



Review of the *Electricity Industry Customer Transfer Code 2004*

Issues Paper

Department of Finance | Public Utilities Office

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Executive summary

The Department of Finance's Public Utilities Office (the **Office**) is reviewing the *Electricity Industry Customer Transfer Code 2004* (the **Transfer Code**) on behalf of the Minister for Energy (the **Minister**). The Transfer Code is made by the Minister under section 39 of the *Electricity Industry Act 2004* (the **Industry Act**).

This Issues Paper seeks views from Code participants and interested parties on the efficiency and effectiveness of the current Transfer Code. The Office also invites suggestions for amendments to the Transfer Code. To help stakeholders formulate submissions to the review, the Issues Paper identifies and examines Transfer Code provisions that may require amendment.

Stakeholders have four weeks to comment. Once the period for comment has closed on 23 May 2014, the Office will consider the submissions and prepare a Draft Recommendations Report for stakeholder consultation. The Draft Recommendations Report will be followed by a Final Recommendations Report with recommendations for the Minister's approval.

The Transfer Code facilitates the transfer of contestable customers between competing retailers. It has not been reviewed or amended since its implementation in 2004.

Following a review undertaken by the former Office of Energy, the *Electricity Industry Metering Code 2005* (the **Metering Code 2005**)¹ was repealed and replaced by the *Electricity Industry (Metering) Code 2012* (the **Metering Code 2012**). The Metering Code 2012 is, in effect, the Metering Code 2005 with amendments.

The Transfer Code and the Metering Code 2012 are interconnected owing to the role that metering data and meter provision play in the transfer of contestable customers. The Office has identified required amendments to the Transfer Code to ensure it is consistent with the Metering Code 2012.

The Transfer Code must be consistent with the Metering Code 2012 to provide certainty to licensees about their compliance obligations. If the inconsistencies are not addressed, network operators and retailers may experience unnecessary operational and licence compliance risks and costs. It will also make it difficult for the Economic Regulation Authority (the **Authority**) to enforce compliance.

¹ Between June 2010 and August 2011, the former Office of Energy reviewed the Metering Code 2005. It published a Final Recommendations Report in August 2011, which detailed its final recommended Code amendments for the Minister's consideration. The Public Utilities Office managed the drafting of the Code amendments approved by the Minister. Amendments were gazetted in December 2012.

Full details of the Metering Code 2005 review, including all published documents, can be found on the Department of Finance website at <http://www.finance.wa.gov.au/cms/content.aspx?id=14551>.

Code participants have also identified potential amendments to the Transfer Code they believe will allow them to operate more effectively.

The purpose of the review is to address the inconsistencies of the Transfer Code with the Metering Code 2012 and to consider amendments suggested by stakeholders.

As part of the Transfer Code Review, the Office will explore the regulatory arrangements for customer transfers in other jurisdictions, including arrangements in the National Electricity Market's (the **NEM**) National Energy Customer Framework to assess what benefits Western Australia may derive from it.

On 6 March 2014, the Minister launched the State Government's Electricity Market Review. The Electricity Market Review will examine the structures of the electricity generation, wholesale and retail sectors within the South West Interconnected System and the incentives for industry participants to make efficient investments and minimise costs².

As the Electricity Market Review proposes to look at regulatory arrangements in the retail sector, consideration was given to deferring the Transfer Code Review until the Electricity Market Review is complete. However, as the current arrangements for customer transfers present a potential barrier to retail competition, there is benefit in reviewing the Transfer Code now. For example, the Transfer Code limits to 20 the number of customer transfer and historical consumption data requests a retailer may submit to a network operator each day. This limit is likely to be unduly restrictive and may be preventing the development of effective retail competition in the contestable market³.

The Transfer Code Review's final recommendations will support greater efficiency in the existing market. However, the recommendations will not preclude longer term efficiency gains and reform options that may arise from the Electricity Market Review.

² Details of the Electricity Market Review can be found on the Department of Finance website at http://www.finance.wa.gov.au/cms/TwoColumns_Content.aspx?Pageid=17638&id=17731

³ See sections 4.1 and 5.1 of this Issues Paper for further information on historical consumption data requests and customer transfer requests respectively.

Table of Contents

Abbreviations	7
1. Introduction	8
1.1 Background	8
1.2 Objectives of the review.....	9
1.3 Scope of the review	9
1.4 Work program and timetable.....	10
1.5 Purpose and structure of this Issues Paper	10
1.6 Invitation for Submissions	11
1.7 Confidentiality	11
2. Part 1 – Preliminary.....	12
2.1 Application.....	12
2.2 Code definitions.....	12
2.3 Meaning of “publish”	17
3. Part 2 - Objectives and arms-length treatment	18
3.1 Network operator must treat retailers at arms-length	18
4. Part 3 – Information provision	19
4.1 Submitting a data request.....	19
4.2 Verifiable consent required for historical consumption data	20
4.3 The communication rules and providing data to a retailer	20
4.4 Network operator’s obligations following receipt of a valid data request.....	21
4.5 Charges for standing data and historical consumption data	22
4.6 Review of the charges for historical consumption data	23
5. Part 4 – Transfer of contestable customers	24
5.1 Submitting a customer transfer request	24
5.2 Retailer’s representations and warranties in relation to a transfer request	24
5.3 Nominated transfer date	25
5.4 Network operator’s obligations following receipt of a valid transfer request.....	26
5.5 The transfer – actual readings	27
5.6 Effect of a transfer on an access contract	28
5.7 Network operator performance reports	28
5.8 Supplier of last resort.....	29
5.9 Consistency with the customer code.....	30
6. Part 5 – Communication rules	31

7. Part 6 – Notices	32
8. Part 7 – Dispute resolution	32
8.1 Referral of disputes to the Authority	32
8.2 Costs of disputing parties	32
9. Part 8 – Code amendment	33
10. Code Appendices	33
Appendix – Questions for consideration	34

Abbreviations

This list contains the abbreviations used in this Issues Paper.

Abbreviation	Full Title
Access Code	<i>Electricity Networks Access Code 2004</i>
Authority	Economic Regulation Authority
Customer Code	<i>Code of Conduct for the Supply of Electricity to Small Use Customers</i>
Energy Arbitrator	Western Australian Energy Disputes Arbitrator
Industry Act	<i>Electricity Industry Act 2004</i>
Market Operator	Independent Market Operator
Market Rules	Wholesale Electricity Market Rules
Metering Code 2005	<i>Electricity Industry Metering Code 2005</i>
Metering Code 2012	<i>Electricity Industry (Metering) Code 2012</i>
Minister	Minister for Energy
MSLA	Model Service Level Agreement
MWh	Megawatt hours
National Energy Retail Law	<i>National Energy Retail Law (South Australia) Act 2011</i>
NEM	National Electricity Market
Office	Department of Finance's Public Utilities Office
SoLR	Supplier of Last Resort
SoLR Plan	Supplier of Last Resort Supply Plan
SoLR Regulations	Supplier of Last Resort Regulations
Transfer Code	<i>Electricity Industry Customer Transfer Code 2004</i>
WEM	Wholesale Electricity Market

1. Introduction

1.1 Background

The (then) Minister established the Transfer Code in 2004, under section 39 of the Industry Act.

