

**ELECTRICITY INDUSTRY AMENDMENT
(ALTERNATIVE ELECTRICITY SERVICES) BILL 2023**

EXPLANATORY MEMORANDUM

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1 Introduction

1.1 Overview of the Bill

Part 1 of the Electricity Industry Amendment (Alternative Electricity Services) Bill 2023 (Bill) sets out the short title and commencement.

Part 2 of the Bill implements its main purpose, which is to amend the *Electricity Industry Act 2004* (Act) to implement the alternative electricity services (AES) registration framework.

Part 3 of the Bill makes consequential changes to the *Electricity Act 1945*.

1.2 Structure of this memorandum

This memorandum is structured as follows:

- Section 2 provides an overview of the AES registration framework;
- Sections 3 to 11 provide the clause-by-clause discussion of the changes to the Act, and in particular describe the new Part 3A of the Act which will contain the main body of the new AES registration framework provisions; and
- Section 12 describes consequential amendments made to the *Electricity Act 1945*.

1.3 Abbreviations and glossary

Term	Description
Act	<i>Electricity Industry Act 2004</i> , the principal Act being amended by the Bill
AES	Alternative electricity service
Authority	Economic Regulation Authority
Bill	Electricity Industry Amendment (Alternative Electricity Services) Bill 2023
Ombudsman	Energy and Water Ombudsman
Regulations	Regulations to be made under the Act
Registration framework	AES registration framework as described under the Bill

1.4 Clause summary

Clause	Description of clause	Section in this memorandum
Clause 1	Short title	Not applicable
Clause 2	Commencement	Not applicable
Clause 3	<i>Electricity Industry Act 2004</i> amended	Not applicable
Clause 4	Amendment to section 3	3
Clause 5	Amendment to section 4	4.1
Clause 6	Amendment to section 7	4.2
Clause 7	Amendment to section 8	4.3
Clause 8	Amendment to section 27	4.4
Clause 9	Amendment to section 28	4.5
Clause 10	Amendment to section 35	4.6
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Clause 12	Amendment to section 47	5.2
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Clause 15	Amendment to section 60	7.1
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Clause 19	Amendment to section 96	9.3
Clause 20	Amendment to section 97	9.4
Clause 21	Insertion of new Part 7 Division 5	9.5
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2 Overview

2.1 The AES registration framework

The Bill amends the Act to establish a registration framework for the regulation of alternative and emerging electricity business models and services. These supply arrangements are referred to in the Bill as ‘alternative electricity services’ or AES.

The legislative amendments in the Bill are based on the recommendations of a 2019 review of the electricity licensing and exemptions framework to improve customer protections for the delivery of new and emerging electricity service business models, as outlined in *Tailoring customer protections for alternative electricity services – a registration framework* (Final Report)¹.

The purpose of the Bill is to create a flexible regulatory framework delivering enforceable protections for electricity customers of alternative electricity services, relevant to the type of activity being provided. It is designed to be flexible enough to cover a wide range of activities. The AES framework will operate as a lower-cost and lighter-handed alternative to the licensing framework, to deliver tailored customer protections relevant to each activity prescribed.

The legislative amendments do not identify specific activities that will be regulated (prescribed). The amendments provide the legislative framework to:

- prescribe an activity in regulations; and
- deliver enforceable protections to electricity consumers relevant to that activity.

This includes the ability to access the Energy and Water Ombudsman (Ombudsman) to resolve disputes.

The AES registration framework is designed to be lighter-handed than the licensing framework to keep the regulatory burden low. It is also designed to be future proofed, by allowing application of the framework to new and emerging business models and services as the need arises.

Any proposal to regulate an activity under the AES registration framework will be subject to assessment under the Better Regulation program, including consultation. This assessment will consider whether:

- regulation is warranted;
- the AES registration framework is the appropriate form of regulation for the activity; and
- if so, the regulatory settings that should be applied for that activity.

As far as practicable, the structure of the AES registration framework in the Act reflects Part 2 (Licensing of supply), with alterations for Part 3A to provide a fit for purpose, lighter-handed, lower cost and flexible regulatory regime.

¹ [Tailoring customer protections for alternative electricity services - a registration framework \(www.wa.gov.au\)](http://www.wa.gov.au)

The Bill establishes the heads of power to facilitate:

- a regulatory framework for the registration of providers of prescribed AES activities that may cover new technologies, emerging business models, and other arrangements (Part 3A, Divisions 1, 2 and 3);
- customer protections that are relevant to the activity provided by registration holders, delivered via an enforceable code of practice (the AES code of practice) (Part 3A, Division 4);
- a robust and proportionate compliance and enforcement regime administered by the Economic Regulation Authority (the Authority) (Part 3A, Divisions 4, 5 and 6); and
- appropriate and practical dispute resolution processes where registered AES providers are required to become members of the electricity ombudsman scheme (amendments to Part 7 of the Act).

The Bill does not, by itself, impose new regulation on any specific persons or business models.

2.2 Rationale for establishing a new registration framework

The electricity licensing and exemption framework outlined in the Act was established when electricity supplies were largely centrally generated and supplied to consumers via large transmission and distribution networks under supply contracts with retailers.

Licences, with comprehensive customer protection obligations and stringent compliance requirements, were applied to large operators. Licence exemptions were applied on the basis that licensing was not practical for all of these arrangements. For example, caravan park operators who on-sell electricity to long-stay residents were made exempt from holding retail and distribution licences. This is largely because they do not supply electricity as their core business.

This regulatory framework is being challenged by a growing range of innovative AES. These include new business models, energy management products and financing arrangements. There is also an increasing use of existing broadly applied and automatic class based licence exemptions such as the electricity on-selling exemption.

For these new, innovative and atypical services, applying the licensing framework would impose onerous costs and regulatory burden, and some licensing compliance requirements would not be practicable or relevant to some services. However, continuing to rely on licence exemptions leaves customers without recourse to enforceable customer protections relevant to the activity, or to access to the Ombudsman to resolve complaints and disputes. Licence exemptions have no form of monitoring, compliance or enforcement regime. Further, some services do not fall within the ambit of the existing licensing and exemption framework at all. For example, services using energy data or that help to improve the use of on-site energy supplies.

The new business models and arrangements pose risks for electricity customers purchasing or subscribing to those services. In particular, small use customers (consuming less than 160MWh of electricity per annum), who may assume they enjoy the same protections as customers of licensed retailers. Sometimes, these business models are used to provide customers with their sole or primary supply of electricity (electricity as an essential service).

2.3 AES related amendments to *Electricity Industry Act 2004* and consequential amendment to *Electricity Act 1945*

Legislative change is required to create the necessary heads of power in the Act to give effect to the AES registration framework. The Bill amends the Act by providing heads of power to prescribe which activities are regulated and what obligations AES providers must comply with. Most of the provisions related to establishing the AES framework are inserted in a new Part 3A of the Act.

As far as practicable, the structure of the AES registration framework reflects Part 2 of the Act (Licensing of supply), but with alterations made to focus on providing a fit-for-purpose, lighter-handed and more flexible regulatory regime. The AES registration framework has been developed to be capable of managing a high volume of registrations.

