

# NORTHERN TERRITORY ELECTRICITY RING-FENCING CODE

~~AS AMENDED APRIL 2002~~

Version 3  
1 August 2008

While the Commission has taken all reasonable care in preparing this delta view document, it is provided for the purpose of general guidance only. Certain formatting and consequential changes are not marked up in this document. Interested parties should refer to the original Codes rather than rely on this delta view document.



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## Foreword

This Third Version of the Northern Territory Electricity Ring-fencing Code (**Code**):

- is made by the Utilities Commission of the Northern Territory pursuant to section 24 of the *Utilities Commission Act*;
- commences operation on **1 August 2008**; and
- replaces the previous versions of the Code.

Notice of the making of the Code was published in the Northern Territory Government Gazette on **[insert date]**.

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## Amendment History

Version	Date made	Date of commencement
1	27 June 2001	1 July 2001
2	29 April 2002	29 April 2002
3	<b>[insert date]</b>	<b>1 August 2008</b>



## NORTHERN TERRITORY ELECTRICITY RING-FENCING CODE

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## Northern Territory Electricity Ring-Fencing Code

### 1. Introduction

#### 1.1 Authority

- (a) This **Code** is made by the **Commission** under section 24 of the **Act** and in accordance with the authority granted to the **Commission** by Regulation 2 of the *Utilities Commission Regulations*.
- (b) In making this **Code**, the **Commission** has had regard to the matters listed in section 6(2) of the **Act**.

#### 1.2 Date of Commencement

- (a) This **Code** takes effect on and from the **Commencement Date**.

#### 1.3 Previous versions of the Code

- (a) This **Code** is the third version of the Codes made by the **Commission**.
- (b) This **Code** replaces the previous versions of the **Codes** made by the **Commission** on and from the **Commencement Date**.
- (c) On and from the **Commencement Date** the previous versions of the **Codes** have continued application only in respect of matters and things occurring before the **Commencement Date**.

#### 1.4 Application

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must comply with this **Code**.
- (b) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must also comply with any **guideline** published by the **Commission** in relation to this **Code**.
- (c) An **Electricity Entity** that must comply with this **Code** must also ensure that its **Associates, Employees and Outsourced Service Providers** comply with applicable provisions of this **Code**.

#### 1.5 Obligation to remedy

- (a) If an **Electricity Entity** breaches this **Code** it must remedy that breach as soon as practicable.

#### 1.6 Guidelines

- (a) The **Commission** may publish **guidelines** relating to the application or interpretation of, or matters arising under, this **Code**.
- (b) The **Commission** must publish a **guideline** by publishing a copy on the website of the **Commission**.
- (c) The **Commission** may, but is not required to, also publish a **guideline** by giving notice of the making of the **guideline** or a copy of the **guideline** to each **Electricity Entity** that is required to comply with the **guideline**.
- (d) A **guideline** takes effect from the date of publication of the **guideline** by the **Commission** or from a later date specified in the **guideline**.

## 2. Application

~~2.1—This **Code** will apply to all **Electricity Entities** that carry on a **Prescribed Business** in the Northern Territory as and from the **Commencement Date**.~~

### 3.2. Objectives and Scope

#### 2.1 Objectives

(a) The objectives of this **Code** are to:

- (i) promote and achieve the object of the **Act**;
- (ii) promote and achieve the objects of the **ERA**; and
- (iii) without limiting paragraphs (i) and (ii), promote and safeguard competition and fair and efficient market conduct in the **Electricity Supply Industry** including by promoting the simulation of competitive market conduct and preventing the misuse of monopoly power (for example by requiring **Electricity Entities** to implement measures which; and

(A) prevent the misuse of monopoly power, and simulate behaviour and outcomes likely to exist in a competitive market; and

~~(b) require that **Electricity Entities** have in place arrangements which~~

(B) ensure that **Related Businesses** are not treated by its Prescribed Businesses in such a manner by a **Prescribed Business** as to confer which confers a non-commercial discriminatory price or non-price advantage on the **Related Business** as compared to an arm's length third party in the same commercial circumstances.]

#### 2.2 Scope

(a) The scope of this **Code** includes:

- (i) to require that an **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must comply with the **minimum-ring fencing requirements** specified in this **Code**;
- (ii) to specify the **minimum ring-fencing requirements**;
- (iii) to enable the **Commission** to require that an **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory submit for approval by the **Commission** proposed **default terms and conditions** in relation to specified goods or services nominated by the **Commission** under which approved **default terms and conditions** the **Electricity Entity** will be obliged, if required, to provide the relevant goods or services to **Customers**;
- (iv) to establish a mechanism for the development and approval of certain **Accounting Procedures**, **Cost Allocation Procedures**, and **Information Procedures** with which an **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must comply;
- (v) to provide mechanisms for adding to or amending this **Code**;
- (vi) to provide procedures for adding to or amending ring-fencing obligations under this **Code**;
- (vii) to provide procedures for ensuring compliance with the requirements of this **Code**, and compliance reporting; and
- (viii) to provide mechanisms for exempting an **Electricity Entity** from compliance with specified requirements of this **Code**.

### 3. Ring-Fencing Minimum Obligations

#### 3.1 Financial accounts

(a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must:

- (i) establish and maintain a separate set of financial accounts and reports in respect of:
  - (A) each **Prescribed Business**; and
  - (B) its **Electricity Business** as a whole,

which have been prepared in accordance with the **Accounting Procedures** applying to that **Electricity Entity** from time to time under clause 5; and

- (ii) allocate any costs that are shared between a **Prescribed Business** and a **Related Business** in a manner that:
  - (A) complies with the **Cost Allocation Procedures** applying to that **Electricity Entity** from time to time under clause 5; and
  - (B) is otherwise fair and reasonable;

#### 3.2 Confidential information

(a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must ensure that **Confidential Information** provided by a **Customer** to a **Prescribed Business** is:

- (i) used only for the purpose for which that **Confidential Information** was provided by that **Customer**;
- (ii) only disclosed to a **Related Business of that Electricity Entity** if the disclosure of that **Confidential Information** is not prohibited under the **Information Procedures** applying to that **Electricity Entity** under clause 5 from time to time and disclosure is otherwise permitted by law; and
- (iii) otherwise dealt with in accordance with the **Information Procedures** applying to that **Electricity Entity** under clause 5 from time to time;

(b) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must ensure that any information (including **Confidential Information**):

- (i) obtained by that **Electricity Entity** (or by its **Associates or Employees**~~employees, consultants, contractors or agents~~) in the course of conducting a **Prescribed Business**; or
- (ii) known to that **Electricity Entity** (or by its **Associates or Employees**~~employees, consultants, contractors or agents~~) as a result of conducting a **Prescribed Business**; and
- (iii) which might reasonably be expected to materially affect the commercial interests of a **Competitor** of a **Related Business** if disclosed to that **Related Business**; or
- (iv) which might reasonably be expected to provide a competitive advantage to a **Related Business** over a competitor of that **Related Business** if disclosed to that **Related Business** without also being disclosed to that competitor,

is:

- (v) used only for the purpose for which that information was provided or obtained;
- (vi) only disclosed to a **Related Business** if the disclosure of that information is not prohibited under the **Information Procedures** applying to that **Electricity Entity** under clause 5 from time to time and is otherwise permitted by law; and
- (vii) otherwise dealt with in accordance with the **Information Procedures** applying to that **Electricity Entity** under clause 5 from time to time;

### 3.3 Provision to third parties of goods or services of a Prescribed Business provided to a Related Contestable Business

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must ensure that goods or services of a **Prescribed Business** of that **Electricity Entity** which are offered or provided to a **Related Business** by a that **Prescribed Business** are also offered and provided ~~on a non-discriminatory arm's length commercial basis to~~ other **Customers** (including **Competitors** of that **Related Contestable Business**) who wish to obtain the same type of goods or services from ~~the that **Prescribed Business** (including competitors of that **Related Business**)~~ on terms and conditions which are:

(i) **fair and reasonable**; and

(ii) non-discriminatory.

