any modifications necessary or desirable for the operation of the works or system;

“retail licence” means a licence with the classification described in clause 4(1)(d) (Classification of licences);

“South West interconnected system” means the interconnected transmission and distribution systems, generating works and associated works —

- (a) located in the South West of the State and extending generally between Kalbarri, Albany and Kalgoorlie; and
- (b) into which electricity is supplied by —
 - (i) one or more of the electricity generation plants at Kwinana, Muja, Collie and Pinjar; or
 - (ii) any prescribed electricity generation plant;

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

- (a) generate;
- (b) transport through a transmission system;
- (c) transport through a distribution system;
- (d) sell;

“transmission licence” means a licence with the classification described in clause 4 (1)(d) (Classification of licences);

“transmission system” means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of 66 kV or higher.

Part 2 - Licensing of Electricity Supply

Part 2 of the Electricity Industry Bill details the framework for the licensing of market participants involved in electricity generation, transmission, distribution and retail activities in Western Australia. The Part specifies procedures in relation to licence grant (including terms and conditions that may be imposed by the Economic Regulation Authority (the "Authority")), licence exemption conditions, licence amendment and transfer, enforcement and cancellation procedures.

The electricity licensing framework contained within Part 2 of the Bill is generally consistent with the gas distribution and retail licensing framework which was enacted in 1999 by amendment to the *Energy Coordination Act 1994*.

The electricity licensing regime takes into account Western Australian circumstances by providing for matters such as the grant of an integrated regional licence and is also generally consistent with electricity licensing frameworks in other States.

Division 1- License classification and area

Clause 4 Classification of licences

This clause classifies five separate licence types:

- (a) generation - which authorises the licensee to construct and operate new generating works or to operate existing generating works;
- (b) transmission - which authorises the licensee to construct and operate a new transmission system or to operate an existing transmission system;
- (c) distribution - which authorises the licensee to construct and operate a new distribution system or to operate an existing distribution system;
- (d) retail - which authorises the selling of electricity to customers; and
- (e) integrated regional - which authorises the licensee to generate, transmit, distribute or sell electricity to customers otherwise than through the South West interconnected system. This is a consolidated licence which recognises the uniqueness of regional areas by enabling small regional supply systems to have one licence, rather than multiple licences.

This clause further provides that a licence must be designated as one of these classifications (i.e one of the elements of the electricity supply chain listed above).

Clause 5 Licence Area

This clause provides that a licence is to apply to one or more areas of the State, and in the case of multiple areas, can consist of multiple parts. A licensee has the legal authority to undertake the licensed activities within that defined area.

Division 2- Licensing requirements

Clause 6 Licensing extends to statutory providers

This clause extends the licensing provisions to existing statutory providers, such as Western Power and its successor entities.

Clause 7 Requirement for licence

This clause prohibits generation, transmission, distribution or retail activities unless the person undertaking those activities holds a licence granted by the Authority.

An exception is provided in relation to generating, transmission and generation works which are used solely for the purpose of these functions by the owner or operator of the generating works (or a related body corporate, partner or joint venturer of the owner or operator). These exclusions are to cover self supply situations on minesites or supply of electricity to associated parties which do not involve third party supply arrangements.

Furthermore, there is an exception for the sale of electricity from the holder of a generation licence for consumption by another person on the premises on which the generation works of the licence are located in clause 7(6).

This clause further provides for a penalty of \$100,000 and a daily penalty of \$5,000 for undertaking electricity supply functions without a licence. These penalties are consistent with those under the *Energy Coordination Act 1994* relating to gas distribution and gas retail activities.

Clause 8 Power to exempt

This clause empowers the Governor to make an order which exempts a person or class of persons from requiring a licence under clause 7. The order must be published in the *Gazette*. The order may be made subject to conditions, which if not complied with may lead to the exemption being cancelled.

The clause provides that the Governor may only make an exemption order if he or she is satisfied that the order is not contrary to the public interest which is defined under subclause 5 as including environmental, social welfare, economic and regional development and government policy matters. Exemptions provide

the ability to recognise unique supply circumstances which, although they would otherwise require a licence, may not be practical to license. Examples in this regard could include the onselling of electricity by a caravan park owner or the sale of electricity to a single large customer. The clause further provides that section 43(4) and (7) to (9) of the *Interpretation Act 1984* apply to an order of the Governor as if the order was subsidiary legislation.

Division 3- General licensing provisions

Clause 9 Authority to consider public interest

This clause provides that the Authority must not exercise a power under Division 3 (including issuing a licence) unless it is satisfied that it is not contrary to the public interest, and in making this determination, the Authority may consider one or more of the matters specified in clause 8(5). This is the identical public interest test that the Governor must apply in considering a licence exemption in clause 8.

Clause 10 Application for licence

This clause requires the licence application to be in a form approved by the Authority and to be accompanied by the prescribed application fee. The applicant must provide any other information that the Authority may require for the proper consideration of the application.

It is usual practice for the licensing authority to publish an application form and application guidelines in order to assist proponents in making an application. These matters however, do not, and are not, reflected in the Bill.

Clause 11 Authority may determine licence terms and conditions

This clause provides that a licence may be subject to such terms and conditions as are determined appropriate by the Authority, which may include the matters listed in Schedule 1. It should be noted that proponents have the ability to appeal against licence terms and conditions to an independent Board pursuant to clause 136 of the Bill.

Licence terms imposed by the Authority must not be inconsistent with:

- a) any other terms and conditions provided for in the Bill or applicable regulations;
- b) any Code issued by the Authority under clause 104 of the Bill;
or

- c) regulations made under section 32 (failure to comply with a licence) of the *Electricity Act 1945*.

This clause further provides that licences of the same type and in the same or significantly overlapping licence areas must have substantially similar terms and conditions, unless the Authority considers that it is not practicable to do so, or a difference is necessary to reflect particular supply circumstances. This clause is intended to ensure competitive neutrality, while reflecting differing operational circumstances such as different classes of customers being supplied. (Small electricity customers have limited market power compared with larger customers and therefore require greater customer protections.)

Clause 12 Regulations as to licence terms and conditions

This clause provides that the regulations made under clause 137 of the Bill may prescribe terms and conditions that are deemed to be included in every licence, prescribed classes of licence or a licence held by one of the successor Western Power entities. This provides the ability for Parliamentary scrutiny of material matters to be imposed through licence conditions such as specified levels of electricity reliability.

Clause 13 Licence condition: performance audit

Consistent with the gas licensing framework, this clause requires every licensee to undertake, through an independent expert acceptable to the Authority, performance audits. A performance audit typically relates to the licensee's performance in complying with licence obligations. The provision further requires the Authority to present a report on each performance audit to the Minister within two months of receipt of that performance audit. The purpose of the provision is designed to assess the licensee's performance in complying with licence obligations.

Clause 14 Licence condition: asset management system

Again consistent with the gas industry licensing framework, this clause requires a generation, transmission, distribution and an integrated regional licensee to establish an asset management system. The asset management system sets out the measures to be undertaken by the licensee for the proper conduct of its assets. Typically this will address such matters as asset operation, maintenance, replacement, refurbishment etc. Licensees are required to report on the effectiveness of that system to the Authority. Such a report must be prepared by an independent expert acceptable to the Authority.

Clause 15 Duration of licence

This clause provides for the grant or renewal of a retail licence by the Authority for a period not exceeding fifteen years and provides for the grant or renewal of a generation licence, transmission licence, distribution licence or integrated regional licence by the Authority for a period not exceeding thirty years. These terms have been extended compared to gas retail (10 years) and gas distribution (21 years) licences following industry consultation and the need for security of title for significant investment decisions.

Clause 16 Renewal of licence

This clause provides that applications for licence renewals must be in a form approved by the Authority and be lodged with a specified application fee. This clause also provides that the applicant must provide any other information that the Authority may require for the proper consideration of that application.

Clause 17 Licence fees

This clause requires the licensee to pay to the Authority an annual licence fee within one month from the date of the licence grant or renewal and annually thereafter. The clause also provides that the regulations may prescribe different licence fees for each of the five licence classifications and that any outstanding licence fee may be recovered by the Authority in a court of law as a debt to the State.

Clause 18 Transfer of licence

This clause provides for licence transferral with the approval of the Authority, which may be given on such terms and conditions as determined by the Authority. An application for a licence transfer must be made to the Authority in an approved form and be lodged with the approved application fee. The applicant must also provide any other information that the Authority may require for the proper consideration of that application.

Clause 19 Decisions as to grant, renewal or transfer of licence

This clause provides that, subject to the public interest test in clause 9, the Authority must grant, renew or approve the transfer of a licence if it is satisfied that the applicant has or will acquire, and then is likely to retain, the financial and technical resources to undertake the licence activities.

The Authority must endeavour to make a decision on the grant, renewal or transfer of a licence within 90 days after the date of application.

This clause further provides that the duties imposed on the Authority only apply if the application has been made in accordance

with clauses 10 (application for a licence), 16 (renewal of a licence) or 18 (transfer of a licence), the grant or renewal of the licence or the approval of the transfer is not prohibited by clause 50 (that is, the standard form of contract has been approved by the Authority) and the licensee or proposed transferee is or will be a member of an approved dispute resolution scheme (clause 100) and all relevant information under clauses 10(2) (additional information to support of an application), 16(2) (additional information to support a licence renewal) and 18(4) (additional information to support a licence transfer) has been provided to the Authority.

