



SUBMISSION TO ENERGY POLICY WESTERN AUSTRALIA

Consultation Paper: Energy and Governance Legislation Reform

1 November 2021

Executive Summary

Matter	Energy and governance legislation reform project.
Context	<p>The Western Australian Government has commenced the second stage of its Energy Transformation Strategy to meet its objective 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.</p> <p>Extensive electricity regulatory reform is planned as part of this second stage. The intent 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 current and future the energy transformation challenges and opportunities.</p>
Scope	<p>Establishment of Western Australian electricity rules (ER-WA) via:</p> <ul style="list-style-type: none">• Development of a centralised regulatory framework that consolidates specific energy regulation into a centralised framework; and• Enhancement, modification, and rationalisation of specific energy regulation.
Key issues	<p>From Synergy's perspective:</p> <ol style="list-style-type: none">1. Effective stakeholder engagement is fundamental to the success of the ER-WA. There should be a focus on face-to-face engagement and co-development with key stakeholders especially those who will be required to comply with ER-WA requirements.2. Synergy supports Energy Policy Western Australia's (EPWA) preliminary ER-WA objectives and is keen to work with EPWA and other stakeholders to further refine them. Synergy expects the concept of "fair" will apply equally to consumers and market participants and the concept of "sustainable" will include energy market viability. Synergy also expects the concept of "efficient" to be included as an objective criterion.3. Transparent ER-WA design principles should be developed early up front that guide decisions in terms of what enhancements and modifications are to be made.4. Clarity is sought as to how the ER-WA is to be designed, developed and implemented in parallel with changes to a range of existing regulatory instruments that are currently underway.5. Legacy generation plants play a vital role in maintaining power system security and reliability and will likely continue to play a critical role in the new market. The ER-WA design needs to recognise the WEM reforms and ensure it has sufficient flexibility to recognise, accommodate and efficiently regulate different generation and loads specifically newly emerging technology.6. As part of the move to the ER-WA, existing regulatory arrangements should be assessed not only in terms of application to new service offerings and new business models but also existing or traditional supply models.7. The agency responsible for ER-WA should be adequately resourced, experienced, funded and prioritised to undertake the ER-WA central administration role.

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8. Synergy supports the proposal to establish a Reliability and Security Advisory Panel (**RASAP**). Care will need to be taken that the RASAP does not duplicate the efforts of existing committees such as the Market Advisory Committee or Technical Rules Committee.
 9. The Western Australian Service Installation Requirements should form part of the existing Technical Rules and hence form part of the ER-WA once enacted.
 10. The Consultation Paper suggests an intent to enable the Distribution System Operator (**DSO**) to remotely control assets connected to the distribution network. While there is likely some instances where this ability to control might be appropriate to protect the network, there is also a risk of DSO actions duplicating or undermining the role of aggregators. The ER-WA should not give the DSO the ability to control distribution-connected assets in way that impedes on the ability of aggregators to carry out the provision of network and market services via orchestrated DER assets.
 11. Synergy agrees the Economic Regulation Authority (**ERA**) should be given the function of administering and regulating alternative electricity providers and the electricity licence exemption framework.
 12. Alternative electricity providers should be subject to market registration and pay their fair share of market costs and fees to ensure these providers are not cross subsidised by existing market participants.
 13. Synergy supports a consolidated energy code applicable to licensed electricity and gas retailers and distributors but clarity is needed as to how the 'behind the meter code' applicable to alternative electricity providers is to be dealt with under the ER-WA.
 14. Consideration should be given to role clarity between the Coordinator of Energy (**COE**) and other statutory roles such as the ERA and the Australian Energy Market Operator (**AEMO**) to ensure there is no regulatory duplication or overlap. Synergy advocates the ER-WA specifying the matters the COE must have regard to in the performance of their ER-WA statutory functions.
 15. Synergy considers inclusion of regulated energy buyback schemes in the ER-WA to be appropriate given the Rules will deal with small use customer service standards and protections. In doing so, the application of current buyback arrangements should be reviewed.
 16. Synergy considers inclusion of retailer of last resort arrangements in the ER-WA to be appropriate given the ER-WA will deal with small use customer service standards and protections. The ER-WA applicable to the supplier of last resort should provide flexibility in terms of solution delivery and be outcome based given the unpredictability and uncertainty of any such future event.
 17. Synergy seeks visibility on the timeframe, scope and stakeholder engagement to review the Electricity Act 1945, the Energy Operators (Powers) Act 1979 and the change management frameworks within the Electricity Corporations Act 2005 and expresses a keen interest in participating in that review.

