



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

Consultation draft of the Electricity Industry Amendment (Alternative Electricity Services) Bill 2023

A consultation guide

16 March 2023

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

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Glossary

Term	Definition
Act	<i>Electricity Industry Act 2004</i>
AES	<p>Alternative electricity service - an electricity service that has been prescribed by regulations to be an AES.</p> <p>In the Final Report, an AES was referred to as a <i>prescribed AES</i> or <i>prescribed category of AES</i>.</p>
AES Bill	Electricity Industry (Alternative Electricity Services) Amendment Bill 2023 (AES Bill)
AES Code of Practice	<p>Alternative Electricity Service Code of Practice</p> <p>In the Final Report the <i>AES Code of Practice</i> was referred to as the <i>AES Code</i>.</p>
combined Bill	<p>A single bill for presentation to Parliament incorporating amendments proposed by:</p> <ul style="list-style-type: none">• Electricity Industry (Alternative Electricity Services) Amendment Bill 2023 (AES Bill); and• Project Eagle
Project Eagle	Energy and Governance Legislation Reform project
Registration holder	<p>This is a person who holds a registration to provide an AES.</p> <p>In the Final Report, this person was described as a <i>code participant</i>.</p>
ERA or Authority	<p>Economic Regulation Authority</p> <p>The Economic Regulation Authority is referred to as:</p> <ul style="list-style-type: none">• <i>ERA</i> in the Final Report;• <i>Authority</i> in this Consultation Guide; and• <i>Authority</i> in the Amendment Bill.
Final Report	Final Report, <i>Tailoring customer protections for alternative electricity services – a registration framework</i>

Overview

Energy Policy WA is seeking feedback on the consultation draft of the Electricity Industry (Alternative Electricity Services) Amendment Bill (AES Bill).

The legislative amendments outlined in this consultation draft are based on the recommendations to improve customer protections for the delivery of new and emerging electricity service business models as outlined in the Final Report, *Tailoring customer protections for alternative electricity services – a registration framework* (Final Report)¹.

The purpose of the AES Bill is to create the regulatory framework necessary to deliver enforceable protections for electricity customers of new and emerging business models relevant to the type of service being provided.

- The legislative amendments do not identify specific services that will be regulated (prescribed).
- The Act amendments provide the legislative framework that is needed to prescribe a service in regulation and then deliver enforceable protections to electricity consumers relevant to that service, including the ability to access the electricity ombudsman to resolve disputes.
- The legislative framework is designed to be future proofed by not only being able to provide customer protections to current forms of electricity services but also capable of being applied to new and emerging business models and services as a need arises.
- A proposal to regulate a service under the Alternative Electricity Services framework (AES framework) will be subject to assessment under the Better Regulation program², including consultation.

Implementation background

In January 2021, the State Government agreed to introduce the AES framework and drafting of the required amendments to the *Electricity Industry Act 2004* (the Act) commenced in August 2021. At this time, Energy Policy WA was also progressing separate changes to the Act to implement broader governance reforms, under the Energy and Governance Legislation Reform project (also known as Project Eagle).

The initial scope of Project Eagle, including the development of a single energy code, interacted with the planned development and operation of the code of practice under the AES framework and, as a result, the drafting of the AES amendments was paused in September 2021 pending a final decision on how Project Eagle would progress.

In late 2022, an amended scope of Project Eagle was finalised and no longer proposed that the scope of the Wholesale Electricity Market Rules be expanded to incorporate the AES Code of Practice³. The drafting of amendments to primary legislation to enable the AES framework recommenced in February 2023 and the implementation of the AES framework has resumed in parallel with Project Eagle.

It is intended that amendments to the Act proposed by Project Eagle and the AES Bill will be combined into a single bill for presentation to Parliament (the combined Bill).

¹ The Final Report was released on 5 November 2020 and is available on the Energy Policy WA [website](#).

² Information on the State Government's Better Regulation Program is available [here](#).

³ *Energy and Government Legislation Reforms, Project Eagle Information Paper – December 2022*, page 18.

How to provide your feedback

You may choose to address some or all the questions in this consultation paper, noting that they are included as a guide to support structured feedback.

