SHOPPING CENTRE COUNCIL OF AUSTRALIA

2 March 2026

Energy Policy WA
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Alternative Electricity Services (AES) Prescribing Regulations

Thank you for the opportunity to provide feedback on the Draft *Electricity Industry (Alternative Electricity Services) Regulations 2025* (AES Prescribing Regulations) and accompanying material. Additionally, we seek to provide feedback on the Information Paper outlining the proposed approach to AES registration fees to be paid to the ERA, which would be included in the AES Prescribing Regulations.

We appreciate the Government's engagement with us and their recent verbal commitment to engage further on key issues; principally being issued to be covered by the AES Code of Practice (which will be enabled under section 9(b) of the Draft Regulation as a condition of registration – noting also that it is prescribed under Division 4 of the 2024 Amendment Act and will be considered to be subsidiary legislation for the purposes of the *Interpretation Act 1984*).

In particular, based on our previous review of the Draft Voluntary Code, we strongly believe that amendments are needed in relation to:

1. **Tariffs and prices** (section 7 of the Draft Voluntary Code),
2. **Information and disclosure** (including the Disclosure Statement) – including ensuring this **aligns with retail leasing** obligations and practices,
3. **Facilitating access to service by other providers (Alternate Supply)**, and
4. **General procedural / red-tape / compliance cost issues** including the proposed ERA registration fee (we note that no other jurisdiction imposes an 'equivalent' registration (or similar) fee.

We have provided previous detailed feedback on the Draft Voluntary Code in relation to such issues, along with addressing several issues in detail in our comments in April 2023 on the then Amendment Bill. In relation to 'Tariffs and prices', our previous feedback is **attached**, which we asked is not published.

In addition to the above, we would appreciate clarity on what seems to be a lack of alignment, and a slight cross-over, in relation to provisions relation go to the AES Code of Practice under (Division 4) the 2024 Amendment Act and the Draft Regulation – for instance in relation to consultation and notification (e.g. section 59 Z (2)).

Noting the above, we remain concerned with the basis of the proposed reforms (including the limited and non-transparent claims (e.g. in the Embedded Network Survey) used to justify key aspects of the regulatory framework, along with the inflammatory commentary in the original Consultation Guide. This also includes claims made by just 26 shopping centre customers via a push poll-style survey, to help advance a case for regulatory change.

While this is old ground, it is clear that some of the unsubstantiated claims have been used to justify the reforms – much of which remains completely non-transparent – including a range of regulatory provisions and obligations.

Related to this, ongoing feedback by experienced embedded network operators, including the experience of other regulatory regimes, has been overlooked.

We have continually been asked to 'disprove' claims that lack objectivity and transparency; yet we have also not heard one detailed or articulate problem that could be fairly labelled against us.

The underlying problem with this approach is that a number of proposed regulatory provisions are problematic and continue to be justified using generalisations about customer protection versus them addressing a clear market failure or problem.

Even in a recent discussion, a comment was made in relation to alleged (but unsubstantiated) general '*price gouging*' in embedded networks.

Noting the general approach to price gouging under Federal competition law, which relates to 'excessively high prices' and prices which exceed reasonable costs and competitive levels, such a claim is simply unfounded and unconscionable, to any extent that this relates to shopping centre embedded networks.

It is incredibly disappointing that such inflammatory language continues to be used.

For clarity, as we have clarified to Energy Policy WA many times, our pricing is based on gazetted tariffs. Any price-gouging claim would have to accept that the gazetted tariffs are 'excessive', noting in any case that they are not broadly cost reflective (e.g. L1 and L2).

We do appreciate that Energy Policy WA has offered to consult with us further on this issue, and look forward to such discussions.

We also remain deeply concerned about the coverage under the Ombudsman scheme, including based on previous discussions that it's needed as a 'back-stop', versus there being a clear market or regulatory failure.

