

**Appendix B: Table of Proposed Amendments to the Northern Territory Electricity Ring-fencing Code v3 (Draft March 2020)**

Clause	Summary of proposed amendment	Reference
Foreword	The Foreword would be amended to state the new Commencement Date, to indicate that this will be the fourth version of the Code and to update contact details for the commission.	Modernisation
1.1 Authority	No amendments proposed.	No change
1.2 Date of Commencement 1.3 Previous versions of the Code	These provisions, and the definition of Commencement Date, would be 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 would be added as paragraph (d).	Modernisation
1.4(a) Application	The definition of Prescribed Business would be amended so that the Code will apply in relation to: <ul style="list-style-type: none"> <li>the System Controller business of Power and Water Corporation (PWC) and</li> <li>any other business carried on by PWC in the electricity sector, excluding its Power Networks Business.</li> </ul>	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 would be removed. Refer to the comments explaining the proposed changes to clause 1.6.	Modernisation
1.4(c) (would become (b))	The references to 'Associates' here would be 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 proposed.	No changes

Clause	Summary of proposed amendment	Reference
1.6 Guidelines	<p>The commission proposes to amend this clause to provide for non-binding guidelines.</p> <p>The commission proposes to revoke the guidelines made under earlier versions of the Code – refer to paragraph 2(c) in Schedule 2. The commission does not intend to make new guidelines at this time.</p> <p>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 proposes to delete, as explained below.</p>	Modernisation
2.1 Objectives	The Code objectives would be 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.	Modernisation and to reflect changes in the industry
2.2 Scope	The clause would be deleted to assist in simplifying the Code.	Modernisation
3 Minimum Ring-fencing Requirements	<p>The new minimum ring-fencing requirements would comprise:</p> <ul style="list-style-type: none"> <li>• an obligation to keep separate accounts for each Prescribed Business of PWC in accordance with the Accounting Principles (but not for PWC's electricity business as a whole)</li> <li>• an obligation to allocate costs in accordance with cost allocation procedures that PWC's power networks business is required to use under the National Electricity (NT) Rules (NER (NT)) and in a manner that is fair and reasonable</li> <li>• 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</li> <li>• 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</li> </ul>	<p>Recommendation 1</p> <p>Recommendation 2(a) &amp; (b)</p> <p>Recommendation 3</p> <p>Recommendation 4(a) &amp; (b)</p> <p>Recommendation 5(a)</p> <p>Modernisation and to reflect changes in the industry</p>

Clause	Summary of proposed amendment	Reference
	<p>system control decisions are efficient overall and not made to suit the Power Networks or Gas Supply Businesses at the cost of electricity consumers</p> <ul style="list-style-type: none"> <li>• an obligation for offices used by the System Controller business to be separate from offices used by any Gas Supplier Business</li> <li>• an obligation to protect the confidentiality of confidential information disclosed to a Prescribed Business</li> <li>• 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.</li> </ul> <p>The other ring-fencing requirements would be removed, which covered:</p> <ul style="list-style-type: none"> <li>• related party goods and services (former clause 3.2) and supply of nominated goods and services (former clauses 3.3 and 3.4) and</li> <li>• marketing and branding (former clauses 3.5 to 3.8).</li> </ul> <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 are 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, Remote Services (Indigenous Essential Services) and Power Services (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 Services from the obligation to comply with similar provisions in the national ring-fencing guideline.</p>	
4 Compliance with Approved Procedures (would change to 'Approval of Procedures')	<p>The commission's recommendations provide for PWC to use the same method of cost allocation that it uses for its Power Networks Business (Power Services) for each of its Prescribed Businesses.</p> <p>The Power Networks Business applies the Cost Allocation Method approved by the Australian Energy Regulator (AER) under the NER (NT). As that document is 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>	Recommendation 1

