

ENERGY LEGISLATION AMENDMENT AND REPEAL BILL 2016

EXPLANATORY MEMORANDUM

Overview

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

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

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

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

The Bill is a consequential amendments bill that supports the objectives of the other two bills in the legislative package. Accordingly, this explanatory memorandum should be read with the explanatory memoranda for the National Electricity (Western Australia) Bill 2016 and National Gas Access (WA) Amendment Bill 2016.

The Bill provides for the following five principal matters.

- Consequential amendments to existing local legislation necessary to facilitate the operation of the National Electricity Law and National Gas Law in Western Australia.
- Establishment of temporary arrangements for the regulation of Western Power's network from 1 July 2017 to 30 June 2018.
- Provision of contractual immunity to Western Power in respect of any liability that may arise under some of its connection agreements with existing generators that provide for access to guaranteed levels of network capacity (such connection agreements being inconsistent with the operation of the national regulatory framework).
- Abolition of the Western Australia Energy Disputes Arbitrator and Electricity Review Board.
- Implementation of a new contracting model to regulate the relationship between Western Power as the distribution network service provider, electricity retailers, and customers in the South West Interconnected System.

These matters are required to be addressed for Western Australia to adopt the national regulatory frameworks under the National Electricity Law and National Gas Law.

Consequential amendments to existing legislation to facilitate the adoption of the national electricity and gas frameworks

Western Australia's adoption of the National Electricity Regime involves replacing a substantial part of the existing local regulatory framework for electricity networks under the *Electricity Industry Act 2004* with the National Electricity Law, in so far as it applies to the Western Power network.¹ Other relevant local instruments must also be amended or repealed to the extent they are inconsistent with or superseded by the National Electricity Law.

The most important consequential type amendments are as follows.

- Part 8 of the *Electricity Industry Act 2004*, which deals with access to electricity networks and establishes the *Electricity Networks Access Code 2004*, will cease to apply to Western Power's network from 1 July 2018 since Western Power will be subject to regulatory oversight by the AER under the national regulatory framework
- From 1 July 2018, the Economic Regulation Authority will no longer be the regulator for Western Power.
- Technical standards applicable to Western Power's network will continue to be set by Western Australian bodies, but will be contained in the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* rather than Western Power's Access Arrangement.

It is intended that the operation of important Western Australian Government policy initiatives such as the Uniform Tariff Policy, Tariff Equalisation Contribution and State Underground Power Program remain unaffected by the shift to the national framework. Consequently, the Energy Legislation Amendment and Repeal Bill 2016 makes minor amendments to the existing legislation in relation to some of these policies so that Western Power can continue to give effect to them when operating under the national regulatory framework.

The Bill also includes legislative amendments to facilitate the operation of the National Gas Access (WA) Amendment Bill 2016. These amendments are also of a consequential nature and are necessary to provide for the effective transfer of the ERA's functions to the AER.

Establishing "gap year" regulatory arrangements for Western Power

Under the existing local regulatory framework, access to Western Power's electricity network is governed by an Access Arrangement approved by the ERA in accordance with the requirements of Part 8 of the *Electricity Industry Act 2004* and the *Electricity Network Access Code 2004*. Western Power is currently operating under its Third Access Arrangement that sets out approved prices, services, policies, terms and conditions for access to its network for the period 1 July 2012 to 30 June 2017.

The earliest that Western Power's next regulatory period under the national framework can commence is 1 July 2018. As Western Power's Third Access Arrangement expires on 30 June 2017, there will be a regulatory 'gap year' period from 1 July 2017 to 30 June 2018 when the Third Access Arrangement will have fallen away but regulation of Western Power's electricity network under the national framework will not yet have commenced.

¹ A map of the Western Power network is contained at Appendix 1.

The Bill provides for the making of regulations and instruments under the *Electricity Industry Act 2004* to prescribe the terms and conditions of access to the Western Power's network during this gap year period.

Western Power's Third Access Arrangement will continue during the gap year, with some modifications. The Minister for Energy, rather than the ERA, will be the decision-maker on certain regulatory matters that are required for the gap year.

Immunity for Western Power to offer network capacity in accordance with the national framework

The current local framework has allowed some existing generators to secure fixed capacity in the network in their connection agreements with Western Power, even if these generators do not use that capacity all the time.

These contractual arrangements create a barrier for lower cost generators, including renewable generation, to gain access to the network. New entrant generators are often required by Western Power to either pay for expensive and potentially unnecessary network capacity expansion, or to settle for being constrained from generating electricity from time to time and ensure generators with contractually fixed capacity rights get priority.

Adoption of the national regulatory framework through the National Electricity Law will ensure there are no barriers for lower cost generators to gain access to Western Power's network. From 1 July 2018, Western Power will have obligations under the national regulatory framework to provide access to all existing and new entrant generators on the basis of generators having to compete to generate electricity based on the available level of overall network capacity.

Consequently, an immunity has been included in the Bill to ensure Western Power is not bound (through its contractual commitments to incumbents) to maintain fixed capacity for any generator on its network from the commencement of the national regulatory framework.

Abolition of the Western Australian Energy Disputes Arbitrator and Electricity Review Board

Energy dispute resolution functions will be transferred from existing specialist energy bodies to alternative bodies. For electricity network services and gas pipeline services, dispute resolution will occur in accordance with the National Electricity Law and National Gas Law regulatory framework that refers disputes to national bodies set up under each respective framework.

All other existing review functions that these State-based specialist energy bodies currently perform will be retained, but transferred to the State Administrative Tribunal, while arbitration will be referred to an arbitration tribunal under the *Commercial Arbitration Act 2012*.

The Bill repeals the *Energy Arbitration and Review Act 1998* and makes consequential amendments to other legislation that refers to the Western Australian Energy Disputes Arbitrator or Electricity Review Board.

Implementation of a new contracting model for Western Power, electricity retailers and customers

The Bill contains heads of power to implement new contractual arrangements between electricity retailers, Western Power and electricity customers that are connected to Western Power's distribution network ('network customers').

The network regulatory framework established under the National Electricity Law is founded on a different set of relationships between the customer, distribution network service providers and retailers than currently applies in Western Australia. Implementation of the new contracting model will support the adoption of the national framework for regulating access to Western Power's distribution network in the South West Interconnected System.

Network customers will notice little difference because the changes proposed will only affect the formal legal structures without substantially modifying the day-to-day practices of retailers and Western Power. Under the new arrangements, electricity customers will have a direct contractual relationship with Western Power for the provision of network services from the electricity distribution network, whereas currently these services are supplied to network customers via their retailers.

Electricity retailers will continue to be liable to pay Western Power for the network charges incurred by a network customer. Other than for new connections, most contracts will be deemed to exist by default. The retailer will remain the primary point of contact and will continue to arrange billing and manage most service requests from electricity customers.

The new contractual arrangements are required to come into effect at the same time as the national framework for regulation of Western Power's network under the National Electricity Law commences on 1 July 2018.

Clause Notes

ENERGY LEGISLATION AMENDMENT AND REPEAL BILL 2016

PART 1 – PRELIMINARY

Clause 1 Short title

This clause formally titles the Bill.

Clause 2 Commencement

This clause sets out when the various parts of the Bill come into operation (with a number of provisions intended to commence on various specified dates).

The commencement dates for each Part of the Bill are as follows:

- **Part 1 – Royal Assent (anticipated to be November 2016)**

The commencement provisions to give effect to the timing set out in this clause 2 are required to come into effect immediately.

- **Part 2, Division 1, Part 3 Division 1 Subdivision 1 and Part 4 Division 1 and Division 2 Subdivision 1 – on the day after Royal Assent**

Part 2, Division 1

Part 2 Division 1 sets out a number of amendments to the EI Act that provide for establishment and implementation of the transitional regulatory regime which will apply to Western Power during the period 1 July 2017 to 30 June 2018 (the “**gap year**”).

This regime is effectively an extension of AA3 and is implemented under a combination of regulations and instruments issued by the Minister, all of which are required to be made as soon as possible after Royal Assent. This is to enable Western Power, the ERA and the Minister sufficient time to develop the pricing, revenue caps and the other related economic regulatory components which will apply during the gap year.

As noted in Part A to the Explanatory Memorandum, during the period from Royal Assent to 1 July 2018, the AER will be undertaking its first regulatory determination in respect of the Western Power transmission and distribution networks to apply from 1 July 2018. Given the transition from a WA-based regime to the national framework, the AER requires significant input from Western Power, the Minister and the ERA on a variety of the economic regulatory components of those determinations, arising from the application of the WA access regime to Western Power during the period prior to 1

July 2018. All of the preparatory work to calculate these components, and the provision of this information to the AER, by Western Power, the Minister and the ERA must occur during the 18 months immediately following Royal Assent.

Accordingly, the provisions of the EI Act which provide for the making of those regulations and instruments must commence on the day after Royal Assent.

Part 2, Division 1 of the Bill also provides for the creation of Part 3A of the Electricity Industry Act 2004. Part 3A establishes a new contracting framework between distribution network service providers who are subject to regulation under the National Electricity Law, retail customers connected to their distribution system, and the retailers of those customers.

The new contracting framework is intended to take full effect on 1 July 2018. However, before the framework can come into operation, various subsidiary instruments (for example, regulations) will need to be made under Part 3A. Accordingly, the Bill provides for Part 3A to commence on the day after Royal Assent of the Bill, to allow subsidiary instruments to be made prior to 1 July 2018.

Part 3, Division 1, Subdivision 1

The amendments in Part 3, Division 1, Subdivision 1 of the Bill provide transitional arrangements under the *Energy Arbitration and Review Act 1998* to facilitate the abolition of the Arbitrator and the Review Board.

The abolition of the Arbitrator and Review Board is intended to take effect on 1 July 2017. However, before and after abolition day, administrative tasks must be undertaken. Accordingly, the Bill provides for Part 3, Division 1, Subdivision 1 to commence on the day after Royal Assent of the Bill to allow those administrative tasks to be undertaken and to provide guidance on the manner in which they are to be undertaken.

Further, to minimise the likelihood of an unresolved proceeding and to ensure there are review provisions for matters arising in the six-months before abolition day, the Bill provides for transitional arrangements that apply only during the period from Royal Assent until 1 January 2018.

Part 4 Division 1 and Division 2 Subdivision 1

The amendment in Part 4 Division 1 confirms that the ERA has the functions conferred on it under the EI Act. These functions largely relate to the obligations conferred on the ERA under the transitional regime, in particular, to determine and provide certain information to the AER, to assist the AER in undertaking the first Western Power regulatory determination under the National Electricity (WA) Law.

The amendment in Part 4 Division 2 Subdivision 1 confirms that Western Power has the functions conferred on it under the WA

national electricity legislation. This is required to ensure that Western Power is subject to those provisions of the National Electricity Regime which apply to the first regulatory determination process.

