

# Electricity Licences Review 2015

Discussion Paper

February 2015

**Economic Regulation Authority**

WESTERN AUSTRALIA

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## Executive Summary

The *Electricity Industry Act 2004* (**Electricity Act**) governs the operation of the electricity licensing regime in Western Australia and defines the functions and powers of the Economic Regulation Authority (**Authority**) with regard to administering licences, and monitoring and enforcing licence compliance.<sup>1</sup>

The Authority periodically reviews its licences to ensure that it maintains a best practice licensing regime. The Authority previously conducted reviews of electricity licences in 2005 and 2010. The current licence templates have remained stable, with few modifications since they were introduced. Licensees have rarely needed to apply for amendments to the generic licence templates. Based on the Authority's experience administering the electricity licensing regime, and feedback received from licensees, it appears that in general the current framework operates effectively.

In 2007, the Authority released its Best Practice Licensing Guidelines<sup>2</sup>, which state that:

“to minimise compliance costs, a licensor should ensure its processes incorporate simple and targeted language, are consistent with other laws and integrated across jurisdictions, are flexible and are formulated with input from interested parties.”

Given the last review occurred in 2010 and the Authority's commitment to good practice licensing, this review is timely.

The scope of the Electricity Licences Review 2015 (**Review**) is to examine:

- the format of all electricity licence templates;
- the terms and conditions applicable to all electricity generation, transmission, distribution, retail and integrated regional licence templates;
- whether current deviations from the template licences should continue to exist; and
- whether further deviations from the template licences should be created, and, if so, in what circumstances.

The Review does not include examination of:

- electricity legislation, including subsidiary legislation;
- the Authority's *Code of Conduct for the Supply of Electricity to Small Use Customers* (**Code of Conduct**)<sup>3</sup>;
- the Authority's processes and procedures that are contained in its “Regulatory Guidelines<sup>4</sup>” documents;

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<sup>1</sup> The Authority is also responsible for licensing the gas industry (under the *Energy Coordination Act 1994*) and the water industry (under the *Water Services Act 2012*).

<sup>2</sup> [http://www.erawa.com.au/cproot/4902/2/Best\\_Practice\\_Utility\\_Licensing\\_Jan\\_2007.pdf](http://www.erawa.com.au/cproot/4902/2/Best_Practice_Utility_Licensing_Jan_2007.pdf)

<sup>3</sup> The Code of Conduct is administered by the Authority and regulates the conduct of retailers, distributors and electricity marketing agents who supply electricity to residential and small business customers (customers who consume not more than 160 MWh of electricity per annum). It has its own review process.

<sup>4</sup> <http://www.erawa.com.au/electricity/electricity-licensing/regulatory-guidelines>

- licence amendment proposals that are specific to a single licensee; or
- licence exemptions.

The objectives of the Review are to:

- ensure electricity licences reflect the current regulatory environment;
- improve consistency across the electricity licence categories and between electricity, gas and water licences;
- reduce the regulatory burden on business, particularly by removing spent, redundant or inappropriate licence conditions to reduce compliance costs; and
- utilise best practice principles of utility licensing.

As a part of the review process, the Authority has issued this Discussion Paper and is seeking public submissions on issues within the scope of the Review. Submissions should provide clear and well-substantiated proposals.

## Invitation to make submissions

Interested parties are invited to make submissions by **4:00 pm (WST) on Tuesday 17 March 2015**. Submissions should be marked to the attention of Alex Kroon, A/Assistant Director Licensing.

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### CONFIDENTIALITY

All submissions will be treated as being in the public domain and placed on Authority's website, unless an interested party clearly indicates the parts of the submission for which confidentiality is claimed, and specifies in reasonable detail the basis for the claim. Any claim of confidentiality will be considered in accordance with the *Economic Regulation Authority Act 2003*.

The publication of a submission on the Authority's website shall not be taken as indicating that the Authority has knowledge either actual or constructive of the contents of a particular submission and, in particular, whether the submission in whole or part contains information of a confidential nature and no duty of confidence will arise for the Authority.

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# 1 Background

## 1.1 Western Australian Electricity Licensing Regime

### 1.1.1 Legislation

Commencing 1 January 2005, the Authority was given the role of licensing Western Australian electricity supply services in accordance with the Electricity Act.

Section 7 of the Electricity Act requires that:

- (1) A person must not construct or operate generating works except under the authority of a generation licence or an integrated regional licence.
- (2) A person must not construct or operate a transmission system except under the authority of a transmission licence or an integrated regional licence.
- (3) A person must not construct or operate a distribution system except under the authority of a distribution licence or an integrated regional licence.
- (4) A person must not sell electricity to customers except under the authority of a retail licence or an integrated regional licence.

With the exception of the Code of Conduct (which is administered by the Authority), the legislation referred to in this Discussion Paper is administered by the Government of Western Australia. If stakeholders wish to seek legislative changes, or apply for a licence exemption, they should contact the Department of Finance's Public Utilities Office.

### 1.1.2 Licences

The Authority currently administers 101 licences across the utilities industry (covering electricity, gas and water), with electricity licences making up 60 of the licences. Consistent with section 4 of the Electricity Act, there are five categories of electricity licences:

- Generation licences (**EGL**), which authorise the construction and operation of generating works. Generating works under 30MW are exempt (see *Electricity Industry Exemption Order 2005*).
- Transmission licences (**ETL**), which authorise the construction and operation of transmission systems to transport electricity at nominal voltages of 66kV or higher.
- Distribution licences (**EDL**), which authorise the construction and operation of distribution systems to transport electricity at nominal voltages of less than 66kV.
- Retail licences (**ERL**), which authorise the sale of electricity to customers.
- Integrated regional licences (**EIRL**), which authorise the construction and operation of any combination of generation, transmission, distribution and retail activities otherwise than through the South West Interconnected System (**SWIS**).