Our detailed feedback, including based on our experience in other jurisdictions (e.g. Victoria) – where one of our members has, to date, paid a couple of hundred thousand dollars in Ombudsman fees to only have 1 dispute every raised – continues to be largely ignored on the basis of generalised views about customer protections, versus addressing any underlying policy or market failure. As Energy Policy WA is aware, we have previously recommended alignment to retail leasing mediation (through the Small Business Commissioner's office) and/or adopting the approach (that works) in the AER's framework (to align with ANZS 10002: 2014/2022).

Overall, the original desire stated by Government that the proposed new regime will be a 'light touch' regulatory approach, is far from what is proposed.

The proposed framework confirms what has become, in our view, something of a foregone conclusion. It will impose unwarranted compliance costs and obligations on SPN and OPS operators, that are disproportionate to any clear market or regulatory failure.

Specific feedback

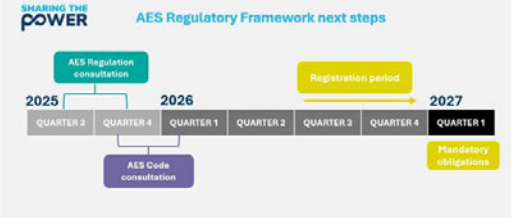
Fast track processing and public consultation

The SCCA supports Regulations 8(1) and (2), which removes the requirement (under relevant sections / sub-sections of 59 under the 2024 Amendment Act) for public consultation to enable the streamlined and timely processing of an anticipated high volume of SPN and OPS AES registrations as existing and new operators transition to the new regulatory framework.

Timeframes for implementation

As previously acknowledged, Energy Policy WA is on track (by ~6 months) to exceed the indicative consultation and implementation timeframes outlined below.

Assuming AES Code consultation commences in Q2 of 2026, this leaves a limited time for operators to prepare this; adjusting leasing and disclosure documents, and administering multiple registrations per site, tenant communications etc. Accordingly, we ask that Energy Policy WA delay implementation in line with the delayed consultation process and to allow operators additional time to adequately prepare and ensure compliance.



Recommendation 1 **The Government should extend the implementation timeframe by 12 months, with the Regulations and AES Code commencing on 1 January 2028.**

Statutory review

Given the points outlined above, the SCCA submits that the proposed framework should be subject to a statutory review no later than 2-years after commencement. The proposed framework represents a significant regulatory intervention in circumstances where there is no demonstrated market failure.

A review mechanism is therefore essential to test whether the regulatory objectives have in fact been met, whether costs and compliance burdens are proportionate and whether key elements, are operating as intended or delivering any measurable public benefit.

Recommendation 2 **The Government should commit to a statutory review of the AES registration framework no later than two years after commencement, with a specific requirement to assess the necessity, effectiveness and benefit-cost performance of the AES Code, and Ombudsman scheme for non-residential SPNs and OPSs in shopping centres, informed by evidence of actual disputes, regulatory outcomes and compliance impacts.**

See **attached** a *Proposed new regulation [XX] – Review of Regulations*, which we respectfully request be considered as a necessary amendment to the AES Prescribing Regulations.

Respectfully, if Energy Policy WA maintains its view that the wholesale changes that it has recommended to Government are founded, then such a commitment to transparency and review should be adopted.

Implementation costs

The Government has consistently indicated that the proposed registration and ombudsman scheme will be low cost to implement. On this basis, operators should be permitted to recover reasonable implementation and ongoing compliance costs from tenants, versus it being a 'cost to do business' and if it wants to ensure price transparency.

Allowing cost recovery would align with the Government's stated confidence in the low-cost nature of the scheme and ensure that costs are transparently passed through to those who ultimately benefit from the regulatory framework. This approach would also avoid unintended cost burdens on operators and support equitable implementation across the sector.

This approach is similar to the approach under retail lease legislation, whereby both statutory and non-statutory costs can be recovered from tenants, so long as they are disclosed up front.

