

**REVIEW OF NT ELECTRICITY
RING-FENCING CODE
PROPOSED VARIATIONS**

FEBRUARY 2008



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Table of Contents

Glossary	iii
1. Introduction	1
Background	1
Call for submissions	1
<i>Confidentiality</i>	1
<i>Public access to submissions</i>	2
Proposed timetable	2
2. Commission’s Proposed Approach	3
Review of Code and background to the issue of the Draft Code	3
Commission’s proposed approach	3
Legislative authority	4
Power and procedures to amend the Code	4
Matters to which the Commission will have regard	5
Procedures under Clause 7 of the Code	6
3. Proposed Draft Code	7
Revocation and replacement of the existing Code.....	7
Overview of proposed changes to the Code	7
Reasons for the proposed changes	7
Changes to ring-fencing minimum obligations	8
Default terms and conditions	9
4. Explanatory Notes	11
Introduction	11
Comments on clauses of the Draft Code	11
Appendix A: Draft Code	12

Inquiries

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GLOSSARY

Act	<i>Utilities Commission Act</i>
Code	Northern Territory Electricity Ring-Fencing Code
Commission	Utilities Commission
Draft Code	Draft Third Version of the Northern Territory Electricity Ring-Fencing Code
ERA	<i>Electricity Reform Act</i>
Issues Paper	<i>Possible Review of Certain Regulatory Instruments</i> , Issues Paper, August 2007
Power and Water	Power and Water Corporation
Response Paper	<i>Possible Review of Certain Regulatory Instruments</i> , Response Paper, January 2008

CHAPTER**1****INTRODUCTION****Background**

1.1 This Paper relates to the release by the Commission of a draft of a proposed third version of the Northern Territory Electricity Ring-Fencing Code – the Draft Code.

1.2 The release of the Draft Code follows the Commission’s decision, first foreshadowed in the “Possible Review” Issues Paper published by the Commission in August 2007 and confirmed in the “Possible Review” Response Paper published by the Commission in January 2008, to undertake a major review of the Code.

1.3 The Commission’s proposed decision, which it is considering whether to make, is to revoke the existing Code and make another code in the form of the Draft Code.

1.4 This Paper is the Commission’s formal notice under clause 7.1 of the Code of that proposal.

1.5 In accordance with clause 7.1 of the Code, this Paper:

- states the nature of the proposed variation, revocation or additional or varied obligation; and
- requests submissions by a date specified in the notice (not being a date earlier than 30 days after the date of the notice).

1.6 The Draft Code, showing how a final Code may look with the proposed variations incorporated, is provided at Appendix A.

Call for submissions

1.7 Submissions are invited from interested parties concerning the issues raised in this Paper and related matters.

1.8 Submissions, comments or inquiries regarding issues raised in this Paper should be directed in the first instance to:

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Utilities Commission	Fax: (08) 8999 6262
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1.9 The closing date for submissions is **Friday, 14 March 2008**.

Confidentiality

1.10 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. In addition, a copy of the submission suitable for publication (i.e., with any confidential material removed) should also be provided.

Public access to submissions

1.11 Subject to the above, submissions will be made available for public inspection at the office of the Commission and on its website (www.utilicom.nt.gov.au).

1.12 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.

1.13 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.

1.14 The closing date for submissions is **Friday, 14 March 2008**.

1.15 The Commission will consider any submissions which are received by the closing date, but it is not obliged to consider submissions received after that date.

1.16 Within 30 days (or such longer period as the Commission specifies) after the closing date for submissions, the Commission will issue a draft decision in relation to the proposal.

1.17 In the interests of transparency and to promote informed discussion, submissions will be made available for public inspection at the office of the Commission or on its website unless the person making a submission claims confidentiality in respect of the submission (or any part of the submission). 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

Proposed timetable

1.18 The present intention of the Commission is to follow a timetable for consultation under the requirements of clause 7 of the Code which would enable a new Code to be introduced with a commencement date of 1 August 2008.

1.19 The Commission will expect persons who wish to make submissions to comply strictly with the timetable set by the Commission.

Due Date	Event
Friday, 14 March 2008	Submissions due on proposed variations to the Code
Monday, 14 April 2008	Publication of proposed Draft Code
Friday, 23 May 2008	Submissions due on proposed Draft Code
Wednesday, 25 June 2008	Gazettal and Publication of Revised Code
Friday, 1 August 2008	Commencement date of Revised Code

CHAPTER**2****COMMISSION'S PROPOSED APPROACH****Review of Code and background to the issue of the Draft Code**

2.1 The Code was made in 2001 and came into force on 1 July 2001. The Code replaced an interim ring-fencing code. Minor definitional amendments were made to the Code in April 2002.

2.2 The Code has not undergone detailed review by the Commission since that time.

2.3 The Commission indicated in the "Possible Review" Issues Paper published in August 2007 that it proposed to undertake a major review of the Code. The Issues Paper indicated that the Commission had taken an in-principle decision to revamp the Code over the next year or so notwithstanding regulatory policy developments that may impact on the NT's electricity market over the same period. The Response Paper published in January 2008 confirmed this decision.

2.4 The Commission notes that, while there is a prospect that the NT Government could ultimately adopt a broader reform program that involves regulatory arrangements which differ from those proposed in the Draft Code, there is currently no certainty about this or the likely timing of the introduction of any changed regulatory arrangements.

2.5 Without intending to repeat the detail of the Response Paper, the Commission reiterates its view that addressing some aspects of current regulatory deficiencies in the NT electricity market through review of the Code is likely to be of benefit and is unlikely to be dealt with, or overtaken, by wider regulatory changes in the Territory for the foreseeable future.

2.6 Having regard to the considerations that, first, the Code has been in operation for over six and a half years without detailed review and, secondly, there have been considerable regulatory developments in relation to ring-fencing and other forms of regulatory structuring in the electricity supply industry (and other industries) elsewhere in Australia in that period, the Commission inclines to the view that further delay by the Commission in deciding whether to make changes to the Code is not warranted.

Commission's proposed approach

2.7 At its meeting on 24 October 2007, the Commission confirmed its earlier *in-principle* decision to undertake a revamp of the Code.

2.8 The Commission agreed to accept that, in doing so, a primary consideration for the Commission should be the avoidance of unnecessary costs and duplication given the range of regulatory policy options which may impact on the Territory's electricity market from 2008.

2.9 Among other matters, the Commission indicated that the regulatory framework should be focused on addressing regulatory issues peculiar to the Territory.

2.10 The Commission identified that it should give priority to regulatory decisions aimed at relieving the burden currently faced by contestable customers in the absence of third-party retailers and generators in the Territory.

2.11 As outlined in the “Possible Review” Response Paper, the Commission recognizes that revamping the Code will only address some aspects of the current regulatory deficiencies identified in Chapter 2 of the Issues Paper. Nonetheless the Commission considers that it is possible to address effectively *some* aspects of those deficiencies through its power to make a code relating to ring-fencing in a regulated industry.

2.12 With this in mind, the Commission has attempted to identify the types of issues which it considers appropriate to be dealt with in a revamped Code.

2.13 In working through these issues, the Commission has looked to the approaches taken in other jurisdictions both in the electricity supply industry and other industries.

2.14 The Commission has sought to identify current regulatory best practice in this regard.

2.15 The Commission has also obtained further legal advice concerning the extent of its power to make a code relating to ring-fencing.

2.16 The Commission has given detailed consideration to the drafting of appropriate proposed amendments to the Code to achieve the intended policy outcomes outlined above, and discussed in greater detail in the Response Paper, and in the subsequent chapters.

2.17 The Draft Code represents the outcome of the process undertaken by the Commission to date.

2.18 The Commission believes that the Draft Code is an appropriate way of addressing certain of the regulatory deficiencies which currently exist without being overly prescriptive or imposing too great a regulatory burden on Power and Water when compared to the likely public benefit of the requirements of the Draft Code.

2.19 In seeking submissions in relation to the Draft Code, the Commission will be particularly interested in receiving comments or views about this.

Legislative authority

2.20 Under section 24 of the Act, the Commission may make codes or rules relating to the conduct or operations of a regulated industry or licensed entities. The Commission may only make a code or rules under section 24 if authorized to do so by the relevant industry regulation Act or by regulations under the Act.

2.21 The ERA (in section 13) declares the electricity supply industry to be a regulated industry for the purposes of the Act.

2.22 Regulation 2 of the Utilities Commission Regulations authorizes the Commission to make a code ‘relating to ring fencing in a regulated industry’. For that purpose, ‘ring fencing means the separate operation of related or associated businesses of a licensed entity in a regulated industry’.

2.23 The Code was made under that authorization.

Power and procedures to amend the Code

2.24 The power of the Commission to amend the Code, and the procedures it must follow to do so are set out in the Act and the Code itself.

- 2.25 The Act provides that the Commission may vary or revoke a code or rules (section 24(3)).
- 2.26 The Act provides that before doing so the Commission must consult the Minister and representative bodies and participants in the regulated industry that the Commission considers appropriate (section 24(4)).
- 2.27 The formal procedure for variation of a code involves the Commission giving notice of the variation of a code to the Minister and to each licensed entity to which the code applies (section 24(6) of the Act). Notice of the variation is to be published in the Gazette (section 24(7) of the Act).
- 2.28 The variation of a code made in this manner takes effect on the date on which it is notified in the Gazette or a later date specified by the Commission in the code (section 24(8) of the Act).
- 2.29 The Code itself regulates the procedures that the Commission will follow in deciding whether to exercise, and in exercising, its powers under the Act to make a variation to the Code.
- 2.30 The detailed procedures that the Commission must follow before it makes a variation to the Code are set out in clauses 6 and 7 of the Code.
- 2.31 The Code provides several means by which it may be amended. An amendment may be made at the instigation of the Commission.
- 2.32 The Code provides that the Commission may at any time vary or revoke the Code in accordance with the Act (clause 6.1).
- 2.33 The Code provides that, before varying or revoking the Code under that power, the Commission will consult with each Electricity Entity in accordance with the procedure set out in clause 7 and otherwise comply with the other requirements of the Act and clause 7 (clause 6.5).
- 2.34 The requirements of the Act and clause 7 of the Code are outlined below.