Table 1 provides an overview of the current number of licensees and licenced services in the electricity industry.

**Table 1 – Electricity Licences**

Classification	Number of licences	Share (%)	Number of licensed services*	Share (%)
Generation	25	42%	32	44%
Transmission	3	5%	7	8%
Distribution	4	7%	7	11%
Retail	20	33%	27	37%
Integrated Regional <sup>5</sup>	8	13%	N/A	N/A
<b>Total</b>	<b>60</b>	<b>100%</b>	<b>73</b>	<b>100%</b>

A list of current licensees can be found on the Authority's website, along with the electricity licences themselves.<sup>6</sup>

Section 11(3) of the Electricity Act requires that the terms and conditions of licences of the same class and same licence area must be substantially similar, except to the extent that the Authority considers appropriate. Accordingly, the majority of licences are identical to the relevant licence template although the specific circumstances of a small number of licensees have required a deviation from the template. For example, Western Power's distribution licence contains a clause specific to its licence that requires it to maintain and operate a 'trouble call fault management system'.

Section 11 of the Electricity Act provides the Authority with the power to determine terms and conditions of the licence. Without limiting that power, Schedule 1 of the Electricity Act specifies that a licence can include conditions relating to a range of matters, including the provision of information to the Authority and customers, electricity supply standards and compliance with specified codes (a complete list of the provisions in Schedule 1 of the Electricity Act is in Appendix 2).

In previous licence reviews across electricity, gas and water, the Authority has found merit in having licence templates that contain:

- identical licence obligations across licences within a utility sector;
- identical licence obligations across licence categories; and
- scope for imposing individually tailored licence conditions where suitable.

Appendix 3 lists all licence clauses across the five different electricity licence categories.

<sup>5</sup> EIRLs authorise any combination of generation, transmission, distribution or retail services otherwise than through the SWIS. The eight EIRLs authorise 21 electricity services that make up the total difference between the number of licences other than EIRLs (52) and the licensed services (73).

<sup>6</sup> <http://www.erawa.com.au/electricity/electricity-licensing/licence-holders>

### 1.1.3 Licence Exemptions

Under section 8 of the Electricity Act, the Governor may exempt any person or class of persons from requiring a licence. Licence exemptions are published in the Government Gazette.

A licence exemption may contain conditions. For example, a condition of the caravan park licence exemptions is that a caravan park operator may not charge more than the regulated residential tariff charged by Synergy and Horizon Power.

The Department of Finance's Public Utilities Office administers licence exemptions.

Current licence exemptions include:

- residential and commercial on-selling;
- caravan parks;
- generation works with a capacity under 30MW;
- most Aboriginal communities; and
- supply to commercial customers where the generating works is located on the same premises as the customer that consumes the electricity (for example, mine sites).

Current licence exemptions can be found in:

- section 7(5) of the Electricity Act;
- *Electricity Industry Exemption Order 2005*; and
- *Electricity Industry (Caravan Park Operators) Exemption Order 2005*.



## 2 Electricity Licences Review

Whilst there is no specific statutory requirement for the Authority to review its licences, the Authority aims to review its licence templates regularly to ensure that the Authority maintains a best practice licensing regime.

### 2.1 Scope

The scope of the Review is to examine:

- the format of all electricity licence templates;
- the terms and conditions applicable to all electricity generation, transmission, distribution, retail and integrated regional licence templates;
- whether current deviations from the template licences should continue to exist; and
- whether further deviations from the template licences should be created, and, if so, in what circumstances.

The Review does not include examination of:

- electricity legislation, including subsidiary legislation;
- the Authority's Code of Conduct, which has its own statutory biennial review process that includes extensive consultation with licensees and stakeholders;
- the Authority's processes and procedures that are contained in its "Regulatory Guidelines"<sup>7</sup> documents; for example, the Licence Application Guidelines, Financial Hardship Policy Guidelines, Audit Guidelines and Electricity Compliance Reporting Manual (these documents are reviewed separately by the Authority);
- licence amendment proposals that are specific to a single licensee (an application for an individual licence amendment should be lodged with the Authority, to be considered separately to this review); or
- licence exemptions, which are administered by the Department of Finance's Public Utilities Office.

### 2.2 Objectives

The objectives of the Review are to:

- reflect the current regulatory environment;
- improve consistency across the electricity licence categories and between electricity, gas and water licences;
- reduce the regulatory burden on business, particularly by removing spent, redundant or inappropriate licence conditions to reduce compliance costs; and

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<sup>7</sup> <http://www.erawa.com.au/electricity/electricity-licensing/regulatory-guidelines>

- utilise best practice principles of utility licensing.

## 2.3 Electricity Licences Review Process

The Authority requested and received from licensees, potential issues for inclusion in this Discussion Paper. Relevant issues that fall within the Review's scope have been included in this Discussion Paper. Issues identified by the Authority as relevant to this Review have also been included in this Discussion Paper.

The Authority has published this Discussion Paper to seek public comment on potential amendments to each of the licence templates and licences granted to existing licensees.

Depending upon the nature and complexity of the issues raised during the public consultation period, the Authority may decide to form a reference group to provide further advice regarding the matters raised.

The Authority may decide to undertake a second round of public consultation on one or more issues raised during the initial public consultation period.

If the issues raised during the initial public consultation do not warrant the establishment of a reference group and / or a second round of public consultation, the Authority will publish its final decision and amend its electricity licences in accordance with that decision.

