

Operation of the gas licensing scheme and licensee compliance – Annual Report 2019/20

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Economic Regulation Authority

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Chair's foreword

The Economic Regulation Authority is Western Australia's independent economic regulator and is responsible for administering the licensing scheme governing the supply of gas to small use customers.

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

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

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

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

Through the preparation of this year's report, the ERA has identified new opportunities to improve the operation of the licensing scheme. Some of these areas for improvement will provide a direct benefit to customers, while others represent good regulatory practice by removing regulatory requirements that do not have a justifying benefit to consumers or the broader community.

These recommendations include:

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

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

The ERA has also included an update on matters raised in last year's report. Most areas of reform raised in that report have not yet been addressed.

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



Nicola Cusworth

Chair, Economic Regulation Authority

1. Introduction

1.1 Purpose of this report

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

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

The State Government is responsible for the legislative framework that establishes the scheme. This report includes recommendations on how the Government could improve the operation of the scheme.

1.1.1 Legislative requirements

The functions of the ERA under section 11AA of the *Energy Coordination Act 1994* (Gas Act) include:

- To monitor and report to the Minister for Energy (Minister) on the operation of the licensing scheme and on compliance by licensees with their licences.
- To inform the Minister about any failure by a licensee to meet performance criteria or other requirements of its licence.²

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

The ERA requires all gas licensees to submit an annual compliance report identifying possible licence breaches that have occurred during the reporting year and publishes annual performance data collected from gas licensees.

Sections 11ZA and 11Y of the Gas Act require licensees to complete independent performance audits and asset management reviews on a periodic basis, and to supply those reports to the ERA for its consideration.³ The reports identify any non-compliances with a licence and determine if a licensee has an effective asset management system. The ERA provides the reports to the Minister.⁴

1.2 Report scope and structure

The scope of this report is set by section 11AA of the Gas Act, which requires the ERA to report to the Minister on the operation of the scheme and licensee compliance. To achieve this, the report:

¹ The reporting year is the year ending 30 June.

² The full text of section 11AA of the Gas Act is in Appendix 1.

³ The full text of sections 11ZA and 11Y of the Gas Act is in Appendix 1.

⁴ Section 11ZA of the Gas Act requires the ERA to "present to the Minister a report on each performance audit within two months after its receipt of the audit". There is not a similar obligation for review reports, but the ERA provides them to the Minister as a matter of course.

- Identifies opportunities for beneficial reform of the scheme for consideration by the Minister.
- Provides an overview of the ERA's licensing activities during the year, including reviews of codes, licences, regulatory guidelines and reporting manuals.
- Presents data on the ERA's annual costs to carry out its licensing functions, which licensees are required to pay through fees and charges.
- Provides an overview of licensee compliance during the reporting year, including performance audits and asset management system reviews.

The scope of the recommendations to improve the scheme do not include those parts of the scheme that the Minister is not responsible for, such as the Compendium of Gas Customer Licence Obligations and individual licence conditions. These are the responsibility of the ERA and dealt with in separate review processes.⁵

1.3 Licensing scheme

The gas licensing scheme is established in Part 2A of the Gas Act.

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

- Granting, amending, transferring and renewing licences for entities that distribute and retail gas to small-use customers in Western Australia.^{6 7}
- Monitoring and enforcing compliance with licences.⁸
- Monitoring and reporting on the performance of licensees through the annual collection and publication of performance data.⁹
- Arranging performance audits and asset management system reviews of individual licensees.

The ERA recovers its licensing costs from licensees under the *Economic Regulation Authority (Licensing Funding) Regulations 2014*. Information about the ERA's licensing costs is in Appendix 2.

The Minister is responsible for maintaining the legislative framework for the licensing scheme, which consists of the Gas Act, regulations and codes.¹⁰ This involves making amendments to the legislative framework as and when they are required. The Minister is supported by the State Government's energy policy agency, Energy Policy WA.

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

⁶ A 'small use customer' is a customer who consumes less than one terajoule of gas per year. A distribution licence and a retail licence are required to supply small use customers only.

⁷ Gas Act s11S, s11VA and s11W. The full text of these sections is in Appendix 1.

⁸ Gas Act s11AA and s11ZB. The full text of these sections is in Appendix 1.

⁹ Gas Act, Schedule1A, clause 1(h). The full text of this clause is in Appendix 1.

¹⁰ The codes and regulations that a licensee must comply with are listed in a licence.

2. Areas of reform

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

Chapter 2 is in two sections:

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

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

2.1 New areas of reform

2.1.1 Supplier of last resort arrangements

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

Part 2A of the Gas Act provides the legislative framework for supplier of last resort (SoLR) arrangements in Western Australia.¹¹ The framework includes the *Energy Coordination (Last Resort Supply) Regulations 2005* (SoLR Regulations).

Under section 11ZAD of the Gas Act, a SoLR event occurs when a retailer is unable to supply gas to its customers, because its licence has been cancelled, expired and not renewed, or surrendered. The customers of the retailer transfer to the designated SoLR (a licensed retailer) to ensure they continue to receive a gas supply.

The SoLR Regulations include the matters that a retailer's SoLR plan must cover, such as the process for the bulk transfer of customers from the failing retailer to the SoLR and how a SoLR recovers the costs it incurs from the SoLR event.

There are barriers to the practical implementation of the SoLR regulatory framework. For example, the SoLR Regulations:

- Do not provide for the transfer of customer information from the failed retailer to the SoLR.
- Require the SoLR plan to include a fee to enable the SoLR to recover its costs from customers, when it may be better for the ERA to approve a fee after the SoLR event has finished, so that the retailer's costs to manage the SoLR event are known.

¹¹ The full text of section 11ZAD is in Appendix 1.

- Provide for a grace period, which is likely to be difficult to manage due to the limited timeframes for customers to transfer from a failed retailer to the SoLR to ensure continuity of supply.¹²
- Do not provide the ERA with the authority to monitor a SoLR event or require the ERA to conduct a post-SoLR event audit.

There are also some parts of a SoLR event that do not appear to be adequately addressed by the Gas Act. For example, it is unclear who is responsible for ensuring customers continue to receive a gas supply between the time that a licence is cancelled and when the customers complete their transfer to the SoLR. There are also no selection criteria to assist the ERA to decide which retailer to appoint as the SoLR.¹³

Due to the gaps in the Gas Act and SoLR Regulations, the ERA has not appointed a SoLR for any gas supply area in Western Australia.

Competition in the gas retail market has increased in recent years, increasing the possibility of a SoLR event.¹⁴ It is therefore important to have an effective SoLR regulatory framework in place to provide the ERA with the certainty to appoint a SoLR for each designated gas supply area in Western Australia.

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.

2.1.2 Licence surrenders

The *Energy Coordination Act 1994* does not provide a framework for managing applications by licensees to surrender their licence and to ensure former gas distribution licensees leave their assets in a safe condition after their licence is surrendered.

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

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

¹² A grace period allows customers to choose their own retailer rather than transfer automatically to the SoLR. However, the customer transfer process can take several weeks to complete.

¹³ This is addressed in other SoLR frameworks, such as the Australian Energy Regulator’s retailer of last resort arrangements and Ofgem’s SoLR arrangements in the United Kingdom.

