

# Operation of the electricity licensing scheme and licensee compliance – Annual report 2019/20

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**Economic Regulation Authority**

WESTERN AUSTRALIA

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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 electricity to small use customers.

The ERA has a statutory obligation to report annually to the Minister for Energy on the operation of the electricity licensing scheme and licensee compliance. The ERA prepares this report each year.

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

As the COVID-19 pandemic emerged in the early part of 2020, the ERA relaxed the deadlines for licence audits and asset management system reviews for utility licensees, including electricity. This was to allow for travel restrictions hindering site visits, to facilitate the need for social distancing on site and the need for licensees to focus on providing essential services.

The ERA has also required electricity retailers to supply monthly data on financial hardship and bill debt indicators for household customers, to allow the ERA to monitor retailers' response to the economic effects of the pandemic.

Through the preparation of this year's report, the ERA has identified new 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 that do not have a justifying benefit to consumers or the broader community.

These recommendations include:

- Making regulations for the supply of electricity in the event of the failure of a retailer, known as a supplier of last resort event.
- Ensuring that electricity distributors that surrender their licence are required to leave their distribution assets in a safe condition.
- Allowing the ERA to appoint inspectors when it has concerns about a licensee's compliance with its licence.

This year, the ERA asked auditors to pay special attention to the correct collection and handling of data that electricity retailers and distributors supply to the ERA. This focus will continue into next year, as the ERA seeks to improve the accuracy of data it receives from licensees.

The ERA has also included an update on matters raised in last year's report. Most areas of reform raised in that report have not yet been addressed. Some progress has been made on the development of regulatory frameworks for behind-the-meter generation and storage services. However, the ERA encourages the State Government to include electricity on-selling arrangements, such as those used in many shopping centres and apartment complexes, in this reform process. This would ensure that more customers receive a greater range of regulatory protection.

The ERA reports separately on the performance of electricity retailers and distributors, providing information about the performance of individual licensees and trends in the electricity market. These reports are available on the ERA website.



Nicola Cusworth

**Chair, Economic Regulation Authority**

# 1. Introduction

## 1.1 Purpose of this report

This is the second edition of a report that the ERA publishes once a year to report on the operation of the electricity licensing scheme and provide an overview of licensee compliance during the reporting year.<sup>1</sup>

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

Under section 38 of the *Electricity Industry Act 2004* (Electricity Act):

It is a function of the Authority -

- a. To monitor and report to the Minister on the operation of the licensing scheme provided for in this Part; and
- b. To inform the Minister about any failure by a licensee to meet performance criteria or other requirements of its licence.

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

The ERA requires all electricity 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 electricity distributors and retailers that supply small use customers.<sup>2</sup>

Sections 13 and 14 of the Electricity 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.<sup>3</sup> These reports identify any non-compliances with a licence and determine whether a licensee's asset management system is effective. The ERA provides the reports to the Minister.<sup>4</sup>

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<sup>1</sup> The reporting year is the year ending 30 June.

<sup>2</sup> A 'small use customer' is a customer who consumes not more than 160 megawatt hours of electricity per year.

<sup>3</sup> The full text of sections 13 and 14 of the Electricity Act is in Appendix 1.

<sup>4</sup> Section 13(3) of the Electricity Act requires the ERA to "give 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.

## 1.2 Report scope and structure

The scope of this report is set by section 38 of the Electricity Act, which requires the ERA to report to the Minister on the operation of the scheme and licensee compliance. To achieve this, the report:

- 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 annual costs the ERA incurs in carrying 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 *Code of Conduct for the Supply of Electricity to Small Use Customers* (Customer Code) and individual licence conditions. These are the responsibility of the ERA and dealt with in separate review processes.<sup>5</sup>

## 1.3 Licensing scheme

The electricity licensing scheme is established in Part 2 of the Electricity Act.

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

- Granting, amending, transferring and renewing licences for entities that generate, transmit, distribute or retail electricity in Western Australia.<sup>6</sup>
- Monitoring and enforcing compliance with licences.<sup>7</sup>
- Monitoring and reporting on the performance of licensees through the annual collection and publication of performance data.<sup>8</sup>
- Arranging performance audits and asset management system reviews of individual licensees.

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 Electricity Act, regulations and codes.<sup>9</sup> 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 (EPWA).

<sup>5</sup> Information about these [reviews](#) is available on the ERA website.

<sup>6</sup> Electricity Act s18, s19, s21 and s22. The full text of these sections is in Appendix 1.

<sup>7</sup> Electricity Act s32 and s38. The full text of these sections is in Appendix 1.

<sup>8</sup> Electricity Act Schedule 1(m). The full text is in Appendix 1.

<sup>9</sup> The codes and regulations that a licensee must comply with are listed in the licence.

## 2. Areas for reform

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

Chapter 2 is in two sections:

- The first section (2.1) identifies areas of reform of the scheme that have not been included in previous reports.
- The second section (2.2) provides an update on the status of areas of reform of the scheme identified in previous reports published by the ERA.

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

### 2.1 New areas of reform

#### 2.1.1 *Supplier of last resort arrangements*

There are regulatory gaps in the supplier of last resort arrangements, which may cause the arrangements to be ineffective when managing a supplier of last resort event.

Part 5 of the Electricity Act provides the legislative framework for supplier of last resort (SoLR) arrangements in Western Australia.

Under section 70 of the Electricity Act, a SoLR event occurs when a retailer is unable to supply electricity to its customers, because its licence has been cancelled, expired and not renewed, or surrendered. The customers of the retailer transfer to the designated SoLR (a licensed retailer) to ensure they continue to receive an electricity supply.<sup>10</sup>

Section 77 of the Electricity Act allows regulations to be made to make provision for SoLR plans and arrangements, including the matters that a retailer's SoLR plan must cover, such as the process for the bulk transfer of customers from the failing retailer to the SoLR and how a SoLR recovers the costs it incurs from the SoLR event.

Under section 71(4) of the Electricity Act, the ERA designated Synergy as the default SoLR for the South West Interconnected System in 2009.<sup>11 12</sup> However, the State Government has not made regulations under section 77 of the Electricity Act, which means there is no information or guidance on the matters that a SoLR must include in its plan to manage a SoLR event.

This means that, despite Synergy being designated as the SoLR for the South West Interconnected System in 2009, it has not submitted a SoLR plan to the ERA for approval. In accordance with section 72 of the Electricity Act, in 2009 the ERA approved an extension for

<sup>10</sup> The full text of section 70 of the Electricity Act is in Appendix 1.

<sup>11</sup> The full text of section 71(4) of the Electricity Act is in Appendix 1.

<sup>12</sup> Economic Regulation Authority, 2009, *Notice: Synergy as the default electricity supplier of last resort for the area covered by the South West Interconnected System*, ([online](#)).

Synergy to submit its SoLR plan until such time as the supporting regulatory provisions have been implemented.<sup>13</sup>

As a comparison, the State Government has made the *Energy Coordination (Last Resort Supply) Regulations 2005* under the *Energy Coordination Act 1994* to support the SoLR arrangements for the gas retail market.

The lack of a SoLR plan and SoLR regulations for the electricity retail market is mitigated by Synergy being government-owned and the electricity supplier to all customers on the South West Interconnected System who consume no more than 50 megawatt hours of electricity per year. This reduces substantially the chances of a SoLR event. It also makes Synergy well placed to respond to a SoLR event if a private retailer fails (although Synergy's response will face challenges due to the lack of regulatory provisions for a SoLR event).

Despite Synergy's role in the electricity retail market, there is still the possibility of a SoLR event occurring on the South West Interconnected System. To address the regulatory gap in the electricity SoLR arrangements, it is recommended that the State Government develop and implement the necessary regulatory provisions, including regulations under section 77 of the Electricity Act. The regulatory provisions should be consistent with the SoLR arrangements for the gas retail market where possible.

### Recommendation

Regulations should be made under section 77 of the *Electricity Industry Act 2004* to provide for supplier of last resort arrangements.

## 2.1.2 Licence surrenders

The *Electricity Industry Act 2004* does not provide a framework for managing applications by licensees to surrender their licence and to ensure former licensees leave their assets in a safe condition after their licence is surrendered.

The Electricity Act includes provisions for the ERA to consider and determine applications to grant, amend, transfer or renew a licence, and for the Governor to cancel a licence. However, it does not provide for a licensee to surrender its licence.

Schedule 1 of the Electricity Act lists the matters that can be the subject of a licence term or condition, which includes "specifying procedures for surrender of a licence." However, this does not extend to the ERA approving an application to surrender a licence.