**Table 2 – Timetable**

Activity	Time frame
Publish Discussion Paper	February 2015
Public Submissions	March 2015
Decision	May 2015
Licensees provided with 15 business days to make submissions on amended licences	May 2015
New licences issued	June 2015

## 3 Proposals

This section lists the licence template amendments proposed by the Authority. Some of the amendments proposed apply to one licence type only, while others apply to two or more licence types. Each proposal clearly specifies the licence type(s) to which it applies. In addition, some of the Discussion Paper's proposal apply to specific licences within a licence type (for example, Proposal 10).

Marked-up versions of the proposed new licence templates are attached (Appendices 4, 5, 6, 7 and 8). The marked-up versions also include minor changes that do not warrant specific attention in this Discussion Paper.

The Authority welcomes stakeholder feedback on the proposals and the licence templates amendments.

### 3.1 Licence cover page EGL, ETL, EDL, ERL and EIRL

The cover page (page 2) of the licence templates includes the licensee's address/contact information and a description of the licensee's assets (generation, transmission and distribution). It is recommended that this information is removed from the licence templates. It is also noted that page 2 does not form part of the licence conditions that a licensee must comply with (it is for information only).

The licensee's ABN or ACN identify the licensee in the licence. The licensee's contact information can be found elsewhere (including the Authority's and the licensee's website). The proposed amendment is consistent with the Authority's decision in the most recent gas and water licence reviews.

This will simplify licences and keep the Authority's administrative costs to a minimum (for example, the Authority currently has to amend a licence each time the licensee's address/contact information changes).

The Authority will consider publishing details of every licensee's assets on its website on an annual basis, separate to the licence templates. This information will be consistent with the information required under the new licensing funding model in the *Economic Regulation Authority (Licensing Funding) Regulations 2014 (Licensing Funding Regulations 2014)*. It will also be administratively more efficient to amend this information if it is available in a format on the website separate to licences.

#### Proposal 1

The Authority proposes removing the licensee's address/contact information and a description of the licensee's assets (where applicable) from page 2 of licences.

## 3.2 Number formatting of licences

### EGL, ETL, EDL, ERL and EIRL

The main licence document<sup>8</sup> is numbered consistently across each licence type:

- All electricity licence templates include the same standard clauses (licence clauses 1 to 19). These licence clauses are relevant to all licences.
- All licence categories include the same standard clauses tailored to that licence category. For example, EDLs contain the same licence clauses from number 1 to 29. If a licence clause is not relevant to the licence it is labelled “Not Used”.

The Authority proposes retaining the consistent number formatting approach set out above.

A licensee has questioned the relevance of using “Not Used” clauses, as it believes all clauses should reflect an actual obligation. However, the approach of using “Not Used” where a licence clause is not relevant is important where clauses overlap licence categories<sup>9</sup>, or a licence contains a number of licence categories, such as the EIRLs. It also ensures that new licence clauses that affect some, but not all licence templates, can be inserted to maintain identical numbering. It is also noted that “Not Used” is commonly used when removing provisions from legislation to ensure consistent numbering throughout the instrument and minimise changes to the numbering.

Consistent numbering has a number of benefits, including:

- facilitating similar licence conditions across similar licence classifications (consistent with section 11 of the Electricity Act);
- reducing the cost of administering licences, which reduces the Authority’s costs (that are recovered from licensees under the Licensing Funding Regulations 2014);
- reducing the regulatory burden on licensees, particularly for licensees with multiple licences who have to maintain licence compliance procedures and processes;
- making licences clear and easy to navigate; and
- reducing the risk of errors and inconsistencies.

### Proposal 2

The Authority proposes retaining the current approach to number formatting in licences.

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<sup>8</sup> The numbering of Schedule 2 will differ due to licence clauses varying across individual licences.

<sup>9</sup> Generic licence clauses 1 to 19.

### 3.3 Licence operating area maps

#### EGL, ETL, EDL, ERL and EIRL

The Authority proposes including licence operating area map(s) in a new schedule to the licence. This will clarify that the licence area maps set out in Schedule 1, clause 1 form part of the licence. This is consistent with gas licences.

The maps will not be included in the electronic licence document due to practical issues associated with the large number of maps in some licences; for example, Synergy's EGL7 and Horizon Power's EIRL2, which contain multiple maps due to the licensee operating in different areas. The Authority will continue its current practice of making licence and maps available separately on its website.

#### Proposal 3

The Authority proposes including a licence's operating area map(s) in a schedule to the licence.

### 3.4 Definitions in individual clauses

#### EIRL

A number of definitions used in EIRLs are included in the clause itself, rather than in clause 1 with other definitions, where the definition is used only once in the licence. For example, the definition of "approved scheme" is in clause 21 of EIRLs. This has the advantage that a licence clause can be deleted without having to delete the definition as well. However, this approach is inconsistent with other licence types and not having all the licence's definitions in the definition section may cause confusion.

If the sole clause it is used in is being removed, it is not considered administratively onerous to also remove the definition. In the interests of clarity and consistency, it is proposed that EIRLs are amended to include all definitions in clause 1 ("Definitions and Interpretation").

#### Proposal 4

The Authority proposes including all definitions in clause 1 of EIRLs.

### 3.5 "Code" and "Regulations"

#### EGL, ETL, EDL, ERL and EIRL

The definition of "Code" in licences lists all the codes made under the Electricity Act and includes a final clause that says: "(f) a code prepared by the *Authority* or the Minister pursuant to section 39 of the *Act*."

The definition of "Regulations" in licences lists all the regulations made under the Electricity Act and includes a final clause that says: "(l) any regulations in force from time to time made pursuant to the *Act*."

This has the effect that any new code or regulations made under the Electricity Act will automatically apply as a licence condition. This is potentially inconsistent with section 130(3) of the Electricity Act, which entitles a person adversely affected by a decision of the Authority to amend a licence to apply to the Electricity Review Board for a review of that decision.