The Transfer Code promotes retail competition by setting out:

- the rules governing the use of information about contestable customers;
- the processes for transferring contestable customers between retailers; and
- retailer and network operator obligations when transferring contestable customers.

A contestable customer is a customer who is able to choose their retailer. Full retail contestability exists outside the South West Interconnected System. Within the South West Interconnected System, which includes Western Power's network, customers who consume less than 50 megawatt hours (**MWh**) of electricity per year (about \$12,600⁴) are non-contestable⁵. These customers can only be supplied by Synergy⁶. Due to the consumption threshold for contestability, a residential customer is unlikely to be a contestable customer (as at 30 June 2013, 0.04 per cent of residential customers in the South West Interconnected System are contestable⁷).

Horizon Power supplies regional areas outside the South West Interconnected System. Although all of Horizon Power's customers are contestable, and other retailers can supply those customers, no other retailer operates in these areas. This means Horizon Power's customers cannot transfer to another retailer.

The Transfer Code applies to network operators and retailers, if it is a term or condition of their licence that they comply with the Transfer Code. The Authority issues and enforces compliance with licences under Part 2 of the Industry Act. The majority of the Authority's licences require compliance with the Transfer Code.

While Part 8 of the Transfer Code allows for the Authority to recommend amendments to the Transfer Code directly to the Minister, the Office is the agency responsible for advising the Minister on, and implementing amendments to, the Transfer Code. Given the broad range of matters to be considered, and the policy implications of several of those matters, it was agreed with the Authority that the Office will manage the review of the Transfer Code and make recommendations to the Minister.

⁴ Economic Regulation Authority, *2013 Annual Performance Report Energy Retailers*, p. 37. <http://www.erawa.com.au/licensing/electricity-licensing/performance-reports>

⁵ The contestability threshold is prescribed by the *Electricity Corporations (Prescribed Customers) Order 2007*.

⁶ Under section 54(2) of the *Electricity Corporations Act 2005*; Western Power is only allowed to supply electricity to Synergy, for the purpose of supplying a "prescribed customer" (customers who consume less than 50 MWh of electricity per annum).

⁷ Economic Regulation Authority, *2013 Annual Performance Report Energy Retailers*, p. 4. <http://www.erawa.com.au/licensing/electricity-licensing/performance-reports>

1.2 Objectives of the review

The objectives of the review are to address:

- inconsistencies of the Transfer Code with the Metering Code 2012;
- industry proposed amendments; and
- the suitability of the Transfer Code to meet its objectives.

The objectives of the Transfer Code are to:

- set out rules for the provision of information relating to contestable customers and the process for transferring contestable customers from one retailer to another retailer in order to promote retail competition;
- protect the interests of contestable customers by ensuring that a contestable customer's verifiable consent is obtained before:
 - a retailer may request the contestable customer's historical consumption data; or
 - a transfer of that contestable customer may proceed; and
- specify the responsibilities and obligations of retailers and network operators in processing and implementing the transfer of a contestable customer.

1.3 Scope of the review

To meet the review objectives, the Office will:

- consult with stakeholders;
- identify amendments to the Transfer Code that are required to ensure it:
 - is consistent with the Metering Code 2012;
 - meets its objectives; and
 - facilitates regulatory efficiency.
- make recommendations to the Minister on amendments to the Transfer Code.

The review will assess matters that relate directly to the suitability of the provisions of the Transfer Code to meet its objectives. The scope of the review does not include matters relating to individual licensee compliance with the Transfer Code, or operational decisions by licensees.

1.4 Work program and timetable

Activity	Timeframe
Publish Issues Paper for public consultation	April 2014
Receive submissions on Issues Paper	May 2014
Publish Draft Recommendations Report for public consultation	August 2014
Receive submissions on Draft Recommendations Report	September 2014
Publish Final Recommendations Report	November 2014
Seek Ministerial approval for proposed amendments	November 2014

1.5 Purpose and structure of this Issues Paper

The Transfer Code is divided into the following parts:

- Part 1 – Preliminary
- Part 2 – Objectives and Arm's Length Treatment
- Part 3 – Information Provision
- Part 4 – Transfer of Contestable Customers
- Part 5 – Communication Rules
- Part 6 – Notices
- Part 7 – Dispute Resolution
- Part 8 – Code Amendment
- Appendices (1 – 6)

Each 'Part' is examined in sections 2 to 10 of this Issues Paper (with each Part having a dedicated section). The purpose of this Issues Paper is to identify provisions of the Transfer Code that may require amendment and, if possible, recommend what the amendment should be. Stakeholder comment is prompted by one or several questions at the end of each section. A complete list of questions is in the Appendix.

While the review is at an early stage, it has been possible to make a recommendation for amendment in relation to several matters. For example, where the Transfer Code and the Metering Code 2012 have been identified as being inconsistent in relation to a matter, where possible, the Issues Paper proposes an amendment to the Transfer Code that achieves consistency between the two codes. Where it is not possible to make a recommendation for amendment at this stage of the review, comment is invited on what a suitable solution to the matter would be (if one is required).

The absence of a particular matter from this Issues Paper does not preclude the Office from considering it. Equally, if a matter has been raised in this Issues Paper, its inclusion does not necessarily guarantee that this review will resolve it.

1.6 Invitation for submissions

The Office invites submissions on this Issues Paper by 5pm (WST) on Friday 23 May 2014.

Electronic submissions are preferred and should be emailed to alexander.kroon@finance.wa.gov.au. Alternatively, submissions in printed form should be sent to:

Mr Alex Kroon
Regulation Branch, Public Utilities Office
Department of Finance
Locked Bag 11
Cloisters Square
WA 6850

Comments are encouraged on the matters raised in this Issues Paper, as well as on other matters considered relevant to this review.

Further information on this Issues Paper or the review process can be obtained from:

- Mr Peter Hawken, Assistant Director, Public Utilities Office on (08) 6551 4693 or at peter.hawken@finance.wa.gov.au.
- Mr Alex Kroon, Senior Policy Officer, Public Utilities Office on (08) 6551 4686 or at alexander.kroon@finance.wa.gov.au.

1.7 Confidentiality

Stakeholders should specify where information they provide is confidential or commercial in confidence (and, where possible, should separate confidential information from non-confidential information). The Office will respect the confidentiality of any information provided.

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.

Requests for information relating to the review 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. Part 1 – Preliminary

2.1 Application

Clause 1.2 of the Transfer Code specifies that it applies to licensed network operators and retailers, the Independent Market Operator (the **Market Operator**) and the Authority.

A condition of a licence exemption⁸ can require compliance with the Transfer Code. While there are no current licence exemptions that require compliance with the Transfer Code, it is possible that a licence exemption will be made subject to compliance with the Transfer Code in the future.

The Office invites comments on whether clause 1.2 should be amended to expand the application of the Transfer Code to include network operators and retailers if it is a term or condition of their licence exemption that they comply with the Transfer Code.

As a comparison, the Metering Code 2012 applies to a network operator or retailer to the extent that a condition of a licence exemption requires compliance with it.

The Transfer Code was gazetted in 2004, before the first licence exemptions were made in 2005. This appears to be the reason why the Transfer Code is not applied to licence exemptions, while the Metering Code 2012 (and the Metering Code 2005 before it) is.

