

Energy Legislation Amendment and Repeal Bill 2016

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Western Australia

LEGISLATIVE COUNCIL

Energy Legislation Amendment and Repeal Bill 2016

A Bill for

An Act to —

- **amend the *Electricity Industry Act 2004*; and**
- **amend and repeal the *Energy Arbitration and Review Act 1998* and make consequential amendments to other Acts; and**
- **make consequential amendments to various Acts necessary as a result of the enactment of the *National Electricity (Western Australia) Act 2016* and the *National Gas Access (WA) Amendment Act 2016*; and**
- **provide for transitional matters, and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Energy Legislation Amendment and Repeal Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 Division 1, Part 3 Division 1 Subdivision 1 and Part 4 Division 1 and Division 2 Subdivision 1 — on the day after assent day;
- (c) Part 3 Division 1 Subdivision 2 and Divisions 2 to 11 — on 1 July 2017;
- (d) Part 3 Division 1 Subdivision 3 — on 1 January 2018;
- (e) the rest of the Act — on 1 July 2018.

- 1 **WA national electricity legislation** means —
- 2 (a) the *National Electricity (Western Australia)*
- 3 *Act 2016*; and
- 4 (b) the National Electricity (WA) Law; and
- 5 (c) the National Electricity (WA) Regulations; and
- 6 (d) the National Electricity (WA) Rules; and
- 7 (e) instruments under them.
- 8
- 9 (2) In section 3 in the definition of **transmission system** delete
- 10 “higher.” and insert:
- 11
- 12 higher;
- 13
- 14 **6. Section 30 amended**
- 15 In section 30 delete “the *Trade Practices Act 1974* of the
- 16 Commonwealth and the Competition Code —” and insert:
- 17
- 18 the *Competition and Consumer Act 2010* (Cwlth) and the
- 19 Competition Code of Western Australia —
- 20
- 21 **7. Section 39 amended**
- 22 In section 39(2):
- 23 (a) delete paragraph (d) and insert:
- 24
- 25 (d) standards that are to be observed by the holders
- 26 of transmission licences, distribution licences
- 27 or integrated regional licences relating to —
- 28 (i) the quality and reliability of the supply
- 29 of electricity; and

- 1 (ii) the quality of customer service;
2
3 (b) in paragraph (da) delete “compensation payments to be
4 made” and insert:
5
6 the provision of compensation (whether or not directly)
7
8 (c) after paragraph (da) insert:
9
10 (db) network planning;
11

12 **8. Section 48 amended**

13 Delete section 48(4).

14 **9. Part 3A inserted**

15 After section 59 insert:
16

17 **Part 3A — Network supply services:**
18 **distributor-customer and**
19 **distributor-retailer relationships**

20 **59A. Terms used**

- 21 (1) In this Part —
22 *direct billing arrangement*, between a Part 3A
23 distributor and a retail customer, means an arrangement
24 under which the customer pays network supply service
25 charges directly to the distributor;
26 *electricity laws* means —
27 (a) the WA national electricity legislation; and
28 (b) the *Electricity Act 1945*; and
29 (c) the *Electricity Corporations Act 2005*; and

- 1 (d) the *Electricity Transmission and Distribution*
2 *Systems (Access) Act 1994*; and
3 (e) the *Energy Coordination Act 1994*; and
4 (f) the *Energy Operators (Powers) Act 1979*; and
5 (g) this Act;

6 ***National Energy Retail Law*** means the National
7 Energy Retail Law set out in the Schedule to the
8 *National Energy Retail Law (South Australia) Act 2011*
9 (South Australia);

10 ***network supply service*** means a service constituted by
11 the transfer of electricity to or from premises, of a retail
12 customer, connected to a Part 3A distribution system,
13 and related services, including the de-energisation or
14 re-energisation of the premises, but does not include
15 establishing, altering or removing the connection to the
16 premises;

17 ***network supply service charges*** means charges that a
18 Part 3A distributor is entitled, under the WA national
19 electricity legislation, to charge for the provision of —

- 20 (a) a network supply service; or
21 (b) any other customer connection service;

22 ***Part 3A distribution system*** means a distribution
23 system of a Part 3A distributor in relation to which the
24 distributor is required to be a Registered participant
25 under the National Electricity (WA) Law section 11;

26 ***Part 3A distributor*** means a person who —

- 27 (a) holds a distribution licence that relates to the
28 South West interconnected system; and
29 (b) in relation to the activity of owning, controlling
30 or operating the distribution system covered by
31 the licence — is required to be a Registered
32 participant under the National Electricity (WA)
33 Law section 11;

- 1 **Part 3A retailer** means a retailer who has a customer to
2 whom the retailer sells electricity for consumption at
3 premises connected to a Part 3A distribution system;
- 4 **retail customer** means a person —
- 5 (a) to whom electricity is or is to be sold by a
6 retailer for the purpose of consumption at
7 premises connected to a distribution system; or
- 8 (b) from whom a retailer purchases or is to
9 purchase electricity generated at premises
10 connected to a distribution system;
- 11 **shared customer**, of a Part 3A distributor and a Part 3A
12 retailer, means a retail customer —
- 13 (a) to whom electricity is or is to be sold by the
14 retailer for consumption at premises connected
15 to a Part 3A distribution system of the
16 distributor; or
- 17 (b) from whom the retailer purchases or is to
18 purchase electricity generated at premises
19 connected to a Part 3A distribution system of
20 the distributor.
- 21 (2) In this Part, **customer connection service**,
22 **de-energisation** and **re-energisation** have the same
23 respective meanings as they have in the National
24 Energy Retail Law section 2(1).
- 25 (3) For the purposes of the definition of **Part 3A**
26 **distributor** in subsection (1), a distribution licence
27 relates to the South West interconnected system if it is
28 a licence to construct or operate a distribution system
29 that is or will be connected to the South West
30 interconnected system or that forms or will form part of
31 that system.

- 1 **59B. Obligation on Part 3A distributor to provide**
2 **network supply services**
- 3 (1) A Part 3A distributor must, subject to and in
4 accordance with the electricity laws, provide a network
5 supply service to a retail customer —
6 (a) who requests the service; and
7 (b) whose premises are connected to a Part 3A
8 distribution system of the distributor.
- 9 (2) A network supply service that must be provided to a
10 retail customer must be provided under a contract that
11 either —
12 (a) is the standard contract that, under the
13 regulations, is relevant to the customer; or
14 (b) is negotiated.
- 15 (3) If a Part 3A distributor must provide a network supply
16 service to a retail customer, the distributor must offer
17 to provide the service under the standard contract
18 relevant to the customer, except in circumstances, or in
19 relation to a class of customer, specified in the
20 regulations.
- 21 (4) It is a condition of every distribution licence held by a
22 Part 3A distributor in relation to a Part 3A distribution
23 system that the distributor must comply with
24 subsections (1), (2) and (3).
- 25 (5) This section has no effect until 1 July 2018.
- 26 **59C. Regulations about provision of network supply**
27 **services**
- 28 (1) The regulations may provide for and in relation to the
29 relationship between Part 3A distributors (*distributors*)
30 and retail customers in relation to the provision of
31 network supply services.

- 1 (2) Without limiting subsection (1), the regulations may —
- 2 (a) provide for the classification of retail
- 3 customers;
- 4 (b) provide for the contracts under which network
- 5 supply services are provided;
- 6 (c) prohibit distributors from entering into direct
- 7 billing arrangements for the provision of
- 8 network supply services with retail customers
- 9 of a specified class;
- 10 (d) provide for standards of service in the provision
- 11 of network supply services;
- 12 (e) provide for compensation to retail customers
- 13 for a failure to observe those standards of
- 14 service;
- 15 (f) provide, without limiting section 12, that it is a
- 16 condition of a distribution licence held by a
- 17 distributor in relation to a Part 3A distribution
- 18 system that the distributor must comply with
- 19 specified provisions of the regulations made for
- 20 the purposes of this section;
- 21 (g) provide for the giving or publication of
- 22 information by distributors;
- 23 (h) confer functions on the Authority, the Minister
- 24 or another person.
- 25 (3) Regulations for the purposes of subsection (2)(b)
- 26 may —
- 27 (a) provide for minimum terms and conditions of
- 28 contracts;
- 29 (b) provide for the determination of —
- 30 (i) the terms and conditions of standard
- 31 contracts; and
- 32 (ii) which standard contract is relevant to
- 33 which class of retail customer;

- 1 (c) provide for the approval of the terms and
2 conditions of standard contracts;
- 3 (d) provide for the formation of contracts,
4 including for the circumstances in which a
5 standard contract is taken to have been entered
6 into;
- 7 (e) provide for the amendment of standard
8 contracts, including for the Authority to require
9 that amendments be made;
- 10 (f) provide for a framework within which contracts
11 may be negotiated, including for the
12 circumstances in which —
- 13 (i) parties to a negotiation must use the
14 framework; and
- 15 (ii) persons are taken to be parties to a
16 negotiation;
- 17 (g) provide for the circumstances in which
18 specified rights and obligations provided for
19 under a standard contract continue after its
20 termination.