Under section 36 of the Electricity Act, if a licence is cancelled by the Governor, the former licensee must ensure that its generating works, transmission system or distribution system is left in a safe condition.<sup>14</sup> <sup>15</sup> The cancellation of a licence is dealt with extensively by section 35 of the Electricity Act and allows the Governor to make regulations to address "all matters that are necessary or convenient for dealing with the consequences of the cancellation."<sup>16</sup> A

<sup>13</sup> Ibid.

<sup>14</sup> The full text of section 36 of the Electricity Act is in Appendix 1.

<sup>15</sup> The transfer of customers from an electricity retailer that has surrendered its licence to an existing licensee is dealt with as a SoLR event under section 70 of the Electricity Act.

<sup>16</sup> The full text of section 35 of the Electricity Act is in Appendix 1.

licence can be cancelled for a number of reasons, including if the licensee has failed to pay a licence fee or is in administration.

The Electricity Act does not provide for the consequences of licence surrenders, despite the possibility of similar outcomes to a cancellation.

Regulation 9 of the *Electricity (Network Safety) Regulations 2015* requires network operators to minimise or eliminate safety risks identified on the network.<sup>17</sup> This includes networks that are no longer in use. This addresses safety risks that are identified through investigation by the network operator, but it does not require a network operator to leave its transmission system or distribution system in a safe condition when it ceases to operate the system.

By comparison, the *Water Act Services Act 2012* (Water Act) addresses the consequences of a licensee ceasing to provide a water service, including if a licence is cancelled by the Governor, or the licensee applies to cancel the licence (the equivalent of a licence surrender). For example, section 36 of the Water Act requires a former licensee to leave its water service works in a safe condition when it ceases to provide the water service.<sup>18</sup> A financial penalty applies if the former licensee does not comply with this requirement and section 36 gives the Minister for Water powers to make a former licensee comply with this requirement.

If a licensee wants to cancel (surrender) its licence, section 18 of the Water Act requires the licensee to apply to the ERA to cancel the licence. The ERA may approve the cancellation of the licence only if it is satisfied that it would not be contrary to the public interest to do so.<sup>19</sup> This allows the ERA to require the licensee to provide information in its application that shows how the licensee will ensure it leaves its water service works in a safe condition and satisfy the ERA that cancelling the licence is not contrary to the public interest.

To ensure the ERA can assess an application to surrender a licence to make sure it is not contrary to the public interest and a former licensee that surrenders its licence leaves its assets in a safe condition, it is recommended that the Electricity Act is amended to align it with the Water Act.

Amendments to the Electricity Act to give the ERA the authority over licence surrenders would be complemented by new licence terms and conditions initiated by the ERA to provide for procedures for licensees to surrender their licence.

## Recommendation

It is recommended that the *Electricity Industry Act 2004* is amended to:

- Require licensees to apply to the ERA to surrender their licence.
- Allow the ERA to approve an application to surrender a licence if it is satisfied that it would not be contrary to the public interest to do so.
- Extend the powers in section 36, which currently apply to licence cancellations, to licence surrenders to ensure former licensees who have surrendered their licence leave their assets in a safe condition.

<sup>17</sup> The full text of regulation 9 is in Appendix 1.

<sup>18</sup> The full text of section 36 of the Water Act is in Appendix 1.

<sup>19</sup> The full text of section 18 of the Water Act is in Appendix 1.

### 2.1.3 Appointing inspectors

To improve the licence compliance monitoring framework, the *Electricity Industry Act 2004* should be amended to allow the ERA to appoint inspectors to inspect a licensee's operations if the ERA has concerns about the performance of a licensee.

Under section 210(1) of the Water Act, the ERA can appoint an inspector to inspect whether a licensee has complied with its licence obligations.<sup>20</sup> Typically, the inspection occurs outside of the operational audits and asset management system reviews that licensees are required to have on a periodic basis.

The ERA is likely to appoint an inspector if the licensee has had an operational audit and/or asset management system review that has identified licence non-compliances and/or asset management system deficiencies respectively, which the licensee has not rectified to the ERA's satisfaction.

Under section 42 of the Water Act, an inspector is required to report to the ERA anything that the inspector finds that does not conform with a term or condition of the licence.<sup>21</sup> The inspector's independent assessment of the status of the non-compliances and asset management system deficiencies informs the ERA's decision on whether to take compliance enforcement action against the licensee.

The Water Act's inspectorial powers have proved useful for the ERA in the past by ensuring it has an accurate picture of a licensee's performance and current operations, including the condition of the water services assets, before it decides what, if any, compliance enforcement action to take against the licensee.

The ERA has appointed an inspector on three occasions to inspect a water licensee's performance and operations to determine the status of licence non-compliances and asset management deficiencies and the licensee's progress in rectifying them. This led to the ERA taking compliance enforcement action against one of the licensees.<sup>22</sup>

Unlike the Water Act, the Electricity Act does not contain any inspectorial powers. These powers form an important part of the compliance monitoring framework by enabling the ERA to determine at any time what the status of a licensee's performance and operations are if it has concerns about non-compliances or asset management system deficiencies.

#### Recommendation

The *Electricity Industry Act 2004* should be amended to enable the ERA to appoint an inspector to inspect whether a licensee has complied with its licence obligations.

<sup>20</sup> The full text of section 210(1) of the Water Act is in Appendix 1.

<sup>21</sup> The full text of section 42 of the Water Act is in Appendix 1.

<sup>22</sup> Economic Regulation Authority, 2016, *Section 31 Rectification Notice – Shire of Dumbleyung – Water Services Licence 16*, ([online](#)).

## 2.2 Areas of reform identified in previous reports

### 2.2.1 *Suitability of licensing scheme for new technologies and supply models*

The licensing scheme and regulatory framework more generally do not adequately provide for emerging distribution technologies and supply arrangements, such as microgrids and stand-alone power systems.

#### **Reform**

The licensing scheme and regulatory framework in the Electricity Act were established between 2004 and 2006, as part of the disaggregation of Western Power. They were designed for an electricity supply arrangement based on a centralised model of generation, transmission, distribution and retail of electricity to end use customers.

Emerging distribution technologies and supply arrangements have different characteristics to the historical supply model. For example, household rooftop solar means that many customers are now both consumers and generators of electricity.

The emergence of new distribution technologies and supply models, such as microgrids and stand-alone power systems, presents challenges for the regulatory framework. Currently, the licensing scheme does not provide flexibility to strike a balance between risks and costs for each supply arrangement to ensure the level of regulation is proportionate to the size of the distribution system. It is important that the regulatory framework allows for the provision of different supply arrangements to meet consumers' needs, but that appropriate consumer protections and service standards are maintained, without imposing unreasonable regulatory costs on service providers.

Until now, in Western Australia, embedded networks connected to the main network behind the meter (such as apartment complexes or shopping centres) have not been regulated in the same way as the main network. These supply arrangements operate under licence exemptions, with unregulated service standards and limited customer protections. For example, customers are not able to access the Energy and Water Ombudsman and are not covered by the Customer Code, which provides protections for customers in the areas of billing, connection, disconnection, financial hardship and complaints. With the emergence of alternative supply arrangements, licence exemptions may no longer be an effective way to regulate arrangements that operate behind the meter, or off-grid.

The current regulatory framework creates uncertainty about what the licensing requirements are for supply arrangements that operate behind the meter or off-grid, because the framework does not deal with these technologies specifically and was not designed with them in mind. This creates problems for both the ERA and industry, as it is not clear what regulatory model should be applied to these service providers.

If the regulatory model does not provide for the development of tailored regulatory frameworks for alternative supply arrangements, then the current one-size-fits-all licensing scheme will have to be applied to these service providers. Applying the current licensing framework to these service providers may create inefficiencies and barriers to market entry, particularly for smaller, independent providers who are unlikely to be as well-resourced as network distribution businesses. The inability of the regulatory framework to respond to new

technologies may also delay their uptake, act as a barrier to innovation and deny customers access to more affordable, secure and reliable electricity.

### Progress update

In May 2019, the Minister published a Ministerial Statement announcing that he had asked the Public Utilities Office (now EPWA) to review the regulatory framework for retail electricity licensing and exemption activities.<sup>23</sup> The review will determine the most suitable regulatory framework to ensure all electricity consumers are adequately protected, regardless of the business model used to deliver the electricity.

On 21 January 2020, EPWA published a Directions Report setting out the terms of reference for the review.<sup>24</sup> The report outlines a proposed regulatory framework involving the development of customised codes of practice for categories of alternative electricity services, with a focus on ensuring adequate consumer protections for customers. Each code of practice will be developed in consultation with industry and consumer stakeholders. EPWA is proposing to amend the Electricity Act to allow this customised approach to the regulation of prescribed categories of alternative electricity services, along with provisions for compliance, enforcement and dispute resolution.