The above matters are dealt with in more detail in this submission.

1. Introduction

1.1 Context

Synergy welcomes the opportunity to respond to EPWA's "Energy and Governance Legislation Reform Consultation Paper October 2021" (**Consultation Paper**). The proposed regulatory reforms to establish the ER-WA are material, wide ranging and will have significant ramifications to existing and new market participants, as well as regulatory agencies. The proposed timeframe to design, develop, legislate and implement the new centralised framework is tight and will be undertaken at the same time industry is considering proposed changes to a range of regulatory instruments including networks access, customer protection and market operation.

Synergy is the most regulated entity in the Western Australian electricity market and has extensive experience in regulatory design, development, change management, market participation and compliance with regulated activities in the State.

Synergy supports EPWA's proposal to establish a rationalised and enhanced ER-WA that covers:

- WEM operation
- Network access
- Licensing, registration and exemption
- Customer protection
- Customer transfer
- Metering
- Power system security and reliability
- Technical regulation.

Synergy provides this submission to assist EPWA in developing the ER-WA. Synergy's comments follow the sequence of EPWA's Consultation Paper. Throughout this submission, there is a common theme relating to stakeholder engagement.

Effective stakeholder engagement will be fundamental to achieving the ER-WA objectives specified in section 1.3 of the Consultation Paper. All key energy stakeholders, particularly those who will be subject to the new regulatory requirements, should be given the opportunity to continuously participate in the ER-WA design, development and implementation stages throughout the proposed two-year work program. In addition, stakeholders should be provided with sufficient detail and time to understand how the proposed regulatory design will be undertaken.

Energy market participants value certainty. ER-WA implementation will inevitably bring uncertainty that will create market risk. In addition, market participants will need to bear the cost of diverting resources from business activities towards participating and supporting the reform activities. From a market participant's perspective, the risk of uncertainty can be mitigated by industry being closely involved in the

ER-WA creation. The extent to which market participants engage in the reform process will likely depend on how their views or concerns are considered by EPWA.

From Synergy's perspective, the characteristics of good engagement are:

- Up front transparency on the engagement process to be followed during the regulatory design, development and implementation stages
- Accessible and inclusive engagement that provides stakeholders with multiple opportunities for input. For example, there should not be excessive reliance on written submissions. Informal meetings should be encouraged with market participants who can share their practical experience in operationalising regulatory changes
- Realistic timeframes for stakeholders to schedule resources, participate in regulatory forums and provide input and feedback
- Decision making transparency on how decisions are made including stakeholder feedback on how their input informed a decision
- Co-creation and co-development in the delivery of options, solutions and recommendations opposed to outcomes being pre-determined and presented to stakeholders.

1.2 The problem

Synergy generally concurs the existence of multiple regulatory regimes and governance frameworks can result in uncoordinated change, leading to slow and ad-hoc development of new rules and amendments to existing rules. From a market participant's perspective Synergy sees efficiency gains from having a consolidated set of specific market rules.

Synergy's experience with the existing regulatory framework has not been as problematic as suggested by the Consultation Paper. Synergy notes consolidating various regulatory instruments into a single set of rules is not without market participant risk¹ in terms of:

- Design
- Implementation
- Administration
- Compliance
- Enforcement
- Market participant cost and financial exposure.

To mitigate these risks and given the magnitude of the task to consolidate the various regulatory instruments into one it is essential that market participants co-develop the new arrangements with the state government through an effective engagement framework to ensure the changes are made with industry and not to

¹ In addition, centralised frameworks have the risk of being less agile than de-centralised frameworks but the benefit of improved coordination if sufficiently the frameworks are sufficiently funded and resourced.

industry. Synergy is supportive of EPWA's proposal to establish (or continue²) a range of specific stakeholder engagement forums for the key regulatory matters the subject of the ER-WA. These working forums should be established as a priority so that they can assist with the ER-WA design and not be established post ER-WA implementation.

1.3 Reform objectives

The Electricity Industry Act 2004 will be amended to include an overarching objective that will guide ER-WA (and other subordinate legislation) development, operation and amendment. The Consultation Paper advises 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.

The Consultation Paper states the overarching objective aims to deliver four key outcomes:

- Agile and responsive regulation
- Coordinated and transparent change management
- Reduce barriers to competition and innovation
- Ease of understanding and compliance.

