

Operation of the gas licensing scheme and licensee compliance – Annual Report 2018/19

30 January 2020

Economic Regulation Authority

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Chair's foreword

The Economic Regulation Authority is Western Australia's independent economic regulator and is responsible for administering the licensing scheme governing the supply of gas to small use customers.

The ERA has a statutory obligation to report annually to the Minister for Energy on the operation of the gas licensing scheme and licensee compliance.

The ERA's assessment is that Western Australia's gas licensing scheme is, for the most part, operating effectively.

Through the preparation of this report, the ERA has identified opportunities to improve the operation of the licensing scheme. Some of these areas for improvement will provide a direct benefit to customers, while others represent good regulatory practice by removing regulatory requirements. Removing unnecessary regulation will reduce both the ERA's and licensees' costs, which in turn should reduce the costs passed through to Western Australian consumers.

The ERA recommends merging the three regulatory instruments that provide protections to electricity and gas customers into a single energy code. Customers should receive the same protections and information, regardless of whether they are receiving gas or electricity services.

A single energy code would reduce administrative inefficiencies, confusion for customers and regulatory burden for licensees. This change would require amendments to the legislation that regulates the electricity and gas licensing schemes.

The ERA also recommends changes to the *Energy Coordination Act 1994* to allow regulatory scrutiny when the ownership of a gas licensee changes. The ERA has no authority to ensure that the new owner of the licensee is able to meet the financial, technical and public interest requirements of the Act, which applicants for a new licence must meet, which creates a risk that a licence is held by an entity that does not have the requisite experience and capacity to provide the service authorised by the licence. The Act should be amended to provide that ownership of a licensee can be transferred only with the ERA's approval.

The ERA will prepare this report each year, including updates on any progress that has been made to address the areas for improvement identified in the previous year's report, as well as any new areas that the ERA has discovered through its work.

The ERA reports separately on the performance of gas retailers and distributors, which provide the reader with information about the performance of individual licensees and trends in the gas market. These reports are available on the ERA's website.



Nicola Cusworth
Chair, Economic Regulation Authority

1. Introduction

1.1 Purpose of this report

This is the first edition of a new report that the Economic Regulation Authority intends to publish once a year to report on the operation of the gas licensing scheme and provide an overview of licensee compliance during the reporting year.¹

As the independent regulator, the ERA is in a position to identify current and emerging issues with the licensing scheme and suggest improvements.

The State Government is responsible for the legislative framework that establishes the scheme. This report includes recommendations on how the Government could improve the operation of the scheme.

1.1.1 Legislative requirements

The functions of the ERA under section 11AA of the *Energy Coordination Act 1994* (Gas Act) include:

- to monitor and report to the Minister for Energy (Minister) on the operation of the licensing scheme and on compliance by licensees with their licences.
- to inform the Minister about any failure by a licensee to meet performance criteria or other requirements of its licence.²

This report forms part of the ERA's function to report to the Minister on the operation of the scheme.

The ERA requires all gas licensees to submit an annual compliance report identifying possible licence breaches that have occurred during the reporting year and publishes annual performance data collected from gas licensees.

Sections 11ZA and 11Y of the Gas Act require licensees to complete independent performance audits and asset management reviews on a periodic basis, and to supply those reports to the ERA for its consideration.³ The reports identify any non-compliances with a licence and determine if a licensee has an effective asset management system. The ERA provides the reports to the Minister.⁴

1.2 Report scope and structure

The scope of this report is set by section 11AA of the Gas Act, which requires the ERA to report to the Minister on the operation of the scheme and licensee compliance. To achieve this, the report:

¹ The reporting year is the year ending 30 June.

² The full text of section 11AA of the Gas Act is in Appendix 1.

³ The full text of sections 11ZA and 11Y of the Gas Act is in Appendix 1.

⁴ Section 11ZA of the Gas Act requires the ERA to "present to the Minister a report on each performance audit within two months after its receipt of the audit". There is not a similar obligation for review reports, but the ERA provides them to the Minister as a matter of course.

- Identifies opportunities for beneficial reform of the scheme for consideration by the Minister.
- Provides an overview of the ERA's licensing activities during the year, including reviews of codes, licences, regulatory guidelines and reporting manuals.
- Presents data on the ERA's annual costs to carry out its licensing functions, which licensees are required to pay through fees and charges.
- Provides an overview of licensee compliance during the reporting year, including performance audits and asset management system reviews.

The scope of the recommendations to improve the scheme do not include those parts of the scheme that the Minister is not responsible for, such as the *Compendium of Gas Customer Licence Obligations* (Compendium) and individual licence conditions. These are the responsibility of the ERA and dealt with in separate review processes.

1.3 Licensing scheme

The licensing scheme is established in Part 2A of the Gas Act.

The ERA is the regulator of the scheme and has many functions, including:

- Granting, amending, transferring and renewing licences for entities that distribute and retail gas to small-use customers in Western Australia.^{5 6}
- Monitoring and enforcing compliance with licences.⁷
- Monitoring and reporting on the performance of licensees through the annual collection and publication of performance data.⁸
- Arranging performance audits and asset management system reviews of individual licensees.⁹

The ERA recovers its licensing costs from licensees under the *Economic Regulation Authority (Licensing Funding) Regulations 2014*. Information about the ERA's licensing costs is in Appendix 2.

The Minister is responsible for maintaining the legislative framework for the licensing scheme, which consists of the Gas Act, regulations and codes.¹⁰ This involves making amendments to the legislative framework as and when they are required. The Minister is supported by the State Government's energy policy agency, Energy Policy WA.¹¹

⁵ A 'small use customer' is a customer who consumes less than one terajoule of gas per year. A distribution licence and a retail licence are required to supply small use customers only.

⁶ Gas Act s11S, s11VA and s11W. The full text of these sections is in Appendix 1.

⁷ Gas Act s11AA and s11ZB. The full text of these sections is in Appendix 1.

⁸ Gas Act, Schedule 1A, clause 1(h). The full text of this clause is in Appendix 1.

⁹ Gas Act s11Y and s11ZA. The full text of these sections is in Appendix 1.

¹⁰ The codes and regulations that a licensee must comply with are listed in a licence.

¹¹ Formerly the Department of Treasury's Public Utilities Office.

2. Areas for reform

This chapter identifies opportunities for beneficial reform of the gas licensing scheme that the ERA has identified from carrying out its licensing functions.

The recommended reforms are set out in order of priority according to the benefits for consumers and licensees if they are addressed.

2.1 Customer contract regulations

The *Energy Coordination (Customer Contracts) Regulations 2004* contains outdated references and duplications with other regulatory instruments, including the *Australian Gas Association Customer Service Code* and the Australian Consumer Law.

The *Energy Coordination (Customer Contracts) Regulations 2004* (Contract Regulations) contain many references to the *Australian Gas Association Customer Service Code* (AGA Code). The Australian Gas Association (AGA) ceased publishing the code in 2002 and transferred responsibility to Standards Australia, which has not released a replacement code.

The AGA Code contains provisions that the gas industry considers are no longer current or relevant to the gas market in Australia. It is not clear whether the parts of the Contract Regulations that refer to the AGA Code are enforceable.

One of the ERA's regulatory functions is to approve a standard form contract for every gas trading licensee, and this must comply with the Contract Regulations. Many references to the AGA Code in the Contract Regulations are outdated and inconsistent with other legislation. This means that licensees and the ERA spend considerable time and resources to produce a standard form contract that meets all regulatory requirements. The cost of this time and resources is ultimately borne by consumers.

