



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

# State Electricity Objective – Consultation Summary Paper

*Electricity Industry Amendment (DER) Bill 2023*

April 2023

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

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# Glossary

Term	Definition
Access Code	Electricity Networks Access Code 2004
AEMO	Australian Energy Market Operator
Amending Bill	Electricity Industry Amendment (DER) Bill 2023
Authority	Economic Regulation Authority
Board	Western Australian Electricity Review Board
Coordinator	Coordinator of Energy
DER	Distributed Energy Resources
EI Act	Electricity Industry Act 2004
EPWA	Energy Policy WA
ETS Stage 2	Energy Transformation Strategy Stage 2: 2021-25
NEO	National Electricity Objective
SEO	State Electricity Objective
SWIS	South West Interconnected System
WEM	Wholesale Electricity Market
TDOWG	Transformation Design and Operation Working Group (TDOWG)

# Executive summary

Enabling amendments to the *Electricity Industry Act 2004* (EI Act) are being progressed under the [Energy and Governance Legislation Reforms](#), also referred to as 'Project Eagle'.

This paper summarises the feedback received from stakeholders through consultation on the proposed State Electricity Objective (SEO), planned to be introduced through changes to the EI Act.

## Background

The current legislative and regulatory framework underpinning the governance of the South West Interconnected System (SWIS) is now nearly two decades old. Changes are necessary to keep pace with a rapidly transitioning power system which must adapt to the integration of new technologies at the same time as having regard to the environment, including electricity sector emissions.

These reforms are focused on introducing enabling amendments to the EI Act and other legal instruments (including subsidiary legislative instruments under the EI Act) to progress the [Energy Transformation Strategy Stage 2: 2021-2025 \(ETS Stage 2\)](#).

## The State Electricity Objective

A new SEO is planned for introduction as part of Project Eagle. The SEO is intended to resolve the current problem of having separate, but overlapping and inconsistent objectives across multiple legal instruments governing the electricity industry in Western Australia. The proposed SEO provides a consistent, overarching objective for the State's electricity regulatory framework.

Drafting of the SEO was prioritised ahead of the remainder of the Electricity Industry Amendment (DER) Bill 2023 (Amending Bill), due to its prominence in the EI Act, the significance of its intent, and the need for early stakeholder engagement about its detail.

## Stakeholder consultation

Consultation on the proposed SEO concluded on 10 March 2023 and Energy Policy WA (EPWA) received 16 written submissions, largely in support of the SEO and its intent.

Stakeholder feedback generally reflected three themes: support for the inclusion of an environmental limb in the SEO; requests for clarification or guidance on the application of the SEO; and a need to include the term and concept of 'security' explicitly, and as distinct from, 'reliability'.

Other feedback centred around the suggestion that the wording of the SEO should more clearly contemplate novel or bidirectional 'electricity services'; provide for the inclusion of batteries and storage; and avoid the term 'supply' of electricity services which may imply uni-directionality of electricity flows.

This paper provides further detail on the feedback received by stakeholders on the proposed SEO, some of which has already been incorporated into revised drafting as part of the development of the Amending Bill which will give effect to Project Eagle. Some stakeholder feedback will be used to inform future policy decisions and development of subsidiary legal instruments as part of the implementation of ETS Stage 2.

## Next steps

The drafting of the remainder of the Amending Bill is being progressed. Stakeholder feedback will be sought on the remainder of the Amending Bill through the release of an Exposure Draft in May.

# 1. Background

Enabling amendments to the *Electricity Industry Act 2004* (the EI Act) are being progressed through the [Energy and Governance Legislation Reforms](#), also referred to as 'Project Eagle'.

The current legislative and regulatory framework underpinning the governance of the South West Interconnected System (SWIS) is now nearly two decades old. Changes are necessary to keep pace with a rapidly transitioning power system, adapting to the integration of new technologies at the same time as having regard to the environment, including electricity sector emissions.