Matters to which the Commission will have regard

- 2.35 The Code provides that in deciding whether to vary or revoke the Code by this means the Commission will have regard to:
- (a) the matters listed in section 6(2) of the Act, being the matters to which the Commission must have regard when performing its functions; and
 - (b) in the case of a variation to the Code which imposes an additional or varied obligation on a particular Electricity Entity, the general principle that the administrative cost to that Electricity Entity of complying with the additional or varied obligation should not, or should not be likely to in the opinion of the Commission, outweigh the benefits to the public from compliance with that additional or varied obligation.
- 2.36 Section 6(2) of the Act provides that in performing its functions the Commission must have regard to the need –
- (a) to promote competitive and fair market conduct;
 - (b) to prevent misuse of monopoly or market power;
 - (c) to facilitate entry into relevant markets;
 - (d) to promote economic efficiency;
 - (e) to ensure consumers benefit from competition and efficiency;

- (f) to protect the interests of consumers with respect to reliability and quality of services and supply in regulated industries;
- (g) to facilitate maintenance of the financial viability of regulated industries; and
- (h) to ensure an appropriate rate of return on regulated infrastructure assets.

2.37 In exercising its code making power under the Act, the Commission will also have regard to the object of the Act which is as follows:

2. Object

The object of this Act is to create an economic regulatory framework for regulated industries that promotes and safeguards competition and fair and efficient market conduct or, in the absence of a competitive market, that promotes the simulation of competitive market conduct and the prevention of the misuse of monopoly power.'

Procedures under Clause 7 of the Code

2.38 Clause 7 of the Code sets out the detailed procedural requirements that the Commission must follow if it is considering varying or revoking the Code.

2.39 The Commission must first publish a written notice which at least states the nature of the proposed variation or revocation and requests submissions by a date specified in the notice (clause 7.1).

2.40 The Commission must give a copy of the notice to each Electricity Entity to which the notice relates (clause 7.2), and inform each person known to the Commission (whom the Commission believes has a sufficient interest in the matter) by publishing the notice.

2.41 The Commission must consider submissions received by the closing date for submissions specified in the notice, and may (but is not obliged to) consider any submissions received after that date (clause 7.3).

2.42 The next step is for the Commission to then issue a draft decision stating whether or not it intends to proceed with the proposed variation or revocation (clause 7.4).

2.43 The Commission must request submissions in relation to the draft decision by a specified date (clause 7.5), and consider any submissions received by the date specified (clause 7.6) before issuing a final decision (clause 7.7).

2.44 If the Commission's final decision is to proceed with the proposed variation or revocation to the Code, the final form of this must be stated in the final decision.

2.45 The making of the variation or revocation of the Code then takes place in accordance with the procedural requirements of the Act outlined above.

CHAPTER**3****PROPOSED DRAFT CODE****Revocation and replacement of the existing Code**

3.1 The Commission proposes that it revoke the existing Code in its entirety, and promulgate a new version of the Code in the form of the Draft Code.

3.2 It is proposed to reissue a new code, rather than simply amend the existing Code. There are two main reasons for this. The first is that, while based on the existing Code, the draft Code contains extensive amendments from the existing text, changes to nomenclature, and numbering and formatting changes. Secondly, it now common regulatory practice for new versions of regulatory documents to be reissued when extensive changes are made to them.

3.3 At the time of making the existing Code, the Commission also issued explanatory notes accompanying the Code. The explanatory notes contained information about matters including the legislative authority for the Code, its development, and discussion about the purpose of ring-fencing and the various options which had been considered by the Commission when making the Code. The explanatory notes also provided some comments about the type of businesses to which ring-fencing applies.

3.4 The Commission does not propose to reissue new explanatory notes when reissuing the Code. It considers that it is now not necessary to do so given that the ring-fencing regulatory regime has been in place since 2001 and the basic requirements of the regime should be well understood.

3.5 Where it considers it appropriate to do so, the Commission is likely to use its power under the Act (as reflected in the Draft Code) to issue guidelines about the interpretation and application of the new Code.

Overview of proposed changes to the Code

3.6 The most significant of the changes which the Commission proposes to the Code relate to two topics, namely ring-fencing minimum requirements and default terms and conditions for goods or services provided by a Prescribed Business to a Related Business.

Reasons for the proposed changes

3.7 Before giving an overview of the two major proposed changes, the Commission outlines the background reasons for the proposals.

3.8 The proposed changes to the ring-fencing requirements are considered by the Commission to be a means by which it can deal in an effective manner with at least one aspect of the current regulatory deficiencies noted in the Response Paper. That is, the deficiencies associated with barriers to entry into the market.

3.9 In the Response Paper, the Commission identified a number of barriers to entry in the Northern Territory electricity supply industry. The Commission observed that one difficulty was that currently there are no publicly observable *de facto* contracts or service level agreements in place between Power and Water's generation and retail arms defining Retail's terms of purchasing of wholesale energy from Generation.

3.10 The Commission noted that if a stand-alone retailer was to seek entry into the NT electricity market (or a large contestable customer to seek to directly source wholesale power), they face at least two major hurdles.

3.11 The first is in trying to understand the exact nature of the bilateral contracting framework currently in place and the equality of regulatory treatment afforded a new retailer (or customer) compared to Power and Water Retail.

3.12 The second is in having sufficient comfort that the ring-fencing processes in place are effective enough to ensure they obtain access to wholesale energy on competitively-neutral commercial terms from Power and Water Generation.

3.13 In the Response Paper, the Commission also noted that it could take some actions to address current deficiencies in the NT electricity market that, by their nature, seem unlikely – at least in the short term – to be overtaken by broader regulatory changes such as the possibility of the NT's migration to the national electricity regime.

3.14 These included dealing with barriers to entry directly associated with Power and Water's vertical integration in general, and the lack of legal separation between Power and Water's networks, generation and retail businesses, and between its franchise and contestable retail businesses in particular.

3.15 The actions could also include those designed to deal with the lack of regulatory oversight in the 'contestable' market segments in the absence of any alternative supplier to Power and Water.

3.16 The changes which the Commission proposes to make to the existing ring-fencing minimum obligations, and the proposed new provisions relating to default terms and conditions for the supply of goods or services, together are designed to deal with issues of that type by introducing arrangements which are intended to increase the transparency of dealings between a Prescribed Business and a Related Business, and provide an environment more conducive to potential entry of other market participants.

3.17 The changes which the Commission proposes do not deal with each of the possible steps which the Commission identified at paragraph 3.13 of the Issues Paper as steps which could be taken in a revamp of the Code.

3.18 The Commission considers that the further steps proposed in the Draft Code represent the most important of the changes that are required to deal with the current regulatory deficiencies which have been identified by the Commission.

3.19 The Commission has considered whether or not it should include any 'legal separation' requirements (as between Prescribed Businesses or as between Prescribed Businesses and Related Businesses) in the Draft Code but, on balance, has decided not to further pursue that more prescriptive option at this stage.

Changes to ring-fencing minimum obligations

3.20 First, changes are proposed to the ring-fencing minimum obligations contained in clause 4 of the Code. It is proposed that these obligations be expanded in the range of matters covered by these obligations, and also that changes be made to the requirements as they relate to the basis on which an Electricity Entity which carries on a Prescribed Business deals with a Related Business in relation to goods and services provided between a Prescribed Business and a Related Business.

3.21 It is proposed that the existing provisions (clauses 4.1(e) and (f) of the Code) dealing with the basis on which goods and services are provided to a Related Business by a Prescribed Business, and vice versa, be recast.

3.22 The basic requirement will be that goods and services of a *Prescribed Business* which are in fact provided to the entity's *Related Contestable Business* (for example, the sale of electricity generated by Power and Water) must also be provided to third parties who seek the same type of goods or services on terms which are *fair and reasonable* and *non-discriminatory*.

3.23 Ultimately the Commission will determine, if necessary, whether terms and conditions are *fair and reasonable* or *non-discriminatory* if those matters are put in contention.

3.24 This requirement will be supplemented by the *default terms and conditions* concept outlined below, so that a third party will have the ability to obtain certain types of goods or services from the *Prescribed Business* on the *default terms and conditions* should it wish to do so.

3.25 The existing provisions are also recast to regulate the basis on which goods or services of a *Prescribed Business* are provided by that *Prescribed Business* to its *Related Contestable Business*.

3.26 The Commission proposes new requirements (clause 3.4 of the Draft Code) as to the basis on which a *Prescribed Business* must deal with its *Related Contestable Business* where it provides goods or services of that *Prescribed Business* to the *Related Contestable Business*.

3.27 The Commission proposes that those dealings must take place in accordance with principles which the Commission has called the *arm's length contracting principles*. Essentially, the terms and conditions of the dealings will be required to be documented in writing. Where *default terms and conditions* exist for the relevant goods or services the parties will have a choice. The *Prescribed Business* may choose to supply the relevant goods or services to its *Related Contestable Business* on the *default terms and conditions*. However if the parties wish to supply the goods or services on other terms, the *Prescribed Business* will need to apply to the Commission for approval.