References to the AGA Code should be removed from the Contract Regulations in the interests of consumers and industry.

The Contract Regulations refer to clauses in the *Gas Marketing Code of Conduct* (Marketing Code) that no longer exist in the current version of the code.¹² The Contract Regulations also overlap with the Australian Consumer Law.¹³ For example, the Contract Regulations prescribe cooling-off periods that are different from the Australian Consumer Law. These inconsistencies create an unnecessary regulatory burden for retailers.

Energy Policy WA is reviewing the Contract Regulations (and the *Electricity Industry (Customer Contracts) Regulations 2005*). In July 2017, the Department of Treasury's Public Utilities Office (now Energy Policy WA) published an issues paper on the review. This was followed by the publication of a draft recommendations report in May 2019, which proposed amendments to the Contract Regulations.¹⁴

¹² The current version of the code is the *Gas Marketing Code of Conduct 2017*.

¹³ The Australian Consumer Law is in Schedule 2 of the *Competition and Consumer Act 2010* (Cwth).

¹⁴ Department of Treasury, Public Utilities Office, 2019, *Review of Energy Customer Contract Regulations – Draft Recommendations Report*.

The purpose of the review is to provide a streamlined and consistent framework for delivering customer protections by removing outdated references to the AGA Code in the Contract Regulations and removing duplications with other instruments.¹⁵ However, this review is ongoing and the amendments to the Contract Regulations have yet to be made.

Recommendation

The *Energy Coordination (Customer Contract) Regulations 2004* should be amended to remove outdated references and duplications with other regulatory instruments, including the *Australian Gas Association Customer Service Code* and the Australian Consumer Law.

2.2 Approval of auditors

To improve the independence and transparency of audits and reviews, the ERA, and not the licensee, should engage the independent expert who conducts an audit or review.

Under sections 11Y and 11ZA of the Gas Act, all licensees must provide the ERA with a report by an independent expert (auditor) on the licensee's compliance and the effectiveness of its asset management system (if it operates infrastructure). The auditor for an audit or review is appointed by the licensee.¹⁶

In comparison, in the water licensing scheme under the *Water Services Act 2012* (Water Act), the ERA appoints the auditor and retains full control over the audit and review. The decision to give the ERA responsibility for appointing auditors was influenced by the final report of the parliamentary Standing Committee on Public Administration's inquiry into Western Power's wood pole management practices. One of the committee's recommendations was:¹⁷

Where energy utilities are required to undergo regulatory and licence-related audits, such audits should be conducted by reviewers that are selected and engaged by the ERA, at the expense of the relevant utility. In the conduct of such audits, there should be absolute clarity that the ERA is the principal for the life of the engagement. This is consistent with current practice relating to the Auditor General.

As the ERA does not appoint the auditor for gas licence audits and reviews, the ERA does not see the audit or review findings until the report is received from the licensee. There have been occasions where the initial draft report provided by the auditor to the licensee is amended before it is provided to the ERA for approval. The ERA has concerns about the lack of transparency in this process, and the potential for the licensee to influence the audit or review findings.

¹⁵ Ibid. p. 5.

¹⁶ The full text of sections 11Y and 11ZA of the Gas Act is in Appendix 1.

¹⁷ Legislative Council Standing Committee on Public Administration, 2012, *Report 14: Unassisted Failure*, p. 251.

Governments and regulators in Australia, New Zealand and the United Kingdom have raised concerns about the conduct of, and reporting on, financial audits.^{18 19 20} In Australia, there has been commentary in the Federal Parliament, discussed below, and in the media on the threats to auditor independence and the quality of audits. The main area of concern is the real and perceived conflicts of interest arising from audit firms also providing non-audit services to the entity they are auditing. Although the recent inquiries into these matters focus mostly on financial audits, the problems they have identified can also be applied to compliance audits.

On 1 August 2019, the Federal Senate referred an inquiry into the regulation of auditing in Australia to the Parliamentary Joint Committee on Corporations and Financial Services.²¹ The terms of reference for the inquiry include:

- The relationship between auditing and consulting services and potential conflicts of interests.
- Other potential conflicts of interests.
- The role and effectiveness of audit in detecting and reporting fraud and misconduct.

Submissions to the inquiry from Chartered Accountant Australia and New Zealand, the Australian Prudential Regulation Authority, the International Auditing and Assurance Standards Board, and the International Ethics Standards Board for Accountants all raised the threats to auditor independence as an item requiring further attention.

At its first public hearing on 19 November 2019, the Committee heard that EY (formerly Ernst & Young) prepared a risk management report for the National Australia Bank in 2018 and “at the behest of NAB’s leaders, toned down the language in the final version of the assessment”.²²

Based on its experience with managing the audits and reviews of water licences, the ERA considers the transparency and independence of gas licence audits and reviews would be strengthened by the ERA engaging the auditor and controlling the audit and review process, which is the case with audits and reviews of water services licences.

Recommendation

The *Energy Coordination Act 1994* should be amended so the independent expert who conducts an audit or review of a licence is engaged by the ERA, at the expense of the licensee.

¹⁸ United Kingdom, House of Commons Business, Energy and Industrial Strategy Committee, 2019, The future of audit, p. 3.

¹⁹ United Kingdom, Competition & Markets Authority, 2019, Statutory audit services market study – final summary report, pp. 3-7.

²⁰ New Zealand, Financial Markets Authority, 2019, Audit Quality Monitoring Report 2019, pp. 11-12

²¹ Parliamentary Joint Committee on Corporations and Financial Services, 2019, Regulation of auditing in Australia, Terms of Reference.

²² Edmund Tadros, 27 November 2019, ‘ASIC ‘squibbed’ on audit concerns’, *The Australian Financial Review*, p. 13.

2.3 Biennial review of the Gas Marketing Code

There are benefits in changing the current legislative requirement to conduct biennial reviews of the *Gas Marketing Code of Conduct* to a longer review period, such as five years.

The Marketing Code regulates the conduct of gas trading licensees and gas marketing agents that act on behalf of gas trading licensees to protect customers from undesirable marketing conduct and define the standards of conduct in the marketing of gas to customers.

Under section 11ZPO of the Gas Act, the ERA is required to establish a committee to advise it on matters relating to the Marketing Code.²³ The committee is known as the Gas Marketing Code Consultative Committee or GMCCC, and comprises industry, government and consumer representatives. The ERA is responsible for the GMCCC's administration. The GMCCC makes recommendations to the ERA on amendments to the Code.

Section 11ZPV of the Gas Act requires the GMCCC to review the Marketing Code every two years.²⁴ Reviews are resource intensive and take around 10 to 12 months to complete. The next review begins about 12 months after a new Customer Code comes into effect.

Since its commencement in 2004, the Marketing Code has undergone seven reviews by the GMCCC. Recent reviews of the Marketing Code have identified only a small number of relatively minor issues to address. As the Marketing Code is well established, a legislative requirement to review the Marketing code every two years is no longer needed and creates unnecessary costs for the ERA and licensees.

In comparison, the Water Act requires the ERA to undertake reviews of the customer code for water services at least once every five years.²⁵

To reduce the regulatory burden on the ERA and licensees, the ERA recommends increasing the period between reviews of the Marketing Code from two years to five years. This would align the Marketing Code with the framework for the Water Code in the Water Act. The ERA would continue to have the discretion to review the Marketing Code at any time in that five-year period, if circumstances called for an earlier review.

