

**ELECTRICITY INDUSTRY AMENDMENT
(DISTRIBUTED ENERGY RESOURCES) BILL 2023
EXPLANATORY MEMORANDUM**

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Introduction

Overview of the Bill

Part 1 of the Electricity Industry Amendment (Distributed Energy Resources) Bill 2023 (Bill) sets out the short title and commencement.

Commencement of Part 1 of the Act comes into operation on the day which this Act receives the Royal Assent, and the rest of the Act comes into operation on a day fixed by proclamation – noting that different days may be fixed for different provisions the Act

Part 2 of the Bill implements Stage 1 amendments and implements the first phase of the main purpose of the Bill which is to amend the *Electricity Industry Act 2004* (Act) to implement the second stage of the Government’s Energy Transformation Strategy (ETS: Stage 2) This includes:

- introducing an overarching objective within the Act;
- expanding the scope of the Wholesale Electricity Market (WEM) Rules; and
- allowing the expanded Rules to address new subject matter related to better integrating distributed energy resources into the power system.

Part 3 of the Bill implements Stage 2 amendments which amends the Act to remove outdated references caused by the repeal of subsidiary instruments in relation to the expansion of the WEM Rules to become the Electricity System and Market Rules (ESMR).

The Bill makes consequential changes to the:

- *Electricity Act 1945*;
- *Electricity Corporations Act 2005*;
- *Electricity Industry Act 2004*;
- *Electricity Transmission and Distribution Systems (Access) Act 1994*; and
- *Energy Operators (Powers) Act 1979*.

1.1 Abbreviations and glossary

Term	Description
Act	<i>Electricity Industry Act 2004</i> , the principal Act being amended by this Bill
AEMO	Australian Energy Market Operator
AES	Alternative Electricity Service
Authority	Economic Regulation Authority
Bill	Electricity Industry Amendment (Distributed Energy Resources) Bill 2023
Coordinator	Coordinator of Energy
Access Code	Electricity Networks Access Code
DER	Distributed Energy Resources
ENC	Electricity Networks Corporation (trading as Western Power)
ESMR	Electricity System and Market Rules
ISO	Independent System Operator
NQRS Code	Network Quality and Reliability of Supply Code 2005
PNAC	Pilbara Networks Access Code
RPC	Regional Power Corporation (trading as Horizon Power)
WEM	Wholesale Electricity Market

1 Clause 1 details the short title of the Act

This is the *Electricity Industry Amendment (Distributed Energy Resources) Act 2023*.

2 Clause 2 outlines Commencement

Clause 2 of the Bill provides for Part 1 of the Act to commence on the day on which the Act receives Royal Assent and for the rest of the Act to commence on a day fixed by proclamation and provides that different days may be fixed for different provisions.

The amendments made by the Bill will be dealt with in two stages. It is intended that the amendments made by Part 3 of the Bill will commence after the amendments made by Part 1 and Part 2.

The need for staged commencement reflects one of the main purposes of the Bill: consolidation of existing subsidiary legislation within a newly-created Electricity System and Market Rules (ESMR). The first stage will enable the tranching and transfer of content from regulatory instruments to the new ESMR, during which time both the ESMR and regulatory instruments will continue to operate in parallel. The second stage will serve to complete the process of consolidation by removing provisions and references relating to the redundant instruments which contained matters now addressed through the new ESMR.

The first stage is to come into effect the day after the date of the Governor's Assent, while the second stage will come into operation upon proclamation by the Minister for Energy at a date no later than 31 December 2028.

The first stage of amendments will establish:

- the commencement scheme for the Bill;
- new defined terms;
- the State Electricity Objective (SEO);
- the new Electricity System and Market Rules (ESMR) and its scope;
- provisions relating to the prescription of voltage and frequency limits;
- provisions relating to the transfer of content from existing regulatory instruments to the new ESMR and the operation of those instruments; and
- provisions relating to the deployment of stand-alone power systems by Horizon Power.

The second stage of amendments are those in Part 3 of the Bill. The second stage will amend the Act (which, at this point will include changes that have come into operation through the first stage) to facilitate the repeal of redundant instruments, the contents of which will have been transferred to the new ESMR. These instruments are the

Electricity Networks Access Code 2004 (Access Code), the Electricity Industry (Metering) Code 2012 (Metering Code), and Electricity Industry (Network Quality and Reliability of Supply) Code 2005 (NQRS Code). This will include amendments to sections 39 and 39A of the Act, and to Part 8 in relation to the Access Code.

It is not possible to simply move each of the instruments into the ESMR without review and rationalisation. The need for a staged commencement reflects the time required to review the existing regulatory framework governing the electricity sector in Western Australia and consolidate the relevant elements within the new ESMR. This is because elements of the Access Code, the 'technical code' it empowers (known as the Electricity Networks Corporation's (ENC) Technical Rules), Wholesale Electricity Market (WEM) Rules, Metering Code and the NQRS Code often relate to similar subject matter, concepts, and terminology and are legally drafted in a manner particular to those instruments, rather than for operation as part of a more comprehensive single set of rules. Duplication and inconsistency between these instruments is a key driver of the need for legislative reform underpinning this legislation.

New content for the ESMR relating to matters such as distributed energy resources and power system security and reliability will be prepared in parallel to this transitional process. This new content will also require consideration of reviewed content from other instruments being transferred into the ESMR.

In addition to the staged commencement, the Minister for Energy will be accorded interim powers to apply during the transition from the first to the second stage of commencement. These powers relate to the ability for the Minister for Energy to determine which of the above subsidiary instruments can be used to deal with any relevant issue, amend each relevant instrument to facilitate transition, and provide for continuation of an instrument after revocation if necessary.

For example, it is likely that during transition the ESMR and the Access Code will operate in parallel. That is, the ESMR will, in time, include new material that relates to access to covered electricity networks, while the existing Access Code may continue to provide for some elements of the access regime not yet transferred to the ESMR. During this transition, the Minister for Energy may decide which instrument is the most appropriate one to include new material. The Minister may also amend both or either of the ESMR and Access Code to ensure duplication or inconsistency in the access regime is minimised.

At present, the Minister for Energy already possesses powers to amend the relevant regulations and codes (with the exception of the ENC's Technical Rules, which are empowered by the Access Code but approved by the Authority). The transitional provisions in this legislation extend these existing powers by disapplying mandatory requirements for public consultation (for example, the 30-day consultation for the Access Code), for the purpose of transition. However, it is planned that amendments to these instruments will involve extensive public consultation on both policy matters and

rule drafting, consistent with the approach taken to the reforms to the WEM as part of the work of the Energy Transformation Taskforce.

The above powers are necessarily broad in order to provide the required flexibility to amend the above-listed subsidiary instruments to give effect to this legislation. The powers are transitional in nature only and have been drafted deliberately to ensure that Parliament's decisions can be implemented in full.

3 Clause 3 amends the Act

This Division amends the *Electricity Industry Act 2004* and represents the first stage of amendments to the Act. These are covered above in section 2 of this Explanatory Memorandum and are amended by Clause 2 of the Bill.

4 Clause 4 amends Section 3 of the Act

4.1 Clause 4(1) inserts new definitions to section 3(1)

4.1.1 New concept – 'connected facility'

- *Connected facility* 'in relation to a distribution system, means electricity infrastructure connected to the distribution system that manages or controls the flow of electricity to or from the distribution system'.
 - This definition introduces the concept of connected facilities as *electricity infrastructure* (equipment that is used in relation to the transportation of electricity) which is connected to, and manages or controls flows to and from, a distribution system.
 - A *distribution system* (being any electricity infrastructure transporting electricity at a voltage under the prescribed voltage) includes electricity networks such as the Electricity Networks Corporation's (ENC) distribution network, as well as the wires, equipment and plant used to distribute electricity at a premises such as a shopping centre, apartment building, or residential premises.
 - The intent of introducing 'connected facility' to the Act is to permit the Act, regulations and new Electricity System and Market Rules to provide for necessary technical requirements, minimum standards, and other obligations relating to connected facilities and *connected facility operators*.
 - An important application of this definition is facilitating the development of technical standards for distributed energy resources (such as rooftop solar inverters). It may also extend to other controllable devices such as air-conditioning or pool pumps, as well as any equipment that can manage electricity flows which may be able to provide electricity services to the broader power system or improve or maintain power system security.
 - The definition is deliberately inclusive of a range of equipment, including distributed energy resources as well as other customer devices and home energy management systems. This drafting reflects the potential for a range of

devices to require regulation, for reasons including addressing power system risks and providing opportunities for devices to provide electricity services. For example, by prescribing standards and requirements, connected facilities may also then be able to be coordinated to provide electricity services for the power system as a ‘virtual power plant’ or be controlled to enable larger rooftop solar connections and faster electric vehicle charging at times when the network has capacity.

