

NORTHERN TERRITORY ELECTRICITY RING-FENCING CODE AND GUIDELINES REVIEW

FINAL DECISION

23 July 2020

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Glossary

Act	<i>Utilities Commission Act 2000</i>
AER	Australian Energy Regulator
CAM	Cost allocation methodology
Code	Northern Territory Electricity Ring-fencing Code, which took effect on 1 January 2009
Commission	The Utilities Commission of the Northern Territory, as established by the <i>Utilities Commission Act 2000</i>
DER	Distributed energy resources
DNSP	Distribution Network Service Provider, as defined by the Ring- fencing Guideline Electricity Distribution Version 2, published by the Australian Energy Regulator in October 2017
Electricity supply industry	The industry involved in the generation, supply and sale of electricity or other operations of a kind prescribed by the Electricity Reform Regulations
Gazette	The Northern Territory of Australia Government Gazette
generator	A business (or a component of a business) which holds a licence authorising the generation of electricity, or whose application for such a licence is currently under consideration by the commission
Guidelines	Northern Territory Electricity Ring-fencing Guidelines, which took effect 28 January 2009
IES	Indigenous Essential Services Pty Ltd, a subsidiary of PWC and a <i>Corporations Act 2001</i> (Cth) company
I-NTEM	Interim Northern Territory Electricity Market
Issues Paper	Issues Paper for the 2019 Northern Territory Electricity Ring- fencing Code and Guidelines Review, published by the commission on 22 May 2019
Jacana	Jacana Energy, a government owned corporation established in accordance with the <i>Government Owned Corporations Act 2001</i> and the <i>Power Retail Corporation Act 2014</i>
licence	A licence granted by the commission under the <i>Electricity Reform Act 2000</i>
Market Operator	The role fulfilled by the System Controller in accordance with Attachment 6 of the System Control Technical Code, which manages the wholesale exchange of electricity in the Interim Northern Territory Electricity Market in the Darwin-Katherine power system

Minister	The Minister to whom the <i>Utilities Commission Act 2000</i> is committed, currently the Treasurer
national guideline	The Ring-fencing Guideline Electricity Distribution, published by the Australian Energy Regulator
NT	Northern Territory of Australia
NTC	Network Technical Code published by Power and Water Corporation
prescribed business	Has the same meaning as provided by the Northern Territory Electricity Ring-fencing Code and Guidelines
PWC	Power and Water Corporation, a government owned corporation established in accordance with the <i>Government Owned Corporations Act 2001</i> and the <i>Power and Water Corporation Act 1987</i>
Regulations	Utilities Commission Regulations 2001
Regulator	The Utilities Commission of the Northern Territory as established by the <i>Utilities Commission Act 2000</i>
Related Contestable Business	Has the same meaning as provided by the Northern Territory Electricity Ring-fencing Code and Guidelines
Retailer	Means a business (or component of a business) which holds a licence authorising the selling of electricity to end users, or whose application for such a licence is currently under consideration by the commission
SCTC	System Control Technical Code, approved by the commission and published by Power and Water Corporation
STPIS	service target performance incentive scheme
System Controller	Means a person licenced under the <i>Electricity Reform Act 2000</i> to exercise system control over a power system
T-Gen	Territory Generation, a government owned corporation established in accordance with the <i>Government Owned Corporations Act 2001</i> and the <i>Power Generation Corporation Act 2014</i>

INTRODUCTION

Purpose

The purpose of this paper is to communicate the Utilities Commission's (commission) Final Decision for its review of the Northern Territory Electricity Ring-fencing Code and Guidelines.

This paper provides the commission's associated considerations and reasons in relation to its Final Decision.

Any questions regarding this Final Decision or the review should be directed to the commission by telephone (08) 8999 5480 or email utilities.commission@nt.gov.au.

About the Utilities Commission

The commission is an independent statutory body established by the *Utilities Commission Act 2000* with defined roles and functions for economic regulation in the electricity, water and sewerage industries and declared ports in the Northern Territory.¹

The commission seeks to protect the long-term interests of consumers of services provided by regulated industries with respect to price, reliability and quality.

The commission aims to ensure consumer requirements are met by enhancing the economic efficiency of regulated industries through promoting competition, fair and efficient market conduct and effective independent regulation.

The commission has functions under various Acts (and associated regulations) including the *Utilities Commission Act 2000*, *Electricity Reform Act 2000*, *Water Supply and Sewerage Services Act 2000* and the *Ports Management Act 2015*.

¹Regulated industries for the purpose of the *Utilities Commission Act 2000* are declared by section 13 of the *Electricity Reform Act 2000*, section 7(1) and (2) of the *Water Supply and Sewerage Services Act 2000* and section 119(1) of the *Ports Management Act 2015*.

FINAL DECISION

In accordance with section 24(9) of the *Utilities Commission Act 2000* (the Act), the commission has reviewed the Northern Territory Electricity Ring-fencing Code (Code) and Guidelines (Guidelines) to ensure their contents and operation are of continued relevance and effectiveness for the electricity supply industry in the Northern Territory.

In conducting the review, the commission was cognisant of the Australian Energy Regulator's (AER) Ring-fencing Guideline for Electricity Distribution (national guideline) which imposes a number of obligations on Power and Water Corporation (PWC) as the Northern Territory's electricity distributor, which are similar to those contained in the Territory's Code. Therefore, the commission has taken a pragmatic approach aimed at reducing the regulatory burden for PWC by seeking to fully rely on the national guideline in relation to its regulated lines of business involved in electricity distribution (Power Networks business unit), to the extent it is regulated by the AER.

However, the national guideline does not extend to non-electricity services and does not adequately cover multi-utility companies like PWC (which has a number of business units that deliver a mix of regulated and non-regulated power services, gas services, water and sewerage services, remote services, metering and System Control, among others).

In addition, stakeholders raised concerns about the lack of separation between System Control and PWC's other business units, which may create the potential for System Control to make decisions that favour PWC over the other electricity entities in the electricity supply industry. Therefore, a Territory ring-fencing Code is still needed to specifically address these gaps and associated potential harms.

Accordingly, while the commission is 'winding back' the Territory Code so that it does not apply to PWC's Power Networks business unit (to the extent that it is regulated by the AER), the Code will be retained, to ensure the other relevant businesses, specifically System Control at this time, are adequately covered.

Subsequently, the commission has made the following changes to the ring-fencing arrangements in the Territory:

1. To minimise the duplication of obligations and potential for confusion, the Territory's ring-fencing Code has been amended to apply only to conduct related to System Control's functions.
2. To reduce the possibility for PWC to discriminate, the Territory's ring-fencing Code has been:
 - (a) amended to ensure that PWC in the conduct of its prescribed businesses (currently limited to System Control) does not discriminate (directly or indirectly) between customers or classes of customer
 - (b) amended to ensure that PWC in the conduct of the System Controller Business does not discriminate (directly or indirectly) in any way that favours its Power Networks or Gas Supply business unit or any other business or component of a business carried on by PWC.
3. To minimise the potential for PWC to recover from customers more (or less) than its total costs as a result of using two different methodologies for allocating costs, the Territory's ring-fencing Code has been amended so that it requires the allocation of costs between System Control and PWC's contestable businesses to be consistent with the Cost Allocation Procedures approved by the commission, which is to be the same as the AER-Approved Cost Allocation Methodology, except to the extent otherwise approved by the commission.

4. To minimise the potential for System Control to advantage the Gas Supply business unit in the dispatch of generators:
 - the Territory's ring-fencing Code has been amended to:
 - (a) require System Control to be physically separated from the Gas Supply business unit
 - (b) place a stronger obligation on System Control to not discriminate (for example, in relation to the dispatch of generators)
 - the commission also recommends the Territory Government and PWC develop and publish a clear set of protocols for generator dispatch as part of the implementation of a wholesale electricity market for the Darwin-Katherine system. When these are published, System Control should publish information showing, with due consideration of commercial confidentiality:
 - (i) which generators were dispatched from time to time
 - (ii) how this satisfies the dispatch protocols.

5. To minimise the potential for System Control to disadvantage Territory Generation (T-Gen) and/or other generators in the planning and management of network outages:
 - the Territory's ring-fencing Code has been amended to place a stronger obligation on System Control to not discriminate (for example, in relation to the planning and management of network outages)
 - PWC should publish a guideline to provide greater transparency on the outage planning process, which should be codified in the System Control Technical Code (SCTC) (the next time it is amended)
 - the commission also recommends the Territory Government consider options to minimise network constraints arising from network outages as part of its electricity market reforms (subject to a full cost benefit analysis).

6. If Power Networks (to the extent that it is regulated by the AER) becomes active in providing contestable services, including contestable metering or installing distributed energy resources (DER), it is recommended (subject to a cost benefit analysis) that the Territory Government consider the application of further provisions in the national ring-fencing guideline.

The commission has amended the Northern Territory Electricity Ring-fencing Code to incorporate and reflect the above recommendations (at Appendix A). A table summarising the amendments has also been prepared, to assist stakeholders in identifying the changes to the Code (at Appendix B).

The Final Decision has been made taking into consideration stakeholders' responses to the Issues Paper, Draft Decision, draft amended Code, engagement with stakeholders, the objectives of the relevant legislation, Code and associated documents, while remaining cost-effective and proportionate to the potential harms being addressed.

The commission thanks stakeholders for their submissions and for engaging constructively with the commission throughout for the review.

In accordance with the Act and the Code, the variation will take effect at least 30 days after notifying the effected licensed entities, and with the publication of a notice in the Gazette, which will be 26 August 2020. However, the Code provides additional time for some obligations (the submission of draft Procedures and the physical separation of offices).

REVIEW OF THE NT ELECTRICITY RING-FENCING CODE AND GUIDELINES

Background

This section provides background information relevant to the commission's review of the Code and Guidelines, and subsequent Final Decision.

Reasons for ring-fencing

Natural monopolies exist because in some markets, it is not feasible or efficient to duplicate existing major infrastructure. This creates a market where users have no, or limited options to obtain alternative services. As a result, monopolies have substantial market power which if used incorrectly, has the potential for negative outcomes for industry and consumers.

Regulation aims to protect consumers from the exercise of market power. However, businesses operating within regulated industries are often diverse, providing both regulated and competitive services to the market. This creates potential risk for the relevant business to receive an advantage in the competitive market due to the regulated parts of their business. For example, the relevant business may:

- cross-subsidise services in the competitive market with revenue derived from its regulated services
- provide its contestable business units with access to commercially sensitive information that was acquired through, and for the provision of, regulated services
- discriminate in carrying out its regulated services in favour of its other business units operating within the contestable market.

To avoid this, it is necessary to identify and separate the regulated (monopoly) business activities, costs, revenues and decision making processes from those that are associated with providing services in a competitive market.² This is achieved through ring-fencing.

Natural monopolies are also usually subject to some form of economic regulation of the prices they can charge for their services due to the risk that they could otherwise use their market power to set prices above a competitive level. These regulated prices are usually set based on an estimate of the efficient costs of operating the regulated business. Where a single business provides a range of services, ring-fencing can assist in ensuring there is clear and appropriate allocation of costs between the various regulated and competitive services that the business offers, so that efficient prices can be set for each regulated service.

There are also some instances where a regulated business has some quasi-regulatory functions, for example in the Northern Territory electricity supply industry PWC's system

² Australian Energy Regulator, *Electricity Distribution Ring-fencing Guideline Explanatory Statement*, November 2016, page 11.

control and market operator functions, and PWC's role in developing changes to the Network Technical Code (NTC) and SCTC.³ Ring-fencing can help ensure that any such functions are performed in a non-discriminatory manner.