Question 1

Should the application of the Transfer Code be extended to include network operators and retailers if it is a term or condition of their licence exemption that they comply with the Transfer Code?

2.2 Code definitions

The definitions below have been identified as potentially requiring amendment.

Access contract

The Transfer Code defines an “access contract” as “...an agreement between a *network operator* and a *retailer* for the *retailer* to have ‘access’ (as defined in section 103 of the Act) to ‘services’ (as defined in section 103 of the Act) on a *network*.”

The Metering Code 2005 contained the same definition and its review identified a need to clarify the definition to explain that it is the same as the expression “contract for services” in

⁸ The Governor in Executive Council grants licence exemptions under section 8 of the Industry Act. Details on current licence exemptions can be found on the Department of Finance website: <http://www.finance.wa.gov.au/cms/content.aspx?id=15069>

the *Electricity Networks Access Code 2004* (the **Access Code**). It is recommended that the Transfer Code's definition be amended in the same way as the definition in the Metering Code 2005 was amended.

The definition of "access contract" is broader than the definition of the same expression in the Access Code. This is because the Transfer Code is not limited to agreements entered into under the Access Code (the Transfer Code also applies to retailers who entered into contracts for services with a network operator before the Access Code was made). Therefore, the Transfer Code's definition of "access contract" should be the same as the Access Code's definition of "contract for services", which includes contracts entered into before the Access Code was made.

Contestable

To take into account a change in legislation since the Transfer Code was made, the reference to the *Electricity Corporation Act 1994* needs to be removed and replaced with a reference to the *Electricity Corporations (Prescribed Customers) Order 2007* made under the *Electricity Corporations Act 2005*.

Exit point / bidirectional point

An "exit point" is defined as a connection point on a network "...at which *electricity* is more likely to be transferred out of the *network* than transferred into the *network*..."

In recent years there has been a substantial increase in connection points that have become bidirectional⁹ due to the installation of on-site generation, such as rooftop photovoltaic systems. While a majority of these systems have been installed by non-contestable customers, contestable customers have also installed generation systems.

Clause 1.4(2)(a) of the Transfer Code states: "...a reference to a *contestable customer's exit point* is a reference to the *exit point* on the *network operator's network* that is used for the supply of *electricity* to the *contestable customer*". The use of the words "supply of *electricity* to the *contestable customer*" suggests that an "exit point" is a connection point at which electricity flows in one direction (out of the network) and does not include a connection point that is subject to bidirectional flows.

The Transfer Code needs to provide for all contestable customers and it is doubtful that the current definition of "exit point" achieves that aim in relation to customers who both import and export electricity on the same connection point.

Western Power's revisions to its Access Arrangement¹⁰ for the third regulatory period (1 July 2012 to 30 June 2017), which was approved by the Authority on

⁹ A bidirectional connection point functions as both an entry and an exit point.

¹⁰ <http://www.erawa.com.au/access/electricity-access/access-arrangements/western-powers-approved-revised-access-arrangement-aa3>

29 November 2012, includes new reference services¹¹ for bidirectional points (Western Power's Access Arrangement for the previous periods included reference services for exit and entry points only). If the Transfer Code is not amended, there could be a perverse outcome whereby a customer's connection point is on a bidirectional reference service, but has to be classified as an "exit point" in the retailer's access contract to transfer to that retailer under the Transfer Code.

The Office invites comments on whether or not the Transfer Code should explicitly provide for the transfer of bidirectional points.

If a new definition is required for "bidirectional point", consequential amendments will be required to the Transfer Code. For example, the definition of "transfer" will need to be updated to reflect that a customer on either an "exit point" or a "bidirectional point" can transfer.

Metropolitan area

To take into account a change in legislation since the Transfer Code was made, the definition should reflect the definition in the *Code of Conduct for the Supply of Electricity to Small-Use Customers* (the **Customer Code**). This will require an amendment so the definition refers to the region described in Schedule 3 of the *Planning and Development Act 2005* and the townsites as constituted under section 26 of the *Land Administration Act 1997*.

Network operator and retailer

To take into account a change in legislation since the Transfer Code was made, it is recommended that the following be removed from both definitions: "(including regulations made under section 31A of the *Electricity Corporations Act 1994*)".

In 2006 the *Electricity Corporations Act 1994* was renamed the *Electricity Transmission and Distribution Systems (Access) Act 1994* and section 31A was repealed as part of that process.

Trading day

The Transfer Code derives its definition of "trading day" from the Wholesale Electricity Market Rules (the **Market Rules**). The Market Rules define "trading day" as the 24 hour period commencing at 8 AM.

The Metering Code 2012 does not define the term "trading day". It uses the term "day", which it defines as the 24 hour period starting at midnight. This is independent of the Wholesale Electricity Market's (the **WEM**) concept of a "trading day".

¹¹ Network operator reference services prescribe the technical and pricing conditions for using a connection point.

Because a network operator cannot send data for part of a day to a retailer, it can experience problems when it is required to provide data to retailers and the Market Operator when a customer transfers. This is because data validation, substitution and estimation methods under the Metering Code 2012 are based on the midnight to midnight calendar (due to its definition of “day”). However, clause 4.11 of the Transfer Code requires the transfer to occur at 8 AM on the nominated transfer date (the start of the “trading day”).

The data file format used by Western Power for interval meters¹² only allows a full day’s data commencing and finishing at the metering day (midnight to midnight). This means that, in the network operator’s meter registry¹³, the customer’s connection point is transferred at midnight prior to the “trading day”, and the next day’s data is sent to the incoming retailer. Since the Transfer Code requires a transfer to occur at 8 AM, the outgoing retailer will miss eight hours of data for the period midnight to 8 AM.

To address this problem, the definition of “trading day” in the Transfer Code could be amended to be consistent with the definition of “day” in the Metering Code 2012. However, such an amendment would require consideration of the implications for the WEM if the Transfer Code requires a transfer to occur at midnight rather than 8 AM.

The review of the Metering Code 2005 considered whether the definition of “day” in the Metering Code 2005 should be amended to align it with the Transfer Code and Market Rules’ definition of “trading day”¹⁴. After careful consideration, the former Office of Energy did not support an amendment to the Metering Code 2005 definition of “day”, but did give an undertaking to revisit this matter as part of any review of the Transfer Code.

UMI or unique market identifier

The term “UMI” or “unique market identifier” is no longer used in the WEM, or other jurisdictions in Australia. “UMI” is outdated and should be replaced with “NMI” (national meter identifier¹⁵).

NMIs are used throughout the NEM and the WEM, with Western Power using its NMI Allocation Procedure¹⁶ to allocate NMIs to its connection points. The amendment will provide consistency with the Metering Code 2012 and Market Rules, which refer to NMIs rather than UMIs.

¹² Western Power uses the National Electricity Market’s NEM12 Data File Format.

¹³ A registry forms part of the network operator’s metering database and holds standing data for metering points.

¹⁴ Office of Energy, *Amendments to the Electricity Industry Metering Code 2005: Recommendations Report*, April 2011, p. 10-11. <http://www.finance.wa.gov.au/cms/content.aspx?id=14551>

¹⁵ A national meter identifier is a distinct and universal identifier for each connection point in the NEM and WEM.