These reforms are focused on introducing enabling amendments to the EI Act and other legal instruments (including subsidiary legislative instruments under the EI Act) to progress the [Energy Transformation Strategy Stage 2: 2021-2025 \(ETS Stage 2\)](#).

The amendments, the first of which is the subject of the current stakeholder consultation, have three primary goals:

1. Introduce an overarching objective in the EI Act.
2. Expand the scope of the Wholesale Electricity Market (WEM) Rules.
3. Improve arrangements to address new subject matter.

The development of a new SEO meets the first goal of introducing an overarching objective within the EI Act.

The SEO is intended to resolve the current problem of having separate, but overlapping and inconsistent objectives across multiple legal instruments governing the electricity industry in Western Australia. The proposed SEO provides a consistent, unifying theme for the State's electricity regulatory framework.

Drafting of the SEO was prioritised ahead of the remainder of the Electricity Industry Amendment (DER) Bill 2023, due to its prominence in the EI Act, the significance of its intent, and the need for early stakeholder engagement about its detail. Drafting continues on the remainder of the Amending Bill.

## 2. Consultation

In February 2023, EPWA published a [consultation paper](#) inviting stakeholders to comment on the proposed SEO, planned for inclusion in the EI Act.

The paper was accompanied by presentations on the detail and intent of the proposed SEO to the Transformation Design and Operation Working Group (TDOWG), the Expert Consumer Panel and the Pilbara Industry Liaison Committee.

EPWA received 16 written submissions from stakeholders and additional verbal feedback in discussion with others.

EPWA acknowledges the considered responses provided as part of the consultation process and thanks all stakeholders for their time, interest, and engagement.

This paper provides a brief overview of the submissions received and how EPWA will incorporate feedback, before outlining the next steps for the Amending Bill being progressed through Project Eagle.

## Consultation timeframes

Consultation on the SEO was open to stakeholders for approximately three weeks from late-February until mid-March 2023, during which briefings with industry groups were held.

EPWA has now reviewed stakeholder feedback, and has already begun progressing some changes to the SEO in response to this feedback.

A timeline for the consultation process is outlined below.

Figure 1: timeline for consultation on the State Electricity Objective



## The proposed State Electricity Objective

The SEO aims to provide a consistent, overarching objective for the State's electricity regulatory framework. In addition to promoting consistency, the SEO is intended to result in a reduction of barriers to the timely and efficient investment in lower-emission technologies while retaining a focus on the long-term interests of consumers with respect to the price, quality, reliability, security, and safety of electricity.

The proposed draft SEO reflects the need for decision makers with obligations or powers under the EI Act or its subsidiary instruments to consider the 'energy trilemma' of reliability, affordability and sustainability, in making decisions regarding the investment, operation and use of electricity services.

Figure 2: wording of the SEO which formed the basis for consultation

Draft State Electricity Objective (SEO)
(1) The objective of this Act is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity in relation to — (a) the quality, safety and reliability of supply of electricity; and (b) the price of electricity; and (c) the environment, including reducing greenhouse gas emissions.
(2) The Minister, the Authority, the Coordinator and the Board must have regard to the State electricity objective in carrying out a function under this Act.
(3) For the purposes of subsection (2), the Minister, the Authority, the Coordinator or the Board may give the weight to any aspect of the State electricity objective that the Minister, the Authority, the Coordinator or the Board considers appropriate in all the circumstances.
(4) In subsection (1) — electricity services means services that are necessary or incidental to the supply of electricity to consumers of electricity, including— (a) the generation of electricity; and (b) services provided by means of, or in connection with, an electricity network; and (c) the sale of electricity.

