



**RING-FENCING CODE:  
DISCUSSION PAPER**

**July 2000**

## Call for Submissions

Public involvement is an important element of regulatory decision-making processes. Submissions are therefore invited from interested parties concerning the Commission's position on ring-fencing with respect to electricity licence holders.

Submissions or inquiries regarding this paper should be directed to:

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The closing date for submissions is Friday, 8 September 2000.

### **Confidentiality**

In the interests of transparency and to promote informed discussion, the Commission intends to make submissions publicly available. However, if a person making a submission does not want their submission to be public, that person should claim confidentiality in respect of the document (or any part of the document). Claims for confidentiality should be clearly noted on the front page of the submission and the relevant sections of the submission should be marked as confidential, so that the remainder of the document can be made publicly available.

### **Public access to submissions**

Subject to the above, submissions will be made available for public inspection at the office of the Commission, or on its website at [www.utilicom.nt.gov.au](http://www.utilicom.nt.gov.au).

To facilitate publication on the Commission's website, submissions should be made electronically by disk or email. However, if this is not possible, submissions can be made in writing.

Information about the role and current activities of the Commission, including copies of reports, papers and submissions can also be found on the Commission's website.

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## Definitions

“Commission”	means the Utilities Commission formed on commencement of the <i>Utilities Commission Act 2000</i>
“PAWA”	means the Power and Water Authority
“PAWA Generation”	means the business division of PAWA with operating responsibility for the generation of electricity by PAWA
“PAWA Networks”	means the business division of PAWA with operating responsibility for the electricity networks owned by PAWA
“PAWA Retail”	means the business division of PAWA with operating responsibility for the selling of electricity by PAWA to both contestable and non-contestable customers
“System Control”	means the activity undertaken by PAWA involving the monitoring and controlling of the operation of the power system
“ring-fencing”	means identifying and isolating, in a specified manner and to a specified extent, a monopoly or near-monopoly activity of an integrated business from other activities of that business which are contestable

## CHAPTER

## 1

## INTRODUCTION

**Legislative requirements**

1.1 The need for ‘ring-fencing’ was foreshadowed in the Treasurer’s statement on 20 October 1999:

“PAWA’s network business will also be separated (or ‘ring-fenced’) from its retail and generation functions to ensure that PAWA’s contestable activities gain no advantage—or cross subsidies—from its ongoing monopoly activities”.

1.2 The ring-fencing obligations on licensees operating monopoly businesses were subsequently included in the *Electricity Reform Act 2000*. In particular, the Act provides that the Commission may make certain licences subject to the condition that the business authorised by the licence be kept separate, in the manner and to the extent specified in the licence conditions:

- for a business licensed to operate an electricity network – from a related body corporate licensed to generate or sell electricity (section 26(1)(h));
- for a business licensed to sell electricity to non-contestable customers – from a related body corporate licensed to generate electricity or to sell electricity to contestable customers (section 27(1)(a)); and
- for a business licensed to undertake the role of system control over a power system – from a related body corporate licensed to generate electricity (section 29(1)(a)).

1.3 The Act defines a “related body corporate”, in respect of PAWA, to be a business division that would be a subsidiary within the meaning of the Corporations Law were PAWA a body corporate to which the Corporations Law applies.

**Licensing requirements**

1.4 The Commission chose to give effect to these requirements by specifying what is meant by “to be kept separate from ... a related body corporate ... in the manner and to the extent specified in the conditions” by means of a Ring-Fencing Code made by the Commission under section 24 of the *Utilities Commission Act 2000*.

1.5 As a consequence, each of the licences granted to PAWA with effect from 1 April 2000 includes an identical “Compliance with regulatory instruments” condition (clause 9 in the networks, generation and retail

licences, and clause 10 in the power system control licence). One of the requirements of this clause is that PAWA as the licensee must:

- “(b) comply with all applicable provisions of the Ring-Fencing Code after such a code is made by the Utilities Commission...” (Network Licence, clause 9.1).

1.6 On 3 February 2000, the Interim Utilities Commissioner provided PAWA with a document entitled “Draft Ring-Fencing Guidelines”. Based on that draft, the Commission determined a Ring-Fencing Code to apply from 1 April 2000. A slightly amended version of the Code promulgated has subsequently been approved, with effect from 1 July 2000. This Code (“Current Code”) is set out at Attachment A.

## Reviewing the current code

1.7 On 14 April, the Commission wrote to PAWA acknowledging that:

- parties (including PAWA) have not had the opportunity to fully consider the Current Code—although PAWA did have the benefit of the draft Guidelines on which the Current Code is based; and
- the Current Code is largely specified in terms of ‘targeted outcomes’—with the Commission leaving it to PAWA management in the first instance to propose the management and process/system steps necessary within PAWA to achieve the specified outcomes.

1.8 The Commission therefore proposed that the Current Code be in place only until a replacement Code is developed through a public consultation process.

1.9 To commence the public consultation process, the Commission required PAWA to develop the policies, practices and procedures which PAWA considers would most cost-effectively give effect to the ring-fencing outcomes set out in the Current Code. Specifically, within 3 months of issue of the licences, PAWA was required to submit its proposed ring-fencing policies, practices and procedures to the Commission for review and approval.

1.10 The Commission indicated that, following receipt of PAWA’s proposals and comments, the Commission would issue a discussion paper setting out its own analysis of PAWA’s proposals, and inviting public comment on both PAWA’s and the Commission’s views.

1.11 The Commission expects to settle on a replacement Code by 30 September 2000, taking into consideration views put to it by both PAWA and interested third parties.

## PAWA’s comments and proposals

1.12 On 6 June 2000, the Commission wrote to PAWA clarifying the Commission’s expectations of PAWA in relation to the development of the replacement Code. In particular, by 30 June, the Commission sought two contributions from PAWA:

- PAWA's comments on the Current Code and any suggested amendments to assist the Commission in drafting a replacement Code; and
- a detailed statement by PAWA, capable of being made public, setting out the policies, procedures, guidelines and structures that PAWA will put in place to meet the requirements of the Current Code.

1.13 PAWA's comments on the Current Code, including some suggested amendments, are at Attachment B.

1.14 A statement of PAWA's proposed ring-fencing policies, practices and procedures is at Attachment C.

1.15 Attachments B and C are taken from a letter to the Commission from PAWA's Chief Executive Officer dated 5 July 2000.



**CHAPTER****2****OBJECTIVES AND PRINCIPLES**

2.1 In developing the Current Code, the Commission's objective was to reinforce the effectiveness of the regulatory processes recently introduced into the electricity supply industry by the Territory Government. In particular, the Commission seeks to limit the ability of a licensed electricity business with monopoly or monopoly-like powers to extend those powers into contestable parts of the industry.

2.2 In other jurisdictions, the electricity industry has undergone structural reform which has reduced the likelihood that monopoly activities could be used to subsidise contestable activities. The Territory Government's decision to maintain PAWA as a vertically integrated business has considerably increased the need for effective ring-fencing.

2.3 In the case of a vertically integrated electricity business, the separation of monopoly functions from contestable functions provides two main benefits:

- New players in contestable sectors of the market will be able to compete on a fair and equal basis, without fear that the vertically integrated incumbent will be able to gain a competitive advantage. In stipulating the rules for separation, ring-fencing is therefore critical to the development of effective competition and creating confidence in the integrity of the market.
- What constitutes the monopoly elements of the market will be clearly defined. In particular, costs that belong to these monopoly activities will be separated from costs relating to contestable activities, ensuring there are no distortions in terms of under-recovery of costs in competitive markets.

2.4 Taking these factors into account, the Commission's objective for the Ring-Fencing Code is to assist in creating an environment where the price, quantity and quality of electricity sold to end-use consumers—be they contestable or non-contestable customers—are not biased as a result of PAWA's vertical integration, irrespective of the degree of integration.

**Issues for Comment:**

- Is this statement of objectives sufficient?
- Are there any other objectives/elements which should be referred to in such a statement of objectives?

**CHAPTER****3****DRAFT REPLACEMENT CODE****Current Code as a light-handed approach**

3.1 The Commission has given effect to the ring-fencing objectives identified in the previous Chapter by:

- promulgating the Current Code; and
- requiring PAWA to specify the policies, practices and procedures that PAWA will put in place to meet the requirements of that Code.

3.2 In adopting this approach, the Commission's intention was to take a relatively light-handed regulatory approach whereby PAWA has maximum discretion as to how it would meet its ring-fencing obligations.

**PAWA's response**

3.3 PAWA's response to the requirement that it specify its ring-fencing policies, practices and procedures (at Attachment C) is closer to a broad statement of principles and intentions than to a set of detailed policies, practices and procedures.

3.4 PAWA's response reflects the belief of management that the arrangements already put in place by and large should be sufficient in the circumstances, and that management was not aware of any aspects of the current arrangements which were a cause for concern or had the potential to cause problems.

**Commission's assessment**

3.5 The Commission's preference is for PAWA to provide a detailed undertaking to the Commission stating the administrative arrangements PAWA will establish and maintain to ensure effective implementation of a ring-fencing regime.

3.6 Such a ring-fencing undertaking would need to be:

- documented to allow timely external auditing;
- written, structured and presented in a manner which is easily understood by general audiences;
- consistent over time and not changed without the prior approval of the Commission; and

- designed to allow the publication of regular information on the costs of providing 'unbundled' monopoly services.

3.7 The undertaking should include nomination of the persons who have responsibility to see that the undertaking is delivering satisfactory outcomes and will contribute to the transparency and accountability of matters contained in the undertaking. The responsibility of the nominated persons would include monitoring and reporting on matters set out in the undertaking.

3.8 PAWA would have to report regularly:

- on the extent to which it was complying with the undertaking; and
- highlighting any non-compliance and, if so, what action is being taken to ensure compliance including a time frame for achieving compliance.