- Decisions (made by the Minister for Energy and the Coordinator for Energy) relating to regulations or rules with respect to ‘connected facilities’ under the Act must have regard for the State Electricity Objective. In other words, the prescription of requirements and standards for these devices must promote efficiency in the investment in, operation of, and use of electricity services *for the long-term interests of consumers*.
- Consequently, the intent of including connected facilities as a defined term is to allow for the regulatory framework to reflect the challenges and opportunities that connected facilities increasingly present for electricity services, including those relating to power system security and reliability.

4.1.2 Other new terms

- *Coordinator* means the Coordinator of Energy, referred to in the *Energy Coordination Act 1994*.
 - The definition of Coordinator has been deleted from section 60, and instead inserted by this Clause into section 3.
 - Through this Bill, the Coordinator will now be referenced in other Parts of the legislation, and therefore requires definition in section 3.
 - New references to the Coordinator are included in the State Electricity Objective, decision-making with respect to the Electricity System and Market Rules, review of the operation of the Wholesale Electricity Market and Regional Power Corporation reliability standards, immunities from civil monetary liability, and any functions conferred upon it in the regulations.
- *Electricity services* means services that are necessary or incidental to the supply of electricity to consumers of electricity.
 - The definition of the term electricity services in the Act reflects the full range of services that can be provided in supporting the supply of electricity (including traditional generation, network and system services, as well as newer services including demand-side load reduction services, energy management services, and services provided by battery storage).
 - The inclusion of electricity services as a defined term reflects its central role in the State Electricity Objective (SEO). The drafting of the SEO intentionally goes beyond the supply of electricity directly, as this does not adequately include

- other services (such as demand-side load reduction services, and battery storage) which can play an important role in the electricity sector.
- This definition deliberately prioritises consumers of electricity.
- *Electricity system* means distribution systems, generating works, stand-alone power systems, storage works, transmission systems, and the wires, apparatus, equipment, plant or buildings used in relation to the supply of electricity.
 - The definition of electricity system is included as it underpins key concepts in the Act, including the Electricity System and Market Rules.
 - The definition of electricity system encompasses all physical elements underpinning the supply of electricity.
 - *Electricity system and market rules (ESMR)* means the rules provided for by regulation under section 123(1).
 - The ESMR is created as an expansion of the existing ‘market rules’ created under section 123 (currently known as the Wholesale Electricity Market (WEM) Rules). Section 123 outlines the matters the ESMR may provide for.
 - *Embedded network* is defined by this section and refers to distribution systems that are supplied by another distribution system (including, but not limited to, the electrical configuration of many shopping centres and apartment buildings).
 - An embedded network is a type of distribution system that is not part of a covered (regulated) network.
 - It must supply at least one customer or premises that is not the entity in control, or the premises of the entity in control, of the embedded network.
 - Importantly, an embedded network must be supplied with electricity by another distribution system; this includes an embedded network that is able to operate autonomously for a period of time.
 - For example, an embedded network could include a shopping centre or a residential development that is connected to the ENC’s network but, in the case that there is no supply from that connection point, can operate autonomously (perhaps by serving consumer demand for electricity with sources of embedded generation such as rooftop solar and battery storage).
 - An embedded network is distinct from a *stand-alone power system*, which is an electricity system that is not connected to another electricity network and is designed to operated continuously in this mode.
 - Lastly, the regulations are empowered to specify that a class of distribution system is not an embedded network for the purpose of the regulations.

- *Quality* means the extent to which the supply of electricity must meet technical requirements (which are specified in the regulations, ESMR, or the Network Quality and Reliability of Supply Code 2005 (NQRS Code)).
 - Previously, quality standards have been prescribed in the NQRS Code, in relation to voltage fluctuations and harmonic voltage distortion levels.
 - Quality is a consideration of the extent to which electricity supply meets requirements that are specified in the regulations or ESMR, and which can extend beyond voltage.
 - The inclusion of this definition gives meaning to the use of ‘quality’ in the State Electricity Objective (SEO) and reflects the transfer of quality standards from the NQRS Code to within the ESMR.

- *Reliability* refers to the ability to maintain consistent delivery of electricity to customers.
 - Previously, network reliability standards have been specified in the NQRS Code and the Part 8 access framework within the Act, and power system reliability is provided for through the WEM Rules and subsidiary documents and procedures.
 - This definition of reliability incorporates both the ability of the supply and the electricity system more generally to maintain consistent delivery of electricity.
 - The inclusion of this definition gives meaning to the use of reliability in the State Electricity Objective (SEO) and reflects the transfer of quality standards from the NQRS Code to within the ESMR.

- *Security* refers to the ability of the power system to withstand disruption or disturbance or changed circumstances, and the ability of supply to withstand disruption or disturbance in changed circumstances of supply or operation.
 - Previously, security was primarily addressed through power system security provisions in the WEM Rules, with some provisions included in the ENC’s Technical Rules (for example, under frequency load shedding).
 - However, limitations to the scope of the WEM Rules and inconsistent definition of roles and responsibilities presented significant barriers to a consistent, end-to-end framework for security.
 - The inclusion of this definition gives meaning to the use of security in the State Electricity Objective (SEO) and reflects the new scope of the ESMR to provide for the security of electricity systems.

- *State Electricity Objective* is outlined in section 3A(1). It is included as a definition in this Part because it is referenced throughout the remainder of the Act, and has application across the whole Act.

4.2 Clause 4(2) inserts the term *prescribed voltage*

Prescribed voltage means the voltage prescribed by the regulations for this definition.

- Previously, the voltage boundary between the distribution and transmission system was specifically prescribed in the Act to be 66 kilovolts (kV).
- This removes the inflexible specification of a technical voltage level from primary legislation and instead places it in subsidiary legislation, which is consistent with the legislative approach to prescribing technical standards throughout the regulatory framework for electricity.
- Through the addition of this definition, and amendments to the definitions for distribution system and transmission system to refer to the prescribed voltage, the boundary between distribution and transmission systems will now refer to a voltage prescribed in the regulations. At the time of drafting, there is no present need to prescribe a voltage level different to 66 kV in regulation.

4.3 Clause 4(3) amends the term *distribution system*

- *Distribution system* means electricity infrastructure relating to the transportation of electricity at nominal voltages ‘that are less than the *prescribed voltage*’.
 - The definition of distribution systems is amended to remove prescription of the nominal voltage of 66 kV in the Act, and instead refer to a voltage prescribed in the regulations. There is no present need to prescribe a different voltage level to 66 kV in regulation. See Clause 4(2) above.

4.4 Clause 4(4) amends the term *transmission system*

- *Transmission system* means electricity infrastructure used, or to be used, for, or in connection with, or to control, the transportation of electricity at nominal voltages equal to or higher than the prescribed voltage.
 - The definition of transmission system is amended to remove prescription of the nominal voltage of 66 kV in the Act, and instead refer to a voltage prescribed in the regulations. There is no present need to prescribe a different voltage level to 66 kV in regulation. See Clause 4(2) above.

5 Clause 5 inserts the term *State Electricity Objective*

Section 3A is a new inclusion in the Act, for the purpose of introducing and defining the State Electricity Objective (SEO).

The SEO will provide a unifying theme for the Act, and will apply across the whole Act, including replacing the *Pilbara electricity objective* in Part 8A.

It will guide decision-makers to make decisions for the long-term interests of energy consumers in relation to the ‘energy trilemma’, which refers to the tension between ‘quality, safety, security and reliability’; ‘price’; and now, ‘the environment, including greenhouse gas emissions’.

Decision-makers (the Minister for Energy, the Authority, the Coordinator of Energy and the Electricity Review Board) must have regard to the SEO when carrying out their functions under the Act. Importantly, these decision-makers are permitted (section 3A(3)) to weight the three elements of the SEO flexibly when making those decisions. Rules under the ESMR may also require that the SEO be taken into account when undertaking certain activities, such as developing market procedures.

It is a deliberate feature of drafting that these three limbs exist in tension. This tension and ability to weight the limbs of the SEO permits decision-makers to address the three limbs in the manner most appropriate to serve the long-term interest of consumers of electricity, within the specific circumstances of their decision-making.

The introduction of *electricity services* as a defined term, and its inclusion in the SEO reflects its important role in the Act. The drafting intentionally goes beyond only the 'supply of electricity', because this does not adequately encompass other services (such as demand-side load reduction services, and battery storage) which can play an important role in the electricity sector.

The SEO and the inclusion of an environmental consideration may enable future changes to rules governing the Wholesale Electricity Market (WEM) or other regulations to reward or penalise technologies based on greenhouse gas emissions. However, this environmental consideration is not limited only to greenhouse gas emissions reduction.

A number of consequential amendments are made throughout the Act to refer to the SEO and amend references to other objectives that are now superseded by the SEO, for example:

- The WEM objectives (s122(2)) are deleted, and instead the regulations (s124(1)) and ESMR (s123(1A)) are empowered to provide for any matter relating to meeting the SEO.
- The Pilbara electricity objective (s119(2)) is amended to instead refer to the SEO, and changes throughout Part 8A are amended to refer to 'meeting' rather than 'achieving' the SEO for drafting consistency.
- Amendments are made to include reference to the SEO in sections 128 and 129, which outline the review functions conferred upon the Coordinator.