¹⁴ In 2017/18, the number of retailers supplying natural gas to residential customers in the south west of Western Australia increased to five, following the entry into the gas retail market of AGL Sales, Origin Energy and Simply Energy.

Under section 11ZF of the Gas Act, if a licence is cancelled by the Governor, the former licensee must ensure that its distribution system is left in a safe condition.¹⁵ ¹⁶ The cancellation of a licence is dealt with extensively by section 11ZE of the Gas Act and allows the Governor to make regulations to address “all matters that are necessary or convenient for dealing with the consequences of the cancellation”.¹⁷ A licence can be cancelled for several reasons, including if the licensee has failed to pay a licence fee or is in administration.

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

Regulation 24 of the *Gas Standards (Gas Supply and System Safety) Regulations 2000* requires network operators to take remedial action where there is a threat to the safety of any person or property.¹⁸ This includes networks that are no longer in use. This addresses safety risks that are identified through investigation by the network operator, but it does not require a network operator to leave its distribution system in a safe condition when it ceases to operate the system.

By comparison, the *Water Act Services Act 2012* (Water Act) addresses the consequences of a licensee ceasing to provide a water service, including if a licence is cancelled by the Governor, or if the licensee applies to cancel the licence (the equivalent of a licence surrender). For example, section 36 of the Water Act requires a former licensee to leave its water service works in a safe condition when it ceases to provide the water service.¹⁹ A financial penalty applies if the former licensee does not comply with this requirement and section 36 gives the Minister for Water powers to make a former licensee comply with this requirement.

If a licensee wants to cancel (surrender) its licence, section 18 of the Water Act requires the licensee to apply to the ERA to cancel the licence. The ERA may approve the cancellation of the licence only if it is satisfied that it would not be contrary to the public interest to do so.²⁰ This allows the ERA to require the licensee to provide information in its application that shows how the licensee will ensure it leaves its water service works in a safe condition and satisfy the ERA that cancelling the licence is not contrary to the public interest.

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

Recommendation

It is recommended that the *Energy Coordination Act 1994* is amended to:

- Require licensees to apply to the ERA to surrender their licence.
- Allow the ERA to approve an application to surrender a licence if it satisfied that it would not be contrary to the public interest to do so.

¹⁵ The full text of section 11ZF of the Gas Act is in Appendix 1.

¹⁶ The transfer of customers from an electricity retailer that has surrendered its licence to an existing licensee is dealt with as a SoLR event under section 11ZAD of the Gas Act.

¹⁷ The full text of section 11ZE of the Gas Act is in Appendix 1.

¹⁸ The full text of regulation 24 of the Regulations is in Appendix 1.

¹⁹ The full text of section 36 of the Water Act is in Appendix 1.

²⁰ The full text of section 18 of the Water Act is in Appendix 1.

- Extend the powers in section 11ZF, which currently apply to licence cancellations, to licence surrenders to ensure former licensees who have surrendered their licence leave their assets in a safe condition.

2.1.3 Appointing inspectors

To improve the licence compliance monitoring framework, the *Energy Coordination Act 1994* should be amended to allow the ERA to appoint inspectors to inspect a licensee's operations if the ERA has concerns about the performance of a licensee.

Under section 210(1) of the Water Act, the ERA can appoint an inspector to inspect whether a licensee has complied with its licence obligations.²¹ Typically, the inspection occurs outside of the operational audits and asset management system reviews that licensees are required to have on a periodic basis.

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

Under section 42 of the Water Act, an inspector is required to report to the ERA anything that the inspector finds that does not conform with a term or condition of the licence.²² The inspector's independent assessment of the status of the non-compliances and asset management system deficiencies informs the ERA's decision on whether to take compliance enforcement action against the licensee.

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

The ERA has appointed an inspector on three occasions to inspect a water licensee's performance and operations to determine the status of licence non-compliances and asset management deficiencies and the licensee's progress in rectifying them. This led to the ERA taking compliance enforcement action against one of the licensees.²³

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

Recommendation

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

²¹ The full text of section 210(1) of the Water Act is in Appendix 1.

²² The full text of section 42 of the Water Act is in Appendix 1.

²³ Economic Regulation Authority, 2016, *Section 31 Rectification Notice – Shire of Dumbleyung – Water Services Licence 16*.

2.2 Areas of reform identified in previous reports

2.2.1 Customer contract regulations

The *Energy Coordination (Customer Contracts) Regulations 2004* contains outdated references and duplications with other regulatory instruments, including the *Australian Gas Association Customer Service Code* and the Australian Consumer Law.

Reform

The *Energy Coordination (Customer Contracts) Regulations 2004* (Contract Regulations) contain many references to the *Australian Gas Association Customer Service Code* (AGA Code). The Australian Gas Association ceased publishing the code in 2002 and transferred responsibility to Standards Australia, which has not released a replacement code.

The AGA Code contains provisions that the gas industry considers are no longer current or relevant to the gas market in Australia. It is not clear whether the parts of the Contract Regulations that refer to the AGA Code are enforceable.

One of the ERA's regulatory functions is to approve a standard form contract for every gas trading licensee, and this must comply with the Contract Regulations. Many references to the AGA Code in the Contract Regulations are outdated and inconsistent with other legislation. This means that licensees and the ERA spend considerable time and resources to produce a standard form contract that meets all regulatory requirements. The cost of this time and resources is ultimately borne by consumers.

References to the AGA Code should be removed from the Contract Regulations in the interests of consumers and industry.

The Contract Regulations refer to clauses in the *Gas Marketing Code of Conduct* (Marketing Code) that no longer exist in the current version of the code.²⁴ The Contract Regulations also overlap with the Australian Consumer Law.²⁵ For example, the Contract Regulations prescribe cooling-off periods that are different from the Australian Consumer Law. These inconsistencies create an unnecessary regulatory burden for retailers.

Energy Policy WA is reviewing the Contract Regulations (and the *Electricity Industry (Customer Contracts) Regulations 2005*). In July 2017, the Public Utilities Office (now Energy Policy WA) published an issues paper on the review. This was followed by the publication of a draft recommendations report in May 2019, which proposed amendments to the Contract Regulations.²⁶

The purpose of the review is to provide a streamlined and consistent framework for delivering customer protections by removing outdated references to the AGA Code in the Contract Regulations and removing duplications with other instruments.²⁷

²⁴ The current version of the code is the *Gas Marketing Code of Conduct 2017*, which was amended in 2020.

²⁵ The Australian Consumer Law is in Schedule 2 of the *Competition and Consumer Act 2010 (Cwth)*.

²⁶ Department of Treasury, Public Utilities Office, 2019, *Review of Energy Customer Contract Regulations – Draft Recommendations Report*.

²⁷ *Ibid.* p. 5.

Progress update

Energy Policy WA's review is ongoing and the amendments to the Contract Regulations have yet to be made.

Energy Policy WA has advised that it is working to finalise recommendations for the Minister for Energy to amend the Contract Regulations.²⁸

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.

2.2.2 Approval of auditors

To improve the independence and transparency of audits and reviews, the ERA, and not the licensee, should engage the independent expert who conducts an audit or review.

Under sections 11Y and 11ZA of the Gas Act, all licensees must provide the ERA with a report by an independent expert (auditor) on the licensee's compliance and the effectiveness of its asset management system (if it operates infrastructure). The auditor for an audit or review is appointed by the licensee.

