



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

Consultation Summary Paper

Electricity Industry Amendment (DER) Bill 2023

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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

Executive Summary

The [Energy and Governance Legislation Reforms](#), also referred to as 'Project Eagle', are progressing enabling amendments to the *Electricity Industry Act 2004* (EI Act) in the form of an Amendment Bill.

This paper summarises the approach undertaken to industry stakeholder engagement about the proposed amendments to the EI Act and summarises the feedback received from stakeholders.

Background

The legislative and regulatory framework which governs the South West Interconnected System (SWIS) is almost two decades old. Changes are crucial to keep pace with the rapid transition of the power system which must adapt to the integration of new technologies while also considering the environment, including reducing greenhouse gas emissions.

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

The Amendment Bill

Drafting of an Electricity Industry Amendment (Distributed Energy Resources) Bill 2023 (Amendment Bill) has been progressing through the first half of 2023. This legislative reform aims to significantly improve legislative and regulatory arrangements for the electricity sector in Western Australia.

Consultation on an exposure draft of the Amendment Bill was provided to industry stakeholders with a companion guide outlining the intent of drafting changes. A special session of the Transformation Design and Operation Working Group (TDOWG) was held to go through the Amendment Bill, with over 50 industry stakeholders in attendance.

Consultation was open for four weeks and concluded on 2 June 2023, and written submissions were provided by 15 stakeholders.

Next steps

Enabled by amendments to the EI Act, the planned changes will provide for major improvements to the responsiveness of the regulatory framework.

In acknowledgement of the significant changes to regulatory instruments required to implement ETS Stage 2 and the potential impact on energy market participants, Energy Policy WA (EPWA) anticipates a phased approach to the reforms through to 2025-26, with the most critical changes to instruments to be progressed first.

1. Background

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

The legislative and regulatory framework which governs the SWIS is almost two decades old. Changes are crucial to keep pace with the rapid transition of the power system which must adapt to the integration of new technologies while also considering the environment, including reducing greenhouse gas emissions.

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

The amendments have three main 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 first goal, introduction of an overarching objective in the EI Act, has already been the subject of consultation with industry. Comments and feedback provided by stakeholders assisted in refining the wording of the State Electricity Objective (SEO). The drafted SEO aims to resolve the current problem which involves a number of separate, overlapping and inconsistent objectives across a range of legal instruments which govern the electricity sector in Western Australia.

The second and third goals are the subject of the current drafting and consultation and form the remainder of the Amendment Bill. Expanding the scope of the WEM Rules will, over time, transition and improve a range of subsidiary legal instruments into consolidated and future-focused rules governing the electricity sector in Western Australia - the Electricity System and Market Rules (ESMR).

Drafting of the *Electricity Industry Amendment (Distributed Energy Resources) Bill 2023* (Amendment Bill) was been progressed through the first half of 2023, and enabled an exposure draft to be shared with stakeholders for feedback.

1.1 Purpose of this paper

Consultation on an exposure draft of the Amendment Bill saw several stakeholders provide written and verbal feedback on the wording and intent in the proposed drafting.

This paper summarises the feedback received from stakeholders and provides an indication of how feedback was incorporated into the final Amendment Bill approach.

2. Consultation

Consultation on the *Electricity Industry Amendment (Distributed Energy Resources) Bill 2023*

Consultation on an exposure draft of the Amendment Bill was open to stakeholders for four weeks and concluded on 2 June 2023. Consultation included a special session of the TDOWG and publication of a companion guide outlining the proposed changes.

EPWA acknowledges the effort and consideration reflected in the feedback provided by stakeholders. Feedback provided valuable comment on the exposure draft, and has resulted in further improvements to the Amendment Bill.

Previous consultation

In February 2023, EPWA published a consultation paper inviting stakeholders to comment on the proposed SEO. The paper was accompanied by presentations to the TDOWG, the Expert Consumer Panel and the Pilbara Industry Liaison Committee.

EPWA received 15 written submissions from stakeholders and additional verbal feedback in discussion with others. This interest and engagement by stakeholders was incorporated into final drafting of the SEO.

Stakeholder feedback, and a paper summarising feedback received by stakeholders on the proposed SEO, its incorporation into drafting, and how feedback has been incorporated into drafting, or ear-marked to inform future policy decisions is available on our website.

3. Stakeholder feedback

Submissions received from stakeholders are available to view on EPWA's website. Written submissions were made by 15 stakeholders, with a list of stakeholders provided at **Appendix A**.

Submissions were generally supportive of the intent of the Amendment Bill, with a significant number of comments received by stakeholders raising queries about the detail and consequences of amendments.

