

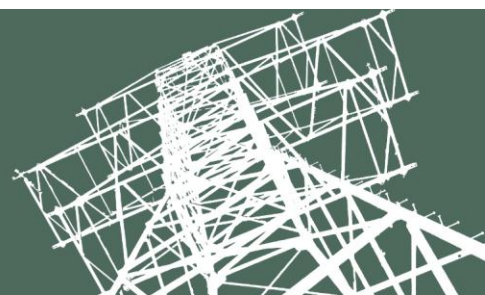


Government of Western Australia
Department of Finance
Public Utilities Office

Amendment to Electricity Industry Act 2004: Removal of electricity generation licensing

Consultation Paper

Department of Finance | Public Utilities Office
December 2015



Disclaimer

© State of Western Australia

The information, representations and statements contained in this publication have been prepared by the Public Utilities Office and are provided for information purposes only. Views expressed in this publication are not necessarily the views of the Western Australian Government or Minister for Energy. The State of Western Australia, the Minister for Energy, the Public Utilities Office, and their respective officers, employees and agents:

1. make no representation or warranty as to the accuracy, reliability, completeness or currency of the information, representations or statements in this publication (including, but not limited to, information which has been provided by third parties); and
2. shall not be liable, in negligence or otherwise, to any person for any loss, liability or damage arising out of any act or failure to act by any person in using or relying on any information, representation or statement contained in this publication.

Table of Contents

Abbreviations	iv
1. Introduction.....	1
1.1 Purpose of consultation paper	1
1.2 Licensing scheme	2
1.3 Work program and timetable	3
1.4 Invitation for submissions	3
1.5 Confidentiality	3
2. Rationale for change	4
2.1 Objectives of licensing	4
2.2 Generation licence exemptions	4
2.3 Generation licence conditions	4
2.4 Licence compliance costs	5
2.5 Compliance history of generation licensees	6
2.6 Western Power and Horizon Power Technical Rules.....	7
2.7 Electricity network access contracts.....	8
2.7.1 Electricity market review and network connection and access	9
2.8 Wholesale electricity market.....	10
2.9 Energy Safety	10
2.10 Environmental regulation	11
3. Recommendation	12
3.1 Recommendation for comment	12
3.1.1 Recommendation.....	12
3.1.2 Consequential legislative amendments	12

Abbreviations

Term	Definition
Access Code	Electricity Networks Access Code 2004
Access Contract	Electricity Transfer Access Contract
Act	Electricity Industry Act 2004
Authority	Economic Regulation Authority
Caravan Park Order	Electricity Industry (Caravan Park Operators) Exemption Order 2005
Environmental Protection Act	Environmental Protection Act 1986
Exemption Order	Electricity Industry Exemption Order 2005
Licensing Funding Regulations	Economic Regulation Authority (Licensing Funding) Regulations 2014
Market Rules	Wholesale Electricity Market Rules
Metering Code	Electricity Industry (Metering) Code 2012
Minister	Minister for Energy
Public Utilities Office	Department of Finance, Public Utilities Office

1. Introduction

1.1 Purpose of consultation paper

The purpose of this Consultation Paper is to:

- explain the rationale for the proposed removal of section 7(1) from the *Electricity Industry Act 2004 (Act)*, which requires persons who construct or operate electricity generating works to hold a licence; and
- seek views from interested parties on this proposal.

Electricity market participants have raised concerns with the Department of Finance, Public Utilities Office (**Public Utilities Office**) that the cost of complying with a generation licence outweighs the benefits of being licensed.

Generation licences have limited obligations (compared to transmission, distribution and retail licences) and generation licensees have a very good compliance record (more detail is in Part 2 of this paper).

The Public Utilities Office considers there are sufficient regulatory and commercial arrangements in place to effectively manage the operation of generating works, without the need to licence generators.

With such measures already in place, requiring the operators of electricity generation works to hold a licence is an onerous regulatory obligation. As explained in Part 2, other measures governing the operations of electricity generators include the following:

- the *Electricity Networks Access Code 2004 (Access Code)* requires network users (including generators) to comply with Western Power's Technical Rules;
- Horizon Power requires generators to comply with its Technical Rules¹;
- Western Power requires network users to enter into an Electricity Transfer Access Contract (**Access Contract**), which requires compliance, amongst other matters, with Western Power's Technical Rules and 'Good Electricity Industry Practice';²
- Horizon Power and Western Power require generators to enter into a connection agreement if they are connecting equipment to the network;
- wholesale electricity market legislation and rules;
- energy safety legislation; and
- environmental regulation.

