



Government of Western Australia  
Energy Policy WA

# Legislative amendments to improve efficiency of the energy licensing regime

Information Paper

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Working together for a **brighter** energy future.

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# Executive summary

This paper outlines Energy Policy WA's proposed amendments to the *Electricity Industry Act 2004* (the Electricity Act) and the *Energy Coordination Act 1994* (the Gas Act) to improve the efficiency of the electricity and gas licensing schemes.

The proposed amendments are intended to reduce compliance costs and regulatory burden for licensees while maintaining customer protections. The amendments are also intended to improve consistency between the electricity and gas licensing regulatory frameworks, unless there is a clear reason for inconsistency. These amendments should also assist in streamlining the Economic Regulation Authority's (ERA) processes relating to administration of the energy licensing schemes.

In addition to the licensing related amendments, there are proposed amendments to terms in the Electricity and Gas Acts to reflect a change to a defined term in the *Corporations Act 2001* (Commonwealth) (Proposal 8). The removal of references to distribution network voltage and frequency limits in the *Electricity Act 1945* is also proposed (Proposal 9), on the basis that the requirements should more appropriately be specified in the Electricity Industry (Network Quality and Reliability of Supply) Code 2005 and that the proposal to update the voltage limit is consistent with Action 11 of the *Distributed Energy Resources Roadmap*<sup>1</sup>.

The proposals discussed in this Information Paper have previously been identified in consultation and review processes conducted by the former Public Utilities Office (now Energy Policy WA) and the ERA.

- The 2015 consultation paper published by the Department of Finance, Public Utilities Office, *Amendment to Electricity Industry Act 2004: Removal of electricity generation licensing*<sup>2</sup> examined the proposed removal of the requirement for electricity generation licensing.
- Proposal 1 through to Proposal 7 were identified in two reports published by the ERA in November 2020, Operation of the gas licensing scheme and licensee compliance – Annual Report 2019/20 and Operation of the electricity licensing scheme and licensee compliance – Annual Report 2019/20<sup>3</sup>.
- All proposals, except for that relating to provision for the surrender of licences (Proposal 5) and the appointment of an inspector to inspect a licensee's operations if there is concern about a licensee's performance (Proposal 6), were also identified in the ERA's annual gas and electricity compliance reports for 2018-19<sup>4</sup>.

Gas and electricity licensing scheme and licensee compliance report recommendations identified by the ERA that have not been addressed in the Information Paper are summarised in Chapter 4 and will be considered separately as required.

<sup>1</sup> Available at [https://www.brighterenergyfuture.wa.gov.au/wp-content/uploads/2020/10/DER-Roadmap\\_April2020.pdf](https://www.brighterenergyfuture.wa.gov.au/wp-content/uploads/2020/10/DER-Roadmap_April2020.pdf).

<sup>2</sup> Available at <https://www.wa.gov.au/government/document-collections/proposal-remove-requirement-electricity-generators-be-licensed>.

<sup>3</sup> Available at <https://www.erawa.com.au/cproot/21590/2/Operation-of-the-gas-licensing-scheme-and-licensee-compliance---Annual-Report-201920---Final-clean-.PDF> and <https://www.erawa.com.au/cproot/21589/2/Operation-of-the-electricity-licensing-scheme-and-licensee-compliance---Annual-Report-201920---Final-clean-.PDF>

<sup>4</sup> Available at <https://www.erawa.com.au/cproot/21014/2/Operation-of-the-gas-licensing-scheme-and-licensee-compliance---Annual-Report-2018-19---Final---Clean.pdf> and <https://www.erawa.com.au/cproot/21015/2/Operation-of-the-electricity-licensing-scheme-and-licensee-compliance---Annual-Report-201819---Final---Clean.PDF>.

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Subject to approval by the Minister for Energy, Energy Policy WA will progress implementation of the proposals outlined in this Information Paper, including a request for Government approval for drafting of the required legislative changes.

Timing for passage and implementation of legislative amendments is dependent on progress to implement wider energy sector reforms and Parliamentary processes, with the changes being unlikely to take effect until at least early 2023.

# 1. Introduction

## 1.1 Context

The electricity and gas licensing frameworks are established by provisions in the *Electricity Industry Act 2004* (Electricity Act) and *Energy Coordination Act 1994* (Gas Act) respectively. The Minister for Energy is responsible for the legislation and is supported in this role by Energy Policy WA. The Economic Regulation Authority (ERA) is responsible for administering and regulating the energy licensing frameworks.

The Electricity Act outlines the requirement for a person or entity to hold an appropriate form of licence if they are generating, transmitting, distributing or selling (retailing) electricity within Western Australia. An entity conducting multiple activities is required to apply for more than one licence unless the electricity-related operations are in regional areas of Western Australia, in which case the entity may apply for an integrated regional licence.

The Gas Act outlines the requirements for a person or entity to hold an appropriate form of licence if they are distributing gas or trading (retailing) gas to small-use customers<sup>5</sup> within Western Australia.

The obligations and conditions placed on entities holding an electricity or gas licence are drawn from the Electricity and Gas Acts respectively, which provide heads of power for subsidiary instruments<sup>6</sup> to which licensees must adhere.

## 1.2 Next steps

Subject to Government approvals, Energy Policy WA will progress drafting of the required legislative amendments to the Electricity and Gas Acts to give effect to the proposals outlined in this Information Paper, along with other consequential amendments.