Clause	Summary of proposed amendment	Reference
	Clause 4 would therefore continue to extend to the Cost Allocation Procedures but would require these to be the same as the AER-Approved Cost Allocation Method except to the extent approved by the commission.	
4.1 Introduction	No amendments proposed.	No change
4.2(a) and (b)	The paragraphs would be amended to refer to the Procedures of the Electricity Entity (and not the Prescribed Business) to be consistent with other references in the Code.	Modernisation
4.2(b) Submission of final draft Procedures for approval by the Commission: new sub-clause to be added	This new paragraph would require 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 (would be changed to 'Requirements for draft Procedures')	<p>The clause would be amended to require the Cost Allocation Procedures to be the same as the AER- Approved Cost Allocation Method except to the extent the commission approves modifications when approving the Cost Allocation Procedures.</p> <p>The requirement in clause 4.3(a)(iii) to develop the final draft Procedures in conjunction with the Commission would be 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 would be 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 currently indicates that the commission will 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 proposes to remove 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 proposed.	No change

Clause	Summary of proposed amendment	Reference
4.7(b) Variations to existing Procedures	The reference to the commission rejecting an application without notice would be removed as the commission would seek to give notice.	Modernisation
4.8 Timing	The clause would be amended, and a new paragraph (b) added, to allow the commission to extend the time for approving draft Procedures from the 30 days currently in 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 proposes to delete 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	These provisions would be simplified. Clause 5 would be amended to align with Part 4 of the <i>Utilities Commission Act 2000</i> (UC Act).  In clause 5.3(a) (formerly clause 5.4(a)), subparagraph (iii) would be 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.	Modernisation
6 Procedures for adding to or amending ring-fencing obligations	Clause 6 would be 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	The commission proposes to simplify these provisions.  In clause 8.3(a)(ii), the commission proposes to remove the list of examples of the types of conditions it may impose on an exemption.  Clauses 8.4 to 8.6 would be simplified to reflect that the commission would publish information about applications on its website. The clauses would also be modified to give the commission more flexibility to	Modernisation

Clause	Summary of proposed amendment	Reference
	determine the process and timing. The minimum requirements will 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	It is proposed to amend paragraph (b) 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	Clause 8.7 would be deleted as it would be redundant. The clause allowed the commission to determine that the generation business of PWC would no longer be subject to the Code. The commission is proposing that the fourth version of the Code would not apply to T-Gen.  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.	Modernisation and to reflect changes in the industry
9 Outsourcing	No amendments proposed	No changes
10 Interpretation and determination of requirements under this Code	Clause 10 would be deleted on the basis that it is no longer required.	Modernisation.
10.1 Fair and reasonable	The commission proposes to delete this definition.  In the revised Code, the term would be 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.	Modernisation
10.2 Non-discriminatory	The commission proposes to delete this definition.  In the current Code, the term is used in relation to offers to provide goods or services on comparable terms (clause 3.4(b)). These provisions will be deleted.	Modernisation
10.3 Arm's length	This term is no longer used and the definition would be deleted.	Modernisation
10.4 Effect of disclosure of information	This provision would be deleted. The commission considers it will have adequate oversight through the new Information Procedures.	Modernisation Recommendation 3

Clause	Summary of proposed amendment	Reference
10.5 Determination of goods or services as contestable or non- contestable	This provision would be 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 would be 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 will be moved to clause 13.2(b) and dealt with as a matter of Code interpretation. The balance of the clause would be deleted.	Modernisation and to reflect changes in the industry
10.8 Commission to determine matters arising under this clause	This clause would be deleted and replaced with the power to issue non-binding guidelines under clause 1.6.	Modernisation
11.1 No derogation from other obligations	Propose amending 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 would be deleted as it is not necessary.	Modernisation
12 Decision Making, Public Consultation and Disclosure of Information by the Commission	This clause would be 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 proposes to amend the clause title to read 'Definitions and interpretation'.	Modernisation
13.1 Italicised terms	No amendments proposed.	No changes