Types of ring-fencing

There are four main types of ring-fencing which relate to the different ways businesses can be separated. These are: structural, legal, accounting and operational/functional. The table below provides a brief overview of each of the different types.

Type	Description
Structural separation	The regulated business and the contestable business are owned by completely separate entities.
Legal separation	The regulated business and the contestable business are separate legal entities.
Accounting separation	Separate accounts are established and maintained in accordance with an approved cost allocation methodology (CAM), which is used to allocate shared costs accurately between the regulated business and the contestable business.
Operational/functional	The 'working parts' of the regulated business are kept separate from the 'working parts' of the contestable business, for example physical separation of the businesses, restrictions on sharing staff, separate branding, protection of confidential information and obligations to not discriminate.

PWC, Jacana Energy (Jacana) and T-Gen are all government owned corporations owned by the same owner, the Northern Territory Government. Therefore, there is no structural separation between these entities.

Whilst there is legal separation between PWC, Jacana and T-Gen, PWC operates a number of businesses within the legal entity, including the provision of electricity network services, water and sewerage services, gas supply and integrated electricity supply services to remote communities through its subsidiary Indigenous Essential Services Pty Ltd (IES). Further, it is the system controller and has market operator functions.

³ Section 66A(4) of the *Electricity Reform Act 2000* requires the commission to be consulted before a network provider can amend the NTC. The commission reviews proposed amendments and can direct the network provider to change them, if necessary. The commission approves the SCTC under section 38 of the *Electricity Reform Act 2000*. Under the SCTC, the commission must approve any proposed amendments.

The Territory's ring-fencing Code and the national guideline set out requirements for accounting separation and operational/functional separation which PWC must comply with.

The commission has taken these requirements, including a detailed breakdown of the classification of services relevant to the ring-fencing arrangements, and the different types of separation into consideration throughout the review and when deliberating, on the appropriate and proportionate response to the harms it is trying to minimise through ring-fencing.

The electricity supply industry in the Northern Territory

When the Code was first introduced in 2001, PWC (formerly the Power and Water Authority) was the single (vertically integrated) provider of all electricity supply services, including generation, networks/distribution and retail. Since the last review of the Code in 2008, there have been a number of developments in the electricity supply industry that directly impact the Code, including:

- commencement of full retail contestability
- separation of PWC into three separate government-owned corporations
- establishment of an interim wholesale electricity market (I-NTEM) in the Darwin-Katherine regulated network, including a market operator role within PWC System Control
- commencement of the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* and transfer of administration of network price regulation to the AER
- progressive adoption of the National Electricity Rules, as modified for the Territory
- recent introduction of a national approach to ring-fencing with the release of the AER's Ring-fencing Guideline for Electricity Distribution (which commenced in the NT on 1 July 2019, with derogations)
- the Territory Government's commitment to renewable energy and electricity market reform in the Northern Territory.

Whilst there have been many changes since the Code was first introduced, the current situation is that the majority of electricity supply services are provided by the three government-owned corporations (PWC, Jacana and T-Gen).

Jacana was established as an electricity retailer and T-Gen as an electricity generation business. PWC continues to provide network services to customers in Darwin, Katherine, Alice Springs and Tennant Creek, and continues to be the vertically integrated electricity service provider in numerous off-grid locations in the Territory. It also provides other regulated and non-regulated services, such as gas supply, water and sewerage services, remote services (to its subsidiary IES), metering and System Control, among others.

Some private retailers and generators are licenced to operate in the Territory, however there is still very limited competition. These private businesses are competing against the government-owned corporations that possess a substantial degree of market power.

The Northern Territory Electricity Market

Commencing in May 2015, the I-NTEM was implemented as a short-term transitional arrangement to facilitate the wholesale exchange of electricity between generators and retailers. It is a virtual market applying only to the Darwin-Katherine system. In accordance with the SCTC, which makes provision for the operation of a wholesale market, a market operator function was established within PWC System Control, to manage the wholesale exchange of electricity in the I-NTEM.

In June 2020, the Territory Government published introductory notes for its Northern Territory Electricity Market Priority Reform Program. The introductory notes outline Government's intended scope and work program to implement priority reforms to the electricity market arrangements in the Territory, to facilitate greater levels of competition and adoption of emerging technologies, for the benefit of Territory electricity consumers.

The priority reforms relate to reliability, dispatch, essential system services and settlement arrangements. They are aimed at ensuring efficient, secure and reliable electricity supply and to support Government's renewable energy target. Government also released its Issues Paper for the Review of Essential System Services in the Northern Territory's Regulated Electricity Systems, which is one of the priority reforms.

Based on the information provided, regulatory reforms relating to System Control are expected in late 2021, with implementation and commencement possibly in early 2022.

Legislative requirements and review process

In the Territory, the commission is authorised to make codes or rules (including varying or revoking codes) regarding ring-fencing in the electricity supply industry.⁴ Regulation 2 of the Utilities Commission Regulations defines ring-fencing as *the separate operation of related or associated businesses of a licensed entity in a regulated industry*. Section 13 of the *Electricity Reform Act 2000* deems the electricity supply industry to be a regulated industry.

Clause 1.6 of the Code authorises the commission to publish guidelines relating to the application or interpretation of, or matters arising under the Code. In addition, section 7 of the Act allows the commission to issue guidelines relating to the performance of its functions. In 2009, the commission released ring-fencing Guidelines, which set out the commission's views relating to the application or interpretation of matters arising under the Code.

In accordance with section 24(4) of the Act, throughout the review the commission consulted with the responsible Minister (the Treasurer), representative bodies and industry participants before varying the Code. A review of the ring-fencing Code and Guidelines is also an action in the Northern Territory Government's Renewable Energy and Electricity Market Reform Implementation Plan 2018- 2020 (initiative 4, action j). Therefore, commission staff also engaged with the relevant government departments.

⁴ Section 24 of the *Utilities Commission Act 2000* and clause 5.1(a) of the Northern Territory Electricity Ring-fencing Code.

Through the Issues Paper published in May 2019 (and as required under clause 6 of the Code), the commission advised the required parties, relevant stakeholders and the public that it was considering varying the Code and Guidelines, and sought to engage stakeholders by inviting submissions on any issues that should be considered as part of the review. The commission received submissions from the AER, Jacana, PWC and T-Gen. The commission also met with the Office of Sustainable Energy (within the Department of Trade, Business and Innovation, previously within the Department of the Chief Minister), the Department of Treasury and Finance, the AER and PWC to discuss issues raised in the submissions.

This informed the commission's Draft Decision and draft amended Code, which was published in March 2020. The required parties, relevant stakeholders and the public were advised and invited to make a submission on the commission's draft recommendations and proposed changes. Submissions were received from Jacana, PWC and T-Gen, which have informed this Final Decision and the amended Code (Attachment A).

As required by section 24 of the Act and clause 6 of the Code, the commission has provided notice of the variation of the Code by way of letter to the responsible Minister and each licensed entity to which the Code applies. A notice advising of variation to the Code will be published in the Northern Territory Government Gazette. The amended Code is available on the commission's website.

Scope of the review

The Code aims to 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 market power.⁵

In reviewing the Code, the commission has had regard to the need to:

- promote competitive and fair market conduct
- prevent misuse of monopoly or market power
- facilitate entry into relevant markets
- promote economic efficiency
- ensure consumers benefit from competition and efficiency
- protect the interests of consumers with respect to reliability and quality of services and supply in regulated industries
- facilitate maintenance of the financial viability of regulated industries
- ensure an appropriate rate of return on regulated infrastructure assets.⁶

⁵ Clause 2.1(a) of the Northern Territory Electricity Ring-fencing Code.

⁶ Section 6(2) of the *Utilities Commission Act 2000*.

The commission has also taken into account the objectives of the Code, which seek to promote and achieve the object of the Act and the *Electricity Reform Act 2000*.

SUBMISSIONS FROM STAKEHOLDERS

Summary of submissions

Consultation on the Territory's ring-fencing arrangements was undertaken in the form of written submissions to the commission's Issues Paper, Draft Decision, draft amended Code and meetings with stakeholders.

Copies of the full submissions made on the Issues Paper and the Draft Decision are available on the commission's website. Below is a brief overview of the submissions received. The key issues raised in submissions are discussed and addressed in more detail in the following sections of this paper.

Australian Energy Regulator

The AER did not respond to the specific questions in the Issues Paper, but provided background on the development of the national ring-fencing guideline for electricity distributors. The AER noted that the guideline exists in a complex landscape of contestable services including issues such as competitive metering and the increasing use of DER in the National Electricity Market.

An overview of the different classes of service that exist was also provided, showing the way that the national ring-fencing guideline imposes requirements for legal and functional separation between certain services (though the way in which these are applied in the Territory differs).

Another key point made in the AER's submission relates to the importance of compliance, reporting and independent assessment. The AER emphasised that, in its experience, independent assessment is a very useful tool in identifying the risk of non-compliance.

The AER did not address ring-fencing issues in the Territory in detail, though it did on the face of it, not see any reason that the (national ring-fencing guideline) could not apply to PWC in full sometime in the future. The AER highlighted that the mechanisms for waiver and exemption would enable PWC to provide contestable services, if this was beneficial to customers.

The AER did not make a written submission on the Draft Decision and draft amended Code.

Jacana Energy

Jacana submitted that the matters raised in the Issues Paper do not directly impact its business activities and services of electricity retailers. However, Jacana supported the adoption of the AER's Ring-fencing Guideline in full (with amendments and supplementary guidelines as required), rather than the Territory having its own ring-fencing Code and Guidelines. Jacana is of the view that this would introduce greater uniformity, avoid the potential for the duplication of requirements and reduce inconsistencies.

Jacana's submission on the Draft Decision and draft amended Code noted the commission had adopted this approach, to the extent that PWC's Power Networks business is regulated by the AER.

Its submission focussed on draft recommendations 4 and 5 regarding System Control developing and publishing clear protocols for generator dispatch and outage planning, suggesting it should go further to also include a requirement on System Control to publish its reasons for dispatching plant out of merit order.

Power and Water Corporation

In summary, PWC's submission on the Issues Paper, was that the commission should reduce the scope of Territory specific ring-fencing requirements substantially and rely primarily on the national ring-fencing guideline. PWC's submission examines a series of issues that it anticipates would be of interest to the commission or other stakeholders and responds to each of the questions set out in the Issues Paper.

PWC submitted that generation and retail services in remote areas are not contestable in a practical sense. Given this, and that retail prices are regulated by the Northern Territory Government, PWC is of the view that there is no potential for cross- subsidisation, discrimination harms or any other anti-competitive market impacts in the remote areas that it services and therefore, ring-fencing is unnecessary in these locations.

In regards to services which are defined as distribution services under the AER's national ring-fencing guideline, PWC stated that these are sufficient to avoid potential harms and that the Territory's ring-fencing Code should no longer apply to the services captured by the national requirements.

PWC acknowledged the concerns about potential cross-subsidy and discrimination due to System Control being responsible for both the system control and market operator functions. In particular, PWC identified amendments to technical codes, cost allocation, generator dispatch decisions and outage planning decisions as the categories of concern and provided suggestions as to how the potential for harm may be addressed. These issues are discussed in further detail, in the following sections.

In response to the Draft Decision and draft amended Code, PWC strongly supported the commission's approach to not apply the Territory ring-fencing Code to the electricity distribution services covered by the national Guideline regulated by the AER. PWC was also supportive of the commission's decision to apply ring-fencing obligations to its System Control business and draft recommendations to improve the transparency of its decisions.

PWC submitted that the commission should reconsider whether ring-fencing requirements should apply to PWC's electricity businesses operating in regional and remote areas that provide end-to-end electricity services in IES remote communities, as these are non- contestable in a practical sense.