21 **59D. Regulations about relationship between Part 3A**
22 **distributors and Part 3A retailers**

- 23 (1) The regulations may provide for and in relation to the
24 relationship between Part 3A distributors (*distributors*)
25 and Part 3A retailers (*retailers*) in relation to shared
26 customers.
- 27 (2) Without limiting subsection (1), the regulations may —
- 28 (a) provide for the payment of network supply
29 service charges by retailers, including for the
30 recovery of overdue charges;
- 31 (b) provide for retailers to make applications for
32 network supply services on behalf of retail
33 customers of the retailer;

- 1 (c) provide for the sharing of information between
2 distributors and retailers;
- 3 (d) provide for distributors to notify retailers of
4 interruptions to supply;
- 5 (e) provide for the coordination of the
6 de-energisation and re-energisation of premises
7 and for liability for network supply service
8 charges in relation to that;
- 9 (f) provide for service standard payments to be
10 made to customers through retailers;
- 11 (g) provide for the mutual indemnification of
12 distributors and retailers in relation to acts and
13 omissions of each other;
- 14 (h) provide for the referral of enquiries and
15 complaints made by shared customers;
- 16 (i) provide for the resolution of disputes between
17 distributors and retailers;
- 18 (j) provide, without limiting section 12, that it is a
19 condition of a distribution licence held by a
20 distributor in relation to a Part 3A distribution
21 system that the distributor must comply with
22 specified provisions of the regulations made for
23 the purposes of this section;
- 24 (k) provide, without limiting section 12, that it is a
25 condition of a retail licence held by a retailer
26 that the retailer must comply with specified
27 provisions of the regulations made for the
28 purposes of this section.

- 29 (3) In subsection (2)(f) —
30 **service standard payment** means a payment of
31 compensation by a distributor to a retail customer, for a
32 failure to observe certain standards, as described in
33 section 39(2)(da), 59C(2)(e) or 79(2)(cb).

- 1 (4) The Minister may make a code dealing with —
2 (a) billing arrangements for network supply service
3 charges; and
4 (b) the provision of credit support by retailers; and
5 (c) other matters, in relation to which regulations
6 for the purposes of this section may be made,
7 specified in the regulations made for the
8 purposes of this subsection.
- 9 (5) The code is subsidiary legislation for the purposes of
10 the *Interpretation Act 1984*.
- 11 (6) A provision of the code is of no effect to the extent to
12 which it is inconsistent with this Act or another written
13 law.

14 **59E. Relationship to code of conduct for supply of**
15 **electricity to small use customers**

16 A provision of the code of conduct, as defined in
17 section 78, is of no effect to the extent to which it is
18 inconsistent with regulations made for the purposes of
19 this Part.
20

21 **10. Section 79 amended**

- 22 (1) Delete section 79(2)(c) and insert:
23
24 (c) defining standards of service or conduct in the
25 supply and marketing of electricity to
26 customers; and
27 (ca) defining standards of service in the provision of
28 network supply services; and
29 (cb) providing for compensation payments to be
30 made to customers when those standards are
31 not met; and
32

1 (2) Delete section 79(4).

2 **11. Section 81 amended**

3 Delete section 81(6).

4 **12. Section 92 amended**

5 Delete section 92(6).

6 **13. Section 103 amended**

7 In section 103 in the definition of *access* delete “*Trade*
8 *Practices Act 1974* of the Commonwealth;” and insert:

9

10 *Competition and Consumer Act 2010* (Cwlth);

11

12 **14. Section 127 amended**

13 In section 127(2) delete “*Trade Practices Act 1974* of the
14 Commonwealth and the Competition Code.” and insert:

15

16 *Competition and Consumer Act 2010* (Cwlth) and the
17 Competition Code of Western Australia.

18

19 **15. Sections 131B and 131C inserted**

20 After section 131A insert:

21

22 **131B. Delegation by Minister**

23 (1) This section applies to a function of the Minister under
24 this Act which may, by express provision (the
25 *provision*) in this Act, be delegated.

26 (2) A delegation under the provision must be in writing
27 signed by the Minister.

1 (3) A person exercising or performing a power or duty that
2 has been delegated to the person under the provision is
3 taken to do so in accordance with the terms of the
4 delegation unless the contrary is shown.

5 (4) The provision does not limit the ability of the Minister
6 to perform a function through an officer or agent.

7 **131C. Authority's security and reliability functions**

8 (1) In this section —

9 *Authority's security and reliability functions* means
10 security and reliability functions of the Authority in
11 relation to a local electricity system under —

12 (a) the *National Electricity (Western Australia)*
13 *Act 2016*; or

14 (b) this Act;

15 *committee* means a committee established by the
16 Authority under subsection (2);

17 *security and reliability functions*, in relation to a local
18 electricity system, means functions that relate to the
19 security or reliability of the local electricity system,
20 including functions that relate to —

21 (a) the continuity and reliability with which a local
22 electricity system conveys electricity; or

23 (b) the quality of the electricity conveyed.

24 (2) The Authority may, in accordance with regulations
25 made for the purposes of subsection (4), establish a
26 committee to advise it on matters relating to the
27 Authority's security and reliability functions.

28 (3) Subject to regulations made for the purposes of
29 subsection (4), a committee may determine its own
30 procedures.

- 1 (4) The regulations may —
- 2 (a) confer on the Authority security and reliability
- 3 functions in relation to a local electricity
- 4 system;
- 5 (b) provide for the review of a decision of the
- 6 Authority made in the performance of the
- 7 Authority’s security and reliability functions,
- 8 including review by the State Administrative
- 9 Tribunal;
- 10 (c) provide for the membership, constitution and
- 11 procedures of a committee;
- 12 (d) require the Authority to consult with a
- 13 committee before exercising specified security
- 14 and reliability functions.
- 15

16 **16. Section 131 amended**

- 17 (1) In section 131 delete “The Governor” and insert:
- 18

19 (1) The Governor

20

- 21 (2) At the end of section 131 insert:
- 22

23 (2) Without limiting subsection (1), the regulations may

24 provide for and in relation to the relationship between

25 this Act and the WA national electricity legislation,

26 including by providing for how this Act and

27 instruments under it have effect in relation to matters

28 and things affected by the WA national electricity

29 legislation.

- 30 (3) Without limiting subsection (1), the regulations may —

31 (a) specify a capital expenditure programme in

32 relation to a holder of a distribution licence or

- 1 transmission licence if the licensee is a
2 participant in the programme; and
3 (b) provide, without limiting section 12, that it is a
4 condition of the licence that the licensee must
5 comply with the obligations of the licensee
6 under the programme to the extent specified.
- 7 (4) The reference in subsection (3)(a) to a participant in a
8 programme includes a reference to a person who
9 participates in the programme only because the person
10 has obligations under the programme.
- 11 (5) The regulations, or an instrument under them, may
12 apply, adopt or incorporate the whole or a part of a
13 legislative instrument, or other published document,
14 relating to the purposes of this Act —
15 (a) with or without modifications; or
16 (b) as in force at a particular time or from time to
17 time.
18

19 **17. Section 132 amended**

- 20 (1) In section 132(1) delete “prescribed” (each occurrence) and
21 insert:
22
23 specified
24
- 25 (2) Delete section 132(2) and insert:
26
- 27 (2) Without limiting subsection (1), the regulations may —
28 (a) make provision for and in relation to discounts,
29 rebates or concessions to be made available to
30 customers of a specified class or in specified
31 circumstances in respect of fees or charges

1 payable in relation to the supply of electricity
2 or the provision of a specified service;
3 (b) provide that fees and charges payable in respect
4 of premises, of customers of a specified class,
5 that are connected to a specified distribution
6 system must not differ on the basis of the
7 location of the premises.
8

9 **18. Part 11 inserted**

10 After section 134 insert:
11

12 **Part 11 — Transitional provisions**

13 **Division 1 — Transitional provisions for *Energy***
14 ***Legislation Amendment and Repeal Act 2016***

