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Energy Policy WA

Energy and Governance Legislation Reform

Project Eagle

Consultation Paper

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

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Disclaimer

The information, representations, and statements contained in this Consultation Paper have been prepared by Energy Policy WA.

It is provided to assist in understanding the high-level design of proposed reforms to the governance and institutional arrangements for the energy sector in Western Australia as part of the Western Australian Government's second stage of Energy Transformation Strategy reforms.

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Contents

Abbreviations

Term	Definition
Access Code	Electricity Networks Access Code 2004
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AES	Alternative Electricity Services
Coordinator	Coordinator of Energy
DEBS	Distributed Energy Buyback Scheme
DER	Distributed Energy Resources
DSO	Distribution System Operator
DMO	Distribution Market Operator
EI Act	Electricity Industry Act 2004
ERA	Economic Regulation Authority
ER-WA	Energy Rules – Western Australia
GSI	Gas Services Information
NQRS	Network Quality and Reliability of Supply
NWIS	North West Interconnected System
PNAC	Pilbara Networks Access Code
PNR	Pilbara Networks Rules
PV	Photovoltaic
REBS	Renewable Energy Buyback Scheme
RSAP	Reliability and Security Advisory Panel
SWIS	South West Interconnected System
WEM	Wholesale Electricity Market
WOSP	Whole of System Plan

Executive summary

The Western Australian Government is embarking on the second stage of its Energy Transformation Strategy to meet its vision for providing safe, secure, reliable, and low-emission power to Western Australian households and businesses at the lowest sustainable cost, while allowing new technology to connect and giving consumers more control over their electricity use.

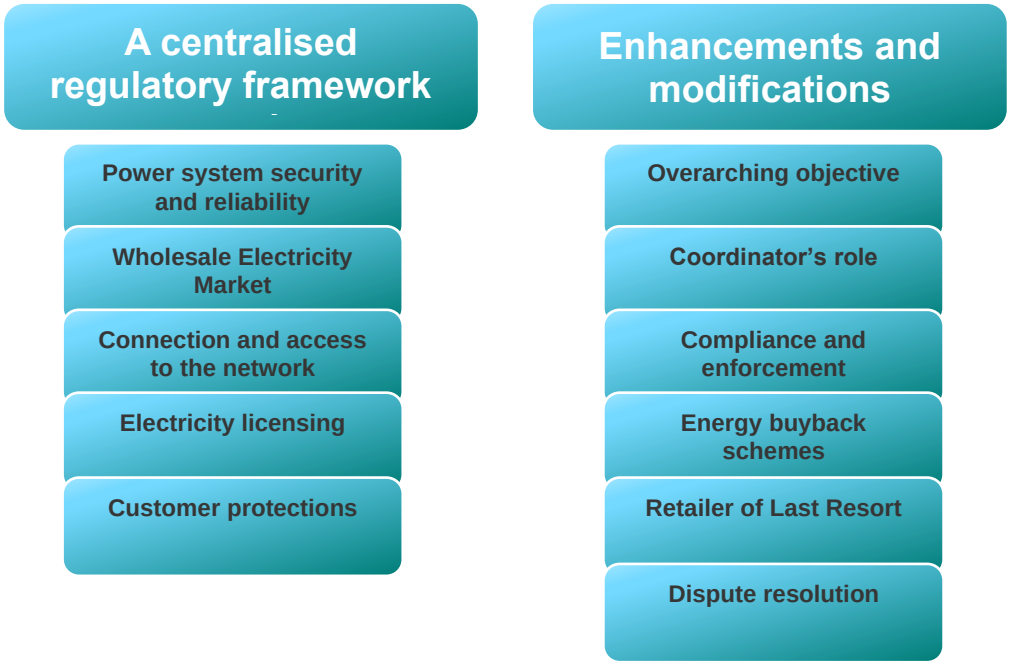
Extensive reform to energy sector governance arrangements is planned as part of this second stage. The objective is to create a regulatory framework that works to deliver outcomes that protect and advance the interests of energy consumers and that is responsive to the challenges and opportunities of the energy transformation now and into the future.

The Energy and Governance Legislation Reform project consists of two workstreams:

1. Development of a centralised regulatory framework to rationalise and consolidate the currently disparate regulatory arrangements into a more coherent framework that provides end-to-end governance of electricity supply and that supports dynamic change management.
2. Enhancements and modifications to the energy regulatory framework and abolishing, where practical, older and outdated arrangements, with a view to enhancing the resilience and responsiveness of the power system to present and emerging challenges.

Figure 1 below provides an overview of the reforms.

Figure 1: Overview of reforms



1. Introduction

1.1 Context

The Western Australian electricity sector is undergoing a rapid transformation underpinned by technological advances, new and innovative business models, and evolving consumer preferences. Low carbon and intermittent resources now make up an increasing share of the mix of generation technologies, and two-way flows of power are straining a linear supply system designed with large, transmission connected, synchronous machines in mind.

This transformation presents significant challenges to the continued security and reliability of supplies, challenges that are exacerbated in Western Australia due to our small, isolated power system being less able to withstand disturbances than larger interconnected systems, and because of the popularity of solar photovoltaic (PV) power systems with Western Australian customers. However, the transformation also presents a great opportunity to take advantage of the potential offered by digital technologies to harness customer energy devices and create a more flexible and resilient power system.

While the sector is experiencing a period of profound change, and some regulatory instruments have recently been extensively amended, many of the rules and practices governing the sector have remained relatively stagnant. This regulatory framework was designed for an era where large electricity generators located some distance from demand centres produced electricity, and a system of high voltage transmission power lines delivered that electricity to largely passive consumers via the low voltage distribution system to which the bulk of customers are connected.

Recognising that the regulation of the energy sector has not kept pace with technological and economic changes, the Western Australian Government approved the Energy Transformation Strategy in March 2019 and established the Energy Transformation Taskforce to oversee a two-year program of work that concluded in May 2021.

The Energy Transformation Strategy has made considerable progress in redesigning the electricity sector to embrace the transformation underway. This includes introducing new arrangements for the dispatch of generation, new system security services, setting out and commencing the actions required to integrate growing levels of distributed energy resources (DER) into the system, and improving access to the Western Power network.

However, the pace and complexity of the transformation has only continued to accelerate, meaning the reforms under the Energy Transformation Strategy to date are not sufficient to manage the emerging power system challenges. Further change is needed to amend aspects of the overall governance of the sector and address deficiencies that prevent the regime from responding quickly and effectively to the challenges and opportunities presented by the energy transformation.

1.2 The problem

A well-designed regulatory framework, including the governance and institutional arrangements within it, is fundamental to the efficient functioning of the electricity sector. If designed well, this framework will deliver change that is timely and effective and that protects and advances the interests of energy consumers into the future.

Presently, the various elements of the electricity supply chain in the South West Interconnected System (SWIS), including the production of electricity, the connection of loads and generation to the system (at both a commercial and retail scale), the provision of network services and the secure and reliable operation of the power system are subject to disparate, overlapping and, at times, inconsistent or conflicting regulatory regimes with differing institutional and governance frameworks. The details of those regimes are established through a myriad of subordinate legislative instruments, principally established under different parts of the *Electricity Industry Act 2004* (EI Act).

These various parts of the EI Act and the instruments made under them have a range of different objectives, decision-makers and administration processes, creating a fragmented regulatory framework that does not account for, or reasonably enable, their overall management and coordination. There are also deficiencies in the enabling powers of the EI Act that are impeding the evolution of the regulatory framework. This has several implications:

- **Change is uncoordinated**. Without a single organisation with overall responsibility for managing the process for evolving the framework, the development of new rules and amendments to existing rules occurs slowly and on an ad hoc basis rather than in a way that is consistent with, and advances, the Government's strategic vision and objectives for the sector in a coherent and systematic manner.
- **Unnecessary complexity**. The operation of a power system and energy market is a highly technical and complex area and this is reflected in the various instruments that regulate electricity supply in the SWIS. The complexity, however, is exacerbated by the fragmented nature of the framework with rules spread across many lengthy and complicated instruments with potential for duplication. This can make the regulatory regime difficult for participants to navigate or change, decreasing overall efficiency and creating barriers to entry and innovation.
- **Regulatory barriers**. Limitations in the current regulatory framework are making it increasingly difficult, and in some cases impossible, to develop adequate and coordinated regulatory responses to key issues (such as the increasing prevalence of DER and intermittent generation).