To share your views, submit your feedback via email to EPWA-Submissions@dmirs.wa.gov.au by 5pm (AWST), 12 April 2023. (extended to 21 April 2023)

Please contact Sarah Woenne, Assistant Director Customer Supply via sarah.woenne@dmirs.wa.gov.au if you have any queries on the matters raised in this consultation paper.

All submissions received will be published on the Energy Policy WA website, unless a specific request for confidentiality is made.

Stakeholders will be given further opportunity to provide feedback on the detailed draft regulations to implement the AES framework and AES Code of Practice later in the year.

Consultation questions

For ease of reference, below is a list of the questions asked in this consultation paper.

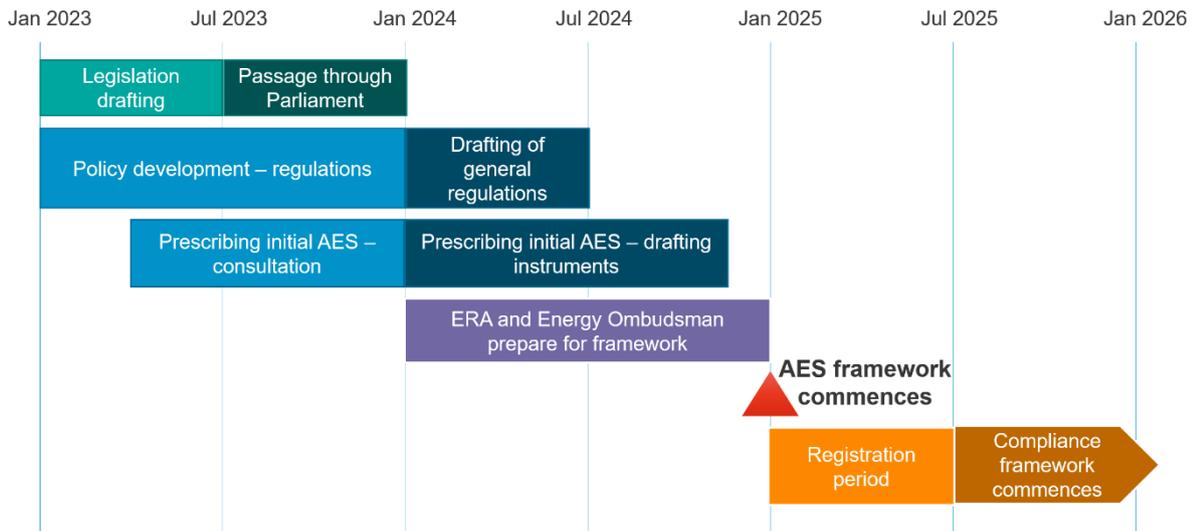
1. *Do you have any comments to make on the proposals to:*
 - a. *extend AES protections to large use customers;*
 - b. *include an option to 'fast track' applications; and/or*
 - c. *allow the AES Code of Practice to include pricing control obligations?*
2. *Do you have any comments on:*
 - a. *establishing a requirement that the maximum time that a registration can remain in place or be renewed for must not exceed 15 years? (refer new s.59P, page 55)*
 - b. *the ability for the AES Code of Practice to make provisions relating to meter connections and/or access to net zero emission energy sources? (refer new s.59U(3), page 57)*
3. *Do you consider the enforceable undertaking provisions (refer new s. 59ZI to s.59ZL, pages 64-65) that have been based on the Education and Care Services National Law are suitable?*
 - a. *If not could you please describe why this is the case.*
 - b. *Do you consider that any other provisions related to enforceable undertakings are necessary?*
4. *Do you think that the Authority requires any additional powers to carry out its functions under the AES framework?*
5. *Do you have any other comments?*

Next steps

Energy Policy WA will consider any stakeholder feedback and amend the consultation draft as appropriate before submitting it to the Minister for Energy for consideration.

An indicative timeframe for the implementation of the AES framework is provided in [Figure 1](#).

Figure 1 – Indicative timeframe to implement the AES framework



Information requests

Requests for information relating to this process will be treated in accordance with the *Freedom of Information Act 1992 (WA)* and Department of Mines Industry Regulation and Safety processes.

1. Proposed amendments

1.1 Final Report recommendations

The Final Report detailed Energy Policy WA's recommendations on establishing and implementing the AES framework. The Final Report was informed by feedback received in response to the Directions Report, *Creating a dynamic customer protection framework for behind-the-meter electricity services* (Directions Report)⁴ and stakeholder comments received during development of the draft Behind the Meter Code⁵.

