



Government of Western Australia  
Department of Mines, Industry Regulation and Safety  
Energy Policy WA

# A new threshold for application of the electricity generation licence exemption

Decision Paper

October 2022

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

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# 1. Overview

This Decision Paper, *A new threshold for application of the electricity generation licence exemption*, presents Energy Policy WA's final recommendation arising from consultation on whether the existing generating works licensing exemption threshold provided for in the [Electricity Industry Exemption Order 2005](#) (the Order) should be increased from 30 megawatts (MW) to 100MW nameplate capacity at a connection point.

## 1.1 Background

The [Electricity Industry Act 2004](#) (Act) requires that a person that constructs or operates electricity generating works holds a licence or an exemption<sup>1</sup> from the requirement to hold a licence.

A proposal to repeal the requirement for electricity generating works to be licensed was incorporated into the [Licensing and Other Authorisations Amendment Bill 2016](#) but did not progress through Parliament. The rationale for the proposal remains relevant, and continues to be supported by industry and the Economic Regulation Authority (ERA), as the entity responsible for administering the electricity licensing scheme. As such, a similar amendment is under consideration for incorporation into a broader package of amendments to energy legislation under development. A timeframe for the finalisation and progression of this package of energy legislation amendments to Parliament has not yet been determined.

The exemption from the requirement to hold a generation licence is contained the Order, which provides:

- a class-based licence exemption for a person that constructs or operates generating works:
  - with a capacity size of less than 30MW at a connection point; and
  - regardless of size, that supply another person on the same non-residential property; and
- specific exemptions for certain persons that operate generating works with a capacity size above 30MW.

Energy Policy WA considered that it was timely to review whether the threshold in the existing generation licensing exemption should be increased as an interim measure to reduce red tape for the industry, prior to the anticipated submission of a package of energy legislation amendments to Parliament.

## 1.2 Consultation

On 11 April 2022, Energy Policy WA released a [consultation paper](#) proposing an increase to the electricity generation licence exemption threshold to 100MW. The consultation paper also proposed that, subject to stakeholder feedback, no additional conditions be attached to this exemption due to the presence of other mechanisms that ensure generating works operate safely and supply reliable and secure electricity.

A series of four questions were posed in the consultation paper with stakeholders and other interested parties asked to provide feedback by 13 May 2022.

Energy Policy WA received seven submissions from the following entities:

- The Australian Energy Council (the AEC);
- Alinta Energy;

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<sup>1</sup> Exemptions from the requirement to have a licence are made by the Governor, by order, if he or she is satisfied that it would not be contrary to the public interest to do so.

- Collgar Wind Farm;
- EDL Energy;
- Perth Energy Pty Ltd (Perth Energy);
- Shell Energy Pty Ltd (Shell Energy);
- Synergy.

The submissions are available at: <https://www.wa.gov.au/government/document-collections/proposal-amend-the-electricity-generation-licence-exemption-submissions>.

## 2. What stakeholders said to us

All stakeholder responses broadly supported amendment of the Act to remove the requirement for generators to be licensed, with a number of submissions noting that there are sufficient regulatory arrangements in place to effectively manage generating works without the need for licensing. There were however varying stakeholder views on application of the exemption threshold which are discussed further in Section 2.1.

All stakeholders who responded to questions related to generation licence exemption conditions supported the proposition that there were sufficient mechanisms already in place and/or that there was no need for any additional conditions to ensure that generators operate safely and reliably<sup>2</sup>.

### 2.1 Exemption threshold level

Two of the submissions (EDL Energy and Shell Energy) supported the proposal to increase the threshold from 30MW to 100MW as an interim measure prior to Parliament's anticipated consideration of the removal of the requirement for generators to be licensed.

Perth Energy and Synergy supported an increase to the threshold, but to a different level.

- Perth Energy suggested an increase to 120MW; and
- Synergy proposed an increase in the range of 275 to 325MW providing generation competitive neutrality in relation to the majority of existing generation capacity within Western Australia.

The remaining submissions did not support an increase to the exemption threshold mainly due to competitive neutrality concerns. These stakeholders instead expressed a preference for the requirement for generators to be licenced to be removed from the Act, or for the threshold to be increased to a level high enough to capture more or all licensed generators.

Several submissions also made the point that the proposed 100MW threshold was arbitrary. EPWA acknowledges that view but also considers that as it has already made the case that the requirement for generating works to be licensed should be repealed, any interim step that removes the requirements for only some generators will be necessarily arbitrary.

Further information on generating works in Western Australia is provided in Appendix A.

### 2.2 Exemption conditions

In addition to seeking feedback on what conditions, if any, should be attached to the generation licence exemption if it were to increase, two questions were posed in relation to compliance with the Electricity Industry (Metering) Code 2012 (Metering Code).