It also requested the commission provide guidance on what constitutes discrimination by addressing the issue through guidelines to the Code, including hypothetical examples.

PWC provided feedback that it was concerned with the level of prescription in the proposed amendments to the Code regarding the requirement to apply the AER-approved CAM to prescribed businesses, claiming that the AER approved CAM is specifically directed at services subject to AER regulation and serves a broader function than ring-fencing.

PWC also raised concerns around the potential increase in costs if it is required to establish new or expanded premises in order to physically separate its System Control offices from its Gas Supply business offices.

It questioned whether a financial incentive scheme for network service providers to minimise network constraints would actually mitigate the perceived issues raised by stakeholders on outage management decisions of System Control.

Territory Generation

Overall, T-Gen appears to support the ongoing use of ring-fencing. While it did not directly respond to the questions in the Issues Paper, it provided a series of general statements intended to assist the commission in its review.

T-Gen raised a general concern that PWC's transition to a new operating model appears to be increasing the integration between system control and network operations. Highlighting that in effect, PWC is currently moving in the opposite direction from ring-fencing.

T-Gen expressed concern that some of System Control's actions appear to have favoured PWC over T-Gen, providing two categories of example. The first example relates to the supply of gas while the second relates to the scheduling of network outages. Both of these issues were also discussed in PWC's submission, and are dealt with in more detail in the following sections.

In general, T-Gen's submission on the draft Decision and draft amended Code supports the commission's draft recommendations. T-Gen makes a number of observations about the current structure of the Territory's electricity supply market and subsequent impacts on its business, in particular, the lack of regulatory mechanisms to compensate generators for the support services they provide to PWC.

T-Gen provided specific feedback about the use of the national guideline in a market where not all of the national rules apply (such as the Territory) and the risk that the intent of the guideline will not be achieved, as it would be operating without the supporting operation of the rules.

It also suggested that System Control, in addition to being physically separated from PWC's gas business, it should be physically separated from PWC's network business as well.

The submission raised concerns with the draft recommendation for the Territory Government to consider whether Power Networks should be subject to a financial incentive to minimise network constraints arising from network outages.

Consideration of the key issues raised in the submissions

Duplication of obligations in the Territory Code and the national guideline

As part of the review, the commission considered whether the newly adopted national ring-fencing guideline provides adequate ring-fencing for the Territory electricity supply industry. In particular, it was considered whether it replicates the Territory's ring-fencing Code entirely and if not, whether differences between the two give rise to a need for ongoing use of the Code or other Territory specific instruments.

In broad terms, the national guideline imposes similar obligations on the Power Networks business unit of PWC as the Territory's ring-fencing Code. The commission agrees that with the introduction of the national ring-fencing guidelines, there is duplication between the AER's guideline and the Territory's ring-fencing Code. The commission is of the view that the Code needs to be amended so it does not apply to Power Networks (to the extent that is regulated by the AER), as it is sufficiently covered by the national guideline, reducing the regulatory burden on PWC and minimising the potential for confusion.

In its submission on the Issues Paper, PWC commented that as the national guideline and the Territory Code cover broadly the same response to potential harms, albeit in slightly different ways, the current duplication results in the potential for confusion and complexity. PWC's submission was that (in summary) the commission should reduce the scope of the

Territory specific ring-fencing requirements and rely predominantly on the national ring-fencing guideline.

The AER submitted that it could not see any reason that the national guideline could not apply to PWC in full, at some point in the future.

Jacana expressed the preference for the AER's guideline to be adopted in full (with amendments and supplementary guidelines as required), rather than the Territory having its own ring-fencing Code and Guidelines.

In the Territory under the Third Version of the Code, there are three obligations to not discriminate, requiring:

- (a) any goods or services that are provided by a prescribed business to a related contestable business to be provided at arms' length
- (b) the terms and conditions on which a prescribed business supplies nominated goods or services to a related contestable business to be reduced to writing
- (c) the prescribed business must also offer to supply nominated goods and services to other customers on comparable terms to what is offered to the related contestable business.

In accordance with the Territory's ring-fencing Code, PWC must also maintain the confidentiality of information provided to a prescribed business by, or in respect of a customer.

Similarly, under the national guideline, PWC (as the Distribution Network Service Provider (DNSP)) must not release confidential information and must only use it for the purpose for which it was acquired or generated.

As Power Networks is currently subject to both regimes, the commission agrees there is duplication which could potentially cause confusion or misunderstanding.

However, this and other restrictions only apply to Power Networks (to the extent that it is regulated by the AER), and not to any of the other prescribed or other PWC businesses, such as System Control, and are effectively narrower than the Territory's obligations. Further, the national obligation does not work in reverse, meaning it does not place a reciprocal obligation on PWC's other business units that provide gas, remote services and the system control functions, to not, for example, discriminate to the advantage of Power Networks or any other of PWC's business units.

Accordingly, the commission's position is that whilst the national guideline can be relied on to provide adequate ring-fencing obligations for Power Networks, and thus the Code should be amended to make it clear that it does not apply to Power Networks to the extent that it is regulated by the AER, Territory specific ring-fencing arrangements are still necessary to address the potential harms that are not covered by the national guideline.

Therefore Territory arrangements in the Code have been updated to ensure there is an obligation on System Control to not discriminate to advantage PWC or any of its other business units, such as Power Networks or its Gas Supply business unit.

In relation to PWC's subsidiary, IES, for the draft amended Code, the commission had proposed it be extended to IES. However, in its submission on the Draft Decision, PWC requested the commission reconsider whether ring-fencing requirements should apply to PWC's electricity businesses operating in regional and remote areas that provide end-to-end

electricity services in IES remote communities, as these are non- contestable in a practical sense.

The commission has reconsidered this draft recommendation and the potential harms it is seeking to address by applying the Code to communities where IES operates. As there does not appear to be any issues or threats at present or in the foreseeable future, the commission accepts PWC's submission.

The commission also reconsidered whether there is a need to include ring-fencing requirements for the remote services provided to non-IES towns and communities (i.e. minor centres) that are not connected to the regulated networks. There does not appear to be any current issues or threats that need to be addressed in this revision of the Code.

T-Gen provided feedback that the use of the national guideline in a market where all of the national rules do not apply, such as the Territory, presents a significant risk that the intent of the guideline will not be achieved, as it would be operating without the supporting operation of the rules.

The national guideline only applies to PWC Networks and the commission is not seeking to apply the national guideline to anything more than it already applies to. The commission has reviewed the application of the national guideline and found it does not appropriately address the potential harms that exist in the Northern Territory electricity supply market, and a Territory specific Code is required to deal with the issues and potential harms.

In regards to draft recommendation 2, PWC requested the commission provide guidance on what constitutes discrimination by addressing the issue through guidelines to the Code, including hypothetical examples. PWC state that discrimination should meet a threshold of carrying on its business in a way which purposefully and unreasonably favours or provides a benefit to another part of its business to the detriment of an external party. The commission does not support this submission and it is of the view that to create guidelines with examples would not capture the breadth of potential behaviours that could constitute discrimination, and may cause unintended consequences and problems when applying the Code and suggested Guidelines.

PWC expressed that the draft recommendation, as it is worded in the Draft Decision, suggested the obligation will apply to all of PWC (that is, all business units) rather than prescribed businesses. PWC suggests the Final Decision should clearly reflect the intent of the Territory ring-fencing Code, by noting that the obligation only relates to a prescribed business.

The commission confirms that the obligation to not discriminate applies to conduct by PWC that is related to the prescribed businesses as defined by the amended Code.

Decision 1: Limit the application of the Territory ring-fencing Code to conduct related to System Control's functions

To minimise the duplication of obligations and potential for confusion, the Territory's ring-fencing Code has been amended to apply only to conduct related to System Control's functions.

Decision 2: Obligation to not discriminate

To reduce the possibility for PWC to discriminate, the Territory's ring-fencing Code has been:

- a) amended to ensure that PWC in the conduct of its prescribed businesses (currently limited to System Control) does not discriminate (directly or indirectly) between customers or classes of customer
- b) amended to ensure that PWC in the conduct of the System Controller Business does not discriminate (directly or indirectly) in any way that favours its Power Networks or Gas Supply business unit or any other business or component of a business carried on by PWC.

Cost allocation

Under the Third Version of the Code, PWC was required to establish and maintain separate financial accounts and reports for its electricity business as a whole as well as each prescribed business.

The commission has considered this requirement and confirms that it does not require separate financial accounts from System Control for its two main functions (system control and market operator) for the purposes of the ring-fencing Code.

However, under the *Electricity Reform Act 2000* (NT), the commission regulates the system control charge, which includes a market operator component in relation to Darwin-Katherine customers. This means that PWC must be able to produce appropriate evidence on its efficient costs to meet its other regulated obligations to the commission, as necessary.

In its submission on the Issues Paper, PWC identified the potential for cross-subsidy between System Control and the Market Operator due to being in the same cost centre.

As identified by PWC under the national guideline, there are obligations on Power Networks to establish and maintain appropriate internal accounting procedures to demonstrate the extent and nature of transactions between the DNSP and its affiliated entities.⁷ The purpose of these accounts is to show the difference between the costs, assets and revenues associated with distribution services that are regulated by the AER and those associated with the other services PWC provides. The AER is not interested in the costs, assets and revenues of each of the other specific services that are provided by PWC. However, the commission is concerned about the costs, assets and revenues for the other services PWC provides, which are critical in it performing some of its other regulated functions, for example system control and market operator functions.

⁷ Note that when applying the national guideline to the Territory, 'affiliated entities' is replaced with 'related electricity service providers'.

There are similarities between the Territory's and the AER's relevant clauses in regards to the requirement for PWC to allocate or attribute costs between distribution and other services.

PWC made the suggestion that it could publish principles underpinning the System Control and Market Operator cost allocation methodology and provide further detail to the commission through the determination process without the introduction of a codified obligation.

However, the commission is of the view that this proposal would not adequately address the potential for the two methodologies to be inconsistent in the allocation and reporting of costs. The possibility for PWC to recover more or less than its total costs from its customers remains.

In its Draft Decision, the commission recommended amending the Code to include a requirement for PWC to apply the same CAM that it applies under the national guideline to each of its regulated lines of business to ensure there is no duplication, overlap or confusion.

In its submission on the Draft Decision, PWC raised concerns with the level of prescription in the draft amended Code regarding the requirement to apply the AER-Approved CAM to prescribed businesses. PWC claimed that the AER approved CAM is specifically directed at services subject to the AER's regulation and serves a broader function than ring-fencing (i.e. its primary purpose is to assist the AER in its economic regulatory functions).

The intention of the commission's recommendation is to minimise duplication, confusion and a number of potential problems that could arise due to PWC using or having to comply with two different CAMs, as previously experienced by PWC and the commission.

PWC incurs some costs that are directly attributable to providing a particular service. There are other functions that span multiple services or business lines, the costs of which are shared. A CAM sets out how these shared costs will be allocated to the relevant services or business lines in preparing the separate accounts. One of the key principles underpinning a CAM is the notion that the same cost will not be allocated more than once.

If costs are to be allocated between services or business lines and recovered only once, it is essential that the same allocator is used for a given category of costs in all cases. For example, if 'revenue' is used to allocate Board and Executive costs to Power Networks, it must also be used to allocate those costs to Gas Services, System Control etc. If different allocators are used for different purposes, there is no certainty that costs will be recovered fully or that they will not be over recovered.

Examples of using different allocators can be found in the commission's review of PWC's System Control charges in 2018-19. The review revealed that some allocators that were originally used to allocate costs to the system control function were not consistent with the allocators in PWC's CAM approved by the AER, and that some varied between PWC's original submission and a (confidential) spreadsheet provided by PWC.