Clause 20 Other laws not affected

This clause provides that a licence grant or transfer does not affect a licensee's obligation to comply with any other written law related to the licence.

Clause 21 Amendment of licence on application of licensee

This clause provides that a licensee may apply to the Authority for amendment of the licence. The application must be made in a form approved by the Authority and must be accompanied by the prescribed application fee. The applicant must also provide any other relevant information that the Authority may require.

This clause further provides that the Authority may grant the application if it has been duly made and the necessary information (if any) has been provided to the Authority.

Clause 22 Amendment of licence on initiative of Authority

This clause provides for the Authority to amend a licence on its own initiative. A licence itself must specify the procedure by which the Authority amends the licence and the Authority may only amend the licence in accordance with that procedure. (This is consistent with the gas licence regime.)

The amended licence takes effect when the licensee is notified. This clause applies to the substitution of a new licence for an existing licence in the same way as it applies to an amendment to a licence.

It should be also noted that a licensee has the ability to seek a review of a decision to amend a licence under clause 136 (review by the Board) should a licensee not concur with a licence amendment.

Clause 23 Notice of decisions

This clause requires the Authority, as soon as practicable, to publish a notice of the licence grant, renewal, transfer or amendment in the Gazette. The notice must contain the details

specified in subclause (2). This is to ensure public transparency of decisions by the Authority.

This clause also requires the Authority to give written notice of a decision to refuse to grant, renew or approve the transfer of a licence, together with a statement of reasons for that decision, to the applicant within 14 days after the decision is made. This is to ensure that the Authority substantiates its decision to the licence applicant.

Clause 24 Licences to be available for inspection

This clause requires a copy of all current licences and licence area plans to be made available at the Authority's office and on the Authority's internet website for public inspection during normal office hours. This is in recognition that granted licences are public documents and those documents are accessible by the public.

Clause 25 Regulations about public consultation

This clause provides that the regulations may require the Authority to undertake public consultation in accordance with a specified procedure before it makes a decision on any application for the grant, renewal, transfer or amendment of a licence under Division 3 of the Bill.

This is an important provision with respect to transparency of decision making by the Authority. The intent of the Regulation making powers is to enable stakeholders to provide input to the Authority on the reasonableness of proposed decisions prior to a decision being made.

Division 4- Exclusive licences

Consistent with the gas licensing framework within the *Energy Coordination Act 1994*, it is considered that finite exclusive electricity licences would be a useful tool for facilitating and encouraging the development of new electricity infrastructure in regional areas of Western Australia.

Parliament recently considered similar rights to be conferred upon the gas sector as part of the *Energy Legislation Amendment Act 2003*.

The initial exclusive licence term is required to encourage industry to undertake infrastructure projects and supply functions in new areas. Exclusive licences introduce a defined period of stable cash flows, without which companies may be reluctant to invest in such infrastructure, as the risk of recouping their investment would be too great.

The grant of an exclusive licence is only permissible following the completion of an open and competitive tender process involving explicit objectives and criteria, and where it is demonstrated that it is in the public interest to do so.

Clause 26 Regulations may authorise an exclusive licence

This clause empowers the Governor (on the recommendation of the Minister) to make regulations designating one or more areas as an area for which an exclusive licence may be granted for a specified period (not exceeding 10 years). If two or more areas are designated, those areas need not be contiguous.

Clause 27 Requirements for regulations

This clause enables the Minister to recommend the making of regulations authorising an exclusive licence. The Minister's recommendation can only be made if it is considered: (i) that without the grant of an exclusive licence, electricity supply would not occur or be limited; (ii) that it would not be contrary to the public interest; and (iii) that an open and effective tender process would be carried out to determine the grantee of the licence.

In determining the public interest, the Minister may take into account the public interest matters specified in clause 8(5).

This clause further provides that any regulations made under clause 26 must set out the requirements to be observed before an application for an exclusive licence is considered and before an exclusive licence is granted, and that they may also specify the terms and conditions of an exclusive licence.

Clause 28 Application for and grant of licence

This clause provides that no application for an exclusive licence may be brought, and that the Authority may not grant an exclusive licence, unless the Minister has first determined that all of the requirements of the relevant regulations have been complied with.

This clause further provides that any such Ministerial determinations must be published in the *Gazette* in order to provide for public transparency.

Clause 29 Prohibition of further licences

This clause provides for a prohibition on the grant of a further exclusive licence if an exclusive licence has already been granted in respect of an area, and that licence has not been cancelled or surrendered. This is necessary as to not to do otherwise, would mean that the licences were not exclusive.

Clause 30 Trade practices exemption

This clause provides that the grant of an exclusive licence and conduct authorised or required by an exclusive licence is authorised to the extent that the grant or conduct would otherwise contravene the *Trade Practices Act 1974* (Cth) or the *Competition Code*.

This clause is intended to ensure that the exclusive licence provisions are not, and that conduct authorised or required by an exclusive licence is not, subject to the restrictive trade practices provisions of the *Trade Practices Act* in accordance with section 51 of the *Trade Practices Act* and equivalent provisions of the *Competition Code*. This provision is consistent with the provision contained within the *Energy Legislation Amendment Act 2003*.

Division 5- Interruption of supply

Clause 31 Interruption of supply

This clause permits a licensee to suspend, restrict or interrupt the supply of electricity in specified circumstances. The licensee must take reasonable steps to minimise such restriction or interruption.

A licensee is not liable for any loss or damage that arises from an interruption, suspension or restriction unless the interruption, suspension or restriction results from:

- a negligent act or omission of the licensee or an officer or employee of the licensee; or
- an act or omission of the licensee or an officer or employee of the licensee done or made in bad faith; or
- an agreement to which the licensee is a party provides otherwise.

This clause is in addition to the licensee's powers under the *Electricity Act 1945* and the *Electricity Corporations Bill 2003* in relation to the suspension, restriction or interruption of electricity; sections 48 and 57 of the *Energy Operators (Powers) Act 1979* to the extent that such provisions apply in respect of a licensee under clause 45(1); and any contractual rights that the licensee may have to interrupt, suspend or restrict the supply of electricity.

Division 6- Enforcement

Clause 32 Failure to comply with licence

This clause empowers the Authority to serve a notice on a licensee requiring a licence contravention to be rectified. If the licensee fails to comply with that notice, this clause empowers the Authority to reprimand or impose a monetary penalty (to a maximum of

\$100,000) on the licensee, or may itself rectify the contravention (and empowers persons authorised by the Authority to enter premises and do things necessary for this purpose).

This clause further empowers the Authority to recover fines imposed, or costs incurred, in a court of law as a debt due to the State. These penalties are consistent with penalties imposed in the gas sector for gas distribution and retail licence breaches since 1999.

Clause 33 Right of licensee to make submissions

This clause requires the licensee to be notified by the Authority of any proposed action under clause 32(2)(b) or (c) (Failure to comply with a licence) and to give the licensee the opportunity to make submissions on the matter.

Clause 34 Exception where public health endangered

In the event of a licence contravention which constitutes a public health or safety risk, the Authority may rectify the contravention under clause 32(2)(c) (Failure to comply with a licence) without notifying the licensee under clause 32(1) (the notification provision) or allowing the licensee to make submissions under clause 33 (the licensee's right to make submissions on the Authority's proposed course of action).

Clause 35 Cancellation of licence

This clause empowers the Governor to cancel a licence in specified circumstances, including if the licensee is in default (as defined in subclause (2)), has failed to pay licence fees, is insolvent or is convicted of more than 3 offences for which the prescribed penalty is a fine of \$10,000 or more or imprisonment for 12 months or more within a period of 12 months.

The Governor's licence cancellation notice must be published in the *Gazette*.

This clause further provides that regulations may be made under clause 137 providing for various things to occur in the event of a licence cancellation, including the vesting of the former licensee's assets, the conferral of powers, dealing with liabilities and property and all other necessary matters relevant to the cancellation.

This clause also provides that if a generation, transmission, distribution or integrated regional licence is cancelled under this clause, and regulations are made under clause 35(4)(a) to vest the licensee's assets in a person in order to enable continuity of supply, then the former licensee's powers in relation to land under Division 8 (Powers in relation to land) of the Bill also apply to that person.

These powers enable the Government to provide for continuation of electricity supply in the event of a licence cancellation and are consistent with the provisions contained within the *Energy Coordination Act 1994*, which presently apply to gas licences.

Clause 36 Duty to leave system in safe condition

This clause requires that the former licensee must ensure that the generating works, transmission system or distribution system (as applicable) is left in a safe condition following licence cancellation and prohibits the former licensee from removing any part of those works or system except with the approval of the Minister.

The Minister is empowered to rectify any contravention of this clause by the former licensee (and empowers persons authorised by the Minister to enter permits and do things necessary for this purpose).

This clause further empowers the Minister to recover costs incurred in a court of law as a debt due to the State. Again, these provisions are consistent with the obligations imposed upon the gas industry since 1999.

Division 7- Other functions of the Authority

Clause 37 Authority to administer licensing scheme

This clause provides that it is a function of the Authority to administer the licensing scheme provided for in Part 2 (Licensing of electricity supply) of the Bill. Following the passage of the Economic Regulation Authority Bill 2003 and this Bill, the Authority will be responsible for water, gas and electricity licensing regimes.