3.28 The Commission will be authorized to approve the proposed contract if the *Prescribed Business* satisfies it that either the terms of the proposed contract are not more favourable to the *Related Contestable Business* than the default terms, or (if not) that the contract should be approved because it is otherwise *fair and reasonable* and *non-discriminatory*.

3.29 The Commission considers that, by strengthening the ring-fencing minimum obligations in this way, there will be greater transparency and certainty as to the basis on which the monopoly and contestable businesses of Power and Water deal with each other in relation to goods and services in the electricity supply industry flowing between those businesses.

3.30 The Commission considers that the introduction of these requirements will aid in the introduction of further competition into the NT electricity supply industry, and provide more confidence to potential entrants in the market.

Default terms and conditions

3.31 Secondly, the Commission proposes to introduce requirements (contained in clause 4 of the Draft Code) relating to default terms and conditions for certain types of goods or services currently provided by a *Prescribed Business* to a *Related Business*.

3.32 The purpose of this is to provide transparency as to the terms and conditions on which these goods or services are provided, and to enable third parties to have the option

of acquiring the same goods or services from the *Prescribed Business* on the default terms and conditions.

3.33 The Commission proposes that it be able to nominate certain types of goods and services currently being provided by a *Prescribed Business* to a *Related Contestable Business* as *nominated goods or services*.

3.34 As an initial step, the Draft Code specifies that the sale to a retailer of electricity generated by Power and Water will be covered by the new provision, and therefore will require default terms and conditions to be prepared.

3.35 Other goods or services will be nominated by the Commission over time. Subject to further consideration of the interaction of the Draft Code with the Network Access Code, the provision of certain network services may also become subject to the requirement to prepare default terms and conditions.

3.36 At this stage the Commission merely raises this as a possible future development which will require further consideration as to its legal feasibility and practicality.

3.37 If goods or services are nominated as *nominated goods or services*, there will be a requirement on the *Prescribed Business* to develop standard terms and conditions (the *default terms and conditions*) governing the supply of those goods or services for approval by the Commission.

3.38 The criteria for approval of *default terms and conditions* are that the terms and conditions are required to be *fair and reasonable* and *non-discriminatory*.

3.39 Provisions of this type for approved standard terms are found in a number of regulatory arrangements in other jurisdictions, particularly in relation to electricity distribution networks.

3.40 The Commission considers that it is desirable to introduce analogous arrangements to deal with the particular situation found in the Territory in the electricity generation sector.

3.41 The Commission noted in the Issues Paper that recent developments mean that competition in the NT generation sector is unlikely to emerge in the medium term. Given this position, the Commission considers that there needs to be put in place arrangements for transparency and certainty as to the basis on which electricity generated by Power and Water is supplied to its contestable retail arm, and may be acquired by another retailer from Power and Water.

3.42 The Commission considers that the imposition of a regime of approved *default terms and conditions* as part of the ring-fencing requirements will assist in achieving the object of the Act.

CHAPTER

4

EXPLANATORY NOTES

Introduction

4.1 This chapter contains the Commission's further detailed comments in relation to the drafting approach to the Draft Code.

4.2 The notes are intended to be by way of overview and are not a clause by clause explanation of each clause of the Draft Code.

4.3 To the extent possible in the circumstances, the Commission in preparing the Draft Code has retained the existing chapter structure of the Code, although some chapters have different numbers in the Draft Code.

4.4 Some changes have been made to nomenclature. For example, a *Related Business* is called a *Related Contestable Business* in the Draft Code.

Comments on clauses of the Draft Code

Clause No.	Subject	Comment
1.2	Commencement Date	The <i>Commencement Date</i> is 1 August 2008 or such later date as the Code is made.
1.3	Previous Versions of the Code	The new Code will wholly replace previous versions of the Code from the <i>Commencement Date</i> .
1.4	Application of the Code	<p>The Code will continue to apply only to an <i>Electricity Entity</i> that carries on a <i>Prescribed Business</i> in the Northern Territory.</p> <p>This provision has been expanded in two ways.</p> <p>An <i>Electricity Entity</i> will also be required to comply with any guidelines issued by the Commission in relation to the Code – clause 1.4(b).</p> <p>An <i>Electricity Entity</i> will also be under an obligation to ensure that its <i>Associates</i>, <i>Employees</i> and <i>Outsourced Service Providers</i> also comply with applicable provisions of the Code – clause 1.4(c).</p>

Clause No.	Subject	Comment
1.5	Obligation to Remedy	<p>The obligation to remedy breaches of the Code is now made explicit. It was probably implicit in the existing Code but this puts the matter beyond doubt.</p> <p>An express requirement to remedy is commonly found in other codes – e.g. clause 1.1.6 Electricity Industry Code (Qld).</p>
1.5	Guidelines	The Commission has power (section 7 of the Act) to publish guidelines relating to the performance of its functions. This provision explains how the Commission will issue guidelines in relation to the Code or matters arising under the Code.
2.1	Objectives of Code	The statement of objectives of the Code has been reworded. It makes clear that the purpose of the Code is to achieve the objects of the Act and ERA (as the relevant industry regulation Act). It further elaborates in clause 2.1(a)(iii) on the objectives that specific measures in the Code are directed towards achieving.
2.2	Scope of Code	This provision is new. It is a brief summary of the scope of the operative provisions of the Code.
3	Minimum Ring-Fencing Requirements	<p>The scope of clause 4 of the existing Code as a whole has been expanded by the inclusion of further <i>minimum ring-fencing requirements</i> (as outlined below) and by revision of some of the existing provisions.</p> <p>See the overview comments in chapter 3 above about the Commission’s intentions in adding to the <i>minimum ring-fencing requirements</i>.</p>
3.2	Confidential Information	Minor amendments have been made to this clause. It now applies to information provided by ‘or in respect of’ a <i>Customer</i> . It clarifies that disclosure of information also can only be made if otherwise permitted by law.
3.3	Provision to third parties of goods or services of a Prescribed Business provided to a Related Contestable Business	<p>Clause 3.3 of the Draft Code is a reworded equivalent of clause 4.1(e) of the Code. Instead of goods or services being required to be supplied by a <i>Prescribed Business</i> to third parties who wish to obtain them on a ‘non-discriminatory arm’s length commercial basis’, the requirement will now be twofold.</p> <p>The goods or services must be provided on terms or conditions that are <i>fair and reasonable</i> and <i>non-discriminatory</i>.</p> <p>Standards of this type, or expressed in that way, are commonly found in regulatory instruments in other jurisdictions – e.g. Victorian electricity distribution licences.</p>

Clause No.	Subject	Comment
		<p>Further the clause applies not in respect of <u>any</u> goods or services provided to a <i>Related Contestable Business</i> by a <i>Prescribed Business</i> but only to goods or services of that <i>Prescribed Business</i>. That is to say, goods and services amounting to the core goods and services defined as constituting a <i>Prescribed Business</i>.</p> <p>Other sorts of goods or services (in fact provided by a <i>Prescribed Business</i> to a <i>Related Contestable Business</i>) but which in fact could be sourced by a <i>Related Contestable Business</i> from other third party supplier (e.g., IT systems, account management services etc) are treated in the Draft Code as <i>contestable</i> goods and services.</p> <p>The provision of <i>contestable</i> goods or services as between a <i>Prescribed Business</i> and a <i>Related Contestable Business</i> are subject to the <i>minimum ring-fencing requirements</i> in clauses 3.5 and 3.6 of the Draft Code.</p>
3.4	Provision of goods or services of a Prescribed Business to a Related Contestable Business	<p>This provision is new. It in part deals with the reverse of the position dealt with in clause 4.1(e) of the Code. The existing Code does not seek to directly deal with the basis on which goods or services are provided by a <i>Prescribed Business</i> to a <i>Related Business</i>. It only deals with this indirectly by requiring that goods and services in fact provided also be made available to third parties, who wish to obtain them, on a non-discriminatory arm's length commercial basis.</p> <p>A weakness of the existing Code is that it does not directly set any standards for how goods or services are to be provided by a <i>Prescribed Business</i> to a <i>Related Business</i>.</p> <p>Clause 3.4 of the Draft Code seeks to fill that gap.</p> <p>It will apply only in respect of goods or services of a <i>Prescribed Business</i> which are offered or provided to a <i>Related Contestable Business</i>. It will therefore not apply to <i>contestable</i> goods or services.</p> <p>The clause will require the Electricity Entity to comply with new arm's length contracting principles.</p> <p>These principles include that goods or services of a <i>Prescribed Business</i> which are offered or provided by it to a <i>Related Contestable Business</i> must occur on terms that are documented in an <i>arm's length contract</i>. This contract may be actual or notional.</p> <p>Presently the business units of Power and Water are not separate legal entities. In the absence of</p>