It is also arguable whether the intent of licence clause 11.2 (which requires the Authority to provide licensees with 15 business days to make submissions on proposed licence amendments) is being met if the licence automatically allows new codes and regulations to become licence conditions without licensees being given the opportunity to comment on the licence amendment before it is implemented.

Before deciding whether they should become a licence condition, the Authority needs time to consider whether any new code or regulations apply to licensees. Some existing codes and regulations made under the Electricity Act do not apply to licensees<sup>10</sup>. For example, the *Electricity Industry (Independent Market Operator) Regulations 2004 (IMO Regulations)* establish the role and functions of the Independent Market Operator. The Authority does not monitor and enforce compliance with the IMO Regulations, as they are independent of the licensing regime and do not impose obligations on licensees. Therefore, it cannot be taken as certain that any new code or regulations will automatically apply to licensees.

It is therefore recommended that the definitions of “Code” and “Regulations” are amended to remove the requirement for new codes and regulations to be automatically applied as a condition of a licence. If a new code or regulations are made, then the Authority will use its established licence amendment process once the new code or regulations are gazetted to determine whether licences should be amended to require compliance with the new code or regulations. The Authority is also likely to receive advanced notice of any new code or regulations that are being prepared by the State Government for implementation and this will place it in a good position to consider the implications for licensees at an early stage.

### Proposal 5

The Authority proposes that the definitions of “Code” and “Regulations” be amended to remove the requirement for new codes and regulations to be automatically applied as a condition of a licence.

## 3.6 “Supply” or “sell” electricity

### ERL and EIRL

The definition of “supply” in licences is the meaning given in section 3 of the Electricity Act.

Section 3 of the Electricity Act defines “supply” as:

“**supply** means to do any one or more of the following —

- (a) generate;
- (b) transport through a transmission system;
- (c) transport through a distribution system;
- (d) sell;”

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<sup>10</sup> See ‘3.7 – Regulatory duplication’ for further information.

Clause 2.1 of licences (Schedule 1 in EIRLs) prescribes the activities that the licence grants the licensee permission to undertake. For example, a distribution licence allows the licensee to construct and operate a distribution system in accordance with the terms and conditions of the licence.

In relation to ERLs and EIRLs (that permit retail services), historically the licences have granted the licensee permission to “supply” electricity to customers. However, this may be inconsistent with section 3 of the Act, as the definition of “supply” also includes generation, transmission and distribution.

To address this inconsistency and clarify that ERLs and the retail activities under EIRLs permit a licensee to “sell” electricity to customers, it is recommended that clause 2.1 of ERLs and Schedule 1 of EIRLs are amended to replace “supply” with “sell” in relation to retail services.

Relevantly, Schedule 1 of EIRL2 (Horizon Power’s licence) allows Horizon Power to “sell” electricity in relation to its retail activities. The proposed licence amendment will ensure ERLs and EIRLs (with a retail service) adopt this approach and there is consistency across electricity licences.

### Proposal 6

The Authority proposes that clause 2.1 of ERLs and Schedule 1 of EIRLs are amended to clarify that the licence is granted to allow the licensee to “sell” electricity rather than “supply” electricity to customers.

## 3.7 Regulatory duplication EGL, ETL, EDL, ERL and EIRL

Clause 5.1 of electricity licences states:

“Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation*.”

“Applicable legislation” includes the:

- *Electricity Networks Access Code 2004 (Access Code)*;
- *Electricity Industry (Access Code Enforcement) Regulations 2005 (Access Code Enforcement Regulations)*;
- *Electricity Industry (Arbitrator and Board Funding) Regulations 2009 (Arbitrator Funding Regulations)*;
- IMO Regulations;
- *Electricity Industry (Licensing Fees) Regulations 2005 (Licensing Fees Regulations 2005)*;
- *Electricity Industry (Tariff Equalisation) Regulations 2006 (Tariff Equalisation Regulations)*; and

- *Electricity Industry (Wholesale Electricity Market) Regulations 2004 (WEM Regulations)*.

The Authority recommends that references to the legislation listed above be removed from licences.

Compliance with the Access Code is not monitored and enforced through the licensing regime. The compliance framework for the Access Code is established by the Access Code Enforcement Regulations, which are independent of the licensing regime. For example, section 11.1 of the Access Code requires a service provider (network operator) to provide reference services<sup>11</sup> at agreed service standards. If a service provider does not comply with section 11.1, the Authority can determine whether to impose civil penalties on the network operator under the Access Code Enforcement Regulations. Chapter 11 of the Access Code also gives the Authority specific compliance monitoring powers to assess a service provider's performance against its service standards.

The Arbitrator Funding Regulations are self-regulated. They give the Energy Disputes Arbitrator (**Arbitrator**) and Electricity Review Board the power to prescribe their fees and how and by whom they should be paid. The Arbitrator Funding Regulations also provide the Arbitrator with the power to recover unpaid amounts from parties to a dispute through the courts.

On 1 January 2015, the Licensing Fees Regulations 2005 were repealed and replaced by the Licensing Funding Regulations 2014. The Licensing Funding Regulations 2014 are made under the *Economic Regulation Authority Act 2003* and are self-regulating (the Authority has the power to recover unpaid licence fees through the courts). Therefore, it is not appropriate to make compliance with the Licensing Funding Regulations 2014 a condition of licences issued under the Electricity Act.

The Tariff Equalisation Regulations prescribe how the tariff equalisation contribution<sup>12</sup> must be paid by the Electricity Networks Corporation (Western Power) into the tariff equalisation fund (section 129F(1) of the Electricity Act requires Western Power to pay the tariff equalisation contribution). The Tariff Equalisation Regulations are independent of the licensing regime and self-regulating under the Electricity Act<sup>13</sup>.