Clause 38 Authority to monitor licensing scheme and licence compliance

This clause provides that it is a function of the Authority to monitor and report to the Minister on the operation of the licensing scheme and to inform the Minister about any failure by a licensee to meet performance criteria or other licence requirements.

Clause 39 Authority may issues codes

This clause empowers the Authority to prepare and issue a code or codes in respect of specified matters including metering equipment and metering data, the transfer of customers between licensees, methods or principles to be applied by licensees in the preparation of accounts for customers, standards relating to the quality and reliability of the supply of electricity that are to be observed by the holders of a transmission and distribution licence and any other matter prescribed by the regulations.

A code is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

This clause also provides that a provision of a code has no effect to the extent that it is inconsistent with another provision of the Bill or another written law.

Consistent with need for open and transparent regulation, clause 39 provides for the making of regulations which may require the Authority, in accordance with the procedures specified in the regulations, to undertake public consultation prior to the issuance of a code.

Division 8- Powers in relation to land

Clause 40 Power of public authority to grant certain interests

This clause empowers defined public authorities to grant specified interests in land held by them in fee simple to a licensee to enable the licensee to undertake the activities authorised by its licence.

Clause 41 Taking of interest or easement for purposes of licence

This clause (on the recommendation of the Minister for Energy) enables an interest in land or an easement over land to be taken under the *Land Administration Act 1997* for the purpose of enabling a licensee to supply electricity as if for a public work.

The provision further affords the Minister the ability to require a licensee to obtain an interest in land for generation or certain transmission works where the Minister considers that such an interest is appropriate and so advises the licensee. The interest may be acquired by agreement where practicable, but otherwise by acquiring it under the provisions of the *Land Administration Act 1997* Part 9 as if for a public work.

This requirement is intended to ensure that, where major electricity infrastructure is to be established, land owners are afforded reasonable protections, including the ability to be compensated for the acquisition of an interest in land by a licensee.

The ability for the Minister to require a licensee to acquire an interest in land is not negated by operation of any provisions of the *Energy Operators (Powers) Act 1979* applied by virtue of Part 2, Division 9 of the Bill. That Ministerial power is also inapplicable to Crown lands or lands vested in a public authority.

Any costs incurred in taking the interest or easement are to be paid by the licensee and may be recovered in a court of law as a debt due to the State.

The clause also provides that, for the purposes of the clause, a reference to an interest in land in the *Land Administration Act 1997* Part 9 includes an easement over land.

Clause 42 Vesting of interest or easement

This clause provides that any interest in or easement over land under clause 41 (Taking of interest or easement for purposes of licence) be vested in the licensee.

This clause also provides that Part 9 of the *Land Administration Act 1997* (relating to compulsory acquisitions) applies to the recording or registering of an interest or easement taken under clause 41 (Taking of interest or easement for purposes of licence).

Clause 43 Proceedings and liability

This clause provides that proceedings in respect of compensation under, or otherwise for the purpose of complying with Part 9 (compulsory acquisition) and Part 10 (Compensation) of the *Land Administration Act 1997*, may be taken against the licensee and that the licensee's liability for taking an interest under clause 41 (Taking of interest or easement for purposes of licence) is the same as it would have been for the Minister for Planning and Infrastructure if the land was taken for the purpose of a public work.

Clause 44 Easements in gross

This clause provides for the grant of an easement over land, even though there is no dominant tenement. Another easement or the benefit of a restriction as to the user of the land may also be annexed to such an easement in gross.

Division 9- Extension of *Energy Operators (Powers) Act 1979* to licensees

Clause 45 Extension of certain provisions of *Energy Operators (Powers) Act 1979*

This provision deals with the extension of the application of provisions of the *Energy Operators (Powers) Act* to licensees. Clause 45(1) permits regulations to be made applying provisions of that Act to licensees by including a licensee or class of licensees in a reference to "energy operator" in such a prescribed provision of the *Energy Operators (Powers) Act*.

In general terms, regulations made under clause 45(1) may:

- restrict the operation of or add a further requirement to a prescribed provision;
- impose conditions or restrictions on, or prohibit the doing of, any thing authorised by a prescribed provision; or

- require an approval or consent before doing any thing authorised by a prescribed provision.

Sections 28(3)(e) and 45(4) to (16) of the *Energy Operators (Powers) Act* may only be extended to Electricity Networks Corporation and Regional Power Corporation. If such provisions are applied to Electricity Networks Corporation and Regional Power Corporation, the provisions of Division 8 (Powers in relation to land) do not apply to those corporations. These powers are in recognition of the extensive network infrastructure operations throughout the State.

Division 10- Transitional provision

Clause 46 Transitional provision for existing operators

This clause provides that existing electricity operators (which is taken to include the successor Western Power entities) have twelve months from the commencement of Part 2 of the Bill in which to apply for a licence.

Existing electricity operators are to be treated as if they hold a licence for eighteen months from the commencement of Part 2 (Licensing of electricity supply) or until the licence is granted or refused (and the time for lodging an appeal has expired or an appeal is unsuccessful).

Part 3 - Supply of electricity to certain customers

Division 1 – Preliminary

Clause 47 Terms used in this Part

This clause provides for definitions of "customer", "non-standard contract", "retail licensee" and "standard form of contract" for the purposes of Part 3 of the Bill.

A standard form contract is a contract which is approved by the Economic Regulation Authority prior to the grant, renewal or transfer of a retail or integrated regional licence. A non-standard contract is a contract between a customer and an electricity retailer which contains terms and conditions that is not included in a standard form contract. A non-standard contract is not required to be approved by the Economic Regulation Authority.

“customer” which means a customer who consumes not more than 160MWh of electricity per annum.

“non-standard contract” means a contract entered into between a licensee and a customer, or a class of customers that it is not a standard contract.

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

“standard form contract” means a contract which is approved under clause 51 (Approval of contract).

Division 2- Supply contracts

Divisions 1-3 provide a regime for the regulation of supply contracts between retailers (including integrated regional licensees) and customers, including the standard form contracts which must be approved by the Authority. Standard form contracts are to specify the terms and conditions of electricity supply for "customers", defined as a customer who consumes not more than 160MWh of electricity per annum. The definition also covers residential customers. The provisions within the Bill provide parity between gas and electricity small use customers, as gas customers have enjoyed the benefit of Government approved supply contracts since 2000. (Most eastern states customers receive supply on the basis of independently approved contracts.)

The provisions contained within Division 2 are based upon comparable gas contract regulation provisions contained within the Energy Legislation Amendment Act 2003.

Clause 48 Regulations as to supply contracts

This clause empowers the Governor to make regulations setting out the terms, conditions and provisions (including the right of a customer to have a "cooling off period") to be provided for in a standard form contract and a non-standard contract. These regulations will in effect set "core" terms and conditions to be included within standard and non-standard contracts and will be subject to Parliamentary scrutiny.

This clause also permits the regulations to require a retail licensee to offer to supply electricity to customers under a standard form contract in certain prescribed circumstances and to comply with certain standards of service (which may be adopted by reference in the regulations). The effect of this provision is that a retailer may be obligated under regulations to offer to supply electricity to any customer who requests supply.

The regulations may also specify standards of service that a retail or integrated regional licensee is to provide to customers in the supply of electricity. This can include such matters as historical electricity consumption information or advisory services and dispute resolution mechanisms.

Clause 49 Form of contract to be submitted with application for grant, renewal or transfer

This clause provides for all retail licensees and integrated regional licensees to develop and submit a standard form contract under which the applicant will supply electricity to customers (as defined in this Part) for approval upon applying for a grant, renewal or transfer of a retail licence or integrated regional licence (as applicable).

Clause 50 Licence application not to be granted unless standard form contract approved

This clause provides that a standard form contract is to meet the minimum terms, conditions and provisions set out in the regulations and is to be approved by the Authority, before a retail licence or an integrated regional licence will be granted, renewed or transferred.

Clause 51 Approval of standard form contract

Under this clause, the Authority may, at its discretion, approve or refuse to approve a standard form contract submitted under clause 49 (Form of contract to be submitted with application for grant, renewal or transfer). Refusal to approve a standard form contract is to occur if the Authority considers that the standard form of contract will not meet the requirements of the regulations or is inconsistent with the Bill, another written law, or a term of the licence.

Clause 52 Amendment or replacement of standard form contract

This clause enables an electricity retailer or the holder of an integrated regional licence to submit an amendment to, or replacement of, a standard form contract for approval by the Authority. This clause further provides that clause 51 (Approval of standard form contract) of the Bill (under which the Authority approves standard form contracts) similarly applies to amendments to, and replacements of, standard form contracts.

Clause 53 Authority may direct that amendment be made

This clause enables the Authority to direct an electricity retailer or the holder of an integrated regional licence to submit an amendment to an approved standard form contract. This may occur if the Authority forms the opinion that the standard form contract no longer meets the requirements of the regulations in respect of such a contract or is inconsistent with the Bill, any other written law or a term of the licence.

Clause 54 Licence condition: contracts

This clause imposes two conditions into every retail licence and every integrated regional licence (subject to any exceptions in the regulations):

- the licensee is not to supply electricity to a customer except under a standard form contract or a compliant non-standard contract (as described in subclause (3)); and
- the licensee must comply with a direction from the Authority under clause 53 (Authority may direct that amendment be made) directing that an amendment be made to a standard form contract.