Recommendation

The *Energy Coordination Act 2004* should be amended to change the period between reviews of the *Gas Marketing Code of Conduct* from two to five years.

²³ The full text of section 11ZPO of the Gas Act is in Appendix 1.

²⁴ The full text of section 11ZPV of the Gas Act is in Appendix 1.

²⁵ Section 27(7) of the Water Act. The full text is in Appendix 1.

2.4 Single energy code

Currently, there are separate codes and review processes for electricity and gas customer protection legislation, which would benefit from being combined in a single energy code to remove the inefficiencies created by them being separate instruments.

Customer protections for electricity customers are specified under the *Code of Conduct of the Supply of Electricity to Small Use Customers* (Electricity Code), while the equivalent gas customer protections are in the Compendium.

The Gas Act establishes the Marketing Code and the GMCCC to review the Marketing Code, but it covers only the marketing of gas to customers.²⁶ The ERA made the Compendium to address that gap in the coverage of the Electricity Code and the Marketing Code. The Marketing Code and the Compendium together provide gas customers with the same level of protection as electricity customers receive under the Electricity Code.

The Electricity Code is reviewed by the Electricity Code Consultative Committee and administered by the ERA, while the Compendium is administered by the ERA as a schedule to gas distribution and trading licences.²⁷ Reviews of the Compendium can include the ERA holding workshops and round-table meetings of industry, government and consumer representatives. However, the Compendium does not benefit from independent review, as the Electricity Code does.

While they are operating effectively as separate instruments, merging the Electricity Code, Marketing Code and Compendium into a single energy code will remove the inefficiencies created by the ERA administering three instruments and allow for greater consistency between the electricity and gas consumer protection regimes. The creation of a single energy code will require amendments to both the Electricity Act and Gas Act.

An energy code that incorporates the Customer Code, Marketing Code and Compendium would harmonise the customer protections for electricity and gas customers, streamline the code review process and ensure that there is a broad representation of views on a review committee that would review the code. The benefits would also extend to reducing the workload of members of the committee, the ERA and licensees. An energy code would reduce the regulatory burden for those licensees that operate in both the electricity and gas retail markets, as they would only have to comply with one set of consumer protection obligations.

Recommendation

The *Code of Conduct for the Supply of Electricity to Small Use Customers*, *Gas Marketing Code of Conduct* and *Compendium of Gas Customer Licence Obligations* should be merged into a single energy code.

²⁶ Sections 11ZPM and 11ZPO of the Gas Act. The full text of the sections is in Appendix 1.

²⁷ The Compendium is Schedule 2 of gas distribution and trading licences.

2.5 Change of licensee ownership

The *Energy Coordination Act 1994* does not allow the ERA to apply the Act's technical, financial and public interest tests to the new owner of an existing licensee, as it can for applicants for a new licence.

Section 11S of the Gas Act authorises the ERA to approve the transfer of a licence from one entity to another.²⁸ Approval is subject to the ERA being satisfied that the applicant (transferee) has the necessary financial and technical resources to provide the services authorised by the licence and that granting the licence would not be contrary to the public interest.²⁹

A change in the ownership of a licensee where the licensee itself remains in operation under the same company name and ABN is not a transfer of the licence under section 11S of the Gas Act.³⁰

Because a change of ownership is not a transfer under the Gas Act, neither the existing owner nor the new owner of the licensee is required to seek the ERA's approval of the change in ownership. Consequently, the ERA cannot apply the same technical and financial capacity assessments or the Gas Act's public interest test to the new owner as it did when the licence was granted to the original owner.

In the past, there have been instances when the ERA would have applied one or more of the financial, technical and public interest tests to the new owner of a licensee if it had the authority to do so.

Not being able to apply the regulatory tests applicable to a licence transfer to a change of ownership creates a risk that a licence is held by a person that does not possess the requisite experience and capacity to provide the service authorised by the licence.

The Gas Act should be amended to provide that ownership of a licensee can be transferred only with the ERA's approval, subject to the ERA being satisfied that the new owner meets the tests in section 11S of the Gas Act.

Recommendation

The *Energy Coordination Act 1994*'s provisions on the transfer of a licence should be amended to allow the ERA to apply the Act's technical, financial and public interest tests to the new owner of an existing licensee.

²⁸ Each entity in the transfer has its own unique combination of company name and ABN

²⁹ The full text of section 11S of the Gas Act is in Appendix 1.

³⁰ A change in ownership is considered to take place when the existing owner transfers a controlling interest in the licensee to the new owner.

2.6 Right to supply under standard customer contract

The *Energy Coordination Act 1994*'s provisions on standard form contracts, and the role of standard form contracts in the customer protection framework more generally, may not be benefiting customers in the way it was intended.

Section 11WE of the Gas Act requires all licensed retailers to have an ERA-approved standard form contract.³¹ However, there is no obligation on these retailers to offer supply to customers under their standard form contract. Instead, licensees can supply customers under a non-standard form contract, which effectively serves the same purpose as the standard form contract, in that it sets out their terms and conditions of supply.

Most licensees choose to offer supply under a non-standard form contract, which brings into the question the purpose of standard form contracts.

There are protections for customers supplied under a non-standard form contract. Section 11WF(2) of the Gas Act requires a non-standard form contract to comply with the Act, which also includes the applicable provisions in the Contract Regulations. These provisions include a customer's right to a cooling-off period when entering into a contract.³² However, unlike for standard form contracts, the ERA does not have oversight of non-standard form contracts and fewer customer protections are required in non-standard form contracts compared to standard form contracts.

In the national energy market, retailers are required to provide energy services to residential and small business customers under a standard retail contract if the customer does not accept a market offer (the equivalent of a non-standard form contract).³³ However, as mentioned earlier, in Western Australia, gas customers do not have the right to the standard form contract if they do not want a non-standard form contract, because it is up to the retailer if it offers its standard form contract to the customer.

The ERA has no evidence that customers on non-standard form contracts are being disadvantaged compared to customers on standard form contracts. However, customers do not have an alternative to a non-standard form contract unless the retailer offers them its standard form contract. The administration of standard form contracts requires the ERA and retailers to expend substantial resources on contracts that are not going to be offered to customers.

To ensure customers have the safety net of the standard form contract if they do not want a non-standard form contract, it is recommended that the Gas Act is amended to require all retailers to offer their ERA-approved standard form contract to prospective customers.

Recommendation

The *Energy Coordination Act 1994* should be amended to require retailers to offer to supply gas to a customer under an ERA-approved standard form contract, if the customer does not accept a non-standard form contract.

³¹ The full text of section 11WE of the Gas Act is in Appendix 1.

³² The full text of section 11WF of the Gas Act is in Appendix 1.

³³ Section 22(1) of the National Energy Retail Law and Rule 16 of the National Energy Retail Rules (full text of both provisions is in Appendix 1).

2.7 Duration of licences

The maximum duration of gas distribution and trading licences in the *Energy Coordination Act 1994* is inconsistent with the maximum duration of electricity distribution and retail licences in the *Electricity Industry Act 2004* respectively. There does not appear to be a reason for this inconsistency.

Under section 110 of the Gas Act, the maximum duration of a gas trading licence is 10 years, while under the *Electricity Industry Act 2004*, the maximum duration of an electricity retail licence is 15 years.³⁴ For distribution licences, the maximum duration for gas is 21 years, while for electricity it is 30 years.