- ~~(f) ensure that goods or services provided to a **Prescribed Business** by a **Related Business** are provided on a non-discriminatory arm's length commercial basis; and~~

### 3.4 Provision of goods or services of a Prescribed Business to a Related Contestable Business

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must comply with the **arm's length contracting principles** in relation to any goods or services of a **Prescribed Business** of that **Electricity Entity** which are offered or provided by that **Prescribed Business** to a **Related Contestable Business** of that **Electricity Entity**.

- (b) The **arm's length contracting principles** are:

(i) that:

(A) the **Prescribed Business** and the **Related Contestable Business** (the **contracting parties**) must prepare and enter into a written agreement between them in relation to goods or services of the **Prescribed Business** which are offered or provided by the **Prescribed Business** to the **Related Contestable Business**; or

(B) if the **contracting parties** are not separate legal entities, the **contracting parties** must:

(I) prepare and enter into a notional written agreement between them in relation to the goods or services of the **Prescribed Business** which are offered or provided by the **Prescribed Business** to the **Related Contestable Business** (a **notional agreement**);

(II) act at all times on the notional basis that the **contracting parties** have and must comply with the **notional agreement**.

(an **arm's length contract**);

(ii) that an **arm's length contract** must:

- (A) deal with each of the material terms and conditions (including in particular prices and terms and conditions relating to price) on which the relevant goods or services are offered or provided;
  - (B) contain terms and conditions dealing with each of the matters that would reasonably be expected to be contained in an agreement if the **contracting parties** were dealing with each other on an arm's length and reasonable commercial basis (i.e. as if the **contracting parties** were separate unrelated entities);
  - (iii) that the **contracting parties** must at all times deal with each other and act in accordance with their **arm's length contract**;
  - (iv) that the **contracting parties** must not vary the **arm's length contract** or waive compliance with the requirements of their **arm's length contract** in a manner inconsistent with these principles;
  - (v) that:
    - (A) if a proposed **arm's length contract** is in respect of goods or services of the **Prescribed Business** in relation to which there are approved **default terms and conditions** under clause 4 below; and
    - (B) if the terms and conditions of the proposed **arm's length contract** differ from the approved **default terms and conditions**.
- the **Electricity Entity** must make application to the **Commission** for approval by the **Commission** of the proposed **arm's length contract** and the **contracting parties** must not enter into the proposed **arm's length contract** unless approved by the **Commission**. A proposed **arm's length contract** which has been approved by the **Commission** is an approved **arm's length contract**; and
- (vi) that the **contracting parties** must not vary an approved **arm's length contract** (except by varying the terms and conditions of the approved **arm's length contract** to the form of the relevant corresponding terms and conditions of the approved **default terms and conditions**) unless the **Electricity Entity** has made application to, and received the approval of, the **Commission** for the proposed variation.
- (c) The **Commission** may approve a proposed **arm's length contract** or a proposed variation to an approved **arm's length contract** (a **proposed variation**) upon application being made to it under clauses 3.4(b)(v) above or 3.4(b)(vi) above if the **Electricity Entity** establishes to the satisfaction of the **Commission**, in the opinion of the **Commission**, that:
    - (i) the terms and conditions of the proposed **arm's length contract** or **proposed variation** are not more favourable to the **Related Contestable Business** relative to the position that the **Related Contestable Business** would be in if the **contracting parties** had an agreement for the supply of the relevant goods or services in the form of the approved **default terms and conditions**; or
    - (ii) if the terms and conditions of the proposed **arm's length contract** or **proposed variation** do not satisfy clause 3.4(c)(i) above, the proposed **arm's length contract** or **proposed variation** is **fair and reasonable** and **non-discriminatory** and should be approved.
  - (d) The **Commission** in giving an approval under clause 3.4(c) above may make the approval subject to further requirements or conditions specified by the **Commission** including that:
    - (i) the **Electricity Entity** provide to the **Commission** periodically during the term of the **arm's length contract** information and materials sufficient to

enable the **Commission** to continue to have the satisfaction, in the opinion of the **Commission**, of the matters referred to in clause 3.4(c) above.

### **3.5 Provision of contestable goods or services by a Prescribed Business to a Related Contestable Business**

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must ensure that **contestable** goods or services which are provided to a **Related Contestable Business** of that **Electricity Entity** by a **Prescribed Business** of that **Electricity Entity** are provided on an arm's length and reasonable commercial basis (i.e. as if the **Prescribed Business** and the **Related Contestable Business** were separate unrelated entities).

### **3.6 Provision of contestable goods or services to a Prescribed Business by a Related Contestable Business**

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must ensure that **contestable goods** or services which are provided to a **Prescribed Business** by a **Related Contestable Business** of that **Electricity Entity** are provided on an arm's length and reasonable commercial basis (i.e. as if the **Prescribed Business** and the **Related Contestable Business** were separate unrelated entities).

### **3.7 Marketing Staff**

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must ensure that:
- (i) the **Marketing Staff** of its ~~**Related Businesses**~~**Prescribed Businesses** are not also used as **Marketing Staff** for its ~~**Prescribed Businesses**~~**Related Businesses**; and
  - (ii) in the event that the **Marketing Staff** of its **Prescribed Businesses** do become or are found to become involved in a **Related Business**, ensure that that involvement immediately ceases.

### **3.8 Branding and marketing**

- (a) An **Electricity Entity** that carries on a **Prescribed Business** and a **Related Contestable Business** in the Northern Territory must brand and market itself in a manner that minimises any potential for **Customer** confusion between the **Prescribed Business** and the **Related Contestable Business** of that **Electricity Entity**.

### **3.9 Claims about service standards**

- (a) An **Electricity Entity** that carries on a **Prescribed Business** and a **Related Contestable Business** in the Northern Territory:
- (i) must not market to **Customers** the goods or services in the **Electricity Supply Industry** offered or provided by the **Related Contestable Business** based on the reliability, quality, safety or other attribute of the goods or services provided by a **Prescribed Business** of that **Electricity Entity**; and
  - (ii) must confine any representations it makes to **Customers** about service standards in relation to goods or services in the **Electricity Supply Industry** provided by the **Related Contestable Business** to those associated with those goods or services directly provided by the **Related Contestable Business**.

### **3.10 Websites**

- (a) Where an **Electricity Entity** that carries on a **Prescribed Business** and a **Related Contestable Business** in the Northern Territory shares a website that **Electricity Entity** must:
- (i) identify on each page of the website which contains material in relation to the **Electricity Business** of that **Electricity Entity** whether the **Prescribed Business** or the **Related Contestable Business** is responsible for the contents of that page; and
  - (ii) separate the contents of the website dealing with a **Prescribed Business** from the contents of the website dealing with the **Related Contestable Business** as far as practicable.

## **4. Default Terms and Conditions**

### **4.1 Submission of proposed default terms and conditions**

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory:
- (i) must within 40 **business days** of the date nominated by the **Commission**; and
  - (ii) may at any other time,
- prepare and submit to the **Commission** for its approval, proposed **default terms and conditions** for **nominated goods or services**.
- (b) The proposed **default terms and conditions** under clause 4.1(a) above must set out each of the terms and conditions (including in particular prices and terms and conditions relating to prices) upon which the relevant goods or services would be provided or offered to a **Customer** (including a **Related Contestable Business** of that **Electricity Entity**) by a **Prescribed Business** of that **Electricity Entity**.

### **4.2 Nominated goods or services**

- (a) For the purposes of clause 4.1(a), the **Commission** may by written notice given to each **Electricity Entity** to which the notice relates specify goods or services, or a class of goods or goods or services, of a type provided or offered in the **Electricity Supply Industry** by a **Prescribed Business** of that **Electricity Entity** to a **Related Contestable Business** of that **Electricity Entity** as **nominated goods or services**.
- (b) The **Commission** may not nominate goods or services, or a class of goods or services, as **nominated goods or services** where the terms and conditions upon which the goods or services are to be provided by an **Electricity Entity** are wholly regulated or provided for by another **applicable law**.
- (c) For the purposes of clause 4.1(a) above **nominated goods or services** includes the sale of electricity generated by **PWC** to an **Electricity Entity** issued with a **licence** authorising the selling of electricity.