Following the publication of its Directions Report, EPWA established a working group of industry and consumer stakeholders to provide advice on developing the first code of practice, which is for behind-the-meter generation and storage providers, such as suppliers of solar power purchase agreements. The Directions Report identifies future services that could be subject to the registration process and codes of practice, including electric vehicle charging stations, community energy projects and peer-to-peer energy trading.<sup>25</sup> The report states that approaches to address customer protections for behind-the-meter services should be easily transferable to business models in front of the meter, including stand-alone power systems, microgrids and energy aggregation services.<sup>26</sup>

EPWA intends to provide the Minister with a recommendations report outlining the detailed arrangements and implementation requirements for the regulatory framework. The report will be accompanied by a draft code of practice for behind-the-meter generation and storage services.

In February 2020, the State Parliament's Economics and Industry Standing Committee published its final report on its inquiry into microgrids and associated technologies in Western Australia.<sup>27</sup> The standing committee's final report included a recommendation that:<sup>28</sup>

The Minister for Energy avoid an approach to electricity licensing based on exemptions for new business models and instead introduce a new class of licence, aimed at facilitating new business models, whilst achieving appropriate consumer protections, social and economic policy outcomes.

As a minimum, licensing arrangements for new business models should ensure that consumers in relevant classes retain access to:

<sup>23</sup> Minister for Energy, 20 May 2019, *Ministerial Statement: Regulatory framework review of retail electricity licensing and exemptions*, ([online](#)) [accessed 20 November 2020].

<sup>24</sup> Energy Policy WA, 2019, *Directions Report: Creating a dynamic customer protection framework for behind-the-meter electricity services*, ([online](#)) [accessed 20 November 2020].

<sup>25</sup> *Ibid*, p. 11.

<sup>26</sup> *Ibid*, p. 12.

<sup>27</sup> Legislative Assembly Economics and Industry Standing Committee, 2020, *Report 8: Taking charge: Western Australia's transition to a distributed energy future*.

<sup>28</sup> *Ibid*, Recommendation 16, p. 156.

- the Energy and Water Ombudsman;
- supply based on Economic Regulation Authority approved contracts;
- supply provided under regulated tariffs, fees and charges;
- access concessions;
- coverage afforded under the *Code of Conduct for the Supply of Electricity to Small Use Customers 2018*;
- guaranteed access for life support customers; and
- the obligation for the retailer to supply electricity.

The regulatory framework of a registration process and codes of practice being developed by EPWA for new business models will go some way to addressing the standing committee's recommendation to move away from using licence exemptions to regulate providers of these services.

### Discussion

The ERA welcomes the review by EPWA and the opportunity for stakeholders to have input into the development of the codes of practice for behind-the-meter services. The review presents an opportunity to address uncertainty around the suitability of the licensing scheme to provide for new technologies and supply models.

While the review is focussed on behind-the-meter services, it does not include all the behind-the-meter services that are being provided to customers. For example, electricity on-selling through embedded networks is not on the list of behind-the-meter services that could be prescribed in the future as an alternative electricity service and made the subject of a code of practice for suppliers.

The on-supply of electricity occurs in residential and commercial premises when the on-seller purchases electricity from a licensed retailer (such as Synergy) at a master meter and on-sells the electricity under a licence exemption to customers on sub-meters in the embedded distribution system controlled by the exempt on-seller. The on-seller is usually the landlord or property owner, but can be someone that manages the embedded network on their behalf. An embedded network is normally a small privately-owned and operated electricity distribution system that sits behind the main electricity network. Embedded networks are common in multi-tenanted commercial buildings, such as shopping centres, residential apartment buildings, caravan parks and retirement villages.<sup>29</sup>

As mentioned on page 7, as on-sellers operate under licence exemptions, service standards are unregulated and customer protections are limited. The ERA estimates that there are tens of thousands of customers in commercial and residential on-selling arrangements who receive limited customer protections compared to customers who are directly connected to the main network and supplied by a licensed retailer, such as Synergy.<sup>30</sup> The review by EPWA presents an opportunity to address the lack of regulatory protections and rights that these customers currently receive.

The behind-the-meter services that EPWA proposes to make the focus of its review affect a relatively small number of customers compared to on-selling arrangements and are typically not the customer's primary source of electricity supply, unlike in on-selling arrangements.

<sup>29</sup> Department of Treasury, *Factsheet: On-supply of electricity*, ([online](#)) [accessed 20 November 2020].

<sup>30</sup> It is not known exactly how many customers are in on-selling arrangements, as this data is not recorded by any government agency and there is generally a lack of information available about these customers, but it is estimated to be in the tens of thousands.

EPWA should expand the scope of its review to include commercial and residential on-selling arrangements.

### Recommendation

Energy Policy WA's review of the regulatory framework for behind-the-meter services should include electricity on-selling arrangements.

## 2.2.2 Generation licensing

The *Electricity Industry Act 2004*'s requirement for generators to be licensed may be causing generators to incur unnecessary licensing costs.

### Reform

In 2016, the Public Utilities Office conducted a review of the requirement for generators to be licensed.<sup>31</sup> It determined that the costs to comply with a generation licence outweigh the benefits of licensing generators. It also determined that there are other regulatory obligations and contractual arrangements that generators must comply with that act to effectively manage the operation of generating works and represent a more suitable form of intervention than licensing.

There are also financial incentives for generators who are participants in the wholesale electricity market to ensure their generating works are maintained and operational, so they comply with the market rules (and are not penalised financially for non-compliance) and receive a return on their investment.

The ERA is currently reviewing two market rules, which ensure there is an adequate supply of generation capacity and generators are responding to the right incentives to make their capacity available.<sup>32</sup> The market rules require the ERA, in conjunction with the Australian Energy Market Operator, to review the effectiveness of the two clauses, which are intended to increase the availability of generators in the South West Interconnected System.

The two clauses are:

- Reserve capacity reduction clause – this provides AEMO with the flexibility to consider the historical outages of some generators and reduce the value of capacity that is frequently unavailable. This incentivises generators to reduce their outages to avoid their capacity credits being reduced (through a refund they must pay AEMO).<sup>33</sup>
- Refund exempt planned outage clause – this limits the number of planned outages generators can take before they pay refunds for capacity that is not available.<sup>34</sup>

<sup>31</sup> Department of Treasury, Public Utilities Office, 'Proposal to amend *Electricity Industry Act 2004* to remove requirement for electricity generators to be licensed', ([online](#)) [accessed 20 November 2020].

<sup>32</sup> Economic Regulation Authority, 2020, *Draft Report – 2020 review of two market rules intended to incentivise the availability of generators*.

<sup>33</sup> Wholesale Electricity Market Rules (WA), 7 August 2020, Rule 4.11.1(h). See Appendix 1 for the full text of the market rule.

<sup>34</sup> Ibid. Rule 4.26.1C. See Appendix 1 for the full text of the market rule.

In 2016, the then Minister for Energy endorsed the removal of the requirement of generators to be licensed and introduced legislation to amend the Electricity Act into State Parliament. This legislation was not passed prior to the change of government in March 2017.

While changes to the Electricity Act are a matter for the State Government, the ERA supports the changes and encourages the State Government to repeal the requirement for generators to be licensed.

### Progress update

Since the 2018/19 annual report on the operation of the electricity licensing scheme was published, there have been no changes to the Electricity Act to address this recommendation. The recommendation is therefore carried forward into this report.

### Recommendation

The requirement in the *Electricity Industry Act 2004* for generators to be licensed should be removed.

## 2.2.3 Licensing retailers that supply large-use customers

The *Electricity Industry Act 2004*'s requirement for retailers to be licensed to supply large use customers may be causing retailers to incur unnecessary licensing costs.

### Reform

The licence conditions that provide consumer protections apply to small use customers only.<sup>35</sup> This is standard practice throughout Australia, because it is accepted that large use customers do not require the same level of regulatory protection. Large use customers are likely to have comprehensive power purchase agreements or supply contracts with their retailer, which provide them with contractual protections and negate the need for regulatory intervention. Consequently, the benefits to large use customers of licensing are limited, while retailers incur unnecessary compliance costs by being licensed.

The requirement in the Electricity Act for retailers to be licensed to supply any customer, small or large, is different to the gas licensing scheme in the *Energy Coordination Act 1994* (Gas Act), which only requires a gas retailer to have a licence if they supply small use customers.<sup>36</sup>

These retailers generally exhibit a high level of compliance with their licence, which the ERA has acknowledged by increasing the periods (typically to four or five years) between their performance audits.

Electricity retailers that supply only large use customers have a small number of licence obligations to comply with, most of which provide little or no benefit to customers. A retail licence does require retailers to comply with the *Electricity Industry (Customer Transfer) Code 2016* and *Electricity Industry (Metering) Code 2012*, which contain provisions that could need

<sup>35</sup> A 'small use customer' is a customer who consumes not more than 160 megawatt hours of electricity per year.