Synergy supports EPWA's preliminary ER-WA objectives and is keen to work with EPWA and other stakeholders to further refine them. For example, Synergy expects the concept of "fair" will apply equally to consumers and market participants and the concept of "sustainable" will include energy market viability. Synergy also expects the concept of "efficient" to be included as an objective criterion. This is important to ensure ER-WA outcomes do not inadvertently result in material financial cost or regulatory burden for market participants and the need for regulatory change is evidence based and quantifiable. This includes designing a framework that gives regard to the cost of compliance and the administrative burden of compliance.

1.4 Proposed reforms

The ER-WA will create a new centralised framework that brings several matters currently regulated under the Electricity Industry Act 2004 into a single piece of subsidiary legislation under the oversight of the COE. Accordingly, it will be very important that the ER-WA provides transparent role clarity in terms of the functions and jurisdiction of the:

- COE
- Economic Regulation Authority
- AEMO
- Energy and Water Ombudsman

² Such as the Market Advisory, Technical Rules or the Electricity Code Consultative Committees.

- Energy Safety.

With respect to identifying required enhancements and modifications to the various existing regulatory instruments that are to be consolidated into the ER-WA, Synergy advocates EPWA, with market participant input, establishes transparent design principles that guide decisions in terms of what enhancements and modifications are to be made. In that regard COAG's best practice regulation guidelines³ are suggested as a useful reference point:

1. There should be a case for action before addressing a problem. For example, regulatory approaches in the NEM should not automatically be adopted in Western Australia based solely on a desire for jurisdictional consistency
2. A range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches and their benefits and costs assessed
3. Identifying and adopting the regulatory option that generates the greatest net benefit for the community. This concept includes industry viability as it is not always in the long-term interest of consumers for market participants to exit the energy market
4. In accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
 - the benefits of the restrictions to the community outweigh the costs, and
 - the objectives of the regulation can only be achieved by restricting competition.
5. Providing effective guidance to relevant regulators and regulated parties to ensure that the policy intent and expected compliance requirements of the regulation are clear and consistently applied in an even-handed manner. For example, outcome-based regulation should be adopted wherever possible opposed to regulation that is excessively prescriptive, complex or impenetrable, or designed to limit the activities of a single market participant
6. Regulation should be relevant and effective over time. Redundant regulation should be retired
7. Effective consultation should occur with affected key stakeholders at each stage of the regulation life cycle. This is important as market participants need to establish compliance frameworks including system changes, procedural changes, education and training to comply with regulatory requirements with such costs ultimately borne by consumers
8. Regulatory intervention should be effective and proportional to the issue being addressed. For example, where there has been very recent regulatory change in WA there should not be a need to revisit those changes as part of ER-WA establishment unless there are compelling reasons for doing so. Examples of recent regulatory changes include generator performance standards being transferred from the Technical Rules into the WEM Rules and the two sets of Electricity Networks Access Code amendments in 2021.

³ <https://www.pmc.gov.au/ria-mooc/coag/principles-best-practice-regulation>

1.5 Consultation Paper purpose

No comment.

1.6 Scope and timing

Given the ER-WA's proposed breadth of regulatory coverage and the need to change primary legislation, specifically the Electricity Industry Act 2004, Synergy notes the ER-WA's implementation timeframe is tight. Synergy is committed to working with EPWA and other stakeholders collaboratively in the ER-WA design, development and implementation.

1.7 Previous governance changes and

1.8 Industry engagement and next steps

Synergy looks forward to receiving details of EPWA's engagement model for review and feedback.

Given the extension to the commencement of the new wholesale market, Synergy considers this project is significant. In respect to future industry engagement, Synergy recommends that adequate and timely consultation is afforded to market participants to enable considered responses, particularly given the resources focussing on this matter are likely to overlap with resources directed towards preparing for the new market in October 2023 as well as other proposed policy and regulatory changes. Synergy looks forward to working closely with EPWA on the proposed changes and providing constructive feedback.

Regulatory clarity is sought on how ER-WA design, development and implementation will interact with regulatory changes currently underway. For example:

- Will the ER-WA project scope include the upcoming tranches of WEM rules amendments, now scheduled to commence in October 2023, or will these continue to be consulted on separately? Will changes considered as part of future tranches of WEM rule changes be progressed under existing WEM rule engagement mechanisms and forums or are these to be progressed under the proposed ER-WA enhancement and modification workstream?
- Will the modified WEM governance arrangements that came into effect on 1 July 2021 be revisited under the ER-WA?
- Will the outcome of the current review of the Code of Conduct for the Supply of Electricity to Small Use Customers be included in the ER-WA in its entirety or will the work of the Electricity Code Consultative Committee and the ERA's Code decision be revisited as part of the proposed ER-WA consultative forums?
- Will Western Power's fifth access arrangement be impacted by the ER-WA?
- Will AEMO's sixth allowable revenue proposal be affected by the ER-WA?