This example illustrates how it is difficult to uphold the principle that the same cost will not be allocated more than once when different allocators are used to allocate the same shared cost across different business lines.

To address this potential harm, the same cost allocation methodology should be used by PWC for each of its regulated lines of business. Accordingly, the commission does not accept PWC's submission.

The draft amended Code included a provision requiring PWC to submit Cost Allocation Procedures to the Commission for approval within 3 months of the commencement of the

amended Code.⁸ In its submission on the draft amended Code and Draft Decision, PWC requested increasing the timeframe for it to submit cost allocation procedures to the commission for approval from 3 months to 6 months.

The commission acknowledges it may take PWC additional time to be able to comply with this requirement, and accepts this submission.

Decision 3: Cost allocation

To minimise the potential for PWC to recover from customers more (or less) than its total costs as a result of using two different methodologies for allocating costs, the Territory's ring-fencing Code has been amended so that it requires costs to be allocated between System Control and PWC's contestable businesses consistent with the Cost Allocation Procedures approved by the commission, which are to be the same as the AER-Approved Cost Allocation Methodology, except to the extent otherwise approved by the commission.

Amendments to technical codes

In response to the Issues Paper, T-Gen made the submission that a conflict of interest currently exists as PWC is both the rule maker/administrator and the enforcer of the SCTC and the NTC.

Section 38 of the *Electricity Reform Act 2000* requires the System Controller to prepare a SCTC and submit it for approval to the commission. This code sets out the System Controller's competitively neutral operating protocols, arrangements for system security and system dispatch, as well as arrangements for the interruption of supply. The commission must approve any proposed amendments.

Section 66A of the *Electricity Reform Act 2000* requires a network provider to prepare an NTC for the network, setting out the technical requirements to ensure connections to the network are operated and maintained in a secure and reliable manner. The commission must be consulted before a network provider can make or amend the NTC. The commission reviews proposed amendments and can direct the network provider to change them, if necessary.

PWC also recognised this potential conflict of interest in its submission on the Issues Paper, but state that the concern is appropriately managed as the codes require consultation with relevant stakeholders and the approval of the commission.

The commission agrees with PWC's submission and is also of the view that this risk is minimal, as amendments to both codes require consultation with stakeholders and the approval of the commission. Nonetheless, the situation where PWC in effect 'owns' and seeks to amend its own rules is not ideal. However, issues in relation to the regulatory framework are not within the scope of this review.

⁸ Clause 4.2(a)(i).

Generator dispatch decisions

T-Gen's submission on the Issues Paper expressed concern that System Control has an incentive to dispatch T-Gen's power stations to increase PWC's gas sales, at the expense of T-Gen.

With the completion of the Northern Gas Pipeline in late 2018, the Territory is now connected to the eastern gas market. During consultation, PWC advised the commission that whilst the contracts are confidential, the price T-Gen pays for gas is now less than the opportunity cost to PWC of supplying gas to others. PWC asserts that in effect, the gas it sells to T-Gen is more valuable if it were used to underpin gas supply contracts on the east coast of Australia.

Australian gas markets are somewhat opaque in comparison to electricity markets. In the Territory, gas prices are confidential and there is a lack of publically available data. However, it appears the notion that PWC's opportunity cost of gas may be higher than the price T-Gen currently pays, may be valid.

In its submission on the Issues Paper, T-Gen suggests that this generator dispatch issue could be addressed by removing the system control functions from PWC, which would require the creation of a standalone, independent power system controller and market operator. Whilst this is an option to address the concern, PWC's submission emphasises the high cost of this option. The commission agrees that in taking this approach, the costs would be disproportionate to the potential harm that it is trying to address.

The commission supports alternative, more cost effective ring-fencing measures that assist in providing greater confidence to stakeholders, which are:

- (a) specifically codifying the requirement for the physical separation between System Control and the Gas Supply business unit
- (b) increasing the obligation in the ring-fencing Code to not discriminate, similar to that in the national ring-fencing guideline, but so that it applies to System Control.

PWC raised a concern in its submission on the Draft Decision that physically separating its System Control offices from its Gas Supply business offices will increase its costs to customers, if it is required to establish new or expanded premises.

PWC confirmed that whilst System Control is located at Hudson Creek and the Gas Supply business unit is located in Darwin city, due to lack of space at the Hudson Creek building, there are staff from the market operator team and the electricity reform team (including market engineers that also undertake pre-dispatch functions) located at the office in Darwin city. Further, due to COVID-19 business continuity planning and physical distancing requirements across all of PWC, the market operator team and electricity reform team members based at the office in Darwin city are on the same floor as the Gas Supply business unit.

These gradual changes, that have brought System Control and the Gas Supply business unit physically closer together, reinforce the commission's recommendation that a specific requirement for them to be physically separate is required in the Code, to ensure appropriate ring-fencing measures remain in place despite any changes to PWC's internal structures or operations.

In regards to the potential costs of physically separating System Control and the Gas Supply business unit, the obligation does not require separate buildings. Physical separation could be achieved through appropriate access controls to floors, work units and/or offices. For clarity, a definition of "office" has been included in the amended Code to allow for these

options. The Code has also been amended to provide for a delay in the commencement of this obligation, to provide time for PWC to make any necessary changes that may be required to ensure compliance.

In its response to the Draft Decision, T-Gen proposed that in addition to the recommendation for System Control to be physically separated from PWC's Gas Supply business unit, System Control should also be physically separated from PWC's Power Networks business.

The commission notes that this goes beyond what PWC is currently subject to under the national guideline for its networks business, as the Territory Government has opted to put derogations in place regarding the physical separation requirements. Further, at present the distribution function is understood to be fundamentally integrated within System Control from a system perspective (although the commission understands that PWC is planning to put in place new systems as it transitions to the National Electricity Rules), and it is likely that the cost to separate this may outweigh the benefit, at least in the short term.

In relation to the generator dispatch issue, as mentioned in the Draft Decision, stronger ring-fencing requirements alone will not resolve this. It is recommended that this issue is addressed through improving the transparency surrounding the generator dispatch process.

The commission notes that changes to the dispatch arrangements have been highlighted as urgent as part of Government's Northern Territory Electricity Market Priority Reform Program. The commission recommends that in undertaking the work program to make changes to dispatch arrangements, Government ensures there is adequate and improved transparency around the generator dispatch process.

In its submission on the Draft Decision, Jacana suggests this recommendation should go further, to also require System Control to publish its reasons/justification for dispatching plant out of merit order. Whilst there is merit to this suggestion as it increases transparency, it is not within the scope of this review and is more relevant to the SCTC and/or NTC (i.e. market and operational issues).

Decision 4: Generator dispatch decisions

To minimise the potential for System Control to advantage the Gas Supply business unit of PWC in the dispatch of generators:

- the Territory's ring-fencing Code has been amended to:
 - (a) require System Control to be physically separated from the Gas Supply business unit
 - (b) place a stronger obligation on System Control to not discriminate (for example, in relation to the dispatch of generators)

- the commission recommends the Territory Government and PWC develop and publish a clear set of protocols for generator dispatch as part of the implementation of a wholesale electricity market for the Darwin-Katherine system. When these are published, System Control should publish information showing, with due consideration of commercial confidentiality:
 - (i) which generators were dispatched from time to time
 - (ii) how this satisfies the dispatch protocols.

Outage planning decisions

In its submission on the Issues Paper, T-Gen expressed concern about the decision making process that PWC's Power Networks business unit undertakes when deciding when to conduct network maintenance, stating that the impact often forces generators to run uneconomically. PWC acknowledges the issue, noting there may be concern amongst stakeholders that System Control has the potential to prioritise network outages over generation outages.

In general, the SCTC provides the process System Control is to undertake when scheduling network outages. However it is limited, providing no guidance on how to manage the planned outages, and does not contain a requirement to consider the costs associated with the outages.

Through its comments on the Issues Paper, PWC discusses the possibility of publishing a guideline to improve transparency around its outage planning practices. PWC suggests the guideline could be codified, which would enable monitoring of compliance and enforcement. The commission supports this suggestion and recommends the SCTC is updated to include this obligation, the next time it is amended.

However, it is unlikely this alone will provide greater confidence to stakeholders, in particular generators. Consequently, the commission considers the issue should also be addressed by strengthening the ring-fencing requirements in the Code, specifically in regards to the potential for PWC to discriminate in favour of itself. For example, when planning and managing network outages. The commission has amended the Code to reflect this position.

As mentioned above in the discussion on recommendation 4, Jacana suggests the recommendation should go further to also require System Control to publish its reasons/justification for dispatching plant out of merit order, but this is not within the scope of this review as they are market and operational issues.

In the Draft Decision, the commission discussed that a financial incentive for Power Networks to minimise network constraints arising from network outages could be implemented using a service target performance incentive scheme (STPIS).

At the national level, through guidelines, STPIS is already included in the revenue determinations for distribution and transmission businesses subject to economic regulation by the AER.

It was proposed that a similar scheme could be developed for the Territory, by the Government, with the aim to address concerns about outage planning decisions. The idea was the proposed scheme could provide Power Networks with an incentive to minimise the impacts of networks outages, based on the time in which more expensive generation is required to be dispatched due to a network constraint caused by a network outage.

Both PWC and T-Gen provided feedback on this recommendation in their submissions on the Draft Decision, which questioned the effectiveness of the proposal.

PWC queried whether a financial incentive scheme for network service providers to minimise network constraints would actually mitigate the perceived issues raised by stakeholders on outage management decisions of System Control. PWC stated it supported a thorough evaluation of the costs and benefits of such a scheme before it is implemented for the next determination period.

T-Gen submitted that rewarding PWC's networks business to minimise network constraints in itself may not provide any cost savings. T-Gen stated an incentive scheme to reduce costs to generators to provide PWC Power Networks with support services may provide some

reduction in costs to generators and an overall reduction in costs to system participants. However, T-Gen asserts that in the absence of any regulatory mechanism to have generation paid for the support it provides to the networks, any decision by System Control to constrain generation to support network operations is effectively allocating network costs to generators, without compensation.

The purpose of the draft recommendation was to encourage Government to broadly consider potential incentive schemes (or other options) as a possible way to address stakeholder concerns about outage planning decisions, as part of its market reforms.

The commission agrees detailed consideration would be required, including a full cost benefit analysis. The recommendation has been updated accordingly.

Decision 5: Outage planning decisions

To minimise the potential for System Control to disadvantage T-Gen and/or other generators in the planning and management of network outages:

- the Territory's ring-fencing Code has been amended to place a stronger obligation on System Control to not discriminate (for example, in relation to the planning and management of network outages)
- PWC should publish a guideline to provide greater transparency on the outage planning process, which should be codified in the SCTC (the next time it is amended)
- the Commission also recommends the Territory Government consider options to minimise network constraints arising from network outages as part of its electricity market reforms (subject to a full cost benefit analysis).

Among other things, the proposed amendments to the Code will place a stronger obligation on System Control to not discriminate. For example, in regards to the dispatch of generators and the planning and management of network outages (see recommendations 4 and 5 above). Increased ring-fencing in the Code allows for greater clarity around System Control's operations which will provide more confidence for investors in the Territory's electricity supply industry.

The commission notes that Power Networks could become active in providing contestable services to customers, such as contestable metering services or installing DER, in the future. If this does eventuate, this Code review recommends that Government further consider the separation of staff, noting at present, the relevant provisions of the national ring-fencing guideline regarding the separation of staff do not apply in the Territory. Accordingly, the commission would also review and update the Code (if necessary) to ensure appropriate separation within its other relevant business units if PWC were to provide any new contestable services.