<sup>36</sup> A 'small use customer' in the gas licensing scheme is a customer who consumes less than one terajoule of gas per year.

to be retained in some form if there was no longer a requirement for these retailers to have a licence.

To ensure retailers do not incur unnecessary compliance costs, the Government should review the requirement in the Electricity Act for a retailer to be licensed to supply large use customers.

The review should consider whether there is a need for these retailers to continue to comply with the Transfer Code and Metering Code and if this can be achieved through other more cost-effective mechanisms other than licensing, such as customer contracts and network access contracts, which prescribe the terms and conditions that retailers must meet to use the network. These contracts usually require retailers to follow processes and procedures necessary to support the network operator's role in facilitating the transfer of customers and the collection and publication of metering data (if the network operator has these roles instead of an independent market operator).

### Progress update

Since the 2018/19 annual report on the operation of the electricity licensing scheme was published, there have been no changes to the Electricity Act to address this recommendation. The recommendation is therefore carried forward into this report.

### Recommendation

The requirement in the *Electricity Industry Act 2004* for a retailer to be licensed to supply large use customers should be removed to make the electricity licensing scheme consistent with the gas licensing scheme.

## 2.2.4 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.

### Reform

Under sections 13 and 14 of the Electricity 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.

In comparison, in the water licensing scheme under the 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:<sup>37</sup>

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

<sup>37</sup> Legislative Council Standing Committee on Public Administration, 2012, *Report 14: Unassisted Failure*, p. 251.

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 electricity 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 by the licensee 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.

Governments and regulators in Australia, New Zealand and the United Kingdom have raised concerns about the conduct of, and reporting on, financial audits.<sup>38 39 40</sup> 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.<sup>41</sup> The terms of reference for the inquiry include:

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

Submissions to the inquiry from Chartered Accountants 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 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”.<sup>42</sup>

Based on its experience with managing the audits and reviews of water licences, the ERA considers the transparency and independence of electricity 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.

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<sup>38</sup> United Kingdom, House of Commons Business, Energy and Industrial Strategy Committee, 2019, *The future of audit*, p. 3.

<sup>39</sup> United Kingdom, Competition & Markets Authority, 2019, *Statutory audit services market study – final summary report*, pp. 3-7.

<sup>40</sup> New Zealand, Financial Markets Authority, 2019, *Audit Quality Monitoring Report 2019*, pp. 11-12

<sup>41</sup> Parliamentary Joint Committee on Corporations and Financial Services, 2019, *Regulation of auditing in Australia*, Terms of Reference.

<sup>42</sup> Edmund Tadros, 27 November 2019, ‘ASIC ‘squibbed’ on audit concerns’, *The Australian Financial Review*, p. 13.

### Progress update

Since the 2018/19 annual report on the operation of the electricity licensing scheme was published, there have been no changes to the Electricity Act to address this recommendation. The recommendation is therefore carried forward into this report.

#### Recommendation

The *Electricity Industry Act 2004* 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.

### 2.2.5 Change of licensee ownership

The *Electricity Industry Act 2004* 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.

#### Reform

Section 19 of the Electricity Act authorises the ERA to approve the transfer of a licence from one entity to another.<sup>43</sup> 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.

A change in the ownership of a licensee where the licensee itself remains in operation under the same company name and ABN is not considered a transfer of the licence under section 19 of the Electricity Act.

Because a change of ownership is not a transfer under the Electricity 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 Electricity 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 Electricity 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 the section 19 of the Act.

<sup>43</sup> Each entity in the transfer has its own unique combination of company name and ABN.

### Progress update

Since the 2018/19 annual report on the operation of the electricity licensing scheme was published, there have been no changes to the Electricity Act to address this recommendation. The recommendation is therefore carried forward into this report.

#### Recommendation

The *Electricity Industry Act 2004*'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.

## 2.2.6 Network reliability standards

The service standards in the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* may not guide network investment decisions for the benefit of consumers.

### Reform

It is a condition of distribution licences that distributors comply with the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*.<sup>44</sup> The Reliability Code requires distributors to report on both planned and unplanned interruptions, regardless of the cause of an interruption. This differs from other reliability measurement frameworks that are commonly used in Australia, such as the framework established by the Steering Committee on National Regulatory Reporting Requirements (SCONRRR), which requires distributors to report only on unplanned interruptions that are caused by factors under their control, which excludes interruptions caused by storms, bushfires and generator failures.

The Reliability Code requires distributors to publish annual reports on their performance against the standards in the code. Including interruptions caused by factors beyond the control of the distributor in the reported data prevents the reader from determining how well the distribution networks are performing.

The Reliability Code's standards and reporting framework were established in 2005 and have never been reviewed. The ERA considers that the standards in the Code are no longer suitable and unlikely to effectively guide network investment decisions for the benefit of consumers. For example, the inclusion of interruptions caused by factors outside the reasonable control of the distributor in the Reliability Code may create incentives for distributors to invest in their networks to mitigate the risks posed by the sources of these interruptions rather than to invest in improvements to their own network performance.

Western Power has previously advised the ERA that compliance with the Reliability Code's standards is difficult. As well as differing from the SCONRRR framework, which requires distributors to report only on unplanned interruptions that are caused by factors under their control, the standards exceed the service standard benchmarks set in Western Power's network Access Arrangement, which are based on recent performance. This means Western Power has two, inconsistent sets of standards to comply with, causing operational and

<sup>44</sup> The Reliability Code is approved by the State Government (Minister for Energy).

decision-making difficulties. Western Power recommends amending the Reliability Code's standards to adopt the approach in its Access Arrangement.<sup>45</sup>

The supply interruption standards in the Reliability Code should be revised to focus on the performance of the distribution networks operated by each distributor by excluding interruptions caused by factors that are beyond their reasonable control. Interruption standards should be developed with consideration of the historical performance of the distribution networks and include an incentive mechanism for distributors to invest in improving network reliability over time.

### Progress update

The Energy Transformation Taskforce, which is tasked with delivering the State Government's Energy Transformation Strategy, published an information paper in July 2019 on potential regulatory reforms to improve the security and reliability of the South West Interconnected System.<sup>46</sup>

In the information paper, the Taskforce committed to developing amendments to the regulatory framework to remove "duplicated reporting requirements between the NQRS Code and Western Power's Access Arrangement".<sup>47</sup> These proposed legislative amendments have not yet been published by the Taskforce and it is not known if they will address any of the network reliability matters identified in this report.

As there have been no changes to the Electricity Act or the Reliability Code since the 2018/19 annual report on the operation of the electricity licensing scheme was published, this recommendation is carried forward into this report.

### Recommendation

The *Electricity Industry (Network Quality and Reliability of Supply) Code 2005's* standards should be reviewed to identify alternatives that may better meet the needs of customers and distributors.

## 2.2.7 Biennial review of the Customer Code

The legislative requirement to conduct biennial reviews of the *Code of Conduct for the Supply of Electricity to Small Use Customers* is no longer necessary and should be replaced with a longer review period, such as five years.

### Reform

Under section 81 of the Electricity Act, the ERA is required to establish a committee to advise it on matters relating to the Customer Code. The committee is known as the Electricity Code Consultative Committee (ECCC), and comprises industry, government and consumer representatives. The ERA is responsible for the ECCC's administration. The ECCC makes recommendations to the ERA on amendments to the Code.

<sup>45</sup> Western Power, 2018, *Electricity Industry (Network Quality and Reliability of Supply) Code 2005: Annual Reliability and Power Quality Report for the year ended 30 June 2018*, p. 7.

<sup>46</sup> Energy Transformation Taskforce, 2019, *Power System Security and Reliability Framework – Information paper*, ([online](#)) [accessed 20 November 2020].

<sup>47</sup> Ibid, p. 10.

Section 88 of the Electricity Act requires the ECCC to review the Customer Code every two years.<sup>48</sup> 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 Customer Code has undergone six reviews by the ECCC and three targeted reviews on its pre-payment meter provisions (twice) and life support provisions. Recent reviews of the Customer Code have identified only a small number of relatively minor issues to address. As the Code is well established, a legislative requirement to review the Customer 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.<sup>49</sup>

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

### Progress update

Since the 2018/19 annual report on the operation of the electricity licensing scheme was published, there have been no changes to the Electricity Act to address this recommendation. The recommendation is therefore carried forward into this report.

### Recommendation

The *Electricity Industry Act 2004* should be amended to change the period between reviews of the *Code of Conduct for the Supply of Electricity to Small Use Customers* from two to five years.