While the proposals presented are not intended to be subject to further consultation on the policy matters, additional consultation with industry and consumer stakeholders will occur during drafting of the legislative amendments.

Timing for passage and implementation of legislative amendments will be dependent on progress to implement wider energy sector reforms under the Energy and Governance Legislation Project<sup>7</sup> and Parliamentary processes, however the changes would be unlikely to take effect until early 2023.

## 1.3 Information requests

Requests for information relating to this process will be treated in accordance with the *Freedom of Information Act 1992* (WA) and Energy Policy WA processes.

<sup>5</sup> Small-use gas customers are those that consume, or are expected to consume, less than 1 terajoule of gas per annum.

<sup>6</sup> Regulations and codes.

<sup>7</sup> This is an extensive governance and regulatory reform project to build greater resilience and flexibility to respond to present and emerging challenges presented by the changes to the energy sector. Further information is available on the Energy Policy WA website at <https://www.wa.gov.au/government/document-collections/energy-and-governance-legislation-reform>.

## 2. Summary of proposals

### Proposal 1 – Removal of generator licensing requirement

Amendment of the *Electricity Industry Act 2004* to remove the requirement for a person who constructs or operates generating works to be licensed and other changes as necessary to give effect to this proposal.

### Proposal 2 – Independent auditor appointments by the ERA

Amendment of sections 13 and 14 of the *Electricity Industry Act 2004* and 11Y and 11ZA of the *Energy Coordination Act 1994* to require that the independent expert who conducts an audit or review of a licence is engaged by the ERA, at the expense of the licensee.

### Proposal 3 – Assessment of change in licensee ownership or organisational structure

Amendment of the *Electricity Industry Act 2004* and *Energy Coordination Act 1994* to require:

- a licensee that intends to materially change its ownership or organisational structure to notify the ERA of the change; and
- where notified of the above, the ERA to perform an assessment that is consistent with the requirements for licence applications under section 19 of the *Electricity Industry Act 2004* and section 11S of the *Energy Coordination Act 1994*.

### Proposal 4 – Approval of standard form contracts and assessment of licence applications

Amendment of the *Electricity Industry Act 2004* to require the ERA to approve or not approve a standard form contract within 90 days, to remove the inconsistency between the timeframes for assessing a standard form contract and licence application.

### Proposal 5 – Surrender of licences

Amendment of the *Electricity Industry Act 2004* and *Energy Coordination Act 1994* to:

- provide for the surrender of a licence so that:
  - a licensee is required to apply to the ERA for approval to surrender its licence; and
  - the ERA is to approve an application to surrender a licence if it is satisfied that it would not be contrary to the public interest to do so; and
- extend the requirements in section 36 of the *Electricity Industry Act 2004* and section 11ZF of the *Energy Coordination Act 1994*, which currently apply to licence cancellations, to licence surrenders.

### Proposal 6 – Inspection of licensee operations

Amendment of the *Electricity Industry Act 2004* and *Energy Coordination Act 1994* to allow the ERA to appoint an inspector to inspect a licensee's operations if the ERA has concerns about the performance of a licensee.

### Proposal 7 – Duration of gas licences

Amendment of section 11O of the *Energy Coordination Act 1994* to extend the maximum duration of gas distribution licences from 21 to 30 years and of gas trading licences from 10 to 15 years, to align with equivalent provisions for electricity licences.

### Proposal 8 – External administration of a licensee

Amendment of section 35(1) of the *Electricity Industry Act 2004* and 11ZE(1)(c) of the *Energy Coordination Act 1994* to replace the term 'an externally-administered body corporate' with 'a Chapter 5 body corporate' as defined by the *Corporations Act 2001* (Commonwealth).

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Proposal 9 – Changes to voltage and frequency limits

Delete sub-section 25(d) of the *Electricity Act 1945*.

## 3. Administrative proposals

### Proposal 1 – Removal of generator licensing requirement

Section 7(1) of the Electricity Act requires a person or entity that constructs or operates generating works to hold a licence or be exempt from the requirement to be licensed.

When a generation licence is issued by the ERA, specific obligations are imposed on licensees. The ERA's *Electricity Compliance Reporting Manual*<sup>8</sup> lists these obligations, which include service standards, asset management requirements and safety matters.

The 2015 review relating to the proposed repeal of the generation licensing legislative requirements conducted by the former Public Utilities Office received support from industry, with an Amendment Bill to give effect to these changes subsequently being introduced into State Parliament in 2016. However, the legislation was not passed prior to the change of government in March 2017.

#### Rationale

Applying for and holding a licence comes with costs. Generator licensees pay the ERA an annual licence fee<sup>9</sup>, quarterly standing charges<sup>10</sup> and specific charges relating to assessing a licence application<sup>11</sup>.

The quarterly standing charge is payable as a contribution to the annual costs incurred by the ERA in performing its licensing functions. The ERA has advised Energy Policy WA that the total standing charge in 2019-20 was \$209,000. The individual standing charge per generation licensee is calculated in proportion to the level of generation capacity held by the licensee.

While there is no publicly available information on the scale of costs in relation to applying for a generation licence, a conservative estimate is between \$5,000 and \$7,000 if technical and financial assessments are required.

In addition to these fees, sections 13 and 14 of the Electricity Act require a licensed generator to engage an auditor to conduct a regular assessment of its licence compliance and a review of its asset management processes. The cost to engage a consultant to perform an audit and review can also be significant<sup>12</sup>. Licensees must have systems and processes in place to ensure compliance with the licensing obligations.