¹⁶ http://www.westernpower.com.au/documents/retailersgenerators/buildPack/NMI_ALLOCATION_PROCEDURE_FOR_THE_WESTERN_AUSTRALIA_ELECTRICI.pdf

Verifiable consent

When a retailer submits a request to the network operator for a customer's historical consumption data (under clause 3.5), or a customer transfer request (under Part 4), the retailer must obtain the customer's "verifiable consent".

In clause 1.3 of the Transfer Code, "verifiable consent" is defined as consent that is given by the customer expressly and in writing. By requiring a customer's consent to be in writing only, the Transfer Code may be placing an unnecessary administrative burden on retailers and customers that does not facilitate effective retail competition.

Consideration needs to be given to allowing retailers to obtain oral "verifiable consent" from a customer. This would give retailers an additional option that is less onerous than obtaining written consent.

As a comparison, section 39 of the National Energy Customer Framework's *National Energy Retail Law (South Australia) Act 2011*¹⁷ (the **National Energy Retail Law**) and clause 6.3 of Queensland's Electricity Industry Code allow a customer's explicit informed consent to a transfer to be given in writing, verbally or electronically. Victoria's Energy Retail Code allows a customer's explicit informed consent to be given in writing, orally or electronically.

The Office invites comment on whether the definition of "verifiable consent" should be extended to allow retailers to obtain a customer's consent orally; for example, by telephone. The Transfer Code could make obtaining oral consent conditional on consent being recorded for audit and compliance purposes¹⁸. Section 40 of the National Energy Retail Law requires a retailer to create a record of each explicit informed consent to enable the Australian Energy Regulator to verify retailer compliance.

Question 2

- A. Comments are invited on the suitability of the definitions identified in this Issues Paper as potentially requiring amendment.
- B. Are there definitions not identified in this Issues Paper that are inaccurate or incorrect? If so, what amendments are required to those definitions?
- C. Are any new definitions required?

¹⁷ Australian Capital Territory, New South Wales, South Australia and Tasmania have adopted the National Energy Customer Framework.

¹⁸ 4.2 – *Verifiable consent required for historical consumption data* examines whether retailers should be required to provide proof of a customer's verifiable consent to the network operator.

2.3 Meaning of “publish”

Clause 1.6 of the Transfer Code states that, if a network operator is required to “publish” a “thing”, the network must place the thing on its website and send an electronic notice to each registered retailer advising that the thing has been placed on the website. However, there is no express requirement to maintain the thing on the website once it has been published. Clause 1.6 could imply a requirement to maintain the thing on the website, but this is not clearly articulated. This uncertainty may affect the validity of the thing that is published.

The same problem was identified with the Metering Code 2005, which was amended to state that a person who is required to “publish” a “thing” must maintain the thing on their website until the person is no longer a Code participant, or the 7th anniversary of it being placed on the website (whichever is later).

The Metering Code 2005 was also amended to require that, if the person is the network operator, it must make available a hardcopy of the thing for inspection by the public, without cost, during normal office hours at its principal place of business in Western Australia.

An amendment to clause 1.6 is proposed to make it consistent with the Metering Code 2012. Where a network operator is required to publish a thing, it will be required to maintain that thing on its website until the Transfer Code no longer applies to the network operator, or the 7th anniversary of it being placed on the website (whichever is later). The network operator will also be required to make available a hardcopy of the thing for inspection by the public, without cost, during normal office hours at its principal place of business in Western Australia.

Question 3

Should the meaning of “publish” be amended to be consistent with the Metering Code 2012?

3. Part 2 - Objectives and arm's length treatment

3.1 Network operator must treat retailers at arm's length

Under clause 2.2 of the Transfer Code, a network operator must ensure that no retailer that is its associate receives a benefit from the Transfer Code, unless the benefit is attributable to an arm's length application of the Transfer Code to the retailer, or the network operator also makes the benefit available to all other retailers. Where the network operator is an "integrated provider" (as defined in the Access Code), a reference in clause 2.2(1) to an associate of the network operator does not include the integrated provider.

In some cases, where a retailer is an associate of a network operator, the retailer may be the sole retailer on the network; for example, the network operator and retailer may be part of the same body corporate. In this situation, it is questionable whether any benefits are derived by requiring the network operator to treat the retailer at arm's length. There are unlikely to be business needs that require the network operator under the Transfer Code to establish arm's length treatment with a retailer that is its associate until another retailer becomes available on the network.

The same problem was identified in the Metering Code 2005, which was amended so that its arm's length provisions (also clause 2.2) no longer apply to network operators who have only one retailer on their network.

An amendment to the Transfer Code is proposed to make it consistent with the Metering Code 2012. The amendment would provide that clause 2.2(1) of the Transfer Code does not apply to a network while there is no more than one retailer on the network.

It is also proposed that, to take into account a change in legislation since the Transfer Code was made and to be consistent with the Metering Code 2012, clause 2.2(2)(b) be amended to replace "section 31A of the *Electricity Corporations Act 1994*" with "section 62 of the *Electricity Corporations Act 2005*".

Question 4

Should the arm's length treatment provisions be amended so that clause 2.2(1) does not apply to a network while there is no more than one retailer on the network?

4. Part 3 – Information provision

4.1 Submitting a data request

Clause 3.4 of the Transfer Code limits to 20 the number of standing data and historical consumption data requests that a retailer may submit to a network operator on a single business day, unless otherwise agreed with the network operator.

There are approximately 26,000 contestable customers on the South West Interconnected System¹⁹. There is also the potential to reduce the contestability threshold of 50 MWh per annum in the future, which would increase the number of contestable customers. While the long-term general trend has been towards a steady increase in the number of customers changing retailers since 2008, the monthly customer churn rate in the South West Interconnected System is relatively low compared to the eastern states²⁰.

Horizon Power has 45,164 customer connections²¹, all of which are contestable. While there is not another retailer on Horizon Power's network for customers to transfer to, there may be in the future.

Considering the number of contestable customers in Western Australia, the limit of 20 data requests per business day may be too restrictive on retailers. However, changes to the limit would need to take into account network operators' capacity to process more than 40 data requests each day (20 x standing data and 20 x historical consumption data requests).

Clause 3.4 should not act as a barrier to retail competition in the contestable market and the Office invites comment on the suitability of clause 3.4 to meet the Transfer Code's objectives and facilitate effective retail competition.

Question 5

- A. Is the limit of 20 requests for standing data and historical consumption data in clause 3.4 consistent with the Transfer Code objectives?
- B. Does the current limit represent a barrier to effective retail competition?
- C. What is a suitable number of requests, or should the number of requests be unlimited?

¹⁹ Economic Regulation Authority, *Discussion Paper: 2012 Wholesale Electricity Market Report to the Minister for Energy*, p. 15. <http://www.erawa.com.au/energy-markets/electricity-markets/annual-wholesale-electricity-market-report-to-the-minister-for-energy> (Note: The Economic Regulation Authority's 2013 Discussion Paper does not contain an updated figure for contestable customers).

²⁰ Ibid.

²¹ Horizon Power Annual Report 2012-13, p. 4. http://www.horizonpower.com.au/annual_reports.html

4.2 Verifiable consent required for historical consumption data

Clause 3.5(1) of the Transfer Code states: “By submitting a *request for historical consumption data*, a retailer represents and warrants that it has the *contestable customer’s verifiable consent* to obtain the *historical consumption data*.”