15 **Subdivision 1 — Transitional provisions relating to access**
16 **to services of network infrastructure facilities**

17 **135. Terms used**

18 In this Subdivision —

19 ***access arrangement*** has the meaning given in
20 section 103;

21 ***Access Arrangement 3*** means the access arrangement,
22 known as Access Arrangement 3, for the Western
23 Power network for the period beginning on
24 1 July 2012, as in force from time to time;

25 ***Code*** has the meaning given in section 103;

26 ***gap year*** means the period beginning on 1 July 2017
27 and ending on 30 June 2018;

28 ***gap year instrument*** has the meaning given in
29 section 136(1);

- 1 *network infrastructure facilities* has the meaning
2 given in section 103;
- 3 *RCP1 transition instrument* has the meaning given in
4 section 138(1);
- 5 *secondary determination* has the meaning given in
6 section 136(3);
- 7 *transitional instrument* means the gap year instrument,
8 a secondary determination or the RCP1 transition
9 instrument;
- 10 *Western Power network* means the network
11 infrastructure facilities that are, from time to time,
12 covered under the Code section 3.1 (as in force when
13 the *Energy Legislation Amendment and Repeal*
14 *Act 2016* section 18 comes into operation).
- 15 **136. Gap year instrument and extension of Access**
16 **Arrangement 3**
- 17 (1) The Minister may, in accordance with this Subdivision
18 and the regulations, make an instrument (the *gap year*
19 *instrument*) setting out modifications to the Code.
- 20 (2) A modification under subsection (1) must not apply to
21 network infrastructure facilities other than the Western
22 Power network.
- 23 (3) Without limiting subsection (1), the gap year
24 instrument may modify the Code so as to authorise or
25 require the Minister to make one or more instruments
26 (a *secondary determination*) —
- 27 (a) setting out modifications to Access
28 Arrangement 3 for specified purposes; or
- 29 (b) determining specified matters for the purposes
30 of the Code or Access Arrangement 3, as those
31 instruments apply under section 137.

- 1 (4) Despite anything in the Code or Access
2 Arrangement 3 —
- 3 (a) the Electricity Networks Corporation is not
4 required to submit proposed revisions of
5 Access Arrangement 3 to the Authority; and
- 6 (b) Access Arrangement 3, as it applies under
7 section 137, continues in force until the end of
8 the gap year.
- 9 (5) The gap year instrument and each secondary
10 determination expires immediately before 1 July 2018.
- 11 (6) Sections 107(3) to (7) and 108 to 110 do not apply in
12 relation to the making or amendment of a gap year
13 instrument or secondary determination.

14 **137. Effect of gap year instrument and secondary**
15 **determinations**

- 16 (1) If a gap year instrument is in operation, the Code
17 applies with any modifications set out in the gap year
18 instrument.
- 19 (2) If a secondary determination of a kind referred to in
20 section 136(3)(a) is in operation, Access
21 Arrangement 3 applies with any modifications set out
22 in the secondary determination.
- 23 (3) A reference in Access Arrangement 3, this Act or
24 another written law to the Code is, to the extent that the
25 reference relates to any period when a gap year
26 instrument is in operation, a reference to the Code as
27 applying under subsection (1).
- 28 (4) A reference to an access arrangement in this Act, the
29 Code or another written law is, to the extent that the
30 reference relates to Access Arrangement 3 and any
31 period when a secondary determination of a kind
32 referred to in section 136(3)(a) is in operation, a

1 reference to Access Arrangement 3 as applying under
2 subsection (2).

3 **138. RCP1 transition instrument**

4 (1) The Minister may, in accordance with this Subdivision
5 and the regulations, make an instrument (the **RCP1**
6 **transition instrument**) that —

7 (a) imposes obligations on any or all of the
8 Minister, the Authority and the Electricity
9 Networks Corporation for transitional purposes
10 relating to either or both of the following —

11 (i) Part 8 ceasing to apply to the South
12 West interconnected system
13 immediately before 1 July 2018;

14 (ii) any provision of the WA national
15 electricity legislation beginning to have
16 effect as a law of the State;

17 and

18 (b) sets out matters that are ancillary or incidental
19 to the imposition of those obligations.

20 (2) The RCP1 transition instrument may incorporate by
21 reference, or provide that specified matters are to be
22 determined in accordance with —

23 (a) the Code or Access Arrangement 3 as in force
24 at a particular time (including those instruments
25 as they apply or applied under section 137); or

26 (b) a secondary determination as in force at a
27 particular time.

28 (3) The RCP1 transition instrument may provide that, if
29 the Authority fails to comply with an obligation
30 imposed by the RCP1 transition instrument, the
31 Minister may perform that obligation in substitution for
32 the Authority.

- 1 (4) The RCP1 transition instrument expires immediately
2 before 1 July 2019.
- 3 **139. General provisions about transitional instruments**
- 4 (1) A transitional instrument, or an instrument that amends
5 or repeals a transitional instrument, is subsidiary
6 legislation for the purposes of the *Interpretation*
7 *Act 1984*.
- 8 (2) Despite the *Interpretation Act 1984* section 41(1), a
9 secondary determination, or an instrument that amends
10 or repeals a secondary determination —
- 11 (a) is not required to be published in the *Gazette*;
12 and
- 13 (b) if it is not published in the *Gazette* — must be
14 published on a website maintained by the
15 department of the Public Service principally
16 assisting the Minister in the administration of
17 this Act; and
- 18 (c) comes into operation on the day of publication
19 or on a later day specified or provided for in the
20 instrument.
- 21 (3) A transitional instrument, or a modification to the Code
22 or Access Arrangement 3 set out in a transitional
23 instrument, may confer functions on the Minister, the
24 Authority, the Electricity Networks Corporation or any
25 other person.
- 26 (4) The Minister may delegate to any person any power or
27 duty of the Minister under a transitional instrument.
- 28 (5) A decision made under a transitional instrument, or a
29 modification to the Code or Access Arrangement 3 set
30 out in a transitional instrument, is not reviewable —
- 31 (a) before the coming into operation of the *Energy*
32 *Legislation Amendment and Repeal Act 2016*
33 section 52 — by the Board; or

- 1 (b) after the coming into operation of that
2 section — by the State Administrative Tribunal.

3 **140. Regulations about transitional instruments**

4 (1) The regulations may make provision for and in relation
5 to transitional instruments.

6 (2) Without limiting subsection (1), the regulations may —

7 (a) provide for the making, amendment and repeal
8 of a transitional instrument;

9 (b) provide for matters that must, or must not, be
10 included in a transitional instrument;

11 (c) prohibit the Minister from amending or
12 repealing a transitional instrument otherwise
13 than in accordance with the regulations;

14 (d) confer functions on the Minister, the Authority,
15 the Electricity Networks Corporation or any
16 other person;

17 (e) provide, without limiting section 12, that it is a
18 condition of any licence held by the Electricity
19 Networks Corporation that the Electricity
20 Networks Corporation must comply with a
21 specified provision of a transitional instrument
22 or a specified modification to the Code or
23 Access Arrangement 3 set out in a transitional
24 instrument.

25 **Subdivision 2 — Transitional provisions for new Part 3A**

26 **141. Terms used**

27 (1) In this Subdivision —

28 *commencement day* means 1 July 2018;

29 *retail contract*, in respect of premises connected to a
30 distribution system, means a contract, in effect
31 immediately before commencement day, under which a

1 retailer sells electricity to a customer for the purpose of
2 consumption at the premises or purchases electricity
3 generated at the premises from the customer.

4 (2) A term used in this Subdivision has the same meaning
5 as it has in Part 3A.

6 **142. Network supply service contracts taken to have**
7 **been entered into on 1 July 2018**

8 (1) If, immediately before commencement day, a retail
9 customer is a party to a retail contract in respect of
10 premises connected to the distribution system of the
11 Electricity Networks Corporation then, on
12 commencement day, the customer and the Electricity
13 Networks Corporation are taken to have entered into a
14 contract for the provision of a network supply service
15 in respect of the premises (the *network supply service*
16 *contract*).

17 (2) Subsection (1) does not apply if the customer and the
18 Electricity Networks Corporation are parties to a
19 contract for the provision of a network supply service
20 in respect of the premises that was entered into before
21 commencement day and that begins to have effect on
22 commencement day.

23 (3) The terms and conditions of a network supply service
24 contract provided for by subsection (1) are the terms
25 and conditions of the standard contract that, under
26 Part 3A, is relevant to the customer.