The SEO will apply to the whole EI Act and subsidiary instruments, replacing the existing objectives of instruments which currently sit under the EI Act's current framework including:

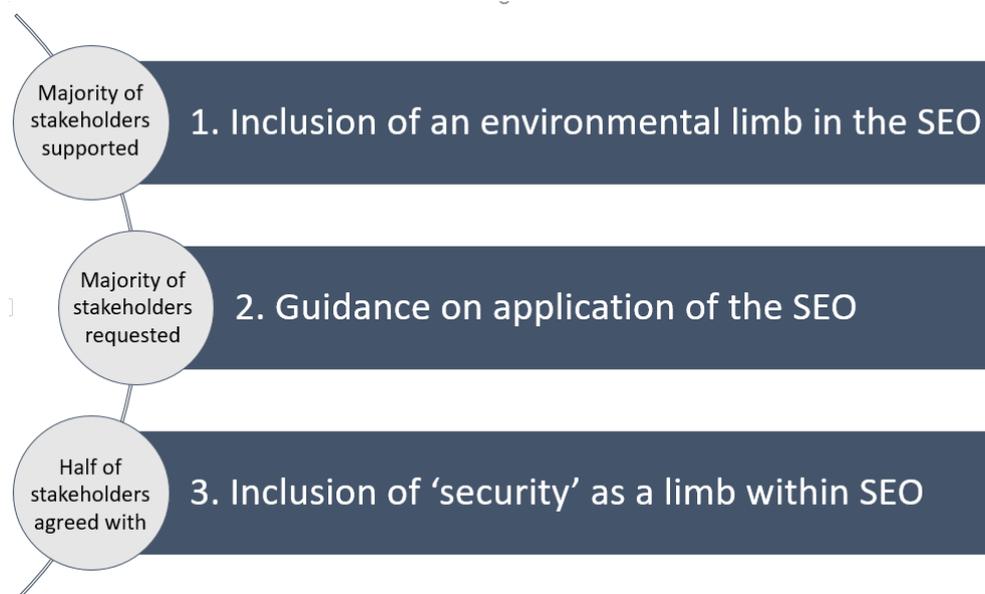
1. the WEM objectives (Section 122(2) of the EI Act);
2. the Pilbara electricity objective (Section 119(2) of the EI Act); and
3. the Code objective within the Electricity Networks Access Code 2004 (Access Code) (section 2.1).

### 3. Stakeholder feedback

Stakeholder submissions on the proposed SEO [are available to view](#) on EPWA's website.

Submissions were generally supportive of the introduction of a SEO, with feedback mainly addressing three common themes:

*Figure 3: Common themes arising from stakeholder consultation*



Stakeholder feedback and subsequent discussion suggested amendments to the SEO as drafted and identified where further elaboration from EPWA would be valuable in understanding its intent and operationalisation. A summary of the issues raised by stakeholders, and explanation addressing these issues is provided below.

#### 1. Inclusion of an environmental limb in the SEO

The majority of submissions received were supportive of the inclusion of a limb in the SEO focused on having regard to environmental outcomes.

Almost all stakeholders agreed that environmental considerations, including emissions reduction, should be factored into future decision making, although several questioned how decision makers would weigh competing limbs of the SEO in practice.

One stakeholder raised concerns about potential duplication with the well-established environmental approvals processes relating to planning and construction of electricity infrastructure projects, including those overseen by the Environmental Protection Agency.

EPWA appreciates the complexity that decision makers will face in having regard to the multiple elements of the SEO; however, it is a deliberate feature of the proposed drafting that the limbs of the 'trilemma' as reflected in the proposed SEO exist in tension. This permits decision makers to

address the three limbs in the appropriate manner that serves the long-term interests of consumers of energy within the specific circumstances of their decision-making.

The application of the SEO, including the environmental limb, will be borne out over time in the decisions are made by the named decision makers through subsidiary instruments (such as the WEM Rules). The drafting of the SEO and Amending Bill will not presuppose how future decision makers will balance consideration of matters relating to the environment, reliability, or price.

It is of note that existing instruments with objectives – such as the WEM objectives and Access Code objective – already require parties to address multiple, occasionally competing elements. In the case of the Access Code objective, an environmental limb already exists.