The consequences of doing nothing are significant. The benefits gained from the efforts of the Energy Transformation Strategy to overhaul the design and operation of the Wholesale Electricity Market (WEM) and to improve network access arrangements would slowly be eroded if the regulatory framework fails to keep up with the pace of development in the energy sector. At the same time, the opportunities presented by the transformation are at risk of slipping by as the challenges of safely managing the integration of DER into the power system become more difficult.

For example, large quantities of cheap, clean energy are being curtailed from time-to-time to manage power system security. This is due to regulatory barriers that restrict the deployment of new, innovative technologies and services that would help integrate variable renewables and build greater resilience in the power system. These same regulatory barriers are also stymying competition and innovation in the sector – the same technologies and services that can build flexibility into the power system will also provide consumers with greater choice while improving competitive outcomes.

The complexity of the regulatory framework and related governance arrangements also creates significant compliance costs for participants, with the burden falling more heavily on smaller participants. If this discourages less resourced parties from fully engaging with consultations and other relevant processes, it may result in a market design that remains static to the detriment of energy consumers.

The nature and size of the technological and regulatory changes expected over the next few years means that it is important for the regulatory framework to be robust enough to ensure that the interests of energy consumers are protected and promoted into the future. Otherwise, there is a risk that the existing institutional and regulatory arrangements lead to future decisions that detract from the long-term interests of consumers.

In a fast-changing environment, a regulatory framework that keeps up with the evolution of the electricity sector and that can respond swiftly and effectively to change is critical to minimise risk and maximise benefits to all energy users and market participants. Changes to governance arrangements and various enhancements and modifications to the regulatory regime will improve its ability to adjust to ongoing disruptive change in a coordinated fashion and facilitate engagement at a broader level.

1.3 Objectives of reform

The objective is to create a regulatory framework that works to deliver outcomes that protect and advance the interests of energy consumers through electricity supply services that are fair, secure and reliable, and affordable and sustainable.

This objective will be achieved by:

- developing a centralised regulatory framework that rationalises and consolidates the currently disparate regulatory arrangements into a more coherent framework that provides end-to-end governance of electricity supply and that supports dynamic change management; and
- enhancements and modifications to the energy regulatory framework and abolishing, where practical, older and outdated arrangements, with a view to enhancing the resilience and responsiveness of the power system to present and emerging challenges.

Successful implementation of the objective is intended to result in an energy regulatory framework that:

- is agile and responsive to the challenges and opportunities presented by the energy transformation, while also recognising the importance of a stable regulatory environment;
- evolves in a coordinated fashion in line with broader strategic priorities, with robust, timely, and transparent decision-making processes;
- reduces barriers to competition and innovation, facilitating the participation of flexible technologies to address risks resulting from the energy transformation; and
- makes it easier for industry participants to identify the rules that apply to them and understand what they mean.

1.4 Proposed reforms

The reforms will fall within one of two workstreams.

1. **The development of a single regulatory instrument currently intended to be titled the Energy Rules – Western Australia (ER-WA)**. This will be the new centralised regulatory framework that brings most matters regulated under the EI Act into a single piece of subsidiary legislation under the oversight of the Coordinator of Energy (Coordinator). The content of the instruments that will form the new ER-WA will be reviewed to rationalise and simplify them to make the regime more accessible and reduce administrative and compliance burden.
2. **Enhancements and modifications**. Other aspects of the energy regulatory framework that will not form part of the new ER-WA will be reviewed with the aim of enhancing and modernising these instruments. A review of historical and other energy related legislation will also be undertaken with a view to rationalising and abolishing elements that are no longer required (because they are outdated, for example).

Appendix B provides an overview of the proposed legislative changes.

The following matters will also be considered as the reforms above are progressed:

- Whether the content of the instruments to be included in the ER-WA is up-to-date, relevant, and applicable, and whether and how it may be improved.
- Whether there is scope to handle some elements of the instruments a little differently, for example, moving to a more outcomes-based approach where practical and retaining prescription where necessary.
- Whether and how the governance arrangements to apply to the ER-WA (and other non-ER-WA instruments) can be improved, for example, streamlining decision-making processes where practical.
- A transition model for the management of power system security and reliability that assures a smooth and continued operation of the WEM and that minimises costs for industry.

1.5 Purpose of this paper

This paper describes the key changes to primary legislation, provides an overview of the matters that will form part of the new ER-WA, and describes changes to other aspects of the energy regulatory framework. The purpose is to enable stakeholders to understand the nature of the reforms and why they are required and to invite comments on the proposal.

1.6 Scope and timing

This project is primarily concerned with delivering an enhanced regulatory framework governing electricity supply in the SWIS. Matters relating to gas are out of scope, except for customer protections.

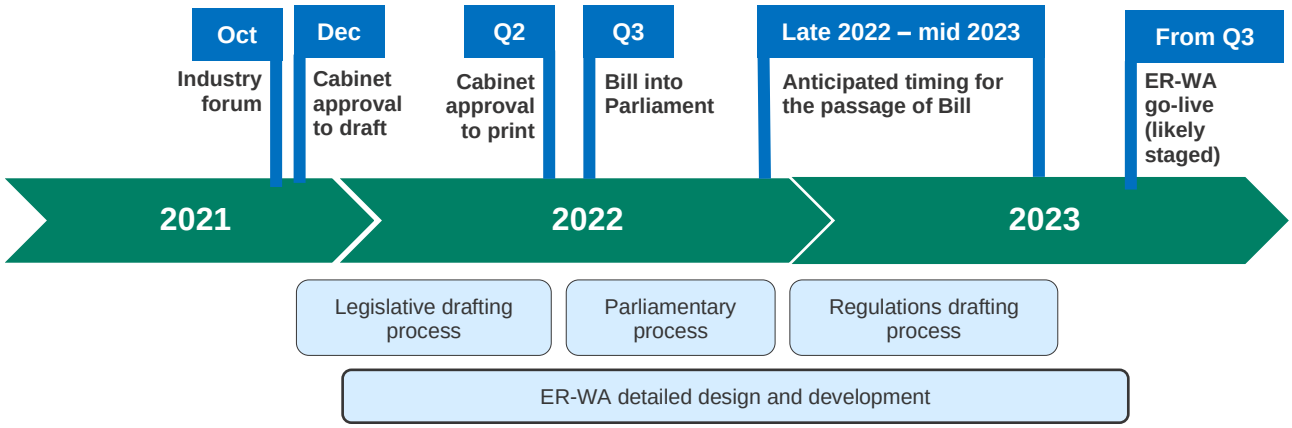
This project forms part of a program of legislative and regulatory reform being developed by Energy Policy WA, which is intended to be contained within a single package of legislative reforms. At a high level, the program includes the following areas.

- A centralised regulatory framework (the ER-WA).
- Power system security and reliability standards frameworks.
- Electricity distribution (including a framework for systems and market operations).
- Licensing, exemptions and Alternative Electricity Services.
- A unified customer protection framework.
- Other enhancements and modifications.

Appendix A provides an overview of the overall program, which is being developed collaboratively with various Energy Policy WA teams.

The process of simplifying, harmonising, and consolidating the existing instruments into a new centralised regulatory framework is a significant undertaking that is anticipated to take up to two years from start to finish. Stakeholders will be able to input into the design of the ER-WA as part of the detailed design and development phase, which is expected to commence in early 2022 in parallel with the commencement of legislative drafting that is intended to produce a Bill for consideration by the Western Australian Parliament in the second half of 2022.

Figure 2: Indicative timeline



1.7 Previous governance changes

From 1 July 2021, modified governance arrangements came into effect to clarify the roles of existing institutions in the energy sector with the intent of improving responsiveness to changes in the sector. These changes reflect a clarification by the Western Australian Government that:

- the Coordinator, supported by Energy Policy WA, will undertake policy, market development, strategic planning and overall coordination of the energy sector;
- the Economic Regulation Authority (ERA) will undertake economic regulation, price setting, licencing and compliance; and
- the Australian Energy Market Operator (AEMO) will undertake system operation, market operation and associated market administration (e.g. registration and settlement).

