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Energy Policy WA
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Energy and governance legislation reform: Project Eagle

The Australian Energy Council (the “AEC”) welcomes the opportunity to make a submission to Energy Policy WA on the Energy and Governance Legislation Reform: Project Eagle (“Project Eagle”) consultation paper (“Consultation Paper”).

The AEC is the industry body representing 20 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC makes the following comments:

Investor confidence

The Consultation Paper suggests that the various parts of the *Electricity Industry Act 2004* (“EI Act”) and the instruments made under them have created a fragmented regulatory framework that hinders evolution, makes any change a difficult exercise, is unnecessarily complex and creates regulatory barriers. Energy Policy WA is proposing to resolve this with:

“The development of a single regulatory instrument currently intended to be titled the Energy Rules – Western Australia (ER-WA). This will be the new centralised regulatory framework that brings most matters regulated under the EI Act into a single piece of subsidiary legislation under the oversight of the Coordinator of Energy (Coordinator). The content of the instruments that will form the new ER-WA will be reviewed to rationalise and simplify them to make the regime more accessible and reduce administrative and compliance burden.

Enhancements and modifications. Other aspects of the energy regulatory framework that will not form part of the new ER-WA will be reviewed with the aim of enhancing and modernising these instruments. A review of historical and other energy related legislation will also be undertaken with a view to rationalising and abolishing elements that are no longer required (because they are outdated, for example).”¹

The Consultation Paper later says that “it is a complex environment that is hard to navigate, with potential for duplication of effort and inefficiencies ... The complexity of the regulatory arrangements may also discourage stakeholders from initiating and participating in rule changes (where they are able to do so under the governance arrangements applying to the instrument).”²

¹ See p3, [Energy and Government Legislation Reform: Project Eagle Consultation Paper](#)

² See p7, [Energy and Government Legislation Reform: Project Eagle Consultation Paper](#)

The AEC considers that it is prudent to review the instruments and other aspects of the energy regulatory framework for ways to streamline the rules and rationalise content. However, a cornerstone of the Wholesale Electricity Market is that the framework has traditionally remained stable and that has facilitated investor confidence. While the current regulatory regime may discourage a small portion of stakeholders from participating in rule changes, it can be equally said that further changes to the framework, particularly in a period of transition and after a series of major rule changes to some instruments, may dent investor confidence at a time when the South West Interconnected System needs to bolster appropriate investment.

The changes proposed in the Consultation Paper are far-reaching and may assist in consolidating the instruments under ER-WA. However, the existing framework, which for the most part is effective, cannot be replaced by another framework that is more onerous to market participants or more administratively cumbersome. It also can't be used as a tool to resolve policy issues as the Consultation Paper suggests.³ Before launching into drafting legislation, Energy Policy WA should communicate the guiding principles with stakeholders and outline how these reforms will be measured with KPI's.

Consultation & engagement

Project Eagle is an ambitious task. Developing a centralised regulatory framework, and enhancing and modifying the energy regulatory framework is a significant undertaking that requires a measured process, appropriate timeframes, and full engagement with stakeholders.

The short, two-week timeframe to consider the Consultation Paper has restricted the ability for stakeholders to provide meaningful feedback. On top of this, the Consultation Paper suggests that there is limited scope for future consultation:

“Stakeholders will be able to input into the design of the ER-WA as part of the detailed design and development phase, which is expected to commence in early 2022 in parallel with the commencement of legislative drafting that is intended to produce a Bill for consideration by the Western Australian Parliament in the second half of 2022.”⁴

Genuine consultation cannot be conducted in parallel with the drafting of the legislation. It needs to be a considered process that is fitting of the proposed changes. The current approach involves presenting already established positions to online industry forums or providing consultation papers without advance notice. This needs to improve to a legitimate consultation process where stakeholder feedback can be meaningfully considered. Changes of the magnitude proposed in the Consultation Paper require dialogue and input, allowing the detailed design to be co-developed between industry, who have a unique perspective on the challenges in the market, and Energy Policy WA. Project Eagle can't be a rushed exercise with consultation conducted alongside the drafting of legislation. The AEC strongly encourages Energy Policy WA to adopt an appropriate timeframe that allows two-way engagement with stakeholders.

Resourcing & costs

Rationalising the current regulatory arrangements into a new centralised framework and enhancing the capability of that framework is a complex task. It will be equally challenging to administer the framework in the future. The AEC considers that it is important for Energy Policy WA to be adequately resourced to undertake this project and then administer the framework.