Under clause 3.2(1), a retailer may request a contestable customer’s data from a network operator by completing and submitting a data request form.

The Transfer Code does not require the retailer to provide the customer’s written consent to the network operator as part of submitting a data request, nor does the Transfer Code require the network operator to confirm that the customer has provided his or her consent. In effect, the data request is processed on the assumption that the retailer has obtained the customer’s consent.

The protection measures around the disclosure of data must be rigorous enough to ensure a customer’s data is not disclosed to a party that has not obtained the customer’s consent for the disclosure. There is the potential to misuse clauses 3.2(1) and 3.5(1). Extra protection may be required to ensure a customer’s data is disclosed only to a retailer who has the customer’s verifiable consent for that disclosure. Another concern is that a network operator may breach the Commonwealth’s *Privacy Act 1998* if the customer’s consent has not been obtained for the disclosure of information it holds that could identify the customer.

A potential solution to this problem is requiring a data request under clause 3.2(1) to contain the customer’s verifiable consent (and amend clause 3.5(1) to facilitate this amendment).

Question 6

Should clauses 3.2(1) and 3.5(1) be amended to require a retailer to submit the customer’s verifiable consent with a data request?

4.3 The communication rules and providing data to a retailer

Clause 3.8(2)(a) of the Transfer Code requires that a network operator must (subject to clause 3.8(3)) provide data requested by a retailer in an electronic format:

- i. in accordance with the communication rules, if they have been approved by the Authority; or
- ii. if no communication rules have been approved by the Authority, in accordance with the Metering Code.

The Metering Code 2005 required the Authority to approve all network operator communications rules²². Under the Metering Code 2012, a network operator no longer has to seek the Authority's approval for its initial communication rules. The new process under the Metering Code 2012 requires a network operator to consult with Code participants and implement communication rules that are "consistent with good electricity industry practice" and "do not impose inappropriate barriers to entry into the market"²³.

Some network operators, like Western Power, may have had their communication rules approved by the Authority under the Metering Code 2005. However, communication rules established under the Metering Code 2012 do not need Authority approval.

Question 7

Should clause 3.8(2) be amended to reflect that a network operator can now establish its own communication rules under the Metering Code 2012?

4.4 Network operator's obligations following receipt of a valid data request

Under clause 3.8(1) of the Transfer Code, following receipt of a valid request for a customer's data, the network operator must use all reasonable endeavours to provide the requested data to the retailer. Under clause 3.8(2)(b), the network operator must provide the requested data within a specified number of business days. The number of business days the network operator has to provide the data increases as the number of data requests being submitted on a particular business day increases.

The timeframes are prescribed in the following table in clause 3.8(2)(b):

Total number of that type of <i>data request</i> submitted by the <i>retailer</i> to the <i>network operator</i> on the <i>business day</i>	Request received by 3.00 pm on a <i>business day</i>	Request received after 3.00 pm on a <i>business day</i>
	<i>Data</i> must be provided as soon as possible, but by no later than 5.00 pm on the <i>business day</i> which is the specified number of <i>business day(s)</i> after the <i>business day</i> on which the <i>data request</i> is submitted.	
Up to 5	2	3
6 to 10	4	5
11 to 20	5	6

The Office invites comment on whether the timeframes that the network operator has to adhere to when responding to a retailer's data request are suitable as prescribed, or whether the timeframes are causing difficulties for retailers or network operators.

²² Network operator communication rules set out the file formats, protocols and system designs for the transfer of meter data between network operator and retailer.

²³ See clause 6.5 of the Metering Code 2012.

If the number of data requests that a retailer can submit per day is increased from the current limit of 20²⁴, the table will need amending to be consistent with the new limit.

Question 8

Are the prescribed timeframes for a network operator to provide requested data to a retailer (as per the table in clause 3.8(2)(b)) suitable?

4.5 Charges for standing data and historical consumption data

Clause 3.10 of the Transfer Code provides that a network operator must not charge for standing data, but may charge for historical consumption data. Clause 3.10(2)(a) provides that, if the historical consumption data is for 12 months or less, the charge must not exceed \$45 per request.

Comment is sought as to whether \$45 is a reasonable maximum charge for a request of up to 12 months of historical consumption data.

Comment is also sought as to whether the Code should prescribe a maximum charge at all and instead enable the network operator to recover the reasonable costs it incurs in providing the data. Setting a maximum charge may have unintended consequences, such as encouraging network operators to charge \$45 for every data request, regardless of the amount of data provided.

Under clause 3.10(2)(b), if the request is for more than 12 months of data, the charge for the data is determined by agreement between the network operator and the retailer, and should reflect the reasonable cost incurred by the network operator in providing the data.

It is potentially inequitable to treat the charges for less than 12 months of data differently to the charges for more than 12 months of data. For example, this could result in a perverse outcome where one retailer pays \$45 for less than 12 months of data under clause 3.10(2)(a), but another retailer negotiates a fee lower than \$45 for more than 12 months of data under clause 3.10(2)(b). A potential solution is to amend the Transfer Code so that all charges for data, regardless of whether they are for more or less than 12 months of data, must reflect the reasonable cost incurred by the network operator in providing the data.

Question 9

- A. Is the figure of \$45 in clause 3.10(2)(a) reasonable and, if not, what should it be?
- B. Rather than prescribe a maximum allowable charge under 3.10(2)(a), should charges for less than 12 months of data reflect the network operator's reasonable costs (similar to clause 3.10(2)(b))?

²⁴ 4.1 – *Submitting a data request* examines the appropriateness of the current transfer caps.

4.6 Review of the charges for historical consumption data

Clause 3.10(3) of the Transfer Code required the Authority to review the \$45 amount in clause 3.10(2)(a) 12 months after the Code commenced (29 December 2004). The Authority has advised that the review has not been conducted.

If it is decided that the \$45 amount should be retained (or set at a different amount)²⁵, it needs to be considered whether the Transfer Code should provide for a review process that ensures the amount continues to be set at a reasonable level. The process for such a review may also need to be prescribed.

Part 8 of the Transfer Code allows the Authority, on its own initiative or in response to a proposal by a retailer, network operator or other interested person, to recommend to the Minister an amendment to the Code. Unless the amendment is urgently required, the process under Part 8 requires the Authority to consult with retailers and network operators on the proposed amendment. At the moment, a retailer or network operator can use Part 8 to request a review by the Authority of the maximum data charge prescribed in clause 3.10(2)(a). Therefore, Part 8 may already provide a suitable avenue for reviewing the data charge in clause 3.10(2)(a).

Alternatively, if the Authority receives requests on a regular basis to review the data charge (at least once every 12 months for example) it may be more practical to allow the Authority to approve the data charge, rather than the Minister. The data charge could be determined by the Authority without requiring an amendment to the Transfer Code, thus reducing administration costs and implementation times.

If it is decided that charges for less than 12 months of data must reflect the network operator's reasonable costs, a process for requesting a review of the data charge will not be required, as a charge will not be prescribed. Part 8 will still be available to request amendments to the Transfer Code and a Code participant will be able to raise a dispute under the Transfer Code, if it believes the network operator's charge is unreasonable.