6 Clause 6 amends section 11: Authority may determine license terms and conditions

Section 11 of the Act details license terms and conditions determined by the Authority, and section 11(4) refers to the Access Code.

Clause 6 reflects the establishment of ESMR (which may address the same matters as the Access Code), and so adds the ESMR to section 11(4), which clarifies that the terms and conditions of the license must not be inconsistent with the ESMR.

7 Clause 7 amends section 39: Authority may issue codes

This Bill establishes the Electricity System and Market Rules (ESMR) and empowers the ESMR to address matters currently covered within a range of existing subsidiary legislation.

Section 39 of the Act articulates how the Authority may prepare and issue codes relating to a range of matters, including the reliability and quality of power, which are to be observed by holders of transmission, distribution, and integrated regional licenses. It also allows for the Authority to prepare and issue codes associated with compensation that may be paid by a license holder in situations where power quality, security and reliability standards have not been met.

This section requires amendment to empower the new ESMR to address matters relating to power security, reliability, and quality and compensation payable to customers in instances of non-compliance. The content of existing codes, such as the Electricity Industry (Network Quality and Reliability of Supply) Code 2005, will be reviewed and incorporated into the new ESMR over time.

Clause 56 (below) outlines further amendments to section 39, which will occur in stage 2 of commencement.

Codes that may still be prepared and issued by the Authority after the passage of the Bill include those regarding the transfer of customers between licensees, methods or principles to be applied to the preparation of customer accounts, and other matters prescribed by regulation.

8 Clause 8 amends section 39A: Review of standards applying to the Regional Power Corporation

Section 39A of the Act relates to the review of Regional Power Corporation (RPC) standards, which are the RPC's quality, security and reliability standards (defined by codes made under section 39(2)(d)).

This clause amends section 39A to transfer functions relating to the review of RPC standards from the Authority to the Coordinator. The amendments to these sections replace the Authority (which has previously been obligated to undertake RPC standards reviews) with the Coordinator (who must now carry out a review of, and present the Minister for Energy with a report on, RPC standards at least every 5 years).

The transfer of this review function to the Coordinator is consistent with the previous transfer of review functions, such as those relating to Wholesale Electricity Market (WEM) rule changes and a triennial review of the WEM included in this Bill.

The change to the definition of service standards adds the concept of ‘security’ to that of ‘quality’ and ‘reliability’. This reflects that these are considered separate concepts within the new State electricity objective, and amendments to section 39.

9 Clause 9 amends section 60: deleting *Coordinator*

This definition is no longer required in Part 4 of the Act as it has now been included as a definition in section 3.

10 Clause 10 amends section 105: other matters for which Code may make provision

Section 105 of the Act sets out ‘other matters’ that may be provided for by the Access Code, which includes an articulation of the relationship between the Access Code and the Electricity System and Market Rules (ESMR), which includes things done under or governed by either the Access Code or the ESMR.

10.1.1 New concept – regulation of SPS outside covered networks

A Stand-alone power system (SPS) can provide a more cost-effective, safe and reliable alternative to traditional network infrastructure, particularly in regional or remote locations where cost of supply is high.

In 2020, amendments to the Act facilitated the provision of SPS by the Electricity Networks Corporation (ENC) in the South West Interconnected System (and the Regional Power Corporation (RPC) in the Pilbara network). This was accompanied by changes to the Electricity Networks Access Code 2004, *Electricity Corporations Act 2005*, and the creation of Electricity Industry (Stand-alone Power Systems) Regulations 2021.

Those amendments empowered the ENC (and the RPC in Pilbara networks) to provide SPS, access land for the purposes of SPS deployment, and be regulated with respect to SPS under the Access Code.

However, the RPC was not granted equivalent powers to access land to deploy SPS in its service area outside networks covered by Part 8 or Part 8A of the Act.

Amendments through Clause 10, as well as Clauses 44, 45 and 52 below (which amend the *Energy Operators (Powers) Act 1979* and *Electricity Corporations Act 2005*) seek to ensure equivalent powers are granted to The RPC to deploy SPS where appropriate in its service area across the state.

Clause 10 amends section 105 to ensure that the deployment of SPS by the RPC that do not form part of a covered network are able to be regulated by the Access Code or

the electricity system and market rules (which will eventually subsume the matters addressed in the Access Code).

11 Clause 11 amends section 115: Prohibitions on hindering or preventing access

This clause inserts the Electricity System and Market Rules into section 115(1).

12 Clause 12 amends section 119: Purposes and objective of this Part

Clause 12 amends section 119(2) of the Act, by replacing the definition of the Pilbara electricity objective, which is now to meet the State Electricity Objective (SEO) in the Pilbara region.

This amendment represents the primary change to Part 8A by this Bill.

This amendment reflects the inclusion of the SEO in section 3 of the Act, and that the SEO supersedes other objectives in the legislative framework established under the Act.

13 Clause 13 amends section 120A: Minister to establish a Pilbara Networks Access Code

Clause 13 deletes 120A(2) which states that the Pilbara Networks Access Code (PNAC) may be established by amendment to the Electricity Networks Access Code 2004 (the Access Code), or by separate instrument. The PNAC has now been established and this clause removes the redundant provision in the Act.

14 Clause 14 amends section 120B: Pilbara Networks Access Code – covered Pilbara networks

These amendments add references to ‘the Electricity System and Market Rules’ (ESMR) where there are mentions of ‘the Code’, referring to the Electricity Networks Access Code 2004.

15 Clause 15 amends section 120F: Consequential amendments to the Code or electricity system and market rules

These amendments add references to ‘the Electricity System and Market Rules’ where there are mentions of ‘the Code’, referring to the Electricity Networks Access Code 2004.

16 Clause 16 amends section 120K: Regulations to provide for Pilbara networks rules

This clause amends 120K to add a new subsection (c), which relates to the regulation of the powers of the Regional Power Corporation (RPC) to provide Stand-alone Power Systems (SPS). Through this amendment, the regulations may provide for the Pilbara network rules to regulate the provision of SPS by the RPC. The regulations may also provide for this regulation through the Electricity System and Market Rules (in section 105). See Clause 10 for more information.

17 Clause 17 amends section 120W: Independent system operator.

This clause amends the Pilbara Independent System Operator's (ISO) functions, one of which is to maintain and improve system security, to include 'reliability'. This reflects the scope of the regulations, Pilbara Networks Access Code, Pilbara network rules and the powers for the Pilbara ISO to collect information in relation to security and reliability. This amendment is not intended to represent a change in the existing role or functions of the Pilbara ISO in practice.

18 Clause 18 amends section 120ZG: Review of regulation of Pilbara networks

This clause amends section 120ZG to correct language in relation to the new Pilbara electricity objective (which has been amended in clause 12).

The amendment replaces references in this section related to how the Pilbara electricity objective is being *achieved*, to instead refer to how the Pilbara electricity objective is being *met*, consistent with the language used in regards to the State Electricity Objective.

19 Clause 19 amends section 120ZH: Public consultation

The amendment replaces references in this section related to how the Pilbara electricity objective is being *achieved*, to instead refer to how the Pilbara electricity objective is being *met*. (See Clause 10 and Clause 18 above).

20 Clause 20 amends Part 9 Heading: Electricity system and electricity markets

Part 9 of the Act outlines the provisions to enable the regulation of electricity systems and electricity markets. A change to the title of Part 9 is necessary as the expanded scope of what was previously the Wholesale Electricity Market Rules, now the Electricity System and Market Rules, includes some provisions that have state-wide application.

The term markets (plural) is used intentionally here so that it does not preclude the establishment of a market for distribution services in the future.

21 Clause 21 amends section 121: Terms used

Part 9 of the Act outlines the provisions to enable the regulation of electricity systems and electricity markets.

An existing definition of *participant* has been amended and included in this section. Previously, a participant was a term that related only to the *market rules*. The term *participant* now defines someone who is registered in accordance with the Electricity System and Market Rules (ESMR) or has functions conferred on them by the ESMR, or someone who is a *governance participant*.

A new term is introduced into the Act by clause 21, *governance participant* which is a subset of the term *participant* and refers only to participants who have functions imposed on them by the ESMR, or in relation to Part 9 by another written law. This term includes employees of the market operator as it relates to its roles and obligations conferred under the Act or subsidiary legislation, or the ESMR.

The terms *market* and *market rules* have been deleted by clause 21. 'Market rules' will become a redundant term as the ESMR is expanded and captures all relevant matters, and *market* has been deleted as it is no longer referred to in section 122 of the Act (amended by clause 23 below).

22 Clause 22 inserts new Part 9 Division 2 heading: Division 2 – Wholesale electricity market and electricity system and market rules

Clause 22 creates a new Division in the Act to deal with matters of regulation for the Wholesale Electricity Market (WEM), regulations to provide for the Electricity System and Market Rules (ESMR), other matters to be dealt with in regulation such as meeting the State Electricity Objective, system voltage or frequency, and directions to rectify non-compliance.