The proposed amendment to the Act to remove the requirement for licensing of electricity generation works will facilitate a more efficient regulatory regime by:

- removing unwarranted obligations on electricity generators; and

¹ Unlike Western Power's Technical Rules, Horizon Power's Technical Rules are not regulated by the Access Code.

² The Access Code defines 'Good Electricity Industry Practice' as "*the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable written laws and statutory instruments and applicable recognised codes, standards and guidelines*".

- potentially reducing licensing costs of the Economic Regulation Authority (**Authority**) and making total contributions collected from each group of remaining licensees more aligned with the costs incurred by the Authority in relation to that type of licence (further information is in Part 3 of this paper).

1.2 Licensing scheme

The Act is administered by the Minister for Energy (**Minister**). Part 2 of the Act provides for a licensing scheme, managed by the Authority.

Section 7 of the Act requires that:

1. A person must not construct or operate generating works except under the authority of a generation licence or an integrated regional licence.
2. A person must not construct or operate a transmission system³ except under the authority of a transmission licence or an integrated regional licence.
3. A person must not construct or operate a distribution system⁴ except under the authority of a distribution licence or an integrated regional licence.
4. A person must not sell electricity to customers except under the authority of a retail licence or an integrated regional licence.

Consistent with section 4 of the Act (which prescribes the classification of licences), there are five licence categories:

1. generation licence⁵;
2. transmission licence;
3. distribution licence;
4. retail licence; and
5. integrated regional licence⁶.

Under section 8 of the Act, the Governor can grant licence exemptions. Current electricity licence exemptions are in the *Electricity Industry Exemption Order 2005* (**Exemption Order**) and *Electricity Industry (Caravan Park Operators) Order 2005* (**Caravan Park Order**).

³ The Act defines 'transmission system' as apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of 66 kV or higher.

⁴ The Act defines 'distribution system' as apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV.

⁵ Under the *Electricity Industry Exemption Order 2005*, generating works with a capacity under 30 megawatts are exempt from the requirement to hold a licence.

⁶ Integrated regional licences authorise the combination of generation, transmission, distribution and retail activities otherwise than through the South West Interconnected System.

1.3 Work program and timetable

Activity	Timeframe
Publish Consultation Paper	December 2015
Receive submissions	February 2016
Consider submissions and finalise recommendations (proposed Act amendments are subject to the outcomes of this consultation process)	February 2016
Seek ministerial approval for proposed Act amendments (if any)	March 2016
Act amendments introduced into Parliament for consideration and approval (subject to Parliament's legislative timetable)	Late 2016

1.4 Invitation for submissions

The Public Utilities Office invites submissions on this Consultation Paper by **5.00 pm (WST) on Friday 5 February 2016**.

Electronic submissions are preferred and should be emailed to puosubmissions@finance.wa.gov.au.

Alternatively, submissions in printed form should be sent to:

Mr Alex Kroon
A/Principal Policy Officer
Markets and Regulation Division
Public Utilities Office
Department of Finance
Locked Bag 11
Cloisters Square WA 6850

Further information on this Consultation Paper can be obtained from:

Mr Alex Kroon, A/Principal Policy Officer, Public Utilities Office on (08) 6551 4686 or at alexander.kroon@finance.wa.gov.au.

1.5 Confidentiality

Stakeholders should clearly specify when information they provide is confidential or commercial in confidence (and, where possible, should separate confidential information from non-confidential information). The confidentiality of any information provided will be respected. With the exception of any material identified by the author as confidential or commercial in confidence, submissions will be made publicly available on the Department of Finance website.

Request for access to information relating to the matters detailed in this Consultation Paper will be treated in accordance with the *Freedom of Information Act 1992* (WA) and Department of Finance processes (please see <http://www.finance.wa.gov.au> for further information).

2. Rationale for change

2.1 Objectives of licensing

Licences granted by the Authority are used as a means to ensure that industry participants adhere to required standards of service delivery, asset management and business practices. The licensing scheme does not deal with safety matters.