The ERA is not aware of any reason why the duration of electricity and gas distribution licences, or the duration of electricity retail and gas trading licences, should be different. Electricity and gas utilities fulfil a similar role in their respective markets.

Some retailers hold both an electricity retail licence and a gas trading licence. Inconsistencies between the electricity and gas licensing schemes creates regulatory burden for the ERA and licensees who participate in both markets.

There is a cost to the ERA and the licensee to process a licence renewal application. Requiring gas licensees to renew their licences more frequently than electricity licensees imposes additional costs on gas licensees and provides limited benefit to the gas market and consumers.

To address this inconsistency, it is recommended that the duration of gas distribution and trading licences is aligned with the duration of electricity distribution and retail licences respectively.

Recommendation

To be consistent with electricity distribution and retail licences, the *Energy Coordination Act 1994* should be amended to change the maximum duration of gas distribution licences from 21 to 30 years and the maximum duration of gas trading licences from 10 to 15 years.

³⁴ The full text of section 110 is in Appendix 1.

3. Licensing scheme and ERA activities

This chapter provides an overview of the objectives of the licensing scheme and the licensing activities that the ERA has carried out during the year.

3.1 Objectives

A best practice licensing scheme will have clearly identified objectives that are administered by an independent and accountable regulatory authority. The regulator will perform its functions in a manner that ensures service standards are met, regulatory risk is as low as reasonably practicable and compliance costs are minimised.

The Gas Act does not have an explicit set of objectives for the licensing scheme. While the ERA, licensees and customers would benefit from defined objectives being included in the Act, the ERA considers that to be effective the scheme will:

- Ensure defined service standards for the supply of gas services are met by licensees.
- Ensure customers are treated fairly through the application of a customer protection regime.
- Ensure that licensees maintain effective asset management systems for their assets.
- Ensure licensing is implemented only where it is the most appropriate form of intervention to address a risk of market failure, or the exercise of market power at the expense of the interests of consumers.
- Ensure the costs of licensing are kept to a minimum and do not outweigh the benefits.

In developing these objectives, the ERA has drawn on its experiences as the regulator of the gas, electricity and water licensing schemes. The ERA also takes into account the public interest matters that it is required to consider when making decisions, which are set out in sections 11K and 11H(3) of the Gas Act and section 26(1) of the *Economic Regulation Authority Act 2003*.³⁵

The regulation of third-party access to networks and the price, safety and security of supply fall outside the scope of the licensing scheme and are addressed by other legislation and regulatory frameworks.

Apart from a small number of licence non-compliances, the scheme is currently meeting these objectives. There is always room for improvement, and one of the aims of this report is to identify areas of reform, so that the scheme can better meet these objectives at the least possible cost to government, industry and consumers.

3.2 Licensing activities

3.2.1 Licensing scheme reviews

As the licensing scheme is established in the Gas Act, it is the responsibility of the State Government to conduct any legislative reviews of the scheme. The licensing scheme under which the ERA grants gas licences has not been reviewed since it came into effect in 2004.

³⁵ The full text of sections 11K and 11H(3) of the Gas Act and section 26(1) of the ERA Act is in Appendix 1.

The ERA is responsible for the licenses issued under the scheme. In accordance with good licensing practice, the ERA reviews the format and content of the licences at least every three years to ensure licences protect consumers effectively and meet current legislative requirements.³⁶ These reviews are not required by legislation; the ERA conducts the reviews to ensure its licences are operating effectively. The reviews generally involve two rounds of public consultation to give the community and industry the opportunity for input.

The ERA last reviewed its gas licences in 2014.³⁷ The next review is due in 2020/21.³⁸

The ERA recently completed its *Inquiry into reform of business licensing in Western Australia*.³⁹ As part of the inquiry, the ERA created two assessment tools designed to assist agencies to assess the operation of their licensing schemes.

The ERA has used the tools (a self-assessment tool and licensing dashboard) to assess the gas licensing scheme. These assessments are in Appendix 3.

The ERA will use the assessment tools each year to review the operation of the gas licensing scheme.

3.2.2 Licensing activities during the year

During 2018/19, the ERA completed the following major activities, as regulator of the gas licensing scheme:

- The *Audit and Review Guidelines – Electricity and Gas Licences* were reviewed, resulting in updated guidelines being published on 1 March 2019.
- The *Financial Hardship Policy Guidelines – Electricity and Gas Licences* were reviewed.⁴⁰
- The 2017/18 annual performance reports for energy distributors and energy retailers were published on 12 April 2019.⁴¹

3.2.3 Stakeholder engagement

The ERA's *Public Consultation Guidelines – Electricity, Gas & Water Licences* documents the public consultation process for its licensing activities.

The ERA also seeks public comment on other regulatory reviews, such as reviews of its licences, regulatory guidelines and codes.

When relevant, ERA holds workshops and forums for licensees on its licensing activities. For example, in November 2018 the ERA held a workshop with licensees and auditors on the review of the *Audit and Review Guidelines – Electricity and Gas Licences*.

Most of the licensing activities outlined in section 3.2.2 involved public consultation.

³⁶ The ERA may occasionally review licences more frequently, if required by amendments to codes or regulations.

³⁷ Economic Regulation Authority, 2014, *Decision on licences amended by substitution – Gas Trading and Distribution Licences*. ([online](#))

³⁸ A review of gas licences did not occur in 2017, because there were no substantive concerns with the operation of gas licences at the time.

³⁹ Economic Regulation Authority, 2019, *Inquiry into reform of business licensing in Western Australia – Final report*, p. 81.

⁴⁰ The updated guidelines were published in August 2019.

⁴¹ The reports are available on the ERA [website](#).

4. Licensee compliance

This chapter provides an overview of the compliance framework for the licensing scheme and the compliance monitoring and enforcement activities undertaken by the ERA during the reporting year.

4.1 Compliance framework

The ERA has a compliance monitoring and enforcement strategy for gas licensees, comprising:

- Periodic performance audits and asset management system reviews (see section 4.2).
- Annual compliance and performance (data) reports submitted by licensees.
- A requirement for licensees to notify the ERA when they become aware of a breach of a Type 1 licence obligation (see section 4.3).
- Compliance Enforcement Policy.
- Regulatory guidelines and compliance reporting manuals published by the ERA to assist licensees in achieving compliance.

The Gas Compliance Reporting Manual requires licensees to provide annual compliance reports to the ERA. To minimise the burden on the licensee, the report includes only non-compliances that were identified during the year. The scope of the performance audits includes reviewing the compliance reports submitted since the previous audit.

The Gas Act requires the licensee to undertake independent audits of the effectiveness of the measures it has taken to meet the performance criteria specified in the licence. The Gas Act also requires licensees to undertake independent reviews of the effectiveness of the licensee's asset management system.

The data collected in the annual compliance reports and audit reports is used to monitor and enforce compliance with licence conditions.

4.2 Performance audits and asset management reviews

The ERA has published *Audit and Review Guidelines: Electricity and Gas Licences*, which provide a comprehensive guide to the audit and review process.

The ERA uses a risk-based approach to performance audits and asset management system reviews to focus the audit or review on higher priorities, with less extensive coverage of medium and lower priorities. Auditors are required to apply the risk evaluation model described in the Audit and Review Guidelines to determine the audit and review priorities.

The Audit and Review Guidelines also require auditors to apply a common set of rating scales to rate licensees' compliance with the licence and the effectiveness of an asset management system. This enables the ERA to compare the performance of individual licensees and groups of licensees over time.