Question 10

- A. Should the Transfer Code have a specific process to request an amendment to the data charge in clause 3.10(2)(a)?
- B. If so, what should the process be and should the charge be approved by the Authority or the Minister?

²⁵ 4.5 – *Charges for standing data and historical consumption data* examines the charge amount in clause 3.10(2)(a).

5. Part 4 – Transfer of contestable customers

5.1 Submitting a customer transfer request

Under clause 4.5(1)(b) of the Transfer Code, unless otherwise agreed with the network operator, a retailer must not submit to a network operator more than 20 customer transfer requests in a business day, or with the same nominated transfer date.

Similar to the matter set out in section 4.1 (Submitting a data request) of this Issues Paper, comment is sought as to whether a cap of 20 transfer requests is unduly restrictive and may be preventing the development of effective retail competition in the contestable market. For example, if a customer has multiple sites and connection points, and requires all those sites to be transferred on the same day, the limit on 20 transfer requests a day could prove problematic.

While the clause allows for a retailer to agree with a network operator that more than 20 transfer requests can be processed in a business day, it does not place an absolute requirement on the network operator to enter into such an agreement.

The Office invites comment on what a reasonable cap is; whether there is a need for a cap; and whether a network operator and retailer should be allowed to negotiate an outcome.

Question 11

- A. Is the amount of 20 transfer requests in clause 4.5(1)(b) reasonable?
- B. Is there a need for a cap in the number of transfer requests?
- C. Should a network operator and a retailer be allowed to negotiate the number of transfer requests?

5.2 Retailer's representations and warranties in relation to a transfer request

Clause 4.6(1)(b) of the Transfer Code states that, if a retailer requests the installation of a new interval meter or the transfer of the contestable customer requires the installation of an interval meter, the retailer will pay the costs of the meter, associated equipment and installation²⁶.

The 'Note' at the end of clause 4.6(1)(b) explains that, if a retailer requests the installation of a new interval meter as part of a transfer request, as well as being a transfer request for the purposes of the Transfer Code, the transfer request will also constitute a 'metering service order' under the Metering Code.

²⁶ Under clause 3.17 of the Metering Code 2012, a transfer cannot occur under the Transfer Code unless the metering installation at each metering point for the customer's connection point contains an interval meter.

Clause 4.6(1)(b) prescribes a slightly different requirement to its 'Note'. The clause is independent of the Metering Code 2012 and sets its own requirements for requesting and paying for a new meter. The 'Note' goes further than the clause by explaining that a transfer request is also a 'metering service order' for the purposes of the Metering Code.

It could be read that the 'Note' contemplates that transfer requests under the Transfer Code have the same legal effect as a retailer submitting a service request under the Metering Code 2012 to the network operator for a new interval meter. However, a 'Note' has no legal effect and is used to clarify the intention of the operative clause. This can cause problems when it goes beyond providing clarification on the interpretation of the operative clause and prescribes its own requirements, as if it were an operative clause.

It is unclear what effect a transfer request has on a retailer and network operator's obligations under the Metering Code 2012 when a new meter is required for a transfer. This is because clause 4.6(1)(b) does not address its interaction with the requirements of the Metering Code 2012 in relation to submitting a service request for a new meter.

Ideally, all metering services should be requested and carried out in accordance with the network operator's service level agreement²⁷, as approved under the Metering Code 2012. With this in mind, it may be a simple case of building the 'Note' into the body of the clause to clarify the relationship between the Transfer Code and Metering Code 2012 when a retailer requests a new meter under a service level agreement.

In addition to the matter above, the final 'Note' at the end of clause 4.6(4) requires a minor amendment to reflect that the *Trade Practices Act 1974* has been replaced by the *Competition and Consumer Act 2010*.

Question 12

Should clause 4.6(1)(b) clarify what the responsibilities of each party are when effecting a meter change under the Metering Code 2012 to enable the transfer of a customer?

5.3 Nominated transfer date

Clause 4.7 provides that a retailer must nominate a transfer date, which must be, if the exit point is in a metropolitan area, at least three business days after the date the transfer request is submitted (it is five business days outside the metropolitan area). In either case, the nominated transfer date cannot be more than 50 business days after the date the transfer request was submitted.

²⁷ A service level agreement specifies the metering services that the network operator will provide to users of the network (normally retailers and generators).

Clause 4.10(1)(b) requires a network operator to ensure that any new meter installation and new service installation required for a transfer is undertaken on or before the nominated transfer date²⁸.

Western Power's Model Service Level Agreement²⁹ (the **MSLA**), as approved by the Authority under the Metering Code 2005, specifies the metering services that a network operator must provide, which must include all the metering services that the Transfer Code requires the network operator to provide. The "meter change" metering service has a service standard (i.e. turnaround days) of five business days for the metropolitan area and 10 business days for country areas.

Because clause 4.10(1)(b) links the timeframe for changing a meter to the nominated transfer date, the Transfer Code is potentially inconsistent with the MSLA. For example, if the retailer nominates a date for the transfer of a metropolitan customer of three business days from the date the transfer request is submitted, the network operator must carry out the meter change on or before the third business day. However, the MSLA's service level for a metropolitan area meter change is five business days.

Question 13

Should the Transfer Code's timeframes (including the timeframes in clauses 4.7 and 4.10) for carrying out a metering service be aligned with the MSLA's service levels?

5.4 Network operator's obligations following receipt of a valid transfer request

Clause 4.7 requires the incoming retailer to nominate the transfer date. Clause 4.10 of the Transfer Code allows the network operator and incoming retailer to negotiate the nominated transfer date for the customer. Following receipt of a valid transfer request, if the network operator considers it unlikely it can transfer the customer on the nominated transfer date, the network operator must propose a new transfer date to the retailer (clause 4.10(2)(a)). If the retailer does not agree to the proposed new date, the network operator must endeavour to transfer the customer on the retailer's original nominated transfer date (clause 4.10(2)(d)).

There may be instances where the network operator does not transfer the customer on the nominated transfer date. This can cause retailers difficulties; for example, the incoming retailer could lose revenue if the transfer occurs after the nominated date.

Because clause 4.10(2)(d) requires the network operator to "endeavour" to transfer the customer on the nominated date, the network operator does not have an absolute obligation to transfer the customer on the nominated date. The network operator needs this flexibility, because it will not always be possible to transfer a customer on the nominated date.

²⁸ Under clause 3.17 of the Metering Code 2012, a transfer cannot occur under the Transfer Code unless the metering installation at each metering point for the customer's connection point contains an interval meter.

²⁹ http://www.westernpower.com.au/documents/retailersgenerators/METERING_SERVICES_GENERIC_SLA_WI_TH_WA_RETAILERS.pdf

However, if the customer is not transferred on the nominated date due to an act or omission by the network operator, a matter arises as to whether the Transfer Code should make the network operator liable for retailer and customer losses caused by that act or omission. Alternatively, matters of financial compensation could be addressed in contractual arrangements, such as access contracts and service level agreements, between the respective parties.

Question 14

Should the network operator be liable for retailer and customer losses caused by an act or omission by the network operator that result in the customer transferring after the nominated transfer date?

5.5 The transfer – actual readings

Under clause 4.11(1) of the Transfer Code, a transfer may only occur on a day the contestable customer's meter is read. Other than by way of a 'note' that is attached to clause 4.11(1), which says that the actual read may comprise a special read or scheduled read, the Transfer Code does not define an "actual read". Further, it does not outline the process to be followed if the network operator cannot obtain an actual read; for example, if the meter is faulty.