Five of the six recommendations contained in the Final Report are being taken forward as proposed ([Table 1](#)), with a modification made to Recommendation One that now extends the AES framework to encompass services provided to large use customers. Two further modifications to the framework have also been made:

- an option to 'fast track' registrations has been included; and
- pricing controls for electricity services can now be included in the AES Code of Practice.

These modifications are consistent with the underlying policy intent of the AES framework and are intended to make the framework more workable. The modifications are explained in more detail in Section 1.2.

Table 1: Final Report recommendations

	Recommendation	Corresponding amendment to the Act
1.	That the <i>Electricity Industry Act 2004</i> (the Act) is amended to establish a registration framework for persons who propose to provide prescribed alternative electricity service/s (AES) to small use customers. The registration framework will:	The new Part 3A (page 48-65) of the Act gives effect to this recommendation. Modification 1: The AES framework has been extended to services provided to both small and large-use customers.
	<ul style="list-style-type: none">• function alongside the existing licensing and exemption framework established by Part 2 of the Act;	This requirement is addressed via the inclusion of Part 3A (page 48-65) of the Act.
	<ul style="list-style-type: none">• require a person who wishes to provide a prescribed AES to be registered with the ERA [<i>the Authority</i>] and comply with framework requirements; and	This requirement is addressed via: <ul style="list-style-type: none">• Division 2 – Registration requirements (pages 50-51) ; and• Division 3 – General registration provisions (pages 52-57). In particular the new s.59O (page 53) requires a registration holder to comply with relevant provisions of the AES Code of Practice and any other terms and conditions that may be determined by the ERA (Authority), in the Act or by regulations.

⁴ The Directions Report was released on 16 January 2020 and is available on the Energy Policy WA [website](#).

⁵ The draft Behind the Meter Code was prepared in November 2020 and is available on the Energy Policy WA [website](#).

Recommendation		Corresponding amendment to the Act
	<ul style="list-style-type: none"> confer responsibility on the ERA [<i>the Authority</i>] for the administration of the framework; including reporting obligations, monitoring adherence to, and enforcing compliance with, framework requirements. 	<p>This requirement is addressed via Division 5 – Functions of Authority (pages 60-61).</p> <p>In particular, the new s.59Z (page 60) addresses this requirement by conferring responsibility for the administration and enforcement of the AES framework on the Authority.</p> <p>Modification 2: An option to ‘fast track’ registrations has been included.</p>
2.	That the Act is amended to allow for categories of AES to be prescribed in regulation.	This recommendation is given effect through Part 3A, Division 1 – Preliminary, in particular new s.59C (page 48).
3.	That the Act is amended to establish that a code of practice is to be prepared and issued for AES.	<p>This recommendation is given effect through Part 3A, Division 4 – Code of practice (pages 57-60)</p> <p>Modification 3: The option to apply electricity pricing controls via the AES Code of Practice has been included.</p>
4.	That the Act is amended to establish authorisation for AES Code related reporting and compliance monitoring processes.	This recommendation is given effect through Part 3A, Division 6 – Performance reporting and compliance monitoring (pages 61-62).
5.	That the Act is amended to provide ERA [<i>the Authority</i>] the power to investigate breaches, or possible breaches, of the registration framework and enforce compliance with the registration framework.	This recommendation is given effect through Part 3A, Division 7 – Enforcement (pages 62-65).
6.	That the Act is amended to require that as a condition of every registration, the code participant must be a member of the Energy Ombudsman Scheme.	This recommendation is given effect through Part 7, Electricity Ombudsman Scheme, in particular new s.101C (page 89).

1.2 Essential modifications

1.2.1 Large use customers

The AES framework outlined in the Final Report was designed to deliver customer protections to small use customers of new and emerging electricity services. Extending protections under this framework to large use customers was not envisaged. Energy Policy WA has since identified that this approach will, in certain circumstances, add unintended complexities (including increased compliance costs) to the registration, licensing and exemption frameworks.