While historical audits and review reports submitted to the ERA indicate a good overall level of performance and compliance with these licence conditions, other regulatory mechanisms also provide effective performance oversight over generators additional to the licensing requirements (Table 1). As an example, 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.

Energy Policy WA supports the view of the former Public Utilities Office that the costs of having to comply with a generation licence outweigh the benefits of licensing generators, meaning that the licence requirements result in little or no benefits to customers supplied by generators, nor to energy consumers more generally.

<sup>8</sup> *Electricity Compliance Reporting Manual*, 2014. Available at <https://www.erawa.com.au/electricity/electricity-licensing/document-archive/regulatory-guidelines>.

<sup>9</sup> Economic Regulation Authority (Licensing Funding) Regulations 2014 (Licensing Funding Regulations), regulation 6.

<sup>10</sup> Licensing Funding Regulations, regulation 7.

<sup>11</sup> Licensing Funding Regulations, regulation 5.

<sup>12</sup> A large generator previously advised the former Public Utilities Office of estimated costs of activities associated with each audit and review process of about \$100,000.

Regulatory consistency is not a consideration for this proposal as the Gas Act does not have an equivalent licence category.

**Table 1: Regulatory obligations imposed on generation facilities additional to licensing requirements**

Instrument	Mechanism
Electricity Network Access Code 2004	<p>The <i>Electricity Networks Access Code 2004 (Access Code)</i><sup>13</sup> requires an electricity network operator to enter into a network access contract with a generator, when the generator makes a request to connect to the network.</p> <p>The Access Code requires generators to comply with the network operator's Technical Rules prescribing performance and technical standards for equipment connected to the network, provide technical information on request, pay certain fees and charges, and comply with the Electricity Industry (Metering) Code 2012.</p> <p>The Access Code also requires generators to comply with 'good industry practice'<sup>14</sup>. In addition, if the network operator considers that an applicant requesting access presents a material risk because of technical or financial resources, it can require that applicant to provide security. Contract termination arrangements are also provided for under the Access Code.</p> <p>Western Power can enforce compliance as the counterparty to a connection agreement.</p> <p>Penalties for non-compliance with the Access Code are enforced in accordance with the Electricity Industry (Access Code Enforcement) Regulations 2005 outside of the licensing scheme.</p>
Pilbara Networks Access Code	<p>The Pilbara Networks Access Code codifies a light-handed access regime for Horizon Power's coastal Pilbara network and Alinta Energy's Port Hedland network. The Code includes the principles that network service providers must use in developing prices, and the information that a network service provider must make available to facilitate timely and effective negotiation. The Pilbara Networks Access Code requires an electricity network operator to enter into a network access contract with a generator when the generator makes a request to connect to the network.</p> <p>The Pilbara Networks Rules (PNR) establish rules for the operation, management, security and reliability of Pilbara networks and the functions of the Pilbara independent system operator, Pilbara ISOCO.</p> <p>The PNR include Harmonised Technical Rules for the North-West Interconnected System that prescribe the technical performance requirements of the power system and equipment connected to the network, including generation facilities.</p> <p>While obligations of the PNR are primarily imposed on network service providers, these obligations are passed through to generators and retailers through commercial arrangements, such as obligations for balancing, essential systems services and outage management.</p>

<sup>13</sup> Horizon Power is not covered by the Access Code.

<sup>14</sup> 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".

Instrument	Mechanism
Wholesale Electricity Market Rules	Generators that are market participants in the Wholesale Electricity Market (WEM) must comply with the Electricity Industry (Wholesale Electricity Market) Regulations 2004 and the Wholesale Electricity Market Rules (WEM Rules). The Australian Energy Market Operator is responsible for operating the WEM in accordance with the WEM Rules, while the ERA performs a market surveillance role and monitors and enforces compliance with the Rules. A focus of these obligations is ensuring that capacity is available for dispatch to meet system demand requirements. These obligations are also reinforced by commercial arrangements, usually between generators and retailers, for the delivery of electricity supplies and capacity credits.  The WEM Rules require payment of Credit Support at registration and include mechanisms to ensure the generator is able to meet its prudential requirements <sup>15</sup> .
<i>Environmental Protection Act 1986</i>	The Department of Water and Environmental Regulation is responsible under the <i>Environmental Protection Act 1986</i> for environmental licensing and registration of prescribed premises, including electricity generating works, the issuing of works approvals, and administration of regulations. It is also responsible for ensuring prescribed premises comply with relevant legislation and achieves this through monitoring, audits and compliance inspections. The Department can also issue a closure notice for a prescribed premise, and under that notice include specific actions that need to be taken.
<i>Electricity Act 1945</i>	All persons who undertake electrical work must comply with extensive technical and safety requirements under the <i>Electricity Act 1945</i> , its supporting regulations and the Western Australian Electrical Requirements. The Building and Energy Division of the Department of Mines, Industry Regulation and Safety monitors and enforces compliance with these obligations.