The updated framework recognises the need for strategic leadership and coordination and ensures that the sector can efficiently respond to the State's energy transformation challenges.

To support this, with effect from 1 July 2021:[1]

- responsibility for administration of the WEM Rules and Gas Services Information (GSI) Rules has been transferred from the Rule Change Panel to the Coordinator;
- responsibility for the new rules for the new Pilbara Networks Rules for the North West Interconnected System (NWIS) has been allocated to the Coordinator;
- responsibility for WEM and GSI market development functions, in particular some reviews of a policy or technical nature, has been transferred from the ERA to the Coordinator; and
- responsibility for the development of future, periodic Whole of System Plans (WOSP), and ongoing WEM and GSI market evolution has been allocated to the Coordinator.

1.8 Industry engagement and next steps

A virtual industry forum is scheduled for 20 October 2021. Comments on the proposed reforms are welcome and can be submitted in the following ways:

- Written submission – send your submission to energytransformation@energy.wa.gov.au
- Verbal discussion – contact energytransformation@energy.wa.gov.au to arrange a one-on-one discussion.
- Postal submission – send your submission to Energy Policy WA at Locked Bag 11, Cloisters Square, WA 6850.

Submissions close on 1 November 2021 at 5.00pm (WA).

A summary of the submissions will be published at the end of November 2021.

Information on this project will be published from time to time on the Energy Policy WA website. Please check the website link below to keep up to date.

https://www.wa.gov.au/government/document-collections/energy-and-governance-legislation-reform

Enquiries on this project can be directed to:

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1 https://www.wa.gov.au/government/publications/gazettal-of-energy-sector-governance-reforms

2. A centralised regulatory framework

2.1 Current arrangements

The regulatory framework that governs the electricity sector is spread across various pieces of legislation and regulations, which are used to set high-level objectives and principles, with more detailed rules, technical requirements, and commercial terms and conditions set out in subsidiary instruments like the WEM Rules, the Electricity Networks Access Code 2004 (Access Code) and other industry codes. Different governance frameworks support each of these arrangements, assigning functions and decision-making responsibilities to various institutions.

While it has worked reasonably well in the past, there is evidence that the arrangements for governing and changing the regulatory framework for the SWIS are no longer suitable to keep up with the pace of change in the electricity sector. This is creating risks to the continued safe, secure and reliable management of the power system whilst at the same time presenting barriers for new technologies and innovation in service delivery.

Risks to power system security and reliability

System security issues are increasing in the SWIS as the level of installed solar PV grows. While not a new issue, the challenges this is creating for power system security and reliability are being felt faster than predicted.

Unexpected power system faults that trip off large quantities of rooftop solar PV result in a net loss of generation for which reserves are not currently held. New low demand records have been set for each of the last six quarters in the SWIS, with minimum demand heading rapidly towards levels that put system security at risk. Older plants are experiencing unpredictable operating issues, raising questions about their reliability and the impacts of being operated outside of intended design parameters.

Backstop arrangements are available to manage system incidents; however, they have highly undesirable outcomes for consumers. For example, if the automatic under-frequency load-shedding protection scheme is activated, large numbers of customers could be affected by power outages.

The arrangements for planning and managing the power system need to evolve continually to minimise the likelihood of needing to rely on these back-stop arrangements, particularly as electricity supplies become more important to the decarbonisation of other sectors, including transport.

Barriers to innovation and competition

The effectiveness of the regulatory framework for granting licenses and exemptions for the supply of electricity to consumers is being challenged by a growth of innovative service offerings and new business models. These alternative electricity services include energy management products, financing arrangements, and new business models and involve the sale and supply of electricity by small participants under different arrangements to those provided by a ‘typical’ licensed retailer.

Requiring these smaller participants to obtain a licence would impose unnecessary and significant administrative and compliance obligations and costs on their operations. Granting them an exemption on the other hand creates risks for small-use electricity consumers who may assume the continued enjoyment of protections generally afforded by a traditional customer relationship with a licensed retailer. As the market for these alternative electricity services grows, more appropriate regulatory oversight is required.

Technological changes in the supply of electricity and evolving consumer preferences are complex interrelated factors that are placing stress on a regulatory framework that was designed for a more stable environment.

2.2 Assessment of the problem

The examples above demonstrate that the regulatory framework is not working to deliver outcomes that protect and advance the interests of energy consumers because it has not kept up with the pace of change in the sector. Without reform, regulatory barriers will continue to persist, and new ones will emerge, unless changes are made to allow the framework to adapt more rapidly and effectively to the transformation underway.

There are several deficiencies that prevent the framework from evolving quickly and effectively.

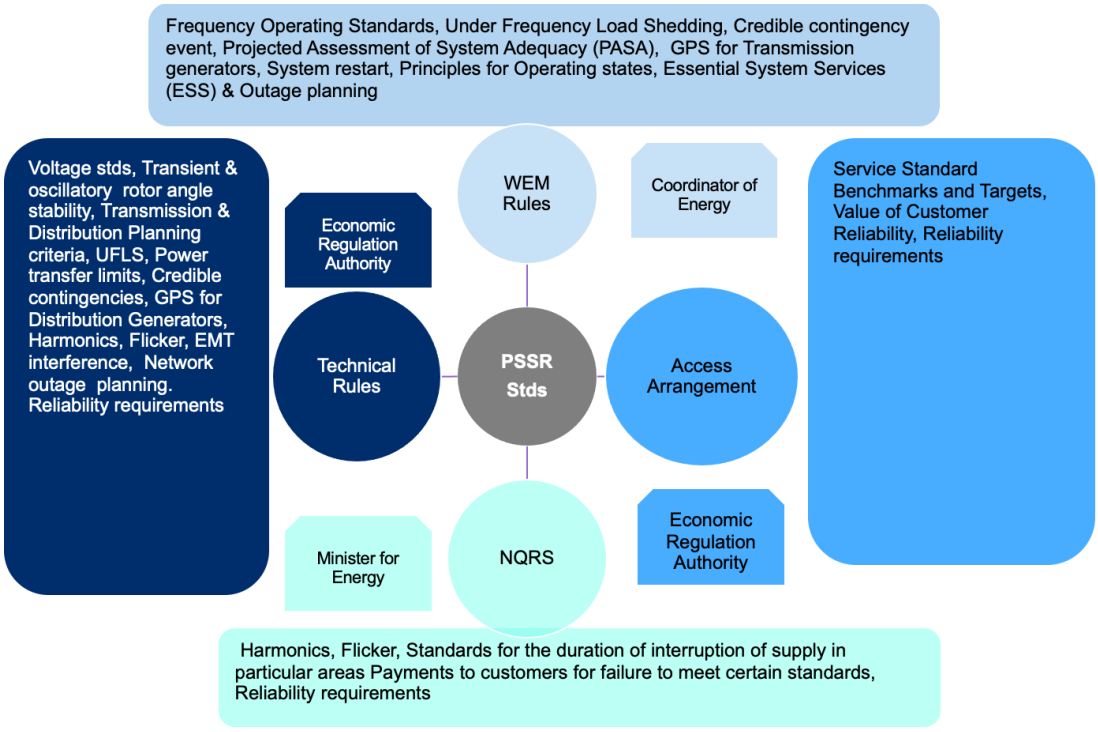
2.2.1 A fragmented and complex regulatory framework

Electricity supply for the SWIS is regulated through many pieces of primary legislation and subsidiary instruments that are lengthy and difficult to understand with different governance arrangements and change processes. It is a complex environment that is hard to navigate, with potential for duplication of effort and inefficiencies. The volume of content and disparate arrangements makes it difficult to address cross-cutting issues and embed change effectively across the regulatory framework, with even simple tidy ups and housekeeping to remove redundant and outdated material representing a significant undertaking.