In comparison, in the water licensing scheme under the Water Act, the ERA appoints the auditor and retains full control over the audit and review. The decision to give the ERA responsibility for appointing auditors was influenced by the final report of the parliamentary Standing Committee on Public Administration's inquiry into Western Power's wood pole management practices. One of the committee's recommendations was:²⁹

Where energy utilities are required to undergo regulatory and licence-related audits, such audits should be conducted by reviewers that are selected and engaged by the ERA, at the expense of the relevant utility. In the conduct of such audits, there should be absolute clarity that the ERA is the principal for the life of the engagement. This is consistent with current practice relating to the Auditor General.

As the ERA does not appoint the auditor for gas licence audits and reviews, the ERA does not see the audit or review findings until the report is received from the licensee. There have been occasions where the initial draft report provided by the auditor to the licensee is amended by the licensee before it is provided to the ERA for approval. The ERA has concerns about the lack of transparency in this process, and the potential for the licensee to influence the audit or review findings.

²⁸ Energy Policy WA, 'Review of energy customer contract regulations', ([online](#)) [accessed on 20 November 2020].

²⁹ Legislative Council Standing Committee on Public Administration, 2012, *Report 14: Unassisted Failure*, p. 251.

Governments and regulators in Australia, New Zealand and the United Kingdom have raised concerns about the conduct of, and reporting on, financial audits.^{30 31 32} In Australia, there has been commentary in the Federal Parliament, discussed below, and in the media on the threats to auditor independence and the quality of audits. The main area of concern is the real and perceived conflicts of interest arising from audit firms also providing non-audit services to the entity they are auditing. Although the recent inquiries into these matters focus mostly on financial audits, the problems they have identified can also be applied to compliance audits.

On 1 August 2019, the Federal Senate referred an inquiry into the regulation of auditing in Australia to the Parliamentary Joint Committee on Corporations and Financial Services.³³ The terms of reference for the inquiry include:

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

Submissions to the inquiry from Chartered Accountants Australia and New Zealand, the Australian Prudential Regulation Authority, the International Auditing and Assurance Standards Board, and the International Ethics Standards Board for Accountants all raised the threats to auditor independence as an item requiring further attention.

At its first public hearing on 19 November 2019, the Committee heard that Ernst & Young prepared a risk management report for the National Australia Bank in 2018 and “at the behest of NAB’s leaders, toned down the language in the final version of the assessment”.³⁴

Based on its experience with managing the audits and reviews of water licences, the ERA considers the transparency and independence of gas licence audits and reviews would be strengthened by the ERA engaging the auditor and controlling the audit and review process, which is the case with audits and reviews of water services licences.

Progress update

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

Recommendation

To improve the independence and transparency of audits and reviews, the ERA, and not the licensee, should engage the independent expert who conducts an audit and review.

³⁰ United Kingdom, House of Commons Business, Energy and Industrial Strategy Committee, 2019, The future of audit, p. 3.

³¹ United Kingdom, Competition & Markets Authority, 2019, Statutory audit services market study – final summary report, pp. 3-7.

³² New Zealand, Financial Markets Authority, 2019, Audit Quality Monitoring Report 2019, pp. 11-12.

³³ Parliamentary Joint Committee on Corporations and Financial Services, 2019, Regulation of auditing in Australia, Terms of Reference.

³⁴ Edmund Tadros, 27 November 2019, ‘ASIC ‘squibbed’ on audit concerns’, *The Australian Financial Review*, p. 13.

2.2.3 Biennial review of the Gas Marketing Code

There are benefits in changing the current legislative requirement to conduct biennial reviews of the *Gas Marketing Code of Conduct* to a longer review period, such as five years.

Reform

The Marketing Code regulates the conduct of gas trading licensees and gas marketing agents that act on behalf of gas trading licensees to protect customers from undesirable marketing conduct and define the standards of conduct in the marketing of gas to customers.

Under section 11ZPO of the Gas Act, the ERA is required to establish a committee to advise it on matters relating to the Marketing Code.³⁵ The committee is known as the Gas Marketing Code Consultative Committee (GMCCC), and comprises industry, government and consumer representatives. The ERA is responsible for the GMCCC's administration. The GMCCC makes recommendations to the ERA on amendments to the Code.

Section 11ZPV of the Gas Act requires the GMCCC to review the Marketing Code every two years.³⁶ Reviews are resource intensive and take around 10 to 12 months to complete. The next review begins about 12 months after a new Customer Code comes into effect.

Since its commencement in 2004, the Marketing Code has undergone seven reviews by the GMCCC. Recent reviews of the Marketing Code have identified only a small number of relatively minor issues to address. As the Marketing Code is well established, a legislative requirement to review the Marketing code every two years is no longer needed and creates unnecessary costs for the ERA and licensees.

In comparison, the Water Act requires the ERA to undertake reviews of the customer code for water services at least once every five years.³⁷

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

Progress update

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

³⁵ The full text of section 11ZPO of the Gas Act is in Appendix 1.

³⁶ The full text of section 11ZPV of the Gas Act is in Appendix 1.

³⁷ Section 27(7) of the Water Act. The full text is in Appendix 1.

Recommendation

The *Energy Coordination Act 1994* should be amended to change the period between reviews of the Gas Marketing Code of Conduct from two to five years.

2.2.4 Single energy code

Currently, there are separate codes and review processes for electricity and gas customer protection legislation, which would benefit from being combined in a single energy code to remove the inefficiencies created by them being separate instruments.

Reform

Customer protections for electricity customers are specified under the *Code of Conduct of the Supply of Electricity to Small Use Customers* (Electricity Code), while the equivalent gas customer protections are in the *Compendium of Gas Customer Licence Obligations*.

The Gas Act establishes the Marketing Code and the GMCCC to review the Marketing Code, but it covers only the marketing of gas to customers.³⁸ The ERA made the Compendium to address that gap in the coverage of the Electricity Code and the Marketing Code. The Marketing Code and the Compendium together provide gas customers with the same level of protection as electricity customers receive under the Electricity Code.

The Electricity Code is reviewed by the Electricity Code Consultative Committee and administered by the ERA, while the Compendium is administered by the ERA as a schedule to gas distribution and trading licences.³⁹ Reviews of the Compendium can include the ERA holding workshops and round-table meetings of industry, government and consumer representatives. However, the Compendium does not benefit from independent review, as the Electricity Code does.

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

An energy code that incorporates the Customer Code, Marketing Code and Compendium would harmonise the customer protections for electricity and gas customers, streamline the code review process and ensure that there is a broad representation of views on a review committee that would review the code. The benefits would also extend to reducing the workload of members of the committee, the ERA and licensees. An energy code would reduce the regulatory burden for those licensees that operate in both the electricity and gas retail markets, as they would only have to comply with one set of consumer protection obligations.

Progress update

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

³⁸ Sections 11ZPM and 11ZPO of the Gas Act. The full text of the sections is in Appendix 1.

³⁹ The Compendium is Schedule 2 of gas distribution and trading licences.

Recommendation

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

2.2.5 Change of licensee ownership

The *Energy Coordination Act 1994* does not allow the ERA to apply the Act's technical, financial and public interest tests to the new owner of an existing licensee, as it can for applicants for a new licence.