### **4.3 Consideration of proposed default terms and conditions**

- (a) Upon receipt of any proposed **default terms and conditions** from an **Electricity Entity** under clause 4.1(a) above, the **Commission** may:
- (i) approve those **default terms and conditions** as submitted;
  - (ii) if there are currently no existing **default terms and conditions** for the relevant goods or services, approve those **default terms and conditions**

with amendments required by the **Commission** following consultation by the **Commission** on its proposed amendments; or

- (iii) not approve those **default terms and conditions**.
- (b) The **Commission** may not approve any terms or conditions in proposed **default terms and conditions** (with or without amendment) which are inconsistent with an **applicable law**.
- (c) If:
  - (i) the **Commission** has received proposed **default terms and conditions** from an **Electricity Entity** under clause 4.1(a); and
  - (ii) at the end of 60 **business days** after the day on which those proposed **default terms and conditions** were received by the **Commission** (or such longer period after that day not exceeding 30 days as notified by the **Commission** to the **Electricity Entity**), the **Commission** has not:
    - (A) approved (with or without amendment) those proposed **default terms and conditions**; or
    - (B) advised the **Electricity Entity** that the proposed **default terms and conditions** will not be approved,

the **Commission** will be deemed to have approved the proposed **default terms and conditions**.

#### **4.4 Provision of nominated goods or services**

- (a) Where:
  - (i) an **Electricity Entity** carries on a **Prescribed Business** in the Northern Territory;
  - (ii) **default terms and conditions** have been approved under clause 4.1 above; and
  - (iii) a **Customer** requests the **Electricity Entity** to provide goods or services of the type which are the subject of approved **default terms and conditions**,  
the **Prescribed Business** of that **Electricity Entity** must offer to enter into an agreement in writing with the **Customer** for the provision of the requested goods or services in the form of the approved **default terms and conditions** (a **default contract**) within three **business days** of the request unless:
    - (iv) an agreement in respect of the requested goods or services between the **Electricity Entity** and the **Customer** making the request has been terminated due to a material breach by the **Customer**; and
    - (v) the circumstances giving rise to that breach remain unchanged such that if that former agreement was still in force there would be an unremedied breach by the **Customer**.
- (b) The **Electricity Entity** and a **Customer** may, instead of entering into a **default contract**, negotiate an agreement for the provision of the requested goods or services (a **negotiated contract**) with terms and conditions different from those of the approved **default terms and conditions**. Each **negotiated contract** must be in writing.

#### **4.5 Requirements for default terms and conditions**

- (a) Proposed **default terms and conditions** submitted to the **Commission** by an **Electricity Entity** in accordance with clause 4.1(a) above must be:
  - (i) **fair and reasonable**; and
  - (ii) **non-discriminatory**.

#### **4.6 Amendment of default terms and conditions**

- (a) The **Electricity Entity** must amend its proposed or approved **default terms and conditions** in accordance with any direction to do so given by the **Commission** if:
- (i) the **Commission** is of the opinion that, without the amendment, the terms and conditions:
    - (A) are not **fair and reasonable**; or
    - (B) are not **non-discriminatory**; and
  - (ii) the **Commission** has given the **Electricity Entity** an opportunity to make representations on the matter and to amend the **default terms and conditions** without such a direction.

#### **4.7 Replacement default contract**

- (a) Upon approval of **default terms and conditions** (under clause 4.3(a) or clause 4.3(c)) or any required amendment to approved **default terms and conditions** (under clause 4.6(a)), the **Electricity Entity** must:
- (i) make an offer within three **business days** to each **Customer** with which it has a **default contract** to enter into a replacement **default contract** in the form of the new **default terms and conditions**; and
  - (ii) if such offer is accepted, terminate the existing **default contract**.
- (b) The offer under clause 4.7(a) above must remain open for acceptance by a **Customer** for at least 40 **business days**.

#### **4.8 Termination of default contract**

- (a) The **Electricity Entity** must notify the **Commission** as soon as practicable if:
- (i) it gives any notice to a **Customer** in connection with the proposed termination of a **default contract**; or
  - (ii) it terminates a **default contract** without a replacement **default contract** or **negotiated contract** immediately coming into force.
- (b) The **Electricity Entity** must not terminate a **default contract** if the **Commission** so directs the **Electricity Entity** specifying the duration and circumstances of the prohibition on termination.

#### **4.9 Review and consultation with Commission about default terms and conditions**

- (a) The **Commission** may in connection with **default terms and conditions** required under this clause 4 require the **Electricity Entity** to:
- (i) develop or prepare **default terms and conditions** in consultation with the **Commission**;
  - (ii) prepare **default terms and conditions** in draft and submit the draft to the **Commission** for its consideration;
  - (iii) review **default terms and conditions** at intervals or when specified by the **Commission**; and
  - (iv) re-submit proposed **default terms and conditions** to the **Commission** when specified by the **Commission**.

## 5. Compliance with Approved Procedures

### 5.1 Introduction

(a) In this clause 5 unless the context otherwise requires, a reference to “**Procedures**” includes in each case the **Accounting Procedures**, **Cost Allocation Procedures** and **Information Procedures**.

### 5.2 Submission of final draft Procedures for approval by the Commission

- (a) An **Electricity Entity** that carries on a **Prescribed Business** must within:
- (i) 3 months (in the case of the **Accounting Procedures** and the **Cost Allocation Procedures**); and
  - (ii) 6 months (in the case of the **Information Procedures**),

of the **Commencement Date** submit to the **Commission** for approval final draft **Procedures** for its **Prescribed Businesses** developed in accordance with clause 5.3.

### 5.3 Development of final draft Procedures

- (a) The final draft **Procedures** submitted by an **Electricity Entity** under clause 5.2 must be:
- (i) designed to ensure compliance with the **Electricity Entity’s** obligations under clause 3;
  - (ii) otherwise consistent with the general principles set out in Schedule 2 to this **Code** for each type of **Procedure**; and
  - (iii) developed in conjunction with the **Commission** so as to ensure that the final draft **Procedures** when submitted can be approved by the **Commission** without the need for substantial amendments.

### 5.4 Matters to which the Commission will have regard when considering draft Procedures

- (a) In considering whether to approve any draft **Procedures** submitted by an **Electricity Entity** under clause 5.2, the **Commission** will have regard to (among other things):
- (i) the matters set out in section 6(2) of the **Act**; and
  - (ii) whether the draft **Procedures** give effect to the principles set out in Schedule 2 to this **Code** for that type of **Procedures**.

### 5.5 Approval by the Commission may be subject to conditions

- (a) The **Commission** may grant its approval of the draft **Procedures** submitted by an **Electricity Entity** under clause 5.2 subject to such conditions as the **Commission** considers are appropriate in the circumstances including conditions requiring that:
- (i) specific amendments be made to the draft **Procedures** submitted by the **Electricity Entity**;
  - (ii) the **Procedures** are approved for a fixed term;
  - (iii) the **Procedures** be reviewed at regular intervals by the **Commission** and the **Electricity Entity**;

- (iv) the **Procedures** must be resubmitted for approval following any change to the **Code** affecting the **Procedures** or when otherwise requested by the **Commission**; and
- (v) the **Electricity Entity** report to the **Commission** concerning the implementation, application and/or compliance with the **Procedures** when requested by the **Commission**.

#### **5.6 Compliance by Electricity Entity with Procedures and conditions of approval**

- (a) An **Electricity Entity** must comply with any **Procedures** approved by the **Commission** from time to time under clause 5.2 and any conditions attaching to the **Commission's** approval of those **Procedures**.