The ERA will increase the period between audits or reviews if the licensee has a strong compliance framework that is achieving a high level of compliance with the licence. Conversely, the period will be reduced (subject to the 24-month minimum in the Gas Act) if an audit or review finds serious compliance problems. This is to ensure that regulatory resources

are focussed on licensees who need to improve compliance with their licence. This is also an incentive for licensees to comply with their licence and have an effective asset management system.

If an audit identifies compliance problems, the ERA actively monitors the actions taken by the licensee to address the cause(s) and return to compliance. In some instances, the compliance issues may be so serious that the ERA will take enforcement action against a licensee using the powers available in the Gas Act.

In 2018/19, two audits and two reviews of gas licences were conducted:

- one licensee had its audit and review periods left unchanged.
- one licensee had its review period left unchanged and its audit period increased following an improvement in performance.

There were no trends or systemic issues identified in the audits and reviews that caused the ERA concern or required intervention. However, the ERA regularly receives incorrect licence performance data from licensees, which is either identified by the ERA through its validation processes, or by the licensees themselves.⁴² To improve the accuracy of data collected from licensees as part of the ERA's annual performance reporting framework, the ERA intends to make performance data collection a special focus of upcoming performance audits of the electricity and gas retailers that provide data.

The upcoming audits of retailers that supply small use customers will include a focus on the effectiveness of the processes and systems that retailers have in place to assist customers experiencing payment difficulties and financial hardship. This will examine the retailer's processes for determining if a customer is experiencing payment difficulties or financial hardship and determining whether customers were offered the assistance they were entitled to.

4.3 Type 1 licence breaches

Licence obligations are classified as Type 1 if a breach of the obligation would cause major disruption to a customer.

A licensee must notify the ERA immediately when it becomes aware of a breach of a Type 1 licence obligation.

In 2018/19, the ERA was notified of three Type 1 licence contraventions by ATCO Gas Australia Pty Ltd. ATCO disconnected three residential customers outside of the prescribed timeframes in the Compendium (two customers were disconnected on the day before a public holiday for failure to pay a bill, and one customer was disconnected after 3pm on a Tuesday for failure to pay a bill).^{43 44}

In response to the notifications, the ERA required ATCO to implement stronger controls to prevent disconnections being performed outside of the permitted timeframes.

⁴² Only licensees that supply small use customers are required to provide performance data to the ERA.

⁴³ Economic Regulation Authority, 19 July 2018, Notice (ATCO Gas Australia Pty Ltd – Type 1 licence contravention). ([online](#)) [accessed 20 December 2019].

⁴⁴ Economic Regulation Authority, 25 September 2018, Notice (ATCO Gas Australia Pty Ltd – Type 1 licence contravention). ([online](#)) [accessed 20 December 2019].

Appendix 1 - Legislative provisions referenced in report

Economic Regulation Authority Act 2003

Section 26 Authority to have regard to certain matters

- (1) In performing its functions, other than the functions described in section 25(c) and (d), the Authority must have regard to —
- (a) the need to promote regulatory outcomes that are in the public interest;
 - (b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
 - (c) the need to encourage investment in relevant markets;
 - (d) the legitimate business interests of investors and service providers in relevant markets;
 - (e) the need to promote competitive and fair market conduct;
 - (f) the need to prevent abuse of monopoly or market power;
 - (g) the need to promote transparent decision-making processes that involve public consultation.

Energy Coordination Act 1994

Section 11AA Functions of Authority

The functions of the Authority under this Part are —

- (a) to administer the licensing scheme provided for in this Part;
- (b) to monitor and report to the Minister on the operation of that licensing scheme and on compliance by licensees with their licences;
- (c) to inform the Minister about any failure by a licensee to meet performance criteria or other requirements of its licence; and
- (d) the other functions conferred on the Authority by this Part.

Section 11H(3) Power to exempt

The Governor, in determining whether the making of the order would not be contrary to the public interest, may take into account one or more of the following matters —

- (a) environmental considerations;
- (b) social welfare and equity considerations, including community service obligations;
- (c) economic and regional development, including employment and investment growth;
- (d) the interests of gas customers generally or of a class of gas customers;
- (e) the interests of any licensee, or applicant for a licence, in respect of the supply area or part of a supply area to which the order, if made, would apply;
- (f) the importance of competition in gas industry markets;

- (fa) the policy objectives of government in relation to the supply of gas;
- (g) any other matter that he or she considers relevant.

Section 11K Authority to consider public interest

- (1) The Authority must not exercise a power conferred by this Division unless the Authority is satisfied that it would not be contrary to the public interest to do so.
- (2) The Authority, in determining whether the exercise of the power would not be contrary to the public interest, may take into account one or more of the matters referred to in section 11H(3).

Section 11O Duration of licence

A licence may be granted or renewed for such period as the Authority thinks fit, but the period cannot exceed —

- (a) in the case of a distribution licence, 21 years from the date of its grant or renewal; or
- (b) in the case of a trading licence, 10 years from the date of its grant or renewal.

Section 11S Decisions as to grant, renewal or transfer

- (1) Subject to section 11K, the Authority must grant, renew or approve the transfer of a licence if the Authority is satisfied that the applicant —
 - (a) has, and is likely to retain; or
 - (b) will acquire within a reasonable time after the grant, renewal or transfer, and is then likely to retain,
 the financial and technical resources to undertake the activities authorised, or to be authorised, by the licence.
- (2) The Authority must take all reasonable steps to make a decision in respect of an application for —
 - (a) the grant or renewal of a licence; or
 - (b) approval to transfer a licence,
 within 90 days after the application is made.
- (3) The duties imposed on the Authority by subsections (1) and (2) apply only if —
 - (a) an application has been made in accordance with section 11L, 11P or 11R, as the case may be;
 - (b) section 11WE or 11ZQG does not prohibit the grant or renewal of the licence or the approval of the transfer; and
 - (c) where a requirement has been made under section 11L(3), 11P(2) or 11R(4), the relevant information has been provided to the Authority.

Section 11VA Amendment of licence on application of licensee

- (1) A licensee may apply to the Authority at any time for amendment of the licence.
- (2) An application —
 - (a) is to be made in a form approved by the Authority; and
 - (b) is to be accompanied by the prescribed application fee.

- (3) The applicant must also provide such other information as the Authority may require for the proper consideration of the application.
- (4) The Authority may grant the application if —
 - (a) it has been made in accordance with subsection (2); and
 - (b) where a requirement has been made under subsection (3), the relevant information has been provided to the Authority.
- (5) Regulations made under section 26 may require the Authority, before it makes a decision on an application under this section, to undertake public consultation in accordance with the procedure specified in the regulations.

Section 11W Amendment of licence

- (1) The Authority may, on its own initiative, determine that a licence is to be amended.
- (2) A licence must specify the procedure to be followed in making such a determination, including the manner in which an amendment is to be notified to the licensee, and the determination may only be made in accordance with that procedure.
- (3) An amendment cannot take effect until it is notified to the licensee under the procedure referred to in subsection (2).
- (4) If a licence is amended under this section the Authority must ensure that notice is published in the *Gazette* indicating the nature of the amendment and the place where a copy of the licence may be inspected under section 11U.
- (5) This section applies to the substitution of a new licence for an existing licence in the same way as it applies to the amendment of a licence.

Section 11WE Licence application not to be granted unless standard form contract approved

Despite section 11S, the Authority is not to grant or renew, or approve a transfer of, a trading licence unless —

- (a) the applicant or the proposed transferee has submitted a draft form of contract as required by section 11WD; and
- (b) the Authority has approved the standard form contract under which the applicant or proposed transferee will supply gas to customers pursuant to the licence.