Decision 6: Application of the national ring-fencing guideline in the Territory

If Power Networks (to the extent that it is regulated by the AER) becomes active in providing contestable services, including contestable metering services or installing distributed energy resources, it is recommended (subject to a cost benefit analysis) that the Territory Government consider the application of further provisions in the national ring-fencing guideline.

APPENDICES

Appendix A: Table of Amendments

**Appendix B: Northern Territory Electricity Ring-fencing Code
Fourth Version**

Appendix A: Table of Amendments to the Northern Territory Electricity Ring-fencing Code v3 (July 2020)

Clause	Summary of amendment	Reference
Foreword	The Foreword has been amended to state the new Commencement Date, to indicate that this is the fourth version of the Code and to update contact details for the commission.	Modernisation
1.1 Authority	No amendments.	No change
1.2 Date of Commencement 1.3 Previous versions of the Code	These provisions, and the definition of Commencement Date, have been amended to state the new Commencement Date and to indicate that this will be the fourth version of the Code. A reference to the transitional provisions in Schedule 2 has been added as paragraph (d).	Modernisation
1.4(a) Application	The definition of Prescribed Business has been amended so that the Code will apply in relation to the System Controller business of Power and Water Corporation (PWC) at this time.	To reflect changes in the industry. Recommendations 1, 2(b) and 3.
1.4(b) (compliance with guidelines)	The obligation to comply with the guidelines has been removed. Refer to the comments explaining the changes to clause 1.6.	Modernisation
1.4(c) (becomes (b))	The references to 'Associates' here has been removed so as not to extend the obligations of PWC under the Code to Jacana Energy (Jacana) or Territory Generation (T-Gen).	To reflect changes in the industry.
1.5 Obligation to remedy	No amendments.	No changes

Clause	Summary of amendment	Reference
1.6 Guidelines	<p>The commission has amended this clause to provide for non-binding guidelines.</p> <p>The commission has revoked the guidelines made under earlier versions of the Code – refer to paragraph 2(c) in Schedule 2. The commission has not made new guidelines at this time. However, the commission considers the framework in clause 1.6 should be retained as a replacement for the arrangements under clause 10.8 which the commission has deleted, as explained below.</p>	Modernisation
2.1 Objectives	<p>The Code objectives have been updated and simplified to reflect the more limited role of the Code. Paragraph (a) reflects relevant objectives from the <i>Electricity Reform Act 2000</i> (ER Act). Paragraph (b) is from the current Code and deals with the consideration of costs and benefits.</p>	Modernisation and to reflect changes in the industry
2.2 Scope	<p>The clause has been deleted to assist in simplifying the Code.</p>	Modernisation
3 Minimum Ring-fencing Requirements	<p>The new minimum ring-fencing requirements comprise:</p> <ul style="list-style-type: none"> • an obligation to keep separate accounts for each Prescribed Business of PWC (currently limited to the System Controller Business) in accordance with the Accounting Principles (but not for PWC's electricity business as a whole) • an obligation to allocate costs that are shared between a Prescribed Business (the System Controller Business only at this time) and a Related Contestable Business to be consistent with the cost allocation procedures approved by the commission, which must be the same as the AER- Approved Cost Allocation Methodology for PWC's Power Networks Business, except to the extent otherwise approved by the commission • an obligation not to discriminate between Customers or classes of Customers, which in the case of the System Controller business will mean other Electricity Entities and is directed at ensuring non- discriminatory treatment as between the government-owned businesses and non-government owned businesses 	<p>Recommendation 1 Recommendation 2(a) & (b) Recommendation 3 Recommendation 4(a) & (b) Recommendation 5(a)</p> <p>Modernisation and to reflect changes in the industry</p>

Clause	Summary of amendment	Reference
	<ul style="list-style-type: none"> • an obligation for PWC, in the conduct of the System Controller business, not to discriminate against other Electricity Entities in order to benefit another business of PWC, which is directed at ensuring System Control's decisions are efficient overall and not made to suit the Power Networks or Gas Supplier Businesses at the cost of electricity consumers • an obligation for offices used by the System Controller Business to be separate from offices used by any Gas Supplier Business (with a delayed commencement of 6 months to allow PWC time to make the necessary changes to achieve compliance) • an obligation to protect the confidentiality of confidential information disclosed to a Prescribed Business • where disclosing confidential or commercially valuable information (which would be covered by a new defined term 'Designated Information'), an obligation to do so in a non- discriminatory manner. <p>The other ring-fencing requirements have been removed, which covered:</p> <ul style="list-style-type: none"> • related party goods and services (former clause 3.2) and supply of nominated goods and services (former clauses 3.3 and 3.4) and • marketing and branding (former clauses 3.5 to 3.8). <p>In relation to the supply of goods and services (former clauses 3.2 to 3.4), to the extent these remain relevant to the System Controller, they have been replaced by the general non-discrimination obligations.</p> <p>In relation to marketing and branding (former clauses 3.5 to 3.8), it may not be practical to prevent PWC from sharing (for example) marketing staff across its Prescribed Businesses (the System Controller business), and Power Networks (PWC's Power Networks business) and its other businesses or related electricity entities, where it makes sense. This is consistent with the derogations granted to Power Networks from the obligation to comply with similar provisions in the national ring-fencing guideline.</p>	
4 Compliance with Approved Procedures (changed to 'Approval of Procedures')	<p>A requirement for draft Cost Allocation Procedures submitted under this clause to be the same as the AER-Approved Cost Allocation Method used by PWC for its Power Networks Business.</p> <p>The Power Networks business applies the Cost Allocation Methodology approved by the Australian Energy Regulator (AER) under the National Electricity Rules for the Northern Territory (NER NT). As that document is</p>	Recommendation 1

Clause	Summary of amendment	Reference
	<p>drafted primarily with a view to meeting the requirements under the NER (NT), it may require amendments to enable it to be applied to the other business units.</p> <p>Clause 4 therefore continues to extend to the Cost Allocation Procedures requiring these to be the same as the AER-Approved Cost Allocation Method, except to the extent approved by the commission.</p>	
4.1 Introduction	No amendments.	No change
4.2(a) and (b)	The paragraphs have been amended to be consistent with other references in the Code. This clause has been amended to allow 6 months for the submission of the Accounting Procedures and the Cost Allocation procedures to the commission for approval, which is consistent with the Information Procedures.	Modernisation
4.2(b) Submission of final draft Procedures for approval by the Commission: new sub-clause added	This new paragraph requires amended Cost Allocation Procedures to be submitted for approval if the AER-Approved Cost Allocation Method is amended.	Recommendation 1
4.3 Development of final draft Procedures (changed to 'Requirements for draft Procedures')	<p>The clause has been amended to require the Cost Allocation Procedures to be the same as the AER- Approved Cost Allocation Method, except to the extent otherwise approved by the commission.</p> <p>The requirement in clause 4.3(a)(iii) to develop the final draft Procedures in conjunction with the commission has been removed and replaced with a more flexible timeframe for approving draft Procedures.</p>	<p>Recommendation 1</p> <p>Modernisation</p>
4.4 Matters to which the Commission will have regard when considering draft Procedures	<p>The clause has been amended to state expressly that the commission may have regard to other matters, such as the NER (NT) framework, when considering approval of Procedures.</p> <p>This change is intended to clarify the drafting of the clause, which in the Third Version of the Code indicates that the commission would have regard to the matters listed in the clause 'among other things'.</p>	Modernisation and to reflect changes in the industry
4.5 Approval by the Commission may be subject to conditions	To simplify and shorten the Code, the commission has removed the list of examples of the types of conditions that may be imposed by the commission when approving Procedures.	Modernisation
4.6 Compliance by an Electricity Entity with Procedures and conditions of approval	No amendments.	No change

Clause	Summary of amendment	Reference
4.7(b) Variations to existing Procedures	The reference to the commission rejecting an application without notice has been removed as the commission would seek to give notice.	Modernisation
4.8 Timing	The clause has been amended, and a new paragraph (b) added, to allow the commission to extend the time for approving draft Procedures from the 30 days in the Third Version of the Code. This reflects removal of the requirement for the draft Procedures to be prepared in conjunction with the commission. In any event, in the commission's experience it is preferable to have more flexible timeframes for approval of instruments made by regulated entities.	Modernisation
4.9 Default by an Electricity Entity 4.10 Compliance with requirements until Procedures are approved	The commission has deleted these provisions. They are no longer required as approved Procedures are already in place and can be used if there is any delay in updating Procedures when required.	Modernisation
5 Adding to or amending this Code	<p>These provisions have been simplified. Clause 5 has been amended to align with Part 4 of the <i>Utilities Commission Act 2000</i> (UC Act).</p> <p>In clause 5.3(a) (formerly clause 5.4(a)), subparagraph (iii) has been deleted. The subparagraph requires (in summary) that the commission weigh the costs and benefits before adding to the minimum ring-fencing requirements in the Code. The commission considers that this point is already covered by paragraph 2(b) of the Code (Objectives) and so deleting subparagraph (iii) avoids duplication.</p>	Modernisation
6 Procedures for adding to or amending ring-fencing obligations	Clause 6 has been deleted on the basis it is not required.	Modernisation
7 Compliance Procedures and Compliance Reporting	No amendments proposed.	No changes
8 Exemption from Compliance with Specified Obligations	<p>The commission has simplified these provisions.</p> <p>In clause 8.3(a)(ii), the commission has removed the list of examples of the types of conditions it may impose on an exemption.</p> <p>Clauses 8.4 to 8.6 has been simplified to reflect that the commission would publish information about applications on its website. The clauses have also been modified to give the commission more flexibility to</p>	Modernisation

Clause	Summary of amendment	Reference
	determine the process and timing. The minimum requirements will now be to publish a notice of the application and a draft decision for consultation before the commission makes its final decision.	
8.6 Final decision	Paragraph (b) has been amended to remove the 30-day waiting period before an exemption may take effect. The timing for commencement of the exemption could be the subject of consultation and the clause continues to allow the commission to specify a waiting period should there be a need for delayed commencement.	Modernisation
8.7 Prescribed Business definition	<p>Clause 8.7 has been deleted as it is redundant. The clause allowed the commission to determine that the generation business of PWC would no longer be subject to the Code. The Fourth Version of the Code does not apply to T-Gen.</p> <p>The exemption mechanism and guidelines provide some means to address potential Code overreach that may emerge as the NT electricity supply industry continues to evolve.</p>	Modernisation and to reflect changes in the industry
9 Outsourcing	No amendments.	No changes
10 Interpretation and determination of requirements under this Code	Clause 10 has been deleted on the basis that it is no longer required.	Modernisation
10.1 Fair and reasonable	<p>The commission has deleted this definition.</p> <p>In the Fourth Version of the Code, the term is used in relation to accounting matters (clause 3.1 and Schedule 1, clause 1.7). In that context, 'fair and reasonable' should be assessed having regard to accounting principles.</p>	Modernisation
10.2 Non-discriminatory	<p>The commission has deleted this definition.</p> <p>In the Third Version of the Code, the term was used in relation to offers to provide goods or services on comparable terms (clause 3.4(b)). These provisions have been deleted.</p>	Modernisation
10.3 Arm's length	This term is no longer used and the definition has been deleted.	Modernisation
10.4 Effect of disclosure of information	This provision has been deleted. The commission considers it will have adequate oversight through the new Information Procedures.	Modernisation Recommendation 3