EPWA notes the SEO does not conflict with or supplant environmental approval processes under existing legislated requirements or obligations, to which decision makers should have regard. Rather, the SEO refers to environmental considerations generally, and does not refer to the ‘environment’ in the same, specific terms as other legislation, such as the manner the ‘environment’ is referred-to under the *Environmental Protection Act 1986*.

## 2. Guidance on application of the SEO

A high proportion of stakeholders expressed a desire for additional guidance regarding the application and interpretation of the SEO.

Some stakeholders referenced guidance provided by the Australian Energy Market Commission on how it interprets and applies the National Energy Objectives, as an example.

EPWA appreciates stakeholders’ desire for greater certainty about decisions to be made under the regulatory framework for electricity; however, EPWA considers that further guidance on the application of the SEO in primary legislation is not appropriate. This is because this guidance could serve to limit the ability of decision makers to make decisions in the long-term interests of consumers of energy in a manner that remains flexible and relevant.

As decision makers apply the SEO over time, stakeholders will gain greater understanding on how aspects of the SEO are given regard to under differing circumstances. This is already the case for the application of the WEM and Access Code objectives.

While not appropriate for inclusion in the EI Act, EPWA is considering how further information may best be provided to stakeholders regarding the way in which the SEO will operate, and the form such information should take.

## 3. Inclusion of ‘security’ as a limb within SEO

Many written submissions proposed that ‘security’ be elevated to the same level as ‘reliability’ in the SEO. The proposed drafting had contemplated ‘security’ as a subset of reliability, and did not mention the concept explicitly in the SEO alongside quality, safety, and reliability.

Discussion following the TDOWG meeting on 28 February 2023 indicated that the majority of stakeholders viewed ‘security’ as a unique and distinct concept, rather than just a subset of reliability.

EPWA concurs with the views expressed by stakeholders and intends on reflecting this in the drafting of the Amending Bill.

Subject to endorsement by Government, the draft SEO may include ‘security’ in part 1(a) as

- (1) The objective of this Act is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity in relation to –
  - (a) The quality, safety, **security** and reliability...

## Other feedback

### Alignment with the National Electricity Objective

Some stakeholders queried whether the SEO should be more closely aligned with proposed changes to the national energy objectives, which are currently being reviewed and amended and were [subject to consultation](#) in early-2023.

EPWA notes that the proposed SEO and amended draft National Electricity Objective (NEO) provided for consultation are highly aligned both in terms of intent and consideration of the environment. However, stakeholders are asked to consider that the proposed approach to the SEO reflects the unique context of the EI Act and the regulatory framework electricity in Western Australia.

Whereas the SEO provides guidance for the application of a single state's legislation, the NEO must guide decision making across several separate jurisdictions. EPWA also notes current proposed NEO drafting is more prescriptive and specific in its language, which is not considered the preferred approach for Western Australia given the desire to maintain flexibility for decision makers over time. These level of detail and absence of prescription in the proposed SEO (such as reference to particular State Government policies, regulations, or standards) will help prevent unintended consequences and unnecessary complexity.

In this way, it is intended that the SEO have longevity to appropriately deal with issues and opportunities for the electricity sector that have not yet been contemplated.

### Support for use of the term 'electricity services'

Stakeholder feedback provided support for Energy Policy WA's decision to use 'electricity services', as an alternative to the term 'supply of electricity', present in other objectives.

Stakeholders agreed that 'electricity services' may better reflect the rapidly changing nature of the electricity sector, which is seeing changes to technology and the nature of electricity services, such as those relating to Distributed Energy Resources (DER).

EPWA notes that, in line with stakeholder feedback, 'electricity services' will be a defined term in the EI Act, with the intention of incorporating services necessary or incidental to the supply of electricity to consumers which includes production, services, and the sale of electricity.

### 'Generation' versus 'production' of electricity

Feedback from stakeholders suggested that the use of the term 'generation' in the SEO may inadvertently exclude technology types that should be included – in particular, battery storage.

EPWA is in agreement with stakeholders and is now updating drafting instructions to refer to 'production', rather than 'generation' in the definition of electricity services.