Licensing should only be implemented where it is the most suitable form of intervention to meet a clearly identified market failure and where the benefits of licensing outweigh the costs.⁷

This Consultation Paper examines whether the costs of complying with a generation licence outweigh the benefits of licensing generators. For example, the compliance history of generation licensees indicates that a market failure does not exist that justifies licensing generators. Furthermore, other regulatory obligations and contractual arrangements that generators must comply with act to effectively manage the operation of generating works and represent a more suitable form of intervention than licensing. These points are discussed in more detail throughout Part 2.

Under section 19 of the Act, the licence application process includes the Authority assessing whether the applicant has the technical and financial resources to undertake the activities authorised by the licence (i.e. to be able to construct and operate the proposed generating works). If the requirement for generators to be licensed is removed from the Act, this assessment will not be carried out. While this assessment has obvious merit in determining that a generator has the requisite capabilities, other regulatory obligations fulfil a similar role (these are discussed in more detail in sections 2.6 – 2.10).

2.2 Generation licence exemptions

There are six individual or class⁸ generation licence exemptions in the Exemption Order, including a class licence exemption for any generating works with nameplate capacity under 30 megawatts. Therefore, only generating works with capacity over this threshold require a licence. As the majority of generating works in Western Australia are below the capacity threshold, there are only 29 generation licences currently in effect.⁹

While Western Australia does not require all electricity generating works to have a licence, generation licensing is also not uniform across Australia. For example, New South Wales does not require generating works to be licensed.¹⁰

2.3 Generation licence conditions

Generation licences contain the least compliance obligations of all electricity licence types. There are 496 licence obligations in total, of which 43 relate to generation licences (a share of less than 10 per cent).¹¹

⁷ *Best Practice Utility Licensing*, Economic Regulation Authority, January 2007, p14.

⁸ Class licence exemptions are blanket exemptions that apply to any person carrying out a particular activity. Individual exemptions apply to a specific person or company.

⁹ A schedule of all generation licensees and their licences is available on the Authority's website: <https://www.erawa.com.au/electricity/electricity-licensing/licence-holders>

¹⁰ <http://www.ipart.nsw.gov.au/Home/Industries/Electricity/Licensing>

¹¹ Electricity Compliance Reporting Manual, Economic Regulation Authority, 1 September 2014, Parts 9-17: <https://www.erawa.com.au/electricity/electricity-licensing/regulatory-guidelines>

The Authority uses criteria to determine the classification of each licence obligation. None of the licence obligations applicable to generation licences are rated Type 1 by the Authority. Type 1 licence obligations are considered the most serious, as the consequences of non-compliance would cause major damage, loss or disruption to customers. Type 2 licence obligations are considered to be of moderate severity.¹²

The obligations specific to generation licences can be divided into two groups:

1. 15 licence obligations are administrative; for example, paying the annual licence charge and filing compliance reports with the Authority by a prescribed time.
2. 28 licence obligations contained in the *Electricity Industry (Metering) Code 2012 (Metering Code)*.

Of the Metering Code obligations, some are administrative, others are duplicated in the generator's Electricity Transfer Access Contract with Western Power (see section 2.6 for more detail) and certain obligations do not apply if the generator has no involvement in the provision of metering services at the network connection point (metering services are normally provided by the network operator, in this case, Western Power).

Generation licensees are also required to have an asset management system, which must be periodically reviewed by an independent expert (at the licensee's cost). There are other mechanisms in place that ensure the generator maintains equipment to a satisfactory standard and replicate the obligation to have an asset management system (these are explained in more detail below).

2.4 Licence compliance costs

Generation licensees incur several compliance costs directly related to the licence obligation:

- a licence application charge;
- annual licence charges;
- standing charges;
- periodic performance audit and asset management system review costs (the Act requires audits and reviews to be conducted by an independent expert); and
- costs associated with developing and maintaining internal systems and processes to achieve licence compliance.