Clause	Summary of amendment	Reference
10.5 Determination of goods or services as contestable or non-contestable	This provision has been deleted. The commission considers that in light of the restructuring of PWC since the Third Version of the Code, the provision is no longer needed. A guideline under proposed amended clause 1.6 could be issued, if necessary.	Modernisation and to reflect changes in the industry
10.6 Determination under paragraph (b) of the definition of Prescribed Business	This provision has been deleted as it is no longer required.	Modernisation and to reflect changes in the industry
10.7 Carrying on a business	A modified version of paragraph (a) of this provision has been moved to clause 13.2(b) and dealt with as a matter of Code interpretation. The balance of the clause has been deleted.	Modernisation and to reflect changes in the industry
10.8 Commission to determine matters arising under this clause	This clause has been deleted and replaced with the power to issue non-binding guidelines under clause 1.6.	Modernisation
11.1 No derogation from other obligations	Amended to include reference to 'or any Procedures or the conditions of approval under clause 4.5 or the conditions of an exemption under clause 8.3'.	Modernisation
11.2 Compliance with Applicable Laws	This clause has been deleted as it is not necessary.	Modernisation
12 Decision Making, Public Consultation and Disclosure of Information by the Commission	This clause has been deleted. It sets out a detailed confidentiality regime for information provided to the commission when making a decision or determination under the Code or in consultation. The commission considers that adequate protection is provided by the confidentiality obligations imposed under Part 5 of the UC Act.	Modernisation
13 Interpretation	The commission has amended the clause title to read 'Definitions and interpretation'.	Modernisation
13.1 Italicised terms	No amendments.	No changes

Clause	Summary of amendment	Reference
13.2 Defined terms	The commission has made the following amendments to the terms set out in clause 13.2, as detailed below:	Modernisation and to implement the recommendations
AER	This new definition is used in the definition 'AER-Approved Cost Allocation Method'.	Recommendation 1
AER-Approved Cost Allocation Method	This new definition identifies PWC's Cost Allocation Method as approved by the AER for its Power Networks business. The same method is to be used for cost allocation for the Prescribed Businesses (currently limited to the System Controller business), except to the extent otherwise approved by the commission.	Recommendation 1
applicable laws	The definition has been restructured for clarification.	Modernisation
arm's length	The definition is no longer used and has been deleted.	Modernisation
Associate	A new paragraph (b) has been added to the definition so as to be clear that Indigenous Essential Services Pty Ltd, Jacana, T-Gen and PWC are Associates.	Modernisation and to reflect changes in the industry
Commencement Date	The commencement date for the Fourth Version of the Code is the date of publication of the notice of variation in the Gazette.	Modernisation
comparable terms	The definition is no longer used and has been deleted.	Modernisation
competition	The commission considers it is no longer necessary to define this term given changes in the industry structure. The definition has been removed. Where the term was in bold italics in the Third Version of the Code, it is replaced with the term in plain text in the Fourth Version of the Code.	Modernisation and to reflect changes in the industry
Competitor	The definition has been amended to be consistent with the way the term is used in the Code.	Modernisation
Confidential Information	The reference to 'Associate' has been replaced with a reference to 'Employee' so as not to extend the definition to information provided to Indigenous Essential Services Pty Ltd, T-Gen or Jacana.	Modernisation
confidential material	The definition is no longer needed as it was only used in clause 12.	Modernisation

Clause	Summary of amendment	Reference
Customer	The definition has been expanded to explain that for a System Controller, a Customer is any Electricity Entity or an exemption holder that uses a system under the control of that System Controller.	Recommendation 2(b)
decision	The definition is no longer needed as it was only used in clause 12.	Modernisation
decision making conduct	The definition is no longer needed as it was only used in clause 12.	Modernisation
Designated Information	This new definition is intended to encompass the same classes of information that were covered by former clause 3.3(b). This covers Confidential Information and information that becomes available to the System Controller when performing its functions. The new clause 3.4 would require the information to be made available on a non-discriminatory basis (subject to confidentiality obligations).	Recommendations 2(b) & 3
disclosing person	The definition is no longer needed as it was only used in clause 12.	Modernisation
document	The definition is no longer needed as it was only used in clause 12.	Modernisation
Electricity Business	The definition has been deleted. It is no longer used due to the removal of the requirement to prepare separate accounts for the electricity business as a whole from clause 3.1.	Recommendation 1
Exempt Electricity Entity	This new term is used in the definition of Customer.	Recommendation 2(b)
fair and reasonable	The commission considers it is no longer necessary to define this term – refer to the discussion relating to clause 10.1.	Modernisation
Gas Supplier Business	This new definition is intended to cover PWC in its role as a supplier of natural gas to T-Gen. The term is used in the new clause 3.3(b), which requires PWC not to discriminate in the conduct of the System Controller Business and in the new clause 3.4(a), which requires the System Controller and Gas Supplier Businesses to be operated from separate offices.	Recommendation 4(a)
GOC Act	This new definition allows the shortened term to be used in the Code in place of <i>Government Owned Corporations Act 2001</i> (NT).	Drafting
marketing staff	The definition has been deleted. It is no longer used due to the deletion of clause 3.5.	Modernisation
matter for consultation	The definition is no longer needed as it was only used in clause 12.	Modernisation

Clause	Summary of amendment	Reference
NEL (NT)	This new definition is used in the definition 'AER-Approved Cost Allocation Method' and "Power Networks Business".	Modernisation and to reflect changes in the industry Recommendation 1
NEMMCO	The definition is out of date. No replacement is needed.	Modernisation and to reflect changes in the industry
NER (NT)	This new definition is used in the definition 'AER-Approved Cost Allocation Method' and "Power Networks Business".	Modernisation and to reflect changes in the industry Recommendation 1
nominated goods or services	The term is no longer used and has been deleted.	Modernisation
non-contestable	The term is no longer used and has been deleted.	Modernisation and to reflect changes in the industry
non-discriminatory	The term is no longer used and has been deleted.	Modernisation
office	This new definition is used to describe what constitutes an office for the purpose of clause 3.4 - which is the requirement for physical separation between the offices of the System Controller Business and the offices used for a Gas Supplier Business.	Recommendation 4(a)
Power Networks Business	This new definition is used to describe the Power Networks Business of PWC regulated by the AER under the NEL (NT) and the NER (NT).	Modernisation and to reflect changes in the industry
Prescribed Business	The definition has been amended so that the Code will apply in relation to the System Controller Business of PWC only, at this time.	Modernisation and to reflect changes in the industry Recommendations 1 & 2

Clause	Summary of amendment	Reference
Related Contestable Business	<p>The changes exclude:</p> <ul style="list-style-type: none"> • the System Controller Business, and • the Power Networks Business, so long as it is subject to the NER (NT) ring-fencing rules. 	Modernisation and to reflect changes in the industry
related party goods and services	The term is no longer used and has been deleted.	Modernisation
related party terms	The term is no longer used and has been deleted.	Modernisation
relevant material	The term is no longer used and has been deleted.	Modernisation
System Control Functions	This new definition recognises that the System Controller Business performs functions and exercises powers (rather than being engaged in the supply of goods or services), and also includes the Market Operator role as set out in the System Control Technical Code.	Modernisation
System Controller Business	This new definition recognises PWC's role as system controller and System Control's associated functions.	Modernisation
System Control Technical Code	This new definition is used in the definition of 'System Control Functions'	
13.2(b) Carrying on of a business	The principle in this clause is currently covered in clause 10 and has been moved here.	Modernisation
13.3 Other interpretation principles	<p>As this Code is made under the UC Act, and to be consistent with the Electricity Retail Supply Code, the commission will apply the <i>Interpretation Act 1978</i> (NT).</p> <p>The other provisions align with the approach in the Electricity Retail Supply Code, with amendments as this Code has Schedules but no Annexures.</p>	Modernisation
13.4 Making of an instrument or decision	Amended the word 'repeal' to revoke'.	Modernisation
Schedule 1, clause 1: Accounting Principles	References to 'the Electricity Business as a whole' have been removed, to reflect the removal of the requirement in clause 3.1 of the obligation to prepare separate accounts for the Electricity Business as a whole.	Modernisation

Clause	Summary of amendment	Reference
Schedule 1, clause 2: Cost Allocation Principles	<p>Clause 2.1 has been amended to reflect the requirement that these must be in the same terms as the AER- Approved Cost Allocation Method.</p> <p>The other principles have been replaced with principles in section 2 of the AER's <i>Cost allocation guidelines</i> (June 2008) for electricity distribution network service providers, but modified so as to use terms appropriate to the Code. A reference to clause 6.17 of the NER (NT) in the AER's guidelines has been omitted as there is no equivalent provision relevant in this context. To the extent the principles are relevant, they would be reflected in the AER-Approved Cost Allocation Method.</p>	Recommendation 1
Schedule 1, clause 3: Information Principles	<p>Amended to:</p> <ul style="list-style-type: none"> • require the Information Principles to set out permitted disclosure, such as disclosure with consent or where required by law, and • better align the principles with (the amended) clause 3. 	Modernisation
Schedule 1, clause 4: Scope of Principles	Minor correction to wording.	Modernisation
Schedule 2: Transitional provisions	<p>New transitional provisions allow for the continued application of the Accounting Procedures, Cost Allocation Procedures and Information Procedures and require submission of draft revised Accounting Procedures, Cost Allocation Procedures and Information Procedures for approval by the commission (in accordance with clause 4.2(b)). A clause has been inserted to revoke the commission's current Ring-fencing Guidelines (version 1) 28 January 2009, as it is no longer required.</p>	Modernisation
Schedule 3: Nominated goods and services	The schedule is no longer needed and has been deleted.	Modernisation

NORTHERN TERRITORY ELECTRICITY RING-FENCING CODE

Fourth Version

26 August 2020

Foreword

This Fourth 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 2000* (NT);
- commences operation on 26 August 2020; and
- replaces the previous versions of the Code.

Notice of the making of the Code was published in the Gazette on 26 August 2020.

Any questions regarding the Code should be directed to the 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	1 December 2008	1 January 2009
4	26 August 2020	26 August 2020

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Northern Territory Electricity Ring-Fencing Code

1. Introduction

1.1 Authority

- (a) This **Code** is made by the **Commission** under section 24 of the **Act** and in accordance with the authority granted to the **Commission** by Regulation 2 of the *Utilities Commission Regulations*.
- (b) In making this **Code**, the **Commission** has:
 - (i) sought to promote and achieve the object of the **Act**;
 - (ii) sought to promote and achieve the objects of the **ERA**; and
 - (iii) 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 fourth version of the Northern Territory Electricity Ring-fencing Code made by the **Commission**.
- (b) This **Code** replaces the previous versions of the Northern Territory Electricity Ring-fencing Code made by the **Commission** on and from the **Commencement Date**.
- (c) On and from the **Commencement Date** the previous versions of the Northern Territory Electricity Ring-fencing Code have continued application only in respect of matters and things occurring before the **Commencement Date**.
- (d) The transitional provisions in Schedule 2 have effect.

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 is required to comply with this **Code** must also ensure that its **Employees** 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 make **guidelines** relating to this **Code**, including:
 - (i) the administrative procedures and arrangements that the **Commission** intends to adopt when administering this **Code**; or
 - (ii) the application or interpretation of, or matters arising under, this **Code**.
- (b) The **Commission** must publish a guideline made under clause 1.6(a) on the **Commission's** website.
- (c) 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

The objectives of this Code are:

- (a) to promote efficiency and competition in the **Electricity Supply Industry** and protect the interests of consumers of electricity by providing for:
 - (i) separate accounts for the activities of a **Prescribed Business**;
 - (ii) non-discriminatory conduct by a **Prescribed Business**;
 - (iii) the protection of confidential information provided to a **Prescribed Business**;
and
 - (iv) non-discriminatory disclosure of confidential or commercially valuable information by a **Prescribed Business**; and
- (b) to achieve an appropriate balance between the public benefits of requiring an **Electricity Entity** to comply with this **Code** and the administrative costs to the **Electricity Entity** of complying with 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 each **Prescribed Business**; and

- (ii) prepare the financial accounts and reports in accordance with the *Accounting Procedures* applying to that *Electricity Entity* from time to time under clause 4.