### Confirmation of no retrospective application of the SEO

Some stakeholders sought confirmation that the application of the SEO would not operate retrospectively or affect historical decisions made regarding the operation of the EI Act or the subsidiary instruments made under the EI Act.

EPWA wishes to assure stakeholders that the SEO will operate in relation to functions carried out on or from the date of commencement of the SEO. The SEO will not be applied retrospectively, and drafting to this effect will be included in the bill, which stakeholders will be able to review.

While not operating retrospectively, the SEO will have effect to all future decision making from its date of commencement. This means when considering proposals to change existing WEM Rules or the Access Code (and other instruments) decision makers must have regard to the SEO.

## Competition versus efficient investment, operation and use

Two stakeholders queried whether ‘competition’ should instead be included as the primary goal of the objective.

EPWA notes that, despite its historical use in some objectives (including the WEM objective), the prioritisation of competition as an end in itself is less desirable than the promotion of efficiency for the long-term interests of consumers. That is, while competition may be an effective tool by which the SEO may be achieved, there may be situations where competition is not the most effective mechanism for achieving an efficient outcome in the long-term interests of consumers.

## Clarity regarding AEMO’s responsibilities

Two stakeholders raised queries about whether the Australian Energy Market Operator (AEMO) should be listed alongside the Minister, the Authority, the Coordinator, and the Board in being required to have regard to the SEO when carrying out its functions.

AEMO’s functions are empowered throughout instruments subsidiary to the EI Act – in particular, the WEM Rules outline AEMO’s functions in significant detail. The listed decision-makers in the proposed draft SEO are viewed by EPWA to be appropriate and reflect the governance structure in the legislation.

## Separation of ‘safety’ from the trilemma

One stakeholder commented that safety cannot be ‘balanced’ against the other elements of the ‘energy trilemma’ as it is non-negotiable, and consideration should be given to its separation from the other limbs.

EPWA acknowledges that a high level of safety is essential and expected in relation to the provision of electricity services. This is reflected in a variety of safety-related legislation and regulations, the operation of which is not affected by the SEO. However, beyond legal requirements, decision makers should be permitted to give consideration to the issue of safety in relation to other elements – for example, in circumstances where incremental, minor improvements to safety may result in material cost (and price) increases for consumers.

## Consideration of a social equity limb to the SEO

One stakeholder raised concerns about how the affordability of electricity might be affected by the introduction of an environmental limb, and suggested the need for a side-limb addressing for the SEO addressing matters of social equity.

While EPWA acknowledges concern that decisions which promote environmental considerations ahead of price outcomes may have an impact on affordability for some consumers, the SEO has been drafted with a primary focus on the long-term interests of all energy consumers.

## Submissions from Pilbara stakeholders

Of the 16 submissions received by Energy Policy WA on the SEO, four submissions were received from stakeholders with specific interest in the operation of the SEO in the Pilbara.

Many of the comments raised in their submissions related to themes that have already been discussed in this paper. However, some aspects of those submissions with specific relevance to the Pilbara are mentioned below.

## Only Part 8A of the EI Act affected

Pilbara stakeholders indicated the high level of effort and engagement already invested in making amendments to Part 8A of the EI Act. Those stakeholders sought assurance that changes to that part of the EI Act would be limited to the application of the SEO.

Stakeholders also sought confirmation that the ‘have regard to’ factors, outlined in Part 2 of the Electricity Industry (Pilbara Networks) Regulations 2021, would be retained without change.

Energy Policy WA assures stakeholders that no further amendments will be made to Part 8A of the EI Act as part of Project Eagle, beyond amending references to the Pilbara electricity objective (to be replaced by references to the SEO).

Further, there are no planned changes to the 'have regard to' factors in the Electricity Industry (Pilbara Networks) Regulations 2021.

EPWA will also invite further involvement from Pilbara stakeholders as part of any further consultation on the remainder of the draft bill.