#### **5.7 Variation to existing Procedures**

- (a) An **Electricity Entity** may at any time apply to the **Commission** to approve a proposed variation to any existing **Procedures**.
- (b) Unless the **Commission** considers that the application has been made on trivial or vexatious grounds (in which case the **Commission** may reject the application without further notice) an application to vary existing **Procedures** will be dealt with by the **Commission** in accordance with the procedure set out in this clause 5 applying to an application to approve the initial **Procedures**.

#### **5.8 Timing**

- (a) The **Commission** must notify an **Electricity Entity** within 30 days after receiving an application from the **Electricity Entity** to approve any **Procedures** (or any variation to the existing **Procedures**) of:
  - (i) whether the **Commission** approves those **Procedures** (or the proposed variation to the existing **Procedures**);
  - (ii) any conditions attaching to the **Commission's** approval of those **Procedures** (or the proposed variation to the existing **Procedures**).
- (b) The **Electricity Entity** must implement any **Procedures** within 30 days after the date upon which they are approved by the **Commission**.

#### **5.9 Default by Electricity Entity**

- (a) If an **Electricity Entity**:
  - (i) fails to submit any of the draft **Procedures** to the **Commission** within the time period specified in clause 5.2 for the submission of that type of **Procedures**; or
  - (ii) submits draft **Procedures** to the **Commission** which require substantial amendment before they can be approved by the **Commission**,

the **Commission** may issue its own **Procedures** which will be deemed for the purposes of this **Code** to be the **Procedures** applying to that **Electricity Entity** until such time as appropriate draft **Procedures** are submitted to the **Commission** and approved.

#### **5.10 Compliance with requirements until Procedures are approved**

- (a) Until such time as **Procedures** are approved or issued by the **Commission** under this clause 5, an **Electricity Entity** must comply with the principles set out in Schedule 2 to this **Code** for that type of **Procedures** as if those principles were the **Procedures**.

### 5.11 Copies of accounts

(a) An **Electricity Entity** that carries on a **Prescribed Business** must provide to any person upon request copies of the accounts provided to the **Commission** under clause 4(a) for the most recent annual reporting period upon payment by that person of the fee approved for that purpose by the **Commission**.

## 6. Adding to or Amending this Code

### 6.1 Variation or revocation by the Commission under the Act

(a) The **Commission** may at any time vary or revoke this **Code** (or any part of this **Code**) in accordance with section 24 of the **Act**.

### 6.2 Application by an Electricity Entity for variation or revocation

(a) An **Electricity Entity** may request that the **Commission** vary or revoke any part of this **Code**.

(b) Unless the **Commission** considers that the application has been made on trivial or vexatious grounds (in which case the **Commission** may reject the application without further notice) an application to vary or revoke any part of this **Code** will be dealt with by the **Commission** in accordance with the procedure set out in this clause 6.

### 6.3 Additional or varied obligations on an Electricity Entity

(a) Without limiting the powers of the **Commission** under section 24 of the **Act** to vary or revoke the **Code**, the **Commission** may vary the **Code** to require that an **Electricity Entity** comply with an obligation in relation to the conduct of a **Prescribed Business** which differs from or is in addition to the minimum obligations set out in clauses 4 and 5 (including by requiring the **Electricity Entity** to comply with procedures issued by the **Commission** which vary or are additional to the **Procedures** approved or issued by the **Commission** under clause 5 from time to time).

### 6.4 Matters to which the Commission will have regard in making a decision

(a) In deciding whether to vary or revoke this **Code** (or any part of this **Code**) under clauses 6.1 or 6.2, or impose any additional or varied obligation on an **Electricity Entity** under clause 6.3, the **Commission** will have regard to:

- (i) the matters listed in section 6(2) of the **Act**; and
- (ii) in the case of a variation to the **Code** which imposes an additional or varied obligation on a particular **Electricity Entity**, the general principle that the administrative cost to that **Electricity Entity** of complying with the additional or varied obligation should not, or should not be likely to in the opinion of the **Commission**, outweigh the benefits to the public from compliance with that additional or varied obligation.

### 6.5 Consultation by Commission with Electricity Entities

(a) Before varying or revoking this **Code**, or imposing any additional or varied obligation on an **Electricity Entity**, under this clause 6, the **Commission** will consult with each **Electricity Entity** in accordance with the procedure set out in clause 7 and otherwise comply with the other requirements of the **Act** and clause 7.

## 6.6 Compliance with additional or varied obligations

- (a) An **Electricity Entity** must comply with any additional or varied obligation imposed upon that **Electricity Entity** under this clause 6 as and from the date upon which that obligation takes effect under section 24 of the **Act**.

## 7. Procedures for Adding To or Amending Ring-Fencing Obligations

### 7.1 Notification by the Commission to interested parties

- (a) The **Commission** must, before:
- (i) varying or revoking this **Code** (or any part of this **Code**); or
  - (ii) imposing an additional or varied obligation on an **Electricity Entity**,
- inform each person known to the **Commission** (whom the **Commission** believes has a sufficient interest in the matter) that the **Commission** is considering varying or revoking this **Code** (or any part of this **Code**) or imposing an additional or varied obligation on an **Electricity Entity** by publishing a written notice which at least:
- (iii) states the nature of the proposed variation, revocation or additional or varied obligation; and
  - (iv) requests submissions by a date specified in the notice (not being a date earlier than 30 days after the date of the notice).
- (b) The **Commission** will also give a copy of any notice published in accordance with this clause 7 to each **Electricity Entity** to which the notice relates.

### 7.2 Consideration of submissions by the Commission

- (a) The **Commission** must consider any submissions received by the date specified in the notice published under clause 7.1(b) and may (but is not obliged to) consider any submissions received after that date.

### 7.3 Draft decision

- (a) Within 30 days (or such longer period as the **Commission** notifies) after the last day for submissions specified in the notice published under clause 7.1(b), the **Commission** must issue a draft decision stating whether or not it intends to proceed with the proposed variation, revocation or additional or varied obligation.
- (b) The **Commission** must:
- (i) provide a copy of its draft decision to each **Electricity Entity**, any person who made a submission on the matter and any other person who requests a copy; and
  - (ii) request submissions from persons to whom it provided the draft decision by a specified date (not being a date earlier than 30 days after the date the draft decision was issued).

### 7.4 Consideration of submissions on the draft decision

- (a) The **Commission** must consider any submissions it receives by the date specified by the **Commission** under clause 7.5(b) and it may (but is not obliged to) consider any submissions received after that date.

## 7.5 Final decision

- (a) Within 30 days (or such longer period as the **Commission** notifies) after the last day for submissions on the draft decision specified by the **Commission**, the **Commission** must issue a final decision stating:
- (i) whether or not it will proceed with the proposed variation, revocation or additional or varied obligation; and
  - (ii) the final form of that proposed variation, revocation or additional or varied obligation.
- (b) A notice in relation to a variation, revocation or additional or varied obligation will have effect:
- (i) 30 days after the notice is given to each **Electricity Entity** and, where required, published in the *Gazette*; or
  - (ii) on such later date as the **Commission** specifies in the notice.

## 8. Compliance Procedures and Compliance Reporting

### 8.1 Electricity Entity to establish and maintain compliance procedures

(a) An **Electricity Entity** that carries on a **Prescribed Business** must within 6 months of the **Commencement Date** establish, ~~and document,~~ maintain ~~and comply with~~ appropriate internal policies, procedures and systems (“**compliance procedures**”) ~~to ensure~~ for ensuring that it complies with its obligations under this **Code**.

(b) The **compliance procedures** must include, without limitation, policies procedures and systems for:

(i) training of **Employees** about the obligations of the **Electricity Entity** under this **Code**;

(ii) regular internal audit by the **Electricity Entity** of its compliance with its obligations under this **Code**;

(iii) regular reporting to, and consideration by, the **Directors** of the **Electricity Entity** concerning compliance with the obligations of the **Electricity Entity** under this **Code**;

(iv) dealing with any complaints made by a **Customer** or other third party to the **Electricity Entity** in connection with non-compliance by the **Electricity Entity** with its obligations under this **Code**; and

(v) detecting and reporting to the **Commission** any breach of the **compliance procedures**.