Clause 55 Contracts with corporations

This clause is essentially concerned with:

1. imposing an obligation on the Electricity Retail Corporation and the Regional Power Corporation to offer to supply - on the terms of the form of contract approved by the Minister under clause 58(2) (Minister to prescribe contracts) of the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003 - a customer who requests supply on or after the commencement day; and
2. amending the contract for any such customer, and any contract that a customer has with Electricity Retail Corporation or the Regional Power Corporation under clause 58(2) (Minister to prescribe contracts) of the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003, so that they are

consistent with the terms of an approved standard form customer contract, provided that certain conditions are satisfied.

Clause 55(1) provides the definitions necessary for achieving these matters. The provision provides for definitions of “commencement day”, “corporation”, “prescribed form of contract” and “relevant contract”. Reference to a “corporation” in this context applies to the Regional Power Corporation and the Electricity Retail Corporation.

Clause 55(2) deals with the obligation to offer to supply a customer, being a person who consumes not more than 160MWh of electricity per annum.

Clause 55(3) deals with the amendment of the terms of contract. In general terms, this provision amends the defined types of customer contract so that they are consistent with the terms of a relevant standard form contract subsequently approved by the Authority under the licensing framework. An amendment does not occur until a retail licence or an integrated retail licence is granted to the relevant corporation and the corporation is required by regulations referred to in clause 48(2) (Regulations as to supply contracts) to offer to supply customers under a standard form contract. If those conditions are satisfied, clause 55(3) also provides that the obligation to offer to supply under clause 55(2) ceases to have effect.

Clause 55(4) provides that the regulations may deal with certain matters associated with these provisions, including in respect of exceptions to the obligation in clause 55(2).

Clause 56 Enforcement of obligation in section 55(2)

This provision permits the imposition of a penalty upon a corporation that fails to comply with the obligation in clause 55(2) (Obligation to offer to supply).

The penalty provisions in clause 56 are based upon the penalty provisions for a breach of licence contained within clause 32 (enforcement).

Division 3- Connection to distribution system

Division 3 provides the ability for regulations to be made which prescribe the circumstances in which a new or existing customer may obtain a connection to the distribution system in order to receive an electricity supply. The regulations may provide that customers are guaranteed an electricity connection in defined circumstances.

Clause 57 **Terms used in this Division**

This clause provides for definitions of "connect" and "premises" (being premises owned or occupied by a new or existing small use customer) for the purposes of Division 3 of the Bill.

Clause 58 **Regulations as to connection**

This clause provides that regulations may deal with the connection of premises. Such regulations may among other things:

- require a retail licensee and a distribution licensee or an integrated regional licensee to make arrangements for connection of premises in certain circumstances;
- require distribution licensees and integrated regional licensees to connect premises of a prescribed class in certain circumstances;
- make provision for costs of connection; and
- make the above obligations a condition of every relevant licence.

Division 4- Default supplier

This clause provides for arrangements attending to the situation whereby a customer uses electricity without a contract with a licensee. This situation is known as a default supplier arrangement. This is not the same as a supplier of last resort (clause 71) which involves a cessation of supply by one retailer and the continuation of that supply by the supplier of last resort.

Regulations may, under this Division, among other things, provide that a standard form contract is deemed to apply. Regulations may set out the terms, conditions and provisions that will not apply or will apply in a modified form in a default supplier arrangement. The regulations may provide that a contract will continue to be in effect until it is terminated or the customer chooses to enter into a non-standard contract.

Similar provisions were contained within the *Energy Legislation Amendment Act 2003* with respect to the gas sector.

Clause 59 **Regulations as to default supplier**

This clause empowers the Governor to make regulations that identify a default supplier for every connection point and require the maintenance of a register of the default suppliers.

The regulations may also provide for arrangements attending to a default supplier arrangement (that is, the situation whereby a

customer uses electricity without a contract with an electricity retailer). The regulations may require that the default supplier's standard form contract (with or without modification) is deemed to apply in such circumstances. The regulations may also provide for the period for which such default contracts will continue in force.

Part 4 - Extension and expansion policies for certain corporations

The purpose of this part is to address a long standing issue with respect to regional electricity supply both within and outside of the South West interconnected system. Presently no transparent policy exists with respect to Government owned corporations in terms of network expansions and extensions.

Part 4 imposes an obligation upon Electricity Networks Corporation and Regional Power Corporation to develop and submit to the Coordinator of Energy for approval an extension and expansion policy. Further, the Part provides that it is a condition of every licence held by each corporation that the corporation will implement the arrangements set out in an approved policy that applies to a system operated by the corporation.

Clause 60 Terms used in this Part

This clause provides definitions of "approved policy", "Coordinator", "corporation", "extension and expansion policy", "licence" and "system" for the purposes of this Part of the Bill. The term "extension and expansion policy" is defined as documentation that sets out arrangements for:

- the geographic extension of a particular transmission or distribution system;
- the expansion of the electrical capacity of that transmission or distribution system; and
- the connection of customers to that transmission or distribution system.

Clause 61 Draft policy to be submitted to Coordinator

This clause requires the Electricity Networks Corporation and the Regional Power Corporation to submit a draft extension and expansion policy for each transmission and distribution system operated by it to the Coordinator of Energy. The policy must be submitted within the prescribed period of 3 months or such other longer period as the Coordinator allows.

An extension or expansion policy submitted by a corporation may relate to one or more or all of the systems operated by the corporation.

Clause 62 Approval of policy

This clause provides that the Coordinator of Energy may approve or refuse to approve an extension and expansion policy submitted under clause 61 (Draft policy to be submitted to Coordinator) or direct such a policy to be amended. The clause also provides that

the Coordinator must not approve an extension or expansion policy if the Coordinator considers that the policy will not meet the requirements of the regulations (refer to clause 66 – Regulations as to content of policies) in respect of such policies or will be inconsistent with the Bill or any other written law.

In exercising the powers conferred by this clause and clauses 63 (Amendment or replacement of policy) and 64 (Coordinator may direct that amendment be made), the Coordinator of Energy is to take into account the matters referred to in clause 8(5). (These matters relate to the public interest.)

Clause 63 Amendment or replacement of policy

This clause provides that the Electricity Networks Corporation and the Regional Power Corporation may submit an amendment to an extension and expansion policy approved under clause 61 (Draft policy to be submitted to Coordinator) or a replacement extension and expansion policy to the Coordinator for approval. This clause also provides that the Coordinator must not approve amendments to, and replacements of, extension and expansion policies if the Coordinator considers that the policy will not meet the requirements of the regulations (refer to clause 66 – Regulations as to the content of policies) in respect of such policies or will be inconsistent with the Bill or any other written law.

Clause 64 Coordinator may direct that amendment be made

This clause enables the Coordinator of Energy to direct the Electricity Networks Corporation and the Regional Power Corporation to submit an "appropriate amendment" to an approved extension and expansion policy. For the purposes of this provision, "appropriate amendment" is an amendment specified by the Coordinator or otherwise determined by the Coordinator to be suitable for approval. This may occur if the Coordinator forms the opinion that the policy no longer meets the requirements of the regulations (refer clause 66 - Regulations as to the content of policies) in respect of such policies or is inconsistent with the Bill or any other written law.

Clause 65 Licence condition: extension and expansion

This clause includes four conditions in every transmission and distribution licence held by the Electricity Networks Corporation and the Regional Power Corporation, namely that:

- the licensee must comply with the obligation in clause 61 (to submit a draft extension and expansion policy) in relation to the system to which the licence applies;

- the licensee must comply with a direction from the Coordinator under clause 62(1)(b) (Approval of policy) to amend a draft extension and expansion policy;
- the licensee must comply with a direction from the Coordinator of Energy under clause 64 (Coordinator may an amendment be made to an extension and expansion policy; and
- the licensee must implement the arrangement set out in the approved policy for the system to which the licence applies.

Clause 66 **Regulations as to content of policies**

This clause empowers the regulations to prescribe matters that are to be dealt with in an extension and expansion policy, including:

- the methods or principles to be applied in relation to the extension or expansion of the system to which the policy relates and the connection of customers to that system;
- the procedures to be followed in undertaking the extension and expansion of the system to which the policy relates and in connecting customers to that system;
- the criteria or parameters to be applied in determining the eligibility of particular classes of customers for connection; and
- information about the costs of implementing the policy.

Part 5 – Last resort supply arrangements

This Part establishes a last resort supply plan to cater for the cancellation, expiry or surrender of an electricity retail licence (which includes an integrated regional licence). The supplier of last resort scheme is one of a number of customer protection mechanisms within the Bill. It is designed to ensure that customers receive continued electricity supply in the unlikely event that a retailer makes an unplanned exit from the market. This protection mechanism can be applied to all electricity customers and not just those with limited market power (ie. not restricted to just those who consume 160 megawatt hours per annum or less).

Clause 67 Terms used in this Part

This clause defines "designated area", "Electricity Retail Corporation", "last resort supply plan", "Regional Power Corporation", "retail licence" and "supplier of last resort" for the purposes of this Part.

"Retail licence" includes an integrated regional licence.

There is no definition of "customer" within Part 5 as the last resort supply arrangements can potentially apply to all customers.

Clause 68 Authority to ensure supply plan in place in designated areas

Subclause (1) provides that the Authority may designate an area for which there is to be a last resort supply plan.

Subclause (2) provides that the Authority must ensure that a last resort supply plan is approved (or determined) for a designated area as soon as practicable after that area is established (under subclause (1)). From then on, the Authority must ensure that each designated area has an approved (or determined) last resort supply plan.