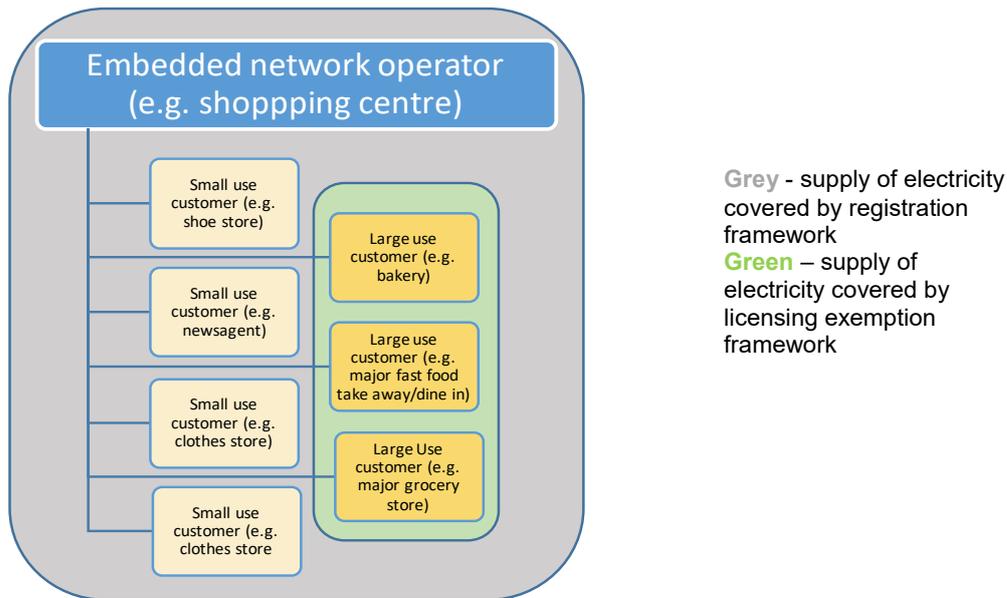
In particular, when contemplating prescribing embedded networks and behind the meter services (including solar power purchase agreements) under the AES framework, Energy Policy WA identified that, applying the framework as originally proposed in the Final Report would mean that:

- an embedded network operator servicing one or two large use customers alongside several small use customers within the same embedded network would be required to hold an AES registration (to service the small use customers) as well as a licence, or a licence exemption, to service the large use customers ([Figure 2](#)); and

- it would not be possible to repeal the Electricity Industry (Solar Power Purchase Agreements) Exemption Order in its entirety as the Order allows exempt persons to provide this type of service to both small use and large use customers.

In addition, many large use customers in embedded networks, unlike their counterparts operating outside the confines of an embedded network, are unable to negotiate and choose their own electricity retailer. This means they are effectively in a monopoly supply arrangement, and stakeholders have indicated this is a major complaint that large use customers have when operating in an embedded network⁶.

Figure 2 – Supply of electricity under current registration framework in embedded networks



To overcome these complexities, the heads of power for the AES framework have been modified to permit:

- registration to authorise the provision of a prescribed service to large use customers; and
- the application of a limited subset of regulatory obligations when providing an AES to large use customers.

This means that, like the licensing and exemption framework, the AES framework will be able to authorise undertaking of an activity in relation to both small use and/or large use customers ([Figure 3](#)) subject to any obligations to provide specified customer protections.

The original focus of the AES framework to protect small use customers is retained by allowing only some of the AES Code of Practice obligations to be applied to AES providers when servicing large use customers. For example, AES Code of Practice requirements relating to standards of conduct in the supply and marketing of services can only be applied with respect to the provision of the service to small use customers (see new s.59U(3)(d), page 58).

⁶ Embedded network survey and one-on-one stakeholder consultation.

Figure 3 – Supply of electricity to customers under revised registration framework

	Licensing framework	AES framework	Exemption framework
Can authorise supply or provision of service to small use customers?	Yes	Yes	Yes
Can authorise supply or provision of service to large use customers?	Yes	Yes - allowed by this modification	Yes

1.2.2 Fast approval of registration applications

Under the AES framework outlined in the Final Report, the Authority is to take into account the public interest⁷ when deciding to grant a registration, with the public interest considerations to be of the same character as that used to grant or refuse a licence or exemption under the Act (s. 8(5)).