Under the *Economic Regulation Authority (Licensing Funding) Regulations 2014 (Licensing Funding Regulations)*, prospective licensees must contribute towards costs incurred by the Authority in dealing with a licence application¹³ (the 'specific charge'). These costs include the engagement of consultants by the Authority to perform technical and/or financial assessments of a licence application, production of licence maps, public consultations and gazettal costs.¹⁴ While there is no publicly available information on the scale of these costs in relation to a generation licence application, a conservative estimate is between \$5,000 and \$7,000, if technical and financial assessments are required.

¹² Ibid, p.5

¹³ Regulation 4.

¹⁴ *Licence Application Guidelines and Form*, Economic Regulation Authority, February 2015, p19: <https://www.erawa.com.au/electricity/electricity-licensing/regulatory-guidelines>

The Licensing Funding Regulations require licensees to pay an annual licence charge to the Authority.¹⁵ For generation licensees, this is \$2,406 per year (paid on the anniversary date of the granting of the licence).

Licensees are also required to pay a quarterly standing charge to the Authority.¹⁶ The standing charge is payable in connection with the costs incurred by the Authority in performing its licensing functions. These costs relate to the general administration of the licensing scheme and include, but are not limited to, the following:

- overheads associated with the Authority's corporate and management activities related to administering the licensing scheme;
- annual reporting on the performance of licensees;
- review and amendment of codes of conduct for electricity, gas and water customers; and
- periodic reviews of generic licence conditions.¹⁷

Under the Licensing Funding Regulations, the standing charge is calculated based on a licensee's market share within its licence type (for generators market share is measured by megawatt capacity). The larger an individual licensee's market share, the larger the share of the standing charge within the licence type. Each licence type (generation, transmission, distribution and retail) is responsible for 25 per cent of the overall standing charge respectively.

The Authority has advised the Public Utilities Office that it estimates the 2015-16 standing charge for generation licensees will be \$317,000 (25 per cent of the Authority's total electricity licensing standing charge).

As an example of performance audit and asset management system review costs, a large generator has advised the Public Utilities Office that it estimates its next audit and review will involve a cost of about \$100,000. While a majority of generation licensees will have audit and review costs lower than this figure, as they have less generation plant, the costs are still substantial.

2.5 Compliance history of generation licensees

The Authority has administered the licensing scheme under the Act since 2005. In this time, it has never taken enforcement action under section 32 of the Act against a generation licensee for non-compliance.¹⁸

To reward good compliance, the Authority has a history of extending the time period for generation licensees' performance audits and asset management system reviews (poor performance may result in a reduced audit and review period, requiring the licensee to be audited and reviewed more frequently).

¹⁵ Regulation 6.

¹⁶ Regulation 7.

¹⁷ *Licence Application Guidelines and Form*, Economic Regulation Authority, February 2015, p23: <https://www.erawa.com.au/electricity/electricity-licensing/regulatory-guidelines>

¹⁸ Section 32 of the Act allows the Authority to serve a notice on the licensee to rectify a non-compliance. If a licensee fails to comply with the notice, the Authority can serve a letter of reprimand on the licensee, order the licensee to pay a penalty up to \$100,000, or cause the non-compliance to be rectified to the satisfaction of the Authority.

The Authority has increased the audit and review period of 22 of the 25 generation licensees that have been audited¹⁹ (while there are 29 generation licensees, four hold newly granted licences and are yet to be audited). The table below shows the audit and review period of current generation licensees:

Audit and review period	Number of generation licensees
24 months	3
36 months	8
48 months	10
60 months	4
Not yet due (new licences)	4
Total	29

Taking into account the substantial compliance costs incurred by generation licensees (in complying with licence obligations) compared to the limited licence conditions imposed and their good compliance record, it is considered unlikely that the benefit of licensing generators outweighs the costs. In addition to this, generators are also governed by other regulatory instruments and contractual arrangements, which reduce the value of the licensing requirement (these arrangements are further detailed below).

2.6 Western Power and Horizon Power Technical Rules

Chapter 12 of the Access Code provides the framework for an electricity network's Technical Rules, including their objectives, content, development, amendment and approval.²⁰ Western Power is the sole network operator in Western Australia with Authority-approved Technical Rules.²¹

Technical Rules specify the technical standards used for the design and operation of a network. They also set out performance and technical specifications for equipment connected to the network, in particular generators. Clause 3.3.3 of Western Power's Technical Rules requires generators to test their equipment to demonstrate compliance with the Technical Rules' technical and operational requirements. Under clause 4.1.3(b), following commissioning, a generator must negotiate in good faith with Western Power and agree on a compliance monitoring program²² to confirm ongoing compliance with the Technical Rules and Connection Agreement.²³

Clause 12.4 of the Access Code requires the service provider (network operator) and users of the network to comply with the service provider's Technical Rules. A network user is a person party to a contract with a service provider to use the network, and is usually a generator or retailer.