3.2 Cost allocation

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must allocate any costs that are shared between a *Prescribed Business* and a *Related Contestable Business* in a manner that:
 - (i) complies with the *Cost Allocation Procedures* applying to that *Electricity Entity* from time to time under clause 4; and
 - (ii) is otherwise fair and reasonable.

3.3 Non-discrimination

- (a) An *Electricity Entity* that carries on a *Prescribed Business* in the Northern Territory must ensure that in the conduct of the *Prescribed Business*, it does not discriminate (directly or indirectly) as between *Customers* or classes of *Customer*.
- (b) An *Electricity Entity* that carries on a *System Controller Business* in the Northern Territory must ensure that in the conduct of the *System Controller Business*, it does not discriminate (directly or indirectly) against another *Electricity Entity* in a way that favours:
 - (i) a *Power Networks Business* or *Gas Supplier Business* of that *Electricity Entity*; or
 - (ii) any other business (or component of a business) carried on by that *Electricity Entity*.
- (c) Clause 3.3(b) does not prevent the proper performance of *System Control Functions* by a *System Controller Business*.

3.4 System Controller's offices

- (a) Within 6 months of the *Commencement Date*, an *Electricity Entity* that carries on a *System Controller Business* in the *Northern Territory* must ensure *offices* used for the *System Controller Business* are separate from *offices* used for a *Gas Supplier Business*.

3.5 Confidential Information

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

- (i) used only for the purpose for which that **Confidential Information** was provided by or in respect of that **Customer**;
- (ii) only disclosed if the disclosure of that **Confidential Information** is permitted under the **Information Procedures** applying to that **Electricity Entity** under clause 4 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 4 from time to time.

3.6 Designated Information

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must ensure that it does not discriminate (directly or indirectly) as between a **Related Contestable Business** and a **Competitor** of a **Related Contestable Business** in relation to the disclosure of **Designated Information**.
- (b) Without limiting clause 3.5, an **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must make **Designated Information** available to a **Related Contestable Business** and a **Competitor** of a **Related Contestable Business** in accordance with the **Information Procedures** applying to that **Electricity Entity** under clause 4 from time to time.

4. Approval of Procedures

4.1 Introduction

- (a) In this clause 4 unless the context otherwise requires, a reference to "**Procedures**" includes in each case the **Accounting Procedures**, **Cost Allocation Procedures** and **Information Procedures**.

4.2 Submission of draft Procedures for approval by the Commission

- (a) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must within 6 months of the **Commencement Date** submit to the **Commission** for approval draft **Procedures** of the **Electricity Entity** developed in accordance with clause 4.3.
- (b) An **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory must within 30 days of the **AER** approving any change to the **AER-Approved Cost Allocation Method** submit to the **Commission** for approval draft amended **Cost Allocation Procedures** of the **Electricity Entity** developed in accordance with clause 4.3.

4.3 Requirements for draft *Procedures*

- (a) Subject to clause 4.3(b), the draft ***Procedures*** submitted by an ***Electricity Entity*** under clause 4.2 must be:
 - (i) designed to ensure compliance with the ***Electricity Entity***'s obligations under clause 3; and
 - (ii) otherwise consistent with the principles set out in Schedule 1 to this ***Code*** applicable to the type of ***Procedure***.
- (b) Draft ***Cost Allocation Procedures*** submitted under clause 4.2 must be the same as the ***AER-Approved Cost Allocation Method*** except to the extent otherwise approved by the ***Commission***.

4.4 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 4.2, the ***Commission*** will have regard to:
 - (i) the objectives of this ***Code*** set out in clause 2;
 - (ii) the matters set out in section 6(2) of the ***Act***; and
 - (iii) whether the draft ***Procedures*** give effect to the principles set out in Schedule 1 to this ***Code*** for that type of ***Procedure***,and may have regard to any other matters the ***Commission*** considers relevant.

4.5 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 4.2 subject to such conditions as the ***Commission*** considers are appropriate in the circumstances.

4.6 Compliance by an *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 4.2 and any conditions attaching to the ***Commission's*** approval of those ***Procedures***.

4.7 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) an application to vary existing ***Procedures*** will be dealt with by the ***Commission*** in

accordance with the procedure set out in this clause 4 applying to an application to approve the initial **Procedures**.

4.8 Timing

- (a) After receiving an application from the **Electricity Entity** to approve any **Procedures** (or any variation to the existing **Procedures**), the **Commission** must notify the **Electricity Entity**:
- (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 **Commission** must use reasonable endeavours to notify the relevant **Electricity Entity** under clause 4.8(a) within 30 days of the application or if a longer period is notified by the **Commission** to the **Electricity Entity**, that longer period.
- (c) The **Electricity Entity** must implement any **Procedures** within 30 days after the date upon which they are approved by the **Commission**.

5. Adding to or Amending this Code

5.1 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**.

5.2 Application by an Electricity Entity for variation or revocation

- (a) An **Electricity Entity** or other person may request the **Commission** to 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 request) a request 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 5 and the **Act**.

5.3 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 5.1 or 5.2, the **Commission** will have regard to:
- (i) the objectives of this **Code** set out in clause 2; and
 - (ii) the matters listed in section 6(2) of the **Act**.

6. Not used.

7. Compliance Procedures and Compliance Reporting

7.1 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 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** may (after giving reasonable notice to the **Electricity Entity**) require the **Electricity Entity** to demonstrate to the **Commission's** satisfaction that:
- (i) the **Electricity Entity's** compliance procedures are adequate; and/or
 - (ii) the **Electricity Entity** is complying with its 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**.

7.2 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, may be made publicly available by the **Commission** subject to the **Commission** first complying with its obligations under section 26 of the **Act**.

7.3 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 7.3, 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**.

7.4 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.

8. Exemption from Compliance with Specified Obligations

8.1 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.

8.2 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 objectives of this **Code** set out in clause 2;
 - (ii) the matters listed in section 6(2) of the **Act**; and

- (iii) 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.

8.3 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.

8.4 Procedure for consideration of application

- (a) When the **Commission** receives an application under clause 8.1 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 30 days after receipt of the application, publish a notice on its website which at least identifies the **Electricity Entity** that has applied for the exemption and the nature of the requested exemption.

8.5 Draft decision

- (a) Before making a decision on an application under clause 8.1, the **Commission** must first publish a draft decision and invite comments by a date specified in the draft decision which must be at least 30 days.
- (b) The **Commission** must consider any submissions it receives by the date specified by the **Commission** under clause 8.5(a) and it may (but is not obliged to) consider any submissions received after that date.

8.6 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 publish on its website a notice of its final decision stating whether or not it will grant the exemption sought in that application.
- (b) A final decision under clause 8.6(a) has effect when the notice under clause 8.6(a) is published or such later date as the **Commission** specifies in the notice.

9. Outsourcing

9.1 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**, that other entity will be an **Outsourced Service Provider** in relation to that **Electricity Entity** and business function for the purposes of this **Code**.

9.2 Use reasonable endeavours to ensure compliance

- (a) If an **Electricity Entity** that carries on a **Prescribed Business** in the Northern Territory uses an **Outsourced Service Provider** to perform any of its business functions in relation to a **Prescribed Business** of that **Electricity Entity**, that **Electricity Entity** must use its reasonable endeavours to ensure that the **Outsourced Service Provider** performs that business function in a manner which complies with that **Electricity Entity's** obligations under this **Code**.

9.3 Outsourcing agreements

- (a) Without limiting clause 9.2, 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**, the **Electricity Entity** must ensure that the terms of the agreement are consistent with and facilitate the implementation of this **Code**.

10. Not used

11. Preservation of Other Obligations and Compliance with Applicable Laws

11.1 No derogation from other obligations

- (a) Nothing in this **Code** or any **Procedures** or the conditions of approval under clause 4.5 or the conditions of an exemption under clause 8.3 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**.

12. Not used

13. Definitions and 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 procedures of that name approved by the **Commission** under clause 4 of this **Code**;

“Act” means the *Utilities Commission Act 2000* (NT);

“AER” means the Australian Energy Regulator established by section 44AE of the *Competition and Consumer Act 2010* (Cth);

“AER-Approved Cost Allocation Method” means the cost allocation method of a **Power Networks Business** approved by the **AER** under clause 6.15.4 of the **NER (NT)** and clause 3.1 of the AER’s Cost Allocation Guidelines made under the **NER (NT)**.

“applicable laws” means:

- (a) legislation and regulations; and
- (b) codes or other instruments with which an **Electricity Entity** must comply under the terms of a **licence** issued to the **Electricity Entity**;

“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 the **Corporations Act**;
- (b) an **Electricity Entity** that is incorporated pursuant to the **GOC Act**:
 - (i) any other **Electricity Entity** that is also incorporated pursuant to the **GOC Act**; and
 - (ii) a person that would be an associate of that **Electricity Entity** under Division 2 of Part 1.2 of the **Corporations Act** if:
 - (A) sections 13, 16(2) and 17 did not form part of the **Corporations Act**; and
 - (B) that **Electricity Entity** were a legal entity incorporated pursuant to the **Corporations Act**

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

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

“**Commencement Date**” means the date of publication of the notice of variation to the **Code** in the *Gazette*;

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

“**Competitor**” of a **Related Contestable Business** means an entity (whether identifiable, actual or notional) which either actually or potentially may be in competition with the **Related Contestable Business**;

“**compliance procedures**” has the meaning in clause 7.1(a) of this **Code**;

“**compliance report**” has the meaning in clause 7.2(a) of this **Code**;

“**Confidential Information**” means information which is or has been provided to, or has otherwise been obtained by, an **Electricity Entity** (or **Employee** 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;

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

“**Cost Allocation Procedures**” means procedures of that name approved by the **Commission** under clause 4 of this **Code**;

“**Customer**” means:

- (a) in the case of a **System Controller Business**, each **Electricity Entity** or **Exempt Electricity Entity** that directly or indirectly uses a power system in respect of which the **System Controller Business** exercises **System Control Functions**; and
- (b) in the case of an **Electricity Entity** (other than in respect of a **System Controller Business**), a person who engages (or proposes to engage) in the activity of purchasing goods or services from the **Electricity Entity**;

“Designated Information” means in relation to an **Electricity Entity**, information (including **Confidential Information**) obtained by or becoming known to the **Electricity Entity** (or its **Employees**) in the course of or as a result of conducting a **Prescribed Business** and which might reasonably be expected to:

- (a) 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
- (b) 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**,

and includes information which is derived from any such information;

“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 **GOC Act**;

“Electricity Entity” has the meaning given to ‘electricity entity’ in the **ERA**;

“Electricity Supply Industry” has the meaning given to ‘electricity supply industry’ in the **ERA**;

“Employee” means a **Director** or other officer, employee, consultant, contractor, or agent of an **Electricity Entity**;

“ERA” means the *Electricity Reform Act 2000* (NT);

“Exempt Electricity Entity” means a person that has the benefit of an exemption granted by the **Commission** from Part 3 of the **ERA**, or from specified provisions of Part 3 of the **ERA**;

“Gas Supplier Business” means the business of supplying natural gas to an **Electricity Entity**;

“Gazette” has the same meaning as is given to that term in the *Interpretation Act 1978* (NT);

“GOC Act” means the *Government Owned Corporations Act 2001* (NT);

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

“Information Procedures” means procedures of that name approved by the **Commission** under clause 4 of this **Code**;

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

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

“**NEL (NT)**” means the National Electricity (NT) Law as defined in the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* (NT);

“**NER (NT)**” means the National Electricity (NT) Rules as defined in the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* (NT);

“**office**” means

(a) a building; or

(b) an entire floor of a building, or a part of a building,

that has separate and secure access requirements so that staff from a different building or elsewhere in the building do not have unescorted access to it.