Section 11 WF Approval of standard form contract

- (1) Subject to subsection (2), the Authority may at its discretion approve or refuse to approve a standard form contract submitted under section 11WD.
- (2) The Authority is not to give an approval if it considers that the standard form contract —
 - (a) will not meet the requirements of the regulations in respect of such contracts; or
 - (b) will be inconsistent with —
 - (i) this Act or any other written law; or
 - (ii) any term, condition or provision of the licence concerned.

Section 11Y Asset management system

- (1) It is a condition of every distribution licence that the licensee is to —
 - (a) provide for an asset management system in respect of the licensee's assets;
 - (b) notify details of the system and any substantial changes to it to the Authority; and
 - (c) not less than once in every period of 24 months (or such longer period as the Authority allows) calculated from the grant of the licence, provide the Authority with a report by an independent expert acceptable to the Authority as to the effectiveness of the system.
- (2) An asset management system is to set out the measures to be taken by the licensee for the proper maintenance of assets used in the supply of gas and in the operation and maintenance of, and, where relevant, the construction or alteration of, the distribution system.

Section 11ZA Performance audit

- (1) It is a condition of every licence that the licensee is to, not less than once in every period of 24 months (or such longer period as the Authority allows) calculated from the grant of the licence, provide the Authority with a performance audit conducted by an independent expert acceptable to the Authority.
- (2) A performance audit is an audit of the effectiveness of measures taken by the licensee to meet —
 - (a) the standards referred to in section 11Z; and
 - (b) performance criteria specified in the licence.
- (3) The Authority is to present to the Minister a report on each performance audit within 2 months after its receipt of the audit.

Section 11ZB Failure to comply with licence

- (1) If, in the opinion of the Authority, a licensee contravenes a licence, the Authority may cause a notice to be served on the licensee requiring the licensee to rectify the contravention within a specified period.
- (2) If, in the opinion of the Authority, a licensee fails to comply with a notice under subsection (1), the Authority may, subject to section 11ZC, do one or more of the following —
 - (a) serve a letter of reprimand on the licensee;
 - (b) order the licensee to pay a monetary penalty fixed by the Authority but not exceeding \$100 000;
 - (c) cause the contravention to be rectified to the satisfaction of the Authority.
- (3) Persons authorised by the Authority may enter any premises and do all things that are necessary for the purposes of subsection (2)(c).
- (4) The Authority may recover —
 - (a) a penalty imposed under subsection (2)(b); or
 - (b) the costs and expenses of any action taken under subsection (2)(c),
 in a court of competent jurisdiction as a debt due by the licensee to the Crown.

Section 11ZPM Code of Conduct

- (1) The Authority may, in consultation with the committee, approve a code of conduct under this section.
- (2) The code of conduct is to regulate and control the conduct of —
 - (a) the holders of trading licences; and
 - (b) gas marketing agents,
 with the object of —
 - (c) protecting customers from undesirable marketing conduct; and
 - (d) defining standards of conduct in the marketing of gas to customers.
- (3) The code of conduct may contain such ancillary and incidental provisions as are necessary or expedient for the purposes of subsection (2).
- (4) Subsection (1) has effect subject to section 53 of the *Energy Legislation Amendment Act 2003*.

Section 11ZPO Consultative committee

- (1) The Authority is to establish a committee to advise it on matters relating to the code of conduct.
- (2) The Authority —
 - (a) is to prescribe the membership, constitution and procedures of; and
 - (b) may discharge, alter, or reconstitute,
 the committee.
- (3) The Authority may determine that a member of the committee is to receive remuneration or an allowance, and if the Authority so determines it is to fix the remuneration or allowance on the recommendation of the Public Sector Commissioner.
- (4) Subject to this section, the committee may determine its own procedure.
- (5) The Authority is to provide the committee with such support services as it may reasonably require.
- (6) This section has effect subject to section 54 of the *Energy Legislation Amendment Act 2003*.

Section 11ZPV Review of code

- (1) The committee must carry out a review of the code of conduct as soon as is practicable after —
 - (a) the first anniversary of its commencement; and
 - (b) the expiry of each 2 yearly interval after that anniversary.
- (2) The object of a review is to re-assess the suitability of the provisions of the code of conduct for the purposes of section 11ZPM(2).
- (3) The committee must, in accordance with section 11ZPW, give any interested person an opportunity to offer comments relevant to the review.

- (4) The committee must take into account any comments received under subsection (3) in carrying out the review.
- (5) The committee must prepare a report based on the review and give it to the Authority.

Water Services Act 2012

Section 27(7) Compliance with the code of conduct made by Authority

...

- (7) The Authority must carry out a review of the operation and effectiveness of the code of conduct at least once every 5 years.

National Energy Retail Law

Section 22(1) Obligation to make offer to small customers

- (1) A retailer must make an offer (a standing offer) to provide customer retail services to small customers for whom it is the designated retailer—
 - (a) at the standing offer prices; and
 - (b) under the retailer's form of standard retail contract.

National Energy Retail Rules

Rule 16 Pre-contractual duty of retailers

- (1) This rule applies where a retailer is contacted by a small customer who is seeking to purchase energy for premises.
- (2) If the retailer is the designated retailer for the premises, the retailer:
 - (a) may elect to offer the customer a market retail contract; and
 - (b) must advise the customer of the availability of the retailer's standing offer, unless the customer is a small market offer customer.

Note: Subrule (2) (b) is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)

- (3) If the retailer is not the designated retailer for the premises and the retailer does not elect to offer the customer (whether at the request of the customer or of its own initiative) a market retail contract, the retailer:
 - (a) must refer the customer to the distributor for the premises concerned; and
 - (b) must inform the small customer that the distributor will be able to advise the customer which retailer has an obligation to make a standing offer that is applicable to the customer.

Appendix 2 - Licences and licensing costs

Licences and licensees

A list of current gas licensees can be found on the ERA's website, along with copies of their licences.⁴⁵

Table 1 shows the total number of gas distribution and trading licences as at 30 June 2019.

Table 1: Gas licences by service 2018/19

Classification	Licences
Distribution	3
Trading (retail)	9
Total	12

Licensing costs

The *Economic Regulation Authority (Licensing Funding) Regulations 2014* set out the fees and charges that licensees must pay to the ERA. The ERA recovers its costs to administer the licensing scheme from licensees through an annual licence fee and a quarterly standing charge. The regulations are the responsibility of the Treasurer.

The ERA's costs to administer the gas licensing scheme over the past three years are set out in Table 2.

Table 2: ERA licensing costs

Licence service	Costs per year (\$)		
	2016/17	2017/18	2018/19
Distribution	195,354	102,943	253,767
Retail	208,755	122,554	273,378
Total	404,109	225,497⁴⁶	527,145

Licence fee

The annual licence fee is a fixed amount set by the regulations.

- Distribution - \$2,778
- Retail - \$3,105

⁴⁵ The licensees and licences are available on the ERA's [Licence Holders](#) webpage.

⁴⁶ There was a substantial reduction in the ERA's licensing costs in 2017/18, because other divisions of the ERA incurred more overheads and costs that year due to the projects they carried out, such as the assessment of Western Power's network access arrangement for the 2017-22 regulatory period.

Licensees are required to pay a standing charge every quarter for the ERA to recover the costs it incurs in performing its licensing functions.

