

1 November 2021



Mr Ashwin Raj
Project Director
Energy and Governance Legislation Reform
Energy Policy WA
Level 1, 66 St Georges Terrace
Perth WA 6000

Sent via email: energytransformation@energy.wa.gov.au

Dear Mr Raj

ENERGY & GOVERNANCE LEGISLATION REFORM – CONSULTATION PAPER

The Chamber of Minerals and Energy of Western Australia (CME) is the peak representative body for the WA resources sector. Power is a direct input into production processes for many CME member companies operating across the Peel, South West and Goldfields-Esperance regions, with some participating in the Wholesale Electricity Market (WEM). CME members were responsible for more than 25 per cent of the designated electricity generation on the South West Interconnected System (SWIS) in 2019-20.¹

The value of royalties received from the sector totalled \$12.7 billion in 2020-21, accounting for 31.7 per cent of general government revenue.² Amid heightened commodity demand, royalties and stronger tax collections from the sector are expected to help underpin government fiscal capacity in 2021-22.³

Overview

CME supports in principle the high-level design of proposed reforms to the governance and institutional arrangements for the WA energy sector, as outlined in the 'Project Eagle' Consultation Paper. It is also positive to see Energy Policy WA receive increased funding from the recent State Budget to embark on the second stage of the Energy Transformation Strategy.

Due to the rapid pace of transformation in the energy transition, CME's Infrastructure Committee developed a common set of policy position principles on energy which the CME Advisory Board have endorsed:⁴

1. A lower emissions future – CME members will play a key role in supporting the economy's ongoing shift towards a cleaner energy future, consistent with our public policy statement on climate⁵
2. One systems approach – A need for whole-of-government coordination on all aspects of renewable and non-renewable energy use and delivery
3. Keep the lights on – Maintain secure, stable and reliable energy supply and support diversification of high-reliability generation sources, providing certainty for large industrial loads
4. Low and stable costs – Efficient infrastructure informed by least cost, transparent and equitable trade
5. Sustainable – Future-proofing and fit-for-purpose policy and regulation to keep pace with change.

The remainder of this submission is thus influenced by these principles to ensure impacts to existing and future industries and their supply chains can be minimised. A coordinated, sustainable development approach between the government and industry, alongside the Sectoral Emission Reduction Strategies (i.e. heavy industries and electricity sectors), will be required.

¹ Australian Government, [Electricity sector emissions and generation data 2019-20](#), Clean Energy Regulator, 25 February 2021.

² Government of Western Australia, [2020-21 Annual report on State finances](#), Department of Treasury, 24 September 2021, pp. 167-168.

³ Government of Western Australia, [Budget Paper No. 3: Economic and Fiscal Outlook](#), Department of Treasury, 9 September 2021.

⁴ CME, [Energy policy](#), infrastructure policy area, published 28 September 2021.

⁵ CME, [Climate policy](#), climate change policy area, published 5 October 2021.

A whole system reform scope

CME supports objectives of the two reform workstreams – a centralised regulatory instrument and framework enhancements. However, such reforms must be holistic, technology-agnostic and cognizant of each other. For example, while the first workstream focuses on the end-to-end governance of electricity supply, this is inextricably linked to the resilience and responsiveness of the power system.

It is acknowledged that it may not be possible to consider the complex interactions of liquid fuel security, gas and other emerging energy sources on electricity supply during these initial stages of reforms. However, we consider this broadened analysis should be prioritised soon. **An end-to-end supply chain and whole-of-government reform focus on aligning all aspects of energy supply, planning, delivery and use will be required** to ensure objectives of the Energy Transformation Strategy can be met.

We note *'matters relating to gas are out of scope, except for customer protections'*. However, it is CME's view it is not pragmatic to exclude the critical role gas-fired generation plays in balancing the system as higher proportions of intermittent renewables risk reliability in the SWIS. This reality is inevitable in the short term and should be recognised in ongoing reforms to governance and institutional arrangements for the WA energy sector. Until other firming capacity or stationary battery storage technologies of least sustainable cost and low emissions become viable at the commercial scale required to support a successful whole-of-economy energy transition on the SWIS, this acknowledgement as a valid pathway may be necessary.

Any subsequent reform stages under the Energy Transformation Strategy will need to understand better the medium to longer-term intricacies and interdependencies of other government strategies which could permanently affect this evolving energy landscape.⁶ To minimise unintended consequences and adverse impacts, government strategies related to the SWIS should be considered collectively within the broader context of the State's ongoing energy, climate and government trading enterprise (GTE) reforms.