3.9 It is the Commission's assessment that PAWA's statement of intentions (Attachment C) falls short of meeting the minimum requirements for such an undertaking.

## Draft replacement Code

3.10 In the circumstances, the Commission proposes to develop a replacement Code similar to those developed for the electricity supply industry by regulators in other jurisdictions (the ACCC and the Queensland Competition Authority, for example) based on the 'National Gas Code' model.

3.11 The National Gas Code model establishes a number of minimum obligations, with the regulator being provided with the ability to waive certain obligations, and provides for a mechanism whereby the regulator may impose additional obligations.<sup>1</sup>

3.12 A draft replacement Code prepared by the Commission is at Attachment D. It follows closely the Queensland regulator's draft ring-fencing guidelines<sup>2</sup>, and includes the Commission's specific proposals/responses to issues canvassed in the remainder of this Discussion Paper.

## Waiving the Code

3.13 The draft replacement Code provides for a greater level of guidance to PAWA as to the minimum requirements expected of it by the Commission, and so has the appearance of being less 'light handed' than the Commission's original approach. However, the inclusion of waiver provisions enables the ring-fencing requirements to be tailored to PAWA's situation based upon a net benefits test.

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<sup>1</sup> Under the National Gas Code, the regulator can waive established ring-fencing obligations (after due public consultation) if it determines that the costs of compliance are greater than the public benefit. Moreover, provided the compliance costs are reasonable, the regulator can impose additional ring-fencing obligations to ensure the regulated provider does not favour the interests of an associate at the expense of other users.

<sup>2</sup> Queensland Competition Authority, *Electricity Distribution: Draft Ring-Fencing Guidelines*, December 1999

3.14 Indeed, PAWA's comments on the Current Code envisaged such a process:

"A section outlining processes by which to address the issue of materiality, such as those incorporated by ACCC in their Transmission Ring-Fencing Guidelines, which allows ring-fencing obligations to be waived should the benefit to the public be outweighed by the cost. The Code should specify some of the more important factors to be taken into account by the Commission when making this assessment. These should include: -

- the administrative costs of regulation;
- the costs to the licensee in limiting or eliminating its ability to achieve economies of scale;
- the level of competition in the relevant market;
- the size of the relevant market; and
- the extent to which competition will be enhanced by the obligation under consideration."

## Amending the Code

3.15 The Current Code contains no provisions for its amendment or development.

3.16 The Commission agrees with PAWA's view that the replacement Code needs a section:

"...outlining processes for revision of the Ring-Fencing Code whereby the code can be amended and/or expanded from time to time to meet the needs of PAWA and other relevant stakeholders arising from changing circumstances including changes in the regulatory framework and developments at the national level. This requirement is consistent with Section 24 of the *Utilities Commission Act*."

3.17 The Commission notes that Codes established under the *Utilities Commission Act 2000* can only be amended after consultation. This consultative requirement applies to any amendments to the Current Code. However, the Commission agrees that the replacement Code should make explicit provision for the processes to be followed when amending the ring-fencing code.

3.18 In the draft replacement Code put forward by the Commission, it is proposed to:

- provide a notice to the relevant PAWA business requiring it to comply with additional or amended ring-fencing provisions;
- inform all interested parties of the issuing of such a notice, including by publication in a daily newspaper requesting submissions on the proposed changes;
- issue a draft decision within 30 days of the last day for submissions, providing a copy of the draft decision to PAWA and anyone making a submission; and
- request further submissions and then to consider those submissions before a final decision is issued within 30 days of the last day for submissions on the draft decision.

**Issues for comment:**

- Do PAWA's proposed ring-fencing policies, practices and procedures (at Attachment C) justify the Commission taking a more prescriptive approach in a replacement Code?
- Does the National Gas Code model represent an appropriate model for the replacement Code?
- Is the consultative approach proposed in the draft replacement Code sufficient when decisions are to be made about waiving or amending obligations under the Code?

## CHAPTER

## 4

**NOTABLE FEATURES OF THE CURRENT CODE**

4.1 Besides specifying the nature of separate financial reports required for each of PAWA's licensed businesses, the Current Code requires that a monopoly business does not:

- pass on information to a related contestable business which is not generally available to competitors of that contestable business;
- cross-subsidise its contestable business activities; nor
- discriminate between customers in an anti-competitive manner, or give preferential treatment to its related contestable businesses.

4.2 This Chapter discusses some of the distinctive features of the Current Code, taking the above general requirements as given. The following Chapters look more closely at the above requirements themselves. In particular, this Chapter discusses whether any aspects of the Current Code should not migrate to the replacement Code. PAWA's comments on the Current Code are at Attachment B.

**Ring-Fencing of Generation**

4.3 Unlike the case of PAWA's monopoly businesses where the *Electricity Reform Act 2000* explicitly states that there must be separation, there is no explicit legislative requirement – in section 25 dealing with conditions on generation licences – that suggests PAWA Generation should be kept separate from PAWA Retail's contestable business.

4.4 Despite this, the Current Code adds PAWA Generation to the list of businesses that should observe certain ring-fencing obligations. The Commission chose to apply section 24(4) of the *Electricity Reform Act 2000*, which states that the Commission may, on granting a licence, make a licence subject to further conditions that are considered appropriate by the Commission. Moreover section 25(2) of the Act provides that the matters specified in section 25(1) "...[do] not limit the matters that may be dealt with by terms or conditions of a licence authorising the generation of electricity."

4.5 PAWA Generation is the dominant participant in the Northern Territory generation market, exhibiting many of the characteristics of a monopoly in some sub-markets. Of particular issue is PAWA Generation's dominance in the market for standby power to third party generators and for the sale of wholesale electricity to third party retailers. It is expected that PAWA Generation will maintain such dominance for some time.

4.6 To limit PAWA Generation's ability to exploit its market dominance to the detriment of competitors to PAWA Retail, the Commission considers it essential that PAWA Generation operate separately from PAWA Retail's business of selling electricity to contestable customers.

4.7 In addition, the Commission believes there should be a transparent relationship between PAWA Generation and PAWA Retail's business of selling electricity to non-contestable customers (its "franchise retail business"). Under the Government's CSO policy, the Government is effectively a co-purchaser of energy services and – like other customers – should be well-informed on the consequence of its purchases. To facilitate this transparency, the Commission considers that sale contracts between PAWA Generation and PAWA Retail franchise business should be available for public scrutiny.

4.8 The draft replacement Code continues to include PAWA Generation among the list of PAWA's businesses to be kept separate from its contestable activities.

### **Financial separation only of monopoly and contestable retail activities**

4.9 The *Electricity Reform Act 2000* requires the businesses of selling electricity to 'contestable' and 'non-contestable' customers to be operated separately.

4.10 However, in the Current Code, the Commission has chosen to require a lesser degree of separation between the contestable and franchise retail businesses, being limited to financial matters.<sup>3</sup> The Commission's rationale is that:

- PAWA Retail has been issued with one licence rather than two;
- compared with decisions made by other of PAWA's monopoly businesses, decisions made by the franchise retail business have considerably less scope to advantage the contestable retail business or discriminate against the competitors of that contestable business; and
- other mechanisms exist (which could be more cost-effective) to ensure that there are no information or other advantages flowing to PAWA if the separation of its franchise and contestable retail businesses is limited to financial separation.

4.11 For example, conduct rules are in place concerning contracting of emerging contestable customers (only after information that is available within PAWA is made available also to its retail competitors).

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<sup>3</sup> Associated with this, the Commission has also granted PAWA Retail an exemption from the need to prepare comprehensive financial statements for its contestable and franchise businesses on a separate basis for 1999-00 only. The Commission is satisfied that PAWA will not be in a position to overcome certain information system limitations until the 2000-01 year.

4.12 The draft replacement Code provides that a waiver apply to the non-financial separation requirements with respect to PAWA Retail's contestable and franchise businesses.

### **Public availability of separate financial reports**

4.13 The Current Code includes a provision that the financial statements relating to PAWA's generation and franchise retail activities may provide commercially sensitive information to its competitors. Rather than requiring publication of these statements, the Current Code in effect only requires these statements to be provided to the Commission on a confidential basis.

4.14 The draft replacement Code continues to provide a waiver to PAWA's generation and franchise retail businesses (only) from the requirement to make separate financial reports publicly available.

### **Coverage**

4.15 The Current Code only applies to PAWA. PAWA has submitted that any ring-fencing code should apply to all market participants, regardless of their market size or historical context. PAWA sees this as fundamental to achieving a level playing field in the market.

4.16 The Commission's view is that ring-fencing is aimed primarily at negating the exercise of market power where monopoly and contestable businesses are owned and operated jointly. Ring-fencing obligations should therefore be restricted to instances where a vertically (or horizontally) integrated entity includes a business or activity which possesses significant market power. If none of the business units of an integrated entity possess such market power, the fact that that entity is integrated is not grounds for imposing ring-fencing obligations.

#### **Issues for Comment:**

- Should a business enjoying substantial market barriers to entry but which does not benefit from any legislated barriers to entry (PAWA Generation) be subject to the same ring-fencing obligations as businesses (networks and franchise retail) protected by legislated barriers to entry?
- Should PAWA's franchise retail and generation businesses continue to receive waivers on the requirement to publicly provide separate financial statements?
- Should PAWA's franchise retail business continue to be exempt from the requirement that monopoly businesses not operate a related contestable business (contestable retail)?
- Should PAWA's franchise retail business continue to receive a waiver on the requirement to ring-fence customer information and major decisions from its contestable retail business?
- Should the ring-fencing code be extended to all licensed businesses, not just those operating a business with monopoly powers or in a dominant market position?





**CHAPTER****5****ACCOUNTING SEPARATION**

5.1 Financial separation requires:

- the separation of financial accounts;
- the consolidation of financial accounts across different products and services within a company and its subsidiaries; and
- the consistent application of rules for cost/revenue attribution and for an appropriate allocation of common or joint costs, including overhead costs.