Given these obligations apply in respect of the period from Royal Assent to 1 July 2018, this amendment is required to commence on the day after Royal Assent.

- **Part 3 Division 1 Subdivision 2 and Divisions 2 to 10 – 1 July 2017**

Part 3 Division 1 Subdivision 2 amends the *Energy Arbitration and Review Act 1998* to abolish the Arbitrator and Review Board. This amendment deletes all provisions under the Act apart from the Governor's power to make regulations for the purpose of giving effect to the Act.

Divisions 2 to 11 make consequential amendments to other pieces of legislation to remove references to the Arbitrator and Review Board. Where necessary, the amendments replace the Review Board with the State Administrative Tribunal as the review body for certain regulatory decisions under State-based legislation.

The amendments also update references to the *Gas Pipeline Access (Western Australia) Act 1998*, which is no longer operational. The references are replaced with references to the *National Gas Access (Western Australia) Act 2009*.

- **Part 3 Division 1 Subdivision 3 – 1 January 2018**

Part 3 Division 1 Subdivision 3 repeals the *Energy Arbitration and Review Act 1998* in its entirety. By this time, all administrative tasks associated with the abolition of the Arbitration and Review Board will be completed and any transitional provisions relating to unheard or unresolved proceedings will be spent.

- **Rest of the Act (being Part 2 Division 2, Part 4 Division 2 Subdivision 2 and Part 4 Division 3 and 4 and Part 5) – 1 July 2018**

Part 2 Division 2

On and from 1 July 2018, the National Electricity (WA) Law will apply to the regulation of connection and access and economic regulation of the Western Power network. Accordingly, from this date, parts of the WA regulatory regime (largely Part 8 of the EI Act and the WA Access Code) will cease to apply to the Western Power networks in the SWIS.

Under Part 2 Division 2 of this Bill, Part 8 of the EI Act will be repealed insofar as it relates to Western Power and the SWIS.

Certain amendments to other aspects of the WA electricity industry regulatory regime (such as the licensing regime in Part 2 and the tariff

equalisation scheme under Part 9A, in each case, of the EI Act) are also required to reflect the repeal of Part 8 (insofar as it relates to the SWIS) and the commencement of the National Electricity (WA) Law.

Under Part 2 of the Bill, a new Part 8A is inserted into the EI Act, which deals with the basis on which existing users may access the Western Power network, on and from the commencement of the National Electricity (WA) Law and the introduction of the constrained access model discussed in Part A. Western Power's existing contracts are proposed to be made subject to a new clause dealing with network access, which is inserted into those arrangements pursuant to Part 8A. These provisions are not required to commence until the commencement of the National Electricity (WA) Law on 1 July 2018.

Part 4 Division 2 Subdivision 1 and Divisions 3 and 4

As with amendments to the EI Act under Part 2 Division 2, this Part deals with consequential amendments to other Western Australian electricity industry acts, which reflect the repeal of Part 8 (insofar as it relates to the SWIS) and the commencement of the National Electricity (WA) Law. These consequential amendments are not required to commence until the commencement of the National Electricity (WA) Law on 1 July 2018.

Part 5

Part 5 of the Bill provides for a number of consequential amendments to existing Acts that are required as a result of the National Gas Access (WA) Amendment Bill 2016. The provisions of the National Gas Access (WA) Bill 2016 that necessitate these consequential amendments commence on 1 July 2018, and accordingly Part 5 of the Bill also commences on 1 July 2018.

PART 2 – ELECTRICITY INDUSTRY ACT 2004 AMENDED

Division 1 – Amendments commencing on the day after Royal Assent

Clause 3 Act amended

This clause provides that the amendments in this Division are to the *Electricity Industry Act 2004*.

The amendments set out in Part 2 Division 1 are the first tranche of consequential amendments to the EI Act which are required to commence the transition of regulation of the Western Power network from the WA Access Code, to the National Electricity (WA) Law. These amendments relate to functions and matters which must occur during the period before the National Electricity (WA) Law commences.

Clause 4 Long title amended

This clause amends the long title of the EI Act so as to reflect that the EI Act will not solely govern the electricity industry in Western Australia. That is, the National Electricity (WA) Law will also comprise part of the regulation of the electricity industry in Western Australia.

Clause 5 Section 3 amended

This clause inserts new definitions for “local electricity system”, “National Electricity (WA) Rules”, “network supply service”, “retailer”, “specified” and “WA national electricity legislation”.

The definition of “local electricity system” is set out in the National Electricity (WA) Law, and is effectively the SWIS (being the only system proposed to be subject to the National Electricity (WA) Law). However, the National Electricity (WA) Law provides for the flexibility for other systems to be prescribed as ‘local electricity systems’ (and thereby, subject to the National Electricity (WA) Law), in the future.

The term “WA national electricity legislation” captures multiple instruments, which include the *National Electricity (Western Australia) Act 2016*, the National Electricity (WA) Law, the National Electricity (WA) Regulations, the National Electricity (WA) Rules (**Rules**) and any instruments made under them.

A definition of ‘specified’ has been inserted to deal with a number of new provisions which contemplate matters being set out in subsidiary instruments. This definition clarifies that a reference to a matter being ‘specified’ in respect of a particular instrument, will be under that instrument itself. References to ‘prescribed’ in section 132 of the EI Act have been replaced with ‘specified’ in light of the inclusion of this definition.

A definition of ‘National Electricity (WA) Rules’ has been included, given the use of this term in a number of new provisions, including the definition of WA national electricity legislation. Definitions of ‘National Electricity (WA) Law’ and ‘National Electricity (WA) Regulations’ are not required because clauses 6(b) and 7(b) of the National Electricity (Western Australia) Bill 2016 provide for the citation of those terms.

Clause 6 Section 30 amended

This clause updates section 30 by removing outdated references to the *Trade Practices Act 1974* and the Competition Code, and substituting them with references to the *Competition and Consumer Act 2010* and the Competition Code of Western Australia.

Clause 7 Section 39 amended

From 1 July 2018, Part 8 of the EI Act will no longer apply to Western Power. Consequently, a number of instruments made under this Part (the WA Access Code, the Technical Rules made thereunder and AA3) will also cease to apply. However, a number of the technical and service standards and network planning obligations under these instruments are required to

continue to apply to the Western Power network under the National Electricity (WA) Law.

It is intended that the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* (made under section 39 of the EI Act) (**NQRS Code**) will be amended to capture the relevant technical and reliability service standards, as well as network planning criteria from the WA Access Code, the Technical Rules and AA3.

For clarity, this clause lists these additional matters which may be dealt with under a section 39 code. It is proposed that, following commencement of the Bill, the NQRS Code will be amended so that the standards and criteria referred to above can be incorporated into this instrument.

Although the amendments to the NQRS Code are not intended to take effect until 1 July 2018 (when the WA Access Code, the Technical Rules and AA3 cease to apply to Western Power), the amended NQRS Code needs to be published as soon as possible following Royal Assent. This is because the obligations and standards imposed on Western Power under this Code need to be finalised and published in order for the AER to take these obligations into account, as part of the Western Power regulatory determination (in particular, as part of its assessment of Western Power's forecast capital and operating expenditure).

Clause 8 Section 48 amended

This clause deletes section 48(4). Section 48 contains powers to make regulations dealing with requirements for retail supply contracts, including service standards and their terms and conditions generally. In so doing, section 48(4) enabled those regulations to incorporate the incorporate any provision of a code or a standard contained in another document, with or without modifications – as that provision of the code or standard may exist at the time regulations are made or as in force from 'time to time'.

This regulation making power has been consolidated into a more general regulation making power set out in a new section 131(5). See clause 16 below.

Clause 9 Part 3A inserted – Network supply services: distributor-customer and distributor-retailer relationship

This clause inserts a new Part 3A into the Electricity Industry Act 2004. Part 3A establishes a new contracting framework between distribution network service providers who are subject to regulation under the National Electricity Law, retail customers connected to their distribution system, and the retailers of those customers.

In Western Australia, relationships between distribution network service providers, retailers and customers are presently configured in a manner that does not support the adoption of the National Electricity Rules as intended. Part 3A modifies the local contracting model to ensure that it operates effectively with the national regulatory framework.

The new contracting model is intended to take full effect on 1 July 2018. However, most of the provisions in Part 3A are heads of power to make

regulations, rather than substantive obligations. As such, Part 3A will commence on the day after Royal Assent of the bill, to allow regulations to be made under Part 3A and to confer functions for approval of other instruments (such as model contract terms) prior to 1 July 2018. The one substantive obligation in Part 3A (in section 59B) is expressed to not have effect until 1 July 2018.

Part 3A provides for the establishment of a direct contractual relationship between retail customers and a distributor who is subject to regulation (and thus is required to be Registered) under the National Electricity Law (a “Part 3A distributor”). Affected retail customers will be those who are connected to the distribution system in relation to which the distributor is required to be a Registered participant (“Part 3A distribution system”). On 1 July 2018, Western Power’s distribution system will be the only distribution system to which the modified contracting model will apply. There is scope for Part 3A to apply to other distributors in the South West Interconnected System in the future, but only if the system of economic regulation in the National Electricity Law and Rules is extended to those distributors.

Part 3A also provides for a regulated relationship between a Part 3A distributor and a retailer with customers connected to a Part 3A distribution system (a “Part 3A retailer”). Under this regulated relationship, Part 3A distributors and Part 3A retailers will have obligations to coordinate their customer service, share information, manage billing and assign financial risks.

Part 3A will operate closely with Chapter 5A of the National Electricity Rules. Chapter 5A provides for connection of retail customers to the distribution system (both new connections and connection alterations). Once a connection is established or altered, Part 3A will cover services provided to retail customers associated with ongoing use of the distribution network (“network supply services”). The definition of “network supply service” therefore excludes “establishing” a connection. The term “establishing” was used to align the language of Part 3A with Chapter 5A (cf. definition of “new connection” under that Chapter). It is intended that “establishing” a connection includes installing a connection as well as initial energisation of the connection – all of which will be activities governed under Chapter 5A.

Section 59A

This section defines the following terms which are used in Part 3A:

- “direct billing arrangement”
- “electricity laws”
- “National Electricity Retail Law”
- “network supply service”
- “network supply service charges”
- “Part 3A distribution system”
- “Part 3A distributor”
- “Part 3A retailer”
- “Registered participant”
- “retail customer”
- “shared customer”

Subsection (2) provides that the terms “customer connection service”, “de-energisation” and “re-energisation” used in Part 3A have the same meaning as words used in the National Energy Retail Law.

Subsection (3) clarifies what is meant by a distribution licence that relates to the South West Interconnected System for the purposes of the definition of “Part 3A distributor”, through reference to a distribution system that ‘is or will be connected to the South West Interconnected System or that forms or will form part of that system’. The language used in this clarification mirrors amendments being made by this bill clause 22 to section 11(5)(b) of the Electricity Industry Act.