Standing charge

Licensees are required to pay a standing charge every quarter for the ERA to recover the costs it incurs in performing its licensing functions.

For the ERA to calculate the standing charge, licensees must report annually on the number of units relevant to the licence (Table 3). The number of units reported by the licensee will determine the standing charge that the licensee must pay.⁴⁷

Under the regulations, the licensees within a licence type (distribution and retail) are collectively required to pay fifty per cent of the total standing charge for the ERA's gas licensing function each year.

For example, if the ERA's gas licensing costs to be recovered from the standing charge is \$1 million and a licensed retailer has 500,000 customers from a total of 1 million customers supplied by all licensed retailers, its annual standing charge is \$125,000. This is because retailers are collectively responsible for 50 per cent of the gas standing charge (\$250,000) and the retailer has 50 per cent of the total number of customers supplied by all retailers within the licensing scheme.

Table 3: Standing charge by licence service

Licence service (unit of measurement)	Cost per unit (\$)		
	2016/17	2017/18	2018/19
Distribution (kilometres of line)	13.31	6.66	17.18
Trading (customers)	0.26	0.13	0.34

The cost per unit changes from year to year due to several factors, including the proportion of the ERA's licensing resources that are allocated to each licensing scheme (electricity, gas or water) each year and the allocation of the ERA's overheads across its divisions.⁴⁸ For example, if there is an increase in staff one year in another area of the ERA to address a higher workload, then a lower percentage of the ERA's overheads are allocated against licensing functions.

Regulation 13 of the regulations requires the ERA to review its costs to administer the licensing scheme and the extent to which the charges paid to the ERA are sufficient to meet these costs. The ERA must provide a written report on its first review to the Treasurer by 1 January 2020 (following the first review, the ERA must conduct a review every three years).

⁴⁷ The regulations require the ERA to calculate the total number of units reported by licensees for each service (called UT). The costs payable by each licensee determined by the formula: $C \times (UL/UT)$, where C is the total cost for the service and UL is the number of units reported for the licence.

⁴⁸ Some licensing activities are annual, while others are biennial or triennial, which results in fluctuations in the amount of staff resources needed to complete the activities each year.

Appendix 3 – Licensing scheme self-assessment tool and dashboard

Self-assessment tool

Licensing scheme questions		
Licences in this scheme	The gas licensing scheme has two gas licence classifications: distribution and trading.	
Category	Questions	Response
Is the licensing scheme achieving its objectives?	Are the objectives the scheme is trying to meet clearly set out in legislation? If not, are they clearly documented elsewhere? Is this information public?	Part 2A of the <i>Energy Coordination Act 1994</i> (Act) establishes the scheme to license gas suppliers. The Act does not contain objectives for the licensing scheme.
	Is data collected to assess whether the objectives are being met?	As the scheme has no prescribed objectives, the ERA does not collect this data.
	How does this scheme contribute to the broader objectives of the regulatory system? Is data collected to assess whether it is making this contribution?	In practice, the ERA considers gas licences are used to ensure service providers adhere to asset management and service delivery standards, and consumer protection arrangements. However, there are no prescribed objectives for the gas licensing scheme in the Act. The ERA requires licensee to provide it with annual, exception based, compliance reports, and periodic independent reports on audits of their performance against their licence conditions and the effectiveness of their asset management systems.
Is the licensing scheme being administered in a cost-effective way?	Are the internal processes and systems efficient? What could be changed to improve efficiency? Examples of internal processes and systems include those used for collating information on the number of active licence holders and revenues collected from fees and charges.	The ERA has an internal web-based licensing workflow system to manage its licensing activities. To complement the licensing system, the ERA has individual documented procedures for all its licensing activities, which provide staff with a step-by-step guide on how to complete an activity, such as processing a licence application or performance audit. The ERA periodically reviews its licences and the regulatory instruments that it publishes to assist licensees in understanding their obligations under the licence, such as guidelines, compliance manuals and performance reporting handbooks. These reviews often include public consultation, which gives licensees and other stakeholders an opportunity to raise any concerns they have with the cost and level of service provided by the ERA and its administration of the licensing scheme. There is no evidence to suggest that the ERA's internal processes and systems are not efficient. This view is also supported by the high proportion of licence applications that are completed within the 90-day target.

Licensing scheme questions

	<p>What minimum level of service should licence holders expect from the agency in processing licence applications and renewals? Is this documented? Is it published?</p>	<p>A minimum level of service should include:</p> <ul style="list-style-type: none"> • A publicly available and clearly described application process that meets the needs of applicants and the agency. • Details, with examples, of the information that should be included in an application. • The ability for the applicant to submit an application in different ways, including online. • A requirement for the agency to process the application within a specified timeframe (that is reasonable). • An appeals process for a licence application decision. <p>The ERA's licence application guideline is available on its website. The guideline also includes information on how to appeal an ERA decision.</p> <p>The Act requires the ERA to use reasonable endeavours to make a decision on a licence application within 90 calendar days of receiving it.</p> <p>The ERA allows applicants to submit applications in different ways, including by email, through its website and through a secure file server.</p>
	<p>Does the legislation that establishes the scheme only include elements that need to be prescribed (for example, the scheme's objectives), and exclude elements that do not need to be prescribed (for example, administrative requirements)? If not, are there plans to make amendments to the legislation in a future omnibus bill?</p>	<p>The Act does not include objectives for its licensing scheme.</p> <p>Administrative requirements are generally in secondary legislation, such as the <i>Economic Regulation Authority (Licensing Funding) Regulations 2014</i>, which prescribe the fees and charges for a licence application and retaining the licence.</p> <p>Most administrative requirements associated with applying for a licence, and subsequently complying with a licence, are at the discretion of the ERA and contained in the ERA's licences and guidelines.</p> <p>There are improvements that can be made to the licensing scheme. For example, the ERA has identified potential amendments to the scheme in its <i>Operation of the gas licensing scheme and licensee compliance – Annual Report 2018/19</i>.</p> <p>The inclusion of licensing scheme reforms in a future omnibus bill is a matter for the State Government.</p>
	<p>Does the scheme include administrative or compliance requirements that are duplicated in other schemes or regulations?</p> <p>An example of administrative duplication is when licence holders are asked to supply the same information multiple times for different purposes or in different formats.</p>	<p>The ERA is not aware of administrative requirements in gas licences that are duplicated in other schemes or regulations.</p>
Is the licensing scheme being complied with?	Is there a compliance and enforcement strategy that applies to the licensing	The ERA has a compliance and enforcement strategy for gas licensees, comprising annual reports and periodic independent audits.