The complexity of the regulatory arrangements may also discourage stakeholders from initiating and participating in rule changes (where they are able to do so under the governance arrangements applying to the instrument). This is because effective involvement in the change process would require significant technical expertise and resource commitments. Less resourced participants would be discouraged from fully engaging with consultations and relevant processes, with the current framework possibly evolving in a way that might promote the interests of certain categories of participant.

The fragmented nature of the regulatory framework is illustrated by the existing framework for power system security and reliability standards in Figure 3 below.

Figure 3: Framework for power system security and reliability standards



2.2.2 Lack of coordination and an overarching strategic direction

No single organisation is responsible for ensuring that the various instruments regulating electricity supply for the SWIS are updated in a timely and coordinated manner so that the regulatory framework adapts to change that promotes innovation or facilitates the energy transition. With the rapid pace of these developments and their impacts across the whole system, changes need to be timely, coordinated, and effective, to take advantage of the opportunities created for energy consumers while designed in a way that protects them.

Recent governance reforms that came into effect from 1 July 2021 have partly addressed this issue, giving the Coordinator greater responsibility and a coordinating role to develop the WEM and administer the WEM Rules change process.[2] Several deficiencies remain, however, as the fragmented nature of the framework makes it difficult to facilitate and deliver on the level of strategic change that is required to build greater resilience and flexibility in the sector. There is also a lack of overarching objectives for regulating the electricity sector. Instead, there are multiple instruments with different objectives.

Change is difficult without an overarching objective and strategic direction to help guide the evolution of the regulatory regime. As noted by the ERA, the decision-making process has been challenged by the implementation of more complex initiatives, such as the constrained access arrangements, where financial stakes are high and the allocation of costs and benefits could change substantially.[3]

2.2.3 Limitations in the regulatory framework

Deficiencies in the enabling powers of the EI Act are limiting the ability to evolve the regulatory framework and making it increasingly difficult, and sometimes impossible, to develop adequate and coordinated regulatory responses to key issues such as the increasing prevalence of DER and intermittent generation.

For example, the power system security and reliability framework was developed at a time when the system operator and market operator were separate entities. While both functions are now performed by AEMO, at present AEMO cannot be given functions under Part 8 of the EI Act which deal with network access. This means that AEMO cannot be given formal functions under Western Power's Technical Rules, despite the Technical Rules directly affecting system operation.

There is also the absence of any powers to prescribe standards and/or other matters and requirements relating to distribution connections. This is limiting the ability of the regulatory framework to adequately integrate the growing prevalence of DER into the network and the wider value chain, preventing Western Power and AEMO (and the broader market) from buying various DER services that would benefit the system and consumers. These limitations were identified in the DER Roadmap.[4]

2.3 Elements of the new framework

Achieving the reform objective requires rationalising the currently disparate energy regulatory arrangements into a single coherent and consistent framework and enhancing the capability of that framework to respond to the challenges presented by ongoing transformation of the sector.

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2 The changes also gave the Coordinator responsibility for administering the Gas Services Information Rules, development of Whole of System Plans, and for the new rules for the North West Interconnected System.

3 Report on the effectiveness of the Wholesale Electricity Market 2020 https://www.erawa.com.au/electricity/wholesale-electricity-market/annual-wholesale-electricity-market-effectiveness-reports

4 Available at https://www.brighterenergyfuture.wa.gov.au/distributed-energy-resources/

Regulatory gaps and barriers will be addressed as part of this work and, where practicable, rules will be simplified to make them easier to understand and redrafted to enable a more forward looking regulatory framework.

The benefits of increasing harmonisation of certain governance and rule change arrangements and improving coordination amongst the various energy market institutions are:

- A consistent and streamlined process for changing rules, underpinned by robust and transparent decision making, creating a framework that is better able to respond to change.
- A more timely and coordinated evolution of the regulatory framework, ensuring that the interests of energy consumers are protected and advanced.
- Rules that are simpler and easier to navigate, streamlining entry requirements and reducing compliance costs for participants, making it easier to engage with rules, participate in the market and to innovate for the benefit of consumers.

The rationalisation and consolidation of the power system security and reliability framework presents the most urgent need; however, there are other aspects of the energy regulatory framework that would also benefit from a similar approach to governance. These other matters indirectly contribute to an enhanced power system and have the added benefit of improving customer outcomes and will also be considered for inclusion in the ER-WA.

The following matters will form the basis of the new centralised regulatory framework.

2.3.1 Power system security and reliability

Standards relating to or affecting reliability and security of supply are spread across several legal instruments, primarily Western Power's Technical Rules, the WEM Rules, the Electricity Industry (Network Quality and Reliability of Supply) Code (NQRS Code), and the Access Code. There are two major deficiencies with this framework.

Firstly, inconsistencies between the various standards and gaps in their coverage have emerged over time. Fragmentation means that there are different processes and bodies responsible for managing change. The problem is made worse because none of the standards in the various instruments reflect an overarching, minimum standard for reliability and security that captures all generation and network requirements, and that balances the competing objectives of affordability against supply security and reliability.

Additionally, there are limitations, duplication and ambiguity in the roles and responsibilities of AEMO and Western Power in managing power system security and reliability, which does not allow for a consistent approach to the interpretation and development of standards or for the coordination of adequate response in this area.

Secondly, the standards are no longer fit-for-purpose to meet the fast, emerging changes to the power system characterised by inter-related risk factors such as frequent changes in weather patterns, changing consumption profiles, and decentralised generation of electricity. For example, there is an absence of a universal set of measurable targets, incentives, and reporting to account for both generation and network operations, particularly where they are inter-dependent.

Existing targets for reliability are themselves limited, with the instruments only considering the availability of network and market support services during system peaks and disturbances rather than under a broader set of system conditions, such as during low load conditions or circumstances where there is a high penetration of DER in a specific location.

Several initiatives to improve the security and reliability regulatory arrangements were implemented through the Energy Transformation Strategy.[5] However, a thorough review of the standards and the framework is needed given the existing problems with the standards, the ongoing changes in the power system, greater planning and operational complexity, and evolving consumer preferences. Two measures were endorsed by the Energy Transformation Taskforce as part of the ongoing evolution of the market.[6]

The first initiative is the establishment of a centralised end-to-end power system security and reliability framework governed by the Coordinator. This new framework will form part of the new ER-WA. Amendments to the EI Act will be made to provide for the various instruments that relate to security and reliability to be moved into the centralised framework. This includes:

- Instruments made under Part 8 of the EI Act, which relate to the provision of access to regulated electricity networks (the Access Code) and the various technical codes that are required for the purposes of access to services (such as Western Power's Technical Rules).
- Instruments made under section 39 of the EI Act, relating principally to codes made by the ERA and/or the Minister for Energy and including matters dealing with metering (Metering Code), customer transfers (the Customer Transfer Code), and the quality and reliability of electricity supply (NQRS Code).
- Instruments made under Part 9 of the EI Act, which provides for the WEM (and system operations) and the WEM Rules.
- Other instruments or requirements dealing with power system security and reliability standards, including the requirements contained in the *Electricity Act 1945* (section 25(1)(d)) that sets limits for power system "pressure" (voltage) and frequency.

The second initiative is the establishment of an advisory panel to the Coordinator on matters relating to security and reliability. The Reliability and Security Advisory Panel (RSAP) will consist of representatives from AEMO, Western Power, customer groups, and industry representatives. Its role will be to recommend new rules/standards, amendments to the existing standards, and to assess amendments requested by third parties. The RSAP will be able to undertake studies or seek the services of consultants to undertake technical and/or economic analyses, and importantly, engage with customers to understand their expectations in relation to, and willingness to pay for, quality and reliability of supply.

Other limitations in the framework will be addressed as part of this work. For example, existing limitations in the framework which prevent AEMO from being given formal functions under Western Power's Technical Rules will be addressed to improve and formalise coordination between the two entities and enhance the planning and operation of the power system.