Section 59B

This section obliges a Part 3A distributor to provide network supply services to retail customers on the distributor’s Part 3A distribution system when requested. This obligation is subject to local and national laws that regulate the supply of electricity. As such, this obligation is subject to provisions in those laws that permit a distributor to interrupt supply (e.g. for emergencies or for safety reasons).

Subsection (2) clarifies that these services are to be provided under either a standard contract or a negotiated contract. Section 59C contains the power to make regulations to provide for these contracts, including how contracts are to be formed and that there may be different standard contracts for different classes of customer.

Subsection (3) requires the distributor to offer the relevant standard contract to a customer, except in circumstances specified in the regulations, or to classes of customer specified in the regulations.

Subsection (4) provides that a Part 3A distributor must comply with subsections (1), (2) and (3) as a condition of its distribution licence.

Subsection (5) provides that this section has no effect until 1 July 2018, which is when the new contracting model is to take effect.

Section 59C

This section provides the head of power to make regulations regarding the relationship between Part 3A distributors and retail customers in relation to the provision of network supply services. Regulations under this head of power will cover matters including the classification of customers, standards of service in the provision of network supply services, and the provision of information by distributors. Perhaps most importantly, these regulations will also provide for standard contracts for network supply services.

Standard contracts will be available to customers in most situations. There may be different standard contracts for different classes of customer and customers may be taken to have entered into a standard contract. It is intended that under the new arrangements, a typical customer will not need to separately arrange the supply of network supply services with the distributor. Rather, in most cases the relevant standard contract will be deemed into existence at the time the customer’s retail supply commences in accordance with regulations to be made under this section. The regulations

will also provide a framework for customers to negotiate a contract with the distributor, in those instances where this is required or may be requested by the customer.

Subsection (2) specifies matters that the regulations may provide for (without limiting the general head of power to make regulations).

Subsection (3) further expands on the head of power to make regulations to provide for network supply service contracts. It clarifies that regulations under that head of power may provide for:

- minimum terms and conditions of contracts
- the determination of the terms and conditions of standard contracts and approval and amendment of those terms and conditions
- the determination of which standard contract applies to which class of retail customer
- the formation of contracts, including the circumstances in which the standard contract is deemed into place
- the negotiating framework for negotiated (i.e. non-standard) contracts, including when parties must use the framework and circumstances when parties are taken to be negotiating under the framework
- circumstances in which some rights and obligations provided for under a standard contract continue after termination of a contract.

Section 59D

This section provides the head of power to make regulations regarding the relationship between Part 3A distributors and Part 3A retailers in respect of shared customers of the distributor and retailer. Currently, distributors provide network supply services to retailers under contract. With the move to the modified contracting framework, these services will be provided by distributors directly to retail customers, displacing the existing contractual relationship between distributors and retailers. Regulations under this section will set out a regulated relationship between Part 3A distributors and Part 3A retailers for matters such as coordination, information provision and the management of financial risks.

Unless a customer and its distributor agree to a direct billing arrangement, the customer's retailer will continue to bill the customer, for both sale of electricity from the retailer and network supply services provided by the distributor. Retaining retailer responsibility for billing avoids the need for the distributor to duplicate the billing, payment and credit risk management capabilities that retailers already maintain. Customers would ultimately bear the costs of the resulting inefficiency. Further, the design and operation of billing systems is part of the core business of retailers and can be a point of competitive advantage for retailers.

The regulations therefore provide for the distributor to bill the retailer for network supply service charges. These charges relate to the provision of network supply services to the retailer's customers, and may also include some connection costs incurred under Chapter 5A and subsequently collected via the customer's retailer.

Subsection (2) specifies matters that the regulations may provide for (without limiting the general head of power to make regulations).

Subsection (3) clarifies that a service standard payment means a compensation payment for failure to observe certain standards, as described in sections 39(2)(da), 59C(2)(e) or 79(2)(cb) of the Electricity Industry Act.

Subsection (4) provides a head of power for the Minister to make a code dealing with certain matters. These include billing arrangements for network supply service charges and the provision of credit support by retailers. It is anticipated that the code will provide for retailers to provide distributors with credit support to manage the risk of a retailer default on network supply service charges owed to the distributor.

The code may also provide for matters under the heads of power in subsections (1) and (2), to the extent that the regulations specify that the code may provide for those matters.

Subsection (5) provides that the code is subsidiary legislation for the purposes of the Interpretation Act 1984.

Subsection (6) clarifies that the Electricity Industry Act and other written laws prevail over the code to the extent of any inconsistency.

Section 59E

This section clarifies that regulations made under this Part 3A prevail over the Code of Conduct for the Supply of Electricity to Small Use Customers to the extent of any inconsistency. The Code of Conduct for the Supply of Electricity to Small Use Customers is provided for under Part 6 of the Electricity Industry Act.

Clause 10 Section 79 amended

This clause amends the scope of the Code of Conduct for the Supply of Electricity to Small Use Customers to reflect the new contracting model to be implemented under Part 3A. The amendment clarifies that the Code covers the standards of service provided by distributors to customers, given that there will be a direct relationship between Part 3A distributors and retail customers after 1 July 2018.

Clause 11 Section 81 amended

Section 81(6) is a transitional provision that allowed the Minister to determine the initial membership, constitution and procedures of the committee that advises the Authority on matters relating to the code of conduct for supply of electricity to small use customers under Part 6 of the Act.

Section 81(6) is a spent provision, having no further effect. Its abolition is a corollary of the repeal of Schedule 3 (transitional provisions) and is in keeping with principles of sound legal policy. See clause 19 below.

Clause 12 Section 92 amended

Section 92(6) is a transitional provision that allowed the Minister (as if he were the Authority) to approve the initial electricity ombudsman scheme under sections 92 and 93 and set the initial monetary limit on claims covered by the scheme in accordance with clause (j) of Schedule 2.

Section 92(6) is a spent provision, having no further effect. Its abolition is a corollary of the repeal of Schedule 3 (transitional provisions) and is in keeping with principles of sound legal policy. See clause 19 below.

Clause 13 Section 103 amended

This clause updates the definition of “access” in section 103 to remove the outdated reference to the *Trade Practices Act 1974* and substitute it with a reference to the *Competition and Consumer Act 2010*.

Clause 14 Section 127 amended

This clause updates section 30 by removing outdated references to the *Trade Practices Act 1974* and the Competition Code, and substituting them with references to the *Competition and Consumer Act 2010* and the Competition Code of Western Australia.

Clause 15 Section 131B and 131C inserted

Section 131B

This clause inserts a new section 131B that confers a power on the Minister to delegate any function of the Minister under the EI Act by way of written instrument.

Under the new Part 11 (see clause 18 below), it is contemplated that the Minister may undertake a number of functions during the gap year and assist in the provision of information to the AER for the first Western Power regulatory determination process. The intent of section 131B is to allow the Minister to delegate these functions, if required.

Section 131C

This clause provides a power for the Economic Regulator Authority to exercise functions in regard to electricity system security and reliability, and electricity network reliability. For example, to make determinations in regard to power system security and reliability standards and settings, and in regard to jurisdictional standards for network power quality and reliability.

The clause also enables the Economic Regulator Authority to establish an advisory committee and provides a general power for regulations to give the Economic Regulator Authority security and reliability functions with respect to the local electricity system. The regulations may also set-out the requirements on the advisory committee and provide for the review of the Economic Regulator Authority's decisions by the State Administrative Tribunal.

Clause 16 Section 131 amended

Section 131(2)

There is significant potential for overlap and interaction between the National Electricity (WA) Law and a number of concepts and regimes established and implemented under the EI Act, including the wholesale electricity market (and wholesale electricity market rules), the tariff equalisation contribution scheme and network quality and reliability standards, as well as network security and reliability requirements.

In order to integrate the state-based and national regimes, this clause inserts a new subsection in the EI Act that provides that regulations may be made that provide for the relationship between the EI Act (including instruments made under the EI Act) and the WA national electricity legislation. Such regulations may be required to ensure that the EI Act and the National Electricity (WA) Law operate and interact appropriately, particularly on technical and operational power system matters.

A similar provision is provided in the National Electricity (Western Australia) Bill 2016. The intent of replicating the power in the EI Act and the National Electricity (Western Australia) Bill 2016 is to enable regulations to be made under either Act (to affect only the instruments made under the relevant enabling Act), depending on the subject matter of the relevant regulation and the instrument that the regulation is intended to affect.

Section 131(3) and (4)

Western Power currently contributes funding to the State Underground Power Program (**SUPP**). The transition to the National Electricity Regime has a number of implications for Western Power's ability to recover the costs it incurs which are associated with the SUPP (or any other capital expenditure programme that may be imposed on Western Power by government in the future).

Under the National Electricity Rules, Western Power's revenue proposal for its distribution system (and revenue proposal for its transmission system) must include forecast capital and operating expenditure which it considers necessary in order to meet the capital expenditure objectives set out in the National Electricity Rules.

Relevantly, the capital expenditure objectives include the requirement to:

- comply with all applicable 'regulatory obligations or requirements' associated with the provision of standard control services (or, in the case of a transmission system, prescribed transmission services), and
- maintain the quality, reliability and security of supply of standard control services and the distribution system.

The phrase 'regulatory obligations or requirements' is defined in the National Electricity Law itself, and importantly, is an obligation or requirement under an Act (or any instrument made or issued under an Act).

The SUPP is currently not set out in any legislative instrument (and so is not an applicable 'regulatory obligation or requirement' for the purposes of the National Electricity (WA) Law).

Further, it is possible that the SUPP would not satisfy requirement of expenditure for '*maintenance*' purposes under the National Electricity Rules, because the primary effect of the SUPP is to 'improve', rather than 'maintain' reliability and security. Accordingly, the funding contributed by Western Power under the SUPP may not be recoverable under the National Electricity Rules.

To avoid this outcome, it is proposed that regulations may be made which specify the SUPP as programme in which Western Power must participate and further, provide that compliance with the SUPP is a condition of Western Power's transmission and / or distribution licence.

Section 131(5)

This clause also includes a provision that contemplates regulations may apply, adopt or incorporate a legislative instrument or other published document (such as guidelines or Australian Standards) relating to the purposes of the EI Act. A text may be adopted in full or in part, and can be adopted in the form it exists in at a particular time, or as amended from time to time. This section effectively relocates the regulation making power under section 48(4) of the EI Act (proposed to be repealed by this Bill), to the general regulation making powers under section 131 of the EI Act.

In addition to the original purpose of the section 48(4) power, whose focus is on requirements for retail supply contracts, section 131(5) is intended to allow for the RCP1 transition ministerial instrument (see comments on clause 18 below) to refer to, or incorporate, provisions of the WA Access Code and AA3. The power in section 48(4) is effectively made redundant by this section and has therefore been repealed (see clause 8 above).