### Consequential changes

Removal of the generator licensing requirement from the Electricity Act will also necessitate other legislative and regulatory changes including:

- amendment of the Electricity Industry Exemption Order 2005<sup>16</sup> to remove the general licence exemption provided to generation facilities sized below 30 megawatts (MW) in capacity and individual exemptions applied to several generating facilities in remote locations, usually involving supply to a single customer;
- amendment of the Economic Regulation Authority (Licensing Funding) Regulations 2014 to remove the requirement that generation licensees pay licence related charges to the ERA;
- repeal of regulation 5A(1)(c) of the Electricity Industry (Licence Conditions) Regulations 2005<sup>17</sup> that requires generation licensees operating generating works connected to a relevant corporation's<sup>18</sup> transmission system or distribution system to comply with the Electricity Industry (Metering) Code 2012<sup>19</sup>; and
- amendment of section 120 of the Electricity Act to adjust the definition of a *Pilbara network participant* to remove references to a holder of a generating licence and continue to capture a person who constructs or operates generating works connected to a Pilbara network. The policy intent and intended application of the Pilbara network provisions in the Electricity Act remain unchanged.

<sup>15</sup> Wholesale Electricity Market Rules, clauses 2.38 2.42 and 2.43. Available at <https://www.wa.gov.au/government/document-collections/wholesale-electricity-market-rules>.

<sup>16</sup> Available at: [https://www.legislation.wa.gov.au/legislation/statutes.nsf/law\\_s37841.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s37841.html).

<sup>17</sup> Available at [https://www.legislation.wa.gov.au/legislation/statutes.nsf/law\\_s37159.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s37159.html).

<sup>18</sup> A relevant corporation under this regulation is Horizon Power or Western Power.

<sup>19</sup> Available at: [https://www.legislation.wa.gov.au/legislation/statutes.nsf/law\\_s45207.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s45207.html).

## Proposal 1

Amendment of the *Electricity Industry Act 2004* to remove the requirement for a person who constructs or operates generating works to be licensed and make other changes as necessary to give effect to this proposal.

## Proposal 2 – Independent auditor appointments by the ERA

Sections 13 and 14 of the Electricity Act and sections 11Y and ZA of the Gas Act require electricity and gas licensees to engage an independent auditor acceptable to the ERA, to assess the level of compliance with conditions attached to their licence. A licensee that operates infrastructure, such as a distribution system, must also engage a consultant to perform a review of related asset management systems. The ERA uses these audit and review reports to inform its regulatory oversight and monitoring functions.

As the auditor is engaged by the licensee, there is a potential for bias and perceived conflict of interest.

### Rationale

While the ERA's *2019 Audit and Review Guidelines Electricity and Gas Licences*<sup>20</sup> outline how an audit document should be structured, this level of direction does not fully overcome the potential for bias in the preparation of an audit of licensee performance.

The audit arrangements in the electricity and gas industries differ from those in the water industry, where the ERA appoints the auditor directly and the cost of the audit is recovered from the licensee. Other jurisdictions have alternative frameworks that enable the regulator to contract with the auditor to provide improved oversight. In Victoria, for example, the licensee, the auditor and the Essential Services Commission, enter a tripartite deed under which the audit is conducted. This ensures the Commission has oversight during the audit and the auditor owes a duty of care to the Commission rather than the licensee<sup>21</sup>.

Amending the Electricity and Gas Acts to allow the ERA to engage the auditor aligns with the audit framework under the *Water Services Act 2012* (Water Act) and is preferred. This approach is not expected to increase the costs incurred by licensees to directly engage auditors, nor require substantial additional administrative effort by the ERA.

## Proposal 2

Amendment of sections 13 and 14 of the *Electricity Industry Act 2004* and 11Y and 11ZA of the *Energy Coordination Act 1994* to require that the independent expert who conducts an audit or review of a licence is engaged by the ERA, at the expense of the licensee.

## Proposal 3 – Assessment of change in licensee ownership or organisational structure

Section 19 of the Electricity Act and section 11S of the Gas Act require the ERA to assess and approve electricity and gas licence transfers against financial, technical and public interest tests. These requirements are limited to the circumstance when a licence is transferred to a different licensee name and do not extend to situations of a change in ownership. This means that the ERA has no ability to assess the financial and technical resources of a new owner where the licensee name and ABN are unchanged.

<sup>20</sup> Available at <https://www.erawa.com.au/electricity/electricity-licensing/document-archive/regulatory-guidelines>

<sup>21</sup> Essential Services Commission (Vic), Audit Guideline for Energy Businesses. Available at: <https://www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-codes-guidelines-policies-and-manuals/audit-guideline-energy-businesses>

## Rationale

This limitation on the scope of ERA assessment of licence holders has the potential to allow a licence to be held by a person who does not possess the capacity to provide the services that are authorised by the licence. The ERA has indicated that there have been instances where approval for the licence may not have been given (if such an assessment was required), as the new owner may not have met one or more of the financial, technical and public interest tests<sup>22</sup>.

### Proposal 3

Amendment of the *Electricity Industry Act 2004* and *Energy Coordination Act 1994* to require:

- a licensee that intends to materially change its ownership or organisational structure to notify the ERA of the change; and
- where notified of the above, the ERA to perform an assessment that is consistent with the requirements for licence applications under section 19 of the *Electricity Industry Act 2004* and section 11S of the *Energy Coordination Act 1994*.

## Proposal 4 – Approval of standard form contracts and assessment of licence applications

Sections 49 and 52 of the Electricity Act require a retailer to submit a draft standard form contract to the ERA for approval when submitting a licence application and when changes to the standard form contract are required. A standard form contract provides protections for small-use customers that are supplied electricity by licensed retailers.