Clause No.	Subject	Comment
		<p>legal separation of Power and Water that will continue to be the case.</p> <p>Clause 3.4 introduces a new requirement for 'notional' contracts between a <i>Prescribed Business</i> and a <i>Related Contestable Business</i> where they are not separate legal entities.</p> <p>The requirement for 'notional' contracting is used in other jurisdictions – e.g., in relation to a use of system agreement between a retailer and distributor where both are the same legal entity: see Victorian electricity retail licences (clause 6).</p> <p>The <i>arm's length contracting principles</i> require the <i>Prescribed Business</i> and the <i>Related Contestable Business</i> to act at all times on the basis of the contract (actual or notional) between them.</p> <p>This is important because, in the absence of legal separation of Power and Water, its monopoly and contestable business units should actually deal with each other in accordance with the standards set by the <i>minimum ring-fencing requirements</i>.</p> <p>The provision will allow transparency in the terms of dealings between the monopoly and contestable business units and will assist the Commission in determining whether the <i>minimum ring-fencing requirements</i> are effective in a behavioral sense.</p> <p>If the type of goods or services of a <i>Prescribed Business</i> which are being offered or provided to a <i>Related Contestable Business</i> are the subject of <i>default terms and conditions</i> approved under clause 4, then the <i>Prescribed Business</i> will have two options under the <i>arm's length contracting principles</i> as to how it supplies goods or services of that type to its <i>Related Contestable Business</i>.</p> <p>It may elect to supply the goods or services on the approved <i>default terms and conditions</i>. However if it chooses not to do so, and proposes to supply the goods or services on terms that differ from the approved <i>default terms and conditions</i>, it will be required to first seek the approval of the Commission: clause 3.4(b)(v).</p> <p>Clause 3.4(c) sets out the criteria the Commission is to apply in determining whether to approve the proposed contract. This is either a 'not more favourable' than the <i>default terms and conditions</i> test, or alternatively a <i>fair and reasonable</i> and <i>non-discriminatory</i> test.</p> <p>It should be noted that a 'no less favourable' requirement exists under the transmission ring-fencing guidelines made by the ACCC/AER</p>

Clause No.	Subject	Comment
		<p>under the National Electricity Rules. See clause 7.2(b) of those guidelines. It is a ring-fencing minimum obligation that a TNSP providing ring-fencing services must offer those services to its customers on terms and conditions no less favourable than it provides to itself or its associates.</p> <p>The onus is put on the <i>Prescribed Business</i> to satisfy the Commission that it meets the standards for approval.</p> <p>Additionally, a <i>Prescribed Business</i> will not be able to vary an approved contract without the further approval of the Commission or waive the requirements of the approved contract.</p>
3.5	Provision of contestable goods or services by a Prescribed Business to a Related Contestable Business	<p>See comments under clause 3.3 above.</p> <p>Clause 3.5 fills a gap existing in the existing Code as clause 4.1(e) of the existing Code does not directly require that goods or services which are provided by a <i>Prescribed Business</i> to a <i>Related Business</i> to be provided on a non-discriminatory arm's length commercial basis.</p> <p>Clause 3.5 imposes in reworded language an equivalent requirement.</p> <p>It will only apply in respect of the provision of <i>contestable</i> goods or services.</p> <p>Such a provision is required because in the absence of a requirement of this nature there could be cross-subsidisation of a <i>Related Contestable Business</i> by a <i>Prescribed Business</i> thus conferring an unfair competitive advantage on that <i>Related Contestable Business</i> when compared to the position of its <i>Competitors</i>.</p>
3.6	Provision of contestable goods or services to a Prescribed Business by a Related Contestable Business.	<p>This is the reverse situation to that covered by clause 3.5 of the Draft Code.</p> <p>Clause 3.6 is a re-worded equivalent of existing clause 4.1(f) of the Code.</p> <p>By definition goods or services provided by a <i>Related Contestable Business</i> to a <i>Prescribed Business</i> will be <i>contestable</i> goods or services which could also have been procured by that <i>Prescribed Business</i> from third parties.</p> <p>The requirement in clause 3.6 is that those transactions must happen on an arm's length and reasonable commercial basis as if the two businesses were separate unrelated entities.</p>
3.7	Marketing Staff	<p>Clause 3.7 rewords the separation requirement found in clause 4.1(g) of the existing Code to put the onus on the <i>Prescribed Business</i> to ensure its <i>Marketing Staff</i> are not used in the <i>Related</i></p>

Clause No.	Subject	Comment
		<i>Contestable Business</i> rather than vice versa as clause 4.1(g) currently provides. The end result of separation between the two is in substance equivalent.
3.8	Branding and Marketing	Clause 3.8 is new. Requirements of this type are found, for example, in electricity ring-fencing requirements in Victoria: see Electricity Industry Guideline No. 17.
3.9	Claims about Service Standards	Clause 3.9 is new. Requirements of this type are found, for example, in electricity ring-fencing requirements in Victoria: see Electricity Industry Guideline No. 17.
3.10	Websites	Clause 3.10 is new. Requirements of this type are found, for example, in electricity ring-fencing requirements in Victoria: see Electricity Industry Guideline No. 17.
4	Default Terms and Conditions	<p>Clause 4 of the Draft Code is new. See the comments in chapter 3 above about the Commission's intention in introducing the clause 4 requirements about <i>default terms and conditions</i>.</p> <p>The form of clause 4 follows closely provisions in the Victorian electricity distribution licences concerning requirements for use of system agreements (see clause 4 of those licences).</p> <p>The requirements for approved <i>default terms and conditions</i> will only apply to a <i>Prescribed Business</i>.</p> <p>Clause 4 will also only apply to those goods or services of that <i>Prescribed Business</i> which are either declared by clause 4 itself to be <i>nominated goods or services</i> or are nominated by the Commission as <i>nominated goods or services</i>.</p> <p>Therefore, the regime for approved <i>default terms and conditions</i> will have an element of flexibility as to the extent of its practical width.</p> <p>The Commission will expect to consult with Power and Water concerning its views about the matter.</p>
4.1(a)	Submission of proposed default terms and conditions	This follows the model for submission of terms under the Victorian electricity distribution licence requirement.
4.1(b)	Proposed default terms and conditions	The proposed <i>default terms and conditions</i> which must be submitted to the Commission for approval must be comprehensive.
4.2	Nominated goods or services	This clause provides the mechanism by which goods or services may be specified as <i>nominated goods or services</i> . If so, the regime in clause 4 will

Clause No.	Subject	Comment
		<p>apply.</p> <p>At the commencement of the Draft Code, the only type of goods or services which will be covered by clause 4 from the outset is the sale of electricity generated by Power and Water to a licensed retailer. See clause 4.2(c).</p> <p>The Commission considers that it is necessary to have in place approved standard terms and conditions on which a licensed retailer is able to buy electricity from Power and Water should such a retailer wish to enter the NT market.</p> <p>The clause also contains a safeguard (clause 4.2(b)) which prevents the Commission from nominating goods or services as <i>nominated goods or services</i> if another regulatory instrument wholly deals with the terms and conditions on which that particular good or service is to be provided by the <i>Prescribed Business</i>.</p>
4.3	Consideration of proposed default terms and conditions	This follows the model for consideration and approval under the Victorian electricity distribution licence.
4.4	Provision of nominated goods or services	<p>Under clause 4.1(e) of the existing Code, a person already has a right to require a <i>Prescribed Business</i> to supply goods or services to it if those goods or services are provided to a <i>Related Business</i>.</p> <p>This provision expands on that existing obligation where the type of goods or services in issue are <i>nominated goods or services</i> and thus subject to the regime under clause 4 of the Draft Code.</p> <p>The provision follows the model in clauses 4.4 and 4.5 of the Victorian electricity distribution licence.</p>
4.5	Requirements for default terms and conditions	<p>This clause imposes the requirement that the terms and conditions submitted for approval by the Commission must be <i>fair and reasonable</i> and <i>non-discriminatory</i>.</p> <p>Clause 4.5 therefore applies the same standard as the <i>minimum ring-fencing requirements</i> proposed in clause 3.3.</p> <p>Requirements to the same or similar effect apply under clause 4.6 of the Victorian electricity distribution licence.</p>
4.6	Amendment of default terms and conditions	This provision follows the model in clause 4.7 of the Victorian electricity distribution licence.
4.7	Replacement default contract	This provision follows the model in clause 4.8 of the Victorian electricity distribution licence.

Clause No.	Subject	Comment
4.8	Termination of default contract	This provision follows the model in clause 4.9 of the Victorian electricity distribution licence.
8	Compliance Procedures and Compliance Reporting	Clause 8 of the Draft Code follows but expands on basic structure of clause 8 of the existing Code.
8.1	Compliance Procedures	Clause 8.1(b) further defines the types of compliance procedures which are required to be put in place by an <i>Electricity Entity</i> .
8.3(d) & (e)	Costs of audit	A minor amendment is made to further specify the circumstances in which an <i>Electricity Entity</i> is responsible for audit costs, and to further provide a mechanism for recovery of those costs by the Commission.
10	Outsourcing	<p>Clause 10 of the Draft Code is new.</p> <p>It is designed to provide specifically for the now common situation of businesses using outsourced service providers to provide services to them in relation to the conduct of their businesses.</p> <p>Clause 10 follows the general form of other regulatory instruments relating to outsourcing. See for example, the Victorian Electricity Industry Guideline No. 17, Electricity Ring-Fencing, clause 6; Tasmanian 'Functional Ringfencing Guideline' 2004, clause 4.6; ESC Victorian Rail Access Regime, Ring Fencing Rules , clause 2.8.</p>
11	Interpretation of requirements under the Code	<p>Clause 11 of the Draft Code is new.</p> <p>It follows the form of provisions now commonly found in regulatory instruments which provide for the regulator to determine contested questions or make decisions about the application of regulatory standards expressed in terms of standards involving issues of judgment or degree or which necessarily involve the making of value judgments against standards expressed as concepts.</p> <p>Other regulatory provisions give discretion to the regulator to decide whether a service is contestable or non contestable: e.g. Victorian Electricity Industry Guideline No. 14, clause 5.2.</p> <p>Examples of the former type are to be found in the Victorian electricity distribution licences (clause 21.3), retail licences (clause 6.3) and Electricity Industry Guideline No. 14 (clause 7).</p>
13	Interpretation	The Draft Code contains a number of additional defined terms in clause 13.2.