This new Division inserted into Part 9 deals with matters which relate to the electricity system, the WEM, and the ESMR.

23 Clause 23 amends section 122: Regulations to provide for a wholesale electricity market

Previously, this section provided for regulations to be made for establishing a wholesale electricity market and detailed the objectives of the Wholesale Electricity Market (WEM); however, the reference in this part of the Act simply referred to the term *market*, a term which has been deleted by Clause 22 above and is now necessarily replaced by the new term *wholesale electricity market*.

The intent of this part of the Act is to outline that the regulations provide for the purpose of establishing the WEM in the South West Interconnected System, the objectives of the market (often referred-to as the 'WEM Objectives') have been deleted. This is because the State Electricity Objective (SEO) provides a unifying theme for the Act, and replaces the objectives of subsidiary instruments, including the WEM Objectives.

The SEO is introduced into the Bill by clause 5 and is dealt with by the introduction of a new Section 3A into the Act (which is dealt with in section 5 of this memorandum).

24 Clause 24 amends section 123: Regulations to provide for electricity system and market rules

Clause 24 amends this section of the Act which previously provided for the *market rules* (the 'WEM Rules'). The title has been amended and outlines that the regulations are instead to provide for the Electricity System and Market Rules (ESMR). This section details that the regulations are to provide for there to be rules, and those rules are to be the ESMR.

24.1 Clause 24(1) amends subsection (1) - amendment – regulations to provide for ESMR

This section amends the existing section 123(1) to require regulations to provide for there to be rules (the ESMR).

24.2 Clause 24(2) – inserts new section 123(1A) – what the ESMR may provide for

This section details what may be in the Electricity System and Market Rules (ESMR). The ESMR may provide for:

- (a) Any matter that relates to meeting the State Electricity Objective;
- (b) Matters relating to any electricity systems in the State that are authorised to be provided for in the ESMR;
- (c) Any matter that relates to the Wholesale Electricity Market (WEM);

- (d) Any matter that relates to the operation of the South West Interconnected System;
- (e) Any matter authorised to be provided for under Part 8 (which relates to access), or Part 8A (which relates to Pilbara networks);
- (f) The registration of persons engaged in specific activities when registration is required under the regulations (and prohibit people from engaging in activities specified in the regulations under 124(3) of the Act;
- (g) Technical codes for the purposes of access to services that are to be complied with by network users (and other specified persons); and
- (h) Any other matter under the Act that may be provided for in the ESMR.

This clause establishes the ESMR, and will allow for the incorporation of all matters which have existed under relevant subsidiary instruments to be brought into the new ESMR.

24.3 Clause 24(3) amends subsection 123(2)

Subsection 123(2) previously detailed that the market rules were not subsidiary legislation, and this section has been amended to detail that the Electricity System and Market Rules (ESMR) are subsidiary legislation for the purposes of the *Interpretation Act 1984*, but that section 42 and section 43(6) of that Act, which relates to disallowance, do not apply to the ESMR. This is consistent with the current status of the market rules (WEM Rules), which will be expanded to become the ESMR.

24.4 Clause 24(4) deletes subsection 123(3)

This clause reflects drafting conventions and does not change the status of the Electricity System and Market Rules. See clause 24(3) above.

24.5 Clause 24(5) amends subsection 123(4)

This clause amends section 123(4) to include consequential changes to replace references to the 'market rules' with the *electricity system and market rules* (ESMR). Clause 24(6) inserts subsection 123(5)

Clause 24(6) of the Bill inserts a new section which details that the regulations and Electricity System and Market Rules (ESMR) may apply, adopt, or incorporate material contained in other documents, either when the regulations or rules or their amendment comes into operation, at a specified prior time, or from time to time if necessary.

Due to the transfer of material from various subsidiary documents (some of which have their own subsidiary documents – for example, Wholesale Electricity Market procedures), this amendment will ensure that all necessary and relevant information is captured by the scope of the ESMR.

25 Clause 25 amends section 124: Matters to be dealt with in regulation

Clause 25 amends this section of the Act to ensure regulations may prescribe matters necessary to meet the State Electricity Objective (SEO), establish the Wholesale Electricity Market (WEM) in the South West Interconnected System, and define the matters that may be included in the Electricity System and Market Rules (ESMR).

The regulations are currently empowered to establish the WEM in accordance with the WEM objectives in section 122(2) which have been replaced in the Act by the new SEO.

This clause also amends section 124(2) which ensures references to the 'market rules' instead refer to the new ESMR. This section of the Act is also amended to refer to the new term *governance participant*.

A new subsection (5) is added to section 124 to detail that a provision in the regulations will prevail in situations where there is an inconsistency between the ESMR and the regulations.

26 Clause 26 inserts new Part 9 Divisions 3 to 7

26.1 Insertion of new Division 3 – Reliable supply and electricity systems

26.1.1 New section 124A: Reliable supply and electricity systems

This part of the Act details the requirements and standards to be provided for in the Electricity System and Market Rules (ESMR) for reliability, security, quality, and safety of electricity supply and the safe operation of electricity systems.

Clause 26 inserts a new section 124B into the Act which outlines the matters for which the ESMR may provide.

These matters include:

- The reliability and security of electricity systems, and the quality of electricity supply, and the supply of electricity and the safe operation of electricity systems;
- Requirements and standards for the above;
- The obligations on license holders to comply with the requirements of the standards listed above; and
- Compensation payments to be made to customers by the holder of licenses when the obligations to abide by those requirements and standards listed above are not complied with.

The obligations on licence holders to comply with standards (section 124A(c)) and compensation payments (section 124A(d)) reflect existing obligations under the Act, and the Electricity Industry (Network Quality and Reliability of Supply) Code 2005. This clause reflects the inclusion of matters addressed in the other, existing codes to be consolidated within the ESMR.

26.1.2 New section 124B: System voltage or frequency

Clause 26 inserts a new section 124B into the Act, which permits the regulations to impose (or authorise the Electricity System and Market Rules (ESMR) to impose), duties on network operators in relation to maintaining system voltage or frequency of supply.

The insertion of this section replaces the system voltage and frequency levels in section 25(1)(d) of the *Electricity Act 1945* with equivalent standards prescribed in regulations or the ESMR.

The previous prescription of voltage and frequency levels in primary legislation (particularly the specification of a narrow band with hard, fixed limits i.e. within 6% of the declared voltage level) has resulted in the voltage standard for network operators in Western Australia not keeping pace with industry practice changes in Australia and internationally. For example, other Australian jurisdictions have transitioned to a lower nominal voltage (of 230 volts) with a larger permitted range (+10%/-6%, for 98% of the time), in line with the relevant Australian standards (including AS60038).

The prescription of technical levels or limits within primary legislation is unusual within Australia, and has not resulted in appropriately flexible prescription voltage and frequency levels.

26.1.3 New section 124C: Directions to rectify non-compliance

Compliance with technical and other standards is becoming increasingly important to the safe and secure operation of the power system as uptake of customer distributed energy resources (DER), such as rooftop solar and energy storage, continues.

In addition to posing risks to power system safety, reliability, and security, non-compliance with technical and other standards can also result in increased requirements for Essential System Services in the Wholesale Electricity Market (WEM) and the need to augment network infrastructure. The costs of these activities are ultimately borne by consumers and taxpayers through increased prices and need for subsidies.

The various changes being made to the Act through the Bill will enable technical and other standards to be specified in regulations and the new Electricity System and Market Rules (ESMR). It is envisaged that standards relating to the customer DER and other facilities connected to the distribution network will mainly be contained in the new ESMR.

Historically, the Electricity Networks Corporation's (ENC) Technical Rules and subsidiary documents have been the main instruments specifying technical and other

standards for equipment connected to lower-voltage distribution networks. The ENC's Technical Rules, made under the Electricity Network Access Code 2004, have limited heads of power and are unclear with respect to the network service provider's and other's powers to direct rectification of non-compliance with technical standards.

The new section 124C within the Act addresses this problem by enabling network service providers and other persons to direct persons to rectify non-compliance or take action to rectify non-compliance if persons fail to do so once directed.

It is anticipated that the additional powers provided for under 124C(1) will be used in relation to instances of systemic or specific non-compliance of DER with applicable standards. The new section 124C(2) will provide for regulations that enable directed parties to appeal the directions or actions of parties specified in 124C(1) to the State Administrative Tribunal.

Rules relating to technical and other compliance have not yet been made under the new ESMR and will be developed in consultation with stakeholders. It is therefore uncertain as to how often directions may be given or actions undertaken under the new section 124C(1) and how often persons will appeal these directions or actions to the State Administrative Tribunal. Further consideration regarding resourcing for the State Administrative Tribunal will be given as new rules are made under the ESMR.