Other provisions related to establishing the AES framework are in the form of consequential changes to Parts 1, 2, 3, 4, 6 and 7 of the Act. There is also a consequential change to the *Electricity Act 1945*. This consequential change is to allow a registration holder or a person exempt from the requirement to hold a registration to be treated as 'network operators' for the purposes of certain energy safety obligations under the *Electricity Act 1945*.

2.4 Regulations and AES code of practice

Most of the detail for the AES registration framework will be set out in regulations and subordinate instruments. This is consistent with the approach taken for other energy legislation. It allows the framework to be applied flexibly as technology and business models evolve, and it also reflects the technical nature of the detailed regulatory and operational arrangements for differing AES.

The Bill sets out the power to prescribe activities as alternative electricity services, the requirement for AES providers to register, and a framework for the terms and conditions of registration that may be imposed, including through an AES code of practice.

The types of activities that regulations may prescribe as an AES are set out in a new section 59C of the Act (discussed in section 6.1.3 below). The intention is that the framework is flexible to cover a broad range of electricity-related activities, if and when regulation is needed.

The AES code of practice requirements will be tailored to each prescribed service, dependent on the characteristics of that activity. Some activities may require many regulatory obligations, and some will only require a few. The scope of the AES code of practice is limited by the Bill, contained in a new section 59X (discussed in section 6.4.1 below).

2.5 Registration requirements and process

Division 2 of a new Part 3A requires AES providers to be registered and comply with terms and conditions of registration, and sets out associated penalties for failure to comply (discussed in section 6.2 below).

Division 3 of a new Part 3A also sets out requirements for:

- registration as a provider of an AES or class of AES; and
- the amendment, transfer and surrender of registrations,

This is discussed further in section 6.3 below.

The standard process for approving a registration requires the Authority to take into account the public interest when making its decision. This is similar to the process for the grant or refusal of licences or exemptions under section 8 of the Act. The Authority must also undertake public consultation before granting an application.

However, reflecting the lighter-handed nature of the AES registration framework, the Bill also allows for a ‘fast-track’ process for the Authority to approve registration applications relating to some services (as specified in regulations) (discussed in section 6.3.1 below). If regulations allow the fast-track process to be applied to a service, the Authority will not need to conduct public consultation and/or apply a public interest test to approve that type of application. This allows for a quick, low-cost option for applicants where appropriate for the activity.

As an example, the fast-track process is likely to be preferable for services where there are many small providers needing to register. Fast-track applications will still be conditional on the applicant meeting a narrower set of requirements. For example, providing certain information to the Authority, payment of a registration fee and membership to the electricity ombudsman scheme.

It will be the responsibility of the Authority to publish an AES register on its website, setting out key information about registrations and registration holders, and applications made under Division 3. The Authority will also be required to publish information on its decisions regarding certain applications (as contained in section 59V and discussed at section 6.3.17 below).

2.6 Roles and responsibilities of the Minister, the Authority and the Ombudsman

The Minister for Energy will be responsible for making, amending and reviewing the AES code of practice. This is set out in a new Part 3A, Division 4 and discussed at section 6.4 below. The first statutory review of the AES code of practice will be undertaken five years after commencement.

The Minister for Energy is also responsible for administering the Act, including the development of regulations to be made by the Governor, such as regulations to prescribe activities as alternative electricity services.

Energy Policy WA will provide policy support to the Minister for Energy for these responsibilities.

The key functions of the Authority are set out in Division 5 of a new Part 3A of the Act, discussed in section 6.5 below. The Authority will be responsible for administering and enforcing the AES registration framework. The Authority also has reporting functions to the Minister for Energy on:

- the operation of the AES registration framework;
- compliance by registration holders with conditions of registration; and

- the enforcement of the AES registration framework.

Additionally, the Authority must prepare and provide an annual report to the Minister for Energy on the AES registration framework. Enforcement powers for the Authority and penalty provisions are also contained within the Bill.

Provisions providing for dispute resolution between customers and AES registration holders by the Ombudsman are also contained within the Bill, which amends Part 7 (Electricity ombudsman scheme) of the Act. The Bill requires AES registration holders to become members of the electricity ombudsman scheme (discussed further at section 9 below).

2.7 Application to large use customers

Subsequent to the recommendations arising from the 2019 review of the electricity licensing and exemption framework, the scope of the AES registration framework was extended to regulate services provided to large use customers (consuming 160MWh of electricity or more per annum). The AES registration framework is not limited to small use customers.

This permits a registration holder who supplies both large use and small use customers to do so under the authorisation of an AES registration. This is to avoid the need for a registration holder to seek a separate licence or exemption to be able to provide the service to large use customers.

Most substantive customer protections (conduct obligations and access to the Ombudsman) are limited to small use customers by the heads of power for the AES code of practice. However, there is the flexibility to impose some registration conditions with respect to services provided to large use customers if required.

2.8 Cost recovery

Once the AES registration framework is operational, it is intended that the administration costs of the framework will be recovered from industry participants. This will be achieved through registration fees and annual fees, noting that the framework is designed to be lighter-handed than the licensing framework to limit regulatory costs incurred by participants.

Regulations may prescribe different application fees and annual fees for different AES. Regulations may also specify circumstances in which a payment of some or all of a fee may be waived (discussed in section 6.3.18 below).

As previously indicated AES providers will also be required to be a member of the electricity ombudsman scheme. The Ombudsman's constitution specifies the membership levies which apply. For licenced electricity retailers, members must pay:

- a joining levy determined by the Board of the Ombudsman; and
- an annual levy based on:
 - the number of customers the member services; and
 - the number of complaints and disputes involving each member supplying electricity during the previous financial year.

Both a joining levy and an annual levy will also be payable by AES registration holders. However, it is anticipated that membership fees for AES providers will generally be of a lower scale than those applied to electricity retail licensees.

3 Amendments to Part 1 of the Act (Clause 4)

3.1 Clause 4 inserts new definitions and amends existing definitions in section 3(1)

New definitions are inserted in section 3 of the Act for the AES registration framework:

- *AES code of practice* means the code of practice for the time being in force under section 59X;
 - The AES code of practice will contain obligations that a registration holder will need to comply with when providing an AES. The obligations may be different for each type of AES and tailored to the characteristics of that service.
 - Registration holders will be required to comply with the AES code of practice as a condition of their registration.
 - The AES code of practice will be amended whenever a new AES is prescribed under the framework, to set out the specific obligations for providers of that service. There is also a statutory requirement for the Minister for Energy to review the AES code of practice every five years.
- *AES customer contract* means a contract entered into between a registration holder and a small use customer, or a class of small use customers, for the provision of an AES;
 - The concept of an AES customer contract is limited to contracts between a registration holder and a small use customer (one that consumes not more than 160 MWh of electricity per year).
 - The heads of power for the AES code of practice permit the code to require registration holders to obtain the consent of a small use customer before entering into or amending an AES customer contract (other than amendments required to comply with a written law).
 - The Ombudsman’s jurisdiction will extend to disputes and complaints under AES customer contracts.
- *alternative electricity service* means an activity prescribed by the regulations as an alternative electricity service;
 - The concept of an AES can include, but is not limited to, activities that currently require a licence under Part 2 of the Act (the generation, transmission, distribution and retail of electricity).
 - The types of activity that can be prescribed as an AES also include activities related to electricity storage works; electricity trading, monitoring or management; electricity aggregation services; and/or the use of electricity data (see also section 6.1.3 below).
 - This is to future-proof the ability to apply the framework to new and emerging electricity business models.
- *registration* means a registration under Part 3A;
 - A provider of a prescribed AES will be required to hold a registration under Part 3A of the Act.