¹⁹ Each licensee's most recent audit and review reports are available on the Authority's website at: <https://www.erawa.com.au/electricity/electricity-licensing/reports-and-decisions>

²⁰ The scope and content of Technical Rules is detailed in Appendix 6 of the Access Code. Technical Rules are independently approved by the Authority under Chapter 12 of the Access Code.

²¹ <http://www.westernpower.com.au/corporate-information-technical-rules.html>

²² Western Power has published Generator Compliance Monitoring Program Requirements: http://www.westernpower.com.au/documents/generator_compliance_monitoring_program_requirements.pdf

²³ Connection Agreements are discussed in more detail in section 2.7.

A generator who holds an Access Contract ('contract for services') is therefore required by the Access Code and its Access Contract to comply with the service provider's Technical Rules, regardless of whether it holds a licence (compliance with the Technical Rules and Access Code is not enforced through the licensing scheme). A network operator's compliance with the Access Code is enforced through separate enforcement regulations²⁴ applied independently of the licensing scheme. A generator's compliance with its Access Contract (and therefore Western Power's Technical Rules) is managed by Western Power under the terms and conditions of the Access Contract.

In relation to other networks that connect to Western Power's network²⁵, under clause 12.4A of the Access Code the operators of these networks must comply with Western Power's Technical Rules at the point of interconnection between the two networks. Clause 12.4A also requires that these other network operators ensure generators connecting to their network operate in such a way as to allow the network operator to comply with Western Power's Technical Rules.

For its regional and remote service areas, Horizon Power has its own Technical Rules²⁶ and network connection approval process for connecting generating works to its network.²⁷

Removal of the generation licence requirements would not affect obligations on a generator to comply with Western Power or Horizon Power's Technical Rules in relation to the network connection and operation of their generating works, which ensure that Western Power and Horizon Power have suitable control over equipment connected to their networks and the networks are adequately protected.

2.7 Electricity network access contracts

Western Power's Access Arrangement is independently approved by the Authority under the Access Code and sets out the terms and conditions for obtaining access to Western Power's electricity network.²⁸ Generally, it is generators and retailers who obtain network access to allow them to transfer electricity in and out of the network and access Western Power metering services at the network connection point.

Clause 5.1 of the Access Code requires an Access Arrangement to include a Standard Access Contract that prescribes terms and conditions of network access (the Access Code also requires an Access Arrangement to include a Model Standard Access Contract). Clause 2.7 of the Access Code requires a network operator to use all reasonable endeavours to accommodate a person's application for network access (such as a generator).

²⁴ *Electricity Industry (Access Code Enforcement) Regulations 2005.*

²⁵ The South West Interconnected System includes Western Power's network and a number of other smaller networks connected to Western Power's network.

²⁶ The Access Code does not require Horizon Power's Technical Rules to be approved by the Authority.

²⁷ http://horizonpower.com.au/media/1287/hpc_9dj_01_0001_2012_tec.pdf

²⁸ <https://www.erawa.com.au/electricity/electricity-access/western-power-network/access-arrangement>

Generators that are connected to and use Western Power's network have an Access Contract with Western Power, which requires the generator, amongst other things, to comply with Western Power's Technical Rules and 'Good Electricity Industry Practice'²⁹ when using the network. The Access Contract also requires generators to provide technical information to Western Power on request and obliges the generator to pay Western Power's fees and charges.

Western Power also requires network users who wish to connect equipment to its network to enter into a Connection Agreement. This agreement is tailored for particular circumstances, but generally also requires generators to comply with Western Power's Technical Rules and submit equipment specifications to Western Power for approval.

Regardless of whether a generator is licensed or not, it must still enter into an Access Contract and Connection Agreement with Western Power to connect equipment to and use the network. This ensures generators comply with Western Power's Technical Rules and that Western Power has control over the specification of equipment that connects to its network.