Under the Electricity Act, the ERA:

- is required to approve, or not approve, a draft standard form contract within 45 days<sup>23</sup>; and
- has 90 calendar days to grant, renew or approve a licence application<sup>24</sup>.

## Rationale

The 45-day timeframe to assess a draft standard form contract was intended to require that the ERA assesses and consults on the contract within a reasonable period, to ensure that the contract contains all mandatory content and is not inconsistent with any written law. The ERA has indicated that it has found it difficult to carry out this assessment within the timeframe permitted<sup>25</sup>.

As a licence application assessment can take up to 90 days, Energy Policy WA considers that it is reasonable to allow the same timeframe for the standard form contract assessment that forms part of the licence assessment process.

The Gas Act does not outline a maximum period for standard form contracts to be assessed, although it imposes a 90-day maximum period to decide on a licence application that includes a proposed standard form contract<sup>26</sup>.

Energy Policy WA considers that the timeframe allowed for the ERA to review electricity standard form contracts should be consistent with the time allowed to consider licence applications and consistent with the equivalent requirements for oversight in the gas licensing regime.

<sup>22</sup> ERA, November 2020, *Operation of the electricity licensing scheme and licensee compliance – Annual Report 2019/20*, p.14.

<sup>23</sup> *Electricity Act*, section 51(3).

<sup>24</sup> *Electricity Act*, section 19(2).

<sup>25</sup> ERA, November 2020, *Operation of the electricity licensing scheme and licensee compliance – Annual Report 2019/20*, pp. 21-22.

<sup>26</sup> Gas Act, section 11S.

## Proposal 4

Amendment of the *Electricity Industry Act 2004* to require the ERA to approve or not approve a standard form contract within 90 days, to remove the inconsistency between the timeframes for assessing a standard form contract and licence application.

## Proposal 5 – Surrender of licences

The Electricity and Gas Acts include provisions for the ERA to consider and determine applications to grant, amend, transfer, or renew a licence, and for the Governor to cancel a licence. They do not, however, provide the capacity for a licensee to surrender its licence, despite the possibility that a licensee ceasing to operate under a licence may have similar outcomes and requirements to that for cancellation of a licence.

### Rationale

Under section 36 of the Electricity Act, if a licence is cancelled by the Governor, the former electricity licensee must ensure that any generating works, transmission system or distribution system it constructed or operated under the licence is left in a safe condition. Similarly, under section 11ZF of the Gas Act, when a gas licence is cancelled by the Governor, the former gas licensee must ensure that any distribution system it constructed or operated under the licence is left in a safe condition. These provisions do not apply when a licensee ceases to operate under its licence, that is, the operator has effectively surrendered its licence.

While the Electricity (Network Safety) Regulations 2015 require network operators to minimise or eliminate safety risks identified on the network<sup>27</sup>, and the Gas Standards (Gas Supply and System Safety) Regulations 2000<sup>28</sup> require network operators to take remedial action where there is a threat to the safety of a person or property<sup>29</sup>, these provisions do not require a network operator to leave its distribution system or transmission system in a safe condition when it ceases to operate the system.

Section 18 of the Water Act allows for a licensee to apply to the ERA to cancel its licence (the equivalent of a licence surrender). Under this provision, the ERA may approve the cancellation of the licence only if it is satisfied that it would not be contrary to the public interest to do so.

Similar to the Electricity and Gas Acts, section 36 of the Water Act requires a former licensee to leave its water service works in a safe condition when it ceases the service, however, this provision is also brought into effect when a licensee applies to cancel (i.e., surrender) its licence<sup>30</sup>.

Energy Policy WA considers that it is reasonable and prudent to offer electricity and gas licence holders the option of surrendering a licence, in a similar manner to that allowed for under the Water Act to ensure that the licensee leaves its assets in a safe condition.

<sup>27</sup> Electricity (Network Safety) Regulations 2015, regulation 9. Available at: [https://www.legislation.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_13665\\_homepage.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_13665_homepage.html)

<sup>28</sup> Available at: [https://www.legislation.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_1481\\_homepage.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1481_homepage.html)

<sup>29</sup> Gas Standards (Gas Supply and System Safety) Regulations 2000, regulation 24. Available at: [https://www.legislation.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_1481\\_homepage.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1481_homepage.html)

<sup>30</sup> Water Act, section 36.

## Proposal 5

Amendment of the *Electricity Industry Act 2004* and *Energy Coordination Act 1994* to:

- provide for the surrender of a licence so that:
  - a licensee is required to apply to the ERA for approval to surrender its licence; and
  - the ERA is to approve an application to surrender a licence if it is satisfied that it would not be contrary to the public interest to do so; and
- extend the requirements in section 36 of the *Electricity Industry Act 2004* and section 11ZF of the *Energy Coordination Act 1994*, which currently apply to licence cancellations, to licence surrenders.

## Proposal 6 – Inspection of licensee operations

The Electricity and Gas Acts do not contain an inspectorial power. These powers form an important part of a compliance monitoring framework to determine the status of a licensee's performance and operations, if a regulator has concerns about non-compliances or asset management system deficiencies at any time.

### Rationale

Under Part 10, Division 2 of the Water Act, the ERA can appoint an inspector to inspect whether a licensee has complied with its licence obligations (see Appendix A for further detail). Typically, the inspection occurs outside of the operational audits and asset management system reviews that licensees are required to have on a periodic basis.