CME recommends the following outcomes be made clearer and include evaluation of success outcomes:

- *'while also recognising the importance of a stable regulatory environment [and reliable power system]'* – Should be clarified to address customer concerns that rely on 24/7 system security for operational continuity or have long-term purchase agreements well exceeding this term of government
- *'evolve in a coordinated fashion in line with broader [whole-of-government] strategic priorities'* – It will be essential to ensure there is an alignment of priorities and transparency in decision-making processes between State agencies, statutory entities and GTEs
- *'a transition model for the management of power system security and reliability that assures a smooth and continued operation of the WEM and that minimises costs for industry'* – CME recommend this consideration is elevated to a key intended standalone outcome. This change would address the first bullet point above.
- If the intention is to 'future proof' the regulatory framework for power system security and reliability standards, matters relating to gas should not be expressly excluded from the scope. Instead, they could be included as another matter to be considered as the reform progresses.

CME supports the exclusion of the Pilbara regime in these reforms. A framework for common governance across the SWIS and Pilbara needs to deliver efficient and fit-for-purpose 'light touch' regulation of access.

The problem

CME agrees with the problems stated in the consultation paper – change can be uncoordinated, the market is fragmented, unnecessarily complex and inherently limited in adapting to technological change. A coherent, systematic mechanism for coordinating the advancement of a whole-of-government strategic vision with the various market, industry and government bodies involved in the energy regulatory framework is thus needed to address some of these structural problems. However, these issues are not new to the SWIS and were recognised as early as a decade ago during consultation and development of the 'Energy2031' vision.

CME also notes some of these underlying issues are systemic and will require a suite of solutions that extend beyond the proposed governance and institutional reforms. Further to CME's submission to the Australian

⁶ In WA, these include Future Battery Industry Strategy, Renewable Hydrogen Strategy, Clean Energy Future Fund, Diversify WA, Net Zero Emission Mining Challenge, LNG Jobs Taskforce, WA Climate Strategy, Sectoral Emissions Reduction Strategies and Electric Vehicle Action Plan. Federally, it includes the Modern Manufacturing Strategy, Australia's Critical Minerals Strategy, National Hydrogen Strategy, Future Fuels Strategy and Technology Investment Roadmap.

Government's consultation on the Future Fuels Strategy,⁷ lessening the distortionary effect of tariff prices, providing greater consumer guidance on energy behaviours and improving connection processes should also be considered to reduce potential worsening of the 'duck curve' effects. The consequences of doing nothing is now unavoidable.

Since electricity is a crucial material input to operational processes, some CME members are WEM participants. Due to the highly technical, complex and fragmented nature of the framework, however, this has necessitated dedicated internal or external resources to interact with the market, even though it takes away time and effort from core activities of the business.

Manufacturing and downstream processing

While detailed commentary on the complexity of the regulatory framework and its technical rules is outside of CME's remit, the cost of reliable energy is a key issue for our members. The cost of reliable energy needs to be addressed to unlock the State's full economic potential to move further into manufacturing and downstream processing. Australia is the third most expensive OECD country for industry electricity prices – driven by the retiring of coal, costs of maintaining networks and margins.⁸ In a global economy challenged by the ongoing uncertainty from the fallout of the COVID-19 pandemic, combined with future changes to international competitiveness (including those proposed under OECD tax reforms), the ability to compete in global markets with reliable access to low cost, stable energy inputs will become even more critical to attracting investment and realisation of the State's aspirations to pursue economic diversification into high value-adding industries.

As policy certainty on federal-state net zero aspirations becomes more apparent with the upcoming UN Climate Change Conference summit (COP26) and transparency of GTE Asset Investment Plans improves under the State Infrastructure Strategy, the proposed energy governance and institutional reforms are a timely opportunity to address some of these fast-changing and cross-cutting problems. Because of this opportunity, CME again reiterates a recommendation to broaden the reform scope to include gas matters as another matter for consideration (at least indirectly). Gas is well-positioned to underpin the transition model in the near term, especially if power system security and reliability management is prioritised.

Power system security and reliability

CME strongly supports reforms intended to introduce an '*overarching, minimum standard for reliability and security that captures all generation and network requirements, and that balances the competing objectives of affordability against supply security and reliability*'.