Clause 69 Requirements for last resort supply plan

This clause specifies the requirements for a last resort supply plan in a last resort event.

A last resort supply plan must set out the arrangements and make provisions that are necessary for the supply of electricity.

A last resort supply plan must deal with:

- the supply of electricity to customers by the supplier of last resort, and the arrangements necessary for that supply, if the last resort supply plan is brought into operation under clause 70 (How plan brought into action); and
- any other prescribed matter.

This clause further provides that a last resort supply plan is of no effect to the extent that it is inconsistent with any other law.

Clause 70 How plan brought into operation

This clause provides that the Authority may bring a last resort supply plan into operation by notice published in the *Gazette*, if the licence of an electricity retailer which supplies customers is cancelled, surrendered, has expired or is not renewed.

Clause 71 Supplier of last resort

This clause provides that, after consulting with the electricity retail licensee concerned, the Authority may designate an electricity retail licensee as the supplier of last resort for a designated area or cancel such a designation. A designation must not last more than two years, but can be renewed.

Subclause (4) provides that, unless another supplier of last resort is designated for the time being, the Electricity Retail Corporation is the supplier of last resort for the designated area if electricity is supplied to customers in that area from the South West interconnected system. Further, the Regional Power Corporation is the supplier of last resort for the designated area if electricity is not supplied to customers in the area from the South West interconnected system.

Clause 72 Functions of supplier of last resort

This clause provides that a supplier of last resort must:

prepare a draft last resort supply plan and submit it to the Authority within three months of being designated;

consult with the Authority regarding approval for the draft last resort supply plan; and

implement the last resort supply plan if it comes into operation under clause 70 (How plan is brought into action).

Clause 73 Approval or determination of plan

This clause provides that the Authority may approve a draft last resort supply plan or request that it be amended. If a draft last resort supply plan has not been approved within a time the Authority considers reasonable, it may prepare its own last resort supply plan after notifying the supplier of last resort.

Clause 74 Amendment of plan by supplier

This clause provides that the supplier of last resort may propose amendments to an approved last resort supply plan and submit it to

the Authority. The Authority may approve, request changes to, or reject the proposed amendment.

Clause 75 Authority may make amendment

This clause provides that the Authority may amend an approved last resort supply plan, after consultation with the relevant supplier of last resort.

Clause 76 Licence condition

This clause provides that it is a condition of a supplier of last resort's retail or integrated regional licence that it perform the functions of the supplier of last resort for the relevant designated area. In particular, if the last resort supply plan comes into operation under clause 70 (How plan is brought into action), it is a condition of the supplier of last resort's licence that it implement the plan.

Clause 77 Provision may be made by regulation

This clause provides that regulations may provide for various matters in relation to last resort supply plans, including:

preparation, approval and amendment processes for last resort supply plans; and

various arrangements to be included in last resort supply plans.

Part 6 – Code of conduct for supply of electricity to small use customers

This Part provides for the establishment of a code of conduct. The code of conduct will regulate the conduct of holders of distribution licences, retail licences and integrated regional licences as well as electricity marketing agents. The objective of the code of conduct will be to define the standards of service applicable to customers and protect those customers from undesirable marketing conduct.

In Western Australia gas customers have had the protection afforded by a Government approved customer service code since 1999. However, there is no such comparable code with respect to electricity.

Clause 78 Terms used in this Part

This clause defines "code of conduct", "committee", "customer", "electricity marketing agent" and "marketing" for the purposes of this Part.

As with other customer protection provisions, "customer" is defined to mean a customer who consumes not more than 160MWh of electricity per annum.

Clause 79 Code of conduct

This clause provides the Authority with the ability to approve a code of conduct, in consultation with a consultative committee (established under clause 81). The code of conduct is to regulate and control the behaviour of a licensee with electricity retail or distribution functions or an electricity marketer. It aims to protect the interests of customers and to define a standard of behaviour for the industry.

Clause 80 Code is subsidiary legislation

This clause provides that the code of conduct is subsidiary legislation for the purposes of the *Interpretation Act 1984*. That is, following publication of the code of conduct in the *Gazette*, it must be laid before both Houses of Parliament.

Clause 81 Consultative committee

This clause provides that the Authority is to establish a consultative committee to advise it on matters relating to the code of conduct. The Authority is to prescribe the composition and other necessary matters related to the operation of the consultative committee. The consultative committee may determine its own procedures, subject to this clause.

Clause 82 Licence condition

This clause provides that it is a condition of every retail, distribution and integrated regional licence that the licensee comply with the applicable provisions of the code of conduct.

Clause 83 Enforcement of code of conduct against marketing agents

This clause provides that the code of conduct may provide that breach of a provision of the code of conduct by an electricity marketing agent is an offence. The code of conduct may provide that an offence is punishable by a financial penalty of up to \$5,000 for individuals and up to \$20,000 for a body corporate.

It is necessary to have separate penalty provisions for marketing agents on the basis that an agent may not be the holder of an electricity licence.

Clause 84 Code may provide for vicarious liability

This clause provides that the code of conduct may provide that a retail licensee, in the absence of excusatory circumstances, is to be held liable for the actions or omissions of its electricity marketing agents who contravene the code of conduct.

Clause 85 Code may include presumption of authority

This clause provides that the code of conduct may provide a presumption that a person who undertakes marketing activities in the name of or for the benefit of the holder of a licence which involves retail functions or an electricity marketing agent is to be taken, unless the contrary is proved, to have been employed or authorised by that licensee or marketing agent to carry out that activity.

Clause 86 Authority to monitor compliance

This clause provides that it is a function of the Authority to monitor and enforce compliance with the code of conduct.

Clause 87 Comment to be sought on amendment or replacement of code

This clause provides the Economic Regulation Authority with the ability to amend, repeal or replace the code of conduct. Before such an action is carried out, the Authority is required to consult with the consultative committee (established under clause 81). The consultative committee is required to consult with interested persons (as identified under clause 89) and take into consideration their comments before providing advice to the Authority.

Clause 88 Review of code

This clause requires the consultative committee to carry out a review of the code of conduct as soon as practicable after the first anniversary of its commencement. The consultative committee is then required to conduct a review at two yearly intervals after that anniversary.

In reviewing the code of conduct, the consultative committee is required to re-assess the suitability of the code of conduct in light of the purposes set out under clause 79(2) (Code of conduct). In conducting a review of the code of conduct, the consultative committee must consult with interested persons and take into consideration their comments before a report is provided to the Authority outlining the advice of the consultative committee.

Clause 89 Further provisions about opportunity to comment

Clauses 87(2) (Comment to be sought on amendment or replacement of code) and 88(3) (Review of code) provide that the consultative committee is required to "give any interested person an opportunity to offer comments" in certain circumstances. This clause defines "an interested person" and "an opportunity to offer comments" for the purpose of those provisions.

Part 7 - Electricity ombudsman scheme

This Part provides for the establishment of an electricity ombudsman scheme. The scheme will provide a mechanism for resolving disputes between licensed industry participants and customers.

The provisions of Part 7 are consistent with the gas ombudsman provisions contained within the Energy Legislation Amendment Bill 2003.

Division 1 - Preliminary

Clause 90 Terms used in this Part

This clause defines "approved scheme", "customer", "customer contract", "electricity ombudsman", "electricity marketing agent" and "licensee" for the purposes of this Part.

The definition of "customer" in this Part is defined as a customer who consumes not more than 160 MWh of electricity per annum, as this customer protection mechanism is directed at residential and small business customers.

Clause 91 Regulations as to electricity ombudsman scheme

This clause provides that regulations may be made for and in relation to the functions of the electricity ombudsman and the establishment and operation of the electricity ombudsman scheme.

Division 2 - Approval of electricity ombudsman scheme

Clause 92 Authority may approve scheme

This clause provides that the Authority may (by notice published in the *Gazette*) approve a scheme that provides for a person to act as the electricity ombudsman to investigate and deal with disputes and complaints between customers and retail, distribution or integrated licensees or electricity marketing agents. In addition the Ombudsman may deal with any prescribed matter. The scheme may permit the electricity ombudsman to investigate disputes which occurred within 12 months before the commencement of the electricity ombudsman scheme.

The Authority may, by instrument in writing approve, an amendment to an approved scheme.

In the case of the initial electricity ombudsman scheme, this clause has effect subject to Schedule 3 (Approval of the initial ombudsman scheme by the Minister).

Clause 93 Requirements for scheme or amendment to be approved

The Authority may only approve an electricity ombudsman scheme or an amendment to an electricity ombudsman scheme, if the scheme meets the objectives set out in Schedule 2 of the Bill (Objectives to be met by the electricity ombudsman scheme) and any other prescribed objective.

Clause 94 Revocation of approval

This clause provides the Authority with the ability to revoke the approved status of an electricity ombudsman scheme if it is satisfied that the electricity ombudsman scheme no longer meets the objectives referred to in clause 93. In exercising the power of revocation, the Authority must follow the procedures and requirements prescribed. A copy of the revocation notice is to be laid before each House of Parliament within 14 sitting days after the revocation takes effect.

Division 3 - Scheme operation

Clause 95 Customer may have decision or complaint reviewed

This clause provides the electricity ombudsman with the ability to review a decision or complaint as requested by a customer and make a binding order or determination, give any direction or decline to deal with the decision or complaint.