- *registration holder* —
 - (a) means the holder of a registration; and
 - (b) includes a transferee of a registration.
 - A person who has registered to provide a prescribed AES will be a registration holder.
 - The structure of this definition mirrors the structure of the definition of “licensee” in section 3(1) of the Act.

Some of the definitions previously located elsewhere in the Act have been moved to section 3 of the Act, sometimes with consequential or other changes, as they are now also being used in other parts of the Act (such as the new Part 3A). This applies to the following definitions:

- *Coordinator* means the Coordinator of Energy referred to in the *Energy Coordination Act 1994* (section 4);
 - This definition has been moved from Part 4 of the Act to section 3.
- *non-standard contract* means a contract entered into between a licensee and a small use customer, or a class of small use customers, that is not a standard form contract;
 - This definition has been moved from Part 3 of the Act, with the consequential change that a reference to a “customer” has now been amended to “small use customer”.
 - This consequential amendment does not change the meaning of the definition as “customer” was redefined in Part 3 of the Act to mean a customer who consumes not more than 160 MWh of electricity per annum.
- *small use customer* means a customer who consumes not more than 160 MWh of electricity per annum;
 - This is technically a new definition. Previously the term “customer” was redefined in Parts 3, 6 and 7 of the Act to be limited to customers who consume not more than 160 MWh of electricity per annum.
 - This redefinition creates confusion and to clarify matters, a new definition of “small use customer” has been created that is now referred to in those Parts of the Act, as well as the new Part 3A.
- *standard form contract* means a contract that is approved under section 51 of the Act.
 - This definition has been moved from Part 3 of the Act to section 3.

4 Amendments to Part 2 of the Act (Clauses 5 to 10)

4.1 Clause 5 amends section 4: Classification of licences

Section 4 of the Act provides descriptions of the five different types of licences (generation, transmission, distribution, retail and integrated regional licences).

Clause 5 of the Bill makes a consequential change to this section of the Act to clarify that a licence does not authorise the holder to provide an AES, unless exempted under

the regulations made under new section 59D(2)(a) from the requirement to be registered (see section 6.2.1 below).

4.2 Clause 6 amends section 7: Requirement for licence

Section 7 of the Act sets out when a licence is required, and includes a penalty when a person does not comply with the requirement for a licence.

Clause 6 of the Bill makes a consequential change to this section to clarify that a person does not commit an offence if the person is:

- a registration holder and the conduct to which the offence applies is authorised by that registration; or
- exempted under the regulations made under section 59D(2)(c) from the requirement to be registered in relation to the conduct to which the offence applies.

An amendment has also been made to section 7 to insert the applicable penalty at the base of subsections 7(1) to (4), rather than at the end of section 7, consistent with current legislative drafting practices.

4.3 Clause 7 amends section 8: Power to exempt

This clause deletes “he or she” and inserts “the Governor”, to reflect current drafting practices.

4.4 Clause 8 amends section 27: Requirements for regulations

This clause deletes “he or she” and inserts “the Minister”, to reflect current drafting practices.

4.5 Clause 9 amends section 28: Application for and grant of licence

This clause deletes “he or she” and inserts “the Minister”, to reflect current drafting practices.

4.6 Clause 10 amends section 35: Cancellation of licence

This clause deletes “he or she” and inserts “the Governor”, to reflect current drafting practices.

5 Amendments to Part 3 of the Act (Clauses 11 to 13)

5.1 Clause 11 amends the title of Part 3

The title of Part 3 of the Act has been amended to reflect its purpose, being the supply of electricity to small use customers.

5.2 Clause 12 amends section 47: Terms used: retail licensee

This clause removes the definitions of “customer”, “non-standard contract” and “standard form contract” as these definitions have been moved, with some consequential changes, to section 3 of the Act.

The heading of section 47 of the Act is amended to reflect that this section is limited to defining “retail licensee” only.

5.3 Clause 13 amends section 48: Regulations as to supply contracts

This clause makes grammatical and consequential changes to section 48 of the Act, including inserting the words “small use” in front of “customer” as a result of the definition of “small use customer” being inserted in section 3 of the Act.

6 Insertion of new Part 3A – Registration of alternative electricity services (Clause 14)

Clause 14 of the Bill inserts a new Part 3A into the Act to deal with the registration of AES providers. It has been created by adapting licence provisions from the existing Part 2 of the Act to facilitate a lighter-handed, lower cost regulatory framework enabling enforceable customer protections and a dispute resolution pathway for customers through the Ombudsman.

Part 3A empowers the making of subordinate instruments including an AES code of practice and regulations. The regulations will also prescribe the specific activities that are regulated under the framework. Part 3A does not, by itself, impose new regulation on any specific persons or business models.

6.1 New Division 1 – Preliminary

Division 1 sets out the purpose of Part 3A, terms used and the heads of power to prescribe activities that will be regulated under the AES framework. Establishing a fit-for-purpose regulatory framework for alternative electricity services is intended to balance the need for regulation to provide suitable protections for customers of those services, while minimising the regulatory burden on registration holders.

6.1.1 New section 59A: Purpose of Part

Section 59A sets out the purpose of Part 3A which is to provide a registration framework to regulate:

- the registration of those who provide alternative electricity services; and
- how alternative electricity services are provided to customers.

6.1.2 New section 59B: Terms used

Section 59B defines terms relevant to the AES registration framework under Part 3A.

- *affected person*, in relation to a reviewable decision, has the meaning given in subsection 59U(1)(b);

- This term is used to refer to a person who is eligible to seek a review of a certain reviewable decisions made by the Authority.
- *class*, in relation to an alternative electricity service, includes sub-class;
 - This clarifies that when this term is used in relation to an AES it may include a sub-class.
- *registration framework*, means Part 3A, the regulations and the AES code of practice;
 - This term captures the registration framework described in Part 3A of the Act, regulations made under the Act and the AES code of practice.
- *reviewable decision*, has the meaning given in subsection 59U(1)(a):
 - This term relates to the decisions of the Authority listed in new section 59U for which a review may be sought by an affected person, by application to the State Administrative Tribunal.

6.1.3 New section 59C: Alternative electricity services

Subsection 59C(1) sets out the head of power for regulations to prescribe an activity as an AES or a class of activities as a class of AES. Until regulations are made under this subsection, the AES framework does not apply to any activity and there is no requirement for any person to register under the framework.

Given the implications and potential regulatory burden of prescribing an AES, it is expected that in all cases regulations to prescribe an AES will undergo formal impact assessment under the Better Regulation Program and will be subject to stakeholder feedback in response to a Consultation Regulatory Impact Statement.

Subsection 59C(2) allows for regulations to prescribe the provision of an AES or a class of AES to all customers or only certain customers (small use customers or a class of small use customers; or customers other than small use customers (or a class of these customers)).

Subsection 59C(3) empowers regulations to prescribe requirements that must be adhered to when providing an AES. This allows requirements to be tailored to each AES or class of AES as it is prescribed. It also allows regulations to specify conditions and requirements of the AES code of practice which are relevant to a provider of an AES or class of AES.