<sup>2</sup> Collgar Wind farm did not provide a response in respect to questions related to exemption conditions.

- *Should the existing requirement for exempt generators connected to the South West Interconnected System to comply with the Electricity Industry (Metering) Code 2012 be maintained, or is this requirement adequately imposed by the Access Code?*
- *If it is retained, does the obligation need to be extended to include the North West Interconnected System and other licensed networks?*

Synergy expressed the view that the requirement to comply with the Metering Code should remain in the Order and be expanded to also apply to exempt generators located outside of the South West Interconnected System where they are connected to a licensed transmission or distribution network, in order to promote locational competitive neutrality.

Alinta considered the condition under the Order as being redundant, on the basis that the Electricity Networks Access Code already requires generators connected to the South West Interconnected System to comply with the Metering Code.

No other stakeholders presented formal views on compliance with the Metering Code in their submission.

All stakeholders were of the view that no conditions should be attached to the exemption if the threshold were to be increased, with several supporting the proposition that sufficient regulatory obligation mechanisms are already in place.

### 3. Our final position

After considering stakeholder feedback, three options were identified:

- Option One - an increase to the generation exemption threshold to 100MW.
- Option Two - increasing the generation exemption threshold to a level higher than 100MW.
- Option Three - retaining the status quo with the generation exemption threshold remaining at 30MW.

Energy Policy WA considers Option One to be the preferred approach and that it is not contrary to the public interest<sup>3</sup> as an interim measure while State Government and Parliament considers the removal of the licensing requirement for electricity generators as part of a broader package of energy legislative reform.

#### Option One: Increase generation exemption threshold to 100MW

- The 100MW exemption threshold would capture approximately half of existing licensed renewable generators in Western Australia, while capturing around one-third of thermal generators. This outcome is consistent with the State Government's goal of promoting renewable generation.
- As a generation licence exemption is already in place for generators with a capacity size less than 30MW, increasing the threshold does not introduce a new competitive neutrality concern to the industry, rather it moves the point at which generators face different regulatory requirements to 100MW. It is recognised that some impact on competitive neutrality for generators sized just above and below the exemption threshold will be retained.
- This option achieves a net benefit as it increases avoided regulatory costs and red tape for electricity generators that fall below the exemption threshold.

<sup>3</sup> Section 8 of the Act enables the Governor to, by order, exempt a person or class of persons from the requirement to have a licence if he or she is satisfied that it would not be contrary to the public interest to do so.

- There are around 16 generating works with a capacity size between 30 and 100MW that are operated under one of 12 generation or integrated regional licences. This represents around a third of all generating works over 30MW operated by a licensed person. Of these 12 licensees, it is expected that around two will be required to retain their generation licence as other generating works they operate under their licence are above 100MW.
- The 100MW threshold has been consulted on and is in the public domain.
- Energy Policy WA considers that no additional conditions should be applied to the increased generation licence exemption threshold and that the existing requirement in the Order for compliance with the Metering Code should remain unchanged.

#### Option Two: Increase the generation exemption threshold to a level higher than 100MW

Energy Policy WA is of the view that while a higher electricity generation exemption threshold could be set, the selection of that threshold will also be necessarily arbitrary as there are no clear break points in the range of licensed generator capacities.

This option, similar to Option One, will also remove regulatory costs and red tape for generators that fall under the threshold.

The suggestion to increase the exemption threshold to capture all licensed generators (which in effect removes the requirement for generator licences) would involve subsidiary legislation that is inconsistent with the intent of section 7(1) of the Act that requires generators to hold a licence. This would circumvent the legislative process and is likely to be considered ultra vires, so is not considered to be a viable option.

#### Option Three: Retain status quo

Option Three presents no change to the current arrangements and is not recommended. Compared to Option One, it retains regulatory costs and red tape for electricity generators with facilities of a capacity size between 30MW and 100MW.

### Recommendation

That the Minister for Energy submit for Executive Council consideration an amendment to the Electricity Industry Exemption Order 2005 to increase to the capacity threshold at which the electricity generation licence exemption applies from 30MW to not more than 100MW.

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## 4. Implementation

In August 2022, following consideration of stakeholder feedback, the Minister for Energy endorsed the recommendation to increase the generation licence exemption threshold from 30MW to not more than 100MW.

The regulatory amendments to bring this recommendation into effect were subsequently approved by the Governor in Executive Council and came into effect on 8 October 2022 [TBC]. As well as changing the level of the licence exemption threshold, the regulatory amendments made minor changes to clarify the intent of the clause. These changes do not reflect a change in the underlying policy, other than the threshold at which the licence exemption takes effect.