## 2.2.8 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.

### Reform

Customer protections for electricity customers are specified under the Customer Code, while the equivalent gas customer protections are in the *Compendium of Gas Customer Licence Obligations* (Compendium). The Gas Act establishes the *Gas Marketing Code of Conduct* (Gas Marketing Code) and a Gas Marketing Code Consultative Committee to review the Gas Marketing Code, but it covers only the marketing of gas to customers.<sup>50</sup> The ERA made the Compendium to address that gap in the coverage of the Customer Code and the Gas Marketing Code. The Gas Marketing Code and the Compendium together provide gas customers with the same level of protection as electricity customers.

<sup>48</sup> The full text of section 88 of the Electricity Act is in Appendix 1.

<sup>49</sup> Section 27(7) of the Water Act. The full text is in Appendix 1.

<sup>50</sup> Sections 11ZPM and 11ZPO of the Gas Act. The full text of the sections is in Appendix 1.

The Customer Code is reviewed by the ECCC and administered by the ERA, while the Compendium is administered by the ERA as a schedule to gas distribution and trading licences. 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 Customer Code does.

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

An energy code that incorporates the Customer Code, Gas 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 customer protection obligations.

### **Progress update**

The State Government has not addressed this recommendation since the 2018/19 annual report on the operation of the electricity licensing scheme was published. The recommendation is therefore carried forward into this report.

### **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.

## **2.2.9 Streetlight repairs**

There is no regulatory oversight of streetlight fault repairs, which may be contributing to a recent deterioration in performance by distributors. There is a need to review the regulatory framework to include streetlight performance standards in the licensing scheme.

### **Reform**

Horizon Power, Western Power and the Rottneest Island Authority maintain over 290,000 streetlights.<sup>51</sup> There is no regulatory oversight of streetlights, such as service standards for repairing faults. For example, the Electricity Act does not allow electricity licences to include conditions on streetlight repairs.

Between 2016/17 and 2018/19 there was a steady increase in the number of streetlight faults reported in both metropolitan and regional areas supplied by Horizon Power and Western Power.<sup>52</sup> During this time, Horizon Power and Western Power's streetlight fault repair

<sup>51</sup> Economic Regulation Authority, 2020, *Annual data report – Energy distributors 2019/20*, p. 24..

<sup>52</sup> Ibid, p. 24-25.

performance deteriorated.<sup>53</sup> Changes to streetlight maintenance practices contributed to this. There is no regulatory incentive for Horizon Power and Western Power to improve their performance in this area.

As part of the ERA's assessment of the fourth Access Arrangement for Western Power's network, the Western Australian Local Government Association made a submission to the ERA, which included concerns about poor service levels for streetlight services.<sup>54 55</sup>

To provide regulatory oversight of streetlight repairs, including creating incentives for distributors to repair faulty streetlights, the licensing framework in the Electricity Act should be amended to include streetlight performance standards. The standards should be enshrined in regulations or a code made under the Act.

The regulations or code should include an obligation for distributors to publish annual reports on their streetlight repair performance.

### Progress update

In 2019/20, there was a substantial increase in the number of streetlight faults reported to Western Power and the number of metropolitan streetlight faults repaired after the benchmark five business days by Western Power.<sup>56</sup> Western Power advised that the increase in the number of faults repaired after five business days was a consequence of:

- The increase in the number of reported faults.
- Western Power transitioning from using contractors to repair streetlights to using its own employees, which resulted in a temporary drop in performance.
- Several severe weather events requiring Western Power to redeploy streetlight repair crews to repair the network to restore electricity supply to customers.<sup>57</sup>

Despite the increase in the number of metropolitan streetlights repaired after five business days, the average time Western Power took to repair metropolitan streetlight faults was less than five business days.<sup>58</sup>

Western Power's performance in repairing regional streetlight faults within nine business days improved slightly in 2019/20 but was still below its performance levels prior to 2017/18.<sup>59</sup>

Despite Western Power addressing its streetlight maintenance practices by moving streetlight repairs in-house, it is still concerning that there has been a substantial increase in the number of reported faults and the number of metropolitan faults not repaired within five business days. The transition to using its own employees to repair streetlight faults will hopefully see Western Power's performance improve over the coming years.

In 2019/20, Horizon Power reported a substantial decrease in streetlight faults, but a substantial increase in the number of metropolitan streetlight faults not repaired within five

<sup>53</sup> Ibid, p. 26.

<sup>54</sup> Western Australian Local Government Association, 2017, Submission to the ERA on Western Power's proposed access arrangement for the period 2017-2022, ([online](#)).

<sup>55</sup> The Access Arrangement includes design criteria and service standard benchmarks for streetlights that Western Power manages.

<sup>56</sup> Western Power, 2020, *Electricity Licence Reporting Datasheets – Distribution – 2020*, ([online](#)) [accessed 20 November 2020].

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Economic Regulation Authority, 2020, *Annual data report – Energy distributors 2019/20*, p. 27.

business days. Horizon Power reported a small improvement in the number of regional streetlight faults repaired within nine business days.<sup>60</sup> Horizon Power advised the ERA that the large increase in the number of metropolitan streetlight faults not repaired within five business days was due to Cyclone Damian, which required Horizon Power to focus maintenance activities on repairing its network to restore electricity supply to customers.<sup>61</sup>

Based on the performance levels reported by Horizon Power and Western Power in 2019/20 and that the State Government has not addressed this recommendation since the 2018/19 annual report on the operation of the electricity licensing was published, the recommendation to amend the Electricity Act to include streetlight performance standards in the licensing scheme is carried forward into this report.

### Recommendation

The *Electricity Industry Act 2004* should be amended to include streetlight performance standards in the licensing scheme.

## 2.2.10 Right to supply under standard customer contract

The *Electricity Industry Act 2004*'s provisions on standard form contracts, and the role of standard form contracts in the customer protection framework more generally, may not be benefitting customers in the way it was intended.

### Reform

Section 50 of the Electricity Act requires all licensed retailers that supply small use customers to have an ERA-approved standard form contract.<sup>62</sup> However, there is no obligation on these retailers, except Horizon Power and Synergy, to offer supply to customers under their standard form contract. Instead, licensees other than Horizon Power and Synergy can supply small use customers under a non-standard form contract that effectively serves the same purpose as the standard form contract, in that it sets out their terms and conditions of supply.

Most of the licensees who are not obliged to offer supply under a standard form contract choose to offer supply under a non-standard contract, which brings into the question the purpose of standard form contracts.

There are a small number of protections for customers supplied under a non-standard contract. Section 54(1)(b) of the Electricity Act requires a non-standard contract to comply with the Act, which also includes the applicable provisions in the *Electricity Industry (Customer Contracts) Regulations 2005*. These provisions include a customer's right to a cooling-off period when entering into a contract.<sup>63</sup> However, unlike for standard form contracts, the ERA does not have any oversight of non-standard contracts and fewer customer protections are required in non-standard form contracts compared to standard form contracts.

The ERA has no evidence that customers on non-standard form contracts are being disadvantaged compared to customers on standard form contracts. Horizon Power and Synergy supply a large majority of the State's small use customers, including most residential

<sup>60</sup> Ibid, p. 27.

<sup>61</sup> Ibid, p. 26.

<sup>62</sup> The full text of section 50 of the Electricity Act is in Appendix 1.

<sup>63</sup> The full text of section 54 of the Electricity Act is in Appendix 1.

customers, on standard form contracts, which are an important part of the customer protection framework. However, customers of retailers other than Horizon Power and Synergy 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.

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).<sup>64</sup> However, as mentioned earlier, in Western Australia, electricity customers who are supplied by a retailer other than Horizon Power or Synergy 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.

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 Electricity Act is amended to require all retailers to offer their ERA-approved standard form contract to prospective customers.

### Progress update

The State Government has not addressed this recommendation since the 2018/19 annual report on the operation of the electricity licensing scheme was published. The recommendation is therefore carried forward into this report.

### Recommendation

The *Electricity Industry Act 2004* should be amended to require all retailers to offer to supply electricity to a customer under an ERA-approved standard form contract, if the customer does not accept a non-standard form contract.

## 2.2.11 ERA assessment of standard customer contracts

There is an inconsistency between the number of days the ERA has to assess a retailer's standard form contract (45 days) and the number of days the ERA has to assess a licence application (90 days). There is a need to review the *Electricity Industry Act 2004* to address this inconsistency.

### Reform

Under section 49(1) of the Electricity Act, for an electricity retailer to supply small use customers, it must submit a standard form contract with its licence application to the ERA for approval.<sup>65</sup>

Under section 51(3), the ERA must take all reasonable steps to make a decision to approve or refuse a retailer's standard form contract within 45 calendar days of the contract being submitted. Under section 50, the ERA cannot grant, renew or transfer a licence unless it has

<sup>64</sup> 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).