For certain situations or matters, all customers may require a degree of protection, whereas in other cases a particular class of customers may require a greater degree of protection. For example, in most circumstances small use electricity customers will have limited negotiation powers and sophistication compared to larger customers and therefore are likely to require greater customer protections. Section 59C maintains flexibility to authorise a person to provide an AES to all customers, with conditions of registration which only impose obligations relevant to small use customers.

Subsection 59C(4) allows regulations to detail the eligibility of a person, or class of person, to be granted a registration for an AES or class of AES, which may include the requirement to meet certain criteria. There may be cases where multiple entities are involved in provision of a particular AES, but it is desirable that only one of those entities is responsible for ensuring customer protection obligations are met. In this situation, other entities involved in provision of the AES could be exempted under

subsection 59D(2) from the requirement to register, or the activities they undertake could be excluded from the definition of an AES under subsection 59C(7).

Subsection 59C(5) describes the activities which may be prescribed as an AES or a class of AES. These descriptions are designed to be flexible enough to cover a wide range of activities where customers interact with the electricity system under different arrangements to those provided by “typical” licensed electricity retailers. The descriptions are also designed to future proof the AES registration framework by listing broad categories of activities for which it may be determined in the future that regulation under the AES registration framework is appropriate.

Usually registration under the AES framework will be considered appropriate because it is identified (through regulatory impact assessment) that customers require enforceable customer protections, access to dispute resolution and there should be oversight of the activity by a regulator. The intention is that the framework is flexible to cover a broad range of electricity-related activities, as and when regulation is needed.

In particular, subsection 59C(6) clarifies that activities that relate to electricity consumed under a membership, financing, subscription, licensing, hire or similar type of scheme (i.e. the arrangement does not involve a direct sale of units of electricity) can be prescribed as AES.

Subsection 59C(7) provides a head of power to allow for regulations to provide that a class of activity is not an AES. This provision is intended to provide flexibility so that if an activity falls within the definition of an AES, but it is determined there is no need for regulation of that activity, it can be designated as not being an AES for the purposes of the Act.

6.2 New Division 2 – Registration requirements

Division 2 sets out the requirements for registration as a provider of an AES.

6.2.1 New section 59D: Requirement for registration

Subsection 59D(1) provides that it is an offence for a person to provide an AES to a customer unless that person is registered under Part 3A to provide that AES.

A penalty of a fine of \$100,000 and a daily penalty of a fine of \$5,000 applies for providing an AES without a registration. These penalties are maximum fines that can be applied, not set amounts. The penalties are consistent with those for selling electricity without a licence (as required under section 7(4)) and operating a distribution system without a licence (as required under section 7(3)), as per requirements under the licensing provisions of the Act in Part 2.

It is the function of the Authority to administer and enforce the AES registration framework, which includes the requirement that a person must not provide an AES to a customer unless the person is registered to provide that AES. The Authority will investigate compliance by AES providers with the registration requirement. A person who commits the offence in subsection 59D(1) may be subject to prosecution.

The default position is that registration is required for anyone, including a licensee and existing holders of registrations for other prescribed services, to provide an AES. However, subsections 59D(2) to (5) allow for regulations to exempt holders of a licence

under Part 2 of the Act, holders of a registration for another specified AES, or any other person prescribed by the regulations, from the requirement to be registered.

These subsections provide for regulations to 'switch on' the ability for licensees and/or existing registration holders to provide an AES without them being required to hold a separate AES registration. It is anticipated that this may be used in circumstances where the provision of that AES would otherwise fall within the ambit of their existing licence or existing registration.

Although this provision may not be used often, it:

- provides a flexible framework able to cater for the interaction of registrations and licences if needed; and
- can be used to avoid unnecessary regulatory duplication (i.e. the need to hold a licence and registration, or two registrations, unnecessarily).

Specific conditions, to cover any gap in customer protections or reporting obligations, may be added to the licence or registration of the exempt person under subsection 59D(4) and (5) in order for them to provide the AES.

6.2.2 New section 59E: Registration holder to comply with terms and conditions of registration

Section 59E requires that a registration holder must comply with the terms and conditions that apply to the registration.

This provision further provides for a penalty of a fine of \$100,000 and a daily penalty of a fine of \$5,000 for each day the offence continues. These penalties are maximum fines that can be applied, not set amounts. The penalties are in line with the equivalent penalties for operating other than under the authority of a licence in Part 2 of the Act (which incorporates non-compliance with the terms and conditions of a licence).

As part of its enforcement function, the Authority is responsible for enforcing compliance with a condition of registration (discussed further at section 6.5 below).

6.3 New Division 3 – General registration provisions

Division 3 sets out the general requirements for registration including the grant, renewal, amendment, transfer or surrender of a registration. It sets out:

- the matters the Authority must take into account when granting a registration;
- the duration of a registration;
- the imposition of terms and conditions on a registration; and
- the payment of fees.

Division 3 also provides for certain decisions of the Authority to be reviewable by the State Administrative Tribunal and the Authority's requirement to publish a register of AES registrations.

6.3.1 New section 59F: Authority to consider public interest

Subsection 59F(1) provides that the Authority must not exercise a power under Division 3 (or Division 2 including issuing a registration) unless it is satisfied that it is not

contrary to the public interest. In making this determination, the Authority must take into account the matters specified in subsection 59F(2).

This is identical to the public interest test that the Authority and the Governor must apply when considering applications for licences and licence exemptions respectively under Part 2 of the Act.

Subsection 59F(3) allows for regulations to prescribe circumstances where the Authority will not be required to apply:

- the public interest test in subsection 59F(1); or
- the general public interest test that applies under the *Economic Regulation Authority Act 2003* section 26(1)(a).

As discussed in section 2.5 above, this provision has been made to allow for ‘fast track’ applications, acknowledging that applying the public interest test to individual registration applications is likely to be time-consuming and resource-intensive for the Authority. In particular, in situations where a large number of small entities offer the prescribed AES.

If the Authority were required to apply the public interest test for all powers conferred by Divisions 2 and 3 in all situations, this would mean that for some AES:

- the processing of registration applications would likely be subject to significant delays; and
- fees would need to be set at a higher level to recover resourcing costs associated with processing registration applications for those AES.

These outcomes are not consistent with the policy intent of the AES registration framework operating as a relatively low-cost and light-handed regulatory framework.

Whether or not applications for a specific type of AES need to be assessed against the public interest test will be determined when the particular AES is prescribed.

6.3.2 New section 59G: Application for registration

Section 59G requires the registration application to be in a form approved by the Authority and to be accompanied by the prescribed application fee.

This section is equivalent to section 10(1) (Application for licence) in Part 2 of the Act.

6.3.3 New section 59H: Renewal of registration

Section 59H provides that applications for registration renewals must be in a form approved by the Authority and be lodged with the prescribed application fee.

This section is equivalent to section 16(1) (Renewal of licence) in Part 2 of the Act.

6.3.4 New section 59I: Amendment of registration

Section 59I provides that a registration holder may apply to the Authority for an amendment to a registration. The application must be made in a form approved by the Authority and be accompanied by the prescribed application fee.

This section is equivalent to section 21(2) (Amendment of licence on application of licensee) in Part 2 of the Act.