5.2 The first two requirements together are referred to as ‘accounting separation’. Accounting separation contributes to ring-fencing through transparency of accounts, and is essential to assessing the extent to which revenues associated with each of these businesses are related to their costs.

5.3 This Chapter looks at the requirements for accounting separation, while the following Chapter deals with cost/revenue allocation issues.

**PAWA’s proposed policies, practices and procedures**

5.4 PAWA proposes to adopt the following policies to achieve its accounting separation obligations.

“ PAWA will apply accounting principles and policies in the development of its regulatory financial statements for each regulated business unit in so far as they relate to regulated activities that will conform to the Australian Accounting Standards. PAWA understands that the accounts to be provided are those for the regulated business activities. In addition,

- where additional accounting principles and policies are used to prepare the regulatory financial statements, in accordance with the Northern Territory Government’s accounting requirements, these will be disclosed to the Commission; and
- where there is a change in the accounting principles and policies used to prepare the regulatory financial statements from one period to the next, PAWA will disclose the change and the effect of the change on the regulatory financial statements to the Commission.

PAWA’s accounts and records, which are directly attributable to the regulated and unregulated parts of the business, will be assigned accordingly. Those accounts and records that are not directly attributable will be allocated to the regulated and unregulated parts of the business using an appropriate allocator. PAWA’s basis of allocation of its accounts and records will be set out and approved by PAWA senior management. Explanation of the allocator applied to the regulated and unregulated parts

of the business can also be traced back to the service level agreements between PAWA's different business units and external service providers including other NT Government agencies.

PAWA will maintain accounting and reporting arrangements that will enable separate regulatory financial statements to be prepared for each Prescribed Business, and provide information in the regulatory financial statements that can be verified. Information presented in PAWA's regulatory financial statements will be presented in the most understandable manner, without sacrificing relevance and reliability. Account headings used in the regulatory financial statements will be reconcilable to PAWA's chart of accounts such that there is an audit trail between PAWA's accounts and records and the account headings used in the regulatory financial statements.

PAWA's General Manager Business Services will be responsible for the preparation and presentation of the regulatory financial statements and the information they contain. This responsibility extends to ensuring that PAWA's accounts and records correctly record and explain transactions and financial position of the Prescribed Business. An appropriate responsibility statement will be attached to the regulatory financial statements and signed off by the CEO prior to submitting these to the Commission."

## Commission's assessment

5.5 The Current Code contains an accounting separation requirement, as a basis for ensuring accountability and transparency of the separate businesses. Specifically:

- any licensed electricity entity supplying monopoly services must maintain a separate set of accounts in respect of those services, as well as a separate set of accounts in respect of the other services it provides; and
- these accounts must be capable of being audited.

5.6 As accounting separation is also important to ensure commercial decisions are made on a sound basis, the Commission considers that this requirement does not involve any significant additional costs for PAWA.

## Replacement code

5.7 PAWA's proposed policies are relatively comprehensive in terms of the minimum financial reporting requirements under the Current Code.

5.8 In the Commission's view, however, the replacement Code needs to clarify the regulatory accounting standards to be met. In particular, the Commission has included in the draft replacement Code the requirements that PAWA comply with:

- any general accounting guidelines for regulated electricity businesses published by the Commission which apply to the accounts being prepared; or
- if the Commission has not published such guidelines – guidelines prepared by the electricity business and approved by the Commission or, if there are no such guidelines, such guidelines (if any) as the

Commission advises the electricity business apply to that electricity business from time to time.

5.9 The Commission's intention is to develop regulatory accounting guidelines for application commencing in the 2000-01 year. Such guidelines will, among other things, require the accounts to contain sufficient information, and to be presented in such a manner, as will enable verification by the Commission of the calculation of regulated tariffs and charges.

**Issues for Comment:**

- Should the Commission take the initiative in preparing regulatory accounting guidelines, or is it appropriate to leave it to PAWA (within a specified time frame) to prepare and submit such guidelines for the Commission's approval?

## CHAPTER

## 6

**CROSS SUBSIDIES****PAWA's proposed policies, practices and procedures**

6.1 PAWA proposes to adopt the following policies to achieve its 'no cross subsidies' obligations.

" PAWA will develop, implement and train relevant staff on a code of conduct in relation to the no-cross subsidisation requirements.

PAWA's General Manager Business Services will be responsible for ensuring that PAWA's regulatory financial statements and the information they contain correctly record and explain transactions and financial position of the Prescribed Business. An appropriate responsibility statement will be attached to the regulatory financial statements and signed off by the CEO prior to submitting these to the Commission."

**Commission's assessment**

6.2 The Commission believes that a prohibition on cross subsidies between PAWA's monopoly and contestable activities is an essential feature of ring-fencing. The Current Code therefore contains a provision that prohibits cross subsidisation between monopoly and related contestable businesses.

6.3 The Commission's view is that PAWA's proposed policies do not contain sufficient detail as to how those policies would be applied. In particular, they do not:

- define what PAWA considers to be a cross subsidy; nor
- the basis of any cost allocation between monopoly and contestable activities aimed at preventing cross subsidisation occurring.

6.4 The draft replacement Code therefore contains a definition of 'cross subsidy' and a mechanism whereby any cost allocation methodology used by PAWA is subject to approval by the Commission.

**Definition of 'cross subsidy'**

6.5 The Commission proposes to use the following definition of a cross subsidy, based upon the approach advocated by the Commonwealth Competitive Neutrality Complaints Office:<sup>4</sup>

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<sup>4</sup> Commonwealth Competitive Neutrality Complaints Office, *Cost Allocation and Pricing*, October 1998

*A cross subsidy exists where, for any costs that are jointly incurred by related businesses, the costs allocated to a contestable business are less than the long run avoidable cost of their supply.*

'Avoidable cost' means the cost of any output that could be saved over the long term by not producing it.

6.6 This approach differs from the definition that would be associated with use of a 'fully distributed cost' (FDC) model, where the costs allocated to a contestable business would need be at least that business's share of 'full costs'. Full costs refer to all costs exclusive to the business and a *pro-rata* share of the overheads and capital costs of the joint businesses.

6.7 The Commission is mindful that allocating a *pro-rata* share of PAWA's overheads and capital costs to its contestable activities may overstate the costs those activities impose on PAWA. A business using such a cost base to set a minimum revenue target could, therefore, neglect opportunities to efficiently supply goods and services. The avoidable (or incremental) cost allocation method overcomes this problem because it better measures the additional costs to an agency of its contestable activities.

6.8 Under the avoidable cost method, the cost base of a business unit comprises all costs that PAWA as a whole would save, or avoid, if the business unit ceased operating. This includes the resources used exclusively by the unit and the additional cost PAWA as a whole incurs to provide resources to that unit.

6.9 The avoidable cost will usually, but not always, be lower than the FDC. Where a business unit uses any spare capacity in an asset which represents an on-going efficient investment on the part of the monopoly businesses of PAWA, few additional costs will be incurred if a contestable business unit uses that spare capacity. If, on the other hand, such spare capacity is due to a change in demand for services or a poor investment decision by the monopoly businesses – and PAWA therefore has the option of selling the asset – the contestable business unit should be required to earn a commercial rate of return on that use (and FDC will be a good proxy for the avoidable cost).

6.10 Since avoidable cost equates to the minimum level of revenue consistent with efficient production, it provides a good benchmark to use when examining claims that a business unit is under-pricing its services. This concept of 'cross subsidy' is therefore used in the draft replacement Code.

## **Basis for cost allocation**

6.11 The scope for cross subsidisation is most evident where costs cannot be allocated precisely and unambiguously to particular customers or services. In particular, costs may jointly relate to the operation of contestable and monopoly businesses. In such circumstances, the potential exists for costs that correctly belong to the contestable business being allocated to the monopoly business, creating a competitive advantage for the contestable activity. An appropriate cost allocation methodology is therefore critical to effective ring-fencing.

6.12 Cost attribution is a generic task involving the general process of assigning costs and revenues to an entity or activity undertaken by an entity. Direct entity or activity costs are quite easily assigned. However, joint or common costs (or revenues) require an allocation methodology.

6.13 The Commission considers that details of the methodology of cost and revenue allocation for common (or joint) costs to each monopoly activity should be provided by PAWA for the following costs categories:

- fixed assets;
- working capital;
- depreciation;
- direct operating costs; and
- administrative (or corporate overhead) costs.

The cost drivers used to allocate costs between activities, products and services need to be identified and justified.

6.14 The Commission is supportive of an approach to cost allocation which allows monopoly businesses to put forward their cost allocation methodologies to the Commission for approval, rather than the Commission prescribing how costs must be allocated. The proposed methodologies will then be assessed in the context of the objectives of the Code and to ensure their effectiveness in promoting competition in related markets. The Commission will consider the need for more detailed cost allocation guidelines in light of this analysis.

**Issues for Comment:**

- Is the Commission's proposed definition of a 'cross subsidy' (based on long-run avoidable costs) acceptable, or is an alternative definition based on the fully distributed cost approach preferable?
- Is the Commission's preference for the monopoly businesses putting forward their preferred cost allocation methodologies for approval generally supported?

**CHAPTER****7****LIMITS ON INFORMATION FLOWS****PAWA's proposed policies, practices and procedures**

7.1 PAWA proposes to adopt the following policies to achieve its 'limits on information flows' obligations.

" Senior Executives of PAWA will be required to make business decisions that attempt to maximise the performance of individual business units, rather than non-optimal solutions that may have the effect of disadvantaging potential competitors.

Financial performance data will only be supplied to the relevant Senior Manager consistent with their individual responsibilities.

System Control will continue to act in a manner which is non-discriminatory and in the spirit intended by the Legislation.