Furthermore, the energy transformation is calling into question the suitability of current definitions of reliability and security that were developed for a time when a single vertically integrated utility was responsible for supplying power and maintaining the power system. Some work has been done on this subject under recent changes to the WEM Rules, but the EI Act remains unchanged since 2004. The EI Act's existing language may not adequately capture the increasing number of small customers that can participate in wholesale markets and offer network services. As the character of the power system evolves, it is also desirable to rethink how best to describe its proper operation.[7]

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5 These can be found here https://www.wa.gov.au/sites/default/files/2021-04/Power%20System%20Security%20and%20Reliability%20Standards%20Framework_0.pdf

6 Given the 2-3 year development period for the ER-WA, recent amendments to the WEM Rules established an interim 'Joint Agreement Framework' between Western Power and AEMO for specific power system security and reliability standards.

7 This issue was considered by CIGRE Working Group C1.27. See https://www.cigreaustralia.org.au/news/in-the-loop-news/the-future-of-reliability-wg-c1-27/

2.3.2 Electricity distribution

New forms of electricity supply and demand at the distribution level are driving the energy transformation, creating challenges in managing the power system but also providing opportunities to use these smaller, distribution connected devices to increase the flexibility of the power system. Developing the capability to leverage and coordinate customer-provided flexibility, as well as maximising the flexibility inherent within the network will be an important part of operating a more active distribution system. However, several regulatory barriers make it difficult for customers, Western Power, retailers and other service providers to take advantage of these opportunities.[8]

First, the requirements that provide for the connection and operation of electrical equipment and devices on the distribution system are mostly found in guidelines and manuals prepared by the network businesses that have limited regulatory status. They are also widely dispersed and found across various instruments.

Providing for a clear regulatory framework for distribution connection and consolidating existing requirements into the centralised regulatory framework will make it easier for industry participants to identify the regulatory requirements associated with connecting customers and their devices.[9] It will also enable the more robust and transparent change management process of the centralised regulatory framework to be applied to these requirements (including technical requirements and/or standards), ensuring that they keep up to date with changes across the sector.

Barriers to DER participation will be addressed as part of the work to consolidate the various regulatory requirements into the ER-WA. This includes addressing how these devices could participate in various wholesale market mechanisms and providing clear guidance on how to value the services provided by these devices.

Second, distribution networks were designed to ensure electricity flowed in a single direction to consumers. The two-way flows and greater activity on today's distribution network requires more active monitoring and control. Network users are increasingly able to provide services that deliver network and system security functions. To take advantage of this, the network operator (Western Power) must be able to dynamically manage the network and the assets connected to it. This requires a new framework to define and provide for the role of a distribution system operator (DSO) (and possibly distribution market operator, or DMO) and allow it to evolve to respond to the increasing prevalence of DER in the power system.[10]

The hallmarks of an enhanced DSO role will be the extent of visibility (especially real-time visibility) and access to control (especially remote control) of elements of the distribution system and facilities connected to it. The framework will enable boundaries to be set as to what a DSO should be permitted to do and what activities it may participate in.[11]

These changes are intended to clarify (but not alter) the nature of the relationship between the network operator, retailer, and customers at the distribution level, facilitating the implementation of

8 The DER Roadmap identified the full suite of regulatory and market barriers.

9 The current fragmentation led to the development of the Western Australian Service Installation Requirements (WASIR) (previously known as the WA Distribution Connections Manual), a comprehensive point of reference for industry and community to provide a clear understanding of the connection requirements where a consumer's installation is required to the distribution networks of Western Power and Horizon Power. It is not intended that the WASIR is simply duplicated in the ER-WA, but rather that the regulatory requirements underpinning the WASIR are themselves consolidated into a single point of reference.

10 The DER Roadmap lays out the steps to define the roles of a DSO and DMO and the requirements for integrating DER into electricity markets. A comprehensive pilot program, the DER Orchestration Pilot, is testing the incorporation of aggregated DER into the WEM.

11 Energy Policy WA released an issues paper in August 2020 on possible roles and responsibilities of the DSO. https://www.wa.gov.au/government/publications/issues-paper-released-distributed-energy-resources-orchestration-roles-and-responsibilities

the DER Roadmap actions and creating an efficient, coordinated, and economical system of electricity distribution that enhances competition and promotes innovation, and improves the overall flexibility and resilience of the power system.

2.3.3 Electricity licensing

The transformation of the energy sector is resulting in a growing range of innovative electricity retail services that involve the selling and management of electricity under arrangements that were not contemplated when the existing licensing framework under the EI Act was first conceived.

The existing licensing and exemption framework under the EI Act was established at a time when electricity supplies were for the most part centrally generated and supplied to consumers via the transmission and distribution networks under supply contracts with retailers. Licensing requirements applied to large network operators and retailers while exemptions existed mainly in relation to on-selling of electricity to sub-metered customers.

These categories and conditions do not align with new retail service offerings that cover energy management products, financing arrangements and new business models. These alternative electricity services (AES) could include solar power purchase agreements, peer to peer trading, embedded networks, electricity aggregation services and electric vehicle charging services. AES business models could incorporate the retailing, storage, aggregation, generation, and/or distribution of electricity, and may include a leasing or membership-based ownership arrangement.

This increase in AES options has led to a growing number of providers of these services seeking exemptions from licensing obligations, challenging the effectiveness of the current regulatory framework in delivering adequate customer protections. Deficiencies include an inability of the current exemption framework to provide effective dispute resolution arrangements and regulated customers protections for small use customers.

Proposed registration framework

Energy Policy WA has recommended that amendments to the EI Act are made to allow for categories of AES to be prescribed in regulations, supported by provisions from the Code of Conduct for the Supply of Electricity to Small Use Customers (the Electricity Customer Code) and other instruments.[12] These will be consolidated into the ER-WA. Obligations with respect to customer protections will be tailorable to accommodate new types of AES as the need arises. The framework will apply to providers of services to small-use customers (consuming less than 160 megawatt hours (MWh) per annum).[13]

A provider of prescribed AES services will have obligations including registration with the ERA as a code participant, information provision requirements and participation in the Energy Ombudsman Scheme. The ERA will be responsible for the administration of the registration framework, including reporting obligations, and for monitoring adherence to and enforcing compliance with framework requirements.

As it is expected that behind-the-meter generation and storage services will be the first AES to be prescribed, customer protection obligations developed for the draft Behind the Meter Code[14] will form the basis of foundation customer protection obligations for AES.

12 https://www.wa.gov.au/government/publications/tailoring-customer-protections-alternative-electricity-services-registration-framework

13 Final Recommendations Report is at: https://www.wa.gov.au/organisation/energy-policy-wa/review-of-licensing-and-exemption-regulatory-framework

14 Further information is at: https://www.wa.gov.au/organisation/energy-policy-wa/draft-code-of-practice-behind-the-meter-generation-and-storage-services

Other amendments to the licensing and exemptions framework

In addition to the AES regime, the electricity licensing framework (established by the EI Act) and the gas licensing framework (established by the *Energy Coordination Act 1994*) are also being updated to improve their efficiency. The proposed amendments will reduce compliance costs and regulatory burden for licensees while maintaining customer protections, improve consistency between the electricity and gas licensing regulatory frameworks, and streamline the ERA's administration of the energy licensing schemes.[15]

Responsibility for granting licensing exemptions will be transferred from the Governor (with administration by Energy Policy WA) to the ERA so that responsibility for granting licences and issuing licensing exemptions fall under the responsibility of one organisation.

2.3.4 Customer protections

Part 6 of the EI Act provides a head of power and administrative details for the Electricity Customer Code. The code is administered by the ERA and reviewed by a consultative committee.

The customer protections included in the Electricity Customer Code are replicated for small-use gas customers through the Gas Marketing Code of Conduct (the Gas Marketing Code), established under Part 2C of the *Energy Coordination Act 1994*, and the Compendium of Gas Customer Licence Obligations (the Compendium) developed and administered by the ERA[16].

Consolidating the Electricity Customer Code, Gas Marketing Code, and Compendium into a single customer protection framework would ensure that there is consistent treatment of and protections for energy consumers. It would reduce administrative and regulatory burden on the ERA and the consultative committees, and compliance costs and burdens for licensees would be minimised. Further, a single framework would clearly demonstrate any inconsistencies between the customer protections afforded the energy consumers.

Adherence to the customer code obligations would continue to be a condition of electricity and gas retail and distribution licences, and integrated regional electricity licences that include a retail and/or distribution element. The ERA would be responsible for monitoring and enforcing compliance with the customer code obligations.