In the Metering Code 2012, an "actual value" is defined as energy data for a metering point that has physically been read (or remotely collected by a communications link or an automated meter reading system) from the meter, and includes a "deemed actual value". A "deemed actual value" is an estimated or substituted value that is designated to the meter when the meter is unreadable.

Under clause 5.23 of the Metering Code 2012, a deemed actual value is used when the network operator concludes that there is no possibility of determining an actual value.

Comment is sought as to whether clause 4.11(1) of the Transfer Code should be amended to define what an "actual read" is. At the moment it is open to interpretation; defining the term and aligning it with the Metering Code 2012 would remove this uncertainty.

Defining the term "actual read" would also clarify the process to be followed when a meter is unreadable. Clause 4.11(1) does not permit the use of a "deemed actual value" in a transfer when the meter is unreadable. If the Transfer Code adopted the definition of "actual value" under the Metering Code 2012, the network operator could use a "deemed actual value" when the customer's meter is faulty. While this would result in the transfer occurring on an estimated or substituted reading, this would be unavoidable if the meter is faulty.

Question 15

Should clause 4.11(1) be aligned with the Metering Code 2012 by defining the term “actual value” in relation to meter readings?

5.6 Effect of a transfer on an access contract

The intention of clause 4.12(1) of the Transfer Code is to have a procedure to automatically update the exit points in a retailer’s access contract to accommodate a transfer. It is also to override any provisions in a retailer’s access contract that act to hinder or frustrate the transfer, or are inconsistent with the objectives of the Transfer Code.

Clause 4.12(3) requires parties to an access contract to negotiate in good faith any amendments to the access contract related to the removal of the exit point from the previous retailer’s access contract and its inclusion in the incoming retailer’s access contract.

The Transfer Code is silent on the customer’s situation while the parties are negotiating amendments to the access contracts. For example, it may be unclear which retailer is supplying the customer while negotiations are ongoing.

Negotiations under clause 4.12(3) are subordinate to the exit point automatically moving between access contracts under clause 4.12(1). With this in mind, a case could be made that the customer changes retailers when the exit point is automatically transferred to the incoming retailer’s access contract and that at no point is the customer without a retailer.

Question 16

- A. Is the Transfer Code clear on which retailer supplies the customer during negotiations that take place under clause 4.12(3)?
- B. If not, what amendments are required to address this uncertainty?

5.7 Network operator performance reports

Performance reports are important in ensuring there is transparency and accountability in a network operator’s operations. Performance reports also provide an incentive to the network operator to improve service delivery and enable users of the network to determine the value of the service they are receiving.

The Transfer Code does not require network operators to produce performance reports on service levels under the Transfer Code. For example, network operators are not required to report on compliance with transfer timeframes prescribed in the Transfer Code.

As a condition of their licence, network operators are required to undertake performance audits on a periodic basis. These audits include the measuring of performance against Transfer Code requirements. While these audits can involve analysing a sample of transfers that were completed during the audit period, rather than all transfers that were completed, licensee audit reports may provide sufficient information on a network operator's performance in relation to transfers.

Network operators are also required by the Metering Code 2012 to report annually on the metering services they provide, which include the services required as part of a transfer (such as meter changes, meter readings and the provision of meter data). While the reporting under the Metering Code has to include information on the metering services that were carried out in accordance with the applicable service level, the report does not have to specifically identify the metering services that related to a transfer.

Question 17

Should the Transfer Code require network operators to prepare and publish annual performance reports on services related to customer transfers?

5.8 Supplier of last resort

The Transfer Code is silent on its application during a Supplier of Last Resort (**SoLR**) event³⁰.

On 15 July 2009, in accordance with section 71(4) of the Industry Act, the Authority designated Synergy as the SoLR for the South West Interconnected System³¹. Under section 71(4), Horizon Power is the default SoLR for areas outside the South West Interconnected System.

Section 72 of the Industry Act requires a SoLR to submit a last resort supply plan (the **SoLR Plan**) to the Authority for approval. Section 77 of the Industry Act allows the making of regulations (the **SoLR Regulations**) to prescribe what a SoLR plan must address.

The intent of the Industry Act is that the SoLR Regulations and SoLR Plan address the bulk transfer of customers during a SoLR event. This is because a SoLR event has unique characteristics that are not contemplated by the Transfer Code. For instance, the Transfer Code process for transferring a customer is likely to be unworkable during a SoLR event, where thousands of customers may need to be transferred at short notice.

³⁰ A SoLR event occurs when an electricity retailer fails and can no longer supply its customers. In such an event, the failed retailer's customers transfer to the designated SoLR to ensure they continue to receive electricity.

³¹ <http://www.erawa.com.au/cproot/8090/2/20091110%20Notice%20-%20Synergy%20as%20the%20Default%20Electricity%20SoLR%20for%20the%20area%20covered%20by%20the%20SOUTH%20WEST%20INTERCONNECTED%20SYSTEM.pdf>

To avoid potential inconsistencies between the Transfer Code, SoLR Regulations and SoLR Plan, the Transfer Code could be amended to clarify that its provisions do not apply during a SoLR event.

Question 18

Should the Transfer Code address its applicability during a SoLR event; for example, should the Transfer Code be amended to clarify that its provisions do not apply during a SoLR event?

5.9 Consistency with the customer code

Customers who consume not more than 160 MWh of electricity per annum are subject to the protections of the Customer Code. This means that contestable customers who consume between 50 MWh and 160 MWh of electricity per annum are covered by the Customer Code.

The interaction between the Transfer Code and the Customer Code is not addressed in the Transfer Code, which may cause problems for retailers. For example, the Customer Code requires retailers to issue a customer with a final bill on request. In relation to a transfer, the final bill will normally be arranged to coincide with the original nominated transfer date. However, if the nominated transfer date is changed by the incoming retailer or the network operator transfers the customer after the nominated date, the previous retailer may breach its Customer Code obligation to issue a final bill on the date requested by the customer.

This is likely if the customer has not been informed by the incoming retailer that the nominated transfer date has been changed and, therefore, the customer does not know that the previous retailer needs to be contacted to change the date of issue of the final bill. As a result, the previous retailer's ability to issue a final bill on the date requested by the customer is often dependent on the network operator transferring the customer on the original nominated transfer date.

The Metering Code 2012 contemplates its interaction with the Customer Code by requiring a network operator to provide a retailer with information it has to enable the retailer to comply with its Customer Code obligations.

A solution is for the Transfer Code to adopt a similar approach to the Metering Code 2012 and require the network operator to ensure its process for transferring a customer does not cause a retailer to breach its Customer Code obligations.

Question 19

- A. Should the Transfer Code require the network operator to ensure its process for transferring a customer does not cause a retailer to breach its Customer Code obligations?
- B. If so, what requirements should the Transfer Code prescribe?

6. Part 5 – Communication rules

Network operator communication rules set out the file formats, protocols and system designs for the transfer of meter data between network operator and retailer.

The Transfer Code and the Metering Code 2012 require a network operator to have communication rules. The intention is that a network operator will have one set of communication rules; fulfilling a function under both codes.