Clause 17 Section 132 amended

In certain circumstances, the WA Access Code applies 'postage stamp' charging restrictions on Western Power. This effectively requires that the tariff applying to a particular user (in respect of a particular exit point on the Western Power network) must not differ from the tariff applying to any other user of the same class because of a difference in the geographic location of each users' respective exit point.

On and from 1 July 2018, the WA Access Code will cease to apply to Western Power. However it is intended that these 'postage stamp' restrictions will continue to apply and so these provisions need to be imposed on Western Power pursuant to a new State-based regulatory instrument.

Accordingly, this clause inserts a new regulation making power in section 132(2)(b) that allows for regulations to provide that fees and charges of customers of a specified class, that are connected to a specified distribution system must not differ on the basis of the location of the customer's premises.

Clause 18 Part 11 inserted

A principal outcome of adopting the National Electricity Regime in WA is transferring responsibility for the economic regulation of the Western Power network from the ERA under the WA Access Code to the AER. However, as summarised in Part A of the Explanatory Memorandum, for timing reasons, it is not practicable to transition directly from Western Power's current regulatory determination under the WA Access Code (that is, AA3) to a full AER regulatory determination under the National Electricity Law.

Subdivision 1 of the new Part 11 establishes the transitional regime which will apply from Royal Assent. It provides for the following two elements of the transition process:

- **Gap Year** - during the gap year period from 1 July 2017 to 30 June 2018, the revenue and prices of Western Power will be regulated under an amended form of the WA Access Code and AA3.
- **RCP1 Transition** – during the period from Royal Assent to 1 July 2019, Western Power, the ERA and the Minister will be required to perform a number of functions to assist the AER to undertake the first regulatory determination under the National Electricity (WA) Law in respect of Western Power (including an adjustment (if any) to that determination after 1 July 2018, to reflect certain costs which may be incurred by Western Power during the gap year). These functions largely relate to the collection and assessment of information and data from Western Power, to provide certain information to the AER in order to establish the Western Power regulatory asset base under the National Electricity Rules.

Part 11 also sets out transitional provisions for the new Part 3A.

The specific provisions of Part 11 are summarised below, using the section numbers 135 to 146.

Section 135

Section 135 defines certain terms which are required for Subdivision 1, including existing instruments (such as the WA Access Code and AA3) and new instruments which are to be made under Subdivision 1. These new instruments are the gap year instrument, RCP1 transition instrument and secondary determinations, each of which are summarised in the following comments.

Section 136

The first element of the transition process involves establishing the regulatory regime to apply during the gap year. This regime comprises:

- an extension of (and some amendments to) the terms of AA3, and
- amendments to the WA Access Code to facilitate the AA3 extension.

Section 136 provides for a gap year instrument to be made by the Minister (in accordance with Subdivision 1 and regulations) which modifies the Code. Those modifications must only apply to the Western Power network.

The modifications implemented under the gap year instrument are anticipated to amend the Code to include a new Chapter which authorises (or requires) the Minister to make one or more instruments (each being a *secondary determination*) which:

- amend AA3 by extending its application from 30 June 2017 to 30 June 2018 (which is confirmed by section 136(4)(b))
- set out price lists for the provision of references services by Western Power during the gap year
- determine the maximum allowed revenue (and related revenue components) that apply for the gap year to the Western Power transmission system and distribution system.

The gap year instrument will amend the Code to reflect the above matters being determined by way of a secondary determination (rather than in accordance with the usual Code process).

In light of the transition to the National Electricity (WA) Law, it is necessary to excuse Western Power from its existing obligations under the WA Access Code and AA3 to submit a revised access arrangement (ie AA4) by 31 December 2016. This is effected under section 136(4)(a).

The gap year arrangements are only intended to apply up to the commencement of the National Electricity (WA) Law, and therefore section 136(5) expressly provides for the expiry of the gap year instrument (and each secondary determination).

In order to implement the precise amendments required to establish the transitional regime (and in a timely manner), the provisions of the EI Act which apply to Code amendments cannot apply to the gap year instrument and any secondary determinations. This exclusion is effected under section 136(6).

Section 137

Section 137 confirms that, if a gap year instrument or a secondary determination has been made, then the Code or AA3 apply as modified pursuant to the instruments (and references in other written laws to the Code or AA3 are to be the Code or AA3, as modified).

Section 138

The second element of the transition process involves requiring Western Power, the ERA and the Minister to collect information, undertake certain determinations and provide information to the AER, to assist the AER in making the first regulatory determination in respect of Western Power under the National Electricity Regime.

The AER will be provided with information including:

- amounts that would have ordinarily been added to or subtracted from Western Power's target revenue in the access arrangement period after AA3 (that is, if the National Electricity (WA) Law had not commenced) arising from certain specified events and mechanisms occurring during AA3 (including technical rule changes and various incentive mechanisms)
- the new facilities investment incurred or proposed to be incurred by Western Power in the period 1 July 2012 to 30 June 2018, and
- the reclassification of substation assets between the transmission and distribution asset bases.

In addition, Western Power will be required to provide information to the ERA on its service standard performance during the gap year, which will be published by the ERA.

It is intended that the RCP1 transition instrument establishes the processes which must be followed in order to determine this information, including assistance to be provided by Western Power and timeframes within which each step of each process must be completed. The timeframes will be critical to ensuring the AER has sufficient time to review and incorporate that information and data into the draft and final Western Power regulatory determinations under the National Electricity Regime.

To further manage this timing risk, section 138(3) provides that the Minister may step in and perform any obligation of the ERA, to the extent the ERA fails to comply with the timeframes imposed on it under the RCP1 transition instrument.

The RCP1 transition instrument is not required beyond the end of Western Power's first regulatory year (under the National Electricity Rules). However, for the first regulatory year, there will be some matters that may not be known until after the gap year ends or may not have been addressed in the Western Power regulatory determination and so the RCP1 transition instrument provides for that information to be provided to the AER to enable it to take that information into account in the second regulatory year (and the remainder of RCP1) under the AER's regulatory determination. Accordingly, section 138(4) provides that the RCP1 transition instrument expires on 1 July 2019.

Section 139

Consistent with the status of the WA Access Code, section 139(1) provides that the transitional instruments made under Part 11 are subsidiary legislation for the purposes of the *Interpretation Act*.

However, whilst it is intended that the gap year instrument and RCP1 transition instrument will be published in the *Gazette*, section 139(2) allows for the secondary determinations to simply be published (rather than gazetted). This is largely because the secondary determinations are supporting instruments, which specify certain matters for the purposes of the

gap year and RCP1 transition instruments, rather than being standalone 'primary' instruments.

To ensure that the transitional regime is implemented as intended (and to allow for the instruments to specify obligations in detail), section 139(3) provides that any of the transitional instruments (including modifications to the Code or AA3 made thereunder) may confer functions on the Minister, the ERA, Western Power or any other person.

Section 139(4) confirms that the Minister is permitted to delegate any power or duty of the Minister under a transitional instrument. This is consistent with the insertion of section 131B.

As noted in Part A of the Explanatory Memorandum:

- during the period from Royal Assent to 1 July 2017, the Minister will establish the regulatory regime to apply to Western Power for the gap year, and
- the AER will be undertaking a truncated regulatory determination process during the gap year period, with information and assistance to be provided by the Minister, the ERA and Western Power.

In light of the limited timeframes for these determinations and other acts (and to minimise regulatory uncertainty and potential complexity), section 139(5) expressly provides that decisions made under any transitional instrument are not reviewable by the Energy Review Board or the State Administrative Tribunal. Given the Minister's involvement in both of these processes, the review role of the Energy Review Board and the State Administrative Tribunal is not required.

Section 140

It is proposed that regulations will be made under Part 11, which set out the parameters to apply to the making of the gap year instrument (and any secondary determinations) and the RCP1 instrument.

In particular, the regulations may provide:

- for when the Minister may (or must) make a transitional instrument
- for the matters which must be dealt with under a transitional instrument
- for when the Minister may (or must) amend or repeal a transitional instrument, and
- that it is a condition of Western Power's transmission and / or distribution licence that it comply with a transitional instrument (or a modification to the Code or AA3 that is set out in a transitional instrument).

Subdivision 2 of the new Part 11 creates transitional provisions related to the insertion of Part 3A into the Electricity Act 2004. Part 3A provides for a direct

contractual relationship between a Part 3A distributor and retail customers for the provision of network supply services. The transitional provisions provide for standard contracts to be deemed into existence between the distributor and existing retail customers on 1 July 2018.

The new contracts between Part 3A distributors and retail customers will provide for network supply services. These services are currently provided from distributors to retailers under existing contracts.

The transitional provisions provide that existing distributor-retailer contracts no longer provide for network supply services on and after 1 July 2018, as these services will be directly provided by a Part 3A distributor to the customer. Consequential amendments to contracts between retailers and their customers may also be required to reflect the new contracting framework.

Section 141

This section defines the following terms which are used in this subdivision:

- “commencement day” – means 1 July 2018
- “retail contract”

Subsection (2) provides that terms used in this subdivision have the same meaning as in Part 3A.

Section 142

This section provides for standard contracts to be deemed between Western Power and retail customers connected to Western Power’s distribution system on 1 July 2018.

Subsection (2) provides that standard contracts are not deemed into existence where Western Power and the party have instead negotiated a contract for network supply services to take effect on 1 July 2018.

Subsection (3) provides that the terms and conditions for deemed standard contracts will be the terms and conditions for the standard contract applicable to the retail customer according to regulations under section 59C. Regulations under section 59C will allow for different standard contracts for different classes of retail customer.

Subsection (4) clarifies that this section does not prevent contracts for a network supply service being amended or terminated.

Section 143

This section provides for modification of contracts between a Part 3A distributor and a Part 3A retailer. From 1 July 2018 network supply services will be provided directly from a Part 3A distributor to a retail customer under contract. To reflect this fact, this section provides that, on and from 1 July 2018, a contract between a Part 3A distributor and a Part 3A retailer does not have effect to the extent to which it provides for the provision of network supply service from that date.

Subsection (2) clarifies that, from 1 July 2018, the distributor will not be liable to the retailer for the provision of network supply services under the contract and that a retailer does not breach the contract for a failure in relation to the provision of those services.

Subsection (3) clarifies that these modifications override the terms of the contract.

Section 144

This section provides for Western Power to be taken to be a Part 3A distributor, and for Western Power's distribution system to be taken to be a Part 3A distribution system, prior to 1 July 2018. This is a transitional provision which will allow for preparation for Part 3A to occur prior to 1 July 2018. For example, it will allow the preparation of Western Power's standard contracts (in accordance with regulations to be made under section 59C) prior to 1 July 2018 so that there are standard contracts to be deemed into place between Western Power and retail customers on its distribution network on 1 July 2018 in accordance with this subdivision.