Clause No.	Subject	Comment
		<p>The additional defined terms are:</p> <ul style="list-style-type: none"> applicable laws approved arm's length contract arm's length contract arm's length contracting principles business day Codes competition Competitor contestable contracting parties default contract default terms and conditions Employee ERA fair and reasonable guideline licence minimum ring-fencing requirements negotiated contract nominated goods or services non-contestable non-discriminatory notional agreement Outsourced Service Provider proposed variation PWC <p>Some of the additional defined terms are to give effect to the new provisions of the Draft Code. A number of the terms contain definitions of concepts used in the existing Code.</p> <p>In addition a number of the existing defined terms have been amended or renamed.</p> <p>Comments on a number of the specific defined terms are contained below.</p> <p>The definitions in the existing Code which have been omitted from the Draft Code are:</p> <ul style="list-style-type: none"> Contestable Market

Clause No.	Subject	Comment
		Related Business - now a Related Contestable Business
13.2	Associate	A minor drafting change has been made to this clause to reflect amendments to the <i>Corporations Act</i> since the introduction of the initial definition.
13.2	Commencement Date	The definition operates so that the intended commencement date of the new Code of 1 August 2008 can be delayed if necessary.
13.2	contestable and non-contestable	These definitions have been introduced, and the definition of <i>Contestable Market</i> omitted. The operation of some provisions of the Draft Code will depend on whether the particular goods or services in question are supplied on a <i>contestable</i> or <i>non-contestable</i> basis.
13.2	competition and Competitor	These definitions are included to clarify that the provisions of the Code which operate by reference to competitors of an <i>Electricity Entity</i> or refer to competition in the electricity supply industry are intended to operate whether there is actual or only potential competition in relation to the thing in question.
13.2	Customer	The definition has been amended so, where the context requires, the term also includes customers of a licensed retailer. Presently the term extends only to direct customers of Power and Water and would not include customers of any other <i>Electricity Entity</i> which entered the NT market (e.g., another retailer). The existing definition unduly restricts, for example, the operation of the minimum ring-fencing obligations in relation to treatment of confidential information of customers.
13.2	Director	Minor amendments are made to this definition to deal with the position of <i>Electricity Entities</i> other than Power and Water, and to more correctly represent the procedure by which directors of Power and Water are appointed.
13.2	Electricity Entity	The definition has been amended to omit reference to the term including, where the context requires, the <i>Associates</i> of the <i>Electricity Entity</i> . The current definition creates potential uncertainty or confusion as to the circumstances in which the Code places an obligation on an <i>Associate</i> as well as an <i>Electricity Entity</i> .
13.2	fair and reasonable	The Code does not attempt to further define what is 'fair and reasonable' but provides that questions of whether something is <i>fair and reasonable</i> may be determined by the Commission according to its opinion of the

Clause No.	Subject	Comment
		matter.
13.2	non-discriminatory	<p>The definition draws on approaches taken in other regulatory instruments.</p> <p>Paragraph (a) of the definition is similar to a number of regulatory provisions. See for example, clause 21 Victorian electricity distribution licences; clause 2 Victorian Electricity Industry Guideline No. 17 – Electricity Ring-Fencing; Tasmanian ‘Functional Ring Fencing Guideline’ 2004 clause 3;</p> <p>Paragraph (b) of the definition is similar to the ring-fencing requirements in section 13.11(f) of the WA Electricity Networks Access Code 2004.</p>
13.2	Related Contestable Business	<p>The definition has been simplified so that essentially a <i>Related Contestable Business</i> will consist of all those businesses (or components of businesses) carried on by an <i>Electricity Entity</i> within the electricity supply industry in the Territory which are outside the scope of a <i>Prescribed Business</i>. That is <i>Related Contestable Businesses</i> will consist of the residue. By definition those elements will be <i>contestable</i> business activities which could be carried on also by a third party.</p>
Schedule 3	Transitional provisions	<p>Although the Draft Code requires certain <i>Procedures</i> to be submitted to the Commission for approval within defined periods after the commencement of the Code (reflecting the provisions of the existing Code), the Commission will not require Power and Water to resubmit approved <i>Procedures</i> again once the new Code comes into force. Schedule 3 provides the machinery for the existing approvals to continue in force.</p>

APPENDIX**A****DRAFT CODE**

The Draft Code shows how a final Code may look with the proposed variations incorporated.

A ‘Delta View’ showing the substantive changes between the current Code and the proposed Draft Code is also provided on the Commission’s website.

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

Draft

Date: February 2008

Northern Territory Electricity Ring Fencing Code

Third Version
1 August 2008



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FOREWORD

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

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

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

Any questions regarding the *Code* should be directed in the first instance to the Executive Officer, Utilities Commission, at any of the following:

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Amendment History

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

TABLE OF CONTENTS

FOREWORD	27
1. Introduction	31
2. Objectives and Scope	32
3. Minimum Ring-Fencing Requirements	33
4. Default Terms and Conditions	37
5. Compliance with Approved Procedures	39
6. Adding to or Amending this Code	41
7. Procedures for Adding To or Amending Ring-Fencing Obligations	42
8. Compliance Procedures and Compliance Reporting	44
9. Exemption from Compliance with Specified Obligations	45
10. Outsourcing	47
11. Interpretation and determination of requirements under this Code	47
12. Preservation of Other Obligations	48
13. Interpretation	48
SCHEDULE 1	55
SCHEDULE 2	57
1. Common Principles	57
2. Accounting Principles	57
3. Cost Allocation Principles	59
4. Information Principles	60
5. Scope of Principles	61
SCHEDULE 3	63

1.	Continuation of approved <i>Procedures</i>	63
2.	Exemptions	63

Northern Territory Electricity Ring-Fencing Code

1. Introduction

1.1 Authority

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

1.2 Date of Commencement

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

1.3 Previous versions of the Code

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

1.4 Application

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

1.5 Obligation to remedy

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

1.6 Guidelines

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

2. Objectives and Scope

2.1 Objectives

- (a) The objectives of this *Code* are to:
- (i) promote and achieve the object of the *Act*;
 - (ii) promote and achieve the objects of the *ERA*; and
 - (iii) without limiting paragraphs (i) and (ii) above, promote and safeguard competition and fair and efficient market conduct in the *Electricity Supply Industry* by promoting the simulation of competitive market conduct and preventing the misuse of monopoly power (for example by requiring *Electricity Entities* to implement measures which:
 - (A) prevent the misuse of monopoly power, and simulate behaviour and outcomes likely to exist in a competitive market; and
 - (B) ensure that its *Related Contestable Businesses* are not treated by its *Prescribed Businesses* in a manner which confers a non-commercial discriminatory price or non-price advantage on the *Related Contestable Business* as compared to an arm's length third party in the same commercial circumstances.)

2.2 Scope

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

3. Minimum Ring-Fencing Requirements

3.1 Financial accounts

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must:
- (i) establish and maintain a separate set of financial accounts and reports in respect of:
 - (A) each *Prescribed Business*; and
 - (B) its *Electricity Business* as a whole,which have been prepared in accordance with the *Accounting Procedures* applying to that *Electricity Entity* from time to time under clause 5; and
 - (ii) allocate any costs that are shared between a *Prescribed Business* and a *Related Contestable Business* in a manner that:
 - (A) complies with the *Cost Allocation Procedures* applying to that *Electricity Entity* from time to time under clause 5; and
 - (B) is otherwise *fair and reasonable*.

3.2 Confidential Information

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must ensure that *Confidential Information* provided by or in respect of a *Customer* to a *Prescribed Business* is:
- (i) used only for the purpose for which that *Confidential Information* was provided by or in respect of that *Customer*;
 - (ii) only disclosed to a *Related Contestable Business* of that *Electricity Entity* if the disclosure of that *Confidential Information* is not prohibited under the *Information Procedures* applying to that *Electricity Entity* under clause 5 from time to time and disclosure is otherwise permitted by law; and
 - (iii) otherwise dealt with in accordance with the *Information Procedures* applying to that *Electricity Entity* under clause 5 from time to time.
- (b) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must ensure that any information (including *Confidential Information*):
- (i) obtained by that *Electricity Entity* (or by its *Associates* or *Employees*) in the course of conducting a *Prescribed Business*; or
 - (ii) known to that *Electricity Entity* (or by its *Associates* or *Employees*) as a result of conducting a *Prescribed Business*; and
 - (iii) which might reasonably be expected to materially affect the commercial interests of a *Competitor* of a *Related Contestable Business* of that *Electricity Entity* if disclosed to that *Related Contestable Business*; or
 - (iv) which might reasonably be expected to provide a competitive advantage to a *Related Contestable Business* of that *Electricity Entity* over a *Competitor* of that *Related Contestable Business* if disclosed to that *Related Contestable Business* without also being disclosed to that *Competitor*,
- is:
- (v) used only for the purpose for which that information was provided or obtained;

- (vi) only disclosed to a *Related Contestable Business* of that *Electricity Entity* if the disclosure of that information is not prohibited under the *Information Procedures* applying to that *Electricity Entity* under clause 5 from time to time and is otherwise permitted by law; and
- (vii) otherwise dealt with in accordance with the *Information Procedures* applying to that *Electricity Entity* under clause 5 from time to time.