The new section 124C(1)(a) enables regulations to be made to confer powers on network service providers, persons performing a network management function, or another person (as specified in regulations) to direct a person who has failed to comply with a requirement under the Act, regulations, or the Electricity System and Market Rules (ESMR), to rectify the non-compliance to ensure safety of electricity supply or electricity system operation.

The new section 124C(1)(b) empowers the regulations to confer on persons identified in 124C(1)(a) the ability to take actions to rectify non-compliance if a direction is not complied with, recover costs associated with those actions, and to bring proceedings to a court for that purpose.

The new 124C(2)(a) empowers regulations made under the Act to enable applications to be made to the State Administrative Tribunal to review any decision to give a direction or to take action as provided for in 124C(1). The new 124(2)(b) empowers regulations to affect a direction or action made under 124C(1) if it has been referred to the State Administrative Tribunal.

26.2 Insertion of new Division 4 – Distribution systems and connected facilities

A new Division 4 is inserted by this clause that deals with much of the content relating to distribution systems and connected facilities.

26.2.1 New section 124D: Terms used

This section introduces and defines terms that are of particular importance to the low-voltage network (the distribution system).

In a future with high penetration of Distributed Energy Resources (DER), such as rooftop solar, it is of increasing importance not only that DER is integrated into the power system in a way that minimises risks to power system security, but that regulation enables DER (including orchestrated DER) to provide services that actively support the power system and be rewarded for doing so.

For the South West Interconnected System, this requires an evolution of the roles of the Electricity Networks Corporation and the market operator in monitoring, planning for, and coordinating DER on the power system. The new ESMR must also be empowered to enable 'DER aggregators' to provide services to networks and the wholesale market. The terms introduced in the new section 124D facilitate this evolution by enabling obligations and roles to be placed on the Electricity Networks Corporation and market operator in their expanded roles.

The coordination of large quantities of diverse customer DER by aggregators will allow small, distribution-connected electricity consumers to participate in the provision of services that benefit the power system and to access additional value from their DER through remote management or more flexible conditions of connection. The terms introduced in the new section 124D enable obligations to be placed on parties responsible for the operation of DER to facilitate this outcome. *Connected facility operator* means a person or persons responsible for owning or operating a connected facility (such as DER); or supplying electricity or electricity services through a connected facility. This definition relates to the definition of *connected facility* and relates to *electricity infrastructure* which is connected to the distribution and manages or controls the flow of electricity to or from the distribution system. Examples of a *connected facility operator* are a customer who owns and operates their own DER or a DER aggregator or energy management services provider who operates DER on behalf of a customer.

- *distribution system*, in this division of the Act only, includes a Stand-alone Power System (SPS), so as to permit the regulations or ESMR to also provide for regulation of, and technical or other standards relating to SPS.
- *distribution system market* is defined and simply refers to a market for the sale, trading or purchase of electricity and electricity services (including Alternative Electricity Services) on a distribution system.
- *distribution system market operator* is also defined by this section and will facilitate the formal participation of DER in the provision of system-wide services in the Wholesale Electricity Market (WEM). This role is seen as an extension of the role of the market operator, as described above.
- *distribution system operator* is defined in relation to a distribution system and means a person or body designated under the Electricity System and Market Rules as the operator of the distribution system, such as the Electricity Networks Corporation. A *distribution system operator* will be required to manage the network within technical

limits, identify when network issues emerge, and act to manage these issues in an efficient manner through the application of standards, monitoring and directions to rectify non-compliance. This role will be empowered to develop visibility of the flow of power across the distribution network in real time, including the impacts of DER. As described above, in the high-DER future, the *distribution system operator* is an extension to the role of a distribution and transmission network service provider.

- *network user* simply references the meaning given to it by section 103, which remains unchanged by the Bill.

26.2.2 New section 124E: Distribution system regulation

This section provides for the regulation of distribution systems or connected facilities, as defined in the new section 124D. It states that the Electricity System and Market Rules (ESMR) can provide for a range of things in relation to the distribution system including stand-alone power systems, embedded networks, and connected facilities.

The ESMR will govern the operation of distribution systems and connected facilities and be able to provide for the standards and technical requirements of connected facilities (standards and technical requirements for the distribution system are already referred to elsewhere in the Act and regulations – in Part 3, where *distribution systems* is defined).

In reference to the terms *distribution system operator*, *connected facility operator*, and *network user* (in relation to a distribution system), the designation of these roles, and their functions and rights are provided for in the ESMR.

The ESMR will also allow for the extent of transparency (i.e. visibility) and capability to manage a connected facility that a distribution system operator and connected facility operator must establish and maintain or impose on another person to be articulated. This amendment is important because without visibility, or the ability to impose limits through standards and remote control, DER may create challenges for power system security and the efficient operation of the wholesale electricity market.

The ESMR may also provide for the creation, governance and operation of a market for distribution network services, if necessary in future. The creation of such a market will depend on the anticipated costs and benefits. The ESMR will be empowered to designate a person or body as the operator of that market.

The ESMR will also place obligations on certain people or bodies in relation to the governance of a distribution system market.

26.2.3 The ESMR to detail the relationships in the distribution system

Section 124E(k) empowers the Electricity System and Market Rules (ESMR) to regulate the various roles and relationships of parties within the lower-voltage distribution system. These relationships are complex and varied, and detail relating to these relationships will be informed by the further policy development and consultation

with stakeholders in relation to the integration of Distributed Energy Resources, and the roles and responsibilities of relevant parties in the distribution system and market.

The ESMR will provide for relationships between *distribution system operators* and *connected facility operators*, between them, and with each other, and with the *distribution market operator*, other participants and network users.

26.2.4 New section 124F: Technical and other standards

This clause of the Bill details the technical and other standards that may be detailed in the Electricity System and Market Rules (ESMR) in relation to distribution systems, including Stand-alone Power Systems (SPS), embedded networks, and the facilities connected to them.

These technical standards dictate standards relating to the supply of electricity or electricity services through the distribution system or connected facility, and the transfer of electricity into and out of the distribution system and connected facility. These technical standards are important in relation to maintaining power security and reliability, especially in a transitioning power system with a high uptake of Distributed Energy Resources (DER). In the absence of compliance with these standards, power system operation will become increasingly challenging and the costs of network augmentation and less efficient market operation that result from non-compliance will be ultimately borne by customers or taxpayers.

In addition to standards for connected facilities such as DER, the new section 124F will allow for the regulation of remote management of DER to prevent threats to power system security and reliability. These standards relate to remote monitoring, data capture, and meter reading, as well as remote disconnection and reconnection, where required, and other remote management deemed necessary to preserve the integrity of the power system.

26.3 Insertion of new Division 5 – Metering and data

This clause inserts sections 124G and 124H, which empower the Electricity System and Market Rules (ESMR) to provide for metering and data matters.

26.3.1 New section 124G: Metering

Previously, metering arrangements have been addressed by the Electricity Industry (Metering) Code 2012 (known as the Metering Code), but the rationalisation of subsidiary instruments and their consolidation into the ESMR necessitates empowerment of the Act to address this content.

26.3.2 New section 124H: Electricity data and electricity data systems

Section 124H introduces electricity data, services and systems to the Act. Through their specific introduction as defined terms and this section, data collection, storage and

transfer, as well as confidentiality, privacy, consumer data rights and cybersecurity matters can be addressed in the ESMR.

- *electricity data* is a term introduced by this part of the Act which means information and documents relating to electricity services, including network services, generation, consumption, suppliers, and consumers.
 - The introduction of this definition and concept in the Act will permit the regulations and ESMR to provide for the regulation of the collection, storage, transfer, confidentiality and protection of all data relevant to the operation of the electricity sector.
 - The application of these regulations may include specification of minimum requirements for customer data that must be maintained by parties, for example, the protection of individuals' data, cyber-security arrangements, or enablement of consumers' data rights.
 - This also provides for the authorisation or sharing of electricity data between network providers.
 - This concept also includes definitions for the terms *electricity data system* which refers to the storage, distribution or processing of electricity data, and *electricity data service* which relates to the operation of the electricity data system.
- *electricity data system* is defined within this part of the Act and refers to a system for the storage, distribution or processing of electricity data.
- *electricity data service* is a service relating to the collection, distribution, storage and processing of electricity data, or relating to the operation of an electricity data system.

26.4 Insertion of new Division 6 – Enforcement

This clause consolidates enforcement provisions relating to contravention of the Electricity System and Market Rules (ESMR), empowering the regulations to provide for enforcement through civil penalties. The enforcement provisions in this division are aligned with the existing provisions in Part 8 of the Act that apply to the Electricity Networks Access Code 2004 (the Access Code). The insertion of this section reflects the transfer of matters currently addressed in the Access Code to the ESMR.

26.4.1 New section 124I: Terms used: contravene

The Act already includes a range of enforcement provisions to ensure compliance. This new section duplicates provisions in the existing Section 114, to ensure the same provisions that apply to the Access Code apply also to the ESMR. *Contravene* is now a term introduced in this division to have the same meaning as in section 114.