Clause 96 Jurisdiction of court and tribunals

This clause provides that nothing in this Part affects the jurisdiction of a court or tribunal to attend to a dispute. This clause also prohibits the electricity ombudsman from dealing with matters that have, are or, in the electricity ombudsman's opinion should be dealt with by a Court or Tribunal.

Clause 97 Enforcement against marketing agents and others

This clause provides that regulations may provide that it is an offence for an electricity marketing agent, or other person, to fail to comply with a decision or direction of an electricity ombudsman, and provide a penalty for such an offence. The penalty is not to exceed \$2,000 for an individual and \$8,000 for a body corporate. This is comparable to similar penalties in other jurisdictions.

Clause 98 Authority to monitor compliance with decisions

This clause provides that the Authority has the function of monitoring and enforcing compliance with the decisions of the electricity ombudsman.

Division 4 - Membership of approved scheme by licensee

Clause 99 Proof of membership in applications relating to licence

This clause requires an applicant for the grant, renewal or transfer of a retail, distribution or integrated regional licence who proposes to supply electricity to customers to provide evidence of membership to an approved electricity ombudsman scheme.

Clause 100 Prerequisite to grant, renewal or transfer of licence

This clause provides that the Authority is not to grant, renew or transfer a retail, distribution or integrated regional licence who proposes to supply electricity to customers unless it is satisfied that the holder of the relevant licence is or will become a member of an approved electricity ombudsman scheme upon the licence being granted.

Clause 101 Licence condition: membership of scheme

This clause provides that it is a condition of every retail, distribution and integrated licence that the licensee cannot supply electricity to customers unless the licensee is a member of an approved electricity ombudsman scheme and is bound by, and will comply with, any decision or direction of the electricity ombudsman.

Part 8 – Access to services of network infrastructure facilities

This Part provides for a regime for access to services of electricity network infrastructure facilities, including the establishment of a Western Australian Electricity Access Code. The Code will provide for third party access to public and private electricity network infrastructure facilities that are covered by the Code. This Part provides the heads of power to establish the Code and also sets out mechanisms for the enforcement, amendment and review of the Code.

The Code itself will be effected as subordinate legislation by way of Regulation.

Division 1- Preliminary

Clause 102 Purposes of this Part

This clause provides that the purposes of this part are to provide access to services, and to give effect to relevant principles of the Competition Principles Agreement.

Clause 103 Terms used in this Part

This clause defines a number of key terms within this Part. These include:

- "access" as that term is defined in the context of "access to a service" in the *Trade Practices Act 1974* (Cth);
- "access agreement", being an agreement under the Code for services between the operator of network infrastructure facilities and a network user;
- "access arrangement" is the document approved by the Economic Regulation Authority which sets out the basic terms and conditions on which the operator of network infrastructure facilities will offer third party access;
- "Code" refers to the code established by the Minister under this Part, which among other things sets out the framework under which Access Arrangements will be established and provides for supervisory functions of the Authority;
- "Competition Principles Agreement" refers to the Agreement entered into between the Commonwealth, the States and Territories on 11 April 1995, and which relevantly sets out principles under which an access regime is deemed to be "effective";
- "network infrastructure facilities" are those parts of an electricity distribution or transmission system which are potentially subject to Code coverage and therefore independent regulation;

- “network user” means a party who has an agreement under the Code with a service provider for access to network infrastructure facilities; and
- "services" refers to the conveyance of electricity and ancillary services, and is essentially what a third party may access.

Division 2- Establishment of Code

Clause 104 Minister to establish Code

This clause requires the Minister to establish a code to provide for third party access to designated electricity network infrastructure facilities.

This clause sets out a number of matters for which the Code is to provide, including decisions as to which network infrastructure facilities will be covered or cease to be covered by the Code, the terms and conditions of proposed electricity access arrangements and the lodgement and approval of electricity access arrangements. In addition, the Code is required to provide for matters such as ring-fencing (intra entity arrangements designed to limit anti-competitive behaviour) within a network service provider, and for the manner in which related bodies corporate may deal with each other. The Economic Regulation Authority is to have supervisory and other functions under the Code, and provision must be made for this.

Subclause (3) provides that the Minister's reasons for decisions as to whether network infrastructure facilities are to become covered by the Code or cease to be covered by the Code cannot be challenged in a court or tribunal, otherwise than under clause 136.

Clause 105 Other matters for which Code may make provision

Subclause (1) specifies other matters that may be provided for in the Code, including conferring functions in relation to arbitration of disputes, and in relation to the Economic Regulation Authority.

Subclause (2) empowers the Minister to determine the appropriate transitional provisions regarding matters in progress immediately before the commencement of Part 8.

Clause 106 Code does not affect existing agreements

This clause ensures that existing agreements for access, whether under the renamed *Electricity Transmission and Distribution Systems (Access) Act 2003*, or otherwise are not affected by the implementation of the Code unless the Code provides otherwise. (The *Electricity Transmission and Distribution Systems (Access) Act 2003* had its origins from the *Electricity Corporation Act 1994*.)

Clause 107 Code is subsidiary legislation

This clause provides that the Code is subsidiary legislation for the purposes of the *Interpretation Act 1984*. In addition, this clause provides the procedure by which the Code is to be laid before each House of Parliament and for disallowing all or part of the Code.

Clause 108 Public comment on amendment or replacement of Code

This clause requires the Minister to undertake a public review process, and have regard to the submissions received, prior to amending, repealing or replacing the Code. This clause also provides the mechanism under which the public review process will proceed.

Clause 109 Exception to section 108

This clause provides that public review prior to an amendment of the Code is not required for minor or urgent amendments. Where the Minister is required to make an amendment “urgently”, the Minister is required to undertake a public review of the amendment as soon as practicable after the amended Code has been effected, and the Minister must then consider whether to further amend the Code in light of the public submissions.

Clause 110 Consultation with network service providers on amendment or replacement of Code

This clause provides that:

- without limiting the public consultation process, the Minister is specifically required to consult with network service providers that the Minister considers may be affected by a proposed amendment or replacement of the Code; and
- if a network service provider considers that, due to changed circumstances, all or part of the Code becomes unreasonable or inappropriate, then the network service provider can make a submission to the Minister requesting that the Code be amended or replaced and the Minister must consider that submission.

Clause 111 Review of Code

This clause requires the Minister to carry out a review every five years to assess the effectiveness of the Code in giving effect to the purposes of this Part. It also requires the Minister to call for public comment as part of its review.

Clause 112 Functions of Authority

This clause provides that the functions of the Economic Regulation Authority include monitoring and enforcing compliance by network service providers with this Part, the Code and access arrangements, and any other functions given by particular provisions of this Bill and the Code.

Clause 113 The arbitrator

This clause effectively provides that the arbitrator's functions under Part 6 Division 3 of the *Gas Pipelines Access (Western Australia) Act 1998* include functions under the Code.

Division 3- Enforcement

Clause 114 References to contravening the Code

This clause lists the ways in which the Code can be contravened, and includes:

- attempting to contravene a provision;
- aiding, abetting or procuring a contravention;
- inducing or attempting to induce a contravention;
- being directly or indirectly, knowingly concerning in the commission of a contravention; or
- conspiring with others to contravene a provision.

Clause 115 Prohibitions on hindering or preventing access

This clause prohibits a network service provider (in relation to network infrastructure facilities covered by the Code) from engaging in conduct aimed at hindering or preventing:

- access to services;
- the making of access agreements or any particular agreement in respect of those facilities; or
- access under an access agreement or arbitration determination.

This clause further prohibits a person who has access under an access agreement from engaging in conduct aimed at hindering or preventing access by another person to any part of the services of network infrastructure facilities covered by the Code. These prohibitions do not apply to conduct that a person is entitled to

engage in under this Bill, the Code, another written law or an access agreement.

The penalty prescribed for breaching this provision is \$100,000 and a daily penalty of \$20,000.

Clause 116 Proceedings

This clause provides that civil proceedings cannot be brought in respect of a matter arising under the Code except:

- in accordance with the Regulations;
- by an arbitration under the Code; or
- in accordance with clause 136, which mandates the process for review by the Board.

It also clarifies the scope of this limitation on proceedings.

Clause 117 Criminal proceedings

This clause provides that a contravention of a provision of the Code will not give rise to criminal liability under sections 177 and 178 of *The Criminal Code*.

Clause 118 Regulations as to enforcement of Code

This clause provides for the making of regulations which may prescribe all things necessary to ensure enforcement of the Code. The regulations may provide for the taking of proceedings before the Supreme Court and for civil penalties of no more than \$100,000, and (additionally) a daily amount which is not to exceed \$20,000.

Division 4- Transitional

Clause 119 Value of existing facilities

This clause ensures that the cost expended to value the network assets of Electricity Networks Corporation or Regional Power Corporation for the purpose of the reform process is not duplicated for the purposes of network price regulation.

Essentially, if the Code requires that the depreciated optimised replacement cost of any relevant network is to be considered, then the Economic Regulation Authority will be obliged to use the value of the network arrived at under this clause.

Clause 120 Expiry

This Division is to expire 3 years after the commencement day, as that day is defined in the *Electricity Legislation (Amendments and Transitional Provisions) Act*. This measure has been put in place to ensure that network valuation is revisited at an appropriate time in the future.

Part 9 – Wholesale electricity market

Part 9 of the Electricity Industry Bill provides the ability to make regulations to prescribe all matters that are necessary for the purpose of establishing a wholesale electricity market in the South West Interconnected System (SWIS).