6.3.5 New section 59J: Transfer of registration

Section 59J provides that the transfer of a registration can only occur with the approval of the Authority, which may be given on such terms and conditions as determined by the Authority. An application for approval to transfer a registration must be made to the Authority in an approved form and be lodged with the prescribed application fee

This section is equivalent to sections 18(1) to (3) (Transfer of licence) in Part 2 of the Act.

6.3.6 New section 59K: Further information

Section 59K requires that the applicant must provide any other information that the Authority may require for the proper consideration of the registration application, or application for registration renewal, amendment, transfer or surrender.

This section is equivalent to licensing provisions in subsections 10(2), 16(2), 21(3) and 18(4) respectively, apart from in relation to surrender of registration².

6.3.7 New section 59L: Public consultation on grant, renewal, amendment or transfer of registration

Subsection 59L(1) requires the Authority to undertake public consultation in accordance with any specified procedure set out in regulations before it makes a decision on any application for the grant, renewal, amendment, or transfer of a registration under Part 3A. This is an important provision with respect to transparency of decision making by the Authority.

This subsection is equivalent to section 25 (Regulations about public consultation) in Part 2 of the Act.

Subsection 59L(2) allows for regulations to exempt a class of AES from the public consultation requirements. For example, for fast track applications where the public interest test is not applied initially at the time of granting a registration. Where the outcomes of a consultation is not required to inform consideration of the public interest test, the costs and delays of conducting public consultation are likely to outweigh any benefits.

Subsection 59L(3) makes it clear that amendments to registrations which are of a minor or administrative nature do not require public consultation.

6.3.8 New section 59M: Decision to grant, renew, amend or approve a transfer of registration

Subsection 59M(1) requires the Authority to endeavour to make a decision on the grant, renewal, amendment or transfer of a registration within 90 days after the date of application.

Subsection 59M(2) provides that this requirement only applies if the application has been made in accordance with section 59G (application for a registration), section 59H (renewal of a registration), section 59I (amendment of a registration) or section 59J

² The process for the surrender of licences is not dealt with in primary legislation, and is instead managed through standard licence conditions. It is considered preferable that, in establishing the registration framework, surrender of registrations is contemplated in the Act.

(transfer of a registration), and the registration holder or proposed transferee is or will be a member of an approved dispute resolution scheme (section 101B) and any relevant information required under section 59K (further information) has been provided to the Authority.

This section is similar to the requirements of subsection 19(2) and (3) (Decisions as to grant, renewal or transfer of licence) in Part 2 of the Act.

Any decision to refuse to grant a registration, refuse to renew a registration or refuse to approve a transfer of a registration is a reviewable decision under section 59U. This means the affected person may apply to the State Administrative Tribunal for the decision to be reviewed.

6.3.9 New section 59N: Registration area

Subsection 59N(1) provides that a registration must be designated to apply to one or more areas of the State. Subsection 59N(2) clarifies that if two or more areas are specified in a registration those areas do not need to be next to each other.

A registration holder will have the legal authority to undertake the AES for which it is registered within the designated area or areas in the registration.

This section is equivalent to the requirements of section 5 (Licence area) in Part 2 of the Act.

6.3.10 New section 59O: Registration is subject to terms and conditions

Subsection 59O(1) provides that it is a condition of registration that the registration holder must comply with the relevant provisions of the AES code of practice that are specified in regulations to apply to the AES or class of AES.

Subsection 59O(2) provides that it is a condition of registration that the registration holder must notify the Authority of any change of circumstances that may materially affect the registration holder's ability to meet its obligations under the Act. For example, this may include but not be limited to circumstances of insolvency or bankruptcy. Failure to notify the Authority of a material change of circumstances breaches the conditions of registration and may result in enforcement action by the Authority under Division 7.

The Authority has a broad power to impose terms and conditions on a registration under subsection 59O(3) and may also amend any terms and conditions at any time (subsection 59O(4)). This is similar to the Authority's powers in section 11, Part 2 of the Act, regarding conditions of licences. The Authority is not bound by criteria in the Act, as for licensing, however decisions of the Authority to impose or amend terms and conditions are reviewable decisions for the purposes of section 59U.

Subsection 59O(5) provides a power for regulations to set out terms and conditions of registration which may be applied to an AES or class of AES. This is similar to the regulation-making power to prescribe terms and conditions of licences in section 12, Part 2 of the Act.

6.3.11 New section 59P: Duration of registration

Section 59P provides that the Authority may grant or renew a registration for a period of up to 15 years. This timeframe on the life of a registration will allow the Authority to

'check in' with registration holders to confirm currency of registration details and is considered to be consistent with good regulatory administration practice. The timeframe also complements the intent of the AES registration framework.

This timeframe is equivalent to the maximum duration of retail licences granted or renewed by the Authority under section 15 (Duration of licence) in Part 2 of the Act.

A decision regarding the period of registration or renewal is a reviewable decision under section 59U. In practice, the only decisions of this nature where an affected person is likely to consider applying for a review is if the Authority does not grant the maximum timeframe to an applicant.

6.3.12 New section 59Q: Annual fees

Subsection 59Q(1) requires the registration holder to pay to the Authority a prescribed annual fee, within a period determined by the Authority. Under subsection 59Q(2), any outstanding annual fee may be recovered by the Authority from the registration holder in a court of law as a debt to the State.

6.3.13 New section 59R: Surrender of registration

Subsection 59R(1) provides that a registration holder must not surrender a registration unless the Authority has approved the application to surrender. Subsection 59R(2) specifies that the application to surrender must be made in a form approved by the Authority and the registration holder must pay the prescribed fee to the Authority along with the application.

Under subsection 59R(3), in deciding whether to approve a surrender of registration, the Authority must be satisfied that it would not be contrary to the public interest to do so. This applies whether or not the Authority is required to consider the public interest when granting the registration.

A decision to refuse to approve a surrender of a registration is a reviewable decision under section 59U.

The requirement for the Authority to give its approval before a registration is surrendered allows an opportunity to ensure that:

- the customers of the registration holder (if there are any); and
- any relevant assets of the registration holder,

are suitably dealt with prior to the registration holder ceasing to provide the service.

A surrender of registration is initiated by the registration holder; it is not the same as a suspension or revocation of a registration, which would be initiated by the Authority using its enforcement powers under Division 7 of Part 3A.

6.3.14 New section 59S: Other laws not affected

Section 59S provides that the grant, renewal, amendment, transfer or surrender of a registration does not affect a registration holder's obligations to comply with any other written law in relation to matters which may be covered by the registration.

For example:

- obligations under the Consumer Credit Code, administered by the Australian Securities and Investments Commission, particularly where energy sellers are engaging in a 'hire purchase' arrangement; and
- obligations under the Australian Consumer Law, set out in Schedule 2 of the *Competition and Consumer Act 2010* (Commonwealth), which provides remedies for unfair contract terms, warranties, and product safety and where a service provider engages in misleading and deceptive, unconscionable or third line forcing conduct.

A similar provision applies for licences in section 20 (Other laws not affected) in Part 2 of the Act.

6.3.15 New section 59T: Notice of decision

Subsection 59T(1) requires the Authority to give written notice of a decision to grant, renew or amend a registration or approve the transfer or surrender of a licence, to the applicant within 14 days after the decision is made.