26.4.2 New section 124J: Regulations as to enforcement of electricity system and market rules

Section 118 of the Act (which is deleted in the second stage of commencement) details how the regulations may prescribe matters necessary for enforcement of the Access Code.

The insertion of a new section 124J details how the regulations may provide for enforcement of the ESMR.

26.4.3 New section 124K: Criminal proceedings do not lie

This clause inserts 124K to detail that criminal proceedings do not necessarily lie against someone for civil proceedings brought against someone for contraventions of the ESMR. This clause relates to section 117 which previously dealt with criminal proceedings in relation to contraventions of the Access Code.

26.4.4 New Division 7 inserted – Functions of Authority

The new section 124L details the functions of the Authority relating to monitoring, investigating, and enforcing compliance with the ESMR. The Authority undertakes these activities and can carry out other functions conferred on it by the ESMR.

Previously, section 112 detailed the same functions undertaken by the Authority, but in relation to provisions by the Access Code. These references have been changed to the ESMR, as all matters addressed through the Access Code will be incorporated over time within the ESMR.

27 Clause 27 inserts new Part 9 Division 8 heading – Division 8 – Review of Decisions

Clause 27 inserts a new heading into Part 9 which deals with the review of decisions.

28 Clause 28 amends section 125: Reviews

This section, which relates to the ability to make applications to the Electricity Review Board (the Board) for the review of decisions made under the regulations or Electricity System and Market Rules (ESMR) remains unchanged by the Bill, except in relation to the insertion of references to the ESMR. These insertions replace references to the market rules (commonly referred to as the Wholesale Electricity Market Rules).

The term *participant* in this part of the Act has been changed to *governance participant*. The definition of *governance participant* is covered in section 121 and refers only to that subset of participants who have functions imposed on them by the ESMR, or in relation to Part 9 by another written law.

29 Clause 29 inserts new heading in Part 9 Division 9: Division 9 – Immunity

Clause 29 inserts a new heading in this section for this part of the Act which relates to immunity provisions.

30 Clause 30 amends section 126: Immunity of certain persons and bodies

Clause 30 amends section 126, which details the immunities that are provided to certain persons and bodies. *System management participant* has been deleted from the Act in this section, where it was previously defined as a market governance participant which had functions under the regulations or the market rules specified in the regulations (as a system management function).

31 Clause 31 inserts a new Part 9 Division 10 heading – Division 10 – Competition authorisation

Clause 31 inserts a new heading into Part 9 of the Act to deal with competition authorisation.

32 Clause 32 amends section 127: Competition authorisation by regulation

This part of the Act, which details that the regulations may authorise anything in relation to the Electricity System and Market Rules (ESMR) for the purposes of the *Competition and Consumer Act 2010* remains unchanged by the Bill, except to insert a reference to ESMR which replaces the previous reference to market rules.

33 Clause 33 inserts new Part 9 Division 11 heading – Division 11 – Review of wholesale electricity market operation

Clause 33 inserts a new heading into Part 9 of the Act to deal with the review of Wholesale Electricity Market operation.

34 Clause 34 amends section 128: Review of wholesale electricity market operation

Amendments to section 128 of the Act have the effect of transferring responsibility for the triennial review of Wholesale Electricity Market (WEM) operation from the Authority to the Coordinator of Energy (Coordinator).

Most other electricity-related reviews of a technical or policy nature were transferred from the Authority to the Coordinator on 1 July 2021, following a decision by the Government and amendment to the WEM Rules. The triennial review of WEM operation could not be transferred at the same time as other reviews as responsibility for conducting the review is conferred via the Act.

The next review will not be due until three (3) years and six (6) months after the passage of the Bill. Any additional resources required by the Coordinator to conduct the review will be sought as part of a future State Budget process.

Clause 34 of the Bill amends section 128(1) of the Act, allocating the triennial review of the WEM to the Coordinator. The Authority is replaced with the Coordinator throughout Section 128. New sections 128(1)(a) and 128(1)(b) specify the timing of reviews.

Section 128(2) of the Act is amended, stating the purpose of the review with respect to the new State Electricity Objective (SEO).

Sections 128(3) and 128(4) of the Act are amended, specifying the timing for the Coordinator to provide a written report with the outcomes of the review to the Minister for Energy and that the report must contain recommendations for how the SEO can be met, if it is assessed as not having been met.

A new section 129AA(a) is added to the Act, conferring power on the Coordinator to appoint panels to provide advice and assistance in conducting the review and implementing recommendations. A new 129AA(b) within the Act is added to enable the Coordinator to recover costs associated with panels from WEM Participants and network operators.

35 Clause 35 amends section 129: Public consultation

This clause amends the existing section 129 to detail the requirement for the Coordinator to seek public comment on the extent to which the State Electricity Objective (SEO) has been or is being met, pursuant to section 128 (which deals with requirements for the Coordinator to review the operation of the Wholesale Electricity Market (WEM) every three years).

Triennial reviews were transferred from the Authority to the Coordinator pursuant to the clause above and detailed in section 128.

This section details that the Coordinator is required to seek public comment on the extent to which the SEO is being met in relation to triennial reviews of the WEM's operation.

This clause also inserts the term SEO into section 129(1) to detail that the Coordinator must seek public comment on the extent to which the SEO has been or is being met.

This clause also amends section 129(2) to insert the term the Coordinator must ensure that a notice giving a general description of the issue is published in a daily newspaper.

The term "must" replaces the term "is to" throughout section 129 to reflect drafting convention.

36 Clause 36 amends section 129AA: Coordinator may appoint panels

Clause 36 inserts section 129AA which allows the Coordinator to establish expert or specialist panels of a technical, legal financial or other nature to provide advice and assistance in the triennial review function which has been transferred to the Coordinator (in section 128).

A new 129AA(b) allows the Coordinator to recover costs associated with panels from wholesale market participants and network operators.

37 Clause 37 amends section 134: Regulations as to excluding Corporations legislation

This clause replaces 'market rules' with the Electricity System and Market Rules (ESMR) with regard to the stipulation that the regulations may provide for the regulations or the ESMR to declare a matter to be an exempt matter under the *Corporations Act 2001*.

The remainder of this section remains unchanged by the Bill.

38 Clause 38 inserts Part 11 - Transitional provisions for *Electricity Industry Amendment (Distributed Energy Resources) Act 2023*

Transitional provisions are included to provide the necessary flexibility and powers to review, amend, import and repeal the content of subsidiary instruments that will eventually be incorporated within the Electricity System and Market Rules (ESMR).

See Clause 2 above for an explanation of the commencement scheme for this Act.

38.1 New section 135 - Term used: relevant instrument

This clause inserts section 135 to outline which instruments are considered 'relevant instruments' in relation to the transitional provisions. In this part of the Act, powers and provisions to amend the relevant instruments, the content of which will be progressively addressed over time through additions to the ESMR, are provided to ensure that this transition can occur with clarity being provided on which instrument has precedence and to avoid inconsistencies between instruments. Relevant parts of these instruments will be moved across, in line with policy positions in a prioritised and staged manner.

For this part of the Act, the 'relevant instruments' are listed as:

- The Electricity Networks Access Code 2004 ('the Access Code');

- A technical code, or technical rules (such as the Electricity Networks Corporation’s Technical Rules) made under the Access Code or any other instrument made under the Access Code;
- The Electricity Industry (Metering) Code 2012; and
- The Electricity Industry (Network Quality and Reliability of Supply) Code 2005.

38.2 New section 136 - Transitional provisions: general

A new section 136 empowers the regulations to prescribe all matters that are necessary to deal with transitional matters, which is defined by clause 38 in this section.

- *transitional matter* refers to a matter that arises as a result of the amendments made to the Act by this Bill. Due to the rationalising of subsidiary instruments which will bring their content into the ESMR, the Act must enable sufficient flexibility to deal with these matters in a streamlined way. For any matters where there is not sufficient provision to deal with them in the Act, the regulations will be able to prescribe all matters necessary for dealing with it.

Further, if the regulations provide for a particular state of affairs to have existed on a day before the day the regulations are published in the *Government Gazette*, the regulations will still have effect according to their terms.

The regulations can say a ‘state of affairs’ existed on a day after the Bill’s commencement, but prior to the regulations being published. This provision allows flexibility to ensure that transitional matters can be backwards-looking to avoid conflicts relating to the simultaneous changes for transitional matters, which may not practically be able to commence on the same date.

38.3 New section 137 - Transitional provisions: power to make orders

This clause inserts section 137 which authorises the Minister for Energy to determine how matters that are in progress immediately before a specified day should be treated by the regulations or the ESMR. For matters which are in progress at the time the content of subsidiary instruments is moved across and into the ESMR, the Minister for Energy will be able to determine, by an order published in the *Government Gazette* how those matters will be treated. The intent of the new section 137 is the same as for the new section 136, described above.