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

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must ensure that any goods or services of a *Prescribed Business* of that *Electricity Entity* which are offered or provided to a *Related Contestable Business* of that *Electricity Entity* by that *Prescribed Business* are also offered and provided to other *Customers* (including *Competitors* of that *Related Contestable Business*) who wish to obtain the same type of goods or services from that *Prescribed Business* on terms and conditions which are:
 - (i) *fair and reasonable*; and
 - (ii) *non-discriminatory*.

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

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must comply with the *arm's length contracting principles* in relation to any goods or services of a *Prescribed Business* of that *Electricity Entity* which are offered or provided by that *Prescribed Business* to a *Related Contestable Business* of that *Electricity Entity*.
- (b) The *arm's length contracting principles* are:
 - (i) that:
 - (A) the *Prescribed Business* and the *Related Contestable Business* (the *contracting parties*) must prepare and enter into a written agreement between them in relation to goods or services of the *Prescribed Business* which are offered or provided by the *Prescribed Business* to the *Related Contestable Business*; or
 - (B) if the *contracting parties* are not separate legal entities, the *contracting parties* must:
 - (I) prepare and enter into a notional written agreement between them in relation to the goods or services of the *Prescribed Business* which are offered or provided by the *Prescribed Business* to the *Related Contestable Business* (a *notional agreement*);
 - (II) act at all times on the notional basis that the *contracting parties* have and must comply with the *notional agreement*,
 (an *arm's length contract*);
 - (ii) that an *arm's length contract* must:
 - (A) deal with each of the material terms and conditions (including in particular prices and terms and conditions relating to price) on which the relevant goods or services are offered or provided;
 - (B) contain terms and conditions dealing with each of the matters that would reasonably be expected to be contained in an agreement if the *contracting*

parties were dealing with each other on an arm's length and reasonable commercial basis (i.e. as if the *contracting parties* were separate unrelated entities);

- (iii) that the *contracting parties* must at all times deal with each other and act in accordance with their *arm's length contract*;
- (iv) that the *contracting parties* must not vary the *arm's length contract* or waive compliance with the requirements of their *arm's length contract* in a manner inconsistent with these principles;
- (v) that:
 - (A) if a proposed *arm's length contract* is in respect of goods or services of the *Prescribed Business* in relation to which there are approved *default terms and conditions* under clause 4 below; and
 - (B) if the terms and conditions of the proposed *arm's length contract* differ from the approved *default terms and conditions*,

the *Electricity Entity* must make application to the *Commission* for approval by the *Commission* of the proposed *arm's length contract* and the *contracting parties* must not enter into the proposed *arm's length contract* unless approved by the *Commission*. A proposed *arm's length contract* which has been approved by the *Commission* is an *approved arm's length contract*; and

- (vi) that the *contracting parties* must not vary an *approved arm's length contract* (except by varying the terms and conditions of the *approved arm's length contract* to the form of the relevant corresponding terms and conditions of the approved *default terms and conditions*) unless the *Electricity Entity* has made application to, and received the approval of, the *Commission* for the proposed variation.
- (c) The *Commission* may approve a proposed *arm's length contract* or a proposed variation to an *approved arm's length contract* (a *proposed variation*) upon application being made to it under clauses 3.4(b)(v) above or 3.4(b)(vi) above if the *Electricity Entity* establishes to the satisfaction of the *Commission*, in the opinion of the *Commission*, that:
 - (i) the terms and conditions of the proposed *arm's length contract* or *proposed variation* are not more favourable to the *Related Contestable Business* relative to the position that the *Related Contestable Business* would be in if the *contracting parties* had an agreement for the supply of the relevant goods or services in the form of the approved *default terms and conditions*; or
 - (ii) if the terms and conditions of the proposed *arm's length contract* or *proposed variation* do not satisfy clause 3.4(c)(i) above, the proposed *arm's length contract* or *proposed variation* is *fair and reasonable* and *non-discriminatory* and should be approved.
 - (d) The *Commission* in giving an approval under clause 3.4(c) above may make the approval subject to further requirements or conditions specified by the *Commission* including that:
 - (i) the *Electricity Entity* provide to the *Commission* periodically during the term of the *arm's length contract* information and materials sufficient to enable the *Commission* to continue to have the satisfaction, in the opinion of the *Commission*, of the matters referred to in clause 3.4(c) above.

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

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

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

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

3.7 Marketing Staff

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

3.8 Branding and marketing

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

3.9 Claims about service standards

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

3.10 Websites

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

- (ii) separate the contents of the website dealing with a *Prescribed Business* from the contents of the website dealing with the *Related Contestable Business* as far as practicable.

4. Default Terms and Conditions

4.1 Submission of proposed default terms and conditions

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

4.2 Nominated goods or services

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

4.3 Consideration of proposed default terms and conditions

- (a) Upon receipt of any proposed *default terms and conditions* from an *Electricity Entity* under clause 4.1(a) above, the *Commission* may:
 - (i) approve those *default terms and conditions* as submitted;
 - (ii) if there are currently no existing *default terms and conditions* for the relevant goods or services, approve those *default terms and conditions* with amendments required by the *Commission* following consultation by the *Commission* on its proposed amendments; or
 - (iii) not approve those *default terms and conditions*.
- (b) The *Commission* may not approve any terms or conditions in proposed *default terms and conditions* (with or without amendment) which are inconsistent with an *applicable law*.
- (c) If:
 - (i) the *Commission* has received proposed *default terms and conditions* from an *Electricity Entity* under clause 4.1(a); and

- (ii) at the end of 60 *business days* after the day on which those proposed *default terms and conditions* were received by the *Commission* (or such longer period after that day not exceeding 30 days as notified by the *Commission* to the *Electricity Entity*), the *Commission* has not:
 - (A) approved (with or without amendment) those proposed *default terms and conditions*; or
 - (B) advised the *Electricity Entity* that the proposed *default terms and conditions* will not be approved,
 the *Commission* will be deemed to have approved the proposed *default terms and conditions*.

4.4 Provision of nominated goods or services

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

4.5 Requirements for default terms and conditions

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

4.6 Amendment of default terms and conditions

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

- (ii) the *Commission* has given the *Electricity Entity* an opportunity to make representations on the matter and to amend the *default terms and conditions* without such a direction.

4.7 Replacement default contract

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

4.8 Termination of default contract

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

4.9 Review and consultation with Commission about default terms and conditions

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

5. Compliance with Approved Procedures

5.1 Introduction

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

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

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

- (i) 3 months (in the case of the *Accounting Procedures* and the *Cost Allocation Procedures*); and
 - (ii) 6 months (in the case of the *Information Procedures*),
- of the *Commencement Date* submit to the *Commission* for approval final draft *Procedures* for its *Prescribed Businesses* developed in accordance with clause 5.3.

5.3 Development of final draft *Procedures*

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

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

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

5.5 Approval by the Commission may be subject to conditions

- (a) The *Commission* may grant its approval of the draft *Procedures* submitted by an *Electricity Entity* under clause 5.2 subject to such conditions as the *Commission* considers are appropriate in the circumstances including conditions requiring that:
 - (i) specific amendments be made to the draft *Procedures* submitted by the *Electricity Entity*;
 - (ii) the *Procedures* are approved for a fixed term;
 - (iii) the *Procedures* be reviewed at regular intervals by the *Commission* and the *Electricity Entity*;
 - (iv) the *Procedures* must be resubmitted for approval following any change to the *Code* affecting the *Procedures* or when otherwise requested by the *Commission*; and
 - (v) the *Electricity Entity* report to the *Commission* concerning the implementation, application and/or compliance with the *Procedures* when requested by the *Commission*.

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

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

5.7 Variations to existing *Procedures*

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

5.8 Timing

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

5.9 Default by Electricity Entity

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

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

5.10 Compliance with requirements until *Procedures* are approved

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

5.11 Copies of accounts

- (a) An *Electricity Entity* that carries on a *Prescribed Business* must provide to any person upon request copies of the accounts provided to the *Commission* under clause 3.1(a)(i) for the most recent annual reporting period upon payment by that person of the fee approved for that purpose by the *Commission*.

6. Adding to or Amending this Code

6.1 Variation or revocation by the Commission under the Act

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

6.2 Application by an Electricity Entity for variation or revocation

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

6.3 Additional or varied obligations on an Electricity Entity

- (a) Without limiting the powers of the *Commission* under section 24 of the *Act* to vary or revoke the *Code*, the *Commission* may vary the *Code* to require that an *Electricity Entity* comply with an obligation in relation to the conduct of a *Prescribed Business* which differs from or is in addition to the minimum obligations set out in clauses 3, 4, and 5 above (including by requiring the *Electricity Entity* to comply with *Procedures* issued by the *Commission* which vary or are additional to the *Procedures* approved or issued by the *Commission* under clause 5 from time to time).

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

- (a) In deciding whether to vary or revoke this *Code* (or any part of this *Code*) under clauses 6.1 or 6.2, or impose any additional or varied obligation on an *Electricity Entity* under clause 6.3, the *Commission* will have regard to:
 - (i) the matters listed in section 6(2) of the *Act*; and
 - (ii) in the case of a variation to the *Code* which imposes an additional or varied obligation on a particular *Electricity Entity*, the general principle that the administrative cost to that *Electricity Entity* of complying with the additional or varied obligation should not, or should not be likely to in the opinion of the *Commission*, outweigh the benefits to the public from compliance with that additional or varied obligation.