Section 145

This section provides for transitional regulations arising from the enactment of Part 3A or the transitional provisions within this subdivision. It permits regulations to modify contracts between Part 3A distributors and Part 3A retailers, and contracts between retailers and their customers, to reflect or give effect to the purposes of Part 3A and this subdivision.

Subsection (2) provides for regulations to allow the Minister to modify such contracts.

Section 146

As noted in Part A to the Explanatory Memorandum, the AER typically requires 32 months to undertake the regulatory determination process (but, in the case of Western Power's first determination, will complete this process in 18 months). However, the AER cannot commence that process until the relevant functions are conferred on it by the National Electricity (Western Australia) Bill 2016.

Accordingly, it is proposed that the transition to the National Electricity Regime occur in two stages. Upon relevant parts of the National Electricity (Western Australia) Bill 2016 being proclaimed, certain parts of the new regime will come into effect immediately to allow the AER to commence the regulatory determination process. The remaining parts of the National Electricity Law and National Electricity Rules, as modified to apply in Western Australia, will then commence on 1 July 2018, together with the AER's first regulatory determination for Western Power.

As a result, the complete National Electricity (WA) Law (and the WA Regulations and WA Rules) will not be in force until 1 July 2018, although references to those instruments (in a holistic sense) are required under the Bill prior to that date. This regulation provides for that effect.

Clause 19 Schedule 3 deleted

This clause repeals Schedule 3, which set out historical transitional provisions in relation to the initial customer service code of conduct (and related consultative committee) and initial ombudsman scheme.

Division 2 – Amendments commencing on 1 July 2018

Clause 20 Act amended

This clause provides that the amendments in this Division are to the *Electricity Industry Act 2004*.

The amendments set out in Part 2 Division 2 are the second tranche of consequential amendments to the EI Act which are required to commence upon the full introduction of the National Electricity (WA) Law on 1 July 2018. These amendments relate to functions and matters which relate to the period after the National Electricity (WA) Law commences.

Clause 21 Section 3 amended

This clause amends the definitions of “distribution system” and “transmission system” to include electricity lines, to refer to the conveyance of electricity and be subject to a regulation making power.

The inclusion of electricity lines among the things that are capable of forming part of a distribution or transmission system is to ensure consistency with the definitions of these concepts in the National Electricity (WA) Law. The reference to the concept of conveyance of electricity, rather than the transport of electricity, is designed to ensure consistency of terminology throughout the EI Act (and also consistency with the National Electricity (WA) Law).

The regulation making power is to provide flexibility for certain equipment or assets to be deemed to be part of a distribution system (or a transmission system), where those items would not otherwise satisfy the relevant definition.

This power will be used (in the first instance) in relation to two 33kV electric lines owned by Western Power, which have historically been treated by Western Power as forming part the transmission system (despite being below the 66kV threshold). It is intended that, under the National Electricity (WA) Law, these lines will continue to comprise part of the Western Power transmission system.

Clause 22 Section 11 amended

Section 11(4) currently provides that the ERA cannot attach conditions to a licence which are inconsistent with certain instruments, including the WA Access Code.

From 1 July 2018, the WA will replace the WA Access Code insofar as it applies to SWIS, and so this clause inserts a new subsection which:

- provides that terms and conditions of a licence cannot be inconsistent with the WA national electricity legislation for licences relating a “local electricity system” (ie a licence relating to a system to which the National Electricity (WA) Law applies), and
- amends the existing subsection (4) to clarify that the terms and conditions for all other kinds of licences must not be inconsistent with the WA Access Code.

This clause also includes a new subsection which clarifies when a licence will relate to a local electricity system.

Clause 23 Section 31 amended

Section 31 allows licensees to interrupt, suspend or restrict the supply of electricity in certain circumstances and limits the licensees’ liability in relation to such interruptions, suspensions or restrictions.

This section is expressed to be in addition to, and not derogate from, any powers given under specified instruments, certain sections of the *Energy Operators (Power) Act 1979* and contractual rights.

This clause amends this section so as to include a reference to ‘duties’ that a licensee has under specified instruments (ie in addition to powers), and to include a reference a licensee’s powers and duties under the WA national electricity legislation as not being limited by this section.

Clause 24 Section 39A amended

Section 39A requires the ERA to review and report to the Minister on certain standards applicable to Horizon Power (called “RPC standards”). When carrying out this review, the ERA must currently consider if the RPC standards are appropriate, when assessed against the “service standards” that apply to the SWIS (which are the service standards provided for in an access arrangement).

From 1 July 2018, the “service standards” for the SWIS will no longer be set out in an access arrangement, but rather will be imposed under the amended NQRS Code.

Accordingly, this clause deletes the definition of “access arrangement” and amends the definition of “service standards” in subsection 39A(1) to refer to the standards as set out in the NQRS Code.

Subsection (3) is an historical provision that requires that the first review be carried out after the first access arrangement in respect of the SWIS is approved. This clause also inserts a note that clarifies for subsection (3) that the first access arrangement was approved on 27 April 2007 and took effect from 1 July 2007.

Clause 25 Section 59B amended

This clause deletes section 59B(5) as of 1 July 2018. Section 59B(5) provides that section 59B has no effect until 1 July 2018. As of 1 July 2018, subsection (5) becomes redundant and thus is deleted by this clause.

Clause 26 Section 60 amended

Part 4 of the EI Act requires certain corporations (including Western Power) to develop and comply with an extension and expansion policy. However, the National Electricity (WA) Law is intended to govern connection and access to the Western Power network.

Accordingly, this clause amends the definition of “corporation” in section 60 so that Part 4 no longer applies to Western Power, and therefore only applies to Horizon Power (and its subsidiaries).

Clause 27 Section 90 amended

This clause amends the definition of “customer contract” so as to include network supply service contracts pursuant to Part 3A of the EI Act and connection contracts formed under Chapter 5A of the Rules.

The effect of this amendment is to allow for the electricity ombudsman to investigate and deal with disputes between customers and network service providers.

Clause 28 Section 102A inserted

Part 8 of the EI Act deals with access to services provided by network infrastructure facilities. It establishes a structure for the implementation of access regimes relating to network infrastructure facilities in Western Australia and gives the Minister the power to establish the WA Access Code. However, under the National Electricity (Western Australia) Bill 2016, the National Electricity (WA) Law will (from 1 July 2018) replace this regulatory regime insofar as it applies to the SWIS.

Accordingly, this clause inserts a new section that provides that Part 8 of the EI Act does not apply to a “local electricity system” (being, in the first instance, the SWIS and any other system made subject to the National Electricity (WA) Law in the future).

This Part cannot be repealed in its entirety, because there are other electricity networks in Western Australia which will not be subject to the National Electricity Regime (and so Part 8 may be required in the future to regulate those networks).

Clause 29 Section 103 amended

So as to ensure consistency of terminology throughout the EI Act, this clause amends the definition of “network infrastructure facilities” to refer to the concept of conveying electricity, rather than transporting electricity. See comments under clause 21 of this Explanatory Memorandum.

Clause 30 Part 8A inserted

This clause inserts a new Part 8A into the EI Act. The new Part 8A comprises sections 120A to 120C.

There are generally two types of network access available to generators seeking connection to the network. Connection can either be on an 'unconstrained' basis where the generator has firm access at all times up to its maximum operating capacity, or on a 'constrained' basis where the generator has 'non-firm' access and can be constrained in its ability to dispatch, including if the network is congested (ie have its right or ability to transfer electricity into the network restricted).

Many generators in the SWIS have (or are perceived to have) firm access as they are connected on an unconstrained basis.

In contrast, under the National Electricity Regime, generation access to a network is on a 'constrained' basis. Under this model, generation is dispatched based on a merit order of bids, subject to various constraints that may impose limitations on generation output, including network constraints.

As part of the Electricity Market Reform, the Western Power network will transition from an 'unconstrained' access model to a 'constrained' access model, for consistency with the national framework. However, the introduction of the National Electricity Regime in WA may not of itself be enough to implement constrained access on the SWIS. This is because:

- constrained access under the National Electricity Rules is implemented through the operation of a number of the chapters of the Rules, not all of which are being implemented in WA, and
- a number of existing access contracts contain terms that contemplate the provision of unconstrained access to users (or are perceived to do so), or which are otherwise inconsistent with a constrained access model.

Part 8A amends the existing Western Power access agreements, to reflect the introduction of constrained access. The specific provisions of Part 8A are summarised below, using the section numbers 120A to 120C.

120A

Section 120A defines certain terms which are required for Part 8A. Relevantly, these definitions capture:

- access agreements between Western Power and another person, under which that person has rights to transfer electricity into the Western Power network, and
- subsidiary agreements between Western Power and another person, which relate to an access agreement and deal with terms of connection to the network of terms on which electricity may be transferred under the access agreement.

The inclusion of 'subsidiary agreements' is to cover arrangements which deal with the terms of connection to the Western Power network, but which are not part of the access agreement itself. These contracts may be with the same party to the related access agreement or a different party (but in respect of the same connection point under the related access agreement).

These subsidiary agreements generally address specific technical matters and may, in the context of terms of “transfer of electricity”, also deal with circumstances in which the user’s right to transfer may be interrupted or limited (ie rights of curtailment), which are in addition to, or amend, any such rights that Western Power may have under the related access agreements.

Section 120A also defines the ‘Western Power network’ by reference to the network in respect of which Western Power is required to be registered as a network service provider under the National Electricity (WA) Law. This ensures that the scope of ‘network’ for the purposes of regulation under the National Electricity (WA) Law and to which Part 8A relates are consistent.

120B

Section 120B provides for the introduction of constrained access on 1 July 2018 by modifying existing access agreements and subsidiary agreements with Western Power at that time to include a new clause which confers an immunity on Western Power for any loss arising as a result of a customer being unable to transfer electricity into the Western Power network due to any limitation in relation to the capacity of network at the time.

Although this clause modifies access agreements and subsidiary agreements to insert the immunity, it is not intended that the clause will rely on any definitions set out in those agreements (particularly given the number of qualifying agreements, and the variety of approaches adopted in relation to defined terms). The interpretation provisions in each agreement are similarly not intended to apply to this inserted clause, for the same reason. The clause therefore refers to definitions in the EI Act and certain provisions of the *Interpretation Act* to deal with these matters.

Examples of the circumstances in which such limitations may arise are set out in section 120B, covering limitations arising under normal operating conditions or states or caused by other persons connecting to, or transferring electricity into, the network. These examples are not intended to be exhaustive or restrict the types of limitations which could fall within this clause.

In particular, the limitations may not be physical limitations in the network itself, but rather could arise as a result of the operation of constraint equations forming part of the dispatch model applied by the system manager of the SWIS or the Australian Energy Market Operator (under the WA wholesale electricity market rules). These models and the safe and secure operation of the SWIS rely on forecasts and pre-determined limits of the assets comprising the broader network. To the extent limitations on access arise due to anticipated constraints in accordance with the WA national electricity legislation and the WA wholesale electricity market rules, it is intended that this clause will still apply to excuse Western Power from liability.