38.4 New section 138 - Transitional provisions: relevant instruments

Section 138 details how the regulations may provide or authorise the ESMR to provide for the regulation of matters that are of a transitional nature relating specifically to matters that are being transitioned from relevant instruments into the ESMR.

During the period of transition, the regulations or the ESMR (as empowered by the regulations) may provide for the continuation of the operation of a relevant instrument after its revocation. Due to the complexity of moving and amalgamating subsidiary instruments into the ESMR, this provides for the provisions contained in those instruments to continue to operate while that process occurs.

Due to the relatively complex nature of the commencement scheme of the Bill, this provision simply provides that all matters will be sufficiently addressed by an instrument at any moment in time, despite the porting of matters in tranches, led by policy priorities, across from subsidiary instruments to the ESMR.

38.5 New section 139: Powers of Minister: relevant instruments

This new section in the Act details the powers of the Minister for Energy to amend *relevant instruments* (these are the Access Code, the Electricity Networks Corporation's Technical Rules, the Metering Code and the NQRS Code), and the ESMR.

This section allows the Minister for Energy to amend relevant instruments to facilitate the transition of matters into the ESMR, or amend relevant instruments as a consequence of the transition of matters into the ESMR, and to amend the ESMR to provide for that transition.

The Minister for Energy may also amend the Access Code, and those subsidiary instruments in relation to the application of the State Electricity Objective, if it is required.

This section outlines that that requirements detailed under the Act, the regulations, or subsidiary instruments for requirements for public consultation prior to the amendment of relevant instruments (or the ESMR) do not apply for transitional matters.

38.6 New section 140: Electricity system and market rules do not affect existing agreements

Section 140 outlines that the making of the ESMR, and an amendment to the ESMR, do not affect terms and conditions of any agreement or arrangement (such as a contract) already in operation. *Arrangement* is a term already defined within the Act and includes the Electricity Networks Corporation's (ENC) Access Arrangements which define services provided by the ENC and the revenue and policies underpinning their operation and are reviewed by the Authority every five years.

This part of the Act also says that the making of the ESMR should not deliberately provide grounds or allow reasons for not complying with agreements or arrangements that are already in place.

38.7 New section 141: References to market rules and wholesale electricity market objectives

Section 141 is added to ensure that references in any Act or instrument to the 'market rules' under the Act after the first stage of commencement are taken to be references to the ESMR.

38.8 New section 142: Power to make electricity system and market rules for matters that may be provided for in relevant instruments

Section 142 allows for the ESMR to make provision for any matter contained within a *relevant instrument* (see section 38.5 of this Explanatory Memorandum). This provision comes into effect on the first stage of commencement and is empowered up until the second stage of commencement when section 104 of the Act (inserted by clause 61) comes into effect.

This section outlines that if there is an inconsistency between a provision of the ESMR and a provision of a relevant instrument, that the provisions provided for in the ESMR prevail.

38.9 New section 143: References to Code and technical codes under the Code

This section, inserted by clause 38 of the Bill outlines that when the ESMR fully regulates access to services (of network infrastructure), that all references to 'the Code' (referring to the Electricity Networks Access Code 2004) will be taken to be references to the ESMR.

Section 104 (which is replaced by clause 61, removes references to the Access Code, and ensures the provision for regulation of access is included in the ESMR.

38.10 New section 144: References to standards

The new section 144 deals with transitional provisions for standards for the Regional Power Corporation (RPC) and for other service standards prior to the commencement of Part 3 of this Bill.

This transitional provision enables the references in section 39A to RPC standards to include a reference to standards and requirements provided by the ESMR under section 124A during this period of transition while the content of existing codes, such as the Electricity Industry (Network Quality and Reliability of Supply) Code 2005 is reviewed and incorporated into the ESMR.

Likewise, references to section 129D and 129N to service standards are also taken to include references to standards and requirements provided by the ESMR (in 124A) until the commencement of the second stage.

38.11 New section 145: References to Electricity Industry (Metering) Code 2012 made under section 39(2a)

The new section 145 provides that a reference in any Act or instrument that references the Metering Code after the commencement of Part 3 (which abolishes the Metering Code) is taken to be a reference to the ESMR.

38.12 New section 146: References to the Electricity Industry (Network Quality and Reliability of Supply) Code 2005 made under section 39(2a)(a)

The new section 146 provides that a reference in any Act or instrument that references the NQRS Code is taken to be a reference to the ESMR.

39 Amendment to Schedule 1 – License terms and conditions

Clause 39 amends Schedule 1 of the Act by the Bill to include reference to the new Electricity System and Market Rules.

40 Clauses 40-52: consequential amendments

40.1.1 Clauses 40-41 amends Division 2 - *Electricity Act 1945*

Clauses 40 and 41 of the Bill amends section 25 of the *Electricity Act 1945* to remove network voltage and frequency limits. The inclusion of these limits in primary legislation is overly prescriptive, inflexible and no longer meets current Australian and international standards for voltage. The Act will empower the regulations and Electricity System and Market Rules (ESMR) to deal with prescribing voltage or frequency through the addition of section 124B.

40.1.2 Clauses 42-48 amends Division 3 - *Electricity Corporations Act 2005*

Clauses 42-48 of the Bill amend the *Electricity Corporations Act 2005* to enable the provision of Stand-alone Power Systems (SPS) by the Regional Power Corporation (RPC) in the same way that the Electricity Networks Corporation is currently able to. The ESMR will also provide for regulation of SPS. See Clause 10 above for more information on SPS regulation.

These consequential amendments also insert necessary references to the ESMR, and replace references to the 'market rules'.

40.1.3 Clauses 49-50 amend Division 4 – *Electricity Transmission and Distribution Systems (Access) Act 1994*

Clauses 49 and 50 make consequential amendments to the *Electricity Transmission and Distribution Systems (Access) Act 1994* to insert a reference to the ESMR that is in addition to a reference to the Access Code.

40.1.4 Clauses 51-52 amend Division 5 – *Energy Operators (Powers) Act 1979*.

Clauses 51 and 52 of the Bill make consequential changes to the *Energy Operators (Powers) Act 1979* to facilitate the provision of SPS by the RPC. See Clause 10 above for more information on SPS regulation.

Amendment to Part 3 – Stage 2 amendments

This Part amends the *Electricity Industry Act 2004* and Stage 2 of commencement.

The Stage 2 amendments amend the Act to remove references to instruments that will be repealed, for example to ‘the Code’, following the consolidation of the content of subsidiary instruments into the Electricity System and Market Rules (ESMR).

This part of the Act finalises all of the amendments the Bill intends to make.

Commencement is covered in section 2 of this Explanatory Memorandum and are covered in Clause 2 of the Bill.

41 Clause 53 amends the Act

Clause 53 amends the *Electricity Industry Act 2004*. Clause 54 amends section 3 of the Act.

41.1 Clause 54(1) deletes the definition of *Code* from the Act.

Clause 54(1) deletes a reference to ‘the Code’, taken to mean the Access Code from section 104.

Section 104 of the Act relates to the requirement by the Minister for Energy to establish the Access Code for the purpose of access to services in Part 9. This reference to the Access Code (dealt with in this Explanatory Memorandum by section 61) is replaced as in this stage the content of the Access Code will have been completely incorporated into the Electricity System and Market Rules (ESMR) and cease to exist.

41.2 Clause 54(2) amends the definition of *covered network*

The term covered network relates to network infrastructure facilities that the Minister for Energy has decided under the ESMR are to be a covered network.

Coverage decisions are presently made under the Access Code and this amendment reflects the intent to transfer the matters currently addressed by the Access Code to the ESMR.

Clause 54(2) inserts a provision in section 3(1)(ab) which says covered networks ‘that were covered by the Code immediately before the *Distributed Energy Resources Act 2023* came into operation and that have not ceased to be a covered network’. This amendment simply provides a historical reference to the Access Code, as most other references to the Access Code are removed in the second stage of commencement.

This clause also deletes a reference to the Access Code and replaces it with a reference to the ESMR in the definition of ‘quality’ in paragraph (b) and removes a now-redundant paragraph (c).

42 Clause 55 amends section 11: Authority may determine license terms and conditions

This clause amends section 11 to delete the reference to the Access Code in relation to license terms and conditions that may be determined by the Authority. The reference to the Access Code becomes redundant in the second stage of commencement as the contents of the Access Code will have been subsumed into the Electricity System and Market Rules (ESMR).

Clause 6 inserts the necessary reference to the ESMR into section 11 in the first stage of commencement.

43 Clause 56 amends section 39: Authority may issue codes

Clause 56 of the Bill deletes sections 39(2)(a), (d) and (da) of the Act. Section 39 makes provision for the Authority to prepare and issue codes in relation to a range of matters, including reliability and quality of supply requirements for licenced entities. These matters will now be dealt with under the ESMR which addresses matters relating to reliability and quality of supply. Section 124A(f) will require the ESMR to provide for obligations that may be placed on licensed entities.