<sup>65</sup> The full text of section 49 of the Electricity Act is in Appendix 1.

approved a standard form contract first. However, under section 19(2), the ERA has 90 calendar days to approve or refuse an application to grant, renew or transfer a licence.<sup>66</sup>

The ERA has found it difficult to assess contracts within 45 days, due to the complex and time-consuming review that is required to ensure the contract is not inconsistent with any written law (a requirement of section 51(2)). Even if the contract is approved within 45 days, the applicant cannot supply customers until it has a licence, which the ERA has 90 days to decide on.

Amending the Electricity Act to give the ERA 90 days to assess a standard form contract to align it with the timeframe to assess a licence application will not disadvantage the applicant, as it cannot operate without a licence, and it will afford the ERA enough time to conduct a detailed assessment of the contract.

### ***Progress update***

The State Government has not addressed this recommendation since the 2018/19 annual report on the operation of the electricity licensing scheme was published. The recommendation is therefore carried forward into this report.

### **Recommendation**

It is recommended that the inconsistency between the timeframes for assessing a standard form contract and licence application is addressed by amending section 51(3) of the *Electricity Industry Act 2004* to give the ERA 90 days to make a decision on a standard form contract.

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<sup>66</sup> The full text of sections 19, 50 and 51 of the Electricity Act 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 Electricity 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 quality and reliability of electricity supply are met by licensees.
- Ensure customers, particularly small-use customers, are treated fairly through the application of a customer protection regime.
- Promote access to, and confidence in, energy data used to bill customers.
- Provide a framework for the efficient transfer of contestable customers between retailers.<sup>67</sup>
- Ensure that licensees maintain effective asset management systems for their electricity supply 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.

To develop these objectives, the ERA has drawn on its experiences as the regulator of the scheme and similar objectives in other jurisdictions, such as the National Electricity Objective in the National Electricity Law.<sup>68</sup> The ERA also takes into account the public interest matters that it is required to consider when making decisions, which are set out in section 8(5) of the Electricity Act and section 26(1) of the Economic Regulation Authority Act 2003.<sup>69</sup>

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.

<sup>67</sup> A 'contestable customer' is a customer who consumes more than 50 megawatt hours of electricity per year. These customers can choose their retailer, including transferring from one retailer to another.

<sup>68</sup> The National Electricity Objective is in Appendix 1.

<sup>69</sup> The full text of sections 8(5) and 26(1) is in Appendix 1.

## 3.2 Licensing activities

### 3.2.1 Licensing scheme reviews

As the licensing scheme is established in the Electricity Act, it is the responsibility of the State Government to conduct any legislative reviews of the scheme. The licensing scheme has not been reviewed since 2004, when the Electricity Act came into effect.

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.<sup>70</sup> 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 electricity licences in 2018.<sup>71</sup> The next review is due in 2021.

### 3.2.2 Licensing activities during the year

In 2019/20, as the regulator of the electricity licensing scheme, the ERA completed the following major activities:

- In response to the COVID-19 pandemic, the ERA requested monthly data from gas retailers to monitor their performance providing financial hardship and billing protections to residential customers.
  - The data includes information on disconnections, customer bill debt levels, financial hardship programs and call centre performance.
  - The collection of monthly performance data from gas retailers is ongoing.
- The 2019/20 annual performance data reports for energy distributors and energy retailers were published on 26 March 2020.<sup>72</sup>
- The 2018/19 annual report on the operation of the electricity licensing scheme and licensee compliance was published on 30 January 2020.<sup>73</sup>
- On 31 January 2020, the ERA appointed the Electricity Code Consultative Committee to carry out the latest review of the Customer Code. This is the first comprehensive review of the code since its inception and is likely to be completed in 2022.<sup>74</sup>
- An updated Electricity Compliance Reporting Manual was published on 8 June 2020.<sup>75</sup>
- Applications for new licences, licence amendments and licence surrenders were received and processed, including an application for an electricity retail licence that included a standard form contract to supply electricity to small use customers.<sup>76</sup>

<sup>70</sup> The ERA may occasionally review licences more frequently, if required by amendments to codes or regulations.

<sup>71</sup> Economic Regulation Authority, 2018, *Decision - Electricity Licence Review 2018*. ([online](#))

<sup>72</sup> The [data and reports](#) are available on the ERA website.

<sup>73</sup> The [report](#) is available on the ERA website.

<sup>74</sup> Economic Regulation Authority, 31 January 2020, *Notice - Appointment of members to the Electricity Code Consultative Committee for 2019 to 2021*. ([online](#))

<sup>75</sup> The [manual](#) is available on the ERA website.

<sup>76</sup> The ERA's [decisions](#) on electricity licence applications and standard form contracts are available on its website.

- The applications included the first distribution and retail licence applications for a microgrid that the ERA has received.<sup>77</sup>

### 3.2.3 Stakeholder engagement

It is standard procedure at the ERA to seek public comment on electricity licence applications, standard form contracts and regulatory reviews, such as reviews of 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 its *Audit and Review Guidelines – Electricity and Gas Licences*.

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

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<sup>77</sup> Economic Regulation Authority, 2020, *Decision on electricity distribution and retail licence applications and standard form contract – Enwave WA Pty Ltd.* ([online](#))

## 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 electricity 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).
- A Compliance Enforcement Policy.
- Regulatory guidelines and compliance reporting manuals published by the ERA to assist licensees in achieving compliance.

The Electricity 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 Electricity 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 Electricity Act also requires generation, transmission and distribution 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.

Table 1 sets out the number of performance audits and asset management system reviews that were completed in 2019/20.

**Table 1: Audit and reviews completed in 2019/20**

Licensees	Performance audits	Asset management system reviews
Generation	3	2
Transmission	0	0
Distribution	1	1
Retail	4	N/A
Integrated regional	4	4
<b>Total</b>	<b>12</b>	<b>7</b>

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 Electricity 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 non-compliances may be so serious that the ERA will take enforcement action against a licensee using the powers available in the Electricity Act.

Of the 12 audits of electricity licences completed in 2019/20:

- eight licences had their audit period left unchanged
- four licences had their audit period increased for good performance.<sup>78</sup>

Of the seven asset management system reviews completed in 2019/20:

- five licences had their review period unchanged
- two licences had their review period increased for good performance.

The ERA did not identify any trends or systemic issues in the audits and reviews that caused 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.<sup>79</sup> To improve the accuracy of data collected from licensees as part of the ERA's annual performance reporting framework, in 2019/20 the ERA made performance data collection a special focus of performance audits of the electricity and gas retailers that provide data.

In 2019/20, the audits of electricity and gas retailers that supply small use customers also included a focus on the effectiveness of the processes and systems that retailers have in place to assist customers experiencing payment difficulties and financial hardship. The audits examined the retailer's processes for determining if a customer is experiencing payment

<sup>78</sup> Two licences are held by the same licensee.

<sup>79</sup> Only electricity and gas licensees that supply small use customers are required to provide performance data to the ERA.

difficulties or financial hardship and determining whether customers were offered the assistance they were entitled to.

The special areas of focus will carry on in 2020/21 for the relevant retailers that did not have an audit in 2019/20, but have an audit scheduled in 2020/21.

### 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 2019/20, the ERA was notified of two Type 1 licence breaches, which were both by Synergy. On the first occasion, Synergy failed to register a life support customer's change of address and notify Western Power in accordance with the Customer Code. The customer's new address was not registered as a life support address from 14 January 2020 to 28 April 2020.

On the second occasion, Synergy failed to notify Western Power in accordance with the Customer Code of a change in contact details for 12 registered life support customers. The customers were not adversely affected by the contravention.

In response to the contraventions, Synergy proposed actions to prevent the contraventions reoccurring, which the ERA accepted and required Synergy to implement.<sup>80</sup>

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<sup>80</sup> Economic Regulation Authority, 2020, *Notice – Synergy – Type 1 licence contravention*, ([online](#)).

## Appendix 1 - Legislative provisions referenced in the 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.

### *Electricity Industry Act 2004*

#### **Section 8(5) Power to exempt**

- (5) Without limiting the other matters that may be taken into account, matters that are to be taken into account by the Governor in determining whether the making of the order would not be contrary to the public interest are -
  - (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 customers generally or of a class of customers;
  - (e) The interests of any licensee, or applicant for a licence;
  - (f) The importance of competition in electricity industry markets;
  - (g) The policy objectives of government in relation to electricity supply.

#### **Section 9 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) Without limiting the other matters that may be taken into account, the Authority, in determining whether the exercise of the power would not be contrary to the public interest, is to take into account the matters referred to in section 8(5) but as if the area or areas referred to in section 8(5)(e) were the area or areas to which the licence in respect of which the power is exercised applies.

**Section 13 Licence condition: performance audit**

- (1) It is a condition of every licence that the licensee must, not less than once in every period of 24 months (or any longer period that 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 the performance criteria specified in the licence.
- (3) The Authority must give the Minister a report on each performance audit within 2 months after its receipt of the audit.