## 4. Additional information for stakeholders

Stakeholder engagement highlighted the need for additional clarification as to the intent and rationale behind the proposed SEO.

### Long-term interests of consumers

The inclusion of the 'energy trilemma' within the SEO adds important considerations decision makers must have regard to; however, but EPWA notes that it is paramount that decisions reflect the overarching objective of the SEO which is 'promoting the efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity'.

To this end, it is intentional that drafting permit decision makers to apply the SEO based on the circumstances of the decision. That is, decision makers should not be forced to make decisions that not in the long-term interests of consumers of electricity when having consideration to the various limbs of the SEO.

It is intended that, by taking this approach, the SEO will remain relevant over time as the needs of consumers and the electricity industry evolve.

### Flexibility

Similarly, the ability for decision makers to weight the three 'limbs' of the SEO in the way that best serves the long-term interests of consumers is a deliberate feature of drafting.

Some stakeholders mentioned the application of the SEO will depend on decision-makers' subjectivity; however it is this judgement which Energy Policy WA considers important to enable sufficient flexibility for decision-makers to consider the unique circumstances of the decision being made, at that time.

Flexibility is a necessary feature of the proposed SEO which seeks to resolve the rigidity of a framework which previously did not afford decision makers the discretion to adequately pursue 'the long-term interests of consumers'.

### Relationships with subsidiary instruments

The principles of the SEO are intended to guide decision making at a high level to promote the long-term interests of consumers. The dimensions of the SEO, which relate to quality, safety, security, reliability, price and the environment (including the reduction in greenhouse gas emissions) are intended to guide decision making without specifying limits (or ranges) of those dimensions.

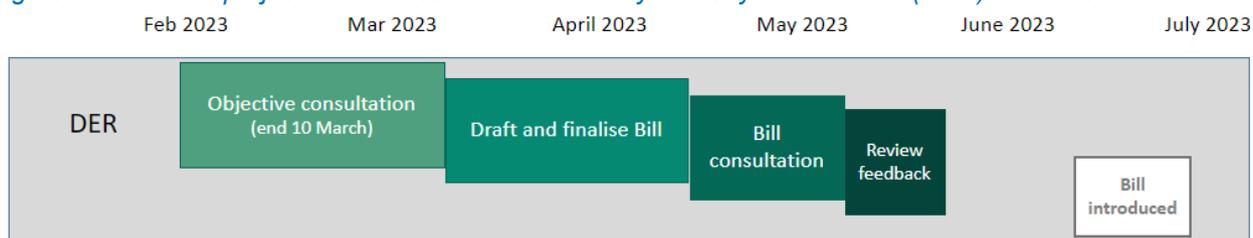
Detail relating to reliability standards, for example is contained within a framework which sits beneath the EI Act. Raising specified, or current limits, ranges, targets, or prices to the status of legislation may result in unnecessarily limiting or apply undue weight to one of the limbs of the objective. Appropriately, that level of specified detail will be left in subsidiary instruments, for example:

- Electricity security and reliability targets, standards and processes are currently contained in the WEM Rules, Network Quality and Reliability of Supply Code and Electricity Networks Access Code 2004.
- Standards such as Generator Performance Standards, SWIS Operating Standards, Frequency Operating Standards, and the Reserve Capacity Mechanism are contained in the WEM Rules; and
- Prices, including price caps, price determination methodologies, and market power mitigation mechanisms are contained in the WEM Rules and other instruments.

## 5. Next steps

Progress on the drafting of the remainder of the bill is continuing to date, and is anticipated to be finalised prior to June 2023.

*Figure 2: Indicative project timeframes for the Electricity Industry Amendment (DER) Bill 2023*



At present, Energy Policy WA hopes to provide stakeholders with the opportunity to comment on an exposure draft of the bill in May 2023, and will communicate this opportunity to stakeholders in as soon as practicable.

Following consultation with stakeholders about the draft bill, introduction of these amendments to parliament is planned for mid-2023.