A generator's compliance with its Access Contract is not enforced through the licensing scheme³⁰; it is enforced contractually by Western Power (as the other party to the contract).

2.7.1 Electricity market review and network connection and access

Phase 2 of the Electricity Market Review commenced on 24 March 2015, with direction from the State Government for the Public Utilities Office to undertake detailed design work on a selected set of reforms identified in Phase 1.³¹ One of these reforms includes adopting the national electricity regulation framework under the National Electricity Law for application to the Western Power transmission and distribution network in the South West Interconnected System.

This process includes consideration of the adoption of Chapters 5 and 5A of the National Electricity Rules³², which deal with technical and procedural requirements for gaining access to network services and connecting facilities to a network.³³ In particular, the network connection requirements for generators in Chapter 5 are extensive, including that registered market generators must maintain and operate their equipment in accordance with relevant laws, the National Electricity Rules, good electricity industry practice and relevant Australian Standards. A generator must also comply with the network operator's requirements in respect of the design of the equipment and participate in inspection and testing of the equipment.

In the event that the Access Code (and by extension the Technical Rules) is repealed and replaced by the national framework (or elements of it), generators will have to comply with

²⁹ The Access Code defines 'Good Electricity Industry Practice' as "*the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable written laws and statutory instruments and applicable recognised codes, standards and guidelines*".

³⁰ Compliance with the Access Code is not a condition of generation licences granted by the Authority.

³¹ Information on the Electricity Market Review is available on the Department of Finance website: http://www.finance.wa.gov.au/cms/Public_Uilities_Office/Electricity_Market_Review/Electricity_Market_Review.aspx

³² <http://www.aemc.gov.au/energy-rules/national-electricity-rules/current-rules>

³³ Information on the Electricity Market Review's Network Regulation Workstream is available on the Department of Finance website: http://www.finance.wa.gov.au/cms/Public_Uilities_Office/Electricity_Market_Review/Network_Regulation.aspx

the technical standards and network access requirements as prescribed under the national framework. This means that both now and in the future, there will be a local or national framework for network connection and access ensuring that generators adhere to prescribed standards to protect Western Power's network within the South West Interconnected System.

2.8 Wholesale electricity market

Section 122(2) of the Act sets out the objectives of the wholesale electricity market, including the efficient, safe and reliable production and supply of electricity in the South West Interconnected System.

Regulation 13(1) of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* provides System Management with the function of operating the South West Interconnected System in a secure and reliable manner. Regulation 13(4) requires System Management to act consistently with the objectives set out under section 122(2) of the Act.

Generators wishing to participate in the wholesale electricity market must register as a market participant under the Wholesale Electricity Market Rules (**Market Rules**).

The requirements to register as a market participant are independent of the licensing scheme under the Act (that is, the Market Rules do not require a generator to be licensed to become a market participant). For example, market participants must meet the Market Rules' certification criteria to obtain Capacity Credits under the Reserve Capacity Mechanism. This includes the testing of the generator (facility) twice a year to ensure it is able to meet dispatch obligations.³⁴

In accordance with the Market Rules, the Independent Market Operator monitors other market participants' compliance with the Market Rules, investigates potential breaches of the Market Rules and takes enforcement action where required. The Authority also has wholesale electricity market surveillance functions under the Act and Market Rules, including monitoring and investigating market participant behaviour.

Therefore, generators that are market participants must comply with the Market Rules and compliance is independently monitored and enforced. Removing a requirement for generators to hold a licence will not affect their obligations to comply with the Market Rules. There is a strong financial incentive for such generators to ensure compliance to allow participation in the wholesale electricity market in order to make a return on their investment (generators may also have power purchase agreements with customers that require the generator to meet reliability and quality standards).

2.9 EnergySafety

The licensing scheme under the Act does not apply to electrical safety matters. Legislation administered by the Department of Commerce's *EnergySafety* regulates the safety of electrical equipment and contractors.