Clause 121 Terms used in this Part

This clause provides for the definitions to be used throughout Part 9.

Under clause 121(2), a person is a “participant” for the purposes of this Part if:

- (a) the person is registered in accordance with the market rules as required under the regulations;
- (b) functions are conferred on the person under the regulations or the market rules; or
- (c) functions relating to this Part are conferred on the person by another written law.

Clause 122 Regulations for a wholesale electricity market

This clause provides that regulations are to be made for the purpose of establishing a wholesale electricity market (the “market”) in the SWIS.

This clause further provides that the high level objectives of the market are:

- (a) to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the SWIS;
- (b) to encourage competition among generators and retailers in the SWIS, including by facilitating efficient entry of new competitors;
- (c) to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies; and
- (d) to minimise the long-term costs of electricity supplied to customers from the SWIS.

Clause 123 Market rules

This clause provides that the regulations are to provide for there to be rules relating to the market and the operation of the SWIS (the “market rules”). The market rules will not be subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of

that Act does not apply to the market rules or to rules amending them or repealing and replacing them.

The clause also enables the regulations to provide for:

- the establishment of the initial market rules;
- the amendment, repeal and replacement of the market rules by rules made in accordance with the regulations and the market rules;
- the commencement of the initial rules and amendments to the rules;
- the publication and laying before each House of the Parliament of the initial rules and amendments to the rules.

Clause 124 Matters to be dealt with in the regulations

This clause provides that the regulations may prescribe all matters that are necessary or convenient for the purpose of establishing a wholesale electricity market in the SWIS and to achieve the market objectives. Amongst other things, the regulations may:

- regulate the conduct of persons including imposing obligations on them. In particular, the regulations may prohibit persons from engaging in an activity specified in the regulations unless they are registered in accordance with the market rules;
- confer functions or authorise the market rules to confer functions on persons (including the Minister) or bodies with respect to the market. Such persons or bodies may include for example the Economic Regulation Authority;
- provide for the establishment of or authorise the establishment of a body and confer functions or authorise the market rules to confer functions on that body related to the market. Such bodies may include, for example, the body that will be charged with approving amendments to the market rules;
- provide for the relationship between the Minister and another person or a body established by the regulations in respect of the performance of functions of that person or body in the market;
- provide for appeals against decisions of person or bodies to whom functions are conferred by the market rules;
- provide for the resolution of disputes between market participants;

- provide that a contravention of the regulations is an offence, and prescribe penalties for such offences;
- provide that certain provisions of the market rules are civil penalty provisions, prescribe civil penalty amounts for a contravention of such provisions, the enforcement of such penalties and the way amounts received from civil penalties are applied;
- provide for the regulation of proceedings in respect of alleged contraventions of provisions of the market rules, including the orders and sanctions that can be made;
- provide for investigations of alleged contraventions of the market rules;
- provide for the recovery of costs incurred in performing of market related functions and the allocation of those costs between market participants; and
- provide for the immunity of persons. For instance, the regulation may limit the liability of Electricity Networks Corporation with respect to the performance of its functions under the market rules.

Clause 124(5) provides that regulations have effect despite the provisions of another written law.

Clause 125 Trade practices authorisation by regulation

This clause provide that the regulations may authorise any arrangement, act, matter or thing in relation to the market rules for the purpose of the *Trade Practices Act 1974* (Cth) and the Competition Code.

Part 10 – Tariff equalisation

Part 10 of the Electricity Industry Bill provides for the establishment of a Tariff Equalisation Fund which is to be used to fund the difference between the actual cost of supply and the price paid by customers in areas outside of the South West interconnected system. The Electricity Networks Corporation will be required to make payments to the fund. Funds received will be used to pay for the Regional Power Corporation's cost of supply.

This funding arrangement does not impose any additional fees or charges upon network users, but simply recognises the existing internal transfer of funds within Western Power in a more transparent manner and provides for the ongoing funding arrangements between the Networks Corporation and Regional Power Corporation.

Clause 126 Purpose of this Part

This clause defines the purpose of the Tariff Equalisation Fund, and Part 10. The purpose of this Part is to contribute towards maintaining the financial viability of the Regional Power Corporation while enabling the regulated retail tariffs for electricity that is not supplied from the South West interconnected system to be, so far as is practicable, the same as the regulated retail tariffs for electricity that is supplied from that system.

Clause 127 Terms used in this Part

This clause defines the terms used in this Part, which include:

- “Code” means the Electricity Access Code in force under clause 104 (Minister to establish Code);
- “efficient cost of supply” means the costs that would be incurred by a prudent service provider acting efficiently and in accordance with accepted and good industry practice.
- “user” means both a user as defined in clause 103 (a party with an arrangement for access under the Electricity Access Code) and a “user” defined under the preserved access regime in the Electricity Transmission and Distribution Systems (Access) Act;
- “regulated retail tariffs” means the tariffs set by the Minister pursuant to regulations under clause 138 (Regulations as to fees and charges for functions of arbitrator and Board), and applying to specified classes of end use customers;
- “tariff equalisation contribution” means the amount determined by the Treasurer under clause 130 (Determination of tariff equalisation contributions), which in practice will be paid by Electricity Networks Corporation to the Treasurer, and then paid by the Treasurer to Regional Power Corporation. and

- “Tariff Equalisation Fund” refers to the account established by the Treasurer to hold contribution amounts.

Clause 128 Tariff Equalisation Fund

This clause establishes the Tariff Equalisation Fund as an account under the Trust Fund constituted under the *Financial Administration and Audit Act*. Contributions required to be paid by Electricity Networks Corporation are to be credited to the Fund. In addition, investment income from the Fund will also be credited to the Fund.

Clause 129 Authority to give advice

The Economic Regulation Authority is required to advise the Treasurer, at such intervals as are prescribed, whether any disparity exists between the efficient cost of supply of electricity in areas outside of the South West interconnected system and the revenues available to Regional Power Corporation from supplying at the uniform (regulated) tariff.

In advising the Treasurer, the Authority must have regard to:

- the amount necessary to compensate Regional Power Corporation for the disparity;
- the extent to which amounts paid to Regional Power Corporation in a previous period were greater or less than the disparity between efficient cost of electricity supply and supply at the regulated retail tariff;
- moneys in the Fund; and
- any other prescribed matters.

Clause 130 Determination of tariff equalisation contributions

This clause provides that if the Authority advises the Treasurer that a disparity exists between the efficient cost of supply to areas outside of the South West interconnected system, and the regulated retail tariff, then the Treasurer is to determine the contribution amount that is to be paid by Electricity Networks Corporation for the purposes of this Part, and in respect of a specified period.

The Treasurer is required to publish in the Gazette any advice provided by the Authority with the notice determining the tariff equalisation contribution.

Clause 131 Payment and passing on of tariff equalisation contributions

The Electricity Networks Corporation is to pay the contribution into the Fund in the manner prescribed. Clause 131(2) provides for a

"pass-through mechanism" whereby users are to pay to Electricity Networks Corporation amounts in respect of the contribution, in accordance with the Electricity Access Code.

Subclause (3) provides that the Code may make provision for the manner in which amounts are to be collected from network users, and requires the Authority to recognise the obligations of Electricity Networks Corporation under this Part when approving an access arrangement lodged under the Electricity Access Code.

Lastly, subclause (4) provides that the mechanisms under subclause (2) relating to the obligation of users to make payments in accordance with Electricity Access Code do not apply until such time as an access arrangement has been approved for Electricity Networks Corporation. Before this time, regulations may be made requiring users under the access regime preserved in the *Electricity Transmission and Distribution Systems (Access) Act* to make payments to Electricity Networks Corporation in respect of contributions payable by it.

Clause 132 Payments from the Fund

This clause provides that if a contribution is payable by the Electricity Networks Corporation in respect of a period, the Treasurer is to pay to Regional Power Corporation, from the Tariff Equalisation Fund, amounts considered necessary for the purposes of this Part having regard to certain matters.

Clause 133 Information

This clause places an obligation upon Regional Power Corporation and Electricity Networks Corporation to provide to the Treasurer and the Authority such information as is necessary for the performance of their functions under this Part.

Clause 134 Treasurer to recommend regulations

This clause provides that regulations can only be made under this Part if the Treasurer so recommends.

Clause 135 Delegation

This clause states that sections 57(2) and (3) to (11) of the *Financial Administration and Audit Act 1985* apply to any power conferred on the Treasurer under this Part. This provision functions to clarify and limit the Treasurer's power of delegation.

Part 11 – Other matters

This Part deals with review by, and the functions of, the Board, which is the appeal body for a number of electricity matters dealt with under the Bill relating to:

- licensing;
- access; and
- supply contracts.

In addition, Part 11 deals with the Governor's general regulation making power in clause 137. Clauses 138 and 139 also deal with regulations as to fees and charges for:

- supply and services; and
- functions of the arbitrator and Board.

As a preliminary matter, the term "Board" has the same meaning as that term does in section 49 of the Gas Pipelines Access (Western Australia) Act 1998 (clause 3).

The Board has been assigned various electricity functions by virtue of this Bill. Prior to, or in the event of a review under Part 11 of this Bill, it is anticipated that the panel of experts which constitutes the Gas Review Board will be expanded to include electricity experts. (Section 52 of the Gas Pipelines Access (Western Australia) Act 1998 prescribes how the panel of experts is to be constituted.)