2 A centralised regulatory framework

2.1 Current arrangements

Risks to power system security and reliability

The growing challenges in maintaining system security and reliability with the changing dynamics of the power system is one of the key drivers of the WEM reforms and new market starting 1 October 2023. Synergy notes that legacy plants currently play a vital role in maintaining power system security and reliability and will likely continue to play a critical role in the new market. Consequently, the ER-WA design needs to be mindful of the WEM reforms and ensure the ER-WA has sufficient flexibility to recognise and efficiently regulate different generation and loads specifically newly emerging technology.

Barriers to innovation and competition

As part of the move to the ER-WA, existing regulatory arrangements should be reviewed not only in terms of application to new service offerings and new business models but also in terms of existing or traditional supply models. Considerations in that regard include:

- Is the current 160MWh/a threshold for the application of various regulatory obligations still relevant? Synergy notes a number of market participants hold electricity retail licences to supply large use customers only, presumably to avoid the regulatory costs of supplying customers below this threshold
- The disparity between electricity and gas retail licence application. A gas retail (trading) licence is required to supply customers who consume < 1TJ/a whereas an electricity retail licence is required to sell electricity to customers irrespective of their load size
- The requirement to obtain and hold a generation licence.

2.2 Problem assessment

Regime fragmentation and complexity

Synergy considers several of the issues relating to perceived regulatory fragmentation and complexity are not necessarily confined to regulatory design and coordination. Centralisation of various regulatory instruments into a single ER-WA will not in itself solve regulatory fragmentation and complexity. For the ER-WA to provide real benefit to the electricity market for the ultimate benefit of consumers, the agency responsible for ER-WA must be adequately resourced, experienced, funded and prioritised to undertake the central administration role.

Lack of coordination and strategic direction

Synergy concurs that an overarching set of objectives that apply to ER-WA matters will provide for better regulatory outcomes than compared to disparate objectives across a range of regulatory instruments.

2.3 New framework elements

Synergy concurs there may be a requirement to amend the WEM rules to enable the new regulatory framework and improve clarity, however with a significant number of WEM rule amendments still to be commenced, any amendments to the WEM rules need to be undertaken with caution to ensure that unintended impacts do not result from the amendments. Synergy seeks clarity on the process as to how the new framework elements will be developed.

Power system security and reliability

Synergy supports the proposal to establish a RASAP and the role and function articulated in the Consultation Paper. Synergy is interested in obtaining details on the RASAP's establishment timing, how RASAP members will be selected; how any work undertaken by the RASAP will be communicated to non-members; and what ability will exist for non-RASAP members to provide comment and consideration to matters being analysed by the panel.

Care will need to be taken when establishing RASAP such that it does not result in duplication of effort with the Market Advisory Committee (**MAC**) or the Technical Rules Committee. Further clarity on how the RASAP, MAC, Technical Rules Committee and the proposed customer consultative committee will interact on overlapping issues would be beneficial.

Electricity distribution

The Consultation Paper correctly identifies that the connection and operation of electrical equipment and devices on the distribution system are mostly found in network operator guidelines and procedures that have limited regulatory status. Synergy considers the current arrangement to be problematic as network operator guidelines and procedures can be changed without appropriate regulatory oversight, review and assessment.

In contrast to the Consultation Paper, Synergy does not consider the ER-WA should create a head of power to underpin such matters as the Western Australian Service Installation Requirements (**WASIR**). Synergy considers the WASIR should form part of the existing Technical Rules and hence should form part of the ER-WA once enacted.

Synergy seeks clarity on what opportunities EPWA is expecting that customers, network operators, retailers and other service providers will be able to access following reductions to the regulatory barriers referred to in the Consultation Paper. In part, this work should be informed by establishing clear boundaries around the activities the DSO and Distribution Market Operator (**DMO**) are able to undertake.

The Consultation Paper suggests an intent to enable the DSO to remotely control assets connected to the distribution network. While there is likely some instances where this ability to control might be appropriate to protect the network, there is also a risk of DSO actions duplicating or undermining the role of aggregators (e.g. market participants and third parties). The ER-WA should not give the DSO the ability to control distribution-connected assets in way that impedes on the ability of aggregators to carry out the provision of network and market services via orchestrated DER assets.