Licensing scheme questions

<p>scheme? Is it documented? When was it last reviewed/updated? Has it been published?</p>	<p>The data collected in the annual compliance reports and the audit reports is used to monitor and enforce compliance with licence conditions.</p> <p>The ERA's compliance reporting manual requires licensees to provide annual compliance reports to the ERA. To minimise the burden on the licensee, the report has to include only non-compliances that were identified during the year.</p> <p>The Act requires the licensee to undertake independent audits of the effectiveness of the measures it has taken to meet the performance criteria specified in the licence. The audits are carried out not less than once every 24 months, but this period can be increased by the ERA. The ERA's audit guidelines states that the ERA will increase the period between audits if the licensee has a strong compliance framework that is achieving a high level of compliance with the licence. Conversely, the period will be reduced (subject to the 24-month minimum) if an audit finds serious compliance problems.</p> <p>If an audit identifies compliance problems, the ERA actively monitors the actions taken by the licensee to address the causes and get back to compliance. In some instances, the ERA may take enforcement action against a licensee using the powers available in the Act.</p> <p>Updated audit and review guidelines were published in March 2019.</p> <p>The current compliance reporting manual was published in January 2017. The manual is updated whenever there is a change in the legislation or the licence.</p> <p>The performance reporting handbooks are updated annually.</p>
<p>Is the compliance and enforcement strategy risk-based?</p>	<p>Yes. The ERA's compliance reporting manual and audit guidelines use a risk-based approach to compliance.</p>
<p>Is data collected to measure compliance? Is this data used to inform agency activities that encourage compliance?</p>	<p>The ERA uses the data collected in annual compliance reports and periodic performance audits and asset management system reviews to monitor and enforce compliance with licence conditions.</p> <p>If the audit identifies compliance problems or deficiencies in the licensees' asset management system, the ERA actively monitors the actions taken by the licensee to address the causes and get back to compliance. In some instances, the ERA may take enforcement action against a licensee.</p>
<p>Are current compliance levels appropriate given the risks the scheme aims to address?</p>	<p>Yes. Generally, the compliance history of gas licensees is satisfactory relative to the risks.</p>
<p>Have there been changes to compliance resourcing that affect this licensing scheme? If so, how have the changes</p>	<p>There have been no changes to compliance resourcing that affect this licensing scheme. The costs the ERA incurs to manage the licensing scheme are recovered directly from licensees on a full cost recovery basis.</p>

Licensing scheme questions		
	affected the achievement of policy outcomes?	
Is the licensing scheme being reviewed and improved?	Is there a schedule of legislative reviews that must be undertaken for the licensing scheme? Is this information public?	<p>The ERA aims to review its gas licence conditions every three years. This review is limited to the format and content of the licences. These reviews are not required by legislation; the ERA conducts the reviews to ensure its licences are operating effectively. The licence reviews are a public process that involves publishing issues papers and decision documents for public comment.</p> <p>As the licensing scheme is established in the Act, which is administered by Energy Policy WA on behalf of the Minister for Energy, it is the responsibility of the State Government to conduct any legislative reviews of licensing scheme in the Act.</p>
	Is there a plan of improvements that applies to the licensing scheme?	<p>The ERA made improvements to its gas licences following a review in 2014. The next gas licence review is due in 2020/21.</p> <p>A review of the Act's legislative framework for the licensing scheme is a matter for the State Government.</p> <p>The ERA has identified potential amendments to the scheme in its <i>Operation of the gas licensing scheme and licensee compliance – Annual Report 2018/19</i>.</p>
	Have findings and recommendations from when the scheme was last reviewed been published?	<p>Documents from the 2014 review of gas licences are available on the ERA's website.</p> <p>The State Government has not carried out a review of the licensing scheme in the Act.</p>
Is there effective engagement about the scheme?	Is there a stakeholder engagement strategy that applies to the licensing scheme? Is it documented? When was it last reviewed/updated? Has it been published?	<p>The ERA has a public consultation process for its day-to-day licensing activities, which is documented in publicly available guidelines on the ERA's website. The guidelines were last reviewed and updated in April 2016.</p> <p>The ERA also seeks public comment on its broader regulatory reviews, such as reviews of its licences, regulatory guidelines and codes.</p> <p>The ERA holds workshops and forums for licensees on its licensing activities when required. For example, in November 2018 the ERA held a workshop with licensees and auditors on the review of its audit and review guidelines. Updated guidelines were published in March 2019.</p>
	Which other agencies have a role in managing the licensing scheme? Is there regular engagement with these agencies?	No other agency has a role in the day-to-day management of the licensing scheme.
	Is there a complaints handling mechanism in place, to allow licensees and members of the public to raise concerns?	The ERA provides several ways for licensees and members of the public to raise concerns about the licensing scheme, including public consultations when it conducts reviews of licences, codes and guidelines. The ERA also has a dedicated email address for its licensing activities and other means to contact the

Licensing scheme questions

		ERA's licensing team, such as by phone, post and an online system on its website to submit information and make enquiries.
	<p>Is it possible for licensees to easily find clear information about:</p> <ul style="list-style-type: none"> • The purpose of the licence and when it is needed. • The licence conditions and requirements, and how to comply with them. • The application process. 	<p>The ERA has published the following guidelines and manuals to assist licensees in obtaining a licence and then complying with the licence conditions:</p> <ol style="list-style-type: none"> 1. Licence Application Guidelines 2. Audit and Review Guidelines 3. Customer Complaint Guidelines 4. Financial Hardship Policy Guidelines 5. Compliance Reporting Manual 6. Compliance Enforcement Policy 7. Performance Reporting Handbook. <p>A full list is available on the ERA's website.</p>

Licensing dashboard

Name of licence		Gas distribution and trading licences	
List titles of enabling legislative instruments		Primary legislation: <i>Energy Coordination Act 1994</i> Subsidiary legislation: <i>Energy Coordination (Customer Contracts) Regulations 2004, Energy Coordination (Last Resort Supply) Regulations 2005, Energy Coordination (Ombudsman Scheme) Regulations 2004, Energy Coordination (Gas Tariffs) Regulations 2000, Gas Marketing Code of Conduct 2017, Economic Regulation Authority (Licensing Funding) Regulations 2014</i>	
Category	Measure	Metric	Comment (optional)
Is the scheme achieving its objectives?	How well is the licensing scheme contributing to meeting the objectives of the regulatory system?	Scale: 1 = not very well to 5 = very well	The regulatory scheme (licensing scheme) does not have prescribed objectives.
Is the scheme administered in a cost-effective way?	What is the annual cost to the agency per licence of administering the licensing scheme?	\$ per licence	The ERA's total cost in 2018/19 to administer gas licences was \$527,145 (\$43,928 per licence).
	What proportion of licence applications was processed within target timeframes in the last 12 months?	%	The ERA did not receive any gas licence applications in 2018/19.
	Which of the following services are available online? <ul style="list-style-type: none"> Information about the scheme Application Renewal Payment of fees and charges 	Note whether available/not available/not applicable for each service	<ul style="list-style-type: none"> Information about the scheme – available Application – available Renewal – available Payment of fees and charges – not available
Is the scheme being complied with?	How many compliance inspections did the agency complete in the last 12 months?	Count	In 2018/19, the ERA completed two licence performance audits and two asset management system reviews of gas licences. The ERA also monitors licensee compliance through an annual compliance reporting framework, which requires every licensee to report on the licence obligations that it has contravened during the reporting year.
	How many instances of non-compliance did the agency uncover in the last 12 months?	Count	From the two performance audits carried out in 2018/19, the two licensees were found to be non-compliant with a total of 19 individual licence obligations.
	How many enforcement actions were taken in the last 12 months?	Count	Because most of the non-compliances were minor in nature, no enforcement action was taken against the licensees.

Name of licence		Gas distribution and trading licences	
Is the scheme being reviewed and improved?	How many years has it been since the last major review of the scheme?	Number	<p>The ERA made improvements to its gas licences following a review in 2014.</p> <p>A review of the Act's legislative framework for the licensing scheme is a matter for the State Government. The current licensing scheme in the Act has not been reviewed.</p>
	To what extent have the recommendations from the last major review of the scheme been implemented?	Fully implemented/ partially implemented/not implemented/not applicable (i.e. no major review)	There has not been a review of the Act's licensing scheme since it commenced in 2004.