Incorporating this unified customer protection framework into the ER-WA will ensure that it adapts to the energy transformation and evolves consistently with the broader energy regulatory framework, and ensure that existing protections are not eroded (particularly in a future with greater prevalence of DER). It is likely that a single consultative committee would be established to provide expert advice and assist the Coordinator with the review of customer protections and the Coordinator would have the discretion to determine the membership, constitution and procedures to ensure a broad representation of stakeholders on the consultative committee.

2.4 Not in scope

2.4.1 The Pilbara regime

The new Pilbara regime consists of the Pilbara Networks Rules (PNR) (relating to systems operations) and the Pilbara Networks Access Code (PNAC) (relating to network operation). The Pilbara regime will not be incorporated into the ER-WA. Instead, it is intended that the PNR and

15 Energy Policy WA will release a consultation paper on this matter – Legislative Amendments to Improve the Efficiency of the Energy Licensing Regime.

16 While the Electricity Customer Code regulates the supply and marketing of electricity to customers, the Gas Marketing Code only regulates the marketing of gas to customers, resulting in gaps in the level of protections offered to energy consumers between the two frameworks. Gaps in coverage are addressed through the Compendium, which is not subject to independent review.

PNAC will be brought together into a single subsidiary instrument to which the governance and institutional arrangements established for the PNR will apply. As far as practicable, the unified Pilbara regime is intended to have consistent governance arrangements to the ER-WA.

The decision not to consolidate the Pilbara regime into the ER-WA has the following consequences:

- There is a need to reconcile or perpetuate some of the differences between the subjects that the PNAC and PNR can deal with, with those that the WEM Rules and Access Code deal with.
- Accounting for the slightly different (expanded) approach to the treatment of certain matters that the WEM Rules may deal with under Part 9 of the EI Act compared to the PNR (for example, the treatment of immunities and that the subject matter for the PNR was not to include a market).
- The need to maintain links between some of the machinery of the Access Code and the PNAC (for example the coverage application process).
- As the language of Parts 8 and 9, and some other provisions, of the EI Act are consolidated into Part 9, some complementary changes may be made to Part 8A to avoid unnecessary discrepancies. Appropriate differences between the SWIS and Pilbara regimes will be retained.

While the development of the ER-WA will be used as an opportunity to address deficiencies and make general improvements to aspects of the regulatory framework for the SWIS, this is not the case for the Pilbara regime. As these instruments were only recently completed, the intention is to consolidate them as simply as possible and establish a common governance framework to enable the efficient and effective evolution of the arrangements over time.

2.5 Means of implementation

The creation of the centralised regulatory framework will require changes to primary legislation, principally the EI Act, to bring the matters identified in section 2.3 into a single subordinate regulatory instrument.

2.5.1 The new instrument

Two approaches were considered in determining how the ER-WA should be established.

Under the first approach, a new regulatory instrument that has the desired characteristics would be created and all other existing instruments would be folded into and transitioned across into this new instrument.

Under the second approach, an existing instrument that has the desired governance and institutional characteristics would be selected, the range and scope of the subject matter that could be dealt within this existing instrument expanded, and all other existing instruments would be folded into and transitioned across into this existing instrument.

The second approach is preferable. The WEM Rules have been identified as a suitable existing instrument with the desired set of governance and institutional arrangements for the following reasons:

- The governance arrangements of the WEM Rules give it a greater capacity to evolve in response to the challenges and demands of the rapidly changing electricity sector.
- Change to the WEM Rules can be driven by industry or other stakeholders through the existing rule change process and through the Market Advisory Committee.
- The WEM Rules have a “protected provisions” mechanism that prevents some rules from being changed unless first approved by the Minister for Energy. Typically, protected provisions are those that contain and apply the governance and institutional arrangements.

- The enabling framework under the EI Act allows the WEM Rules to confer functions on any person (as distinct from the Access Code, for example, which restricts the conferral of functions to certain entities such as the ERA and the Energy Disputes Arbitrator).
- The WEM Rules already establish a compliance and enforcement framework for Western Australia's wholesale electricity market, albeit one in which there is plenty of room for improvement, that can be made "fit for purpose" to apply to the ER-WA.

The establishment of the ER-WA will therefore involve the following:

- Expanding the current scope of Part 9 of the EI Act (dealing with matters related to the WEM) by creating new enabling provisions where necessary.
- Giving responsibility for developing and making amendments to the ER-WA to the Coordinator.
- Clarifying the functions to be performed by institutional entities under the ER-WA.
- Providing for the recovery of the costs of administering the ER-WA and providing for a fair, equitable, and administratively simple approach to cost recovery.
- Developing transitional provisions to bring the various matters currently dealt with in different parts of the EI Act into Part 9.
- Establishing new enabling powers to make rules for new matters where necessary and to consolidate and reconcile existing matters.
- Applying the "protected provisions" mechanism currently in the WEM Rules to the various instruments that will be transitioned into the WEM Rules.
- Providing for the establishment of advisory committees as a feature of the ER-WA framework (such as the Market Advisory Committee, the Customer Consultative Committee, and the RSAP).
- Civil penalties and reviewable decisions will continue, with the precise obligations and decisions to which they apply to be determined during detailed design.
- Disapply the tabling provisions of the *Interpretation Act 1984* but otherwise leaving the ER-WA with the status of subsidiary legislation for the purposes of that Act.

2.5.2 Rationalisation and simplification of existing content

Simply consolidating existing instruments would create a new instrument that itself is extremely lengthy and unwieldy, negating the intended benefits of reform. Consolidation of the various instruments into a centralised regulatory framework is therefore not enough on its own to deliver a streamlined regulatory framework and a more efficient change process.

Reforming the content of the various instruments will also be a necessary step to create an accessible and agile code system that is considerably easier for market participants to access, understand, and navigate.

The volume of content currently contained in the various instruments will be reduced through:

- Rationalisation to streamline undue detailed prescription and remove any irrelevant or outdated information to reduce the volume of content.

  Many years of overlaying and bolting new rules and processes onto legacy arrangements have created a cumbersome framework with many layers, contributing to information complexity and density. Content that is no longer up-to-date, relevant, or applicable will be removed or cleaned up to create a manageable and accessible regulatory regime to reduce administrative and compliance burden on participants.
- Simplification to translate regulatory requirements (where possible) from technical prescriptions and legalese into plain English and establishing outcome-based regulation into new rule design.

Creating a more simplified set of rules involves taking a less prescriptive approach to the drafting of rules where it makes sense to do so. Moving towards outcomes-based regulation (rather than detailed prescription) provides flexibility by allowing regulated parties to determine how best to implement rules. Not all aspects of the energy market and system will lend itself to this model and prescription will be retained where necessary.

3. Enhancements and modifications

The need for legislative amendment to create the new centralised regulatory framework presents an opportunity to consider enhancements and modifications to other aspects of the energy regulatory framework to ensure it is fit-for-purpose and capable of responding to the challenges presented by the transformation of the energy sector.

3.1 An overarching objective

Objectives play an important role in a regulatory framework. Amongst other matters, they provide guidance as to how the framework should evolve over time in response to changes in the broader environment, providing stability and predictability to the market in the midst of rapid change.

How an objective may be interpreted, including how potential trade-offs may be treated, can have a material influence on the certainty and predictability of the regulatory framework. Uncertainty about how an objective (or objectives) could be interpreted will increase the perception of regulatory risk and can arise where the drafting of the objective (or objectives) is not clear, or where there are competing objectives.

The EI Act is described as “an Act to govern the operation and regulation of the Western Australian electricity industry and for related purposes.” While there are objectives for several subordinate instruments under the EI Act (for example the objectives in the Access Code and the WEM Objectives contained in the EI Act and reproduced in the WEM Rules) there are no overarching objectives for the regulatory framework created by the EI Act.

A suitable overarching objective will be developed for inclusion in the EI Act to guide the development and operation of the ER-WA as well as other subordinate instruments made under the Act that will not form part of the new ER-WA. The precise wording of the overarching objective will be developed in consultation with industry, but it will include the protection and advancement of the interests of consumers (present and future) through energy services that are fair, secure and reliable, of appropriate quality, and affordable and sustainable, while also accounting for environmental considerations more broadly.