Electricity licensing

Synergy agrees the ERA should be given the function of regulating alternative electricity providers (**AEP**) and the electricity licence exemption framework. Synergy also agrees that the existing licensing and exemption framework needs to be reviewed to ensure it is appropriate for the changing electricity market. AEPs should be subject to market registration and pay their fair share of market costs and fees to ensure these providers are not cross subsidised by existing market participants.

Refer also to section 2.1 of this submission in relation to electricity licensing reform opportunities.

Customer protection

Synergy has supported a consolidated energy code applicable to licensed electricity and gas retailers and distributors for many years. Consequently, Synergy supports the ER-WA having this coverage. Synergy's experience with the ERA's administration of the Electricity Code Consultation Committee has been very good. Synergy advocates continuation of this engagement model via the ER-WA.

Synergy is a strong advocate of the Western Australian customer protection framework applying to AEPs, specifically the Energy and Water Ombudsman's jurisdiction.

Clarity will be needed as to how the 'behind the meter code' applicable to AEPs is to be accommodated under the ER-WA vis a vis the customer service code and associated consultation committee applicable to licensed retailers and distributors.

2.4 Not in scope

No comment.

2.5 Implementation means

New instrument

Given the infancy of the ER-WA proposal and the limited time to consider the matter Synergy does not have a definitive view on the proposed instrument approach to establish the ER-WA at this stage.

Rationalisation and simplification of existing content

Synergy supports EPWA's proposal for the ER-WA to:

- Rationalise and streamline undue prescription and remove identified redundancy
- Remove regulatory complexity, promote better regulatory understanding via plain English drafting
- Promote industry flexibility and innovation by utilising outcome-based regulation wherever possible.

3 Enhancements and modifications

3.1 Objective

The setting of the ER-WA objectives and replacement principals for the WEM objectives (and other instruments such as the Electricity Industry Metering Code) is an imperative step and should be prioritised. The ER-WA objective should guide the governance reforms and ensure the principals of on-going WEM and other regulatory reforms are consistent with the future direction of the ER-WA.

Refer also to comments in section 1.3 to this submission.

3.2 Coordinator of Energy's role

Synergy notes the proposed review of the COE's role and functions. In that regard consideration should be given to role clarity between the COE and other statutory roles (such as the ERA and AEMO) to ensure there is no regulatory duplication or overlap. Further Synergy advocates transparency in terms of the matters that the COE must have regard to in the performance of their statutory functions. Synergy considers section 26 of the Economic Regulation Authority Act 2003 provides a useful reference point in that regard where the ERA must have regard to the following in the performance of its functions:

- 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.

3.3 Improving compliance and enforcement

Synergy notes the proposal to consider granting the ERA with greater compliance, information provision and enforcement powers like those granted to the Australian Energy Regulator in the National Electricity Market. Synergy is not opposed to such a review but considers the need for any changes should be evidence based. For example, from Synergy's regulatory experience the ERA has significant information gathering powers under clause 4.5 of Synergy's electricity retail licence (ERL1) and section 51 of the Economic Regulation Authority 2003 and has made significant use of those powers in the past.

3.4 Energy buyback schemes

Synergy considers inclusion of regulated energy buyback schemes in the ER-WA to be appropriate given the ER-WA will deal with small use customer service standards and protections. In doing so, the application of current arrangements should be reviewed. For example, should buyback arrangements apply to:

- entities other than government trading enterprises
- behind the meter supply in addition to network supply
- stand-alone power systems
- alternative buyback arrangements exist such as community housing

3.5 Retailer of Last Resort

Synergy considers inclusion of retailer of last resort arrangements (**ROLR**) in the ER-WA to be appropriate given the ER-WA will deal with small use customer service standards and protections. Synergy concurs that the legislative framework should provide flexibility in terms of solution delivery and be outcome based given the unpredictability and uncertainty of any future ROLR event.

3.6 Dispute resolution

No comment.

3.7 Other matters

Synergy notes EPWA's intent to review, amongst other matters, the Electricity Act 1945, the Energy Operators (Powers) Act 1979 and the change management frameworks within the Electricity Corporations Act 2005. Synergy seeks visibility on the timeframe, scope and stakeholder engagement for this review and expresses a keen interest in participating in that review.

With respect to the current contestability order made under section 54 of the Electricity Corporations Act 2005, Synergy refers EPWA to its previous comments on the matter.