The ERA has reported that the inspectorial powers under the Water Act have proved to be useful in allowing the ERA to obtain an accurate picture of a licensee's performance and operations, including the condition of the water service assets, before it decides what, if any, compliance enforcement action to take against the licensee<sup>31</sup>.

Energy Policy WA considers that it is reasonable the ERA has the ability to appoint inspectors under the Electricity and Gas Acts to determine whether a licensee has complied with its licence obligations and that these provisions in relation to the appointment and powers of inspectors should align with similar provisions in the Water Act.

## Proposal 6

Amendment of the *Electricity Industry Act 2004* and *Energy Coordination Act 1994* to allow the ERA to appoint an inspector to inspect a licensee's operations if the ERA has concerns about the performance of a licensee.

## Proposal 7 – Duration of gas licences

Under Section 11O of the Gas Act, the duration of gas trading (retail) and distribution licences cannot extend beyond 10 years and 21 years respectively, whereas the equivalent licences for the electricity industry have a maximum duration of 15 and 30 years.

### Rationale

Electricity and gas retail and distribution businesses fulfil a similar role in their respective markets and there does not appear to be a reason for the difference in licence duration between the energy types.

<sup>31</sup> ERA, November 2020, *Operation of the gas licensing scheme and licensee compliance – Annual Report 2019/20*, p. 6.

Some energy retailers hold both an electricity retail licence and a gas retail licence. Inconsistencies between the licensing schemes create regulatory burden for the ERA and licensees who participate in both markets. Furthermore, as there is a cost to the ERA and the licensee to process a licence renewal application, requiring gas licensees to renew their licences more frequently than electricity licensees imposes additional costs on these licensees without a noticeable benefit to the gas market and consumers.

The increased duration of licences will also improve investment certainty for licensed gas distributors and retailers.

### Proposal 7

Amendment of section 110 of the *Energy Coordination Act 1994* to extend the maximum duration of gas distribution licences from 21 to 30 years and of gas trading licences from 10 to 15 years, to align with equivalent provisions for electricity licences.

## Proposal 8 – External administration of a licensee

The *Insolvency Law Reform Act 2016* (Commonwealth) repealed the definition of ‘an externally administered body corporate’ in the *Corporations Act 2001* (Commonwealth) and replaced it with the defined term ‘Chapter 5 body corporate’.

Section 35(1)(c) of the *Electricity Act* and 11ZE(1)(c) of the *Gas Act* require amendment to refer to the new defined term. The policy intent and intended effect of the relevant provisions in the *Electricity Act* and *Gas Act* remain unchanged.

### Proposal 8

Amendment of section 35(1) of the *Electricity Industry Act 2004* and 11ZE(1)(c) of the *Energy Coordination Act 1994* to replace the term ‘an externally-administered body corporate’ with ‘a Chapter 5 body corporate’ as defined by the *Corporations Act 2001* (Commonwealth).

## Proposal 9 – Removing voltage and frequency limits

### Proposed changes to voltage limits

The *Electricity Act 1945* stipulates that voltage in the distribution network must be constantly maintained within  $\pm 6\%$  of a nominal voltage of 240 volts (V). This voltage level is higher than the Australian Standard for voltages and the band is narrower.

The existing voltage level and range has the practical effect of Western Power being required to manage the network under a higher than desirable voltage condition.

This creates a risk to the operation of customer appliances, including customer solar photovoltaic (PV) systems, and can lead to equipment failure or disconnections.

### Rationale

Western Australia is the only jurisdiction in Australia that has not transitioned to a 230V nominal voltage. Other jurisdictions that adopted the 230V nominal voltage simultaneously adopted the wider limits included in the Australian Standards for voltages, which is  $+10\%/-6\%$  for 98% of the time.

A reduction in the nominal level from 240V to 230V and a widening of the voltage range from  $\pm 6\%$  for 100% of the time to  $+10\%/-6\%$  for 98% of the time will allow Western Power to continue to connect residential scale solar PV systems without network augmentation, at the current forecast uptake levels.

The proposed changes to the voltage limits are also in alignment with Action 11 of the *Distributed Energy Resources Roadmap*<sup>32</sup>.

The main reason the nominal voltage has not transitioned to the wider limits is due to limits being specified in primary legislation, which is difficult to change. In other jurisdictions voltage limits are specified in subsidiary instruments.

Reducing the nominal voltage can be undertaken by changing the declaration of nominal voltage in the *WA Distribution Connection Manual*, however a widening of the voltage range requires a legislation change.

It is proposed that the voltage range be removed from the *Electricity Act 1945* and specified in the Electricity Industry (Network Quality and Reliability of Supply) Code 2005, as it is an appropriate and legally binding instrument administered by the State Government. The associated code changes will be progressed following the deletion of sub-section 25(d) from the Act.

In 2019, Western Power commissioned the University of Wollongong to test a range of domestic appliances under lower voltage conditions. Testing did not produce any results that would preclude the lowering of specified voltages. There was evidence to suggest that lowering voltage will reduce operating temperature and may prolong equipment life. Given European standards, it is fair to assume that equipment imported into Australia is already compatible with lower voltages<sup>33</sup>.

### Proposed changes to frequency limits

The *Electricity Act 1945* stipulates that network operators maintain frequency within a range of +/- 2.5% of the declared frequency of 50 hertz (Hz), which provides for a range of 48.75 to 51.25 Hz.