Reform

Section 11S of the Gas Act authorises the ERA to approve the transfer of a licence from one entity to another.⁴⁰ Approval is subject to the ERA being satisfied that the applicant (transferee) has the necessary financial and technical resources to provide the services authorised by the licence and that granting the licence would not be contrary to the public interest.⁴¹

A change in the ownership of a licensee where the licensee itself remains in operation under the same company name and ABN is not a transfer of the licence under section 11S of the Gas Act.⁴²

Because a change of ownership is not a transfer under the Gas Act, neither the existing owner nor the new owner of the licensee is required to seek the ERA's approval of the change in ownership. Consequently, the ERA cannot apply the same technical and financial capacity assessments or the Gas Act's public interest test to the new owner as it did when the licence was granted to the original owner.

In the past, there have been instances when the ERA would have applied one or more of the financial, technical and public interest tests to the new owner of a licensee if it had the authority to do so.

Not being able to apply the regulatory tests applicable to a licence transfer to a change of ownership creates a risk that a licence is held by a person that does not possess the requisite experience and capacity to provide the service authorised by the licence.

The Gas Act should be amended to provide that ownership of a licensee can be transferred only with the ERA's approval, subject to the ERA being satisfied that the new owner meets the tests in section 11S of the Gas Act.

Progress update

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

⁴⁰ Each entity in the transfer has its own unique combination of company name and ABN.

⁴¹ The full text of section 11S of the Gas Act is in Appendix 1.

⁴² A change in ownership is considered to take place when the existing owner transfers a controlling interest in the licensee to the new owner.

Recommendation

The *Energy Coordination Act 1994*'s provisions on the transfer of a licence should be amended to allow the ERA to apply the Act's technical, financial and public interest tests to the new owner of an existing licensee.

2.2.6 *Right to supply under standard customer contract*

The *Energy Coordination Act 1994*'s provisions on standard form contracts, and the role of standard form contracts in the customer protection framework more generally, may not be benefiting customers in the way it was intended.

Reform

Section 11WE of the Gas Act requires all licensed retailers to have an ERA-approved standard form contract.⁴³ However, there is no obligation on these retailers to offer supply to customers under their standard form contract. Instead, licensees can supply customers under a non-standard form contract, which effectively serves the same purpose as the standard form contract, in that it sets out their terms and conditions of supply.

Most licensees choose to offer supply under a non-standard form contract, which brings into the question the purpose of standard form contracts.

There are protections for customers supplied under a non-standard form contract. Section 11WF(2) of the Gas Act requires a non-standard form contract to comply with the Act, which also includes the applicable provisions in the Contract Regulations. These provisions include a customer's right to a cooling-off period when entering into a contract.⁴⁴ However, unlike for standard form contracts, the ERA does not have oversight of non-standard form contracts and fewer customer protections are required in non-standard form contracts compared to standard form contracts.

In the national energy market, retailers are required to provide energy services to residential and small business customers under a standard retail contract if the customer does not accept a market offer (the equivalent of a non-standard form contract).⁴⁵ However, as mentioned earlier, in Western Australia, gas customers do not have the right to the standard form contract if they do not want a non-standard form contract, because it is up to the retailer if it offers its standard form contract to the customer.

The ERA has no evidence that customers on non-standard form contracts are being disadvantaged compared to customers on standard form contracts. However, customers do not have an alternative to a non-standard form contract unless the retailer offers them its standard form contract. The administration of standard form contracts requires the ERA and retailers to expend substantial resources on contracts that are not going to be offered to customers.

⁴³ The full text of section 11WE of the Gas Act is in Appendix 1.

⁴⁴ The full text of section 11WF of the Gas Act is in Appendix 1.

⁴⁵ Section 22(1) of the National Energy Retail Law and Rule 16 of the National Energy Retail Rules (the full text of both provisions is in Appendix 1).

To ensure customers have the safety net of the standard form contract if they do not want a non-standard form contract, it is recommended that the Gas Act is amended to require all retailers to offer their ERA-approved standard form contract to prospective customers.

Progress update

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

Recommendation

The *Energy Coordination Act 1994* should be amended to require retailers to offer to supply gas to a customer under an ERA-approved standard form contract, if the customer does not accept a non-standard form contract.

2.2.7 Duration of licences

The maximum duration of gas distribution and trading licences in the *Energy Coordination Act 1994* is inconsistent with the maximum duration of electricity distribution and retail licences in the *Electricity Industry Act 2004* respectively. There does not appear to be a reason for this inconsistency.

Reform

Under section 110 of the Gas Act, the maximum duration of a gas trading licence is 10 years, while under the *Electricity Industry Act 2004*, the maximum duration of an electricity retail licence is 15 years.⁴⁶ For distribution licences, the maximum duration for gas is 21 years, while for electricity it is 30 years.

The ERA is not aware of any reason why the duration of electricity and gas distribution licences, or the duration of electricity retail and gas trading licences, should be different. Electricity and gas utilities fulfil a similar role in their respective markets.

Some retailers hold both an electricity retail licence and a gas trading licence. Inconsistencies between the electricity and gas licensing schemes create a regulatory burden for the ERA and licensees who participate in both markets.

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 gas licensees and provides limited benefit to the gas market and consumers.

To address this inconsistency, it is recommended that the duration of gas distribution and trading licences is aligned with the duration of electricity distribution and retail licences respectively.

⁴⁶ The full text of section 110 is in Appendix 1.

Progress update

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

Recommendation

To be consistent with electricity distribution and retail licences, the *Energy Coordination Act 1994* should be amended to change the maximum duration of gas distribution licences from 21 to 30 years and the maximum duration of gas trading licences from 10 to 15 years.

3. Licensing scheme and ERA activities

This chapter provides an overview of the objectives of the licensing scheme and the licensing activities that the ERA has carried out during the year.

3.1 Objectives

A best practice licensing scheme will have clearly identified objectives that are administered by an independent and accountable regulatory authority. The regulator will perform its functions in a manner that ensures service standards are met, regulatory risk is as low as reasonably practicable and compliance costs are minimised.

The Gas Act does not have an explicit set of objectives for the licensing scheme. While the ERA, licensees and customers would benefit from defined objectives being included in the Act, the ERA considers that to be effective the scheme will:

- Ensure defined service standards for the supply of gas.
- Ensure customers are treated fairly through the application of a customer protection regime.
- Ensure that licensees maintain effective asset management systems for their assets.
- Ensure licensing is implemented only where it is the most appropriate form of intervention to address a risk of market failure, or the exercise of market power at the expense of the interests of consumers.
- Ensure the costs of licensing are kept to a minimum and do not outweigh the benefits.

To develop these objectives, the ERA has drawn on its experience as the regulator of the gas, electricity and water licensing schemes. The ERA also takes into account the public interest matters that it is required to consider when making decisions, which are set out in sections 11K and 11H(3) of the Gas Act and section 26(1) of the *Economic Regulation Authority Act 2003*.⁴⁷

The regulation of third-party access to networks and the price, safety and security of supply fall outside the scope of the licensing scheme and are addressed by other legislation and regulatory frameworks.

Apart from a small number of licence non-compliances, the scheme is currently meeting these objectives. There is always room for improvement, and one of the aims of this report is to identify areas of reform, so that the scheme can better meet these objectives at the least possible cost to government, industry and consumers.