PAWA will prepare and implement a 'Code-of-Conduct' (including training its staff) that incorporate procedures for:

- Ensuring confidential information is used only for the purposes for which it was provided;
- Appropriate information disclosure;
- Lines of reporting;
- Behavioural rules to address preferential self-dealing with PAWA businesses;
- Dealing with market sensitive information; and
- Internal and external mechanisms that assist in the identification and rectification of any lapses of ring-fencing requirements.

PAWA, which is in the process of developing internal compliance arrangements, will ensure that these include reviewing compliance with the Commission's ring-fencing guidelines.

PAWA's proposed amendments to the Chinese Walls requirements combined with our proposed policies and code of conduct will ensure that no improper use of information is made, where PAWA's Manager – Commercial Services has access to confidential commercial transactions in his capacity as PAWA's contact point for obtaining legal advice in relation to the transaction."

7.2 PAWA has also proposed that the definition of 'information' that is deemed to provide unfair advantage be tightened.

" The present code has a blanket prohibition on access to information in relation to the prescribed business' dealings with suppliers in upstream



markets and customers in downstream markets. In PAWA's view, this is too wide in the following respects:

- (a) there should be an exception to the prohibition with respect to information which is generally known or available;
- (b) in particular, there should be an exception to the prohibition with respect to information which other market participants have equality of opportunity to gain access to; and
- (c) the prohibition should only apply to information which, if improperly used, could reasonably provide a commercial advantage to the licensee over its competitors.

...In summary, PAWA suggests that the current Chinese Walls provisions of the Code be amended in the following ways:

- (a) a more restrictive definition of the type of information required to be kept confidential; and
- (b) rather than prohibiting access to or possession of that information, the code should:
  - (i) require that information provided or obtained is only used for the purpose for which it was provided or obtained; and
  - (ii) prohibit use of the information by a Prescribed Business to gain commercial advantage for any Related Business."

## Commission's assessment

7.3 PAWA contends that it is not the access to information that is the primary issue, but rather the application of that information in a manner that creates an unfair advantage.

7.4 The Commission agrees with PAWA that the replacement Code should aim at controlling the use of information rather than its mere access. This would be consistent with the approach adopted by regulators elsewhere in Australia and overseas. As a consequence, the draft replacement Code requires that a monopoly business:

- must ensure that all confidential information provided by a customer or prospective customer is used only for the purpose for which that information was provided and that such information is not disclosed to any other related business or any other person without the approval of the customer or prospective customer who provided it; and
- must not provide any commercially-sensitive information to a related business unless it is made equally available to all competitors of that related business.

7.5 As PAWA's proposed policies recognise, information flows between monopoly and contestable businesses can have anti-competitive consequences. One example of a possible information advantage is the treatment of customer information held by the network business, particularly information relating to consumption patterns, including competing retailers' customers. Such information should be treated in a confidential manner by a network business, unless there is a legitimate commercial need for such information to be disclosed. In such circumstances, information should be

made publicly available and therefore accessible on the same basis to all retailers.

7.6 PAWA's proposed policies flag the placing of some limits on the sharing of information between related businesses in order to minimise any potential competitive advantages that the monopoly business can provide to a related businesses. However, policies establishing the physical and procedural internal divisions (known as Chinese walls) within PAWA to contain certain information and activities need to be fleshed out in a good deal more detail.

7.7 The Commission proposes to encourage further consideration of this issue by PAWA by strengthening the Code itself, including by:

- requiring certain information to be published, or otherwise made available to all participants in upstream or downstream markets on an equal basis; and
- providing for protocols for the disclosure and exchange of information between related businesses to be established and approved.

7.8 Also, the Current Code and PAWA's proposed policies may be deficient by not recognising that ring-fencing with respect to information flows can be very difficult to implement and monitor where there is a significant degree of common staffing between network and retail activities, eg. common customer call centres or a customer information system that makes use of common information. At issue is whether information flows should be further restricted through requirements for separate staffing, physically separate locations for the different businesses or controls on customer data.

7.9 The Commission has considered the merits and costs of such limitations and, based on its stated objectives and principles, has included in the draft replacement Code a requirement that marketing staff not be shared between the network, generation and retailing businesses. This removes the potential for unintended sharing of information both at an operational level and in terms of managerial decision making.

7.10 The Commission acknowledges, however, that this provision must be capable of possible waiver, but the onus of proof will be on PAWA to demonstrate no net public benefit from continuing application of this prohibition. Also, the draft replacement Code makes provision for a waiver where approved information sharing protocols are in place.

**Issues for Comment:**

- Are the proposed clarifications to the type of information not to be shared sufficient?
- Should the making of protocols for the sharing of information be mandatory?
- Should the proposed requirement preventing the sharing of marketing staff between monopoly and contestable businesses be capable of waiving?

**CHAPTER****8****SEPARATION OF DECISION-MAKING****Purpose of Part D requirement of Current Code**

8.1 The final element of the Current Code is the ‘decision-making independence’ requirement (Part D).

8.2 The Territory Government’s decision to maintain PAWA as a vertically integrated business gives rise to the possibility that decisions can be made by a monopoly business in ways that discriminate against a competitor of a related business in an upstream or downstream market, or financially or competitively advantage the related business.

8.3 Vertical integration gives rise to the possibility – not available otherwise – for conduct that has the effect of:

- discriminating between customers in an anti-competitive manner, such as anti-competitive discriminatory pricing; and
- giving preferential treatment to related businesses or preferred customers, including as a result of some investment and operational decisions not being subject to competitive market forces.

**PAWA’s proposed policies, practices and procedures**

8.4 PAWA proposes to adopt the following policies to achieve its ‘decision-making independence’ obligations.

“ PAWA will adopt a ‘Code-of-Conduct’ that actively requires business unit managers to seek optimal outcomes for the performance of their individual business units. That is, policies will be implemented that require business unit managers to engage in non-discriminatory treatment of Related Businesses and third party businesses by Prescribed Businesses.

PAWA will continue to monitor the current tasks and responsibilities of its senior executive managers to ensure independence of decision making consistent with the Government’s decision not to dis-aggregate PAWA.”

**Commission’s assessment**

8.5 Part D of the Current Code is a unique provision, and does not exist explicitly in similar codes applying to the electricity supply industry elsewhere in Australia. In other jurisdictions, the electricity industry has undergone structural reform which has reduced the likelihood that monopoly activities could be used to discriminate against a competitor of a related contestable

business and/or favour that related business.

8.6 PAWA's proposals in this area are minimal, to say the least. In the Commission's view, consideration may also need to be given to such initiatives as:

- legal separation of some of the monopoly businesses; and
- further management separation.

## Legal separation

8.7 'Structural separation' is the most effective means of countering concern over decision-making interdependence. Ring-fencing would not be required for enterprises providing monopoly goods and services were they supplied by separately owned and operated entities.

8.8 As the Territory Government's decision to keep PAWA as a vertically integrated business implies, a policy of full structural separation would reduce PAWA's ability to achieve available economies of scale and scope. PAWA has submitted that:

" While PAWA's position with respect to complying with the principles of ring-fencing is assured, we would also like to remind the Commission of the context in which the Ring-Fencing Code has been established. That is, the Northern Territory Government's recent reform of the electricity industry has resulted in PAWA continuing to operate as a vertically and horizontally integrated business. However, it is also important to acknowledge the reasoning behind the Northern Territory Government's decision not to structurally separate PAWA, being the uniqueness of the situation due to:

- the size of the NT market and existing economies of scale; and
- the fact that it would be too costly to operate a wholesale electricity market and it would be of limited benefit given the lack of interconnection with other state power systems.

Simply, the Northern Territory Treasurer appreciated that diseconomies could occur (to the public detriment) if PAWA were separated into competing companies, and as such, PAWA needs to operate in certain ways to achieve the economies it currently enjoys from the wide scope of its business as a multi-utility."

8.9 While not disputing this interpretation of the Government's position, an alternative to structural separation not apparently considered in PAWA's case involves the monopoly and contestable functions being located in separate legal entities under the Corporations Law. Such 'legal separation' would still permit the achievement of economics of scale and scope through:

- contestable businesses being subsidiaries of a monopoly business; and/or
- monopoly and contestable businesses both being owned by the same holding company.

As such, 'legal separation' can be distinguished in principle from 'structural separation'.

8.10 Legal separation would:

- require the monopoly and contestable businesses to enter into more formal contractual and reporting arrangements, and as a consequence would require each business to better identify their respective roles;
- provide clear incentives under the Corporations Law for Directors and management to act in ways that focus solely on the interests of individual subsidiaries or business units; and
- reduce the requirement for more prescriptive ring-fencing arrangements and therefore the associated costs.

8.11 There are, however, costs associated with legal separation, particularly in terms of public reporting requirements. However, competitive neutrality considerations would require PAWA to bear such costs. Moreover, legal separation may not of itself prevent entities that retain common ownership from collaborating in a manner which provides a contestable business with the ability to exercise a competitive advantage over competitors of that business. As long as common ownership remains, incentives or opportunities to favour related businesses—let alone share information and costs—will continue to exist.<sup>5</sup> Legal separation alone may therefore not forestall the need for additional ring-fencing arrangements aimed at making it difficult for commonly-owned entities to act upon such incentives and opportunities.

8.12 The draft replacement Code does not require legal separation on the basis that this is a matter for the Government as shareholder. Rather, the requirement is that the various businesses of PAWA operate **as if** they were subsidiaries as defined under the Corporations Law. PAWA's Board and management need to consider the implications of this requirement.