Secondary objectives (for example, the WEM Objectives) will not be retained in the new framework because of the potential for introducing confusion and uncertainty in the interpretation of the overarching objective. If necessary, specific guidance (or principles) to interpret how particular aspects of the regulatory framework will promote and advance the interests of consumers may be considered so long as it can be incorporated without creating uncertainty in the interpretation of the overarching objective.

The operation of the regulatory framework would also be enhanced by a requirement for rule changes to meet an explicit test (that is, how a rule change meets the overarching objective). The presence of a clear test against which rule changes are assessed would mean that rule changes are assessed and explained in a logical and methodical manner, which adds further to the clarity of new rules and rule changes and adding certainty and predictability to the regulatory regime and its long-term evolution.

This is similar to how the regime in the National Electricity Market operates, where the Australian Energy Market Commission (AEMC) is required to provide its reasoning on how it interprets the National Electricity Objective and how rule changes promote it (or not as the case may be). The commentary provided by the AEMC as part of this process improves the certainty and predictability of the regulatory framework and assists with the subsequent interpretation and application of rules because it sheds light on the AEMC’s interpretation of the objective. This in turn means that an interpretation exists, first, of how a specific rule promotes the objective, but also the AEMC has sought to clarify how it interprets the National Electricity Objective more generally.

3.2 Enhancing the Coordinator's role

A review of the role and functions of the Coordinator will be undertaken to ensure that the enabling powers of, and provision of resources for, the Coordinator are able to accommodate its additional policy, rulemaking, and market development functions, particularly in relation to its roles and responsibilities under the ER-WA.

The intended changes will also amend responsibilities under the EI Act for undertaking certain reviews of a technical nature including, for example:

- Section 39A of the EI Act, which requires the ERA to carry out a review of reliability standards that apply to Horizon Power. The ERA has only reported on this issue once in 2008.[17]
- Section 128 of the EI Act, which requires the ERA to carry out a three-yearly review of the effectiveness of the operation of the WEM. The Coordinator is now responsible for conducting an annual review of the effectiveness of the WEM.
- Section 111 of the EI Act, which requires the Minister for Energy to carry out a review of the Access Code and requires the ERA to call for public comment on the review. It is understood that a review under section 111 has never been undertaken by the Minister.
- Section 120ZG of the new Part 8A, which requires the ERA to undertake five yearly reviews of the operation of the arrangements established for the Pilbara.

3.3 Improving compliance and enforcement

The ERA is responsible for the administration of the electricity licensing regime. A review of its enforcement and compliance powers is needed to ensure it can effectively carry out its role. This is because the powers currently available to the ERA under the EI Act (section 32) have several drawbacks that substantially diminish their effectiveness. For example, the ERA has the power to grant licences but does not have the power to cancel them (with this power resting currently with the Governor).

The review will consider granting the ERA compliance and enforcement powers that are similar to those granted to the Australian Energy Regulator (AER) under the national regime.[18] Those powers could include the following.

- A requirement for licensees to provide the ERA with any information that the ERA considers reasonable for it to carry out its responsibilities.
- A power to direct a licensed/registered participant who is contravening their obligations to show cause as to why their licence or registration should not be revoked and/or to rectify the contravention.
- An ability to impose enforceable undertakings if the contravention/s are not rectified.
- An ability to recover the costs associated with imposed penalties.
- A power to suspend (and possibly revoke) the registration of a participant should they contravene a requirement of the licensing/registration framework.

17 See this paper: https://www.erawa.com.au/cproot/6706/2/20080702%20Discussion%20Paper%20-%20Review%20of%20Horizon%20Powers%20Service%20Standards.pdf

18 The AER has a range of general information gathering powers (section 28 National Energy Law). Those powers were recently expanded. Central to the expanded powers was the ability for the AER to compel or summon a person to appear before it and give information or evidence or produce a document. See part 3 of the Explanatory Note: https://energyministers.gov.au/publications/aer-national-energy-laws-enforcement-and-penalties-framework-consultation-package

The review will also consider enhancements to the civil penalty regime under the EI Act to move towards a more National Energy Law style regime, including providing for the ERA to issue lower-level infringements directly (without the need to go through the administrative dispute process).

3.4 Energy buyback schemes

The current regulatory framework for the existing Distributed Energy Buyback Scheme (DEBS) and the Renewable Energy Buyback Scheme (REBS) is administratively cumbersome, being established as an outgrowth of the licensing regime and exercise of the Minister for Energy's powers to direct an electricity corporation (established under the *Electricity Corporations Act 2005*).

Enhancements to this framework are proposed and new enabling powers to make regulations that will explicitly require the electricity corporations (the Government Trading Enterprises) to purchase distributed energy and/or small-scale renewable resources from a small-use customer or other classes of customer that may be prescribed from time to time.

The enabling provisions would allow buyback schemes to be addressed in regulations in their own right, rather than as an outgrowth of, or something added to, a licensing regime that is largely concerned with the sale of electricity by retailers to end use customers. The enabling powers would specifically allow buyback regulations to deal with the subject matter of the schemes (that is, to provide for the purchase of that electricity on terms and conditions approved by the Minister for Energy (for price) and by the Coordinator (for all other arrangements)).

To ensure continuity for existing eligible customers, transitional provisions would be established to treat the existing DEBS and REBS schemes as being established / validated in accordance with the new provisions. That is, any contract entered into by an electricity corporation under the current or historical DEBS or REBS schemes would be taken to have been entered into in accordance with obligations under regulations made under the new enabling provisions.

3.5 Retailer of Last Resort Scheme

Amendments are proposed to the EI Act and the *Energy Coordination Act 1994* to improve the existing frameworks that provide for a Retailer of Last Resort (ROLR) Scheme for the supply electricity and gas. Primarily, there are legislative requirements that limit the flexibility of the schemes and its ability to respond quickly and dynamically to a retailer's failure, particularly if the retailer supplies into both the electricity and gas markets. Less detail in primary legislation would allow for more flexibility to respond with bespoke arrangements based on the circumstances of an individual retailer failure.

3.6 Dispute resolution framework

Western Australia's current dispute resolution framework for energy market participants consists of two main elements, both established under the *Energy Arbitration and Review Act 1998*:

- the Energy Disputes Arbitrator (Arbitrator); and
- the Electricity Review Board (Board)

The Arbitrator is responsible for arbitrating disputes between energy industry participants as well as providing financial and administrative support to the Board when constituted. The Board is responsible for reviewing certain decisions by the ERA or the Minister for Energy relating to electricity licences, standard form contracts, network coverage and access as well as certain determinations made by the AEMO.

Gas and electricity industry participants have a regulatory obligation to fund the Arbitrator's standing costs, currently $55,000 per year, despite limited use of the Arbitrator since its establishment in 1998.

In view of the administrative complexity and cost to industry of the existing regime, abolishing the Arbitrator's statutory position and referring arbitration in all State-based energy legislation to private arbitration is considered a more cost-effective alternative. Under this proposal, standing costs would be abolished and parties to a dispute would be required to pay for arbitration only if a dispute arises.

It is proposed that the Board's functions be transferred to the State Administrative Tribunal, a move consistent with the machinery of government reforms under which the Tribunal was established. Such a transfer of the roles of the Arbitrator and Board will require:

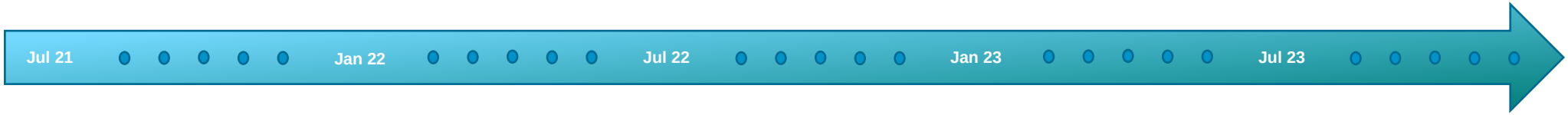
- the repeal of the *Energy Arbitration and Review Act 1998*; and
- amendments to all legislative instruments that confer responsibilities to the Arbitrator or the Review Board.
    - Where applicable, the amended instruments will need to refer to the *Commercial Arbitration Act 2012* or the State Administrative Tribunal.