It has become apparent that applying the public interest test to individual registration applications is likely to be time-consuming and resource-intensive for the Authority in situations where the number of entities offering a type of service proposed to prescribed is likely to be substantial (e.g. on-selling electricity within embedded networks)⁸. This would mean that for some AES:

- the processing of registration applications would likely be subject to significant delays; and
- fees would need to be set at a higher level to recover resourcing costs associated with processing registration applications.

These outcomes are not consistent with the policy intent of the AES framework operating as a relatively low-cost and light-handed regulatory framework.

To overcome these unwanted outcomes, the heads of powers for the AES framework have been modified to allow for regulations prescribing an AES to specify that for a service:

- the Authority is not required to take the public interest into consideration when assessing an application for that type of AES (see new s.59F(3), page 52); and/or
- the Authority is not required to consult publicly on an application for that type of AES (see new s.59L(2), page 54).

The Authority will still be required to take the public interest into consideration when undertaking other functions under the AES framework, such as its enforcement functions.

Under this ‘fast track’ route, approval of applications would still be conditional on the applicant meeting a narrower set of criteria. Such criteria could include, but not be limited to:

- the satisfactory completion of a registration form available on the ERA [Authority] website;

⁷ Under s.26(a) of the *Economic Regulation Authority Act 2003* the Authority is also required to have regard to certain matters, including the *need to promote regulatory outcomes that are in the public interest* when performing its functions.

⁸ Potentially thousands of embedded networks are currently operating under the existing Exemption Order and would all need to register if on-selling in embedded networks is prescribed as an AES.

- payment of an appropriate fee; and/or
- a registrant's commitment to joining the Energy and Water Ombudsman Scheme before providing services to customers.

Whether applications for a specific type of service will need to be assessed against the public interest prior to being able to be approved will be determined during the regulatory impact assessment for that service.

1.2.3 Pricing controls

The AES framework has been modified to allow the AES Code of Practice to impose pricing controls.

In support of this modification, Energy Policy WA notes that:

- a form of pricing control already exists for the on-supply of electricity within some embedded networks (e.g. the on-supply of electricity by building landlords and caravan park operators is controlled through the conditions of the licence exemption under which they operate, and is subject to price caps in certain circumstances)⁹; and
- a recent survey¹⁰ of embedded network services indicated that:
 - more price regulation than is currently provided by the Exemption Order would be welcomed by many customers; and
 - non-residential customers, even those with multiple tenancies and who were large users of electricity, have a lack of negotiating power with their embedded network seller.

The survey results also showed that although many residential customers in embedded networks (62 per cent) reported paying electricity rates lower than if they were grid connected, there was a cohort that reported being worse off compared to the regulated rate (11 per cent). In addition, ten of 19 non-business customers who responded to pricing questions stated that they were worse off than being subject to the relevant regulated business tariff.

The heads of powers for the AES framework have therefore been modified to allow pricing controls to be adopted in the AES Code of Practice to combat negative customer outcomes related to pricing, such as those described above (see the new s.59U(3)(d), page 58).

Whether pricing controls are required for a specific type of service, and the form such pricing controls may take, will be determined during the regulatory impact assessment for that service.

Question

1. Do you have any comments to make on the proposals to:
 - (a) extend AES protections to large use customers;
 - (b) include an option to 'fast track' applications; and/or
 - (c) allow the AES Code of Practice to include pricing control obligations?

⁹ Clause 6 [Electricity Industry Exemption Order 2005](#) and clause 6 [Electricity Industry \(Caravan Park Operators\) Exemption Order 2005](#)

¹⁰ Energy Policy WA website: [Survey – Experiences in Embedded Networks in Western Australia \(www.wa.gov.au\)](#)

1.3 Minor adjustments

Minor adjustments have also been made to the administrative features of the AES registration framework originally described in the Final Report as detailed below in [Table 2](#).