3.2 Licensing activities

3.2.1 Licensing scheme reviews

As the licensing scheme is established in the Gas Act, it is the responsibility of the State Government to conduct any legislative reviews of the scheme. The licensing scheme under which the ERA grants gas licences has not been reviewed since it came into effect in 2004.

⁴⁷ The full text of sections 11K and 11H(3) of the Gas Act and section 26(1) of the ERA Act is in Appendix 1.

The ERA is responsible for the licenses issued under the scheme. In accordance with good licensing practice, the ERA reviews the format and content of the licences at least every three years to ensure licences protect consumers effectively and meet current legislative requirements.⁴⁸ These reviews are not required by legislation; the ERA conducts the reviews to ensure that its licences are operating effectively. The reviews generally involve two rounds of public consultation to give the community and industry the opportunity for input.

The ERA last reviewed its gas licences in 2014.⁴⁹ ⁵⁰ The next review will be in 2020/21.

3.2.2 Licensing activities during the year

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

- In response to the COVID-19 pandemic, the ERA requested monthly data from gas retailers to monitor their performance providing financial hardship and billing protections to residential customers.
 - The data includes information on disconnections, customer bill debt levels, financial hardship programs and call centre performance.
 - The collection of monthly performance data from gas retailers is ongoing.
- The 2019/20 annual performance reports for energy distributors and energy retailers were published on 26 March 2020.⁵¹
- The 2018/19 annual report on the operation of the gas licensing scheme and licensee compliance was published on 30 January 2020.⁵²
- In September 2019, the ERA completed a review of the Gas Marketing Code, which regulates and controls the conduct of gas retailers and gas marketing agents to protect customers from undesirable marketing conduct. The amendments to the code to improve protections for customers took effect on 1 January 2020.⁵³
- The ERA reviewed and amended the *Compendium of Gas Customer Licence Obligations* to strengthen protections for customers, with the ERA's final decision published on 4 November 2019.⁵⁴ Gas licences were updated to give effect to the new compendium on 1 January 2020.
- An updated Gas Compliance Reporting Manual was published on 16 June 2020.⁵⁵
- Applications for licence renewals were received and processed.⁵⁶

⁴⁸ The ERA may occasionally review licences more frequently, if required by amendments to codes or regulations.

⁴⁹ Economic Regulation Authority, 2014, *Decision on licences amended by substitution – Gas Trading and Distribution Licences*.

⁵⁰ A review of gas licences did not occur in 2017, because there were no substantive concerns with the operation of gas licences at the time.

⁵¹ The [data and reports](#) are available on the ERA website.

⁵² The [report](#) is available on the ERA website.

⁵³ Information on the [code review](#) is available on the ERA website.

⁵⁴ Economic Regulation Authority, 2019, *Final decision – Amendments to the compendium of gas customer licence obligations*.

⁵⁵ The [manual](#) is available on the ERA website.

⁵⁶ The ERA's [decisions](#) on gas licence applications are available on its website.

3.2.3 Stakeholder engagement

It is standard procedure at the ERA to seek public comment on gas licence applications, standard form contracts and regulatory reviews, such as reviews of licences, regulatory guidelines and codes.

When relevant, ERA holds workshops and forums for licensees on its licensing activities. For example, in November 2018 the ERA held a workshop with licensees and auditors on the review of its *Audit and Review Guidelines – Electricity and Gas Licences*.

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

4. Licensee compliance

This chapter provides an overview of the compliance framework for the licensing scheme and the compliance monitoring and enforcement activities undertaken by the ERA during the reporting year.

4.1 Compliance framework

The ERA has a compliance monitoring and enforcement strategy for gas licensees, comprising:

- Periodic performance audits and asset management system reviews (see section 4.2).
- Annual compliance and performance (data) reports submitted by licensees.
- A requirement for licensees to notify the ERA when they become aware of a breach of a Type 1 licence obligation (see section 4.3).
- A Compliance Enforcement Policy.
- Regulatory guidelines and compliance reporting manuals published by the ERA to assist licensees in achieving compliance.

The Gas Compliance Reporting Manual requires licensees to provide annual compliance reports to the ERA. To minimise the burden on the licensee, the report includes only non-compliances that were identified during the year. The scope of the performance audits includes reviewing the compliance reports submitted since the previous audit.

The Gas Act requires the licensee to undertake independent audits of the effectiveness of the measures it has taken to meet the performance criteria specified in the licence. The Gas Act also requires licensees to undertake independent reviews of the effectiveness of the licensee's asset management system.

The data collected in the annual compliance reports and audit reports is used to monitor and enforce compliance with licence conditions.

4.2 Performance audits and asset management reviews

4.2.1 Overview of audits and reviews in 2019/20

The ERA has published *Audit and Review Guidelines: Electricity and Gas Licences*, which provide a comprehensive guide to the audit and review process.

The ERA uses a risk-based approach to performance audits and asset management system reviews to focus the audit or review on higher priorities, with less extensive coverage of medium and lower priorities. Auditors are required to apply the risk evaluation model described in the Audit and Review Guidelines to determine the audit and review priorities.

The Audit and Review Guidelines also require auditors to apply a common set of rating scales to rate licensees' compliance with the licence and the effectiveness of an asset management system. This enables the ERA to compare the performance of individual licensees and groups of licensees over time.

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

Table 1: Audit and reviews completed in 2019/20

Licensees	Performance audits	Asset management system reviews
Distribution	2	1
Trading	6	N/A
Total	8	1

The ERA will increase the period between audits or reviews if the licensee has a strong compliance framework that is achieving a high level of compliance with the licence. Conversely, the period will be reduced (subject to the 24-month minimum in the Gas Act) if an audit or review finds serious compliance problems. This is to ensure that regulatory resources are focussed on licensees who need to improve compliance with their licence. This is also an incentive for licensees to comply with their licence and have an effective asset management system.

If an audit identifies compliance problems, the ERA monitors the actions taken by the licensee to address the cause(s) and return to compliance. In some instances, the non-compliances may be so serious that the ERA will take enforcement action against a licensee using the powers available in the Gas Act.

Of the eight audits and one asset management system review of gas licences completed in 2019/20:

- Five licensees had their audit period left unchanged and one licensee had its review period left unchanged.
- Three licensees had their audit period increased following an improvement in performance.

There were no trends or systemic issues identified in the audits and reviews that caused the ERA concern or required intervention.

4.2.2 *Special areas of focus*

The ERA regularly receives incorrect licence performance data from licensees, which is either identified by the ERA through its validation processes, or by the licensees themselves. To improve the accuracy of data collected from licensees as part of the ERA's annual performance reporting framework, in 2019/20 the ERA made performance data collection a special focus of performance audits of major gas retailers.

In 2019/20, the audits of major gas retailers also included a focus on the effectiveness of the processes and systems that retailers have in place to assist customers experiencing payment difficulties and financial hardship. The audits examined the retailer's processes for determining if a customer is experiencing payment difficulties or financial hardship and determining whether customers were offered the assistance they were entitled to.

In 2019/20, Alinta Sales Pty Ltd and Origin Energy Retail Ltd had performance audits that included special areas of focus. The audits identified:

- Data on complaints, financial hardship and bill debt performance submitted by Alinta to the ERA in its 2018/19 annual performance report did not match the data in Alinta's systems.