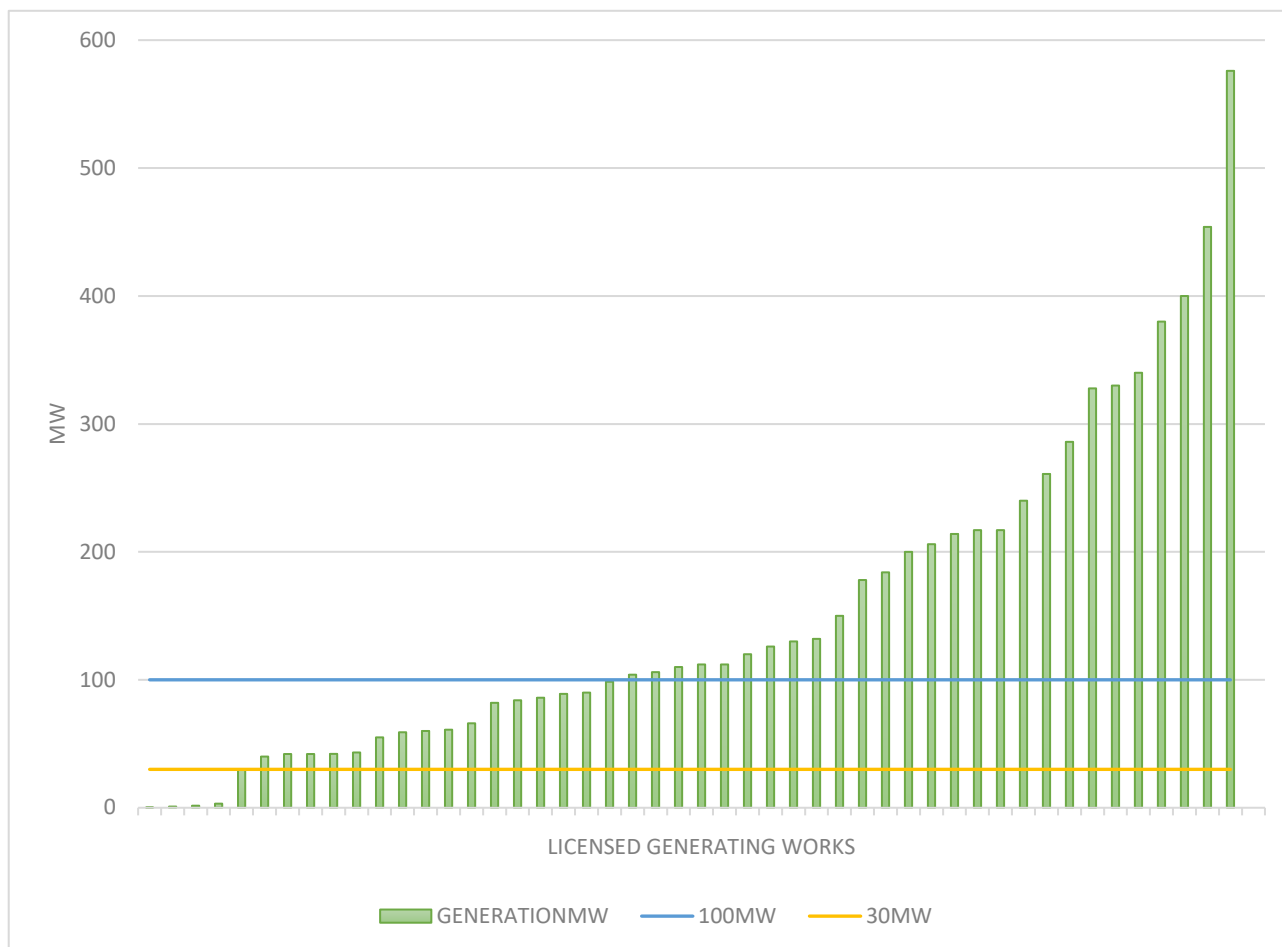


## Appendix A. Licensed generation works in Western Australia

The exact number of generation works in Western Australia is unknown as there is no requirement for the State Government to maintain a register of exempt generation works.

- Just under 50 generating works are operated under a generation licence or integrated regional licence in Western Australia. These generating works range in size from less than 1MW to around 570MW with no clear break points existing in generator capacity ([Figure 1](#)).
- The remaining generating works operate under an individual exemption<sup>4</sup> or a class based exemption with most falling under the 30MW exemption threshold<sup>5</sup>.

**Figure 1: Licensed generating works**



Source: Energy Policy WA

<sup>4</sup> For example, mining operations under certain State Agreements are exempt from the requirement to hold a generation licence

<sup>5</sup> Domestic rooftop solar photovoltaic systems fall under the 30MW general licence exemption threshold.

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