Table 2: Minor amendments to AES framework administrative features

	Description in Final Report	Amended approach in the AES Bill
1.	<p>The provision of a prescribed AES will not be authorised under the authority of a licence granted under Part 2 of the Act (page 12).</p>	<p>This approach has been modified so that a licence does not authorise the provision of an AES <i>unless</i> regulations allow the service to be provided by a licensee under the terms of its licence. Refer to new s.4(3) (pages 10-11).</p> <p>The regulations will allow conditions to be placed on the licensee in order for it to conduct the AES that it is approved to provide under its licence. This could include for example, reporting requirements on the AES provided and identification on the Authority's AES registration database. Refer to new s.59D(2)(a) and new s.59D(4) (page 51).</p> <p>Similarly, a person holding a registration for an AES and who is seeking a registration for another class of AES may be exempt from the requirement to register again. This may be considered if there are significant overlaps between the services provided. Refer to new s.59D(2)(b) and new s.59D(5) (page 51).</p> <p>The default position is that registration is required for anyone, including a licensee and existing registration holders, to provide an AES. However, when a specific AES is prescribed, the regulations can 'switch on' the ability for licensees and/or existing registration holders to provide that AES without getting a separate registration, as long as the provision of that AES would otherwise fall within the ambit of their licence or existing registration.</p> <p>Although this provision may not be used often, it:</p> <ul style="list-style-type: none"> ▪ provides a flexible framework able to cater for the interaction of registrations and licences if needed; and ▪ avoids the potential for regulatory double-up to occur (i.e. the need to hold a licence and registration or two registrations unnecessarily). <p>Specific conditions, to cover any gap in customer protections or reporting obligations, may be added to the licence or registration of the exempt person under new s.59(3)-(5) (page 51) in order for them to provide the AES.</p>
2.	<p>In deciding to grant a registration, the ERA <i>[the Authority]</i> will be required to take into account the applicant's financial and technical resources to undertake the prescribed AES and public interest considerations (page 14).</p>	<p>Refer to discussion on fast tracked registrations in Section 1.2.2 of this Guide.</p>

Description in Final Report	Amended approach in the AES Bill
<p>3. The Minister for Energy will be responsible for preparing, amending and reviewing the AES Code (supported by Energy Policy WA). The AES Code will be reviewed at least every five years or earlier if deemed appropriate. Reviews will be informed by public consultation (page 15).</p>	<p>This requirement, provided for in new s.59X(4) (page 60), has been modified to allow the Minister for Energy to delegate responsibility for review of the AES Code of Practice to the Authority.</p> <p>It is envisaged that once the AES Code of Practice has been operative and the obligations are mature, the maintenance of the AES may be delegated to the Authority. This would complement the Authority's management of the codes of conduct for the supply of gas and electricity to small use customers by licensed retailers.</p>
<p>4. It is intended that a registration will remain in force until transferred, cancelled or revoked (page 17).</p>	<p>This requirement has been modified to place a maximum timeframe of 15 years when granting a registration or renewal.</p> <p>A timeframe on the life of a registration will allow the Authority to 'check in' with registration holders to confirm currency of its registration details and is considered to be consistent with good regulatory administration practice. Refer to new s.59P (page 55).</p>
<p>5. The ERA [<i>the Authority</i>] will report annually to the Minister for Energy on the operation of the registration framework, including:</p> <ul style="list-style-type: none"> • the number of code participants, the AES that they provide and the number of customers they service; • failure of a code participant to comply with the framework requirements; and • identified opportunities to improve the registration framework (page 18). 	<p>This requirement, provided for in new s.59ZA (page 61), has been modified to reflect that the annual report must detail the performance and compliance of registration holders with the registration framework but <u>may</u> include identification of improvements that could be made to the framework (i.e. it will be left to the ERA's discretion to how often they review the framework for improvements).</p> <p>It is envisaged that it is likely that improvements to the efficacy and efficiency operation of the framework will be identified on an ad hoc basis over time as the framework is implemented</p>
<p>6. Consultation requirements on applications. This matter was not discussed in the Final Report.</p>	<p>The regulations will have capacity to exempt certain types of registration applications from the public consultation requirements (refer new s.59L(2), page 54).</p> <p>This arrangement will allow for more efficient and cost effective processing of applications. Applying public consultation processes to all application types would mean additional resourcing costs and increased processing timeframes which are inconsistent with the policy intent of the AES framework operating as a relatively low-cost and light-handed regulatory framework.</p>