## Management structure

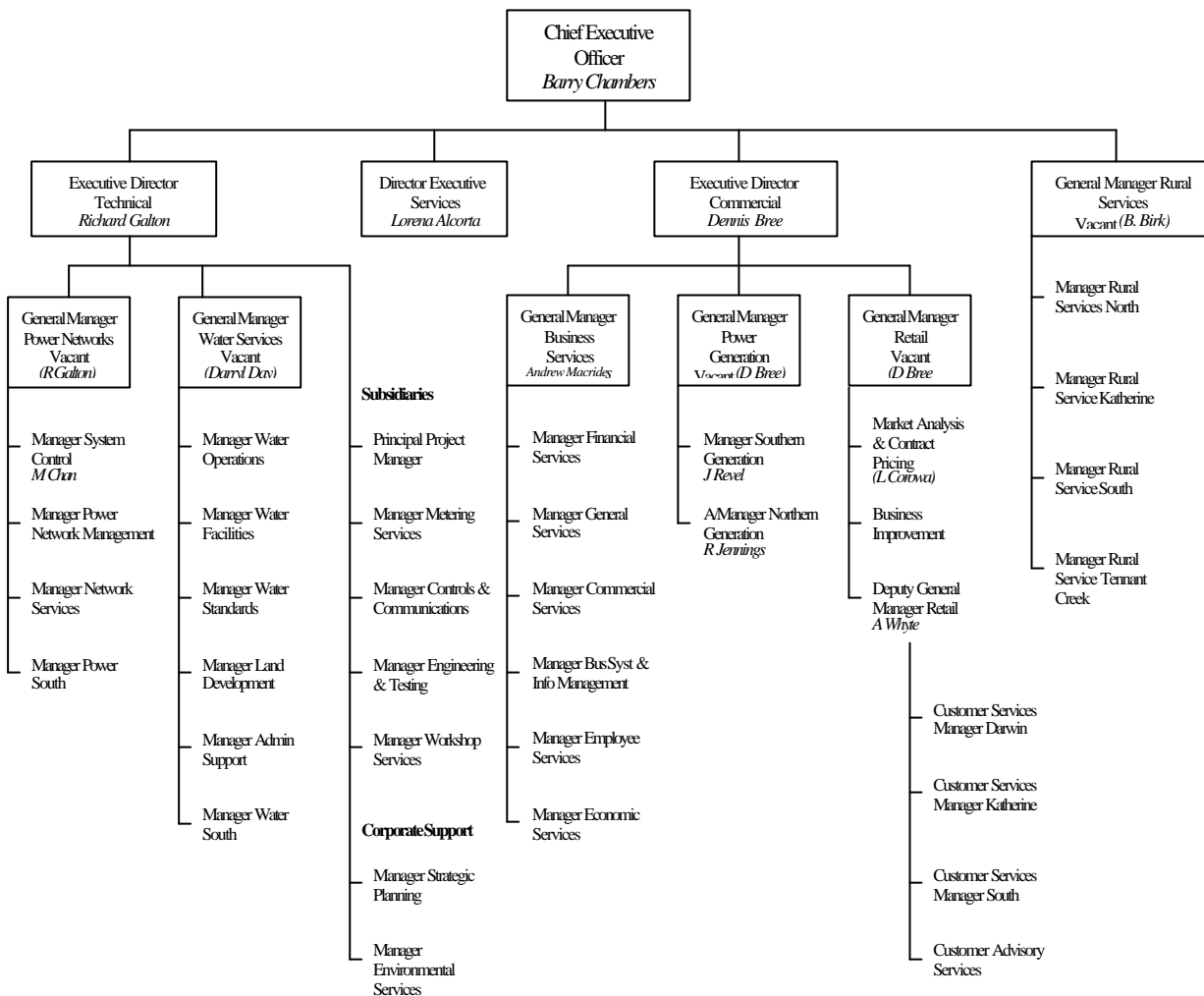
8.13 Whatever the approach taken with regard to legal separation, there is a need for PAWA's management structure and arrangements to enable and require senior managers to act in the sole interests of their own business units.

8.14 Under the current management arrangements, there may be little to no incentive for individuals within PAWA to undertake decisions that maximise the performance of their respective business units, with the exception of the desire of individual employees to 'do the right thing'. That is, under the current operational and salary structure, the Commission is not aware of any mechanism by which business unit performance is linked to individual incentives and/or financial rewards.

Also, currently, there are some senior managers who have direct responsibility for businesses that are to be ring-fenced from one another. For example, the Executive Director, Commercial also currently fulfils the roles of General Manager, Retail and General Manager, Generation. This is highlighted in the following organisational structure diagram.

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<sup>5</sup> Separate but commonly owned firms may use contractual and other arrangements to engage in anti-competitive conduct. It should be noted, however, that such contracts and arrangements are likely to be in breach of Part IV of the Commonwealth *Trade Practices Act 1974*, particularly sections 45, 46 and 47, and as such could attract significant financial and other penalties.



Org/700

8.16 Without questioning the integrity of the employees involved, an issue of perception arises as to their ability to remain independent in a decision-making context. To address this concern, PAWA has recently advised the Commission that it intends to establish a separate General Manager for at least one of the Retail or Generation businesses and that this position will report directly to the Chief Executive Officer. In the Commission’s view, this is a significant and appropriate step.

### Protocols

8.17 To provide a mechanism to easily test whether particular arrangements or procedures are in breach of the Code, the Commission has proposed in the draft replacement Code that there be provision for PAWA to submit undertakings/protocols regarding organisational arrangements and procedures to the Commission for approval. When approved by the Commission and complied with by PAWA, these undertakings would be taken as *prima facie* evidence that the underlying ring-fencing obligations were being met.

**Issues for comment:**

- Can legal separation be distinguished *in practice* from structural separation in PAWA's case, and would its application to PAWA Generation, PAWA Networks and PAWA Retail entail administrative costs that exceeded any benefit to the public?
- How should the general manager of each of PAWA's monopoly businesses be held accountable for the performance of that business, and absolved from responsibility for any possible detrimental impact of business decisions upon related businesses?
- Should there be any common management between PAWA's monopoly and contestable businesses below the level of the Chief Executive Officer?

## ATTACHMENT A

**CURRENT RING-FENCING CODE**

1. For each *Prescribed Business* defined in the columns of Table 1, each of the specified requirements with respect to each *Related Business* defined in the rows of Table 1 is to be observed, where A, B, C and D refer to the following requirements:

**A. Separation of financial accounts**

2. The Licensee must keep the accounts for the *Prescribed Business* separate from a *Related Business* operated by the Licensee.

3. For the purpose of achieving the objective described in clause 2:

(a) the Licensee must determine:

(i) all of its income, expenditure, assets and liabilities relating to the *Prescribed Business*; and

(ii) where necessary, any item of income, expenditure, assets or liabilities of the Licensee which relates only in part to the *Prescribed Business*;

(b) the Licensee must ensure that its accounts and records are in such form as to enable:

(i) all of its income, expenditure, assets and liabilities relating to the *Prescribed Business* to be properly recorded and distinguished from the income, expenditure, assets and liabilities of the *Related Business*; and

(ii) where necessary, any item of income, expenditure, assets or liabilities of the Licensee which relates only in part to the *Prescribed Business* to be appropriately apportioned to that business;

(c) the Licensee must prepare from those accounts and records a profit and loss statement and a balance sheet in respect of each financial year relating solely to the *Prescribed Business*, each of which give a fair and reasonable view of the profit and loss and balance sheet relating to that *Prescribed Business* and are capable of certification as such by an auditor when and if required by the Commission; and

(d) with respect only to a *Prescribed Business* specified by the Commission\*\*, the Licensee must provide to any person copies of the profit and loss statement and balance sheet prepared in accordance with sub-clause (c), upon payment to the Licensee by that person of the fee approved for the purpose by the Commission.

**B. 'No cross-subsidisation' requirement**

4. The Licensee must use all reasonable endeavours to ensure that any goods or services that the *Prescribed Business* provides to, or receives from, a *Related Business* operated by the Licensee when conducting the *Prescribed Business* are provided or received on an arm's length, commercial basis.

5. Until agreement can be reached on alternative mechanisms for determining whether particular goods or services have been provided or received by a *Prescribed Business* from a *Related Business* on an arm's length, commercial basis, such questions will be decided by the Commission on the basis of the Commission's opinion of the matter.

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\*\* 'Network' and 'System Control' only, with 'Franchise Retail' and 'Generation' being excluded from this requirement.



**C. ‘Chinese walls’ requirement**

6. The Licensee must use all reasonable endeavours to ensure that, unless otherwise authorised by law or regulations, only officers and employees engaged in the Prescribed Business have access to, or possession of, information in relation to that business’s past, present and future dealings with suppliers in upstream markets and customers in downstream markets.

**D. ‘Decision-making independence’ requirement**

7. The Licensee must use all reasonable endeavours to ensure that any goods or services the *Prescribed Business* provides to, or receives from, any third-party operating in competition with a *Related Business* operated by the Licensee are provided or received on a basis that takes no account of the actual or likely competitive or financial impact of the transaction upon that *Related Business*.

8. Until agreement can be reached on alternative mechanisms for determining whether particular goods or services have been provided or received by a *Prescribed Business* from a third party operating in competition with a *Related Business* on a basis that takes no account of the competitive or financial impact of that transaction upon the *Related Business*, such questions will be decided by the Commission on the basis of the Commission’s opinion of the matter.

**Table 1: Specific ring-fencing requirements**

“ <i>Related Business</i> ”:	“ <i>Prescribed Business</i> ”			
	Network	System Control	Franchise Retail <sup>(a)</sup>	Generation
Network		A	A,B	(b)
System control	A		A,B	(b)
Franchise retail	A,B	A,B		(b)
Generation	A,B,C,D	A,B,C,D	A,B,C,D	
Contestable retail	A,B,C,D	A,B,C,D	A,B	A,B,C,D
Other non-power monopoly businesses <sup>(c)</sup>	A	A	A	A
All other contestable businesses	A,B,C,D	A,B,C,D	A,B,C,D	A,B,C,D

<sup>(a)</sup> that part of the Licensee’s business authorised by a Retail Licence which relates to the sale of electricity to non-contestable customers

<sup>(b)</sup> not applicable; the required ringfencing is achieved by the requirements on the related monopoly businesses

<sup>(c)</sup> e.g. water services and waste water services

## ATTACHMENT B

**PAWA'S COMMENTS ON, AND SUGGESTED AMENDMENTS  
TO, THE CURRENT RING-FENCING CODE**

*{Extract from letter from Barry Chambers, CEO of PAWA  
to the Commission, dated 5 July 2000.}*

**Ring-Fencing in Context**

From the outset PAWA would like to assure the Commission that PAWA is committed to complying with the principles of ring-fencing. As a consequence of the recent changes to the Northern Territory electricity industry, PAWA appreciates that there is a need to establish effective ring-fencing arrangements and to have the Commission monitor and enforce compliance with relevant regulatory instruments that reflect the reality of the Government's intentions and decisions.