Smaller, non-interconnected and temporarily disconnected systems are optimally operated over a broader frequency range than envisioned in the *Electricity Act 1945*.

Where the band allowed for normal operations is wider, excess generation and imbalances that occur can be more effectively and efficiently managed because inherent characteristics of inverter connection energy systems that comply with Australian/New Zealand Standard 4777 – Grid connection of energy systems via inverters (AS/NZS 4777) can be leveraged. This means more expensive arrangements to manage the narrower frequency range required by the *Electricity Act 1945* can be avoided.

### Rationale

Rooftop solar PV systems, batteries, electric vehicles and microgrids are transforming Western Australia's electricity system. Many of the newer technologies respond automatically to changes in frequency at various tolerance ranges via inverter connected technology.

In both stand-alone power systems and microgrids, making use of the inherent characteristics of AS/NZ 4777 compliant inverter connected technology avoids costs where a slightly broader frequency range is permitted.

For example, excess generation from a customer's solar PV system is typically absorbed by batteries in smaller electricity systems such as microgrids and stand-alone power systems. However, when the battery is fully charged, an alternative approach is required to ensure the excess generation does not cause frequency to increase uncontrollably.

<sup>32</sup> Available at [https://www.wa.gov.au/sites/default/files/2020-04/DER\\_Roadmap.pdf](https://www.wa.gov.au/sites/default/files/2020-04/DER_Roadmap.pdf).

<sup>33</sup> Unpublished report commissioned by Western Power.

In stand-alone power systems, communication systems are installed that direct the customer's solar PV system to reduce power. In microgrids with a larger battery, load banks are installed to simulate load when the battery is fully charged. If a wider frequency band is permitted, this additional equipment may not be required as frequency is reliably self-managed using the inverters' inherent response features.

Adoption of a wider band, for example from 48 to 52 Hz is not expected to adversely affect the consumer experience. Western Power engaged the University of Wollongong to investigate the effect of providing electricity consistently at frequencies higher than 50 Hz. The results show that the main consequence of operating an electricity system at slightly lower or higher frequencies is that machinery will run slightly slower or faster, respectively. Customers may notice this change under the following circumstances:

- older-style digital clocks will run slightly slower or faster and may need to be reset occasionally; and
- machinery operations normally aligned with unpowered, but regular, activities may become out-of-sync with these activities, such as with the use of a reticulation system.

Western Power and Horizon Power consider the likelihood of either of the above circumstances resulting in adverse outcomes for consumers to be very low. Where operators continue to target a frequency of 50 Hz (which is not expected to change) and deviations within the broader range, either higher or lower, apply for only a proportion of the time, the effects will be unnoticeable for most customers. Further, the symmetrical range that will be proposed in technical rules allows for automatic control of faster and slower operating periods – so clocks may no longer require resetting.

AS/NZ 4777 requirements are designed to 47 to 53 Hz. However, Western Power and Horizon Power will seek changes to technical rules to support a 48 to 52 Hz band until further studies to support a wider range can be undertaken.

It is proposed that the frequency range be removed from the *Electricity Act 1945* and specified in the Electricity Industry (Network Quality and Reliability of Supply) Code 2005, as it is an appropriate and legally binding instrument administered by the State Government. The associated code changes will be progressed following the deletion of sub-section 25(d) from the Act.

### Proposal 9

Delete sub-section 25(d) of the *Electricity Act 1945*.

## 4. Other Economic Regulation Authority licensing report recommendations

The following recommendations, as contained in the ERA gas and electricity licensing scheme and licensee compliance reports, but not included in the proposed amendments outlined in Chapter 3 of this paper, will be addressed separately as required.

### Supplier of last resort arrangements

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

*Recommendation:* The regulatory framework for gas supplier of last resort arrangements should be reviewed and amended to ensure relevant parties, including the ERA and gas retailers, can adequately prepare for and manage a supplier of last resort event.

*Energy Policy WA response:* Energy Policy WA is considering amendments to the Electricity and Gas Acts to allow for more flexibility to respond with bespoke arrangements based on the circumstances of an individual retailer failure as part of broader reforms to energy sector legislation under the Energy and Governance Legislation Reform Project<sup>34</sup>.

### Gas customer contract regulations

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

*Energy Policy WA response:* This recommendation is currently being progressed through amendments to the Energy Coordination (Customer Contract) Regulations 2004 to bring into effect recommendations contained in the report, *Review of the energy customer contracts regulations, Final Recommendations Report*<sup>35</sup>, approved by the Minister for Energy in January 2021.

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

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

*Energy Policy WA response:* This matter is being considered as part of the implementation of Alternative Electricity Services regulatory framework as outlined in the report, *Tailoring customer protections for alternative electricity services – a registration framework, Final Recommendations Report*<sup>36</sup>. Legislative amendments to implement the regulatory framework are being progressed under the Energy and Governance Legislation Reform Project.

<sup>34</sup> *Energy and Governance Legislation Reform, Project Eagle Consultation Paper*, October 2021. Available at <https://www.wa.gov.au/sites/default/files/2021-10/Energy-and-Governance-Legislation-Reform-Consultation-Paper-Oct21.pdf>

<sup>35</sup> *Review of energy customer contract regulations, Final Recommendations Report*, January 2021. Available at [https://www.wa.gov.au/sites/default/files/2021-01/REPORT\\_Review%20of%20Energy%20Customer%20Contract%20Regulations.pdf](https://www.wa.gov.au/sites/default/files/2021-01/REPORT_Review%20of%20Energy%20Customer%20Contract%20Regulations.pdf).