As noted in the consultation paper, CME agrees that there is no universal set of reliability targets, incentives, and accountability reporting requirements for generation and network operations. This lack of reliability is mainly the case when changes in the weather pattern, such as new lower minimum demands require flexible, fast-ramping generation from elsewhere on the network. CME, therefore, supports AEMO's recommendation for a ramping service to be investigated as part of these reforms to provide a suitably effective 'ahead' signal.⁹

Electricity distribution

CME strongly supports reforms to enable two-way flows in distribution networks. Like what is occurring in interstate energy systems, some member companies are keen to take advantage of this opportunity to diversify and deliver network and system security functions to the grid during times of high demand.

Implementing the new instrument

In implementing either approach for these new arrangements, CME would like to caution the design of principles to underpin the recovery of costs. Any path to cost recovery should be equitable and ideally focused on efficient expenditure rather than actual costs. Allocation of direct, indirect, capital use and overhead costs should be transparent and require consultation to ensure relevance (a solid nexus to the service delivered). Expenditure to address market failures of 'public good' in nature should not be borne by WEM participants or end users but funded from general government revenue. Given the public-private nature

⁷ CME, [Future Fuels Strategy: Discussion paper](#), submission to the Department of Industry, Science, Energy and Resources, April 2021.

⁸ Accenture, [Future charge: Building Australia's battery industries](#), final report commissioned by the Future Battery Industries Cooperative Research Centre, June 2021, pp. 18.

⁹ AEMO, [Renewable energy integration – SWIS update](#), 28 September 2021, pp. 76.

of the SWIS and WEM, this may require a more precise delineation. Please see our recent submission on principles that should underpin the implementation of cost recovery for assessment processes.¹⁰

An overarching objective amendment

CME supports the intent to develop a suitable overarching objective which, as outlined in the consultation paper, 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'*.

In place of secondary objectives, CME recommends clear, specific guidance or principles be considered to prevent confusion and uncertainty in interpreting *'environmental considerations more broadly'*. To avoid disconnect between similar but competing government policy objectives, this guidance may require an explicit reference that ties in the various government policies and legislation relevant to the State's energy transition, emissions reduction and environmental protection strategies. Should there be a potential to align timing, these energy reforms will need to coincide and be compatible with these other institutional shifts. For example, the development of the Sectoral Emissions Reduction Strategies or legislation of emission targets will heavily influence the uptake of the energy storage opportunity under the Reserve Capacity Mechanism market. Clarity on the interpretation of *'environmental considerations'* will therefore shape market participation and growth of this new industry.

CME supports a requirement for rule changes to meet an explicit test, ensuring any new rules or changes retains consistency in the regulatory framework over the longer term. In rationalising and simplifying the rules, CME would like to recommend strategic consideration of which issues are deemed a priority for a rule change. The process for prioritisation could be underpinned by an assessment of risk, opportunity cost and net benefit to the market of implementation.

Enhancing the Coordinator's role

CME welcomes extension of the Coordinator's functions to include administration of the WEM Rules, Gas Services Information Rules and the Pilbara Networks Rules. However, with expanded responsibilities under these reforms, we would recommend increased governance and transparency over the Coordinator's decision-making processes as a prudent measure for managing risk.

There should also be a relevant mechanism introduced to encourage a regular independent review of the Coordinator's decisions that may affect economic efficiency and market effectiveness.

Dispute resolution framework

Consistent with the machinery of government reforms, CME supports the transfer of the Electricity Review Board functions to the State Administrative Tribunal. CME notes, however, the *Courts Legislation Amendment (Magistrates) Bill 2021* is yet to be finalised. It is not yet clear if these changes in appointment arrangements will result in a loss of specialised legislation expertise in favour of judicial resourcing flexibility (i.e. knowledge specific to energy market regulation).

Other matters

CME supports a review of the emergency management regime to manage electricity supply emergencies, particularly if it supports more coordination and responsiveness on gas-related matters.

CME looks forward to ongoing engagement with Energy Policy WA on industry energy transition matters. Should you have questions regarding this letter, please contact Linh Nguyen, Policy Adviser – Industry Competitiveness, at L.Nguyen@cmewa.com.

¹⁰ CME, [Implementing cost recovery for Part IV of the Environmental Protection Act 1986 \(WA\)](#), submission to the Department of Water and Environmental Regulation, October 2021.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'RCarruthers', written in a cursive style.

Robert Carruthers
Director – Policy & Advocacy