I would like to emphasise that the concept of ring-fencing is being embraced across the organisation. On 29 March 2000, I sent a memorandum to senior managers outlining the ring-fencing requirements and emphasising their importance. A copy of that memorandum is attached for your information [at Attachment B.1]. PAWA appreciates that, in order to work properly, PAWA staff must understand the concept of ring fencing and be trained in its requirements and implementation. Accordingly, we propose to implement an ongoing education program on the practicalities of ring-fencing during the course of normal presentations to PAWA staff. Further, the importance of compliance with the ring-fencing requirements will be the subject of endorsement by the Board, to be distributed to all relevant staff.

While PAWA's position with respect to complying with the principles of ring-fencing is assured, we would also like to remind the Commission of the context in which the Ring-Fencing Code has been established. That is, the Northern Territory Government's recent reform of the electricity industry has resulted in PAWA continuing to operate as a vertically and horizontally integrated business. However, it is also important to acknowledge the reasoning behind the Northern Territory Government's decision not to structurally separate PAWA, being the uniqueness of the situation due to:

- the size of the NT market and existing economies of scale; and
- the fact that it would be too costly to operate a wholesale electricity market and it would be of limited benefit given the lack of interconnection with other state power systems.<sup>6</sup>

Simply, the Northern Territory Treasurer appreciated that diseconomies could occur (to the public detriment) if PAWA were separated into competing companies<sup>7</sup>, and as such, PAWA needs to operate in certain ways to achieve the economies it currently enjoys from the wide scope of its business as a multi-utility.

**Replacement Code**

The existing Ring-Fencing Code appears to be serving us well with no problems having been brought to my attention so far. Nonetheless, as you consider it necessary to review the Code

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<sup>6</sup> "Reforms to the Supply of Electricity in the Northern Territory", Hon Mike Reed MLA, Treasurer, p.8

<sup>7</sup> Ministerial Statement on the Northern Territory Government's plan to allow competition into the Northern Territory electricity market.

we would like to present some specific issues that we consider should be incorporated in any replacement code. In developing a replacement code PAWA considers the following should be incorporated:

### 1. General Opening Statement

- A section on the authority and purpose for the Ring-Fencing Code;

For example,

"This Code is published by the Utilities Commission pursuant to section 24 of the *Utilities Commission Act* for the purposes of achieving the Utilities Commission's objectives and functions under:

- section 3 of the *Electricity Reform Act*; and
- section 6(2) of the *Utilities Commission Act*."

### 2. Processes for Code amendment

A section outlining processes for revision of the Ring-Fencing Code whereby the code can be amended and/or expanded from time to time to meet the needs of PAWA and other relevant stakeholders arising from changing circumstances including changes in the regulatory framework and developments at the national level. This requirement is consistent with Section 24 of the *Utilities Commission Act*.

For example,

"The Utilities Commission may amend this Code from time to time to meet the needs of customers, the electricity supply industry and the Utilities Commission, in the context of:

- changing circumstances including changes in the regulatory framework;
- keeping compliance costs at a minimum; and
- developments at the national level.

The licensee is entitled to request that this Code be amended from time to time to take into consideration material changes in circumstances and in its policies, procedures and practices to meet ring-fencing requirements under this Code.

In making any revision to this Code the Utilities Commission will have regard to the consultation requirements set out at Section 24 of the *Utilities Commission Act*."

### 3. Application of Code to other market participants

- Requiring the code apply to all market participants, regardless of their market size or historical context. PAWA sees this as fundamental to achieving a level playing field in the market. One of the most fundamental results of only applying the Code to PAWA is dealt with at 5 below.

### 4. Power to waive compliance

- A section outlining processes by which to address the issue of materiality, such as those incorporated by ACCC in their Transmission Ring-Fencing Guidelines, which allows ring-fencing obligations to be waived should the benefit to the public be outweighed by the cost. The Code should specify some of the more important factors to be taken into account by the Commission when making this assessment. These should include: -
  - (a) the administrative costs of regulation;
  - (b) the costs to the licensee in limiting or eliminating its ability to achieve economies of scale;

- (c) the level of competition in the relevant market;
- (d) the size of the relevant market; and
- (e) the extent to which competition will be enhanced by the obligation under consideration.

## 5. Chinese walls requirements

PAWA asks the Commission to tighten the definition of 'information' that is deemed to provide unfair advantage if able to be used.

The present code has a blanket prohibition on access to information in relation to the prescribed business' dealings with suppliers in upstream markets and customers in downstream markets. In PAWA's view, this is too wide in the following respects:

- (a) there should be an exception to the prohibition with respect to information which is generally known or available;
- (b) in particular, there should be an exception to the prohibition with respect to information which other market participants have equality of opportunity to gain access to; and
- (c) the prohibition should only apply to information which, if improperly used, could reasonably provide a commercial advantage to the licensee over its competitors.

Further, it is PAWA's contention that it is not the access to information that is the primary issue, it is the application of that information in a manner that creates an unfair advantage that is the real issue. This contention regarding the use of information over the mere access to information is consistent with the approach adopted by regulators in both Australia and overseas. That is:

- IPART has suggested in preparing electricity distribution ring-fencing guidelines it refine the ACCC's Transmission Ring-Fencing Guidelines to incorporate *'the tightening of requirements relating to the disclosure of confidential information'*<sup>8</sup>;
- The ORG in Victoria has issued a guideline that addresses the issue of confidentiality<sup>9</sup>. The objective of the guideline is to ensure that information acquired by a licensee in relation to its distribution business must not be used to gain a commercial advantage for its retail arm, unless other retailers have an equality of opportunity, consistent with the principle of informed consent, to gain access to that information;
- The National Gas Code requires service providers to:
  - ensure that Confidential Information provided by a User or a Prospective User is used only for the purposes for which it was provided and is not disclosed without the User or Prospective User's consent; and
  - ensure that Confidential Information obtained by a Service Provider which might reasonably be expected to materially affect the commercial interests of a User or Prospective User is not disclosed to any other person without the permission of the User or Prospective User to whom the information pertains;
- The United Kingdom electricity regulator (OFGEM) incorporates controls within Public Electricity Suppliers (PES) licenses that prevents the use of confidential information provided to the distribution business from being used to the commercial advantage of the supply business (Condition 12).

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<sup>8</sup> "Pricing for Electricity Networks and Retail Supply - Report of the Special Reference on Electricity"; IPART; July 1999, p 185

<sup>9</sup> Electricity Guideline No. 1 - Access to, and Use of, Distribution Systems; Office of the Regulator-General-Victoria; August 1995

Clearly, in all of these examples, regulators have incorporated controls aimed at managing the use of information rather than its mere access. PAWA contends such an approach should also be adopted by the Commission, and is the only approach consistent with both:

- (a) PAWA's current vertically and horizontally integrated structure, with a number of services (such as economic services and commercial management) being used by all of PAWA's businesses; and
- (b) achieving the economies of scale contemplated by the Territory in implementing the current reforms.

In summary, PAWA suggests that the current Chinese Walls provisions of the Code be amended in the following ways:

- (a) a more restrictive definition of the type of information required to be kept confidential; and
- (b) rather than prohibiting access to or possession of that information, the code should:
  - (i) require that information provided or obtained is only used for the purpose for which it was provided or obtained; and
  - (ii) prohibit use of the information by a Prescribed Business to gain commercial advantage for any Related Business.

This is an important issue to PAWA. The current Chinese Walls requirements are unworkable for PAWA's current structure and, if they remain, will result in additional costs to PAWA and consequently, its customers. Further, as the Code currently stands, these requirements do not apply to our competitors, resulting in considerable commercial disadvantage to PAWA.

PAWA seeks the opportunity to make further submissions to the Commission in relation to the Chinese Walls requirements of the draft replacement code to be prepared by the Commission.

Barry Chambers  
Chief Executive Officer  
5 July 2000

## ATTACHMENT B.1

## INTER OFFICE MEMORANDUM

TO: SENIOR MANAGERS

FROM: CHIEF EXECUTIVE OFFICER

SUBJECT: **RING FENCING ARRANGEMENTS**

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Whilst I understand that the Utilities Commission intends to issue ring fencing guidelines in the near future, I thought it important, with the opening of the market on 1 April, to indicate my expectations on ring fencing in the context of information exchanges across business units within the Authority.

Ring fencing amongst other things, includes the physical internal divisions (sometime known as Chinese walls) to contain certain information and activities and the protocols for the disclosure and exchange of information between internal entities.

Within the context of the Authority's business lines structure, the Retail and Generation functions have separate management arrangements from the Power Networks business.

In this context it is important that there be no flow of commercially sensitive information from the Power Networks business to the related contestable businesses of Generation and Retail.

This will require all business units to restrict the information contained in their monthly management reports to Senior Management to those issues that are not commercially sensitive, and to have in place written protocols for maintaining the confidentiality of information. Any discussions at Senior Management or at other internal meetings need to be restricted to matters that do not breach our obligations under the *Trade Practices Act*,

The General Managers of the Generation/Retail businesses and Power Networks should be mindful of these requirements in any of their mutual discussions on operational or strategic matters.