3.7 Other matters

The following enhancements to the energy legislative framework will also be considered:

- A review of historical energy related legislation with a view to rationalising those areas which are no longer used or required. The key pieces of legislation to be reviewed include the *Electricity Act 1945* and the *Energy Operators (Powers) Act 1979*.
- A review of Horizon Power's ability to provide standalone power systems for the purposes of replacing existing electricity infrastructure in areas outside of the covered NWIS.
- A review of the change management frameworks for the *Electricity Corporations Act 2005* and its subordinate instruments. This is required to identify areas of improvement, including the alignment of change processes and the potential to amalgamate instruments.
- A review of the framework for emergency management to manage electricity supply emergencies, with a view to developing a more responsive arrangement that would allow the network and system operator to act in real time and in a more coordinated and responsive manner.
- Contestability orders under the section 54 of the *Electricity Corporations Act 2005* will be reviewed with a view to enabling orders to be made on the basis of supply points. The current position is that it is a customer who is contestable not a supply point, meaning that if a customer consumes more than 50 MWh per annum at a supply point, then that customer is contestable at each of its supply points, even if its consumption is less at its other supply points.

Appendix A. Energy and Governance Legislation Reform – indicative timetable



Energy Rules – Western Australia (ER-WA)

Contact: Ashwin.raj@energy.wa.gov.au https://www.wa.gov.au/government/document-collections/energy-and-governance-legislation-reform

- Prepare Drafting Instructions → Cabinet approval to draft
- Draft Amendment Bill → Introduce Bill into Parliament
- Parliamentary process → Bill passed (Subject to Parliamentary processes)
- Planning and high-level design → Detailed design and development of the Energy Rules - WA (with likely staged implementation from mid-2023)

Power system security and reliability

Contact: energymarkets@energy.wa.gov.au https://www.wa.gov.au/organisation/energy-policy-wa/energy-rules-and-procedures

- Consolidate regulatory framework → Identify and address gaps → Implementation

Electricity distribution (including a framework for systems and market operations)

Contact: Aden.barker@energy.wa.gov.au https://www.brighterenergyfuture.wa.gov.au

- Develop and publish defined DSO and DMO
- Develop and finalise DER / WEM integration policy and rules in preparation for DSO and DMO go-live
- Consolidate regulatory framework → Identify and address gaps → Implementation

Licensing, exemptions, and Alternative Electricity Services

Contact: Matthew.martin@energy.wa.gov.au https://www.wa.gov.au/organisation/energy-policy-wa/review-of-licensing-and-exemption-regulatory-framework

- Implement administrative improvements to the licensing regime and transfer responsibility for exemptions to the ERA
- Design, develop and implement a new framework for regulating AES
- Draft regulations for AES
- AES for behind the meter services
- AES for embedded networks
- AES for microgrids

A unified customer protection framework

Contact: Matthew.martin@energy.wa.go.au

- ERA review of the Electricity Customer Code → Integration of the unified customer protection framework into the ER-WA

Enhancements, modifications, and new features

Contact: Ashwin.raj@energy.wa.gov.au https://www.wa.gov.au/government/document-collections/energy-and-governance-legislation-reform

- Planning and high-level → Detailed design → Implementation

Appendix B. Proposed legislative changes

B.1 Implementation of the Energy Rules – Western Australia

The principal legislative means by which the Energy Rules – Western Australia (ER-WA) is intended to be established is through expansion of the scope of subjects that the existing market rules created under Part 9 of the Electricity Industry Act 2004 (the EI Act) may deal with.

The intended result is that the revamped ER-WA would:

- continue to deal with the establishment and operation of the wholesale electricity market and operation of the South West Interconnected System (SWIS);
- takeover or subsume matters that are currently addressed in various subordinate legislative instruments established elsewhere in the EI Act;
- include enhanced capability to respond to the challenges presented by the transforming electricity sector, particularly in relation to distributed energy resources (DER); and
- in general, use and apply the institutional and governance framework of the existing wholesale electricity market rules (other institutional and governance arrangements currently applying across the sector are intended to be abolished).

Transitional provisions will be developed to 'migrate' subordinate instruments (including, for example, various codes established under Part 2, Part 6, and Part 8 of the EI Act) to the new framework, giving them existence under the new ER-WA.

The subordinate instruments being considered for inclusion in the new ER-WA are:

1. All codes made under Part 2, s39 of the EI Act. These are notionally Economic Regulation Authority (ERA) administered codes but in practice codes mostly made by the Minister including, for example:
    - the Metering Code;
    - the Customer Transfer Code; and
    - the Network Quality and Reliability of Supply Code.
2. the Code of Conduct for Supply of Electricity to Small Use Customers made under Part 6 of the EI Act, the Gas Marketing Code of Conduct made under Part 2C of the *Energy Coordination Act 1994*, and the Compendium of Gas Customer Licence Obligations; and
3. the Energy Networks Access Code 2004 made under Part 8.

The ability of the proposed ER-WA to respond to the challenges of DER will be enhanced through, among other measures, enabling the ER-WA to deal with matters such as:

- the distribution of electricity by a distributor to its customers;
- connection of customers to an electricity distribution system (such as a network grid);
- the creation and functions of a separate distribution system operator and/or a separate distribution market operator; and
- connection of embedded generating units (such as solar panels) to an electricity distribution system, including equipment standards and requirements.

Current and ongoing work to establish a regime for licensing and imposing fit-for-purpose obligations on new energy service providers will also form part of this proposed legislative reform package. This includes allocation of a complete set of functions for the ERA to issue licences and exemptions and enforce compliance with the licensing regime (including exemptions). It will encompass the work currently under way in respect of the Alternative Electricity Services regime and the proposed Behind the Meter Code.

B.2 Related legislative changes

To facilitate the objectives of the governance reforms, a number of other related changes to the EI Act and other principal legislation will be considered. These changes are intended to include:

- transfer of certain review functions currently undertaken by the Minister of Energy and the ERA to the Coordinator of Energy (Coordinator);
- enhancement of the capability for non-Government funding of bodies performing institutional and governance related functions under the ER-WA, and of the Coordinator's ability and resources to perform those functions;
- constitution of the Distributed Energy Buyback Scheme (DEBS) as a specifically identified matter that can be addressed by the ER-WA (DEBS has superseded the Renewable Energy Buyback Scheme);
- enhancement of the powers of the ERA to enforce compliance with the new framework, including:
  - conferral of information gathering powers on the ERA modelled on those currently enjoyed by the Australian Energy Regulator;
  - clarification of the scope of the ERA's enforcement responsibilities; and
  - greater flexibility in the setting of penalties, modelled again on those available to the Australian Energy Regulator who can, for example, in an appropriate circumstance, impose a penalty on a person found to be in contravention that is determined by reference to that person's turnover or revenue;
- abolition of the *Energy Arbitration and Review Act 1998*, including:
  - transfer of the Electricity Review Board's functions to the State Administrative Tribunal; and
  - access disputes currently heard by the Energy Arbitrator to instead be resolved by private arbitration.
- amendment (and potentially abolition) of the *Electricity Act 1945* including modernisation of voltage requirements to enable a high DER future;
- amendment of Part 8A of the EI Act to allow the Pilbara Networks Rules and the Pilbara Networks Access Code to be amalgamated into a single instrument, to keep in step with the ER-WA (where appropriate); and
- consequential amendments to related instruments including the *Energy Coordination Act 1994* to update the functions of regulatory bodies including the Coordinator and Director Energy Safety in light of the energy transformation, and other associated amendments.

As part of this reform, Energy Policy WA will consider the need for amendments to the *Energy Operators (Powers) Act 1979*, including:

- modernisation and simplification of the powers conferred on the Government owned electricity corporations under the Act, including the powers to resume land;
- rationalisation of powers to regulate electricity pricing under the Act with a similar power that already exists under the EI Act;
- modernisation of the emergency management regime under the Act; and
- abolition of outdated and redundant provisions.

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We're working for Western Australia.