6.5 Consultation by Commission with Electricity Entities

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

6.6 Compliance with additional or varied obligations

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

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

7.1 Notification by the Commission to interested persons

- (a) The *Commission* must, before:
 - (i) varying or revoking this *Code* (or any part of this *Code*); or
 - (ii) imposing an additional or varied obligation on an *Electricity Entity*,
inform each person known to the *Commission* (whom the *Commission* believes has a sufficient interest in the matter) that the *Commission* is considering varying or revoking

this *Code* (or any part of this *Code*) or imposing an additional or varied obligation on an *Electricity Entity* by publishing a written notice which at least:

- (iii) states the nature of the proposed variation, revocation or additional or varied obligation; and
 - (iv) requests submissions by a date specified in the notice (not being a date earlier than 30 days after the date of the notice).
- (b) The *Commission* will also give a copy of any notice published in accordance with this clause 7.1 to each *Electricity Entity* to which the notice relates.

7.2 Consideration of submissions by the Commission

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

7.3 Draft decision

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

7.4 Consideration of submissions on the draft decision

- (a) The *Commission* must consider any submissions it receives by the date specified by the *Commission* under clause 7.3(b) and it may (but is not obliged to) consider any submissions received after that date.

7.5 Final decision

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

8. Compliance Procedures and Compliance Reporting

8.1 Electricity Entity to establish and maintain compliance procedures

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must within 6 months of the *Commencement Date* establish, document, maintain, and comply with appropriate auditable internal policies, procedures and systems (“*compliance procedures*”) for ensuring that it complies with its obligations under this *Code*.
- (b) The *compliance procedures* must include, without limitation, policies procedures and systems for:
 - (i) training of *Employees* about the obligations of the *Electricity Entity* under this *Code*;
 - (ii) regular internal audit by the *Electricity Entity* of its compliance with its obligations under this *Code*;
 - (iii) regular reporting to, and consideration by, the *Directors* of the *Electricity Entity* concerning compliance with the obligations of the *Electricity Entity* under this *Code*;
 - (iv) dealing with any complaints made by a *Customer* or other third party to the *Electricity Entity* in connection with non-compliance by the *Electricity Entity* with its obligations under this *Code*; and
 - (v) detecting and reporting to the *Commission* any breach of the *compliance procedures*.
- (c) The *Commission*, upon reasonable notice being given to the *Electricity Entity*, may require the *Electricity Entity* to demonstrate to the *Commission’s* satisfaction, in the opinion of the *Commission*, the:
 - (i) adequacy of; and
 - (ii) satisfactory compliance by the *Electricity Entity* with, the *compliance procedures*.
- (d) Any notification made by the *Commission* to the *Electricity Entity* concerning the *Commission’s* opinion of the adequacy of the *compliance procedures* of that *Electricity Entity* will not affect the *Electricity Entity’s* obligations under this *Code*.

8.2 Compliance reports

- (a) An *Electricity Entity* must provide a report to the *Commission*, at reasonable intervals determined by the *Commission*, describing the measures taken by the *Electricity Entity* to ensure compliance with its obligations under this *Code* (a *compliance report*).
- (b) The *compliance report*, and the *Commission’s* assessment of compliance, will be made publicly available by the *Commission* subject to the *Commission* first complying with its obligations under section 26 of the *Act*

8.3 Audit

- (a) The *Commission* may, upon reasonable notice to an *Electricity Entity*, appoint an independent auditor to undertake an audit of the *Electricity Entity’s* compliance with any of its obligations under this *Code*.
- (b) If the *Commission* nominates standards or requirements to apply to an audit under clause 8.3, the auditor will report in accordance with those standards or requirements.

- (c) The *Commission* will provide a copy of the auditor's report to the *Electricity Entity* as soon as reasonably possible after it has been received from the auditor.
- (d) The *Electricity Entity* will be responsible to pay the costs of undertaking that audit if, in the opinion of the *Commission*, the auditor discovers any failure by the *Electricity Entity* to comply with a material obligation under this Code.
- (e) Upon notification to the *Electricity Entity* by the *Commission*, the *Electricity Entity* must pay the amount of the audit costs to the *Commission* in the amount notified by the *Commission*.

8.4 Notification of breaches to the Commission

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

9. Exemption from Compliance with Specified Obligations

9.1 Initial exemptions

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

9.2 Application for an exemption

- (a) An *Electricity Entity* may apply to the *Commission* for an exemption from compliance with any obligation (or component of an obligation) under this Code.
- (b) A notice requesting an exemption must include all information and materials necessary to support the *Electricity Entity's* application for exemption.

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

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

9.4 Terms or conditions of exemption

- (a) The *Commission* may grant an exemption:
 - (i) on different terms to those sought by the *Electricity Entity*; or
 - (ii) subject to such conditions as the *Commission* considers are appropriate in the circumstances, including conditions requiring that:
 - (A) the exemption be for a fixed term;
 - (B) the continuation of the exemption be subject to review by the *Commission* on such terms as the *Commission* considers appropriate in the circumstances;

- (C) the *Electricity Entity* report to the *Commission* concerning any matter relating to the operation or impact of the exemption; and
- (D) the grant of the exemption be conditional upon the occurrence of a nominated event (for example, the variation of the *Code* to impose an additional or varied obligation on the *Electricity Entity* or the implementation of agreed compliance procedures).

9.5 Procedure for consideration of application

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

9.6 Draft decision

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

9.7 Final decision

- (a) Within 30 days (or such longer period as the *Commission* notifies) after the last day for submissions on the draft decision specified by the *Commission*, the *Commission* must

issue a final decision stating whether or not it will grant the exemption sought in that application.

- (b) A final decision under clause 9.7(a) has effect 30 days after the decision is issued to the *Electricity Entity* or such later date as the *Commission* specifies in the notice.

9.8 Prescribed Business definition

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

10. Outsourcing

10.1 Outsourced Service Provider

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

10.2 Compliance by Outsourced Service Provider

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

10.3 Outsourcing agreements

- (a) If an *Electricity Entity* enters into an agreement with an *Outsourced Service Provider* in relation to the performance of any of the business functions of the *Prescribed Business* of that *Electricity Entity* (including an asset management agreement) the *Electricity Entity* must ensure that the terms of the agreement are consistent with and facilitate the implementation of this *Code*.

11. Interpretation and determination of requirements under this Code

11.1 Fair and reasonable

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

11.2 Non-discriminatory

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

11.3 Arm’s length contracting principles

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

11.4 Effect of disclosure of information

- (a) Any question as to whether:

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

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

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

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

11.6 Carrying on of a business

- (a) For the purposes of this *Code* an *Electricity Entity* is to be regarded as carrying on a *Prescribed Business* or a *Related Contestable Business* (as the case may be) if :
 - (i) it is the holder of a *licence* authorising the activities for which a *licence* is required comprising all or part of the relevant *Prescribed Business* or *Related Contestable Business*; or
 - (ii) it otherwise engages in the activity of owning, controlling or operating the relevant *Prescribed Business* or *Related Contestable Business*.
- (b) Any question arising under this *Code* as to whether an *Electricity Entity* is to be regarded as carrying on a *Prescribed Business* or a *Related Contestable Business* is to be determined by the *Commission* on the basis of the *Commission's* opinion of the matter.

11.7 Commission to determine matters arising under this clause

- (a) The *Commission* may from time to time in its discretion consider and decide any issue arising under this clause 11.
- (b) An:
 - (i) *Electricity Entity*; or
 - (ii) any other person who has, in the opinion of the *Commission*, a sufficient interest in the matter,

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

12. Preservation of Other Obligations

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

13. Interpretation

13.1 Italicised terms

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

13.2 Defined terms

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

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

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

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

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

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

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

“*Associate*” means in relation to:

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

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

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

“*Code*” means this Northern Territory Electricity Ring-Fencing Code;

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

“*Commencement Date*” means the later of 1 August 2008 or the date set out in the notice published in the *Gazette* making this *Code* as the date of commencement of this *Code*;

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

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

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

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

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

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

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

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

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

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

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

“*Director*” has the same meaning as in the *Corporations Act* and includes in the case of the *PWC* its chief executive officer from time to time and each of the persons appointed as directors of *PWC* in accordance with the *Government Owned Corporations Act*.

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

“*Electricity Entity*” has the same meaning as is given to that term in the *ERA*;

“*Electricity Supply Industry*” has the same meaning as is given to that term in the *ERA*;

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) do not unreasonably discriminate, or have the effect of creating unreasonable discrimination between:
 - (i) different *Customers* or classes of *Customers*; or
 - (ii) *Customers* and a *Related Contestable Business* of an *Electricity Entity*; and
- (b) do not unreasonably competitively or financially disadvantage a *Customer* relative to a *Related Contestable Business* of an *Electricity Entity*,

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

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

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

“*Prescribed Business*” means:

- (a) a business (or component of a business) carried on by an *Electricity Entity* which consists of:
 - (i) the operation of an electricity network and the provision of network access services in relation to that electricity network to *Customers*;
 - (ii) the provision of power system control and dispatch services in relation to any electricity network;
 - (iii) the sale of electricity to non-contestable *Customers*; or
 - (iv) a business (or component of a business) carried on by an *Electricity Entity* which consists of the provision of any other goods or services in the *Electricity Supply Industry*:
 - (A) to which the Regulations authorising the making of this *Code* extend to; and
 - (B) which the *Commission* determines in accordance with clause 6 are *non-contestable* goods or services; or
- (b) the business carried on by the *PWC* of generating electricity for sale (whether to third parties or notionally to another business division of the *PWC*) carried on by the *PWC*, until such time as the *Commission* is satisfied that having regard to factors set out in section 6(2) of the *Act* and such other matters as the *Commission* considers are appropriate:
 - (i) the *PWC* no longer has a substantial degree of market power in the market for the generation of electricity for sale in respect of a particular geographical area; or
 - (ii) this *Code* should no longer apply to that business;

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

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

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

“*Related Contestable Business*” means, in relation to an *Electricity Entity*, any business (or component of a business), other than a *Prescribed Business*, carried on by that

Electricity Entity or an *Associate* of that *Electricity Entity* in the *Electricity Supply Industry*.