The issues raised in submissions has been grouped into several key themes: drafting intent, defined terms, application of the ESMR, and operationalisation of the amendments. Feedback relating to these themes are summarised below, along with responses to additional comments provided by stakeholders

Main themes raised

1. Drafting intent

Some stakeholders provided feedback on whether they thought the drafting would accomplish what it set out to do.

Clarity of roles on the distribution system

- One stakeholder requested clarity on whether the roles of 'system or facility operator' and the 'operator of a distribution system' were intended to be undertaken in concert, or only as separate roles.
- This comment highlighted an issue of clarity about defined roles within the Amendment Bill and also raised concern that, despite the role of 'distribution system operator' being central to the regulatory framework for DER, it was subsumed within 'distribution system or connected facility' within the Amendment Bill.
- This feedback has been incorporated in drafting through inclusion of a separate definition for 'distribution system operator' in order to provide clarity of intent and meaning.

Consideration of data use

- One stakeholder raised concerns about the requirements and standards relating to ‘energy data’ (which has now been revised to ‘electricity data’ – discussed in the section below on definitions).
- Requirements and standards of data detailed in this section relate to confidentiality, protection, and rights for customers without considering whether data may need to be shared by entities to enable system security (as in the case of DER management).
- Electricity data services consider collection, distribution, storage and processing of energy data, and further consideration has been given to ensure that the ESMR are sufficiently empowered to enable and promote data sharing between entities while still fulfilling important privacy obligations and data rights for consumers.

Transfer of functions to the Coordinator

- Some stakeholders noted the transfer of the triennial review of WEM operation from the Economic Regulation Authority (ERA) to the Coordinator of Energy (Coordinator).
- In 1 July 2021, following a decision of government, the responsibility of electricity reviews of a policy or technical nature was transferred from the ERA to the Coordinator. However, the triennial review of the WEM was not able to be transferred at the same time because the review is empowered in the EI Act and therefore requires amendment to legislation in order to be transferred.
- EPWA notes the comments provided by stakeholders in relation to the transfer of this function, however, the drafting implements a position already approved by Government. The first triennial review will not be due until three years and six months after the passage of the Amendment Bill.
- Stakeholders noted the drafting did not amend the review of reliability standards for the Regional Power Corporation (Horizon Power). Consistent with the above, this review function is also transferred to the Coordinator.

Queries about potentially limited language

- Stakeholders queried whether the use of ‘any of the following’ was exclusionary in s104B in relation to regulation of access to services of covered networks by the ESMR, however this phrase has been included intentionally to not limit this section to an implication that ‘all of the following’ would be required.

Immunity provisions

- Stakeholders noted that the specific drafting of immunity provisions relating to civil penalties (section 126) inadvertently limited the Australian Energy Market Operator’s (AEMO) existing immunity.
- There was no intent to limit these immunities. Drafting has been revised to reinstate AEMO’s immunity provisions by removing the qualifier that immunity would be provided only in relation to its ‘system management function’.

2. Definitions

Stakeholders raised comments or concerns about the clarity and breadth of some defined terms in the draft. Comment was also provided on some compound terms that may be improved by being separated into discrete definitions.

Reliability

- Stakeholders provided feedback on the defined term ‘reliability’ which in the Amendment Bill refers to the concept of power ‘quality’ (also a defined term), despite them being related but separate concepts. One stakeholder also viewed the phrase ‘demanded by customers’ problematic to the definition.

- The definition of ‘reliability’ in the draft Amendment Bill has been amended to promote clarity around its application.

Security

- The concept of whether security relates only to supply or whether it relates to security of the power system and its ability to withstand disruption was a comment raised by stakeholders. This definition has been revised, with further refinements to the wording being implemented for clarity.

Electricity system

- Some stakeholders provided the comment that ‘electricity system’ is not defined within the Amendment Bill which they felt was inconsistent with other systems, such as ‘distribution systems’, ‘transmission systems’ and ‘stand-alone power systems’ all being defined.
- This suggestion has been incorporated into the drafting, with a definition for ‘electricity services’ now being provided.

Energy data vs electricity data

- A stakeholder queried whether ‘energy data’ might more appropriately be referred to as ‘electricity data’.
- This suggestion has been reflected in new definitions for ‘electricity data’, ‘electricity data platforms’, and ‘electricity data services’.

Microgrids

- Stakeholders inquired about the operationalisation of the definition of ‘microgrid’, and its usefulness in relation to definitions of ‘embedded network’ and ‘stand-alone power systems’.
- Consequently, the definition of ‘microgrid’ has been removed. Instead, ‘embedded network’ has been expanded to include those distribution systems that also may be capable of operating autonomously for a period of time.