27 Note for this subsection:

28 Regulations made for the purposes of section 59C(2)(b)
29 provide for the determination of which class of standard
30 contract is relevant to which class of retail customer.

31 (4) Nothing in this section prevents a network supply
32 service contract from being amended or terminated
33 under this Act or the contract.

- 1 **143. Relationship between Part 3A distributors and**
2 **Part 3A retailers**
- 3 (1) On and after commencement day, a contract between a
4 Part 3A distributor and a Part 3A retailer does not have
5 effect to the extent to which it provides for or in
6 relation to the provision, on and after commencement
7 day, of network supply services.
- 8 (2) Without limiting subsection (1), the distributor is not
9 liable to the retailer for or in relation to the provision,
10 on and after commencement day, of a network supply
11 service under the contract, and a failure by the retailer
12 in relation to the provision of the service is not a breach
13 of, or default under, the contract.
- 14 (3) Subsections (1) and (2) have effect despite the terms of
15 the contract.
- 16 **144. Transitional status of Electricity Networks**
17 **Corporation and its distribution system**
- 18 (1) For the purposes of Part 3A and the period before
19 1 July 2018 —
- 20 (a) the Electricity Networks Corporation is taken to
21 be a Part 3A distributor; and
- 22 (b) the distribution system of the Electricity
23 Networks Corporation is taken to be a Part 3A
24 distribution system.
- 25 (2) Subsection (1) ceases to have effect on 1 July 2018.
- 26 **145. Transitional regulations**
- 27 (1) The regulations may provide for and in relation to
28 transitional matters (including matters of an application
29 or savings nature) relating to the enactment of Part 3A
30 or this Subdivision.

- 1 (6) The following do not apply in relation to an
2 amendment made by instrument under
3 subsection (2) —
- 4 (a) if the instrument amends a code issued under
5 section 39 — regulations made for the purposes
6 of section 39(5);
- 7 (b) if the instrument amends the Small Use
8 Customer Code — section 87;
- 9 (c) if the instrument amends the Electricity
10 Networks Access Code — sections 107(3) to
11 (7) and 108 to 110.

12 **147. References to National Electricity (WA) Law,
13 Regulations and Rules**

14 Before the day on which the *National Electricity
15 (Western Australia) Act 2016* Part 2 comes into
16 operation, a reference in this Act to the National
17 Electricity (WA) Law, the National Electricity (WA)
18 Regulations or the National Electricity (WA) Rules is a
19 reference to that Law, those Regulations or those Rules
20 as they will apply as a law of this State on and after
21 that day.
22

23 **19. Schedule 3 deleted**

24 Delete Schedule 3.

25 **Division 2 — Amendments commencing on 1 July 2018**

26 **20. Act amended**

27 This Division amends the *Electricity Industry Act 2004*.

- 1 **21. Section 3 amended**
- 2 (1) In section 3 delete “In this Act,” and insert:
- 3
- 4 (1) In this Act,
- 5
- 6 (2) In section 3 delete the definitions of:
- 7 *distribution system*
- 8 *transmission system*
- 9 (3) In section 3 insert in alphabetical order:
- 10
- 11 *distribution system* means, subject to subsection (2),
- 12 any apparatus, electric lines, equipment, plant and
- 13 buildings used, or to be used, to convey or control the
- 14 conveyance of electricity at nominal voltages of less
- 15 than 66 kV;
- 16 *transmission system* means, subject to subsection (2),
- 17 any apparatus, electric lines, equipment, plant and
- 18 buildings used, or to be used, to convey or control the
- 19 conveyance of electricity at nominal voltages of 66 kV
- 20 or higher;
- 21
- 22 (4) In section 3 in the definition of *electricity* delete “transported”
- 23 and insert:
- 24
- 25 conveyed
- 26
- 27 (5) In section 3 in the definition of *supply* delete “transport” (each
- 28 occurrence) and insert:
- 29
- 30 convey
- 31

- 1 (6) At the end of section 3 insert:
2
3 (2) The regulations may provide that specified apparatus,
4 electric lines, equipment, plant or buildings used to
5 convey or control the conveyance of electricity forms,
6 or does not form, part of a specified transmission
7 system or specified distribution system, regardless of
8 the nominal voltages at which electricity is conveyed.
9
- 10 **22. Section 11 amended**
- 11 (1) In section 11(4):
12 (a) in paragraph (a) delete “licence;” and insert:
13
14 licence; or
15
16 (b) after paragraph (a) insert:
17
18 (aa) to the extent to which the licence relates to a
19 local electricity system — the WA national
20 electricity legislation; or
21
22 (c) in paragraph (b) delete “the Code” and insert:
23
24 to the extent to which the licence does not relate to a
25 local electricity system — the Code
26
- 27 (2) After section 11(4) insert:
28
- 29 (5) For the purposes of subsection (4), a licence relates to a
30 local electricity system if —
31 (a) it is a licence to construct or operate generating
32 works that are or will be connected to the
33 system; or

- 1 (b) it is a licence to construct or operate a
2 transmission system or a distribution system
3 that is or will be connected to the system or that
4 forms or will form part of the system; or
5 (c) it is a licence to sell electricity to customers
6 connected to the system.
7

8 **23. Section 31 amended**

9 In section 31(4):

- 10 (a) in paragraph (a) delete “any powers that the licensee has
11 under the *Electricity Act 1945* or the *Electricity*
12 *Corporations Act 2005*” and insert:

13
14 any powers or duties that the licensee has under the
15 *Electricity Act 1945*, the *Electricity Corporations*
16 *Act 2005* or the WA national electricity legislation
17

- 18 (b) delete “powers, provisions” and insert:

19
20 powers, duties, provisions
21

22 **24. Section 39A amended**

- 23 (1) In section 39A(1) delete the definitions of:

24 ***access arrangement***

25 ***service standards***

- 26 (2) In section 39A(1) insert in alphabetical order:

27
28 ***service standards*** means standards relating to the
29 quality and reliability of the supply of electricity that
30 are provided for in the code issued under section 39

1 that deals with network quality and reliability of
2 supply.
3

4 (3) At the end of section 39A(3) insert:
5

6 Note for this subsection:

7 The first access arrangement was approved on
8 27 April 2007 and had effect from 1 July 2007.
9

10 **25. Section 59B amended**

11 Delete section 59B(5).

12 **26. Section 60 amended**

13 In section 60 delete the definition of *corporation* and insert:
14

15 *corporation* means the Regional Power Corporation or
16 a subsidiary of it;
17

18 **27. Section 90 amended**

19 In section 90 delete the definition of *customer contract* and
20 insert:
21

22 *customer contract* means —

- 23 (a) a standard form contract, or a non-standard
24 contract, as defined in section 47; or
25 (b) a network supply service contract, that is a
26 contract under which a network supply service
27 is provided in accordance with Part 3A; or
28 (c) a connection contract, that is a connection
29 contract formed under the National Electricity
30 (WA) Rules Chapter 5A;
31

1 **28. Section 102A inserted**

2 After section 102 insert:

3

4 **102A. Application of this Part**

5 This Part does not apply to or in relation to a local
6 electricity system.

7 Note for this section:

8 The National Electricity (WA) Law applies to and in relation
9 to local electricity systems.

10

11 **29. Section 103 amended**

12 In section 103 in the definition of *network infrastructure*
13 *facilities* delete “transporting” and insert:

14

15 conveying

16

17 **30. Part 8A inserted**

18 After Part 8 insert:

19

20 **Part 8A — Access to Western Power network**

21 **120A. Terms used**

22 In this Part —

23 *access agreement* means an agreement between the
24 Electricity Networks Corporation and another person
25 under which the person has rights to transfer electricity
26 into the Western Power network, including —

- 27 (a) an access agreement as defined in section 103;
28 and

- 1 (b) an existing access agreement as defined in the
2 *Electricity Transmission and Distribution*
3 *Systems (Access) Act 1994* section 95(2);
- 4 **subsidiary agreement** means an agreement between the
5 Electricity Networks Corporation and another person
6 that —
- 7 (a) relates to an access agreement; and
- 8 (b) deals with —
- 9 (i) the terms of connection to the Western
10 Power network for the purpose of the
11 access agreement; or
- 12 (ii) the terms on which electricity may be
13 transferred under the access agreement;
- 14 **Western Power network** means a distribution system or
15 transmission system of the Electricity Networks
16 Corporation in relation to which the Electricity
17 Networks Corporation is required to be a Registered
18 participant under the National Electricity (WA) Law
19 section 11.