While the communication rules provisions under the Transfer Code were consistent with the Metering Code 2005, they are inconsistent with several aspects of the Metering Code 2012.

The communication rules requirements under the Transfer Code are substantially less onerous than under the Metering Code 2012. The Metering Code 2012 is the primary instrument that provides for the establishment and operation of communication rules. As all the necessary requirements for communication rules are in the Metering Code 2012, Part 5 of the Transfer Code may be redundant.

The Transfer Code provisions on communication rules could cause unnecessary duplication and increase the possibility of inconsistencies arising between the Transfer Code and the Metering Code 2012. Inconsistencies between the codes will cause network operators and retailers operational and licence compliance problems that will lead to inefficiencies and unnecessary costs.

Should Part 5 of the Transfer Code be retained, it will need amending to be consistent with Part 6 of the Metering Code 2012. For example, clause 5.1 of the Transfer Code will need to be amended so a network operator will no longer have to seek the Authority's approval for its initial communication rules.

Question 20

Should Part 5 of the Transfer Code be removed or amended to make it consistent with Part 6 of the Metering Code 2012?

7. Part 6 – Notices

While no issues are being raised with Part 6 of the Transfer Code at this time, submissions on any matters relating to Part 6 are invited.

8. Part 7 – Dispute resolution

5.10 Referral of disputes to the Authority

Part 7 of the Transfer Code designates the Authority as the arbitrator of disputes that arise between network operators, retailers and the Market Operator in respect of any matter under or in connection with the Transfer Code.

Comment is sought as to whether the Authority is best placed to arbitrate disputes given the Authority's role under the Transfer Code in approving a network operator's communication rules and in monitoring and enforcing electricity licensees' compliance with the Transfer Code. Because a dispute may raise matters of non-compliance with the Transfer Code, the Authority's role as the administrator of the licensing regime may deter a licensee from raising a dispute with the Authority against a fellow licensee.

The Western Australian Energy Disputes Arbitrator (the **Energy Arbitrator**) could provide an alternative to the Authority as the arbitrator of Transfer Code disputes, if it was felt that the Authority had a perceived conflict of interest. Unlike the Authority, the Energy Arbitrator has a role specific in the arbitration of disputes (both the Access Code and the Metering Code 2012 designate the Energy Arbitrator as the arbitrator of Code disputes). Replacing the Authority with the Energy Arbitrator would enhance consistency within the regulatory framework, as it would bring the Transfer Code in line with the arbitration of disputes under other codes.

Question 21

Should the Energy Arbitrator replace the Authority as the arbitrator of Transfer Code disputes?

5.11 Costs of disputing parties

The Metering Code 2005 was amended to provide for the recovery of the Energy Arbitrator's costs, including the Energy Arbitrator being able to determine the costs of disputing parties and how those costs are settled (clauses 8.10, 8.10A and 8.10B of the Metering Code 2012). If the Authority is replaced by the Energy Arbitrator as the arbitrator of disputes, it is proposed that the Transfer Code adopt the same provisions on dispute costs as the Metering Code 2012.

Question 22

If the Authority is replaced by the Energy Arbitrator as the arbitrator of disputes, should the Transfer Code adopt the Metering Code 2012's provisions on the determination and recovery of the Energy Arbitrator's dispute costs?

9. Part 8 – Code amendment

While no issues are being raised with Part 8 of the Transfer Code at this time, submissions are invited on any matters relating to Part 8.

10. Code Appendices

While no issues are being raised with the Appendices of the Transfer Code at this time, submissions are invited on any matters relating to the Appendices.

Appendix – Questions for consideration

Question 1

Should the application of the Transfer Code be extended to include network operators and retailers if it is a term or condition of their licence exemption that they comply with the Transfer Code?

Question 2

- A. Comments are invited on the suitability of the definitions identified in this Issues Paper as potentially requiring amendment.
- B. Are there definitions not identified in this Issues Paper that are inaccurate or incorrect? If so, what amendments are required to those definitions?
- C. Are any new definitions required?

Question 3

Should the meaning of “publish” be amended to be consistent with the Metering Code 2012?

Question 4

Should the arm’s length treatment provisions be amended so that clause 2.2(1) does not apply to a network while there is no more than one retailer on the network?

Question 5

- A. Is the limit of 20 requests for standing data and historical consumption data in clause 3.4 consistent with the Transfer Code objectives?
- B. Does the current limit represent a barrier to effective retail competition?
- C. What is a suitable number of requests, or should the number of requests be unlimited?

Question 6

Should clauses 3.2(1) and 3.5(1) be amended to require a retailer to submit the customer’s verifiable consent with a data request?

Question 7

Should clause 3.8(2) be amended to reflect that a network operator can now establish its own communication rules under the Metering Code 2012?

Question 8

Are the prescribed timeframes for a network operator to provide requested data to a retailer (as per the table in clause 3.8(2)(b)) suitable?

Question 9

- A. Is the figure of \$45 in clause 3.10(2)(a) reasonable and, if not, what should it be?
- B. Rather than prescribe a maximum allowable charge under 3.10(2)(a), should charges for less than 12 months of data reflect the network operator's reasonable costs (similar to clause 3.10(2)(b))?

Question 10

- A. Should the Transfer Code have a specific process to request an amendment to the data charge in clause 3.10(2)(a)?
- B. If so, what should the process be and should the charge be approved by the Authority or the Minister?

Question 11

- A. Is the amount of 20 customer transfer requests in clause 4.5(1)(b) reasonable?
- B. Is there a need for a cap in the number of transfer requests?
- C. Should a network operator and a retailer be allowed to negotiate the number of transfer requests?

Question 12

Should clause 4.6(1)(b) clarify what the responsibilities of each party are when effecting a meter change under the Metering Code 2012 to enable the transfer of a customer?

Question 13

Should the Transfer Code's timeframes (including the timeframes in clauses 4.7 and 4.10) for carrying out a metering service be aligned with the MSLA's service levels?

Question 14

Should the network operator be liable for retailer and customer losses caused by an act or omission by the network operator that result in the customer transferring after the nominated transfer date?

Question 15

Should clause 4.11(1) be aligned with the Metering Code 2012 by defining the term "actual value" in relation to meter readings?

Question 16

- A. Is the Transfer Code clear on which retailer supplies the customer during negotiations that take place under clause 4.12(3)?
- B. If not, what amendments are required to address this uncertainty?

Question 17

Should the Transfer Code require network operators to prepare and publish annual performance reports on services related to customer transfers?

Question 18

Should the Transfer Code address its applicability during a SoLR event; for example, should the Transfer Code be amended to clarify its provisions do not apply during a SoLR event?

Question 19

- A. Should the Transfer Code require the network operator to ensure its process for transferring a customer does not cause a retailer to breach its Customer Code obligations?
- B. If so, what requirements should the Transfer Code prescribe?

Question 20

Should Part 5 of the Transfer Code be removed or amended to make it consistent with Part 6 of the Metering Code 2012?

Question 21

Should the Energy Arbitrator replace the Authority as the arbitrator of Transfer Code disputes?

Question 22

If the Authority is replaced by the Energy Arbitrator as the arbitrator of disputes, should the Transfer Code adopt the Metering Code 2012's provisions on the determination and recovery of the Energy Arbitrator's dispute costs?