Clause 136 Review by the Board

Clause 136(2) sets out the matters to which the clause applies. They are:

- (a) a decision of the Authority to refuse to grant or renew a licence;
- (b) a decision of the Authority to refuse to approve the transfer of a licence;
- (c) a decision of the Authority to refuse to amend a licence under clause 21 (Licence amendment on application of licensee);
- (d) a decision of the Authority as to the length of the period for which a licence is granted or renewed;
- (e) a decision of the Authority as to any term or condition of a licence;
- (f) a decision of the Authority to amend a licence under clause 22 (Licence amendment on initiative of Authority);

- (g) a decision of the Authority to refuse to approve —
 - (i) a standard form contract under clause 51 (Approval of standard form contract); or
 - (ii) an amendment to, or replacement for, a standard form contract under clause 52 (Amendment or replacement of standard form contract);
- (h) a direction given by the Authority under clause 53 (Authority may direct an amendment to be made);
- (i) a decision by the Minister that network infrastructure facilities are to become covered by the Code or are to cease to be covered by the Code;
- (j) a decision by the Authority to add to the obligations of a network service provider under the Code in respect of the segregation of the functions and business of providing services from the network service provider's other functions and business, or to waive any of those obligations;
- (k) a decision by the Authority to approve or not to approve an arrangement lodged under clause 104(2)(b) (Minister to establish Code); or
- (l) a decision by the Authority to release confidential data given to the Authority for the performance of its functions under Part 8 (Access to services of network infrastructure facilities).

Clause 136(3) (Review by the Board) provides that a person adversely affected by a decision or direction to which the clause applies may apply to the Board for a review of the decision. The remaining provisions of the clause deal with the conduct of a review and the powers and functions of the Board.

Clause 137 Regulations

The Governor may make regulations prescribing all matters that are required or permitted by the Bill to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of the Bill

Clause 138 Regulations as to fees and charges for supply and services

Without limiting clause 137, regulations may be made which fix fees and charges, or the means of determining the fees and charges, that, unless otherwise agreed, are to be payable by customers of a prescribed class in relation to:

- the supply of electricity in prescribed circumstances; or

- the provision of any prescribed service; and
- deal with any other matter relating to the fixing or determination of fees and charges.

Regulations may also make provision for and in relation to discounts, rebates, or concessions to be made available to customers of a prescribed class or in prescribed circumstances in respect of fees or charges payable in relation to the supply of electricity or the provision of a prescribed service.

Clause 139 Regulations as to fees and charges for functions of arbitrator and the Board

Without limiting clause 137, regulations may make provision for and in connection with the performance of the respective functions of the arbitrator and the Board under this Bill.

If it is inappropriate to prescribe a set fee or charge in connection with the performance of a particular function, the regulations may provide for the method of calculating the fee or charge, including calculation according to the cost of performing that function.

The regulations may also:

- authorise the Board to fix, and determine the incidence of liability for, the cost and expenses of the hearing and determination of proceedings before the Board; and
- make any incidental or supplementary provision that is expedient for that purposes .

The clause also extends to the cost and expenses of proceedings that are commenced but discontinued or otherwise not brought to a conclusion.

Schedule 1 – Licence terms and conditions

This Schedule describes the provisions that may be included in a licence (see clause 11(2) of the Bill). The Economic Regulation Authority (the “Authority”) has the discretion to seek to impose licence conditions dealing with the following matters:

- (a) if the licence is a generation licence or integrated regional licence, requiring the licensee to prepare and implement strategies for the management of greenhouse gas emissions;
- (b) if the licence is a generation licence, a retail licence or an integrated regional licence, requiring the licensee to maintain and publish records dealing with greenhouse gas emissions;
- (c) if the licence is a retail licence or an integrated regional licence, requiring the licensee to prepare and implement strategies to encourage the use of renewable energy;
- (d) if the licence is a retail licence or an integrated regional licence, requiring the licensee to give information to customers on matters relating to electricity consumption, electricity conservation and the efficient use of electricity;
- (e) if the licence is a retail licence or an integrated regional licence, specifying methods or principles to be applied by the licensee in determining fees or charges payable by customers of a class;
- (f) if the licence is a retail licence or an integrated regional licence, requiring the licensee, when seeking payment by tariff customers of a fee or charge, to specify —
 - (i) the portion of the fee or charge that is attributable to the cost of generating the electricity supplied;
 - (ii) the portion of the fee or charge that is attributable to the cost of transporting that electricity through a transmission system; and
 - (iii) the portion of the fee or charge that is attributable to the cost of transporting that electricity through a distribution system;
- (g) if the licence is a retail licence or an integrated regional licence, regulating the extent to which the licensee’s customers may be of a particular class;
- (h) requiring the licensee to maintain specified accounting records;
- (i) preventing the licensee from engaging in or undertaking specified business activities or any other business in the electricity industry in the State;
- (j) specifying methods or standards to be applied in supplying electricity under the authority of the licence;
- (k) requiring the licensee to observe specified codes (including any codes issued by the Authority under clause 39) with such modifications or exemptions as may be determined by the Authority;
- (l) specifying procedures for surrender of the licence;

- (m) requiring the licensee to provide to the Authority, in the manner and form determined by the Authority, specified information on any matter relevant to the operation or enforcement of the licence, the operation of the licensing scheme provided for in Part 2 or the performance of the Authority's functions under that Part;
- (n) requiring the licensee to lodge with the Authority securities in an amount and of a nature acceptable to the Authority securing the performance by the licensee of the requirements, responsibilities and obligations under the licence;
- (o) relating to the performance of functions by the licensee including —
 - (i) the range of functions that may be performed by the licensee;
 - (ii) performance criteria to be met by the licensee; and
 - (iii) community service obligations, that is obligations that are not commercially justified, to be discharged by the licensee;
- (p) requiring the licensee to publish specified information in relation to its performance under the licence on matters such as key performance indicators;
- (q) relating to obligations of the licensee with respect to public authorities and other licensees;
- (r) regulating the construction or operation, or both, of any generating works, transmission system or distribution system to which the licence applies;
- (s) relating to the disposal or transfer of property, rights or liabilities of a specified kind either during the term of the licence or on or after its expiration by effluxion of time including provisions —
 - (i) prohibiting any disposal or transfer of property except with the approval of a specified person;
 - (ii) prohibiting the giving of any encumbrance over specified property except with the approval of the Authority;
 - (iii) requiring the transfer of property, rights or liabilities of a specified kind to a specified person on or within a specified time after the expiration of the licence;
 - (iv) with respect to the consideration to be provided in respect of any disposal or transfer;
 - (v) with respect to the arbitration of disputes that arise in connection with any disposal or transfer; and
 - (vi) of a supplementary, consequential or transitional nature in relation to any disposal or transfer.

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

Objectives stated

This clause sets out the objectives of the electricity ombudsman scheme. These objectives will be the basis for determining approval or revocation of approval of the electricity ombudsman scheme. The objectives include:

- all licensees, who are required to be members of the scheme, are bound by the scheme;
- the fund is to appropriately funded;
- the scheme has satisfactory arrangements in place to deal with all disputes and complaints referred to in clause 92(1) (Authority may approve the scheme);
- the electricity ombudsman will be able to operate independently of all licensees in performing his or her functions under the scheme;
- the scheme will be accessible to customers;
- without limiting any other application of the scheme, the scheme will apply to all disputes and complaints referred to in clause 92(1) (Authority may approve the scheme);
- the scheme will operate expeditiously and without cost to customers;
- the scheme will satisfy best practice benchmarks for schemes of a similar kind, both in terms of its constitution and procedure and in terms of its day to day operations;
- the scheme will provide for a monetary limit on claims covered by the scheme of an amount or amounts approved by the Economic Regulation Authority (the “Authority”);
- the scheme will maintain the capacity of the electricity ombudsman, where appropriate, to refer disputes or complaints to other forums; and
- the scheme will require the electricity ombudsman to inform the Authority of substantial breaches of any licence condition; or the code under Part 6 (Code of conduct for the supply electricity to small use customers) of which the ombudsman becomes aware.

Schedule 3 - Transitional provisions

Division 1 - Initial code of conduct of conduct

Clause 1 Approval of initial code of conduct of conduct

This clause provides that the Minister, instead of the Economic Regulation Authority, is to approve the initial code of conduct in consultation with the consultative committee appointed under clause 81 of the Bill.

Clause 2 Appointment of initial committee

This clause provides that the Minister, instead of the Economic Regulation Authority, is to appoint the initial consultative committee for the purpose of clause 81 of the Bill.

Clause 3 Regulations for transitional matters

This clause provides that regulations may be made to rectify anomalies relating to the Minister's actions under clauses 1 and 2 of this Schedule and the operation of Part 3 of the Bill in accordance with section 25 of the *Interpretation Act 1984* (in relation to the exercise of the Minister's powers before the commencement of that Division).

Division 2 - Initial electricity ombudsman scheme

Clause 4 Approval of initial electricity ombudsman scheme

This clause provides that the Minister, instead of the Economic Regulation Authority, is to approve the initial electricity ombudsman scheme.

Clause 5 Regulations for transitional matters

This clause provides that regulations may be made to rectify anomalies relating to the Minister's actions under clause 4 of this Schedule and the operation of Division 2 of Part 4 of the Bill in accordance with section 25 of the *Interpretation Act 1984* (in relation to the exercise of the Minister's powers before the commencement of that Division).