Connected facility

- One stakeholder sought further clarity on the definition of ‘connected facility’. This definition has been revised to provide a more comprehensive description of this new term.

Consumers of electricity

- One stakeholder queried the use of ‘consumers of electricity’ and not ‘consumers of energy’.
- In order to be consistent with the EI Act and the scope relating to electricity, no change has been made.

Electricity services

- Stakeholders raised concerns that the defined term ‘electricity services’ was too narrow and did not accurately or adequately reflect the range of electricity services that may be provided in future. In particular, the use of demand-side services were not contemplated in the exposure draft definition.
- Other comments queried the scope of the definition in relation to system operations and supply of electricity.
- All feedback has been considered and incorporated into a revised definition of electricity services.

3. Application of the ESMR

Stakeholders raised queries about how the new ESMR would be applied.

- Stakeholder feedback queried whether the ESMR would apply to regulation of the Pilbara network. The ESMR will include provisions that apply outside of the SWIS, however, there is no intention for the ESMR to replace instruments already in effect for the Pilbara under Part 8A of the EI Act (i.e. the Pilbara Networks Access Code or Pilbara Network Rules).
- One stakeholder queried why the ESMR is subsidiary legislation and not primary legislation. The expanded WEM Rules, now the ESMR, are intentionally designed as subsidiary legislation. Primary legislation, which is broad, enabling, and only changed by the Parliament, does not typically contain operational detail. Consequently, the ESMR (as subsidiary legislation) sits beneath the EI Act, empowered by regulation, and is subject to its own rule change process which enables it to be responsive to a rapidly transitioning system.

4. Operationalisation of amendments

Stakeholders raised a range of queries querying how the amendments might be implemented.

- Stakeholder feedback questioned matters relating to access (currently addressed through Part 8 of the EI Act), including whether changes to the timing of access arrangements were considered, and whether a future policy review of the *Electricity Networks Access Code 2004* (Access Code) might delay other changes in the industry.
- The transfer of the matters in the Access Code into the ESMR will be subject to a considered and highly consultative process, over a period of years. For this reason, it is not possible to presuppose the outcomes of those processes; however, the timing and staging of the process will reflect government's policy priorities. The above feedback did not identify the need for any changes to the drafting.
- Further comment on the transition of Access Code provisions to the ESMR would result in access contracts being subject to differing access provisions in subsidiary legislation. The contractual implications for these agreements will be subject to the specific change of law provisions in those contracts, but do not relate to the current drafting of the Amendment Bill.
- A stakeholder queried how the transfer of prescribed nominal voltages (for the definitions of distribution and transmission systems) to the regulations might impact services provided to network users. This voltage level, 66 kilovolts, will remain in the regulations and is not anticipated to have any impact on network users.
- Stakeholders also provided suggestions for further consideration in the implementation phase following passage of the Amending Bill, including thought for commercial access agreements, potential consequential amendments for the *Electricity Industry (Customer Transfer) Code 2016* and *Electricity Industry (License Conditions) Regulations 2005*. This feedback has been noted, and will be incorporated into consideration of any transitional arrangements.

Other feedback

Support for reform

- Stakeholders stated their general support for the proposed reforms, and indicated their interest in ongoing engagement and opportunities for consultation as the reforms progress.
- Following the passage of the Amendment Bill, EPWA will ensure that project planning ensures a strong link between the policy projects that will flow on from the amendments, their timing and importance to progressing the reforms.

The State Electricity Objective

- Some stakeholders restated their desire for material that would provide guidance on the application of the SEO. EPWA highlighted in the consultation paper about the SEO that primary legislation which gives effect to broad, guiding principles is not the place for that level of detail, and that guidance may be considered in future policy documents.
- One stakeholder requested confirmation that the SEO would not be able to be applied retrospectively. Drafting was reviewed with this in mind, confirming that the SEO would only be able to be applied onwards from the day of proclamation of the amendments.
- One stakeholder raised an issue that the wording of section 3A(4) is inconsistent with the three limbs being of equal precedence. This was raised, and it was determined that the drafting did ensure that the limbs were weighted equally, but that a necessary feature of application of the SEO was that the weighting of the limbs could be applied flexibly by decision makers.
- Another stakeholder sought clarification that AEMO will be required to have regard to the proposed SEO in regard to discharging its functions (as specified in the EI Act and the new ESMR), and EPWA can confirm that it will (where it explicitly stated to do so). This has been reflected in updated drafting of the Amendment Bill.
- One stakeholder queried whether application of the SEO should be explicitly stated as not as applying to section 3A only, and rather applies across the whole EI Act. Has been made clear through updated drafting.