- Alinta's systems could not identify customers experiencing payment difficulties or financial hardship. This affected the auditor's ability to conduct the audit and Alinta's ability to monitor its compliance with these obligations.⁵⁷
- Origin Energy had no material non-compliances or control deficiencies with the licence obligations that were in the special areas of focus.⁵⁸

The special areas of focus will be included in the audits of relevant gas retailers scheduled to be carried out in 2020/21.

4.3 Type 1 licence breaches

Licence obligations are classified as Type 1 if a breach of the obligation would cause major disruption to a customer.

A licensee must notify the ERA immediately when it becomes aware of a breach of a Type 1 licence obligation.

In 2019/20, the ERA did not receive a notification from a gas licensee of a Type 1 licence breach.

⁵⁷ Economic Regulation Authority, 2020, *Notice – Alinta Sales Pty Ltd – 2020 performance audit*.

⁵⁸ Economic Regulation Authority, 2020, *Notice – Origin Energy Pty Ltd – 2019 performance audit*.

Appendix 1 – Legislative provisions referenced in the report

Economic Regulation Authority Act 2003

Section 26 Authority to have regard to certain matters

- (1) In performing its functions, other than the functions described in section 25(c) and (d), the Authority must have regard to —
- (a) the need to promote regulatory outcomes that are in the public interest;
 - (b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
 - (c) the need to encourage investment in relevant markets;
 - (d) the legitimate business interests of investors and service providers in relevant markets;
 - (e) the need to promote competitive and fair market conduct;
 - (f) the need to prevent abuse of monopoly or market power;
 - (g) the need to promote transparent decision-making processes that involve public consultation.

Energy Coordination Act 1994

Section 11AA Functions of Authority

The functions of the Authority under this Part are —

- (a) to administer the licensing scheme provided for in this Part;
- (b) to monitor and report to the Minister on the operation of that licensing scheme and on compliance by licensees with their licences;
- (c) to inform the Minister about any failure by a licensee to meet performance criteria or other requirements of its licence; and
- (d) the other functions conferred on the Authority by this Part.

Section 11H(3) Power to exempt

The Governor, in determining whether the making of the order would not be contrary to the public interest, may take into account one or more of the following matters —

- (a) environmental considerations;
- (b) social welfare and equity considerations, including community service obligations;
- (c) economic and regional development, including employment and investment growth;
- (d) the interests of gas customers generally or of a class of gas customers;
- (e) the interests of any licensee, or applicant for a licence, in respect of the supply area or part of a supply area to which the order, if made, would apply;
- (f) the importance of competition in gas industry markets;

- (fa) the policy objectives of government in relation to the supply of gas;
- (g) any other matter that he or she considers relevant.

Section 11K Authority to consider public interest

- (1) The Authority must not exercise a power conferred by this Division unless the Authority is satisfied that it would not be contrary to the public interest to do so.
- (2) The Authority, in determining whether the exercise of the power would not be contrary to the public interest, may take into account one or more of the matters referred to in section 11H(3).

Section 11O Duration of licence

A licence may be granted or renewed for such period as the Authority thinks fit, but the period cannot exceed —

- (a) in the case of a distribution licence, 21 years from the date of its grant or renewal; or
- (b) in the case of a trading licence, 10 years from the date of its grant or renewal.

Section 11S Decisions as to grant, renewal or transfer

- (1) Subject to section 11K, the Authority must grant, renew or approve the transfer of a licence if the Authority is satisfied that the applicant —
 - (a) has, and is likely to retain; or
 - (b) will acquire within a reasonable time after the grant, renewal or transfer, and is then likely to retain,

the financial and technical resources to undertake the activities authorised, or to be authorised, by the licence.

- (2) The Authority must take all reasonable steps to make a decision in respect of an application for —
 - (a) the grant or renewal of a licence; or
 - (b) approval to transfer a licence,

within 90 days after the application is made.

- (3) The duties imposed on the Authority by subsections (1) and (2) apply only if —
 - (a) an application has been made in accordance with section 11L, 11P or 11R, as the case may be;
 - (b) section 11WE or 11ZQG does not prohibit the grant or renewal of the licence or the approval of the transfer; and
 - (c) where a requirement has been made under section 11L(3), 11P(2) or 11R(4), the relevant information has been provided to the Authority.

Section 11VA Amendment of licence on application of licensee

- (1) A licensee may apply to the Authority at any time for amendment of the licence.
- (2) An application —
 - (a) is to be made in a form approved by the Authority; and
 - (b) is to be accompanied by the prescribed application fee.

- (3) The applicant must also provide such other information as the Authority may require for the proper consideration of the application.
- (4) The Authority may grant the application if —
 - (a) it has been made in accordance with subsection (2); and
 - (b) where a requirement has been made under subsection (3), the relevant information has been provided to the Authority.
- (5) Regulations made under section 26 may require the Authority, before it makes a decision on an application under this section, to undertake public consultation in accordance with the procedure specified in the regulations.

Section 11W Amendment of licence

- (1) The Authority may, on its own initiative, determine that a licence is to be amended.
- (2) A licence must specify the procedure to be followed in making such a determination, including the manner in which an amendment is to be notified to the licensee, and the determination may only be made in accordance with that procedure.
- (3) An amendment cannot take effect until it is notified to the licensee under the procedure referred to in subsection (2).
- (4) If a licence is amended under this section the Authority must ensure that notice is published in the *Gazette* indicating the nature of the amendment and the place where a copy of the licence may be inspected under section 11U.
- (5) This section applies to the substitution of a new licence for an existing licence in the same way as it applies to the amendment of a licence.

Section 11WE Licence application not to be granted unless standard form contract approved

Despite section 11S, the Authority is not to grant or renew, or approve a transfer of, a trading licence unless —

- (a) the applicant or the proposed transferee has submitted a draft form of contract as required by section 11WD; and
- (b) the Authority has approved the standard form contract under which the applicant or proposed transferee will supply gas to customers pursuant to the licence.

Section 11WF Approval of standard form contract

- (1) Subject to subsection (2), the Authority may at its discretion approve or refuse to approve a standard form contract submitted under section 11WD.
- (2) The Authority is not to give an approval if it considers that the standard form contract —
 - (a) will not meet the requirements of the regulations in respect of such contracts; or
 - (b) will be inconsistent with —
 - (i) this Act or any other written law; or
 - (ii) any term, condition or provision of the licence concerned.

Section 11Y Asset management system

- (1) It is a condition of every distribution licence that the licensee is to —
- (a) provide for an asset management system in respect of the licensee's assets;
 - (b) notify details of the system and any substantial changes to it to the Authority; and
 - (c) not less than once in every period of 24 months (or such longer period as the Authority allows) calculated from the grant of the licence, provide the Authority with a report by an independent expert acceptable to the Authority as to the effectiveness of the system.
- (2) An asset management system is to set out the measures to be taken by the licensee for the proper maintenance of assets used in the supply of gas and in the operation and maintenance of, and, where relevant, the construction or alteration of, the distribution system.

Section 11ZA Performance audit

- (1) It is a condition of every licence that the licensee is to, not less than once in every period of 24 months (or such longer period as the Authority allows) calculated from the grant of the licence, provide the Authority with a performance audit conducted by an independent expert acceptable to the Authority.
- (2) A performance audit is an audit of the effectiveness of measures taken by the licensee to meet —
- (a) the standards referred to in section 11Z; and
 - (b) performance criteria specified in the licence.
- (3) The Authority is to present to the Minister a report on each performance audit within 2 months after its receipt of the audit.