The IMO Regulations establish the role and functions of the Independent Market Operator, while the purpose of the WEM Regulations is to establish the wholesale electricity market, including the Market Rules<sup>14</sup>. The Authority does not monitor and enforce compliance with these two instruments (or the Market Rules<sup>15</sup>) through the licensing regime.

Therefore, the Access Code, Arbitrator Funding Regulations, Licensing Funding Regulations 2014, IMO Regulations and WEM Regulations are:

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<sup>11</sup> Network operator reference services prescribe the approved technical and pricing conditions for using a network connection point.

<sup>12</sup> Under s.129D of the Electricity Act, the tariff equalisation contribution is the difference between the efficient costs of electricity supply outside the SWIS and the revenues available to Horizon Power from supplying electricity in these areas at regulated retail tariffs.

<sup>13</sup> Part 9A of the Electricity Act, which provides for the tariff equalisation contribution and the Tariff Equalisation Regulations, was included in the Electricity Act as an amendment in 2005. Part 9A is the responsibility of the Treasurer (rather than the Minister for Energy, who has responsibility for the majority of the Electricity Act).

<sup>14</sup> <http://www.imowa.com.au/home/electricity/rules>

<sup>15</sup> Under Part 5 of the WEM Regulations, the Independent Market Operator enforces compliance with the Market Rules.



- independent of the licensing regime;
- self-regulating; and
- do not impose specific compliance obligations on licensees that are monitored and enforced through the licensing regime.

A desire to list all the codes and regulations made under the Electricity Act in licences would appear to be the driving force behind the current approach in the licence templates. However, there is no justifiable reason to continue to include references to the Access Code, Access Code Enforcement Regulations, Arbitrator Funding Regulations, Licensing Funding Regulations 2014 (previously the Licensing Fees Regulations 2005), Tariff Equalisation Regulations, IMO Regulations and WEM Regulations in licences. The references create uncertainty and potentially increase licensees' administrative and compliance costs. Relevantly, the Authority's Electricity Compliance Reporting Manual (September 2014)<sup>16</sup>, does not require a licensee to report on compliance with these instruments.

### Proposal 7

The Authority proposes that references to the following legislation are removed from electricity licences:

- *Electricity Networks Access Code 2004;*
- *Electricity Industry (Access Code Enforcement) Regulations 2005;*
- *Electricity Industry (Arbitrator and Board Funding) Regulations 2009;*
- *Electricity Industry (Independent Market Operator) Regulations 2004;*
- *Electricity Industry (Licensing Fees) Regulations 2005;*
- *Electricity Industry (Tariff Equalisation) Regulations 2006; and*
- *Electricity Industry (Wholesale Electricity Market) Regulations 2004.*

## 3.8 Licence clauses reflecting specific legislative requirements

### EGL, ETL, EDL, ERL and EIRL

Some licence conditions are based on specific legislative requirements. This is where a licence contains a specific obligation on a licensee or type of licensee that is derived from legislation, such as the Electricity Act. For example:

- EGL, ETL, EDL, ERL and EIRL licence clause 14 (Performance Audit) adds additional context about the administration of the licence conditions imposed under section 13 of the Electricity Act.

<sup>16</sup> <http://www.era.com.au/electricity/electricity-licensing/regulatory-guidelines>

- EGL, ETL, EDL and EIRL licence clause 20 (Asset Management System), which adds additional context about the administration of the licence conditions imposed under section 14 of the Electricity Act.

This approach clarifies:

- how the particular statutory obligation is administered within the Authority's licensing regime; and
- what a particular licensee's obligations are.

Concerns have been raised that this approach may create regulatory uncertainty, particularly if an obligation in a code or regulation is changed and that obligation also appears in a licence. In this situation, a licensee may have to comply with two different standards temporarily until the licence(s) is amended to reflect the changes to the legislation.

In relation to these concerns, it is noted that clause 1.2 of licences states:

*"A reference in this licence to any applicable legislation includes, unless the context otherwise requires, any statutory modification, amendment or re-enactment of that applicable legislation."*

Clause 1.2 ensures that a licence adopts any legislative amendments at the time they are made. However, to ensure consistency between licences and relevant legislation, the Authority will endeavour to amend affected licences to adopt legislative changes as soon as practicable. In any event, clause 1.2 ensures the time it takes to amend the licences will not have a material impact on licensees.

It is also noted that the Electricity Act and its associated codes and regulations are rarely amended. For example, the *Electricity Industry (Metering) Code 2012 (Metering Code)* has been amended only once since its inception in 2005. Therefore, the opportunity for regulatory uncertainty created through legislative amendments arises infrequently.

While the Authority acknowledges licensees' concerns, it does not believe there is sufficient justification to remove licence conditions drawn directly from legislation. The current approach of including legislative obligations in licences provides for transparency, reduces the risk of licensee non-compliance and appears to have worked well up until now.

## Proposal 8

The Authority proposes that the current approach of including specific legislative obligations in licenses is retained.

## 3.9 Frequency of reporting ERL and EIRL

Licence clause 23.2 (ERL and EIRL) requires a licensee to report a breach of the Code of Conduct by an electricity marketing agent within three days of becoming aware of the breach. This is potentially inconsistent with the compliance reporting framework, which classifies the same breach within the Code of Conduct as a Type 2 breach, reportable to the Authority annually.

To resolve this inconsistency, the Authority recommends that the requirement to report Code of Conduct breaches by electricity marketing agents is removed from ERLs and EIRLs. The requirement to report breaches by electricity marketing agents will be captured within the Authority's compliance reporting framework and be reported annually (as a Type 2 breach).