(c) The **Commission**, upon reasonable notice being given to the **Electricity Entity**, may require the **Electricity Entity** to demonstrate to the **Commission’s** satisfaction, in the opinion of the **Commission**, the:

(i) adequacy of, and

(ii) ~~level of, satisfactory~~ compliance by the **Electricity Entity**

with ~~these the **compliance procedures**, upon reasonable notice.~~

(d) ~~However, any statement made or assurance given~~ Any notification made by the **Commission** to the **Electricity Entity** concerning the **Commission’s** opinion of the

adequacy of ~~an *Electricity Entity's*~~ the compliance procedures of that *Electricity Entity* will not affect the *Electricity Entity's* obligations under this *Code*.

## 8.2 Compliance reports

(a) An *Electricity Entity* must provide a report to the *Commission*, at reasonable intervals determined by the *Commission*, describing the measures taken by the *Electricity Entity* to ensure compliance with its obligations under this *Code* (a *compliance report*).

(b) The *compliance report*, and the *Commission's* assessment of compliance, will be made publicly available by the *Commission* subject to the *Commission* first complying with its obligations under section 26 of the *Act*.

## 8.3 Audit

(a) The *Commission* may, upon reasonable notice to an *Electricity Entity*, appoint an independent auditor to undertake an audit of the *Electricity Entity's* compliance with any of its obligations under this *Code*.

(b) If the *Commission* nominates standards or requirements to apply to an audit under clause 8.3, the auditor will report in accordance with those standards or requirements.

(c) The *Commission* will provide a copy of the auditor's report to the *Electricity Entity* as soon as reasonably possible after it has been received from the auditor.

(d) The *Electricity Entity* will be responsible to pay the costs of undertaking that audit if, in the opinion of the *Commission*, the auditor discovers any failure by the *Electricity Entity* to comply with a material obligation under this *Code*.

(e) Upon notification to the *Electricity Entity* by the *Commission*, the *Electricity Entity* must pay the amount of the audit costs to the *Commission* in the amount notified by the *Commission*.

## 8.4 Notification of breaches to the Commission

(a) An *Electricity Entity* must report any breach of its obligations under this *Code* to the *Commission* as soon as reasonably possible after becoming aware that the breach has occurred and must advise of the remedial action that is being undertaken to rectify the breach.

# 9. Exemption from Compliance with Specified Obligations

## 9.1 Initial exemptions

(a) As at the *Commencement Date* each *Electricity Entity* listed in column 1 of Schedule 1 is exempt from complying with the obligations under this *Code* set out in column 2 of Schedule 1 in relation to the *Prescribed Business* or the *Electricity Business* set out in column 3 of Schedule 1 until such time as the *Commission* revokes that exemption in accordance with clause 6 of this *Code*.

## 9.2 Application for an exemption

(a) An *Electricity Entity* may apply to the *Commission* for an exemption from compliance with any obligation (or component of an obligation) under this *Code*.

(b) A notice requesting an exemption must include all information and materials necessary to support the *Electricity Entity's* application for exemption.

### 9.3 Matters to which the Commission will have regard on the application

- (a) In determining whether to grant any exemption, the **Commission** will have regard to:
- (i) the matters listed in section 6(2) of the **Act**; and
  - (ii) the general principle that the **Commission** will only grant an exemption if it is satisfied that the benefit, or likely benefit, to the public of compliance with the relevant obligation will be outweighed by the administrative cost to that **Electricity Entity** of complying with that obligation.

### 9.4 Terms or conditions of exemption

- (a) The **Commission** may grant an exemption:
- (i) on different terms to those sought by the **Electricity Entity**; or
  - (ii) subject to such conditions as the **Commission** considers are appropriate in the circumstances, including conditions requiring that:
    - (A) the exemption be for a fixed term;
    - (B) the continuation of the exemption be subject to review by the **Commission** on such terms as the **Commission** considers appropriate in the circumstances;
    - (C) the **Electricity Entity** report to the **Commission** concerning any matter relating to the operation or impact of the exemption; and
    - (D) the grant of the exemption be conditional upon the occurrence of a nominated event (for example, the variation of the **Code** to impose an additional or varied obligation on the **Electricity Entity** or the implementation of agreed compliance procedures).

### 9.5 Procedure for consideration of application

- (a) When the **Commission** receives an application under clause 9.2 the **Commission** must:
- (i) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; or
  - (ii) in all other cases within 14 days after receipt of the application, inform each person known to the **Commission** whom the **Commission** believes has a sufficient interest in the matter, that the **Commission** has received the application by publishing a written notice which at least:
    - (A) identifies the **Electricity Entity** that has applied for the exemption and the nature of the requested exemption;
    - (B) states how copies of the application can be obtained; and
    - (C) requests submissions by a date specified in the notice (not being a date earlier than 30 days after the date of the notice).
- (b) The **Commission** must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the **Commission**.
- (c) The **Commission** must consider any submissions received by the date specified in the notice published under clause 9.5(a)(ii) and it may (but is not obliged to) consider any submissions received after that date.

## 9.6 Draft decision

- (a) Within 30 days (or such longer period as the **Commission** notifies after the last day for submissions specified in the notice published under clause 9.5(a)(ii) the **Commission** must issue a draft decision stating whether or not it intends to grant the exemption sought in that application.
- (b) The **Commission** must:
- (i) provide a copy of its draft decision to the relevant **Electricity Entity**, any person who made a submission on the matter and any other person who requests a copy; and
  - (ii) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 30 days after the date the draft decision was issued).
- (c) The **Commission** must consider any submissions it receives by the date specified by the **Commission** under clause 9.6(b) above and it may (but is not obliged to) consider any submissions received after that date.

## 9.7 Final decision

- (a) Within 30 days (or such longer period as the **Commission** notifies after the last day for submissions on the draft decision specified by the **Commission**, the **Commission** must issue a final decision stating whether or not it will grant the exemption sought in that application.
- (b) A final decision under clause 9.7(a) has effect 30 days after the decision is issued to the **Electricity Entity** or such later date as the **Commission** specifies in the notice.

## 9.8 Prescribed Business definition

- (a) An **Electricity Entity** may at any time request that the **Commission** consider whether the requirements set out in paragraph (b) of the definition of '**Prescribed Business**' have been satisfied.
- (b) A request under this clause 9.8 will be dealt with by the **Commission** in the same manner as an application for an exemption from compliance with any obligation (or component by obligation) under clause 9.2.

# 10. Outsourcing

## 10.1 Outsourced Service Provider

- (a) If an **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory arranges for or uses another entity to perform any of its business functions in relation to a **Prescribed Business** of that **Electricity Entity** the other entity is an **Outsourced Service Provider** in relation to that **Electricity Entity**.

## 10.2 Compliance by Outsourced Service Provider

- (a) An **Electricity Entity** must ensure that an **Outsourced Service Provider** in relation to that **Electricity Entity** complies with this **Code** as if the **Outsourced Service Provider** were the **Electricity Entity**.

## 10.3 Outsourcing agreements

- (a) If an **Electricity Entity** enters into an agreement with an **Outsourced Service Provider** in relation to the performance of any of the business functions of the

*Prescribed Business* of that *Electricity Entity* (including an asset management agreement) the *Electricity Entity* must ensure that the terms of the agreement are consistent with and facilitate the implementation of this *Code*.

## 11. Interpretation and determination of requirements under this Code

### 11.1 Fair and reasonable

(a) Any question as to whether a thing is *fair and reasonable* for the purposes of this *Code* is to be decided by the *Commission* on the basis of the *Commission's* opinion of the fairness and reasonableness of the matter.

### 11.2 Non-discriminatory

(a) Any question as to whether a thing is *non-discriminatory* for the purposes of this *Code* is to be decided by the *Commission* on the basis of the *Commission's* opinion of the matter.

### 11.3 Arm's length contracting principles

(a) Any question as to whether a thing satisfies the *arm's length contracting principles* for the purposes of this *Code* is to be decided by the *Commission* on the basis of the *Commission's* opinion of the matter.