	Description in Final Report	Amended approach in the AES Bill
7.	Inclusion of the ability to allow the AES Code of Practice to address meter connections. This matter was not discussed in the Final Report	<p>The AES Code of Practice will be able to include provisions that allow an embedded network customer to access their own master meter connection (subject to appropriate cost recovery arrangements for the works required within the embedded network) and, more broadly, requirements to facilitate any future changes to contestability arrangements subject a Government policy decision on these matters (refer new s.59U(3)(f), page 57).</p> <p>This change has been made to help ensure the AES framework is future proof and able to cater for any future government policy changes. It does not reflect a change of the current State Government policy position on retail contestability.</p>
8.	Inclusion of the ability to allow the AES Code of Practice to accommodate net zero emission energy sources. This matter was not discussed in the Final Report.	The AES Code of Practice will be able to make provisions in support of renewable energy (refer to new s.59U(3)(g), page 58). Energy Policy WA considers that, <u>if practicable</u> , a customer of an AES provider should be able to access electricity generated from renewable sources in order to meet carbon reduction commitments. It is expected that this would be at the customer's (reasonable) cost.

Question

2. Do you have any comments on:
- (a) establishing a requirement that the maximum time that a registration can remain in place or be renewed for must not exceed 15 years? (refer new s.59P, page 55); and
 - (b) the ability for the AES Code of Practice to make provisions relating to meter connections and/or access to net zero emission energy sources? (refer new s.59U(3)(f) and s.59U(3)(g), page 58)

1.4 AES framework features

Each recommendation made in the Final Report, was supported by additional information which provided further context as to how it was envisaged that the recommendations would be implemented. [Table 3](#) highlights the amendments that give effect to these key features of the framework.

Table 3: AES framework features

	AES framework feature as described in the Final Report	Corresponding amendment
1.	A code participant will be required to notify the ERA [<i>the Authority</i>] of any change in circumstances that may affect its ability to meet obligations under the registration framework. This includes a change to a code participant's ownership or structure related to a registration (page 14).	s.59O(2) (page 55)

AES framework feature as described in the Final Report	Corresponding amendment
<p>2. The ERA <i>[the Authority]</i> will be able to charge fees associated with the administration of the registration framework including fees for a registration application and annual, renewal, transfer and cancellation fees (page 14).</p> <p><i>Note: fee arrangements will be determined during the regulatory assessment phase of each service.</i></p>	<p>s.59Q (page 55)</p>
<p>3. The ERA <i>[the Authority]</i> will establish and maintain a public register of code participants that will offer customers the opportunity to verify that services they have been offered, or are receiving, are being provided by an entity or person registered with the ERA (page 14).</p>	<p>s.59T (page 56)</p>
<p>4. A prescribed category of AES can include services that:</p> <ul style="list-style-type: none"> - would otherwise need a licence or an exemption to sell, generate or convey electricity; and/or - involve the use of electricity under membership, financing, leasing or hire arrangements and/or on behalf of a third party, such as embedded networks; and/or - involve aggregation of electricity from one or more sites; and/or - relate to storage works, such as batteries, that currently do not require licensing; and/or - involve demand management services; and/or - involve the management and/or use of electricity data. (page 14) 	<p>s. 59C (pages 47-49)</p>
<p>5. Regulations will prescribe each category of AES and identify the code (AES Code) obligations that a code participant providing a prescribed AES will be required to adhere to (page 15).</p> <p><i>Note: The Act limits the type of obligations that can be applied to AES providers in servicing large use customers (refer (s. 59U(3), pages 56-57).</i></p>	<p>s. 59C (pages 48-50)</p>
<p>6. The AES Code will be subsidiary legislation (page 15).</p>	<p>s. 59V (page 59)</p>
<p>7. Each Code participant will be required to provide any information and data to the ERA <i>[the Authority]</i> that the ERA considers reasonable for it to carry out its responsibility to administer the registration framework. The ERA will determine the form the information is to be provided in and the frequency of reporting.</p> <p>This approach will provide the ERA scope and flexibility to determine and prioritise the number and type of obligations code participants are to report on, in order to balance reporting requirements with the need for regulatory oversight (page 17).</p>	<p>s. 59ZB (page 61)</p>
<p>8. The ERA <i>[the Authority]</i> will also be able to initiate compliance audits should it have reason to believe that an audit is necessary to determine a code participant's compliance with the registration framework (page 17).</p>	<p>s. 59ZC (pages 61-62)</p>