13.3 Other interpretation principles

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

13.4 Making of an instrument or decision

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

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

SCHEDULE 1

Exemptions as at Commencement Date

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

SCHEDULE 2

Accounting, Cost Allocation and Information Principles

1. Common Principles

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

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

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

2. Accounting Principles

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

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

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

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

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

- (a) where substance and form differ, reporting the substance rather than the legal form of a transaction or event;
- (b) in determining the substance of a transaction, considering all its aspects and implications, including the expectations of and motivations for, the transaction; and
- (c) for the purposes of determining the substance of a transaction, viewing in aggregate a group or series of transactions that achieves, or is designed to achieve, an overall commercial effect.

- 2.5 An *Electricity Entity* must maintain accounting and reporting arrangements which:
- (a) enable financial statements and reports to be prepared for each *Prescribed Business* and its *Electricity Business* as a whole; and
 - (b) provide information in the financial statements and reports that can be verified.
- 2.6 Information must be presented in financial statements and reports in the most understandable manner, without sacrificing relevance or reliability.
- 2.7 The financial statements and reports prepared by an *Electricity Entity* in compliance with its obligations under this *Code* must:
- (a) give a fair and reasonable view of the profit and loss and the balance sheet relating to each *Prescribed Business* and its *Electricity Business* as a whole;
 - (b) be capable of certification as such by an auditor when and if required by the *Commission*;
 - (c) be derived from the statutory accounts or their equivalent of the *Electricity Entity*; and
 - (d) contain the entirety of the activities of each *Prescribed Business* and its *Electricity Business* as a whole by:
 - (i) eliminating costs not related to each *Prescribed Business* and (where applicable) its *Electricity Business* as a whole;
 - (ii) not consolidating amounts from statutory accounts of different entities; and
 - (iii) consolidating or disaggregating statutory account amounts within an entity in order to prepare financial statements.
- 2.8 If some or all of the activities of an *Electricity Entity* are carried out by an entity that does not have statutory accounts, all financial representations of *Prescribed Business* activities by such an entity must be capable of being audited by an external independent auditor.
- 2.9 An *Electricity Entity* must present on a fair and consistent basis, from the accounting records that underlie its statutory accounts, the costs, revenues, assets employed and liabilities that may be reasonably attributed to each *Prescribed Business* and its *Electricity Business* as a whole.
- 2.10 The financial statements and reports of each *Prescribed Business* and its *Electricity Business* as a whole must, in so far as is reasonably practicable, be prepared in accordance with the accounting principles and policies applicable to the statutory accounts.
- 2.11 The financial statements and reports of each *Prescribed Business* and its *Electricity Business* as a whole must, in so far as is reasonably practicable, be prepared in a consistent manner so that the *Commission* can make comparisons between them over time.
- 2.12 An *Electricity Entity* must provide to the *Commission* full and detailed documentation of any policies and procedures that the *Electricity Entity* may have used to prepare the financial statements and reports, that are additional to or in place of, the accounting principles and policies used to prepare its statutory accounts.
- 2.13 The *Directors* of an *Electricity Entity* will be responsible for the purposes of this *Code* for the preparation and presentation of the financial statements and reports, and the information they contain.

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

3. Cost Allocation Principles

- 3.1 The *Cost Allocation Procedures* will only be approved by the *Commission* if:
- (a) they ensure compliance with the relevant *minimum ring-fencing requirements* ;
 - (b) they are consistent with the accounting policies and procedures for other regulatory instruments;
 - (c) their utilisation involves a recognisable and rational economic basis;
 - (d) the resultant financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions and events is reported; and
 - (e) they comply with the principles set out in this Schedule 2.
- 3.2 The *Cost Allocation Procedures* must be presented to the *Commission* in a manner that ensures that the *Commission* may readily understand the methodologies and procedures comprising such *Procedures* and the resultant financial statements and reports prepared by the *Electricity Entity*.
- 3.3 The cost allocations prepared by the *Electricity Entity* in compliance with its obligations under this *Code* must be capable of certification as such by an auditor when and if required by the *Commission*.
- 3.4 For the purpose of financial statements and reports required to be provided to the *Commission* under this *Code* or for other regulatory purposes, the allocation of accounts between each *Prescribed Business* and the activities of the *Electricity Business* as a whole and across segments of a *Prescribed Business* are to be based on the principle that:
- (a) items which are directly attributable to a *Prescribed Business* or to the *Electricity Business* as a whole and segments of a *Prescribed Business* are assigned accordingly; and
 - (b) items not directly attributable, are to be allocated to a *Prescribed Business* or to the *Electricity Business* as a whole and across segments of the *Prescribed Business* using an appropriate allocator, as indicated in following paragraphs.
- 3.5 An item may be directly attributable to a *Prescribed Business* or to the *Electricity Business* as a whole but not directly attributable to a segment of a *Prescribed Business*. In these circumstances, the allocation across segments of *Prescribed Businesses* will be made using an appropriate allocator as indicated in the following paragraphs.
- 3.6 Items that are not directly attributed either to a *Prescribed Business* or to the *Electricity Business* as a whole or to a segment of a *Prescribed Business* are to be allocated on a causation basis. Allocation based on avoidable cost is not permitted.

- 3.7 An *Electricity Entity* must produce for each item that has not been directly attributed to a *Prescribed Business* or the *Electricity Business* as a whole and/or *Prescribed Business* segment supporting paper work that includes:
- (a) the amounts that have been allocated to the *Prescribed Business* or the *Electricity Business* as a whole and/or *Prescribed Business* segment and amounts that have not been so allocated; and
 - (b) the numeric quantity of each allocator.
- 3.8 If an item is immaterial and a causal relationship cannot be established without undue cost and effort, the *Electricity Entity* may effect an allocation of these items on a non-causal basis, provided it is accompanied by a supporting note documenting for each such item:
- (a) a defensible basis of allocation (which must not be avoidable cost);
 - (b) the reason for choosing that basis; and
 - (c) an explanation why no causal relationship could be established.
- 3.9 A non-causal basis of allocation may only be applied to the extent that:
- (a) the aggregate of all items subject to all non-causal bases of allocation is not material to the financial statements or reports; or
 - (b) an *Electricity Entity* can demonstrate that there is likely to be a strong positive correlation between the non-causal basis and the actual cause of resource or service consumption or utilisation that those costs represent.
- 3.10 An item is material if its omission, misstatement or non-disclosure has the potential to prejudice the understanding of the financial position and nature of the *Prescribed Business* or the *Electricity Business* as a whole (whichever is applicable), gained by reading the financial statements and reports.
- 3.11 All bases of allocation must be explained and documented in the *Cost Allocation Procedures*.

4. Information Principles

- 4.1 The *Information Procedures* will set out the procedures to be followed by staff of an *Electricity Entity* involved in the conduct of a *Prescribed Business* for the purpose of identifying, and then appropriately handling, storing, sharing and publishing, information that is either:
- (a) deemed to be *Confidential Information*; or
 - (b) capable of materially affecting the commercial interests of a *Competitor* of a *Related Contestable Business*.
- 4.2 The proposed *Information Procedures* must contain procedures for ensuring that the identification and the handling, storing, sharing and publishing of such information will not provide a competitive advantage to the *Related Contestable Business* over any *Competitor* of a *Related Contestable Business*.
- 4.3 If an *Electricity Entity* proposes to allow the disclosure of information of the type referred to in clause 3.2(b) of this *Code* to an employee, consultant, contractor or agent involved in the conduct of a *Related Contestable Business*, the *Information Procedures* must identify categories of information which will also be made available to *Competitors* of the *Related Contestable Business*.
- 4.4 Without limiting the matters which may be covered in the *Information Procedures*, those *Procedures* should deal with the electronic, physical and procedural security measures that the *Electricity Entity* proposes to employ in respect of the conduct of a *Prescribed Business* (including separation of office space, access to information systems and procedures for the

minimisation of *Customer* confusion and opportunities for preferential treatment or other unfair competitive advantage).

5. Scope of Principles

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

SCHEDULE 3

Transitional provisions

1. Continuation of approved *Procedures*

- (a) The *Accounting Procedures*, *Cost Allocation Procedures* and *Information Procedures* of an *Electricity Entity* which were approved by the *Commission* under the previous *Codes* and in force immediately before the *Commencement Date*:
 - (i) will continue in force and deemed to be approved *Procedures* for the purposes of clause 5 of this *Code*; and
 - (ii) will continue to be subject to any conditions relating to the *Commission's* approval of those *Procedures*.
- (b) An *Electricity Entity* referred to in clause 1(a) of this Schedule is not required to comply with the requirements of clause 5.2 of this *Code* in relation to that approved *Procedure*.

2. Exemptions

- (a) Any exemption granted by the *Commission* under the previous *Codes* which was in force immediately before the *Commencement Date*:
 - (i) will continue in force and deemed to be an exemption granted under clause 9 of this *Code*; and
 - (ii) will continue to be subject to any conditions relating to the *Commission's* approval of that exemption.