20 **120B. Access to Western Power network: modification of**
21 **agreements in force before 1 July 2018**

- 22 (1) Each access agreement, and each subsidiary agreement,
23 that is in force immediately before 1 July 2018 is, on
24 and from 1 July 2018, modified so as to include the
25 following clause:
26

27 **Access to Western Power network on constrained basis**

- 28 (1) The Electricity Networks Corporation is not liable under
29 this agreement for any loss arising as a direct or indirect
30 result of the customer being unable to transfer electricity
31 into the Western Power network due to any limitation in

- 1 relation to the capacity of the network at that time,
2 including any such limitation —
- 3 (a) caused by other persons connecting to or
4 transferring electricity into the network in
5 accordance with the WA national electricity
6 legislation, the market rules and their respective
7 access agreements, including under normal
8 operating conditions or states; or
- 9 (b) arising under normal operating conditions or states.
- 10 (2) That a limitation in capacity, as described in subclause (1),
11 arises is not a breach of or default under this agreement.
- 12 (3) Subclauses (1) and (2) have effect despite the other terms
13 and conditions of this agreement, including terms and
14 conditions included in this agreement under a written law.
- 15 (4) In subclause (1) —
- 16 *customer* means the party or parties to this agreement other
17 than the Electricity Networks Corporation.
- 18 (5) A term used in this clause has the same meaning as it has
19 in or in a portion of the *Electricity Industry Act 2004*.
- 20 (6) The *Interpretation Act 1984* Part II applies to the
21 interpretation of terms used in this clause as if it were a
22 written law.
23
- 24 (2) This section does not prevent an agreement modified
25 by subsection (1) from being amended, other than in
26 respect of the clause included by subsection (1), or
27 terminated.

28 **120C. Saving provision**

- 29 The enactment of this Part —
- 30 (a) does not give rise to any right or remedy by a
31 party to an agreement; and

- 1 (b) does not cause or permit the termination of, or
2 exercise of rights under, an agreement; and
3 (c) is not an event of default under an agreement.
4

5 **31. Section 129B amended**

- 6 (1) In section 129B delete the definitions of:

7 ***Code***

8 ***user***

- 9 (2) In section 129B insert in alphabetical order:
10

11 ***network service charges*** means charges the Electricity
12 Networks Corporation is entitled, under the WA
13 national electricity legislation, to charge for the
14 provision of electricity network services (as defined in
15 the National Electricity (WA) Law section 2(1));

16 ***user*** means a person liable to pay network service
17 charges directly to the Electricity Networks
18 Corporation.
19

20 **32. Section 129F amended**

- 21 (1) In section 129F(2) delete “Code” and insert:
22

23 regulations
24

- 25 (2) Delete section 129F(3) to (5) and insert:
26

- 27 (3) The regulations may make provision for the
28 determination of —

- 29 (a) the amounts payable by users; and

- 1 (b) the manner in which those amounts are to be
2 collected; and
3 (c) which users need not make payments under
4 subsection (2).
5

6 **33. Schedule 1 amended**

7 In Schedule 1 clause 1(f) delete “transporting” (each occurrence)
8 and insert:

9
10 conveying
11

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Division 1 Energy Arbitration and Review Act 1998 amended and repealed

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1 **Part 3 — Repeal of *Energy Arbitration and Review***
2 ***Act 1998* and associated amendments**

3 **Division 1 — *Energy Arbitration and Review Act 1998* amended**
4 **and repealed**

5 **Subdivision 1 — Amendments commencing on the day after Royal**
6 **Assent**

7 **34. Act amended**

8 This Subdivision amends the *Energy Arbitration and Review*
9 *Act 1998*.

10 **35. Part 2 inserted**

11 After section 5 insert:
12

13 **Part 2 — Transitional provisions for abolition of**
14 **review board and arbitrator**

15 **Division 1 — Preliminary**

16 **6. Terms used**

17 (1) In this Part —

18 ***abolition day*** means 1 July 2017, which is the day on
19 which the *Energy Legislation Amendment and Repeal*
20 *Act 2016* Part 3 Division 1 Subdivision 2 comes into
21 operation;

22 ***arbitrator*** has the meaning given in section 61;

23 ***arbitrator account*** means the bank account held by the
24 arbitrator under section 82;

- 1 **assets** —
- 2 (a) means any legal or equitable estates or interests
- 3 (whether present or future, whether vested or
- 4 contingent and whether personal or assignable)
- 5 in real or personal property of any description;
- 6 and
- 7 (b) includes money, securities, choses in action and
- 8 documents;
- 9 **Board** has the meaning given in section 49;
- 10 **final quarter** means the quarter that begins on
- 11 1 April 2017 and ends immediately before abolition
- 12 day;
- 13 **funding regulations** means regulations made for the
- 14 purposes of any of the following provisions —
- 15 (a) the *National Gas Access (WA) Act 2009*
- 16 section 21(2);
- 17 (b) the *Electricity Industry Act 2004* section 133;
- 18 (c) the *Gas Services Information Act 2012*
- 19 section 9;
- 20 (d) the *Gas Supply (Gas Quality Specifications)*
- 21 *Act 2009* section 34(2)(h);
- 22 **liabilities** means any liabilities, duties or obligations,
- 23 whether actual, contingent or prospective, liquidated or
- 24 unliquidated or whether owed alone or jointly or jointly
- 25 and severally with any other persons;
- 26 **quarter** means a period of 3 months beginning on
- 27 1 July, 1 October, 1 January or 1 April;
- 28 **standing charge** means a charge described as a
- 29 standing charge and payable under funding regulations
- 30 in respect of the performance of the functions of the
- 31 Board or arbitrator during a quarter;
- 32 **Treasurer's advance** means an amount borrowed from
- 33 the Treasurer under section 83.

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- 1 (2) A reference to a section of this Act in the definition of
2 *arbitrator, arbitrator account, Board or Treasurer's*
3 *advance* in subsection (1) is, on and after abolition day,
4 a reference to that section as in force immediately
5 before abolition day.

6 **Division 2 — Financial provisions**

7 **7. Assets, rights and liabilities of arbitrator**

8 (1) On abolition day, any assets, rights or liabilities of the
9 arbitrator are assigned to and become assets, rights or
10 liabilities of the State.

11 (2) The arbitrator must ensure that, on the day before
12 abolition day —

- 13 (a) the money standing to the credit of the
14 arbitrator account is applied in repayment of
15 any outstanding Treasurer's advance; and
16 (b) any amount not applied under paragraph (a) is
17 credited to the Consolidated Account; and
18 (c) the arbitrator account is closed.

19 (3) Subsection (2) applies despite section 82.

20 **8. Recovery of standing charges for final quarter and**
21 **unpaid standing charges**

22 (1) If, immediately before abolition day, funding
23 regulations provide that a standing charge is payable by
24 a person (the *liable person*), the standing charge is
25 payable by the liable person after abolition day in
26 respect of the final quarter and may be recovered under
27 this section.

28 (2) Subsection (1) applies despite —

- 29 (a) the amendments made on abolition day by the
30 *Energy Legislation Amendment and Repeal*

- 1 *Act 2016* sections 53, 63 and 70 and the
2 *National Gas Access (WA) Amendment*
3 *Act 2016* section 13; and
- 4 (b) any repeal or amendment of funding
5 regulations.
- 6 (3) As soon as is practicable after abolition day the person
7 appointed under section 9 (the ***assessment officer***)
8 must —
- 9 (a) assess the standing charges payable by a liable
10 person for the final quarter; and
- 11 (b) give a notice of assessment to the person
12 specifying —
- 13 (i) the amount of those charges and the
14 total amount payable; and
- 15 (ii) the day on which the notice of
16 assessment was issued.
- 17 (4) A person given a notice of assessment under
18 subsection (3) must pay to the assessment officer the
19 total amount payable specified in the notice within
20 30 days after the day specified under
21 subsection (3)(b)(ii).
- 22 (5) Subsection (6) applies if —
- 23 (a) before abolition day, the arbitrator issues a
24 notice of assessment of standing charges to a
25 person under funding regulations in respect of a
26 quarter prior to the final quarter; and
- 27 (b) immediately before abolition day, the person
28 has not paid the total amount payable specified
29 in the notice.
- 30 (6) The person must pay to the assessment officer the total
31 amount payable specified in the notice within 30 days
32 after abolition day.

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- 1 (7) The assessment officer may recover any unpaid amount
2 referred to in subsection (4) or (6) in a court of
3 competent jurisdiction as a debt due to the State.
- 4 (8) An amount recovered under this section is to be applied
5 in repayment of any outstanding Treasurer's advance.
- 6 (9) Any amount not applied under subsection (8) is to be
7 credited to the Consolidated Account and paid into the
8 Public Bank Account.