Section 11ZAD How plan brought into operation

- (1) The Authority may, by order published in the *Gazette*, determine that a last resort supply plan for a supply area comes into operation on a day specified in the order.
- (2) An order may be made under subsection (1) only if the licence of the supplier to whose small use customers the plan applies —
- (a) has been cancelled under section 11ZE;
 - (b) has expired and has not been renewed; or
 - (c) has been surrendered.
- (3) An order under subsection (1) in respect of a last resort supply plan is to specify the name of the supplier to whose small use customers the plan applies.

Section 11ZB Failure to comply with licence

- (1) If, in the opinion of the Authority, a licensee contravenes a licence, the Authority may cause a notice to be served on the licensee requiring the licensee to rectify the contravention within a specified period.
- (2) If, in the opinion of the Authority, a licensee fails to comply with a notice under subsection (1), the Authority may, subject to section 11ZC, do one or more of the following —

- (a) serve a letter of reprimand on the licensee;
 - (b) order the licensee to pay a monetary penalty fixed by the Authority but not exceeding \$100 000;
 - (c) cause the contravention to be rectified to the satisfaction of the Authority.
- (3) Persons authorised by the Authority may enter any premises and do all things that are necessary for the purposes of subsection (2)(c).
- (4) The Authority may recover —
- (a) a penalty imposed under subsection (2)(b); or
 - (b) the costs and expenses of any action taken under subsection (2)(c),
- in a court of competent jurisdiction as a debt due by the licensee to the Crown.

Section 11ZE Cancellation of licence

- (1) The Governor may cancel a licence if he or she is satisfied that the licensee —
- (a) is in default as defined in subsection (2);
 - (b) has failed to pay a licence fee as required under section 11Q;
 - (c) in the case of a company, is an externally administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - (d) has within a period of 24 months been convicted of more than 3 offences for which the prescribed punishment is a fine of \$10 000 or more or imprisonment for 12 months or more.
- (2) For the purposes of subsection (1)(a) a licensee is in default if the Governor is satisfied that —
- (a) the licensee has failed to comply with a term or condition of the licence;
 - (b) the failure is material in terms of the operation of the licence as a whole;
 - (c) the Minister has given to the licensee written notice of the failure and the fact that in the Minister’s opinion paragraph (b) applies to it; and
 - (d) the licensee has not, within the time specified in the notice, either remedied the failure or shown cause why the licence should not be cancelled.
- (3) If a licence is cancelled under this section the Authority must ensure that notice of the cancellation is published in the *Gazette*.
- (4) Regulations may be made under section 26 providing, in the event of a licence being cancelled, for —
- (a) the vesting of assets, rights and interests of the former licensee in a person (including the Minister as a corporation) for the purpose of enabling gas to be supplied after the cancellation, except where a last resort supply plan under Part 2A Division 6A applies;
 - (b) the conferral of powers and duties for that purpose;
 - (c) the discharge or assignment of liabilities;
 - (d) the disposal of property; and
 - (e) all matters that are necessary or convenient for dealing with the consequences of the cancellation and the vesting referred to in paragraph (a).

- (5) If —
- (a) a distribution licence is cancelled under this section; and
 - (b) regulations of the kind referred to in subsection (4)(a) are made,

Division 9 applies, with all necessary changes, for the purpose of enabling gas to be supplied after the cancellation, as if references in that Division to a licensee were references to the person in whom the assets, rights and interests of the former licensee are vested under the regulations.

Section 11ZF Duty to leave system in safe condition

- (1) Following the cancellation of a distribution licence under section 11ZE, the former licensee —
- (a) is to ensure that any distribution system constructed or operated by the former licensee under the licence is left in a safe condition; and
 - (b) is not to remove any part of such a system except with the approval of the Minister.
- (2) If, in the opinion of the Minister, a former licensee contravenes subsection (1), the Minister may cause the contravention to be rectified to the satisfaction of the Minister.
- (3) Persons authorised by the Minister may enter any land or premises and do all things that are necessary for the purposes of subsection (2).
- (4) The Minister may recover the costs and expenses of any action taken under subsection (2) in a court of competent jurisdiction as a debt due by the former licensee to the Crown.

Section 11ZPM Code of Conduct

- (1) The Authority may, in consultation with the committee, approve a code of conduct under this section.
- (2) The code of conduct is to regulate and control the conduct of —
- (a) the holders of trading licences; and
 - (b) gas marketing agents,
- with the object of —
- (c) protecting customers from undesirable marketing conduct; and
 - (d) defining standards of conduct in the marketing of gas to customers.
- (3) The code of conduct may contain such ancillary and incidental provisions as are necessary or expedient for the purposes of subsection (2).
- (4) Subsection (1) has effect subject to section 53 of the *Energy Legislation Amendment Act 2003*.

Section 11ZPO Consultative committee

- (1) The Authority is to establish a committee to advise it on matters relating to the code of conduct.
- (2) The Authority —

- (a) is to prescribe the membership, constitution and procedures of; and
 - (b) may discharge, alter, or reconstitute,
- the committee.
- (3) The Authority may determine that a member of the committee is to receive remuneration or an allowance, and if the Authority so determines it is to fix the remuneration or allowance on the recommendation of the Public Sector Commissioner.
 - (4) Subject to this section, the committee may determine its own procedure.
 - (5) The Authority is to provide the committee with such support services as it may reasonably require.
 - (6) This section has effect subject to section 54 of the *Energy Legislation Amendment Act 2003*.

Section 11ZPV Review of code

- (1) The committee must carry out a review of the code of conduct as soon as is practicable after —
 - (a) the first anniversary of its commencement; and
 - (b) the expiry of each 2 yearly interval after that anniversary.
- (2) The object of a review is to re-assess the suitability of the provisions of the code of conduct for the purposes of section 11ZPM(2).
- (3) The committee must, in accordance with section 11ZPW, give any interested person an opportunity to offer comments relevant to the review.
- (4) The committee must take into account any comments received under subsection (3) in carrying out the review.
- (5) The committee must prepare a report based on the review and give it to the Authority.

Gas Standards (Gas Supply and System Safety) Regulations 2000

Regulation 24 Threats to safety of people or property, network operator's duties to investigate etc.

- (1) In subregulation (2) —

former distribution system means anything owned by the network operator that would be a distribution system if it were still utilised for a purpose for which it previously was, but no longer is, utilised.
- (2) If a network operator becomes aware that —
 - (a) anything at a place where a prescribed activity is being carried out; or
 - (b) the condition of any part of a distribution system or former distribution system at any place,

is a threat to the safety of any person or property, the network operator must investigate the matter as soon as is practicable.

- (3) If the investigation reveals that there is a threat to the safety of any person or property, the network operator must take such remedial action as is required to remove the threat as soon as is practicable.

Water Services Act 2012

Section 18 Amendment or cancellation of a licence – on application of licensee

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

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

...

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

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

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

Penalty: a fine of \$30 000.

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

Section 42 Power to prohibit use etc.