Recommendation 3 **The Government should allow reasonable implementation and compliance costs associated with the registration and Ombudsman scheme to be passed through to customers – aligning the transparency principles along with WA (and other) retail lease legislation.**

Registration fees

The SCCA notes that the indicative initial registration fee of approximately $300 per registration is intended to recover around $900,000 per annum in operating costs associated with the Economic Regulation Authority's (ERA) administration of the AES registration framework. This indicative fee is contingent on an estimated coverage of approximately 3,000 SPN operators registering under the framework.

The SCCA is concerned, however, that in the early years of implementation the ERA may receive materially fewer registrations than anticipated, particularly given that SPN and OPS operators are currently unregulated, may be unaware of their new obligations, or may register late. In these circumstances, there is a risk that compliant operators who register at the outset could be disproportionately penalised through higher per-registration fees.

While the SCCA acknowledges that registration fees will be waived until the end of the 2026–27 financial year and that no application fees are proposed, it would be a perverse outcome if the indicative ~$300 annual fee were to increase markedly as a result of lower-than-expected initial registration uptake.

Recommendation 4 **The Government should provide greater fee certainty by establishing a cap of $300 per SPN and OPS operator per annum, applicable until 30 June 2031. This cap should remain in place until the planned review of the registration fee methodology has been completed and a refined "causer pays" model is implemented, ensuring early registrants are not unduly disadvantaged during the transition to the new regulatory framework.**

AES Code consultation

As discussed, we would welcome the Government's recent offer to engage closely with us on key aspects of the AES Code – as detailed earlier in this submission.

Recommendation 5 **That Energy Policy WA establishes a working group with the SCCA and its members, to seek to discuss and resolve relevant material issues such as:**

- **Tariffs and prices (section 7 of the Draft Voluntary Code),**
- **Information and disclosure (including the Disclosure Statement) – including ensuring this aligns with retail leasing obligations and practices,**
- **Facilitating access to service by other providers (Alternate Supply), and**
- **General procedural / red-tape / compliance cost issues including the proposed ERA registration fee (we note that no other jurisdiction imposes an 'equivalent' registration (or similar) fee.**

AES Prescribing Regulation vs Amendment Act 2024

We have reviewed the relevant enabling provisions of the AES Code of Practice in the Draft Regulation and the Amendment Act 2024 (e.g. 59X). We believe that there are some inconsistencies in relation to issues such as consultation and notification – such as under the 2024 Amendment Act where the Minister does not need to consult if a proposed amendment to the AES Code is considered 'minor'.

Recommendation 6 **That Energy Policy WA ensures a clear and consistent approach of AES Code of Practice enabling provisions and the 2024 Amendment Act.**

Thank you in advance for your consideration. Please contact Oliver Everett (Senior Advisor, SCCA) on [redacted] or at [redacted] if further discussion or clarification is required.

Sincerely,

James Newton
Head of Policy and Regulatory Affairs
Shopping Centre Council of Australia

Att. Proposed new regulation [XX] – Review of Regulations

SCCA Submission – WA Embedded Network Review: Draft Voluntary Code of Practice [Official: Sensitive]

SHOPPING CENTRE COUNCIL OF AUSTRALIA

Proposed new regulation [XX] – Review of Regulations

18. Statutory review

(1) The Minister must cause a review of the operation and effectiveness of these Regulations to be undertaken as soon as practicable after the period of 2 years beginning on the day on which these Regulations come into operation.

(2) The review must consider —

(a) whether the cost of the regulatory framework established under these Regulations, including the AES Code and any fees, is proportionate to the benefits associated with the provision of alternative electricity services,

(b) the effectiveness and ongoing necessity of dispute resolution arrangements, including the requirement for certain AES providers to be members of the Ombudsman scheme; and

(c) whether these Regulations have resulted in improved customer outcomes, having regard to evidence of operational issues by AES providers, complaints, disputes and enforcement activity.

(3) The Minister must cause a report of the review to be laid before each House of Parliament within 12 months after the review is commenced.

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