9 **9. Minister to appoint assessment officer for section 8**

- 10 (1) The Minister must, in writing, appoint a person to
11 exercise functions under section 8.
- 12 (2) A person appointed under this section must, on or
13 before 31 December 2017, report to the Minister on
14 any functions exercised and amounts recovered under
15 section 8.

16 **Division 3 — Applications and proceedings**

17 **10. Proceedings before arbitrator immediately before**
18 **abolition day**

- 19 (1) In this section —
20 *Electricity Networks Access Code* means the Code as
21 defined in the *Electricity Industry Act 2004*
22 section 103.
- 23 (2) This section applies if, immediately before abolition
24 day —
- 25 (a) proceedings for the arbitration of a dispute are
26 before the arbitrator under any of the following
27 (the *governing law*) —
- 28 (i) the Electricity Networks Access Code;
29 (ii) a code issued under the *Electricity*
30 *Industry Act 2004* section 39(1) in

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- 1 (c) proceedings relating to the application have not
2 otherwise ended under the governing law.
- 3 (2) The application is cancelled on abolition day.
- 4 (3) An application for review of the decision may be
5 re-made —
- 6 (a) in accordance with the governing law as in
7 force on and after abolition day; and
- 8 (b) within 28 days after abolition day.
- 9 (4) Subsection (3) applies despite any time limit for the
10 making of an application that would otherwise apply
11 under the *State Administrative Tribunal Act 2004* or
12 any other written law.
- 13 (5) Despite anything in the governing law, the Board's
14 costs and expenses of proceedings relating to an
15 application cancelled under subsection (2) are not
16 payable by a party to the proceedings.
- 17 **12. Application for review of decision made in 6-month**
18 **period before abolition day**
- 19 (1) This section applies to a decision if —
- 20 (a) the decision is made during the period that
21 begins on 1 January 2017 and ends immediately
22 before abolition day; and
- 23 (b) the decision is of a kind that, immediately
24 before abolition day, is reviewable by the
25 Board under any of the following (the
26 ***governing law***) —
- 27 (i) the *Electricity Industry Act 2004*;
- 28 (ii) the *Gas Services Information Act 2012*;
- 29 (iii) regulations made for the purposes of the
30 *Electricity Corporations Act 2005*
31 section 39;

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Division 1 Energy Arbitration and Review Act 1998 amended and repealed

s. 35

- 1 contravention order under any of the following
2 (the ***governing law***) —
- 3 (i) regulations made for the purposes of the
4 *Electricity Industry Act 2004*
5 section 124;
- 6 (ii) regulations made for the purposes of the
7 *Electricity Corporations Act 2005*
8 section 39;
- 9 (iii) regulations made for the purposes of the
10 *Gas Services Information Act 2012*
11 section 8;
- 12 and
- 13 (b) the Board has not made a decision on the
14 application.
- 15 (3) The application is cancelled on abolition day.
- 16 (4) The application may be re-made in accordance with the
17 governing law as in force on and after abolition day.
- 18 **14. Enforcement of notice demanding payment of civil**
19 **penalty given in 6-month period before abolition**
20 **day**
- 21 (1) This section applies to a notice demanding the payment
22 of a civil penalty if —
- 23 (a) the notice was given under any of the following
24 (the ***governing law***) during the period that
25 begins on 1 January 2017 and ends immediately
26 before abolition day —
- 27 (i) regulations made for the purposes of the
28 *Electricity Industry Act 2004*
29 section 124;
- 30 (ii) regulations made for the purposes of the
31 *Electricity Corporations Act 2005*
32 section 39;

- 1 (iii) regulations made for the purposes of the
2 *Gas Services Information Act 2012*
3 section 8;
4 and
5 (b) immediately before abolition day, no
6 application to the Board has been made for an
7 order for the payment of the civil penalty
8 demanded in the notice.
- 9 (2) The payment of the civil penalty demanded in the
10 notice may be enforced in accordance with the
11 governing law as in force on and after abolition day.
- 12 (3) Subsection (2) applies despite any time limit for the
13 making of an application for an order for the payment
14 of the civil penalty that applied under the governing
15 law as in force before abolition day.

16 **Division 4 — Transitional regulations**

17 **15. Transitional regulations**

- 18 (1) The regulations may make provision for transitional
19 matters (including matters of an application or savings
20 nature) relating to the enactment of the *Energy*
21 *Legislation Amendment and Repeal Act 2016* Part 3
22 Division 1.
- 23 (2) Without limiting subsection (1), the regulations may
24 make provision for any of the following —
- 25 (a) transitional matters relating to the termination
26 of proceedings under section 10(3) or the
27 cancellation of applications under section 11(2)
28 or 13(3);
- 29 (b) transitional matters relating to the
30 recommencement of proceedings referred to in
31 section 10(4), the making or re-making of

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Division 1 Energy Arbitration and Review Act 1998 amended and repealed

s. 36

- 1 applications referred to in section 11(3), 12(2)
2 or 13(4) or the enforcement of the payment of
3 civil penalties referred to in section 14(2);
4 (c) the determination, payment and recovery of
5 costs in respect of proceedings before the Board
6 or arbitrator that were resolved or otherwise
7 ended before abolition day.
8

9 **Subdivision 2 — Amendments commencing on 1 July 2017**

10 **36. Act amended**

11 This Subdivision amends the *Energy Arbitration and Review*
12 *Act 1998*.

13 **37. Part 6 heading replaced**

14 Delete the heading to Part 6 and insert:
15

16 **Part 6 — Regulations**
17

18 **38. Part 6 Divisions 2 and 3 deleted**

19 Delete Part 6 Divisions 2 and 3.

20 **39. Part 6 Division 4 heading deleted**

21 Delete the heading to Part 6 Division 4.

22 **Subdivision 3 — *Energy Arbitration and Review Act 1998* repealed**

23 **40. *Energy Arbitration and Review Act 1998* repealed**

24 The *Energy Arbitration and Review Act 1998* is repealed.

1 **Division 2 — *Constitution Acts Amendment Act 1899* amended**

2 **41. Act amended**

3 This Division amends the *Constitution Acts Amendment*
4 *Act 1899*.

5 **42. Schedule V Part 1 Division 1 amended**

6 In Schedule V Part 1 Division 1 delete the item relating to the
7 Western Australian Energy Disputes Arbitrator.

8 **Division 3 — *Electricity Corporations Act 2005* amended**

9 **43. Act amended**

10 This Division amends the *Electricity Corporations Act 2005*.

11 **44. Section 39 amended**

12 After section 39(5) insert:

- 13
- 14 (6) Regulations made for the purposes of subsection (3)
15 may confer jurisdiction on the State Administrative
16 Tribunal.
- 17

18 **Division 4 — *Electricity Industry Act 2004* amended**

19 **45. Act amended**

20 This Division amends the *Electricity Industry Act 2004*.

21 **46. Section 3 amended**

22 In section 3 delete the definitions of:

23 *arbitrator*

24 *Board*

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Division 4 Electricity Industry Act 2004 amended

s. 47

1 **47. Section 104 amended**

2 In section 104(2)(o) delete “the arbitrator.” and insert:

3

4 any person arbitrating a dispute referred to in section 105(1)(a).

5

6 **48. Section 105 amended**

7 In section 105(1):

8 (a) in paragraph (a) delete “by the arbitrator”;

9 (b) delete paragraph (b).

10 **49. Section 116 amended**

11 In section 116(2)(b) delete “Minister, the arbitrator or the
12 Board.” and insert:

13

14 Minister, the State Administrative Tribunal or any person
15 arbitrating a dispute referred to in section 105(1)(a).

16

17 **50. Section 124 amended**

18 After section 124(4) insert:

19

20 (4A) Regulations made for the purposes of subsection (2)
21 may confer jurisdiction on the State Administrative
22 Tribunal.

23

1 **51. Section 125 replaced**

2 Delete section 125 and insert:

3

4 **125. Review of decisions by State Administrative**
5 **Tribunal**

6 (1) In this section —

7 *reviewable decision* means a decision of a participant
8 referred to in section 121(2)(b) or (c) that —

9 (a) is made under the regulations or the market
10 rules; and

11 (b) is of a class specified in the regulations.

12 (2) A person adversely affected by a reviewable decision
13 may apply to the State Administrative Tribunal for a
14 review of the decision.