While the Consultation Paper notes that the establishment of ER-WA will involve “providing for the recovery of the costs of administering the ER-WA and providing for a fair, equitable, and administratively simple approach to cost recovery,”⁵ it says nothing about the expected costs. These costs will be collected from

³ See, for instance, p2, [Energy and Government Legislation Reform: Project Eagle Consultation Paper](#)

⁴ See p4, [Energy and Government Legislation Reform: Project Eagle Consultation Paper](#)

⁵ See p15, [Energy and Government Legislation Reform: Project Eagle Consultation Paper](#)

market participants and the AEC encourages Energy Policy WA to make the detailed costs available to stakeholders.

Scope of review

The Consultation Paper says that ER-WA will involve consolidating existing instruments into a centralised regulatory framework plus reforming the content of the various instruments.⁶ Some of these instruments, such as the Electricity Networks Access Code, have already undergone a lengthy review in the recent past. These reviews are a detailed process taking up considerable resources for market participants and now there is the prospect of these instruments being re-opened again for review. The AEC seeks clarification on whether instruments that have been recently reviewed will be considered for further changes as part of this process.

Reviews to be conducted by the Coordinator

The Consultation Paper notes that the Coordinator will have “additional policy, rulemaking, and market development functions.”⁷ It also goes on to say that the “Coordinator is now responsible for conducting an annual review of the effectiveness of the WEM.”⁸

This approach lacks independence and creates a conflict of interest with the Coordinator monitoring the effectiveness of its own policy and rulemaking process. It would be extremely difficult for the Coordinator to impartially monitor the effectiveness of its own activities and any position taken by the Coordinator could be called into question by its conflict of interest.

The AEC maintains that an independent body should be given responsibility to monitor the effectiveness of the Coordinator’s policy, market development and rule making process.

Overarching objective

The Consultation Paper states:

“A suitable overarching objective will be developed for inclusion in the EI Act to guide the development and operation of the ER-WA as well as other subordinate instruments made under the Act that will not form part of the new ER-WA. The precise wording of the overarching objective will be developed in consultation with industry, but it will include the protection and advancement of the interests of consumers (present and future) through energy services that are fair, secure and reliable, of appropriate quality, and affordable and sustainable, while also accounting for environmental considerations more broadly.”⁹

The AEC supports the adoption of an overarching objective and also welcomes industry consultation in developing the objective. While the items proposed to be included in the objective are worthwhile, the AEC also suggests that the objective should be framed such that whilst ultimately striving to meet the long-term needs of consumers, it achieves this through an efficient and competitive market. This would encompass effective competition, efficient investment, retailer viability and producer revenue adequacy.

⁶ See p15, [Energy and Government Legislation Reform: Project Eagle Consultation Paper](#)

⁷ See p18, [Energy and Government Legislation Reform: Project Eagle Consultation Paper](#)

⁸ See p18, [Energy and Government Legislation Reform: Project Eagle Consultation Paper](#)

⁹ See p17, [Energy and Government Legislation Reform: Project Eagle Consultation Paper](#)

The AEC supports references to security, reliability and affordability. The AEC however expresses caution regarding including the following virtuous concepts within an industry objective:

- “Fairness” and “protection” relate to redistributive social policy which is the responsibility of government rather than industry. The usual process is for rules developed by the industry to be purely focussed on efficiency and cost reflectivity, whilst it is open for government, where necessary, to legislatively constrain those rules for the purposes of social policy.
- Environmental considerations are also a responsibility for government outside of the industry. It is government’s role to identify and manage environmental externalities through environmental legislation which will naturally affect the competitive position of various technologies. Industry rules on the other hand should always be technology neutral. Attempts in some markets to introduce sustainability objectives have led to considerable responsibility confusion between the industry and government.¹⁰

Conclusion

The AEC appreciates this opportunity to provide feedback on the Consultation Paper and encourages Energy Policy WA to consider the issues raised above.

Please do not hesitate to contact Graham Pearson, Western Australia Policy Manager by email on graham.pearson@energycouncil.com.au or by telephone on 0466 631 776 should you wish to discuss this further.

Yours sincerely,

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¹⁰ For further discussion as to why the National Electricity Market has at several times considered, but rejected, an environmental objective, see <https://www.energycouncil.com.au/analysis/objecting-to-the-objectives/>