Similarly, although this clause refers to other persons ‘connecting’ or ‘transferring’ in accordance with the WA national electricity legislation, the market rules and their respective access agreements, this example is not intended to limit the application of this clause to other persons acting in those circumstances (or in compliance with those instruments).

The immunity conferred on Western Power is intended to apply despite any other terms and conditions of an access agreement or subsidiary agreement (including terms or conditions which are imposed under a written law).

120C

Under section 120B, the immunity conferred on Western Power is achieved via modification to specified agreements. The intent of section 120C is to ensure that, beyond those particular agreements, the effect of Part 8A does not give right to any right or remedy or event of default under any other agreement.

Clause 31 Section 129B amended

Part 9A of the EI Act establishes the tariff equalisation contribution scheme, which relies on provisions of the WA Access Code that:

- require users of network services to make payments to Western Power (in respect of tariff equalisation contributions payable by Western Power),
- specify the basis on which those payments are determined and when those amounts are due.

The term 'user' is defined by reference to network users under section 103 (under Part 8) or the *Electricity Transmission and Distribution Systems (Access) Act*. From 1 July 2018, those regimes will only apply historically to Western Power (and not to any new connections after that date), and so it is proposed that the concept of 'user' be amended to simply be a person who is liable to pay network service charges to Western Power.

Clause 32 Section 129F amended

On and from 1 July 2018, the WA Access Code will cease to apply to Western Power. However it is intended that the tariff equalisation scheme will continue to apply and so the WA Access Code provisions referred to above need to be specified in an alternative instrument.

Accordingly, this clause amends section 129F to remove the reference to the WA Access Code and insert a new subsection that allows regulations to be made which specify, for the purposes of the tariff equalisation contribution, the amounts payable by users, the manner in which payment is collected and which users need not make payments.

The intention is to enable the operation of the scheme to be continued under the new legislative arrangements.

Clause 33 Schedule 1 amended

So as to ensure consistency of terminology throughout the EI Act, this clause amends schedule 1 to refer to the concept of conveying electricity, rather than transporting electricity. See comments under clause 21 of this Explanatory Memorandum.

PART 3 – REPEAL OF *ENERGY ARBITRATION AND REVIEW ACT 1998* AND ASSOCIATED AMENDMENTS

Division 1 – *Energy Arbitration and Review Act 1998* amended and repealed

Subdivision 1 – Amendments commencing on the day after Royal Assent

Clause 34 Act amended

This clause provides that the Bill amends the *Energy Arbitration and Review Act 1998*.

Clause 35 Part 2 inserted

This clause inserts a new Part 2 into the *Energy Arbitration and Review Act 1998* that provides for transitional arrangements from the date of Royal Assent until the repeal of the Act on 1 January 2018. The provisions of new Part 2 are discussed below.

Part 2 – Transitional provisions for abolition of the review board and arbitrator

Division 1 – Preliminary

Section 6

This clause defines the following terms, which are used in the transitional provisions to ensure that on abolition day, there is still a mechanism to bill for and recover any outstanding charges from industry for the functions performed by the Arbitrator or the Review Board.

- “abolition day”
- “arbitrator”
- “arbitrator account”
- “assets”
- “Board”
- “final quarter”
- “funding regulations”
- “liabilities”
- “quarter”
- “standing charge”
- “Treasurer’s advance”

Division 2 – Financial provisions

Section 7

This clause provides for the closure of the Arbitrator’s account on the day before abolition day and ensures that at abolition day any asset, rights or liabilities of the Arbitrator are assigned to the State.

All money standing to the credit of the Arbitrator's account will be applied to a repayment of any outstanding Treasurer's Advance and, if there is any amount remaining, credited to the Consolidated Account.

Section 8

This clause provides for billing for and recovery of standing charges for the final quarter (1 April to 30 June 2017), as prescribed in the relevant funding regulations for the Arbitration and the Review Board that were in place immediately before abolition day. It also provides for the recovery of any outstanding charges for a quarter prior to the final quarter.

All amounts payable are due within 30 days of abolition day. If unpaid, the outstanding charges may be recovered in a court of competent jurisdiction as a debt due to the State.

Amounts recovered pursuant to this provision will be applied to a repayment of any outstanding Treasurer's Advance and, if there is any amount remaining, credited to the Consolidated Account.

Section 9

This clause provides that the Minister for Energy must appoint a person in writing for the purposes of billing for and recovery of any unpaid standing charges pursuant to section 8.

The appointed person must report to the Minister for Energy on or before 31 December 2017 on the bills issued and amounts recovered.

Division 3 – Applications and proceedings

Section 10

This clause terminates all unresolved arbitrations before the Arbitrator at 30 June 2017.

However, this clause reserves the right of parties whose arbitration proceedings are terminated to recommence their hearings in accordance with the governing law in force after abolition day.

All costs and expenses associated with terminated proceedings will be paid by the Western Australian Government.

Section 11

This clause terminates all unresolved matters before the Review Board at 30 June 2017.

However, this clause reserves the right of parties whose review proceedings are terminated to reapply in accordance with the governing law in force after abolition day within 28 days of the Review Board being abolished. The clause also clarifies that the 28 days applies despite any time limit that would otherwise apply under another written law, such as the *State Administrative Tribunal Act 2004*.

All costs and expenses associated with terminated proceedings will be paid by the Western Australian Government.

Section 12

This clause provides that a party who decides not make an application to seek review before the Review Board during the transitional period of 1 January 2017 to 30 June 2017 will retain the right to make an application for the matter to be heard by the State Administrative Tribunal within 28 days of abolition day.

This clause is intended to minimise the likelihood of there being an unresolved matter before the Review Board on 30 June 2017, and ensure parties continue to have a right of review.

Section 13

This clause cancels all applications to the Review Board to enforce a civil penalty order or issue a contravention order at 30 June 2017. However, this clause reserves the right of the applicant to re-make an application in accordance with the governing law in force following abolition day.

For example, if a party had applied to the Review Board for an order for a contravention of the market rules, after abolition day the party will reapply to State Administrative Tribunal.

Where a party had applied to the Review Board seeking an enforcement order for a civil penalty for a contravention of a civil penalty provision, the party may reapply for the enforcement order in a court of competent jurisdiction.

All costs and expenses associated with terminated proceedings will be paid by the Western Australian Government.

Section 14

This clause reserves the right of an applicant to seek enforcement of a civil penalty order in a court of competent jurisdiction until after abolition day for a notice demanding payment of a civil penalty issued during the transitional period of 1 January 2017 to 30 June 2017.

This provision applies if the applicant does not make an application to the Review Board during the transitional period.

This clause is intended to minimise the likelihood of there being an unresolved matter before the Review Board on 30 June 2017, and ensure parties continue to have a right of review.

Division 4 – Transitional regulations

Section 15

This clause inserts a head of power for regulations to provide for transitional matters relating to the repeal of the Act. The clause specifies particular items about which regulations could be made including the termination of proceedings and the payment or recovery of any costs relating to proceedings before the Review Board or Arbitrator that were resolved or discharged before abolition day.

Subdivision 2 – Amendments commencing on 1 July 2017

Clause 36 Act amended

This clause provides that the Bill amends the *Energy Arbitration and Review Act 1998*.

Clause 37 Part 6 heading replaced

This clause replaces the heading to Part 6 and inserts: Part 6 – Regulations.

Clause 38 Part 6 Division 2 to 3 Deleted

This clause repeals Divisions 2 and 3. The repealed Divisions provided for the roles, functions and responsibilities of the Review Board and the Arbitrator. With this repeal, Part 6 will include only the Governor's power to make regulations for the purposes of giving effect to the Act.

Clause 39 Part 6 Division 4 heading deleted

This clause deletes the heading to Part 6 Division 4, which will be replaced with the heading contemplated in clause 37 of this Bill: Part 6 – Regulations.

Subdivision 3 - *Energy Arbitration and Review Act 1998* repealed

Clause 40 *Energy Arbitration and Review Act 1998* repealed

This clause repeals the *Energy Arbitration and Review Act 1998* in its entirety at 1 January 2018.

Division 2 – *Constitution Acts Amendment Act 1899* amended

Clause 41 Act Amended

This clause provides that the Bill amends the *Constitution Amendment Act 1899*.

Clause 42 Schedule V Part 1 Division 1 amended

This clause deletes reference to the Arbitrator as a judicial, tribunal and similar office for the purposes of Schedule V of the *Constitution Acts Amendment Act 1899*.

Division 3 – *Electricity Corporations Act 2005* amended

Clause 43 Act amended

This clause provides that the Bill amends the *Electricity Corporations Act 2005*.

Clause 44 Section 39 amended

This clause amends the *Electricity Corporations Act 2005* to specify that regulations made under section 38(1) of that Act may confer jurisdiction on the State Administrative Tribunal. Section 38(1) of the *Electricity Corporations Act 2005* provides for the making of regulations relating to the wholesale acquisition or supply of electricity by Synergy.

Under the new regulation making power, regulations could, for example, confer jurisdiction on the State Administrative Tribunal to review a decision by the ERA to impose a civil penalty on Synergy pursuant to the *Electricity Corporations (Electricity Generation and Retail Corporation) Regulations 2015*.

Division 4 – *Electricity Industry Act 2004* amended

Clause 45 Act amended

This clause provides that the Bill amends the *Electricity Industry Act 2004*.

Clause 46 Section 3 amended

This clause deletes reference to the Arbitrator and the Board in the list of definitions.

Clause 47 Section 104 amended

This clause deletes the reference to the Arbitrator and replaces it with a reference to a person arbitrating a dispute.

This clause is intended to make the head of power under the Act broad enough for specific reference to the *Commercial Arbitration Act 2012* to be made under the Electricity Networks Access Code.

Clause 48 Section 105 amended

This clause deletes the reference to the Arbitrator and replaces it with a reference to a person arbitrating a dispute.

Clause 49 Section 116 amended

This clause deletes the reference to the Review Board and replaces it with a reference to the State Administrative Tribunal. The clause ensures a party can bring proceedings for judicial review of a decision of the State Administrative Tribunal.

This clause also deletes the reference to the Arbitrator and replaces it with a reference to a person arbitrating a dispute.

Clause 50 Section 124 amended

This clause provides the head of power to make regulations conferring jurisdiction on the State Administrative Tribunal for specified Wholesale Electricity Market matters.

Clause 51 Section 125 amended

This clause deletes a reference to the Review Board and replaces it with a reference to the State Administrative Tribunal. The clause confers the Tribunal with jurisdiction to review a certain decisions made in relation to the Wholesale Electricity Market.

In addition, it removes a reference to the *Gas Pipeline Access (Western Australia) Act 1998*, which is longer operational.

Clause 52 Section 130 amended

This clause deletes a reference to the Review Board and replaces it with a reference to the State Administrative Tribunal. The clause confers the State Administrative Tribunal with jurisdiction to review a licensing decision made by the ERA under the *Electricity Industry Act 2004*.