15

16 **52. Section 130 amended**

17 (1) In section 130(1) delete the definition of *gas pipelines access*
18 *provisions*.

19 (2) In section 130(1) in the definition of *Code* delete “section 104;”
20 and insert:

21

22 section 104.

23

24 (3) In section 130(3) delete “Board” and insert:

25

26 State Administrative Tribunal

27

28 (4) Delete section 130(4).

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Division 5 Financial Management Act 2006 amended

s. 53

1 (5) In section 130(5) delete “Board” and insert:

2

3 State Administrative Tribunal

4

5 (6) Delete section 130(6) to (9).

6 Note: The heading to amended section 130 is to read:

7

Review of decisions by State Administrative Tribunal

8 **53. Section 133 amended**

9 (1) In section 133(1) delete “the performance of the respective
10 functions of the arbitrator and the Board under this Act.” and
11 insert:

12

13 the performance of any functions under this Act.

14

15 (2) Delete section 133(3) and (4).

16 Note: The heading to amended section 133 is to read:

17

Regulations as to fees and charges

18 **Division 5 — *Financial Management Act 2006* amended**

19 **54. Act amended**

20 This Division amends the *Financial Management Act 2006*.

21 **55. Schedule 1 amended**

22 In Schedule 1 delete the item relating to the Western Australian
23 Energy Disputes Arbitrator.

1 **Division 6 — *Freedom of Information Act 1992* amended**

2 **56. Act amended**

3 This Division amends the *Freedom of Information Act 1992*.

4 **57. Glossary clause 7A amended**

5 (1) In the Glossary clause 7A(1) delete the definitions of:

6 ***arbitrator***

7 ***Board***

8 (2) In the Glossary clause 7A(1) in the definition of ***Authority***
9 delete “2003;” and insert:

10 *2003.*

11 (3) Delete the Glossary clause 7A(2) and insert:

12 (2) A document that is in the possession or under the control of
13 the Authority (because of its access regulation functions), or
14 to which the Authority is entitled to have access (because of
15 its access regulation functions), is not to be regarded as a
16 document of the Authority unless it relates to a matter of an
17 administrative nature concerning the Authority.
18
19
20
21

22 Note: The heading to amended Glossary clause 7A is to read:

23 **Documents of Authority under gas pipelines access legislation**

24 **Division 7 — *Gas Corporation (Business Disposal)***
25 ***Act 1999* amended**

26 **58. Act amended**

27 This Division amends the *Gas Corporation (Business Disposal)*
28 *Act 1999*.

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Part 3 Repeal of Energy Arbitration and Review Act 1998 and associated amendments

Division 8 Gas Services Information Act 2012 amended

s. 59

1 **59. Section 38 amended**

2 In section 38(2)(b) delete “*Act 1998.*” and insert:

3

4 *Act 1998* (as in force immediately before it was deleted by the
5 *National Gas Access (WA) Act 2009* section 50).
6

7 **Division 8 — Gas Services Information Act 2012 amended**

8 **60. Act amended**

9 This Division amends the *Gas Services Information Act 2012*.

10 **61. Section 3 amended**

11 In section 3(1) delete the definition of ***Board***.

12 **62. Section 8 amended**

13 After section 8(2) insert:

14

15 (2A) Regulations made for the purposes of subsection (2)
16 may confer jurisdiction on the State Administrative
17 Tribunal.
18

19 **63. Section 9 amended**

20 Delete section 9(4) and (5).

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Part 3 Repeal of Energy Arbitration and Review Act 1998 and associated amendments

Division 9 Gas Supply (Gas Quality Specifications) Act 2009 amended
s. 68

- 1 **68. Section 11 amended**
- 2 In section 11(2):
- 3 (a) in paragraph (a) delete “by an arbitrator;” and insert:
- 4
- 5 by arbitration;
- 6
- 7 (b) in paragraph (c) delete “by an arbitrator.” and insert:
- 8
- 9 by arbitration.
- 10
- 11 **69. Section 16 amended**
- 12 In section 16(2):
- 13 (a) in paragraph (a) delete “by an arbitrator;” and insert:
- 14
- 15 by arbitration;
- 16
- 17 (b) in paragraph (c) delete “by an arbitrator.” and insert:
- 18
- 19 by arbitration.
- 20
- 21 **70. Section 34 amended**
- 22 (1) In section 34(2)(h) delete “arbitrator or”.
- 23 (2) In section 34(3) delete “an arbitrator or”.
- 24 **71. Part 7 deleted**
- 25 Delete Part 7.

1 **Division 10 — *Petroleum (Submerged Lands) Act 1982* amended**

2 **72. Act amended**

3 This Division amends the *Petroleum (Submerged Lands)*
4 *Act 1982*.

5 **73. Section 73 amended**

6 (1) In section 73(2) delete “Code pipeline as defined in the Gas
7 Pipelines Access (Western Australia) Law.” and insert:

8
9 covered pipeline as defined in the National Gas Access
10 (Western Australia) Law section 2.
11

12 (2) In section 73(3) delete “Code pipeline for the purposes of the
13 Gas Pipelines Access (Western Australia) Law.” and insert:

14
15 covered pipeline for the purposes of the National Gas Access
16 (Western Australia) Law.
17

18 **Division 11 — *Petroleum Pipelines Act 1969* amended**

19 **74. Act amended**

20 This Division amends the *Petroleum Pipelines Act 1969*.

21 **75. Section 21 amended**

22 In section 21(7) delete “Code pipeline within the meaning of the
23 Gas Pipelines Access (Western Australia) Law for which there
24 is an approved Access Arrangement under that Law.” and
25 insert:

26
27 pipeline if it is a covered pipeline as defined in the National Gas
28 Access (Western Australia) Law section 2 and is subject to an

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Part 3 Repeal of Energy Arbitration and Review Act 1998 and associated amendments

Division 11 Petroleum Pipelines Act 1969 amended

s. 76

1 applicable access arrangement as defined in section 2 of that
2 Law.

3

4 **76. Section 22 amended**

5 In section 22(1a) delete “Code pipeline within the meaning of
6 the Gas Pipelines Access (Western Australia) Law for which
7 there is an approved Access Arrangement under that Law.” and
8 insert:

9

10 pipeline if it is a covered pipeline as defined in the National Gas
11 Access (Western Australia) Law section 2 and is subject to an
12 applicable access arrangement as defined in section 2 of that
13 Law.

14

1 **Part 4 — Amendments to other Acts consequential on**
2 ***National Electricity (Western Australia) Act 2016***

3 **Division 1 — *Economic Regulation Authority Act 2003* amended**

4 **77. Act amended**

5 This Division amends the *Economic Regulation Authority*
6 *Act 2003*.

7 **78. Section 25 amended**

8 After section 25(a) insert:

- 9
10 (aa) the functions it is given by or under the
11 *Electricity Industry Act 2004*; and
12

13 **Division 2 — *Electricity Corporations Act 2005* amended**

14 **Subdivision 1 — Amendments commencing on the day after**
15 **Royal Assent**

16 **79. Act amended**

17 This Subdivision amends the *Electricity Corporations Act 2005*.

18 **80. Section 41 amended**

19 In section 41(b) delete “Part; and” and insert:

20
21 Part, or by the WA national electricity legislation as defined in
22 the *Electricity Industry Act 2004* section 3; and
23

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Part 4 Amendments to other Acts consequential on National
Electricity (Western Australia) Act 2016

Division 3 Energy Coordination Act 1994 amended

s. 81

1 **Subdivision 2 — Amendments commencing on 1 July 2018**

2 **81. Act amended**

3 This Subdivision amends the *Electricity Corporations Act 2005*.

4 **82. Section 41 amended**

5 In section 41(b) delete “by the *Electricity Industry Act 2004*
6 Part 8 (which relates to network access) and regulations and
7 Code made under that Part, or”.

8 **83. Section 54 amended**

9 (1) After section 54(7) insert:

10

11 (7A) Subsection (2) has effect despite the WA national
12 electricity legislation as defined in the *Electricity*
13 *Industry Act 2004* section 3(1).
14

15 (2) In section 54(8) delete “Subsections (2) and (3) have” and
16 insert:

17

18 Subsection (3) has
19

20 **Division 3 — *Energy Coordination Act 1994* amended**

21 **84. Act amended**

22 This Division amends the *Energy Coordination Act 1994*.

1 **85. Section 26B inserted**

2 After section 26 insert:

3

4 **26B. Inconsistency of regulations with WA national**
5 **electricity legislation**

6 (1) In this section —

7 *WA national electricity legislation* has the meaning
8 given in the *Electricity Industry Act 2004* section 3(1).