### 11.4 Effect of disclosure of information

(a) Any question as to whether:

(i) information might reasonably be expected to materially affect the commercial interests of a *Competitor* of a *Related Contestable Business* of an *Electricity Entity* if disclosed to that *Related Contestable Business* for the purposes of clause 3.2(b)(iii) above; or

(ii) information might reasonably be expected to provide a competitive advantage to a *Related Contestable Business* of an *Electricity Entity* over a *Competitor* of that *Related Contestable Business* if disclosed to that *Related Contestable Business* without also being supplied to that *Competitor* for the purposes of clause 3.2(b)(iv) above;

is to be determined by the *Commission* on the basis of the *Commission's* opinion of the matter.

### 11.5 Determination of goods or services as contestable or non-contestable

(a) Any question arising under this *Code* as to whether goods or services in the *Electricity Supply Industry* are *contestable* or *non-contestable* is to be determined by the *Commission* on the basis of the *Commission's* opinion of the matter.

### 11.6 Carrying on of a business

(a) For the purposes of this *Code* an *Electricity Entity* is to be regarded as carrying on a *Prescribed Business* or a *Related Contestable Business* (as the case may be) if:

(i) it is the holder of a *licence* authorising the activities for which a *licence* is required comprising all or part of the relevant *Prescribed Business* or *Related Contestable Business*; or

(ii) it otherwise engages in the activity of owning, controlling or operating the relevant **Prescribed Business** or **Related Contestable Business**.

(b) Any question arising under this **Code** as to whether an **Electricity Entity** is to be regarded as carrying on a **Prescribed Business** or a **Related Contestable Business** is to be determined by the **Commission** on the basis of the **Commission's** opinion of the matter.

### **11.7 Commission to determine matters arising under this clause**

(a) The **Commission** may from time to time in its discretion consider and decide any issue arising under this clause 11.

(b) An:

(i) **Electricity Entity**; or

(ii) any other person who has, in the opinion of the **Commission**, a sufficient interest in the matter,

may request that the **Commission** may make such a decision.

## **12. Preservation of Other Obligations**

10.1 Nothing in this **Code** will derogate from any obligation imposed upon an **Electricity Entity** under the **Act**, the **ERA**, any regulation made under those Acts, any condition of a licence issued to the **Electricity Entity** or any other code made by the **Commission** under the **Act**.

## **13. Interpretation**

### **13.1 Italicised terms**

(a) In this **Code**, words appearing like **this** will have the meaning set out in clause 13.2.

### **13.2 Defined terms**

(a) In this **Code**, unless the contrary intention appears:

“**Accounting Procedures**” means the procedures of that name approved or issued by the **Commission** under clause 5 for the purposes of this **Code**;

“**Act**” means the *Utilities Commission Act 2000*;

“**applicable laws**” means legislation, regulations, codes or other instruments with which an **Electricity Entity** must comply under the terms of a **licence** issued to the **Electricity Entity**;

“**approved arm's length contract**” has the meaning in clause 3.4(b)(v) of this **Code**;

“**arm's length contract**” has the meaning in clause 3.4(b)(i) of this **Code**;

“**arm's length contracting principles**” has the meaning in clause 3.4(b) of this **Code**;

“**Associate**” means in relation to:

(a) an **Electricity Entity** that is a legal entity incorporated pursuant to the **Corporations LawAct**, a person that is an associate of that **Electricity**

**Entity** under Division 2 of Part 1.2 of the **Corporations Law Act** if sections 13, 14, 16(2) and 17 of the **Corporations Law Act** were repealed; and

- (b) an **Electricity Entity** that is not a legal entity incorporated pursuant to the **Corporations Law Act**, a person that would be an associate of that **Electricity Entity** under Division 2 of Part 1.2 of the **Corporations Law Act** if sections 13, 14, 16(2) and 17 of the **Corporations Law Act** were repealed and if that **Electricity Entity** were a legal entity incorporated pursuant to the **Corporations Law Act**;

**“business day”** means a day other than a Saturday or Sunday or a day declared to be a public holiday in the Northern Territory under the *Public Holidays Act*;

**“Code”** means this Ring-Fencing **Code**;

**“Codes”** means the previous versions of the Northern Territory Electricity Ring-Fencing Codes previously made by the **Commission**.

**“Commencement Date”** means the later of 1 July 2008 or the date set out in the notice published in the *Gazette* making this **Code** ~~from which~~ has the date of commencement of this **Code** ~~will take effect~~;

**“Commission”** means the Utilities Commission of the Northern Territory established by the *Utilities Commission Act 2000*;

**“competition”** means either actual or potential rivalry or competition in relation to a business (or component of a business) or activity in the **Electricity Supply Industry**;

**“Competitor”** means an entity (whether identifiable, actual or notional) which either actually or potentially may be in **competition** with an **Electricity Entity**;

**“Confidential Information”** means information which is or has been provided to, or has otherwise been obtained by, an **Electricity Entity** in connection with the carrying on of a **Prescribed Business** and which is confidential or commercially sensitive and includes information which is derived from any such information;

~~**“Contestable Market”** means a market within the **Electricity Supply Industry** in which more than one **Electricity Entity** is operating in the market or in which there are no statutory impediments to the entry of new **Electricity Entities** into that market;~~

**“contestable”** in relation to goods or services within the **Electricity Supply Industry** means goods or services in relation to which there exists or potentially exists **competition** in a market in relation to the supply of the relevant goods or services;

**“contracting parties”** has the meaning in clause 3.4(b)(i)(A) of this **Code**;

**“Corporations Act”** means the *Corporations Act 2001* (Cth.);

**“Cost Allocation Procedures”** means the procedures of that name approved or issued by the **Commission** under clause 5 for the purposes of this **Code**;

**“Customer”** means a person who engages (or proposes to engage) in the activity of purchasing goods or services from a **Prescribed Business** of an **Electricity Entity** or from a **Related Contestable Business** of that **Electricity Entity**, and also means, where the context requires, a person who engages (or proposes to engage) in the activity of purchasing goods or services in the **Electricity Supply Industry** from a **Customer** who purchased goods and services from a **Prescribed Business**;

**“default contract”** has the meaning in clause 4.4(a) of this **Code**;

**“default terms and conditions”** has the meaning in clause 4.1(a) of this Code;

**“Directors”** has the same meaning as in the **Corporations Act** and includes in the case of the ~~Power and Water Authority~~ PWC its chief executive officer from time to time and each of the persons appointed ~~as directors of PWC to the Power and Water Authority by the Minister under the Power and Water Authority Act~~ in accordance with the **Government Owned Corporations Act**.

**“Electricity Business”** means in relation to an **Electricity Entity**, all of the businesses conducted by that **Electricity Entity** in the **Electricity Supply Industry**;

**“Electricity Entity”** has the same meaning as is given to that term in the **ERA Electricity Reform Act 2000** and includes, where the context requires, the **Associates** of that entity;

**“Electricity Supply Industry”** has the same meaning as in the **ERA Electricity Reform Act 2000**;

**“Employee”** means a **Director** or other officer, employee, consultant, contractor, or agent of an **Electricity Entity** and includes an **Outsourced Service Provider** of that **Electricity Entity**;

**“ERA”** means the **Electricity Reform Act**;

**“fair and reasonable”** has the meaning in clause 11.1 of this Code;

**“guideline”** means a guideline published by the **Commission** under section 7 of the **Act**;

**“Information Procedures”** means the procedures of that name approved or issued by the **Commission** under clause 5 for the purposes of this Code;

**“licence”** means a licence granted under the **ERA**;

**“Marketing Staff”** means an ~~employee, consultant, contractor or agent~~ of an **Electricity Entity** who is directly involved in the sale, promotion or advertising of any goods or services provided by the **Electricity Entity** to **Customers** (whether or not that employee, consultant, contractor or agent is involved in other functions) but does not include an employee, consultant, or agent who is only involved in:

- (a) strategic decision making, including the executive officer or officers to whom **Marketing Staff** report either directly or indirectly; or
- (b) technical, administrative, accounting or service functions;

**“minimum ring-fencing requirements”** means the requirements under clause 3 of this Code;

**“negotiated contract”** has the meaning in clause 4.4(b) of this Code;

**“nominated goods or services”** has the meaning in clause 4.2 of this Code;

**“non-contestable”** in relation to goods or services provided in the **Electricity Supply Industry** means goods or services other than **contestable** goods or services;

**“non-discriminatory”** means in relation to terms and conditions upon which goods or services are provided or offered or proposed to be provided or offered, terms or conditions which:

- (a) do not unreasonably discriminate, or have the effect of creating unreasonable discrimination between:

(i) different **Customers** or classes of **Customers**; or

(ii) **Customers** and a **Related Contestable Business** of an **Electricity Entity**; and

(b) do not unreasonably competitively or financially disadvantage a **Customer** relative to a **Related Contestable Business** of an **Electricity Entity**,

in relation to the provision of the relevant goods or services.