“**Outsourced Service Provider**” has the meaning in clause 9.1(a) of this **Code**;

“**Power Networks Business**” means the business of a network provider (as defined in the **ERA**) but only to the extent that:

(a) the network provider is a Distribution Network Service Provider as defined in the **NER (NT)** in respect of the business; and

(b) the network services provided by the network provider are subject to economic regulation by the **AER** under the **NER (NT)** and the **NEL (NT)**;

“**Prescribed Business**” means a **System Controller Business**;

“**Procedure**” has the meaning given to it by clause 4.1 of this **Code**;

“**PWC**” means the Power and Water Corporation established under the *Power and Water Corporation Act 1987* (NT);

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

(a) a **System Controller Business**; or

(b) a **Power Networks Business**;

“**System Control Functions**” means the functions and powers of a ‘system controller’ within the meaning of the **ERA** and includes the functions and responsibilities of the market operator as set out in the **System Control Technical Code**; and

“**System Controller Business**” means a business having **System Control Functions**;

“**System Control Technical Code**” means the code of that name approved by the **Commission** in accordance with the **ERA** and published by **PWC**.

(b) For the purposes of this **Code** an **Electricity Entity** is to be regarded as carrying on a **Prescribed Business** 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

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

13.3 Other interpretation principles

- (a) The *Interpretation Act 1978* (NT) applies to and in respect of this **Code** as if it were a statutory instrument for the purposes of that Act.
- (b) Unless the contrary intention is apparent:
 - (i) a reference to a clause or Schedule is a reference to a clause or Schedule in this **Code**;
 - (ii) a reference in this **Code** to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, the document or provision;
 - (iii) without limiting paragraph (a):
 - (A) the word 'may' in conferring a power will be interpreted to imply that a power may be exercised or not, at discretion; and
 - (B) the word 'must' in conferring a function will be interpreted to mean that the function so conferred must be performed.
- (c) Schedules to this **Code** form part of this **Code**.
- (d) If there is any inconsistency between the substantive provisions of this **Code** and the provisions of any Schedule then the provisions of the substantive provisions will prevail to the extent of the inconsistency and the provisions of this **Code** will be construed accordingly.
- (e) A reference to an accounting term in this **Code** 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 revoke the instrument or decision; and
 - (ii) the power to amend or revoke 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: Accounting, Cost Allocation and Information Principles

1. Accounting Principles

- 1.1 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 1.
- 1.2 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**.
- 1.3 The **Accounting Procedures** must conform to Australian Accounting Standards wherever possible.
- 1.4 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.
- 1.5 An **Electricity Entity** must maintain accounting and reporting arrangements which:
- (a) enable financial statements and reports to be prepared for each **Prescribed Business**; and

- (b) provide information in the financial statements and reports that can be verified.
- 1.6 Information must be presented in financial statements and reports in the most understandable manner, without sacrificing relevance or reliability.
- 1.7 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**;
 - (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** by:
 - (i) eliminating costs not related to each **Prescribed Business**;
 - (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.
- 1.8 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.
- 1.9 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**.
- 1.10 The financial statements and reports of each **Prescribed Business** must, in so far as is reasonably practicable, be prepared in accordance with the accounting principles and policies applicable to the statutory accounts.
- 1.11 The financial statements and reports of each **Prescribed Business** 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.
- 1.12 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.

- 1.13 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.
- 1.14 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**;
 - (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**.

2. Cost Allocation Principles

- 2.1 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; and
 - (c) except where variations have been approved by the **Commission**, they are in the same terms as the **AER-Approved Cost Allocation Method**.
- 2.2 The detailed principles and policies for attributing costs directly to, or allocating costs between **Prescribed Businesses** must be sufficiently detailed to enable:
- (a) the **Commission** to replicate the reported outcomes through the application of those principles and policies; and
 - (b) the **Electricity Entity** to demonstrate that it is meeting the requirements of these principles.
- 2.3 For the avoidance of doubt, paragraph 2.2 means that an **Electricity Entity** must include information on the following matters only to the extent necessary to enable the **Commission** to replicate its reported outcomes:
- (a) For directly attributable costs:
 - (i) the nature of each cost item;
 - (ii) the category of services to which the cost item is to be directly attributed;

- (iii) the characteristics of the cost item that associate it uniquely with a particular category of services in order to make it a directly attributable cost; and
 - (iv) how and where records will be maintained to enable the basis of attribution to be audited or otherwise verified by a third party, including the **Commission**.
- (b) For shared costs:
- (i) the nature of each cost item;
 - (ii) the categories of services between which each cost item is to be allocated;
 - (iii) the nature of the allocator, or allocators, to be used for allocating each cost item;
 - (iv) the reasons for selecting the allocator, or allocators, for each cost item and an explanation of why it is the most appropriate available allocator, or set of allocators, for the cost item;
 - (v) whether the numeric quantity or percentage of the allocator, or allocators, to be applied for each cost item will:
 - (A) remain unchanged over the relevant period; or
 - (B) change from time to time throughout the relevant period.
 - (vi) if paragraph (v)(A) applies:
 - (A) details of the numeric quantity or percentage of the allocator, or allocators; and
 - (B) an explanation of how the numeric quantity or percentage has been calculated, including where the data for determining this numeric quantity or percentage have been sourced.
 - (vii) if paragraph (v)(B) applies, an explanation of how the **Electricity Entity** intends to calculate the numeric quantity or percentage throughout the relevant period, including where the data for determining the changing numeric quantities or percentages are to be sourced; and
 - (viii) how and where records will be maintained to enable the allocation to be audited or otherwise verified by a third party, including the **Commission**.

2.4 An **Electricity Entity** must attribute costs directly to, or allocate costs between, **Prescribed Businesses** based on the substance of the underlying transaction or event.

2.5 Where the substance and legal form differ, the substance rather than the legal form of a transaction or event must be used as the basis of cost attribution or allocation.

Substance over form emphasises the economic substance of an event even though its legal form may provide a different result.

- 2.6 In determining the substance of a transaction or event, all of its aspects and implications must be considered, including the expectations of and motivations for, the transaction or event.
- 2.7 For the purposes of determining the substance of a transaction or event, a group or series of transactions or events that achieves, or is designed to achieve, an overall commercial effect must be viewed in aggregate.
- 2.8 Only costs that are directly attributable to the provision of a particular category of services may be directly attributed to that category of services.
- 2.9 A cost may be directly attributable to a **Prescribed Business** but not directly attributable to a particular category of services provided by the **Prescribed Business**. In this circumstance, the allocation of costs between categories of service may only be made in accordance with the following:
- (a) Shared costs incurred in providing several categories of service must be allocated between those categories using an appropriate causal allocator, except to the extent that:
 - (i) the shared costs are immaterial; or
 - (ii) a causal relationship cannot be established without undue cost and effort.
 - (b) If a shared cost is immaterial or a causal relationship cannot be established without undue cost and effort, then the **Electricity Entity** may allocate the shared cost to a particular category of services using a non-causal allocator provided that:
 - (i) the non-causal allocator accords with an AER-approved Cost Allocation Method;
 - (ii) the non-causal basis of allocation is approved in writing by the **Commission**; and
 - (iii) the **Electricity Entity** provides a supporting work paper to the **Commission** documenting for each such shared cost:
 - (A) the basis of allocation;
 - (B) the reason chosen for that basis;
 - (C) a demonstration that the shared cost is immaterial or an explanation of why no causal relationship could be established without undue cost and effort; and
 - (D) a numeric quantity or percentage of the non-causal allocator applied to each category of services and in total.

- (c) The bases of non-causal allocation will be subject to review by the **Commission**. The **Commission** expects only to accept a non-causal basis of allocation if the **Electricity Entity** can demonstrate that there is likely to be a strong positive correlation between the non-causal basis of allocation and the actual cause of the resource or service consumption or utilisation that those shared costs represent.
 - (d) An **Electricity Entity** is not permitted to allocate shared costs using an avoided cost approach without prior approval by the **Commission**.
- 2.10 An **Electricity Entity** must not allocate the same cost more than once. For the avoidance of doubt, this means that:
- (a) the same cost may not be treated as both a direct cost and a shared cost;
 - (b) a direct cost may only be attributed once to a single category of services;
 - (c) a shared cost may only be allocated once between categories of services; and
 - (d) an **Electricity Entity** may only recover the same cost once through the charges that it levies.
- 2.11 Costs that have been attributed or allocated to services must not be reattributed or reallocated to another service during the course of a regulatory control period (as defined in the **NER (NT)**).

3. Information Principles

- 3.1 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:
- (a) **Confidential Information**; and
 - (b) **Designated Information**.
- 3.2 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**.
- 3.3 The **Information Procedures** must set out the circumstances in which an **Electricity Entity** involved in the conduct of a **Prescribed Business** is permitted to disclose **Confidential Information**.
- 3.4 If an **Electricity Entity** proposes to allow the disclosure of **Designated Information** to a **Related Contestable Business** or an **Employee**, consultant, contractor or agent involved in the conduct of a **Related Contestable Business**, the **Information**

Procedures must identify how the **Designated Information** will also be made available to **Competitors** of the **Related Contestable Business**.

- 3.5 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 **Confidential Information** and **Designated Information** (including separation of office space, access to information systems and procedures for the minimisation of opportunities for preferential treatment or other unfair competitive advantage).

4. Scope of Principles

- 4.1 Nothing in these principles 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 2: Transitional provisions

1. Transitional provisions for the third version of the Code

- (a) The **Accounting Procedures, Cost Allocation Procedures** and **Information Procedures** of an **Electricity Entity** which were approved by the **Commission** and were in force immediately before the **Commencement Date** (as defined in the third version of the **Code**):
 - (i) will continue in force and deemed to be approved **Procedures** for the purposes of clause 4 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 2 is not required to comply with the requirements of clause 4.2 of this **Code** in relation to that approved **Procedure**.
- (c) This clause applies to the third version of the **Code**.

2. Transitional provisions for the fourth version of the Code

- (a) This clause applies to the fourth version of the **Code**.
- (b) In this clause:
 - (i) “**new clause 4**” means clause 4 of the **Code** as in effect on and from the **new Commencement Date**;
 - (ii) “**new clause 4.2(a)**” means clause 4.2(a) of the **Code** as in effect on and from the **new Commencement Date**;
 - (iii) “**new Commencement Date**” means the **Commencement Date** for the fourth version of this **Code**; and
 - (iv) “**old clause 1.6**” means clause 1.6 of the **Code** as in effect immediately before the **new Commencement Date**; and
 - (v) “**old guidelines**” means the Ring Fencing Guidelines (version no 1) dated 28 January 2009 made by the **Commission** pursuant to **old clause 1.6** of the **Code**.
- (c) With effect from the **new Commencement Date**, the **old guidelines** are revoked.
- (d) Subject to clause 2(e) of this Schedule, the **Procedures** of an **Electricity Entity** which were approved by the **Commission** and were in force immediately before the **new Commencement Date**:

(i) will continue in force and will be deemed to be approved for the purposes of **new clause 4**; and

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

on and from the **new Commencement Date** until the **Commission** approves updated or replacement **Procedures** under **new clause 4**.

(e) An **Electricity Entity** must review the **Procedures** referred to in clause 2(d) of this Schedule to take into account the changes made in the fourth version of this **Code** and must within the time prescribed under **new clause 4.2(a)** submit the **Procedures** to the **Commission** for approval in accordance with **new clause 4**.