Subsection 59T(2) requires that, where the Authority has refused to grant, renew or amend a registration or has refused an application to transfer or surrender a registration, the Authority must provide written notice of the decision and also a statement of the reasons for the decision to the applicant within 14 days after the decision is made. This is to ensure that the Authority substantiates its decision to the registration applicant.

This section reflects section 23(3) (Notice of decisions) in Part 2 of the Act.

6.3.16 New section 59U: Review of certain decisions

Section 59U sets out which decisions of the Authority are reviewable by the State Administrative Tribunal and who is eligible to apply for a review of those decisions. A reviewable decision is one listed in the table in section 59U.

Decisions of the Authority which are reviewable decisions include:

- a decision to refuse to grant a registration (section 59M), for which an application for review may be made by the applicant for registration;
- a decision to refuse to renew a registration (section 59M), for which an application for review may be made by the registration holder;
- a decision to refuse to approve a transfer of a registration (section 59M), for which an application for review may be made by the applicant for approval;
- a decision to impose a term or condition on a registration (section 59O(3)), for which an application for review may be made by the registration holder;
- a decision to amend a term or condition of a registration (section 59O(4)), for which an application for review may be made by the registration holder;
- a decision regarding the period of registration or renewal of registration (section 59P), for which an application for review may be made by the registration holder; and
- a decision to refuse to approval the surrender of a registration (section 59R), for which an application for review may be made by the applicant for approval.

Applications are to be made to the State Administrative Tribunal within 28 days after the day on which notice of the reviewable decision is given.

6.3.17 New section 59V: Register

Section 59V requires the Authority to publish a register of the following:

- an application for registration;
- a grant, renewal or amendment of registration;
- an approval of a transfer of registration;
- a refusal of an application for registration or for renewal or amendment of registration;
- a surrender of a registration;
- a suspension or revocation of registration,

on the Authority's website.

The register is to be made available for members of the public to inspect free of charge.

Decisions to grant, refuse to grant, renew, refuse to renew, amend, refuse to amend, approve a transfer, refuse to approve a transfer, approve a surrender of registration and refuse to approve a surrender of registration must be published on the register within 14 days after a decision is made.

The Authority is not required to publish reasons for decisions on the register. However, the Authority may publish any details relating to refusal of an application that it sees fit.

The information on the register will provide transparency for customers as to whether a provider of an AES or a registration holder they have contracted with has, for example, been refused a registration. This information could offer the customer valuable information on circumstances relating to the provision of the AES they may be receiving. An example may be where a provider of an AES has been refused a registration yet is providing an AES to customers in contravention of the requirement to be registered under section 59D. In this situation the customer could consult the register and see that the provider was refused registration and may inform the Authority accordingly.

For registrations which are granted, the Authority is also required to provide the minimum details contained in subsection 59V(5). This includes, but is not limited to, the registration holder's name and address, the AES for which registration was granted, details of the person responsible for handling customer requests for information and complaints, relevant dates relating to the status of the registration, the term of the registration and a description of the registration area.

6.3.18 New section 59W: Fee regulations

Section 59W allows for regulations to be made which prescribe different application fees and annual fees for different AES, or different classes of AES. Regulations may specify the amount of a fee or provide for a fee to be calculated in accordance with a specified method or formula.

This section is similar to section 17 (Licence fees) in Part 2 of the Act.

Subsection 59W(2) also provides flexibility for regulations to specify circumstances in which the payment of some or all of a fee may be waived. For example, in order to encourage registration at commencement of the AES framework, certain fees could be waived for a time period. Further, it may be considered appropriate for certain fees to be waived if a registration holders subsequently registers to provide a different AES.

6.4 New Division 4 – AES code of practice

To help ensure a simple registration framework the AES code of practice will be used as the main repository for obligations on AES providers.

Each time a new service is prescribed, the AES code of practice will be amended to include any additional customer protection obligations that are deemed necessary for the prescribed service following a regulatory impact assessment process.

The AES code of practice will be subsidiary legislation and therefore will be subject to Parliamentary scrutiny as for any regulations made under Part 3A of the Act.

6.4.1 New section 59X: AES code of practice

Subsection 59X(1) provides for the Minister for Energy to prepare and issue the AES code of practice.

Subsection 59X(2) requires the AES code of practice to set out customer protection requirements that registration holders must comply with. The AES code of practice requirements will be different for each service prescribed under the AES framework, depending on the characteristics of that service. Some services may require many regulatory obligations, and some will only require a few.

Subsection 59X(3) identifies the scope of requirements which may be included in the AES code of practice. This scope of requirements was informed by the Final Report and stakeholder feedback on the consultation draft of the Bill.

The AES code of practice has scope to apply beyond small use customers in some circumstances where it is considered appropriate. For example, where the obligations or requirements affect all customers regardless of their negotiating position, such as service quality and reliability standards (subsection 59X(3)(f)). For other matters, the AES code of practice can only impose customer protections with respect to small use customers. For example, the standards of conduct set out in subsection 59X(3)(a).

Subsection 59X(4) also allows the AES code of practice to incorporate or apply (with or without amendment) any provision of a code or standard in force under section 39 (such as the Electricity Industry Metering Code or the Network Quality and Reliability of Supply Code).

6.4.2 New section 59Y: AES code of practice is subsidiary legislation

Subsection 59Y(1) provides that the AES code of practice is subsidiary legislation for the purposes of the *Interpretation Act 1984*. Following publication of the AES code of practice, it must be laid before both Houses of Parliament.

This subsection is equivalent to section 80 (Code is subsidiary legislation) in Part 6 (Code of conduct for supply of electricity to small use customers) of the Act.

Subsection 59Y(2) provides that a provision of the AES code of practice is of no effect to the extent that it is inconsistent with a provision of the Act or another written law. This means in situations of inconsistency, the Act or other written law takes precedence.

6.4.3 New section 59Z: Public consultation on issue, amendment or replacement of AES code of practice

Subsection 59Z(1) requires the Minister for Energy to carry out public consultation in accordance with regulations before issuing, amending, or repealing and replacing the AES code of practice (see also new section 59ZC (Public consultation on review)).

Subsection 59Z(2) specifies that the Minister for Energy does not need to publicly consult on amendments to the AES code of practice if the Minister is satisfied that they are of a minor nature.

Subsection 59Z(3) allows the Minister for Energy to determine the manner in which public consultation is carried out before the initial AES code of practice is issued. This allows consultation on the regulations and the initial AES code of practice to be carried out in parallel, if needed.

6.4.4 New section 59ZA: Notice to registration holders of amendment or replacement of AES code of practice

Section 59ZA requires the Authority to provide all registration holders with notice of the amendment or replacement of the AES code of practice. This is to ensure that registration holders are aware of changes to their regulatory obligations.

6.4.5 New section 59ZB: Review of AES code of practice

Section 59ZB sets out the framework for review of the AES code of practice. The purpose of the review is to assess the suitability of the obligations contained in the AES code of practice in achieving the purpose of Part 3A of the Act (subsection 59ZB(3)).

Subsection 59ZB(1) requires the Minister for Energy to ensure that a review of the AES code of practice is carried out five years after its commencement and thereafter every five years. However, the Minister can cause an earlier review of the AES code of practice to be conducted if the Minister considers it is necessary (subsection 59ZB(2)).