9 (2) If a provision of the regulations is inconsistent with a
10 provision of the WA national electricity legislation, the
11 provision of the WA national electricity legislation
12 prevails to the extent of the inconsistency.

13

14 **Division 4 — *Energy Operators (Powers) Act 1979* amended**

15 **86. Act amended**

16 This Division amends the *Energy Operators (Powers) Act 1979*.

17 **87. Section 58 amended**

18 After section 58(4) insert:

19

20 (5) The following do not apply to an energy operator that
21 is a network service provider as defined in the National
22 Electricity (WA) Law section 2(1) —

23 (a) subsection (2), in the circumstances described
24 in subsection (2)(a);

25 (b) subsection (3).

26

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Part 4 Amendments to other Acts consequential on National
Electricity (Western Australia) Act 2016

Division 4 Energy Operators (Powers) Act 1979

s. 88

1 **88. Section 61 amended**

2 Before section 61(1) insert:

3

4 (1AA) This section does not apply to an energy operator that
5 is a network service provider as defined in the National
6 Electricity (WA) Law section 2(1).

7

8 **89. Section 125 amended**

9 Before section 125(1) insert:

10

11 (1A) In this section —

12 ***WA national electricity legislation*** has the meaning
13 given in the *Electricity Industry Act 2004* section 3(1).

14 (1B) If a provision of a regulation or by-law made under this
15 Act is inconsistent with a provision of the WA national
16 electricity legislation, the provision of the WA national
17 electricity legislation prevails to the extent of the
18 inconsistency.

19

1 **Part 5 — Amendments to other Acts consequential on**
2 ***National Gas Access (WA) Amendment Act 2016***

3 **Division 1 — *Economic Regulation Authority Act 2003* amended**

4 **90. Act amended**

5 This Division amends the *Economic Regulation Authority*
6 *Act 2003*.

7 **91. Section 25 amended**

8 Delete section 25(c).

9 **92. Section 26 amended**

10 In section 26(1) delete “section 25(c) and (d),” and insert:

11

12 section 25(d),

13

14 **93. Section 28 amended**

15 (1) In section 28(3)(b) delete “given by or under the *National Gas*
16 *Access (WA) Act 2009* or”.

17 (2) Delete section 28(5) and insert:

18

19 (5) Within 14 days after a direction is given under
20 subsection (2), the Authority must cause the text of the
21 direction to be published in the *Gazette*.

22

23 **94. Section 32 amended**

24 In section 32(1) delete “the National Gas Access (Western
25 Australia) Law or”.

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Part 5 Amendments to other Acts consequential on National Gas Access (WA) Amendment Act 2016

Division 2 Energy Coordination Act 1994 amended

s. 95

1 **95. Section 51 amended**

2 In section 51(2)(a) delete “section 25(c) and (d); or” and insert:

3

4 section 25(d); or

5

6 **Division 2 — Energy Coordination Act 1994 amended**

7 **96. Act amended**

8 This Division amends the *Energy Coordination Act 1994*.

9 **97. Section 3 amended**

10 (1) In section 3(1) insert in alphabetical order:

11

12 *WA national gas legislation* has the meaning given in
13 the *Gas Supply (Gas Quality Specifications) Act 2009*
14 section 3(1).

15

16 (2) In section 3(1) in the definition of *transmission works* delete
17 “section 5(1).” and insert:

18

19 section 5(1);

20

21 **98. Section 11M amended**

22 In section 11M(5)(a) delete “National Gas Access (Western
23 Australia) Law; or” and insert:

24

25 WA national gas legislation; or

26

1 **99. Section 11V amended**

2 In section 11V(2) delete “National Gas Access (Western
3 Australia) Law.” and insert:

4
5 WA national gas legislation.
6

7 **100. Section 11ZAC amended**

8 In section 11ZAC(4)(b) delete “National Gas Access (Western
9 Australia) Law.” and insert:

10
11 WA national gas legislation.
12

13 **101. Schedule 1A amended**

14 In Schedule 1A clause 1(a) delete “National Gas Access (Western
15 Australia) Law; and” and insert:

16
17 WA national gas legislation; and
18

19 **Division 3 — *Freedom of Information Act 1992* amended**

20 **102. Act amended**

21 This Division amends the *Freedom of Information Act 1992*.

22 **103. Glossary clause 7A amended**

23 (1) In the Glossary clause 7A(1) delete the definition of *access*
24 *regulation functions* and insert:

25
26 *access regulation functions* means the functions given
27 under the *National Gas (Western Australia) Act 2009*,
28 including functions given under that Act as in force before

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Part 5 Amendments to other Acts consequential on National Gas Access (WA) Amendment Act 2016

Division 4 Gas Services Information Act 2012 amended

s. 104

1 the coming into operation of the *National Gas Access (WA)*
2 *Amendment Act 2016* Part 4;

3

4 (2) Delete the Glossary clause 7A(2) and insert:

5

6 (2) A document that is in the possession or under the control of
7 the Authority (because of its access regulation functions) is
8 not to be regarded as a document of the Authority unless it
9 relates to a matter of an administrative nature concerning the
10 Authority.

11

12 Note: The heading to amended Glossary clause 7A is to read:

13 **Documents of Authority under *National Gas (Western Australia)***
14 ***Act 2009***

15 **Division 4 — *Gas Services Information Act 2012* amended**

16 **104. Act amended**

17 This Division amends the *Gas Services Information Act 2012*.

18 **105. Section 3 amended**

19 In section 3(2) delete “the *National Gas Access (Western*
20 *Australia) Law*” and insert:

21

22 the National Gas (WA) Law

23

24 **106. Section 13 amended**

25 (1) In section 13(2) delete the note.

26 (2) Delete section 13(4).

27 (3) In section 13(5) delete “(4)” and insert:

28

29 (3)

30

1 **Division 5 — Gas Supply (Gas Quality Specifications)**
2 **Act 2009 amended**

3 **107. Act amended**

4 This Division amends the *Gas Supply (Gas Quality*
5 *Specifications) Act 2009*.

6 **108. Section 3 amended**

7 (1) In section 3(1) insert in alphabetical order:

8

9 ***WA national gas legislation*** means —

- 10 (a) the *National Gas (Western Australia) Act 2009*;
11 and
12 (b) the National Gas (WA) Law; and
13 (c) the National Gas (WA) Regulations; and
14 (d) the National Gas (WA) Rules as defined in the
15 *National Gas (Western Australia) Act 2009*
16 section 3(1); and
17 (e) instruments under them.

18

19 (2) In section 3(1) in the definition of ***Gas Access Law*** delete
20 paragraph (a) and insert:

21

22 (a) the WA national gas legislation; or

23

24 (3) In section 3(1) in the definition of ***pipeline service*** delete
25 “National Gas Access (Western Australia) Law section 2;” and
26 insert:

27

28 National Gas (WA) Law section 2(1);

29

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Part 5 Amendments to other Acts consequential on National Gas Access (WA) Amendment Act 2016

Division 6 Parliamentary Commissioner Act 1971 amended

s. 109

1 (4) In section 3(1) in the definition of *user* delete “party.” and
2 insert:

3

4 party;

5

6 **Division 6 — *Parliamentary Commissioner Act 1971* amended**

7 **109. Act amended**

8 This Division amends the *Parliamentary Commissioner*
9 *Act 1971*.

10 **110. Schedule 1 amended**

11 In Schedule 1 in the item relating to the *Economic Regulation*
12 *Authority Act 2003* delete “given by or under the *National Gas*
13 *Access (WA) Act 2009* or”.

14 **Division 7 — *Petroleum (Submerged Lands) Act 1982* amended**

15 **111. Act amended**

16 This Division amends the *Petroleum (Submerged Lands)*
17 *Act 1982*.

18 **112. Section 73 amended**

19 (1) In section 73(2) delete “Access (Western Australia)” and insert:

20

21 (WA)

22

23 (2) In section 73(3) delete “Access (Western Australia)” and insert:

24

25 (WA)

26

1 **Division 8 — *Petroleum Pipelines Act 1969* amended**

2 **113. Act amended**

3 This Division amends the *Petroleum Pipelines Act 1969*.

4 **114. Section 21 amended**

5 In section 21(7) delete “Access (Western Australia)” and insert:

6

7 (WA)

8

9 **115. Section 22 amended**

10 In section 22(1a) delete “Access (Western Australia)” and
11 insert:

12

13 (WA)

14

15