**Section 14 Licence condition: asset management system**

- (1) It is a condition of every licence, other than a retail licence, that the licensee must —
  - (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 any longer period that 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 measures that are to be taken by the licensee for the proper maintenance of assets used in the supply of electricity and in the operation of, and, where relevant, the construction of, any generating works, transmission system or distribution system.

**Section 18 Transfer of licence**

- (1) A licence cannot be transferred except with the approval of the Authority.
- (2) Approval for the purposes of subsection (1) may be given on such terms and conditions as are determined by the Authority.
- (3) An application for approval to transfer a licence must be —
  - (a) made in a form approved by the Authority; and
  - (b) accompanied by the prescribed application fee.
- (4) An applicant must provide any additional information that the Authority may require for the proper consideration of the application.

**Section 19 Decisions as to grant, renewal or transfer of licence**

- (1) Subject to section 9, the Authority must grant, renew or approve the transfer of a licence if it 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 10, 16 or 18, as the case may be;
  - (b) section 50 or 100 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 10(2), 16(2) or 18(4), the relevant information has been provided to the Authority.

### **Section 21 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 for the amendment of a licence must be —
  - (a) made in a form approved by the Authority; and
  - (b) accompanied by the prescribed application fee.
- (3) An applicant must provide any additional information that 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.

### **Section 22 Amendment of licence on initiative of Authority**

- (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 under this section cannot take effect until it is notified to the licensee under the procedure referred to in subsection (2).
- (4) 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 32 Failure to comply with a 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 33, 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 in writing 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 State.

### **Section 35 Cancellation of licence**

- (1) The Governor may cancel a licence if he or she is satisfied that the licensee —
  - (a) is in default as defined in subsection (2); or
  - (b) has failed to pay a licence fee as required under section 17; or
  - (c) in the case of a company, is an externally-administered body corporate as defined in the *Corporations Act 2001* of the Commonwealth section 9; or
  - (d) has within a period of 24 months been convicted of more than 3 offences for which the prescribed punishment is a fine of \$10 000 or more or imprisonment for 12 months or more.
- (2) For the purposes of subsection (1)(a) a licensee is in default if the Governor is satisfied that —
  - (a) the licensee has failed to comply with a term or condition of the licence; and
  - (b) the failure is material in terms of the operation of the licence as a whole; and
  - (c) the Minister has given to the licensee written notice of the failure and the fact that in the Minister's opinion paragraph (b) applies to it; and
  - (d) the licensee has not, within the time specified in the notice, either remedied the failure or shown cause why the licence should not be cancelled.
- (3) If a licence is cancelled under this section the Authority must ensure that notice of the cancellation is published in the *Gazette*.
- (4) Regulations may be made under section 131 providing, in the event of a licence being cancelled, for —
  - (a) the vesting of assets, rights and interests of the former licensee in a person (including the Minister as a corporation) for the purpose of enabling electricity to be supplied after the cancellation; and
  - (b) the conferral of powers and duties for that purpose; and
  - (c) the discharge or assignment of liabilities; and
  - (d) the disposal of property; and
  - (e) all matters that are necessary or convenient for dealing with the consequences of the cancellation and the vesting referred to in paragraph (a).
- (5) If —
  - (a) a licence other than a retail licence is cancelled under this section; and
  - (b) regulations of the kind referred to in subsection (4)(a) are made,
 Division 8 applies, with all necessary changes, for the purpose of enabling electricity to be supplied after the cancellation, as if references in that Division

to a licensee were references to the person in whom the assets, rights and interests of the former licensee are vested under the regulations.

### **Section 36 Duty to leave system in safe condition**

- (1) Following the cancellation of a licence under section 35, the former licensee —
  - (a) must ensure that any generating works, transmission system or distribution system constructed or operated by the former licensee under the licence is left in a safe condition; and
  - (b) is not to remove any part of the works or system except with the approval of the Minister.
- (2) If, in the opinion of the Minister, a former licensee contravenes subsection (1), the Minister may cause the contravention to be rectified to the satisfaction of the Minister.
- (3) Persons authorised by the Minister may enter any land or premises and do all things that are necessary for the purposes of subsection (2).
- (4) The Minister may recover the costs and expenses of any action taken under subsection (2) in a court of competent jurisdiction as a debt due by the former licensee to the State.

### **Section 38 Authority to monitor licensing scheme and licence compliance**

It is a function of the Authority —

- (a) to monitor and report to the Minister on the operation of the licensing scheme provided for in this Part; and
- (b) to inform the Minister about any failure by a licensee to meet performance criteria or other requirements of its licence.

### **Section 49 Form of contract to be submitted with application for grant, renewal or transfer**

- (1) An applicant for the grant or renewal of a retail licence or an integrated regional licence must submit with the application a draft of the standard form contract under which the applicant will supply electricity to customers pursuant to the licence.
- (2) Where an application is made under section 18 for the transfer of a retail licence or an integrated regional licence to be approved, the proposed transferee must submit with the application a draft of the standard form contract under which the proposed transferee will supply electricity to customers pursuant to the licence if the transfer is approved.
- (3) The requirement in subsection (1) and (2) only applies if the applicant or proposed transferee intends to supply electricity to customers pursuant to the licence.

### **Section 50 Licensing application not to be granted unless standard form contract approved**

- (1) Despite section 19, the Authority must not grant or renew, or approve a transfer of, a retail licence or an integrated regional licence unless —
  - (a) the applicant or the proposed transferee has submitted a draft form of contract as required by section 49; and

- (b) the Authority has approved the standard form contract under which the applicant or proposed transferee will supply electricity to customers pursuant to the licence.
- (2) If when a retail licence or an integrated regional licence was granted or renewed, or the transfer of a retail licence or an integrated regional licence was approved, subsection (1) did not apply because of section 49(3), the licensee may at any subsequent time submit to the Authority a draft of a standard form contract under which the licensee will supply electricity to customers pursuant to the licence if the standard form contract is approved by the Authority.

#### **Section 51 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 49 or 50(2).
- (2) The Authority must not 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.
- (3) The Authority must take all reasonable steps to make a decision under subsection (1) within 45 days after the standard form contract is submitted to it.

#### **Section 54 Licence condition: contracts**

- (1) It is a condition of every retail licence and integrated regional licence that, subject to any exception provided for in the regulations, the licensee must not supply electricity to a customer otherwise than under —
- (a) a standard form contract; or
  - (b) a non-standard contract that complies with this Act.
- (2) It is also a condition of every retail licence and integrated regional licence that the licensee must comply with a direction given to the licensee under section 53.
- (3) For the purposes of subsection (1)(b), a non-standard contract complies with this Act if it —
- (a) meets the requirements of the regulations in respect of such contracts; and
  - (b) is not inconsistent with —
    - (i) this Act or any other written law; or
    - (ii) any term, condition or provision of the licence concerned.

#### **Section 71(4) Supplier of last resort**

- (4) Unless another supplier of last resort for a designated area is designated for the time being under subsection (1) —
- (a) the Electricity Generation and Retail Corporation is the supplier of last resort for the designated area if electricity is supplied to customers in the area from the South West interconnected system; and

- (b) the Regional Power Corporation is the supplier of last resort for the designated area if electricity is not supplied to customers in the area from the South West interconnected system.

### **Section 88 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 79(2).
- (3) The committee must, in accordance with section 89, 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.

### **Section 92 Authority may approve scheme**

- (1) The Authority may, by instrument in writing, approve a scheme that provides for a person (the **electricity ombudsman**) to investigate and deal with —
  - (a) disputes and complaints under customer contracts;
  - (b) disputes between —
    - (i) customers and licensees; or
    - (ii) customers and electricity marketing agents;
  - (c) complaints by customers about —
    - (i) licensees; or
    - (ii) electricity marketing agents;and
  - (d) any other kind of dispute or complaint (whether or not under a customer contract) that is prescribed by the regulations.
- (2) A scheme may treat a failure to make a decision within a specified period as a decision of a particular kind.
- (3) A scheme may be made applicable to a dispute or complaint that arose before the commencement of the scheme, but not earlier than 12 months before that commencement.
- (4) The Authority may, by instrument in writing, approve an amendment to an approved scheme.
- (5) Notice of an approval under subsection (1) is to be published in the Gazette.
- (6) In the case of the initial electricity ombudsman scheme, this section has effect subject to Schedule 3 clause 4.

**Schedule 1 Licence terms and conditions**

- (m) requiring the licensee to provide to the Authority, in the manner and form determined by the Authority, specified information on any matter relevant to the operation or enforcement of the licence, the operation of the licensing scheme provided for in Part 2, or the performance of the Authority's functions under that Part;

**Energy Coordination Act 1994****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*.

**Water Services Act 2012****Section 18 Amendment or cancellation of a licence – on application of licensee**

- (1) A licensee may apply to the Authority at any time for the amendment or cancellation of a licence held by the licensee.