Clause	Summary of proposed amendment	Reference
13.2 Defined terms	The commission proposes making 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. It is proposed the same method would be used for cost allocation for the Prescribed Businesses, subject to any necessary changes to allow for it to be applied to the other businesses of PWC.	Recommendation 1
applicable laws	The definition would be restructured for clarification.	Modernisation
arm's length	The definition is no longer used and would be deleted.	Modernisation
Associate	A new paragraph (b) would be added to the definition so as to be clear that Indigenous Remote Services Pty Ltd, Jacana, T-Gen and PWC are Associates.	Modernisation and to reflect changes in the industry
Commencement Date	The commencement date for version 4 of the Code is to be completed when known. It must be at least 30 days after gazettal.	Modernisation
comparable terms	The definition is no longer used and would be deleted.	Modernisation
competition	The commission considers it is no longer necessary to define this term given change in the industry structure. The definition would be removed. Where the term is currently in bold italics in the Code, it would be replaced with the term in plain text.	Modernisation and to reflect changes in the industry
Competitor	The definition would be amended to be consistent with the way the term is used in the Code.	Modernisation
Confidential Information	The reference to 'Associate' would be 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 proposed amendment	Reference
Customer	The definition would be 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. 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 would be 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 would be 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 proposed new clause 3.3(b), which requires PWC not to discriminate in the conduct of the System Controller Business and in proposed 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 would be 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 proposed amendment	Reference
NEL (NT)	This new definition would be 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 would be 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 would be deleted.	Modernisation
non-contestable	The term is no longer used and would be deleted.	Modernisation and to reflect changes in the industry
non-discriminatory	The term is no longer used and would be deleted.	Modernisation
Power Networks Business	This new definition would be used to describe the power networks business of PWC regulated by the AER under the NEL (NT) and the NER (NT), currently known as Power Services.	Modernisation and to reflect changes in the industry
Prescribed Business	The definition would be amended so that the Code will apply in relation to: <ul style="list-style-type: none"> <li>the System Controller business of PWC and</li> <li>any other business carried on by PWC in the electricity sector, excluding the Power Networks Business.</li> </ul>	Modernisation and to reflect changes in the industry Recommendations 2 & 3
Related Contestable Business	The changes would exclude: <ul style="list-style-type: none"> <li>the System Controller Business and</li> <li>the Power Networks Business, so long as it is subject to the NER (NT) ring-fencing rules.</li> </ul>	Modernisation and to reflect changes in the industry

Clause	Summary of proposed amendment	Reference
related party goods and services	The term is no longer used and would be deleted.	Modernisation
related party terms	The term is no longer used and would be deleted.	Modernisation
relevant material	The term is no longer used and would be 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).	Modernisation
System Controller Business	This new definition recognises PWC's role as system controller.	Modernisation
13.2(b) Carrying on of a business	The principle in this clause is currently covered in clause 10 and would be moved here.	Modernisation
13.3 Other interpretation principles	As this Code is made under the UC Act, and to be consistent with the Electricity Retail Supply Code, the commission proposes to apply the <i>Interpretation Act 1978</i> .  The other provisions align with the approach in the Electricity Retail Supply Code, with amendments as this Code has Schedules but no Annexures.	Modernisation
13.4 Making of an instrument or decision	Propose amending the word 'repeal' to revoke'.	Modernisation
Schedule 1, clause 1: Accounting Principles	References to 'the Electricity Business as a whole' would be 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
Schedule 1, clause 2: Cost Allocation Principles	Clause 2.1 would be amended to reflect the requirement that these must be the same as the AER-Approved Cost Allocation Method.  The other principles will be 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.	Recommendation 1

Clause	Summary of proposed amendment	Reference
Schedule 1, clause 3: Information Principles	<p>Proposed amendments would:</p> <ul style="list-style-type: none"> <li>require the Information Principles to set out permitted disclosure, such as disclosure with consent or where required by law and</li> <li>better align the principles with proposed clause 3.</li> </ul>	Modernisation
Schedule 1, clause 4: Scope of Principles	Minor correction to wording.	Modernisation
Schedule 2: Transitional provisions	New transitional provisions would allow for the continued application of the Accounting Procedures, Cost Allocation Procedures and Information Procedures and would 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 would no longer be required.	Modernisation
Schedule 3: Nominated goods and services	The schedule is no longer needed and would be deleted.	Modernisation