All persons who construct, operate and/or maintain electricity generation, transmission or distribution systems in Western Australia must comply with extensive technical and safety

³⁴ <http://www.imowa.com.au/home/electricity/reserve-capacity>

legislation. All electrical work must be carried out in accordance with the requirements of the *Electricity Act 1945*, its supporting regulations and the Western Australian Electrical Requirements.³⁵ EnergySafety is an independent regulator that monitors and enforces compliance with these obligations (independent of the Authority's licensing scheme).

If generators are no longer licensed under the Act they will still be required to comply with the legislation administered by EnergySafety, ensuring that the connection of generating equipment to a network will continue to be safe.

2.10 Environmental regulation

The Department of Environment Regulation is responsible under the *Environmental Protection Act 1986* (**Environmental Protection Act**) for the environmental licensing and registration of prescribed premises, the issuing of works approvals and administration of regulations. It also monitors and enforces compliance with works approvals, licence conditions and regulations.³⁶

Premises with the potential to cause emissions and discharges to air, land or water are known as 'prescribed premises' and trigger regulation under the Environmental Protection Act. The Environmental Protection Act requires a works approval to be obtained before constructing a prescribed premise. Therefore, prescribed premises with generating works must obtain a works approval and licence from the Department of Environment Regulation.

As these environmental regulatory requirements are independent of the Act's licensing scheme, applicable generating works in Western Australia will still need to comply with the Environmental Protection Act if they are no longer required to be licensed by the Authority. The Department of Environment Regulation is responsible for ensuring generators comply with relevant legislation and achieves this through monitoring, audits and compliance inspections.³⁷

³⁵ <http://www.commerce.wa.gov.au/energysafety/energy-industry-technical-safety-regulatory-framework>

³⁶ <http://www.der.wa.gov.au/our-work/licences-and-works-approvals>

³⁷ <http://www.der.wa.gov.au/our-work/enforcement>

3. Recommendation

3.1 Recommendation for comment

3.1.1 Recommendation

It is recommended that the requirement under section 7(1) for persons constructing and/or operating generating works to have a licence is removed from the Act.

To facilitate the removal of section 7(1), several other sections in the Act would need to be amended. Specifically, these are sections 3, 4(1)(a), 7(5) and 7(6). These amendments would remove the definition of generating works and the generation licence classification from the Act, and amend two types of licence exemptions.

Should this recommendation be progressed, it is proposed that the changes would commence on 1 July (the year will be dependent on when Parliament considers the proposed Act amendments). This is to provide sufficient time for the Treasurer to make any amendments that are required to the Licensing Funding Regulations and for the Authority to prepare its budget for the financial year that begins after the repeal of generation licensing takes effect (further information on the effect of the amendment on the Licensing Funding Regulations is in section 3.1.2 below). This will also allow for a clear separation between the financial year when generating licensing was active and the following financial year when it has been repealed.

3.1.2 Consequential legislative amendments

If the Act is amended to remove the requirement for generation licensing, it is anticipated that consequential amendments will be needed to the following regulatory instruments:

- Licensing Funding Regulations
 - The provisions that require generation licensees to pay licence charges to the Authority will no longer be required.

The Authority's electricity licensing standing charge is currently divided equally across the four licence types (25 per cent share for each type). Should the generation licence type be removed, the split will need to be across the three remaining licence types (transmission, distribution and retail).

While the Authority would no longer need to administer generation licences, its costs to carry out electricity licensing functions are unlikely to be reduced by 25 per cent (indeed, they may stay at a similar level). The standing charge is to recover the cost of certain Authority functions, such as administering the licensing scheme as a whole, code reviews and annual reporting. The Authority will still need to carry out these functions (and generation licences do not necessarily take the same resources to administer as transmission, distribution or retail licences, which have substantially more licence obligations).

Therefore, there is the potential for the licensing charges paid by transmission, distribution and retail licensees to increase. As the standing charge is calculated based on the licensee's market share within their licence type, if the standing charge of transmission, distribution and retail licensees increases, the largest licensees may see the majority of the increases.

- *Electricity Industry (Licence Conditions) Regulations 2005*
 - Regulation 5A(1)(c) will no longer be required, which requires generation licensees that operate generating works connected to a relevant corporation's³⁸ transmission system or distribution system to comply with the Metering Code.
- Exemption Order and Caravan Park Order
 - Generation licence exemptions will no longer be required.

³⁸ A relevant corporation under this regulation is Horizon Power or Western Power.