Staff in all three business units will also need to be mindful of these requirements when discussing issues of mutual concern with their colleagues.

It is always preferable to err on the side of caution if there is the slightest doubt about the commercial sensitivity of information. In any such instance, the matter is to be referred to my attention for consideration.

The simple requirement is that the Power Networks business, in particular, must avoid passing on information to either the Generation or Retail businesses which is:

- not generally available to other competitors to those business activities;
- information about their competitors; or
- information on their competitor's customers.

Support units in Business Services and Infrastructure Services should also be mindful of the 'Chinese wall' concept in the provision of services to business units (for example it would be undesirable for the Generation/Retail and Power Networks businesses to have the same Budget Officer).

This is an extremely important matter and the Authority will be judged critically if we fail to properly understand and implement ring fencing arrangements to give effect to the Government's decision to introduce competition in the NT electricity market.

I will keep you advised of any specific requirements we are obliged to implement.

BARRY CHAMBERS  
CHIEF EXECUTIVE OFFICER  
29 March 2000

## ATTACHMENT C

**PAWA'S POLICIES, PRACTICES AND PROCEDURES  
TO MEET ITS RING-FENCING OBLIGATIONS**

*{Extract from letter from Barry Chambers, CEO of PAWA  
to the Commission, dated 5 July 2000.}*

The following sets out PAWA's broad policies, practices and procedures to meet the ring-fencing requirements. More detailed policies, procedures and practices will be evolved over time through the development of Codes-of-Conduct.

An outcomes based approach is preferable to a full set of prescriptive procedures. The effectiveness of this will be maximised if the outcomes are expressed simply and clearly without resorting to legalese.

**General**

PAWA's staff generally have a good culture of compliance. In implementing our proposed policies and procedures, the necessity of and reasons for compliance needs to be emphasised by the people at the top of the organisation downwards. In addition to my memorandum of 29 March 2000, PAWA proposes to do this by an appropriate statement from the Board in relation to compliance with the Code, to be distributed to all relevant staff.

Further, responsibilities for meeting ring-fencing requirements and implementing policies and procedures will be clearly stated, with an appropriate reporting regime.

PAWA will also implement an ongoing training program for staff in relation to ring-fencing requirements, including the necessity for compliance with our proposed policies, procedures and codes of conduct and reporting of non-compliance.

**Part A - Separation of Financial Accounts**

- PAWA will apply accounting principles and policies in the development of its regulatory financial statements<sup>10</sup> for each regulated business unit in so far as they relate to regulated activities that will conform to the Australian Accounting Standards. PAWA understands that the accounts to be provided are those for the regulated business activities. In addition,
  - where additional accounting principles and policies are used to prepare the regulatory financial statements, in accordance with the Northern Territory Government's accounting requirements, these will be disclosed to the Commission; and
  - where there is a change in the accounting principles and policies used to prepare the regulatory financial statements from one period to the next, PAWA will disclose the change and the effect of the change on the regulatory financial statements to the Commission.
- PAWA's accounts and records, which are directly attributable to the regulated and unregulated parts of the business, will be assigned accordingly. Those accounts and records that are not directly attributable will be allocated to the regulated and unregulated parts of the business using an appropriate allocator. PAWA's basis of

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<sup>10</sup> Financial statements for the purposes of the Ring-Fencing Code mean Profit and Loss Statement and Balance Sheet.

allocation of its accounts and records will be set out and approved by PAWA senior management. Explanation of the allocator applied to the regulated and unregulated parts of the business can also be traced back to the service level agreements between PAWA's different business units and external service providers including other NT Government agencies.

- PAWA will maintain accounting and reporting arrangements that will enable separate regulatory financial statements to be prepared for each Prescribed Business, and provide information in the regulatory financial statements that can be verified. Information presented in PAWA's regulatory financial statements will be presented in the most understandable manner, without sacrificing relevance and reliability. Account headings used in the regulatory financial statements will be reconcilable to PAWA's chart of accounts such that there is an audit trail between PAWA's accounts and records and the account headings used in the regulatory financial statements.
- PAWA's General Manager Business Services will be responsible for the preparation and presentation of the regulatory financial statements and the information they contain. This responsibility extends to ensuring that PAWA's accounts and records correctly record and explain transactions and financial position of the Prescribed Business. An appropriate responsibility statement will be attached to the regulatory financial statements and signed off by the CEO prior to submitting these to the Commission.

#### **Part B - 'No cross-subsidisation' requirement**

- PAWA will develop, implement and train relevant staff on a code of conduct in relation to the no-cross subsidisation requirements.
- PAWA's General Manager Business Services will be responsible for ensuring that PAWA's regulatory financial statements and the information they contain correctly record and explain transactions and financial position of the Prescribed Business. An appropriate responsibility statement will be attached to the regulatory financial statements and signed off by the CEO prior to submitting these to the Commission.

#### **Part C - 'Chinese-walls' requirement**

- Senior Executives of PAWA will be required to make business decisions that attempt to maximise the performance of individual business units, rather than non-optimal solutions that may have the effect of disadvantaging potential competitors.
- Financial performance data will only be supplied to the relevant Senior Manager consistent with their individual responsibilities.
- System Control will continue to act in a manner which is non-discriminatory and in the spirit intended by the Legislation.
- PAWA will prepare and implement a 'Code-of-Conduct' (including training its staff) that incorporate procedures for:
  - Ensuring confidential information is used only for the purposes for which it was provided;
  - Appropriate information disclosure;
  - Lines of reporting;
  - Behavioural rules to address preferential self-dealing with PAWA businesses;
  - Dealing with market sensitive information; and
  - Internal and external mechanisms that assist in the identification and rectification of any lapses of ring-fencing requirements.
- PAWA, which is in the process of developing internal compliance arrangements, will ensure that these include reviewing compliance with the Commission's ring-fencing guidelines.



- PAWA's proposed amendments to the Chinese Walls requirements combined with our proposed policies and code of conduct will ensure that no improper use of information is made, where PAWA's Manager - Commercial Services has access to confidential commercial transactions in his capacity as PAWA's contact point for obtaining legal advice in relation to the transaction.

**Part D - 'Decision-making independence' requirement**

- PAWA will adopt a 'Code-of-Conduct' that actively requires business unit managers to seek optimal outcomes for the performance of their individual business units. That is, policies will be implemented that require business unit managers to engage in non-discriminatory treatment of Related Businesses and third party businesses by Prescribed Businesses.
- PAWA will continue to monitor the current tasks and responsibilities of its senior executive managers to ensure independence of decision making consistent with the Government's decision not to dis-aggregate PAWA.

Barry Chambers  
Chief Executive Officer  
5 July 2000

## ATTACHMENT D

**PROPOSED REPLACEMENT RING-FENCING CODE**

This Ring-Fencing Code (Code) will apply to those prescribed businesses located in the Northern Territory for whom the granting of a licence is conditional upon compliance with all applicable provisions of a ring-fencing code made by the Commission.

This Code is published by the Commission pursuant to section 24 of the *Utilities Commission Act 2000* for the purposes of achieving the Commission's objectives and functions under:

- section 3 of the *Electricity Reform Act 2000*; and
- section 6 of the *Utilities Commission Act 2000*.

**Ring-fencing minimum obligations**

1. A prescribed business in the Northern Territory electricity supply industry must:
  - (a) be a legal entity incorporated pursuant to the Corporations Law, or a statutory corporation, or a separate business division of a statutory authority that would be a subsidiary within the meaning of the Corporations Law if that authority were a body corporate to which the Corporations Law applies;
  - (b) other than as permitted by the licence granted by the Commission with respect to the prescribed business – not carry on a related business;
  - (c) establish and maintain a separate set of financial accounts in respect of the prescribed business;
  - (d) establish and maintain a separate consolidated set of accounts in respect of the entire business of the prescribed business, including establishing and maintaining a separate set of accounts in respect of contestable services provided by the prescribed business;
  - (e) allocate any costs that are shared between the prescribed business and any Associate that takes part in a related business, or between the monopoly activities of the prescribed business and any contestable activities permitted to be carried on by the prescribed business, in a manner that ensures there is no cross subsidy;
  - (f) ensure that all confidential information provided by a customer or prospective customer to the prescribed business is used only for the purpose for which that information was provided and that such information is not disclosed to any employee, consultant, independent contractor or agent of an Associate or any other person without the approval of the customer or prospective customer who provided it, except:
    - (i) if the confidential information comes into the public domain otherwise than by disclosure by the prescribed business; or
    - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised stock exchange;
  - (g) ensure that all confidential information obtained by the prescribed business or by its employees, consultants, independent contractors or agents in the course

of conducting its business and which might reasonably be expected to affect materially the commercial interests of a customer or prospective customer is not disclosed to any employee, consultant, independent contractor or agent of an Associate or any other person without the approval of the customer or prospective customer to whom that information pertains, except:

- (i) if the confidential information comes into the public domain otherwise than by disclosure by the prescribed business; or
  - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised stock exchange;
- (h) not provide services to an Associate that takes part in a related business on terms more favourable than those on which it provides such services to any competitor of that Associate;
- (i) ensure that goods or services provided to or purchased from a competitor of an Associate that takes part in a related business are provided to or purchased from that competitor on terms that are determined by the prescribed business taking no account of the actual or likely competitive or financial impact upon that Associate; and
- (j) ensure that its marketing staff are not also staff of an Associate that takes part in a related business and, in the event that they become or are found to be involved in a related business contrary to this clause, must ensure their immediate removal from its marketing staff.

2. In complying with 1(c), (d) and (e), a prescribed business must:

- (a) if the Commission has published general accounting guidelines for regulated prescribed businesses which apply to the accounts being prepared – comply with those guidelines; and
- (b) if the Commission has published cost allocation guidelines – comply with those guidelines; or
- (c) if the Commission has not published such guidelines – comply with guidelines prepared by the prescribed business and approved by the Commission or, if there are no such guidelines, comply with such guidelines (if any) as the Commission advises the prescribed business apply to that prescribed business from time to time.