- (2) The Authority may amend or cancel the licence in accordance with the application if satisfied that it would not be contrary to the public interest to do so.
- (3) The Authority cannot amend a term or condition of a licence that was not determined by the Authority.
- (4) If the licence specifies a procedure to be followed in amending it, the amendment must be made in accordance with that procedure unless the Authority and the licensee agree otherwise.

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

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

### **Section 36 Provision of a water service ceasing – duty to leave system in safe condition**

- (1) If a licensee ceases to provide a water service in an area, the former licensee —
  - (a) must ensure that any water service works provided or operated by the former licensee for the purposes of the licence in the area are left in a safe condition; and
  - (b) must not remove any part of the works except with the approval of the Minister.

Penalty: a fine of \$30 000.

- (2) If the Minister is satisfied that a former licensee has failed to comply with subsection (1)(a), the Minister may have the failure rectified to the Minister's satisfaction.
- (3) Persons authorised by the Minister for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of subsection (2).
- (4) The Minister may recover the Minister's reasonable costs and expenses of having a failure rectified from the former licensee, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.

### **Section 42 Power to prohibit use etc.**

- (1) If an inspector is of the opinion that anything that the inspector is authorised to inspect does not conform with the requirements of any term or condition of a licence or an exemption, the inspector must as soon as practicable report his or her opinion in writing to the designating authority.
- (2) Upon receipt of a report under subsection (1) about a thing, the designating authority may, if satisfied that the lack of conformity is materially significant —
  - (a) by order in writing given to the licensee or exempt person — prohibit the use of the thing absolutely or except in accordance with specified conditions or restrictions; and
  - (b) have the water service to or from the thing, or to or from the premises on which the thing is situated, disconnected until the designating authority is satisfied that the thing conforms with the requirements referred to in subsection (1).

- (3) The order referred to in subsection (2)(a) has effect as a condition on the licence or exemption.
- (4) Persons authorised by a designating authority for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of subsection (2)(b).
- (5) A designating authority may recover its reasonable costs and expenses of having a water service disconnected from the licensee or exempt person, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.
- (6) The court may not issue an order unless satisfied that the licensee or exempt person was responsible for the lack of conformity.

### **Section 210(1) Designation of inspectors and compliance officers**

- (1) The Authority may, in writing, designate an individual as an inspector for the purposes of one or more specified provisions of Part 2 to the extent to which the provisions relate to functions of the Authority.
- (2) The CEO may, in writing, designate an employee of the Department as an inspector for the purposes of one or more specified provisions of Part 2 to the extent to which the provisions relate to functions of the Minister.
- (3) A licensee may, in writing, designate an employee of the licensee, a contractor (who is an individual) or an employee of a contractor as a compliance officer for the purposes of one or more specified provisions of Part 5.
- (4) The CEO may, in writing, designate an individual as a compliance officer for the purposes of one or more specified provisions of Part 5.
- (5) If a designating authority designates a person as an inspector or a compliance officer, the designating authority must give the person a certificate of authority that sets out or includes —
  - (a) a recent passport-size photograph of the person; and
  - (b) the person's name; and
  - (c) a statement to the effect that the person is an inspector or compliance officer for the purposes of this Act; and
  - (d) the provisions under which the inspector or compliance officer may exercise powers; and
  - (e) any limitations or restrictions that apply to the exercise of the powers of the inspector or compliance officer; and
  - (f) the expiry date of the certificate.
- (6) In any proceedings under this Act, a certificate of authority purporting to be issued by a designating authority under this section is evidence of the designation of the person as an inspector or compliance officer unless evidence is given to the contrary.

## Electricity (Network Safety) Regulations 2015

### Regulation 9 Duties relating to certain risks to safety

- (1) In this regulation —  
**investigate** includes to consider whether or not a work practice or safety management system contributed to a risk to safety;  
**risk to safety**, in relation to a network, means —
- (a) anything at a place where a prescribed activity is being carried out on a network that is a risk to safety; or
  - (b) the condition of any part of the network that is a risk to safety.
- (2) If a network operator becomes aware of a risk to safety in relation to a network of the network operator, the network operator must, as soon as is reasonably practicable, investigate the risk.  
 Penalty: a fine of \$250 000.
- (3) Subregulation (2) does not apply to a risk that is inherent.
- (4) If a person for whom a network operator is responsible becomes aware of a risk to safety in relation to a network of the network operator, the person must, as soon as is reasonably practicable, notify the network operator of the risk, unless the person knows that the network operator has already been notified.  
 Penalty:
- (a) for an individual, a fine of \$50 000;
  - (b) for a body corporate, a fine of \$250 000.
- (5) If an investigation reveals that there is a risk to safety, the network operator must ensure, so far as is reasonably practicable, that —
- (a) the risk is minimised or eliminated, as soon as is reasonably practicable; and
  - (b) until the risk is minimised or eliminated, no prescribed activity is carried out on any affected part of the network, other than work to minimise or eliminate the risk.
- Penalty: a fine of \$250 000.
- (6) The requirements imposed by this regulation are in addition to any requirements applying under an applicable safety management system.

## National Electricity Law (National Electricity (South Australia) Act 1996)

### Section 7 National electricity objective

The objective of the law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- price, quality, safety and reliability and security of supply of electricity; and
- the reliability, safety and security of the national electricity system.

## ***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 electricity licensees can be found on the ERA's website, along with copies of their licences.<sup>81</sup>

Table 2 shows the total number of electricity licences and licensed services as at 30 June 2020.

The four licence classifications reflect the four licence services: generation, transmission, distribution and retail. The reason there are more licensed services in the table than licences is because an integrated regional licence authorises a licensee to undertake any combination of the four services outside the South West Interconnected System. For example, Horizon Power has an integrated regional licence that authorises it to provide three services: transmission, distribution and retail.

**Table 2: Electricity licences by type and service 2019/20**

Classification	Licences	Share (%)	Licensed services	Share (%)
Generation	27	39	34	40
Transmission	3	4	8	10
Distribution	6	9	10	12
Retail	24	34	32	38
Integrated regional <sup>82</sup>	10	14	N/A	N/A
<b>Total</b>	<b>70</b>	<b>100</b>	<b>84</b>	<b>100</b>

### 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 electricity licensing scheme over the past three years are set out in Table 3.

<sup>81</sup> The licensees and licences are available on the ERA's [Licence Holders](#) webpage.

<sup>82</sup> The 10 integrated regional licences authorise 24 services that make up the difference between the number of licences other than integrated regional licences and the number of licensed services.

**Table 3: ERA licensing costs**

Licence service	Costs per year (\$)		
	2017/18	2018/19	2019/20
Generation	199,589	255,356	290,844
Transmission	139,439	187,988	228,288
Distribution	141,721	190,270	236,360
Retail	225,077	273,626	318,352
<b>Total</b>	<b>705,826<sup>83</sup></b>	<b>907,240</b>	<b>1,073,844</b>

### Licence fee

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

- Generation - \$2,406
- Transmission - \$2,406
- Distribution - \$2,732
- Retail - \$3,416
- Integrated regional licence fees consist of the aggregate of the fees for each activity (generation, transmission, distribution and/or retail) authorised by the licence.

### 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 2). The number of units reported by the licensee will determine the standing charge that the licensee must pay.<sup>84</sup>

Under the regulations, the four licence types (generation, transmission, distribution and retail) are collectively required to pay a quarter of the total standing charge for the ERA's electricity licensing function each year.

For example, if the ERA's electricity 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 25 per cent of the electricity standing charge

<sup>83</sup> 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 (as a proportion of the ERA's overall costs) due to the projects they carried out, such as the assessment of Western Power's network access arrangement for the 2017-22 regulatory period.

<sup>84</sup> 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.

(\$250,000) and the retailer has 50 per cent of the total number of customers supplied by all retailers within the licensing scheme.

**Table 4: Standing charge by licence service**

Licence service (unit of measurement)	Cost per unit (\$)		
	2017/18	2018/19	2019/20
Generation (megawatt capacity)	17.82	24.23	28.96
Transmission (kilometres of line)	13.85	19.41	23.48
Distribution (kilometres of line)	1.20	1.66	2.01
Retail (customers)	0.12	0.15	0.18

The ERA's electricity licensing costs change 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, which fluctuates depending on the licensing activities the ERA completes in the year and the number of licensees in each licensing scheme. For example, in 2019/20 the ERA granted five new electricity licences.
- The allocation of the ERA's overheads across its divisions.<sup>85</sup> For example, if there is an increase in staff one year in another area of the ERA to address a higher workload, such as the electricity markets division, then a lower percentage of the ERA's overheads are allocated against licensing functions.

<sup>85</sup> 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.