### Proposal 9

The Authority proposes that clause 23.2 is removed from ERLs and EIRLs.

## 3.10 Customer Transfer Code

ETL, EDL, ERL and EIRL

Schedule 1 (new conditions to limit compliance with the Transfer Code)

The *Electricity Industry Customer Transfer Code 2004 (Transfer Code)* is established under section 39 of the Electricity Act by the Minister for Energy and applies to network operators and retailers. The Transfer Code specifies the responsibilities and obligations of network operators and retailers in processing and implementing the transfer of a contestable customer.<sup>17</sup>

The Minister for Energy is responsible for the Transfer Code and any amendments to it.

Regulation 5 of the *Electricity Industry (Licence Conditions) Regulations 2005 (Licence Conditions Regulations)* makes compliance with the Transfer Code a mandatory licence condition for a:

- transmission, distribution or integrated regional licence held by relevant Electricity Corporations (Horizon Power and Western Power); and
- retail licence and integrated regional licence that authorise the sale of electricity transported through a transmission or distribution system operated by a relevant Electricity Corporation.

Compliance with the Transfer Code is currently a licence condition for ETLs, EDLs, ERLs and EIRLs (approved for transmission, distribution or retail services).

In some instances, upon application by licensees, the Authority has clarified within the licence itself that a licensee does not have to comply with the Transfer Code, as long as there is only one retailer supplying customers on the network. For example, on application by Newmont Power Pty Ltd (**Newmont Power**), the Authority approved the inclusion of the following additional conditions in EDL4, Schedule 2:

#### 1 Compliance with the Electricity Customer Transfer Code 2004

- 1.1 Despite clause 5.1 of the licence, the licensee is not required to comply with the Electricity Industry Customer Transfer Code 2004 so long as there is only one electricity retailer supplying electricity through the distribution system covered by this licence.

<sup>17</sup> Within the SWIS, a contestable customer is a customer that consumes more than 50 MWh of electricity per annum.

- 1.2 The licensee must notify the Authority within 10 business days in the event that the number of electricity retailers supplying electricity through the distribution system exceeds one.

Small standalone networks often differ substantially from the networks operated by the Electricity Corporations. The small standalone networks typically have a small number of large commercial customers supplied by a sole retailer on the network and their relationships are typically governed by detailed power purchase agreements. In addition, the Licence Condition Regulations, as mentioned above, do not make the Transfer Code a mandatory licence condition for those entities.

The Authority recommends including Schedule 2, Clause 1 from EDL4 (Newmont Power's distribution licence) to all relevant licences where a network has only one retailer operating on it. This will ensure consistency between EDL4 (Newmont Power's licence) and other licensees with similar operations, and is a simple and clear licence amendment to administer on an ongoing basis (because the application of the licence condition is based solely on the number of customers on the network). This would affect the licences set out in Table 3.

**Table 3 – Removal of licence obligation to comply with the Transfer Code**

ETL	EDL	ERL	EIRL
ETL4 (Southern Cross Energy Partnership)	EDL2 (BHP Billiton Nickel West Pty Ltd)	ERL2 (BHB Billiton Nickel West Pty Ltd)	EIRL3 (generation, distribution and retail) (Rottnest Island Authority)
ETL6 (Karara Power Pty Ltd)	EDL3 (Southern Cross Energy Partnership)	ERL4 (Goldfields Power Pty Ltd)	EIRL4 (generation, transmission and retail) (Ord Hydro)
	EDL4 (Newmont Power Pty Ltd – this licence already has the required provision).	ERL7 (Southern Cross Energy Partnership)	
		ERL9 (Newmont Power Pty Ltd)	
		ERL16 (Pilbara Pty Ltd)	

### Proposal 10

The Authority proposes that Schedule 2, Clause 1 (exemption from compliance with the Transfer Code) from EDL4 is included in relevant transmission, distribution, retail and integrated regional licences where a network has only one retailer operating on it.

## 3.11 Metering Code

### EGL, ETL, EDL, ERL and EIRL Licence clause 1

The Metering Code is established under section 39 of the Electricity Act by the Minister for Energy and applies to generators (EGLs), network operators (ETLs and EDLs) and retailers (ERLs). The Metering Code sets out the responsibilities of Code participants associated with the measurement of electricity and the provision of metering services and energy data.

The Minister for Energy is responsible for the Metering Code and any amendments made to it.

Regulation 5A of the Licence Conditions Regulations makes compliance with the Metering Code a mandatory licence condition for a:

- transmission, distribution or integrated regional licence held by relevant Electricity Corporations (Horizon Power and Western Power);
- retail licence or integrated regional licence that authorises the sale of electricity transported through a transmission or distribution system operated by a relevant Electricity Corporation; and
- generation licence or integrated regional licence that authorises the operation of generating works connected to a transmission or distribution system operated by a relevant Electricity Corporation.

Some licensees have suggested that the Metering Code should not form part of their licence obligations. In some instances, auditors have formed the view that the Metering Code is not relevant due to the specific circumstances of the licensee; for example ETL6 (Karara Power) and EDL4 (Newmont Power). Where large customers are supplied, power purchase agreements often set out rights and obligations between network operators, retailers and customers in relation to metering.

The Authority understands licensees' concerns, but determining which licensee should comply with the Metering Code (or specific provisions of the Metering Code) through individual licence conditions represents an administratively complex approach to a matter that can be managed more efficiently through the Authority's audit processes. This approach keeps the Authority's licensing and monitoring costs, which are passed on to licensees, to a minimum.

The Authority provides guidance through the licence and compliance policy documents, including the Compliance Reporting Manual, to assist licensees identify the legislative obligations that are directly relevant to the provision of services under the different licences. Licensees also have input to the audit planning process on how an obligation may apply to its particular circumstances. For example, the requirement to comply with all, or part, of the Metering Code, may differ depending on the business relationships and the licensee's customer base.