- (1) If an inspector is of the opinion that anything that the inspector is authorised to inspect does not conform with the requirements of any term or condition of a

- licence or an exemption, the inspector must as soon as practicable report his or her opinion in writing to the designating authority.
- (2) Upon receipt of a report under subsection (1) about a thing, the designating authority may, if satisfied that the lack of conformity is materially significant —
 - (a) by order in writing given to the licensee or exempt person — prohibit the use of the thing absolutely or except in accordance with specified conditions or restrictions; and
 - (b) have the water service to or from the thing, or to or from the premises on which the thing is situated, disconnected until the designating authority is satisfied that the thing conforms with the requirements referred to in subsection (1).
 - (3) The order referred to in subsection (2)(a) has effect as a condition on the licence or exemption.
 - (4) Persons authorised by a designating authority for the purposes of this subsection may enter any place, in accordance with Part 8, and do all things necessary for the purposes of subsection (2)(b).
 - (5) A designating authority may recover its reasonable costs and expenses of having a water service disconnected from the licensee or exempt person, and may seek an order for the recovery of those costs and expenses in a court of competent jurisdiction.
 - (6) The court may not issue an order unless satisfied that the licensee or exempt person was responsible for the lack of conformity.

Section 210(1) Designation of inspectors and compliance officers

- (1) The Authority may, in writing, designate an individual as an inspector for the purposes of one or more specified provisions of Part 2 to the extent to which the provisions relate to functions of the Authority.
- (2) The CEO may, in writing, designate an employee of the Department as an inspector for the purposes of one or more specified provisions of Part 2 to the extent to which the provisions relate to functions of the Minister.
- (3) A licensee may, in writing, designate an employee of the licensee, a contractor (who is an individual) or an employee of a contractor as a compliance officer for the purposes of one or more specified provisions of Part 5.
- (4) The CEO may, in writing, designate an individual as a compliance officer for the purposes of one or more specified provisions of Part 5.
- (5) If a designating authority designates a person as an inspector or a compliance officer, the designating authority must give the person a certificate of authority that sets out or includes —
 - (a) a recent passport-size photograph of the person; and
 - (b) the person's name; and
 - (c) a statement to the effect that the person is an inspector or compliance officer for the purposes of this Act; and
 - (d) the provisions under which the inspector or compliance officer may exercise powers; and

- (e) any limitations or restrictions that apply to the exercise of the powers of the inspector or compliance officer; and
 - (f) the expiry date of the certificate.
- (6) In any proceedings under this Act, a certificate of authority purporting to be issued by a designating authority under this section is evidence of the designation of the person as an inspector or compliance officer unless evidence is given to the contrary.

National Energy Retail Law

Section 22(1) Obligation to make offer to small customers

- (1) A retailer must make an offer (a standing offer) to provide customer retail services to small customers for whom it is the designated retailer—
- (a) at the standing offer prices; and
 - (b) under the retailer's form of standard retail contract.

National Energy Retail Rules

Rule 16 Pre-contractual duty of retailers

- (1) This rule applies where a retailer is contacted by a small customer who is seeking to purchase energy for premises.
- (2) If the retailer is the designated retailer for the premises, the retailer:
- (a) may elect to offer the customer a market retail contract; and
 - (b) must advise the customer of the availability of the retailer's standing offer, unless the customer is a small market offer customer.
- Note: Subrule (2) (b) is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)
- (3) If the retailer is not the designated retailer for the premises and the retailer does not elect to offer the customer (whether at the request of the customer or of its own initiative) a market retail contract, the retailer:
- (a) must refer the customer to the distributor for the premises concerned; and
 - (b) must inform the small customer that the distributor will be able to advise the customer which retailer has an obligation to make a standing offer that is applicable to the customer.

Appendix 2 – Licences and licensing costs

Licences and licensees

A list of current gas licensees can be found on the ERA's website, along with copies of their licences.⁵⁹

Table 2 shows the total number of gas distribution and trading licences as at 30 June 2020.

Table 2: Gas licences by service 2019/20

Classification	Licences
Distribution	3
Trading	9
Total	12

Licensing costs

The *Economic Regulation Authority (Licensing Funding) Regulations 2014* set out the fees and charges that licensees must pay to the ERA. The ERA recovers its costs to administer the licensing scheme from licensees through an annual licence fee and a quarterly standing charge. The regulations are the responsibility of the Treasurer.

The ERA's costs to administer the gas licensing scheme over the past three years are set out in Table 3.

Table 3: ERA licensing costs

Licence service	Costs per year (\$)		
	2017/18	2018/19	2019/20
Distribution	102,943	253,767	292,408
Trading	122,554	273,378	312,019
Total	225,497⁶⁰	527,145	604,427

Licence fee

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

- Distribution - \$2,778
- Retail - \$3,105

⁵⁹ The licensees and licences are available on the ERA's [Licence Holders](#) webpage.

⁶⁰ There was a substantial reduction in the ERA's licensing costs in 2017/18, because other divisions of the ERA incurred more overheads and costs that year (as a proportion of the ERA's overall costs) due to the projects they carried out, such as the assessment of Western Power's network access arrangement for the 2017-22 regulatory period.

Licensees are required to pay a standing charge every quarter for the ERA to recover the costs it incurs in performing its licensing functions.

Standing charge

Licensees are required to pay a standing charge every quarter for the ERA to recover the costs it incurs in performing its licensing functions.

For the ERA to calculate the standing charge, licensees must report annually on the number of units relevant to the licence (Table 4). The number of units reported by the licensee will determine the standing charge that the licensee must pay.⁶¹

Under the regulations, the licensees within a licence type (distribution and retail) are collectively required to pay fifty per cent of the total standing charge for the ERA's gas licensing function each year.

For example, if the ERA's gas licensing costs to be recovered from the standing charge is \$1 million and a licensed retailer has 500,000 customers from a total of 1 million customers supplied by all licensed retailers, its annual standing charge is \$125,000. This is because retailers are collectively responsible for 50 per cent of the gas standing charge (\$250,000) and the retailer has 50 per cent of the total number of customers supplied by all retailers within the licensing scheme.

Table 4: Standing charge by licence service

Licence service (unit of measurement)	Cost per unit (\$)		
	2017/18	2018/19	2019/20
Distribution (kilometres of line)	6.66	17.18	19.76
Trading (customers)	0.13	0.34	0.39

The ERA's gas licensing costs change from year to year due to several factors, including:

- The proportion of the ERA's licensing resources that are allocated to each licensing scheme (electricity, gas or water) each year, which fluctuates depending on the licensing activities the ERA completes in the year and the number of licensees in each licensing scheme. For example, in 2019/20:
 - There was an increase in gas licensing activities compared to 2018/19, such as the biennial review of the Gas Marketing Code (see section 3.2.2 for more information).
 - There was an increase in the number of performance audits of gas trading licences compared to 2018/19.
- The allocation of the ERA's overheads across its divisions.⁶² For example, if there is an increase in staff one year in another area of the ERA to address a higher workload, then a lower percentage of the ERA's overheads are allocated against licensing functions.

⁶¹ The regulations require the ERA to calculate the total number of units reported by licensees for each service (called UT). The costs payable by each licensee determined by the formula: $Cx(UL/UT)$, where C is the total cost for the service and UL is the number of units reported for the licence.

⁶² Some licensing activities are annual, while others are biennial or triennial, which results in fluctuations in the amount of staff resources needed to complete the activities each year.