Subsection 59ZB(4) allows the Minister for Energy to delegate the responsibilities for review and public consultation on a review to the Authority. This allows flexibility for these Ministerial functions to be conferred by the Minister on the Authority once the AES code of practice is reasonably mature. The Authority is already responsible for reviews of, and amendments to, the Code of Conduct for Supply of Electricity to Small Use Customers, which imposes customer protection obligations on licensees.

6.4.6 New section 59ZC: Public consultation on review

Consistent with the need for open and transparent regulation, section 59ZC requires the Minister for Energy to ensure that when the AES code of practice is reviewed, public consultation is carried out in accordance with regulations.

6.5 New Division 5 – Functions of Authority

Division 5 provides for the Authority's functions of administering and enforcing compliance with the registration framework.

6.5.1 New section 59ZD: Functions of Authority

Subsection 59ZD(1) provides that the Authority is responsible for the administration and enforcement of the AES registration framework.

Subsection 59ZD(2) identifies that the responsibility in subsection (1) includes:

- monitoring and reporting to the Minister for Energy on request on the operation of the registration framework and compliance by registration holders with the conditions of registration; and
- reporting to the Minister on request on the enforcement of the registration framework.

The specific responsibilities listed in subsection (2) do not limit the Authority's general function to administer and enforce the registration framework under subsection 59ZD(1).

The Authority has similar functions under Part 2 of the Act with respect to the licensing scheme, to:

- administer the licensing scheme (section 37); and
- monitor and report to the Minister for Energy on the operation of and compliance with the licensing scheme (section 38).

6.5.2 New section 59ZE: Annual report

Section 59ZE details the requirement for the Authority to prepare and provide to the Minister for Energy an annual report on the registration framework. The report must:

- detail the performance and compliance of registration holders with the registration framework and may identify improvements that may be made to the registration framework; and
- be published by the Authority on its website.

6.6 New Division 6 – Performance reporting and compliance monitoring

Division 6 sets out obligations on registration holders and the Authority with regard to:

- performance reporting and compliance monitoring;
- the Authority's ability to audit a registration holder's compliance with the registration framework and conditions of registration; and
- obligations on the Authority with regard to the use and disclosure of information.

6.6.1 New section 59ZF: Requirement to provide information to Authority

Section 59ZF requires that it is a condition of every registration that the registration holder must provide to the Authority any information or report that the Authority considers reasonable for it to carry out its responsibility to administer and enforce the framework. The Authority can specify the manner and the frequency by which, the information or report should be provided.

This section is intended to ensure that the Authority can obtain sufficient information to satisfy itself of the performance of a registration holder.

6.6.2 New section 59ZG: Compliance audit

Under subsection 59ZG(1) the Authority has the power to appoint a person to audit a registration holder's compliance with the registration framework and any conditions of registration. The audit process is to be determined by the Authority under subsection 59ZG(2). The registration holder is required by subsection 59ZG(3) to provide the auditor (if requested) with any information reasonably required for the purposes of the audit.

The Authority is able to recover the costs arising from the appointment of the auditor from the registration holder and seek recovery of those costs under subsection 59ZG(4).

The intent of this section is to provide the Authority the power to initiate compliance audits to determine registration holders' compliance with the registration framework. The cost of the audit is to be paid for by the registration holder. Unlike under the licensing framework, registration holders will not be subject to a requirement for regular performance audits. This is in line with the intention for a lighter-handed, lower cost framework.

There are several avenues through which the Authority can access information regarding a person's compliance with the registration framework or conditions of its registration, including from:

- customers who have concerns about the behaviour of a person providing a prescribed AES (whether registered or not);
- general surveillance of the AES sector;
- regular performance reporting by registration holders;
- compliance reporting by registration holders on specific regulatory obligations contained in a registration, the Act, regulations or the AES code of practice;
- compliance audits initiated by the Authority; and
- individual reporting following a specific information request by the Authority to a registration holder.

It is also likely that the Authority may receive information from the Ombudsman regarding compliance with the registration framework.

6.6.3 New section 59ZH: Use and disclosure of information

Section 59ZH allows the Authority to use and disclose any information it has been provided with under Part 3A in order to carry out its responsibility to administer and enforce the registration framework. A specific provision has also been made to allow the Authority to disclose such information in response to a request from the Coordinator of Energy.

Regulations may provide for how confidential information may be used and disclosed. The Authority is required to comply with any such regulations when using or disclosing confidential information.

6.7 New Division 7 – Enforcement

Division 7 deals with matters relating to enforcement of the registration framework. Like any legislation creating a regulatory regime, an enforcement process comprising of penalties and other enforcement powers by a regulatory body is necessary – a regulatory regime without an enforcement mechanism is of little benefit.

6.7.1 New section 59ZI: Failure to comply with registration

Section 59ZI empowers the Authority to serve a notice on a registration holder requiring a contravention of a condition of registration to be rectified. If the registration holder fails to comply with a notice, this section empowers the Authority to:

- accept a written undertaking from the registration holder to rectify the contravention; and/or
- require the registration holder to give public notice of the contravention; and/or
- impose a monetary penalty (up to a maximum of \$100,000) on the registration holder; and/or
- cause the contravention to be rectified to the Authority’s satisfaction; and/or
- revoke or suspend a registration.

The Authority is able to recover its costs and expenses incurred in causing a contravention to be rectified.

6.7.2 New section 59ZJ: Right of registration holder to make submissions

Subsection 59ZJ(1) prohibits the Authority (except in the circumstances described in section 59ZP(3) (discussed at section 6.7.8 below)) from taking any enforcement action under subsection 59ZI(2) unless the Authority has given notice to the registration holder of:

- the proposed action and the reasons for it; and
- the registration holder’s right to make a submission as to why the action should not be taken by the Authority.

If the registration holder makes a submission within the time specified in the notice, the Authority must consider it and must make its decision within 30 business days following the close of the period allowed for the registration holder to make their submission. The Authority must notify a registration holder of its decision.

The Authority’s power to withdraw acceptance of an undertaking at any time under subsection 59ZM(3) is not affected by this section.

This clause replicates section 33 (Right of licensee) in Part 2 of the Act.

6.7.3 New section 59ZK: Power to enter land to rectify contravention

Section 59ZK provides for persons authorised by the Authority to enter any premises to rectify a contravention, for the purposes of subsection 59ZI(2)(d).

This section replicates section 32(3) (Failure to comply with licence under the licensing framework) in Part 2 of the Act.

6.7.4 New section 59ZL: Recovery of penalty, costs and expenses

Section 59ZL further empowers the Authority to recover penalties imposed, or costs incurred in causing a contravention to be rectified, in a court of competent jurisdiction.

This clause replicates section 32(4) (Failure to comply with licence under the licensing framework) in Part 2 of the Act.

6.7.5 New section 59ZM: Enforceable undertakings

An enforceable undertaking is a legally binding agreement between a regulator and the person who proposed the undertaking. The provisions related to enforceable undertakings have been based on the Education and Care Services National Law.

If under subsection 59ZI(2), an enforceable undertaking has been accepted by the Authority, this subsection allows the registration holder to amend or withdraw the undertaking with the consent of the Authority and the Authority to withdraw its acceptance of the undertaking at any time. If the Authority withdraws its acceptance of an undertaking, the undertaking ceases to be in force.