The Authority's compliance process adopts a risk-based approach to compliance, which has regard to the likelihood, and the consequences, of a licence contravention. The consequences of a contravention are assessed in relation to the licensee's circumstances. Licensees have opportunity to provide input to the Authority and the auditor to tailor the scope of an audit to reflect the licensee's business operations.<sup>18</sup>

The Authority considers that managing compliance with the Metering Code through the audit process, rather than through licence conditions, represents the most effective way to manage this matter.

### **Proposal 11**

The Authority proposes that all licences continue to require compliance with the Metering Code, but individual licensee compliance continue to be managed through the audit process.

<sup>18</sup> The Authority's Audit Guideline sets out the process for determining audit priorities.

## 3.12 Priority restoration register

### EDL and EIRL Licence Clause 29

On 22 July 2012, the Authority moved the requirement to create and maintain a priority restoration register from the Code of Conduct to relevant licences. This change was brought into effect on 1 January 2013, when the requirement to maintain a priority restoration register was introduced as a new licence clause 29 in EDLs and EIRLs (with distribution service).

Some licensees have raised issues with this requirement in terms of:

- the relevance of a priority restoration register to licensees with only one customer; and
- the manner in which the objective of the obligation can be met. The current requirement is often interpreted as too prescriptive (a prioritised list of entities), whereas the objective of the requirement could be met with broader guidelines.

In relation to the relevance of a priority restoration register to licensees with one customer, the Authority has managed this through the compliance process, noting that the requirement is not relevant to licensees with only one customer. A similar issue exists in relation to the Transfer Code (see section 3.7), where the Authority has granted individual licensees amendments on a case by case basis (for example, EDL4 held by Newmont Power).

The Authority recommends that EDLs and EIRLs (with a distribution service) are amended to make it clear that the requirement to create and maintain a priority restoration register applies only where the distribution system supplies more than one customer (similar to Proposal 10 relating to compliance with the Transfer Code). This is a simple licence amendment that will clarify a licensee's obligations and reduce uncertainty.

In relation to how the obligation can be met (the format of the register for example), the Authority agrees that the outcome is more important than how it is achieved. Other documents could fulfil the function of a priority restoration register, including power purchase agreements, or priority restoration guidelines and procedures (a "priority restoration framework") could be put in place.

Therefore, the Authority recommends that licences should allow for alternative documents and processes to form the basis for the assessment of the licensee's compliance with the obligation to have a priority restoration register. This will provide all parties with the flexibility to determine the most suitable way to meet the obligation.

#### **Proposal 12**

- A. The Authority proposes that EDLs and EIRLs (with a distribution service) are amended to make it clear that the requirement to create and maintain a priority restoration register applies only where the distribution system supplies more than one customer.
- B. The Authority proposes that EDLs and EIRLs (with a distribution service) that require the licensee to create and maintain a priority restoration register are amended to allow for alternative documents and processes to form the basis for the assessment of the licensee's compliance with that obligation.

### 3.13 Customer classes that can be supplied

#### ERL and EIRL Schedule 2

The Electricity Act defines small use customers as those consuming not more than 160MWh of electricity per annum. This definition creates the two primary customer classes from a licensing perspective; namely small use and large use customers.

Licensees with small use customers have a number of additional regulatory requirements associated with customer protection. This includes the legislative requirement to have an approved standard form contract as a precondition for selling electricity to small use customers (section 51 of the Electricity Act).

Only seven licensees have approved standard form contracts. Currently, the ERLs and EIRLs do not explicitly state which class of customers can be supplied and stakeholders have to refer to an external document, the approved standard form contract, to determine if a licensee has been approved to supply small use customers.

To address this issue, the Authority has adopted a new approach in the most recent licences granted to sell electricity:

- When a licence is granted to sell electricity to large use customers only, Schedule 2 (Licence specific conditions) requires the licensee to seek approval for a standard form contract (for example Blair Fox's ERL17, Alinta DEWAP's EIRL7) before commencing supply to small use customers, should it decide to do so in the future.
- When the licence has been granted, and a standard form contract has been approved for the supply of small use business customers only, Schedule 2 (Licence specific conditions) requires the licensee to seek approval of an amended standard form contract should it decide to supply residential customers in the future (for example A-Star's ERL21).

The Authority recommends adopting this approach in all relevant ERLs and EIRLs (where the licensee is authorised to retail electricity) where there is a need to clarify that only large use customers can be supplied under the licence and an approved standard form contract needs to be submitted to the Authority for approval, prior to commencement of supply to small use customers.

#### Proposal 13

The Authority proposes that it be clarified in relevant ERLs and EIRLs (with a retail service) that the licensee can only supply large use customers and an approved standard form contract needs to be submitted to the Authority for approval, prior to commencement of supply to small use customers.