“**notional agreement**” has the meaning in clause 3.4(b)(i)(B)(I) of this **Code**;

“**Outsourced Service Provider**” has the meaning in clause 10.1(a) of this **Code**;

“**Prescribed Business**” means:

(a) a business (or component of a business) carried on by an **Electricity Entity** which consists of:

- (i) the operation of an electricity network and the provision of network access services in relation to that electricity network to **Customers**;
- (ii) the provision of power system control and dispatch services in relation to any electricity network;
- (iii) the sale of electricity to non-contestable **Customers**; or

(iv) a business (or component of a business) carried on by an **Electricity Entity** which consists of the provision of any other goods or services in the **Electricity Supply Industry**:

(A) to which the Regulations authorising the making of this **Code** extend to; and

(B) which the **Commission** determines in accordance with clause 6 are ~~not reasonably contestable~~ **non-contestable** goods or services ~~and should be included within the definition of ‘Prescribed Business’ for the purposes of this Code;~~ or

(b) the business carried on by the ~~Power and Water Authority~~ **PWC** of generating electricity for sale (whether to third parties or notionally to another business division of the ~~Power and Water Authority~~ **PWC**) carried on by the ~~Power and Water Authority~~ **PWC**, until such time as the **Commission** is satisfied that having regard to factors set out in section 6(2) of the **Act** and such other matters as the **Commission** considers are appropriate:

- (i) the ~~Power and Water Authority~~ **PWC** no longer has a substantial degree of market power in the market for the generation of electricity for sale in respect of a particular geographical area; or
- (ii) this **Code** should no longer apply to that business;

“**Procedure**” has the meaning given to it by clause 5.1 of this **Code**; and

“**proposed variation**” has the meaning in clause 3.4(c) of this **Code**;

“**PWC**” means the Power and Water Corporation established under the *Power and Water Corporation Act*; and

“**Related Business**” means, in relation to ~~a particular **Prescribed Business** of an **Electricity Entity**, any business (or component of a business), other than a **Prescribed Business**, carried on or activities undertaken in the **Electricity Supply Industry**~~ by that **Electricity Entity** or an **Associate** of that **Electricity Entity**

~~operating in a **Contestable Market** which do not form part of that **Prescribed Business** in the **Electricity Supply Industry**.~~

### 13.3 Other interpretation principles

- (a) In this **Code**, unless the context otherwise requires:
- (i) if a term is defined in the **ERA** and is not otherwise defined in clause 13.2, that term will have the same meaning as is given to that term under the **ERA**;
  - (ii) headings are for convenience only and do not affect the interpretation of this **Code**;
  - (iii) words importing the singular include the plural and vice versa;
  - (iv) words importing a gender include any gender;
  - (v) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa;
  - (vi) a reference to any thing includes a part of that thing;
  - (vii) a reference to a clause, Schedule or part of a clause or Schedule is a reference to a clause, Schedule or part of this **Code**;
  - (viii) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and determinations issued under that statute;
  - (ix) other parts of speech and grammatical forms of a word or phrase defined in this **Code** have a corresponding meaning;
  - (x) mentioning an example or anything after the words “include”, “includes” or “including” will not limit what else might be included;
  - (xi) a period of time:
    - (A) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
    - (B) which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
  - (xii) a reference to:
    - (A) a day is a reference to a period commencing immediately after midnight and ending the following midnight; and
    - (B) a month is a reference to a calendar month; and
  - (xiii) a reference to an accounting term is to be interpreted in accordance with accounting standards under the *Corporations Law* and, if not inconsistent with those accounting terms, generally accepted principles and practices in use from time to time in Australia in the **Electricity Supply Industry**.

### 11.4 Making of an instrument or decision

- (a) Where this **Code** authorises the making of an instrument or decision:
- (i) the power includes the power to amend or repeal the instrument or decision; and

- (ii) the power to amend or repeal the decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

**SCHEDULE 1****Exemptions as at Commencement Date**

<b>Column (1) – Electricity Entity</b>	<b>Column (2) – Code Obligation</b>	<b>Column (3) – Prescribed Business</b>
<b>PWC</b>	Clause 5.11	Franchise Retail
<b>PWC</b>	Clause 5.11	Generation Business
<b>PWC</b>	Clause 5.11	Electricity Business as a whole



## SCHEDULE 2

### Accounting, Cost Allocation and Information Principles

#### 1. Common Principles

1.1 In addition to the matters referred to in clause 5.4 of the **Code**, the **Commission** will, when considering whether to:

- (a) approve any **Procedures** submitted by an **Electricity Entity** under clause 5.3(a);
- (b) impose any conditions upon the grant of its approval; or
- (c) issue its own **Procedures**,

have regard to the need to achieve an appropriate balance between the public benefits of requiring an **Electricity Entity** to comply with those obligations or conditions and the administrative costs to the **Electricity Entity** of complying with those obligations or conditions.

#### 2. Accounting Principles

2.1 The **Accounting Procedures** will only be approved by the **Commission** if:

- (a) they ensure compliance with the relevant **minimum ring-fencing requirements**;
- (b) they are consistent with the accounting policies and procedures for other regulatory instruments;
- (c) their utilisation involves a recognisable and rational economic basis;
- (d) the resultant financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions and events is reported; and
- (e) they comply with the principles set out in this Schedule 2.

2.2 The **Accounting Procedures** must be presented to the **Commission** in a manner that ensures that the **Commission** may readily understand the methodologies and procedures comprising such **Accounting Procedures** and the resultant financial statements and reports of each **Prescribed Business** and its **Electricity Business** as a whole.

2.3 The **Accounting Procedures** must conform to Australian Accounting Standards wherever possible.

2.4 The **Accounting Procedures** must ensure the reporting of the substance of transactions by:

- (a) where substance and form differ, reporting the substance rather than the legal form of a transaction or event;
- (b) in determining the substance of a transaction, considering all its aspects and implications, including the expectations of and motivations for, the transaction; and

- (c) for the purposes of determining the substance of a transaction, viewing in aggregate a group or series of transactions that achieves, or is designed to achieve, an overall commercial effect.

2.5 An **Electricity Entity** must maintain accounting and reporting arrangements which:

- (a) enable financial statements and reports to be prepared for each **Prescribed Business** and its **Electricity Business** as a whole; and
- (b) provide information in the financial statements and reports that can be verified.

2.6 Information must be presented in financial statements and reports in the most understandable manner, without sacrificing relevance or reliability.

2.7 The financial statements and reports prepared by an **Electricity Entity** in compliance with its obligations under this **Code** must:

- (a) give a fair and reasonable view of the profit and loss and the balance sheet relating to each **Prescribed Business** and its **Electricity Business** as a whole;
- (b) be capable of certification as such by an auditor when and if required by the **Commission**;
- (c) be derived from the statutory accounts or their equivalent of the **Electricity Entity**; and
- (d) contain the entirety of the activities of each **Prescribed Business** and its **Electricity Business** as a whole by:
- (i) eliminating costs not related to each **Prescribed Business** and (where applicable) its **Electricity Business** as a whole;
- (ii) not consolidating amounts from statutory accounts of different entities; and
- (iii) consolidating or disaggregating statutory account amounts within an entity in order to prepare financial statements.