Such guidelines are to be consistent with the objectives of the relevant industry regulation Act, the *Utilities Commission Act 2000* and any access code for the service to which the undertaking relates, and be otherwise fair and reasonable. They may, among other things, require the accounts to contain sufficient information, and to be presented in such a manner, as would enable the verification by the Commission of the calculation of regulated tariffs and charges.

3. In complying with 1(c) and (d), a prescribed business must:

- (a) ensure the set of accounts that are established and maintained gives a fair and reasonable view of the profit and loss and the balance sheet relating to that business, and is capable of certification as such by an auditor when and if required by the Commission; and
- (b) provide to any person copies of the profit and loss statement and balance sheet relating to the most recent annual reporting period upon payment by that person of the fee approved for the purpose by the Commission.

4. In complying with 1(h) and (i), and until agreement can be reached on alternative mechanisms for determining whether particular goods or services have been:

- (a) provided to an Associate that takes part in a related business on terms more favourable than those it provides to any competitor of that Associate; or
- (b) provided to or purchased from a competitor of an Associate that takes part in a related business on terms that take account of the actual or likely competitive or financial impact upon that Associate;

such questions shall be decided by the Commission on the basis of the Commission's opinion on the matter.

5. A prescribed business is exempt from complying with 1(g) and (i) if the arrangements under which:

- (a) the business shares an employee, consultant, independent contractor or agent with an Associate that takes part in a related business; or
- (b) confidential or commercially-sensitive information obtained by the business is disclosed to any employee, consultant, independent contractor or agent of an Associate;

is consistent with protocols ("Chinese wall protocols") prepared by the business and approved by the Commission.

#### **Adding to or amending ring-fencing obligations**

6. The Commission may by notice to a prescribed business require that business to comply with obligations in addition to the minimum obligations outlined in clauses 1 to 4 above (including temporary obligations), or add to or amend this Code. The Commission may add to or amend the Code provided that it is satisfied the prescribed business cannot demonstrate that the administrative cost to the prescribed business and its Associates of complying with the additional or altered obligations is, or is likely to, outweigh the benefit to the public. The prescribed business must comply with any additional obligations imposed under this clause.

7. Without limiting the additional obligations that may be imposed under clause 6, the Commission may require that:

- (a) the prescribed business ensures such categories of its additional staff as is specified by the Commission are not employees, consultants, independent contractors or agents of an Associate that carries on a related business and, in the event that they become or are found to be involved in a related business, ensure their immediate removal from the additional staff; and
- (b) the electronic, physical and procedural security measures employed in respect of the offices of the prescribed business and of all offices of its Associates are satisfactory to the Commission.

The examples given in this clause 7 shall not be construed as limiting the types of action a prescribed business may have to take in order to comply with clause 1.

#### **Procedures for adding to or amending ring-fencing obligations**

8. The Commission must, before issuing a notice under the provisions for adding to or amending ring-fencing obligations, inform each person known to the Commission who the Commission believes has a sufficient interest in the matter that it is considering issuing a notice under clause 5 with respect to a particular prescribed business, by publishing a notice in a daily newspaper which at least:

- (a) states who the prescribed business concerned is and the obligations the Commission is considering adding; and
- (b) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice).

The Commission will also give a copy of any notice published in a daily newspaper in accordance with this clause to the prescribed business to which the notice relates.

9. The Commission must consider any submissions received by the date specified in the notice published under clause 8(b) and may (but is not obliged to) consider any submissions received after that date.

10. Within 30 days after the last day for submissions specified in the notice published under clause 8(b), the Commission must issue a draft decision stating whether or not it intends to issue a notice under clause 6.

11. The Commission must:

- (a) provide a copy of its draft decision to the prescribed business, any person who made a submission on the matter and any other person who requests a copy; and
- (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued).

12. The Commission must consider any submissions it receives by the date specified by the Commission under clause 11 and it may (but is not obliged to) consider any submissions received after that date.

13. Within 30 days 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 issue a notice under clause 6.

14. A notice under the provisions for additional ring-fencing obligations has effect 14 days after the notice is given to the prescribed business or such later date as the Commission specifies in the notice.

### **Compliance procedures and compliance reporting**

15. A prescribed business must establish and maintain appropriate internal procedures to ensure it complies with its obligations under this Code. The Commission may require the prescribed business to demonstrate the adequacy of these procedures upon reasonable notice. However, any statement made or assurance given by the Commission concerning the adequacy of the prescribed business's compliance procedures do not affect the prescribed business's obligations under this Code.

16. A prescribed business must provide a report to the Commission, at reasonable intervals determined by the Commission, describing the measures taken by the prescribed business to ensure compliance with its obligations under this Code. This report, along with the Commission's assessment of compliance, will be made publicly available by the Commission. Confidential information will be removed from the public report where the prescribed business can demonstrate that its public release would harm the commercial interests of the prescribed business or its Associate taking part in a related business.

17. The Commission may, upon reasonable notice, require a prescribed business to:

- (a) appoint an independent reviewer approved by the Commission to report on such compliance matters as are specified by the Commission; and
- (b) provide a copy of the reviewer's report to the Commission by a date specified by the Commission.

18. If the Commission nominates standards or requirements to apply to a review under clause 17, the reviewer must report in accordance with those standards or requirements.

19. For the purpose of clause 18, the Commission may publish auditing guidelines with which a prescribed business must comply.

20. A prescribed business must provide a report of any breach of any of its obligations under this Code to the Commission immediately upon becoming aware that the breach has occurred. Any breach of these requirements may be subject to civil penalties prescribed for breaches of this Code where a breach is determined to have occurred.

### **Waiver of ring-fencing obligations**

21. A prescribed business listed in column (1) of the Schedule to this Code is granted waivers from the business's obligations under clauses 1 to 4 listed in column (2) of that Schedule.

22. The Commission may, by notice to a prescribed business, additionally waive any of a prescribed business's obligations under clauses 1 to 4 provided that the Commission is satisfied that the prescribed business can demonstrate that the administrative cost to the prescribed business and its Associates of complying with the obligation outweighs the benefit, or any likely benefit, to the public.

### **Procedures for waiving ring-fencing obligations**

23. A prescribed business may apply to the Commission requesting the Commission to issue a notice under clause 22.

24. When the Commission receives an application under clause 23 the Commission must:

- (a) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; or
- (b) in all other cases within 14 days after receipt of the application, inform each person known to the Commission who the Commission believes has a sufficient interest in the matter that it has received the application by publishing a notice in a daily newspaper which at least:
  - (i) states who the prescribed business concerned is and the obligations that the application seeks to have waived;
  - (ii) states how copies of the application can be obtained;
  - (iii) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice).

25. 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.

26. The Commission must consider any submissions received by the date specified in the notice published under clause 24 and it may (but is not obliged to) consider any submissions received after that date.

27. Within 30 days after the last day for submissions specified in the notice published under clause 24 the Commission must issue a draft decision stating whether or not it intends to issue a notice under clause 22.

28. The Commission must:

- (a) provide a copy of its draft decision to the prescribed business, any person who made a submission on the matter and any other person who requests a copy; and
- (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued).

29. The Commission must consider any submissions it receives by the date specified by the Commission under clause 28 and it may (but is not obliged to) consider any submissions received after that date.

30. Within 30 days 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 issue a notice under clause 22.

31. A notice under clause 22 has effect 14 days after the notice is given to the prescribed business or such later date as the Commission specifies in the notice.

### Interpretation

32. In this Code, unless the contrary intention appears:

“additional staff” means employees, consultants, independent consultants and agents of a prescribed business who are not marketing staff.

“Associate” means:

- with respect to an authority of the Territory, another electricity business that is related to the prescribed business by virtue of it also being a subsidiary within the meaning of the Corporations Law if that authority were a body corporate to which the Corporations Law applies; or
- in all other cases, a body corporate that is related to a prescribed business by virtue of section 50 of the Corporations Law.

“confidential information” means information which is or has been provided to a prescribed business or an Associate taking part in a related business and which is considered to be confidential information or otherwise confidential or commercially sensitive or information which is derived from any such information.

“cross subsidy” means a financial advantage arising where, for any costs that are jointly incurred by a prescribed business and an Associate taking part in a related business or by monopoly and contestable activities undertaken by a prescribed business, the costs allocated to the Associate’s output or the contestable activity are less than that part of the cost of the output or activity that could be saved over the long term by not producing or undertaking it (the long run avoidable cost of supply).

“customer” means a person who engages in the activity of purchasing electricity supplied through a regulated power system.

“electricity business” means a body corporate or statutory authority, or a subsidiary of a body corporate or the equivalent of a subsidiary of a statutory authority, which has been granted a licence under the *Electricity Reform Act 2000*, and that undertakes the business authorised by that licence.

“marketing staff” means employees, consultants, independent contractors or agents directly involved in sales, sale promotion or advertising (whether or not they are also

involved in other functions) but does not include employees, consultants, independent contractors or agents involved only in:

- strategic decision making, including the executive officer or officers to whom marketing staff report either directly or indirectly; or
- technical, administrative, accounting or service functions.

“prescribed business” means an electricity business which is determined by the Commission as supplying services which are non-contestable or which are dominated by a single supplier, including:

- the network business (supplying network access services);
- the power system control business (supplying power system control and dispatch services);
- the franchise retail business (selling electricity to non-contestable customers); and
- the residual generation business (supplying standby and out-of-balance energy to other generators).

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

“related business” means the business of generating, purchasing or selling electricity which is contestable.

**Schedule 1**

Column (1)	Column (2)
Franchise Retail	clause 1(c): with respect to reporting on the 1999-00 year only clause 3(b)
Generation	clause 3(b)