# Appendices



## Appendix 1 – Glossary of Terms

Title	Term
<i>Code of Conduct for the Supply of Electricity to Small-Use Customers</i>	Code of Conduct
Economic Regulation Authority	Authority
<i>Economic Regulation Authority (Licensing Funding) Regulations 2014</i>	Licensing Funding Regulations 2014
Electricity Distribution Licence	EDL
Electricity Generation Licence	EGL
<i>Electricity Industry Act 2004</i>	Electricity Act
<i>Electricity Industry (Arbitrator and Board Funding) Regulations 2009</i>	Arbitrator Funding Regulations
<i>Electricity Industry (Access Code Enforcement) Regulations 2005</i>	Access Code Enforcement Regulations
<i>Electricity Industry Customer Transfer Code 2004</i>	Transfer Code
<i>Electricity Industry (Independent Market Operator) Regulations 2004</i>	IMO Regulations
<i>Electricity Industry (Licence Conditions) Regulations 2005</i>	Licence Conditions Regulations 2005
<i>Electricity Industry (Licensing Fees) Regulations 2005</i>	Licensing Fees Regulations 2005
<i>Electricity Industry (Metering) Code 2012</i>	Metering Code
<i>Electricity Industry (Tariff Equalisation) Regulations 2006</i>	Tariff Equalisation Regulations
<i>Electricity Industry (Wholesale Electricity Market) Regulations 2004</i>	WEM Regulations
Electricity Integrated Regional Licence	EIRL
Electricity Licences Review 2015	Review
<i>Electricity Networks Access Code 2004</i>	Access Code
Electricity Retail Licence	ERL
Electricity Transmission Licence	ETL
Energy Disputes Arbitrator	Arbitrator
Newmont Power Pty Ltd	Newmont Power
South West Interconnected System	SWIS

## Appendix 2 – Schedule 1 of the Electricity Act: Licence Terms and Conditions

Without limiting that power, Schedule 1 of the Electricity Act specifies that a licence can include conditions related to:

- the preparation and implementation of strategies for the management of greenhouse gas emissions (EGL & EIRL) and publication of records regarding greenhouse gas emissions (EGL, ERL & EIRL);
- the preparation and implementation of strategies to encourage the use of renewable energy (ERL & EIRL);
- the provision of information to customers in relation to consumption, conservation and efficiency (ERL & EIRL);
- any methods or principles to be applied by the licensee in determining fees or charges payable by prescribed customers (ERL & EIRL);
- the provision of information to customers regarding the disaggregated components of a fee or charge applied by a retailer, including what components relate to generation; transmission; distribution and retail costs (ERL & EIRL);
- the extent to which the licensee's customers may be of a particular class;
- maintenance by the licensee of specific accounting records;
- preventing the licensee from engaging in particular business activities in the electricity industry in Western Australia;
- methods or standards of supply;
- compliance with specified codes;
- procedures for licence surrender;
- the provision of information by the licensee to the Authority;
- the lodgement of securities by the licensee with the Authority;
- the performance of functions by the licensee;
- the publication of performance information;
- any obligations of the licensee to public authorities and other licensees;
- regulation of the construction or operation (or both) of any generating works, transmission system or distribution system; and
- the disposal or transfer of property, rights or liabilities.

## Appendix 3 – Current Licence Clauses

	EGL	ETL	EDL	ERL	EIRL	Comment
<b>Main Licence Document</b>						
1	X	X	X	X	X	Generic
2	X	X	X	X	X	Generic
3	X	X	X	X	X	Generic
4	X	X	X	X	X	Generic
5	X	X	X	X	X	Generic
6	X	X	X	X	X	Generic
7	X	X	X	X	X	Generic
8	X	X	X	X	X	Generic
9	X	X	X	X	X	Generic
10	X	X	X	X	X	Generic
11	X	X	X	X	X	Generic
12	X	X	X	X	X	Generic
13	X	X	X	X	X	Generic
14	X	X	X	X	X	Generic
15	X	X	X	X	X	Generic but with some variation within the licence clause between the different licence categories. Section 13 of the <i>Electricity Act</i> .
16	X	X	X	X	X	Generic
17	X	X	X	X	X	Generic
18	X	X	X	X	X	Generic
19	X	X	X	X	X	Generic
20	X	X	X	Not Used	(X)	Applicable to licensees with infrastructure assets. Section 14 of the <i>Electricity Act</i> .
21	Not Used	Not Used	Not Used	X	(X)	Included in all ERLs but only applies to the supply to small use customers. Section 101 (Membership of scheme) of the <i>Electricity Act</i> .
22	Not Used	Not Used	X	Not Used	(X)	
23	Not Used	Not Used	Not Used	X	(X)	Included in all ERLs but only applies to the supply to small use customers. Customer Code
24	Not Used	Not Used	Not Used	X	(X)	Included in all ERLs but only applies to the supply to small use customers.
25	Not Used	Not Used	Not Used	X	(X)	Included in all ERLs but only applies to the supply to small use customers.
26	Not Used	Not Used	Not Used	X	(X)	Included in all ERLs but only applies to the supply to small use customers. Section 53 of the <i>Electricity Act</i> .
27	Not Used	Not Used	Not Used	X	(X)	Included in all ERLs but only applies to the supply to small use customers. Section 76 (Last resort supply) of the <i>Electricity Act</i> .
28	Not Used	Not Used	Not Used	X	(X)	Included in all ERLs but only applies to the supply to small use customers. Regulation 38 of the <i>Contract Regulations</i> .
29	Not Used	Not Used	X	Not Used	(X)	

	EGL	ETL	EDL	ERL	EIRL	Comment
<b>Schedule 1</b>						
1 Licence Area	x	x	x	x	x	Generic
2 Commencement Date	x	x	x	x	x	Generic
3 Expiry Date	x	x	x	x	x	Generic
<b>Schedule 2</b>						
Individual licence obligations	(x)	(x)	(x)	(x)	(x)	Individual. Section 65 (extension and expansion) of the Electricity Act applies to Western Power (ETL2 and EDL1), and Horizon Power (EIRL2) Regulation 3 and 8 of the Licence Condition Regulations (Renewable Source Electricity) applies to Synergy (ERL1) and Horizon Power (EIRL2).

## **Appendix 4 – Electricity Generation Licence Template**

# Appendix 5 – Electricity Transmission Licence Template

## **Appendix 6 – Electricity Distribution Licence Template**

# Appendix 7 – Electricity Retail Licence Template



## **Appendix 8 – Electricity Integrated Regional Licence Template**