AES framework feature as described in the Final Report		Corresponding amendment
9.	<p>The ERA [<i>the Authority</i>] will be given powers to impose enforceable undertakings (page 18).</p> <p><i>Additional information:</i> An enforceable undertaking is a legally binding agreement between a regulator and the person who proposed the undertaking. The provisions related to enforcement undertakings have been based on the Education and Care Services National Law.</p>	s. 59ZI to s. 59ZL (pages 64-65)
10.	<p>Similar to major electricity industry participants who currently pay the energy safety levy, code participants who provide certain prescribed AES may also be required to pay the energy safety levy to ensure legislated energy safety activities are provided for (page 23).</p>	New Part 3 – Consequential amendment to <i>Energy Safety Act 2006</i> (page 175)

Questions

3. Do you consider the enforceable undertaking provisions (refer new s.59ZI to s.59ZL, pages 64-65) that have been based on the Education and Care Services National Law are suitable?
 - (a) If not could you please describe why this is the case.
 - (b) Do you consider that any other provisions related to enforceable undertakings are necessary?
4. Do you consider that the Authority requires any additional powers to carry out its functions under the AES framework?
5. Do you have any other comments?

1.5 Definitions

Certain definitions have also been moved from various Parts of the Act to Part 1 – Preliminary (s. 3 of the Act). This reflects use of the defined word in multiple parts of the Act. New definitions have also been included as a result of the adoption of the AES framework.

Definitions that have been moved into Part 1 – Preliminary are:

- **Coordinator** (moved from Part 4 – Extension and expansion policies for certain corporations, page 65)
- **non-standard contract** (moved from Part 3 – Supply of electricity to certain customers, page 38)
- **standard form contract** (moved from Part 3 – Supply of electricity to certain customers, page 38)

New definitions included into Part 1 – Preliminary are:

- **AES code of practice**
- **AES customer contract** (*note: this term is used to differentiate from the defined term of 'customer contract' in Part 7*)
- **alternative electricity service**
- **class**
- **large use customer**

- **registration**
- **registration holder**
- **small use customer** (noting the definition of **customer** has been deleted from Part 3 – Supply of electricity to certain customers).

1.6 Project Eagle

Definitions for embedded networks and microgrids are proposed to be included in the Act as part of Project Eagle to more readily facilitate the:

- prescription of certain classes of AES;
- creation of energy rules dealing with the provision of AES in connection with or in relation to the Wholesale Electricity Market; and
- creation of rule provisions dealing with electricity distribution matters¹¹.

Although these proposed definitions are not identified in the exposure draft of the AES Bill, they are included here for completeness ([Table 4](#)).



This guide does not discuss the amendments to the Act proposed by Project Eagle. Please see *Energy and Governance Legislation Reforms – Project Eagle Information Paper, December 2022* for further information and the [consultation paper](#) on the State Electricity Objective.

Table 4: Project Eagle proposed amendments

Definitions
<p>“embedded network” means a <i>distribution system</i>¹² that does not form part of a <i>covered network</i>:</p> <ol style="list-style-type: none"> that is operated by or under the control of a person (one person) – that is, is subject to a single controlling mind; that <i>supplies</i> (as defined in the <i>Industry Act</i>) electricity to at least one customer who is not, or at least one premises that is not occupied by, the operator or controller referred to in (i); and that is supplied with energy by another distribution system.
<p>“microgrid” means a <i>distribution system</i>:</p> <ol style="list-style-type: none"> operated by or under the control of a single person – i.e. is subject to a single controlling mind; to which distributed energy resources facilities (DER facilities)¹³ are connected;

¹¹ *Energy and Governance Legislation Reforms – Project Eagle Information Paper, December 2022*, page 7 is available on the Energy Policy WA [website](#).

¹² As currently defined, which is (and is intended to be) capable of applying to all wiring down to the wiring in an individual home.

¹³ Facilities and or things that manage (control, etc.) the flow of electricity connected to a distribution system.

Definitions

- (ii) that is capable of operating autonomously (i.e. without receiving a supply of electricity from another network) for at least a prescribed period of time. That is, can be operated using only the DER facilities within the relevant distribution system for at least the prescribed period.
- (iii) A microgrid may exist on a standalone basis or as an embedded network.

2. Next steps

Energy Policy WA will consider all feedback on the consultation draft of the AES Bill, prior to finalising the combined Bill for introduction to Parliament. Subject to Parliamentary processes, the intention is for the combined Bill to pass through Parliament before the end of 2023.

The Energy Policy WA website be updated to reflect progress of the Bill through Parliament.

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