2.8 If some or all of the activities of an **Electricity Entity** are carried out by an entity that does not have statutory accounts, all financial representations of **Prescribed Business** activities by such an entity must be capable of being audited by an external independent auditor.

2.9 An **Electricity Entity** must present on a fair and consistent basis, from the accounting records that underlie its statutory accounts, the costs, revenues, assets employed and liabilities that may be reasonably attributed to each **Prescribed Business** and its **Electricity Business** as a whole.

2.10 The financial statements and reports of each **Prescribed Business** and its **Electricity Business** as a whole must, in so far as is reasonably practicable, be prepared in accordance with the accounting principles and policies applicable to the statutory accounts.

2.11 The financial statements and reports of each **Prescribed Business** and its **Electricity Business** as a whole must, in so far as is reasonably practicable, be prepared in a consistent manner so that the **Commission** can make comparisons between them over time.

2.12 An **Electricity Entity** must provide to the **Commission** full and detailed documentation of any policies and procedures that the **Electricity Entity** may have used to prepare the financial statements and reports, that are additional to or in place of, the accounting principles and policies used to prepare its statutory accounts.

2.13 The **Directors** of an **Electricity Entity** will be responsible for the purposes of this **Code** for the preparation and presentation of the financial statements and reports, and the information they contain.

2.14 The **Directors** of an **Electricity Entity** must ensure that the **Electricity Entity** keeps accounting records that:

- (a) correctly record and explain the transactions and financial position of each **Prescribed Business** and its **Electricity Business** as a whole;
- (b) enable financial statements and reports to be prepared in accordance with this **Code**; and
- (c) are capable of allowing an auditor to conveniently and properly form an opinion on the basis of those financial statements and reports as to the level of compliance by the **Electricity Entity** with the requirements of this Schedule, the **Accounting Procedures** and the **minimum ring-fencing requirements**.

### 3. Cost Allocation Principles

3.1 The **Cost Allocation Procedures** will only be approved by the **Commission** if:

- (a) they ensure compliance with the relevant **minimum ring-fencing requirements**;
- (b) they are consistent with the accounting policies and procedures for other regulatory instruments;
- (c) their utilisation involves a recognisable and rational economic basis;
- (d) the resultant financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions and events is reported; and
- (e) they comply with the principles set out in this Schedule 2.

3.2 The **Cost Allocation Procedures** must be presented to the **Commission** in a manner that ensures that the **Commission** may readily understand the methodologies and procedures comprising such **Procedures** and the resultant financial statements and reports prepared by the **Electricity Entity**.

3.3 The cost allocations prepared by the **Electricity Entity** in compliance with its obligations under this **Code** must be capable of certification as such by an auditor when and if required by the **Commission**.

3.4 For the purpose of financial statements and reports required to be provided to the **Commission** under this **Code** or for other regulatory purposes, the allocation of accounts between each **Prescribed Business** and the activities of the **Electricity Business** as a whole and across segments of a **Prescribed Business** are to be based on the principle that:

- (a) items which are directly attributable to a **Prescribed Business** or to the **Electricity Business** as a whole and segments of a **Prescribed Business** are assigned accordingly; and
- (b) items not directly attributable, are to be allocated to a **Prescribed Business** or to the **Electricity Business** as a whole and across segments of the **Prescribed Business** using an appropriate allocator, as indicated in following paragraphs.

3.5 An item may be directly attributable to a **Prescribed Business** or to the **Electricity Business** as a whole but not directly attributable to a segment of a **Prescribed Business**. In these circumstances, the allocation across segments of **Prescribed Businesses** will be made using an appropriate allocator as indicated in the following paragraphs.

3.6 Items that are not directly attributed either to a **Prescribed Business** or to the **Electricity Business** as a whole or to a segment of a **Prescribed Business** are to be allocated on a causation basis. Allocation based on avoidable cost is not permitted.

3.7 An **Electricity Entity** must produce for each item that has not been directly attributed to a **Prescribed Business** or the **Electricity Business** as a whole and/or **Prescribed Business** segment supporting paper work that includes:

- (a) the amounts that have been allocated to the **Prescribed Business** or the **Electricity Business** as a whole and/or **Prescribed Business** segment and amounts that have not been so allocated; and
- (b) the numeric quantity of each allocator.

3.8 If an item is immaterial and a causal relationship cannot be established without undue cost and effort, the **Electricity Entity** may effect an allocation of these items on a non-causal basis, provided it is accompanied by a supporting note documenting for each such item:

- (a) a defensible basis of allocation (which must not be avoidable cost);
- (b) the reason for choosing that basis; and
- (c) an explanation why no causal relationship could be established.

3.9 A non-causal basis of allocation may only be applied to the extent that:

- (a) the aggregate of all items subject to all non-causal bases of allocation is not material to the financial statements or reports; or
- (b) an **Electricity Entity** can demonstrate that there is likely to be a strong positive correlation between the non-causal basis and the actual cause of resource or service consumption or utilisation that those costs represent.

3.10 An item is material if its omission, misstatement or non-disclosure has the potential to prejudice the understanding of the financial position and nature of the **Prescribed Business** or the **Electricity Business** as a whole (whichever is applicable), gained by reading the financial statements and reports.

3.11 All bases of allocation must be explained and documented in the **Cost Allocation Procedures**.

#### 4. Information Principles

4.1 The **Information Procedures** will set out the procedures to be followed by staff of an **Electricity Entity** involved in the conduct of a **Prescribed Business** for the purpose of identifying, and then appropriately handling, storing, sharing and publishing, information that is either:

- (a) deemed to be **Confidential Information**; or
- (b) capable of materially affecting the commercial interests of a **Competitor** of a **Related Business**.

4.2 The proposed **Information Procedures** must contain procedures for ensuring that the identification and the handling, storing, sharing and publishing of such information will not provide a competitive advantage to the **Related Contestable Business** over any **Competitor** of a **Related Contestable Business**.

4.3 If an **Electricity Entity** proposes to allow the disclosure of information of the type referred to in clause 3.2(b) of this **Code** to an employee, consultant, contractor or agent involved in the conduct of a **Related Contestable Business**, the **Information Procedures** must identify categories of information which will also be made available to **Competitors** of the **Related Contestable Business**.

4.4 Without limiting the matters which may be covered in the **Information Procedures**, those **Procedures** should deal with the electronic, physical and procedural security measures that the **Electricity Entity** proposes to employ in respect of the conduct of a **Prescribed Business** (including separation of office space, access to information systems and procedures for the minimisation of **Customer** confusion and opportunities for preferential treatment or other unfair competitive advantage).

## 5. Scope of Principles

5.1 Nothing in these principles will limit the matters which the **Commission** may take into account in approving or issuing any **Procedures** or imposing any conditions upon its approval of any **Procedures**.



## **SCHEDULE 3**

### **Transitional Provisions**

#### **1. Continuation of approved Procedures**

(a) The **Accounting Procedures, Cost Allocation Procedures** and **Information Procedures** of an **Electricity Entity** which were approved by the **Commission** under the previous **Codes** and in force immediately before the **Commencement Date**:

(i) will continue in force and deemed to be approved **Procedures** for the purposes of clause 5 of this **Code**; and

(ii) will continue to be subject to any conditions relating to the **Commission's** approval of those **Procedures**.

(b) An **Electricity Entity** referred to in clause 1(a) of this Schedule is not required to comply with the requirements of clause 5.2 of this **Code** in relation to that approved **Procedure**.

#### **2. Exemptions**

(a) Any exemption granted by the **Commission** under the previous **Codes** which was in force immediately before the **Commencement Date**:

(i) will continue in force and deemed to be an exemption granted under clause 9 of this **Code**; and

(ii) will continue to be subject to any conditions relating to the **Commission's** approval of that exemption.