<sup>36</sup> *Tailoring customer protections for alternative electricity services – a registration framework, Final Recommendations Report*, November 2020. Available at [https://www.wa.gov.au/sites/default/files/2020-11/Tailoring%20customer%20protections%20for%20alternative%20electricity%20services%20-%20a%20registration%20framework\\_%20recommendation%20report.pdf](https://www.wa.gov.au/sites/default/files/2020-11/Tailoring%20customer%20protections%20for%20alternative%20electricity%20services%20-%20a%20registration%20framework_%20recommendation%20report.pdf)

## Repeal of the retail licensing scheme for retailers that supply large-use customers

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

*Energy Policy WA response:* This proposal requires further consultation to seek stakeholder views on the effectiveness of the regulatory regime for retailers who supply electricity to large-use customers. In particular, feedback will be sought on the need to retain existing customer protections for large-use customers, such as those specified in the Electricity Industry (Customer Transfer) Code 2016 and the Electricity Industry (Metering) Code 2012.

## Single energy customer code

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

*Energy Policy WA response:* Energy Policy WA is progressing the development of a single energy code, Energy Rules – Western Australia (ER-WA), within the context of broader reforms to the governance arrangements of the energy sector under the Energy and Governance Legislation Reform Project. It is intended that, in general, the ER-WA will use and apply the institutional and governance framework of the existing Wholesale Electricity Market Rules, with other institutional and governance arrangements currently applying across the sector to be abolished.

The Code of Conduct for Supply of Electricity to Small Use Customers made under Part 6 of the Electricity Act, the Gas Marketing Code of Conduct made under Part 2C of the Gas Act, and the Compendium of Gas Customer Licence Obligations are being considered for inclusion in the new ER-WA.

## Biennial review of customer codes

*Recommendation:* The Electricity and Gas Acts should be amended to change the period between reviews of the Code of Conduct for the Supply of Electricity to Small Use Customers and Gas Marketing Code of Conduct respectively from two to five years.

*Energy Policy WA response:* This recommendation will be considered as part of the development of a single energy code under the Energy and Governance Legislation Reform Project.

## Application of standard form contract

*Recommendation:* The Electricity and Gas Acts should be amended to require all retailers to offer to supply electricity to a customer under an ERA-approved standard form contract, if the customer does not accept a non-standard form contract.

*Energy Policy WA response:* Proposed amendments to the Electricity Industry (Customer Contract) Regulations 2004 to bring into effect recommendations contained in the report, *Review of the energy customer contracts regulations, Final Recommendations Report*, include a requirement for all electricity retailers to offer to supply electricity under a standard form contract to a customer who requests supply.

Energy Policy WA is of the view that this proposal should not be extended to the gas industry, given that gas retailers provide discounted product offerings under non-standard form contracts without any obvious adverse impact to consumer protections.

## Streetlight performance standards

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

*Energy Policy WA response:* Energy Policy WA considers that further examination is required to assess the merits of this proposal, including assessment of any cost impacts to Western Power, Horizon Power and other distributors.

## Network reliability standards

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

*Energy Policy WA response:* As part of the ongoing evolution of the market, the Energy Transformation Taskforce endorsed the establishment of a centralised end-to-end power system security and reliability framework governed by the Coordinator of Energy<sup>37</sup>.

Amendments to the Electricity Act will be made to provide for the various instruments that relate to security and reliability, including the Electricity Industry (Network Quality and Reliability of Supply) Code 2005, to be moved into the new ER-WA. Regulatory gaps and barriers will be addressed as part of this work and, where practicable, rules will be simplified to make them easier to understand and enable a more forward-looking regulatory framework.

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<sup>37</sup> Power System Security and Reliability Standards Framework – Information Paper. Available at [https://www.wa.gov.au/sites/default/files/2021-04/Power%20System%20Security%20and%20Reliability%20Standards%20Framework\\_0.pdf](https://www.wa.gov.au/sites/default/files/2021-04/Power%20System%20Security%20and%20Reliability%20Standards%20Framework_0.pdf)

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# Appendices

## Appendix A. Extract from *Water Services Act 2012*

The following extract contains provisions copied from the relevant legislative instrument at the time of writing this document and is not an authoritative statement of those provisions. No assurance is given as to the accuracy of this information and it is the responsibility of the reader to verify and make his or her own decision on the accuracy and correctness of this information for themselves.

### Part 10 Administration Division 2 — Inspectors and compliance officers

#### 209. Terms used

In this Division —

**contractor**, in relation to a licensee, means a person with whom the licensee has entered into a contract for services that relate to the provision of water services by the licensee;

**designating authority** means the Authority, the CEO or a licensee.

#### 210. Designation of inspectors and compliance officers

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

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## 211. Limitations on scope of authority of inspectors and compliance officers

- (1) A compliance officer designated by a licensee cannot, in that capacity, exercise a power under Part 5 unless the purpose for which the power is to be exercised relates to —
  - (a) the water service works of the licensee or the provision of water services by the licensee; or
  - (b) the contravention, or possible contravention, of a provision of Part 5 in its application in relation to the water service works of the licensee or the provision of water services by the licensee.
- (2) The regulations may also limit or otherwise deal with the scope of the functions of an inspector or compliance officer.



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