In addition, the clause removes references to the *Gas Pipeline Access (Western Australia) Act 1998*, which is longer operational.

The heading to amended section 130 is to be updated to 'Review of decisions by State Administrative Tribunal'.

Clause 53 Section 133 deleted

This clause removes the head of power to make regulations in relation to the imposition and payment of fees and charges in connection with the performance of the respective functions of the Arbitrator and the Review Board as conferred under the *Electricity Industry Act 2004*.

Division 5 – *Financial Management Act 2006* amended

Clause 54 Act amended

This clause provides that the Bill amends the *Financial Management Act 2006*.

Clause 55 Schedule 1 amended

This clause removes reference to the Arbitrator as a prescribed statutory authority for the purposes of State agency financial reporting.

Division 6 – *Freedom of Information Act 1992* amended

Clause 56 Act amended

This clause provides that the Bill amends the *Freedom of Information Act 1992*.

Clause 57 Glossary clause 7A amended

This clause deletes reference to the Arbitrator and the Review Board in the Glossary of the *Freedom of Information Act 1992*.

Division 7 – *Gas Corporation (Business Disposal) Act 1999* amended

Clause 58 Act amended

This clause provides that the Bill amends the *Gas Corporation (Business Disposal) Act 1999*.

Clause 59 Section 38 amended

This clause updates a reference to the *Gas Pipelines Access (Western Australia) Act 1998* to reflect that this Act was superseded in 2009 by the *National Gas Access (WA) Act 2009* coming into effect.

Division 8 – *Gas Services Information Act 2012* amended

Clause 60 Act amended

This clause provides that the Bill amends the *Gas Services Information Act 2012*.

Clause 61 Section 3 amended

This clause removes reference to the Review Board in the list of defined terms.

Clause 62 Section 8 amended

This clause provides the head of power for regulations to confer jurisdiction on the State Administrative Tribunal.

Clause 63 Section 9 amended

This clause removes the head of power for regulations to confer the Review Board with the power to apportion costs related to review proceeding conducted pursuant to the *Gas Services information Act 2012*.

Clause 64 Section 12 replaced

This clause removes the reference to the Review Board and replaces it with a reference to the State Administrative Tribunal. This confers on the Tribunal the power to hear an appeal made by a person adversely affected by a reviewable decision, as specified by regulations.

Clause 65 Part 3 deleted

This clause deletes consequential amendments made under the *Gas Services Information Act 2012* to the *Energy Arbitration and Review Act 1998*.

Division 9 – Gas Supply (Gas Quality Specifications) Act 2009 amended

Clause 66 Act amended

This clause provides that the Bill amends the *Gas Supply (Gas Quality Specifications) Act 2009*.

Clause 67 Section 9 amended

This clause removes the reference to ‘by an arbitrator’ and replaces it with a reference to ‘by arbitration’ to clarify that regulations providing for the resolution of disputes can refer to an arbitration tribunal under the *Commercial Arbitration Act 2012*.

Clause 68 Section 11 amended

This clause removes the reference to ‘by an arbitrator’ and replaces it with a reference to ‘by arbitration’ to clarify that regulations providing for the resolution of disputes can refer to an arbitration tribunal under the *Commercial Arbitration Act 2012*.

Clause 69 Section 16 amended

This clause removes the reference to ‘by an arbitrator’ and replaces it with a reference to ‘by arbitration’ to clarify that regulations providing for the resolution of disputes can refer to an arbitration tribunal under the *Commercial Arbitration Act 2012*.

Clause 70 Section 34 amended

This clause deletes the head of power to make regulations providing for the payment of fees and charges to the Arbitrator.

Clause 71 Part 7 deleted

This clause deletes Part 7, which is a list of spent consequential amendments.

Division 10 – *Petroleum (Submerged Lands) Act 1982* amended

Clause 72 Act amended

This clause provides that the Bill amends the *Petroleum (Submerged Lands) Act 1982*.

Clause 73 Section 73 amended

This clause removes the reference to a Code pipeline under the Gas Pipelines Access (Western Australia) Law and replaces it with a reference to a covered pipeline under the National Gas Access (Western Australia) Law.

This change corrects an incorrect reference, which should have been updated when the National Gas Access (Western Australia) Law was introduced in 2009.

Division 11 – *Petroleum Pipelines Act 1969* amended

Clause 74 Act amended

This clause provides that the Bill amends the *Petroleum Pipelines Act 1969*.

Clause 75 Section 21 amended

This clause removes the reference to a Code pipeline under the Gas Pipelines Access (Western Australia) Law and replaces it with a reference to a covered pipeline under the National Gas Access (Western Australia) Law.

This change corrects an incorrect reference, which should have been updated when the National Gas Access (Western Australia) Law was introduced in 2009.

Clause 76 Section 22 amended

This clause removes the reference to a Code pipeline under the Gas Pipelines Access (Western Australia) Law and replaces it with a reference to a covered pipeline under the National Gas Access (Western Australia) Law.

This change corrects an incorrect reference, which should have been updated when the National Gas Access (Western Australia) Law was introduced in 2009.

PART 4 — AMENDMENTS TO OTHER ACTS CONSEQUENTIAL ON *NATIONAL ELECTRICITY (WESTERN AUSTRALIA) ACT 2016*

Division 1 – *Economic Regulation Authority Act 2003* amended

Clause 77 Act amended

This clause provides that amendments in this Division are to the *Economic Regulation Authority Act 2003*.

Clause 78 Section 25 amended

A number of new functions will be conferred on the ERA under the EI Act, on and from Royal Assent (including under the transitional arrangements established under Part 11 – see comments under clause 18 above).

Accordingly, this clause inserts a reference to those functions under the EI Act as being ‘functions’ of the ERA under the *Economic Regulation Authority Act*.

Division 2 – Electricity Corporations Act 2005 amended

Subdivision 1 – Amendments commencing on day after Royal Assent

Clause 79 Act amended

This clause provides that amendments in this Subdivision are to the *Electricity Corporations Act 2005*.

Clause 80 Section 41 amended

Section 41 sets out the principal functions of Western Power. Amongst others, these functions include doing anything authorised or required by Part 8 of the EI Act and the WA Access Code.

From Royal Assent, Western Power will also have functions under the National Electricity Regime, in relation to the first regulatory determination process. Accordingly, from Royal Assent, section 41 is amended by this clause to provide that it is a function of Western Power to comply with the WA national electricity legislation.

Division 2 – Electricity Corporations Act 2005 amended

Subdivision 1 – Amendments commencing on day after Royal Assent

Clause 81 Act amended

This clause provides that amendments in this Subdivision are to the *Electricity Corporations Act 2005*.

Clause 82 Section 41 amended

As of 1 July 2018, Part 8 of the EI Act and the WA Access Code will no longer apply to Western Power's network. This amendment removes the function of doing anything authorised or required by Part 8 of the EI Act and the WA Access Code from the principal functions of Western Power.

Clause 83 Section 54 amended

Section 54 provides that Western Power and Horizon Power's respective distribution or integrated regional licences only permit the provision of services (being the conveyance of electricity by network infrastructure facilities, and ancillary services) to certain entities (being, in the case of Western Power, Synergy) for the supply of electricity to certain prescribed (small use) customers.

In the case of Western Power, the Minister prescribes such customers to be those who consume less than 50MWh per annum. This restriction on Western Power's ability to supply such services is expressed to apply despite the effect of Part 8 of the EI Act. However, Part 8 of the EI Act will no longer apply to Western Power's network from 1 July 2018.

This clause retains this restriction for Horizon Power, but (in the case of Western Power) removes the reference to Part 8 of the EI Act and substitutes it with a reference to the WA national electricity legislation.

Division 3 – *Energy Coordination Act 1994* amended

Clause 84 Act amended

This clause provides that amendments in this Division are to the *Energy Coordination Act 1994*.

Clause 85 Section 26B inserted

This clause inserts a new section that provides for the WA national electricity legislation to prevail over any regulations made under section 26 of the *Energy Coordination Act*, to the extent of any inconsistency. This amendment aims to address the potential for future regulations to be inconsistent with the provisions of the WA national electricity legislation (which are intended to have priority).

Division 4 – *Energy Operators (Powers) Act 1979* amended

Clause 86 Act amended

This clause provides that amendments in this Division are to the *Energy Operators (Powers) Act 1979*.

Clause 87 Section 58 amended

Section 58(2)(a) provides that an energy operator will not be liable for a failure to supply energy to a person if that supply is of a nature that will require expenditure (including relating to network development) that an energy operator is unwilling to incur unless that person enters into an agreement with an energy operator under section 58(3). Section 58(3) provides that an energy operator may continue supplying energy to a person pursuant to an agreement on such terms as the energy operator thinks fit (including an obligation to pay to the energy operator the cost of appropriate network development).

The National Electricity Regime is intended to govern for capital contributions and extensions in respect of Western Power's network.

Accordingly, this clause amends section 58 by providing that subsections (2)(a) and (3) will not apply to an energy operator who is also a network service provider under the National Electricity (WA) Law.

Clause 88 Section 61 amended

Section 61 gives an energy operator the right to supply electricity beyond the normal point from which that operator is prepared to supply electricity, in certain circumstances (including that the customer pays for electricity supplied and pays capital contributions for the cost of the development).

The National Electricity Regime is intended to govern capital contributions in respect of Western Power's network. Accordingly, this clause amends

section 61 so that the reference to an 'energy operator' excludes any energy operator who is also a network service provider under the National Electricity (WA) Law.

Clause 89 Section 125 amended

This clause inserts a new subsection that provides for the WA national electricity legislation to prevail over regulations or by-laws made under the *Energy Operators (Powers) Act* to the extent of any inconsistency. This amendment aims to address the potential for future regulations or by-laws to be inconsistent with the provisions of the WA national electricity legislation (which are intended to have priority).

PART 5 – AMENDMENTS TO OTHER ACTS CONSEQUENTIAL ON NATIONAL GAS (WESTERN AUSTRALIA) AMENDMENT ACT 2016

Division 1 – Economic Regulation Authority Act 2003 amended

Clause 90 Act amended

This clause provides that the amendments in this Division are to the *Economic Regulation Authority Act 2003*.

Clause 91 Section 25 amended

This clause deletes the current section 25(c) of the *Economic Regulation Authority Act 2003*. Section 25 lists the ERA's functions, and currently includes "the functions it is given by or under the *National Gas Access (WA) Act 2009*". After the commencement of Part 4 of the National Gas Access (WA) Amendment Bill 2016 on 1 July 2018, these regulatory functions of the ERA will be transferred to the AER and therefore, this subsection is no longer required.