Drafting accuracy

- One stakeholder noted that the word 'governance' had been inadvertently deleted from the second reference to 'market governance participant' in section 126(2). This error has been remedied through updated drafting.
- A query was made whether it was an error to remove the definition of 'Coordinator' from Part 4. 'Coordinator' has now been defined in the Preliminary part of the Amendment Bill.
- Stakeholders queried whether 'competition' should be removed from section 122 and not stated within the SEO.
 - 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 efficiency is 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.

Drafting consistency

- Consideration was given to whether it was appropriate to refer to electricity *systems* or the electricity *system* and consideration has been applied to rationalising these terms throughout the Amendment Bill.
- One stakeholder raised a query about whether the ESMR should also be referred to as the Rules, and it was confirmed that in cases where the term 'Electricity System and Market Rules' would need to be used twice within one sentence that it is acceptable in the second instance in that sentence to be referred to as 'the Rules'.
- Other terms have been raised in relation to consistency of the Amendment Bill such as the use of the terms 'at least 1' in some parts of the Amendment Bill and 'one or more' in others and rationalisation of the terms Co-ordinator with Coordinator.
- Another stakeholder raised concerns over whether 'achieved' and 'met' should both be used in the Amendment Bill to refer to both the State Electricity Objective and the Pilbara electricity objective. This has been addressed through amended drafting.

Consultation

- Another stakeholder commented that extensive consultation during the reforms will be necessary to ensure that the ESMR has industry support, is efficient and does not have unintentionally burdensome consequences. Additional comment noted the possible trade-off between the pace of implementation and adequate consultation.
- The next phase of the reforms will be carried out in a deliberate, well-staged approach which seeks to minimise adverse impact on industry stakeholders, but enables sufficient time to comprehensive consultation to occur.

Retrospectivity of application

- 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 instruments under the EI Act decision makers must have regard to the SEO.

4. Additional information for stakeholders

Next steps

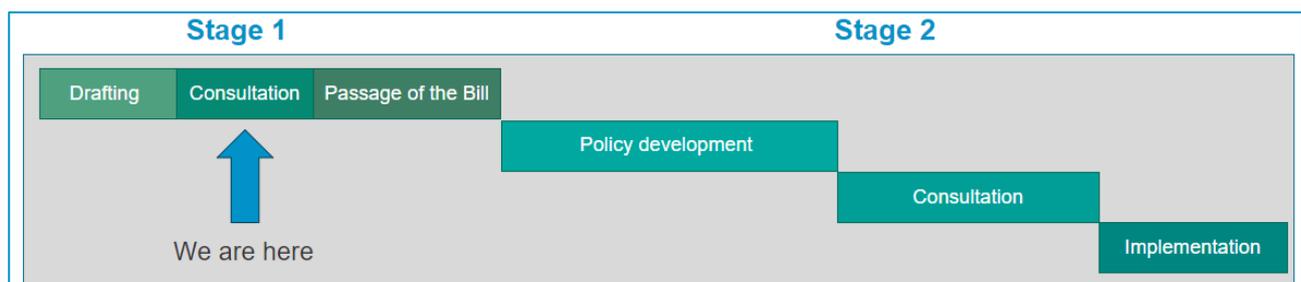
- Following the introduction of the Amendment Bill to Parliament, implementation of the reforms will follow a deliberate, phased approach to the development of policy and subsequent amendments to the new ESMR.
- The proposed approach to implementation of the ETS Stage 2 reforms enabled by Project Eagle has activities packaged into three broad work streams relating to:
 1. The lower-voltage distribution network and DER integration;
 2. Power system security and reliability; and
 3. Other enhancements and modifications.

Timing

Each work stream will be progressed in parallel, and it is anticipated that there will be interdependencies between each of the work streams.

To implement these changes, and manage interdependencies and timing, governance arrangements (including industry consultation, working groups, and advice and approval bodies) will be required.

These arrangements will be developed by EPWA over the coming months and communicated to stakeholders.



Appendix A

List of stakeholders who provided submissions on the Amendment Bill

- Economic Regulation Authority
- Australian Energy Market Operator
- Noel Schubert – Expert Consumer Panel
- Alinta Energy
- Change Energy
- Ivan Quail
- Synergy
- Sustainable Energy Now
- Western Power
- Fortescue Future Industries
- SwitchDin
- Horizon Power
- Old Shanghai Pty Ltd
- Confidential submissions not listed