Section 59ZM allows the Authority to publish any accepted undertakings on its website. Enforceable undertakings are not a feature of the licensing regime in Part 2 of the Act.

6.7.6 New section 59ZN: Certain actions prohibited while undertaking is in force

Section 59ZN prevents the Authority from taking other enforcement actions against a registration holder in relation to a matter if an enforceable undertaking is in place that covers that matter.

6.7.7 New section 59ZO: Certain actions prohibited if undertaking is complied with

Section 59ZO prevents the Authority from taking any further enforcement action against a registration holder relating to a matter covered by the undertaking, if the registration holder has complied with the requirements of the undertaking.

6.7.8 New section 59ZP: Failure to comply with enforceable undertakings

Section 59ZP allows the Authority to apply to a court for an order to enforce the undertaking if a registration holder has failed to comply with the terms of the undertaking. It is open to the court to make any orders the court considers appropriate, including but not limited to orders directing:

- the registration holder to comply with a term of the undertaking; or
- that the registration holder take any specified action to comply with a term of the undertaking.

The court may also make any other order that the court considers appropriate. If the court determines that the registration holder has failed to comply with a term of the undertaking, the Authority is also permitted to immediately take further enforcement action permitted under subsection 59ZI(2)(b) to (e) regarding the matter.

7 Amendment to Part 4 of the Act (Clause 15)

Part 4 provides for extension and expansion policies for certain corporations and contains the definition of “Coordinator”.

7.1 Clause 15 moves the definition of *Coordinator* from section 60 to section 3

This clause moves the definition of “Coordinator” to section 3 of the Act as it is now also being used elsewhere in the Act.

In section 60 of the Act, the definition of “Coordinator” is therefore deleted.

8 Amendment to Part 6 of the Act (Clause 16)

Part 6 provides for the establishment of the Code of Conduct for Supply of Electricity to Small Use Customers. The Code of Conduct regulates the conduct of holders of distribution licences, retail licences and integrated regional licences as well as marketing agents. The object of the Code of Conduct is to define the standards of services available to small use customers and to protect those customers from undesirable conduct.

8.1 Clause 16 deletes the definition of “customer” from section 78

This clause deletes the definition of “customer” from section 78: Terms used.

9 Amendments to Part 7 of the Act – Electricity ombudsman scheme (Clauses 17 to 21)

Part 7 provides for the establishment of an electricity ombudsman scheme. The scheme provides a mechanism for resolving disputes between licensed industry participants and customers.

9.1 Clause 17 amends section 90: Terms used

This clause makes consequential changes to the definitions of “customer” and “customer contract” as a result of extending the existing electricity ombudsman scheme to include AES registration holders, as well as the moving of definitions of “standard form contract” and “non-standard contract” to Part 3 of the Act.

The definition of “customer” is amended so that the first limb is limited to a small use customer in Part 7. The definition of “customer contract” means a standard form contract, a non-standard contract or an AES customer contract.

9.2 Clause 18 amends section 92: Authority may approve scheme

This clause makes consequential changes to section 92 to extend the scope of the electricity ombudsman scheme to include the registration framework.

9.3 Clause 19 amends section 96: Jurisdiction of courts and tribunals

This clause deletes “his or her opinion” and inserts the “electricity ombudsman’s opinion”, to reflect current drafting practices.

9.4 Clause 20 amends section 97: Enforcement against marketing agents and others

This clause makes a consequential change to section 97 to extend the application to registration holders, as well as licensees and electricity marketing agents.

9.5 Clause 21 inserts new Division 5 – Membership of approved scheme by registration holder

This clause inserts new Division 5 which includes new sections 101A, 101B and 101C necessary to reflect the requirement for persons applying for the grant of a registration of an AES, who propose to provide the AES to a customer (as defined in this Part 7, which in most instances means limited to small use customers), to become members of the electricity ombudsman scheme.

9.5.1 New section 101A: Proof of membership in applications relating to registration

Section 101A requires an applicant for an AES registration who proposes to provide the AES to a customer, to provide evidence with its application that the applicant will, if a registration is granted, be a member of the electricity ombudsman scheme. This is also required for renewals or transfers of registration.

This section is equivalent to existing section 99 (Proof of membership in applications relating to licence) in relation to licences.

9.5.2 New section 101B: Prerequisite to grant, renewal, amendment or transfer of registration

Section 101B provides that the Authority must not grant, renew, amend or approve a transfer an AES registration or approve a transfer of a registration to a person who provides or proposes to provide the AES to customers, unless it is satisfied that the holder of the relevant registration is, or will become, a member of the electricity ombudsman scheme.

This section is equivalent to existing section 100 (Prerequisite to grant, renewal or transfer of licence) in relation to licences.

9.5.3 New section 101C: Registration condition: membership of scheme

Section 101C provides that it is a condition of every AES registration that the registration holder cannot provide an AES to customers unless they are a member of the electricity ombudsman scheme and will comply with decisions or directions of the Ombudsman.

This section is equivalent to existing section 101 (Licence condition: membership of scheme) in relation to licences.

10 Amendments to Schedule 2 (Clause 22)

Schedule 2 describes the objectives to be met by the electricity ombudsman scheme. The scheme provides a mechanism for resolving disputes between licensed industry participants and customers and is being extended to include AES registration holders.

10.1 Clause 22 amends Schedule 2(1)

Clause 22 amends Schedule 2(1) which sets out the objectives of the electricity ombudsman scheme referred to in section 93, by extending the objectives to include the registration framework. This is achieved by the inclusion of the words “registration holders”, “registration condition” and “AES code of practice” in Schedule 2(1).

This clause also improves grammar used within Schedule 2.

11 Various references to “customer” amended (Clause 23)

Clause 23 sets out in the Table the following sections of the Act which are amended to refer to “small use customer” instead of “customer”. These changes result from the new definition of “small use customer” instead of redefining “customer” in multiple Parts of the Act, and therefore do not change the meaning of the provisions.

- Section 49(1), (2) and (3);
- Section 50(1)(b) and (2);
- Section 54(1);
- Section 54A(1) definition of “relevant contract” paragraph (a) and (b);
- Section 54A(2), (3) and 4(b);
- Section 57 definition of “premises”;
- Section 59(d);
- Section 78 definition of “electricity marketing agent”;
- Section 78 definition of “marketing”;
- Section 79; and
- Section 89A(a), (b), (c) and (d).

12 Insertion of new Part 11 - Consequential amendments to *Electricity Act 1945* (Clauses 24 and 25)

12.1 Clause 24 sets out the Act amended

This clause sets out the Act amended, the *Electricity Act 1945*.

12.2 Clause 25 amends section 5

This clause:

- inserts new definitions in section 5(1) of the *Electricity Act 1945* for “AES registration holder”, “alternative electricity service” and “exempt AES provider”, referring back to terms used in the Act; and
- amends the definition of “network operator” in section 5(1) of the *Electricity Act 1945* to include an “AES registration holder” and an “exempt AES provider” as prescribed by regulations.

This consequential amendment will allow regulations under the *Electricity Act 1945* to extend the definition of “network operator” to AES registration holders and exempt AES providers as required. This will allow certain energy safety obligations to be applied to these entities.