Clause 92 Section 26 amended

This clause deletes the reference to section 25(c) of the *Economic Regulation Authority Act 2003* contained in section 26(1) of that Act. Section 26 lists the matters that the ERA is to have regard to in performing its functions, other than the functions described in section 25(c) and (d). As section 25(c) will be deleted by clause 91 of the Bill, the reference to section 25(c) in this section is no longer required.

Clause 93 Section 28 amended

Subclause 93(1) deletes the words '*National Gas Access (WA) Act 2009*' from section 28(3)(b) of the *Economic Regulation Authority Act 2003*, which imposes a limitation on the Minister's power to give the ERA directions. Section 28 gives the Minister the power to give the ERA directions, to which the ERA must give effect. However, such directions cannot constrain the ERA with respect to the performance of its functions under the *National Gas Access (WA) Act 2009*. As the ERA's regulatory functions will be transferred to the AER, the reference to that Act is no longer required.

Subclause 93(2) has the effect of deleting section 28(5)(b) of the *Economic Regulation Authority Act 2003*, which refers to directions given by the Minister which relate to a matter of administration under the *National Gas Access (WA) Act 2009*. As the ERA's regulatory functions will be transferred to the AER, the reference to that Act is no longer required.

Clause 94 Section 32 amended

This clause deletes the words 'the National Gas Access (Western Australia) Law or' from section 32(1), which imposes a limitation on the Minister's power to refer matters relating to a regulated industry to the ERA.

Section 32 of the *Economic Regulation Authority Act 2003* allows the Minister to refer matters to the ERA if they relate to a regulated industry, other than matters governed by the *National Gas Access (WA) Act 2009*.

A policy decision has been made that, as the ERA's regulatory functions will be transferred to the AER, the Minister should have the ability to refer matters relating to the gas industry (as a regulated industry) to the ERA.

Clause 95 Section 51 amended

This clause deletes the reference to section 25(c) of the *Economic Regulation Authority Act 2003* from section 51(2)(a) of that Act. Section 51 of the provides the ERA with a power to obtain information and documents in particular circumstances, but does not include the functions described in section 25(c), being the ERA's functions under the *National Gas Access (WA) Act 2009*. As the ERA's regulatory functions will be transferred to the AER, the reference to this function is no longer required.

Division 2 – Energy Coordination Act 1994 amended

Clause 96 Act amended

This clause provides that the amendments in this Division are to the *Energy Coordination Act 1994*.

Clause 97 Section 3 amended

Subclause 97(1) inserts a definition of "WA national gas legislation" into the *Energy Coordination Act 1994*. This subclause adopts the definition of "WA national gas legislation" found in section 3(1) of the *Gas Supply (Gas Quality Specifications) Act 2009*, which reflects the adoption of the National Gas Law as an applied law scheme.

Subclause 97(1) deletes "section 5(1)." from the definition of "transmission works" in the *Energy Coordination Act 1994* and substitutes "section 5(1);". This is a minor grammatical amendment, replacing the full stop at the end of the list in section 5(1) with a semicolon.

Clause 98 Section 11M amended

This clause deletes the words “National Gas Access (Western Australia) Law; or” from section 11M(5)(a) of the *Energy Coordination Act 1994*, substituting the words “WA national gas legislation”.

Section 11M(5)(a) currently provides that the terms and conditions of a gas licence granted by the ERA are not to be inconsistent with the National Gas Access (Western Australia) Law.

This clause amends section 11M(5)(a) to refer instead to the WA national gas legislation, reflecting the adoption of the National Gas Law as an applied law scheme.

Clause 99 Section 11V amended

This clause deletes the words “National Gas Access (Western Australia) Law; or” from section 11V(2) of the *Energy Coordination Act 1994*, substituting the words “WA national gas legislation”.

Section 11V currently provides that gas licences granted by the ERA do not have effect to the extent of any inconsistency with the National Gas Access (Western Australia) Law. This clause amends section 11V(2) to refer instead to the WA national gas legislation, reflecting the adoption of the National Gas Law as an applied law scheme.

Clause 100 Section 11ZAC amended

This clause deletes the words “National Gas Access (Western Australia) Law; or” from section 11ZAC(4)(b) of the *Energy Coordination Act 1994*, substituting the words “WA national gas legislation”.

Section 11ZAC currently provides that last resort supply plans approved by the ERA do not have effect to the extent of any inconsistency with the National Gas Access (Western Australia) Law.

This clause amends section 11ZAC(4)(b) to refer instead to the WA national gas legislation, reflecting the adoption of the National Gas Law as an applied law scheme.

Clause 101 Schedule 1A amended

Item 1(a) of Schedule 1A to the *Energy Coordination Act 1994* currently provides that a gas licence may require a licensee to enter into agreements other than agreements relating to the provision of access to gas distribution capacity covered by the National Gas Access (Western Australia) Law.

This clause amends item 1(a) of Schedule 1A to refer instead to the WA national gas legislation, reflecting the adoption of the National Gas Law as an applied law scheme.

Division 3 – *Freedom of Information Act 1992* amended

Clause 102 Act amended

This clause provides that the amendments in this Division are to the *Freedom of Information Act 1992*.

Clause 103 Glossary clause 7A amended

Subclause 103(1) of the Bill deletes the definition of “access regulation functions” in clause 7A(1) of the Glossary of the *Freedom of Information Act 1992*, substituting a new definition.

The effect of clause 7A of the Glossary is to excise documents in the possession or under the control of the ERA, or to which the ERA is entitled to access because of its functions under the *National Gas Access (WA) Act 2009*, from the right of access provided for in the *Freedom of Information Act 1992*.

Subclause 103(1) of the Bill preserves the exclusion and extends the scope of the exclusion to cover documents in the possession or under the control of the ERA in the course of discharging its function to provide information and assistance to the AER.

Subclause 103(2) of the Bill deletes clause 7A(2) of the Glossary, substituting a truncated clause 7A(2).

The clause has been truncated to remove the exclusion of documents that the ERA is entitled to access because of its functions under the *National Gas Access (WA) Act 2009* as being documents of the ERA for the purpose of the *Freedom of Information Act 1992*. Following the transfer of regulatory functions to the AER, no such entitlements will exist. The substituted clause also removes references to the Board and the Arbitrator as these bodies will be abolished.

Division 4 – Gas Services Information Act 2012 amended

Clause 104 Act amended

This clause provides that the amendments in this Division are to the *Gas Services Information Act 2012*.

Clause 105 Section 3 amended

This clause deletes the words “the *National Gas Access (Western Australia) Law*” from section 3(2) of the *Gas Services Information Act 2012*, substituting the words “the National Gas (WA) Law”.

Section 3(2) currently adopts the definition of terms found in the National Gas Access (Western Australia) Law, with certain provisos.

This clause amends section 3(2) to refer instead to the National Gas (WA) Law, reflecting the adoption of the National Gas Law as an applied law scheme.

Clause 106 Section 13 amended

This clause deletes section 13(4) of the *Gas Services Information Act 2012*. Section 13(4) currently applies provisions of the *National Gas (South Australia) Act 2008* (South Australia) to protected information, with some modification. Section 13(5) states that section 13(4) is to have effect while

there are no regulations under the *Gas Services Information Act 2012* controlling the use and disclosure of protected information.

Part 7 of the *Gas Services Information Regulations 2012*, which controls the use and disclosure of protected information, was enacted in June 2013. On that basis, section 13(4) is redundant and can be deleted.

Division 5 - Gas Supply (Gas Quality Specifications) Act 2009 amended

Clause 107 Act amended

This clause provides that the amendments in this Division are to the *Gas Supply (Gas Quality Specifications) Act 2009*.

Clause 108 Section 3 amended

Subclause 108(1) of the Bill inserts a definition of “WA national gas legislation” into section 3(1) of the *Gas Supply (Gas Quality Specifications) Act 2009*, listing each of the relevant pieces of legislation that comprise the definition.

This approach has been used as section 46 of the *Interpretation Act 1984* cannot be relied upon to read references to the National Gas (WA) Law to include references to all subsidiary legislation made under that law.

Subclause 108(2) deletes paragraph (a) from the definition of “Gas Access Law” in section 3(1) and substitutes “(a) the WA national gas legislation; or”. This subclause amends the interpretation section to update references to the National Gas Access (Western Australia) Law to refer to the new applied law scheme.

Subclause 108(3) deletes the words “National Gas Access (Western Australia) Law” from the definition of “pipeline service” in section 3(1) and substitutes the words “National Gas (WA) Law”. This subclause amends the interpretation section to update references to the National Gas Access (Western Australia) Law to refer to the new applied law scheme.

Subclause 108(4) deletes the word “party.” from the definition of “user” in section 3(1) and substitutes the word “party;”. This clause makes a minor grammatical amendment, replacing the full stop at the end of the list in section 3(1) with a semicolon.

Division 6 – Parliamentary Commissioner Act 1971 amended

Clause 109 Act amended

This clause provides that the amendments in this Division are to the *Parliamentary Commissioner Act 1971*.

Clause 110 Schedule 1 amended

This clause deletes the words “National Gas Access (WA) Act 2009” from the item relating to the *Economic Regulation Authority Act 2003* in Schedule 1 to the *Economic Parliamentary Commissioner Act 1971*.

Schedule 1 excludes a number of departments and authorities from the purview of the Act, to varying extents. Currently, the ERA is made exempt to the extent of its functions given by or under the *National Gas Access (WA) Act 2009*. Following the transfer of regulatory functions to the AER, no such functions will exist and the reference to that Act is no longer required.

Division 7 – Petroleum (Submerged Lands) Act 1982 amended

Clause 111 Act amended

This clause provides that the amendments in this Division are to the *Petroleum (Submerged Lands) Act 1982*.

Clause 112 Section 73 amended

This clause deletes the words “Access (Western Australia)” from the reference to the Gas Pipelines Access (Western Australia) Law in sections 73(2) and 73(3) of the *Petroleum (Submerged Lands) Act 1982* and substitutes “(WA)”. This has the effect of updating the references to the Gas Pipelines Access (Western Australia) Law to refer to the new applied law scheme.

Division 8 – Petroleum Pipelines Act 1969 amended

Clause 113 Act amended

This clause provides that the amendments in this Division are to the *Petroleum Pipelines Act 1969*.

Clause 114 Section 21 amended

This clause deletes the words “Access (Western Australia)” from the reference to the Gas Pipelines Access (Western Australia) Law in section 21(7) of the *Petroleum Pipelines Act 1969* and substitutes “(WA)”. This has the effect of updating the reference to the Gas Pipelines Access (Western Australia) Law to refer to the new applied law scheme.

Clause 115 Section 22 amended

This clause deletes the words “Access (Western Australia)” from the reference to the Gas Pipelines Access (Western Australia) Law in section 22 of the *Petroleum Pipelines Act 1969* and substitutes “(WA)”. This has the effect of updating the reference to the Gas Pipelines Access (Western Australia) Law to refer to the new applied law scheme.

APPENDIX 1
WESTERN POWER NETWORK



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