Clause 56 deletes 39(2)(a)t which states that the Access Code may make provision for metering. Metering, and access to metering data, is now dealt with in section 124G of the Act, inserted by clause 26.

Clause 56 also deletes section 39(2)(da), which makes provision for the Authority to prepare and issue codes in relation to compensation payments that may be made to customers by the Electricity Networks Corporation and the Regional Power Corporation as required if they fail to observe standards outlined in a code made under 39(d) regarding reliability and quality of electricity supply.

This matter will now be dealt with under the new ESMR in section 124A(g) which enables the ESMR to address matters relating to compensation payments for customers if holders of transmission licences, distribution licences, integrated regional licences, or any other persons fail to comply with obligations placed on them under the ESMR via the new section 124A(f).

Clause 56 also includes consequential deletions of sections 39(2c)(a), 39(2c)(c), and 39(2c)(ca) which relate to a definition of code matters that may be addressed by the Minister for Energy if not addressed by the Authority. The deletions remove references to matters that will now be dealt with under the new ESMR.

44 Clause 57 amends section 39A: Review of standards applying to Regional Power Corporation

Clause 57 of the Bill amends section 39A of the Act to update definitions of Regional Power Corporation (RPC) standards and service standards, reflecting that the standards for power system reliability and power quality will in future be contained within the new Electricity System and Market Rules (ESMR).

The changes to the definition of RPC standards removes reference to section 39(2)(d) of the Act, which relates to the Authority's power to make codes relating to standards for the quality and reliability of electricity supply which must be observed by the RPC as a condition of its integrated regional licence.

In place of 39(2)(d), the definition of RPC standards refers to requirements and standards made under the new section 124A(a)(i) to (iii) of the Act made under clause 26 of the Bill. This relates to the requirement that the new ESMR provide for the reliability of electricity systems and the quality of electricity supply made under new sections 124A(a) and (c), respectively, under clause 26 of the Bill.

45 Clause 58 deletes section 102: Purposes of this part

Section 102 of the Act describes the purpose of Part 8 of the Act, which relates to access to network infrastructure services.

Section 102 has been deleted from the Act because matters relating to the regulation of access to network services are now provided for by the Electricity System and Market Rules.

46 Clause 59 amends section 103: Terms used

Amendments to this part of the Act simply relate to a consequential change to insert the ESMR in the term 'access agreement' and delete a redundant reference to the Access Code.

'Access agreement' refers to an agreement under the Electricity System and Market Rules (ESMR) between a network service provider and another person for that person to have access to services.

47 Clause 60 amends heading to Part 8 Division 2: Division 2 – Access to services of network infrastructure facilities

Clause 60 inserts a new Division into the Act to deal with access to services of network infrastructure facilities, which previously established the Access Code.

48 Clause 61 replaces section 104: Electricity system and market rules to regulate access to services of network infrastructure facilities

In order for the content of the Access Code to be moved into the Electricity System and Market Rules (ESMR), clause 61 amends section 104 which now enables the ESMR to regulate access to services of network infrastructure facilities.

49 Clause 62 amends section 104A: Electricity system and market rules to provide for coverage of networks

Section 104A of the Act prescribes the process undertaken by the Minister for Energy to decide whether a network should be considered a covered network and when a network should cease to be a covered network.

This clause amends 104A to allow the Electricity System and Market Rules (ESMR) to provide for the coverage of networks.

50 Clause 63 amends section 104B: Full regulation of access to covered networks

Section 104B empowers the Electricity System and Market Rules (ESMR) to make provisions for the full regulation of access to services of covered networks, which were previously provided for by the Access Code.

This clause amends the title of section 104B to the requirement for the Access Code to provide for full regulation of access to services of covered networks.

This clause also deletes 104B(m) which requires a network service provider to create a technical code (which is known as the ‘Technical Rules’). The content of such a technical code is now provided for in the section 123(1A)(g) which allows that the ESMR may provide for technical codes.

This clause also amends 104B(o) to delete the reference to ‘the Code’ providing for supervisory functions of the Authority in relation to this part and replaces that with the ESMR providing for those functions.

51 Clause 64 amends section 105: Other matters for which the electricity system and market rules may make provision

Clause 64 makes necessary amendments to section 105 in order to refer to the ESMR instead of the Access Code.

This clause deletes 105(1) clauses relating to the ESMR being able to make provision for ‘other functions’ of the arbitrator and functions of the Authority, and amends section 105(1)(b) to ensure the arbitrator can be conferred functions in respect of the arbitration of disputes.

Clause 64(2) amends 105(2) to outline that the ESMR may authorise the Minister for Energy to determine how transitional provisions (for the regulation of matters of a savings, transitional or supplementary nature) may progress immediately before ‘a day specified in the order’ (deleting ‘the commencement of this Part’), and references to the Access Code are also deleted by this clause.

52 Clause 65 amends section 106: Approval of access arrangement does not affect existing agreements

Section 106 provides that the Electricity System and Market Rules (ESMR) (previously the Access Code) do not retrospectively alter agreements (either their terms and conditions or the operation of those agreements) which relate to access to services.

Agreements that were in place prior to the making or an amendment of the ESMR remain unchanged, and only agreements entered into after a day specified by the ESMR for a particular purpose change the terms and conditions, or operation of agreements moving forward.

53 Clause 66 deletes sections 107 to 112

This clause deletes Section 107 – 112 of the Act, which relate specifically to the Access Code that are made redundant by the transfer of Access Code matters to the Electricity System and Market Rules and the repeal of the Access Code given effect in Part 3 of this Bill.

54 Clause 67 deletes section 114: References to contravening the Code

This clause deletes Section 114 of the Act, which relate specifically to the Access Code that are made redundant by the transfer of Access Code matters to the Electricity System and Market Rules and the repeal of the Access Code given effect in Part 3 of this Bill.

55 Clause 68 amends section 115: Prohibitions on hindering or preventing access

This clause amends section 115 to refer to the Electricity System and Market Rules (ESMR) instead of the Access Code.

56 Clause 69 deletes sections 116 – 118

This clause deletes Section 116 – 118 of the Act, which relate specifically to the Access Code that are made redundant by the transfer of Access Code matters to the Electricity System and Market Rules and the repeal of the Access Code given effect in Part 3 of this Bill.

57 Clause 70 amends section 120B: Pilbara Networks Access Code

Clause 70 makes three consequential deletions of references to the Access Code in this part of the Act. In the first stage of commencement, references to the Electricity System and Market Rules (ESMR) were inserted into those same two paragraphs. Now that references to the Access Code are made redundant, only the references to the ESMR remain.

58 Clause 71 amends section 120F: Consequential amendments to the electricity system and market rules

This clause makes a consequential deletion to the Access Code in relation to the title of this section.

59 Clause 72 amends section 129D: Determination of tariff equalisation contributions

This clause amends the definition of *service standards* to refer only to requirements and standards in the Electricity System and Market Rules (ESMR). Previously, this definition refers to codes that were previously empowered by section 39 (which has now been removed).

Service standards as defined by this clause means requirements and standards in the ESMR that relate to the quality, security and reliability of electricity systems as referred to in section 124A.

60 Clause 73 amends section 129F: Payment and passing on of tariff equalisation contributions

This clause amends section 129F to refer to the Electricity System and Market Rules (ESMR) instead of the Access Code.

61 Clause 74 amends section 129N: Determination of temporary access contributions

This clause amends the definition of *service standards* to refer only to requirements and standards in the Electricity System and Market Rules (ESMR). Previously, this definition refers to codes that were previously empowered by section 39 (which has now been removed).

Service standards as defined by this clause means requirements and standards in the ESMR that relate to the quality, security and reliability of electricity systems as referred to in section 124A.

62 Clause 75 amends section 130: Review by the Board

This clause amends section 130 to refer to the Electricity System and Market Rules (ESMR) instead of the Access Code.

63 Clauses 76-78 amend the *Electricity Corporations Act 2005*

Clauses 76-77 make consequential amendments by deleting references to the Access Code in the *Electricity Corporations Act 2005*.

64 Clauses 79-80 amend the *Electricity Transmission and Distribution Systems (Access) Act 1994*

Clauses 78 – 80 make consequential amendments by deleting references to the Access Code in the *Electricity Transmission and Distribution Systems (Access) Act 1994*.

65 Clauses 81-82 amend the *Energy Operators (Powers) Act 1979*

Clauses 81-82 make consequential amendments by deleting references to the Access Code in the *Energy Operators (Powers) Act 1979* in relation to the definition of *generating works*.

66 Clause 83 repeals subsidiary legislation made under the *Electricity Industry Act 2004*

Clause 83 repeals the:

- Electricity Industry (Metering) Code 2012;
- Electricity Industry (Network Quality and Reliability of Supply) Code 2005; and
- Access Code in force under section 104 as in force immediately before the *Electricity Industry Amendment (Distributed Energy Resource) Act 2023* section 61 comes into operation (the establishment of the Electricity System and Market Rules);

which will have been subsumed into the Electricity System and Market Rules.